



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 02/06/2024

* = Mandatory, information must be provided

or Procurement Director Award:

*Contractor/Vendor Name/Grantor (DBA):

City of Tucson

*Project Title/Description:

Fiscal Year 2023 Shelter and Services Program.

*Purpose:

This grant awards the City of Tucson, \$3,774,485.54 to cover eligible expense under the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) Shelter and Services Program (SSP). SSP makes available federal funds for costs associated with providing shelter and other humanitarian aid to Legally Processed Asylum Seekers (LPAS) who have been encountered and released by DHS agencies.

*Procurement Method:

This Subrecipient Agreement is a non-Procurement contract and not subject to Procurement rules.

*Program Goals/Predicted Outcomes:

Provide LPAS released by DHS agencies with safe, supportive services, in compliance with federal guidelines, and assist with onward destination travel. As an SSP-funded subrecipient, City of Tucson will submit federally required data and backup documentation to Pima County Department of Grants Management & Innovation relating to humanitarian services provided.

*Public Benefit:

Overall goals are to prevent street releases and promote public health by humanely and expeditiously facilitating the movement of asylum seekers from the point of release by federal authorities through onward destination travel.

*Metrics Available to Measure Performance:

Subrecipient City of Tucson will provide paid itemized receipts for all purchases and payroll certification for each paid staff member allocated to the FEMA-approved SSP Program budget. Subrecipient reports will include all FEMA SSP-required information for services rendered to all LPAS provided aid by City of Tucson. City of Tucson is responsible for maintaining legible and accurate records relating to all LPAS served. Reimbursement of hotel expenses requires folio backup for every room used.

*Retroactive:

Yes, back to November 1, 2023. The unprecedented number of LPAS released by DHS agencies within the Tucson sector during the first two quarters of the fiscal year (July 1, 2023 – December 31, 2023) burned through most of the last tranche of "Phase HR23" federal grant funding provided via the federal Emergency Food and Shelter Program. If not allowed to retroactively commence the SSP-funded City of Tucson subrecipient agreement on November 1, 2023, Pima County will not be able to cover all of City of Tucson costs incurred with federal grant money.

FEB 01 24 AM 09:44 PCLK OF BD

TO: COB 2-1-24(3)
Vers: 1
Pgs: 42
GME oppo's
1/19/24 ADDENDUM
(initials)

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: GMI Contract Number (i.e., 15-123): 24-266
Commencement Date: 11/01/2023 Termination Date: 06/30/2024 Prior Contract Number (Synergen/CMS):
Expense Amount \$ \$3,774,485.54 Revenue Amount: \$

*Funding Source(s) required: U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA)/Grant Programs Directorate.

Funding from General Fund? Yes No If Yes \$ %

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient? Subrecipient

Were insurance or indemnity clauses modified? Yes No
If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):

Amendment No.: AMS Version No.:

Commencement Date: New Termination Date:

Prior Contract No. (Synergen/CMS):

Expense Revenue Increase Decrease

Amount This Amendment: \$

Is there revenue included? Yes No If Yes \$

*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards)

Award Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):

Commencement Date: Termination Date: Amendment Number:

Match Amount: \$ Revenue Amount: \$

*All Funding Source(s) required:

*Match funding from General Fund? Yes No If Yes \$ %

*Match funding from other sources? Yes No If Yes \$ %

*Funding Source:

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Julio Jimenez

Department: Grants Management and Innovation

Telephone: 520-724-8562

Department Director Signature: [Signature] Date: 1/19/24
Deputy County Administrator Signature: [Signature] Date: 2-24-2024
County Administrator Signature: [Signature] Date: 1/24/2024

Pima County Department of Grants Management & Innovation

Project: Fiscal Year 2023 Shelter and Services Program

Subrecipient name and address: City of Tucson, 255 W Alameda St, Tucson, Arizona 85701

Amount: \$3,774,485.54

Contract No.: CT-GMI-24-266

Subrecipient Unique Entity Identifier (UEI):	X487LACQEQN6	SAM expiration date (if applicable):	02/29/2024
Federal Award Identification Number (FAIN)	DHS-23-GPD-141-00-99	Federal award date	09/28/2023
Subaward term/ period of performance start and end date	11/01/2023-06/30/2024	Subaward budget period start and end date	11/01/2023-06/30/2024
Amount of federal funds obligated by this action by the pass-through entity to the subrecipient (amount of this agreement)			\$3,774,485.54
Total amount of the federal award committed to the subrecipient by the pass-through entity (original amount of this agreement, plus any match, plus any future budget periods, if applicable)			\$3,774,485.54
Federal award project description (descriptive project title)		U.S. Department of Homeland Security/Federal Emergency Management Agency/Grant Programs Directorate	
Funding agency		U.S. Department of Homeland Security/FEMA	
Pass-through entity (primary recipient)		Pima County Grants Management and Innovation	
Pass-through entity (secondary recipient, if applicable)		City of Tucson	
Assistance listing number and title (applies to 100% of this sub-award, including all disbursements)		97.141 Shelter and Services Program (SSP)	
Is this subaward for research and development?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Subrecipient indirect cost rate and methodology	<input checked="" type="checkbox"/> Negotiated Indirect Cost Rate Agreement	<input type="checkbox"/> De minimis rate	X No Indirect
Required match	<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Match amount	\$0.00

FEDERAL FINANCIAL ASSISTANCE SUBRECIPIENT AGREEMENT

1. PARTIES, BACKGROUND AND PURPOSE.

1.1. Parties. This Subrecipient Agreement (“Agreement”) is between Pima County, a body politic and corporate of the State of Arizona (“County”), and City of Tucson (“Subrecipient”), a body politic of the State of Arizona (“County”).

- 1.2. Background and Purpose. The Department of Homeland Security (DHS) has committed to bolstering the capacity of non-federal entities to receive non-citizens for a temporary period not to exceed 45 days after they have been processed by DHS. This contract award grants funds to the City of Tucson to cover eligible expenses under the Shelter and Services Program (SSP), to utilize available non-congregate hotel/motel shelter support to temporarily shelter an average of 1,904 individuals per night for a total of 24,960 individuals over two months.
- 1.3. The present-day irregular migration of noncitizens is unprecedented. The unprecedented number of migrants in local communities, particularly those communities of the Southwest border, are drawing down the capacity of non-federal entities to make available humanitarian services.
- 1.4. The Shelter and Services Program (SSP) makes available federal funds to eligible recipients and subrecipients for costs associated with providing shelter and other eligible services to noncitizen migrants who have been encountered and released by DHS.

2. **TERM.**

- 2.1. Initial Term. The term of this Agreement commences on 11/01/2023 and will terminate on 06/30/2024 ("Initial Term"). If the commencement date of the Initial Term is before the signature date of the last party to execute this Agreement, the parties will, for all purposes, deem the Agreement to have been in effect as of the commencement date.
 - 2.2. The applicable terms and conditions of this Agreement will survive and remain in effect during any period that Subrecipient has control over program income.
3. **USE OF FUNDS.** Subrecipient understands and agrees that the funds disbursed under this Agreement may only be used in compliance with Shelter and Services Program DHS-23-GPD-141-00-99 and the Uniform Guidance at 2 C.F.R. Part 200. Subrecipient is responsible for being informed of all updates to applicable regulations and Federal funding agency's compliance and reporting guidance.
 4. **SCOPE OF SERVICES.** Subrecipient will implement the services described in the attached **Exhibit A - Scope of Services** (3 pages), at the dates and times described in **Exhibit A** or, if **Exhibit A** contains no dates or time frames, then upon demand. Subrecipient will perform its duties in a humane and respectful manner and in accordance with any applicable professional standards and will obtain and maintain all required licenses, permits and authority required for performance under this Agreement.
 5. **KEY PERSONNEL.** Subrecipient will employ suitably trained and skilled professional personnel to perform all activities under this Agreement. Unless otherwise provided for herein, the personnel delivering services pursuant to this Agreement will: (1) be employees or volunteers of Subrecipient; (2) satisfy any qualifications in this Agreement; and (3) be covered by the personnel policies and practices of Subrecipient. The key personnel for this Subrecipient Agreement is Kevin Burke.
 6. **LICENSING.** Subrecipient warrants that it is appropriately licensed to provide the services

under this Agreement and that its subcontractors will be appropriately licensed.

