

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**FIRST AMENDMENT TO BAYLOR MIRACA GENETICS LABORATORIES, LLC
LABORATORY SERVICES AGREEMENT**

THIS FIRST AMENDMENT, is made and entered into by and between Baylor Miraca Genetics Laboratories, LLC doing business as Baylor Genetics with its business address at 2450 Holcombe Blvd, Houston, Texas 77021 (“Baylor Genetics”) and Fort Bend County by and through Fort Bend County Health & Human Services (“Client”) a body corporate and politic under the laws of the State of Texas, Client and Baylor Genetics are referred to together as the “Parties” and each, individually, as a “Party.”

WHEREAS, the parties executed and accepted that certain Baylor Miraca Genetics Laboratories, LLC Laboratory Services Agreement on or about July 23, 2020 (hereinafter “Agreement”) pursuant to execution by the Fort Bend County Judge as Emergency Management Director; and

WHEREAS, the parties desire to amend the Agreement to reflect the additional volume of Services to be provided and increase the total Maximum Compensation under the Agreement.

NOW, THEREFORE, the parties do mutually agree as follows:

1. Client shall pay Baylor Genetics an additional \$400,000.00 to perform continued COVID-19 testing services as described in the original Agreement.
2. The Maximum Compensation payable to Baylor Genetics for all Services rendered is hereby increased to an amount not to exceed \$500,000.00:
 \$100,000.00 under the Agreement; and
 \$400,000.00 under this Amendment.
3. In no case shall the amount paid by Client for all Services under the Agreement and this Amendment exceed the Maximum Compensation without an agreement executed by the parties.

Except as provided herein, all terms and conditions of the Agreement shall remain unchanged.

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IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the final party.

FORT BEND COUNTY

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

Reviewed by:

J. Johnson - Minter, MD
Dr. Jacquelyn Johnson-Minter, MD, MBA, MPH
Director of Health and Human Services

BAYLOR MIRACA
GENETICS LABORATORIES, LLC

Kengo
Takishima

Digitally signed by Kengo Takishima
DN: cn=Kengo Takishima, o=Baylor
Genetics, ou,
email=ktakishima@baylorgenetics.co
m, c=US
Date: 2020.09.15 09:12:39 -05'00'

Kengo Takishima
President & Chief Executive Office

09/15/2020

Date

Baylor Miraca Genetics Laboratories, LLC
Laboratory Services Agreement

This Laboratory Services Agreement, (the "**Agreement**") is effective as of July 22, 2020 (the "**Effective Date**") by and between Baylor Miraca Genetics Laboratories, LLC doing business as Baylor Genetics with its business address at 2450 Holcombe Blvd, Houston, Texas 77021 ("**Baylor Genetics**") and Fort Bend County by and through Fort Bend County Health & Human Services ("**Client**") a body corporate and politic under the laws of the State of Texas, Client and Baylor Genetics are referred to together as the "**Parties**" and each, individually, as a "**Party**."

Whereas, Baylor Genetics has the facilities and expertise to provide DNA diagnostic and sequencing testing, cytogenetic testing, mitochondrial testing, certain infectious disease testing, and biochemical genetic testing laboratory services to physicians, hospitals, and laboratories; and

Whereas, Client desires to purchase certain laboratory services from Baylor Genetics described in the Scope of Work on Exhibit A.

Intending to be legally bound and in consideration of the mutual provisions set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1
PROVISION OF SERVICES

1.1 COVID-19 Testing Services. Baylor Genetics agrees to provide Client with the COVID-19 testing services described in Exhibit A attached hereto. Services shall be provided only at the request of Client and there is no minimum guarantee of services (or any services at all) to be requested. The Parties acknowledge and agree that there is no requirement that Baylor is or will be County's exclusive provider of COVID-19 testing services.

1.2 Specimens. Client will provide Baylor Genetics with certain specimens for genetic testing based on the specific specimen requirements that can be found on the Baylor Genetics' website. Client agrees to follow the specimen requirements relevant to the specific genetic testing provided by the Baylor Genetics to the Client and understands that such requirements are critical to Baylor Genetics' ability to perform the tests described herein. All costs associated with Client's failure to follow the specimen requirements shall be Client's responsibility.

1.3 Transport. For orders including 20 or more specimens, all specimens will be transported via Hotshot Courier services, which is Baylor's third party vendor, with no increase in the amount per test. Hot Shot will pick up specimens at 3 locations (4250 Reading Rd Rosenberg, TX 77471, 22333 Grand Corner Dr- Katy TX 77494, and 307 Texas Parkway-Missouri City, TX 77489) in Fort Bend County if notified before 3 pm and pick up will occur no later than 5 pm daily. For orders less than 20 specimens; the cost of sample

transportation would be \$20 per shipment. All specimens should be shipped in the manner specified by the specimen requirements on the Baylor Genetics' website to the following address:

Baylor Miraca Genetics Laboratories
2450 Holcombe, Grand Blvd. - Receiving Dock
Houston, Texas 77021-2024

ARTICLE 2 FEES AND PAYMENTS

2.1 Price. For the provision of such genetic testing services, Baylor Genetics will bill Client weekly, and Client shall pay Baylor Genetics at the rate set forth in Exhibit A as the current fees to be charged to Client for services rendered hereunder. Baylor Genetics has represented to Client that this Agreement complies with the federal Anti-Kickback Statute, 42 U.S.C. § 132a-7b (b) and other applicable federal and state laws and, further, that this Agreement satisfies, and complies with, as applicable, the GPO Safe Harbor, and discounts safe harbor regulation at 42 C.F.R. § 1001.952 (h). Any amendments or changes to the scheduled fees set forth on Exhibit A shall be effective sixty (60) days following the date upon which Baylor Genetics has notified Client in writing, at which time the amended schedule will become part of this Agreement.

