

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING AN AGREEMENT WITH CENTRAL MEDICAL LABORATORY FOR DRUG AND ALCOHOL TESTING FROM APRIL 15, 2015 TO APRIL 14, 2016 IN THE NOT-TO-EXCEED AMOUNT OF \$19,500.00 AND AUTHORIZING THE CITY MANAGER (OR DESIGNEE) TO EXERCISE UP TO FOUR (4) ANNUAL OPTIONS WITH ANNUAL FEE INCREASES NOT TO EXCEED 5% PER YEAR, SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL

WHEREAS, Section I-2-3.09 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the Purchasing Agent determines that there is only one source for the required supply or service; and

WHEREAS, after conducting a good faith review of the available sources such as the Police Departments of San Jose, Santa Clara, Campbell and the Director of the Santa Clara County Crime Lab, the Purchasing Agent has determined that Central Medical Laboratory, a California corporation, is the only source for criminal specimen collection in Santa Clara County; and

WHEREAS, the City’s Purchasing Agent recommends the City Council approve the Agreement between the City and Central Medical Laboratory for the period of April 15, 2015 through April 14, 2016 in the not-to-exceed amount of Nineteen Thousand Five Hundred dollars (\$19,500.00); and

WHEREAS, City staff also requests authority for the City Manager or designee to renew the Agreement on an annual basis for up to four (4) years with an annual increase of no more than five percent (5%), without further City Council approval except appropriation of funds.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council approves the Agreement for drug and alcohol testing for the Police Department with Central Medical Laboratory, a California corporation, in the not-to-exceed amount of Nineteen Thousand Five hundred dollars (\$19,500.00) for the period of April 15, 2015 through April 14, 2016, a copy of which is attached hereto as **Exhibit A**; and
3. The City Council authorize the City Manager or designee to extend the term of the Agreement on an annual basis for up to four (4) additional years with an annual increase

in compensation of no more than five percent (5%), without further City Council approval except appropriation of funds.

PASSED AND ADOPTED this ____ day of _____, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney



**EXHIBIT A TO RESOLUTION
SHORT FORM PURCHASE OF SERVICE CONTRACT**

The parties to this Short Form Purchase of Services Contract (Contract) do mutually agree and promise as follows:

1. Parties. The parties to this Contract are the CITY OF MILPITAS, CALIFORNIA, a municipal corporation (City) and the following named Contractor: **Central Medical Laboratory**, a California corporation.

(Contact Name) **Frank Ammon**
 (Street Address) **P.O. Box 28188**
 (City/State/Zip Code) **San Jose, CA 95159**
 (Telephone) **408-295-9845**
 (Email Address) **cmlinfo@sbcglobal.net**
 (Fax Number) **408-295-4955**
 (Taxpayer ID #) **941496795**
 (Milpitas Business License #) **32182**

2. Term. The effective date of this Contract is **April 15, 2015 thru April 14, 2016 with the option for City, at its sole option, to extend the Contract up to four (4) additional one (1) year options**, unless sooner terminated as provided herein. City may extend the Contract by providing written notice to Contractor in the form attached hereto as **Exhibit D** prior to the then applicable term.

3. Payment Limit. City's total annual payments to Contractor under this Contract shall not exceed: **\$19,500.00**. City will make monthly payments within 30 days of receipt of each approved invoice, based on the "Rate Schedule" attached hereto as **Exhibit B** and incorporated herein.

4. Contractor's Obligations.

(a) To the satisfaction of the City's Project Manager, Contractor shall provide the following services: **Drug and alcohol testing in accordance with the "Scope of Work" attached hereto as Exhibit A and incorporated herein.**

(b) Contractor shall perform the above-referenced services at the following specified location/s: **Various as directed by the Milpitas Police Department.**

(c) Name or type of service: **Drug and alcohol testing.**

5. City's Obligations. City shall pay Contractor as follows: **not-to-exceed \$19,500.00** per year total payment for all services rendered under this Contract.

6. Supplemental Conditions. This Contract is subject to the Supplemental Conditions attached hereto, which are incorporated herein by reference.

7. Signatures. These signatures attest the parties' agreement hereto:

CENTRAL MEDICAL LABORATORY

Name of Authorized Representative

Title of Authorized representative

CITY OF MILPITAS, CALIFORNIA

a municipal corporation:

By: _____
Thomas C. Williams, City Manager

Approved as to form:

By: _____
Michael J. Ogaz, City Attorney

Approved as to content:

By: _____
Kevin Moscuza, City Project Manager

SUPPLEMENTAL CONDITIONS

1. Independent Contractor. It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353, under the control of the City as to the result of his work only but not as to the means by which such result is accomplished. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any assistants used by Contractor in providing said services.
2. Termination. The City may terminate this Contract at any time upon giving the other party five (5) days' written notice of such termination. In the event of termination, the City shall be liable only to pay to the Contractor compensation for services rendered up to the date of the Contract's termination.
3. Assignment. Contractor shall not assign this Contract, or any part thereof, or any right of the Contractor hereunder without the prior written consent of the City.
4. Indemnity. Contractor shall indemnify, defend and hold the City harmless from and against all claims, demands and causes of action for injury, death or damage to any person or property which may arise or result from the contractor's performance of this Contract or from acts or omissions of any person(s) employed or an agent of Contractor.
5. Anti-Discrimination. Contractor agrees to observe the provisions of the City of Milpitas Standard Operating Procedure 16.8 "Anti-Discrimination Policy" and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Milpitas for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor.
6. Business License. Pursuant to the City of Milpitas Municipal Code, Title III Business and Professions, Section 1-4.01 Requirement and Special Exemptions ..."it shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Milpitas without first having procured a license from said City".
7. Insurance. During the entire term of this Contract and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the following insurance requirements: See Exhibit B – Insurance Requirements General
8. Price Adjustments. Eligibility for price adjustments occurs at each renewal period when an option is exercised to extend the Contract. All requested price increases shall not exceed 5% and must be justified by documented increase to the contractor such, as labor rate increases, cost of materials, or similar factors. All options to exercise contract extensions shall be subject to availability of funds and at the City's sole discretion. Such options shall be exercised by use of the "Notice of Exercise of Option to Extend Agreement" document included with this Contract as Exhibit D.

EXHIBIT A
SCOPE OF WORK

Contractor shall provide the following services subject to the City's review and approval:

1. This is an "On Call" service available 24 hours a day, 365 days a year.
2. Central Medical Lab technicians are dispatched as needed by the City of Milpitas Police Dispatch to any of the nine locations listed on Exhibit B "Rate Schedule" within 30 minutes.
3. Upon arrival at the designated location the certified technician, depending on what type of test is requested, draws a blood sample, following the attached procedure (Exhibit -A1). Urine samples are not drawn, they are only observed.
4. The sample(s) follow the standard evidence "chain of custody" procedures and are delivered to the Alcohol Investigation Bureau lock box.
5. Santa Clara County Crime Lab personnel pick up the samples from the Alcohol Investigation Bureau lock box for analysis the next business day.

**EXHIBIT B
RATE SCHEDULE**

The following rates shall apply per location listed per specimen draw and are the same for blood or urine collection.

Alcohol Investigation Bureau	\$50.00
Santa Clara County Jail	\$50.00
Elmwood Prison	\$55.00
Valley Medical Center	\$57.00
Milpitas Police Station	\$60.00
Milpitas Sub-Station - Great Mall	\$60.00
Regional Medical Center	\$62.00
El Camino Hospital	\$62.00
Stanford Hospital	\$100.00



EXHIBIT C INSURANCE REQUIREMENTS - GENERAL

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of his employees.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as*:

- Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.
- Architects' and Engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance:

Contractor must maintain limits no less than:

1. **General Liability:** **\$1,000,000** per occurrence for bodily injury, personal injury (Including operations, products and completed operations, as applicable.) and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2. **Automobile Liability:** **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** Statutory
Employer's Liability: **\$1,000,000** each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee

4. **Professional Liability** **\$1,000,000** each occurrence
or Errors & **\$1,000,000** policy aggregate
Omissions Liability:

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and 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 or 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 as a separate owner's policy.
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Contractor's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City

reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

Subcontractors:

Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement

EXHIBIT D - NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE and DATE:	
CONTRACTOR Name and Address:	
DATE OF OPTION:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to the Terms and Conditions of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
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NEW OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
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Pursuant to Section ___ of the Agreement the Rates of Compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF Milpitas a municipal corporation By _____ Name: Chris Schroeder Title: Purchasing Agent

Declaration of Person Qualified to Perform Venipuncture

I am qualified pursuant to the California Business and Professional Code section 1246, Title 17 of the California Code of Regulations, and / or the California Vehicle Code section 23158 to perform venipuncture and was so qualified when I worked as a (check all that apply):

Clinical Laboratory Scientist
 Licensed Clinical Laboratory Technologist
 Registered Nurse
 Licensed Vocational Nurse
 Certified Phlebotomy Technician

On _____ when I took blood from a person identified to me as:

I performed the blood draw using the following procedures:

I cleansed the area to be punctured with the non-alcoholic disinfectant and the Arresting Officer witnessed my use of the non-alcoholic disinfectant with the above-name defendant.

A sterilized needle, holder and needle protector was employed to withdraw blood from the defendant's vein. I will withdraw enough blood to fill the vacuum vial furnished by the Santa Clara Crime Laboratory. Prior to using it, I examined the vacuum vial and observed that it contained a dry white powder.

I discarded the needle, holder and disinfectant and inverted the vial 8 to 10 times to prevent the blood from clotting.

I labeled the vials of blood with the full name of the defendant, the date and time of withdrawal and place my initials on the label.

I gave the vial to the Officer who accompanied the defendant, and I observed the Officer place the vials in the envelope furnished by the Santa Clara Crime Laboratory and seal it.

The sample(s) was/were taken and handle in a medically approved manner.

I, _____, declare under penalty of perjury that under the laws of the State of California the foregoing is true and correct.

Dated: _____ at _____, California

Signature of Declarant: _____

Original: Attach to Admin Per Se Documents
& return to DMV-Driver Safety Office

Law Enforcement Case # _____

Driver's license # _____ (optional)