7. **NO COMMISSION.** Subrecipient certifies that no individual or agent has been employed or retained to solicit or secure this Agreement for commission, percentage, brokerage or contingent fee except a bona fide employee or bona fide established agents maintained by the Subrecipient for the purpose of securing business.

8. **COMPENSATION AND PAYMENT.**

- 8.1. Maximum Payment Amount. County's total payments to Subrecipient under this Agreement, including any sales taxes, may not exceed \$3,774,485.54 (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Subrecipient is not required to provide any services, payment for which will cause the County's total payments under this Agreement to exceed the NTE Amount; if Subrecipient does so, it is at the Subrecipient's own risk.

- 8.1.1. Payment of the full Maximum Allocated Amount is subject to the FEMA/SSP funds being made available to County for this Agreement. The Maximum Allocated Amount may be decreased at any time due to reduction, termination, or any other changes in funding. Unless specifically authorized by County, unexpended funds will not be carried over into another fiscal year.

- 8.2. Budget; Adjustment. County will reimburse Subrecipient according to the budget in **Exhibit B – Compensation and List of Unallowable Costs** (2 pages). This budget will remain in effect throughout the term unless otherwise adjusted and formally agreed to.

- 8.3. Cost Restrictions. Subrecipient may use funds only for reasonable program purposes, including personnel, travel, supplies, and services. Cost restrictions that must be considered are listed in **Exhibit B**. Subrecipient must utilize funds available under this Agreement to supplement rather than supplant funds otherwise available. Subrecipient may not bill County for costs which are paid by another source. Subrecipient must notify County within ten days of receipt of alternative funding for costs which would otherwise be subject to payment pursuant to this Agreement.

- 8.4. Timing of Invoices. Subrecipient will invoice County on a monthly basis unless a different billing period is included in **Exhibit B**. County must receive invoices no later than 30 days after the end of the previous month, even if no funds are being requested for the previous month. Due to the County fiscal year-end close, County must receive invoices for June expenses within 15 calendar days after June 30 of any year that falls within the Term. Request for final payment for compensation earned and/or eligible costs incurred must be submitted to the County within 15 calendar days after the end of the Agreement term. County may refuse to pay for any period for which Subrecipient does not timely invoice the County. Pursuant to A.R.S. § 11-622, County will deny reimbursement for requests for payment submitted later than six months after the last item of the account accrues.

- 8.5. Content of Invoices. Subrecipient will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item. Each request for reimbursement must have a unique invoice number, reference this Agreement number, be approved and signed by the person(s) that prepared the request and an authorized manager, supervisor, or executive of the Subrecipient to ensure proper internal

financial controls, and be for costs identified as allowable in Exhibit B of this Agreement. Each reimbursement request must be accompanied by documentation which must include, but is not limited to:

- 8.5.1. A Financial Status Report and Request for Funds summarizing monthly expenditures by expense categories as shown in the approved budget in **Exhibit B** of this Agreement. County will provide Subrecipient with a form similar to that attached hereto as **Exhibit C – Pima County Invoice Request** (1 page) upon execution of this Agreement. The Financial Status Report and Request for Funds must be signed by the person who prepared the report and by an authorized representative of Subrecipient.
 - 8.5.2. Copies of paid invoices and receipts or cancelled checks (front and back) to support all purchases of goods or services.
 - 8.5.3. Timesheets or other records, signed by the employee and the employee's immediate supervisor with direct knowledge of the employee's efforts under this Agreement, that account for one hundred percent (100%) of the employee's time worked in the pay period and specify hours worked on the program; total hours worked per pay period; days worked; and hours worked each day.
 - 8.5.4. Accounting system report(s) specifying rate of pay and cost of employer-paid benefits.
 - 8.5.5. Detailed travel reports to support all travel expenses if reimbursement is authorized for travel.
 - 8.5.6. Any other documentation requested by the County.
- 8.6. Payment to Subrecipient. If each request for payment includes adequate and accurate documentation, County will generally pay Subrecipient within 30 days from the date invoice is received. Subrecipient should budget cash needs accordingly. County may, at its sole discretion:
- 8.6.1. Determine the acceptability and progress of work performed and determine the resulting entitlement to payment of each request for reimbursement.
 - 8.6.2. Liquidate funds available under this Agreement for costs incurred by County on behalf of Subrecipient.
 - 8.6.3. Deny full payment for requests for reimbursement that are submitted to County after the period set forth in Paragraph 8.4. County may deduct its processing costs or delay-related damages in connection with a request for payment submitted after that date.
- 8.7. Payment Conditions. No payments will be made to Subrecipient, until all of the following conditions are met:
- 8.7.1. Subrecipient has completed and submitted a W-9 Taxpayer Identification Number form to County.
 - 8.7.2. Subrecipient has a valid Unique Entity Identifier (UEI);

- 8.7.3. Subrecipient has registered as a Pima County Vendor at the Pima County Procurement Vendor Portal:
<http://webcms.pima.gov/cms/One.aspx?portalId=169&pageId=18377>
- 8.7.4. Subrecipient has provided adequate and accurate documentation with each request for payment or invoice; and
- 8.7.5. This Agreement is fully executed.
- 8.8. Changes to Agreement. Changes requiring an Amendment to this agreement include any changes to the Scope of Work, or any changes to the maximum allocated amount. Any change that requires an Amendment to the agreement will not be effective, nor will compensation under the change be provided, until the Agreement amendment is fully executed by both parties.
- 8.8.1. The Director of Pima County Grants Management & Innovation Department (“GMI”) (or the Director’s designee) has the sole discretion to approve requests to reallocate funding between budget line items within the approved budget. Subrecipient must submit a written request to the individual listed in Section 23, “Notice,” at County for the above changes. The request must be received on or before 01/31/2024. The written request must contain a detailed explanation of the reason the change is necessary for achieving the specified purpose, program(s), metrics, or outcomes set forth in this Agreement.
- 8.8.2. Change requests must be submitted and approved prior to incurring costs associated with the proposed changes. If the Director of GMI does not approve the request, charges made in anticipation of approval will not be allowable nor compensated. If the Director of GMI (or designee) approves the request for the budget line-item change, the change will be considered effective on the date set forth in the written approval. Costs incurred prior to the effective date, reflective of the proposed changes, will not be allowable or reimbursable.
- 8.8.3. Any items in budget “**Exhibit B**” requiring prior funding agency approval must be designated and labeled as such and will only be allowable once written approval from the federal funding agency is received. The GMI Director or designee has the sole discretion to approve these costs once approval from the funding agency is received. If the funding agency does not approve expenditures, a budget modification reallocating these costs to another allowable expenditure category must be submitted and approved by the GMI Director or designee. The Director or designee has the sole discretion to approve reallocation of these costs to another, allowable, expenditure category.
- 8.8.4. Expenditures incurred in excess of the budgeted line item or the maximum allocated amount without prior authorization will be at Subrecipient’s own risk.
- 8.9. Invoice Adjustments. County may, at any time, question any payment under this Agreement. If County raises a question about the propriety of a past payment, Subrecipient will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Subrecipient under this or any other

Agreement between County and Subrecipient. Subrecipient will promptly pay to County any overpayment that County cannot recover by set-off.

- 8.10. Closeout Requirements. The final invoice/request for payment must include a report summarizing Subrecipient's performance during the term of the Agreement.

9. **AUDIT REQUIREMENTS.**

9.1. Subrecipient will:

9.1.1. Comply with the applicable provisions of the Audit Requirements for Federal Awards in 2 C.F.R. Part 200, Subpart F and 2 C.F.R. Part 2400.

9.1.2. Establish and maintain a separate, identifiable accounting of all funds provided by County under this Agreement. The accounting must record all expenditures that are used to support invoices and requests for payment from County.

9.1.3. Maintain an accounting manual that describes its financial procedures in sufficient detail to ensure that its financial practices are easily understood.

