

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement is entered into by and between Laredo Examiners, office located on 802 E. Saunders, Laredo, Texas 78041, **WEBB COUNTY**, (hereinafter referred to as **PROVIDER**) and **WEBB COUNTY** of Laredo, a political subdivision of the State of Texas with its offices located at 1000 Houston Street, Laredo, **WEBB COUNTY**, Texas 78040, (hereinafter referred to as "**WEBB COUNTY**").

Recitals

Whereas, **WEBB COUNTY** desires to engage the professional services of Laredo Examiners, solely as an independent contractor, not as an employee, to provide Drug and Alcohol Testing for its employees;

Whereas, the **PROVIDER** agrees to render such professional services for **WEBB COUNTY** according to the terms and conditions provided in this agreement;

Therefore, by this agreement **WEBB COUNTY** agrees to retain the professional services of the **PROVIDER**, and for and in consideration of the mutual promises contained in the contract, the parties hereby declare and state that they agree to the following terms and conditions thereto:

TERMS AND CONDITIONS OF AGREEMENT

1. Services.

PROVIDER will provide services included in Exhibit A, as needed. **PROVIDER** will administer the employee drug and alcohol screening pursuant to **WEBB COUNTY**'s Drug and Alcohol Policy, as amended, and as required by 49 CFR, Part 40, as presently effective and as hereinafter amended, from the following selections:

- Pre-Employment;
- Random;
- Reasonable Suspicion/Cause;
- Post Accident;
- Follow up; and
- Return to Duty.

Such **drug screening** shall be conducted in accordance with the regulations promulgated by the Substance Abuse Mental Health Service Administration (hereinafter referred to as "SAMSHA", formally known as the National Institute of Drug Abuse).

Such **alcohol screening** shall be done by using a Evidential Breath Tester (EBT) device which meets the National Highway Transportation Safety Administration's specifications for Precision and Accuracy (hereinafter referred to as NHTSA).

The location of such testing shall be at 802 E. Saunders Laredo, Texas 78040, Laredo, **WEBB COUNTY**, Texas during the regular business hours of 9:00 a.m. to 12:00 p.m. and 1:00

p.m. to 5:00 p.m., and **WEBB COUNTY** will designate representatives to be notified in order to coordinate emergency, on-site and/or and after-hours collection.

It is specifically agreed to by both parties that any a.) On site, b.) after hour and/or c.) emergency collections will charged at and entail an added fee as identified in Exhibit A, Schedule of Fees.

Only SAMHSA certified laboratories will be utilized by **PROVIDER** for the testing of specimens for drug screening. All positive drug screens results will be confirmed by Gas Chromatography/Mass Spectrometry. Drug Specimen Collection shall be done under Federal Drug Testing Chain of Custody Guidelines. Alcohol testing will be done locally, using Evidential Breath Tester (EBT) devices, which meets the National Highway Transportation Safety Administrations' specification for Precision and Accuracy and shall be administered by either a Certified Breath Alcohol Technician Instructor (BATI) or by a Certified Breath Alcohol Technician (BAT). Alcohol confirmation testing is performed as required by law and in compliance with federal guidelines for all Alcohol Breath Testing with a result of 0.02 BR.AC.

PROVIDER shall provide **WEBB COUNTY** with Reports of results on a quarterly basis and will keep records and release of information pursuant to 40 CFR, Part 40.

2. Schedule of Fees.

WEBB COUNTY shall pay **PROVIDER** for the services rendered under this agreement as in accordance with the Schedule of Fees attached hereto as Exhibit A. Such payment shall be due thirty (30) days after the date of invoice sent to **WEBB COUNTY**.

3. Funding.

This agreement is contingent upon annual budgetary appropriations and funding being available for the term in question and **PROVIDER** shall have no right of action against **WEBB COUNTY** in the event that **WEBB COUNTY** is unable to perform its obligations under this agreement as a result of the suspension, termination, withdrawal of failure of funding for **WEBB COUNTY**.

4. Professional Standards.

PROVIDER agrees to abide by and perform his/her duties in accordance with the applicable ethics of his/her profession, and all applicable federal, state and municipal laws, regulations, and ordinances regulating his/her profession. **PROVIDER** further agrees to furnish **WEBB COUNTY** with a copy of his Texas medical license, and his DEA number, and his Medical Review Officer license.

Since some **WEBB COUNTY** employees speak only Spanish and are unable to comprehend and communicate in English, the **PROVIDER** must have the ability to verbally communicate effectively in Spanish with **WEBB COUNTY** employees during office visits; or alternatively, provide for the services of a translator to accomplish this at the sole cost and expense of **PROVIDER**.

