

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

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AGREEMENT

**35566**

THIS AGREEMENT is made and entered, in duplicate, as of July 6, 2020 for reference purposes only, pursuant to Chapters 2.69 and 2.85 of the Long Beach Municipal Code, by and between FULGENT THERAPEUTICS LLC, a California corporation ("Contractor"), with a place of business located at 4978 Santa Anita Ave, Suite 205, Temple City, CA 91780, and the CITY OF LONG BEACH ("City"), a municipal corporation.

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

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

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

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

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

WHEREAS, pursuant to Chapter 2.85 of the Long Beach Municipal Code, the City Manager and Purchasing Agent have the authority to approve purchases, rentals, or leases of goods or services related to a proclaimed emergency; and

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

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

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

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

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

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

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

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

26 1. The St. Charles County Agreement with Contractor, attached hereto  
27 as Exhibit "A-2", is incorporated by this reference as if fully set forth, and the same terms  
28 and conditions contained in the St. Charles County Agreement shall be applicable here

1 except as follows:

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

4 B. Contractor shall sell, furnish and deliver to the City COVID-19  
5 testing services of substantially the same type and kind purchased under the St.  
6 Charles County Agreement, except as modified by Exhibit "B" attached hereto and  
7 incorporated by this reference, in an annual amount not to exceed One Million  
8 Dollars (\$1,000,000.00), including tax and fees. To the extent that the St. Charles  
9 County Agreement and this Agreement are inconsistent, the following priority shall  
10 govern: (1) this Agreement and (2) the St. Charles County Agreement.

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

15 D. All warranties shall accrue to the City of Long Beach.

16 E. This Agreement shall be construed in accordance with the laws  
17 of the State of California, and the venue for any legal actions brought by any party  
18 with respect to this Agreement shall be the County of Los Angeles, State of  
19 California for state actions and the Central District of California for any federal  
20 actions. Contractor shall cause all work performed in connection with construction  
21 of the Project to be performed in compliance with (1) all applicable laws, ordinances,  
22 rules and regulations of federal, state, county or municipal governments or agencies  
23 (including, without limitation, all applicable federal and state labor standards,  
24 including the prevailing wage provisions of sections 1770 et seq. of the California  
25 Labor Code); and (2) all directions, rules and regulations of any fire marshal, health  
26 officer, building inspector, or other officer of every governmental agency now having  
27 or hereafter acquiring jurisdiction.

28 2. Neither this Agreement nor any money that becomes due to

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1 Contractor under this Agreement may be assigned by Contractor without the prior written  
2 consent of the City Manager or their designee.

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

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

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

13 6. This Agreement and all documents which are incorporated by  
14 reference in this Agreement constitute the entire understanding between the parties and  
15 supersede all other agreements, oral or written, with respect to the subject matter of this  
16 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

\_\_\_\_\_, 2020 By [Signature]  
Name Jian Xie  
Title COO

\_\_\_\_\_, 2020 By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

"Contractor"

CITY OF LONG BEACH, a municipal corporation

July 15, 2020 By [Signature]  
Name \_\_\_\_\_  
Title \_\_\_\_\_

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER

"City"

This Agreement is approved as to form on July 14, 2020.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy

# EXHIBIT "A-1"



June 29, 2020

Long Beach Financial Management Bureau  
Carrie Sinohui  
411 W. Ocean Blvd., 6th Floor  
Long Beach, CA 90802

Dear Ms. Sinohui,

Fulgent Therapeutics agrees to give the City of Long Beach the same terms provided in the St. Charles agreement with an effective date of 06/24/2020. Fulgent also agrees to change the governing law/venue to California.

Sincerely,

A handwritten signature in black ink, appearing to read "James Xie".

James Xie  
COO, Fulgent Therapeutics

# EXHIBIT "A-2"



## AGREEMENT FOR SERVICES

This Agreement for Services, (the "Agreement") is effective as of the date of execution, by and between Fulgent Therapeutics LLC ("LAB"), with a business address at 4978 Santa Anita Ave, Temple City, CA 91780 and St. Charles County, Missouri ("CLIENT") with a business address at 201 North Second Street, St. Charles, MO, 63301.

Whereas, LAB has the facilities and expertise to provide COVID-19 diagnostic testing to physicians, hospitals and other laboratories, and

Whereas, CLIENT is a company that desires to purchase COVID-19 testing services from the LAB.