2.2 Baylor's fees shall be calculated at the rates set forth in the attached Exhibit A though the Parties agree that there is no minimum volume of orders required by Client to secure the pricing shown. The Maximum Compensation for the performance of Services shall not exceed one hundred thousand dollars and 00/100 (\$100,000.00). In no case shall the amount paid by Client under this Agreement exceed the Maximum Compensation without an approved change order.

2.3 Baylor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that Client shall have available the total maximum of one hundred thousand dollars and 00/100 (\$100,000.00) specifically allocated to fully discharge any and all liabilities Client may incur.

2.4 Baylor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Baylor may become entitled to and the total maximum sum that Client may become liable to pay to Baylor shall not under any conditions, circumstances, or interpretations thereof exceed one hundred thousand dollars and 00/100 (\$100,000.00).

2.5 Invoices. Baylor Genetics will submit a detailed electronic invoice weekly to Client. Client shall review such invoices and issue payment for any undisputed costs within fifteen (15) days after receipt thereof. Invoice should be accompanied with ACH instructions on Baylor's letterhead to further expedite payment. Client reserves the right to withhold payment pending verification that services were performed in accordance with the requirements of this Agreement. Invoices shall be sent electronically to the email address below:

Email: APAuditor@fortbendcountytx.gov

All questions regarding invoices should be directed to the Baylor Genetics' Client Relations Division at (713) 798-6555 or by email at apayable@baylorgenetics.com, or such other person designated in writing by Baylor Genetics.

ARTICLE 3 TERM AND TERMINATION

3.1 Term. This Agreement is effective as of the date executed by both Parties through December 31, 2020. Such termination is effective thirty (30) days after receipt of written notice sent by the terminating Party. During the initial term or any subsequent renewal term, this Agreement may be terminated without cause at any time before expiration with sixty (60) days written notice by the terminating Party. Notwithstanding anything herein to the contrary:

- a. Baylor Genetics may terminate this Agreement immediately and without prior written notice upon Client's failure to pay according to Section 2.2 herein unless Client makes all payments within said thirty (30) day period; and
- b. either Party may terminate this Agreement on thirty (30) days' notice if the other Party breaches any covenant or other material obligation of such Party set forth in this Agreement and the Party fails to cure such breach in said thirty (30) day period.

3.2 Effect of Termination. Upon termination of this Agreement for any reason Baylor Genetics shall invoice Client for any partial or full week(s) remaining and Client agrees to pay Baylor Genetics final payment(s) within thirty (30) days as invoiced. In addition, upon any termination, Baylor Genetics may, at its sole discretion, provide genetic testing services for any specimens received but not processed as of the date of termination, or return such specimens to Client. Baylor Genetics may consider but not be obligated to provide genetic testing services under such circumstances upon offer of prepayment for the genetic testing services by Client.

ARTICLE 4 CONFIDENTIALITY

4.1 Compliance with Laws. The terms of this Agreement are intended to be in compliance with all federal, state, and local statutes, regulations, and ordinances applicable on the date the Agreement takes effect, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Stark Law (42 U.S.C. § 1395nn), the Anti-Kickback Statute (42 U.S.C. § 1320a-7b), and their implementing regulations (collectively, "Applicable Laws"). If applicable, both Parties agree to enter into a Business Associate Agreement to preserve the confidentiality of Protected Health Information and any other patient information protected by federal and state privacy laws.

ARTICLE 5 INDEMNIFICATION; LIMITATION OF LIABILITY

5.1 Indemnification. To the extent allowed by law, each Party shall indemnify (the "Indemnifying Party") and hold harmless the other Party (the "Indemnified Party") from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses whether or not arising from a third party claim incurred as a result of or in connection with any breach or violation of any covenant or other obligation or duty of the Indemnifying Party under this Agreement, the provision of services, patient interaction or under applicable law, except to the extent such losses are determined to have resulted solely from negligence or intentional misconduct of the Indemnified Party seeking indemnity hereunder.

5.2 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL ANY PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, LOSS OF REVENUE OR LOST SALES OR AMOUNTS CALCULATED AS A MULTIPLE OF EARNINGS, PROFITS, REVENUE, SALES OR OTHER MEASURE) IN CONNECTION WITH ANY CLAIMS, LOSSES, DAMAGES OR INJURIES ARISING BETWEEN THE PARTIES TO THIS AGREEMENT REGARDLESS OF WHETHER THE NONPERFORMING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR NOT.

