



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

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: August 17, 2020

\* = Mandatory, information must be provided

or Procurement Director Award ☐

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

United States Marshal Service (USMA)

**\*Project Title/Description:**

Intergovernmental Agreement between Pima County and USMS to add USMS to Pima County Wireless Integrated Network (PCWIN) as a Public Safety Service Participant

**\*Purpose:**

USMS has been approved by the PCWIN Board of Directors to participate in PCWIN as a Public Safety Service Participant.

USMS will be adding 65 radios to the PCWIN system for interoperability with PCWIN agencies in order to conduct warrant operations for state and local warrants.

**\*Procurement Method:**

This IGA contract is a Non-Procurement Contract and not subject to Procurement Rules

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

To ensure interoperability between PCWIN members and supported agencies.

**\*Public Benefit:**

To support efforts of PCWIN, a state-of-the-art digital trunked radio communications system designed to provide public safety grade radio communications throughout Pima County.

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

USMS to make timely payments per the Agreement.

**\*Retroactive:**

No

To: COB- 8.3.20  
Ver. - 1  
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(1)

**Contract / Award Information**

Document Type: CTN Department Code: WIN Contract Number (i.e., 15-123): 20\*165  
Commencement Date: 8/17/2020 Termination Date: 8/17/2025 Prior Contract Number (Synergen/CMS):  
☐ Expense Amount: \$\* 16 M ☒ Revenue Amount: \$ 144,300

\*Funding Source(s) required: United States Marshal Service

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? \_\_\_\_\_

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: Nicole Jennings

Department: PCWIN Telephone: 724-9321

Department Director Signature/Date: 2A B 7-30-2020

Deputy County Administrator Signature/Date: 7-31-2020

County Administrator Signature/Date: 7/31/20  
(Required for Board Agenda/Addendum Items)

**Pima County Wireless Integrated Network (PCWIN)**

**Project: PCWIN Public Safety Service Participant Membership**

**Grantee: United States Marshal Service**

**Contract No.: CTN-WIN 20-165**

**Estimated Revenue: \$ 144,300**

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
PIMA COUNTY AND UNITED STATES MARSHAL SERVICE (USMS) TO ADD USMS  
AS A PUBLIC SAFETY SERVICES PARTICIPANT**

The Parties to this agreement ("Agreement") are Pima County, a political subdivision duly organized and existing under the laws of the State of Arizona ("County") and USMS a federal agency duly organized and existing under the United States Government ("USMS"). County and USMS shall be referred to individually as a "Party" and collectively as "Parties".

**RECITALS.**

WHEREAS, County is the Network Managing Member of the Pima County Integrated Wireless Integrated Network Cooperative ("PCWIN") and is entering into this Agreement in its capacity as the Network Managing Member and with the authorization of the PCWIN Board of Directors.

WHEREAS, USMS is a federal agency that provides emergency and non-emergency law enforcement services.

WHEREAS, when used in this Agreement, the "PCWIN" shall mean the public safety/municipal communications system that includes, but is not limited to, the 800 MHz system originally procured and built by County and commonly referred to as "PCWIN"

WHEREAS, when used in this Agreement, "Cooperative Member" shall include all signatories to that certain Intergovernmental Agreement between and amongst public safety government entities within Pima County .

WHEREAS, subject to the terms and conditions of this Agreement, the Parties desire to enter into this Agreement to allow USMS to use the PCWIN Network.

WHEREAS, this Agreement is entered into under the authority and pursuant to Section 3.1.5 of the Intergovernmental Agreement to Operate, Maintain, Sustain, Improve and Finance the Pima County Wireless Integrated Network (PCWIN Governance Agreement). This Agreement is subject to the terms and conditions of the PCWIN Governance Agreement.

## **AGREEMENT.**

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants herein contained, and good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows

### **1. Term and Duration of Agreement; Termination**

1.1. The initial term of this Agreement is five (5) years, commencing on the date the Agreement has been executed by all Parties (the "Effective Date") unless otherwise terminated in accordance with this Agreement; thereafter, this Agreement will automatically renew for terms of five (5) years unless otherwise terminated in accordance with this Agreement.

1.2. The Parties shall have the right to terminate this Agreement at anytime, with or without cause, during the term of this Agreement or any extended term by first providing not less than one hundred-eighty days (180) prior written notice to the other Party.

