

10/14/2020

## INTERGOVERNMENTAL AGREEMENT FOR COVID-19 TEST FUNDING

This Intergovernmental Agreement, dated October 14, 2020 (the “Agreement”), is entered into by and between Larimer County, Colorado (“County”), and Town of Johnstown (the “Municipality”), located at 450 S Parish Ave, Johnstown, CO 80534.

### **Background:**

The County has entered into an intergovernmental agreement (“CSU-IGA”) with Colorado State University (“CSU”) to increase diagnostic testing for COVID-19 for residents of the County. The CSU-IGA is attached and incorporated herein as Exhibit A. The CSU-IGA outlines the processes and financial elements of the increased testing as agreed to between the County and CSU. The Municipality agrees, subject to the terms of the CSU-IGA, that it will pay for a portion of the County’s share of the cost of testing as follows:

#### **Section 1. Services.**

- 1.1 CSU will perform the testing services described in the CSU-IGA.

#### **Section 2. Compensation.**

2.1 CSU has entered into an agreement with the County and with the Colorado Department of Public Health and Environment to perform testing services and to increase their lab testing capacity. As part of that agreement CDPHE has agreed to pay for 50% (\$50.00) of each test for residents of Larimer County. Larimer County has agreed to pay CSU for the remaining 50% (\$50.00) for each test processed for residents of Larimer County.

2.2 The Municipality agrees to pay County a set amount of \$2,574.00 as its contribution toward securing the additional testing capacity and to help fund the County’s share (50%) (\$50.00) of each test administered for a resident of the County. All payments from the Municipality pursuant to this Agreement will be kept in a separate account and used to pay CSU for the administration of tests. Any money which is not used for testing by December 30, 2020 will be reimbursed to the Municipality, unless otherwise negotiated by the parties.

2.3 The County will invoice the Municipality for its full contribution of \$2,574.00 by October 23, 2020 and the Municipality shall pay within 21 days.

**Section 3. Contractual Relationship.** In the performance of all services to be rendered hereunder: no party shall be authorized or empowered to act as agent for the other party for any purpose and shall not on the other party’s behalf attempt to enter into any contract, agreement, warranty, or representation as to any matter. It is understood and agreed by the parties that the County is an independent contractor with respect to the Municipality and that this Agreement is not intended and shall not be construed to create an employer/employee or a joint venture relationship between the Municipality and the County. The County shall be free from the direction and control of the Municipality in the performance of the County’s obligations under this Agreement. To avoid any doubt, this Agreement does not intend to create any joint venture, partnership, “teaming” or joint collaborative arrangement between the County and the Municipality.

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**Section 4. Meetings and Communication.** Throughout the term of this Agreement, the County shall regularly communicate with the Municipality regarding any Services or results.

**Section 5. Record Keeping**

5.1 The County understands that the Municipality intends to submit for reimbursement under the Corona Virus Relief Fund (CVRF) the expense incurred under this agreement to the Colorado Department of Local Affairs. The County will retain records of the CSU-IGA, this Intergovernmental Agreement, invoices received from CSU, and evidence of payment of said invoices. These materials shall be available to the Municipality upon request as documentation of the eligibility of the expense incurred by the Municipality.

**Section 6. Term and Termination.**

6.1 Project Period. The Agreement will be effective as of the latest of the execution dates set forth below, and continue at all times through December 30, 2020, unless terminated earlier below. This period may be amended by mutual written agreement of the Municipality and the County.

6.2 Extensions of Project Period. The parties may by mutual agreement in writing extend the project period.

6.3 Termination. Either party may terminate this agreement on ten (10) days prior written notice to the other. Upon termination, the County shall return any unused funds deposited by Municipality to the Municipality.

**Section 7. Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be sent by confirmed e-mail or facsimile transmission (FAX) to the number or addresses set forth below (in each such case notice shall be deemed given on the date of transmission), or by overnight air courier service or by registered or certified mail, return receipt requested, postage prepaid and properly addressed, to the addresses set forth below, or such other address as a party may hereafter provide notice of to the other:

If to the County:  
Tom Gonzales,  
Public Health Director  
1525 Blue Spruce Dr,  
Fort Collins, CO 80524  
970-498-6700  
gonzaltr@co.larimer.co.us

and

Frank Haug  
Larimer County Attorney's Office  
224 Canyon Avenue  
Fort Collins, CO 80521  
970-498-7450  
haugfn@co.larimer.co.us

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If to the Municipality

Matt LeCerf  
Town Manager  
P.O. Box 609  
Johnstown, CO 80534  
970-587-4664  
mlecerf@townofjohnstown.com

**Section 8. Miscellaneous.**

8.1 Entire Agreement. This Agreement expresses the entire agreement between the parties. All prior negotiations, understandings, promises and agreements, oral or written, are superseded hereby.

8.2 Amendments. Any amendment to this Agreement or any exhibit or attachment to this Agreement must be in writing and signed by the parties. No waiver of any term or required performance of this Agreement shall be valid and enforceable unless in writing and signed by the authorized representative for the party granting the waiver. The waiver by any party of a breach of any term or required performance of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party or a breach of the entire Agreement.

8.3 Severability. If any of the provisions of this Agreement shall be determined to be illegal or unenforceable by a court of competent jurisdiction, the other provisions shall remain in full force and effect.

8.4 Force Majeure. No party will be responsible for delays resulting from causes beyond its reasonable control, including without limitation fire, explosion, flood, war, strike, or riot; provided that the non-performing party uses reasonable efforts to avoid or remove those causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever the causes are removed.

8.5 Interpretation. Words expressed in the singular number shall include the plural and vice versa, and words expressed in the masculine shall include the feminine and neuter genders and vice versa. References to "day" or "days" are to calendar days. The words "include," "includes," and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of similar import. The headings contained in this Agreement and in the schedules and exhibits hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement, including the meaning or intent of the provision that follows.

8.6 No Third-Party Beneficiary. Except as expressly provided herein, this Agreement is for the sole benefit of the parties and their permitted successors and assignees and nothing herein expressed or implied will give or be construed to give any person, other than the parties and such successors and assignees, any legal or equitable rights hereunder.

8.7 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, and by different parties hereto in separate counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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8.8 Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied of any of the immunities, rights, benefits or protections available to either party under the Colorado Governmental Immunity Act as now in effect or hereafter amended.

8.9 Funding Availability. The Municipality's and County's financial obligations under this Agreement are contingent upon the annual appropriation, budgeting and availability of specific funds to discharge those obligations, and that no change orders will be issued for the project unless appropriations exist to cover any increased costs to the Municipality and County. Nothing in this Agreement shall create a payment guaranty by either party or a debt or a multiple-fiscal year financial obligation under the Colorado Constitution or any similar provisions of the Municipality's charter or ordinances.

\* \* \*

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The parties have each affixed their signatures below and enter into this Agreement as of the date first set forth above.

**Larimer County, Colorado**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Johnstown, Colorado**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_