

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Department of Public Health

AGENDA DATE: May 26, 2020

CONTACT PERSON NAME / PHONE NUMBER: Fire Chief Mario D'Agostino 915-212-5610

DISTRICT(S) AFFECTED: All

STRATEGIC GOALS 2 and 8: Goal 2. Set the standard for a safe and secure city. Goal 8. Nurture and promote a healthy sustainable community.

SUBJECT: Interlocal agreement for laboratory testing facility for local state of emergency assistance.

BACKGROUND / DISCUSSION:

That the Mayor, or City Manager, is authorized to execute an Interlocal Agreement for Laboratory Testing Facility for Local State of Emergency Assistance between the City of El Paso, the University of Texas at El Paso (UTEP), and Texas Tech University Health Sciences Center at El Paso (TTUHSCEP) for use of a UTEP facility for the detection and mitigation of COVID-19 cases and to allow for reimbursement of expenses incurred by UTEP and TTUHSCEP in the operation of the facility capped at \$1,000,000 for the term of the agreement.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO THAT:

That the Mayor, or City Manager, is authorized to execute an Interlocal Agreement for Laboratory Testing Facility for Local State of Emergency Assistance between the City of El Paso, the University of Texas at El Paso (UTEP), and Texas Tech University Health Sciences Center at El Paso (TTUHSCEP) for use of a UTEP facility for the detection and mitigation of COVID-19 cases and to allow for reimbursement of expenses incurred by UTEP and TTUHSCEP in the operation of the facility capped at \$1,000,000 for the term of the agreement.

Further, that the City Manager is authorized to sign any certification or delegation of authority needed for the operation of the facility.

APPROVED on this _____ day of _____, 2020.


THE CITY OF EL PASO:

Dee Margo
Mayor

ATTEST:

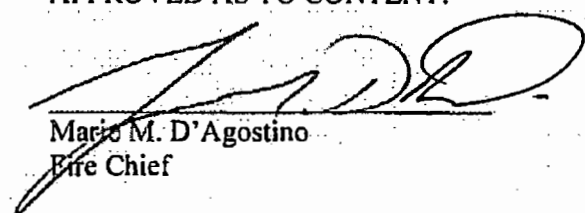
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Mario M. D'Agostino
Fire Chief

STATE OF TEXAS §
§
COUNTY OF EL PASO §

**INTERLOCAL AGREEMENT FOR
LABORATORY TESTING
FACILITY FOR LOCAL STATE OF
EMERGENCY ASSISTANCE**

This Agreement is entered into by and between the City of El Paso, Texas, a Texas municipal corporation ("City"), The University of Texas at El Paso ("UTEP") a Texas State Agency, Texas Public Institution of Higher Education and member institution of The University of Texas System, and Texas Tech University Health Sciences Center at El Paso ("TTUHSC EP") a Texas State Agency, Texas Public Institution of Higher Education (jointly UTEP and TTUHSC EP "Universities"), by and through their duly authorized officials, pursuant to the Interlocal Cooperation Act, Article 791.001 *et seq.*, Texas Government Code.

RECITALS

WHEREAS, UTEP, TTUHSC EP and the City (each a "Party," and collectively the "Parties") are local governments as defined in Chapter 791 of the Texas Government Code, and have the authority to enter into this agreement, and have each entered into this agreement in the appropriate manner prescribed by law;

WHEREAS, UTEP, TTUHSC EP and the City specify that each Party paying for the performance of said functions of government shall make those payments from current revenues available to the paying Party;

WHEREAS, as a result of confirmed cases of 2019 Novel Coronavirus (COVID-19), the US Secretary of Health and Human Services declared a public health emergency exists and has existed since January 27, 2020, nationwide; and the Governor of the State of Texas on March 13, 2020 declared a State of Disaster in Texas due to COVID-19; and effective March 13, 2020, a local state of emergency was declared for the City of El Paso;

WHEREAS, on March 13, 2020 the Mayor signed a Local Emergency Declaration and requested the aid of the State Government pursuant to Texas Government Code Section 418.108;

WHEREAS, on March 17, 2020, the City Council adopted Emergency Ordinance No. 019035, Extending a Disaster Declaration Due to a Public Health Emergency;

WHEREAS, On March 17, 2020 the U.S Secretary of Health and Human Services (HHS) published the Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 (COVID-19 Declaration) issued pursuant to the Public Readiness and Emergency Preparedness Act (PREP Act). This Agreement is being entered in response to the COVID-19 Declaration;

