



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: October 5, 2021

* = Mandatory, information must be provided

or Procurement Director Award: ☐

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

Partners in Health

***Project Title/Description:**

Prevention of COVID-19 Infection among High Risk Populations

***Purpose:**

The purpose of the project is to address COVID-19 related health disparities and advance health equity by expanding local capacity and services to prevent and control COVID-19 infection (or transmission) among populations at higher risk and that are underserved, including racial and ethnic minority groups and people living in rural communities. Utilizing a coordinated, holistic approach, PCHD will align our five strategic priority areas (Health Equity, Community Partnerships and Community Mobilization, Innovative Models of Public Health Services, Communication and Transparency and recovery and resiliency) to design and implement locally tailored activities focused on building and sustaining trust, ensuring equitable access to COVID-19 related services, and advancing health equity to address COVID-19 related health outcomes.

***Procurement Method:**

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

***Program Goals/Predicted Outcomes:**

Goals for this agreement include:

- Increase/Improve data collection and reporting for testing and contact tracing for populations at higher risk and that are underserved;
- Build plans for collecting and reporting timely, complete, representative, and relevant data on testing, incidence, vaccination, and adverse outcomes by membership in one or more population groups known to be disproportionately affected by health disparities;
- Assist PCHD in creating a Public Health Disparities Data Services focus to support the collecting, analyzing, and reporting of standardized data to ensure programs and policies have the data needed to inform strategies related to advancing equity; and
- Support PCHD in planning and implementing community rebuilding and resiliency efforts to create long term systems change.

***Public Benefit:**

COVID-19 has disproportionately affected populations placed at higher risk and who are medically underserved, including racial and ethnic minority groups, and people living in rural communities who are at higher risk of exposure, infection, hospitalization, and mortality. Additionally, racial and ethnic minority groups and people living in rural communities have disproportionate rates of chronic diseases that increase the severity of COVID-19 infection and might experience barriers to accessing testing, treatment, or vaccination. This grant funded subrecipient agreement allows the PCHD to expand their relationship with PIH to reinforce their outreach to disadvantaged populations during this pandemic.

***Metrics Available to Measure Performance:**

1. Number of improvements to data collection, quality, and reporting capacity for recipients, partners, and agencies related to COVID-19 health disparities and inequities
2. Number of improvements to infrastructure to address COVID-19 health disparities and inequities

***Retroactive:**

No.

TO: COB 9-29-21(1)
Vers.: 1
PGS.: 27
ADDENDUM

09/29/21 09:00:00 PM CLK/DIP

Procure Dept 09/28/21 PM0205

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: HD Contract Number (i.e., 15-123): 22-057
 Commencement Date: 10/05/2021 Termination Date: 05/31/2023 Prior Contract Number (Synergen/CMS): N/A
☒ Expense Amount \$ 500,000.00 * ☐ Revenue Amount: \$ _____

***Funding Source(s) required:** Grant from the U.S. Dept. of Health and Human Services, CDC

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

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: Sharon Grant

Department: Health

Telephone: 724-7842

Department Director Signature: _____

Date: 09/23/21

Deputy County Administrator Signature: _____

Date: 24 Sept 2021

County Administrator Signature: _____

Date: 9/27/21

Pass-through entity: Pima County Health Department

Project: Prevention of COVID-19 Infection Among High Risk Populations

Subrecipient: Partners In Health
800 Boylston Street, Suite 300
Boston, MA 02199

Subrecipient DUNS number: 602352924

Amount of federal funds obligated to subrecipient: \$500,000.00

Contract No.: CT-HD-22-057-00

Funding: National Initiative to Address COVID-19 Health Disparities Among Populations at High Risk and Underserved, Including Racial and Ethnic Minority Populations and Rural Communities

Assistance listing number and title: 93.391, Activities to Support State, Tribal, Local and Territorial Health Department Response to Public Health or Healthcare Crises

Funding agency: U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention, passed through Pima County Health Department

Federal Award Identification Number: NH75OT000063

Federal Award Date: 05/28/2021

Total Amount of Federal Award: \$6,510,503

Federal Award Period of Performance: 06/01/2021 – 5/31/2023

Subaward Period of Performance / Budget Period: 10/5/2021 – 05/31/2023

Research and Development? No

Indirect cost rate and methodology: 19.7% of direct costs, excluding capital expenditures, subawards, hospitalization and cost of drugs.