5. Term/Renewal Term.

The term of this agreement shall be for a period of one (1) year commencing on _____ 2014_____ - to _____ 2016 with an option to renew for an additional three (3) years, subject to annual budgetary appropriation.

6. Termination.

Either party upon receipt may terminate this agreement, by giving a thirty-day written notice to the other party, at any time during the term of this agreement.

7. Employee Information

WEBB COUNTY will provide **PROVIDER** with a complete roster of all **WEBB COUNTY's** employees specifying:

1. complete name, business address and business and home telephone number;
2. social security number;
3. position and title;
4. home phone number;
5. any and all information requested by **PROVIDER** deemed necessary by **PROVIDER** in order to perform the services rendered under this agreement.

PROVIDER will maintain confidentiality with any and all information relating to any employee as defined by all current State and Federal laws as it relates to the services under this agreement.

8. Insurance Requirements.

Prior to the commencement of any work, under this agreement, **PROVIDER** shall furnish a completed Certificate of Insurance to the Risk Management Division and **WEBB COUNTY** Secretary's Office, which shall be completed and signed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon and which shall furnish and contain all required information referenced or indicated thereon. **WEBB COUNTY** shall have no duty to pay or perform under this contract until such completed and signed Certificate of Insurance shall have been delivered to the Risk Management Division and **WEBB COUNTY** Secretary's Office, and no officer, employee or elected official shall have authority to waive this requirement.

WEBB COUNTY reserves the right to review the insurance requirements of this section during the effective period of the agreement or any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by **WEBB COUNTY's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this agreement, but in no instance will **WEBB COUNTY** allow modification whereupon **WEBB COUNTY** may incur increased risk.

The financial integrity of **PROVIDER** is of interest to **WEBB COUNTY**, therefore, subject to the right of **PROVIDER** to maintain reasonable deductibles in such amounts as are approved by **WEBB COUNTY**. **PROVIDER** shall obtain and maintain in full force and effect for the entire duration of this agreement, and any extension hereof, at **PROVIDER's** sole expense, insurance coverage written on an occurrence basis, by companies authorized and

admitted to do business in the State of Texas and rated A or better by A.M. Best Company (Best's Key Rating Guide, 2005 Edition, and as amended) and/or otherwise acceptable to **WEBB COUNTY**, the following types and amounts:

TYPE	LIMIT
1. Workers' Compensation	Statutory
la. Employers' Liability	\$500,00/\$500,000/\$500,000
2. Professional Liability Policy	combines Single Limit for Bodily Injury and property Damage of \$1,000,000 occurrence or its equivalent
3. Comprehensive Auto Liability	Combines Single Limit injury and property
a. Owned/Leased Vehicles	damage \$1,000,000 per occurrence
b. Non-owned vehicles	of its equivalent
c. Hired vehicle	

WEBB COUNTY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto, as they apply to the limits required by **WEBB COUNTY**, and may make reasonable request for deletion, revision, or modification or particular policy terms, conditions, limitations or exclusions except where policy provisions are established by law regulation binding upon either of the parties hereto or the underwriter of any such policies. Upon such request by **WEBB COUNTY**, **PROVIDER** shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

PROVIDER agrees that with respect to the above required insurance, all insurance contracts and Certificates of Insurance shall be required to and will contain the following required provisions:

- Name **WEBB COUNTY** and its officers, employees, agents, and elected representatives as additional insured's with respect to operations and activities of, or on behalf of, the names insured performed under contract with **WEBB COUNTY**, with the exception of the workers' compensation and employers' liability policy.
- Provide for an endorsement that the "other insurance" clause shall not apply to **WEBB COUNTY** of Laredo where **WEBB COUNTY** is an additional insured shown on the policy.
- Workers' Compensation and employers' liability policy will provide a waiver of subrogation in favor of **WEBB COUNTY**.

PROVIDER shall notify **WEBB COUNTY** in the event of any notices of cancellation, nonrenewal or material change in coverage and shall give such notices not less than 30 days to change, which notice must be accompanied by replacement Certificate of Insurance.

