



**BOARD OF SUPERVISORS AGENDA ITEM REPORT**  
**CONTRACTS / AWARDS / GRANTS**

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 04/05/2022

\* = Mandatory, information must be provided

or Procurement Director Award ☐

**\*Contractor/Vendor Name/Grantor (DBA):**

Dalberg Design, LLC., DBA Dalberg Design (Headquarters: New York, NY)

**\*Project Title/Description:**

Human Centered Design Consultant Services (Healthcare)

**\*Purpose:**

Award: Master Agreement No. MA-PO-22-144. This Master Agreement is for an initial term effective April 5, 2022 through June 30, 2023 in the award amount of \$420,000.00 and includes four (4) one-year renewal options.

Administering Department: Health.

**\*Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.020, Competitive sealed proposals, Solicitation No. RFP-PO-2200018 was conducted. Two (2) responses were received. Award is to the responsive and responsible respondent submitting the highest scoring proposal.

PRCUID: 436820

Attachments: Notice of Recommendation for Award and Professional Services Contract.

**\*Program Goals/Predicted Outcomes:**

The goal of this project is to enhance COVID-19 vaccination and other mitigation practices among vulnerable patients served through a federally qualified health center (i.e., MHC Healthcare). The human centered design approach will guide and co-create with appropriate stakeholders clinical, public health and administrative healthcare solutions that will allow varied populations to find, understand and use COVID-19 information and services and inform and guide implementable actions that need to be taken by MHC Healthcare and the PCHD to improve health outcomes for patients and residents.

**\*Public Benefit:**

This project will generate new policies, practices, and system-level changes that will allow MHC Healthcare patients to find, understand and use COVID-19 public health information. By increasing access to culturally and linguistically appropriate health information, Pima County Health Department will contribute to improved responses to public health strategies for COVID-19 and improve health outcomes for racial and ethnic minority populations and socially vulnerable populations in Pima County.

**\*Metrics Available to Measure Performance:**

Metrics including methodological framework, process, tools to measure project success will be developed by Dalberg Design, partnership with the University of Arizona, Health Department, and any other stakeholders.

**\*Retroactive:**

No

To: COB 3-31-22(1) Addendum

Vers: 1

Pgs: 19

Revised 5/2020

Page 1 of 2

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**Contract / Award Information**

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 22-144  
Commencement Date: 4/05/2022 Termination Date: 6/30/2023 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☒ Expense Amount: \$\* 420,000.00 ☐ Revenue Amount: \$ \_\_\_\_\_

\*Funding Source(s) required: U.S. Department of Health and Human Services (HHS) and Office of Minority Health (OMH)

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? Vendor

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 or ☐ 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: Nancy Page, Procurement Officer Digitally signed by Nancy Page Date: 2022.03.29 10:32:56 -07'00' Division Manager: Ana Wilber Digitally signed by Ana Wilber Date: 2022.03.29 10:40:00 -07'00'

Department: Procurement Director: Terri Spencer Digitally signed by Terri Spencer Date: 2022.03.29 12:08:24 -07'00' Telephone: 520-724-3563

Department Director Signature/Date: [Signature] 3/30/2022

Deputy County Administrator Signature/Date: [Signature] 3/30/2022

County Administrator Signature/Date: [Signature] 3/31/2022

(Required for Board Agenda/Addendum Items)



**NOTICE OF RECOMMENDATION FOR AWARD**

Date of Issue: March 29, 2022

The Procurement Department hereby issues formal notice to respondents to Solicitation No. RFP-PO-2200018 for Human Centered Design Consultant Services (Healthcare) that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after April 5, 2022.

Award is recommended to the highest scoring proposal.

<u>AWARDEE NAME</u>	<u>AWARD AMOUNT</u>
Dalberg Design, LLC., DBA Dalberg Design	\$420,000.00

OTHER RESPONDENT NAMES  
Agency 39A, LLC

Issued by: Nancy Page, Procurement Officer

Telephone Number: (520)724-3563

This notice is in compliance with Pima County Procurement Code §11.12.020(C) and §11.20.010(C).

Copy to: Pima County SBE via e-mail at [SBE@pima.gov](mailto:SBE@pima.gov).

A handwritten signature in black ink, appearing to be "Nancy Page", located in the bottom right corner of the document.

