Board of Supervisors Memorandum

June 20, 2017

Authorization to Negotiate and Enter into a Service Contract with Humane Borders for the Provision of Water Distribution Services in Remote Areas of Pima County

Background

For a number of years, the County has contracted with Humane Borders to provide water stations within the County. The attached April 30, 2017 letter highlights the purpose of the request. The critical contracting period is during the Summer months; hence, our contracts with Humane Borders are typically from April/May through the end of the calendar year.

For your information, I have enclosed the 2016 contract with Humane Borders.

Recommendation

I recommend the Board of Supervisors approve an allocation of $22,500 from the Budget Reserve Fund to fund Humane Borders for Calendar Year 2017 and authorize the Procurement Director to execute an appropriate contract similar to the contract executed for Calendar Year 2016.

Respectfully submitted,

C.H. Huckelberry
County Administrator

CHH/anc - June 1, 2017

Attachments

c: Jan Lesher, Chief Deputy County Administrator
Dr. Francisco Garcia, Assistant County Administrator for Community & Health Services

HUMANE BORDERS
FRONTERAS COMPASIVAS
P.O. Box 27024
Tucson, AZ 85726
Phone: 520-398-5053
info@humaneborders.org
www.humaneborders.org

April 30, 2017

The Honorable Sharon Bronson
Chair, Pima County Board of Supervisors
130 West Congress Street, 11th Floor
Tucson, Arizona 85701

Dear Supervisor Bronson:

We are writing to request a renewal of our contract with Pima County for the distribution of water in remote areas of Pima County. We very much appreciate the County's determination to reduce the number of deaths by providing life-saving water.

Despite the Department of Homeland Security's reports of a significant decline in the number of people crossing the border between the ports of entry, the rate of human remains found is actually on the increase. In 2016, with the help of the Pima County Office of Medical Examiner, we documented the recovery of 170 human remains in southern Arizona; 134 of those were located in Pima County. The Arizona OpenGIS Initiative for Missing and Deceased Migrants, a website we maintain in partnership with the Pima County Medical Examiner's Office, provides information about 2,797 sets of human remains found in southern Arizona of which 2,038 were located in Pima County.

There has been a shift in travel patterns from the more populated areas to the more remote, hotter and more arid parts of southwestern Arizona. For example, in 2006, four sets of human remains were identified in Organ Pipe Cactus National Monument; in 2016, the number was twenty-one sets of human remains. In 2006, only one set of human remains was identified in Cabeza Prieta National Wildlife Refuge; in 2016, there were 19 identified human remains and from January through March of this year, 14 more (over half of which were in Pima County), leading us to seriously fear for the toll in this summer's high heat. These areas are rugged and harder to access for our volunteers, whether they come from Tucson, Phoenix or Ajo but we are trying very hard to maintain as much service as possible.

As you know, Humane Borders follows all applicable laws and regulations and works with a number of federal and local agencies. The U.S. Border Patrol has stated that their work with us has resulted in a reduction in deaths and potential rescues. An ancillary benefit of saving lives is saving taxpayer dollars otherwise spent on search and rescue, identification, examination and burials.

I would be happy to provide any further information that would be useful and can be reached at info@humaneborders.org or (202) 906-9407. Thank you for your work on behalf of Pima County and its citizens.

Sincerely,

Dinah Bear
Chair

Robert Feinman
Vice Chair

cc: Chuck Huckleberry, County Administrator
Jan Lesher, Deputy County Administrator

CONTRACT FOR THE PROVISION OF WATER DISTRIBUTION SERVICES IN REMOTE AREAS OF PIMA COUNTY

THIS CONTRACT is entered into between Pima County, a body politic and corporate of the State of Arizona ("County") and Humane Borders, Inc., a nonprofit corporation in the State of Arizona ("Contractor").

RECITALS

A. A.R.S. § 11-251.02 authorizes the Board of Supervisors to use county resources in search or rescue operations involving the life or health of any person; and,

B. On June 5, 2001, a State of Local Emergency was declared in Pima County due to the extreme peril faced by persons exposed to the high summer desert temperatures and limited water supply; and,

C. According to the Pima County Medical Examiner's Office, 2,468 persons have died in the Tucson sector from January 1, 2001 through January 30, 2016 and therefore that State of Local Emergency continues to exist in 2016 and;

D. County requires the services of a Contractor to provide water stations and potable water to various remote desert locations in Pima County to reduce the need for aggressive search and rescue operations; and,

E. CONTRACTOR is qualified and willing to provide such services; and,

F. Pursuant to Pima County Code 11.12.060, emergency procurement of services is authorized when there exists a threat to public health, welfare, property or safety.

