

AGREEMENT FOR SERVICES

#546-PHD0906

with

DADE BEHRING, Inc.

for

Laboratory Reagents, Equipment, Maintenance, and Technical Support

THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Dade Behring, Inc. SYVA, a Delaware Corporation, duly qualified to conduct business in California, whose principal place of business is 500 GBC Drive, building 500, Newark, DE, 19702 (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide drug testing equipment and supplies for the County's Public Health Laboratory; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws as such apply to each party's responsibilities and obligations under this agreement; and

WHEREAS, County has determined that the provision of such services provided by Contractor are in the public's best interest, and authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor agrees to provide all necessary Analyzer equipment; specifically the V-Twin Analyzer and the iMS WinTox Ver. 5 (or iMS WinTox Ver. 6 if it is ready at time of execution of this contract) data management system, applicable hardware, software and testing reagents (hereinafter referred to as the system) to provide Enzyme Multiplied Immunoassay Technique (EMIT) testing for Drugs of Abuse at the El Dorado County Public Health Laboratory.

Contractor will provide an iMS WinTox Laboratory Information System (LIS) that includes a bi-directional interface with the computer that runs the Analyzer and other hardware. The LIS must be capable of producing a variety of query and statistical reports on the information stored to assist in tailoring program testing criteria. The LIS shall have the capability of collecting data including, but not limited to: name, file #, gender, DOB, submitter, date and time collected, witness, date and time received, and/or received by. In addition, the system must be capable of sending results to clients via auto fax and/or email without the requirement of staff printing and faxing reports and must have the ability to bill and post payments. The system should be capable of storing a minimum of one year worth of tests (12,000). It would be desirable to have LIS capable of backing up data to DVD/CD formats and be able to print in .pdf file format.

Contractor must provide user guide information, in English, in a notebook hard copy and on electronic media to the El Dorado County Public Health Laboratory for use in operating the equipment and troubleshooting minor equipment malfunctions.

Contractor must provide 2 “hard” copies of drugs of abuse testing “reference manual” which include drug information/classification tables. This reference guide should be updated regularly and should also be available to the El Dorado County Public Health Laboratory in electronic/digital format.

Contractor shall provide a thirty-day acceptance period following installation and stabilization/testing by Contractor of the complete Analyzer, hardware and software system. The County will evaluate Contractor’s system during this thirty-day period to insure that the system functions to contractor’s specifications as defined in its proposal. Upon successful completion of the acceptance period, County shall accept and pay for all delivered products and services in accordance with the signed agreement.

Acceptance occurs upon delivery of equipment. However, if County identifies an issue specifically related to the installation of the equipment within 45 days of delivery, Dade Behring agrees to cure the issue. If Dade Behring does not cure the issue to County’s satisfaction, Dade Behring will nullify acceptance of the instrument and agree to a mutually acceptable resolution with the County. If Contractor’s system does not perform to the satisfaction of the Public Health Laboratory, Contractor shall remove all equipment within thirty (30) calendar days following written notification by the County to do so with no further obligation by the County.

Contractor shall provide technical support during the County’s normal business hours as needed either in person or by telephone and/or on-line support at no additional charge. Contractor will provide a toll free telephone number for technical support. The toll free number shall not have an automated attendant without the option of contacting support staff during normal business hours.

Contractor will include all preventive maintenance required to maintain the system cost to El Dorado County throughout the term of the contract. The preventive maintenance shall include instrument

labor, parts, freight, travel and/ any other expense necessary.

Contractor will provide El Dorado County with replacement kits for any problem identified by County that causes loss of use of reagents due to a technical problem. Wasted reagents due to technical problems and for troubleshooting purposes will be replaced at no cost to County. County will be responsible for identifying and reporting these problems with an invoice to Vendor.

Customers are requested to contact the Technical Assistance Center (TAC) twenty-four hours per day, seven days per week for all inquiries at the Contractor's expense; including clinical and technical phone assistance or on-site service requests at this number:

Syva Technical Assistance Center 1.800.227.8994

The TAC is Dade Behring's front line operation to resolve minor issues and get the equipment operational as fast as possible. Our TAC personnel, System Specialists, and Engineers possess a strong clinical and/or technical background. Most issues that come into the TAC are resolved over the telephone with advice/information or parts which are shipped out at the expense of Dade Behring. If our TAC personnel determine that more extensive service is required they will notify the local Field Service Representative (FSR). The FSR will call the customer to schedule a visit and determine if additional parts or resources may be required.

Guidelines for the use of the Analyzer and the Data Management System, as well as additional related services, are listed in Exhibits A and B, respectively.

