

SERVICES AGREEMENT
BY AND BETWEEN
THE TEXAS DIVISION OF EMERGENCY MANAGEMENT
AND DAVACO, LP
C2020-1862

This Services Agreement (“**Agreement**”) is entered into and made effective as of August 17, 2020 (the “**Effective Date**”), by and between The Texas Division of Emergency Management, a member of The Texas A&M University System (“**A&M System**”), an agency of the state of Texas (hereinafter referred to as “**TDEM**”), and DAVACO Inc., (hereinafter referred to as “**PROVIDER**”). TDEM and PROVIDER are sometimes hereinafter referred to as “**Party**” individually or “**Parties**” collectively.

WHEREAS, PROVIDER has established licensed clinical laboratories to test for the coronavirus disease 2019 (“**COVID-19**”) caused by the severe acute respiratory syndrome coronavirus 2 (“**SARS-CoV-2**”);

WHEREAS, TDEM is charged with carrying out a comprehensive all-hazard emergency management program for the state of Texas and assisting cities, counties, and state agencies in planning and implementing their emergency management programs;

WHEREAS, on March 11, 2020, the World Health Organization announced that the outbreak of COVID-19 can be characterized as a pandemic; on March 13, 2020, the president of the United States declared a national emergency and the governor of the State of Texas declared a state of disaster in Texas; and on March 25, 2020, the president of the United States issued a Major Disaster Declaration for the State of Texas (the “**COVID-19 Pandemic**”);

WHEREAS, in light of the COVID-19 Pandemic, TDEM desires to utilize PROVIDER’s services to provide COVID-19 testing to Texas residents (the “**Patients**”); and

WHEREAS, the activities contemplated under this Agreement are of mutual interest and benefit to the Parties.

NOW THEREFORE, in consideration of the mutual covenants and premises contained in this Agreement, the receipt and sufficiency of which is acknowledged, TDEM and PROVIDER hereby agree as follows:

1. **SCOPE OF WORK**

Consistent with the provisions of this Agreement, PROVIDER shall provide the services detailed on Exhibit A attached hereto (the “**Services**”).

2. **TERM**

This Agreement shall begin on the Effective Date and continue through August 31, 2021 (the “**Initial Term**”), unless sooner terminated in accordance with Section 4 hereof. Upon mutual written agreement of the Parties, the Initial Term may be renewed for additional

one (1) year terms (each, a “**Renewal Term**” and collectively with the Initial Term, the “**Term**”), provided that in no event shall the Term exceed five (5) years.

3. **PAYMENT TERMS**

- A. For the Services rendered under this Agreement, TDEM shall pay PROVIDER a firm-fixed-price of \$150.00 per PCR test + applicable additional cost per day (as defined on Exhibit A hereto). This amount shall be inclusive of all necessary expenses for the provision of all Services under this Agreement, including but not limited to, the supply of the kits, laboratory services, and reporting of Lab Results (as defined on Exhibit A hereto). Please see the attached DAVACO, LP Testing Fees document.
- B. **Competitive Pricing.** The prices, terms, and conditions under this Agreement must be equal to or better than those offered to any other customer of PROVIDER. To the extent PROVIDER is not in compliance with this Section 3B, PROVIDER must refund TDEM the difference between the pricing under this Agreement and the lower, competitive price in violation of this Section 3B. Within thirty (30) days of TDEM’s determination that PROVIDER is not in compliance, PROVIDER agrees that it will (i) provide TDEM with the more favorable prices, terms, and conditions, (ii) amend this Agreement to reflect the change in pricing, and (iii) and issue any required refund.
- C. PROVIDER will invoice TDEM for the Services actually rendered by PROVIDER each month; provided that, PROVIDER will only bill TDEM (i) the full cost of the Kits for which Lab Results were reported to the Patients within 72 hours of the specimens’ arrival at PROVIDER’s laboratory; (ii) 50% of the cost of the Kits for which Lab Results were reported to the Patients between 72-96 hours of the specimens’ arrival at PROVIDER’s laboratory; and (iii) \$0 for the Kits for which Lab Results were reported to the Patients more than 96 hours after the specimens’ arrival at PROVIDER’s laboratory.
- D. Payment will be made to PROVIDER upon approval of such invoice by TDEM. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.
- E. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TDEM a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at:
<https://fmo.tamu.edu/media/395081/substitute-w9-2019.pdf>
- F. All invoices must include detail regarding the Services actually rendered by PROVIDER in that month.