9.1.4. Establish and maintain accounting records that identify the source and application of any funds not provided under this Agreement used to support these Agreement activities.

9.1.5. Ensure that all accounting records meet the requirements of the Federal, State, County, and generally accepted accounting principles laws and regulations.

9.1.6. Upon written notice from County, provide a program-specific or financial audit. Such notice from County will specify the period to be covered by the audit, the type of audit and the deadline for completion and submission of the audit.

9.1.7. Ensure that any audit conducted pursuant to this Agreement is performed by a qualified, independent accounting firm and submitted to County within six (6) months of completion of the audit required pursuant to this Section, unless a different time is specified by County. The audit submitted must include Subrecipient responses, if any, concerning any audit findings.

9.1.8. Pay all costs for any audit required or requested pursuant to this Section.

9.2. Subrecipient status:

9.2.1. If Subrecipient is a "nonprofit corporation" that meets the definition of "corporation" in A.R.S. § 10-3140, Subrecipient will comply with the applicable audit requirements set forth in A.R.S. § 11-624, "Audit of Non-Profit Corporations Receiving County Monies."

9.2.2. If Subrecipient meets or exceeds the single audit threshold in 2 C.F.R. Part 200, Subrecipient will comply with federal single audit requirements and provide County with a copy of the required audit document within twelve months following the end of

Subrecipient's fiscal year.

9.3. Subrecipient must timely submit the required or requested audit(s) to:

Pima County Grants Management & Innovation
130 West Congress St,
Mailstop: DT-ADE-127
Tucson, Arizona 85701

10. **MONITORING AND EVALUATION.**

10.1. County will monitor Subrecipient's activities and information sources in the management, fiscal, and services systems of Subrecipient and any subcontracted parties relating to performance of duties and obligations under this Agreement to ensure that Subrecipient is:

10.1.1. Using the funding as allowed by the U.S. Department of Homeland Security (DHS).

10.1.2. Making adequate and acceptable progress in the provision of services.

10.1.3. Maintaining adequate and acceptable systems to document services and expenditures; and

10.1.4. Using the funds provided pursuant to this Agreement effectively and efficiently to accomplish the purposes for which funds were made available.

10.2. Subrecipient must cooperate with the County's monitoring and evaluation process and any monitoring or oversight by the U.S. Department of Homeland Security (DHS). To the greatest extent permissible by law, and in addition to the provisions above in Audit Requirement and below in Books, Records, and Data, County, and any authorized federal, state, or local agency, will at all reasonable times have the right of access to Subrecipient's facilities. Within 60 days of award, Subrecipient must provide the core documents set forth in **Exhibit D – Subrecipient Core Documents** (1 page), as applicable, to Pima County GMI. Subrecipient must assist County in providing reports and documentation related to Subrecipient's performance and, where applicable, the impact of the activities funded under this Agreement on the community.

10.3. If County finds that Subrecipient's performance is inconsistent with the terms of this Agreement, with Uniform Guidance at 2 C.F.R. Part 200, or with U.S. Department of Homeland Security (DHS) grant guidance, Subrecipient will be in default of this Agreement. If Subrecipient fails to take appropriate actions to correct the default within fifteen (15) calendar days from date of notice, this Agreement may be suspended, modified to reduce the NTE amount, or terminated.

11. **REMEDIES.** See #25.

12. **BOOKS, RECORDS, AND DATA.**

12.1. Subrecipient will keep and maintain proper and complete books, records, and accounts, which will be open at all reasonable times for inspection and audit by duly

authorized representatives of County. In addition, Subrecipient will retain all records relating to this Agreement for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

12.2. To the greatest extent permissible by law, County, and any authorized federal, state, or local agency, including, but not limited to, the Arizona Auditor General's Office and the U.S. Department of Homeland Security (DHS) will at all reasonable times have the right of access to Subrecipient's facility, books, documents, papers, or other records which are pertinent to this Agreement, in order to make audits, examinations, excerpts and transcripts for the purpose of evaluating Subrecipient's compliance with this Agreement.

12.3. All data and data work product containing personally identifiable information collected by Subrecipient under this Agreement is confidential. Any personally identifiable information must be collected and used only for the purpose of providing the services and reports described in **Exhibit A**. Subrecipient will hold all Data and Data Work Product in a secure manner and will protect it from disclosure, except as specifically provided in this Agreement. Subrecipient destroy all data and data work product related to this Agreement after the retention period specified in 12.1, unless instructed otherwise by County.

13. **INSURANCE.** Subrecipient will procure and maintain at its own expense insurance policies (the "**Required Insurance**") satisfying the below requirements (the "**Insurance Requirements**") until all its obligations under this Agreement have been met. The below Insurance Requirements are minimum requirements for this Agreement and in no way limit Subrecipient's indemnity obligations under this Agreement. The County in no way warrants that the required insurance is sufficient to protect the Subrecipient for liabilities that may arise from or relate to this Agreement. If necessary, Subrecipient may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

13.1. Insurance Coverages and Limits: Subrecipient will procure and maintain, until all its obligations have been discharged, coverage with limits of liability not less than those stated below. Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A-VII, unless otherwise approved by the County.

13.1.1. Commercial General Liability (CGL) – Occurrence Form with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include coverage for liability arising from premises, operations, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations. Any standard coverages excluded from the CGL policy, such as products/completed operations, etc. shall be covered by endorsement or separate policy and documented on the Certificates of Insurance.

13.1.2. Business Automobile Liability – Coverage for bodily injury and property damage on any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Agreement with minimum limits not less than \$1,000,000 Each Accident.

13.1.3. Workers' Compensation and Employers' Liability – Statutory coverage for Workers' Compensation. Workers' Compensation statutory coverage is

compulsory for employers of one or more employees. Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.

13.1.4. Professional Liability (E & O) Insurance – This insurance is required for work from professionals whose coverage is excluded from the above CGL policy. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance shall cover professional misconduct or negligent acts of anyone performing any services under this Agreement.

13.2. Additional Coverage Requirements:

13.2.1. Claims Made Coverage: If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Agreement, and Subrecipient must maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination, or cancellation.

13.2.2. Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Subrecipient.

13.2.3. Subrogation Endorsement: The General Liability, Business Automobile Liability, and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Subrecipient.

13.2.4. Primary Insurance Endorsement: The Required Insurance policies must stipulate that they are primary, and that any insurance carried by County, or its agents, officials, or employees, is excess and not contributory insurance.

13.2.5. The Required Insurance policies may not obligate County to pay any portion of Subrecipient's deductible or Self Insurance Retention (SIR).

13.2.6. Subcontractors: Subrecipient must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so. Subrecipient must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Subrecipient must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

13.3. Notice of Cancellation: Subrecipient must notify County, within two business days of Subrecipient's receipt of notice from an insurer, if any required insurance policy is suspended, voided, or cancelled for any reason. Notice must include the Pima County project or Agreement number and project description.

13.4. Verification of Coverage:

13.4.1. Subrecipient must furnish County with a certificate of insurance (valid ACORD form or equivalent approved by Pima County) for each Required Insurance policy, which must specify that the policy has all the required endorsements, and must include the Pima County project or Agreement number and project description. Each certificate must be signed by an authorized representative of the insurer.

13.4.2. County may at any time require Subrecipient to provide a complete copy of any Required Insurance policy or endorsement. Note: Subrecipients for larger projects must provide actual copies of the additional insured and subrogation endorsements.

13.4.3. Subrecipient must provide the certificates to County before work commences. Each Required Insurance policy must be in effect at least 10 days before work under this Agreement commences. Subrecipient must provide County a renewal certificate not less than 15 days prior to a Required Insurance policy's expiration date. Failure to maintain the Required Insurance policies, or to provide evidence of renewal, is a material breach of this Agreement.

