



MEMORANDUM

Date: September 21, 2020

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "CH", is written over the printed name "C.H. Huckelberry".

Re: Intergovernmental Agreement between Pima County and City of Tucson for Repayment of COVID-19 Testing Expenses

I am attaching a copy of Intergovernmental Agreement to be placed on the Board Agenda of October 6th for the purpose of accepting City of Tucson Cares Act funding for COVID-19 testing primarily for the Udall Center, El Pueblo Center and other mobile testing that may be occurring throughout the County. It is important that rapid response testing occur through a mobile platform in order to maximize individual test participation. In addition, the Udall Center has been operating since August 7, 2020 and has conducted over 4,741 tests. The El Pueblo Center testing site is just now been initiated and mobile testing has occurred since Labor Day.

The City has also provided assistance in staffing and to FEMA and DEMA mobile drive thru-testing sites at the Rodeo grounds and Sunnyside High School.

The Intergovernmental Agreement allows the City of Tucson to recoup its expenses and providing assistance and/or contracts services related to the testing sites, it is anticipated these expenses will be nominal and that a significant portion of the \$2 million dollars allocated in this intergovernmental agreement will spent on COVID-19 testing.

To date, Pima County through our testing throughout the pandemic beginning in March of 2020 through September 15th has expended \$12.6 million dollars in COVID-19 testing. It is likely that before December 31st the County will expend another \$12 to \$15 million dollars in COVID-19 testing, hence the 2 million dollar contributions from the City of Tucson is very much appreciated.

Attachment

c: Jan Leshner, Chief Deputy County Administrator
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer, Health and Community Services
Terry Cullen, MD, MS, Public Health Director, Pima County Health Department
Regina Kelly, Director, Grants Management and Innovation Office
Louie Valenzuela, Community Health Assessment and Assurance Division Manager, Health Department

**Intergovernmental Agreement
between
Pima County and the City of Tucson
for
Repayment of COVID-19 Testing Expenses**

This Intergovernmental Agreement (IGA) is entered into by and between Pima County, a body politic and corporate of the State of Arizona (“County”) and the City of Tucson, Arizona (“City” or “Tucson”), pursuant to A.R.S. § 11-952.

Recitals

- A. County and City may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, et seq.
- B. County is authorized by A.R.S. § 36-182 to operate the Pima County Public Health Department and to administer testing for the COVID-19 pandemic in Pima County.
- C. The City of Tucson is authorized by Chapter 7, Section 1(28) of the Tucson City Charter to preserve the health of its citizens and suppress disease.
- D. This Agreement is entered into pursuant to the Governor of Arizona's State of Emergency Proclamation dated March 11, 2020 and the Mayor of Tucson's Proclamation of Emergency dated March 17, 2020, and Proclamation of Continuing Emergency dated March 27, 2020, in response to COVID-19, and is directly related to the COVID-19 emergency and is necessary for the preservation of public health and safety.
- E. The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by the 116th U.S. Congress and signed into law by President Donald Trump on March 27, 2020 in response to the economic fallout of the COVID-19 pandemic in the United States. The County and City have obtained CARES Act funding for COVID-19 response costs within Pima County.
- F. The City of Tucson desires to expend \$2 million (\$2,000,000) of its CARES Act funding on COVID-19 testing for members of the public in locations within the City of Tucson, including the City's Udall Park testing center and other testing centers. Some of this \$2 million will be expended directly by the City of Tucson to fund this effort through set-up costs for Udall Park, as well as “blitz” mobile testing services and the ancillary support costs at the Rodeo and Sunnyside sites; the remainder will be allocated to reimburse Pima County on a monthly basis for its testing expenses.
- G. The County and City have already informally collaborated on a testing program that is operating in various locations and testing members of the public as of the date of this Agreement.

NOW, THEREFORE, County and City, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

Agreement

1. **Purpose.** The purpose of this IGA is to coordinate the testing of members of the public for COVID-19 and to reimburse the County for its portion of the \$2 million City of Tucson CARES Act testing program.
2. **County and City COVID-19 Testing Expenses.** Pima County and the Pima County Health Department and the City of Tucson continue to incur testing costs for members of the public at City of Tucson testing locations, including Udall Park. The City will pay the County for its testing expenses as part of the City/County program until the total of such funds for both City and County expenses are exhausted.
3. **City Testing Expenses.** City will incur testing costs based on facility set-up costs and other non-budgeted ongoing costs for operating the City/County testing sites. The City Liaison, as established in Section 6, below, will keep records of the City's site-related set-up and ongoing operational costs and provide monthly updates to the County Liaison, as established in Section 5, below. The City Liaison will provide a summation of City-related costs for setting up and operating the program through the month that this Agreement becomes effective to the County ten (10) days after the close of that month, and thereafter on a monthly basis.
4. **County responsibilities.** The County will provide monthly invoicing of its testing costs to the City of Tucson Liaison established in Section 6, below. Testing costs include: (1) County's actual contracted costs for each test for each member of the public.
 - a. **Initial Invoice.** The County's initial invoice after the adoption of this Agreement shall include the County's entire testing costs as requested by the City incurred prior to the effective date of this Agreement, plus all testing costs during the remainder of the month during which this Agreement becomes effective.
5. **Financing.** The City will reimburse the County for all of its monthly testing invoices for any month during which the total of County testing expenses and City testing expenses as of the receipt of the County's monthly bill is less than \$2 million (\$2,000,000.00), within 30 days of receipt of the monthly invoice. The City Liaison will provide such running totals to Pima County upon payment of each invoice. If the total of City and County expenses should exceed \$ 2 million (\$2,000,000.00) upon the receipt of any County invoice, the City will pay its expenses first with the remaining sum and then pay as much of the County's testing expenses as may be paid without exceeding the \$2million (\$2,000,000.00) in total expense.
 - a. County recognizes that it may not receive full payment of its testing expenses during a final monthly billing cycle.
 - b. City recognizes that the total expenses for this testing program may exceed \$2 million (\$2,000,000.00) if it incurs site operating expenses during any monthly billing cycle that exceed the remainder of available funding, as determined by the City Liaison.

