



MEMORANDUM

Date: December 18, 2013

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: **John A. Valenzuela Youth Center Intergovernmental Agreement Between Pima County and the City of South Tucson**

At the December 17, 2013 Board of Supervisors meeting, a number of questions were asked regarding this intergovernmental agreement (IGA). Of particular concern was the thought the IGA was a retroactive agreement. Given that none of the \$113,000 appropriated has been spent, I expressed my belief that the IGA was not retroactive but that it did cover the fiscal year during which the Board appropriated program funding.

No payments have been made pursuant to the IGA under Article III, Paragraph B, because the IGA was not executed by the City of South Tucson. Deputy County Administrator Hank Atha indicated the primary reason for the lack of execution related to a change of administration in the City of South Tucson.

Questions arose from the Board regarding Article IV, Paragraph C, with the belief that these items were a cost component of the IGA. As explained at the meeting, it is not and never has been. It is a restatement requested by South Tucson for certain improvements desired by the City for the facility being utilized by Pima Vocational High School (PVHS).

As the Board will recall, location of the Mulcahy YMCA in the Kino Recreation Center displaced the PVHS function at Kino; and the program was located to the John Valenzuela Youth Center. The relocation actions were approved by the Board on October 4, 2011, before the present District 1 Supervisor took office; and the amount allocated for the relocation was \$175,000, which covered improvements needed for new locations at both John Valenzuela and at Ina Road. Items 1 through 5 in Paragraph C of Article IV relate to improvements needed for school operations at John Valenzuela and that South Tucson requested be legally recognized in the contract as County expenses during the tenant improvements associated with PVHS. All of the costs are covered within the original Board allocation. The improvements have been completed, and the cost associated with each is as follows:

The Honorable Chairman and Members, Pima County Board of Supervisors
Re: **John A. Valenzuela Youth Center IGA Between Pima County and South Tucson**
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Item	Description	Amount
C.1	Lavatory Upgrades	\$ 5,615
C.2	Water Fountain and Commercial Water Heater Replacement and Urinal Repair	5,860
C.3	Telephone System Replacement with County Standard VOIP, including Computer Link	9,756
C.4	Exit Door Installation	600
C.5	Security Lighting	825
Total		\$22,656

Again, as stated in the meeting, no expenditures were made in the amount authorized in the IGA before the Board approved the IGA on December 17, 2013. The tenant improvements at the John Valenzuela Youth Center have been completed with expenditures previously authorized by Board action.

CHH/mjk

Attachment

c: Hank Atha, Deputy County Administrator for Community and Economic Development

**INTERGOVERNMENTAL AGREEMENT
BETWEEN PIMA COUNTY AND
CITY OF SOUTH TUCSON**

CONTRACT
NO. <u>CT-CS-14000000000000000000 222</u>
AMENDMENT NO. _____
This number must appear on all invoices, correspondence and documents pertaining to this contract.

Project Name: John A. Valenzuela Youth Center ("JVYC")
City: City of South Tucson
1601 S. 6th Avenue
Tucson, Arizona 85713
Purpose: Provide youth programs.
Funding: Pima County General Fund
Agreement Term: July 1, 2013 through June 30, 2014
Agreement Amount: \$113,000.00

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into between the **City of South Tucson**, a municipal corporation, ("**South Tucson**"), and **Pima County**, a political subdivision of the State of Arizona, ("**County**"), for the purpose of entering into a cooperative effort for the provision of youth programs and recreation activities.

Recitals

WHEREAS, in accordance with A.R.S. § 11-952 *et seq.* South Tucson and County are expressly authorized to enter into intergovernmental agreements for the joint exercise of powers; and

WHEREAS, pursuant to A.R.S. §§ 11-251(17) and 11-254.04, County may appropriate and spend public monies for the preservation of the health of the county and in connection with economic development activities that the respective Boards of Supervisors determines will otherwise improve or enhance the economic welfare of the inhabitants of the County; and

WHEREAS, the City of South Tucson operates the John A. Valenzuela Youth Center ("JVYC"), a recreation facility, to provide year round youth programs and recreation activities to benefit the residents and community of South Tucson; and

WHEREAS, the Pima County Board of Supervisors finds that JVYC activities will enhance academic performance, economic opportunities, and fitness of youth participants.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I – PURPOSE

The purpose of this Intergovernmental Agreement is to set forth the responsibilities of the parties for delivery of youth programs and address legal and administrative matters among the parties.