13.4.4. All insurance certificates must be sent directly to the appropriate County Department.

13.5. Approval and Modifications: The Pima County Risk Manager may modify the Insurance Requirements at any point during the Term of this Agreement. This can be done administratively, with written notice from the Risk Manager and does not require a formal Agreement amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Subrecipient, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

14. **INDEMNIFICATION.** To the fullest extent permitted by law, Subrecipient will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Subrecipient or any of Subrecipient's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Subrecipient to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Subrecipient from and against any and all Claims. Subrecipient is responsible for primary loss investigation, defense, and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Agreement.

15. **LAWS AND REGULATIONS.**

- 15.1. Compliance with Laws. The parties will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders.
- 15.2. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Agreement. Any action relating to this Agreement must be filed and maintained in the appropriate court of the State of Arizona in Pima County.
- 15.3. Compliance with Special Grant Terms and Conditions. The Subrecipient will comply with the Special Federal Award Grant Terms and Conditions set forth in **Exhibit E – Special Federal Award Grant Terms and Conditions** (9 pages) of this Agreement.
- 15.4. Compliance with Federal Grant Regulations. The Subrecipient acknowledges that federal financial assistance will be used to fund this Agreement. The Subrecipient will comply with all applicable federal law, regulations, executive orders, federal funding agency policies, guidance, procedures, and directives.
- 15.5. Federal Funding Accountability and Transparency Act (FFATA). Subrecipient acknowledges that County is obligated to report on this agreement in the FFATA Subaward Reporting System (FSRS), if the NTE amount is \$30,000 or above and if the County is the direct recipient of the federal funding agency. If Subrecipient received 80 percent or more of gross annual revenues from Federal grants and contracts in the Subrecipient's preceding fiscal year, and \$25,000,000 or more in annual gross revenues from Federal grants and contracts; Subrecipient will report to County the names and total compensation of each of the Subrecipient's five most highly compensated executives for the preceding completed fiscal year.
- 15.6. No Obligation by Federal Government. The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, Subrecipient, or any other party pertaining to any other matter resulting from the Agreement.
- 15.7. Byrd Anti-Lobbying Amendment. Subrecipient certifies that it has not and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352.
- 15.8. Debarment and Suspension. (Executive Orders 12549 and 12689)—Subrecipient certifies that they are not listed on the government wide exclusions in the System for Award Management (SAM).
- 15.8.1. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such the Subrecipient is required to verify that none of its contractors, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 15.8.2. The Subrecipient is required to provide their UEI number to Pima County.

- 15.8.3. The Subrecipient is required to notify Pima County within three business days if any Federal agency excludes Subrecipient, its contractor, principal or affiliates under Executive Order 12549 or Executive Order 12689.
- 15.8.4. The Subrecipient must comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 15.8.5. This certification is a material representation of fact relied upon by County. If it is later determined that the Subrecipient did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to Pima County, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.
- 15.9. Mandatory Disclosures for Federal Awardee Performance and Integrity Information System (FAPIIS). Subrecipient must disclose in a timely manner, in writing to the U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG), all information related to violations, or suspected violations, of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Subrecipients must disclose, in a timely manner, in writing to the prime recipient (pass through entity), the U.S. Department of Homeland Security (DHS) and OIG, all information related to violations, or suspected violations, of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to the awarding agency and to the U.S. Department of Homeland Security (DHS) OIG at the following addresses: 500 C St SW, Washington, DC 20472
- 15.10. Whistleblower Protection. An employee of Subrecipient or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.
- 15.11. Program Fraud and False or Fraudulent Statements or Related Acts. The Subrecipient acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Subrecipient's actions pertaining to this contract. Making false statements or claims in connection with this subaward is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
- 15.12. Non-Discrimination.
- 15.12.1. Subrecipient will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement,

including flow-down of all provisions and requirements to any subcontractors. During the performance of this Agreement, Subrecipient will not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin.

15.12.2. As a condition of receipt of Federal financial assistance, Subrecipient acknowledges and agrees that it must comply (and require any subrecipients, contractors, successors, transferees, and assignees to comply) with applicable provisions of national laws and policies prohibiting discrimination, including but not limited to:

15.12.2.1. Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 C.F.R. Part 35).

15.12.2.2. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin (42 U.S.C. § 2000(d) *et seq.*).

15.12.2.3. Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, sex, or national origin (42 U.S.C. § 2000(e) *et seq.*).

15.12.2.4. As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing your budgets and in conducting your programs and activities. For assistance and information regarding LEP obligations, go to <http://www.lep.gov>.

15.13. § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment. Subrecipient is prohibited from obligating or expending loan or grant funds to:

15.13.1. Procure or obtain;

15.13.2. Extend or renew a contract to procure or obtain; or

15.13.3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, Section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- 15.13.4. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- 15.13.5. Telecommunications or video surveillance services provided by such entities or using such equipment.
- 15.13.6. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
16. **INDEPENDENT CONTRACTOR.** Subrecipient is an independent contractor. Subrecipient and its Subrecipient's officers, agents, or employees must not be considered an employee of Pima County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Administrative Procedures or Merit System. Subrecipient is responsible for paying all federal, state and local taxes on the compensation received by Subrecipient under this Agreement and will indemnify and hold County harmless from any and all liability that County may incur because of Subrecipient's failure to pay such taxes.
17. **SUBCONTRACTORS.** Subrecipient is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Subrecipient is responsible for the acts and omissions of its own employees. Nothing in this Agreement creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
18. **ASSIGNMENT.** Subrecipient may not assign its rights or obligations under this Agreement, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.
19. **AUTHORITY TO CONTRACT.** Subrecipient warrants its right and power to enter into this Agreement. If any court or administrative agency determines that County does not have authority to enter into this Agreement, County will not be liable to Subrecipient or any third party by reason of such determination or by reason of this Agreement.
20. **FULL AND COMPLETE PERFORMANCE.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Agreement, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Agreement, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
21. **CANCELLATION FOR CONFLICT OF INTEREST.** This Agreement is subject to cancellation

for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

22. **TERMINATION BY COUNTY.**

22.1. Without Cause. Either Party may terminate this Agreement at any time without cause by notifying the other Party, in writing, at least 30 days before the effective date of the termination. In the event of such termination, the County's only obligation to Subrecipient will be payment for services rendered prior to the date of termination.

22.2. With Cause. Either Party may terminate this Agreement at any time without advance notice and without further obligation to the other Party when either Party finds the other Party to be in default of any provision of this Agreement.

22.3. Non-Appropriation. Notwithstanding any other provision in this Agreement, either Party may terminate this Agreement if for any reason there are not sufficient appropriated and/or available monies for the purpose of maintaining County, Subrecipient, or other public entity obligations under this Agreement. In the event of such termination, County will have no further obligation to Subrecipient, other than to pay for services rendered prior to termination.

22.4. Suspension: County reserves the right to suspend Subrecipient's performance and payments under this Agreement immediately upon notice delivered to Subrecipient's designated agent in order to investigate Subrecipient's activities and compliance with this Agreement. In the event of an investigation by County, Subrecipient will cooperate fully and provide all requested information and documentation. At the conclusion of the investigation, or within 45 days, whichever is sooner, Subrecipient will be notified in writing that the Agreement will be immediately terminated or that performance may be resumed.

23. **NOTICE.** Any notice required or permitted to be given under this Agreement must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

R.K. Kelly, Director
Pima County Grants Management
& Innovation Department
130 W. Congress St.
Mailstop: DT-ADE-127
Tucson, Arizona 85701

Subrecipient:

Kevin Burke
Deputy Director, Office Economic Initiatives
2150 N. Congress DR #118
Tucson, Arizona 85621-1090

24. **NON-EXCLUSIVE AGREEMENT.** Subrecipient understands that this Agreement is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

25. **REMEDIES.** Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.