5.3 Insurance.

a. Client shall, at its sole cost and expense at all times during the term of this Agreement, procure and maintain comprehensive general and professional liability insurance or self-insurance (including personal injury, property damage, products liability, and completed operations liability), in a minimum amount of one million dollars (\$1,000,000). Upon Baylor Genetics' request, Client shall cause to be issued to Baylor Genetics proper certificates of insurance or self-insurance evidencing the foregoing provisions of this Agreement have been complied with. Prior to any cancellation without replacement or material adverse change in the underlying insurance during the policy period, Client will use reasonable efforts to first give thirty (30) calendar days' written notice to Baylor Genetics.

b. Baylor Genetics shall, at its sole cost and expense and at all times during the term of the Agreement, procure and maintain professional liability self-insurance (including personal injury, property damage, products liability) in a minimum amount of ten million dollars (\$10,000,000). Upon Client's request, Baylor Genetics shall issue to Client proper certificates of self-insurance evidencing the foregoing provisions of this Agreement have been complied with. Prior to any cancellation without replacement or material adverse change in the underlying insurance during the policy period, Baylor Genetics will use reasonable efforts to first give thirty (30) calendar days' written notice to Client.

ARTICLE 6 GENERAL PROVISIONS

6.1 Assignment and No Third Party Rights. This Agreement may not be assigned or otherwise transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld and any purported assignment without such consent shall be null and void. No Party may delegate any performance of its obligations under this Agreement without notifying the other Party via telephone or electronic means. Nothing expressed or referred to in this Agreement will be construed to give any person, other than the Parties to this Agreement, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement except such rights as may be provided in this Agreement or may inure to a permitted assignee under this Section.

6.2 Amendments. This Agreement may not be amended, supplemented or otherwise modified except in a written document signed by each Party to be bound by the amendment and that identifies itself as an amendment to this Agreement.

6.3 Force Majeure. In the event that either Party is delayed in or prevented from performing its obligations under this Agreement, in whole or in part, due to a cause beyond its reasonable control and without its fault or gross negligence, including an act of God, fire, flood, explosion, civil disorder, strike, lockout or other labor trouble, material shortages of utilities, delay in transportation, breakdown or accident, any law, judgment, demand or requirement of any governmental authority, riot, war, or other cause beyond the reasonable control of the Parties (each a "Force Majeure Event"), then upon written notice to the other Party, (a) the affected obligations under this Agreement will be suspended to the extent reasonably necessary during the period of the Force Majeure Event, (b) neither Party will have any liability to the other Party or any other person in connection with such suspended obligation and (c) the Parties will resume performance as soon as practicable after the Force Majeure Event has ended.

6.4 Entire Agreement. This Agreement (including any exhibits hereto and the Business Associate Agreement) constitutes the entire agreement between Baylor Genetics and Client and supersedes any prior negotiations, correspondence, understandings, agreements or representations by or among the Parties, or any of them, written or oral, with respect to the subject matter of this Agreement.

6.5 Independent Contractor. Baylor Genetics and Client are independent contractors, and nothing in this Agreement shall be deemed or construed to create an employment or agency relationship between Baylor Genetics and Client.

6.6 Non-Waiver. The Parties covenant and agree that if a Party fails or neglects for any reason to take advantage of any of the terms provided for the termination of this Agreement or if a Party, having the right to declare this Agreement terminated, shall fail to do so, any such failure or neglect by such Party shall not constitute a waiver or be deemed or be construed to be a waiver of any cause for the termination of this Agreement subsequently arising, or as a waiver of any of the terms, covenants or conditions of this Agreement or of the performance thereof. None of the terms, covenants and conditions of this Agreement may be

waived by a Party except by its written consent. Any enumeration of a Party's rights and remedies in this Agreement is not intended to be exclusive, and a Party's rights and remedies are intended to be cumulative to the extent permitted by law and include any rights and remedies authorized in law or in equity.

6.7 Severability. If any provision of this Agreement is held void, invalid, illegal or unenforceable, the remaining provisions of this Agreement will remain in full force and effect, if the essential terms and conditions of this Agreement for each Party remain valid, binding and enforceable.

6.8 Governing Law and Jurisdiction. The internal laws of the State of Texas (without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any other jurisdiction) shall govern all matters arising out of or relating to this Agreement, and its respective exhibits, and all actions contemplated thereby, including its validity, interpretation, construction, performance and enforcement and any disputes or controversies arising therefrom or related thereto. To the extent allowed by law, any action, suit or other proceeding arising under or relating to this Agreement (a "Suit") where Client is the defendant shall be brought in a court of competent jurisdiction in Fort Bend County in the State of Texas, and any Suit where Baylor Genetics is the defendant shall be brought in a court of competent jurisdiction in Harris County in the State of Texas.

6.9 Non-Solicitation. During the term of this Agreement and for twelve (12) months after any termination of this Agreement, neither Party will, without the prior written consent of the other Party, either directly or indirectly solicit or attempt to solicit, divert or hire away any person from either Party.

6.10 Notices. All notices and other communications under this Agreement must be in writing and are deemed duly delivered when (a) delivered, if delivered personally or by nationally recognized overnight courier service (costs prepaid), or (b) received or rejected by the addressee, if sent by U.S. certified or registered mail, return receipt requested; in each case to the following physical addresses marked to the attention of the individual (by name or title) designated below (or to such other physical address or individual as a Party may designate by notice to the other Party). Telephone numbers are provided below for courtesy communications, and any information received by telephone or left on a voicemail shall not constitute notice.

