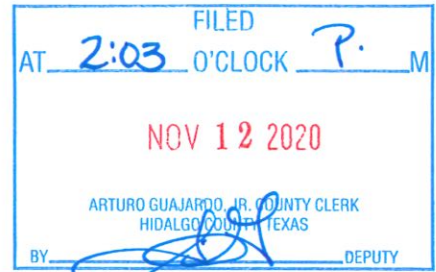


THE STATE OF TEXAS
COUNTY OF HIDALGO

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**CONTRACT FOR SERVICES
C-20-363-11-10**

THIS AGREEMENT is made as of the 10th day of **November 2020** by and between **HIDALGO COUNTY, TEXAS**, a political subdivision of the State of Texas (hereinafter "County") and **John Lung, M.D.** (hereinafter "Physician" and/or "Contractor") to serve at the pleasure of the Hidalgo County Commissioners' Court.

WITNESSETH:

WHEREAS, pursuant to Texas Government Code Section 2254.004 and Section 262.024, "The Professional Services Procurement Act," the County can select and contract with a professional services provider on the basis of demonstrated competence and qualifications to perform the services; and for a fair and reasonable price to assist the County by providing said services; and

WHEREAS, County desires to contract with a competent licensed physician to provide professional medical and related services for Hidalgo County, specifically, the residents of the Hidalgo County Adult Detention Facility (the "Clients") that are more specifically set forth hereinafter; and

WHEREAS, the parties recognize that medical and related services require the training, experience, and qualifications necessary to practice in the profession of medicine; and

WHEREAS, Physician has agreed to provide the services enumerated hereinafter for the Hidalgo County Adult Detention Facility (the “Jail”) in accordance with recognized medical or related standards and the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, for the mutual consideration expressed hereinafter, County and Physician agree as follows:

1. Physician agrees to provide to the Jail and its Clients the services required of a Physician as specified in the “Scope of Services/Requirements” attached as **Exhibit “A”** and incorporated herein for all purposes. These services include, but are not limited to the following:
 - (a) Providing and maintaining a medical license under which all medical activities of the Jail employees will take place;
 - (b) Providing standing delegation orders to nurse practitioners, nurses, and supervising medical procedures;
 - (c) Conduct physical examinations of the Clients as required by the Jail;
 - (d) Conducting other evaluations and tests on each client as required by the Jail;
 - (e) Interpreting the results of any test conducted under (c) or (d) above and submitting a written report to the Jail of the results of such tests and examinations, as required by the Jail, including but not limited to, the Radiology Tests (i.e. X-rays for all inmates) performed on Hidalgo County Inmates involving and/or subject to tuberculosis;
 - (f) Together with a nurse, provided at the sole cost and expense of the Jail, the Physician will conduct and/or oversee Sick Call Clinics for all inmates incarcerated at the Jail who require medical services four (4) hours a week. It will be the duty of the R.N. Supervisor, and/or Infirmary Administrator to organize additional clinic visits by the Physician to follow up on medications, treatments, and similar requirements;
 - (g) Physician shall adopt and implement workplace guidelines concerning inmates with AIDS and HIV infection and shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of Physician and for Clients, inmates, patients, and/or residents served by the Physician.

- (h) Provide consultation, hands-on treatment, and other related medical services to inmates while assessing their health needs and designing treatment plans during regularly scheduled visits to the Jail Facilities;
- (i) Physician shall refer inmates to a hospital or specialty clinic for treatment and care whenever the health care required is beyond the resources available at the jail;
- (j) Physician shall oversee the preparation, maintenance, and submission of all records that are designated, required, or prescribed by either the Jail or the Texas Commission on Jail Standards;
- (k) Physician shall permit Jail and the Texas Commission on Jail Standards to audit or inspect records and reports, review services and/or evaluate the performance of the services provided hereunder at any time;
 - 1. Physician shall provide reasonable access to all records, books, reports, and other data and information needed to accomplish reviews of activities, services, and expenditures of the Jail;
 - 2. Physician will order prescription medications utilizing the approved formulary provided by the jail, unless in the best interest of the patient as is deemed by the Physician;
 - 3. The qualified Physician must provide and maintain a Texas Controlled Substance Registration listing the Jail's physical address in order to maintain and store/stock medications needed by the Contract Physician and Detention Infirmiry Department;

2. **License.** Physician represents that he/she is licensed by the State of Texas and qualified to perform and execute the services provided above. If such license is suspended or revoked, this Contract shall automatically be terminated and Physician shall immediately notify the Hidalgo County Sheriff of such suspension or revocation.

3. **Consideration.** As consideration for the above and foregoing, Physician shall submit a monthly billing statement to the Jail (P.O. Box 1228, Edinburg, Texas 78540). Said statement must include an itemized list of services rendered to the Jail during the statement period. Upon receipt of said statement, the Jail shall submit a requisition for payment of said services in the customary manner provided for payments utilized by Hidalgo County, Texas. Physician shall be compensated according to the negotiated monthly amount as evidenced in **Exhibit "B"** entitled "Negotiated Monthly Amount" for the services provided to the Jail. County shall not be liable for costs incurred or performances rendered by

Physician before or after the Contract Term; for expenses not billed to County within the applicable time frames set forth in this Contract; or for any payment for services or activities not provided pursuant to the terms of this Contract. Physician shall be responsible for all mileage and other expenses related to the fulfillment of the requirements of the Contract.