SUBRECIPIENT AGREEMENT

1. Parties and Background.

- 1.1. Parties. This Agreement is between Pima County, a body politic and corporate of the State of Arizona ("County"), and Partners in Health ("Subrecipient").
- 1.2. Authority. Centers for Disease Control released funding opportunity notice CDC-RFA-OT21-2103 on May 3, 2021, for state and local health departments. County partnered with Subrecipient in developing its response to this funding opportunity.
- 1.3. Background. County received a grant from the Centers for Disease Control called *Pima County Initiative to Address COVID-19 Health Disparities*. Partners in Health

was proposed as one of the grant subrecipients in the amount of \$250,000 for each year of the two year term. This Agreement serves as a means to reimburse Subrecipient for their expenses in implementation of this project.

2. **Term.**

2.1. Initial Term. The term of this Agreement commences on October 5, 2021 and will terminate on May 31, 2023 ("Initial Term"). "Term," when used in this Agreement, 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 Agreement, the parties will, for all purposes, deem the Agreement to have been in effect as of the commencement date.

2.2. Extension Options. In the event of an extension to the Federal award period of performance, County may renew this Agreement for up to two additional periods of up to one 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**. Subrecipient will implement the scope described in the attached **Exhibit A** (4 pages).

4. **Key Personnel**. Subrecipient will employ suitably trained and skilled professional personnel to perform all activities under this Contract. Prior to changing any Key Personnel, especially those Key Personnel County relied upon in making this Contract, Subrecipient will obtain the approval of County. The Key Personnel is the following individual: Cecelia Rose English.

5. **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 Contractor for the purpose of securing business.

6. **Monitoring and Evaluation**.

6.1. 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 uses the funding as allowed by the Centers for Disease Control.

6.1.1. Making reasonably adequate and acceptable progress in the provision of services;

6.1.2. Maintaining reasonably adequate and acceptable systems to document services and expenditures; and

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

6.2. Subrecipient must cooperate in the County's monitoring and evaluation process and any monitoring or oversight by U.S. Department of Health and Human Services/Centers for Disease Control.

- 6.3. If County finds that Subrecipient's performance is inconsistent with HHS grant policy and the Uniform Guidance, 45 C.F.R. part 75 and Subpart F; 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 notices, this Agreement may be suspended or terminated.
7. **Books and Records.** To the greatest extent permissible by law, County, and any authorized federal, state or local agency, including, but not limited to, the Centers for Disease Control, will at all reasonable times and upon reasonable advanced notice have the right of access to Subrecipient's facility, and copies of 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.
8. **Compensation and Payment.**
- 8.1. Budget; Adjustment. County will reimburse Subrecipient according to the budget in **Exhibit B** (1 page). This budget will remain in effect during an Extension Option period unless Subrecipient, at least 90 days before the end of the then-existing Term, or at the time the County informs Subrecipient that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to the budget, and the reasons for the adjustments.
- 8.2. Maximum Payment Amount. County's total payments to Subrecipient under this Contract, including any sales taxes, may not exceed \$500,000.00 (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 Contract to exceed the NTE Amount; if Subrecipient does so, it is at the Subrecipient's own risk.
- 8.3. Sales Taxes. The payment amounts or rates in **Exhibit B** do not include sales taxes. Subrecipient may invoice County for sales taxes that Subrecipient is required to pay under this Contract. Subrecipient will show sales taxes as a separate line item on invoices.
- 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 more than 30 days after the end of the billing period in which Subrecipient carried out the scope goals and objectives. County may refuse to pay for any period for which Contactor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any period invoiced more than 6-months late.
- 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:
- 8.5.1. Have a unique invoice number.
- 8.5.2. Reference this Agreement number.

