

AT 4:45 FILED O'CLOCK P M
JUN 29 2020
ARTURO GUERRERO, JR. COUNTY CLERK
HIDALGO COUNTY, TEXAS
BY [Signature] DEPUTY

STATE OF TEXAS §
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COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE
UNIVERSITY OF TEXAS RIO GRANDE VALLEY AND THE COUNTY OF HIDALGO,
TEXAS FOR LAB SERVICES
C-20-303-06-23**

THIS Agreement is made on this the 23rd day of June, 2020 by and between the UNIVERSITY OF TEXAS RIO GRANDE VALLEY, hereinafter referred to as the "UTRGV" and the COUNTY OF HIDALGO, TEXAS, hereinafter referred to as the "COUNTY" pursuant to the provisions of the Texas Interlocal Cooperation Act, Texas Gov't Code 791.001 et seq., hereinafter referred to as the "Act", as follows:

WITNESSETH:

WHEREAS, the University of Texas Rio Grande Valley is an institution of higher education as defined by Texas Education Code Section 61.003(8) and is located in COUNTY, Texas; and

WHEREAS, County is a local government as defined by the Act, and county in the State of Texas; and

WHEREAS, County is the recipient of CARES ACT Relief Funds that may be expended, pursuant to guidance provided by the United States Department of Treasury: (Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments) (the "Guidance"); and

WHEREAS, the Guidance allows COUNTY to transfer Coronavirus Relief Funds to another unit of government provided that the transfer qualifies as *a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act as outlined in the Guidance*;

WHEREAS, COUNTY is in need of additional laboratory testing for its patients and UTRGV can provide laboratory testing (the "Services") and is willing to provide such Services for COUNTY's patients; and

WHEREAS, UTRGV operates and maintains a properly equipped and staffed laboratory with the appropriate and current Clinical Laboratory Improvement Amendments (CLIA) certification necessary to provide laboratory testing services for COUNTY; and

WHEREAS, The COUNTY and UTRGV recognize that additional testing is a necessary medical action for the continued response to the public health emergency related to COVID-19; and

WHEREAS, The COUNTY desires to enter into an agreement for full service (turnkey) services utilizing clinical and laboratory services offered by UTRGV for its patients, and UTRGV is willing to provide such services, per the terms and conditions set forth in this Agreement.

WHEREAS, the UTRGV and COUNTY are authorized to enter into this Agreement pursuant to the Act, which authorizes local governments to contract with institutions of higher education to perform governmental functions and services under the terms of the Act;

NOW, THEREFORE, the University and County, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. OBLIGATIONS OF UTRGV:

UTRGV will perform the following as part of its Services to COUNTY under this Agreement:

- a. Provide SARS-CoV-2 IgG and COVID-19 Real Time-Polymerase Chain Reaction (RT-PCR) testing services offered by UTRGV through its CLIA-certified lab.
- b. Shall conduct specified test(s) to all identified patients, which includes administer test, collect specimen, process specimen and report lab results to COUNTY.
- c. Provide COUNTY with laboratory tests performed to identified patients.
- e. Use best efforts to process all specimens within 24-30 hours of receipt by UTRGV.
- f. Report test results to COUNTY via fax, email or through an EMR, if available; the same day results become available.
- g. In exchange for COUNTY payment for Services, UTRGV shall assign all rights to receive payment from patients or third parties for the Services provided under this Agreement to COUNTY.
- h. Use customary billing practices to bill COUNTY for all tests performed for COUNTY patients receiving SARS-CoV-2 IgG and COVID-19 Real Time-Polymerase Chain Reaction (RT-PCR) testing.
- i. Provide COUNTY the name and contact information of UTRGV employee who will be the contact person for any customer service or laboratory service-related issues.
- j. Continue and maintain certifications and qualifications as required by both federal and state law to provide such laboratory services to COUNTY patients, including all CLIA rules and regulations
- k. Commence providing Services on the Effective Date provided that enhanced throughput equipment and supplies have been received and validated in UTRGV's lab. UTRGV shall immediately advise COUNTY of any potential delays in its ability to perform all Services herein and of an estimated timeline when Services will be available.