If to Baylor Genetics:

Attn: Chief Executive Officer
Baylor Miraca Genetics Laboratories
2450 Holcombe Blvd, Suite O104
Houston, TX 77021
CC: legal@baylorgenetics.com

If to Client:

Fort Bend County Health and Human Services
Attn: Director
4520 Reading Road, Suite A-100
Rosenberg, Texas 77471

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

6.11 Certain State Law Requirements for Contracts: The contents of this Section are required by Texas Law and are included by County regardless of content.

- a. Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Baylor Genetics verifies Baylor Genetics does not boycott Israel and will not boycott Israel during the term of this Agreement.
- b. Texas Government Code Section 2251.152 Acknowledgment: By signature below, Baylor Genetics represents pursuant to Section 2252.152 of the Texas Government Code, that Baylor Genetics is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

6.12 Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original as against the Party that signed it, and all of which together constitute one agreement. This Agreement is effective upon delivery of one executed counterpart from each Party to the other Party. The signatures of all Parties need not appear on the same counterpart. The delivery of signed counterparts by .pdf in an email transmission that includes a copy of the sending Party's signature(s) is as effective as signing and delivering the counterpart in person.

ARTICLE 7 FEDERAL CLAUSES

Baylor Genetics understands and acknowledges that this Agreement may be totally or partially funded with federal and or state funds. As a condition of receiving these funds, Contractor represents that it is and will remain in compliance with all federal and or state terms as stated below and as attached in Exhibit B to this Agreement. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. Baylor Genetics shall require that the clauses shown below and as attached be included in each covered transaction at any tier. Baylor Genetics will also require

all of their staff to comply with Federal documentation requirements administered by the County.

7.1 Americans with Disabilities Act (ADA) – Baylor Genetics shall comply with all federal, state, County, and local laws concerning this type of products/service/equipment/project and the fulfillment of all ADA requirements.

7.2 Drug-Free Workplace – Baylor Genetics shall provide any and all notices as may be required under the Drug-Free Workplace Act of 1988, 28 CFR Part 67, Subpart F, to their employees and all sub-Baylor Genetics to insure that the County maintains a drug-free workplace.

7.3 Small, Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms – Baylor Genetics will take all necessary affirmative steps to assure that qualified small, minority firms, women's business enterprises, and labor surplus area firms are used when possible by:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime Baylor Genetics, if subcontracts are to be let, to take the affirmative steps listed in subsections (1) through (5) above.

7.4 Energy Policy and Conservation Act – Baylor Genetics agrees to comply with the Energy Policy and Conservation Act (42 U.S.C. Section 6201). Debarment and Suspension –

- a. Baylor Genetics certifies that they are in compliance with the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180 which states that a contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549. These provisions apply to each

contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount).

- b. This certification is a material representation of fact relied upon by the County. If it is later determined that Baylor Genetics did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- c. Baylor Genetics agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.5 Byrd Anti-Lobbying Amendment – Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7.6 Political Activities – Baylor Genetics is prohibited from using federal funds directly or indirectly for political purposes, including polling, lobbying or advocating for legislative programs or changes; campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties; and voter registration or get-out-the-vote campaigns. Generally, organizations or entities which receive federal funds by way of grants, contracts, or cooperative agreements do not lose their rights as organizations to use their own, private, non-federal resources for “political” activities because of or as a consequence of receiving such federal funds. These recipient organizations must thus use private or other non-federal money, receipts, contributions, or dues for their political activities, and may not charge off to or be reimbursed from federal contracts or grants for the costs of such activities.

7.7 Procurement of Recovered Materials – Baylor Genetics must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). (1) In the performance of this Agreement, Baylor Genetics shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired: (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. (2) Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

7.8 Access to Records

- a. Baylor Genetics agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Baylor Genetics which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. Baylor Genetics agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Baylor Genetics agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

7.9 DHS Seal, Logo, and Flags – Baylor Genetics shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

7.10 Compliance with Federal Law, Regulations, and Executive Orders - Baylor Genetics will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

7.11 No Obligation by Federal Government – The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Baylor Genetics, or any other party pertaining to any matter resulting from the contract.

7.12 Program Fraud and False or Fraudulent Statements or Related Acts – Baylor Genetics acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Baylor Genetics' actions pertaining to this Agreement.

7.13 Civil Rights and Non-Discrimination – During the performance of this contract, the Baylor Genetics agrees as follows:

- a. Nondiscrimination on the Basis of Race, Color, and National Origin – Baylor Genetics will comply with state and federal anti-discrimination laws including Title VI of The Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), FEMA's implementing regulations at 44 C.F.R. Part 7 (Nondiscrimination in Federally Assisted Programs), and the Department's implementing regulations at 6 C.F.R. Part 21 (Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance) which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- b. Nondiscrimination on the Basis of Sex – Baylor Genetics will comply with Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.), FEMA's implementing regulations at 44 C.F.R. Part 19

(Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance), and the Department's implementing regulations at 6 C.F.R. Part 15 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance) prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

