

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into this 1<sup>st</sup> day of February, 2014, by and between the County of Tuolumne, a political subdivision of the State of California, (“County”), and Redwood Toxicology Laboratory, INC., (“Contractor”), pursuant to the following terms and conditions.

### **WITNESSETH:**

#### **1. TERM**

The term of this Agreement shall commence on February 1, 2015, and terminate on February 1, 2016, unless extended as provided by this Agreement.

This Agreement will be automatically extended for 5 one year extensions, unless either party provides written notice of its intention not to proceed with the Agreement at least 60 days prior to the expiration of the current term.

#### **2. SERVICES**

Contractor shall perform the services as described in Exhibit A, “Scope of Work,” which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

#### **3. COMPENSATION**

Contractor shall be compensated for services performed in an amount not to exceed \$150,000 per fiscal year. The Contractor’s rates are listed in Exhibit B, “Cost Proposal.” The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

#### **4. INSURANCE**

- A. The Contractor shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the County as may be required by the Risk Manager of the County. The Contractor’s insurance policy(ies) shall be placed with insurer(s) with acceptable Best’s rating of A:VII or with approval of the Risk Manager. The Policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the County by registered mail, return receipt requested, for all of the following stated insurance policies:
- i. Workers’ Compensation Coverage – Workers’ Compensation Insurance and Employer’s Liability Insurance for employees in accordance with the laws of the State of California (including requiring any authorized subcontractor to obtain such insurance for its employees).

- ii. General Liability Coverage - Commercial general liability insurance with a minimum liability limit per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand dollars (\$100,000) for property damage. If a commercial general liability insurance form or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Coverage shall be included for premises, operations and broad form contractual.
  - iii. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage. This insurance shall cover for bodily injury and property damage, owned, hired and non-owned vehicles.
  - iv. Professional Liability: Professional errors and omissions liability for protection against claims alleging negligent acts, errors or omissions which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim with an aggregate limit of five million dollars (\$5,000,000). Contractor agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement and any extensions thereof.
- B. Policy Endorsements: Each general liability and automobile liability insurance policy shall be endorsed with the following specific provisions:
- i. The County, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds ("County additional insureds").
  - ii. This policy shall be considered, and include a provision it is, primary as respects the County additional insureds, and shall not include any special limitations to coverage provided to the County additional insureds. Any insurance maintained by the County, including any self-insured retention the County may have, shall be considered excess insurance only and shall not contribute with it.
  - iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  - iv. The insurer waives all rights of subrogation against the County additional insureds.
  - v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County additional insureds.

- C. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the County's option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- D. Unsatisfactory Policies: If at any time any of the policies or endorsements be unsatisfactory as to form or substance, or if an issuing company shall be unsatisfactory, to the Risk Manager, a new policy or endorsement shall be promptly obtained and evidence submitted to the Risk Manager for approval.
- E. Failure to Comply: Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

## **5. HOLD HARMLESS/INDEMNIFICATION**

Contractor shall indemnify, defend, save, protect and hold harmless County, its elected and appointed officials, officers, employees, agents and volunteers (collectively, "County") from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, consultants, or any person under its direction or control and shall make good to and reimburse County for any expenditures, including reasonable attorney's fees, the County may make by reason of such matters and, if requested by County, shall defend any such suits at the sole cost and expense of Contractor. Contractor's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor shall not be required to indemnify County for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. This indemnification clause shall survive the termination or expiration of this Agreement.

## **6. INDEPENDENT CONTRACTOR**

It is understood that Contractor, in the performance of the services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the County. Contractor shall obtain no rights to retirement benefits or other benefits which accrue to County's employees, and Contractor hereby expressly waives any claim it may have to any such rights. All employees, agents, contractors, subcontractors hired or retained by the Contractor are performing in that capacity for

and on behalf of the Contractor and not the County. The County shall not be obligated in any way to pay any wage claims or other claims made against the Contractor by any such employee, agent, contractor or subcontractor, or any other person resulting from the performance of this Agreement.

**7. ASSIGNMENT**

This Agreement is for the professional services of the Contractor and it shall not assign, subcontract or sublet any part of this Agreement without the express prior written consent of County. Any assignment without the express prior written consent of the County is VOID.

**8. NOTICE**

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

**CONTRACTOR:**

Redwood Toxicology Laboratory, Inc.  
Po Box 5680  
Santa Rosa, CA 95402  
Fax: (707)577-8102

**COUNTY:**

Adele Arnold  
Chief Probation Officer  
  
County of Tuolumne  
465 South Washington Street  
Sonora, CA 95370  
Fax: (209) 533-7564

**9. COMPLIANCE**

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

**10. PUBLIC RECORDS ACT**

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

**11. ENTIRE AGREEMENT AND MODIFICATION**

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties, however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the Chief Probation Officer and Human Services Director.

**12. ENFORCEABILITY AND SEVERABILITY**

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect. If there is a conflict between the terms of any Exhibits attached hereto and the terms of this Agreement, the terms of this Agreement shall control.

