

APPROVED

JUL 15 2021

BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 21-126

DATE July 15, 2021

C.D. Various

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: MEMORANDUM OF UNDERSTANDING WITH THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH TO PROVIDE ABBOTT BINAXNOW ANTIGEN TESTING AT DEPARTMENT OF RECREATION AND PARKS FACILITIES

AP Diaz	_____	M. Rudnick	_____
H. Fujita	_____	C. Santo Domingo	_____
* J. Kim	<u>JK</u>	N. Williams	_____

M. Sluce
General Manager

Approved X Disapproved _____ Withdrawn _____

If Approved: Board President *Agripa Petanusa* Board Secretary *F. Hamilton*

RECOMMENDATION

1. Approve the Memorandum of Understanding (MOU), substantially in the form attached to this Report as Attachment 1, between the Department of Recreation and Parks (RAP) and the California Department of Public Health (CDPH) to provide Abbott BinaxNOW Antigen Testing at various RAP facilities, subject to the approval of the City Attorney as to form;
2. Authorize RAP's General Manager to execute the MOU subsequent to all necessary approvals; and
3. Authorize RAP's General Manager, or Designee, to make technical corrections as necessary to carry out the intent of this Report.

SUMMARY

The University of Southern California (USC) is collaborating with the Office of Mayor Eric Garcetti and the Los Angeles County Department of Public Health on a study to examine the use of coronavirus rapid antigen tests. The goal of this study is to find the best methods for using these inexpensive tests to reopen schools and businesses.

Rapid tests have the potential to quickly alert people who are contagious and need to isolate, thereby limiting the number of new infections. Los Angeles is one of the first metropolitan areas in the country to launch a large-scale pilot study of rapid tests in both symptomatic and asymptomatic participants. The first part of the study included firefighters and frontline essential

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numbers of students and develop real-world guidance for using rapid antigen testing to safely reopen schools.

Youth at select RAP Summer Play LA sites will be offered rapid antigen tests and parents will be asked to complete an online survey to better understand the opinions of rapid antigen testing for students.

SUMMARY OF MOU BETWEEN RAP AND CDPH

The purpose of the MOU is to establish the scope, terms, conditions, and requirements for the use of laboratory testing of samples for SARS-CoV-2 using the Abbott BinaxNOW antigen test.

CDPH will supervise and oversee, under its state clinical laboratory registration and federal Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver, laboratory testing of the collected samples for SARS-CoV-2 using their own equipment and supplies.

RAP shall be responsible for the direct oversight of the testing personnel at the designated temporary Summer Play LA testing sites and shall ensure that personnel meet the training and competency criteria delivered by CDPH. Using partners from the LA LOCAL HIRE program, the newly hired health screeners will be trained and responsible for the onsite administration and data entry for this program.

FISCAL IMPACT

Approval of this MOU will have no fiscal impact on RAP's General Fund. CDPH will be responsible for the cost of the Abbott BinaxNOW testing at the select Summer Play LA testing sites.

ATTACHMENT

1. MOU between RAP and CDPH to provide Abbott BinaxNOW Antigen Testing at various RAP facilities
2. RAP facility listing of testing locations for the Summer of 2021

This Report was prepared by Deanne A. Dedmon, Acting Region Superintendent, Pacific Region.

**CDPH K-12 SCHOOL LABORATORIES
MEMORANDUM OF UNDERSTANDING
City of Los Angeles, Department of Recreation and Parks & CDPH**

1. Term

- A.** The term of the Memorandum of Understanding (“MOU”) shall be from the date of execution (the “Effective Date”) until thirty (30) days after the lifting of the declaration of the COVID-19 state of emergency.
- B.** In addition to any other provision of this MOU, the California Department of Public Health (“CDPH”) or the City of Los Angeles, a municipal corporation acting through its Department of Recreation and Parks (“Participant”), may terminate this MOU or cancel a portion of the service for any reason with fourteen (14) days written notice.

