MEMORANDUM

Date: May 28, 2019

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

From: C.H. Huckelberry
County Administrator

Re: **Consent Calendar Item #3 on the June 4, 2019 Board of Supervisors Agenda – Town of Oro Valley Intergovernmental Agreement for Oro Valley Innovation Labs (OVIL) Funding and transition to a University of Arizona Center for Innovation – Oro Valley**

The biotechnology or bioscience industry is a major high tech employer in Pima County. This industry develops, compounds and other treatment protocols that can be used to address a range of issues in health care, crop production and agriculture, non-food uses of crops, and development of biodegradable and other environmental uses. The University of Arizona has been a leader in biotechnology experimentation and intellectual property creation including immunotherapy and a wide range of products that have been successfully utilized globally. The Bio5 Institute is an excellent example of cross discipline collaboration with game changing outcome.

This regional expertise has enabled the attraction and growth of world-wide research companies such as Ventana Medical Systems (now Roche Ventana), Sanofi (now Icogen), as well as Accellerate, a tenant in the County owned Herbert K. Abrams building. Combined with the University programs and a number of other smaller companies, southern Arizona has become a bioscience cluster.

This industry has the highest average employee pay in the state of Arizona and one of the highest in the nation. It is important that our region continue to provide support in order for southern Arizona to become a magnet for bioscience companies. With the amount of research at The University of Arizona and many of the other Bioscience companies in the area, there is a need to provide an ecosystem where the developers of intellectual properties and innovative products have support at all levels from startups through the attraction of major biotechnology employers, academia, and investors.

Expansion of this industry is also a critical component of the Pima County Economic Development Plan. A number of community members and those involved in biotechnology, bioscience and pharmacy are working to advance development of a bioscience/biotechnology incubator in the Oro Valley area, near existing major bioscience employers within Oro Valley.

Based on industry experience there is significant demand for such an incubator in the Oro Valley area. It has been proposed that a 4000 square foot incubator be constructed by a

local developer and leased to a non-profit operator with 3 years of free rent and a gradually increasing rent over the next 7 years. The Town of Oro Valley recognizing the importance of attracting primary export based employers has agreed to contribute $10,000 this fiscal year and $50,000 next fiscal year in advancing the incubator. With the Board's approval, the County would match these funds through an Intergovernmental Agreement (IGA) with the Town of Oro Valley for economic development purposes. These funds together with other funding sources are available to construct a small incubator and begin operation of the facility.

Recently the founders of the incubator concept formed the Oro Valley Innovation Labs of which I am a Board Member. Over the years, there has been a great deal of discussion with regard to university participation in such an incubator. In fact, in an earlier concept version of an Oro Valley incubator, Arizona State University was to be a prime sponsor. Recently a decision has been made that the major operating partner of the incubator will be the Campus Research Corporation who also operates the University of Arizona Tech Park at Rita Road. Given the University's activities in bioscience through Bio5, the College of Pharmacy, and the College of Medicine, it is believed that an Oro Valley incubator will be highly successful, hence my confidence in investing in this venture.

The Campus Research Park Board of Directors recently approved a proposal to accept the offer of the non-profit Oro Valley Innovation Labs to operate the 4000 square foot incubator as the University of Arizona Center for Innovation – Oro Valley.

If approved by the Board, Pima County will contribute through an IGA with Oro Valley, $10,000 this fiscal year and $50,000 next fiscal year from Economic Development revenues, in support of other community partners including Venture West, Roche Ventana, Icogen, the Town of Oro Valley and the University of Arizona. The commitment of these partners and others will provide the catalyst to advance this badly needed Center for Innovation.

I recommend the Board approve the Intergovernmental Agreement with the Town of Oro Valley for Biotechnology Development Collaboration.

CHH/dr

c: The Honorable Joe Winfield, Mayor, Town of Oro Valley
Mary Jacobs, Town Manager, Town of Oro Valley
Carol Stewart, Associate Vice President, Tech Parks Arizona
Jan Lesher, Chief Deputy County Administrator
John Moffatt, Director, Economic Development

INTERGOVERNMENTAL AGREEMENT
between
PIMA COUNTY and ORO VALLEY
for
BIOTECHNOLOGY DEVELOPMENT COLLABORATION

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 Town of Oro Valley, a municipal corporation of the State of Arizona ("**Oro Valley**"), pursuant to A.R.S. §11-952.

RECITALS

A. County and Oro Valley 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 § 11-254.04 to engage in economic development activities.

C. Oro Valley is authorized by A.R.S. § 9-500.11 to engage in economic development activities.

D. The biotech industry in Pima County has developed primarily through expansion of firms that were formed and expanded locally.

E. The biotech industry has the highest average pay rates in Pima County and potentially in the State of Arizona.

F. Oro Valley is the focal point of local biotech development within Pima County, with a history of collaborating effectively with world class pharmaceutical and drug testing companies to locate and expand in the community.

G. Oro Valley Innovation Labs ("**OVIL**") is an Arizona nonprofit corporation that was formed in 2015 for the purpose of conducting and supporting educational and translational research efforts and programs to promote bioscience either alone or in collaboration with public and private educational and other institutions. It is a 501(c)(3) tax-exempt entity.