4. **DEFAULT AND TERMINATION**

- A. In the event of a substantial failure by either Party to perform in accordance with the terms hereof, the non-defaulting Party may terminate this Agreement upon fifteen (15) days' written notice setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the non-defaulting Party.
- B. Either Party may terminate this Agreement at any time upon thirty (30) days' prior written notice to the other Party.
- C. In the event PROVIDER is utilizing a COVID-19 test authorized by the U.S. Food and Drug Administration (“**FDA**”) pursuant to an Emergency Use Authorization (“**EUA**”), PROVIDER shall promptly submit written notice to TDEM if the EUA is terminated or revoked sooner under Section 564(g) of the Federal Food, Drug, and Cosmetic Act (an “**EUA Termination**”). In the event of an EUA Termination, TDEM may terminate this Agreement immediately without liability or penalty.
- D. TDEM has the right to immediately terminate this Agreement, without penalty, in the event of (i) PROVIDER's gross negligence, willful misconduct, or sanction by the Centers for Medicare and Medicaid Services (“**CMS**”), the Office of the Inspector General or another governmental entity, (ii) PROVIDER's violation of any Applicable Law (as defined below), or (iii) a filing by or against PROVIDER of a petition in bankruptcy or in equity for receivership or for reorganization under the *United States Bankruptcy Code*, as now or hereafter amended, which filing is not withdrawn or vacated within thirty (30) days.
- E. Upon the expiration or termination of this Agreement for any reason, (i) TDEM shall pay PROVIDER any fees for Services rendered through the effective date of the expiration or termination, and (ii) PROVIDER shall process and communicate Lab Results to Patients for any and all return shipments of Kits received through the effective date of the expiration or termination.

5. **CONFIDENTIALITY**

Each Party recognizes and acknowledges that, by virtue of entering into this Agreement and performing their respective obligations hereunder, each Party may have access to certain information of the other Party that is confidential and constitutes proprietary, valuable, special, and unique property of the other Party. To the extent allowed by the laws and Constitution of the State of Texas without regard to its conflicts of law statutes or principles, the Parties agree that they shall not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the express prior written consent of the other Party whose confidential information is so disclosed or used, except pursuant to the performance of such Party's duties hereunder, any confidential or proprietary information of the other Party, including, but not limited to, information which concerns patients and costs which is not otherwise available to the public. Any information owned by either Party shall remain the property of the disclosing Party.

6. **PUBLIC INFORMATION**

- A. PROVIDER acknowledges that TDEM is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon TDEM's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of TDEM.
- C. PROVIDER acknowledges that TDEM may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.
- D. The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this Agreement, and PROVIDER agrees that the agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

7. **DISPUTE RESOLUTION**

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TDEM and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to the Chief of TDEM, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

8. **INSURANCE**

PROVIDER's insurance requirements are detailed in Exhibit B attached hereto.

9. **HIPAA COMPLIANCE**

- A. Each Party hereto will comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement, including but not limited to the Healthcare Laws (as defined below) (collectively, "**Applicable Law**").
- B. Under this Agreement, PROVIDER may create, or have access to, records or record systems that contain data protected or made confidential or sensitive by applicable federal, state, and local laws, rules, and regulations (collectively, "**Patient Records**"). PROVIDER will comply with all applicable federal, state, and local laws, rules, and regulations relating to the maintenance, uses, and disclosures of such Patient Records ("**Healthcare Laws**"), including but not limited to, the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder and Subtitle D of the Health Information Technology for

Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder. PROVIDER agrees to enter into any necessary Business Associate Agreements with appropriate entities for the provision of the Services or sharing of Patient Records under this Agreement. At the request of TDEM, PROVIDER may provide TDEM with de-identified components of Patient Records, provided that such sharing is conducted in accordance with all applicable Healthcare Laws.

- C. PROVIDER will maintain security policies, protocols, and procedures that are consistent with industry standards for similar businesses. In the event of an access to Patient Records, or use or disclosure of Patient Records, that is or would be impermissible under any Applicable Law related to the privacy and security of the Patient Records, PROVIDER shall be responsible for responding to the incident as required by any Applicable Law related to the privacy and security of the Patient Records (including, but not limited to, any application data breach notification laws) and for providing all notifications that are or would be required under any such Applicable Law. In addition to the foregoing, in the event of an impermissible access, use, or disclosure of Patient Records, PROVIDER shall provide TDEM with notice of the incident within five (5) days of discovery, and TDEM shall have the right to terminate this Agreement immediately without liability or penalty.

