



INTERGOVERNMENTAL AGREEMENT (IGA)

ARIZONA DEPARTMENT OF EDUCATION

1535 W. Jefferson, Bin # 37
Phoenix, Arizona 85007
(602) 364-2517

IGA No: 23-14-ED

**PROJECT TITLE: ESSER
COCHISE COUNTY
MENTAL HEALTH
CONSORTIUM PROJECT**

Effective Date: Upon Execution

Termination Date: 9/30/2024

Pursuant to Arizona Revised Statutes (A.R.S.) § 11-952 *et seq.* this Intergovernmental Agreement is entered into by the Arizona State Board of Education ("BOARD"), acting through the Arizona Department of Education ("ADE"), an agency of the State of Arizona, and **Cochise County** ("CONTRACTOR"). Pursuant to A.R.S. § 11-951 *et seq.* both parties are authorized to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies.

Therefore the ADE and the CONTRACTOR agree to abide by all the terms and conditions set forth in this agreement.

For and on behalf of the CONTRACTOR: **Cochise County**

For and on behalf of the Arizona Department of Education

1415 Melody Lane Bldg. C

1535 W Jefferson Street, Bin # 37
Phoenix, Arizona 85007

Bisbee Arizona 85603

Ann English 10-11-23

Signature of Person Authorized to Sign Date

Signature of Person Authorized to Sign Date

Ann English

Printed Name

Printed Name

BOE, Chair

Title

Title

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with A.R.S. § 11-952, this agreement has been reviewed by the undersigned who has determined that this agreement is in appropriate form and within the powers and authority granted to the respective public body.

Christina Roberts

Signature

Signature

Christina Roberts, Chief Civil Deputy

Typed Name and Title

Typed Name and Title

10/11/2023

Date

Date



1. Purpose of Agreement

The purpose of this agreement is for CONTRACTOR to provide the Cochise County Mental Health Consortium Project as proposed and budgeted in enclosed documents titled "CochiESA Cochise County Education Service Agency ESSER LEA Capacity Building Support - Proposal Framework" dated 7/14/2022 and "Cochise County Mental Health Consortium ESSER Budget" dated 8/17/2022.

2. Term of Agreement

This agreement is effective upon execution of the Agreement through 9/30/2024 and can be renewed in accordance with Section 3, or be terminated in accordance with Sections 9 and 11.

3. Renewal of Agreement

This agreement may be renewed for additional terms, upon agreement of the CONTRACTOR and ADE, and by both parties signing an Amendment extending this Agreement. ADE shall prepare the Amendment for additional periods for both parties' signatures.

4. Scope of Services

ADE and the CONTRACTOR shall perform the obligations agreed to by each as set forth in Attachment "A," Scope of Work attached hereto and incorporated herein by reference.

5. Payment

As payment for full and satisfactory performance of the services, the ADE agrees to pay the CONTRACTOR based upon individual task orders submitted in accordance with the Scope of Work.

The Contractor shall submit invoices to accountspay@azed.gov and the invoices shall include:

- Company Name
- Complete address
- Telephone Number
- Contact Person
- Itemized services, description, quantity, unit of measure, unit price, and extended price of supplies delivered (including dates services were performed)
- Purchase Order Number
- Invoice date
- Contract number
- Invoice Number
- Shipping and payment terms



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The Contractor is responsible to ensure that all invoices submitted for payment are completed with the above information.

6. Changes

This agreement may only be changed in writing and must be signed by both parties and their duly authorized agents (an Amendment). In the event that state or federal law enacted after the effective date of this agreement conflicts with any term of this agreement, controlling law will apply and supersede that/those term(s). The parties agree to promptly consider an appropriate Amendment to the agreement to remove each conflict.

7. Arbitration

Both parties 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.

8. Breach

This agreement may be terminated by either party if the other party fails to fulfill its obligations.

9. Termination

Except as otherwise provided, this agreement may be terminated without cause upon thirty (30) days written notice by either party.

10. Governing Law

This agreement shall be governed and interpreted by the laws of the State of Arizona, and to the extent applicable, the Arizona Procurement Code (A.R.S. § 41-2501, et seq.) and the administrative rules promulgated thereunder (A.A.C. R2-7-901 et seq.).

