

**60480**

**DATE:** December 21, 2017

**TO:** Board of Acquisition and Contract

**FROM:** Sherlita Amler, MD  
Commissioner of Health

**RE:** Authorization to enter into an Agreement with The University of Florida Board of Trustees, to provide Tuberculosis ("TB") and other Drug Blood Concentration Testing Services for the Westchester County Department of Health TB Clinic Patients, as needed, for the Period from 01/01/18 through 12/31/18, in the Total Amount Not-to-Exceed Amount \$6,000, to be paid at the rates stated in Schedule "A", attached hereto, and also to accept the limits of professional liability and to authorize Westchester County to indemnify The University of Florida Board of Trustees as stated in the Agreement

The County of Westchester, acting by and through its Department of Health (the "WCDH"), seeks authorization to enter into an agreement with The University of Florida Board of Trustees ("UFBOT"), to provide Tuberculosis ("TB") and other Drug Blood Concentration Testing Services for WCDH TB Clinic patients, as needed, for the period from 01/01/18 through 12/31/18, in the total amount not-to-exceed \$6,000, to be paid at the rates stated in Schedule "A", attached hereto (the "Agreement"), and also to authorize the County to accept the limits of professional liability and to authorize the County to indemnify the UFBOT, as stated in the Agreement, and as set forth below.

Pursuant to Section 768.28 of the State of Florida statute relating to state sovereign immunity, UFBOT has limited its professional liability under the proposed Agreement. Accordingly, the following language will be included in the Agreement:

Limitation of Liability. To the extent that the State of Florida, on behalf of the Board of Governors and The University of Florida Board of Trustees ("UFBOT"), has partially waived its immunity to tort claims and is vicariously responsible for the negligent acts and omissions of its employees and agents as prescribed by Section 768.28, Florida Statutes, UFBOT is protected for a claim or judgment by any one person in a sum not exceeding Two Hundred Thousand Dollars (\$200,000) and for total claims or judgments arising out of the same incident or occurrence in a total not exceeding Three Hundred Thousand Dollars (\$300,000), such protection being provided by the University of Florida J. Hillis Miller Health Center Self Insurance Program, a self insurance program created pursuant to the authority of Section 1004.24, Florida Statutes. Personnel and agents of UFBOT are not individually subject to actions arising from their state functions. Any damages allocated to UFBOT are as prescribed by Section 768.28, Florida Statutes. All liability protection described in this Section is on an "occurrence" basis. The University of Florida J. Hillis Miller Health Center Self-Insurance Program provides ongoing protection with no expiration."

In addition, the following indemnification language will be included in the proposed Agreement:

"Each party to this Agreement agrees to be fully responsible for its acts of negligence, or its agents' acts of negligence when acting within the scope of employment or agency, and agrees to be liable for any damage resulting from said negligence. Nothing in the Agreement is intended to serve as a waiver of sovereign immunity by The University of Florida Board of Trustees, the University of Florida and/or the Florida Board of Governors or by the County of Westchester. Nothing in the Agreement shall be construed as consent by any state agency, public body corporate, or political subdivision of the State of Florida or the State of New York to be sued except as permitted by applicable law."

The primary reason that the County is requesting authorization to accept the above limits to professional liability and the indemnification language is that the lab director is the leading national expert on TB/infectious disease and drug efficacy pharmacokinetics. His expertise is vitally important for our clinic operations especially in providing our clinicians expert guidance on difficult to treat and multiple drug resistant ("MDR") cases. This lab director used to work at National Jewish Health, which is the current provider of services. The County Department of Labs & Research does not have the capability to perform these tests.

In order to promote the public health, safety and general welfare of Westchester County residents, and in accordance with New York State Public Health Law, the WCDH must ensure for the appropriate diagnosis, care and treatment of patients with suspected and/or confirmed cases of TB. Use of the professional services under this contract will ensure that WCDH TB clinic patients receive the best diagnostic assessment for TB drug dosages necessary to maximize TB treatment.

