

**AGREEMENT BETWEEN
EL PASO COUNTY AND
CONFIDENTIAL DRUG TEST**

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CLERK OF COUNTY CLERK
EL PASO COUNTY, TEXAS

State of Texas

County of El Paso

1. TERM OF CONTRACT

- a. El Paso County contracts with Confidential Drug Testing, hereinafter referred to as "Contractor" for a term of twelve (12) months beginning on the 1 day of February, 2002 and ending on the 31 day of January, 2003.
- b. To the extent provided for in the contract, the County, at its sole option may extend the initial term of this contract for one (1) additional year by giving the Contractor written notice no later than thirty (30) days prior the expiration of the current term. If the option to renew is exercised, the contract will continue under the same terms and conditions set forth herein.

2. CONTRACTUAL RELATIONSHIP

Nothing herein shall be construed as creating the relationship of employer or employee between the County and the Contractor's employees. The County shall not be subject to any obligations or liabilities for the Contractor or his employees, incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein shall constitute or designate the Contractor or any of his employees as County employees. Neither the Contractor nor any of his employees shall be entitled to any of the benefits established for County employees, nor be covered by the County's Workers' Compensation Program.

3. INVOICE AND PAYMENT

- a. The Contractor shall submit an invoice for each group of tests to the Budget Section.
- b. Payments shall be made to the Contractor on a monthly basis, after Contractor provides a monthly invoice to the to the billing department.
- c. The following charges will apply for the duration of the contract:

KK-02-049

- d. Mail invoices to El Paso County Sheriff's Department, Attn: Irma Cerda-Padilla, Budget Analyst, P.O. Box 125, El Paso, Texas 79941-0125.

4. INDEMNIFICATION

Contractor hereby expressly warrants and guarantees to the County that its urine specimen collection processes, its chain of custody processes and all other methods and procedures relating to its performance of the drug screening required under the terms of this contract comply in all respects with the applicable law of any jurisdiction within the United States of America. Furthermore, Contractor expressly understands and agrees that it shall indemnify and save harmless County, its officers, agents and employees from all suits, actions or claims of any character type or description brought or made for on account of any injuries or damages received or sustained by any persons or property arising out of or occasioned by the negligence or willful misconduct of Contractor in the performance of the drug screening process, including sample collection, chain of custody and other related drug screening procedures and tests, by Contractor, its officers, agents, assignees, delegates, independent contractors, employees, or any other party acting on behalf of the Contractor, in the course of the performance of this contract or in the course of an attempt to perform under this contract.

5. PROCEDURES

- a. Contractor shall perform a drug test and positive confirmation screen in exact accordance with departmental policy and appropriate laws. Additionally, students and trainees are forbidden to work on collected specimens from the Sheriff's Office.
- b. Collection sites and hours: Contractor shall furnish collection sites and hours of operation of such sites to the Sheriff's Office; at least one collection site must be available on a twenty-four (24) hour basis. Changes to hours of operation or the location of such sites must be available to the County within twenty-four (24) hours.

Location site:

Confidential Drug Testing
1551 Montana Suite 100
El Paso, Texas 79902

- c. Contractor shall provide a certified Medical Review Officer (MRO) review and reporting service. The MRO will interview the employee when the results are positive.

- d. Charges to include all collection, chain of custody, testing, and storage procedures, and any other services, material equipment or other expense, duty or obligation of the Contractor, its assignees, delegates, independent contractors, or other parties acting on behalf of the contractor, in the performance of drug screening.

\$22.00 Non-Dot Urine Testing (Includes all Collection & Lab Fees) and MRO Service (Includes both negative and positive results).

- 6. **EMIT TEST:** The Enzyme-Multiplied Immunoassay method (EMIT TEST) must be used to test participants' urine sample. All positive EMIT TEST results must be confirmed with the Gas Chromatography/Mass Spectrometry Test (GC/MS).

- a. Urine specimens will be analyzed for the following drugs.

- 1) Marijuana (THC Metabolite)
- 2) Cocaine
- 3) Amphetamines
- 4) Opiates (including Heroin)
- 5) Phencyclidine (PCP)

- 7. **REPORTING OF TEST RESULTS:** The Contractor shall report initial test results within twenty-four hours of a negative sample and within seventy-two hours of a positive sample. All positive results shall follow the proper procedures. The Contractor shall only report positive results to the Sheriff or Chief Deputy. All results will be verified with a written report that will be picked up by an employee designated by the Chief Deputy.

- 8. **METHOD OF RANOM SELECTION:** A computer-generated list that will be based on an unbiased method of randomly selecting employees, will be supplied to the Contractor by the Director of Human Resources for the Sheriff's Department on the first working date of each month.

- 9. **DRUG TESTING PROCEDURES:**

- a. Personnel authorized to administer drug tests shall require positive photo identification and department ID number from each employee to be tested before they enter the testing area.
- b. A pretest interview shall be conducted by testing personnel with each employee in order to ascertain and document the recent use of any prescription or non-prescription drugs, or any indirect exposure to drugs that may result in a false positive test result.