- 8.5.3. 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.
- 8.5.4. Be for costs as identified in **Exhibit B** of this Agreement.
- 8.5.5. Be accompanied by documentation which must include, but is not limited to:
 - 8.5.5.1. A summary report of monthly expenditures by expense categories as shown in the approved budget in **Exhibit B** of this Agreement.
 - 8.5.5.2. Retain, for a period of three years following the closeout date, copies of paid invoices and receipts or cancelled checks (front and back) to support all purchases of goods or services. This documentation does not need to accompany invoice submissions.
 - 8.5.5.3. 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:
 - 8.5.5.3.1. Hours worked on the program;
 - 8.5.5.3.2. Total hours worked per pay period;
 - 8.5.5.3.3. Days worked; and
 - 8.5.5.3.4. Hours worked each day.
 - 8.5.5.4. Accounting system report(s) specifying rate of pay and cost of employer-paid benefits.
 - 8.5.5.5. Any other documentation reasonably requested by County
 - 8.5.5.6. Be accompanied by signed copy of the Financial Status Report and Request for Funds. County will provide Subrecipient with a form similar to that attached hereto as **Exhibit C** (1 page) upon execution of this Agreement.
- 8.6. 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, acceptability and payment of which shall not be unreasonably delayed or withheld.
 - 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 date 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.

- 8.6.4. Deny payment for any request for reimbursement received after July 15, 2023.
- 8.7. Request for final payment for compensation earned and/or eligible costs incurred must be submitted to the County no later than July 15, 2023. The request must meet the requirements set forth in paragraph 8.4 above and include a report summarizing Subrecipient's performance during the term of the Agreement.
- 8.8. No payments will be made to Subrecipient, until all of the following conditions are met:
 - 8.8.1. Subrecipient has completed and submitted a W-9 Taxpayer Identification Number form;
 - 8.8.2. 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>
 - 8.8.3. Adequate and accurate documentation is provided with each request for payment or invoice; and
 - 8.8.4. This Agreement is fully executed.
- 8.9. Any change that increases or decreases the maximum allocated amount or that changes the Scope of Work in any way will require an Agreement amendment. Such change will not be effective, nor will compensation under the change be provided, until the Agreement amendment is fully executed by both parties.
- 8.10. Goods and services provided that exceed 20% of the budgeted line item or the maximum allocated amount without prior authorization as set forth in paragraphs 4.15 and 4.16 above will be at Subrecipient's own risk.
- 8.11. County may, at any time reasonably 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 contract between County and Subrecipient. Subrecipient will promptly pay to County any overpayment that County cannot recover by set-off.
9. **Insurance.** Subrecipient will procure and maintain at its own expense insurance policies (the "**Required Insurance**") satisfying the below requirements (the "**Insurance Requirements**") during the term of this Contract. The below Insurance Requirements are minimum requirements for this Contract. 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 Contract. If necessary, Subrecipient may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.
 - 9.1. Insurance Coverages and Limits: During the term of the Contract, Subrecipient will procure and maintain coverage with limits of liability not less than those stated below.
 - 9.1.1. Commercial General Liability (CGL) – Occurrence Form with limits not less than \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy

shall include coverage for liability arising from premises, operations, personal injury, bodily injury, 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.

9.1.2. 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.

9.1.3. 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.

9.2. Additional Coverage Requirements:

9.2.1. 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 Subrecipient must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

9.2.2. Subrogation Endorsement: The General Liability and Business Automobile Liability 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.

9.2.3. 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.

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

9.2.5. 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.

9.3. 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 contract number and project description.

9.4. Verification of Coverage:

- 9.4.1. Subrecipient must furnish County with a certificate of insurance (valid ACORD form or equivalent approved by Pima County) for each Required Insurance policy. Each certificate must be signed by an authorized representative of the insurer.
- 9.4.2. 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 Contract commences. Subrecipient must provide County a renewal certificate not less than 15 days prior to a Required Insurance policy's expiration date..
- 9.4.3. All insurance certificates must be sent directly to the appropriate County Department.

9.5. Approval and Modifications:

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.