6. **LIAISONS.** Each Party designates a LIAISON for purposes of executing this agreement and resolving any issues that may be posed during its term. The liaisons are responsible for coordinating the City/County testing program, resolving any issues regarding locations and setup, determining the proper location and staging of any ancillary testing locations, and generally ensuring the smooth functioning of this agreement during its term.
 - a. The City Liaison is: Lane Mandle, Public Information Officer
 - b. The County Liaison is:
7. **Term.** This IGA will expire on December 31, 2020, per the terms of the CARES Act. Should Congress and the President authorize another coronavirus “relief” package with funding for similar City/County efforts, or that allows CARES Act monies to be expended after December 31, 2020, prior to the expiration of such period, this Agreement may be extended by written amendment of the parties for a term concurrent with any such authorization without returning to the Parties’ governing bodies for such authorization.
8. **Termination:** Either party may terminate this Agreement by providing written notice of termination from their respective liaison to the other party’s liaison. A termination notice provided during any month will be sufficient to terminate the agreement upon the conclusion of the following month, followed by payment and exchange of the final monthly invoice, which could take as little as 59 days and as long as 92 days.
9. **Disposal of Property.** Upon the termination of this IGA, all property involved will revert back to the owner. Termination will not relieve any party from liabilities or costs already incurred under this IGA, nor affect any ownership of property pursuant to this IGA.
10. **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”) for bodily injury of any person (including death) or property damage, but only to the extent that such injury or damage is caused or alleged to be caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers.
11. **Insurance.** Each party is aware of the other party’s self-insured status and agrees to maintain at its own expense, during the entire term of this IGA, any required insurance to satisfy financial responsibility associated with claims, including attorney fees outlined in section 10, above.
12. **Compliance with Laws.** The parties will comply with all federal, state and local laws, rules, regulations, standards and Executive Orders. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this IGA and any disputes. Any action relating to this IGA will be brought in a court in Pima County.
13. **Non-Discrimination.** The parties will not discriminate against any employee, client or any other individual in any way because of that person’s age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties under this IGA. The

parties will comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this IGA by reference.

14. **ADA.** The parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
15. **Severability.** If any provision of this IGA, or any application of a provision to the parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this IGA that can be given effect without the invalid provision or application.
16. **Conflict of Interest.** This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
17. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Board of Supervisors or the [insert governing body of other entity] does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the parties will have no further obligations under this IGA other than for payment for services rendered prior to cancellation.
18. **Legal Authority.** Neither party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, will be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
19. **Worker's Compensation.** Each party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each party is solely responsible for the payment of Worker's Compensation benefits for its employees.
20. **No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA will be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between a party and the employees of the other party. Neither party will be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
21. **No Third Party Beneficiaries.** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

- 22. Notice.** Any notice required or permitted to be given under this IGA must be in writing and served by delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party) :

County:

City:

[Name & title]
[address]

[Name & title]
[address]

With copies to:

- 23. Entire Agreement.** This document, and any exhibits attached to it, constitutes the entire agreement between the parties pertaining to the subject matter addressed, and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this IGA. This IGA may not be modified, amended, altered or extended except through a written amendment signed by the parties.

[Signature page to follow]

In Witness Whereof, County has caused this IGA to be executed by the Chairman of its Board of Supervisors, upon resolution of the Board, and attested to by the Clerk of the Board, and [Insert party abbrev.] has caused this Intergovernmental Agreement to be executed by the _____ upon resolution of the _____ and attested to by _____.

PIMA COUNTY:

CITY OF TUCSON

Chairman
Board of Supervisors

Mayor

ATTEST:

ATTEST:

Clerk of the Board

City Clerk

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and the City of Tucson has been reviewed by the undersigned, each of whom has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the party he or she represents.

PIMA COUNTY:

CITY OF TUCSON:

Deputy County Attorney

Principal Assistant City Attorney