

790 Governor Carlos Camacho Road
Tamuning, Guam 96913

REQUEST FOR PROPOSAL
Criminal Justice Consultancy and Training Services
For Guam's Community Mental Health Center Grant Program

GBHWC RFP 2022-03

AMENDMENT NO. 2022-03-A01

To: All Prospective Offerors

The above numbered and described solicitation is amended as set forth below:

Sample Contract (Form N)

Section V Contractual Terms: Attached and made a part hereof is the Sample of the Subaward Agreement consisting of thirty-one (31) pages.

Except as provided herein, all terms and conditions of the document referenced in the solicitation number above remain unchanged and in full force and effect.

Theresa C. Arriola
Director
May 31, 2022

(This amendment must be included with the proposal.)

SAMPLE CONTRACT

This sample is provided only for reference, and shall not be considered a final document during negotiation of offers and proposals.

SUBAWARD AGREEMENT

BETWEEN

GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER
DIVISION OF CLINICAL SERVICES

AND

Professional Services for Criminal Justice Consultancy and
Training Services for Guam's Community Mental Health Center
Grant Program
GBHWC RFP 2022-03

Prevention Education and Community Empowerment Partnerships for Success (PEACE PFS) HHS SAMHSA Federal Grant, PEACE PFS Sub-Grants Supported by Federal Funds CFDA # 93.243 Strategic Prevention Framework-Partnerships for Success US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration

This SUBAWARD AGREEMENT is made between the GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER, Division of Clinical Services, Prevention & Training Branch, an agency of the government of Guam, (hereinafter called the GBHWC), whose office address is 790 Governor Carlos G. Camacho Road, Tamuning, Guam 96913, and _____, licensed on Guam as a _____ (hereinafter called the Consultant) whose street and mailing address (es) are _____.

WHEREAS, the GBHWC serves as the single state agency for substance use treatment and the State Mental Health Authority for mental health services. It is also the only provider of psychiatric inpatient services on the island.

WHEREAS, GBHWC successfully applied under Funding Opportunity Announcement Number SM-21-014 titled Community Mental health Centers Grant Program and received an award for the purpose to enable community mental health centers to support and restore the

delivery of clinical services that were impacted by the COVID-19 pandemic and effectively address the needs of individuals with serious emotional disturbance (SED), serious mental illness (SMI), and individuals with SMI or SED and substance use disorders, referred to as co-occurring disorder (DOD). The funding is authorized by the Consolidated Appropriations Act, 2021 and the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (P.L. 116-260) to prevent, prepare for, and respond to the Coronavirus (COVID-19) pandemic.

The prime Notice of Award FAIN No. H79SM085739 issued April 22, 2021 is for the multi-year period consisting of two incremental periods from September 30, 2021 to September 29, 2021. The grant will address behavioral health concerns of the prisoner population at the Department of Corrections and incarcerated youths at the Department of Youth Affairs.

WHEREAS, GBHWC issued Request for Proposal GBHWC 2022-03 and the Consultant was evaluated and determined to be the most qualified offerer for the consultancy and training services for GBHWC consumers at the Department of Correction and the Department of Youth Affairs and this Subaward Agreement is to pass-through the requirements of the Prime Federal Award to the Consultant in keeping with the terms and conditions set forth in GBHWC RFP 2022-03.

NOW THEREFORE, the GBHWC and the PFS Community Partner, in consideration of mutual covenants hereinafter set forth, agree as follows:

SECTION I. INCORPORATION AND ORDER OF PRECEDENCE

The Federal Grant terms and conditions, GBHWC RFP 03-2021 and the PFS Community Partner's proposal (inclusive of all signed forms) are incorporated by references into this Subaward Agreement as if fully rewritten herein. In the event of any conflict among these documents, the following order of precedence shall apply:

Federal Grant Fund requirements:

Notice of Prime Grant Award HHS, SAMHSA CFDA No.: 93.958; Grant #1H79SM085739-01, and as amended in by 6H79SM085739-01M002, and as further amended in the future

2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

45 CFR Part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards

HHS Grants Policy Statement

Federal Funding Accounting and Transparency Act (FFATA)

Anti-Lobbying Restriction for HHS Recipients

Any contract amendment(s) in reverse chronological order.

This Subaward Agreement itself inclusive of Exhibits:

Exhibit A – Scope of Work – GBHWC RFP 2022-03

Exhibit B – Negotiated Cost Proposal/Offer

Exhibit C – Prime Notice of Award

Exhibit D – Subaward Data

Consultant's Proposal/ and Cost/Budget Proposal inclusive of all signed forms.

SECTION II. SCOPE OF WORK

Consultant shall perform the subaward as forth in GBHWC RFP 2022-03. A copy GBHWC RFP 2022-03 Section II Scope of Work is attached to this Subaward Agreement, as Exhibit A, for easy reference purposes.

SECTION III. CONTRACT TERM

III.1 Initial Term.

The initial term of this Subaward Agreement shall begin upon the date that the Governor approves the contract, as signified by her execution of the contract (the "Effective Date"). After the Governor has approved the contract, the government will issue a written notice to proceed notifying the Consultant when the subaward performance is to begin. The initial term of the contract shall end September 29, 2020, subject to the appropriation, allocation and availability of funds.

III.2 Renewal Term.

The Federal Grant is a two year grant as set forth in the HHS SAMHSA Federal Notice of Grant Awards. At the option of GBHWC, and satisfactory performance of the subaward grant by the Consultant in keeping with the grant terms and conditions, this Subaward Agreement may be renewed in keeping with further HHS SAMSHA Federal Notice of Grant Award (updates) for one additional period (being a "Renewal Term") subject to the appropriation, allocation and availability of funds; and updates to the budget and justification.

III.3 Close Out Period – No Cost Extensions.

The terms and condition of the contract shall remain in effect for any Close-Out period of the Federal grant. In the event the Federal Grant includes any additional extension period(s) and said periods are allowed or awarded by SAMHSA to GBHWC, the Initial Term or last agreed

Renewal Term, terms and conditions, shall remain in effect between the parties for the Close Out Period or Extension Period.

III.4 Multiple Term Contract/Multiple Certification of Funds.

The Initial Term and any subsequent term(s) of this contract are subject to the availability of funds and funds for the Initial Term of the contract may be certified for the end of the current fiscal year as part of the execution of the contract. Each proceeding year of the contract will require a certification of funds by the government of Guam. In the event that funds are not allocated, appropriated or otherwise made available to support continuation of performance in any period of time after the Initial Term, the contract shall be cancelled; however, this does not affect either the GBHWC's rights or the Consultant's rights under any termination clause of the contract. The GBHWC shall notify the Consultant on a timely basis in writing that funds are, or are not, available for the continuation of the contract for each succeeding period. In the event of cancellation of this multi-term contract as provided above, the Consultant may be reimbursed its authorized, unamortized, reasonably incurred, nonrecurring costs.