2. OBLIGATIONS OF COUNTY

COUNTY is responsible for the following under this Agreement:

- a. Shall specify patient name, provide demographics, and designate the laboratory test to be performed by UTRGV hereunder on a laboratory requisition form provided by UTRGV.
- b. Shall make payment directly to UTRGV for Services provided hereunder.
- c. Provide UTRGV with the name and contact information of COUNTY employee who will be the contact person for test results and addressing contract related issues.
- d. Provide UTRGV with a fax number, and or dedicated secure email address, for providing test results.
- e. Shall not make any referrals or any payments under this Agreement that are prohibited by law.

3. FEES AND BILLING

Billing. UTRGV will bill COUNTY directly for all testing performed based on information provided by COUNTY at the agreed upon fee listed in Exhibit A attached hereto (the "Service Fees").

This pricing is agreed upon and may not be changed except by written agreement by both parties. COUNTY shall make payment to UTRGV upon receipt of UTRGV's written invoice-in compliance with the Texas Prompt Payment Act, Tex.Govt.Code Ch. 2251.

4. TERM AND TERMINATION

Term. The initial term of this Agreement shall commence on the Effective Date and end on the one (1) year anniversary of the Effective Date, unless sooner terminated in accordance with the terms hereof. Thereafter, this Agreement may be renewed for a period of two (2) additional one (1) year terms by written amendment executed by both parties.

Termination With or Without Cause. Either party may terminate this Agreement, without cause, upon no less than thirty (30) days advance written notice.

Effect of Termination. Upon expiration or termination of this Agreement, neither party shall have any further obligations hereunder, except for (i) obligations incurred prior to the date of expiration or termination, and (ii) other obligation set forth in this Agreement that specifically survive the expiration and/or earlier termination hereof.

5. HOUSE BILL (HB) 300 AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

House Bill (HB) 300 and the Health Insurance Portability and Accountability Act sets rules and limitations on who can view and receive an individual's personal information whether it is verbal, electronic, or written. HB 300 and HIPAA will be enforced at all times and UTRGV - Nursing will be subject to compliance at all times.

The Parties agree that:

- a. Both COUNTY and UTRGV are covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996, of 1996 as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act and the Privacy, Security and Breach Notification Regulations at 45 CFR §§ 160 and 164 (hereinafter collectively, "HIPAA") and subject to 45 CFR Parts 160 and 164 ("the HIPAA Administrative Simplification Regulations");
- b. Both COUNTY and UTRGV shall implement appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for by this agreement.
- c. Either COUNTY or UTRGV shall promptly report to the other party any use or disclosure of protected health information not in accordance with this agreement or in violation of HIPAA or HB 300, of which the party becomes aware of.
- d. Either COUNTY or UTRGV shall make its internal practices, books, and records related to the use and disclosure of protected health information available to the

other party, and as applicable, to the Secretary of Health and Human Services to the extent required for determining compliance with the HIPPA and HB 300.

- e. The Services being provided under this agreement by UTRGV create a “business associate” relationship as that term is defined in 45 CFR §160.103.
- f. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by COUNTY or UTRGV by virtue of the provisions of this section.

5. MISCELLANEOUS

Parties Relationship. UTRGV at all times will act as an independent contractor and not as a partner or agent of the other party. Neither COUNTY nor UTRGV will act or hold itself out to third parties as a partner, employee, joint venture, or agent of the other party in the provisions of services under this Agreement.

No Waiver. No waiver of a breach of any provisions of this Agreement will be construed to be a waiver of this Agreement, whether of a similar or different nature, and no delay in acting with regard to a breach shall be construed as a waiver of that breach.

Amendments. Any amendments to this Agreement will be effective only if in writing and signed by COUNTY and UTRGV.

Notices. Any notices permitted or required by this Agreement shall be sufficiently given in personally delivered or sent by registered or certified mail, postage prepaid, to the other party at the address set forth below or to such other person and address as either party may designate in writing:

If to UTRGV: The University of Texas Rio Grande Valley
1201 W University Dr.
Edinburg, TX 78539
Attn: EVP, Health Affairs

If to Hidalgo County: County of Hidalgo
100 East Cano Street 2nd Floor
Edinburg, Texas 78539
Attn: Richard Cortez, County Judge

Severability. The invalidity or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provision.

