

INTERGOVERNMENTAL AGREEMENT FOR COVID-19 TESTING

This Intergovernmental Testing Agreement, dated August 8, 2020 (the "Agreement"), is entered into by and between Larimer County, Colorado ("County"), and the Board of Governors of the Colorado State University System acting by and through Colorado State University (the "University"), located at Fort Collins, CO 80523-2002.

Background:

The County through its Department of Health and Environment seeks to increase diagnostic testing for COVID-19 for residents of the County. They have requested that the University provide testing services for County collected samples. The County and the University have agreed to enter into this Agreement to memorialize the agreement of the parties with respect to testing services to be provided to the County by the University.

Section 1. Services.

1.1 The University agrees to perform the testing services described in the Scope of Work attached hereto (the "Services") and made a part hereof as Exhibit A, under the direction and supervision of Dr. Kristy Pabilonia.

1.2 All Services rendered pursuant to this Agreement shall be supervised by only duly qualified personnel having the necessary skills to supervise the performance of the Services (or their respective portion thereof) in the manner contemplated by this Agreement.

1.3 Within the Scope of Work, the parties will agree on a mutually acceptable workflow or protocol for receipt of samples from the County, return of results to the County and final disposition of samples. Additional matters may be addressed as well and the parties may with mutual consent up-date or modify the Scope of Work document. Generally, the test results will be returned within 72 hours of submission. However, the University reserves the right to notify the County that such testing returns may take longer due to backlogs or other unforeseen circumstances.

Section 2. Compensation.

2.1 The University has entered into an agreement with Colorado Department of Public Health and Environment to perform testing services and to increase their lab testing capacity. As part of that agreement CDPHE has agreed to pay for 50% of each test for residents of Larimer County. Larimer County has agreed to pay CSU for the remaining 50% for each test processed for residents of Larimer County. The tests shall be performed for \$100.00. The University will invoice the County for its share of the payment for each test processed for a resident of Larimer County.

2.2 Invoices will be presented to the County no more frequently than once a month. Payment is expected no later than 45 days after date of invoice. The University will not be responsible for billing any individual or insurance carrier.

Section 3. Work Standards. The University agrees at all times relevant hereunder: (i) to perform the Services by applying sound and accepted scientific principles and methodologies; (ii) to perform all Services (*A*) in a workmanlike and safe manner, and (*B*) in compliance with all applicable federal, state, and local laws and University rules, policies and regulations (collectively, "Laws"); (iii) to report any Results truthfully and accurately to the County in a prompt manner; (iv) handle all County

materials in a safe and lawful manner; and (v) without the County's written consent, not deviate in any material respect from the Scope of Work.

Section 3. Facilities and Equipment.

Except as may be otherwise provided below, the University shall provide all resources necessary or desired to perform and complete any Services required under this Agreement or as contemplated herein, including all personnel; and any physical facilities and equipment (collectively, "Facilities").

Section 4. Contractual Relationship. In the performance of all services to be rendered hereunder: no party shall be authorized or empowered to act as agent for the other party for any purpose and shall not on the other party's behalf attempt to enter into any contract, agreement, warranty, or representation as to any matter. It is understood and agreed by the parties that the University is an independent contractor with respect to the County and that this Agreement is not intended and shall not be construed to create an employer/employee or a joint venture relationship between the University and the County. The University shall be free from the direction and control of the County in the performance of the University's obligations under this Agreement, except that the County may indicate specifications, standards requirements and deliverables for satisfaction of the University's obligations under this Agreement. To avoid any doubt, this Agreement does not intend to create any joint venture, partnership, "teaming" or joint collaborative arrangement between the County and any other person employed by the University.

Section 5. Meetings and Communication. Throughout the term of this Agreement, the University shall regularly communicate with the County regarding any Services or results.

Section 6. Use of Names and Marks. Neither party obtains by this Agreement any right, title, or interest in, or any right to reproduce or to use for any purpose, the name, tradenames, trade- or service marks, or logos (the "Marks"), or the copyrights of the other party. Neither party will include the name of the other party or of any employee of that party in any advertising, sales promotion, or other publicity matter without the prior written approval of that other party. In the case of the University, prior written approval is required from the University Vice President for Research. In the case of the County, prior written approval is required from an authorized representative of the County.