There may be multiple certifications of funds by the GBHWC during any term of the contract.

SECTION IV. CONSULTANT'S COMPENSATION FOR SERVICES

IV.1. Compensation.

The agreed to Budget that GBHWC will compensate the Consultant for its subaward services performed are set for in more detail in Exhibit B attached hereto and incorporated herein as is fully rewritten not to exceed the amount of _____ (\$_____) for the Initial Term subject to the appropriation, allocation, and availability of funds.

IV.2. Invoicing and Payments.

The Consultant shall submit monthly invoices with a detailed expense report at the scheduled Technical Assistance meeting. All invoices are subject to review and approval by the GBHWC. The Consultant shall be compensated upon the clearance of monthly invoices by the GBHWC. In any reporting month in which a discrepancy exists in the statistical, verbal, narrative or financial reports submitted by the Consultant to the GBHWC, twenty percent (20%) of the invoice amount after applying any penalties or disallowed costs, shall be withheld until the discrepancy has been resolved to the satisfaction of the GBHWC. The Consultant is given up to five (5) working days to resolve the identified discrepancy(ies). Failure to do so may result to forfeiture of the Twenty percent (20%) withheld. Three (3) forfeitures shall be grounds for termination of contract. Discrepancies include but will not be limited to: inaccuracy, incompleteness and inconsistencies in the statistical, verbal, narrative and financial reports and required supporting documents submitted, questionable expenditures included in the expense

reports (i.e. unallowable costs, non-adherence to procurement guidelines).

All compensation is to the appropriation, allocation and availability of funds, upon completion of the services and receipt of any deliverables and invoice in the form agreed to by the parties. Payment shall be based upon actual costs incurred, as defined in 2GAR Division 4 § 7101 (1), submitted less disallowed costs and penalties, as applicable. Compensation based upon the aggregate of actual cost submitted may be less than the agreed upon compensation, but in no event shall it exceed the agreed upon compensation. The invoice should reflect only those service fees incurred for the current billing period. Each invoice should also include the total amount billed from the inception of the current year contract. The acceptance and payment of any invoice shall not be deemed a waiver of any of the GBHWC's rights under this Agreement.

IV.3. Final Payment and Release of Claims.

The final payment shall be made upon satisfactory delivery and acceptance of all services herein specified and performed. Prior to final payment and as a condition precedent thereto, the Consultant shall execute and deliver to the GBHWC a release, in the form provided by the GBHWC, of claims against the GBHWC and the government of Guam arising under and by virtue of the contract. Additionally, prior to final payment and as condition precedent thereto, the Consultant shall ensure a smooth program transition back to GBHWC or to the new Consultant identified by GBHWC; and shall immediately provide the GBHWC with all program related information, files, equipment, service contributions/program income (contributions, donations, and gifts) remaining balances and all other operational and administrative and service documents and/or tangible assets.

IV.4. Allowable Costs. (Cost Reimbursement)

The Consultant agrees to comply with the following standards of financial management:

IV.4.a. Financial Records.

The Consultant shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

IV.4.b. Accounting Records.

The Consultant shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the contract, authorizations, obligations, unobligated balances, assets, outlays, and income.

IV.4.c. Internal Control.

The Consultant shall maintain effective control over and accountability for all funds and assets. The Consultant shall keep effective internal controls to ensure that all the GBHWC funds received are separately and properly allocated to the activities described in this Agreement. The Consultant shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

IV.4.d. Source Documentation.

The Consultant shall support all accounting records with source documentation: account statement submitted every year upon renewal of contract to include, but not limited to, expenditures, cancelled checks, paid bills, payrolls, contract and sub-grant (as applicable) contract documents, and so forth. All costs invoiced by contract in this Agreement shall be reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles set forth in 2GAR Division 4 § 7101 or in any federal assistance instrument applicable to this Agreement.

IV.4.e. Reimbursable Cost Principles.

The Consultant shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and sub-grant and/or contract documents and so forth.

IV.4.f. Allowable Cost.

Total allowable cost of the contract is the sum of allowable direct costs actually incurred in the performance of the contract in accordance with the terms of the contract, plus the properly allowable indirect costs, less any applicable credits. Costs shall be allowed to the extent they are: reasonable as defined in 2 GAR Division 4 § 7101 (d); and allocable, as defined in 2 GAR Division 4 § 7101 (e) and lawful under any applicable law; and not unallowable under 2 GAR Division 4 § 7101(f). In the case of costs invoiced for reimbursement, they shall be actually incurred or accrued and accounted for in accordance with generally accepted accounting principles. (as applicable)

IV.4.g. Applicable Credits.

Applicable credits are receipts or price reductions which reduce expenditures allocable to contracts as direct or indirect costs, as defined in 2 GAR Division 4 § 7101 (h). In the event the Consultant receives discounts, rebates and or other applicable credits accruing to or received by the Consultant or any subcontractor under the contract, to the extent those credits are allocable to the allowable portion of the cost billed to the GBHWC; allowable costs shall be paid to the Consultant, net of all discounts, rebates and other such applicable credits. The Consultant shall separately identify for each cost submitted for payment to the GBHWC the amount of cost that is allowable; shall identify all unallowable costs; or the Consultant shall exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.

The Consultant shall identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the GBHWC for payment and individually identify the amount as a discount, rebate or in case of other applicable credits, the

nature of the credit. The GBHWC may permit the Consultant to report this information on a less frequent basis than quarterly, but no less frequently than annually. The Consultant shall identify the method by which it shall report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.

SECTION V.
THE GOVERNMENT IS NOT LIABLE

- V.1. The GBHWC assumes no liability for any accident or injury that may occur to the Consultant, his or her agents, dependents, or personal property while in route to or from worksite or during any travel mandated by the terms of this Agreement.
- V.2. The GBHWC shall not be liable to the Consultant for any work performed by the Consultant prior to the approval of this Agreement by the Governor of Guam and the Consultant hereby expressly waives any and all claims for services performed in expectation of this Agreement prior to its approval by the Governor of Guam.

SECTION VI.
SPECIAL REPORTING REQUIREMENT FOR NON-PROFIT ORGANIZATIONS

- VI.1. In the event that the Consultant is a non-profit organization, the Consultant shall comply with the reporting requirements set forth in P.L. 35-36 Chapter XIII Section 6 and this clause, or any subsequent public report requirement law(s). In the event one of the Consultant's subcontractors is a non-profit organization, the provisions of this clause shall also be deemed to apply to the Consultant's subcontractor, and the Consultant is obligated to submit its non-profit subcontractor's information in the same manner and time periods.
- VI.2. The Consultant shall maintain accurate financial records of all monies paid to it under this Agreement. The Consultant shall provide to the GBHWC a budgetary breakdown by object category as to all services under this Agreement. An initial proposed budgetary breakdown is part of the proposal submission and negotiation, and the agreed cost proposal, budget, and staffing request are incorporated into the scope of services of this Agreement as part of Exhibit A.
- VI.3. The Consultant shall provide to the GBHWC a monthly report describing its activities during the reporting period and the results it achieved during the scheduled monthly technical assistance meeting, approximately ten (10) days after the end of each month.
- VI.4. The Consultant shall provide prior written notification to the GBHWC of all procurement of equipment and services of Five Thousand Dollars (\$5,000.00) or more as to its services related to this Agreement, or with regard to items to be invoiced as part of the contract.