- c. Nondiscrimination on the Basis of Disability – Baylor Genetics will comply with The Americans with Disability Act of 1990 (codified as amended at 42 U.S.C. §§ 12101-12213) prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Baylor Genetics must comply with the responsibilities under Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.
- d. Nondiscrimination on the Basis of Handicap – Baylor Genetics will comply with Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) and FEMA's implementing regulations at 44 C.F.R. Part 16 (Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Emergency Management Agency) provide that no otherwise qualified handicapped individual in the United States will, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.
- e. Nondiscrimination on the Basis of Age – Baylor Genetics will comply with the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.), and Department of Health and Human Services implementing regulations at 45 C.F.R. Part 90 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance) prohibit discrimination against individuals on the basis of age in any program or activity receiving Federal financial assistance.
- f. Nondiscrimination on the Basis of Limited English Proficiency – Baylor Genetics will comply with Title VI of the Civil Rights Act of 1964 prohibition against discrimination on the basis of national origin which requires that recipients and subrecipients of FEMA assistance take reasonable steps to provide meaningful access to persons with limited English proficiency. Baylor Genetics shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability. Baylor Genetics shall not, on the grounds of race, color, creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination. Baylor Genetics shall adhere to any Federal implementing regulations and other requirements that the Department and the FEMA have with respect to nondiscrimination.

7.14 Contracting with Small, Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms – Baylor Genetics will take all necessary, affirmative steps to assure that qualified small and minority businesses, women's business enterprises, and labor area surplus firms are used when possible by:

- a. Placing small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that it solicits small and minority businesses and women's business enterprises whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- e. Utilizing the assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Baylor Genetics must require subcontractors to take the five affirmative steps described in 1-5 above.

7.15 Environmental and Historic Preservation Protections

- a. Case by case basis. FEMA will identify various environmental and historic preservation mitigation measures with which a Non-Federal Entity (NFE) must comply when performing the scope of work under a FEMA award. FEMA expects the NFE to include adequate third-party provisions to facilitate compliance with such measures that the NFE has agreed to implement as a term and condition of the FEMA award.
- b. Baylor Genetics shall abide by all environmental and historic preservation mitigation measures identified by FEMA when performing the scope of work including: a. National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1969) (codified as amended at 42 U.S.C. §§ 4321-4347); the National Historic Preservation Act, Endangered Species Act Endangered Species Act of 1973, Pub. L. No. 93-205 (1973) (codified as amended at 16 U.S.C. §§ 1531-1544);, Clean Water Act, other laws, and various executive orders.

7.16 Disaster Reservists – Baylor Genetics may not in the performance of this Agreement utilize employees who are also Disaster Reservists. Disaster Reservists are personnel authorized by the special hiring authority in the Stafford Act that are not full-time employees, but rather work on an on-call, intermittent basis to perform disaster response and recovery activities.

7.17 False Statements Act – Baylor Genetics agrees to comply with the False Statement Act sets forth liability for, among other things, any person who knowingly submits a false claim to the Federal government or causes another to submit a false claim to the

government or knowingly makes a false record or statement to get a false claim paid by the government. 31 U.S.C. §§ 3729-3733.

- 7.18 Fraud Waste and Abuse – Baylor Genetics understands that in the event County becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from FEMA or the Office of the Governor, the County is required to immediately notify OOG of said allegation or finding and to continue to inform OOG of the status of any such on-going investigations. The County must also promptly refer to OOG any credible evidence that a principal, employee, agent, Baylor Genetics, Baylor Genetics, or other person has -- (1) submitted a claim for award funds that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving award funds. County must also immediately notify OOG in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements. County must notify the local prosecutor's office of any possible criminal violations.
- 7.19 Prompt Payment – The Contractor is required to pay its subcontractors performing work related to the Underlying Agreement for satisfactory performance of that work no later than 30 days after the Baylor Genetics' receipt of payment for that work from County. In addition, the Baylor Genetics is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work is satisfactorily completed.
- 7.20 Retention of Records – The Baylor Genetics agrees to maintain fiscal records and supporting documentation for all expenditures related to this Agreement pursuant to 2 CFR 200.333, UGMS, and state law. Baylor Genetics must retain, and will require its subcontractors of all tiers to retain, these records and any supporting documentation for a minimum period of not less than seven (7) years after the date of termination or expiration of the Agreement or any litigation, dispute, or audit arising from the performance of the Agreement. Records related to real property and equipment acquired with grant funds shall be retained for seven (7) years after final disposition.
- 7.21 Veteran Preference – The Baylor Genetics shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC Section 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

(Signature page follows)

IN WITNESS WHEREOF, the Parties, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names as of the date first above written.