NOW, THEREFORE, the parties hereto agree as follows:

AGREEMENT

1. TERM AND EXTENSION/RENEWAL

1.1. This Contract, as awarded by the Pima County Board of Supervisors, commences on April 1, 2016 and terminates on December 30, 2016, unless sooner terminated or further extended pursuant to the provisions of this Contract. The parties may renew this Contract for up to one (1) additional one-year period or any portion thereof.

1.2. Any modification or extension of the contract termination date, will be by formal written amendment executed by the parties hereto.

1.3. Amendments to the Contract must be approved by the Board of Supervisors before any work or deliveries under the Amendment commences.

2. SCOPE

2.1. Contractor will:

2.1.1. Identify appropriate locations for water stations, in consultation with local, state and federal authorities;

2.1.2. Install and maintain water stations at identified and approved sites including proper disposal of used water containers and clean up and disposal of trash that accumulates at water station sites;

2.1.3. Transport, deliver and install at its own cost potable water at each water station at, to the extent possible, intervals and in quantities sufficient to assure a constant supply of water;

2.1.4. Purchase, laminate and deliver area maps to be placed at each water station; and,

2.1.5. Print and distribute information brochures in English and Spanish.

2.2. Contractor will perform the work in accordance with the terms of the contract and to the best of Contractor's ability.

3. PAYMENT

3.1. In consideration of the services specified in this Contract, County agrees to pay Contractor in an amount **not-to-exceed $22,500.00.**

3.2. On or before December 30, 2016, Contractor must submit a sufficiently detailed invoice for all expenses to County.

3.3. Upon receipt of the invoice, one payment will be made from the Pima County Community and Economic Development Funds (General Fund).

4. INSURANCE

4.1. County in no way warrants that the minimum limits contained herein are sufficient to protect the Subrecipient from liabilities that might arise out of the performance of the work under this Agreement by the Subrecipient, its agents, representatives, employees or subcontractors, and Subrecipient is free to purchase additional insurance.

4.2. Contractor must obtain and maintain at its own expense, during the entire time of this Contract, the following type(s) and amounts of insurance.

4.2.1. Commercial General Liability in the amount of $1,000,000.00 combined single limit Bodily Injury and Property Damage. Pima County is to be names as the additional insured of all operations performed within the scope of the Contract between Pima County and Contractor.

4.2.2. Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of $1,000,000.00 combined single limit or $1,000,000.00 Bodily Injury, $1,000,000.00 Property Damage.

4.2.3. If this Contract involves professional services, professional liability insurance in the amount of $1,000,000.00; and

4.2.4. If required by law, workers' compensation coverage including employees' liability coverage.

4.3. Contractor will provide County with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice to the County of cancellation.

5. INDEMNIFICATION

5.1. Contractor will indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the Contractor, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Agreement.

5.2. Contractor warrants that all products and services provided under this Agreement are non-infringing. Contractor will indemnify, defend and hold County harmless from any claim or infringement arising from services provided under this Agreement or from the provision, license, transfer or use for their intended purpose of any products provided under this Agreement.

6.0 COMPLIANCE WITH LAWS

6.1 Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Agreement, and any disputes hereunder.

6.2 Any action relating to this Agreement must be brought in a court of the State of Arizona in Pima County.

6.3 Any changes in the governing laws, rules, and regulations during the terms of this Agreement will apply, but do not require an amendment.

7.0 INDEPENDENT CONTRACTOR

The status of the Contractor shall be that of an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Contractor will be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Agreement and shall indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such taxes. Contractor will be solely responsible for program development and operation.

8.0 SUBCONTRACTORS

8.1 Contractor will not enter into any subcontracts for any services to be performed under this Agreement without County's prior written approval of the subcontract. Contractor must follow applicable Federal, State, and County rules for obtaining subcontractor services. Prior written approval will not be required for the purchase of supplies that are necessary and incidental to Contractor's performance under this Agreement.

8.2 Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement will create 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.

9.0 ASSIGNMENT

Contractor will not assign its duties, rights and obligations under this Agreement, in whole or in part, without prior written approval of County. Approval may be withheld at the sole discretion of County, provided that such approval shall not be unreasonably withheld.

