

**EXECUTION COPY**

**MEMORANDUM OF UNDERSTANDING**

**MEMORANDUM OF UNDERSTANDING**, dated as of June 9, 2020 (this “**MOU**”) by and between the City of New York (the “**City**”), acting by and through the Mayor’s Office of Management and Budget (“**OMB**”), having its principal office at 255 Greenwich Street, New York, NY 10007, and the New York City Health and Hospitals Corporation, a public benefit corporation having its principal office at 125 Worth Street, New York, New York 10013 (“**H+H**”). **OMB** and **H+H** shall together be referred to as the “**Parties**” and each as a “**Party**.”

**WITNESSETH:**

**WHEREAS**, **H+H** operates the City’s municipal hospital system; and

**WHEREAS**, the Mayor of the City issued a Declaration of Emergency dated March 13, 2020, as the same has been modified and renewed, brought on by the spread of COVID-19; and

**WHEREAS**, a major part of the City’s plan to respond to the COVID-19 epidemic is a program of testing, contact tracing and follow up care and services for individuals requiring isolation due to COVID-19 infection (the “**Program**”); and

**WHEREAS**, the City has asked **H+H** to take a lead role in administering the Program in cooperation and collaboration with other involved agencies of the City; and

**WHEREAS**, **H+H**’s role in the Program will involve it in activities that are outside of its typical scope of activity; and

**WHEREAS**, because of the extent of the financial commitments that **H+H** has made and will make to perform its responsibilities for the Program and because these commitments would not be part of **H+H**’s normal activities, **H+H**’s current budget will not cover the anticipated activities and commitments associated with the Program; and

**WHEREAS**, the Parties wish to confirm that **H+H** will take on or has taken on extraordinary Program expenses at the City’s request and that they will be reimbursed for such Program expenses as described herein.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Parties agree to the following:

**ARTICLE I. SERVICES**

1. **H+H** shall take the lead role in the Program with other City agencies playing roles still being determined. Among the key roles that **H+H** shall play are: contracting with commercial laboratories for tests to detect the active presence of the coronavirus and antibody tests; staffing and operating sites at which individuals can go to be tested; preparing such sites to serve such

purposes; supporting other agencies and organizations in their operation of test sites; contracting for an advertising campaign to promote testing for coronavirus; renting hotel rooms for individuals diagnosed with active coronavirus or close contact of individuals diagnosed with active coronavirus who are required to isolate or quarantine who are unable to do so due to their housing conditions; arranging for services to persons in isolation or quarantine, whether they are in hotels, in their homes or elsewhere, necessary to enable them to maintain isolation or quarantine; contracting for the services of persons who can perform contact tracing and monitoring; contracting for the services of persons and systems to supervise persons performing contact tracing and monitoring; hiring, on a short-term basis, employees to perform case investigation and tracing; purchasing personal protective equipment, supplies and clothing for individuals potentially exposed to COVID-19 due to their participation in the Program and to staff serving these individuals; and establishing systems to track persons who have tested positive for the coronavirus and manage the tracing and monitoring Program. H+H shall also perform other functions associated with the Program and functions and services that are supportive of and ancillary to the listed services. These could include providing management, direction and oversight of such activities and programs; and administrative services necessary to procure, manage, and oversee such services.

2. H+H shall collaborate in the administration of the Program with the City Department of Health and Mental Hygiene (“DOHMH”) and with other City agencies as appropriate. DOHMH and H+H shall enter into one or more memoranda of understanding to document the allocation of responsibilities for the Program between them. H+H shall enter into memoranda of understanding or other appropriate agreements with such other City agencies as necessary.

## **ARTICLE II. TERM AND TERMINATION**

1. The term of this MOU shall commence on June 8, 2020 and shall continue until such time that all activities described in this MOU have been terminated or an alternative arrangement exists to finance and operate the activities on a longer term basis.