26. **SEVERABILITY.** Each provision of this Agreement stands alone, and any provision of this

Agreement found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

27. **PUBLIC RECORDS.**

- 27.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in award of this Agreement, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 27.2. Records Marked Confidential, Notice and Protective Order. If Subrecipient reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Subrecipient must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Subrecipient of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Subrecipient has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

28. **LEGAL ARIZONA WORKERS ACT COMPLIANCE.**

- 28.1. Compliance with Immigration Laws. Subrecipient hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Subrecipient will further ensure that each subcontractor who performs any work for Subrecipient under this Agreement likewise complies with the State and Federal Immigration Laws.
- 28.2. Books & Records. County has the right at any time to inspect the books and records of Subrecipient and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 28.3. Remedies for Breach of Warranty. Any breach of Subrecipient's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Agreement subjecting Subrecipient to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Subrecipient will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Subrecipient.
- 28.4. Subcontractors. Subrecipient will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 28 by including a provision in each subcontract substantially in the following form:

“Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor’s employees, and with the requirements of A.R.S. § 23- 214 (A). Subcontractor further agrees that County may inspect the Subcontractor’s books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract.”

29. **ISRAEL BOYCOTT CERTIFICATION.** Pursuant to A.R.S. § 35-393.01, if Subrecipient engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000.00 or more, Subrecipient certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
30. **FORCED LABOR OF ETHNIC UYGHURS.** Pursuant to A.R.S. § 35-394, if Subrecipient engages in for-profit activity and has 10 or more employees, Subrecipient certifies it is not currently using, and agrees for the duration of this Agreement to not use (1) the forced labor of ethnic Uyghurs in the People’s Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. If Subrecipient becomes aware during the term of the Agreement that the Company is not in compliance with A.R.S. § 35-394, Subrecipient must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.
31. **AMENDMENT.** The parties may modify, amend, alter or extend this Agreement only by a written amendment signed by the parties.
32. **CITED LAWS AND REGULATIONS.** Laws and regulations cited in this agreement may be modified after execution of the Agreement. Such modifications shall be assumed to be incorporated into the Agreement and may be used to update its provisions without requiring a formal amendment.
33. **ENTIRE AGREEMENT.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Agreement supersedes all prior or contemporaneous agreements and understandings, oral or written.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

This agreement may be executed in counterparts, each of which, when taken together, will constitute one original agreement.

PIMA COUNTY

SUBRECIPIENT

Chair, Board of Supervisors

Authorized Officer Signature

Date

Printed Name and Title

Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM

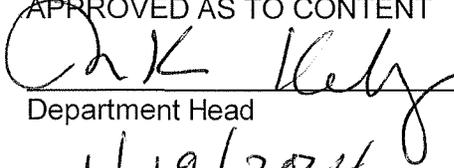


Deputy County Attorney

Kyle Johnson
Print DCA Name

1/19/2024
Date

APPROVED AS TO CONTENT



Department Head

1/19/2024
Date

Exhibit A (3 Pages) Scope of Services

PROJECT PURPOSE

City of Tucson will provide overnight hotel/motel non-congregate as needed per GSA rates to eligible legally processed asylum seekers in Pima County. The city will follow the budgetary and service guidelines outlined in the Shelter and Services Program (SSP) notice of funding opportunity.

PROJECT ACTIVITIES

- 1) Subrecipient shall:
 - a) Provide non-citizen migrants released by the Department of Homeland Security into Pima County with safe, supportive services, in compliance with federal guidelines, to assist non-citizen migrants with securing onward destination travel, as follows:
 - i) Intake, to include documentation of the following information for every individual asylee (adults and children):
 - ii) A-number
 - iii) Name
 - iv) Date of release from DHS
 - v) Date of intake
 - vi) Assignment of sleeping quarters, as appropriate (Room numbers), and
 - vii) Identification of and response to critical needs - such as urgent medical care or communicable disease isolation.
- 2) Provide shelter at competitively procured hotels/motels within Pima County.
- 3) City will comply with NTE room rates set by the U.S. General Services Administration (GSA)
- 4) Facilitate service provider to service provider transportation of eligible non-citizen migrants to Tucson International Airport through City Sun Tran Bus service.
- 5) Provide staffing support as budgeted in **Exhibit B** for temporary shelter sites to ensure safety and humane care, in coordination with security staff, up to 24-hours per day, seven days per week at each designated shelter site to include the following sites:
 - a) Best Western
 - b) Quality Inn Airport
 - c) Ramada / Las Palmas
 - d) Quality Inn Starr Pass

ITEMS INCORPORATED BY REFERENCE

Any required exhibits other than Terms and Conditions listed in **Exhibit E**.

REPORTS AND DEADLINES

1. Reporting Requirements:

- a) On a **monthly** basis, Subrecipient will send the County monthly logs of all population data from the month prior. Subrecipient will submit monthly logs within five (5) days following the end of each month.
 - b) On a **daily basis**, City will share data sets collected with Pima County subrecipient, Catholic Community Services of Southern Arizona Inc., and other identified vendors.
 - c) Maintaining the spreadsheet in **Exhibit C** (One page) reflecting actual expenses incurred with itemized receipts for services rendered, date, actual costs and proof of payments for services.
 - d) Payroll certification required for each paid staff allocated to the FEMA/SSP Program budget.
 - a. Time sheets of paid staff members with Full name,
 - b. Gross wages,
 - c. Detailed employee related expenses, and
 - d. Pay period.
 - e) Maintain all records listed in sections for a period of three years after final payment.
 - f) All reporting provisions will survive termination of this Agreement.
 - g) Collection of A-number, name, date, of release from DHS, date of intake, for every individual asylum seeker, adults, and children. **(Exhibit F)**
 - h) Coordinate with other service providers to promote cost-effective and efficient service delivery to include:
 - a. Pima County Grants Management and Innovation (GMI)
 - b. Pima County Office of Emergency Management (OEM)
 - c. Transportation providers
 - d. Other service providers identified by Pima County
 - i) Notify GMI and OEM of any incident where law enforcement, fire or other protective services are contracted.
 - a. By phone within 2 hours.
 - b. Written incident report within 24 hours of incident.
- 1) All data submitted to the County by the Subrecipient should be reviewed for accuracy and completeness and will be considered final upon receipt by County. Missing, incomplete or inaccurate data may with improper folio backup will result in non-payment.**
- a) Ad-hoc Reporting: The County and Subrecipient may agree to additional reporting on an ad-hoc basis, based on data requests to either, or both, entities. County reserves the right to audit any process or data resulting from provision of services pursuant to this Agreement and to request data compilation as the County

determines necessary

- b) The parties will abide by the confidentiality and security provisions for this data. The County further agrees that access to protected information will be restricted to County authorized individuals directly involved with the coordination of these programmatic services.

2) Personally Identifiable Information

- a) The subrecipient(s) must recognize and safeguard Personally Identifiable Information (PII) except where disclosure is allowed by prior written approval of the Grant Officer of the federal funding agency or by court order. Subrecipient will have a publicly-available privacy policy that describes what PII they collect, how they use the PII, whether they share the PII with third parties, and how individuals may have their PII corrected where appropriate.
- b) Resource to share: Grantees may also find as a useful resource the DHS Privacy Impact Assessments: The Privacy Office Official Guidance and the Privacy Impact Assessment Template (available on the DHS Privacy Office website at:http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_guidance_june2010.pdf and http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_template.pdf

ADDITIONAL TERMS

Monthly performance reports Required spending projection by month Lifting of any spending cap requires written approval by both the Pima County Department Director and the GMI Director. GMI's approval will be contingent upon due diligence including but not limited to ensuring funder allowability

**Exhibit B (2 Pages)
Compensation and List of Unallowable Costs**

1. BUDGET PERIOD (11/01/2023-06/30/2024 - 4 months)

2. COMPENSATION

2.1. County will reimburse Subrecipient's expenses in accordance with the budget set forth below. Invoices submitted with monthly reports must contain adequate supporting documentation to verify the amount and nature of expenditures. Invoices shall be submitted to the County no later than the 15th of the month following the end of the month being invoiced for. County will pay invoices no later than 15 days from receipt of invoice and monthly report. County reserves the right to audit Contractor's financial records as relates to the performance of duties under this Agreement.