For 2017 year to date, approximately 20 TB drug level tests have been performed.

The goal and objective of this program is to reduce the incidence of TB related illness among all age groups throughout the County by ensuring comprehensive and follow up medical care for all confirmed TB patients. Proper drug dosage treatment and blood level assessments are part of a complete TB curative plan that will help contain the spread, prevention and management of this disease.

The program is tracked and monitored by the electronic recording of all drug level tests and through review and audit of individual patient records and monthly service lists. All confirmed or suspect TB cases are entered into the Health Information Network (HIN) using the required information/forms to generate monthly management reports which are used by the WCDH to monitor caseloads and drug monitoring and prescriptions.

Attached hereto is a resolution which, if approved by your Honorable Board, would authorize the County to enter into the agreement with UFBOT.

This agreement is exempt from the Westchester County Procurement Policy under Section 3 (a) viii which exempts contracts for medical and/or health-related services.

Your approval of the attached Resolution is respectfully requested.

Attachment

/SA/dc

## RESOLUTION

UPON A COMMUNICATION FROM THE COMMISSIONER OF HEALTH, be it hereby

**RESOLVED**, The County of Westchester, acting by and through its Department of Health (the "WCDH"), is authorized to enter into an agreement with The University of Florida Board of Trustees (UFBOT"), pursuant to which UFBOT will provide Tuberculosis ("TB") and other Drug Blood Concentration Testing Services for WCDH TB Clinic patients, as needed, for the period from 01/01/18 through 12/31/18, in the total amount not-to-exceed \$6,000, to be paid at the rates stated in Schedule "A", attached hereto (the "Agreement"), and also to authorize the County to accept the limits of professional liability and to authorize the County to indemnify the UFBOT, as stated in the Agreement and as set forth below; and, be it further

**RESOLVED**, that the Agreement shall contain a limitation of liability clause in favor of UFBOT as set forth below:

"Limitation of Liability. To the extent that the State of Florida, on behalf of the Board of Governors and The University of Florida Board of Trustees ("UFBOT"), has partially waived its immunity to tort claims and is vicariously responsible for the negligent acts and omissions of its employees and agents as prescribed by Section 768.28, Florida Statutes, UFBOT is protected for a claim or judgment by any one person in a sum not exceeding Two Hundred Thousand Dollars (\$200,000) and for total claims or judgments arising out of the same incident or occurrence in a total not exceeding Three Hundred Thousand Dollars (\$300,000), such protection being provided by the University of Florida J. Hillis Miller Health Center Self Insurance Program, a self insurance program created pursuant to the authority of Section 1004.24, Florida Statutes. Personnel and agents of UFBOT are not individually subject to actions arising from their state functions. Any damages allocated to UFBOT are as prescribed by Section 768.28, Florida Statutes. All liability protection described in this Section is on an "occurrence" basis. The University of Florida J. Hillis Miller Health Center Self-Insurance Program provides ongoing protection with no expiration"; and, be it further

**RESOLVED**, that the Agreement shall also contain the following indemnification language:

"Each party to this Agreement agrees to be fully responsible for its acts of negligence, or its agents' acts of negligence when acting within the scope of employment or agency, and agrees to be liable for any damage resulting from said negligence. Nothing in the Agreement is intended to serve as a waiver of sovereign immunity by The University of Florida Board of Trustees, the University of Florida and/or the Florida Board of Governors or by the County of Westchester. Nothing in the Agreement shall be construed as consent by any state agency, public body corporate, or political subdivision of the State of Florida or the State of New York to be sued except as permitted by applicable law."

and, be it further

**RESOLVED**, that this agreement is subject to County appropriations; and, be it further

**RESOLVED**, that this agreement is subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of the agreements. Each of the agreements shall contain a provision that the County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of the State Budget or any amendments thereto, and for a reasonable period of time after such releases(s) or adoption(s) to conduct an analysis of the impacts of any State Budget on County finances. After such analysis, the County shall retain the right to either terminate the agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount and/or rate to the above Contractor, then the Contractor shall have the right to terminate the Agreement upon reasonable prior written notice; and, be it further

**RESOLVED**, that the County Executive or his duly authorized designee be and hereby is authorized and empowered to execute all appropriate agreements or documents necessary to effectuate the purposes of this Resolution in the manner prescribed by law.