2. Any Party may terminate this MOU upon 60 days’ notice to the other Parties.

3. If any Party elects to terminate this MOU, the Parties shall negotiate a written plan for an orderly transition process, for both contracted and directly provided services set forth under this MOU to ensure the continued administration of the Program. The negotiated plan may provide for H+H to renegotiate any contract or to enter into a new contract for such services. Upon the City’s approval such a renegotiated or new agreement may be assigned to the City or to any other approved party or agency of the City.

4. H+H will include in any new contract for Program services a provision making such contract assignable by H+H to the City or, with the City’s approval, to any other party or agency. H+H will use commercially reasonable efforts to amend existing contracts for Program services to be so assignable.

## **ARTICLE III. FUNDING**

1. H+H shall be reimbursed by the City for operating and capital costs of the Program, pursuant to the mechanisms described below, and subject to the following: (i) such expenditures must be within the approved Budget (as defined below) and (ii) funding for such expenditures must be available in the Program Budget Code (as defined below).

2. The Parties shall cooperate in securing any grants, funds through third-party billing, and any other funding necessary or available to support the Program. OMB will create a standalone budget code within the H+H agency code for the purposes of the Program which will include all federal and other funds for the Program that have been received by the City, or that OMB believes will be received by the City, and that have been duly appropriated (the "Program Budget Code"). H+H and other participating agencies may submit requests for reimbursement on a weekly basis against the Program Budget Code and will provide appropriate information documenting its Program related expenses, including any supporting information requested by the City. H+H may draw down available expense funds in the Program Budget Code for costs in the Budget (as defined below) in advance of H+H expenditures, or for reimbursement. In such case, H+H will provide documentation of the uses of such advances to OMB promptly following their expenditure. Capital funds in the Program Budget Code will not be eligible for such advances and will only be drawn by H+H as reimbursements. Reimbursement of capital expenditures will only be made to the extent such expenditures are determined by OMB to be eligible for financing with City bond proceeds pursuant to the City Charter, the New York State Financial Emergency Act for the City of New York and the directives of the City Comptroller. No modifications to the Budget (as defined below) can be made without the approval of the Working Group (as defined below).

3. An interagency working group (the "Working Group") will be established and led by OMB and include representatives from H+H and DOHMH to set the approved budget for the activities under the Program identifying available sources of revenue for each category of Program expenditure (the "Budget"). The Budget and any amendments thereto shall require the approval of OMB through its representative on the Working Group. If the Working Group determines that expenses of the Program are expected to exceed available funds in the Program Budget Code or funds otherwise available to H+H, the Working Group will make recommendations to the Program which could include reducing expenses, seeking additional federal/state relief, seeking payment from insurers, or seeking an additional appropriation from the City. H+H will not incur expenses beyond what is approved in the Budget and either appropriated by the City in the Program Budget Code or available to H+H directly from non-City sources. If a Budget is approved that reflects expenditures beyond what is either appropriated by the City in the Program Budget Code or available to H+H directly from non-City sources, OMB shall seek an appropriation for such excess amount. Program expenses already incurred prior to the convening of the Working Group because of the emergency timeline associated with the Program will be approved for inclusion in the Budget. The Working Group will review any ongoing services and commitments that have been made, and, if approval for additional expenses associated with these services is not granted, OMB will provide notice in writing to H+H that future expenses for such services beyond necessary termination fees/costs are not approved. City agency expenditures for the Program approved by the Working Group may be reimbursed via IntraCity agreements, subject to Working Group approval of the Budget to fund the IntraCity within the Program Budget Code. The Working Group will be established and convene no later than June 30, 2020.

4. OMB will endeavor to make funds available in the Program Budget Code such that H+H's cash flow is not constrained by the Program, subject to the terms and conditions hereof.

5. Expenses of the Program that are paid directly by DOHMH or other City agencies will be funded directly through such agencies, subject to appropriation by the City, or through the mechanism described above.

#### **ARTICLE IV. FINANCIAL REPORTS AND AUDITS**

H+H shall include in its financial plan the expenditure of funds related to the Program. H+H shall provide such financial reports to OMB as are requested to review specific funding requests or otherwise conduct fiscal oversight of the Program.