Therefore, LAB and CLIENT do hereby agree as follows:

### A. Responsibilities of the Parties

1. **COVID-19 Testing Services.** LAB agrees to provide to CLIENT the testing services described in Appendix A attached hereto.
2. **Specimens.** CLIENT will provide LAB with specimens for COVID-19 testing. LAB has developed specific specimen requirements, which are attached hereto as Appendix A. CLIENT agrees to follow all instructions on Appendix A and understands that such instructions are critical to LAB's ability to perform the tests described herein. All costs associated with CLIENT's failure to follow the instructions described on Appendix A shall be CLIENT's responsibility.
3. **CLIENT Requirements.** Where CLIENT obtains a patient sample or submits an order for COVID-19 testing for a patient, CLIENT represents and warrants that (i) it is authorized in its jurisdiction to order any tests on behalf of a patient; (ii) it has advised the patient of the benefits, risks, capabilities, and limitations of the test(s) and services; (iii) CLIENT has obtained the consent from its patient to share patient health and other personal information with LAB, as required under HIPAA, as amended, and under any other applicable data privacy requirements; (iv) CLIENT has confirmed that its patient has signed or will sign LAB's informed consent, either in paper form, or as part of the test requisition form process; and (v) CLIENT will notify LAB of any changes in patient information and consent status.
4. **Transport.** All specimens should be shipped to the lab in the manner specified in Appendix A.
5. **Price.** For the provision of testing services, CLIENT agrees to pay LAB at the rate set forth in Exhibit A as the current fees to be charged to CLIENT for services rendered hereunder. No tests or services will be priced below the fair market value as required by law. All questions regarding invoices should be directed to the LAB's Institutional Billing Manager at 626-350-0537 or [billing@fulgentgenetics.com](mailto:billing@fulgentgenetics.com), or such other person designated in writing by LAB.
5. **Confidentiality.** To the extent as may be allowed by law, parties acknowledge and agree that the terms of this Agreement are confidential. Both parties agree that neither party, its agents or employees shall disclose, by any means, the terms of this Agreement, including, but not limited to, the price schedule or any part thereof, to any party not a party to this Agreement unless required to disclose by statute, ordinance, or order of court.
6. **HIPAA Requirements.** Both parties agree to comply with the applicable provisions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d through d-8, as amended from time to time ("HIPAA"), and the requirements of any regulations promulgated thereunder including, without limitation, the federal privacy regulations as contained in 45 CFR Part 164 (the "Federal Privacy Regulations") and the federal security standards as contained in 45 CFR Part 142 (the "Federal Security Regulations"). Both parties acknowledge that each party constitutes a "covered entity," as that term

is defined at 45 CFR §164.103, and both parties are engaged in "covered functions," as that term is defined at 45 CFR §164.501. Both parties agree not to use or further disclose any "protected health information," as defined at 45 CFR §164.504, or "individually identifiable health information," as defined at 42 U.S.C. §1320d (collectively, the "Protected Health Information"), concerning a patient other than as permitted by the provisions of this Agreement and the requirements of HIPAA and the regulations promulgated pursuant to HIPAA, including without limitation the Federal Privacy Regulations and the Federal Security Regulations. Both parties shall implement appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for by this Agreement. Either party shall promptly report to the other party any use or disclosure of protected health information not in accordance with this Agreement or in violation of HIPAA, the Federal Privacy Regulations, or the Federal Security Regulations of which that party becomes aware. In the event either party, with the prior approval of the other party in writing, contracts with any other parties or agents to whom the party furnishes protected health information received from the party, that party shall include provisions in such agreements whereby that party and the other party or agent agree to the same restrictions and conditions that apply to that party with respect to such protected health information. Either party shall return to the other party or properly dispose of any protected health information in accordance with federal and state law and regulations after the expiration or termination of this Agreement. Either party shall make its internal practices, books, and records relating to the use and disclosure of protected health information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations and the Federal Security Regulations. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by either party by virtue of this paragraph. Any breach of this paragraph shall constitute a material breach upon which termination of this Agreement may be based.

7. **Insurance.** CLIENT shall, at its sole cost and expense at all time 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). CLIENT shall cause to be issued to LAB proper certificates of insurance or self-insurance evidencing the foregoing provisions of this Agreement have been complied with and said certificates shall provide that prior to any cancellation or change in the underlying insurance during the policy period, the insurance carrier will first give thirty (30) calendar days written notice to LAB.

LAB 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 One Million Dollars (\$1,000,000). LAB shall cause to be issued to CLIENT proper certificates of self-insurance evidencing the foregoing provisions of this Agreement have been complied with and said certificates shall provide that prior to any cancellation or change in the underlying insurance during the policy period, the insurance carrier will first give thirty (30) calendar days written notice to CLIENT.

#### B. General Provisions

1. **Term.** The initial term of this Agreement shall commence as of the date recited above and continue for one year. Thereafter, CLIENT shall have the option to renew this Agreement for two additional one year periods at the same terms, conditions and prices. This Agreement may be terminated without cause at any time before expiration with thirty (30) days by mutual agreement.
2. **Publicity** Any mention of the Lab by the Company for publicity must be pre-approved by the Lab in writing.
3. **Effect of termination.** Upon any termination, LAB may at its sole discretion, provide testing services for any specimens received but not processed as of the date of termination, or return such specimens to CLIENT. LAB may consider but not be obligated to provide testing services under such circumstances upon offer of prepayment for the testing services by CLIENT.

4. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party. Consent may be conditioned upon written acknowledgment of obligations under this Agreement by the prospective recipient of the assignment.
5. Amendments. This Agreement may be modified or amended only by an instrument in writing signed by both parties hereto.
6. Force Majeure. No liability hereunder shall result to a party by reason of delay in performance caused by force majeure, that is circumstances beyond the reasonable control of the party, including, without limitation, acts of God, fire, flood, war, terrorism, civil unrest, labor unrest, or shortage of or inability to obtain material or equipment.
7. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior negotiations, correspondence, understandings and agreements between CLIENT and LAB.
8. Independent Contractors. LAB and CLIENT are independent contractors, and nothing in this Agreement shall be deemed or construed to create an employment or agency relationship between LAB and CLIENT.
9. 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 be 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.
10. Reformation. The parties hereby agree that neither party intends to violate any public policy, statutory or common law, rule, regulation, treaty or decision of any government agency or executive body thereof of any country or community or association of countries, and that if any word, sentence, paragraph or clause or combination thereof of this Agreement is found, by a court or executive body with judicial powers having jurisdiction over this Agreement or any of the parties hereto, in a final, unappealable order to be in violation of any such provision in any country or community or association of countries, such words, sentences, paragraphs or clauses or combination shall be inoperative in such country or community or association of countries, and the remainder of this Agreement shall remain binding upon the parties hereto. In lieu of such inoperative words, sentences, paragraphs or clauses, or combination of clauses, there will be added automatically as part of this Agreement, a valid, enforceable and operative provision as close to the original language as may be possible which preserves the economic benefits to the parties.
11. Governing Law. This Agreement shall be construed, interpreted and governed by the laws of Missouri. The Parties submit to jurisdiction and venue in the State of Missouri in any legal proceeding arising regarding this Agreement.
12. 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.
13. Notices. All notices (except invoices which will be sent per Section A.5) under this Agreement shall be in writing and delivered either by personal delivery or mailed by United States mail, postage prepaid, to the following addresses:

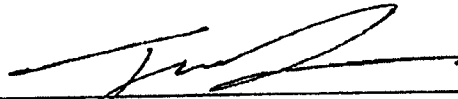
If to LAB:  
Fulgent Therapeutics LLC.  
4978 Santa Anita Ave.  
Temple City, CA 91780  
Attn: James Xie

If to CLIENT:

St. Charles County, Missouri  
Attn: Demetrius Cianci-Chapman  
Director, St. Charles County Department of Public Health  
1650 Boone's Lick Road  
St. Charles, MO 63301

In Witness Whereof, the parties have executed this Agreement as of date indicated above.

FULGENT THERAPEUTICS LLC

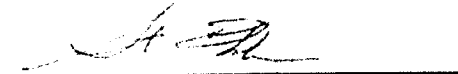
  
\_\_\_\_\_  
Signature

James Xie \_\_\_\_\_  
Name

Chief Operating Officer \_\_\_\_\_  
Title

06/24/2020  
\_\_\_\_\_  
Date

CLIENT

  
\_\_\_\_\_  
Signature

Steve Ehlmann \_\_\_\_\_  
Name

County Executive \_\_\_\_\_  
Title

06.24.2020  
\_\_\_\_\_  
Date

## APPENDIX A. SERVICES AND PRICING

The LAB will provide St. Charles County ("CLIENT") with COVID-19 testing by RT-PCR.

### INSTITUTIONAL PRICING

- COVID-19 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
- COVID-19 RT-PCR Testing with At-home collection kit and telehealth authorization: \$119. This includes clinical support for patients with positive results and shipping.

### ACCEPTABLE SPECIMEN TYPES

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

### TESTING

- LAB will perform testing as samples are returned, with testing completed within 24-48 hours and results sent back to CLIENT within 72 hours. Positive results will be reported within 6 hours of test results, and negative results will be reported within 24 hours of test results.

### BILLING

- Insurance Billing. Fulgent will bill 3rd party payers for insurance, as applicable.
- 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](mailto:billing@fulgentgenetics.com)

# EXHIBIT “B”

## APPENDIX A. SERVICES AND PRICING

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

### INSTITUTIONAL PRICING

- COVID-19 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
- COVID-19 RT-PCR Testing with At-home collection kit and telehealth authorization: \$119. This includes clinical support for patients with positive results and shipping.

### ACCEPTABLE SPECIMEN TYPES

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

### TESTING

- LAB will perform testing as samples are returned, with testing completed within 24-48 hours.

### BILLING

- Insurance Billing. Fulgent will bill 3rd party payers for insurance, as applicable.
- 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](mailto:billing@fulgentgenetics.com)

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RECEIVED  
CITY CLERK  
LONG BEACH, CA