WHEREAS, the City is the Authority having jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following the declaration of an emergency under the COVID-19 Declaration;

WHEREAS, testing is considered a “covered countermeasure” to which immunity applies;

WHEREAS, the number of COVID-19 cases in the City of El Paso continue to rise with the existence of over 1,413 cases in El Paso as of May 12, 2020;

WHEREAS, the President of the United States of America continues to urge Americans to do their part to slow the spread of COVID-19;

WHEREAS, the City thru its Department of Public Health (“Department”) laboratory has requested the assistance of UTEP and TTUHSC EP in establishing a City Department Covid-19 testing facility within the UTEP campus (“Facility”), thru the use of the appropriate UTEP and/or TTUHSC EP CLIA certification, assigning UTEP and TTUHSC EP employees, faculty and/or staff who are trained in among other issues, nucleic acid extraction and PCR methods (“Personnel”) to assist the City and Department in the City’s testing of community specimens for COVID-19 using available testing methods, and obtaining additional necessary Equipment as defined below (“Program”);

WHEREAS, UTEP owns and operates certain building and facilities, including the Facility which is currently assigned to UTEP laboratory space specifically designated within the Biosciences Research Building located within the UTEP campus and City desires to use the Facility in accordance with the terms and conditions of this Agreement, under which the City will be entitled to use such and operate Facility exclusively for the Program;

WHEREAS, UTEP, TTUHSC EP have available Facility and Personnel accordingly, and are able to obtain the necessary additional Equipment on behalf of the City for said Program;

WHEREAS, the Parties wish to establish interagency cooperation for the City and Department to utilize Facility, Equipment, Testing Supplies, and Personnel from Universities to cooperate with City and Department in the described activities for the detection and mitigation efforts for the current worldwide health crisis and pandemic identified as COVID-19, and

WHEREAS, the City and the Universities believe that the cooperative agreement to assist the City, Department, the public and the taxpayers in the detection and mitigation efforts for the current worldwide COVID-19 health crisis and pandemic and is adequate consideration to support this Interlocal Agreement.

NOW THEREFORE, in consideration of the mutual contributions described herein and the mutual covenants and undertakings of the Parties, the receipt and sufficiency is hereby acknowledged, the City and the Universities agree as follows:

I. OBLIGATIONS OF BOTH THE CITY AND UNIVERSITIES

A. Designated Liaisons. Each Party will assign a responsible liaison and point of contact (“POC”) to coordinate, oversee and facilitate the implementation of the Program.

The Parties hereby designate the following POC under this Agreement:

<p>For UTEP:</p> <p>Dr. Georgialina Rodriguez 500 W. University Ave Bioscience Research Building Rm. 4.132 El Paso, TX 79968 Phone: (915) 747-8147 Cel. (915) 309-7579 grodriguez@utep.edu</p>	<p>For TTUHSC EP</p> <p>Sergio Garcia, MBA Sr. Clinical Department Administrator Departments of Anesthesiology / Radiology / Pathology Texas Tech University Health Sciences Center EL Paso 5001 El Paso Dr. El Paso, Texas 79905 O 915.215.5606 C 915.873.8008 F 915.215.5047 Sergio.garcia@ttuhsc.edu</p>	<p>For Department:</p> <p>Chief Mario D'Agostino or as otherwise designated by the City Manager 300 N. Campbell El Paso, TX 79901 DagostinoMM@elpasotexas.gov</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

B. Obligations of the City

- a. The City shall be responsible for all aspects of the Program, as well as providing all the necessary direction, supervision and maintenance of the Program, the City Equipment, Equipment, Testing Supplies, and Personnel.
- b. City will provide the Department's equipment ("City Equipment") necessary operate the Program at Facility. A list of the City Equipment is attached hereto as **Exhibit A** and incorporated herein by reference.
- c. The City in consultation with Universities will determine the number of Personnel and the scheduling of Personnel assignment by the Universities to the Program at Facility.
- d. Prior to engaging in any Program activities, Department shall provide Universities' Personnel orientation and training.
- e. During the Program, Department shall provide Universities' Personnel direction and supervision and shall document all Program actions in accordance with applicable law and regulation.
- f. City shall use the licensed Facility exclusively for the purposes related to general and laboratory operations for the Program and in accordance with the provisions of this Agreement including yet not limited to the Facility use terms and conditions established in **Exhibit B** attached hereto and incorporated herein by reference.
- g. The City will reimburse Universities in full all costs for Universities' participation in the Program, for the cost of Personnel, Equipment, Testing Supplies, and Facility in accordance with the terms and conditions of this Agreement.
- h. To the extent permitted under law, the City will work with federal agencies and state agencies to receive funding available under COVID-19 Declaration and

other available federal, state and local declarations, laws, rules regulations and/or programs, to reimburse City, for any eligible costs incurred City under the Program.

