

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

SECTION 1. ADOPTION OF RECITALS.

The above stated recitals are incorporated herein by reference, are hereby made a part of this Agreement, and shall be as effective as if repeated verbatim.

SECTION 2. PURPOSE.

Grantee incurred \$355,000 dollars in uncompensated increases in service need from March 3, 2021, through May 2022. *See* Exhibit A. While Grantee has received alternate sources of financial assistance, Grantee has not received assistance for the negative economic impact identified in this Grant.

To alleviate the fiscal pressure and negative economic impact caused and exacerbated by the COVID-19 pandemic, the County will transfer SLFRF funds proportional to Grantee's economic harm as a grant beneficiary.

SECTION 3. FUNDING AMOUNT.

The County will grant Grantee \$158,500.00 (ONE HUNDRED FIFTY EIGHT THOUSAND FIVE HUNDRED DOLLARS) of SLFRF funds no later than fifteen (15) business days from the County's receipt and approval of supporting documentation which may include but is not limited to invoices, and financial statements evidencing Grantee's economic harm associated with providing scheduled and non-emergency medical transport from March 3, 2021, through May 2022.

SECTION 4. TERM.

Unless terminated sooner as allowed under this Agreement, this Agreement commences on September 12, 2022 ("**Effective Date**") and terminates on October 31, 2024.

SECTION 5. TERMINATION.

The Agreement may be terminated in accordance with the following provisions:

- A. The County may terminate the Agreement, if Grantee fails to comply with the terms and conditions of this Agreement, ARPA or corresponding federal law. Before terminating this Agreement pursuant to this provision, the County will provide written notice of intent to terminate enumerating the reasons for which the termination is being sought and provide at least 30 calendar days to the Grantee to cure such failure. If the Agreement is terminated pursuant to this provision, Grantee will reimburse the County all funds disbursed by the County to Grantee.
- B. For Cause. The County may terminate the Agreement upon the County's determination that the Grantee was not subject to a negative economic impact caused and exacerbated by the COVID-19 pandemic or received funding disproportional to Grantee's negative economic impact. If the Agreement is terminated pursuant to this provision, Grantee will reimburse the County all funds disbursed by the County to Grantee that were disproportional to Grantee's negative economic impact.

- C. Mutual Consent. County, with the written consent of the Grantee, may terminate the Agreement, in which case the County and Grantee must agree upon the termination conditions, including effective date and in the case of partial termination, the portion to be terminated.
- D. Grantee may terminate this Agreement by sending to the County written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. In the event Grantee terminates the Agreement, the County may seek the return of some or all of the Grant amount from Grantee.
- E. Non-Appropriation of Funds by the County. If the County fails to appropriate sufficient funds to carry out the obligations of the County under this Agreement, then the County may terminate this Agreement upon 30 calendar day notice to the Grantee.

SECTION 6. NOTICES AND PAYMENTS.

The parties will send notices required by this Agreement in writing and delivered by certified mail to the addresses described in this Section. All notices are considered received three (3) business days after the postmark date. Either Party may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address, the notified party will send all further notifications to the new address. Parties will address notices as follows:

To Grantee: PROJECT AMISTAD
 Attn: Chief Executive Officer
 Address: 3210 Dyer St
 El Paso, Texas 79930

To the County of El Paso: THE COUNTY OF EL PASO
 Attn: Chief Administrator
 Address: 500 E. San Antonio Street, Suite 302A
 El Paso, Texas 79901

Copy to: El Paso County Auditor’s Office
 800 E. Overland, Room 406
 El Paso, Texas 79901

SECTION 7. LIABILITY FOR FUNDS.

The Grantee will repay the County any funds that the Grantee accepts under this Agreement in violation of this Agreement, the SLFRF rules, federal law or U.S. Treasury guidance.

SECTION 8. INDEMNIFICATION.

TO THE EXTENT ALLOWED BY LAW AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT THE GRANTEE WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE COUNTY AND THE COUNTY’S OFFICERS AND EMPLOYEES FROM ALL CLAIMS OF PROPERTY DAMAGE, PROPERTY LOSS, PERSONAL INJURY, DEATH, ILLNESS, INTELLECTUAL PROPERTY RIGHT INFRINGEMENT, REGULATORY COMPLIANCE RELATED TO GRANTEE AND/OR GRANTEE’S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, OR LICENSEES

ACTIONS OR OMISSIONS RELATED TO THIS AGREEMENT. THE OBLIGATION UNDER THIS SECTION REMAINS IN EFFECT FOR ALL CLAIMS ARISING DURING THE TERM OF THIS AGREEMENT.