Section 7. Liability; Insurance.

7.1 Each party hereto agrees to be responsible for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent allowed by law. Liability of the University and the County are at all times herein strictly limited and controlled by the provisions of the Colorado Government Immunity Act, C.R.S. secs. 24-10-101, *et seq.* as now or hereafter amended. Nothing in this Agreement shall be construed as a waiver of the protections of said Act.

7.2 No party shall be liable for any indirect, special, incidental, consequential or punitive loss or damage of any kind, including but not limited to lost profits (regardless of whether or not University knows or should know of the possibility of such loss or damages). The liability of either party under this Agreement shall not exceed the amount paid or payable to the University under this Agreement, except where such party's actions were willful or grossly negligent.

Section 8. Term and Termination.

8.1 Project Period. The Agreement will be effective as of the latest of the execution dates set forth below, and continue at all times through December 30, 2020, unless terminated earlier below. This period may be amended by mutual written agreement of the University and the County.

8.2 Extensions of Project Period. The parties may by mutual agreement in writing extend the project period.

8.3 Termination. Either party may terminate this agreement on ten (10) days prior written notice to the other.

8.4 Effect of Termination. The following provisions survive the expiration or termination of this Agreement: Sections 10.1

Section 9. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be sent by confirmed e-mail or facsimile transmission (FAX) to the number or addresses set forth below (in each such case notice shall be deemed given on the date of transmission), or by overnight air courier service or by registered or certified mail, return receipt requested, postage prepaid and properly addressed, to the addresses set forth below, or such other address as a party may hereafter provide notice of to the other:

If to the County:
Tom Gonzales,
Public Health Director
1525 Blue Spruce Dr,
Fort Collins, CO 80524
970-498-6700

and

Frank Haug
Larimer County Attorney's Office
224 Canyon Avenue
Fort Collins, CO 80521
970-498-7450

If to the University:

Office of the General Counsel
01 Administration Building
0006 Campus Delivery
Colorado State University
Fort Collins, CO 80523-0006
Tel: 970-491-6270

Section 10. Miscellaneous.

10.1 AT NO TIME SHALL ANY PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES SUFFERED BY ANY PERSON (INCLUDING ANOTHER PARTY) RESULTING FROM SUCH PARTY'S BREACH OF OR DEFAULT UNDER THIS AGREEMENT OR THE PROVISION, USE OR HANDLING OF ANY COUNTY MATERIALS.

10.2 Entire Agreement. This Agreement expresses the entire agreement between the parties. All prior negotiations, understandings, promises and agreements, oral or written, are superseded hereby.

10.3 Amendments. Any amendment to this Agreement or any exhibit or attachment to this Agreement must be in writing and signed by the University and the County. No waiver of any term or required performance of this Agreement shall be valid and enforceable unless in writing and signed by the authorized representative for the party granting the waiver. The waiver by any party of a breach of any term or required performance of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party or a breach of the entire Agreement.

10.4 Severability. If any of the provisions of this Agreement shall be determined to be illegal or unenforceable by a court of competent jurisdiction, the other provisions shall remain in full force and effect.

10.5 Force Majeure. No party will be responsible for delays resulting from causes beyond its reasonable control, including without limitation fire, explosion, flood, war, strike, or riot; provided that the non-performing party uses reasonable efforts to avoid or remove those causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever the causes are removed.

10.6 Interpretation. Words expressed in the singular number shall include the plural and vice versa, and words expressed in the masculine shall include the feminine and neuter genders and vice versa. References to "day" or "days" are to calendar days. The words "include," "includes," and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of similar import. The headings contained in this Agreement and in the schedules and exhibits hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement, including the meaning or intent of the provision that follows.

10.7 No Third-Party Beneficiary. Except as expressly provided herein, this Agreement is for the sole benefit of the parties and their permitted successors and assignees and nothing herein expressed or implied will give or be construed to give any person, other than the parties and such successors and assignees, any legal or equitable rights hereunder.