H. OVIL is planning to lease a facility being constructed in Oro Valley, adjacent to Roche Molecular Solutions and Icagen, with approximately 4,000 square feet of lab and office space that OVIL will make available to budding bioscience startups for research, clinical trials, and other development activities, in order to foster the growth of this industry in Oro Valley and Pima County (the "**Incubator Project**"). The Incubator Project will help enable the commercialization in Pima County of translational science in the areas of genomics and artificial intelligence, among others. These transformational technologies will generate new bio economy entrants into Pima County.

I. The UA Veterinary College is scheduled to open in Oro Valley in 2020, which, together with the addition of the Incubator Project, will generate additional collaborations between academic and commercial enterprises utilizing transformational technologies.

J. The Town Council and the Board of Supervisors have determined that providing funding for the Incubator Project will assist in the creation and retention of jobs and will otherwise improve and enhance the economic welfare of the inhabitants of Oro Valley and the County.

NOW, THEREFORE, County and Oro Valley, 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 agreement is to provide funding from Pima County to Oro Valley for contribution to the Incubator Project, with matching funding provided by Oro Valley.

2. **Oro Valley's Responsibilities.** Oro Valley will:

   2.1 Engage in activities to facilitate the Incubator Project organizational and physical development.

   2.2 Contract with OVIL to provide the funding and cooperation for the Incubator Project as contemplated in this IGA, with Pima County named as a third-party beneficiary of that contract. The contract between Oro Valley and OVIL will require OVIL to use all funds provided by either Oro Valley or the County to pay its out-of-pocket costs for the Incubator Project. The contract will state that no funds provided by the County may be paid by OVIL to any private entity or individual as a direct economic incentive or used for travel outside the State of Arizona by any person or for entertainment expenses.

   2.3 In the contract with OVIL, require OVIL to provide reports allowing Oro Valley and the County to monitor the use of funding provided to insure appropriate application of those funds. This will include a quarterly reporting system that outlines activities, successes and challenges for the prior quarter, and describes how any funds provided by Oro Valley and Pima County have been used.

   2.4 Provide copies of the above monitoring reports to the Pima County Administrator.

   2.5 Invest up to $10,000 in the Incubator Project in Fiscal Year 2018-2019 and notify Pima County of such investment.

   2.6 Invest up to $50,000 in the Incubator Project in Fiscal Year 2019-2020 and notify Pima County of such investment.

   2.7 Designate an official or employee to be the official liaison with County with respect to the Incubator Project.

   2.8 Pay to OVIL, pursuant to Oro Valley's agreement with OVIL, the funds contributed by County under this IGA.

3. **Pima County's Responsibilities.** County will:

   3.1 Upon notice of payment from Oro Valley, provide a match of up to $10,000 for Oro Valley's investment in the Incubator Project in Fiscal Year 2018-2019.

   3.2 Subject to budgeting and appropriation, upon notice of payment from Oro Valley, provide a match of up to $50,000 for Oro Valley's investment in the Incubator Project in Fiscal Year 2019-2020.

   3.3 Payments will be made to Oro Valley upon review of reports referenced in Section 2 above and upon receipt of notices in from Oro Valley as described above.

   3.4 Designate an official or employee to be the official liaison with Oro Valley with respect to the Incubator Project.

4. **Term**. This IGA will be effective on the date it is fully executed by both parties and will continue for a period of two (2) years unless it is, prior to the expiration of such period, extended or terminated by agreement of the parties.

5. **Indemnification.** Oro Valley will indemnify, defend and hold harmless Pima County, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature which result from any act or omission of Oro Valley, its agents, employees or anyone acting under its direction, control or on its behalf except to the extent caused by County's own negligence.

6. **Insurance.** Each party will obtain and maintain at its own expense, during the entire term of this IGA the following type(s) and amounts of insurance:

   a) Commercial General Liability in the amount of $1,000,000.00 combined single limit Bodily Injury and Property Damage.

   b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of $1,000,000.00 combined single limit or $1,000,000.00 Bodily Injury, $1,000,000.00 Property Damage.

   c) If required by law, workers' compensation coverage including employees' liability coverage.

   Each party will provide thirty (30) days written notice to the other party of cancellation, non-renewal or material change of coverage.

   The above requirement may be alternatively met through self-insurance pursuant to A.R.S. §§ 11-261 and 11-981 or participation in an insurance risk pool under A.R.S. § 11.952.01, at no less than the minimum coverage levels set forth in this article.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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 Oro Valley Town Council 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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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:

Charles Huckelberry
County Administrator
130 W. Congress, 10th Floor
Tucson, Arizona 85701

With copies to:

County Administrator
130 West Congress St., 10th Floor
Tucson, Arizona 85701

Clerk of the Board
130 West Congress, 5th Floor
Tucson, Arizona 85701

Oro Valley:

Mary Jacobs
Town Manager
11000 N. La Canada Drive
Oro Valley, Arizona 85737

18. **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.

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 Oro Valley has caused this Intergovernmental Agreement to be executed by the Mayor of the Town of Oro Valley upon resolution of the Oro Valley Council and attested to by Town Clerk.

PIMA COUNTY:

_____
Chairman
Board of Supervisors

ATTEST

_____
Clerk of the Board

TOWN OF ORO VALLEY:

_____
Mayor
Oro Valley Town Council

ATTEST

_____
Town Clerk

Approval as to Content

The foregoing Intergovernmental Agreement between Pima County and the Town of Oro Valley has been reviewed by the undersigned, and is hereby approved as to content.

Dr. John Moffatt
Pima County Director of Economic Development

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and the Town of Oro Valley 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:	**TOWN OF ORO VALLEY:**
Deputy County Attorney	Town Attorney