**13. TERMINATION AND RIGHTS UPON TERMINATION**

- A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.
- B. Either party may terminate this Agreement for convenience upon 60 calendar days' written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.
- C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

**14. NO WAIVER**

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

**15. DISPUTES**

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Tuolumne, State of California.

**16. CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**17. NUMBER AND GENDER**

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

**18. MANDATORY AND PERMISSIVE**

"Shall" is mandatory. "May" is permissive.

**19. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**20. COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**21. OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

**22. CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California. Proper venue for any action is Tuolumne County.

**23. AUTHORITY**

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

**24. NEGOTIATED AGREEMENT**

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

**25. NO RELIANCE ON REPRESENTATIONS**

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

**26. WARRANTY**

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

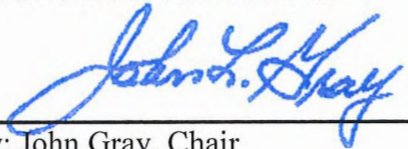
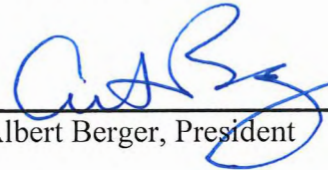
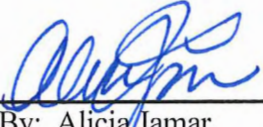
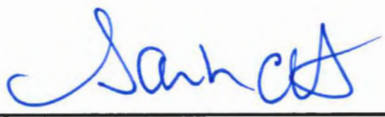
**27. FUNDING AVAILABILITY**

It is mutually agreed that if the County budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event,

the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this program, the County shall have the option to either cancel this Agreement with no liability occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced amount.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

<p>COUNTY OF TUOLUMNE</p>  <hr/> <p>By: John Gray, Chair Board of Supervisors</p>	<p>CONTRACTOR</p>  <p>12/17/2014</p> <hr/> <p>By: Albert Berger, President</p>
<p>ATTEST:</p>  <hr/> <p>By: Alicia Jamar Seal Chief Deputy Clerk of the Board</p>	
<p>APPROVED AS TO LEGAL FORM:</p>  <hr/> <p>By: Sarah Carillo, County Counsel</p>	

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

By:  \_\_\_\_\_  
ALICIA L. JAMAR  
Clerk of the Board



## Exhibit A SCOPE OF WORK

### BACKGROUND

RTL offers drug and alcohol laboratory testing services ("Services"), and instant, on-site device products ("Products"), described on Attachment A. The Services and Products are available through RTL's National Joint Powers Alliance (NJPA) Contract Number 011713, provided as Attachment B.

### AGREEMENT

RTL and Customer agree as follows:

#### 1) DRUG TESTING SERVICES

- a. RTL will provide the Services, as described in this Agreement, in connection with Customer's drug and alcohol testing program. Drugs and panels to be tested by RTL are described in Attachment A.
- b. RTL will provide screening and confirmation Services for alcohol and drugs of abuse in urine and oral fluids. Screening and confirmation methodologies vary by drug or metabolite and are subject to change at RTL's discretion. The most current screening and confirmation methodologies by drug, metabolite and/or panel are provided on RTL's website.
- c. RTL's standard service includes all urine collection and shipping supplies. Supplies include requisition forms, specimen collection bottles, security seals and pre-paid shipping labels or containers. All items shipped FOB Shipping Point. Shipping costs for outbound supplies and inbound specimens are provided in Attachment A.
- d. RTL will supply electronic reporting of laboratory results through our proprietary webpage at <https://toxaccess.redwoodtoxicology.com>. Fax summary and/or hard copy reports will be provided upon written request by Customer.
- e. Turnaround time for results varies by test and method. Timely receipt of the specimen at the lab may be impacted by weather or postal/courier service delays. Turnaround time may be delayed if RTL is in receipt of a specimen that shows signs of tampering or has illegible writing on the chain of custody or label. Below is an approximation of RTL's turnaround times:

#### Urine Drug Testing

- Negative results for basic *urine* tests (non-esoteric) are available within twenty-four (24) hours after receipt of specimen(s) at RTL.
- Confirmed positive results or esoteric testing requiring GC/MS, LC/MS/MS, or GC-FID will be reported to authorized Customer personnel within forty-eight (48) hours to seventy-two (72) hours after receipt of specimen(s), or after receiving request for GC/MS, LC/MS/MS, or GC-FID confirmation.

#### Oral Fluid Drug Testing

- Negative results for oral fluid drug screens are available within twenty-four (24) hours after receipt of specimen(s) at RTL.
- Confirmed positive results by GC/MS or LC/MS/MS will be reported to authorized Customer personnel within forty-eight (48) to seventy-two (72) hours after receipt of specimen(s), or after receiving request for GC/MS or LC/MS/MS confirmation.

- f. RTL will retain positive specimens for three (3) months.
- g. RTL will provide litigation packets and court representation/testimony at the prices outlined in Attachment A.

#### 2) DRUG TESTING PRODUCTS

- a. RTL will provide Products, as described in this Agreement, in connection with Customer's drug and alcohol testing program. RTL may substitute a generic (unbranded) Product of an identical configuration, at the same price, when branded devices are not available.
- b. Collection and shipping supplies are available for Products. Supplies include requisition forms, specimen collection bottles or beakers, security seals and pre-paid shipping labels or containers. Costs for these collection and shipping supplies are described in Attachment A.