### **2. Interoperability.**

2.1. USMS Use of PCWIN Network. Subject to reasonable conditions imposed by the PCWIN Cooperative Board of Directors, USMS employees or contractors that will be using the PCWIN Network ("Public Safety Service Participants") may use the PCWIN Network to support PCWIN Members and USMS with Public Safety Services. The PCWIN Cooperative will develop policies, procedures and guidelines that govern how Public Safety Service Participants obtain services, whether routine or emergency, establish Talkgroups, set priorities, determine roaming/site access, and operate on the PCWIN Network. When using PCWIN, the Public Safety Service Participants shall abide by all policies, procedures and guidelines established by the PCWIN Cooperative as a condition for using the PCWIN Network.

2.2. Voting Rights and Representation. Public Safety Service Participants shall have no voting rights or representation on the PCWIN Board of Directors or Executive Committee, but may appoint one representative to the Operations Working Group.

2.3. Annual Membership Fees and Costs. Public Safety Service Participants are required to pay the Annual Membership Fees described in the PCWIN Governance Agreement. Payments are due in the manner specified by the IGA payment terms and conditions.

2.4. Interoperability Defined. As used in this Agreement the word "Interoperability" shall mean: "an essential communication link within Public Safety and Public Service wireless communications systems which permits units from two or more different agencies to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results."

3. **Records; Confidentiality.** USMS shall treat any information about the PCWIN's Network ("Network Information") as proprietary and confidential. Network Information includes, but is not limited to, technical data, engineering details, construction documents, equipment lists, programming configurations, and operational procedures. If USMS receives a request for information concerning the PCWIN Network, USMS shall promptly forward the request to County for consideration and response.

4. **Conflict of Interest.** The Parties understand and acknowledge that this Agreement may be subject to cancellation under A.R.S. § 38-511 (Arizona's public employee conflict of interest law) in the event there is a conflict of interest of the type specified in A.R.S. § 38-511 by persons significantly involved in initiating, negotiating, securing, drafting or creating this Agreement.

5. **Compliance with Applicable Laws.** Each Party shall comply with all applicable laws, statutes, ordinances, executive orders, rules, regulations, standards, and codes of federal and state governments whether or not specifically referred to in this Agreement.

6. **Cooperation.** The Parties agree to make, sign and deliver all documents and to perform all acts that are necessary to fully carry out the terms of this Agreement.

7. **Disclaimer of Warranties.** USMS acknowledges and agrees that neither County nor any other PCWIN cooperative member warrant the reliability or performance of the PCWIN network. County disclaims all warranties whether written, oral, implied or statutory, applicable or relating to the equipment, supplies, maintenance of the equipment, or other items provided under the agreement by county or any other PCWIN cooperative members, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose and USMS acknowledges that no such warranties have been made by county or any other PCWIN cooperative member. USMS also hereby waives any rights and remedies to make a claim against county, PCWIN or any PCWIN cooperative member including, without limitation, any general, special, incidental or consequential damages, for any reason whatsoever, based on (1) USMS's use of the PCWIN network, or (2) County's or any other PCWIN cooperative member's operation and maintenance of the PCWIN network. USMS agrees that the PCWIN network and USMS's use of the network is provided on an "as-is" "where is" basis with all faults.

8. **Indemnification.** USMS agrees to defend (with counsel reasonably acceptable to County), indemnify and hold harmless County and any other PCWIN Cooperative Member from all suits, legal or administrative proceeding liability, costs, attorney's fees, damages and penalties which may be incurred by or asserted against County or any other PCWIN Cooperative Member arising from any accident, injury or damage resulting from USMS's use of the PCWIN Network. USMS shall advance and pay all expenses, including actual attorney's fees, incurred by County or any other PCWIN Cooperative Member in defending against any such claims, demands, liabilities and causes of action. USMS agrees to notify County promptly upon receiving any notice of any such asserted claim, liability, demand or cause of action.

9. **Amendment.** This Agreement may be amended only by a written document executed by a duly authorized representative of each of the Parties.

10. **Third Parties.** All PCWIN Cooperative Members are intended third party beneficiaries of this Agreement. Except as otherwise provided by the first sentence of this Section 10, this Agreement is entered into for the sole and exclusive benefit of the Parties, and no other person shall claim any implied right, benefit or interest in this Agreement. The Parties do not intend to create rights in or remedies to any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established under this Agreement.

11. **Notice.** Any notice, consent or other communication ("Notice") required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If intended for County:  
PCWIN Executive Director  
3434 E. 22<sup>nd</sup> Street  
Tucson, AZ 85713

If intended for USMS:  
ACDUSM Thomas Smith  
405W. Congress Street  
Suite 2300  
Tucson, AZ 85701

Notice shall be deemed received at the time it is personally served, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, five (5) days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, telephone or FAX number, or the person to receive the notice, by notifying the other party as provided in this Section.

Notices sent by facsimile transmission shall also be deposited in the United States mail to the recipient at the above address on the same day the facsimile transmission is sent. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

12. **Waiver.** The waiver by any Party of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition of this Agreement.