C. Obligations of TTUHSC EP

- a. For purposes of CLIA certification requirements, TTUHSC EP will designate a physician to serve as Medical Director of the lab site at Facility. For purposes of the CLIA License and Medical Director oversight, the CLIA License will be used solely for the response activities related to COVID-19 under this Agreement, to include but not limited to sample receiving processing, accessioning, testing, and documenting.
- b. Continue to work with the City in obtaining CLIA certification for the Facility and to monitor that all requirements of CLIA certification are met for Facility.
- c. Work with the City to coordinate the expansion of City facilities and assist in obtaining CLIA certification for the Facility and assist City in monitoring compliance with all applicable regulatory requirements.

D. Obligations of UTEP

- a. UTEP grants to City, and City accepts from UTEP a license to use the Facility exclusively for the purposes related to general and laboratory operations for the Program and in accordance with the provisions of this Agreement including yet not limited to the Facility use terms and conditions established in **Exhibit B** attached hereto and incorporated herein by reference.

E. Obligations of Universities.

- a. Subject to budgetary availability Universities will procure, at City's cost to be reimbursed to each University as applicable under this Agreement, the following equipment ("Equipment") in accordance to all applicable procurement laws and regulations:
 - i. Two (2) Laboratory Machines, identified as one (1) 7500 FAST DX INSTRUMENT TOWER, and one (1) KINGFISHER FLEX WITH 96 Deep to be procured by UTEP.
 - ii. Personal Protective Equipment ("PPE"), to include yet not limited to Powered Air Purifying Respirator ("PAPR") for the Universities Personnel assigned to the Program at the Facility.
 - iii. Appropriate Testing Viral Media Kits for the Program.
- b. Subject to budgetary availability and in accordance with section F.f below, Universities may procure, at City's sole cost to be reimbursed to each University as applicable under this Agreement, additional equipment, and testing supplies including but not limited to reagent as requested in writing by the City and approved and agreed to in writing by the duly authorized representatives of each of the Parties, and such additional equipment shall be included in the Equipment as defined in this Agreement.

F. Obligations of all Parties

- a. Assign personnel for the implementation of the Program under the direction and supervision of the City. City will verify that Personnel assigned by the Universities shall have the proper training and certification as required by the City to operate the Program.
- b. While performing the Program, Universities shall follow and comply with the Department's direction, guidelines, Standard Operating Procedures and Safety instructions and expectations under the Program.
- c. The Parties will consult with each other and coordinate with their respective POCs to determine continuing availability of Universities' capacity and operation of the Program under the direction and supervision of the City.
- d. Personnel shall be assigned to work under the Program as determined by their respective employer and as agreed to by the City.
- e. Each Party will assign personnel to the Program at Facility and shall be responsible for paying the salary and benefits of its own Personnel as applicable to employees of each Party, and shall withhold and transmit payroll taxes, provide unemployment insurance, and workers' compensation benefits as well as process unemployment and workers' compensation claims involving their own personnel. The City will reimburse the Universities for personnel costs incurred by the Universities.
- f. As the current pandemic crisis evolves, the Parties will continue to confer regarding the optimum equipment required and available in order to maintain the most effective public safety health system for the City under the Program. Any additional equipment requests under this Section must be approved and agreed to in writing by the duly authorized representatives of each of the Parties and shall be included in the Equipment as defined in this Agreement.
- g. Establishment of the CLIA License under the Department at Facility will be used solely for the response activities related to COVID-19 under this Agreement, to include but not limited to sample receiving processing, accessioning, testing, and documenting.
- h. All copies of equipment certifications used at the Facility will be provided to Department.
- i. Facility Hours of Operation: Hours of operation shall be from 6:00 a.m. to 10:00 p.m. Subject to written approval by the Parties, the Hours of Operation may be modified as required to maintain a twenty-four (24) hour result notification, which shall be measured from the time the sample is received until the results are confirmed.
- j. Department CLIA license for the Facility will be terminated at the time the Department of Health determines the COVID-19 testing site is no longer needed and this Agreement is terminated as established below. The Department shall provide thirty (30) calendar day prior written notice in accordance with this Agreement regarding the termination of the Department CLIA license at Facility.
- k. All Personnel assigned to Facility under this Program is required to abide by the Department standards of privacy and policies, Department shall provide all necessary notices and notifications for Personnel in accordance with this Agreement.
- l. All Personnel handling Department patient information at the Facility under the

Program are required to comply with the Department's applicable HIPAA regulations.