**3) PRICE, PAYMENT and RETURNS**

- a. **Price.** Customer agrees to pay RTL for Services and Products in accordance with the pricing provided in Attachment A. RTL may adjust the price for Services and Products by providing written notice to Customer at least thirty (30) days prior to adjustment.
- b. **Payment.**
  - i. Services: RTL will bill Customer for Services on a monthly basis. Customer agrees to make payments to RTL within thirty (30) days from the date of invoice.
  - ii. Products: RTL will bill Customer for Products upon shipment of order. Invoices for Products are sent separately from Services invoices. Customer agrees to make payments to RTL within thirty (30) days from the date of invoice.
  - iii. Overdue accounts bear interest at a rate of 1.5% a month or the maximum amount allowed by law.
- c. **Returns**
  - i. Any order rejected by the Customer on the basis that the Product is either non-conforming or is defective may be returned to RTL for full credit or replacement as set forth below. All claims must be made within 30 days from date of invoice.
  - ii. Any Products returned for any other reason shall be subject to a restocking fee of equal to twenty percent (20%) of said order. All claims must be made within thirty (30) days from date of invoice. A finance charge of 1.5% a month will be assessed on all invoices that are past due.

## Exhibit B COST PROPOSAL

Redwood Toxicology Laboratory, Inc. agrees to extend our NJPA Contract No. 011713 to the Tuolumne County Probation Department. Please find a copy of this pricing schedule as Attachment B.

### Laboratory Drug & Alcohol Testing Services – Urine (Non-Esoteric)

#### **URINALYSIS STANDARD PANELS**

DRUG(S)	DESCRIPTION	PANEL CODES	SCREENING METHODOLOGIES	PRICE PER TEST
10	Ten Drug Standard Lab Panel	R57*	EIA	\$4.00

*Drugs available for standard panels include: Alcohol, Amphetamines, Barbiturates, Benzodiazepines, Cocaine, Methadone, Methamphetamine (including Ecstasy), Opiates, PCP, Propoxyphene, and Marijuana (THC). Screening and confirmation methodologies, as well as cutoff levels, vary by drug or metabolite and are subject to change at RTL's discretion. Panel codes are also subject to change.*

#### **URINALYSIS CONFIRMATION**

DESCRIPTION	TEST CODE	PRICE PER TEST
GC-MS or LC-MS/MS Confirmation for Standard Drugs – cost per drug	5XXX*	\$11.00
GC-FID Alcohol Confirmation	5047*	\$11.00

*Drugs available for confirmation include: Alcohol, Amphetamines, Barbiturates, Benzodiazepines, Buprenorphine, Cocaine, Methadone, Methamphetamines (including Ecstasy), Opiates, Oxycodone, PCP, Propoxyphene, and Marijuana (THC). Confirmation and methodologies, as well as cutoff levels, vary by drug or metabolite and are subject to change at RTL's discretion. Panel codes are also subject to change.*

#### **URINALYSIS ESOTERIC TESTS**

DESCRIPTION	TEST CODE	SCREENING METHODOLOGIES	PRICE PER TEST
Ethyl Glucuronide/Ethyl Sulfate (EtG/EtS) - screened by immunoassay and confirmed by LC/MS/MS.	647*	EIA	\$10.95

\*Please note that RTL has offered the above services at a reduced rate from our NJPA contract pricing schedule. This markdown is acceptable under section 4.E of the original RFP terms.

### Court Representation/Testimony/Support

#### **FEES**

DESCRIPTION	PRICE PER DAY
In-Court Testimony	\$700.00 + Travel, a daily meal per-diem and hotel costs not to exceed the county and state rates, and any other related travel cost.
Written Affidavits/Telephonic Testimony	No additional cost

**Laboratory Shipping & Supplies**

---

RTL provides all necessary laboratory urine testing specimen collection and shipping supplies to its clients at no additional cost. *Laboratory supplies are sent in three (3) month increments, based on Customer's historic lab volumes.*

PART NUMBER	DESCRIPTION	Unit Price
031215	60 ml Urine Collection Bottle with Built-in Temp Strip	\$0.00
031234	90 ml Urine Collection Bottle with Built-in Temp Strip	\$0.00
031341	Specimen baggies with absorbent material	\$0.00
Varies	Preprinted Chain of Custody forms/labels	\$0.00
113211	Security Seals	\$0.00
039030	FedEx overnight shipping labels	\$0.00
031011	Large Ziploc bags for shipping through FedEx	\$0.00
031210	FedEx lab pack	\$0.00
039037	UPS shipping box	\$0.00
031279	UPS overnight shipping labels	\$0.00
039032	UPS padded pack	\$0.00
039034	UPS lab pack	\$0.00
031219	U.S. mailer box – One 60 ml Urine Collection Bottle	\$0.00
031220	U.S. mailer box – Two 60 ml Urine Collection Bottles	\$0.00
031222	U.S. mailer box – Two 90 ml Urine Collection Bottles	\$0.00