RESOLUTION - ACTION REQUESTED 2020-489

MEETING: August 11, 2020

TO: The Board of Supervisors

FROM: Walter Wall, District Attorney

RE: Approve Contract for Services with John C. Fremont Healthcare District (JCFHD)

RECOMMENDATION AND JUSTIFICATION:
Approve a three year agreement with John C. Fremont Healthcare District (JCFHD) for Blood Drawing Services in an amount not to exceed $20,000; and Authorize the Board of Supervisors Chair to sign the agreement.

JCFHD provides blood drawing services on suspected driving under the influence of alcohol and/or drug cases. The fees charged for these services by JCFHD have changed from the previous contract. The term of this agreement is from July 1, 2020 through June 30, 2023.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
There has been an ongoing contract with JCFHD since 1996, to provide blood drawing services on suspected driving under the influence of alcohol and/or drug cases.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
A negative action would result in having to locate a new facility to provide blood drawing services on suspected driving under the influence of alcohol and/or drug cases.

FINANCIAL IMPACT:
Appropriate funding is included in the District Attorney Prosecution Budget for Fiscal Year 2020-2023.

ATTACHMENTS:
JCFHD Blood Draw Agreement (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Rosemarie Smallcombe, Marshall Long, Kevin Cann, Miles Menetrey
EXCUSED: Merlin Jones
AGREEMENT FOR BLOOD DRAW SERVICES ON SUSPECTED
DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR
DRUG CASES

THIS AGREEMENT ("Agreement") is made and entered into this 1st day of July, 2020, by and
between the County of Mariposa, a political subdivision of the State of California ("County"),
and John C. Fremont Healthcare District (JCFHD) ("Contractor"), pursuant to the following
terms and conditions.

WITNESSETH:

1. TERM

The term of this Agreement shall commence on July 1, 2020 and terminate on June 30, 2023
unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform blood draw services on suspected driving under the influence of alcohol
and/or drug cases as described in Exhibit A, "Scope of Work," which is attached hereto and
incorporated herein by this 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 $200.00 per
blood draw, not to exceed $20,000.00 for contracted three-year term. The Contractor’s rates are
listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within forty-five (45) days
of receipt of an approved invoice.

4. INSURANCE

Contractor shall procure and maintain for the duration of the agreement insurance against claims
for injuries to persons or damages to property which may arise from or in connection with the
performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG
00 01 covering CGL on an "occurrence" basis, including products and completed operations,
property damage, bodily injury, and personal and advertising injury with limits no less than
$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate
limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000.00 per accident for bodily injury and property damage.

3. Workers’ Compensation Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits of no less than $2,000,000.00 per accident for bodily injury or disease.

4. Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor’s profession, with limits no less than $1,000,000.00 per occurrence or claim, $2,000,000.00 aggregate. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or high limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

2. Primary Coverage: For any claims related to this Agreement, 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 excess of the Contractor’s insurance and shall not contribute with it.

3. Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

4. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
(5) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the County.

(6) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligations to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(7) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(8) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify County its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney’s fees, arising from all acts or omissions to act of Contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from County’s sole negligence or willful acts.

To the fullest extent permitted by law, County shall hold harmless, defend at its own expense, and indemnify Contractor its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney’s fees, arising from all acts or omissions to act of County or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from Contractor’s sole negligence or willful acts.

6. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer, or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.
7. **PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)**

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

8. **STATE AND FEDERAL TAXES**

As Contractor is not County’s employee, Contractor is responsible for paying all required state and federal taxes. In particular:

   a. County will not withhold FICA (Social Security) from Contractor’s payments;
   b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
   c. County will not withhold state or federal income tax from payment to Contractor;
   d. County will not make disability insurance contributions on behalf of Contractor; and,
   e. County will not obtain Workers’ Compensation Insurance on behalf of Contractor.

9. **ASSIGNMENT**

It is understood and agreed that this Agreement contemplates personal performance by the contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any and all rights, duties, or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

10. **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:**
John C. Fremont Healthcare District
P.O. Box 216
Mariposa, CA 95338

**COUNTY:**
Mariposa County District Attorney
P.O. Box 730
Mariposa, CA 95338
11. COMPLIANCE

Contractor shall comply with all federal, state, and local laws, codes, ordinances, 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.

12. 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 these/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.

13. 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 Mariposa County District Attorney. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. 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.

15. 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 sixty (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 either party (the “Defaulting Party”) default in the performance of this Agreement or materially breach any of its provisions, the other party, at its option, may terminate this Agreement by giving written notification to the Defaulting Party. 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.

16. 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.

17. 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 Mariposa, State of California.

18. CAPTIONS

The captions of the 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.

19. 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.

20. MANDATORY AND PERMISSIVE

“Shall” is mandatory. “May” is permissive.

21. 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.
22. 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.

23. 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.

24. CONTROLLING LAW

The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

25. 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.

26. 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 § 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.

27. 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.

28. 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.

29. FUNDING AVAILABILITY

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this Agreement, 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 of 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 Agreement, 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. Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination.

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

COUNTY OF MARIPOSA

Kevin Cann, Chair Board of Supervisors

ATTEST:

Rene LaRoche, Clerk of the Board

CONTRACTOR

Matthew Matthiessen, CEO
7/10/20

APPROVED AS TO FORM:

Steven W. Dahlem, County Counsel
Exhibit A
SCOPE OF WORK

CONTRACTOR shall perform blood draw services on suspected driving under the influence of alcohol or drug cases as requested by the Mariposa County District Attorney, California Highway Patrol, and Mariposa County Sheriff’s Office.

CONTRACTOR shall charge $200.00 per blood draw for the period July 1, 2020 through June 30, 2023, not to exceed $20,000.00 for contracted three-year term.

CONTRACTOR shall invoice the Mariposa County District Attorney’s office accordingly and reimbursement shall be due within 45-days of being submitted from the Contactor.

Routine Driving Under the Influence (DUI) blood draws will be performed at the John C. Fremont Healthcare District (JCFHD) ER. There will be no ER charges incurred. Emergency patients will take priority over DUI blood draws.

All “forced” DUI blood draws will be performed at the Mariposa County Adult Facility (Jail). In the event of a “forced” DUI blood draw, lab personnel will make every effort to arrive at the jail within 15-20 minutes. Emergency patients will take priority over “forced” DUI blood draws.

It is further understood that the Law Enforcement Agency will provide Contractor with the blood draw kits.
Exhibit B
COST PROPOSAL

CONTRACTOR shall charge $200.00 per blood draw for the period July 1, 2020 through June 30, 2023, not to exceed $20,000.00 for contracted three-year term.

CONTRACTOR shall invoice the Mariposa County District Attorney’s office accordingly and reimbursement shall be due within 45-days of invoices being submitted from the Contractor.