10. **REGULATORY COMPLIANCE**

- A. PROVIDER represents and warrants that its laboratories are, and shall remain, duly licensed clinical laboratories under applicable federal, state, and municipal law. Failure to maintain accreditation may result in immediate termination of this Agreement. PROVIDER shall obtain and maintain all licenses, permits, and certifications required by applicable state and federal government authorities for the provision of the Services hereunder including, but not limited to, the Clinical Laboratory Improvement Act of 1998 (“CLIA”). Upon request, PROVIDER shall provide TDEM with proof that PROVIDER is approved by CMS to provide laboratory services and is licensed or registered in its state(s) of operation. PROVIDER will perform all tests in compliance with any standard, ruling, or regulation of The Joint Commission, the U.S. Department of Health and Human Services, CLIA, or any other governmental agency responsible for administering, regulating, or accrediting healthcare facilities or professionals.
- B. PROVIDER will maintain records in such form and for such duration as may be required by Applicable Laws, and to make available to the Department of Health and Human Services, the U.S. Comptroller General and their designees upon reasonable request and in a reasonable manner its books, documents, and records relating to its provision of the Services hereunder as may be required by Applicable Laws.

11. **REPRESENTATIONS AND WARRANTIES**

PROVIDER represents and warrants that all tests supplied hereunder shall be (a) manufactured in accordance with Applicable Law and (b) free from defects under normal use and that all work under this Agreement will comply with all Applicable Laws.

12. **INDEMNIFICATION**

PROVIDER shall indemnify the A&M System and TDEM, and their regents, employees, students, and agents for claims arising from (i) PROVIDER's breach of this Agreement, (ii) the performance of the Services under this Agreement, (iii) actual or alleged billing errors, false claims, or insurance fraud relating to claims made by PROVIDER for any Services, or (iv) the negligent or intentional acts or omissions of PROVIDER or its employees, contractors or agents.

13. **MISCELLANEOUS**

- A. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of TDEM. TDEM will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status.
- B. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- C. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- D. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TDEM from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

- E. **Not Eligible for Rehire.** PROVIDER is responsible to ensure that employees participating in work for TDEM have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this Agreement.
- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- G. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the Parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both Parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such a manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TDEM.
- L. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP that will be provided by contacting Mary Williams at me-williams@tamu.edu or (979) 458-7434. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.

- M. In the event that you determine you will be using a subcontractor, please contact Mary Williams for assistance in determining available HUB subcontractors and proper completion of the HSP.
- N. **Force Majeure.** Neither Party will be in breach of its obligations under this Agreement (other than payment obligations for Services received up to Force Majeure event) or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other Party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure had not occurred. “**Force Majeure**” is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the Party whose performance is affected and which by the exercise of all reasonable due diligence, such Party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform the obligation(s). Written notice of a Party’s failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). Notwithstanding the foregoing, a Party’s financial inability to perform its obligations shall in no event constitute a Force Majeure. For the avoidance of doubt, COVID-19 and any governmental changes or closures related thereto shall be deemed Force Majeure events under this Section, even to the extent reasonably foreseeable by either Party as of the Effective Date.
- O. **Loss of Funding.** Performance by TDEM under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”). If the Legislature fails to appropriate or allot the necessary funds, TDEM will issue written notice to PROVIDER, and TDEM may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TDEM.
- P. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction,

shall be governed and determined by the Constitution and the laws of the State of Texas.

- Q. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TDEM shall be in the county in which the primary office of the chief executive officer of TDEM is located, which is Travis County, Texas.
- R. **Non-Waiver.** PROVIDER expressly acknowledges that TDEM is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TDEM of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- S. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of the A&M System or the A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by the A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
- T. **Prohibited Bids and Agreements.** A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: “Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”
- U. **Access by Individuals with Disabilities.** PROVIDER represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to TDEM under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*). To the extent PROVIDER becomes aware that the EIRs, or any portion thereof, do not comply then PROVIDER represents and warrants that it will, at no cost to TDEM, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.
- V. **Copyrights & Patents.** PROVIDER shall not provide to TDEM any materials or services that infringe any intellectual property, privacy, or other right of any party. If PROVIDER becomes aware of any possible infringement claims, PROVIDER shall immediately notify TDEM in writing. As to any judicial, administrative, or other action, suit, claim, investigation, or proceeding (each a “**Proceeding**”) alleging that any such material or service infringes any intellectual property, privacy, or other right, PROVIDER shall indemnify and defend A&M System and TDEM, and their regents, officers, employees, representatives, agents, and students

those Indemnitees against all: (a) amounts awarded in, or paid in settlement of, that Proceeding, including any interest, and (b) out-of-pocket expenses incurred in defending that Proceeding or in any related investigation or negotiation, including court costs, witness fees, and attorneys' and other professionals' fees and disbursements arising out of that Proceeding.