2.2. Total amount for this award is **\$3,774,485.54**

*Allowable Expenses will be limited to the following budget and item amounts below

Shelter (Hotel/Motel)	The Pima County Southwest Border Coalition needs 14,280 rooms per month (476 rooms per night x 30 nights per month). At an average rate of \$126.11 per room per night, the monthly cost is \$1,800,850.80 (\$126.11 per room x 476 rooms x 30 nights) and the total cost for two months (January and February 2024) is \$3,601,701.60. (476 rooms per night x \$126.11 per room per night x 60 nights)	\$3,601,701.60	
		Temporary Shelter subtotal:	\$3,601,701.60
Primary Labor	Six staff at a rate of for 8 hours per day at \$32.40 per hour for 60 days. Hourly rate includes ERE @ 35% (Social Security & Medicare 7.65%, Unemployment 0.06%, Health Insurance 12.03%, Worker's Compensation 0.21%, Life Insurance 0.06%, Pension Plan 12.29%, Short Term Disability 0.48% and Health Savings Account for HDHP 1.72%) (6 staff x \$32.40 per hour x 60 days)	\$62,208.00	
		Primary Labor subtotal:	\$62,208.00
Transportation	Service Provider to Service Provider transportation: Drexel Overnight Congregate Facility to Tucson International Airport. SunTran Contracted Bus (\$174.41 x 634 trips)	\$110,575.94	
		Transportation Total:	\$110,575.94
		Total:	\$3,774,485.54

3. VARIANCE OR REPROGRAMMING

Reallocation(s) or budget variance(s) between budget categories must be approved by Pima County Grants Management & Innovation Director.

4. **COSTS REQUIRING PRIOR APPROVAL BY THE PIMA COUNTY GMI DIRECTOR.**

Unusual or large items, for example: capital equipment purchases, including software systems.

5. **UNALLOWABLE COSTS:**

- Alcoholic beverages
- Entertainment
- Renovations or repairs
- Fines, penalties, damages, and other settlements
- Pre-award costs
- Lobbying activities
- List other costs that are unallowable under the specific federal award

EXHIBIT C (1 page)

PIMA COUNTY INVOICE REQUEST SAMPLE

Invoice For The Month Of _____, 2023

PLEASE SEND INVOICE TO THE ATTENTION OF:	AGENCY INVOICE INFORMATION:	FEDERAL FUNDING INFORMATION _____
		INV DATE _____
		<u>PROGRAM NAME</u> <u>FY 2023 Shelter and Services Program</u>
		INVOICE # _____ CFDA # <u>97.141</u>

APPROVED BUDGET & BILLING DETAILS (11/01/23-06/30/24)

PAYMENT TERMS: Net 30 Days	APPROVED BUDGET	Mar-20 Billed Amt	Apr-20 Billed Amt	May-20 Billed Amt	Jun-20 Billed Amt	Jul-20 Billed Amt	Aug-20 Billed Amt	Sep-20 Billed Amt	Oct-20 Billed Amt	Nov-20 Billed Amt	YEAR TO DATE TOTALS	BALANCE REMAINING
Salary	-										-	-
Fringe Benefits	-										-	-
Travel	-										-	-
Supplies	-											-
Contractual Services	-											-
Other	-											-
Indirect	-										-	-
TOTAL CONTRACT BILLING	-	-	-	-	-	-	-	-	-	-	-	-

By signing this report: I certify that to the best of my knowledge: (1) the information reported represents actual receipts and actual expenditures which have been incurred in accordance with the agreement for management and implementation of the contracted program and are based on official accounting records and supporting documents which will be maintained by us for purposes of audit; and (2) the report is true, complete and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statement, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

REQUIRED SUBRECIPIENT SIGNATURES:

Agency Preparer Signature - please print & sign	Date	Contact Phone Num/Ext	Agency Authorized Approver Signature - please print &	Contact Phone Num/Ext
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~~~~~FOR PIMA COUNTY USE ONLY~~~~~

|                          |                                     |                                            |
|--------------------------|-------------------------------------|--------------------------------------------|
| Date bill rcv'd/Initials | Date rtned for corrections/Initials | Date rvwd & submitted for payment/Initials |
|--------------------------|-------------------------------------|--------------------------------------------|

**EXHIBIT D (1 Page)**  
**Subrecipient Core Documents**

All Subrecipients are required to submit the following core documents to County within 60 days of approval of this Agreement. Core documents may be submitted via email to [GMIagreements@pima.gov](mailto:GMIagreements@pima.gov) or via Surface Mail to Grants Management & Innovation, Grants Admin Compliance Division, 130 W. Congress, DT-ADE-127, Tucson, Arizona 85701.

1. Audited Financial Statement(s)(most current)
2. Single Audit in accordance with the audit requirements at 2 C.F.R. § 200.501(a):

Non-Federal entities that expend \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
3. Organizational Charts
4. Chart of Accounts with Cost Centers
5. Internal Control Procedure(s) such as:
  - Procurement/Purchasing Policy(ies)
  - Procedure for budgeting grants
  - Personnel Policies
  - Drug-free Workplace Policy
  - Code of Conduct
  - Conflict of Interest
  - Whistleblower Protection
  - Employee Travel
6. The following administrative and/or financial management procedures for administering federal grants such as:
  - Cost Allocation Plan
  - Cash Management Procedure(s)
  - Methodology for reporting accrued expenditures for Pima County contracts
  - Financial Management Systems
  - Determination of Allowable costs
  - Financial Reporting
  - Records Retention
7. Certificate of Insurance or Fidelity Bond for construction projects (if applicable)
8. Indirect Cost Rate (most current issued by a Federal agency). Per 2 CFR 200.332(a)(4), Pima County will accept the following types of indirect cost rates:
  - An approved federally recognized indirect cost rate negotiated between the entity and the Federal Government; or
  - If no such rate exists, a de minimis indirect cost rate as defined in 2 C.F.R. § 200.414(f).

If additional documents are required, Subrecipient will be notified by the County.

**Exhibit E (9 Pages)**  
**Special Federal Award Grant Terms and Conditions**

**CONSTRUCTION CONTRACTS.** Subrecipient will include the following federally-mandated provisions in all contracts:

**1. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.**

- 1.1. Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- 1.2. Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR § 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. Chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.
- 1.3. Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.
- 1.4. Payrolls and basic records.
  - 1.4.1. The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR § 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.
  - 1.4.2. The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to

inspect, copy, or transcribe records maintained under paragraph 1.4.1 of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

- 1.5. Subcontracts. The Contractor shall insert the provisions set forth in paragraphs 1.1 through 1.4 of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs 1.1 through 1.4 of this clause.
2. **COPELAND “ANTI-KICKBACK” ACT.** Contractors and subcontractors performing work are prohibited from in any way inducing an employee to give up any part of the compensation to which he or she is entitled. The Copeland Act and implementing regulations also require contractors and subcontractors performing on covered contracts to pay their employees on a weekly basis and in cash or a negotiable instrument payable on demand and to submit weekly payroll reports of the wages paid to their laborers and mechanics during the preceding payroll period.
3. **DAVIS-BACON ACT.**
  - 3.1. Subrecipient will ensure that construction carried out under this agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141- 3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5 as may be applicable. All contractors shall comply with 40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5 as applicable.
  - 3.2. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor and published at SAM.gov. Prevailing wages must be posted at all job sites.
  - 3.3. Subrecipient will ensure that the following clauses are inserted into any contract in excess of \$2,000 which is entered into for actual construction, alteration, and/or repair, including painting and decorating, under this Agreement:

*All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to*

*such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.*

- 3.4. Subrecipient will maintain and submit payroll certifications to the U.S. Department of Labor as required by the Davis-Bacon Act and 29 C.F.R. Subtitle A § 5.5(a)(3).
4. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this contract, the contractor agrees as follows:
  - 4.1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - 4.2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - 4.3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an

investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 4.4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4.5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 4.6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 4.7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 4.8. The contractor will include the portion of the sentence immediately preceding paragraph 4.1 and the provisions of paragraphs 4.1 through 4.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under

the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

5. **SECTION 3.** Subrecipient must comply with the requirements of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u. When new employment opportunities are created by HUD assistance, priority consideration is given to the greatest extent possible, to low- and very low-income persons, residing in the community in which the funds are spent and to businesses that provide economic opportunities for these persons.
6. **UNIFORM RELOCATION ASSISTANCE.** Subrecipient must comply with the Uniform Relocation Act at 42 U.S.C. § 4601. et seq. in all cases where any person is displaced by the funded activities.

