

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

1 AMENDED AND RESTATED AGREEMENT NO. 35566

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3 THIS AMENDED AND RESTATED AGREEMENT NO. 35566 is made and
4 entered, in duplicate, as of September 14, 2021 for reference purposes only, pursuant to
5 Chapters 2.69 and 2.85 of the Long Beach Municipal Code, by and between FULGENT
6 THERAPEUTICS LLC, a California corporation (“Contractor”), with a place of business
7 located at 4978 Santa Anita Ave, Suite 205, Temple City, CA 91780, and the CITY OF
8 LONG BEACH (“City”), a municipal corporation.

9 WHEREAS, on July 6, 2020 City and Contractor (the “Parties”) entered into
10 Agreement No. 35566 (“Agreement”); and

11 WHEREAS, as a result of the need to proactively slow the spread of, and
12 combat, COVID-19 in the City, the City Public Health Officer issued a Declaration of Local
13 Health Emergency and the Acting City Manager issued a Proclamation of Local Emergency
14 on March 4, 2020; and

15 WHEREAS, on March 10, 2020, the City Council of the City of Long Beach
16 recognized that an emergency did exist and unanimously passed a Resolution ratifying the
17 City Manager’s Proclamation of a Local Emergency and the Public Health Officer’s
18 Declaration of Local Health Emergency; and

19 WHEREAS, the scope and magnitude of the response necessary to
20 proactively slow the spread of, and combat, COVID-19 in the City is beyond the control of
21 the services, personnel, equipment, and facilities of the City; and

22 WHEREAS, during the week of week of June 29, 2020, the City of Long
23 Beach has averaged over 130 cases per day and seen a 25.9% increase in cases. This is
24 compared to 40 cases per day in mid-May. The 7-day average of the daily positivity rate
25 has increased in the last week 8.5% to 10.8%; and

26 WHEREAS, due to the recent sharp increase in new COVID-19 cases, it is
27 necessary for the City to triple its testing capacity immediately; and

28 WHEREAS, pursuant to Chapter 2.85 of the Long Beach Municipal Code, the

1 City Manager and Purchasing Agent have the authority to approve purchases, rentals, or
2 leases of goods or services related to a proclaimed emergency; and

3 WHEREAS, pursuant to Long Beach Municipal Code Section 2.85.030.C, the
4 City Manager has the authority to approve Purchases up to One Million Dollars
5 (\$1,000,000.00), following the procedures in Long Beach Municipal Code Section
6 2.85.040; and

7 WHEREAS, after a competitive procurement, St. Charles County, Missouri
8 entered into an Agreement for Services for the purchase of COVID-19 testing services)
9 (“St. Charles County Agreement”); and

10 WHEREAS, Section 1802 of the Long Beach City Charter permits the City to
11 make purchases under the purchasing contracts of other governmental agencies when
12 authorized to do so by a resolution; and

13 WHEREAS, Contractor has agreed to extend the terms established in the St.
14 Charles County Agreement to the City with a change of governing law/venue to California,
15 as outlined in the Letter of Agreement attached hereto as Exhibit “A-1” and incorporated
16 by this reference; and

17 WHEREAS, City desires to have Contractor perform these COVID-19 testing
18 services to respond immediately to the threat of COVID-19 in the City, and Contractor is
19 willing and able to do so on the terms and conditions in this Agreement; and

20 WHEREAS, the public exigency created by the sharp increase in cases
21 makes it impracticable to wait for the City Council to adopt a resolution to purchase COVID-
22 19 testing kits under the purchasing contracts of another government agency; and

23 WHEREAS, a Resolution to acknowledge this Agreement to purchase
24 COVID-19 testing services by virtue of the St. Charles County Agreement for the City will
25 be brought to the City Council at the next practicable opportunity;

26 WHEREAS, the Parties entered into a First Amendment to the Agreement to
27 revise the annual not to exceed amount and amend the Agreement to add terms regarding
28 medical billing; and