10.0 NON-DISCRIMINATION

10.1 Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors.**

10.2 During the performance of this Grant Agreement, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

11.0 AMERICANS WITH DISABILITIES ACT

Contractor must comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

12.0 AUTHORITY TO CONTRACT

12.1 Contractor warrants its right and power to enter into this Agreement. If any court or administrative agency determines that COUNTY does not have authority to enter into this Agreement, COUNTY shall not be liable to Contractor or any third party by reason of such determination or by reason of this Agreement.

12.2 Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

13.0 FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, will not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing at any time will not be construed as an accord and satisfaction.

14.0 CANCELLATION FOR CONFLICT OF INTEREST

This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

15.0 TERMINATION

15.1 County reserves the right to terminate this Agreement at any time and without cause by serving upon Contractor 30 days advance written notice of such intent to terminate. In the event of such termination, the County's only obligation to Contractor will be payment for services rendered prior to the date of termination.

15.2 This Agreement may be terminated at any time without advance notice and without further obligation to the County when Contractor is found by County to be in default of any provision of this Agreement. If,

after termination for default, it is determined that Contractor was not in default the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of County.

15.3 Notwithstanding any other provision in this Agreement, this Agreement may be terminated 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 have no further obligation to Contractor, other than to pay for services rendered prior to termination.

15.4 The rights and remedies of County in this Section are cumulative and in addition to any other rights and remedies provided by law or under this Agreement.

16.0 NOTICE

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

COUNTY:	**CONTRACTOR:**
Ms. Jan Lesher	Ms. Dinah Bear
Deputy County Administrator	Chair/President
Pima County Administration	Humane Borders
130 West Congress Street, 10th Floor	P.O. Box 27024
Tucson, AZ 85701	Tucson, AZ 85726
(520) 724-8977 direct	(520) 398-5053 direct
(520) 724-8171 fax	(520) 398-4744 fax

17.0 NON-EXCLUSIVE AGREEMENT

Contractor 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.

18.0 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 will be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.

19.0 SEVERABILITY

Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

20.0 BOOKS AND RECORDS

20.1 Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County.

20.2 Contractor must retain all records, supporting documents, statistical records, and all other records relating to this Agreement for a period of five (5) years after this Agreement is terminated or cancelled or until any related-pending proceeding or litigation has been closed, whichever date is later.

21.0 PUBLIC INFORMATION

21.1 Pursuant to Arizona Public Records law, A.R.S. § 39-121 et seq., documents submitted by Contractor to County may be considered public records and may be subject to release to any member of the public. Records subject to release may include, but are not limited to: pricing, product or program specifications, work plans, and any supporting data.

21.2 In the event that County receives a public records request pursuant to A.R.S. § 39-121 et seq. for documents Contractor submitted to County, County will notify Contractor on the same day the request is made or as soon as possible thereafter.

21.3 County will release Contractor's records ten (10) business days after the date of notice to the Contractor, unless Contractor has secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release will not be counted in the time calculation.

21.4 County will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records submitted to County by Contractor nor shall County be in any way financially responsible for any costs associated with securing such an order.

22.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE

22.1 Contractor hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor must ensure that each subcontractor who performs any work for Contractor under this Agreement likewise complies with the State and Federal Immigration Laws.

22.2 County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

22.3 Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Agreement subjecting Contractor 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, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to COUNTY approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

22.4 Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article 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 will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

22.5 Any additional costs attributable directly or indirectly to remedial action under this Section 23 shall be the responsibility of Contractor. In the event that remedial action under this Section 23 results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones

schedule, such period of delay will be deemed excusable delay for which Contractor will be entitled to an extension of time, but not costs.

23.0 ENTIRE AGREEMENT

23.1 This document constitutes the entire agreement between the parties pertaining to the subject matter hereof.

23.2 No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Agreement will affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement is unofficial information and in no way binding upon County and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded.

23.3 This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

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

PIMA COUNTY:

Sharon Bronson

Chair, Board of Supervisors

Date: APR 05 2016

CONTRACTOR: Humane Borders, Inc.

Dinah Bear

Signature

DINAH BEAR, Chair Humane Borders

Printed Name and Title

Date: 3-1-2016

ATTEST:

Robin Brigode

Clerk of the Board

Date: APR 05 2016

APPROVED AS TO CONTENT:

Jan Lesher
Deputy County Administrator

Date: 2/22/2016

APPROVED AS TO FORM:

Karen S. Friar

Karen S. Friar, Deputy County Attorney