ARTICLE II

Term: This Agreement shall be effective when signed by both parties hereto and shall expire October 31, 2009. County reserves the right to extend the term of the contract for three additional one-year terms, when notification is provided to Contractor in writing, signed by the Contract Administrator as identified under Article XXIII, provided such extensions are in the best interest of the parties.

At the end of the term, Contractor may sell said Analyzer and transfer title to County for fair market value as determined by the manufacture. Contractor will, at this time, adjust the price of the products and/or service to reflect that the contract has been fulfilled. County may exercise the option to return the Analyzer to Contractor. At end of term, or in the event of terminating this Agreement, costs associated with preparing, shipping and returning Analyzer to Contractor will be at the expense of the Contractor.

At the end of the contract term, if a new vendor is selected, Contractor will assist with data transfer to a new LIS, if needed.

ARTICLE III

Compensation for Services: The County of El Dorado makes no specific guarantee of the number of tests that shall be required annually, however it is estimated that approximately 114,400 specimens will be eventually tested once testing has been started and stabilized.

Cost of EMIT Drugs of Abuse Reagents is \$0.40/test. Included within the cost per test is use of Analyzer, WinTox system, Reagent and all applicable technical support and service. Consumables will be priced at an 80% discount from 2006 Tier Appropriate List Price. Contractor will pay for the first 50 positive specimens to be confirmed via GCMS.

Contractor will provide El Dorado County enough reagents to verify and validate 30 proficiency testing samples obtained from an external source of its choosing.

Award prices shall not be increased at any time greater than 2.5% annually; however any discount shall not be eliminated at anytime during this term. In addition to any changes made to assure market competitiveness, vendors may lower the award prices or increase any discounts applicable to the purchase of the products at any time.

The County reserves the right to ask for new pricing each calendar year based on the volume of tests that are performed. If on an annual basis the total test volume changes significantly, the County and Contractor may renegotiate the pricing and pricing may be adjusted by mutual agreement of County and Dade Behring.

The contractor shall invoice after delivery of ordered reagents for the specific number and types of Drugs of Abuse analytes actually ordered and priced as indicated in the contractor's original proposal. County shall reimburse Contractor within 45 days of date of original invoices which reflect detail regarding period being billed, services performed, compensation due for each service, and total compensation due for all services. Contractor shall not charge late fees or interest charges for invoices paid.

Invoices are to be submitted to:

Michael Deatherage, Public Health Lab Director
931 Spring Street
Placerville, CA 95667.

ARTICLE IV

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE V

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VI

Assignment and Delegation: Contractor is engaged by County for their unique qualifications and skills as well as those of their personnel. Neither party shall subcontract, delegate or assign services

to be provided, in whole or in part, to any other person or entity without prior written consent of the other party such consent not to be unreasonably withheld.

ARTICLE VII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable to the extent of its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE VIII

Scope and Ownership of Work: Notwithstanding anything to the contrary contained in this agreement, Consultant shall retain all of its rights in its own proprietary information, including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by the Consultant prior to, or acquired by the Consultant during the performance of this agreement and the Consultant shall not be restricted in any way with respect thereto

ARTICLE IX

Title: Dade Behring will retain title to the Equipment. You agree to clearly indicate that the Equipment is the sole property of Dade Behring. You also agree that Dade Behring may file a UCC financing statement, or any other document or instrument required by law, to give public notice of Dade Behring's interest in the equipment. This remains valid throughout the term of this contract. If at the end of the term the County chooses to purchase the Equipment title will transfer to the county.

ARTICLE X

Customer's Responsibilities. (a) YOU AGREE NOT TO SELL, TRANSFER, LEASE OR DISPOSE OF THE EQUIPMENT OR TO PERMIT ANY OTHER PERSON TO HAVE ANY INTEREST IN IT. You shall keep the Equipment free of all liens and encumbrances. You shall not move the Equipment from the Equipment location without our prior written consent. (b) You agree that you will use the Equipment solely for your business purposes in the manner for which it was intended. (c) You shall keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. You shall perform all maintenance requirements described in the manuals provided by the manufacturer and keep the Equipment safe from hazards. All replacement parts and attachments shall become part of the Equipment. (d) You shall maintain primary insurance on the Equipment upon delivery at your own cost with an insurance company acceptable to Dade Behring. (e) You shall give us reasonable access to inspect the Equipment. This remains valid throughout the term of this contract.