- VI.5. The Consultant shall provide access to duly authorized representative of the GBHWC, the Guam Public Auditor, or their authorized representatives, to any and all appropriate records for the purpose of audit and examination of books, documents, papers, and records of funds expended as part of the contract. The Consultant shall upon written request by the GBHWC, the Guam Public Auditor or their authorized representatives provide source documentation, including but not limited to copies of checks or receipts, employee pay statement, inventory receipt, attendance records, utility bills.
- VI.6. The Consultant is subject to the Single Audit Rules and shall provide annually (as applicable) to GBHWC copies of its Audit Reports for all time periods covered as part of this Agreement.
- VI.7. The Consultant shall provide certified detailed inventory listing of each Fiscal Year's purchases under the contract to the GBHWC as well as a Fiscal Year-end report of all expenditures of funds under the contract no later than November 15, the initial year, and November 15, of each subsequent year.
- VI.8. In the event the Consultant fails to provide any reports or items set forth in this section to the GBHWC after prior written reasonable notice by the GBHWC to the Consultant and the Consultant's failure to fix the contract default, the GBHWC in addition to other contractual rights and remedies under this contract, may withhold payment that are invoiced under this Agreement by the Consultant.

SECTION VII.
RESPONSIBILITY OF GBHWC

GBHWC agrees to maintain oversight of the Consultant's performance as the Consultant. GBHWC will monitor, evaluate and provide guidance and direction to Consultant in the conduct of approved services performed under this Subaward Agreement. GBHWC has the responsibility to determine whether the Consultant has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and agreements and shall monitor the activities of Consultant to ensure that Consultant has met such requirements. GBHWC may require Consultant to take corrective action if deficiencies are found.

SECTION VIII.
RESPONSIBILITY OF CONSULTANT

Consultant- Subaward -Subrecipient Responsibilities.

Consultant shall permit GBHWC to carry out monitoring and evaluation activities, including any performance measurement system required by applicable law, regulation, funding sources guidelines or by the terms and conditions of the applicable Notice of Prime Award Exhibit C and Consultant shall ensure, to the greatest extent possible, the cooperation of its agents, employees

and board members in such monitoring and evaluation efforts. This provision shall survive the expiration or termination of this Subaward Agreement.

Consultant shall cooperate fully with any reviews or audits of the activities under this Subaward Agreement by authorized representatives of GBHWC, Guam Public Auditor, HHS SAMHSA or their authorized delegates, and Consultant shall ensure to the extent possible the cooperation of its agents, employees and board members in any such reviews and audits. This provision shall survive the expiration or termination of this Subaward Agreement.

Consultant shall ensure timely submission of all Monthly and Annual/Closing Reports and Data.

Federal and Local Government of Guam Funding – Allowable Costs

This Subaward Agreement is funded with federal funds and is governed by the cost principles of the Office of Management and Budget (OMB) for Non-Profits. Allowable costs are those costs identified in the relevant OMB circulars and in the grant program’s authorizing legislation. All costs in this Subaward Agreement must be reasonable, allocable, and necessary to the project, and they must also comply with Federal and the Government of Guam funding statutes and regulations. See Cost Principles for Educational Institutions; Title 2 CFR Part 220, Cost Principles for State, Local and Indian Tribal Governments, Title 2 CFR Part 225, Cost Principles for Non-Profit Organizations, Title 2 CFR Part 230, the Federal Acquisition Regulations as well 2 GAR Division 4 Chapter 7 Cost Principles.

Improper Payments

Any item of expenditure by the Consultant under the terms of this Subaward Agreement which is found by auditors, investigators, and other authorized representatives of GBHWC, the Government of Guam Public Auditor, HHS SAMHSA, the U.S. Government Accountability Office or the Comptroller General of the United States, or their delegates, to be improper, unallowable, in violation of federal or Guam law or the terms of the Notice of Grant Award(s) or this Subaward Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of the Consultant, shall become the Consultant’s liability, to be paid by the Consultant from funds other than those provided by GBHWC under this Subaward Agreement or any other agreements between GBHWC and Consultant. This provision shall survive the expiration or termination of this Subaward Agreement.

Audited Financial Statements

In any fiscal year in which the Consultant expends \$750,000 or more in federal awards during such fiscal year, including awards received as a subrecipient, Consultant must comply with the federal audit requirements contained in the Uniform Guidance, 45 CFR Part 75, including the preparation of an audit by an independent Certified Public Accountant in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501-7507, and with Generally Accepted

Accounting Principles. If Consultant expends less than \$750,000 in federal awards in any fiscal year, it is exempt from federal audit requirements, but its records must be available for review by GBHWC, the Government of Guam Public Auditor, appropriate officials of HHS SAMHS, the U.S. Government Accountability Office or the Comptroller General of the United States, or their delegates, and it must still have a financial audit performed for that year by an independent Certified Public Accountant. Consultant shall provide GBHWC with a copy Consultant's most recent audited financial statements, federal Single Audit report, if applicable (including financial statements, schedule of expenditures of federal awards, schedule of findings and questioned costs, summary of prior audit findings, and corrective action plan, if applicable), and management letter within thirty (30) days after execution of this Agreement and thereafter within nine (9) months following the end of Consultant's most recently ended fiscal year.

Closeout

Final payment request(s) under this Subaward Agreement must be received by GBHWC no later than thirty (30) days from the earlier of the expiration date, cancellation date or termination date of this Subaward Agreement. No payment request will be accepted by GBHWC after this date without authorization from GBHWC. In consideration of the execution of this Subaward Agreement by GBHWC, Consultant agrees that acceptance of final payment from GBHWC shall constitute an agreement by Consultant to release and forever discharge GBHWC, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which GBHWC has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Subaward Agreement. Consultant's obligations to GBHWC under this Subaward Agreement shall not terminate until all closeout requirements are completed to the satisfaction of GBHWC. Such requirements shall include, without limitation, submitting final reports to GBHWC and providing any closeout-related information requested by GBHWC by the deadlines specified by GBHWC. This provision shall survive the expiration or termination of this Subaward Agreement.