FORT BEND COUNTY

BAYLOR MIRACA
GENETICS LABORATORIES, LLC

KP George, County Judge

KP George, County Judge/
Emergency Management Director

Kengo
Takishima

Kengo Takishima
President & Chief Executive Officer

Digitally signed by Kengo Takishima
DN: cn=Kengo Takishima, o=Baylor
Genetics, ou,
email=kentakishima@baylorgenetics.c
m, c=US
Date: 2020.07.22 17:08:00 -0500

July 23, 2020

Date

7/22/2020

Date

ATTEST:

Laura Richard, County Clerk

Reviewed by:

Dr. Jacquelyn Johnson-Minter
Dr. Jacquelyn Johnson-Minter, MD, MBA, MPH
Director of Health and Human Services

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 100,000.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant
Robert Ed Sturdivant, County Auditor

Exhibit A: COVID-19 Testing Scope of Work
Exhibit B: Federal Clauses for CARES Act

EXHIBIT A

COVID-19 Testing Scope of Work

I. Overview

Baylor Genetics will provide high throughput SARS-COV-19 testing services for the Client. The scope of work between the Parties includes:

- A. Baylor Genetics will perform COVID-19 tests for \$70 per test, including limited transportation costs.
- B. Baylor Genetics will send Client collection testing kits that include swabs for sample collection. Any unused kits will be returned to Baylor Genetics upon termination of this Agreement.
- C. Client must place each sample in a separate biohazard bag. Client may then compile the samples into one shipping container. Client must send least 20 samples per shipment for Baylor Genetics to cover shipping or courier expenses. Client is responsible for following the shipping instructions below and ensuring the samples are sent to Baylor Genetics in acceptable form.

II. Specimen and Data Collection

- A. Specimen Collection by Client. Client will arrange for specimen collection via swab by qualified professionals with appropriate PPE and will provide the labeled and packaged sample to Baylor Genetics per the instructions provided below for Baylor Genetics to perform the test. *New specimen types and accompanying delivery details may be proposed by Baylor Genetics in the future. The Parties will review and agree upon those terms in the future.*
 1. Nasal swab samples using a sterile swab (flocked swab preferred)
 2. Samples in the following viral transport media (M4, M4-RT, M5, M6, MTM and Universal Transport Media (UTM)) (1 mL to 3 mL)
 3. If viral transport media or universal transport media is not available, samples in Phosphate Buffered Saline (PBS) or Normal Saline (NS) are acceptable
 4. Samples should be stored and shipped at 2°C to 8°C until delivered to Baylor Genetics. Samples that cannot be delivered to Baylor Genetics within 72 hours of collection must be frozen as soon as possible and shipped at -70°C.
- B. Sample Rejection. Baylor Genetics will reject samples sent in any of the conditions indicated below. Per Baylor Genetics' standard operating procedure, rejected samples will be discarded and a cancellation memo will be sent to Client.
 1. Swabs not submitted in approved liquid

2. Unvalidated sample types (tongue swab, saliva, calcium alginate swabs, cotton tips, or wood shafts)
3. Samples without 2 patient identifiers
4. Samples received at the wrong temperature
5. Samples received in less than 1mL of approved liquid
6. Unfrozen samples received at Baylor Genetics more than 72 hours after collection
7. Improperly labeled, broken or leaked samples
8. Samples received without a requisition form

C. Data Collection by Client. Client will be responsible for completing the Baylor Genetics' electronic manifest, paper requisition form, or online order form for each sample prior to sample transfer. A sample requisition form is attached for reference. Because of city, state, and federal reporting obligations, Baylor Genetics must have all the information fields that are listed on the sample requisition form completed to report a patient's test results to the Client. Baylor Genetics may update the required information fields at any time to comply with applicable laws and regulations.

III. Test Details	
COVID-19 (SARS-CoV-2) RT-PCR Test	
Test Information:	Test to detect SARS-COV-2 viral infection
Test Details	
Test Code:	1299
Special Notes: Check "Sample Rejection Criteria"	
Technical Information	
Methodology:	Real Time PCR
References Values or Ranges:	Negative or not detected
Sample & Shipping Information	
Test Requisition:	
Specimen Type: Nasal swab samples using a sterile swab (flocked swab preferred).	
Requirements: Samples in the following viral transport media (M4, M4-RT, M5, M6, MTM and Universal Transport Media (UTM)) (1 mL to 3 mL). If viral transport media or universal transport media is not available, samples in Phosphate Buffered Saline (PBS) or Normal Saline (NS) are acceptable.	
Shipping Conditions: Samples stored and shipped at 2°C to 8°C until tested. Samples that cannot be delivered to Baylor Genetics within 72 hours of collection must be frozen and shipped at -70°C until tested.	

Please refer to the section below for more detailed guidance on sample requirements.

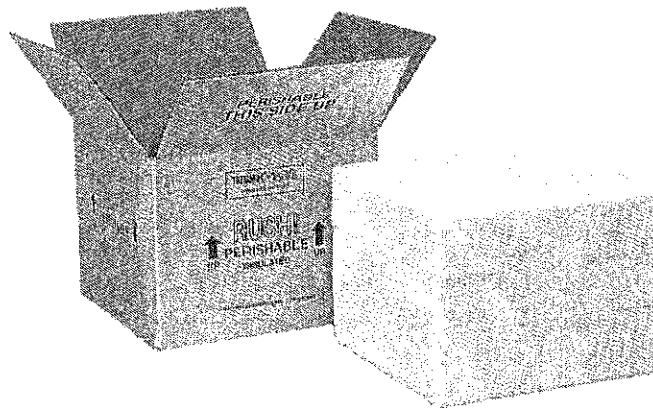
Turn Around Time:

24 to 48 hours after received and accessioned.
If test results are not provided within this window, Baylor Genetics shall notify County's Health and Human Services Director at:
Jacquelyn Minter
Email: Jacquelyn.Minter@fortbendcountytexas.gov

