



Douglas A. Ducey
GOVERNOR

STATE OF ARIZONA
DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

5636 East McDowell Road
Phoenix, Arizona 85008-3495
(602) 267-2700 DSN: 853-2700



Major General Kerry L. Muehlenbeck
THE ADJUTANT GENERAL

Agreement Type: Agreement
M22-0062

Effective Date: October 1, 2022
Termination Date: December 31, 2027

Agreement Title: Cochise County, Border Fencing and Technology, Laws 2022 Chapter 334, Section 1.

COCHISE COUNTY AGREEMENT ADMINISTRATORS

Cochise County
Address: 1415 Melody Lane,
Bldg. G
Bisbee, AZ 85603
Contact Name: Richard Karwaczka, County Administrator
Phone Number: (520) 432-9200
Email: RKarwaczka@cochise.az.gov

Cochise County Sheriff's Office
205 N Judd Drive
Milepost 345, Highway 80
Bisbee, AZ 85603
Contact Name: CPT Randal Wilson, Project Manager
Phone Number: (520) 432-9505
Email: RWilson@cochise.az.gov

DEMA AGREEMENT ADMINISTRATOR

Arizona Department of Emergency and Military Affairs
5645 East McDowell Road,
Bldg. M5800
Phoenix, AZ 85008
Contact Name: Kyle Matthew, Chief Procurement Officer
Phone Number: (602) 464-6491
Email: Kyle.Matthew@azdema.gov

THIS AGREEMENT, (hereinafter referred to as "Agreement") is between the **STATE OF ARIZONA DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS** [hereinafter referred to as "DEMA", a "budget unit" as defined in A.R.S. § 35-101 authorized to contract pursuant to A.R.S. § 26-102] and **COCHISE COUNTY** and the **COCHISE COUNTY SHERIFF'S OFFICE** [hereinafter referred to together as "County". authorized to contract pursuant to A.R.S. § 11-201]. The purpose of this Agreement is to establish the process for oversight of activities conducted by the County and reimbursed by DEMA pursuant to Appropriation Legislation 2022-2023, approved by the Governor on June 28, 2022, and authorized in accordance with Laws 2021 Chapter 408, Section 106 to distribute to the County for the purposes outlined in Section 26-105, Arizona Revised Statutes.



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IN WITNESS WHEREOF, the Parties hereto agree to carry out the terms of this Agreement

Executed this day by the duly authorized officer of the Eligible Entity:

Cochise County	Arizona Department of Emergency and Military Affairs
Signature	Signature
Printed Name Ann S. English	Printed Name Major General Kerry L. Muehlenbeck
Title Chairperson, Cochise County Board of Supervisors	Title The Adjutant General
Date _____	The above referenced Agreement is hereby executed this _____ Day of _____, 20 _____

Cochise County Sheriff's Office
Signature
Printed Name Mark Dannels
Title Cochise County Sheriff
Date _____



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AGREEMENT TERMS

1. Recitals: The purpose of this Agreement is to define the terms under which DEMA will provide funds to the County with which to construct and maintain a physical border fence, to purchase or install border security technologies including cameras, sensors, drones, software and other surveillance equipment, and to pay administrative costs, conducted by the County to be reimbursed by DEMA.

2. Definitions: The Parties agree to expeditiously initiate and complete the Scope of Work under this Agreement. The Parties warrant, represent and agree that they, their employees, and representatives will comply with all applicable provisions provided herein. The following definitions shall apply to the terms used in this Agreement, except where the context necessarily requires otherwise.

2.1. "A.R.S." means Arizona Revised Statutes.

2.2. "Agreement" means the terms and conditions of this Agreement between the State of Arizona Department of Emergency Management and Military Affairs (STATE) and Cochise County and the Cochise County Sheriff's Office together (The County), and its addendums: Scope of Work, (Addendum A), Price Sheet (Addendum B), and Budget and Justification (Addendum C), constitute the entire Agreement between the Parties and supersede other understandings, oral or written.

2.3. "County" means Cochise County and the Cochise County Sheriff's Office together, unless context requires that they be treated as separate entities. Unless treated as separate entities, Cochise County and the Cochise County Sheriff's Office shall be treated as a single Party to this Agreement, and shall jointly have, exercise, and be responsible for the same rights and obligations under this Agreement.

2.4 "FY" means State Fiscal Year.