10. **Indemnification, Limitation of Liability.** 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, "Indemnatee") from and against any and all third party claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of injury of any person (including death) or loss or damage to tangible or intangible property caused by any gross negligence or willful misconduct by Subrecipient or any of Subrecipient's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any third party 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 Indemnatee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnatee, be indemnified by Subrecipient from and against any and all third party Claims. This indemnity will survive for a period of one year following the expiration or termination of this Contract.

10.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, MULTIPLE OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2. SUBRECIPIENT'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS CONTRACT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED THE NTE AMOUNT PAID BY PIMA COUNTY TO SUBRECIPIENT UNDER THIS CONTRACT.

11. Laws and Regulations.

- 11.1. Compliance with Laws. Subrecipient will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.
- 11.2. Licensing. Subrecipient warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.
- 11.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract.
- 11.4. Compliance with grant regulations. Subrecipient will comply with the requirements of 45 CFR part 75 including internal controls, subrecipient monitoring and management, cost principles and audit requirements.
- 11.5. Debarment and Suspension (Executive Orders 12549 and 12689). Subrecipient 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 CFR 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.
 - 11.5.1. This contract is a covered transaction for purposes of 2 CFR 180 and 2 CFR 3000. As such the Subrecipient is required to verify that none of the Subrecipient, 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).
 - 11.5.2. The Subrecipient is required to provide their DUNS number to Pima County.
 - 11.5.3. The Subrecipient must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - 11.5.4. 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. pt. 180, subpart C and 2 C.F.R. pt. 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.
- 11.6. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). To the extent applicable, Subrecipient shall file any required certification. Each tier certifies to the tier above that it will not and has not used federally 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. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any

federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

- 11.7 Required Disclosures for Federal Awardee Performance and Integrity Information System (FAPIIS): Consistent with 45 CFR 75.113, applicants and recipients must disclose in a timely manner, in writing to the CDC, with a copy to the HHS Office of Inspector General (OIG), all information related to 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) and the HHS OIG, all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to the assigned GMS/GMO identified in the NOA, and to the HHS OIG at the following address:

U.S. Department of Health and Human Services Office of the Inspector General
ATTN: Mandatory Grant Disclosures, Intake Coordinator 330 Independence Avenue,
SW, Cohen Building, Room 5527 Washington, DC 20201

Fax: (202)-205-0604 (Include "Mandatory Grant Disclosures" in subject line) or Email:
MandatoryGranteeDisclosures@oig.hhs.gov

Recipients must include this mandatory disclosure requirement in all subawards and contracts under this award.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371. Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 and 376, and 31 U.S.C. 3321).

CDC is required to report any termination of a federal award prior to the end of the period of performance due to material failure to comply with the terms and conditions of this award in the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS). (45 CFR 75.372(b)) CDC must also notify the recipient if the federal award is terminated for failure to comply with the federal statutes, regulations, or terms and conditions of the federal award. (45 CFR 75.373(b))

- 11.8. Copyright Interests and Inventions. Subrecipient will comply with CDC's Public Access Policy, if applicable, for submission into public access repositories any work developed under this award and accepted for publication. Subrecipient will provide County and Federal governments a nonexclusive, nontransferable, irrevocable, paid-up license to any inventions developed under this subaward.

- 11.9. Health Insurance Portability and Accountability Act (HIPAA). The Parties agree that in order to implement the Services, as described in Exhibit A to this agreement, they may need to exchange Protected Health Information ("PHI") as defined by the Health Insurance Portability and Accountability Act ("HIPAA"). The Parties agree to enter into the Business Associate Agreement in the attached **Exhibit D** (7 pages).

12. **Independent Contractor**. Subrecipient is an independent contractor. Neither Subrecipient, nor any of Subrecipient's officers, agents or employees will 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 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.

13. **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.
14. **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.
15. **Non-Discrimination.** 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.
16. **Americans with Disabilities Act.** Subrecipient 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).
17. **Authority to Contract.** Subrecipient warrants its right and power to enter into this Agreement.
18. **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.
19. **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.
20. **Termination by County.**
 - 20.1. Without Cause. County may terminate this Agreement at any time without cause by notifying Subrecipient, in writing, at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Subrecipient will be payment for services rendered through the date of termination.
 - 20.2. With Cause. In the event any service furnished by Subrecipient during performance of this Subrecipient fails to conform to any material requirement of this Contract, and the failure is not cured within thirty (30) days written notice thereof to Subrecipient, the County may terminate the Contract.