1 WHEREAS, the Parties entered into a Second Amendment to add Nine
2 Million Dollars (\$9,000,000) to the annual contract amount; and

3 WHEREAS, the Parties desire to add the term of the contract;

4 NOW, THEREFORE, in consideration of the terms and conditions contained
5 in this Agreement, the parties agree as follows:

6 1. The St. Charles County Agreement with Contractor, attached hereto
7 as Exhibit "A-2", is incorporated by this reference as if fully set forth, and the same terms
8 and conditions contained in the St. Charles County Agreement shall be applicable here
9 except as follows:

10 A. Wherever the St. Charles County Agreement refers to St.
11 Charles County, Missouri, it shall be deemed to refer to the City of Long Beach;

12 B. Contractor shall sell, furnish and deliver to the City COVID-19
13 testing services of substantially the same type and kind purchased under the St.
14 Charles County Agreement, except as modified by Exhibit "B-1" attached hereto and
15 incorporated by this reference, in an annual amount not to exceed Seventeen Million
16 One Hundred Six Thousand Dollars (\$17,106,000), including tax and fees. To the
17 extent that the St. Charles County Agreement and this Agreement are inconsistent,
18 the following priority shall govern: (1) this Agreement and (2) the St. Charles County
19 Agreement.

20 C. Payment for the COVID-19 testing services purchased from
21 Contractor by the City shall be made by the City on delivery to and acceptance of
22 the COVID-19 testing services by the City and submittal of an invoice to the City.
23 Payment is due thirty (30) days after the date of the invoice.

24 D. The term of this Agreement shall commence at midnight on
25 July 6, 2020 and shall terminate at 11:59 p.m. on July 24, 2022. The term may
26 be extended for one (1) additional one-year period, at the discretion of the City
27 Manager.

28 E. All warranties shall accrue to the City of Long Beach.

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F. This Agreement shall be construed in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions.

G. Medical Billing.

1. Contractor, under this contract, shall provide all services necessary to collect for services provided by the City related to COVID-19 testing. Contractor will be responsible for and must include all the items listed below their pricing.
2. Contractor shall submit electronic and/or paper claims to all insurance companies within time of filing limitations.
3. Contractor will initially only bill patients with insurance. In the future, at the City's request, non-insured patients may be billed.
4. Contractor shall follow-up with responsible party for collection of the receivable after the initial billing date.
5. Contractor shall be responsible for the initial collection, generation of all insurance forms, filings, record maintenance, and reporting.
6. Contractor shall conduct any follow-up required to obtain necessary insurance information for accurate billing, collection, and payment processing.
7. Contractor must establish a process by which all rejected claims for payment are reviewed, corrected, and resubmitted.
8. Contractor shall comply with all HIPAA policies. Any violations of HIPAA by the Contractor will be grounds to terminate all contractual agreements.
9. Monthly reporting to the City that details the activity for

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the month as it relates to billing services, collection efforts, and accounts receivables, including but not limited to an Aging Report and Accounts Receivable reports on the 1st of every month.

10. Contractor must provide reports on an “as needed basis” as determined solely by the City at no additional charge.

11. Provide monthly statistical reports to allow the City to accurately track and manage its billing activity.

12. Contractor must be access to COVID-19 related diagnostic codes and procedure codes.

13. Contractor must possess the ability to use and add necessary ICD-10 diagnosis codes.

14. Contractor shall perform third party billing in compliance with applicable local, state, and federal government rules and regulations.

15. Contractor shall credit the City any funds (payments) collected by Contractor from insurance for City purchases made pursuant to this Agreement in an mount not to exceed the costs outlined in Exhibit “B” Contractor shall credit the City within (30) days of receipt of funds collected from insurance.

16. On a case by case basis, the Contractor shall provide access to Explanation of Benefits (EOBs) Payments for review.

17. Contractor must submit a complete listing and description of the information that the City must record before, during, or after testing, in order to fulfill the Contractor’s billing requirement.