Department of Health  
 County of Westchester  
 10 County Center Road, 2<sup>nd</sup> Floor  
 White Plains, New York 10607  
 December 21, 2017

Original Agreement       \$  
 First Amendment        \$  
**This Amendment**       \$  
 TOTAL                      \$ \_\_\_\_\_

Agreement #

Account to be Charged/Credited	Fund	Dept	Major Program, Program & Phase or Unit	Object/ Sub-Object	Trust Account	Dollars
		101	27	0010-HSSN	4238-04	

Budget Funding Year(s) (must match resolution) 2018 Start Date 01/01/2018 End Date 12/31/18

Funding Source	Tax Dollars	\$3,840
	State Aid	\$2,160
<b>\$6,000</b>	Federal Aid	_____
(must match resolution)	Other	_____

APPROVED BOARD OF ACQUISITION CONTRACT - 12/28/2017 - LISA MRIJAJ, SECRETARY

## SCHEDULE "A"

Single Drug, Single Draw Concentration - \$80.00/each

Single Drug, Multiple Draw Concentrations - \$70.00/each

Generic Name	Abbreviation	Brand Name(s)	Indication
Atazanavir	ATAZ	Reyataz®	HIV (PI)
Azithromycin	AZL	Zithromax®, Zmax®	NTM
Capreomycin	CMH	Capasat Sulfate®	TB
Ciprofloxacin	CIPH	Proquin XR®	NTM
Clarithromycin	CLART	Biaxin®, Biaxin XL®	NTM
Clofazamine	CFH	Lamprene®	NTM / TB
Cycloserine	CSH	Seromycin®	TB
Darunavir	DARU	Prezista®	HIV (PI)
Dolutegravir	DTG	Tivicay®	HIV (II)
Efavirenz	EFVL	Sustiva®	HIV (NNRTI)
Ethambutol	EMBH	Myambutol®	NTM / TB
Ethionamide	ETAH	Trecator®	TB
Isoniazid	INH	Nydrazid®	TB
Itraconazole	ITRI	Sporonox®	Fungal
Levofloxacin	LFHL	Levaquin®, Iquix®, Quixin®	TB
Linezolid	LNZL	Zyvox®	TB / Acute Bacterial Infections
Lopinavir	LOPV	Kaletra®	HIV (PI)
Moxifloxacin	MXFL	Avelox®, Avelox IV®, Vigamox®	NTM / TB
p-Aminosalicylic Acid	PASH	Paser®	TB
Posaconazole	POSA	Noxafil®	Fungal
Pyrazinamide	PZAH	-	TB
Rifabutin	RBN	Mycobutin®	NTM / TB
Rifampin	RIFH	Rifadin®, Rimactane®	NTM / TB
Rifapentine	RFPTN	Priftin®	TB
Rilpivirine	RILP	Edurant®, Complera®	HIV (NNRTI)
Streptomycin	SMH	-	TB/Various Bacterial Infections
Voriconazole	VORL	VFEND®	Fungal
Cefepime	CEFE	Several generics, and Maxipime®	Bacteria
Ceftriaxone	CEFT	Several generics, and Rocephin®	Bacteria
Meropenem	MERO	Several generics, and Merrem®	Bacteria
Piperacillin	PIPE	Several generics, and Zosyn®	Bacteria
Ampicillin	AMPI	Several generics, and Unasyn®	Bacteria