**Pima County Department of Health**

**Project:** Human Centered Design Consultant Services (Healthcare)

**Contractor:** Dalberg Design, LLC., Dalberg Design  
155 West 23<sup>rd</sup> Street  
New York, NY 10011

**Amount:** \$420,000.00

**Contract No.:** MA-PO-22-144

**Funding:** U.S. Department of Health and Human Services (HHS) Office of Minority Health (OMH)

**PROFESSIONAL SERVICES CONTRACT**

**1. Parties, Background and Purpose.**

- 1.1. Parties. This Contract is between Pima County, a body politic and corporate of the State of Arizona ("County"), and Dalberg Design, LLC., DBA Dalberg Design ("Contractor").
- 1.2. Purpose. The Pima County Health Department requires services to support project planning for human centered design projects. The human centered design agency will provide assistance, research, resources, design tools, and technical support to Pima County and any grant sub-recipients.
- 1.3. Authority. County selected Contractor pursuant to and consistent with County's Procurement Code 11.12.020 Competitive Sealed Proposals;
- 1.4. Solicitation and Other Documents. County previously issued Solicitation No. RFP-PO-2200018 for certain services (the "Solicitation"). Requirements and specifications contained in the Solicitation, all documents included in the Solicitation, and any information and documentation submitted by Contractor in response to the Solicitation, are incorporated into this Contract by reference.
- 1.5. Contractor's Response. Contractor submitted the most advantageous response to the Solicitation.

**2. Term.**

- 2.1. Initial Term. The term of this Contract commences on April 5, 2022 and will terminate on June 30, 2023 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.
- 2.2. Extension Options. County may renew this Contract for up to four (4) additional periods of up to 1 year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

**3. Scope of Services.** Contractor will provide County with the services described in **Exhibit A** (1 page), at the dates and times described on **Exhibit A** or, if **Exhibit A** contains no dates or time frames, then upon demand. The Services must comply with all requirements and specifications in the Solicitation including **Exhibit C** (2 pages) Grant Conditions.

**4. Health Insurance Portability and Accountability Act.** The parties acknowledge that the County is a hybrid covered entity as described in 45 C.F.R. §164.103 of 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 is required to comply with the provisions of the HIPAA Privacy and Security Rules with the respect to safeguarding the privacy, confidentiality and security of protected health information. Contractor acknowledges that it may obtain protected health information, as defined in 45 C.F.R. §160.103, in the course of Contractor's performance under the terms of this Contract. Furthermore, Contractor acknowledges

that County may utilize protected health information for research purposes, as defined in 45 C.F.R. §164.501, and Contractor will obtain an authorization in compliance with 45 C.F.R. §164.508, if required by the HIPAA Privacy and Security Rules. Contractor agrees to maintain the privacy, confidentiality and security of information it may obtain in the course of its performance under this Contract. In particular, Contractor agrees that it is the County's Business Associate and to be bound by the Business Associate Agreement **Exhibit D (5 pages)** which is incorporated into this Contract, and further specifically agrees that:

- 4.1. Any protected health information that Contractor may obtain shall remain the sole property of the County; and
  - 4.2. No research activities, including academic, methodological or other such research activities, will be performed without the explicit authorization by the County and a written authorization from each patient, in compliance with 45 C.F.R. § 164.508; and
  - 4.3. Contractor shall establish and maintain procedures and controls that are acceptable to County to assure that no protected health information contained in its records or obtained from County or from others in carrying out its functions under this Contract shall be used by or disclosed by Contractor, its agents, officers, employees or subcontractors, except as required in the performance of its obligations under the terms of this Contract; and
  - 4.4. Contractor shall not remove any protected health information from County premises, if applicable; and
  - 4.5. Any other information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of its duties under this Contract, or to County.
5. **Authorization for Sharing Information.** Contractor will obtain an authorization from each patient, in compliance with the requirements of 45 C.F.R. §164.508, regarding the use of protected health information for research purposes, if required by the HIPAA Privacy and Security Rules. Contractor shall consult with County to ensure such authorization complies with the HIPAA Privacy and Security Rules. Contractor will provide to County a copy of the authorization obtained from each patient.
6. **Key Personnel.** Contractor will employ suitably trained and skilled professional personnel to perform all consultant services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, Contractor will obtain the approval of County. The key personnel include the following staff:

Name: Robert Fabricant Title: Partner/Director

**7. Compensation and Payment.**

- 7.1. Rates; Adjustment. County will pay Contractor at the rate set forth in **Exhibit B** (1 page). The rate will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.
- 7.2. Not-to-Exceed (NTE) Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$420,000.00 (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.
- 7.3. Sales Taxes. The payment amounts or hourly rates in **Exhibit B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract, **if applicable**. Contractor will show sales taxes as a separate line item on invoices.
- 7.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in sections 5.6 and 5.7 below. County must receive invoices no more than 15 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse

to pay for any product or service for which Contactor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.