## **PROCUREMENTS FOR MATERIALS**

1. **DOMESTIC PREFERENCES FOR PROCUREMENTS.**
  - 1.1. As appropriate, and to the extent consistent with law, Subrecipient should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

- 1.2. For purposes of this clause:
  - 1.2.1. Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - 1.2.2. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
2. **RECOVERED MATERIALS** A Subrecipient entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
3. **DISADVANTAGED BUSINESS ENTERPRISES.**
  - 3.1. Subrecipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used, when possible, per 2 C.F.R. § 200.321.
  - 3.2. Affirmative steps must include:
    - 3.2.1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    - 3.2.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
    - 3.2.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
    - 3.2.4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
    - 3.2.5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
    - 3.2.6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs 3.2, (3.2.1) through (3.2.5) of this

section.

## **PUBLICATIONS AND INVENTIONS**

1. **PUBLICATIONS.**
2. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
3. **COPYRIGHT AND DATA RIGHTS.** The Subrecipient grants to County a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license to data first produced in the performance of this Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Agreement but not first produced in the performance of this contract, the Subrecipient will identify such data and grant to County or acquire on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Agreement, the Subrecipient will deliver to County data first produced in the performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement in formats acceptable by County.

## **ENVIRONMENTAL REGULATIONS**

1. **FEDERAL WATER POLLUTION CONTROL ACT.**
  - 1.1. The Subrecipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
  - 1.2. The Subrecipient agrees to report each violation to County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
  - 1.3. The Subrecipient agrees to include these requirements in each subcontract exceeding its Simplified Acquisition Threshold or \$250,000, whichever is lower, financed in whole or in part with Federal assistance.

2. **CLEAN AIR ACT.**

- 2.1. The Subrecipient agrees to comply with all applicable standards orders or regulations issued pursuant to the Clean Air Act as amended, 42 U.S.C. § 7401 et seq.
- 2.2. The Subrecipient agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 2.3. The Subrecipient agrees to include these requirements in each subcontract exceeding its Simplified Acquisition Threshold or \$250,000, whichever is lower, financed in whole or in part with Federal assistance.

3. **NATIONAL ENVIRONMENTAL POLICY ACT.** Where applicable, the Subrecipient will work with County and Federal funding agency on any required environmental review of their proposed actions and of the environmental impact of activities funded with federal assistance, in order to ensure informed decision-making and public input.

4. **NATIONAL HISTORIC PRESERVATION ACT.** Where applicable, the Subrecipient will work with County and Federal funding agency on any required consultation process with the Arizona State Historic Preservation Office (SHPO) prior to commencing the project to ensure compliance with Section 106 of the National Historic Preservation Act.

5. **ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT.** Subrecipient agrees to notify County if performing a construction project wherein archeologically significant artifacts or similar items are discovered after construction has begun and agrees to coordinate with County and SHPO on all required preservation and repatriation activities.

6. **PROTECTED HEALTH INFORMATION.** No protected health information as described in 45 C.F.R. §160.103 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) will be collected, stored, disclosed or shared in the performance of this Agreement.

7. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.** The parties acknowledge that the County is a hybrid covered entity as described in 45 C.F.R. § 160.103 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and is required to comply with the provisions of HIPAA with respect to safeguarding the privacy, confidentiality, and security of protected health information. Subrecipient acknowledges that it may obtain confidential personal health information in the course of Subrecipient's performance under the terms of this Agreement. "Confidential personal health information" includes information that could be used to identify a participant, information pertaining to the participant's care, treatment, or experience in County's program, and information pertaining to the cost of, payment for, or collections activities related to participant's care, treatment, and experience in County's program. Subrecipient agrees to maintain the privacy, confidentiality, and security of information it may obtain in the course of its performance under this Agreement. Subrecipient agrees that it is County's Business Associate and agrees to be bound by the Business Associate Agreement in **Exhibit E-1 – Business Associates Agreement** (7 pages) which is incorporated into this agreement,

and further specifically agrees that:

- 7.1. Any confidential personal health information that Subrecipient may obtain shall remain the sole property of the County; and Subrecipient shall establish and maintain procedures and controls that are acceptable to County to assure that no confidential personal health information contained in its records or obtained from County or from others in carrying out its functions under this Agreement shall be used by or disclosed by Subrecipient, its agents, officers, employees or sub-contractors, except as required in the performance of its obligations under the terms of this Agreement; and
  - 7.2. Subrecipient shall not remove any confidential personal health information from County premises, if applicable; and
  - 7.3. Any other information pertaining to individual persons shall not be divulged other than to employees or officers of Subrecipient as needed for the performance of its duties under this Agreement, or to County.
8. **CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS.** All project patients' records are confidential and may be disclosed and used only in accordance with 42 C.F.R. Part 2. The Subrecipient is responsible for assuring compliance with these regulations and principles including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.

#### **MANDATORY DISCLOSURE GRANT-SPECIFIC LANGUAGE. STATUTORY AND NATIONAL POLICY REQUIREMENTS**

1. **VIOLENCE AGAINST WOMEN ACT.**
  - 1.1. As applicable, Subrecipient will comply with the notice, documentation, certification, confidentiality, and remedy requirements in 24 C.F.R. Part 5, Subpart L as supplemented by 24 C.F.R. § 576.409.
  - 1.2. As required by 24 C.F.R. § 576.409(f), Subrecipient agrees not to deny admission to or remove from emergency shelter an individual or family on the basis or as a direct result of the fact that they have been the victim of domestic violence, dating violence, sexual assault, or stalking, if the individual or family otherwise qualifies for admission or occupancy.
  - 1.3. Right to Report.
2. **MCKINNEY-VENTO REQUIREMENTS.**
3. **TRAFFICKING VICTIMS PROTECTION ACT.** This award is subject to termination, without penalty, if the subrecipient:
  - 3.1. Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
  - 3.2. Procures a commercial sex act during the period of time that the award is in effect; or
  - 3.3. Uses forced labor in the performance of the award or subawards under the award.

**EXHIBIT E-1 (7 pages) Business  
Associates Agreement**

WHEREAS, Pima County, on behalf of the Pima County Grants Management & Innovation ("Covered Entity"), and City of Tucson, a body politic ("Business Associate"), (each, a "Party," and collectively, the "Parties") wish to enter into a Business Associate Agreement to ensure compliance with the Privacy, Security, Breach Notification, and Enforcement Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Privacy and Security Rules") (45 C.F.R. Parts 160 and 164); and

WHEREAS, the Health Information Technology for Economic and Clinical Health ("HITECH") Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the "HIPAA Privacy and Security Rules" include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and

WHEREAS, the Parties have entered into a written or oral arrangement or arrangements (the "Underlying Agreement") whereby Business Associate will provide certain services to Covered Entity that require Business Associate to create, receive, maintain, or transmit Protected Health Information ("PHI") on Covered Entity's behalf, and accordingly Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

WHEREAS, Business Associate and Covered Entity wish to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a business associate to Covered Entity.

THEREFORE, in consideration of the Parties' continuing obligations under the Underlying Agreement, the Parties agree to the provisions of this Business Associate Agreement ("Agreement").

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time the inconsistency is discovered shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Agreement shall control.

**1. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.**

- 1.1. Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.
- 1.2. Business Associate may use PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

- 1.3. Business Associate may disclose PHI in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:
  - 1.3.1. the disclosures are required by law; or
  - 1.3.2. Business Associate obtains reasonable assurances from the third parties to whom the PHI is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.
- 1.4. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes "minimum necessary" for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only PHI that is contained in a limited data set (as defined in 45 C.F.R. § 164.514(e)(2)), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use, or request, in which event Business Associate may access, use, or request only the minimum necessary amount of PHI to accomplish the intended purpose of the access, use, or request.