2.5. "Party" and/or "Parties" means DEMA and/or Cochise County.

2.6. "Project" means activities conducted within Scope of Work and from Border Security funds.

2.7. "State" means the State of Arizona.

3. Access to Information: Subject to statutory confidentiality requirements of the State of Arizona, the Parties to this Agreement shall have full, complete, and equal access to data and information prepared under this Agreement on a no-charge basis.

4. Amendment: This Agreement, excluding Addendums, may be modified only by written Amendment signed and dated by authorized representatives of each signatory (treating Cochise County and the Cochise County Sheriff's Office as separate signatories for this purpose) to this Agreement. Amendments to this Agreement shall be executed with the same formalities as this Agreement and become effective upon the dated signature of the last signatory (again, treating Cochise County and the Cochise County Sheriff's Office as separate signatories for this purpose). Executed copies of any Amendment shall be provided to each signatory.

4.1. Addendum Amendments: Addendums to this Agreement may be amended or modified, as necessary, only by the Parties' authorized contracting and procurement officers.



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5. Budget: The amount of \$9,069,000.00 was appropriated in FY2023 and transferred to the Border Security Fund effective October 1, 2022. Payments shall be made by electronic funds transfer in lieu of a State warrant whenever possible. Funds provided by DEMA to the County under this Agreement shall be used only for the purposes identified in this Agreement. Funds provided by DEMA to the County under this Agreement shall not be used to supplant Federal, State, County or local funds that would otherwise be available to the County for the purposes identified in this Agreement and shall be used to supplement funds already available to the County for the purposes identified in this Agreement.

6. Non-Availability of Funds: Pursuant to A.R.S. § 35-154(A), every payment obligation under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by either Party at the end of the period for which funds are available. No liability shall accrue to either Party in the event this provision is exercised, and the Parties shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. Payment Mechanism: Beginning upon execution of this agreement, DEMA shall distribute monthly payments to the County totaling \$9,069,000.00. The amount of \$9,069,000.00 has been apportioned into nine equal monthly payment amounts for each of the nine months in FY 2023 from October 2022 through June 2023. Each monthly payment amount shall not significantly exceed one ninth of the total appropriation amount, i.e., shall not significantly exceed \$1,007,666.67. Upon execution of this agreement, DEMA shall advance to the County payment amounts for months already passed at the time of execution, and shall continue to make monthly payments to the County until such time as the sum equals \$9,069,000.00. Subsequent distributions of funds shall be advanced to the County monthly after having been received by DEMA from the State Treasurer's Office as outlined in Laws 2022 Chapter 334, Section 1. DEMA will not make any further payments to the County after June 2023, pursuant to this agreement.

8. Conflict Resolution Procedures:

8.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

8.2. In the event of any judicial proceeding related to this Agreement the Parties agree that venue shall be proper in Maricopa County, Arizona.

8.3. The Parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.

9. Assignment: Neither Party may assign rights hereunder without the express, written, prior consent of the other Party.

10. Conflict of Interest: Either Party may cancel this Agreement for conflict of interest in accordance with the termination terms of this Agreement, without penalty or further obligation, pursuant to A.R.S. § 38-511.

11. Agreement Term: The term of this Agreement shall be from October 1, 2022, to December 31, 2027.

12. Effective Date: This Agreement shall become effective upon the date of the last signatory's signature

13. Notices, Correspondence, Reports:



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13.1. Any notice given pursuant to this Agreement shall be in writing and shall be considered to have been given when actually received by the following persons at the following addresses: Notices and correspondence (except for correspondence relating to the execution of the Agreement, clarification of this Agreement, and Amendments to this Agreement) shall be sent to:

For Cochise County:	For DEMA:
Name: Randal Wilson	Name: Darlene Quihuis
Title: Captain, Project Manager	Title: Assistant Director
Phone: (520) 432-9505	Phone: (602) 464-6454
Email: RWilson@cochise.az.gov	Email: Darlene.Quihuis@azdema.gov

13.2. Correspondence relating to the execution of the Agreement, clarification of this Agreement, and Amendments to this Agreement shall be sent to:

For Cochise County:	For DEMA:
Name: Randal Wilson	Name: Kyle A. Matthew
Title: Captain, Project Manager	Title: Chief Procurement Officer
Address: 205 N Judd Drive Milepost 345, Highway 80 Bisbee, AZ 85603	Address: 5645 East McDowell Road, Building M5800, Phoenix AZ 85008
Phone: (520) 432-9505	Phone: (602) 464-6491
Email: RWilson@cochise.az.gov	Email: Kyle.Matthew@azdema.gov

13.3 Reports and deliverables shall be sent in accordance with Scope of Work, Reporting Requirement & Deliverables.

13.4. Either Party to this Agreement may designate a new contact by delivering written notice to all other signatories in accordance with these notice requirements.