- 20.3. **Non-Appropriation.** Notwithstanding any other provision in this Agreement, County may terminate this Agreement 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 Agreement. In the event of such termination, County will promptly provide written notification to Subrecipient and have no further obligation to Subrecipient, other than to pay for services rendered through the date of termination.
21. **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: | Subrecipient: |
| Theresa Cullen, MD, Director | Katie Bollbach, Director USPHAU |
| Pima County Health Department | 800 Boylston Street, Suite 300 |
| 3950 S. Country Club Rd., Suite 100 | Boston, MA 02199 |
| Tucson, AZ 85714 | |
| | With a copy to: |
| | Lori Silver, General Counsel |
| | 800 Boylston Street |
| | Suite 300 |
| | Boston, MA 02199 |
22. **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.
23. **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.
24. **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.
25. **Audit Requirements**
- 25.1. Subrecipient will:
- 25.1.1. Comply with the applicable provisions of the Audit Requirements for Federal Awards in 45 C.F.R. 75, Subpart F.
 - 25.1.2. 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.
 - 25.1.3. 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.
 - 25.1.4. Ensure that all accounting records meet the requirements of applicable Federal, State, County, and generally accepted accounting principles laws and regulations.

25.2. Subrecipient status:

25.2.1. 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."

25.2.2. Subrecipient will comply with federal single audit requirements and, upon request from County, provide County with a copy of the required audit document within one hundred eighty (180) days following the end of Subrecipient's fiscal year.

25.3. Subrecipient must timely submit the required or requested audit(s) by e-mail to Laura.samuelson@pima.gov or to:

Pima County Grants Management and Innovation
130 West Congress St, 3rd floor
Tucson, Arizona 85701

26. **Public Records.**

26.1. **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.

26.2. **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.

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

27.1. **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.

27.2. **Books & Records.** County has the right at any time to, upon reasonable advanced notice, inspect copies of the books and records of Subrecipient 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 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.

27.4. Subcontractors. Subrecipient will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 27 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. **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.
29. **Amendment.** The parties may modify, amend, alter or extend this Agreement only by a written amendment signed by the parties.
30. **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.
31. **Effective Date.** This Agreement will become effective when all parties have signed it. The effective date of the Agreement will be the date this Agreement is signed by the last party (as indicated by the date associated with that party's signature).

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

PIMA COUNTY

Chair, Board of Supervisors

Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM



Deputy County Attorney

JONATHAN PINKNEY
Print DCA Name

9/23/21
Date

APPROVED AS TO CONTENT



Department Representative

09/23/21
Date

SUBRECIPIENT



Authorized Officer Signature

Caroline Broderick, Sr. Dir. Grants
Printed Name and Title

9/21/2021
Date

Exhibit A (4 pages)

Scope of Services

Background

Coronavirus disease 2019 (COVID-19) has disproportionately affected populations placed at higher risk and who are medically underserved, including racial and ethnic minority groups, and people living in rural communities who are at higher risk of exposure, infection, hospitalization, and mortality. Additionally, racial and ethnic minority groups and people living in rural communities have disproportionate rates of chronic diseases that increase the severity of COVID-19 infection and might experience barriers to accessing testing, treatment, or vaccination against the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which causes COVID-19. In response to the issues noted above, the Centers for Disease Control and Prevention (CDC) released a funding opportunity to strengthen the public health infrastructure, preparedness and response capabilities to address COVID-19 related health disparities and advance health equity underserved and disproportionately affected populations through testing, contact tracing and other mitigation strategies. Pima County Health Department (PCHD), in collaboration with several partners, submitted an application and was awarded funding to develop and implement activities focused on the four overarching strategies prescribed by the CDC and summarized here:

1. Expand existing and/or develop new mitigation and prevention resources and services
2. Increase/Improve data collection and reporting for target populations;
3. Build, leverage and expand infrastructure support for COVID-19 prevention and control among populations that are at higher risk and underserved; and
4. Mobilize partners and collaborators to advance health equity and address social determinants of health as they relate to COVID-19 health disparities among populations at higher risk and those that are underserved.