13. **Uncontrollable Events.** No Party shall be considered to be in default in the performance of any obligations under this Agreement (other than obligations of a Party to pay costs and expenses) if failure of performance is due to an uncontrollable event. The term "uncontrollable

event" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by court order or public authority, that by exercise of due diligence and foresight the Party reasonably could not have been expected to avoid and that by exercise of due diligence it will be unable to overcome. A Party that is rendered unable to fulfill any obligation by reason of an uncontrollable event shall exercise due diligence to remove such inability with all reasonable dispatch.

**15. Assignment and Binding Effect.** USMS may not assign its rights or obligations under this Agreement without the prior written consent of County which consent may be granted or denied at County's sole and absolute discretion. Except as otherwise provided in the first sentence of this Section 14, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

**16. Entire Agreement.** This Agreement contains the entire agreement and understanding among the Parties regarding the subject matter herein and supersedes and replaces all related prior negotiations, agreements and proposed agreements, written or oral. Each Party acknowledges that no other Party, nor any agent or attorney of any Party, has made any promise, representation, or warranty whatsoever, expressed or implied, not contained in this Agreement and acknowledges that this Agreement has not been executed in reliance on any promise, representation or warranty not contained in this Agreement. This Agreement shall not be amended, modified or supplemented at any time unless in writing.

**17. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts executed and intended to be performed entirely within the State of Arizona by residents of the State of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision therefore shall be instituted only in the courts of Pima County, Arizona.

**18. Severability.** Except for each Party's right to terminate this Agreement pursuant to Section 1.2, if any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, the provision shall be severed from this Agreement, which shall otherwise remain in full force and effect if the remaining provisions permit the Parties to obtain the practical benefits of this Agreement. If any law or court of competent jurisdiction prohibits or excuses any Party from undertaking any contractual commitment to perform any act under this Agreement, this Agreement shall remain in full force and effect, but the provisions requiring such action shall be deemed to permit the Party to take such action at its discretion, if such a construction is permitted by law.

**19. Attorneys Fees.** The prevailing party in any litigation or arbitration arising out of this Agreement shall be entitled to the recovery of its reasonable attorneys' fees, court costs and other litigation related costs and fees from the other party.

20. **Headings.** Section headings are inserted in this Agreement solely for convenience and the section headings shall not by themselves alter, modify, limit, expand or otherwise affect the meaning of any provision of this Agreement.

21. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. **Recitals Incorporated.** The Parties acknowledge that the Recitals to this Agreement are true, accurate and correct, and are hereby incorporated into and made a part of the operative provisions of this Agreement as if fully set forth therein without difference or distinction.

23. **Personnel.** This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind between the parties. No employee, agent, or servant of a Party shall be deemed to be an employee, agent or servant of the other Party. Except as otherwise provided by Sections 7 and 8 of this Agreement, each Party will be solely and entirely responsible for its acts and the acts of its employees, agents, servants, subcontractors, and volunteers during the performance of this Agreement. Each Party will have total responsibility for all salaries, wages, bonuses, retirement withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employment compensation, other employee benefits, and all employer's taxes and premiums concerning the persons who are supplied by that Party in the performance of this Agreement, and each Party agrees to hold the other Party harmless from any liability thereof.

24. **E-Verify Laws.** To the extent applicable under A.R.S. § 41-4401 and 23-214, USMS represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. 23214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by County. County retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

25. **Scrutinized Business Operations.** USMS acknowledges and agrees that it is in compliance with ARS 35-391 and ARS 35-391 as it applies to doing business with or having a material interest in a company that does business with Sudan and Iran, respectively. If County determines that USMS has submitted a false certification or representation, County reserves the right to impose any and all remedies provided by law, in its sole discretion, including immediate termination of this Agreement.

THE REMAINDER OF THIS PAGE LEFT BLANK



IN WITNESS THEREOF, the parties have affixed their signatures to this Agreement on the date written below.

**PIMA COUNTY**

\_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Date

**UNITED STATES MARSHAL SERVICE**



Authorized Officer Signature

DAVID P. GONZALEZ, US MARSHAL

Printed Name and Title

7-22-2020  
Date

**ATTEST**

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

\_\_\_\_\_  
Date

## Intergovernmental Agreement Determination

The foregoing Agreement between Pima County and United States Marshal Service has been reviewed by the undersigned, each of whom has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the party he or she represents.

**PIMA COUNTY:**



Deputy County Attorney

**UNITED STATES MARSHAL SERVICE:**



~~Attorney for USMS~~

U.S. MARSHAL  
DISTRICT OF ARIZONA