- W. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that *Texas Government Code*, Chapter 2271 applies to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- X. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Purchase Order may be terminated if this certification is or becomes inaccurate.
- Y. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, *Texas Government Code*, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- Z. **Right of Review and Records Retention.**
- a. PROVIDER will preserve all contracting information, as defined under *Texas Government Code*, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven (7) years after the conclusion of the Agreement. PROVIDER also agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than seven (7) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case PROVIDER agrees to maintain the same until TDEM, the applicable federal administrator, the Comptroller General of the United States or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims or other such questions.
 - b. PROVIDER and its subcontractors, if any, shall properly, accurately and completely maintain all books, documents, papers and records of PROVIDER's that are directly pertinent to this Agreement and shall make such materials available to TDEM, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives at their respective offices, at all reasonable times and as often as the aforementioned may deem necessary during the Term of this Agreement, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection,

examination, and making excerpts or copies of same by TDEM and any of its authorized representatives.

- c. PROVIDER agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- d. **PROVIDER SHALL ENSURE THAT ALL SUBCONTRACTS AWARDED REFLECT THE REQUIREMENTS OF THIS SECTION, AND THE REQUIREMENT TO COOPERATE.**
- e. PROVIDER will be deemed to have read and have knowledge of all applicable federal, state, and local laws, regulations, and rules including, but not limited to, those identified in Exhibit C hereto, governing audit requirements pertaining to work performed under this Agreement.
- f. PROVIDER shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to TDEM the Texas State Auditor's Office, the United States Government, and/or their authorized representatives, sufficient information to determine compliance with the terms and conditions of this Agreement and all state and federal rules, regulations, and statutes including, but not limited to, the applicable laws and regulations provided in Exhibit C hereto.
- g. PROVIDER acknowledges and agrees that TDEM shall have access to any and all such documents at any and all times, as deemed necessary by TDEM, during said retention period. Additionally, PROVIDER agrees to provide TDEM, any FEMA or other federal Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any book, documents, papers, and records of PROVIDER which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. TDEM and PROVIDER acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States. TDEM may, at its election, require PROVIDER to return the documents to TDEM at PROVIDER's expense prior to or at the conclusion of the retention period. In such event, PROVIDER may retain a copy of the documents.

AA. **Representations and Warranties.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of PROVIDER has been duly authorized to act for and bind PROVIDER.

BB. Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TDEM and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TDEM: Texas Division of Emergency Management
1033 La Posada Dr.
Austin, TX 78752
Attention: Quenya Evans
Phone: (512)424-2288
E-mail: Quenya.Evans@tdem.texas.gov

With a copy to: Texas A&M Engineering Experiment Station
Fiscal Office - Procurement and Contracting
7607 Eastmark Drive
College Station, TX 77840
Attention: Mary Williams
Phone: (979) 458-7463
Fax: (979) 458-7464
Email: me-williams@tamu.edu

PROVIDER: DAVACO, LP
4050 Valley View Lane
Suite 150
Irving, TX 75038
US
Phone: (214) 706-4046
Email: Jordan.Handel@davacoinc.com

CC. E-Verify. By entering into this Agreement, PROVIDER certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of (a) all persons employed during the contract term to perform duties within Texas; and (b) all persons (including subcontractors) assigned by the PROVIDER to perform scope of work pursuant to the Agreement.

DD. DHS or Other Federal Seals, Logos, and Flags. PROVIDER shall not use the DHS or other federal seal(s), logos, crests or reproductions of flags or likenesses of DHS or other federal agency officials without specific FEMA or applicable federal agency pre-approval.