The purpose of the project is to address COVID-19 related health disparities and advance health equity by expanding local capacity and services to prevent and control COVID-19 infection (or transmission) among populations at higher risk and those that are underserved, including racial and ethnic minority groups and people living in rural communities.

The intended outcomes for this grant are:

1. Reduced COVID-19-related health disparities.
2. Improved and increased testing and contact tracing among populations at higher risk and those that are underserved, including racial and ethnic minority groups and people living in rural communities.
3. Improved local health department capacity and services to prevent and control COVID-19 infection (or transmission) among populations at higher risk and those that are underserved, including racial and ethnic minority groups and people living in rural communities.

Partners In Health will provide leadership, support and technical assistance/guidance to the PCHD in its efforts to conduct coronavirus testing, disseminate critical information to marginalized

communities, and ensure that these communities receive effective health care coordination, comprehensive education related to coronavirus spread, prevention and care, with additional focus on reducing social stigma related to COVID-19.

All four of the CDC strategies are included in the grant. Partners in Health will assist PCHD with implementation of the second and third strategies through the activities listed below. The numbering of the activities and strategies correspond to the Work Plan submitted as part of the grant proposal. Only those activities that PIH will be working on are included here.

Partners in Health tasks include:

Strategy 2 (Data and Reporting) - Increase/Improve data collection and reporting for populations experiencing a disproportionate burden of COVID-19 infection, severe illness, and death to guide the response to the COVID-19 pandemic by identifying potential data sources that can be used to evaluate and analyze data systems to determine capacity to deliver meaningful indicators of health equity.

Activity 1 – Improve data collection and reporting for testing and contact tracing for populations at higher risk and that are underserved.

Subject to PCHD's authority to share Protected Health Information with PIH as described in Section 11.9, PIH will assist PCHD in identifying potential data sources that can be used to evaluate and analyze data systems to determine capacity to deliver meaningful indicators of health equity by:

2. Identifying technical and data gaps within the current COVID-19 data system relevant to the capacity to provide data necessary to understand and monitor health metrics stratified by relevant demographic category (ethnicity, race, rural residence, LGBT+, disabilities status)
 - a. Evaluate capacity of the system to provide meaningful and hyper-local metrics on key social determinants of health, such as neighborhood poverty rate)
 - b. Identify and assess potential solutions and tools to improve COVID-19 data system to achieve health equity goals
 - c. Establish requirements for data system to support and prepare for future public health response and/or emergencies
5. Assisting in the identification of ways for aggregating and integrating data from various sources and systems, both internal to the County and external.
6. Assisting in identifying ways for various analytic tools to be used, publication of metrics to various stakeholders and the public, data governance standards to be applied ensuring data quality.

Activity 2 - Build plans for collecting and reporting timely, complete, representative, and relevant data on testing, incidence, vaccination, and severe outcomes by membership in one or more population groups known to be disproportionately affected by health disparities.

Subject to PCHD's authority to share Protected Health Information with PIH as described in Section 11.9, PIH will assist PCHD in identifying solution(s) that include, analytics, informatics and reporting systems to further advance health equity efforts by:

1. Reviewing current COVID-19 data collection protocol to assess presence of variables that measure key demographic and social factors known to affect health equity, including but not limited to race, socioeconomic status, ethnicity, and neighborhood.
2. Partnering with the community to identify shared communal terms and consistent sets of variables for data collection that contextualize racial, ethnic, socioeconomic status, and rural health considerations.
3. Improving data collection to incorporate standard sets of variables that contextualize racial, ethnic, socioeconomic status, and rural health considerations.
4. Analyzing data collection processes and collected data to identify disparate and potential duplication of data as well as data standards essential to improve efficiency of use and interoperability.
5. Establish quality reporting to support data collection and analysis, identifying deviations from data standards and providing a methodology for data cleaning.