- 7.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.

Invoices shall have a signature and the following information:

Provider name

Invoice number

Date and place of service

Total hours provided, itemized by activities listed in Exhibit A – Scope of Services.

- 7.6. Invoice Submittal. Invoices are to be sent by the 15th of each month to:

Pima County Health Department

Attn: Adriane Ackerman and Susan Graham

3950 S. Country Club Road, Suite 2246

Tucson, AZ 85714

- 7.7. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 24 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

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

- 8.1. Insurance Coverages and Limits. Contractor will procure and maintain, until all of 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.

8.1.1. 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 cover 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.

8.1.2. 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 Contract with minimum limits not less than \$1,000,000 Each Accident.

8.1.3. 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.

8.1.4. 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 contract.

- 8.1.5. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" located in the next section.
- 8.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.
- 8.2.1. 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 Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
- 8.2.2. Additional Insured Endorsement. The General Liability, Business Automobile Liability and Technology E&O Policies shall each be endorsed to include 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 Contractor.
- 8.2.3. Subrogation Endorsement. The General Liability, Business Automobile Liability, Workers' Compensation and Technology E&O Policies shall each contain a waiver of subrogation endorsement in favor of County, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- 8.2.4. 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.
- 8.2.5. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR). Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 8.2.6. Subcontractors. Contractor 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, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.
- 8.3. Notice of Cancellation. For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to County, within two (2) business days of receipt of notice, if a policy is suspended, voided, or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to the County Contracting Representative. Notice shall include County's project or contract number and project description.
- 8.4. Verification of Coverage.
- 8.4.1. Contractor must furnish County with a certificate of insurance (valid ACORD form or equivalent approved by County) for each Required Insurance policy, which must specify that the policy has all the required endorsements, and must include County's project or contract number and project description. Each certificate must be signed by an authorized representative of the insurer.
- 8.4.2. Contractor 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 Contract commences. Contractor 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 Contract.
- 8.4.3. County may at any time require Contractor to provide a complete copy of any Required Insurance policy or endorsement. Note: Contractors for larger projects must provide actual copies of the additional insured and subrogation endorsements.
- 8.4.4. All insurance certificates must be sent directly to the appropriate County Department.

8.5. Approval and Modifications. County's Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager and does not require a formal Contract 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 Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

9. **Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless 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 Contractor or any of Contractor'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 Contractor 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 Contractor from and against any and all Claims. Contractor 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 Contract.

#### 10. Laws and Regulations.

10.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

10.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.

10.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

11. **Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

12. **Subcontractors.** Contractor 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 Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract 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.

13. **Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.

14. **Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor 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. **Americans with Disabilities Act.** Contractor will comply with 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 CFR Part 35).

16. **Authority to Contract.** Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.



**17. 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 Contract, 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 Contract, 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.

**18. Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

**19. Termination by County.**

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

19.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.

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

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

Pima County:

Terri Spencer, Procurement Director  
Pima County Procurement  
150 W. Congress St., 5<sup>th</sup> Floor, Tucson, Az 85701  
(520) 724-3722, Terri.Spencer@pima.gov

Contractor: Dalberg Design, LLC., DBA  
Dalberg Design

Robert Fabricant, Partner/Director 155  
West 23<sup>rd</sup> Street  
New York, NY 10011  
(917) 701-3166,  
robert.fabricant@dalberg.com

**21. Non-Exclusive Contract.** Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

**22. Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. 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 Contract.

**23. Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

**24. Use of County Data.** Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).

**25. Books and Records.** Contractor 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, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

**26. Public Records.**

- 26.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents submitted in response to the solicitation resulting in award of this Contract, 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.
- 26.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, 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.

**27. Legal Arizona Workers Act Compliance.**

- 27.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract 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"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 27.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 27.3. Remedies for Breach of Warranty. Any breach of Contractor'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 Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor 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 Contractor.
- 27.4. Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 26 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."

**28. Grant Compliance.** Contractor will comply with all requirements attached in **Exhibit C – Grant Conditions** (2 pages).

**29. Written Orders.** County will order services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not perform services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for services not documented by a County Delivery Order (DO).

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide services other than those described in this Contract, in excess of the Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any services provided in excess of that stated in this Contract are at Contractor's own risk.

