

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources *SJA*

BOARD AGENDA # *B-10

Urgent Routine

AGENDA DATE April 22, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Award the Contract to Conduct Testing on Milk Samples for the Milk and Dairy Inspection Division of the Department of Environmental Resources, to Silliker Laboratories, Inc.

STAFF RECOMMENDATIONS:

1. Award the Contract for testing on milk samples for the Milk and Dairy Inspection Division of the Department of Environmental Resources, to Silliker Laboratories, Inc., in the amount of \$75,000 annually and not to exceed \$375,000 cumulatively.
2. Authorize the Director of the Department of Environmental Resources, or her designee, to execute a contract with Silliker Laboratories, Inc., for a term of five (5) years and sign all necessary documents.

FISCAL IMPACT:

The Agreement with Silliker Laboratories, Inc. for milk and dairy laboratory testing services has a term of five (5) years and is set not to exceed \$75,000 annually and \$375,000 cumulatively. Milk testing for the Milk and Dairy Inspection Division of the Department of Environmental Resources is reimbursed from the \$360.00 per quarter inspection fee for Grade A Dairies and \$176.00 per quarter inspection fee for Grade B Dairies.

BOARD ACTION AS FOLLOWS:

No. 2008-285

On motion of Supervisor Grover, Seconded by Supervisor DeMartini

and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini, and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Stanislaus County has been an Approved Milk Inspection Service since 1957. The program enforces the California Food and Agricultural Code, the California Code of Regulations and the Pasteurized Milk Ordinance, as they pertain to the County's Grade A and Grade B dairies. These regulations mandate that the dairies be routinely sampled for quality four (4) times in any six-month period. If violations occur, then additional samples are required to abate the violations of quality. Stanislaus County has approximately 297 dairies, and approximately 2,250 routine samples are taken annually. An additional 250 samples are taken to abate quality violations, and approximately 11,250 tests are run annually on these samples to assure that the milk supply is safe for consumption of milk and milk products.

The Department of Environmental Resources (DER), in partnership with the General Services Agency (GSA) Purchasing Division, issued a Bid on February 28, 2008, for Milk and Dairy Laboratory Service. The Bid closed on March 21, 2008, and the GSA Purchasing Division conducted the opening of the proposals on the closing date. One (1) laboratory, Silliker Laboratories, Inc., responded to the Bid. The GSA Purchasing Division and DER staff reviewed and evaluated the Bid response and found Silliker Laboratories, Inc. to be a responsible and responsive Bidder.

Since the year 2005, DER has contracted with Silliker Laboratories, Inc., which has provided the Milk & Dairy Division with excellent service. Silliker Laboratories, Inc. currently has 27 labs in 11 countries and, for over 35 years, has provided support to food manufacturers, restaurants and retailers to help assure product safety and nutrition. The Silliker Laboratories, Inc. commitment to excellence helps the Department meet exacting specifications for quality and safety.

The Agreement with Silliker Laboratories, Inc. for Milk and Dairy Laboratory Service has a term of five (5) years and is set not to exceed \$75,000 annually and \$375,000 cumulatively.

DER requests that the Stanislaus County Board of Supervisors grant the Director of the Department of Environmental Resources, or her designee, the authority to sign the Independent Contractor Service Agreement (Attachment "A").

POLICY ISSUES:

Approval of this request will enable Stanislaus County to continue to sample and test the County's Grade A and Grade B Dairies for quality assurance in an efficient and cost effective manner. The Board of Supervisors should determine if the approval of this request supports its priorities of a safe and healthy community and efficient delivery of public services.

STAFFING IMPACT:



DEPARTMENT OF ENVIRONMENTAL RESOURCES
3800 Comucopia Way, Suite C, Modesto, CA 95358
Phone: (209) 525-6770
Fax: (209) 525-6773

**AGREEMENT
FOR
INDEPENDENT CONTRACTOR SERVICES**

This Agreement For Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and Silliker, Inc. ("Contractor") on May 2, 2008.