Procurement Standards

Consultant will follow written procurement policies in keeping with the procurement requirements set forth in 2 CFR, §200.318 through §200.326 Contract provisions, including complying with and flowing down were applicable the flow down provision in 2 CFR, Part 200 Appendix II and 45 CFR, Part 75 Appendix II for HHS Awards. (*New Part of Uniform Guidance 2 CFR, Part 200*).

Contracting with Small and Minority Businesses, Women's Business Enterprises

Consultant agree in keeping with 2 CFR §200.321(6) with the following:

Consultant agrees to affirmatively takes steps listed in §200.321 (1)-(5) to contract with small and minority businesses, women's business enterprises, and labor surplus area firms in its subcontracting process.

Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Conflict of Interest

In keeping with 2 CFR §200.112 Consultant agrees as follows:

During the term of this Subaward Agreement, Consultant will not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with Consultant fully performing its obligations under this Subaward Agreement.

Additionally, Consultant acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of GBHWC.

Thus, Consultant agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with Consultant's fully performing its obligations to GBHWC under the terms of this Subaward Agreement, without the prior written approval of GBHWC.

In the event that Consultant is uncertain whether the appearance of a conflict of interest may reasonably exist, Consultant shall submit to GBHWC a full disclosure statement setting forth the relevant details for GBHWC's consideration and direction. Failure to promptly submit a disclosure statement or to follow GBHWC's direction in regard to the apparent conflict will be grounds for termination of the contract.

Further, Consultant will maintain a written code of standards governing the performance of its agent(s) engaged in the award and administration of contracts.

Neither Consultant nor its agent(s) shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal or Local funds under this Subaward Agreement, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

The employee, officer or agent;

Any member of the employee's immediate family (which includes a spouse, children, parents, brothers and sisters, grandparents and grandchildren, mothers-in-law and fathers-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Stepsiblings, stepchildren and stepparents shall also be regarded as immediate family. 5 GCA Ch 5 Article 11 Section 5610 (g) Immediate Family (P.L. 31-016)).

The employee's partner; or

An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Neither Consultant nor its agent(s) will solicit nor accept gratuities, favors, or anything of monetary value from Consultant's potential subcontractor's, or parties to sub-agreements.

Consultant shall comply with Ethics in Public Contracting 5 GCA Chapter 5 Article 11 Ethics in Public Contracting and 2 GAR Division 4 Chapter 11.

PROCUREMENT STANDARDS – SUBRECIPIENT – FEDERAL GRANT FUNDS

Consultant is a Federal Grant Subaward subrecipient of GBHWC in carrying out this Subaward Agreement, and shall utilize and adhere to 5 GCA §§5001-5805, and 2 GAR Division 4 §§1101-12601, and the Federal and Guam laws, regulations and requirements applicable to acquisition of supplies and services under this program.

GBHWC passes through to Consultant the requirements of all federally funded contracts set forth in 45 Part 75 Appendix II, and Consultant shall flow through the requirements to its vendors and contractors, as applicable.

45 CFR Part 75 HHS Procurement Standards.

§ 75.326 Procurement by states.

When procuring property and services under a federal award, a state must follow the same policies and procedures it uses for procurement from its non-Federal funds. The

state will comply with § 75.331 and ensure that every purchase order or other contract includes any clauses required by § 75.335. All other non-Federal entities, including subrecipients of a state, will follow §§ 75.327 through 75.335.

§ 75.331 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation Act. The requirements of § 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeding \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 75.335 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to this part.

45 CFR Part 75 Appendix II.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Equal Employment Opportunity. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b),

in accordance with Executive Order 11246, Equal Employment Opportunity (30 FR12319, 12935, 3 CFR1964-1965 Comp. p. 339) as amended by Executive Order 11375, amending Executive Order 1126 Relating to Equal Employment Opportunity and implementing regulations at 41 CFR part 60.

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR 401.2 (a) and the recipient or

subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR part 401 and any implementing regulations issued by the awarding agency.

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 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.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must 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 non-Federal award.

See § 75.331 Procurement of recovered materials.

SECTION IX.

ACCESS TO RECORDS AND OTHER REVIEW

- IX.1. The Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by the GBHWC, the Public Auditor, and any applicable Federal Granting Agency, Inspector

General or its delegate. Each subcontract by the Consultant pursuant to this Agreement shall include a provision containing the conditions of this Section.

- IX.2. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three (3) year period, the records shall be kept until all issues are resolved, or until the end of the regular three (3) year period, whichever is later.
- IX.3. Records for non-expendable property acquired in whole or in part, with funds from this contract funds shall be retained for three (3) years after its final disposition.
- IX.4. The Consultant shall provide access to any project site(s) to the GBHWC, Guam Public Auditor and in the event there are federal funds, the Federal Granting Agency or its designated Inspector General or their authorized representative. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

SECTION X. OWNERSHIP OF DOCUMENTS

All briefs, memoranda and incidental to the Consultant's work or materials furnished hereunder shall be and remain the property of the GBHWC including all publication rights and copyright interests, and may be used by the GBHWC without any additional cost to the GBHWC.

SECTION XI. INDEMNITY

The Consultant agrees to save and hold harmless the GBHWC, its officers, agents, representatives, successors and assigns, and other governmental agencies from any and all actions, proceedings, claims, demands, costs, damage, attorney fees and all other liabilities and expense of any kind or any source which may arise out of the performance of this Agreement, caused by the negligent act or failure of the Consultant, its officers, employees, servants, or agents, or if caused by the actions of any client of the Consultant resulting in injury or damage to persons or property during the time when the Consultant or any of officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Consultant or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Consultant, the Consultant shall as soon as practicable but no later than two (2) days after it receives notice thereof, notify the Director of the GBHWC by certified mail.

SECTION XII.
CHANGES

The GBHWC may at any time, by written order make any change in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work under this Agreement, or in the time required for this performance, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly.

SECTION XIII.
INSURANCE

The Consultant shall procure and maintain in effect Workers Compensation, Commercial General Liability, and Comprehensive General Liability Insurance coverage for the operation of the services set forth in this Agreement. The Consultant shall provide certificates of such insurance to the GBHWC when required and shall immediately report in writing to the GBHWC any insurance claims filed. The Consultant is responsible for obtaining and maintaining the necessary coverage for the operation of this program.

- A. Workers Compensation Insurance in the form and amount required by the law or the government of Guam to cover all employees working in any capacity in executing this contract.
- B. Commercial General Liability on an "Occurrence Basis" with limits of liability not less than One Million Dollars (\$1,000,000) per occurrence and/or combined single-limit bodily injury and property damage. The Consultant will ensure the insurance is issued by a company authorized to do business on Guam with minimum limits of not less than One Million Dollars (\$1,000,000) for bodily injuries or death per occurrence, and not less than Three Hundred Thousand Dollars (\$300,000) for damages to property. Such policy will insure the Government and their respective agents and employees with respect to liability as a result of the ownership, maintenance, use or operation of vehicles pursuant to the Agreement.