14. **Ownership of Information:** Both Parties retain title to all documents, reports, data, and other materials prepared as a part of the Project. DEMA and The County shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all information prepared under this Agreement.



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15. Project Review: It is the responsibility of the County to coordinate with DEMA regarding the progress of the Project as defined in the Scope of Work and related attachments. DEMA may request in writing, at its discretion, written progress updates, which the County shall provide to DEMA within 15 calendar days of DEMA's request.

16. Severability: The provisions of this Agreement are severable to the extent that any provision or application to be invalid shall not affect any other provision or application of the Agreement, which shall remain in effect without the invalid provision or application.

17. Termination:

17.1. DEMA or the County may terminate this Agreement at any time, with or without cause, after giving 30 days written notice of termination to DEMA or the County, as appropriate. The notice shall specify the effective date of termination. Any deviation or failure to comply with the purposes and/or conditions of this Agreement by the County without written permission from DEMA may constitute cause for DEMA to terminate this Agreement.

17.2. In the event the Agreement is terminated, the County shall deliver all financial and programmatic records, supporting documents, statistical records, electronic data, and other related records. All records and documents of both Parties shall be maintained and available for access in accordance with A.R.S. §§ 35-214, 39-101, 41-151 and any other State or local rule or regulation. Repayment to DEMA of a portion or full payment received by the County may be required.

17.3. Upon notice of termination of this Agreement, the Parties will cooperate and work diligently to prepare a transition plan to include a transition schedule and circumstances for transfer of deliverables including, but not limited to, records, funds (both unexpended and any previously expended funds that may have been spent in violation of the purposes and conditions of this Agreement), and compliance with closing auditing requirements to be performed at the County's expense.

18. Indemnification: Each Party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other Parties (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. The State of Arizona is self-insured per A.R.S. § 41-621.

In addition, should the County utilize contractor(s), the County's contract with each such contractor shall (a) include the following language: (b) require that the following language be included by the contractor in all its subcontracts; and (c) require the contractor to require all its subcontractors include the following language in their contracts with all of their subcontractors:

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless Cochise County, DEMA and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Contractor or any of the directors, officers, agents, or employees or subcontractors of such Contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims



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arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. Additionally, on all applicable insurance policies, the Contractor and its subcontractors shall name Cochise County, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds and also include a waiver of subrogation in favor of Cochise County, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees.

19. E-Verify: To comply with A.R.S. § 41-4401(A), each Party hereby warrants its compliance with federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). If either Party uses contractors in performance of this Agreement, the contractors shall warrant their compliance with federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of the Agreement subject to penalties up to and including termination of this Agreement. Each Party retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the Agreement to ensure that the contractor or subcontractor is complying with this warranty.

20. Waiver: The waiver or failure to enforce any provision of this Agreement will not operate as a waiver of any future breach of any such provision or any other provision hereof.

21. Non-Discrimination: Pursuant to Title 41, Chapter 9, Article 4 of the A.R.S. and Executive Order 2009-09, the County shall provide access to equal employment opportunities for all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, and to all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are treated without regard to race, age, color, religion, sex, or national origin and in compliance with the Americans with Disabilities Act.

22. Implied Consent Terms: Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated in it.

23. Record Keeping Requirements: Pursuant to A.R.S. §§ 35-214 and 35-215, the Parties shall retain all data, books, accounts and other records ("records") relating to this Agreement for a period of five years after completion of the Agreement, after any litigation, claim, negotiation, audit, cost recovery, or action involving the records has been completed or from the date of complete resolution of any dispute and any applicable appeals, unless a longer period is required by statute or rule. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, either Party shall produce the original of any or all such records.