- m. Department will direct, supervise, review and approve the testing process and results under the Program.
- n. Personal Protective Equipment: All Personnel assigned under the Program must wear required PPE as determined by the Department's safety policies rules and regulations to include PAPR, N-95 masks, nitrile gloves, gowns, suits, lab coats, booties and face shield, etc. as provided by Department. If not provided by Department, Department will reimburse Universities for all expenses in providing Personnel Protective Equipment.
- o. Health Monitoring: All Personnel assigned to Facility will be required on a daily basis to monitor and record daily temperature and symptoms. Personnel with the following vitals shall not be permitted into the Facility: (i) temperature higher than 99.4 degrees; (ii) shortness of breath; or (iii) dry cough, or any cold or flu like symptoms. Personnel will be required by Department to follow City Policy if they develop any of the above symptoms.

II. COST REIMBURSEMENT

- A. Reimbursable Costs. In response to the COVID-19 Declaration and COVID-19 pandemic, any costs associated with providing the Program, including yet not limited to the, Facility, Equipment, Testing Supplies, Reagents, Personal Protective Equipment, and Personnel ("Reimbursable Costs") will be reimbursed by the City to Universities as applicable.
- B. Basis for Calculating Reimbursable Costs. Payments made by City under this Agreement (1) are based on cost to be fully reimbursed to Universities, (2) will fully and fairly compensate each of the Universities for the Facility, Equipment, Personnel and services they each provide and perform, and (3) will be made from funding available to City.
- C. In no event shall the amount of reimbursement by the City exceed \$1,000,000.00 over the Term of this Agreement ("Contractual Cap").
- D. The Universities will issue invoices for reimbursement along with its substantiating documentation on a monthly basis ("Invoice").
- E. City will issue payment to the Universities before the earlier of (i) thirty (30) calendar days after the City receives reimbursement for costs arising from an Invoice from funding available under the COVID-19 Declaration, or other federal, state and local declarations, laws, rules regulations and/or programs, which reimburse City for any such eligible costs; or (ii) the Expiration Date (as defined below) of this Agreement.
- F. Universities will each be independently and individually responsible for submitting their own Invoices to the City. City will process each Invoice independently, and City will process the appropriate payments per Invoice in accordance with this Agreement without delay or regard to the other Party's Invoices.
- G. The Parties participation in the Program is based on the common good trust and good faith of

the Parties. The City agrees it shall make a good faith effort to receive reimbursement for costs arising this Program from funding available to the City under the COVID-19 Declaration, or other federal, state and local declarations, laws, rules regulations and/or programs, which reimburse City for any such eligible costs. This notwithstanding, the City agrees to reimburse the Universities for costs related to Personnel and Equipment.

- H. In the event the City is unable to receive reimbursement for costs arising from the Facility License Fee (as defined below) due and payable to UTEP, from funding available under the COVID-19 Declaration, or other federal, state and local declarations, laws, rules regulations and/or programs, which are available for reimbursement to City for any such eligible costs, UTEP, will waive the Facility License Fee and consider it an in-kind donation.