- EE. **Compliance with Federal Law, Regulations, and Executive Orders.** PROVIDER acknowledges that federal financial assistance funds will be used to fund the Agreement. PROVIDER will comply with all applicable federal law, regulations, executive orders, federal policies, procedures, and directives.
- FF. **Clean Air Act.** The following is only applicable if the amount of the contract exceeds \$150,000.
- a. PROVIDER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - b. PROVIDER agrees to report each violation to TDEM and understands and agrees that TDEM will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c. PROVIDER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or other Federal funds.
- GG. **Federal Water Pollution Control Act.**
- a. PROVIDER agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - b. PROVIDER agrees to report each violation to TDEM and understands and agrees that TDEM will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c. PROVIDER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or other Federal funds.
- HH. **Suspension and Debarment.**
- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt 180 and 2 C.F.R. pt. 3000. PROVIDER certifies that PROVIDER, PROVIDER's principals (defined at 2 C.F.R. Sec. 180.995), or its affiliates (defined at 2 C.F.R. Sec. 180.905) are not excluded (defined at 2 C.F.R. Sec. 180.940) or disqualified (defined at 2 C.F.R. Sec. 180.935).
 - b. PROVIDER must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - c. This certification is a material representation of fact relied upon by TDEM. If it is later determined that PROVIDER did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, in addition to remedies available to TDEM, the Federal Government may pursue available remedies, including but limited to suspension and/or debarment.

- d. PROVIDER agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000 during the term of this Agreement. PROVIDER further agrees to include a provision requiring such compliance in its lower tier covered transactions.

II. Byrd Anti-Lobbying Amendment, 31 U.S.C. Sec. 1352 (as amended). PROVIDER shall file the required certification attached hereto as Exhibit E. Each contracting tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. Sec. 1352. Each contracting tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

JJ. Procurement of Recovered Materials.

- a. In the performance of this Agreement, PROVIDER shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired – (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

KK. Civil Rights.

- a. PROVIDER agrees to comply with state and federal anti-discrimination laws, including:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
 - vii. The System Agency’s administrative rules, as set forth in the *Texas Administrative Code*, to the extent applicable to this Agreement.

PROVIDER agrees to comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the

grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.

- b. PROVIDER agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. PROVIDER agrees to take reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- c. In particular, PROVIDER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. PROVIDER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. PROVIDER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- d. PROVIDER will, in all solicitations or advertisements for employees placed by or on behalf of PROVIDER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- e. PROVIDER will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- f. PROVIDER will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- g. PROVIDER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - h. In the event of PROVIDER's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - i. PROVIDER will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. PROVIDER will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- LL. **Energy Conservation.** If applicable, PROVIDER agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- MM. **Federal Assurances.** PROVIDER further certifies that the Federal Assurances set forth in Exhibit D of this Agreement, which is attached and incorporated by reference, have been reviewed and that PROVIDER is in compliance with each of the requirements reflected therein.
- NN. **Federal Certifications.** PROVIDER certifies that it is in compliance with all applicable federal laws, rules, or regulations, including but not limited to those listed in Exhibit C as they may pertain to this Agreement.
- OO. **Compliance with Contract Work Hours and Safety Standards Act.**
- a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of

laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

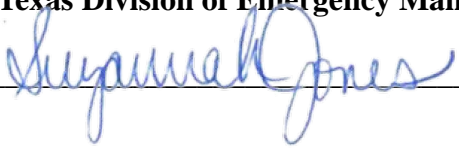
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c. Withholding for unpaid wages and liquidated damages. PROVIDER shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

PP. **Fraud and False or Fraudulent or Related Acts.** PROVIDER acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

[Signature Page Follows]


IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas Division of Emergency Management

By 

9-23-20
Date

PROVIDER

By 

September 2, 2020
Date

EXHIBIT A – SCOPE OF WORK

- A. Type of Test: The PCR or Antibody Test (the “**COVID-19 Test**”), which has been authorized by the FDA under an EUA, is a real-time reverse transcription polymerase chain reaction (rRT-PCR) test for the detection of nucleic acid from SARS-CoV-2 by collecting clinical specimens using Mouth-Saliva, Nasal or Blood Draw from individuals suspected of COVID-19 in consultation with a healthcare provider. The EUA for the COVID-19 Test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of in vitro diagnostics for detection and/or diagnosis of COVID-19 under Section 564(b)(2) of the Federal Food, Drug, and Cosmetic Act (the “**Act**”) or the EUA is terminated or revoked sooner under Section 564(g) of the Act.
- B. Testing Program to Include:
- (1) Establish and manage test sites and provide personnel and all logistical support items and services to collect and process the tests
 - a. Site locations, dates and times will be scheduled in coordination with the TDEM Point of Contact and with the local designated representatives
 - b. No registered sex offenders will be allowed to work a State of Texas test site
 - c. Meetings and conference calls with all stakeholders may be part of the requirement in establishing sites
 - (2) Provide COVID-19 Polymerase Chain Reaction (PCR) testing using defined criteria and approved testing methodologies; only FDA/EUA approved testing kits shall be used
 - (3) Provide transportation of tests collected to a CLIA certified laboratory for test resulting
 - (4) Test results must be provided within 48 hours of testing but no later than 72 hours. The 48 hours begins at the end of day (11:59 pm) of the day the test was collected. There will be a financial penalty for late test results.
 - a. tests results provided between 72-96 hours shall be billed at a 50% price reduction
 - b. tests results are after 96 hours, shall be provided at no cost
 - c. Weather and other non-controllable delays will be taken into consideration for the 48-hour time-frame.
 - (5) Provide test results to patients and counsel persons testing positive;
 - a. Counseling to patients testing positive will be conducted by a medical professional if required under Texas statute, rule or policy.