SECTION 9. INADMISSIBLE TO PROVE OR DISPROVE ANY CURRENT OR FUTURE CLAIMS.

- A. The Parties understand that this Agreement is negotiated in full knowledge of the negative economic impact Project Amistad sustained in providing medical transport services to a vulnerable and historically underserved population during the COVID-19 pandemic. Except as the County may be properly billed pursuant to the Parties' Fifth or subsequent Amendment to the Parties' Transportation Agreement, Grantee, its representatives, successors and assigns hereby accept the Funding Amount, and agree not to seek further remuneration or pursue any claims against the County or any of the clients that received services in connection with the Parties' Transportation Agreement, as amended.

- B. Pursuant to Texas Rule of Evidence 408, this Agreement is not admissible to prove or disprove the validity or amount of a disputed claim that Project Amistad may have or could have brought against the County. Project Amistad agrees that this Grant is made in an effort to mitigate the negative economic effects caused and exacerbated by the COVID-19 pandemic and may not be introduced as evidence in relation to any claim, cause or pursuit of a debt relating to the Parties' Transportation Agreement, as amended.

SECTION 10. COMPLIANCE WITH FEDERAL REGULATIONS.

The Parties acknowledge that SLFRF and corresponding Treasury guidance continue to evolve. To the extent that federal rules or guidance pertaining to this grant requires further amendment to this Agreement or compliance with additional requirements, Grantee will cooperate with the County to timely comply with the same.

SECTION 11. AMENDMENTS.

This Agreement may be amended at any time by written instruments executed by the authorized officials of County and Grantee.

SECTION 12. DOCUMENT RETENTION.

Grantee will keep all records related to this Agreement for a period of three (3) years after the Effective Date. Grantee will allow the County, the Granting Agency, federal Inspectors General, and/or the Comptroller of the United States to inspect all records reasonably related to this Agreement within three (3) calendar days from request in order to make audits, examinations, excerpts, and transcripts. The Grantee will provide copies to the requesting party of any records requested at the Grantee's expense.

SECTION 13. GENERAL PROVISIONS.

- A. GOVERNING LAW. This Agreement is governed by Texas law.
- B. VENUE. The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.

- C. **NO OTHER RELATIONSHIP.** No term or provision in this Agreement is intended to create a partnership, joint venture, or agency arrangement between any of the parties.
- D. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- E. **NO PERSONAL LIABILITY.** This Agreement does not create any personal liability on the part of any employee, officer, or agent of any public body that may be a Party to this Agreement.
- F. **PUBLIC INFORMATION.** This Agreement is public information. The Parties agree that the County is a governmental body for purposes of the Public Information Act, codified as Chapter 552 of the Texas Government Code and as such is required to release information in accordance with the Public Information Act. The Parties agree that they will mark any information that they consider to be confidential, proprietary, and/or trade secret in their communications in connection with this Agreement. The Parties agree to provide notice to the other Parties in accordance with the Public Information Act in the event any Party receives a request for information under the Public Information Act for information that another Party has marked as confidential, proprietary, and/or trade secret.
- G. **SOVEREIGN IMMUNITY ACKNOWLEDGED AND RETAINED.** The Parties acknowledge and agree that no provision of this Agreement is in any way intended to constitute a waiver by the County of any immunities from suit or liability that the County may have by operation of law. The County retains all governmental immunities.
- H. **GOVERNMENTAL FUNCTION.** The Parties agree that the County is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The Parties also agree that the County is entering into this Agreement as a governmental entity performing a governmental function.
- I. **INDEPENDENT CONTRACTOR RELATIONSHIP.** This Agreement does not create an employee-employer relationship between the parties. The County and Grantee are not subject to the liabilities or obligations the other party obtains under the performance of this Agreement.
- J. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- K. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on Grantee and the County of El Paso, and the County of El Paso's and Grantee's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- L. **NO WAIVER.** Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- M. **COMPLIANCE WITH LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement.
- N. **DISCRIMINATION PROHIBITED.** Grantee shall comply with all laws prohibiting discrimination pursuant to applicable local, state and federal requirements. Failure to do so in any manner which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Agreement. Grantee covenants that during the term of this Agreement, the Grantee, its associates, officers, board or committee members, and/or employees shall have no interest, direct or indirect, which will conflict in any manner with the performance of the services under this Agreement and that

none of its paid personnel shall be employees of the County or have any contractual relationship with the County.