Activity 3 - Create and support a Public Health Disparities Data Services Focus

Assist PCHD in creating a Public Health Disparities Data Services focus to support the collecting, analyzing, and reporting of standardized data to ensure programs and policies have the data needed to inform strategies related to advancing equity

Strategy 3 - Build, leverage, and expand support for COVID-19 prevention and control among populations that are at higher risk and underserved

Activity 1 - Create an Office of Health Equity

Assist PCHD in the creation of an Office of Health Equity to lead and coordinate the interdepartmental, county-wide health equity efforts and implementation of the health equity plan by:

1. Assisting in the development and implementation of the Health Equity Plan and COVID-19 community response
2. Helping establish and participating in Health Equity Learning Collaborative
3. Assisting in the creation of data-driven systems to analyze, monitor, and evaluate the Health Equity Plan

Activity 3 - Community Rebuilding and Resiliency

Assist PCHD in planning and implementing rebuilding and resiliency efforts to create long term systems change by:

1. Assisting with the creation and implementation of a Community Rebuilding and Resiliency Plan.
2. Assisting with the development of trauma informed, family-inclusive practice and integrated care models across public health and clinical care systems in conjunction with community care providers.

Activity 4 – Public Health-Legal Partnership

1. Assisting with facilitating strategic connections with external organizations to support PCHD in creating a public health-legal partnership that will embed a staff lawyer into the Health Department to address structural problems contributing to health inequities. This work will support expedited referrals to legal aid services for qualifying clients.

Other requirements:

1. Key Personnel needed to accomplish the tasks detailed above must be hired within 60 days of contract execution.
2. Quarterly reports in a format determined by PCHD in collaboration with PIH will be submitted no later than the 30th day after the end of the quarter being reported on.
3. Changes in Key Personnel will be reported to PCHD within 15 days of change being known.

Exhibit B (1 page)
Rates

County will reimburse subrecipient's expenses for the services described in **Exhibit A**.

The total agreed upon and budgeted amount for Contractor's work is \$500,000 for the two-year term. The following budget has been agreed upon by the Parties:

Line Item	Year 1	Year 2	Total Budget
Personnel / salaries (total of 1.324 FTE)	\$150,744	\$155,266	\$306,010
Fringe benefits (22-35% of salaries)	38,178	39,323	77,501
Travel	14,400	14,400	28,800
Computers (2 laptops)	3,000	0	3,000
Office supplies	1,200	1,200	2,400
Total Direct Expenses	\$207,522	\$210,189	\$417,711
Indirect Expenses (19.7% of Direct)	40,882	41,407	82,289
Total Budget	\$248,404	\$251,596	\$500,000

Invoices shall be submitted to the County no later than the 30th of the month following the end of the month being invoiced for. County will pay invoices no later than 30 days from receipt of invoice.

Subrecipient may not use funds for the following:

- Research;
- Clinical care;
- Furniture or equipment;
- Reimbursement of pre-award costs;
- Publicity or propaganda purposes, for the preparation, distribution, or use of any material designed to support or defeat the enactment of legislation before any legislative body; or
- Salary or expenses related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before any legislative body.

EXHIBIT C (1 page)

PIMA COUNTY INVOICE REQUEST SAMPLE

Invoice For The Month Of _____, 2021

PLEASE SEND INVOICE TO THE ATTENTION OF:

AGENCY INVOICE INFORMATION:

FEDERAL FUNDING INFORMATION _____

INV DATE _____

PROGRAM NAME _____

INVOICE # _____

CFDA # 21.019

APPROVED BUDGET & BILLING DETAILS (07/01/21-06/30/21)

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 & sign

Contact Phone Num/Ext

~~~~~FOR PIMA COUNTY USE ONLY~~~~~

Date bill rcv'd/Initials

Date rtd for corrections/Initials

Date rvwd & submitted for payment/Initials

**Exhibit D (7 pages)**  
**Business Associate Agreement**

WHEREAS, Pima County, on behalf of the Pima County Health Department ("Covered Entity"), and Partners In Health ("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. 11 1-5, 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 arrangement (the "Underlying Agreement") whereby Business Associate will provide certain services to Covered Entity that may 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. SS 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. S 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 reasonable 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 CFR. S 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 nonbreaching 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.