- (6) Collect data and submit required reporting through Texas State Electronic Lab Reporting System
 - (7) Manage billing for public and private health insurance; and bill TDEM for any tests that were not covered by public or private health insurance (including Medicare and Medicaid)
- C. Laboratory Services and Lab Results: PROVIDER will promptly process the test kits upon receipt of the specimens and provide the laboratory results (“**Lab Results**”) to each Patient within 48 hours from the time the specimen is delivered at the laboratory. PROVIDER shall correct any error in the Lab Results within 24 hours of discovering such error.
- D. Reporting: PROVIDER will report test results to local and state public health authorities as required by law. At a minimum, all lab results must be delivered to the Texas Disease Surveillance System (NEDSS) within 24 hours of resulting via standardized HL7 v.2.5.1 compliant transactional electronic laboratory reports (ELR).

ELR must be sent via a qualified Health Information Exchange in the State of Texas. The ELR must also be in conformance with the Texas standard for ELR submissions to the NEDSS which can be found at <https://michiganhealthit.org/public-health/mdss/>

PROVIDER will provide access to a portal to the TDEM POC and the TDEM regional POC for daily counts of tests collected at each site with access to non-PHI data.

The State reserves the right to audit documentation or processes and/or inspect test sites and labs during the period of this agreement.

The PROVIDER will have an orientation briefing with TDEM before being allowed to conduct their first test site.

EXHIBIT B – INSURANCE

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the *Texas Insurance Code* and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to TDEM. By requiring such minimum insurance, TDEM shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure

to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to TDEM at least ten days before the effective date of the cancellation.

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker's Compensation</u>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit
B. <u>Automobile Liability</u>	
Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;	
C. <u>Commercial General Liability</u>	
Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000
D. <u>Professional Liability (Errors & Omissions)</u>	
Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of PROVIDER and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, PROVIDER agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration of cancellation of this Agreement.	

- E. **Umbrella Liability Insurance** **\$5,000,000 Limit**
F. **Cyber Liability Coverage** **\$1,000,000 Limit**

G. PROVIDER will deliver to TDEM:

The required commercial general liability policy will be issued on a form that insures PROVIDER'S or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any Services by PROVIDER under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System, and The Texas Division of Emergency Management as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System, and The Texas Division of Emergency Management. No policy will be canceled without unconditional written notice to TDEM at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to TDEM ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Exhibit.

Any deductible or self-insured retention must be declared to and approved by TDEM prior to the performance of any Services by PROVIDER under this Agreement. PROVIDER is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be emailed to the following TDEM contact at: Texas A&M Engineering Experiment Station

Fiscal Office - Procurement and Contracting
7607 Eastmark Drive
College Station, TX 77840
Attention: Mary Williams
Phone: (979) 458-7463
Fax: (979) 458-7464
Email: me-williams@tamu.edu

The insurance coverage required by this Agreement will be kept in force until all Services have been fully performed and accepted by TDEM in writing, except as may be noted.

EXHIBIT C – NONEXCLUSIVE LIST OF LAWS, RULES, AND REGULATIONS

If applicable to this Agreement or any Services thereunder, PROVIDER must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of this Agreement, and PROVIDER acknowledges that this list may not include all such applicable laws, rules, and regulations.

PROVIDER is deemed to have read and understands the requirements of each of the following, as amended and if applicable to any Services under this Agreement:

Generally

The Acts and Regulations specified in this Agreement.

Guidance Documents: All applicable State and Federal funding program, policy, guides, handbooks, including but not limited to, FEMA Public Assistance Program and Policy Guide (FP 104-009-2 / April 2017); FEMA Public Assistance Guides; FEMA Public Assistance Applicant Handbooks; FEMA PDAT Field Manual for Public Assistance Grantee and Subgrantee Procurement Requirements; FEMA PDAT Field Manual for Procurement Requirements Supplement; FEMA PDAT Required Contract Clauses (2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II); FEMA PDAT Cost and Pricing Guide; Texas Emergency Management Executive Guide – FY 2019 Edition; and other applicable TDEM issued guidance documents.