III. OTHER COVENANTS AND AGREEMENTS

- A. Transfer of Ownership Interest. This Interlocal Agreement represents an agreement for the City and Universities to share resources. None of the Parties shall acquire an interest in the existing real or personal property of the other, except that the Universities shall keep ownership of the Equipment until reimbursement is made by the City for the corresponding expenses under an appropriate Invoice. Once reimbursement is made by the City for the Equipment the City will retain ownership of the Equipment and the Universities will release to the City any claims of ownership to the Equipment and assign any warranties that may come with the equipment. UTEP will execute any documents necessary to evidence ownership and will assist the City enforcing any warranties of the Equipment. To the extent allowed by law, in the event City wishes to sell the Equipment, City will first contact UTEP and provide UTEP a right of first refusal in the event UTEP would like to purchase the Equipment from the City.
- B. Independent Parties. This Agreement shall not be construed to create a relationship of partners, brokers, employees, servants or agents as between the Parties. The Parties to the Agreement are acting as independent contractors. Personnel who participate in the Program remain employees of their own employing Party.
- C. Use of Institutions' Name; Advertising and Publicity. None of the Parties shall use the other Parties' name, or any name that is likely to suggest that it is related to the other Parties, in any advertising, promotion or sales literature without first obtaining the written consent of the other Parties.
- D. Retention of Ownership. Upon termination of this Agreement, each Party will retain ownership of its respective properties, facilities, equipment and related testing supplies, whether or not the property was previously shared. Facility space will be reassigned by UTEP at its sole discretion, and all Personnel will return to work at their respective employers and to their regular appointments and assignments.
- E. Responsibility for Third Party Contracts. If any Party enters into a license, lease, lease/purchase agreement for services, equipment, tests, supplies or software, the signing Party shall remain responsible for all payments and interaction with the vendor. No contribution will be required from the non-signing entity at the time of purchase unless otherwise expressly agreed.

- F. **Insurance.** Each entity may insure its own property, and none of the Parties shall be liable for loss or damage to the real or personal property, personal injury, or any other special, indirect and/or consequential damages of any kind of the other arising from this Agreement.
- G. **No Conveyance of Real or Personal Property Interests.** The Parties agree this Interlocal Agreement is not intended to form an interest in real property and neither the City nor the Universities will acquire rights of tenancy in the other's facility for the initial term of this Agreement or during any renewal, extensions or modifications of the term of the Agreement.
- H. **Stand Alone Agreement.** The terms of this Agreement will be considered separate from any other Universities / City transaction or agreement. The consideration of the Parties described herein shall be calculated without reference to any other contract. Setoffs against other contractual obligations is neither contemplated by the Parties nor permitted.

IV. INITIAL TERM AND RENEWAL

- A. **Term and Automatic Renewal.** The effective date of this Agreement is **March 30, 2020** ("Effective Date"). The Universities' responsibilities under this Agreement to assign Personnel, purchase Equipment and provide services as established herein will commence ("Commencement Date") as of the Effective Date and this Agreement shall be in effect for twelve (12) months beginning on the Effective Date, unless terminated or extended in writing signed by duly authorized representatives of each of the Parties in accordance with the provisions set forth in this Agreement ("Term").
- B. **Termination.** Any of the Parties may terminate this Agreement upon thirty (30) calendar days written notice of its intention to terminate the Program described herein to the other Parties by certified mail, return receipt requested at the addresses established herein.
- C. The Parties expressly agree that in the event the amount of reimbursement by the City to the Universities reaches the Contractual Cap under this Agreement prior to the expiration of its Term, unless the Parties enter into an appropriate amendment hereto, this Agreement shall automatically terminate and the Universities shall have no further obligations to continue providing the Program, Facility and/or services to the City in accordance with the terms and conditions of this Agreement.

V. NOTICES

- A. **Notices.** Any notice to any Party under this Agreement must be in writing signed by the Party giving it, and shall be deemed given when received by the Party's designated representative. Notices shall be mailed postage prepaid by U.S. Postal Service first class, certified, or express mail, or other overnight mail service, hand delivered or emailed to the following designated representatives:

To the City of El Paso: City of El Paso
Office of the City Manager
P.O. Box 1890
El Paso, TX 79950-1890

With copy to: City of El Paso
Deputy Director, Public Health Department
Angela Mora
5115 El Paso Dr.
El Paso, Texas 79905
Email: Angela.Mora@elpasotexas.gov

UTEP: The University of Texas at El Paso
500 W. University Ave
El Paso, TX 79968
Attn. President

With copy to: The University of Texas at El Paso
Vice President for Business Affairs
500 W. University Ave
El Paso, Texas 79968

TTUHSC EP: Texas Tech University Health Science Center at El Paso
Attn: Contracting
5001 El Paso Drive
El Paso, Texas 79905
Email: ELPContractDept@ttuhsc.edu

With copy to: Texas Tech University Health Science Center at El Paso
Office of the President
5001 El Paso Drive
El Paso, Texas 79905

Changes may be made to the above addresses and addressees through timely written notice provided to the other Parties.