SECTION XIV.
TERMINATION

XIV.1. Termination for Defaults:

XIV.1.a Default.

If the Consultant refuses or fails to perform any of the provisions of this Agreement with such diligence as shall ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this Agreement, the GBHWC may

notify the Consultant in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the GBHWC, the GBHWC may terminate the Consultant's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the GBHWC may procure similar professional services in a manner and upon terms deemed appropriate by the GBHWC. The Consultant shall continue performance of this Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar professional services, goods or services.

XIV.1.b The Consultant's Duties.

Notwithstanding termination of the Agreement and subject to any directions from the GBHWC, the Consultant shall take timely, reasonable, and necessary action to protect and preserve property in possession of the Consultant in which the GBHWC has an interest.

XIV.1.c Compensation.

Payment for completed professional services delivered and accepted by the GBHWC shall be per Section IV Compensation for the Consultant's services. The GBHWC may withhold from amounts due the Consultant such sums as the GBHWC deems to be necessary to protect the GBHWC against loss because of outstanding liens or claims of former lien holders and to reimburse the GBHWC for the excess costs incurred in procuring similar professional services. The Consultant may pursue its rights under Section XVI Mandatory Disputes clause of this Agreement, and the Guam Procurement Laws and Regulations if it disagrees with the GBHWC's decision with regard to compensation.

XIV.1.d Erroneous Termination for Default.

If, after notice of termination of the Consultant's right to proceed under the provisions of this clause, it is determined for any reason that the Consultant was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Section XXII Force Majeure of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such clause.

XIV.1.e Additional Rights and Remedies.

The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

XIV.1.f Non-Profit Organization Special Reporting Requirements.

The Consultant, if a non-profit organization subject to Section VI Special Reporting Requirements of Non-Profit Organizations (P.L. 33-66 Chapter XIII Section 6) or current

fiscal year related mandate; and if the Consultant fails to timely provide any reports or items set forth in Section VI Special Reporting Requirements for Non Profit Organizations of this Agreement; then the GBHWC pursuant to that section may after prior written reasonable notice to the Consultant and the Consultant's failure to cure the contract default, the GBHWC in addition to other contractual rights and remedies under this Agreement, may withhold payment of Twenty Percent (20%) of any amounts that are invoiced under this Agreement by the Consultant.

XIV.2. Termination for Convenience.

XIV.2.a Termination.

The Director of the GBHWC may, when the interest of the GBHWC so requires, terminate this Agreement in whole or in part, for the convenience of the GBHWC. The Director of the GBHWC shall give thirty (30) days prior written notice of the termination to the Consultant specifying the part of the contract terminated and when termination becomes effective.

XIV.2.b The Consultant's Obligations.

The Consultant shall incur no further obligations in connection with the terminated professional services and on the date set in the notice of termination, the Consultant shall stop work to the extent specified. The Consultant shall also terminate outstanding orders and subcontracts as they relate to the terminated professional services. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated professional services. The Consultant must still complete the professional services not terminated by the notice of termination and may incur obligations as are necessary to do so.

In the event there is any deliverables and/or reports due per this Agreement, the Consultant and the GBHWC shall meet and set up the delivery dates for those items not set forth in the written notice of termination.

XIV.2.c Compensation.

The Consultant shall invoice the GBHWC in keeping Section IV Compensation for Consultant's Services for professional services performed up to the date of termination.

XIV.3 Program Transition.

In the event of the termination under this Section XIV. Termination, the Consultant shall take all steps necessary to ensure a smooth and professional transition of the program to prevent any interruption of the services to the clients and to preserve the integrity of the program. The Consultant shall immediately prepare to relinquish all program related information, files, major equipment items, service contributions, and program income (contributions, donations, and gifts)

remaining balances and all other operational and administrative and service documents and/or other tangible assets or items to the GBHWC.

SECTION XV.
PRODUCT OF SERVICE-COPYRIGHT

All materials developed or acquired by the Consultant under this Agreement shall become the property of the GHWC and shall be delivered to the GBHWC no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Consultant under this Agreement shall be subject of an application for copyright or other claim of ownership by or on behalf of the Consultant.

SECTION XVI.
MANDATORY DISPUTE RESOLUTION CLAUSE

In the event of a conflict between this "Mandatory Disputes Resolution Clause" and any other terms in this Agreement, it is the intent of the GBHWC and the Consultant that the terms of this clause are to be given precedence.

XVI.1. Disputes - Contractual Controversies.

The GBHWC and the Consultant agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the Consultant shall request the Director of GBHWC or his designee, in writing to issue a final decision within sixty days after receipt of the written request in keeping with 5 GCA § 5427 (c). The Director of GBHWC or their designee shall immediately furnish a copy of the decision to the Consultant, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

XVI.2. Absence of a Written Decision within Sixty Days.

If the Director of GBHWC, or his designee does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Consultant may proceed as though the Director of the GBHWC, or his designee had issued a decision adverse to the Consultant.

XVI.3. Appeals to the Office of Public Accountability.

The Director of the GBHWC, or his designee's decision shall be final and conclusive, unless fraudulent or unless the Consultant appeals the decision administratively to the Public Auditor in accordance with 5 GCA § 5706.

XVI.4. Disputes – Money Owed To or By the Government of Guam.

This subsection applies to appeals of the GBHWC's decision on a dispute. For money owed by or to the government of under this Agreement, the Consultant shall appeal the decision in accordance with the "Government Claims Act", 5 GCA § 6101 et. seq., by initially filing a claim with the Office of the Attorney General no later than eighteen (18) months after the decision is rendered by the government of Guam or from the date when a decision should have been rendered. For all other claims by or against the GBHWC under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of the GBHWC. Appeals to the Office of the Public Auditor shall be made within sixty (60) days of the GBHWC's decision or from the date the decision should have been made.

XVI.5. Exhaustion of Administrative Remedies.

The Consultant shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

XVI.6. Performance of Contract Pending Final Resolution by the Court.

The Consultant shall comply with the GBHWC's decision and proceed diligently with performance of this Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where the Consultant claims a material breach of this contract by the GBHWC. However, if the Director of the GBHWC determines in writing that continuation of services under this Agreement is essential to the public's health or safety, then the Consultant shall proceed diligently with performance of the contract notwithstanding any claim of material breach by the GBHWC.

SECTION XVII.

MANDATORY REPRESENTATIONS BY CONSULTANT

XVII.1. Ethical Standards.

With respect to this procurement and any other contract that the Consultant may have, or wish to enter into, with the GBHWC, the Consultant represents that it has not knowingly influenced, and promises that it shall not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

XVII.2. Prohibition Against Gratuities and Kickbacks.

With respect to this procurement and any other contract that the Consultant may have or wish to enter into with the GBHWC, the Consultant represents that he/she/it has not violated, is not violating, and promises that he/she/it shall not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.

