



MEMORANDUM

Date: February 3, 2021

To: Julie Castañeda
Clerk of the Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Professional Services Contract with Banner-University Medical Group for COVID-19 Vaccination Services**

This contract was recently completed and needs to be executed as soon as possible under the emergency provisions of the COVID-19 declaration.

CHH/dym

Attachment

c: The Honorable Sharon Bronson, Chair, Board of Supervisors
Andrew Flagg, Chief Civil Deputy County Attorney

Pima County Department of Health

Project: COVID-19 Vaccination Services

Contractor: Banner-University Medical Group
2701 E. Elvira Road
Tucson, AZ 85756-7124

Amount: \$5,000,000.00

Contract No.: CT-HD-21-301

Funding: Health Special Revenue Fund, function code HDCOVID19V, Unit 2877

PROFESSIONAL SERVICES CONTRACT

1. Background, Parties and Authority

1.1. Parties. This Contract is between Pima County, a body politic and corporate of the State of Arizona ("County"), and Banner-University Medical Group ("Contractor").

1.2. Authority. On March 19, 2020, the Board of Supervisors declared a state of emergency due to the spread of COVID-19 in Pima County. Under Pima County Code Section 11.12.060, that declaration allows the procurement director to waive normal procurement practices upon a declaration of an emergency by the Board of Supervisors in order to do all things necessary to meet the County's emergency needs.

2. Term.

2.1. Initial Term. The term of this Contract commences on January 15, 2021 and will terminate on April 30, 2021 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.

2.2. Extension Options. Both parties may renew this Contract for up to four (4) additional periods of up to 90 days each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

3. Scope of Services. Contractor will provide County with the services described in **Exhibit A** (3 pages), at the dates and times described in Exhibit A.

4. Compensation and Payment.

4.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit B** (1 page). Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.

- 4.2. Maximum Payment Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$5,000,000.00 (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.
- 4.3. Sales Taxes. The payment amounts or rates in **Exhibit B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.
- 4.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in **Exhibit B**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County shall reimburse Contractor within 30 days of receipt of invoice.
- 4.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.

5. **Insurance**

- 5.1. Contractor, at Contractor's own expense, shall maintain the herein stipulated minimum insurance and may utilize a program of self-insurance to satisfy the insurance requirements of this Contract.
- 5.2. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted.
- 5.3. Contractor's insurance may be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.
- 5.4. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.
- 5.5. The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention.
- 5.6. The insurance policies required by this Contract, except Workers' Compensation, Professional Liability and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- 5.7. The policies required hereunder, except Workers' Compensation and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

5.8. Commercial General Liability.

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 Products/Completed Operations Aggregate, and \$4,000,000 General Aggregate Limit. The policy shall include coverage for premises liability, bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provisions which would serve to limit third party action over claims. There shall be no endorsement or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

5.9 Workers' Compensation.

Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

Contractor, its contractors and its subcontractors, waive all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor, its contractors and its subcontractors pursuant to this Contract.

5.10 Cyber, Network Security and Privacy Liability.

Cyber, Network Security and Privacy Liability Insurance with a limit of not less than \$2,000,000 per occurrence. The policy shall include, but not be limited to; coverage for all directors, officers, agents and employees of the Contractor, losses with respect to network risks (such as data breaches, unauthorized access or use, and ID theft of data), invasion of privacy (regardless of the type of media involved in the loss of private information), crisis management, identity theft response costs, breach notification costs, credit remediation, and credit monitoring, defense, and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, electronic data restoration expenses (data asset protection), network business interruption, computer fraud coverage, funds transfer loss, third-party fidelity, theft, no requirement for arrest and conviction, and loss outside the premises of the named insured.

5.11 Hospital Professional Liability and Medical Malpractice

Medical Malpractice insurance and, if necessary, Commercial Umbrella insurance, which will insure and provide coverage for Medical Malpractice of the Contractor, with limits of no less than \$3,000,000 for each claim.

5.12 Commercial General Liability Policy shall include bodily injury, property damage and broad form contractual liability coverage. The policy shall be endorsed to include coverage for physical/sexual abuse and molestation. The minimum limits are:

General Aggregate	\$4,000,000
Each Occurrence Limit	\$2,000,000
Personal/Advertising Injury	\$1,000,000

5.13 Certificates of Insurance.

Contractor shall furnish the County with valid and complete certificates of insurance or self-insurance letter as required by the Contract in the form provided by the County, as evidence that policies providing the required coverage, conditions and limits required by this contract are in full force and effect. Such self-insurance letter shall identify this contract number and title.