Recitals

WHEREAS, the County has a need for services involving laboratory testing and reporting services of milk and dairy samples; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. **Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2. **Consideration**

2.1 County shall pay Contractor as set forth in Exhibit A and **Exhibit B**.

2.2 Except as expressly provided in Exhibit A and Exhibit B of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil

Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

6.4 The Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its Ind-Con-Agmt (Rev 021706)

agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
Department of Environmental Resources
Attention: Susan M. Garcia, C.P.M., A.P.P.
3800 Cornucopia Way, Suite
Modesto, CA 95358

To Contractor: Silliker, Inc.
Attention: Jeanna E. Kilmer
1548 Cummins Drive
Modesto, CA 95358

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect, which would conflict, in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the Ind-Con-Agmt (Rev 021706)

parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

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

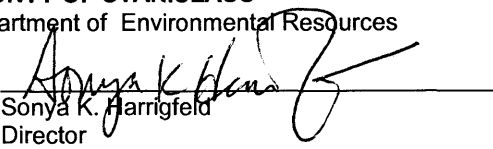
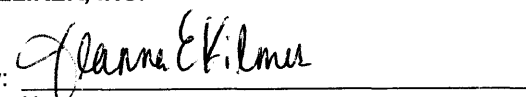
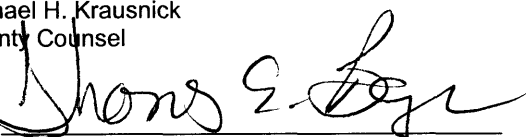
<p>COUNTY OF STANISLAUS Department of Environmental Resources</p> <p>By: <u></u> Sonya K. Harrigfeld Director</p> <p style="text-align: center;">"County"</p>	<p>SILLIKER, INC.</p> <p>By: <u></u> Name Title</p> <p>Technical Sales Manager "Contractor"</p>
<p>APPROVED AS TO FORM: Michael H. Krausnick County Counsel</p> <p>By: <u></u> Thomas Boze Deputy County Counsel</p>	

EXHIBIT A

A. OVERVIEW

Currently the County has three (3) Milk Inspectors who submit approximately 2400 samples and approximately 200 recheck samples per year to a contracted milk and dairy laboratory for testing. The County's Milk Inspectors samples are submitted to the laboratory at various times, including weekends and holidays.

The test results data is currently being provided to the County as a fixed width text file by the laboratory testing the samples.

B. SCOPE OF SERVICES

The Contractor shall provide all the labor, material, and equipment necessary to perform state certified milk and dairy testing services at the Contractor's laboratory. The County shall deliver the milk and dairy samples to the Contractor's laboratory for testing and the Contractor shall test the samples and deliver the test results to the County within the timeframe agreed to by the County Representative and as specified in the awarded Agreement. The Contractor's handling and testing of the milk and dairy samples shall meet or exceed Federal, State and Local government agency guidelines, laws, regulations and ordinances and be in accordance with the general specifications outlined below and the terms and conditions under the executed Agreement.

The delivery time for the test results to be received by the County are identified in Exhibit C of this Agreement. Contractor shall perform the laboratory services upon the execution of this Agreement.

Laboratory Availability

The Contractor's laboratory shall be available to receive samples from the County Milk Inspectors seven (7) days a week including Holidays.

Reporting Requirements

Contractor shall provide written and electronic test results to the County within the timeframe identified for each sample. The electronic test results shall be provided to the County, by the Contractor, in a fixed width text file or by entering the data into the County's Department of Environmental Resources, Milk & Dairy Labs website within the timeline identified in **Exhibit C** attached hereto and made a part of this Agreement. The Contractor shall mail current results along with the six (recent) prior results to each individual dairymen. Contractor shall not charge the County for the fixed width text file.

Contractor shall submit reports of services performed indicating results of testing. Such results and reports thereon shall be based upon samples as provided by County. Such results are intended for use by persons having professional skill and training in the interpretation of such results. Contractor assumes no responsibility, and County hereby waives all claims against Contractor, for interpretation of such results. County shall not at any time misrepresent the content of any report or other information received from or relating to Contractor or its work on behalf of County. Any action taken by County based on results designated by Contractor as "preliminary", are at County's own risk. To the extent practicable, County shall give notice to and consult with, Contractor prior to implementing a withdrawal or recall of products based on final test results. However, any decision to recall or withdraw product based final test results is County's sole responsibility.

Average Samples

The average samples taken over the past two (2) years are as follows:

<u>Test Type</u>	<u>Number of Samples Taken</u>	<u>Number of Recheck Samples Taken</u>
S.P.C.	2,242	41
L.P.C.	2,242	88
Coliform	2,242	87
S.C.C.	2,242	40
Antibiotics	2,207	86.5
*Cryoscope	1,386	

*Note: The Cryoscope average is taken from the last 2003/2004 data.