ARTICLE II – TERM/EXTENSION

- A. The term of this Agreement shall commence on July 1, 2013 and terminate on June 30, 2014. County, upon mutual consent of the parties and if funding so warrants, shall have the option to renew this Agreement for up to four (4) 12-month periods or any portion thereof.

- B. Any modification or extension of the Agreement termination date shall be by formal written amendment executed by the parties hereto.

ARTICLE III – COMPENSATION

- A. Funding is from Pima County General Fund.
- B. The County agrees to provide funding to South Tucson. Payments to South Tucson for the term of this Agreement shall not exceed \$113,000.00 to be provided in two (2) payments of \$56,500.00 due payable after this Agreement is executed by both parties and April 1st of each year.

ARTICLE IV – SCOPE OF WORK/SERVICES

- A. All services shall comply with the requirements and specifications as called for in this Agreement.
- B. South Tucson shall:
1. Provide youth programs and offer recreational services at JVYC. Services shall include, but are limited to, arts, crafts, indoor activities, fitness, dances and club activities for the youth and the community.
 2. Schedule and coordinate events to be provided for youth and the community at JVYC.
 3. Gather, maintain and compile information about program performance such as attendance, number of program activities offered, and program evaluations to be submitted as an annual performance report to the County by June 15 of each year.
 4. Pay utilities directly to the proper authorities.
 5. Pay for janitorial services needed by JVYC.
 6. Provide space for County to operate a school-to-work secondary education program and allow access to County and its contractors to complete the physical improvements set forth in Paragraph IV(C).
 7. Designate a point of contact for Pima County to coordinate space-sharing arrangements.
 8. Submit a detailed expenditure report as an attachment to the annual performance report.
- C. County will be responsible for the following tenant improvements required by code for the operation of the school-to-work secondary education program.
1. Lavatory upgrades
 2. Water fountain replacement
 3. Telephone system replacement
 4. Installation of exit door
 5. Security lighting
- D. Both South Tucson and County understand that there will be no taxes payable relative to the premises or personal property. In the event that such taxes are incurred, South Tucson shall bear the obligation of any taxation.
- E. Upon execution of the Agreement, South Tucson shall provide a detailed line-item budget indicating the proposed uses of funding for biannual allocations.

- F. Reconciliation of the payment received with the actual costs incurred shall be completed by July 15 for the prior contract year's activities or through a subsequent audit. In the case that payment exceeds expenditures, South Tucson shall refund to County the difference between the amount paid by County and costs incurred for activities covered under this Agreement.

ARTICLE V – TERMINATION/SUSPENSION

- A. Termination for Convenience: County reserves the right to terminate this Agreement at any time and without cause by serving upon South Tucson 30 days advance written notice of such intent to terminate. In the event of such termination, the County's only obligation to South Tucson shall be payment for services rendered prior to the date of termination.
- B. Insufficient Funds: Notwithstanding paragraph A above, if any state or federal grant monies used to pay for performance under this Agreement are either reduced or withdrawn, County shall have the right to either reduce the services to be provided and the total dollar amount payable under this Agreement or terminate the Agreement. To the extent possible, County will endeavor to provide fifteen (15) days written notice of such reduction or termination. In the event of a reduction in the amount payable, County shall not be liable to South Tucson for more than the reduced amount. In the event of a termination under this paragraph, County's only obligation to South Tucson shall be payment for services rendered prior to the date of termination to the extent that grant funds are available.
- C. Termination for Cause: This Agreement may be terminated at any time without advance notice and without further obligation to the County when South Tucson is found by County to be in default of any provision of this Agreement.
- D. Suspension: County reserves the right to suspend South Tucson's performance and payments under this Agreement immediately upon notice delivered to South Tucson's designated agent in order to investigate South Tucson's activities and compliance with this Agreement. In the event of an investigation by County, South Tucson shall cooperate fully and provide all requested information and documentation. At the conclusion of the investigation, or within forty-five (45) days, whichever is sooner, South Tucson will be notified in writing that the Agreement will be immediately terminated or that performance may be resumed.