In the event any insurance policy(ies) required by this Contract is(are) written on claims made basis, coverage shall extend for two years past completion and acceptance of Contractor's work or services and as evidenced by annual self-insurance letters.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to County upon renewal.

5.14 Cancellation and Expiration Notice

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to Pima County. Contractor must notify Pima County, within ten (10) business days of receipt, if they receive notice of a policy that has been or will be suspended, canceled, has expired, or will be expiring. Such notice shall be sent directly to Pima County Risk Management and shall be mailed, or hand delivered to 130 W. Congress Street, 9th Floor, Tucson, AZ 85701.

6. **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.
7. **Laws and Regulations.**
 - 7.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.
 - 7.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.
 - 7.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.
8. **Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of Pima County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract

- and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.
9. **Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
 10. **Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.
 11. **Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor 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.
 12. **Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).
 13. **Authority to Contract.** Contractor warrants its right and power to enter into this Contract.
 14. **Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
 15. **Cancellation for 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 into this Contract by reference.
 16. **Termination by the Parties.**
 - 16.1. Without Cause. Either party may terminate this Contract at any time without cause by notifying the other party, in writing, at least 30 days before the effective date of the termination. In the event of such termination, County's obligation to Contractor will be payment for services rendered prior to the date of termination.
 - 16.2. With Cause. Either party may terminate this Contract at any time without advance notice and without further obligation when the other party is in default of any provision of this contract.

16.3. **Non-Appropriation.** Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

17. **Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:
Theresa Cullen, MD
Director
Pima County Health Department
3950 S. Country Club Rd., Suite 100
Tucson, AZ 85714

Contractor:
David Bixby
Chief Legal Officer & General Counsel
Banner Health
2901 N. Central Ave, Suite 160
Phoenix, AZ 85012

18. **Non-exclusive Contract.** Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason
19. **Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
20. **Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract
21. **Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
22. **Public Records.**

22.1. **Disclosure.** Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

22.2. **Records Marked Confidential; Notice and Protective Order.** If Contractor reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as

reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

23. Legal Arizona Workers Act Compliance.

If Contractor, under this Contract, furnishes labor, time or effort to County within the State of Arizona, the following applies: Contractor warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws. A breach of this paragraph will be deemed a material breach of this Contract that subjects Contractor to penalties up to and including termination of the Contract. County retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with this warranty.

- 24. Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
- 25. Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.
- 26. Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

This agreement will become effective when all parties have signed it. The effective date of the agreement will be the date this agreement is signed by the last party (as indicated by the date associated with that party's signature).

PIMA County

Contractor

Chairman, Board of Supervisors

Authorized Officer Signature

Date

Printed Name and Title

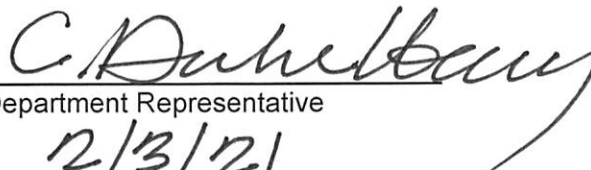
Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO CONTENT



Department Representative
2/3/21
Date

APPROVED AS TO FORM



Deputy County Attorney
Stacey Roseberry

Print DCA Name

2/2/2021

Date

Exhibit A (3 pages)

Scope of Services

Contractor shall perform activities related to the continuing management and operation of point(s) of dispensing to administer COVID-19 vaccine. The focus of this scope of work is on activities associated with the administration of COVID-19 vaccine to the PHASE IB population. Activities associated with additional populations and phases may be offered as mutually agreed upon amendments to this work upon agreement of both parties. The following are integral and material components or functional requirements for PHASE IB:

Contractor Roles and Responsibilities. Contractor shall provide the following:

1. Establish and operate site(s) for 90 days, with option to expand or consolidate as needed and mutually agreed upon:
 - a. Banner University Medical Center North Campus, 3838 N Campbell Ave Bldg. 2, Tucson, AZ 85719
 - b. Kino Sports Park, next to Banner University Medical Center South Campus, 2500 E Ajo Way, Tucson, AZ 85713
2. Vaccine operations: Monday through Friday from 0900-1700, Saturday 0900-1700 and Sunday 0900-1300. Hours may be adjusted to ensure target vaccine.
3. Hours of operation may be suspended based on weather or other situations.
4. Provide telephone and web-based support for patients registered and appointed through the Banner scheduling platform.
5. Provide 3 security officers including one manager splitting time between both North and South pod.
6. Initially provide vaccine to Phase 1A and identified priority 1B populations of 75 years of age and older. Once all appointments cannot be filled with these populations, Banner and Pima County will jointly determine to expand operations to other IB, 1C and other categories.
7. Clinical supplies, equipment, and services that relate to the vaccination of patients.
8. Provide for the transport and safe disposal of biohazardous waste.
9. Execute the staffing plan identified for the populations to manage daily operations and administer vaccine.
10. Establish an appointment schedule to provide a minimum 1500 appointments per day for the prioritized vaccine population, with a target escalation to 3000 combined, based on vaccine allocation and staffing. Reimbursement for vaccine administration above the total of 30,000 over 30 calendar days will be \$5 per additional vaccine administered.
11. Establish a process to filter population for appointments based on current guidelines and be held harmless if patients falsify information.
12. Establish an operations plan which includes all aspects of site operations; provide required staff including immunizers and support staff; vaccinate population with two doses of vaccine as per medication guidelines.
13. Establish a logistics plan, in coordination with the County, which includes all aspects

- of logistics, supply, security of vaccine from time received until administered, services, cold chain management, and waste disposal (medical and non-medical).
14. Identify site leadership to participate in County led POD operation meetings.
 15. Operate an online scheduling system.
 16. Establish and document the services of a contractor to provide on-site BLS/EMS services in support of the clinical vaccine operation. Services to be billed to County.
 17. Bill insurance companies of insured individuals receiving vaccine for reimbursement of the established federal administration fee rate for COVID-19 vaccine dose 1 and dose 2.
 18. Continue to report all State and County required data as required by Executive Order.
 19. Provide County with daily reports as agreed upon by Banner and County, including at a minimum a weekly summary report of vaccines administered by risk priority category as well as number and severity of adverse reactions.

County Roles and Responsibilities. County shall provide the following:

1. Allocate vaccines for 1A and 1B populations as they are made available by the State and Federal government.
2. Provide accessible hotline and website information for all vaccine populations prior completing registration and appointment process.
3. Provide staffing support through volunteer pool, Pima County employees or other contractor to supplement Banner staffing and by mutual accord.
4. Provide South site logistics and support to include:
 - a. Provide appropriate access to all parking areas at the South pod as needed for site operations.
 - b. Public restrooms for staff
 - c. Public restrooms for patients via port-a- johns
 - d. Install, set up, maintain and tear down of staff break tents.
 - e. Install, set up, maintain and tear down of tent structures for vaccine operations.
 - f. Install, set up, maintain and tear down of security fencing to deter unauthorized entry.
 - g. Access to electricity and sufficient power for site operations.
 - h. Dedicated indoor space for work/break room, locked storage, restrooms
 - i. Portable heaters/air conditioners, lights, tables and chairs
 - j. Regular trash collection/waste management
 - k. Way finding/directional signage
 - l. On-site security to include 6 security officers during operating hours.
 - m. Provide 1 uniformed officer.
 - n. Provide traffic and lane control support including cones and barriers.

Both parties agree to the following:

1. Regular and consistent meetings
2. Collaboratively work together when issues arise.
3. Inform of any changes in key personnel.
4. Determine expansion to other population categories.
5. Identify a space on the South/Kino Stadium for media interactions.
6. Adjust hours of operation as mutually agreed upon.

Exhibit B (1 page)
Rates

Summary of Agreed Support provided to Banner Health

Items	Amount
BLS/EMS support contract Invoice monthly by Banner to County for actual on-site services. Estimated at \$69,000 per 90 days.	\$69,000
IT Infrastructure Support	\$10,000
Start- up Supplies	\$10,000
Incentive for exceeding 30,000 vaccines administered over a 30 calendar day period at \$5 per vaccine over 30,000	\$5/vaccine