All notices shall be given to **WEBB COUNTY** at the following address:

WEBB COUNTY Administrative Services Department; attn.:
Ms. Cynthia Mares, Dept. Director
1110 Washington St.
Laredo, Texas 78040
E:mail-cynthiamares@webbcountytx.gov

If **PROVIDER** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **WEBB COUNTY** may maintain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement upon giving written notice to contractor by certified return receipt mail; however, procuring of said insurance by **WEBB COUNTY** is an alternative to other remedies **WEBB COUNTY** may have, and is not the exclusive remedy for failure of **PROVIDER** to maintain said insurance or secure such endorsement. In addition to any other remedies **WEBB COUNTY** may have upon **PROVIDER** failure to provide and maintain any insurance or policy endorsement to the extent and within the time herein required, **WEBB COUNTY** shall have the right to order **PROVIDER** hereunder, and/or withhold any payment(s) which become due, to **PROVIDER** hereunder until **PROVIDER** demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which the **PROVIDER** may be held responsible for payments of damages to persons or property resulting from the performance of **PROVIDER** or its subcontractor's performance of the work covered under this agreement.

9. Indemnity.

PROVIDER covenants and agrees to fully indemnify, defend, and hold harmless agents and/or assigns, **WEBB COUNTY** and the elected officials, employees officers, directors, volunteers, and representatives of **WEBB COUNTY**, individually, or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demand, causes of actions, liability, and suits of any kind and nature, including but not limited to, personal injury, or death and property damages, made upon **WEBB COUNTY** directly arising out of, resulting from or related to **PROVIDER**'s activities under this agreement including any acts or omissions of **PROVIDER**, any agent, officer, director, representative, employee, consultant, or subcontractor of **PROVIDER** while in the exercise of performance of the rights or duties under this agreement, all without however, waiving any governmental immunities available to **WEBB COUNTY** under Texas Tort Law and without waiving any defense of the parties under Texas Law.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **PROVIDER** shall promptly advise **WEBB COUNTY** in writing of any claims or demands against **WEBB COUNTY** or **PROVIDER** known to **PROVIDER** related or arising out of **PROVIDER**'s activities under this agreement and shall see the investigation of and defense of such claim or demand at **PROVIDER**'s activities under this agreement and shall see the investigation of a defense of such claim or demand at **PROVIDER** cost.

WEBB COUNTY shall have the right, at its option, and at its own expense, to participate in such defense without relieving **PROVIDER** of any of its obligation under this paragraph.

10. Force Majeure.

In the event that performance by **PROVIDER**, of any its obligations under the terms of this agreement shall be interrupted or delayed by an act of God, by acts of war, riot, or civil commotion, by an act of State, by strikes, fire, flood, snow or by the occurrence of the parties hereto, **PROVIDER** shall be excused from such performance for such time as is reasonable necessary after such occurrence abates.

11. Relationship of the Parties.

This agreement does not constitute **WEBB COUNTY** as the agent, legal representative, joint venture or partner of **PROVIDER** for any purpose, and likewise, does not constitute **PROVIDER** as an agent, representative, servant or employee of **WEBB COUNTY**. It is understood between the parties, hereto that **WEBB COUNTY** is merely a purchaser of services from **PROVIDER** who is acting in solely as an independent contractor and **WEBB COUNTY** is in no way authorized to make any contract, agreement, warranty or representation of behalf of **PROVIDER**, or to create any obligation, expressed, or implied. Likewise **PROVIDER** is in no way authorized to make any contract, agreement, warranty or representation of behalf of **WEBB COUNTY**, or to create any obligation, expressed, or implied It is understood and agreed that the relationship of **PROVIDER** to **WEBB COUNTY** is that of an independent contractor. **WEBB COUNTY** and **PROVIDER** agree that **PROVIDER** shall perform his/her duties to **WEBB COUNTY**, solely as an Independent Contractor and shall not have or claim any right, and hereby expressly waives any such rights arising from any type of employee status claim whatsoever due to its independent contractor status. **PROVIDER** has the sole discretion to determine the manner in which services are to be performed. However, **WEBB COUNTY** retains the right to exercise final judgment with respect to the quality and adequacy of the services provided herein.

12. Exchange of Information.

The parties acknowledge that it is necessary for them to exchange information and cooperate fully regarding policies affecting the administration of the agreement, to the end of achieving an orderly and effective delivery of high quality services to all participants referred to **PROVIDER** by **WEBB COUNTY**.

13. Audit and Inspection of Records.

The **PROVIDER** shall permit **WEBB COUNTY**, the Texas Department of Health, or any of their authorized representatives to inspect and audit all data and records relating to the performance of this agreement. All records pertaining to the agreement shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible at all reasonable times. **PROVIDER** further agrees to retain all records as per standards outlined in the JCAHO for Freestanding occupational health Programs.