B. COMPENSATION

The Contractor shall be compensated for the services provided under this Agreement as follows:

Contractor shall be compensated as set forth in a Schedule of Rates – Exhibit B attached hereto and made a part of this Agreement.

C. LIMIT OF EXPENDITURE

The parties hereto acknowledge the annual maximum amount to be paid by the County for services provided shall not exceed \$75,000.00, including, without limitation, the cost data transfer, of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement. The total maximum amount to be paid by the County for services provided under this Agreement shall not exceed **\$375,000.00**.

D. INVOICE REMIT TO:

The remit to address is:

Stanislaus County
Department of Environmental Resources
Attention: Accounting
3800 Cornucopia Way, Suite C
Modesto, CA 95358

E. REPRESENTATIVES

The County's Project Manager is Don Rowley, (209) 581-1023. The Contractor's representative is Jeanna Kilmer, (209) 988-3749.

F. AGREEMENT PERIOD

This shall be effective from April 25, 2008 or date of award; whichever is later, through April 25, 2013.

G. TERMINATION FOR CONVENIENCE

The County may terminate this Agreement at any time for its convenience and at its sole option, in whole or in part, by giving written notice to Contractor. Contractor agrees to waive any claims for damages, including loss of anticipated profits, in the event the County terminates the Agreement as provided for in this paragraph. Upon such termination, the obligations of this Agreement shall continue as to any work already performed and the County shall pay Contractor the amount due for work properly performed as of the date of termination, less any sums previously paid.

H. WARRANTY

The Contractor shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Contractor represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made by the Contractor and any reports or opinions prepared or issued as part of the work performed by the Contractor under this Agreement, Contractor makes no other warranties, either express or implied, as part of this Agreement.

EXHIBIT B
PRICE SCHEDULE

PRICE SCHEDULE:

The Contractor shall provide all the supervision, labor, equipment, materials and tools necessary to perform the services identified in Exhibit A – Scope of Work / Specifications in accordance with the rate schedule below.

The rates for the five (5) year Contract term are as follows:

Testing Rate Schedule Year 1:

Test Type	Unit Price	Unit of Measure
S.P.C.	\$4.75	Each
L.P.C.	\$4.50	Each
Coliform	\$3.60	Each
S.C.C.	\$2.50	Each
Antibiotics	\$5.10	Each
Cryoscope	\$5.10	Each

Testing Rate Schedule Year 2:

Test Type	Unit Price	Unit of Measure
S.P.C.	\$4.75	Each
L.P.C.	\$4.50	Each
Coliform	\$3.60	Each
S.C.C.	\$2.50	Each
Antibiotics	\$5.10	Each
Cryoscope	\$5.10	Each

Testing Rate Schedule Year 3:

Test Type	Unit Price	Unit of Measure
S.P.C.	\$4.80	Each
L.P.C.	\$4.55	Each
Coliform	\$3.65	Each
S.C.C.	\$2.55	Each
Antibiotics	\$5.15	Each
Cyroscope	\$5.15	Each

Testing Rate Schedule Year 4:

Test Type	Unit Price	Unit of Measure
S.P.C.	\$4.80	Each
L.P.C.	\$4.55	Each
Coliform	\$3.65	Each
S.C.C.	\$2.55	Each
Antibiotics	\$5.15	Each
Cyroscope	\$5.15	Each

Testing Rate Schedule Year 5:

Test Type	Unit Price	Unit of Measure
S.P.C.	\$4.85	Each
L.P.C.	\$4.60	Each
Coliform	\$3.70	Each
S.C.C.	\$2.60	Each
Antibiotics	\$5.20	Each
Cyroscope	\$5.20	Each

EXHIBIT C

TESTING RESULT DELIVERY SCHEDULE

Testing Result Delivery Schedule

Services and work provided by the Contractor under this Agreement shall be performed in a timely manner in accordance with a schedule of work set forth below:

Test Type	Result Delivery Time
S.P.C.	2 days from the date the sample is dropped off to the Laboratory by the County
L.P.C.	2 days from the date the sample is dropped off to the Laboratory by the County
Coliform	1 day from the date the sample is dropped off to the Laboratory by the County
S.C.C.	2 days from the date the sample is dropped off to the Laboratory by the County
Antibiotics	1 day from the date the sample is dropped off to the Laboratory by the County
Cryoscope	2 days from the date the sample is dropped off to the Laboratory by the County