10.8 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, and by different parties hereto in separate counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

* * *

The parties have each affixed their signatures below and enter into this Agreement as of the date first set forth above.

Larimer County, Colorado

By: Steve Johnson, Chair BOCC

Date: Sept. 15, 2020

The Board of Governors of the Colorado State University System, acting by and through Colorado State University:

By:  Digitally signed by Diana Ehrlich
Date: 2020.09.08 09:59:15 -06'00'

Printed Name: Diana Ehrlich

Title: Senior Contracting Officer

Date: September 8, 2020

Approved as to form
Markus Hugg 9/11/20
Assistant County Attorney

STATEMENT OF WORK
 To Original Contract Number _____

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

I. Project Description:

This project serves to increase the COVID-19 capacity throughout Colorado. This project consists of purchasing additional laboratory equipment for the Colorado State University’s (CSUs) Clinical Laboratory Improvement Amendment (CLIA) Certified Veterinary Diagnostic Laboratory (VDL). Additionally, the project consists of testing samples for COVID-19.

II. Definitions:

1. CDPHE – Colorado Department of Public Health and Environment
2. CLIA – Clinical Laboratory Improvement Amendment
3. CSU – Colorado State University
4. VDL - Veterinary Diagnostic Laboratory

III. Work Plan

Goal #1: To increase COVID-19 testing capacity in Colorado.	
Objective #1: No later than the expiration date of the contract, test COVID-19 samples on additional equipment purchased.	
Primary Activity #1	The Contractor shall increase the testing capacity of the CSU CLIA certified VDL lab.
Sub-Activities #1	<ol style="list-style-type: none"> 1. The Contractor shall purchase additional laboratory equipment. 2. The Contractor shall install additional laboratory equipment.
Primary Activity #2	The Contractor shall test samples for COVID-19.
Sub-Activities #2	<ol style="list-style-type: none"> 1. The Contractor shall report test results to the submitter. 2. The Contractor shall report test results to CDPHE. 3. The Contractor shall track the number of tests completed. 4. The Contractor shall track the turnaround time from sample receipt to results processing and patient notification.
Primary Activity #3	The Contractor shall prepare a Final Report.
Standards and Requirements	<ol style="list-style-type: none"> 1. The content of electronic documents located on CDPHE and non-CDPHE websites and information contained on CDPHE and non-CDPHE websites may be updated periodically during the contract term. The contractor shall monitor documents and website content for updates and comply with all updates. 2. Additional laboratory equipment is listed in Attachment #1 and is incorporated and made a part of this contract by reference. 3. The Contractor shall report results within 72 hours of sample receipt. If the Contractor is unable to meet this reporting timeline the Contractor shall notify CDPHE. 4. The Final Report shall include the following:

EXHIBIT A

	<ol style="list-style-type: none"> a. Date of equipment instillation b. Number of samples tested for COVID-19 c. The testing results, including indeterminate or unusable samples d. The sample processing turnaround time 	
Expected Results of Activity(s)	1. The State of Colorado will have an increased capacity to test samples for COVID-19.	
Measurement of Expected Results	1. Number of COVID-19 tests completed.	
	Completion Date	
Deliverables	1. The Contractor shall email the CDPHE Contract Monitor and State Laboratory Director when the additional laboratory equipment has been installed.	No later than two (2) business days after instillation.
	2. The Contractor shall submit the Final Report via email to the CDPHE Contract Monitor.	No later than 12/20/20

IV. Monitoring:

CDPHE’s monitoring of this contract for compliance with performance requirements will be conducted throughout the contract period by the *CDPHE Contract Monitor*. Methods used will include a review of documentation determined by CDPHE to be reflective of performance to include progress reports and other fiscal and programmatic documentation as applicable

V. Resolution of Non-Compliance:

The Contractor will be notified in writing within (10) calendar days of discovery of a compliance issue. Within (15) calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented in writing and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the *CDPHE Contract Monitor* and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the provisions of this contract.