14. Discrimination Prohibited.

No person in the United States shall, on the grounds of race, creed, age, handicap, ability to pay, color, sex or national origin, be excluded from participation in, be denied the process of, or be subject to discrimination in the performance of this agreement by **PROVIDER**.

15. Entire Agreement.

This agreement supersedes any and all other agreements, either oral or in writing, between the parties to this agreement with respect to this subject matter. No other agreement, statement, or promise relating to this subject matter shall be valid or binding unless in writing and signed by both parties.

16. Amendment to Agreement & Non-assignability.

This agreement can only be amended in writing, by the mutual consent of both parties, to be incorporated herein. This agreement is not assignable except with the express written consent of the Commissioner’s Court of **WEBB COUNTY**, Texas.

17. Governing Law/Venue.

The validity of this agreement and any of its terms or provisions, as well as the rights and duties of the parties under it, shall be governed by the laws of the State of Texas and Federal law when applicable, and the parties further covenant, acknowledge and agree that the venue for any legal action, and/or suit arising from this agreement shall be and lie exclusively in **WEBB COUNTY**, Texas.

Executed on this the _____ day of _____, 2014.

WEBB COUNTY, Texas

By: _____
Danny Valdez,
WEBB COUNTY Judge

Contract **PROVIDER**:

By: _____
Robert Moran, RN, M H, JD, FNP-BC

ATTEST:

Margie Ramirez Ibarra
WEBB COUNTY Clerk

APPROVED AS TO FORM:

Marco A. Montemayor
WEBB COUNTY Attorney*

*By law, the county attorney’s office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

EXHIBIT A-Schedule of Fees

CONTROLLED SUBSTANCE AND ALCOHOL USE TESTING

I. SAMHSA (Substance Abuse Mental Health Services Administration) Drug Screen:

Fee --- \$ 42.00 DOT Drug Screen - gas chromatography
\$ 32.00 Non-DOT Drug Screen - gas chromatography

SAMHSA Drug Screen Includes:

1. Drug screens done by a SAMHSA (Formerly N IDA) certified laboratory
2. Drug collection done under Federal Drug Testing Chain of Custody guidelines
3. Turnaround time for results if urine specimen collected by 4:00 PM in 24 Hours on negatives and 49 hours for suspected positive results from the time the samples arrive to the testing laboratory (Federal Guidelines allow the laboratory up to 5 working days from the arrival date to report final results)
4. Medical Review Officer Services
 - a. Confirmation of positive drug test -- \$30.00 per positive test.
 - b. If confirmation cost is included in Drug Screen Fee as noted above in Section I. SAMHSA Drug Screen. then please print ***included fee*** on ***this blank:*** _____

II. Alcohol Testing as approved by the National Highway Traffic Safety Administration

Alcohol testing is done by evidential breath tester (EB1) devices. These devices have met the National Highway Traffic Safety Administration (NHTSA) specifications for precision and accuracy. Devices currently in use at this office are:

Alcohol Breath Testing Fee ---\$20.00

1. ___ Alco Sensor RBT IV (Electrochemical Oxidation/Fuel Cell)
2. ___ Alco analyzer 2100
3. ___ Life-Loc Technologies

Alcohol breath testing is performed by a certified breath alcohol technician (BAT). This office has a minimum of 5 (five) Certified Breath Alcohol Technicians (BATs) and 1 (one) alcohol technician instructor (BATI). At no point, during this contract shall there be less than 4 (four) certified Breath Alcohol Technicians available whether on a full-time basis or on stand-by; on-call availability of 1 (one) technician at minimum, and as needed, then may activate others depending on testing needs of **WEBB COUNTY**.

Please note: Only courses of instruction of EBT that are equivalent to the Department of Transportation model course, as determined by the National Highway Traffic Safety Administration (NHTSA), may be used to train BATs to proficiency.

ALCOHOL CONFIRMATION TESTING FEE --- \$ 15.00

Under the Federal Highway Administration (FHWA) regulations, Sec. 382.105 requires employers to test for alcohol and drugs only in accordance with the procedures set forth in 49 CFR Part 40.

Alcohol confirmation testing must be performed in compliance with Federal Guidelines.

ADDITIONAL DRUG AND ALCOHOL TESTING COLLECTION FEES:

AFTER HOURS FEE: **\$30.00/hr.**

OFF-SITE FEE: **\$ 30.00/EACH***

(Services for random program for both alcohol and drug testing that include statistical and annual reports.)

DOT PHYSICAL EXAMINATION FEE ---**\$ 50.00**

EXECUTED this the _____ day of _____, 2014.