11. Non-Availability of Funds

Every payment obligation of the Arizona Department of Education (ADE) 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 the agreement, this agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to ADE in the event this provision is exercised, and ADE shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

12. Cancellation for Conflict of Interest

Pursuant to A.R.S. § 38-511, the State of Arizona ("State"), its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract (agreement), without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political



subdivisions or any of the departments or agencies of either is, at any time while the contract (agreement) or any extension of the contract (agreement) is in effect, an employee or agent of any other party to the contract (agreement) in any capacity or a consultant to any other party of the contract (agreement) with respect to the subject matter of the contract (agreement). A cancellation made pursuant to this provision shall be effective when either party receives written notice of the cancellation unless the notice specifies a later time.

13. Non-Discrimination

The Parties shall comply with Executive Order 09-09, which mandates that all persons regardless of race, creed, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and 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 not discriminated against due to race, creed, color, religion, sex, age, national origin, political affiliation or disability.

14. Records

Pursuant to A.R.S. §§ 35-214 and 35-215, the CONTRACTOR shall retain and shall contractually require each subcontractor to retain all data, books and other records ("Records") relating to this agreement for a period of five years after completion of the agreement. All Records shall be subject to inspection and audit by the State at reasonable times. Upon request, the CONTRACTOR shall produce the original of any or all such Records.

15. Compliance Requirements for A.R.S. § 41-4401, Government Procurement: E-Verify Requirement

- A. The contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
- B. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.
- C. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.
- D. ADE retains the legal right to inspect the papers of any employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph A.

16. Confidentiality

ADE and CONTRACTOR may choose, from time to time, in connection with work contemplated under this agreement, to disclose confidential information to each other (Confidential Information). All such disclosures must be in writing and marked as Confidential Information. The Parties shall not disclose to unauthorized third parties any Confidential Information of the other Party and will use such information only for the purposes of this Agreement, and for three (3) years after the termination of this agreement; provided that the receiving Party's obligations hereunder shall not apply to information that: (A) is already in the receiving Party's possession at the time of disclosure; or, (B) is or later becomes part of the public domain through no fault



of the receiving Party; or, (C) is received from a third party with no duty of confidentiality to the disclosing party; or, (D) was developed independently by the receiving party prior to disclosure; or, E. is required to be disclosed by law or regulation.

Any information that is transmitted orally or visually, in order to be protected hereunder, shall be identified as such by the disclosing party at the time of disclosure, and identified in writing to the receiving party, as Confidential Information, within thirty (30) days after such oral or visual disclosure. The CONTRACTOR shall retain the right to refuse acceptance of such Confidential Information that is not required for the purposes of this agreement.

Both parties agree to comply with the federal Family Educational Rights and Privacy Act of 1974. This applies to all provisions of this agreement which involves identifiable individual student data.

17. Property Disposition

Disposition of property acquired for the purpose of this agreement, either by ADE or with funds provided by ADE, shall be determined by ADE upon termination or completion of the agreement. Upon termination or completion of this agreement, the CONTRACTOR shall provide ADE with a listing of all such property, and shall make arrangement to return or dispose of this property as directed by ADE. The CONTRACTOR shall provide ADE with an inventory for this property within 90 days of this agreement becoming effective, and annually thereafter.

18. Property of the State

Title and exclusive copyright to all reports, information, data, curricula, materials, and software prepared by CONTRACTOR in performance of this agreement shall vest in the State of Arizona.

19. Public Record

Both parties recognize that work product developed under this agreement become public information, except as limited by section 17, "Confidentiality."