2. Service Overview

CDPH and Participant shall comply with the scope, the terms, conditions, and requirements set forth herein for the laboratory testing of samples for SARS-CoV-2 using the Abbott BinaxNOW antigen test.

3. Service Location

The services shall be performed at a temporary testing site identified by Participant that has been approved by the Laboratory Director of CDPH K-12 School Laboratories.

4. Project Representatives

- A.** The project representatives during the term of this MOU will be

<p>California Department of Public Health Sabel Davis</p> <p>Telephone: (916) 865-8717 E-mail: testing.taskforce@cdph.ca.gov</p>	<p>City of Los Angeles, Department of Recreation and Parks Jimmy Kim</p> <p>Telephone: (213) 202-2633 E-mail: jimmy.kim@lacity.org</p>
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- B.** Direct all general inquiries to:

<p>California Department of Public Health</p> <p>Attention: Megan Cornejo 850 Marina Bay Parkway City, CA, 95899-7413</p> <p>Telephone: (510) 231-7836 E-mail: SchoolBinax@cdph.ca.gov</p>	<p>City of Los Angeles, Department of Recreation and Parks</p> <p>Attention: Deanne A. Dedmon 1670 Palos Verdes Drive North Harbor City, CA 90717</p> <p>Telephone: (310)548-7643 E-mail: Deanne.dedmon@lacity.org</p>
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5. Services to be Performed by CDPH

CDPH shall supervise and oversee, under its state clinical laboratory registration and federal CLIA certificate of waiver, laboratory testing of collected samples for SARS-CoV-2 using equipment and supplies provided by CDPH. Samples will be tested only for SARS-CoV-2 using the Abbott BinaxNOW antigen test. CDPH shall also make available the services of an authorized health care provider (“Ordering Physician”) to make assignments for test reports for the performance of tests described in this MOU. CDPH, through CDPH Agreement 20-10982, has contracted with Primary Diagnostics, Inc. and via Primary Diagnostics, Inc. will provide patient registration services and laboratory and medical records data collection, management, storage, and reporting services.

6. Services to be Performed by Participant

Participant shall be responsible for the direct oversight of testing personnel at the designated temporary testing site and shall ensure that personnel meet the training and competency criteria established by the Laboratory Director of CDPH K-12 School Laboratories. Participant shall comply with all operational guidelines established by the Laboratory Director.

Participant shall be responsible for all of the following:

- 1) Comply with all requirements and specifications of the Laboratory Director, and its contractor, Primary Diagnostics, Inc., to ensure that all test results and data reporting, storage, and management requirements applicable under state and federal law are satisfied;
- 2) Maintain adequate site inventory control of tests;
- 3) Securely transmit copies of patient results and Participant site records, including, but not limited to quality control logs, testing personnel training records, and test inventory records, to CDPH in accordance with the operational guidelines established by the Laboratory Director, at the frequency determined by the Laboratory Director to ensure regulatory compliance, and upon the termination of the testing program, as described in Paragraph 8.H.;
- 4) Securely report and transmit, in accordance with the Laboratory Director’s operational guidelines, patient adverse event information and suspected false negatives, suspected false positives, and any significant test performance deviations to the CDPH Ordering Physician and CDPH Laboratory Director via a secure CDPH electronic mail address to be identified by the CDPH Laboratory Director.

7. Payment and Billing

Unless otherwise agreed to in writing, CDPH will be responsible for the cost of the Abbott BinaxNOW tests used to perform testing on samples at the temporary testing site identified by the Participant. The Participant may not charge for the cost of the Abbott BinaxNOW tests provided by CDPH. The parties will otherwise bear their own costs in providing services under this MOU. Nothing under this MOU precludes either party from seeking payment from health plans, insurers, or other third-party payers (“Third Party Payers”) for services rendered. It is the expectation of CDPH that Participants will not balance bill patients for amounts billed to but not paid by Third Party Payers.