## 2. **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.**

- 2.1. Business Associate agrees not to use or further disclose PHI other than as permitted or required by this Agreement or the Underlying Agreement or as required by state and federal law.
- 2.2. Business Associate agrees to use appropriate safeguards and to comply, where applicable, with 45 C.F.R. Part 164, Subpart C with respect to Electronic Protected Health Information, to prevent use or disclosure of PHI other than as provided for by this Agreement. Specifically, Business Associate will:
  - 2.2.1. implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in 45 C.F.R. §§ 164.308, 164.310, and 164.312; and
  - 2.2.2. report to Covered Entity any Security Incident, and any use or disclosure of PHI that is not provided for by this Agreement, of which Business Associate becomes aware without unreasonable delay and in no case later than thirty (30) calendar days after discovery.
- 2.3. Business Associate shall require each subcontractor that creates, receives, maintains, or transmits PHI on its behalf to enter into a business associate agreement or equivalent agreement containing the same restrictions on access, use, and disclosure of PHI as those applicable to Business Associate under this Agreement. Furthermore, to the extent that Business Associate provides Electronic PHI to a subcontractor, Business Associate shall

require such subcontractor to comply with all applicable provisions of 45 C.F.R. Part 164, Subpart C.

- 2.4. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522 of which Business Associate has been notified by Covered Entity.
- 2.5. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available PHI required for Covered Entity to respond to an individual's request for access to his or her PHI in accordance with 45 C.F.R. § 164.524. If Business Associate maintains PHI in an electronic designated record set, it agrees to make such PHI available electronically to Covered Entity or, upon Covered Entity's specific request, to the applicable individual or to a person or entity specifically designated by such individual, upon such individual's request.
- 2.6. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available PHI required for amendment by Covered Entity in accordance with the requirements of 45 C.F.R. § 164.526.
- 2.7. Business Associate agrees to document any disclosures of Protected Health Information, and to make PHI available for purposes of accounting of disclosures, as required by 45 C.F.R. § 164.528.
- 2.8. If Business Associate is to carry out one or more of Covered Entity's obligations under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- 2.9. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, to enable the Secretary to determine Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules. Business Associate also shall cooperate with the Secretary and, upon the Secretary's request, pursuant to 45 C.F.R. § 160.310, shall disclose PHI to the Secretary to enable the Secretary to investigate and review Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules.
- 2.10. Unless expressly authorized in the Underlying Agreement, Business Associate shall not:
  - 2.10.1. use PHI for marketing or fundraising;
  - 2.10.2. use PHI to create a limited data set or to de-identify the information;
  - 2.10.3. use PHI to provide data aggregation services relating to the health care operations of Covered Entity; or
  - 2.10.4. use or disclose PHI in exchange for remuneration of any kind, whether directly or indirectly, financial or non-financial, other than such remuneration as Business Associate receives from Covered Entity in exchange for Business Associate's

provision of the services specified in the Underlying Agreement.

2.10.5. Prior express written authorization from Covered Entity is required for Business Associate to access, store, share, maintain, transmit, use, or disclose PHI in any form via any medium with any entity or person, including the Business Associate's employees and subcontractors, beyond the boundaries and jurisdiction of the United States. Authorization may be granted in the sole discretion of Covered Entity and, if granted, will be subject to additional conditions with which Business Associate must agree. Prior express written authorization from Covered Entity is required for Business Associate to access, store, share, maintain, transmit, use, or disclose PHI in any form via any medium with any entity or person, including the Business Associate's employees and subcontractors, beyond the boundaries and jurisdiction of the United States. Authorization may be granted in the sole discretion of Covered Entity and, if granted, will be subject to additional conditions with which Business Associate must agree.

**3. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS.**

3.1. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

3.2. Following the discovery of a Breach of Unsecured PHI ("Breach"), Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than thirty (30) calendar days after discovery of the Breach, and shall assist in Covered Entity's breach analysis process, including risk assessment, if requested. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate. The Breach notification shall be provided to Covered Entity in the manner specified in 45 C.F.R. § 164.410(c) and shall include the information set forth therein to the extent known. If, following the Breach notification, Business Associate learns additional details about the Breach, Business Associate shall notify Covered Entity promptly as such information becomes available. Covered

Entity shall determine whether Business Associate or Covered Entity will be responsible for providing notification of any Breach to affected individuals, the media, the Secretary, and/or any other parties required to be notified under the HIPAA Privacy and Security Rules or other applicable law. If Covered Entity determines that Business Associate will be responsible for providing such notification, Business Associate may not carry out notification until Covered Entity approves the proposed notices in writing.

3.3. Notwithstanding the provisions of Section III.B., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

3.3.1. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or

3.3.2. if the statement is made orally, Business Associate shall document the statement,

including the identity of the official making it, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

- 3.4. Business Associate shall bear Covered Entity's costs of any Breach and resultant notifications, if applicable, to the extent the Breach arises from Business Associate's negligence, willful misconduct, violation of law, violation of the Underlying Agreement, or violation of this Agreement.

#### 4. **OBLIGATIONS OF COVERED ENTITY**

- 4.1. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520.
- 4.2. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes could reasonably be expected to affect Business Associate's permitted or required uses and disclosures.
- 4.3. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such Protected Health Information.

#### 5. **TERM AND TERMINATION.**

- 5.1. Term. The Term of this Agreement shall be effective as of the first effective date of any Underlying Agreement, and shall terminate upon later of the following events:
  - (i) in accordance with Section V.C., when all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is returned to Covered Entity or destroyed (and a certificate of destruction is provided) or, if such return or destruction is infeasible, when protections are extended to such information; or
  - (ii) upon the expiration or termination of the last of the Underlying Agreement.
- 5.2. Termination. Upon either Party's knowledge of a material breach by the other Party of its obligations under this Agreement, the non-breaching Party shall, within twenty (20) days of that determination, notify the breaching Party, and the breaching Party shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to effect such a cure within such time period, the non-breaching Party may terminate this Agreement and the Underlying Agreement without penalty.

Where either Party has knowledge of a material breach by the other Party and determines that cure is infeasible, prior notice of the breach is not required, and the non-breaching Party shall terminate the portion of the Underlying Agreement affected by the breach without

penalty.

5.3. Effect of Termination.

5.3.1. Except as provided in paragraph 2 of this subsection C., upon termination of this Agreement, the Underlying Agreement or upon request of Covered Entity, whichever occurs first, Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. Neither Business Associate nor its subcontractors shall retain copies of the PHI except as required by law.

5.3.2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide within ten (10) days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate, and its applicable subcontractors, shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate and its applicable subcontractors maintain such Protected Health Information.

6. **MISCELLANEOUS.**

6.1. No Rights in Third Parties. Except as expressly stated herein or in the HIPAA Privacy and Security Rules, the Parties to this Agreement do not intend to create any rights in any third parties.

6.2. Survival. The obligations of Business Associate under Section V.C. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Underlying Agreement, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

6.3. Amendment. The Parties agree that this Agreement will be amended automatically to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for each of them to comply with the current requirements of the HIPAA Privacy and Security Rules and the Health Insurance Portability and Accountability Act, unless a particular statutory or regulatory provision requires that the terms of this Agreement be amended to reflect any such change. In those instances where an amendment to this Agreement is required by law, the Parties shall negotiate in good faith to amend the terms of this Agreement within sixty (60) days of the effective date of the law or final rule requiring the amendment. If, following such period of good faith negotiations, the Parties cannot agree upon an amendment to implement the requirements of said law or final rule, then either Party may terminate this Agreement and the Underlying Agreement upon ten (10) days written notice to the other Party. Except as provided above, this Agreement may be amended or modified only in a writing signed by the Parties.

6.4. Assignment. Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

- 6.5. Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. Nothing in this Agreement creates or is intended to create an agency relationship.
- 6.6. Governing Law. To the extent this Agreement is not governed exclusively by the HIPAA Privacy and Security Rules or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the state in which Covered Entity has its principal place of business.
- 6.7. No Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 6.8. Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Privacy and Security Rules.
- 6.9. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
- 6.10. Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.
- 6.11. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written. In the event of any inconsistency between this Agreement and any other agreement between the Parties concerning the use and disclosure of PHI and the Parties' obligations with respect thereto, the terms of this Agreement shall control.
- 6.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

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