20. Notices

All written communications shall be addressed and mailed or personally served as follows:

To the CONTRACTOR:

Jacqui Clay
Cochise County Schools
4001 E. Foothills Dr.
Sierra Vista, AZ 85635
Telephone: (520) 803-3380
Fax: (520) 458-5686
Email: jclay@cochise.az.gov

To ADE:

Peter Raquer
Procurement, Bin # 37
Arizona Department of Education
1535 West Jefferson
Phoenix, AZ 85007
Telephone: (602) 364-1851
Fax: (602) 364-0598
Email: Peter.Raquer@azed.gov

Technical Contact: Peter Laing



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Arizona Department of Education
1535 W Jefferson, Bin # 37
Phoenix, Arizona 85007

Telephone: (602) 364-3842
Email: Peter.Laing@azed.gov

21. Documents Incorporated By Reference

The Uniform Terms and Conditions and Uniform Instructions to Offerors are incorporated into this document by reference, and may be obtained by visiting:

<https://spo.az.gov/sites/default/files/documents/files/Uniform%20Terms%20and%20Conditions%20V9%20Rev%207-1-2013%29.pdf> for the **Terms and Conditions**

and

<https://spo.az.gov/sites/default/files/documents/files/Uniform%20Instructions%20to%20Offerors%20rev%209-2014%29.pdf> for the **Uniform Instructions to Offerors.**



**INTERGOVERNMENTAL AGREEMENT
ATTACHMENT A – SCOPE OF WORK**

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1. **Description of Project:** This grant would assist in providing funding for the Cochise Educational Service Agency (CochisESA) Mental Health Consortium. The consortium would provide a unique opportunity to provide mental health training to school employees, students, parents and community members in Cochise County. The Consortium will also augment services schools provide for special needs students. This grant will also assist in strengthening the partnerships between our schools and mental health organizations in Cochise County.

2. CONTRACTOR Responsibilities:

Contractor shall provide services per the enclosed Scope of Work and budget as proposed and agreed to as follows:

- Scope of Work ESA ESSER CochiseESA dated 7/14/2022 and Cochise County Mental Health Consortium – ESSER Budget dated 8/17/2022.

3. ADE Responsibilities:

- 3.1 Review all invoices and supporting documentation and approve, reject, or request additional information for, invoices submitted by Contractor. Upon review and approval of the invoice, pay all invoices through the Arizona Procurement Portal.
- 3.2 Payments will comply with A.R.S. Titles 35 and 41. Reimbursements for goods and services supplied by under this Contract shall be made in full within thirty days after receipt of goods or services and a complete and accurate invoice for payment has been received by the ADE.

4. Required Reports:

Contractor shall:

- 4.1 Provide ADE with all requested information it determines it needs to comply with all reporting requirements, and any additional reporting required in the future in furtherance of ADE's reporting duties to state and Federal agencies.