4. **Independent Contractor.** Physician must comply with all applicable federal, state and local laws, rules, regulations, County and Jail policies. Notwithstanding the foregoing sentence, Physician represents and maintains that Physician is an independent contractor and is not an employee of the County, Texas, or any agency thereof, and represents and warrants that Physician does not desire or request any fringe benefits provided to employees of Hidalgo County, Texas, and/or any agency thereof, including, but not limited to benefits associated with Hidalgo County's Civil Service Program. Physician agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder. Physician will incur no financial obligation on behalf of the County without prior written approval of the County. Physician will be responsible for all personal and professional expenses, including, but not limited to, membership fees and dues and expenses of attending conventions and meetings.

5. **Term.** The term of this Contract shall be for a period of **two (2) years** and shall commence on **November 16, 2020** and end on **November 15, 2022** with the option to renew for an additional two (2) one (1) year periods under the same rates, terms and conditions reserved solely by the County. Hidalgo County reserves the right to continue this agreement for an additional sixty (60) day grace period at the end of the agreement terms for unforeseen delay in award of the new request for qualifications.

6. **Termination.** Physician agrees to give County two weeks notice of his intent to terminate the Contract; however, if County is unable to find a suitable replacement within that time, Physician agrees to continue as Physician for a period not to exceed thirty (30) additional days at the same compensation stipulated in this Contract so that County may have an additional period of time to find a suitable replacement. The County may terminate this agreement with or without cause with thirty (30) days written notice to Physician.

7. Contractor will be responsible for making arrangements acceptable to, and at no additional expense to the County, for adequate professional medical services coverage during any absence. The County shall not unreasonably withhold acceptance of any such arrangements. Contactor shall remain

responsible for the Services at all times during the term of this Agreement. However, the parties agree that the Contractor may have a qualified substitute physician render the Services. Contractor must submit the name of the qualified physician to the County and make all necessary arrangements for the performance of Services should Contractor not be available. **FAILURE TO PROVIDE ADEQUATE COVERAGE AS DESCRIBED HEREIN IS AN EVENT FOR WHICH THIS AGREEMENT MAY BE IMMEDIATELY TERMINATED WITHOUT PENALTY.** While this Agreement allows for a qualified substitute physician to render the Services, it is not the intent of the parties to have another physician other than Contractor perform the services on a regular basis. Any abuse of this substitute physician provision by Contractor, upon reasonable determination by the County, shall result in the County having sole discretion to terminate this agreement effective immediately.

8. General Provisions.

a. Insurance. Consistent with its status as an independent contractor and at its sole expense, Contractor agrees that throughout the duration of the work under this contract and any extension hereof, it shall provide and maintain in full force and effect any and all insurances which may be necessary in providing Services or are otherwise required by law. Insurance policies shall cover, but are not limited to, Contractor's activities and all persons, vehicles, equipment and property, connected with providing Services, to include theft and loss, and including, but not limited to professional liability insurance covering Contractor's activities in providing the services to County. Coverage shall be in the amounts specified by the County in the Procurement Packet/Specifications or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et seq., Texas Civil Practices and Remedies Code. These requirements do not establish limits of Contractor's liability. Contractor is responsible for ensuring all required insurance policies are valid for the duration of the contract. All insurance policies are to be issued by an insurance contractor authorized to do business in the State of Texas and acceptable to County. Contractor shall cause all subcontractors utilized by Contractor to also

comply with these specifications. For each applicable policy, Contractor shall name the County as an additional insured. Contractor shall notify County a minimum of thirty (30) days in advance of cancellation of all or part of a policy. Contractor shall notify County in writing within 24 hours of any claim or demand against County or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract. Contractor shall make any other insurance documentation available to County upon request. Contractor shall furnish to County certificate(s) of coverage, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect (See Exhibit "C" attached hereto and incorporated herein for all purposes) within ten (10) calendar days of execution and/or renewal of this Contract on an Acord Form Certificate of Liability.

b. Assignment. Contractor may not assign the obligations or rights under this Contract to any person without the prior written consent of County.