VI. GOVERNMENTAL FUNCTION AND IMMUNITY

- A. **Governmental Function.** The City and Universities expressly agree that, in all things relating to this Interlocal Agreement, the Parties enter into this Interlocal Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of each Party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.
- B. **Immunity.** The City and Universities reserve, and do not waive, their respective rights of governmental and/or sovereign immunity and similar rights and do not waive their rights under

the Texas Tort Claims Act. The Parties expressly agree that none of the Parties waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, regulations or declarations.

- C. **PREP ACT.** The City and Universities agree that immunity applies to UTEP and its employees, TTUHSC EP and its employees, and the City and its employees for the covered countermeasures, including but not limited to testing for COVID-19.

VII. RISK ALLOCATION – LIMITATION OF LIABILITY

- A. **Liability.** This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to any Party by law.
- B. **Exclusion of Incidental and Consequential Damages.** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, none of the Parties shall be liable to the other Parties (nor to any person claiming rights derived from such Party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish, emotional distress and attorney's fees- as a result of breach of any term of this Agreement, regardless of whether the Party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. None of the Parties hereto shall be liable to the other Parties or any third Party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other Parties regardless of whether the Party receiving said information from the other Parties was advised, had other reason to know, or in fact knew thereof.
- C. **Intentional Risk Allocation.** The City and Universities each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the Parties.
- D. **Fines and Penalties.** Each Party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that Party's actions, except as may be specifically provided by law.
- E. **Indemnification.** To the fullest extent permitted by applicable law, and without waiver of any Constitutional and/or statutory protections, City will and does hereby agree to indemnify, protect, defend with counsel approved by TTUHSC EP and UTEP individually, and hold harmless Universities and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents (collectively, "Indemnitees") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, (collectively, "Claims") by any person or entity, arising out of, caused by, or resulting from the Program, Universities' performance under or breach of this

Agreement, or that any act or omission of Universities, anyone directly employed by Universities or anyone for whose acts or omissions Universities may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

VIII. GENERAL PROVISIONS

- A. Compliance with Laws. In the performance of their obligations under this Agreement, the Parties shall comply with all applicable federal, state or local laws, ordinances and regulations and declarations.
- B. Governing Law. For purposes of determining the law governing the same, this Agreement is entered into in the city and state of main operations of the Parties hereto, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso, Texas.
- C. Privileges and Immunities. All privileges and immunities from liability, exemptions from laws, ordinances and rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of the City and the Universities when performing a function shall apply to such officers, agents, Personnel or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.
- D. Current Revenues. Pursuant to Section 791.001(d) (3), Texas Government Code, each Party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying Party.
- E. No Waiver. The failure of any Party at any time to require performance by the other Parties of any provision of this Agreement shall in no way affect the right of such Parties to require performance of that provision. Any waiver by any Party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.
- F. Amendment; Assignability. This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other Parties.
- G. Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which to be illegal, invalid or unenforceable, there will be added as part of this Agreement, a provision which preserves the intention of the unenforceable provision, but which complies with the law.
- H. Section Headings. The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

I. Representation of Counsel; Mutual Negotiation. Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the Parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties named hereinabove as of the date, month and year established below.

CITY OF EL PASO

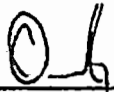
Tommy Gonzalez
City Manager

Date: _____

ATTEST:

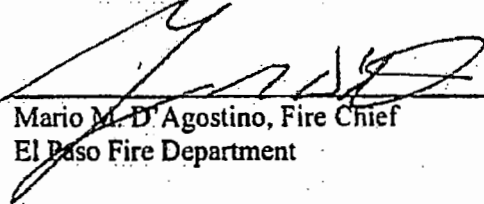
Laura Prine
City Clerk

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Mario M. D'Agostino, Fire Chief
El Paso Fire Department

THE UNIVERSITY OF TEXAS AT EL PASO

Heather Wilson

Heather Wilson, PhD
President
Date: 5/20/2020

TEXAS TECH UNIVERSITY HEALTH SCIENCE CENTER AT EL PASO

Richard Lange

Richard A. Lange, MD, MBA
President
Date: 5/20/2020

**EXHIBIT A
CITY EQUIPMENT**

- (2) Applied Biosystems QuantStudio real-time PCR
- (1) Applied Biosystems® 7500 Fast Dx Real-Time PCR Instrument with SDS Software
- (2) QIAcube from Qiagen (Automated Extractor)
- (2) Centrifuges

To include any additional equipment as identified by the City Department of Public Health in order to meet the requirements of testing.