8. Confidentiality of Information/Data and Privacy Use

- A. Use and Disclosure of Data Set:** For purposes of this MOU, "Protected Data" means any data obtained and stored by the Participant while undergoing any of the activities described in this MOU. Participant agrees to maintain the confidentiality of the Protected Data. Participant agrees not to use or disclose any Protected Data in any manner not permitted by applicable state or federal health information privacy laws and shall require that its directors, officers, employees, contractors, subcontractors and agents do not use or disclose the Protected Data in any manner that would constitute a violation of this MOU.
- B. Legal Authority:** Participant and CDPH have the legal authority to exchange the Protected Data pursuant to California Health and Safety Code sections 131050 and 120175.
- C. Minimum Necessary Information:** Participant agrees, to the extent Protected Data is shared, only the minimum necessary Protected Data for the accomplishment of CDPH and Participant's goals will be shared.
- D. California Civil Code section 1798.29:** CDPH and Participant agree to comply with applicable privacy breach notification laws, including California Civil Code section 1798.29, with regard to the Protected Data. Participant agrees to notify CDPH as soon as practicable, without unreasonable delay, of any breach that triggers a response under this section.
- E. Safeguards Against Misuse of Information:** CDPH and Participant shall use appropriate administrative, technical, and physical safeguards to prevent use (sharing, employment, application, utilization, examination, or analysis of information) or disclosure of the Protected Data that is prohibited under applicable state and federal health information privacy laws:
- CDPH and Participant shall comply with the information security standards, which standards shall be at least as stringent as those set forth in NIST 800-53. These standards shall also include encryption of the Protected Data using a FIPS 140-2 certified algorithm, such as AES, with a 128bit key or higher when Protected Data is being sent outside Participant's network boundary.
 - Each party is individually responsible for abiding by the applicable laws and regulations pertaining to the Protected Data in its possession.
 - Nothing in this MOU shall relieve either party from abiding by relevant laws or regulations.
- F. Agreements by Third Parties:** Participant shall require each subcontractor or agent it intends to grant access to the Protected Data to agree to materially the same terms of this MOU in writing.
- G. No Third-Party Beneficiaries:** Nothing express or implied in the terms and conditions of this MOU is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Participant and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- H. Return or Destruction of Protected Data on Expiration or Termination:** Upon expiration or termination of the MOU between Participant and CDPH for any reason, Participant shall securely return or destroy the Protected Data. If return or destruction is not feasible, Participant shall provide a written

explanation to CDPH using the contact information listed in Paragraph 4. When the Protected Data is no longer needed, the MOU has terminated, or any retention period has expired, it must be sanitized. All electronic or physical forms of Protected Data must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization.

- I. **Survival:** If Participant does not return or destroy the Protected Data upon the completion or termination of the MOU, the respective rights and obligations of Participant under clauses D, E, and H of this Paragraph shall survive the completion or termination of the MOU between Participant and CDPH.
- J. **No HIPAA Business Associate Agreement or Relationship Between CDPH and Participant:** This MOU and the relationship it memorializes between CDPH and Participant do not constitute a business associate agreement or business associate relationship pursuant to Title 45 of the Code of Federal Regulations, Part 160.103 (definition of “business associate”). Accordingly, this MOU is neither intended to, nor at any time shall result in, nor shall be interpreted or construed by the parties as to create a business associate relationship between CDPH and Participant. By signing this MOU, CDPH and Participant expressly disclaim the existence of any business associate relationship.