#### **ARTICLE V. MODIFICATIONS**

The terms of this MOU may not be modified except by a written instrument executed by all Parties.

#### **ARTICLE VI. EVALUATION/MONITORING, DATA COLLECTION/REPORTS**

##### **1. Evaluation/Monitoring**

a. The Program shall be managed, supervised and evaluated under H+H's management and Board structure.

b. Upon the City's request, H+H shall attend meetings to review the administration of the Program or to review matters otherwise relevant to the Program.

c. Nothing in this section shall be construed to require H+H to disclose to the City individual patient identifying information, individual patient reports or similar documents, except to the extent that such reports are statistical in nature or as otherwise provided in this MOU.

d. Upon the City's request, H+H will provide the City any information or reports determined by the City to be relevant to the administration of the Program, including such information or reports as are requested to be provided by any contractor H+H hires to provide or assist in providing administering the Program (a "Program Contractor"), and including all information needed for the City to comply with reporting requirements of applicable law and to seek funding or reimbursement from state, federal, or other sources.

##### **2. Submission of Reports**

H+H and the City shall each designate an individual to be the principal point of contact for the delivery and receipt of all reports required by this Article.

#### **ARTICLE VII. MISCELLANEOUS**

1. Compliance with Laws. Notwithstanding any other provision of this MOU, H+H shall be responsible for ensuring that any service provided pursuant to this MOU, or by any contract, or affiliation or grant thereunder, complies with all pertinent provisions of federal, State or local laws, rules and regulations, and that all necessary approvals thereunder have been obtained.

2. Patient Record Maintenance and Retention. All Parties acknowledge that the medical records of patients are subject to various laws and regulations and each Party shall comply with the same in their respective dealings with such records.

3. Non-assignability of this MOU. This MOU shall not be assigned, transferred, conveyed, or otherwise disposed of, in whole or in part, unless the prior written approvals of the Parties are obtained. Notwithstanding the foregoing, H+H may contract with agencies or companies to perform Program services while retaining responsibility for the same pursuant to this MOU.

4. Notices. Notices and requests hereunder by any Party to the other shall be in writing and be delivered and mailed as registered or certified mail, postage paid, to the address of the Parties set forth as follows:

Mayor's Office of Management and Budget  
255 Greenwich Street  
New York, NY 10007  
Attn: General Counsel

New York City Health and Hospitals Corporation  
125 Worth Street  
New York, New York 10013  
Attn: General Counsel

Either of the Parties may change the address for such notice or request by providing written notice thereof to the other Parties.

5. Non-liability. Except as specifically provided in this MOU, or the Operating Agreement between H+H and the City dated June 16, 1970, none of the Parties shall be liable for the acts, omissions, liabilities, or obligations of any other Party or of any person, firm or corporation.

6. Cooperation. The Parties will provide all reasonable cooperation to one another to achieve an effective implementation of the Program.

7. Indemnification. Issues of legal liability, defense, and indemnification of H+H or its contractors will be addressed in an MOU between the City, acting by and through the City Law Department, and H+H.

8. No Third Party Rights. Nothing in this MOU shall create any rights in any third parties and no third party shall have any right to enforce any term hereof.

9. Counterparts. This Agreement may be executed in counterparts, and the execution pages may be delivered electronically, including by pdf.

**IN WITNESS WHEREOF**, this MOU has been duly executed by the Parties as of the day and year first above written.

**New York City Health and Hospitals Corporation**

[Redacted Signature]

[mitchell katz \(Jun 10, 2020 14:24 EDT\)](#)

President

**Mayor's Office of Management and Budget**

[Redacted Signature]

[Melanie Hartzog \(Jun 10, 2020 13:13 CDT\)](#)

Director of Management and Budget

Approved as to Form:

[Redacted Signature]

[Andrea G. Cohen \(Jun 10, 2020 14:03 EDT\)](#)

H+H Office of Legal Affairs

Approved as to Form:

[Redacted Signature]

[Amrita P. Barth \(Jun 11, 2020 10:45 EDT\)](#)

Acting Corporation Counsel

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