EXHIBIT B
FACILITY USE TERMS AND CONDITIONS

1. As established in this Agreement, and subject to the terms and conditions of this Agreement and its Exhibits, UTEP grants to City, and City accepts from UTEP:
 - a. A license to use the Facility and City shall use the licensed Facility exclusively for the purposes related to general and laboratory operations under the Program and in accordance with the provisions of this Agreement. In using the Facility, City shall comply with all applicable federal, state and local statutes, rules, regulations, codes, ordinances, declarations and policies, applicable UTEP rules, regulations and policies.
 - b. A non-exclusive license to use the common areas of the building in which the Facility is located, related improvements and the land where the Facility is located ("Common Areas").
 - c. A non-exclusive license to use the parking facility that is made available to City and TTUHSC EP personnel assigned to the Program;
2. Changes in Facility Location. As established in this Agreement, Facility is currently designated within the UTEP campus Biosciences Research Building. As the current COVID-19 pandemic crisis evolves, the City and UTEP will continue to confer regarding the location of the Facility and the amount of space required and available in order to maintain the most effective public safety health system for the City in accordance with the terms of this Agreement. Any requests for changing designated location, increasing, or decreasing the amount of space of the Facility under this Section and Agreement will be subject to approval and agreed to in writing by the duly authorized representatives of each of the Parties. UTEP at its sole discretion may reject any request for designation of increased space and/or change in location of the Facility within the UTEP campus.
3. License Fee. In consideration for the use of Facility, and as part of the Reimbursable Costs under this Agreement, City shall pay UTEP license fee equal to a ten percent (10%) overhead assessment charged on UTEP direct costs only ("License Fee"), during the Term (as defined in the Agreement). License Fee shall be included in the corresponding UTEP Invoices and payable in accordance with the terms and conditions of the Agreement without any offset or deduction.
4. Facility Services.
 - a. Utility and Custodial Services. UTEP shall be responsible for the provision of electricity, gas, water, heat and air conditioning, and other utility services and janitorial cleaning services as available in the building and Facility.
 - b. UTEP shall be responsible for routine maintenance in common areas; twenty-four (24) hour, non-exclusive, passenger elevator service to the floor on which the Facility is located; and replacement of building standard light bulbs and fluorescent tubes that are part of the permanent ceiling fixtures in the Facility. UTEP shall provide electrical currents suitable for standard office lighting and typewriters, dictating equipment, calculators and other machines of similar low electrical consumption, as well as that

necessary for the operation of the City Equipment and Equipment and the Program.

- c. UTEP does not warrant that any of the utility and other services provided by UTEP to the Facility or any portion thereof will be free from interruptions caused by weather, repairs, renewals, improvements, alterations, strikes, lockout, accidents, inability of UTEP to obtain fuel or supplies, or any other cause or causes beyond the reasonable control of UTEP. However, if any of the utility and other services provided by UTEP to the Facility is interrupted for any reason, then UTEP will use its best efforts to restore such service as promptly as possible. Any such interruption of utility and other services shall not be deemed a breach of contract, an eviction, or a disturbance of City's use of the Facility, or any part thereof, or render UTEP liable to City for damages or relieve City from performance of its obligations under this Agreement, except to the extent that such failure or interruption prevents performance by City.
- d. HIPAA. City shall comply with all applicable laws, rules, regulations and policies related to the privacy and confidentiality of "protected health information" as defined under the federal "Administrative Simplification Provisions" of the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time.