10. DRUG TESTING METHOD:

- a. The contractor must keep a detailed and accurate chain of custody which shows the following:
- 1) Where the specimen has been;
 - 2) Who has had access to the specimen;
 - 3) What tests were performed on the specimen;
 - 4) When those tests were performed; and
 - 5) What individual performed these tests.
- b. In addition, a collection log must be kept that indicates the path of the specimen and contains the signatures of the individuals who handled the specimen, including the individual who collects the specimen.
- c. All sample containers must have a label which is keyed to the participant's name, a unique identification number, the date the sample was taken, the initials of the individual who observed and the initials of any individual who has handled the sample or tested the sample and the collection site. Contractor must ensure that these labels are firmly attached to each bottle and that such labels are standardized so that each item is clearly understood.
- 1) Employees shall have their urine sample split and stored in case of legal disputes. The urine sample must be provided at the same time, and marked and placed in identical specimen containers by authorized testing personnel. One sample shall be submitted for immediate drug testing. The other sample may remain at the facility in frozen storage. This sample may be made available to the employee or his attorney should the original sample result in a legal dispute or the chain of custody be broken.
 - 2) The urine sample is first tested using the initial drug screening procedure. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending." Notification of test results shall be held until the confirmation test results are obtained.
 - 3) Specimen samples shall be sealed, labeled and checked against the identity of the employees to ensure the results match the tested specimen. Samples should be stored in a secured and

refrigerated atmosphere until tested or delivered to the testing lab representative.

Contractor shall furnish transportation of specimens to a NIDA certified laboratory.

- d. The observer, while still in the presence of the participant, shall then place both sample containers into one tamper-evident bag, remove the protective paper strips from the adhesive area of the bag and seal the bag. Finally, the observer shall require the participant to initial the seal in the appropriate area. When specimens have been collected exactly as specified, Contractor shall transport the sealed, tamper-evident bag to the laboratory for testing. The laboratory must then follow all requirements to ensure the chain of custody and proper test procedure are carried out.
 - e. When a drug test comes back positive, a second test will be rerun on the employee's specimen by Gas Chromatography Mass Spectrometry (GC/MS). Test results will be reported directly to the Sheriff or the Chief Deputy.
11. **CONFIDENTIALLY:** At all times, Contractor shall be solely responsible for ensuring that all results of the drug screening procedures are kept strictly confidential and secure.

12. **INSURANCE REQUIREMENTS**

- a. Contractor agrees to obtain and keep in force during the term of this contract, the insurance coverage described. Such insurance shall be carried with companies satisfactory to the County of El Paso and licensed to do business in the State of Texas and certificates evidencing such coverage shall be furnished to the County of El Paso prior to commencing any work under this proposal. Copy of certificate evidencing such coverage shall be mailed to:

**El Paso County Sheriff's Department
Ms. Irma Cerda-Padilla
Budget Analyst
P.O. Box 125
El Paso, Texas 79941-0125**

The certificates must show the proposal number and give a brief description of the services supplied. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notification has been given to the County of El Paso. The County of El Paso reserves the right to examine the bidder's original insurance policy. This policy shall list the

County of El Paso as an insured. The insurance coverage which the Contractor shall obtain and keep in force is as follows:

General Liability:	General Aggregate	\$2,000,000
	Each Occurrence	\$1,000,000
Professional Liability:	General Aggregate	\$3,000,000
Excess Liability	Each Occurrence	\$1,000,000

Contractual (Hold Harmless) Liability:

The Contractor agrees to save and hold harmless and fully indemnify the County of El Paso and all its employees or agents from and against all damages, costs or expenses in law or equity that may arise, or be set up by any persons as a consequence of the program, by any of its employees or contents of the articles supplied under this contract except to the extent caused by the negligence of the County of El Paso from and against all suits, claims and demands including attorney's fees, based upon any alleged damage to property or alleged injury (including death) which may occur or be alleged to have occurred by or on account of any negligent act or omission on the part of said Contractor or subcontractor, or any of their servants, employees, or agents. The Contractor, at its own option and expense, will be associated with the County of El Paso or the federal government in the settlement or defense of any claims or litigation arising out of the performance of this contract.

13. Contractor shall keep fully informed of all federal, state and local laws, ordinances or regulations necessary to comply with this contract, and shall at all times comply with all such laws.
14. Contractor shall not assign nor subcontract any work under this contract, except as expressly provided in Contractor's proposal or without the agreement in writing of the County to do so.
15. Contractor shall obtain and maintain all permits and licenses and to pay all taxes, charges and fees necessary to perform the services called for in this contract.

16. GRATUITIES

The County may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by the County that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the County of the El Paso with a view toward securing a contract or securing favorable treatment with respect to the performing of such a contract. In the event this contract is canceled by the County pursuant to this

provision, the County shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

17. WARRANTY-PRICE

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the County shall the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

18. TERMINATION

Either party may terminate this contract by giving the other party (30) days written notice.

The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the County of El Paso to be paid the Contractor. If the Contractor has any property in its possession belonging to the County of El Paso, the Contractor will account for the same, and dispose of it in the manner the County of El Paso directs.

19. WAIVER

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

20. ADVERTISING

Contractor shall not advertise or publish, without the County's prior consent, the fact that the County has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

21. AVAILABILITY OF FUNDS

The awarding of this contract is dependent upon the availability of funding. In the event that funds do not become available, the contract may be

terminated or the scope may be amended. A thirty (30) day written notice will be given to the vendor and there shall be no penalty nor removal charges incurred by the County.

22. VENUE

Both parties agree that venue for any litigation arising from this contract shall lie in El Paso County, Texas.

23. APPLICABLE LAW

This contract shall be governed by the laws of the State of Texas.

In witness whereof, the County of El Paso has caused this agreement to be executed through itself and Confidential Drug Testing, the 25 day of Feb, 2002.

CONFIDENTIAL DRUG TESTING

By: Renee Allen RMA

EL PASO COUNTY SHERIFF'S DEPT.

By: Leo Samaniego
Leo Samaniego, Sheriff
El Paso County, Texas

EL PASO COUNTY

By: Dolores Briones
Dolores Briones
County Judge

Attest:

Waldo Alvarez
County Clerk *Chief Deputy*

Approved as to Form:

[Signature]
Assistant County Attorney