ARTICLE XI

Warranty: Dade Behring warrants that the Consumables are free from defects in material and

workmanship and conform to the labeling claims which accompany them. Dade Behring promises that if County uses the Equipment as would be normally expected, and it fails to meet the claims made for it in its labeling, Dade Behring will repair or replace the Equipment in accordance with the service arrangement set forth in this Agreement. Dade Behring also promises that the use of the Equipment and the Consumables in the form delivered to County and in accordance with their instructions will not infringe the U.S. patent of any third party. This promise does not cover the use of the Equipment or Consumables in combination with any other product or equipment. Dade Behring Equipment and Consumables are designed and certified with applicable regulatory authorities as an integrated instrument/reagent/consumable system. Use of unapproved parts or consumables with County's Dade Behring Equipment and consumables will void any service contract County may have with Dade Behring. If any services are performed on the instrument other than through Dade Behring's Service Representative, such service would also void any service contract or warranty County may have with Dade Behring. Dade Behring is not required to add any design, engineering, or performance change or development into the Equipment after it is delivered to County. In no event will Dade Behring's obligations herein require it to pay more than the aggregate purchase price of the Consumables County have purchased during the term of this Agreement. DADE BEHRING MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AS TO DESIGN, MERCHANTABILITY, OR FITNESS FOR ANY PURPOSE IN CONNECTION WITH THE EQUIPMENT OR CONSUMABLES. County will not make any claim against Dade Behring for any special consequential or incidental damages. No oral or written promises as to the Equipment or Consumables which conflict with the statements in this Paragraph will bind Dade Behring unless signed by an authorized representative of the party to be bound

ARTICLE XII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation. In the event of termination the County is responsible to pay for product ordered and shipped prior to termination.

ARTICLE XIII

Default, Termination, and Cancellation:

A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within thirty (30) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.

C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part thirty 30 calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means. Should this agreement be terminated, Contractor shall promptly provide to County any and all finished and unfinished reports, data, studies, photographs, charts and other documents prepared by Dade Behring Inc. pursuant to this agreement. In the event of termination County is responsible to pay for product shipped prior to termination. In the event that the County purchases above and beyond the total amount of the contract, it is the County's responsibility to amend and increase their budget.

ARTICLE XIV

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

EL DORADO COUNTY PUBLIC HEALTH DEPARTMENT
931 SPRING STREET
PLACERVILLE, CA 95667

ATTN: GAYLE ERBE-HAMLIN, DIRECTOR

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

DADE BEHRING INC.
1717 DEERFIELD RD.
DEERFIELD, IL 60015
ATTN: HEATHER SOLOMON, SYVA BUSINESS ANALYST

or to such other location as the Contractor directs.

ARTICLE XV

Indemnity: To the fullest extent of the law, Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance to the extent of the existence or degree of fault or negligence on the part of the Contractor, subcontractor(s) and employee(s) of any of these, except as expressly provided by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVI

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements: Sent to Jamie 11.10.2006

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management

Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3)

years following completion of performance of this Agreement.

- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the County.

ARTICLE XVII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVIII

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XIX

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XX

Taxpayer Identification / Form W9: All individuals/sole proprietors, corporations, partnerships, associations, organizations or public entities providing services to the County shall provide a fully executed Department of the Treasury Internal Revenue Service Form W-9, "Request for Taxpayer Identification Number and Certification".

ARTICLE XXI

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXII

HIPAA: Under this Agreement, Contractor will provide services to County and in conjunction with the provision of such services, certain Protected Health Information ("PHI") may be made available to Contractor for the purposes of carrying out its obligations. Contractor agrees to comply with all the terms and conditions of Exhibit C, HIPAA Business Associate Agreement, attached

hereto and made by reference a part hereof, regarding the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated there under.

ARTICLE XXIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Gayle Erbe-Hamlin, Director of Public Health, or successor.

ARTICLE XXIV

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXV

Access to Records/Retention: County, federal and state officials shall have reasonable access under mutually agreeable terms to any books, documents, papers and records of Consultant which are directly pertinent to the subject matter of this agreement for the purpose of auditing or examining the activities of Consultant or County. Except where longer retention is required by federal or state law, Consultant shall maintain all records for five years after County makes final payment hereunder.

ARTICLE XXVI

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXVII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

CONTRACTOR

By: _____
Heather Solomon, SYVA Business Analyst
Dade Behring, Inc.

Date: _____

By: _____

Date: _____

COUNTY OF EL DORADO

By: _____
James R. Sweeney, Chairman
El Dorado County Board of Supervisors

Date: _____

ATTEST:
Cindy Keck, Clerk

By: _____ Date: _____
Deputy Clerk