Federal Authorities

Public Law 93-288, as amended (Stafford Act)

Disaster Mitigation Act of 2000

FEMA Regulations, 44 CFR, Emergency Management and Assistance, 44 CFR Parts 204, Fire Management Assistance Grant Program, - 206 Federal Disaster Assistance & 207 Management Costs

Executive Order 11988, Floodplain Management

Executive Order 11990, Protection of Wetlands

Executive Order 12372, Intergovernmental Review of Programs and Activities

Executive Order 12549, Debarment and Suspension

Executive Order 12612, Federalism

Executive Order 12699, Seismic Design

Executive Order 12898, Environmental Justice

Executive Order 13278, Equal Protection of the Laws for Faith-Based and Community Organizations

Executive Order 11246 – Equal Employment Opportunity

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 – 1688)

Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*)
Coastal Barrier Resources Act, Public Law 97-348
Single Audit Act, Public Law 98-502
Cash Management Improvement Act Regulations (31 C.F.R. Part 205)
2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
Sandy Recovery Improvement Act publications
National Historic Preservation Act, 16 U.S.C. § 470
Endangered Species Act References, 16 U.S.C. § 1531
National Environmental Policy Act of 1969, (42 U.S.C. §§ 4321-4347)
Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508)
Coastal Zone Management Act of 1972, (16 U.S.C. 1451 *et seq.*)
FEMA program publications, guidance and policies
FEMA-State Agreements
DHS Standard Terms and Conditions 2017
Grant Terms and Conditions – FEMA-4485-DR-TX, including all required assurances and certifications and additional grant conditions

State Authorities

Texas Disaster Act of 1975, as amended
Executive Orders of the Governor
Uniform Grant and Contract Management Act (*Texas Government Code*, Chapter 783) and the Uniform Grant Management Standards maintained by the Comptroller of Public Accounts, including the Texas Single Audit Circular
State of Texas Administrative Plan for Public Assistance
Addendum to the State of Texas Administrative Plan for Public Assistance for DR-4485-TX Texas Covid-19 Pandemic

EXHIBIT D – FEDERAL ASSURANCES – NON-CONSTRUCTION PROGRAMS

See Standard Form 424B

As the duly authorized representative of Provider, I certify that Provider:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non- Federal share of project cost) to ensure proper planning, management and completion of the project described in this Agreement, if applicable.
2. Will give the Department of Homeland Security, other appropriate federal agencies, the Texas Division of Emergency Management, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Agreement and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the and Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501- 1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190 as amended by 42 U.S.C. 4311 et seq. and Executive Order (EO) 11514) which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for DHS grant-supported activities, DHS-FEMA requires the environmental aspects to be reviewed and evaluated before final action on the application; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) comply with the Clean Air Act of 1977, (42 U.S.C. §§7401 et seq. and Executive Order 11738) providing for the protection of and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348, 45 C.F.R. 46, and DHS Management Directive 026-044 (Directive) regarding the protection of human subjects involved in research, development, and related activities supported by this Agreement. "Research" means a systematic investigation, including research, development, testing, and evaluation designed to develop or contribute to general knowledge. See Directive for additional provisions for including humans in the womb, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). See also state and local law for research using autopsy materials.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133 (now OMB 2 C.F.R. 200.500), "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders.
19. Will comply with the Federal Water Pollution Control Act as amended (33 U.S.C. §§1251 et seq.) related to regulating pollutant discharges into waters of the United States.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or sub-awards under the award.



September 2, 2020

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL DATE

President

TITLE

DAVACO, LP

PROVIDER ORGANIZATION NAME

EXHIBIT E – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned PROVIDER, DAVACO Inc., certifies, to the best of his or her knowledge that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Sec. 1352 (as amended by the Lobbying Disclosure Act of 119). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The PROVIDER, DAVACO Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, PROVIDER understands and agrees that the provisions of 31 U.S.C. Sec. 3801 *et seq.* apply to his certification and disclosure, if any.

By: Jordan Handel

Signature: 

Title: President

Date: September 2, 2020

PROVIDER must initial by each Exhibit, acknowledging PROVIDER has received them, understand them, and agrees to abide by them.