**INTERGOVERNMENTAL AGREEMENT
ATTACHMENT C – INTELLECTUAL PROPERTY**

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- **CONTRACTOR Materials and Inventions.** As between the parties, CONTRACTOR shall own all rights, title, and interests, in and to: all CONTRACTOR Materials and Inventions, including all patents, copyrights, trade secrets, and any other intellectual property rights pertaining thereto; all changes, modifications, updates or enhancements thereto made by CONTRACTOR; and all derivative works therefrom. CONTRACTOR shall grant to ADE for the duration of the term of the agreement a nonexclusive, worldwide right and license to copy, distribute, transmit, display, perform, create derivative works from, sub-license and otherwise use and exploit the CONTRACTOR Materials, in any medium now known or hereafter developed, provided that ADE and CONTRACTOR shall negotiate in good faith a mutually agreeable arrangement for an appropriate licensing fee payable to CONTRACTOR for any such license that will allow CONTRACTOR to recover any of its direct, out of pocket development costs in such CONTRACTOR Materials. To the extent any such license to ADE relates to CONTRACTOR Materials licensed from a third party and such third party license permits use of the Materials outside of the scope of this agreement or Statement of Work without any additional incremental charge, then the license between ADE and CONTRACTOR shall likewise not include any additional incremental charge (over and above cost recovery for CONTRACTOR) with respect to such Materials. Except as otherwise requested or approved by CONTRACTOR, ADE shall cease all use of the CONTRACTOR Materials upon expiration or termination of the agreement, and shall immediately return or destroy the same at CONTRACTOR's direction.
- **ADE Materials and Inventions.** From time to time, ADE may provide CONTRACTOR with certain ADE Materials. ADE shall own all rights, title, and interests in and to: all ADE Materials and Inventions including all patents, copyright, trade secrets, and any other intellectual property rights pertaining thereto; all changes, modifications, updates or enhancements thereto made by ADE or CONTRACTOR; and all derivative works therefrom. ADE hereby grants to CONTRACTOR a revocable, nonexclusive, non-assignable, non-transferable, worldwide limited right and license to copy, distribute, transmit, display, perform, create derivative works, sublicense and otherwise use and exploit the ADE Materials for the performance of the Services hereunder. The foregoing license does not give CONTRACTOR, and CONTRACTOR is not authorized, to sublicense such ADE Materials. Except as otherwise requested or approved by ADE, CONTRACTOR shall cease all use of the ADE Materials upon expiration or termination of the agreement, and shall immediately return or destroy the same at ADE's direction.
- **Joint Inventions.** During the term of this agreement, the parties jointly may conceive of Inventions relating to the provision of Services hereunder. In such event, CONTRACTOR and ADE shall jointly own any such Invention. All rights, title, and interests are jointly and equally shared by the CONTRACTOR and the ADE. In the event that such Inventions relate to Materials licensed from a third party and such third party requires fees for said Materials, each party shall be responsible for covering the costs of their use of these third party Materials outside the scope of this agreement. To the extent any such Inventions relates to Materials licensed from a third party and such third party license permits use of the Materials outside of the scope of this agreement or Statement of Work without any additional incremental charge, then likewise, there shall be no additional incremental charge to either party by the other with respect to such Materials.
- **Defined Terms.** For purposes hereof, the following terms have the following meanings:
 - **"Invention"** shall mean any idea, design, concept, technique, process, machine, discovery or improvement, whether or not patentable, conceived of or made solely or jointly by CONTRACTOR and CONTRACTOR's employees, or jointly by CONTRACTOR and CONTRACTOR's employees with one or more employees of ADE, during the term of this agreement and in the performance of this agreement, provided that either the conception or reduction to practice thereof occurs during the term of this agreement and in the performance of the agreement.
 - **"Materials"** shall mean any computer software, computer programs, architecture, computer functionalities, computer interfaces, computer code, computer files, images, photographs, designs, forms, data listings, or compilations or databases, graphics, artwork, text or writings, documents, abstracts and summaries thereof or any other related items or information reasonably required for the performance of the Services. "Materials" include Materials created by or for ADE ("*ADE Materials*") and Materials created by or for CONTRACTOR ("*CONTRACTOR Materials*").



**INTERGOVERNMENTAL AGREEMENT
ATTACHMENT D – INDEMNIFICATION AND INSURANCE**

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INDEMNIFICATION:

Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (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.

In addition, (insert name of other governmental entity) shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, 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 (insert name of other governmental entity)'s 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 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.

INSURANCE

I. Insurance Requirements for Governmental Parties to an IGA: NONE

II. Insurance Requirements for Any Contractors Used by a Party to the Intergovernmental Agreement:

(Note: this applies only to Contractors used by a governmental entity, not to the governmental entity itself.) The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained in the Intergovernmental Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors, and Contractor and the governmental entity are free to purchase additional insurance.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Damage to Rented Premises	\$ 50,000
• Each Occurrence	\$1,000,000



**INTERGOVERNMENTAL AGREEMENT
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- a. The policy shall be endorsed to include the following additional insured language: **“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.”** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

- b. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: **“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

- b. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

- c. Policy shall contain a severability of interest provision.

3. Worker's Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$ 500,000
 - Disease – Each Employee \$ 500,000
 - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.



**INTERGOVERNMENTAL AGREEMENT
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- B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:
1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S § 41-621 (E).
 2. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of its Contract with the other governmental entity(ies) party to the IGA.
- C. NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to the Department and shall be sent by certified mail, return receipt requested.
- D. ACCEPTABILITY OF INSURERS:** Contractors insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.
- All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.
- F. SUBCONTRACTORS:** Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. APPROVAL:** Any modification or variation from the *insurance requirements* in any Intergovernmental Agreement must have prior approval from the State of Arizona Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.
- H. EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.