9. **Indemnification**

Pursuant to Government Code Sections 895.2 and 895.4, each party hereto indemnifies and holds harmless the other party, its boards, as applicable, council, as applicable, officers, agents, employees and independent contractors from and against any and all loss, cost, damage, expense, claims and liability, including, court costs and reasonable attorneys’ fees (collectively “**Claims**”) imposed by law upon such other party which results from, or is caused by, any negligent or wrongful act or omission occurring in the performance of this Agreement by the indemnifying party or its officers, directors, agents, employees, contractors, invitees, guests and licensees. In the event that third-party loss is attributable to the negligence or wrongful act or omission of both parties, the ultimate financial responsibility of each party shall be proportionate to its percentage of fault as determined by mutual agreement between the parties or by a court of competent jurisdiction. The provisions of California Civil Code Section 2778 regarding interpretation of indemnity agreements are made a part hereof as if fully set forth herein. Notwithstanding anything herein to the contrary, in no event shall the parties be liable to each other for any consequential damages sustained by the other party. The provisions of this Section 9 shall survive the expiration or sooner termination of this MOU with respect to any Claims occurring prior to such expiration or termination.

10. **Avoidance of Conflict of Interest by Participant:**

- A. CDPH intends to avoid any real or apparent conflict of interest on the part of the Participant, subcontractors, or employees, officers and directors of the Participant or subcontractors. Thus, CDPH reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Participant to submit additional information or a plan for resolving the conflict, subject to CDPH review and prior approval.

- B.** Conflicts of interest include, but are not limited to:
 - 1. An instance where the Participant or any of its subcontractors, or any employee, officer, or director of the Participant or subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under this MOU would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of this MOU.
 - 2. An instance where the Participant's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C.** If CDPH is or becomes aware of a known or suspected conflict of interest, the Participant will be given an opportunity to submit additional information or to resolve the conflict. A Participant with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDPH to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDPH and cannot be resolved to the satisfaction of CDPH, the conflict will be grounds for terminating this MOU. CDPH may, at its discretion upon receipt of a written request from the Participant, authorize an extension of the timeline indicated herein.

11. Dispute Resolution

Any dispute concerning a question of fact arising under the terms of this MOU that is not disposed of within fifteen (15) calendar days by the Participant and State employees normally responsible for the administration of this MOU shall be brought to the attention of the designated representative for the Participant and the Deputy Director CDPH (or designated representative) for joint resolution.

12. Execution

This MOU may be executed in counterparts with the same force and effectiveness as though executed in a single document. The parties agree that an electronic copy of a signed agreement, or an electronically signed agreement, has the same force and legal effect as an agreement executed with an original ink signature. The term "electronic copy of a signed agreement" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed agreement in a portable document format. The term "electronically signed agreement" means an agreement that is executed by applying an electronic signature using technology approved by the State. The provisions of this MOU supersede any previous Agreement entered into between the Participant and CDPH.

In witness whereof, this Memorandum of Understanding has been executed by the parties hereto:

California Department of Public Health

By: _____

Print name: Sabel Davis

Title: Testing Task Force Lead Contract

Date: _____

**Participant: City of Los Angeles,
Department of Recreation and Parks**

By _____

Print name: _____

Title: _____

Date: _____

Rapid Antigen Testing Sites - Summer 2021

109th Street Rec Center	1464 E 109th Street, Los Angeles 90059
Algin Sutton Rec Center	8800 South Hoover St., Los Angeles 90044
Banning Rec Center	1331 Eubank Street, Wilmington 90744
D.M. Gonzales Rec Center	10943 Herrick Ave, Pacoima 91331
El Sereno Rec Center	4721 Klamath St., Los Angeles 90032
Evergreen Rec Center	2844 E 2nd Street, Los Angeles, CA 90033
Harbor City Rec Center	24901 Frampton Ave., Harbor City 90710
Hazard Rec Center	2230 Norfolk St., Los Angeles 90033
Hollenbeck Rec Center	415 S St. Louis Street, Los Angeles, 90033
Hubert H. Humphrey Rec Center	12560 Filmore Street, Pacoima 91331
Lafayette Multipurpose Community Center	625 S. Lafayette Park Place, Los Angeles 90057
Martin Luther King Jr. Rec Center	3916 S. Western Ave., LA 90062
Pecan Rec Center	145 S. Pecan St., Los Angeles 90033
Peck Park Community Center	560 North Western Ave., San Pedro 90732
Wabash Rec Center	2765 Wabash Ave., Los Angeles 90033