24. Lobbying: Upon signature of this Agreement, the County shall disclose all lobbying activities to DEMA to the extent they are an actual or potential conflict of interest or where such activities would create an appearance of impropriety. The County shall implement and maintain adequate controls to ensure that monies paid this Agreement shall not be used for lobbying.

23. Antitrust Recovery: The County assigns to DEMA any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the County toward fulfillment of this Agreement.

24. Compliance with Laws. The County agrees to comply with all state and local laws and regulations applicable to the terms and conditions of this Agreement including but not limited to State of Arizona Accounting Manual (SAAM) and State and local procurement codes; whichever is more restrictive will apply.



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**ADDENDUM A
SCOPE OF WORK**

1. **Project Title:** Cochise County, Border Fencing and Technology.
2. **Project Timeline:** October 1, 2022 to December 31, 2027.
3. **Purpose:**
 - a. Distribute to Cochise County the funds with which to construct and maintain a physical border fence, to purchase or install border security technologies including cameras, sensors, drones, software and other surveillance equipment, and to pay administrative costs.
4. **Tasks:**
 - a. Purchase equipment in accordance with the budget approved by DEMA.
 - b. CCSO to enter into contract with Western Sky Helicopters. Copies of all contracts are to be provided to DEMA upon request.
5. **Cost**
 - a. Not to exceed \$9,069,000.00.
6. **Reporting Requirements and Deliverables:**

Timeframe	Deliverable	Description	Due Date	Send To:
Quarterly	Financial Expenditure Report	Provide an accurate and detailed expenditure report with backup documentation. Period of Performance: Qtr. 1: July 1 – Sept. 30 Qtr. 2: Oct.1 – Dec.31 Qtr. 3: Jan.1 - March 31 Qtr. 4: April 1 - June 30	Qtr. 1: Oct. 15 Qtr. 2: Jan. 15 Qtr. 3: April 15 Qtr. 4: July 15 In the event that the 15 th falls on a weekend or holiday, it is due the next business day.	Grants.border@azdema.gov with a copy to: Dema.Finance@azdema.gov
Final	Financial Summary Report	Provide an accurate and detailed expenditure financial summary report of project period.	Due 30 Days after the end of the period of performance or completion of the Project.	Grants.border@azdema.gov with a copy to: Dema.Finance@azdema.gov



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Timeframe	Deliverable	Description	Due Date	Send To:
Quarterly	Programmatic Report	Provide a progress report of all Border Security Fund activities & metrics by the jurisdiction during the reporting period. Period of Performance: Qtr. 1: July 1 – Sept. 30 Qtr. 2: Oct.1 – Dec.31 Qtr. 3: Jan.1 - March 31 Qtr. 4: April 1 - June 30	Qtr. 1: Oct. 15 Qtr. 2: Jan. 15 Qtr. 3: April 15 Qtr. 4: July 15 In the event that the 15 th falls on a weekend or holiday, it is due the next business day.	Grants.border@azdema.gov with a copy to: Dema.Finance@azdema.gov
Final	Programmatic Report	Provide a final report to include a summary narrative of annual accomplishments and metrics.	Due 30 Days after the end of the period of performance or completion of the Project.	Grants.border@azdema.gov with a copy to: Dema.Finance@azdema.gov

7. Additional Requirements:

- a. Ensure all procurement of goods and services are following established applicable procurement law and the County’s written policies and procedures. All procurement transactions shall be conducted in a manner to provide to the maximum extent practical, open, and free competition.
- b. All Border Security funds must be accounted for by the County in writing and in compliance with the State of Arizona Accounting Manual (SAAM), available at <https://gao.az.gov/publications/saam>.



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**ADDENDUM B
PRICE SHEET**

Budget October 1, 2022, to December 31, 2027

ACCOUNT CLASSIFICATION	AMOUNT
Personnel (Not Applicable)	\$0
Fringe (Not Applicable)	\$0
Travel (Not Applicable)	\$0
Equipment	\$1,069,000.00
Supplies (Not Applicable)	\$0
Contractual	\$8,000,000.00
Other (Not Applicable)	\$0
Total Direct Costs	\$9,069,000.00
Administration (Not Applicable)	\$0
TOTAL (Not to Exceed)	\$9,069,000.00

With prior written approval, the County is authorized to transfer up to a maximum of 10% of the total budget amount between line items. Transfers of funds are only allowed between funded line items. Transfers exceeding 10% or to a non-funded line item shall require a DEMA review and amendment to the Price Sheet, Addendum B.