XVII.3. Prohibition Against Contingent Fees.

The Consultant represents that he has not retained any person or agency upon an

agreement or understanding for a percentage, commission, brokerage, or other contingent arrangement, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this contract or any other contract with the government of Guam.

XVII.4. Prohibition of Employment of Sex Offenders.

Pursuant to 5 G.C.A. § 5253: No person convicted of a sex offense under the provisions of 9 GCA Chapter 25, or an offense as defined in GCA Chapter 28 Article 28, on Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway;

The Consultant warrants (1) that no person providing services on behalf of the Consultant has been convicted of a sex offense as set forth in the preceding subsection; and (2) that if any person providing services on behalf of the Consultant is convicted of a sex offense under the provisions of 9 GCA Chapter 25 or 9 GCA Chapter 28 Article 2, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person shall be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

For the purposes of this "Prohibition of Employment of Sex Offenders Clause" in the event the Consultant is providing services that involve direct contact with the GBHWC consumers, customers or potential eligible receivers of the GBHWC community behavioral health wellness services all locations where there is contact with those individuals is considered for purposes of this clause in this contract "property of the government of Guam".

XVII.5. Wage and Benefit Compliance – Community Partners Providing Services.

The Consultant shall comply with 5 GCA § 5801 et. seq., and with regard to all persons it employs whose purpose in whole or in part is the direct delivery of services contracted for with the GBHWC in this procurement, shall pay such employees in accordance with the Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct deliverance of deliverables to the government of Guam. The Consultant shall be responsible for flowing down this obligation to its subcontractors.

The Wage Determination most recently issued by the U.S. Department of Labor at the time this contract is awarded to the Consultant shall be used to determine wages and benefits which shall be paid to employees pursuant to this clause.

The Wage Determination promulgated by the U.S Department of Labor on a date most recent to the renewal date shall apply to any renewal terms of this agreement.

The Consultant agrees that in addition to the Wage Determination detailed above, health

and similar benefits for employees having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor shall apply. The Consultant shall pay a minimum of ten (10) paid holidays per annum per employee.

The Consultant shall flow the Wage and Benefit Compliance clauses above through to any of its subcontractor under this agreement.

The Consultant agrees that any violation of the Consultant's obligations or its subcontractors obligations as set forth in this Section "Wage and Benefit Compliance Consultant Providing Service's Clause" shall be investigated by the Guam Department of Labor and may include a monetary penalty assessment by the Guam Department of Labor of no less than One Hundred Dollars (\$100.00) per day, and no more than One Thousand Dollars (\$1,000.00) per day, until such time as a violation has been corrected, as well as the payment of all back wages and benefits due.

In addition to any and all other breach of contract actions the GBHWC may have under this procurement, in the event there is a violation in the process set forth in the preceding subsection, the Consultant may be placed on probationary status by the Director of GBHWC, for a period of one (1) year. During the probationary status, the Consultant shall not be awarded any contract by any instrumentality of the government of Guam. The Consultant if it is placed on probationary status, or has been assessed a monetary penalty pursuant to this "Wage and Benefit Compliance Consultant Providing Services Clause" may appeal such penalty or probationary status to the Superior Court of Guam as set forth in 5 GCA § 5804.

The Consultant's Declaration of Compliance with Wage Determination with the attached most recent Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor is applicable to this contract.

The Consultant agrees to provide upon written request by the GBHWC written certification of its compliance with its obligations under this "Wage and Benefit Compliance Consultant Providing Services Clause" as part of each invoice, along with the names of any employees, their positions, and detailed wage and benefits paid in keeping with this section. Additionally, upon request by the GBHWC, the Consultant shall submit source documents as to those individuals that provide direct services in part or whole under this contract and its payments to them of such wages and benefits.

XVII.6. Privacy Rights.

The Consultant will comply with all Federal and Guam laws and regulations as to the privacy rights of individuals and as to any records and information of individuals providing services under this contract, including but not limited to the following:

1. Health Insurance Portability and Accountability Act (HIPAA)

The Consultant will comply with the Health Insurance Portability and Accountability Act (HIPAA of 1996, P.L. 104-1991) and the Federal "Standards for Privacy of Individually Identifiable "Health Information" promulgated under 45 CFR Part 160

and Part 164, Subparts A and E.

2. The Consultant will ensure information obtained directly or directly from a recipient client under this contract will be kept confidential and not released in a form that identifies the person without informed consent of the person, or of his or her legal representative, unless the disclosure is required by court order or for program monitoring by authorized Federal, or Guam monitoring agencies. (Ref. 45 CFR 1321.51 and 42 CFR Part II). Privacy Rule Standards for Privacy of Individually Identifiable Health Information, Ref. 45 CFR Part 160 and Part 164, Subparts A and E.

XVII.7. Client Confidentiality.

The Consultant shall ensure information obtained directly or directly from a recipient client under this contract shall be kept confidential and not released in a form that identifies the person without informed consent of the person, or of his or her legal representative, unless the disclosure is required by court order or for program monitoring by authorized Federal, or Guam monitoring agencies. (Ref. 45 CFR 1321.51 and 42 CFR Part II). Privacy Rule Standards for Privacy of Individually Identifiable Health Information, Ref. 45 CFR Part 160 and Part 164, Subparts A and E.

XVII.8. Confidentiality.

Any information provided to or developed by the Consultant in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Consultant without the prior written approval of the GBHWC.

XVII.9. Technology Access For Blind or Visually Impaired.

The Consultant acknowledges that no government funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired.

XVII.10. Equal Opportunity Nondiscrimination.

GBHWC is an equal opportunity employer and strictly adheres to a policy on non-discrimination activities in compliance with all applicable Federal and Guam laws in its labor practices and carries out all government programs and in such a manner that no person shall on the grounds of race, religion, color, sex, including sexual harassment and orientation, national origin, age, physical or mental disability, marital status or political affiliation and retaliation be excluded from participation in, and be denied the benefits of, or be subject to discrimination with respect to any program or activities. See Title VI of the Civil Rights Act of 1964 as amended and Presidential Executive Order 11246, as amended and other relevant Federal and Territorial requirements; and Governor of Guam Executive Order 2006-16.

Consultant shall assure that no person shall on the grounds of race, religion, color, sex, including sexual orientation, national origin, age, physical or mental disability, marital status or political affiliation and retaliation be excluded from participation in, be denied benefit of, or otherwise be subjected to discrimination under any program or activity under this Agreement.