- 30. Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.
- 31. Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. The 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.
- 32. Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.
- 33. Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

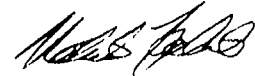
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IN WITNESS WHEREOF, the parties have approved this Professional Services Contract and agree to be bound by the terms and conditions of the Contract on the dates written below.

**PIMA COUNTY**

**DALBERG DESIGN, LLC., DBA DALBERG DESIGN**

\_\_\_\_\_  
Chair, Board of Supervisors



\_\_\_\_\_  
Authorized Officer Signature

\_\_\_\_\_  
Date

**Robert Fabricant, Partner**

\_\_\_\_\_  
Printed Name and Title

**March 29, 2022**

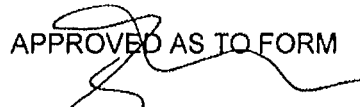
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**ATTEST**

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

**APPROVED AS TO FORM**



\_\_\_\_\_  
Deputy County Attorney

**Jonathan Pinkney**

\_\_\_\_\_  
Print Name

**3/23/22**  
\_\_\_\_\_  
Date

## **EXHIBIT A: SCOPE OF SERVICES (1 PAGE)**

### **1. SCOPE:**

#### **1.1 Partner Provider and Patient Engagement:**

Coordinate and lead meetings for county staff, stakeholders, clinicians, healthcare administrators and patients/clients to participate in four human centered design projects. Continued contact with MHC Healthcare, Pima County Health Department (PCHD), and community-based organizations identified by Pima County Health Department. Anticipate this section will require about 50 hours.

#### **1.2 Comprehensive Human Centered Design Process**

Use a human centered design approach to improve MHC Healthcare services/processes for clients and identify innovations or solutions that are desirable, feasible, viable, replicable and scalable. Guide Pima County Health Department and MHC Healthcare through the human centered design process including observation, ideation, prototyping, iteration and implementation by providing step-by-step guidance, experience, expertise, design tools and/or resources on assigned project and task completions and project implementation. Measure effectiveness of solutions against project initial goals together with the external evaluation team from the University of Arizona. If the solution falls short of those goals, make revisions based on further feedback from clients and test again. Assist the Pima County Health Department in utilizing research findings to develop opportunities to test, prototype and pilot scalable interventions to increase experiences of equity, cultural sensitivity and inclusion on behalf of priority populations, in alignment with the Department's commitment to a Health, Equity and Literacy in All Policies framework. Anticipate this section will require about 910 hours.

#### **1.3 Research and Project Development**

Facilitate the process of project development through research and planning as well as leading team project planning meetings using a human-centered design approach and the latest developments in design theory/strategy and resources/techniques available. Provide step-by-step guidance for MHC Healthcare and the Pima County Health Department on how to conduct human centered design discovery, synthesize research findings, and utilize human centered design tools and techniques towards the goal of helping MHC Healthcare identify opportunities to enhance COVID-19 vaccination and other mitigation practices among vulnerable clients served through MHC Healthcare. Anticipate this section will require about 400 hours.

#### **1.4 Coordination**

The project will also be hiring a consultant for Behavioral Economics. Contractor is required to work in coordination with this consultant and integrate behavioral economics principles into the program. Anticipate this section will require about 50 hours.

#### **1.5 Administrative and Reporting**

Submit documentation to the County on project implementation and progress by the required due date when applicable. In addition, Contractors must communicate weekly with MHC Healthcare, the University of Arizona evaluator, and/or County staff via phone and email. Anticipate this section will require about 80 hours.

#### **1.6 Meetings**

Attend all project planning meetings virtually. These meetings will be with project partners and PCHD staff, approximately two per week, not to exceed eight per month. As such, Contractor will receive reimbursement at the standard hourly rate of pay. Invoicing for meetings will take place under one of the categories in 1.1-1.5 and is included in the estimate for minimum hours. Anticipate this section will require about 60 hours.

#### **1.7 Data Security**

Contractor will ensure the PCHD, MHC Healthcare and other data that is shared with them is protected and shared only with authorized partners.

#### **1.8 Travel**

Travel to County may be required to complete work outlined in the RFP. Approved travel to County, including flight, vehicle rental, local mileage, parking fees, meals and hotel stay can be reimbursed by County. Reimbursement of travel expenses must not exceed the maximum reimbursement rates as determined by the U.S. General services Administration for Tucson: <https://www.gsa.gov/>.