IV. Sample Transportation

A. Client shall prepare specimens for transportation according to the following instructions:

1. Every sample should be labeled with the patient's full name and date of birth.
2. All samples must be stored refrigerated at 2°C- 8°C (35°F – 46°F)
3. Each sample should be placed in its own biohazard bag along with the completed patient information.
4. Once bulk samples have been collected and are in individual biohazard bags place the samples in an insulated shipping box
5. (Styrofoam cooler) as shown here (bulk orders may require multiple insulated shippers)



6. Add ice packs to the bottom of the insulated shipping box and additional ice packs on top of biohazard bagged samples in the box (6 gel ice packs for general 12 x 10 x 9 boxes)

7. Close the insulated shipping box and tape box closed with clear packing tape.
8. Place the insulated shipper in a box and tape with clear packing tape.
9. Address the package to:

**Baylor Genetics
2450 Holcombe Blvd
Houston, TX 77021
Central Processing Room O220
Attention: Jonathan Tegbe**

B. Testing Sites located more than 15 miles from Baylor Genetics' address:

1. Send back priority overnight via Fedex or UPS. Ensure that either (i) Fed Ex picks up the package from the Client or (ii) one of Client's employees delivers the package in person to a Fed-Ex location. Do not place in a drop box.
2. Ensure courier is informed biological samples are being shipped so they can place their internal markings on the package.
3. If using a larger outer box "cushion" is required, paper stuffing or peanuts are options.

C. Testing Sites less than 20miles from the Baylor Genetics' address:

1. Send shipment back via Hotshot by calling 713-869-7575
2. Or reach out to our Customer Service team to place the Hotshot Order 1-800-411-4363
3. If after 5pm send samples priority overnight via Fedex or UPS. Ensure that either (i) Fed Ex picks up the package from the Client or (ii) one of Client's employees delivers the package in person to a Fed-Ex location. Do not place in a drop box.
4. Ensure courier is informed biological samples are being shipped so they can place their internal markings on the package.
5. If using a larger outer box "cushion" is required, paper stuffing or peanuts are options.

D. Specimens that cannot be tested within 72 hours of collection: If specimens cannot be tested within 72 hours of collection, they should be frozen at -70°C (-94°F) or colder until tested. Frozen specimens are to be shipped frozen at -70°C (-94°F) or colder using dry ice. If sent via Fedex remember to include the **UN3373 Biological Substance Category B** sticker on the box.

V. Test Report and Timing

A. Turn Around Time. Test results will be reported within 24 – 48 hours after a sample is received and accessioned. If test results are not provided within this window, Baylor Genetics shall notify County's Health and Human Services Director at: Jacquelyn Minter; Email: Jacquelyn.Minter@fortbendcountytexas.gov

B. Baylor Genetics shall provide Client with a table that contains key information about each test performed with each row representing a case and each column representing a variable such as demographic, clinical and epidemiologic information, AKA a "line list" with data fields to be identified by County's Health and Human Services Director. Baylor Genetics shall also ensure this information is reported to the State of Texas.

C. Baylor Genetics shall provide patients with original lab reports via email if email address is provided with order.

Sample Baylor Genetics Requisition Form

**BAYLOR
GENETICS**

BAYLOR GENETICS
245A HOI COMBIE BLVD.
GRAND BLVD. RECEIVING DOCK
HOUSTON, TX 77023-2024

PHONE
1.800.411.4363
FAX
1.800.434.9850

CONNECT



COVID-19 (SARS-CoV-2) RT-PCR TEST REQUISITION

PATIENT INFORMATION (COMPLETE ONE FORM FOR EACH PERSON TESTED)

Patient Last Name		Patient First Name		MI	Date of Birth (MM / DD / YYYY)	
Address		City	State	Zip	Phone	
Email	Hospital / Medical Record #		Patient discharged from the hospital/facility: <input type="radio"/> Yes <input type="radio"/> No		Biological Sex: <input type="radio"/> Female <input type="radio"/> Male Gender Identity (if different from above):	
Social Security Number						
RACE <input type="radio"/> American Indian or Alaska Native <input type="radio"/> Asian <input type="radio"/> Black or African American <input type="radio"/> Hispanic or Latino <input type="radio"/> Native Hawaiian or Other Pacific Islander <input type="radio"/> White <input type="radio"/> Other				ETHNICITY <input type="radio"/> Non-Hispanic <input type="radio"/> Hispanic		

ORDERING PROVIDER

Provider Last Name		Provider First Name		Institution Name	
NPI (USA)	MINC (Canada)	Provider Title	Provider Phone	Provider Fax	
Provider Address		City	State	Zip	Country
Email					

PAYMENT (FILL OUT ONE OF THE OPTIONS BELOW)

- ☐ SELF PAYMENT
☐ Pay with Sample ☐ Bill to Patient
☐ INSTITUTIONAL BILLING

Institution Name	Institution Code	Institution Contact Name	Institution Phone	Institution Contact Email
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☐ INSURANCE

ICD-10 Valid Code: _____ Referral / Prior Auth. _____
 REQUIRED ITEMS 1. Copy of the Front/Back of Insurance Card(s) 2. Name of Ordering Physician 3. Insured Signature of Authorization

Name of Insured	Insured Date of Birth (MM/DD/YYYY)	Patient's Relationship to Insured	Phone of Insured
Address of Insured		City	State Zip
Primary Insurance Co. Name	Primary Insurance Co. Phone	Primary Member Policy #	Primary Member Group #

Baylor Genetics will be releasing medical information concerning the test to health departments, as required by regulations, and the insurance company of record upon request. The patient or insured will be responsible for any co-pay, co-insurance, and amount deductible that the insurance company dictates, as well as any outstanding balance not paid for by the insurance company for reasons including, but not limited to, non-covered and unauthorized services. Please note that Medicare does not cover routine screening tests.