18. Contractor must submit a detailed plan of how the billing and collection process will work. This aspect is extremely important in that this plan must be completely operational within 30 days after approval of the contract terms.

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19. Given the reasonable notification, the City has the right to audit all financial records pertaining to the billing and collection for COVID-19 testing for a period of three (3) years after contract terminates.

2. Neither this Agreement nor any money that becomes due to Contractor under this Agreement may be assigned by Contractor without the prior written consent of the City Manager or their designee.

3. Any notice given under this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, return receipt, and shall be delivered or mailed to Contractor at the relevant address first stated above, and to the City at 411 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager. Notice shall be deemed given three days after deposit in the mail.

4. The terms appearing on the St. Charles County Agreement are incorporated in this Agreement.

5. Contractor shall cooperate with the City in all matters relating to self-accrual of use tax. Contractor shall contact the City Treasurer for additional information regarding self-accrual.

6. This Agreement and all documents which are incorporated by reference in this Agreement constitute the entire understanding between the parties and supersede all other agreements, oral or written, with respect to the subject matter of this Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

FULGENT THERAPEUTICS LLC, a California corporation

September 24, 2021

By [Signature]
Name Jian Ye
Title COO

_____, 2021

By _____
Name _____
Title _____

"Contractor"

CITY OF LONG BEACH, a municipal corporation

September 30, 2021

By Linda J. Jatum
City Manager

"City"

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

This Agreement is approved as to form on September 28, 2021.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

EXHIBIT “B-1”

APPENDIX A. SERVICES AND PRICING

The LAB will provide City of Long Beach ("CLIENT") with COVID-19 and Influenza A and Influenza B testing by RT-PCR.

INSTITUTIONAL PRICING

- COVID-19 and Influenza A and Influenza B RT-PCR Testing: \$70 per test, includes testing, collection kit and shipping.
 - a. Laboratory Testing Service: \$55
 - b. Collection kits (including shipping and handling): \$15

ACCEPTABLE SPECIMEN TYPES

- Nasopharyngeal Swab
- Mid-turbinate or Anterior Nares Nasal Swab
- Oropharyngeal Swab
- Extracted RNA

SPECIMEN SHIPPING AND TESTING

- Specimens must be returned to the LAB as soon as reasonably practicable upon collection, and may be shipped at room temperature. LAB will use commercially reasonable efforts to perform and complete the testing within 24-48 hours of receipt of valid specimens by LAB.
- There may be delays if specimens are improperly labelled, if the specimen is of insufficient quality or quantity, or if the test requisition forms are not completed in the form and manner required.
- If discrepancies in the information provided cannot be resolved within 48 hours of receipt of specimen, the specimens will be discarded, and a replacement specimen will be required.

BILLING

- CLIENT will pay the LAB for all tests rendered upon completion of testing. LAB will then bill the insurance companies. LAB will credit the CLIENT up to the amount invoiced to CLIENT for any and all insurance claims that are approved. For any insurance claims that are not approved within 90 days, the CLIENT must pay for testing at institutional prices indicated.
- Institutional Billing. CLIENT must pay the invoice within 15 days of receiving the invoice. Payment options:

Mail-in check

Fulgent Therapeutics LLC
Address: PO Box 748677
Los Angeles, CA 90074 USA
Phone number: +1(626) 350-0537

Bank transfer

Name on Account: Fulgent Therapeutics LLC
Address: 4978 Santa Anita Ave, Ste 205
Temple City CA 91780 USA
Phone number: +1(626) 350-0537
Beneficiary Bank: Bank Of America
1234 S Baldwin Ave
Arcadia CA 91007
Routing/Transit (ABA) Number: 121 000 358
ABI Number: 0260-0959-3
SWIFT Number: BOFAUS3N
CHIP Address: 0959
Beneficiary Account Number: Checking Account 3250 1602 8298
Remittance Email Address: billing@fulgentgenetics.com