ARTICLE VI – INSURANCE

Parties are self insured under the State of Arizona Self Insurance Program. All minimum levels of insurance are met.

ARTICLE VII – DISPOSAL OF PROPERTY

Upon the termination of this Agreement, all property involved shall revert back to the owner. Termination shall not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of property pursuant to this Agreement.

ARTICLE VIII – 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.

ARTICLE IX – COMPLIANCE WITH LAWS

Both parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Agreement and any disputes hereunder. Any action relating to this Agreement shall be brought in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules and regulations during the terms of this Agreement shall apply, but do not require an amendment.

ARTICLE X – NON-DISCRIMINATION

Both parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors**. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website:

http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf

These provisions are hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, South Tucson shall 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.

ARTICLE XI – AMERICAN DISABILITY ACT (ADA)

Both Parties shall 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. Each party shall maintain accessibility to the program to the same extent and degree required under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

ARTICLE XII – SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable to the full extent permitted by law.

ARTICLE XIII – CONFLICT OF INTEREST

This Agreement 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.

ARTICLE XIV – NON-APPROPRIATION

Notwithstanding any other provision in this Agreement, this Agreement may be terminated if for any reason, there is not sufficient appropriated and available money for the purpose of maintaining County or other public entity obligations under this Agreement. In the event of such termination, County shall have no further obligation to South Tucson, other than for payment for services rendered prior to termination.

ARTICLE XV – LEGAL AUTHORITY

Neither party warrants to the other its legal authority to enter into this Agreement. If a court, at the request of a third person, should declare that either party lacks authority to enter into this Agreement, or any part of it, then the Agreement, or parts of it affected by such order, shall be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.

ARTICLE XVI – WORKER'S COMPENSATION

Each party shall comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the operations of protocol in place, and said party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.

ARTICLE XVII – NO JOINT VENTURE

It is not intended by this Intergovernmental Agreement to, and nothing contained in this Intergovernmental Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any South Tucson employees, or between South Tucson and any County employees. Neither party shall be liable for any debts, accounts, obligations nor 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.

ARTICLE XVIII – NO THIRD PARTY BENEFICIARIES

Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or effect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

ARTICLE XIX – NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by delivery or by certified mail upon the other party as follows:

Pima County:

Arthur Eckstrom
Director
Pima County One Stop
2797 E. Ajo Way
Tucson, AZ 85713

City of South Tucson:

Luis Gonzales
South Tucson Manager
City of South Tucson
1601 S. 6th Avenue
Tucson, Arizona 85713

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ARTICLE XX – ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement shall not be modified, amended, altered or extended except through a written amendment signed by the parties and recorded with the Pima County Recorder or Arizona Secretary of State, as appropriate.

IN WITNESS THEREOF, we have hereunto set our hands the day and year first written above.

**THIS AGREEMENT MAY BE SIGNED IN
COUNTERPARTS.**

PIMA COUNTY

CITY OF SOUTH TUCSON

Chair, Board of Supervisors

Mayor

Date

Date

ATTEST

Clerk of the Board

Town Clerk

Date

Date

APPROVED AS TO CONTENT



Pima County Community
Services Department

APPROVED AS TO FORM

Pursuant to A.R.S. § 11-952(D), the attorneys for the parties have determined that the foregoing Agreement is in proper form and is within the powers and authority granted under the laws of this State to the parties.



Karen S. Friar
Deputy County Attorney, Pima County

City Attorney