ORDERING PROVIDER STATEMENT OF MEDICAL NECESSITY (REQUIRED)

By signing below, I, the Ordering Provider, attest that I have fully informed the patient about the purpose, capabilities, and limitations of the ordered test. The patient has voluntarily given his or her full consent for the ordered test. I confirm that testing is medically necessary and that test results may impact medical management for the patient.

Ordering Provider Printed Name	Ordering Provider Signature	Date (MM / DD / YYYY)
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BAYLOR GENETICS

BAYLOR GENETICS
2450 HOLCOMBE BLVD.
GRAND BLVD. RECEIVING DOCK
HOUSTON, TX 77021-2024

PHONE
1.800.611.4363
FAX
1.800.434.9850

CONNECT



COVID-19 (SARS-CoV-2) RT-PCR TEST REQUISITION

Patient Last Name _____ Patient First Name _____ MI _____ Date of Birth (MM/DD/YYYY) _____ Biological Sex _____

COVID-19 TESTS

TEST CODE TEST NAME
☐ T299 COVID-19 (SARS-CoV-2) RT-PCR Test

SAMPLE

SAMPLE TYPE
☐ Nasal Swab in VTM/UTM ☐ Nasopharyngeal Swab in PBS/NS
☐ Nasopharyngeal Swab in VTM/UTM ☐ Oropharyngeal Swab in PBS/NS
☐ Oropharyngeal Swab in VTM/UTM ☐ Other: _____
☐ Nasal Swab in PBS/NS

SAMPLE TYPE KEY: NS Normal Saline UTM Universal Transport Media
PBS Phosphate Buffered Saline VTM Viral Transport Media
DATE OF COLLECTION (MM/DD/YYYY) _____ TIME OF COLLECTION _____
_____ : _____ ☐ AM ☐ PM

SAMPLE STORAGE

Refrigerated (2C to 8C) in VTM or UTM, specimen should be received within 72 hours of collection. If VTM or UTM are not available, then PBS or NS may be used. If specimen cannot be delivered within 72 hours of collection, the specimen should be frozen and shipped at -70C or colder.

SHIPPING ADDRESS

Label all specimen tubes with two identifiers (e.g. first and last name, date of birth).

Baylor Genetics
2450 Holcombe, Grand Blvd. - Receiving Dock
Houston, Texas 77021-2024

CLINICAL INFORMATION (REQUIRED)

ICD10 DIAGNOSIS CODE(S): _____

DATE OF ONSET OF SYMPTOMS
(MM/DD/YYYY) (if applicable) _____ / _____ / _____

Pneumonia (COVID-19)

☐ J12.89 Pneumonia, Other viral pneumonia

Acute Bronchitis (COVID-19)

☐ J20.8 Acute Bronchitis, Unspecified

Acute Respiratory Distress Syndrome (COVID-19)

☐ J80 Acute Respiratory Distress Syndrome

Lower Respiratory Infection (COVID-19)

☐ J22 Acute lower respiratory infection, Unspecified
☐ J98.8 Other specified disorders

Signs and Symptoms without Definitive Diagnosis of COVID-19

☐ Z03.818 Suspected exposure to COVID-19
☐ Z20.828 Known Exposure to COVID-19
☐ Z11.59 Asymptomatic Screening with Negative Result or No Exposure

Additional Diagnosis Codes:

☐ R05 Cough
☐ R06.02 Shortness of Breath
☐ R50.9 Fever, Unspecified
☐ Other: _____

PRE-EXISTING CONDITIONS

☐ Asthma ☐ Heart Conditions ☐ Liver Disease ☐ Currently Pregnant
☐ Diabetes ☐ Immunocompromised ☐ Lung Disease ☐ Cancer Type: _____
☐ Concurrent Infection ☐ Kidney Disease ☐ Obesity ☐ Other: _____

INDICATION FOR TESTING

☐ Asymptomatic ☐ Screening ☐ Other: _____
☐ Contact Tracing ☐ Surveillance
☐ Repeat Testing for Known Positive ☐ Symptomatic

Exhibit B:
FEDERAL CLAUSES FOR CARES ACT

Code of Federal Regulations

Title 2 - Grants and Agreements

Volume: 1
Date: 2014-01-01
Original Date: 2014-01-01
Title: Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
Context: Title 2 - Grants and Agreements, Subtitle A - Office of Management and Budget Guidance for Grants and Agreements, CHAPTER II - OFFICE OF MANAGEMENT AND BUDGET GUIDANCE, - Reserved, PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.

Pl. 200, App. II

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in

Exhibit C

the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See § 200.322 Procurement of recovered materials.