5. Condition of Licensed Facility.

- a. At Delivery. UTEP makes no representation or warranty of any kind (express or implied) regarding the suitability of, or compliance with applicable laws by, the Facility, as built or maintained, for any aspect of City's intended use. Accordingly, City acknowledges and agrees that City has made an adequate investigation and inspection of the Facility and its own determination regarding the suitability thereof for City's intended use and the Program. **City further acknowledges and agrees that the Facility shall be delivered by UTEP to City "as is," "where is" and "with any and all faults," and without any representation or warranty of any kind (express or implied), including, but not limited to, representations and warranties as to merchantability and fitness for the use thereof for any particular purpose, including yet not limited the Program.**
- b. Preservation. City shall not, without the prior approval of UTEP, (i) cause or allow to be caused any activity whereby the Facility or any property owned or operated by UTEP are damaged, marred or defaced or (ii) make or allow to be made any alteration of any kind to the Facility.
- c. Damage. City shall return the Facility to UTEP upon termination of this Agreement in the same condition as when received, excepting only normal wear and tear, and shall reimburse UTEP in accordance with the Agreement for any and all costs, expenses, charges or fees incurred in the repair or replacement of damage to the Facility as a result of the acts or omissions of City and/or the operation of the Program, either preceding, during or after the Program.
- d. Hazardous Materials. City shall not bring, place, store, or use on or about the Facility any asbestos containing materials, petroleum, explosives, toxic, reactive, corrosive, biohazardous, or radioactive materials, medical wastes, substances defined as hazardous wastes, hazardous materials, or hazardous substances under or regulated by any federal, state, or local law, rule, order or regulation, or any inflammable materials or odorous solvents or materials, **except ordinary products commonly used in connection with the Program and use permitted herein and created, placed, stored and used in strict accordance with all applicable federal, state, and local laws, rules, orders and regulations.**

- e. No alteration of any nature may be made to the Facility or to any fixture or Equipment located therein without the prior written consent of a duly authorized representative of UTEP.
6. No Assignment; No Amendment. The City (i) may not assign or transfer, in whole or in part, by operation of law or otherwise, the use of the Facility without the prior written consent of the other party; and (ii) this license may not be amended or modified except in a writing duly executed by each of the parties.
7. Control of Facility. By granting City the temporary limited use of the Facility and corresponding parking areas exclusively for the operation of the Program during the Term in accordance with the terms of this Agreement UTEP does not relinquish custody or control of such Facility, property, and/or premises and at all times retains the right for its authorized representatives to enter such premises at any time during its use by City under the Program.
8. Vacation of Facility. Facility shall be vacated and all City Equipment and materials brought into the Facility by City, TTUHSC EP or the officers, agents, employees, or contractors of City and/or TTUHSC EP for the Program shall be removed by 11:59 P.M. on the earliest of (i) the end of the Term of this Agreement, or (ii) the termination of this Agreement in accordance terms and conditions established above. In the event the Facility and any other premises are not vacated by City when herein specified, then UTEP is hereby authorized to remove from Facility and premises, at the expense and liability of City, all goods, wares, City Equipment, merchandise and property of any and all kinds and description placed therein by City or as a result of the Program, and which may be then occupying the same and UTEP shall not be liable for any damages or loss of such goods, wares, merchandise or other property which may be sustained either by reason of such removal or of the place to which it may be removed, and UTEP is hereby expressly released from any and all claims for damages of whatsoever kind or nature.

Delegation of Duties CLIA Laboratory Director to Technical Supervisor/Laboratory Section Director

By this Delegation of Duties, the CLIA Laboratory Director Attilio Orazi delegates the duties listed below to the Technical Supervisor Miguel Martinez. Miguel Martinez has been employed by the City of El Paso to perform the duties of Technical Supervisor. The Technical Supervisor will perform the following duties and is responsible for assuring compliance with the standards set forth under 42 CFR §493.1451 for the laboratory assigned CLIA# 45D2183961.

The Technical Supervisor is responsible for the technical and scientific oversight of the laboratory. The Technical Supervisor must be accessible to the laboratory to provide on-site, telephone, or electronic consultation.

The Technical Supervisor is responsible for the following:

1. Appropriate selection of test methodology for the clinical use of the test results,
2. Verification of the test procedures performed and the establishment of the laboratory's test performance characteristics, including the precision and accuracy of each test and test system,
3. Enrollment and participation in an HHS approved proficiency testing programs
4. Establishing a quality control program appropriate for the testing performed and establishing the parameters for acceptable levels of analytic performance and ensuring that these levels are maintained throughout the entire testing process
5. Technical problems are resolved and remedial actions have been taken and the test system is functioning properly
6. Ensuring that patient test results are not reported until all corrective actions have been taken and the test system is functioning properly
7. Identifying training needs and assuring that each individual performing tests receives regular in-service training and education
8. Evaluating the competency of all testing personnel and assuring that the staff maintain their competency to perform test procedures and report test results promptly, accurately and proficiently
9. Evaluating and documenting the performance of individuals responsible for high complexity testing at least semiannually during the first year the individual tests patient specimens.

Tomas Gonzalez
City Manager

Miguel Martinez

Miguel Martinez
Technical Supervisor

Attilio Orazi

Attilio Orazi
Medical Director

5-16-2020

05-19-2020