Additionally, in keeping with Section II (4) of Governor of Guam E.O. 2006-16, PFS Community Partner shall meet the following contractual requirements:

1. In the event it is receiving then thousand dollars (\$10,000) or have more than fifty (50) or more employees, it shall develop an equal opportunity affirmative action plan, using standard guidelines established by the Guam Department of Labor, within sixty (60) days after the Effective Date of this Agreement. Furthermore, within ninety (90) days of the award and annually thereafter for the duration of the Agreement, Consultant under this section shall submit affirmative action reports to the Guam Department of Labor.
2. In the event it is receiving less than ten thousand dollars (\$10,000) or has less than fifty (50) employees, it shall not be required to develop an equal opportunity affirmative action plan, except, however, Consultant shall be strictly prohibited from discrimination on the basis of race, religion, color, sex, including sexual orientation, national origin, age, physical or mental disability, marital status or political affiliation and retaliation.
3. Consultant shall flow through the requirement in this Section V Equal Opportunity Nondiscrimination to its subcontractors.
4. Consultant shall comply with all Federal and Guam laws and regulations including the Guam Department of Labor laws and regulations and (new) P.L. 33-64 Guam Employment Non-discrimination in Employment Act of 2015 codified as 22 GCA Chapter 5 Article 2, which additionally includes as unlawful employment practice or unlawful discrimination grounds race, sex (including gender identity or expression), age, religion, color, honorably discharged veteran and military status, sexual orientation, or ancestry. The definitions for "sexual orientation", "gender identity or expression" and "veteran and military status" as set forth in 22 GCA §5202(h), (i) and (j). A Consultant that is a "religious employer" in keeping with P.L. 33-64 §5(a) is exempt from the religious discrimination provisions of Title VII of the Civil Rights Act of 1964 as set forth in §5 in more detail. In the event Consultant is part of Government of Guam (new) P.L. 33-64 is codified at 4 GCA Chapter 4, §4101(a) as amended.

If Consultant is found not to be in compliance with the requirement in this Section V Equal Opportunity Non-discrimination during the life of this Agreement, this Consultant agrees to make appropriate steps to correct these deficiencies.

XVII.11. Records Discrimination Against Status Offenders Prohibited.

The Consultant acknowledges that no private entity that receives government of Guam funding, either local or federal funds, for any of its programs may, solely on the basis of conviction of a status offense, discriminate against any person who would otherwise be eligible. P.L. 30-168 (effective 7/16/10) codified at § 20120 of Article 1, Chapter 20 of Title 19, Guam Code Annotated.

XVII.12. Restricting the Use of Mobile Phones While Driving a Vehicle, and Providing for the Public Education Requirements Regarding Such Restrictions.

The Consultant shall ensure compliance with relative to the restrictions on the use of mobile phones while driving. P.L. 31-194

XVII.13. Drug and Smoke-Free Workplace.

The Consultant shall ensure compliance with Federal and local drug and smoke-free workplace laws and requirements. [Federal Drug-Free Workplace Act of 1988, the Governor's Circular No. 89-26 (Governor's Policy Statement Establishing a Drug-Free Workplace) and Clean Indoor Air Act of 1992, P.L. 21-139, Title 10 GCA, Chapter 90]. Notwithstanding the enactment of P.L. 35-5 which decriminalized the use of cannabis and marijuana under Guam law, the government of Guam maintains a Drug Free Workplace Program which continues to prohibit the use of cannabis and marijuana. See the Governor's Circular No. 2019-037 and the Governor's Executive Order 2019-11 Relative to the Government of Guam's Drug Free Workplace Policy. Consultant shall comply with the government of Guam's Drug Free Workplace Program, and its continued prohibition of cannabis and marijuana, at all times while providing services under this Agreement.

XVII.14. Social Security Number Confidentiality Act.

The Consultant shall ensure compliance relative to preventing the inappropriate disclosure and misappropriation of social security numbers. P.L. 28-95, Article 7, Chapter 32, Title 5, Guam Code Annotated.

XVII.15. Employment of Individuals with Severe Disabilities; P.L. 26-109 Section 2, §41210(b), Article 2, Chapter 41, Division 5, Title 17 of the Guam Code Annotated.

The Consultant shall comply with the provision of this mandate with emphasis on the employment of two percent (2%) of its workforce with severe disabilities in coordination with the Division of Vocational Rehabilitation Administrator, Department of Integrated Services for Individuals with a Disability (DISID) for placement. In the event the Consultant is unable to employ due to the lack of individuals with disabilities who are able to work, the Consultant shall utilize funds for the purchase of supplies produced by non-profit organizations employing individuals with disabilities. Efforts to comply with this specification shall be documented by the Consultant and is subject to review and inspection by the GBHWC.

SECTION XVIII.
ASSIGNMENT, SUCCESSORS AND ASSIGNS

Neither party may assign or otherwise transfer this Agreement or any of the rights that it grants without the prior written consent of the party. Any purported assignment in violation of the preceding sentence shall be void and of no effect. This contract shall be binding upon the parties' respective successors and permitted assigns.

SECTION XIX.
SUBCONTRACTING

The Consultant shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the GBHWC.

SECTION XX.
STATUS OF CONSULTANT

The Consultant and its agents and employees are independent contractors performing professional services for the GBHWC and are not employees of the GBHWC. The Consultant and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of the GBHWC vehicles, or any other benefit afforded to employees of the GBHWC as a result of this Agreement. The Consultant acknowledges that all sums received hereunder are reportable by the Consultant for tax purposes, including without limitation, self-employment and business income tax. The PFS Community Partner agrees not to purport to bind the GBHWC unless the Consultant has express written authority to do so, and then only within the strict limits of that authority.

SECTION XXI.
GENERAL COMPLIANCE WITH LAWS

The Consultant shall comply with all applicable Federal and Guam laws and regulations. The Consultant shall maintain all licenses and permits during all times pertinent to this Agreement. The Consultant is responsible for payment of all taxes under this Agreement. In the event the contract sets forth key personnel positions of stated experiences and training, the Consultant agrees to maintain those individuals and or positions at all times pertinent to the contract.

The Consultant shall comply with all applicable GBHWC PFS PEACE rules and guidelines. In keeping with the Governor's PEACE Council's Alcohol & Tobacco Advertisement and Sponsorship Guidelines the Consultant shall ensure that no prevention messages, curricula, programs, strategies, materials, speakers, presentations, sponsorships and/or contracts with entities associated with or receiving funds from tobacco and/or alcohol industries are utilized. The Consultant will also ensure that these industries are not partnered with the planning process, delivery and evaluation of prevention services. Approval from GBHWC must be obtained for

any and all questionable situations. In addition, the Consultant agrees not to partner or receive funds or material from said industries.