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**ADDENDUM C
BUDGET AND JUSTIFICATION
October 1, 2022, to December 31, 2027**

- A. Personnel: Not Applicable
- B. Fringe Benefits: Not Applicable
- C. Travel: Not Applicable
- D. Equipment (Over \$5,000 per item):

Item(s) (1)	Quantity (2)	Amount (3)	% Charged (4)	Total Cost (5)
MX-10 Camera with laser designator (Model 82036); Macro Blue MB12 Monitor; 2 FAA-Approved Meeker Aviation Mounts	1 Set	\$675,000.00	100%	\$675,000.00
Churchill Mapping System Model (ARS 600C); Churchill NVIS Keyboard and Rack Mount; A-4G LTE Auto-Failure Router	1 Set	\$197,000.00	100%	\$197,000.00
Rotheta RT 600 Radio Direction Finder (Lojack PLB Locator etc)	1	\$58,000.00	100%	\$58,000.00
TRAKKA or Spectrolab Searchlight; FAA Meeker aft Crosstube Mount	1 Set	\$139,000.00	100%	\$139,000.00

TOTAL EQUIPMENT REQUEST	\$1,069,000.00
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JUSTIFICATION:

These funds will allow Cochise County Sheriff's Office (CCSO) to:

- Collect digital video, court-ready evidence of border-related crimes
- Detect hiding criminals through infrared technologies
- Illuminate areas at night with searchlight
- Obtain 24-hour operational support for the camera system, when needed.

CCSO believes it is necessary to be able to fly missions at night when searching for suspects or when conducting rescue operations involving illegal border crossers.

E. Contractual:

Name (1)	Service (2)	Rate (3)	Other (4)	Cost (5)
Western Sky Helicopter	Helicopter Lease	\$1,600,000.00 Annually	5 Year Lease \$1,600,000.00 x 5 Years	\$8,000,000.00
TOTAL CONTRACTUAL REQUEST				\$8,000,000.00

JUSTIFICATION:

Criminal activity on the international border with Mexico has increased drastically over the last 18 months. Cochise County covers 6,200 square miles with three mountain ranges. As seen in conflict regions throughout the world, helicopter operations have become a vital tool to react quickly to criminal activity or to conduct rescue missions.

The Cochise County Sheriff's Office had a previous contract with Western Sky Helicopters (Previously doing business as Aerial Solutions). The contract period was approximately 3 years long and funded through a private foundation. This was a productive relationship that would have continued if funding had not ended.

This contract will allow Cochise County to:

- Provide quick access to smuggling corridors in remote, inaccessible areas. This serves to both maintain digital surveillance equipment and respond immediately when smugglers are identified.
- Provide immediate medical response for injured people (both law enforcement and migrants) in remote locations



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- Provide Search and Rescue support
- Provide the ability to safely monitor fleeing vehicles and strategically stage resources ahead of fleeing vehicles to bring deadly pursuits to a conclusion.

F. Construction: NOT ALLOWED

G. Other: Not Applicable

H. Total Direct Charges:

TOTAL DIRECT CHARGES	\$9,069,000.00
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I. Administration: Not Applicable

J. Total Project Costs:

TOTAL REQUEST- TOTAL PROJECT COSTS (Sum of Total Direct Costs and Admin Costs)	\$9,069,000.00
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K. **BUDGET SUMMARY:**

Category	Year 1	Year 2*	Year 3*	Year 4*	Year 5*	Total Project Costs
Personnel						
Fringe						
Travel						
Equipment	\$1,069,000.00					\$1,069,000.00
Supplies						
Contractual	\$1,600,000.00	\$1,600,000.00	\$1,600,000.00	\$1,600,000.00	\$1,600,000.00	\$8,000,000.00
Other						



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Category	Year 1	Year 2*	Year 3*	Year 4*	Year 5*	Total Project Costs
Total Direct Charges	\$2,669,000.00	\$1,600,000.00	\$1,600,000.00	\$1,600,000.00	\$1,600,000.00	\$9,069,000.00
Administration						
Total Project Costs	\$2,669,000.00	\$1,600,000.00	\$1,600,000.00	\$1,600,000.00	\$1,600,000.00	\$9,069,000.00

*FOR FUTURE REQUESTED YEARS