c. Notice. Except as may be otherwise specifically provided in this Contract, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to County:	County of Hidalgo, Texas Attention: County Judge 100 East Cano, 2 nd Floor Edinburg, Texas 78539
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If to Contractor:	John Lung M.D. 2104 Scout Lane Mission, Texas 78572
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Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

d. INDEMNIFICATION. THE CONTRACTOR WILL INDEMNIFY AND HOLD COUNTY HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, LIABILITY AND EXPENSES (INCLUDING COST OF JUDGMENTS, SETTLEMENTS, COURT COSTS, AND ATTORNEY'S FEES, REGARDLESS OF THE OUTCOME OF SUCH CLAIM OR ACTION) CAUSED BY, RESULTING FROM, OR ALLEGING NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OR ANY FAILURE TO PERFORM ANY OBLIGATION UNDERTAKEN OR ANY COVENANT IN THIS AGREEMENT, WHETHER SUCH ACT, OMISSION OR FAILURE WAS THE CONTRACTOR'S OR THAT OF ANY PERSON PROVIDING SERVICES HEREUNDER THROUGH OR FOR THE CONTRACTOR. UPON WRITTEN NOTICE FROM THE COUNTY, THE CONTRACTOR WILL RESIST AND DEFEND AT CONTRACTOR'S EXPENSE, AND BY COUNSEL REASONABLY SATISFACTORY TO COUNTY, ANY SUCH CLAIM OR ACTION. THE CONTRACTOR WILL CARRY PROPER INSURANCE WITH THE COUNTY AS AN ADDITIONAL NAMED INSURED, AS PROVIDED ABOVE.

e. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

f. Successors. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

g. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hidalgo County.

h. Non-Exclusive. This is a non-exclusive contract and the County is not precluded from retaining the services of other physicians when, in the sole opinion of the County, it would be in the County's best interest to retain the services of another physician.

i. Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ten (10) days written notice to Contractor. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County. *Agreements for the*

acquisition, including the lease of real or personal property under Tex. Loc. Govt. Code §271.903: In the event that, during any term hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ten (10) days written notice to Contractor, County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision, if applicable, to be a continuing right to terminate this at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1996).

j. Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by the parties hereto, and not otherwise.

k. Immunities: Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

l. Nondiscrimination: Contractor, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this contract/agreement. Contractor agrees to comply with the requirements of Title VI of the Civil Rights Act of 1964, as amended and its provisions and assurances provided as part of the initial procurement packet and incorporated herein and made a part of this agreement for all purposes.

m. Additional Documents: The parties hereto covenant and agree that they will execute each such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this contract/agreement.

n. Required Contract Provision for Contracts Subject to Federal Award (if applicable): If applicable, Contractor agrees to abide by provisions of Appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards as well as required Federal

Emergency Management Agency (FEMA) contract clauses. Applicable required clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

o. Reporting and Records. Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames. The Contractor shall, at Contractor's expense, keep or cause to be kept in an adequate filing system, accurate and complete records of Services provided. Such records shall be the property of the County. Upon termination of this Agreement, Contractor agrees to deliver to County all records in its possession pertaining to the Services within thirty (30) days. Contractor shall make all of his records and books reasonably related to this Contract available to authorized County personnel, at reasonable times and within reasonable periods, for inspection or auditing purposes or to substantiate the provisions of services under this Contract. All documents shall be maintained and kept by Contractor as per the retention schedule provided by the Texas State Records Retention Schedule or Hidalgo County Policy. If any litigation, claim, or audit involving these records begins before the specified period expires, Contractor must keep the records and documents until all litigation, claims or audit findings are resolved.

p. Confidentiality. Contractor, including, without limitation, its employees and agents, shall not disclose privileged or confidential communications or information acquired in the course of the performance of services under this Contract, unless authorized by law. Contractor agrees to safeguard and adhere to all confidentiality, privacy and security requirements according to this Contract and the applicable federal, State and local rules and regulations for all information deemed confidential. Release of information is subject to the provisions of the Texas Public Information Act (PIA) (*See* Chapter 552 of the Texas Government Code) or otherwise required by law. Contractor shall comply with any and all applicable requirements of the Health Information Portability & Accountability Act (HIPAA), the Texas Medical Records Privacy Act (TMRPA) and other related statutes, rules and regulations in the performance of services under this Contract.

q. Government Funded Project. If Contract is funded in part by either the State of Texas or the federal government, the Contractor agrees to timely comply without additional cost or expense to County, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other State or federal law, rule, regulations, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered under

the terms of this Contract.

r. No Implied Waiver. Any waiver of enforcement of any provision or waiver of any breach of this Agreement, whether or not recurring, shall not be construed as a waiver of any subsequent enforcement or breach.

s. Amendments. Any amendments to this Agreement will be effective only if in writing and signed by the County and Contractor.

t. Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

u. Gender and Number. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

v. Authority to Execute. The execution and performance of this Agreement by County and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Contractor and County in accordance with its terms.

(Signature Page to Follow)

WITNESS our hands this _____ day of _____, 2020.

COUNTY OF HIDALGO, TEXAS

By: Richard F. Cortez
Richard F. Cortez, County Judge

ATTEST:

By: Arturo Guajardo, Jr.
Arturo Guajardo, Jr., County Clerk



APPROVED BY
COMMISSIONERS' COURT
ON: 11/10/20

PHYSICIAN:

By: _____
John Lung M.D.

Approved by Commissioners' Court on: 11/10/20

Approved as to form:

Hidalgo County Criminal District Attorney's Office
Ricardo Rodriguez, Jr.

By: David R. Cantu
David R. Cantu, Assistant District Attorney