SECTION XXII.
FORCE MAJEURE

The Consultant and/or the GBHWC (other than its payment obligation) shall be excused from performance under this Agreement for any period that the Consultant or the GBHWC is prevented from performing any services in whole or in part as a result of acts of God, typhoons, earthquakes, floods, epidemics, pandemics, fire, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of the party invoking the section (each of the foregoing deemed a "Force Majeure"), provided that the Consultant or the GBHWC have prudently and promptly acted to take any and all reasonably necessary preventive and/or corrective steps that are within the Consultant's or the GBHWC's control to ensure that the Consultant or the GBHWC can promptly perform. Such non-performance (collectively, a Force Majeure Event) shall not be deemed a breach of the Agreement. This clause shall not relieve the Consultant of responsibility for developing and implementing all prudent contingency and disaster recovery measures. Subcontractor interruptions shall not be considered a Force Majeure Event unless agreed upon by both parties. The party delayed by a Force Majeure Event shall immediately notify the other party by telephone (to be confirmed in writing, via hand delivery return receipt, within FIVE (5) days of the inception of such delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event, all preventive and corrective steps taken, how it affects performance, and the anticipated duration of the inability to perform, and shall resume performance of its obligations as soon as possible after the Force Majeure condition no longer exists. The parties shall meet to discuss and determine a revised timetable for completion of any Services delayed by a Force Majeure Event under this Agreement.

SECTION XXIII.
SEVERABILITY

The provisions of the contract shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. In addition, if any provision of this contract is declared unenforceable, the parties shall substitute an enforceable provision that to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

SECTION XXIV.
ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of that party's rights under this Agreement shall be effective to waive any other rights.

SECTION XXV.
NO WAIVER

No failure or delay by either party in exercising any right, power or remedy shall operate as a waiver of such right, power or remedy, and no waiver shall be effective unless it is in writing and signed by the waiving party. If either party waives any right, power or remedy, such waiver shall not waive any successive or other right, power or remedy the party may have under this contract.

SECTION XXVI.
APPLICABLE LAW

The laws of Guam shall govern this Agreement, without giving effect to its choice of laws and provisions. Venue shall be proper only in a Guam court of competent jurisdiction. By execution of this Agreement, the Consultant acknowledges and agrees to the jurisdiction of the courts of Guam over any and all lawsuits arising under or out of any term of this Agreement.

SECTION XXVII.
AMENDMENT

This Subaward Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties.

SECTION XXVIII.
MERGER

This Subaward Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written agreement. No prior agreement or understanding, oral or otherwise, of the parties, or their agents shall be valid or enforceable unless embodied in this Agreement.

SECTION XXIX.
TERMINATION FOR FINANCIAL EXIGENCY

In addition to any other right of termination between the parties, GBHWC shall have the right to terminate this Subaward Agreement for financial exigency by giving Consultant at least

thirty (30) days prior written notice. For the purposes of this provision, a financial exigency shall be a determination made by the Director of GBHWC based on the Guam Legislature failure to fund this contract or in the event HHS SAMHSA fails to fund GBHWC for this program. If notice of such termination is so given, this Subaward Agreement shall terminate on the expiration of the time period specified in the notice, and the liability of the parties hereunder for further performance of the terms of this Subaward Agreement shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination or those obligations involved in closeout of federal and local funds. Consultant may submit a claim in the same manner as is set forth for the termination for convenience claim.

SECTION XXX.

PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INDEMNIFICATION

XXX.1. The Consultant shall defend at its own expense, the government of Guam and its agencies against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark in the United States or Guam, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a procuring agency based upon the Consultant's trade secret infringement relating to any product or service provide under this Agreement, the Consultant agrees to reimburse the government of Guam for all costs, attorneys' fees and the amount of the judgment. To qualify for such a defense and/or payment, the government of Guam shall:

- a. Give the Consultant prompt written notice of any claim;
- b. Allow the Consultant to control the defense or the settlement of the claim; and
- c. Cooperate with the Consultant in a reasonable way to facilitate the defense or settlement of the claim.

XXX.2. If any product or service becomes, or in the Consultant's opinion is likely to become the subject of a claim of infringement, the Consultant shall at its option and expense:

- a. Provide a procuring agency the right to continue to using the product or service;
- b. Replace or modify the product or service so that it becomes non-infringing; or
- c. Accept the return of the product or service, less the unpaid portion of the purchase price any other amounts due the Consultant. The Consultant's obligations shall be void as to any product or service modified by the procuring agency to the extent such modification is the cause of the claim.

SECTION XXXI.

APPROVAL OF CONSULTANT PERSONNEL

Personnel proposed in the Consultant's written proposal to the GBHWC are considered material to any services or work performed under this Agreement. No changes in personnel shall be made by the Consultant without the prior written consent of the GBHWC. Replacement of any

of the Consultant's personnel, if approved shall be with equal ability, experience and qualifications. The Consultant shall be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project or program immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The GBHWC shall retain the right to request the removal of any of the Consultant's personnel at any time. A penalty of twenty percent (20%) of the monthly invoice amount shall be imposed for every month the Consultant does not have the required program staff.

SECTION XXXII.

SURVIVAL

The sections titled Indemnification and Patent, Copyright, Trademark and Trade Secret Indemnification shall survive the expiration of this Subaward Agreement. Software licenses, leases, maintenance and other unexpired agreements that were entered into under the terms and conditions of this Subaward Agreement shall survive this agreement.

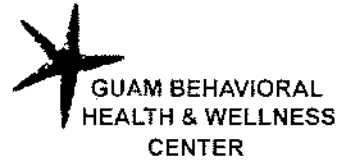
SECTION XXXIII.

FEDERAL GRANT TERMS AND CONDITIONS

XXXIII.1 In the event this Subaward Agreement includes federal grant funds in whole or in part as provided in the request for proposal and Section II Scope of Work of this Agreement, the Consultant shall comply with all federal grant requirements, federal laws and regulations applicable to the program.

XXXIII.2 The Consultant's certifications and representations and assurances submitted by it as part of its proposal are incorporated herein as if fully re-written.

- Exhibit A – Scope of Work – GBHWC RFP 2022-03
- Exhibit B – Consultant's Negotiated and Approved Program Budget
- Exhibit C – Notice of Grant Award (Notice of Prime Award)
- Exhibit D – Subaward Data



Title: CRIMINAL JUSTICE CONSULTANCY AND TRAINING
SERVICES FOR GUAM'S COMMUNITY MENTAL HEALTH CENTER
GRANT PROGRAM
RFP Number: 2022-03

The individual, firm, entity or organization identified below is registered as an interested party and/or "potential Offeror" to the RFP number above, and is therefore entitled to receive changes, amendments, inquiries and/or related correspondence in accordance with the Guam Procurement Regulations.

ACKNOWLEDGEMENT
Amendment No. 2022-03-A01
Sample Contract (Form N)

The person below is the authorized representative or representative delegate and acknowledges receipt of the above numbered amendment(s).

Name of Organization, Firm or Individual	
Name and Signature	
Time and Date	

Instruction: This acknowledgement form must be filled out and returned to GBHWC Director's Office, faxed to (671) 649-6948, or emailed to marilyn.aflague@gbhwc.guam.gov

The amendment (s) must be included in the proposal.