O. TIME IS OF THE ESSENCE.

- 1) Time is of the essence with respect to the rights and obligations of the Parties as described herein.
- 2) The times and dates specified in this contract are material to this Agreement. For the purpose of this agreement “**business days**” means Monday through Friday excluding County of El Paso holidays and “**calendar days**” means Monday through Sunday including County of El Paso holidays.

P. RELEASE. To the extent allowed by law, the Grantee releases the County and the County’s officers, officials, and employees from all claims related to this Agreement.

Q. FORCE MAJEURE. There is no breach of contract should either party’s obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party’s reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

R. PROVISIONS SURVIVING THIS AGREEMENT. Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.

S. REPRESENTATIONS AND WARRANTIES. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.

T. FINES AND PENALTIES. Each Party is responsible for fiscal penalties, fines, or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal law occurred as a result of that Party’s actions.

U. EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. Neither Party is liable under this Agreement to the other Parties for any incidental, consequential, special, punitive, or exemplary damages of any kind, including lost profits, loss of business, mental anguish, emotional distress and/or attorney fees, as a result of a breach of any term of this Agreement.

V. SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.

W. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties.

X. All attachments referenced in this Agreement are incorporated in full to this Agreement by reference.

Y. COUNTERPARTS. This Agreement may be executed in multiple counterparts which, when taken together, shall be considered as one original.

IN WITNESS WHEREOF, the parties through their authorized representatives execute this Grant.

COUNTY OF EL PASO


Ricardo A. Samaniego, County Judge

Date: _____

APPROVED AS TO CONTENT:

Irene Valenzuela
Executive Director
Community Services Department

APPROVED AS TO FORM:



Ana Schumacher
Assistant County Attorney

[SIGNATURE PAGE FOR GRANTEE]

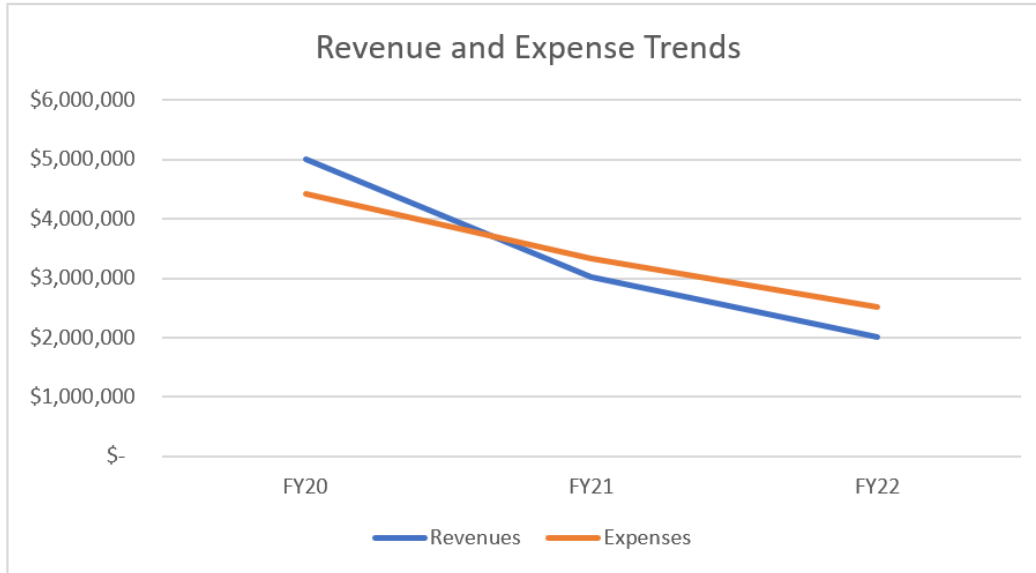
PROJECT AMISTAD

Andrea A. Ramirez, Chief Executive
Officer

Date

Exhibit A

	FY20	FY21	FY22	FY20-FY22
Revenues	\$ 5,010,277	\$ 3,027,396	\$ 2,018,704	\$ (1,084,192)
Expenses	\$ 4,412,905	\$ 3,323,593	\$ 2,505,523	Negative economic harm between FY20 and FY22



Source: Based on data provided by Project Amistad.