**END OF EXHIBIT A**

**EXHIBIT B: COMPENSATION AND PAYMENT (1 PAGE)**

**OFFERORS NAME: Dalberg Design, LLC**

Offerors must propose one firm, fixed, fully-loaded hourly rate. The firm, fixed, fully-loaded hourly rate will include all direct costs, indirect costs, overhead and profit margin, as well as subcontractor's total costs, if appropriate.

Item	Item Description: To include any fees or charges associated with providing this service in the hourly rate	Unit of Measure (UOM)	Est. No. of Hours Annually	Hourly Rate	Total Price Proposed (TPP)
1	Hourly rate for services cited in Exhibit A.	Hour	1550	\$225	\$348,750

**END OF EXHIBIT B**

**EXHIBIT C: GRANT CONDITIONS (2 PAGES)**

***Contract Provisions for Non-Federal Entity Contracts Under Federal Awards:***

1. **Debarment and Suspension (Executive Orders 12549 and 12689)**—Contractor warrants that they are not listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
  - a. This contract is a covered transaction for purposes of 2 CFR 180 and 2 CFR 3000. As such the Contractor is required to verify that none of the 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).
  - b. The Contractor is required to provide their DUNS number to Pima County.
  - c. The Contractor must comply with 2 C.F.R. 180, subpart C and 2 C.F.R. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  - d. This certification is a material representation of fact relied upon by Contractor. If it is later determined that the Contractor did not comply with 2 C.F.R. 180, subpart C and 2 C.F.R. 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.
  - e. The Contractor agrees to comply with the requirements of 2 C.F.R. 180, subpart C and 2 C.F.R. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
2. **Compliance with Federal law, Regulations, and Executive Orders.** The Contractor acknowledges that financial assistance from the federal Department of Health and Human Services (HHS) will be used to fund this contract. The Contractor will comply with all applicable federal law, regulations, executive orders, HHS policies, procedures, and directives.
3. **No Obligation by Federal Government.** The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, Contractor, or any other party pertaining to any other matter resulting from the contract.
4. **Program Fraud and False or Fraudulent Statements or Related Acts.** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
5. **Access to Records.** The Contractor agrees to provide access by the County, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to this specific Contract for the purpose of audit, examination, excerpts, and transcriptions.
  - a. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. **Patent Rights.** Acceptance of grant funds obligates contractor to comply with the standard patent rights clause in 37 CFR Part 401.14.
7. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors with awards exceeding \$100,000 must file the required certification. Contractor must certify that it will not and has not used 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. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures will be forwarded from tier to tier up to the non-Federal award.
8. **Energy Policy and Conservation Act.** Contractor is obligated to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub\_ L. 94-163, 89 Stat 871) as amended.
9. **Clean Air Act.** Contractor is obligated to comply with applicable standards, orders or requirements issued under the Clean Air Act (42 USC 7401-7671q.)
10. **Federal Water Pollution Control Act.** Contractor is obligated to comply with applicable standards, orders or requirements issued under the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended.

**END OF EXHIBIT C**



**EXHIBIT D: BUSINESS ASSOCIATE AGREEMENT (5 PAGES)**

WHEREAS, Pima County ("Covered Entity"), and Dalberg Design, LLC ("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.

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

A. 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.

B. 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.

C. 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. the disclosures are required by law; or

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.

D. 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.

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

**A.** 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.

**B.** 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:

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. 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.

**C.** 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.

**D.** 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.

**E.** 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.

**F.** 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.

**G.** 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.

**H.** 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).

**I.** 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.

**J.** Unless expressly authorized in the Underlying Agreement, Business Associate shall not:

1. use PHI for marketing or fundraising;

2. ~~use PHI to create a limited data set or to de-identify the information;~~

3. use PHI to provide data aggregation services relating to the health care operations of Covered Entity; or

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.

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.

### **III. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS**

A. 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.

B. 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.

C. 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:

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

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.

D. 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.

### **IV. OBLIGATIONS OF COVERED ENTITY**

A. 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.

B. 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.

C. 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.

## **V. TERM AND TERMINATION**

**A. 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.

**B. 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.

### **C. Effect of Termination.**

**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.

**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.

## **VI. MISCELLANEOUS**

**A. 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.

**B. 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.

**C. 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.

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

**E. 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.

**F. 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.

**G. 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.

**H. 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.

**I. 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.

**J. 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.

**K. 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.

**L. 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.

**END OF EXHIBIT D**