Headings. The headings used herein are for convenience only and do not limit the contents of this Agreement.

Variation of Pronouns. All pronouns and all variations thereof will be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the person, persons, or entity may require.

Governing Law and Venue. The interpretation and enforcement of this Agreement will be governed by the laws of the State of Texas, without regard to any conflicts of law provisions contained therein. This Agreement is performable in Hidalgo County, Texas. Venue for any suit filed against UTRGV shall be in Hidalgo County, Texas.

Assignment. This agreement may not be assigned.

Force Majeure. Either party shall be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion or inability due to any of the aforementioned causes to obtain labor, materials or facilities. Nevertheless, each party shall use its best efforts to avoid or remove such causes and to continue performance whenever such causes are removed, and shall notify the other party of the problem.

Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Authorization for Agreement. The execution and performance of this Agreement by COUNTY and UTRGV have been duly authorized by all necessary laws, resolutions, and corporate action, and this Agreement constitutes the valid and enforceable obligations of COUNTY and UTRGV in accordance with its terms.

Immunities. Neither Hidalgo COUNTY nor UTRGV, via this agreement, waive governmental immunity from suit, or from liability, except as expressly set forth by the Texas Legislature in the Texas Government Code. The fact that Hidalgo COUNTY and UTRGV have entered into this agreement shall not in any way, constitute a deliberate waiver of immunity by either entity, which immunities are expressly reserved by both parties.

Insurance. Consistent with its status as an independent contractor and at its sole expense, UTRGV agrees that throughout the duration of the work under this contract and any extension hereof, it shall provide and maintain any and all insurances and abide by any requirements which may be necessary in providing Services or are otherwise required by law. Insurance policies shall cover, but are not limited to, UTRGV's activities and all persons, vehicles, equipment and property connected with providing Services. The amount of insurance required shall be in accordance with amounts specified by the COUNTY or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by law, including, but not limited to the Texas Tort Claims Act. UTRGV is responsible for ensuring all required insurance policies are valid for the duration of the contract. UTRGV 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). For each applicable policy, UTRGV shall name the COUNTY as an additional insured. UTRGV shall make any other insurance documentation available to County upon request.

Liabilities. This Agreement is not intended to extend the liability of the Parties beyond that provided by law. Neither UTRGV nor COUNTY waive, nor shall be deemed to have hereby waived, any immunity or defenses that would otherwise be available to it against claims arising from third parties.

Additional Documents. The Parties agree that they will use reasonable, good faith efforts to execute each such other and further instruments and documents, including but not limited the Business Associate Agreement, as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

Non-Discrimination. The Services and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or UTRGV and/or COUNTY policy, including without limitation race, color, national origin, religion, sex, age, veteran status, or disability.

Commitment of Current Revenues. In the event that during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best 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 each party.

Required Contract Provision for Contracts Subject to Federal Award (if applicable): Pursuant to 2 CFR 200.326, a non-federal entity's contracts must contain the applicable provisions described in appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

IN WITNESS WHEREOF, this Agreement is executed by the parties or their duly authorized representatives as of date specified above.

[SIGNATURE PAGE TO FOLLOW]

Hidalgo County:

Richard Cortez, CPA
County Judge
County of Hidalgo
100 East Cano Street 2nd Floor
Edinburg, Texas 78539

By: Richard Cortez
Date: 6/24/20

The University of Texas Rio Grande Valley (UTRGV):

John H. Krouse, MD, PhD, MBA
Dean, School of Medicine
Executive Vice President, Health Affairs
1201 W. University Drive
Edinburg, Texas 78539

By: John H. Krouse
Date: 6/24/20

ATTEST:

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



APPROVED BY
COMMISSIONERS' COURT
ON: 6/23/20

APPROVED AS TO FORM:

Office of the Criminal District Attorney
Ricardo Rodriguez, Jr.

By: Victor Garza
Victor Garza, Asst. District Attorney

C-20-303-06-23