PT

Nonexclusive List of Laws, Rules and Regulations, hereinafter referred to as
“Exhibit C”

PT

Federal Assurances – Non-Construction Programs, hereinafter referred to as
“Exhibit D”

PT

Federal Certification Regarding Lobbying, hereinafter referred to as “Exhibit E”

Highway District Number	Counties	On-Site Testing Designated Facility Price Per Test	Mobile Drive Thru Testing Price Per Test	Walk-up Testing Public Facility Price Per Test	Additional Cost per Day for On-Site Testing Designated Facility	Additional Cost per Day for Mobile Drive Thru Testing	Additional Cost per Day for Walk-Up Facility Testing
District 01	Delta, Fannin, Franklin, Grayson, Hopkins, Hunt, Lamar, Rains, Red River	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 02	Erath, Hood, Jack, Johnson, Palo Pinto, Parker, Somervell, Tarrant, Wise	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 03	Archer, Baylor, Clay, Cooke, Montague, Throckmorton, Wichita, Wilbarger, Young	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 04	Armstrong, Carson, Dallam, Deaf Smith, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 05	Bailey, Castro, Cochran, Crosby, Dawson, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Parmer, Swisher, Terry, Yoakum	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 06	Andrews, Crane, Ector, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, Winkler	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 07	Coke, Concho, Crockett, Edwards, Glasscock, Irion, Kimble, Menard, Reagan, Real, Runnels, Schleicher, Sterling, Sutton, Tom Green	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 08	Borden, Callahan, Fisher, Haskell, Howard, Jones, Kent, Mitchell, Nolan, Scurry, Shackelford, Stonewall, Taylor	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 09	Bell, Bosque, Coryell, Falls, Hamilton, Hill, Limestone, McLennan	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 10	Anderson, Cherokee, Gregg, Henderson, Rusk, Smith, Van Zandt, Wood	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 11	Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 12	Brazoria, Fort Bend, Galveston, Harris, Montgomery, Waller	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 13	Austin, Calhoun, Colorado, De Witt, Fayette, Gonzales, Jackson, Lavaca, Matagorda, Victoria, Wharton	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 14	Bastrop, Blanco, Burnet, Caldwell, Gillespie, Hays, Lee, Llano, Mason, Travis, Williamson	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 15	Atacosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, Uvalde, Wilson	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 16	Aransas, Bee, Goliad, Jim Wells, Karnes, Kleberg, Live Oak, Nueces, Refugio, San Patricio	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00

Highway District Number	Counties	On-Site Testing Designated Facility Price Per Test	Mobile Drive Thru Testing Price Per Test	Walk-up Testing Public Facility Price Per Test	Additional Cost per Day for On-Site Testing Designated Facility	Additional Cost per Day for Mobile Drive Thru Testing	Additional Cost per Day for Walk-Up Facility Testing
District 17	Brazos, Burleson, Freestone, Grimes, Leon, Madison, Milam, Robertson, Walker, Washington	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 18	Collin, Dallas, Denton, Ellis, Kaufman, Navarro, Rockwall	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 19	Bowie, Camp, Cass, Harrison, Marion, Morris, Panola, Titus, Upshur	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 20	Chambers, Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Tyler	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 21	Brooks, Cameron, Hidalgo, Jim Hogg, Kenedy, Starr, Willacy, Zapata	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 22	Dimmit, Duval, Kinney, La Salle, Maverick, Val Verde, Webb, Zavala	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 23	Brown, Coleman, Comanche, Eastland, Lampasas, McCulloch, Mills, San Saba, Stephens	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 24	Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00
District 25	Briscoe, Childress, Collingsworth, Cottle, Dickens, Donley, Foard, Hall, Hardeman, King, Knox, Motley, Wheeler	\$150.00	\$150.00	\$150.00	\$32,000.00	\$32,500.00	\$32,000.00



4050 Valley View Lane, Suite 150
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Client:	State of Texas	
Program/Project:	COVID-19 Testing Call Center	
Store # / Mall:	Virtual	
Address:	Virtual	
City, State:	Virtual	Virtual

Construction Start Date:	Friday, September 4, 2020
Construction End Date:	On-Going
Labor Affiliation:	Non-Union

Scope Of Work

Call center for State of Texas Covid 19 Test Reporting for Curative Inc. mouth swab tests. Transitioning from STRAC to DAVACO. Transtion meeting 6/29. Began taking calls 6/30/20. Based on current call volume, projected to ramp to 50 dedicated resources. Price is \$6,200/month/resource. Telecom Price - \$45,000PO requested for \$355,000 per month.

Price Per Call Center Resource	\$6,200.00
Estimated Number of Resources Needed	50
Telecom Price \$	45,000.00
Grand Total: \$	355,000.00