

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT ("First Amendment") is made and entered into this 22nd day of June, 2021, by and between COUNTY OF FRESNO, a political subdivision of the State of California, Fresno, California ("COUNTY"), and Avertest LLC, dba Averhealth, a Virginia limited liability company, whose address is 2916 W. Marshall Street, Suite A, Richmond, VA 23230, ("CONTRACTOR").

WITNESSETH:

WHEREAS, COUNTY and CONTRACTOR entered into Agreement number 20-212, dated June 9, 2020 ("Agreement"), pursuant to which CONTRACTOR agreed to provide a random drug testing program for families involved with the Department of Social Services' (DSS) Child Welfare System to COUNTY; and

WHEREAS, COUNTY and CONTRACTOR now desire to amend the Agreement in order to expand the program to allow services to include the provision of a random drug testing program for individuals involved with the Fresno County Probation Department ("Probation"), and to increase the maximum compensation amount payable to CONTRACTOR accordingly.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, COUNTY and CONTRACTOR agree as follows:

1. In the introductory section of the Agreement, located on page 1, lines 8 through 9 are deleted and replaced with the following:

" WHEREAS, COUNTY desires to enter into an agreement with the CONTRACTOR for the purpose of providing a random drug testing program for families involved with the Department of Social Services' (DSS) Child Welfare System and the Fresno County Probation Department (Probation); and".

2. Section 1(D) of the Agreement, located on page 1, line 28, through page 2, line 5, is deleted in its entirety, and replaced with the following:

"D. In the event of the termination or expiration of this Agreement in accordance with Section Three (3) of this Agreement, CONTRACTOR shall provide transitional services to clients currently receiving services, working with DSS and Probation staff, and/or COUNTY'S

1 contracted vendor(s). Transitional services shall include, but not be limited to the transfer of
2 client records, and shall not exceed a maximum of thirty (30) days. This section of the
3 Agreement shall survive thirty (30) days from the expiration or written termination date of this
4 Agreement."

5 3. Section 4 of the Agreement, located on page 3, line 6 through page 4, line 9, is deleted
6 in its entirety, and replaced with the following:

7 " 4. **COMPENSATION**

8 For actual services provided as identified in the terms and conditions of this Agreement,
9 including Exhibit A, COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to
10 receive compensation in accordance with Exhibit B, attached here to and by this reference
11 incorporated herein.

12 In no event shall compensation paid for services performed under this
13 Agreement exceed Five Hundred Forty-One Thousand Dollars (\$541,000) for the period of July
14 1, 2020 to June 30, 2021. In no event shall compensation paid for services performed under
15 this Agreement exceed Seven Hundred Ninety-One Thousand Dollars (\$791,000) for the
16 period of July 1, 2021 to June 30, 2022, with Five Hundred Fifty-Five Thousand Dollars
17 (\$555,000) allocated to DSS, and Two Hundred Thirty-Six Thousand Dollars (\$236,000)
18 allocated to Probation. In no event shall compensation paid for services performed under this
19 Agreement exceed Eight Hundred Twelve Thousand Dollars (\$812,000) for the period of July
20 1, 2022 to June 30, 2023, with Five Hundred Sixty-Nine Thousand Dollars (\$569,000) allocated
21 to DSS, and Two Hundred Forty-Three Thousand Dollars (\$243,000) allocated to Probation.
22 Should the term of this Agreement be extended for one (1) additional year, in no event shall
23 compensation paid for services performed under this Agreement exceed Eight Hundred Thirty-
24 Five Thousand Dollars (\$835,000) for the period of July 1, 2023 to June 30, 2024, with Five
25 Hundred Eighty-Four Thousand Dollars (\$584,000) allocated to DSS, and Two Hundred Fifty-
26 One Thousand Dollars (\$251,000) allocated to Probation. Should the term of this Agreement
27 be extended for a second additional year, in no event shall compensation paid for services
28 performed under this Agreement exceed Eight Hundred Fifty-Seven Thousand Dollars

1 (\$857,000), for the period of July 1, 2024 to June 30, 2025, with Five Hundred Ninety-Nine
2 Thousand Dollars (\$599,000) allocated to DSS and Two Hundred Fifty-Eight Thousand Dollars
3 (\$258,000) allocated to Probation. The cumulative total compensation amount of this
4 Agreement shall not exceed Three Million, Eight Hundred Thirty-Six Thousand Dollars
5 (\$3,836,000), with Two Million, Eight-Hundred Forty-Eight Thousand Dollars (\$2,848,000)
6 allocated to DSS and Nine Hundred Eighty-Eight Thousand Dollars (\$988,000) allocated to
7 Probation. It is understood that all expenses incidental to CONTRACTOR'S performance of
8 services under this Agreement shall be borne by the CONTRACTOR.

9 Except as provided below regarding State payment delays, payments by
10 COUNTY shall be in arrears, for services provided during the preceding month, within forty-five
11 (45) days after receipt, verification, and approval of CONTRACTOR'S invoices by DSS and
12 Probation. If CONTRACTOR should fail to comply with any provision of this Agreement,
13 COUNTY shall be relieved of its obligation for further compensation. All final claims shall be
14 submitted by CONTRACTOR within sixty (60) days following the final month of service for
15 which payment is claimed. No action shall be taken by COUNTY on claims submitted beyond
16 the sixty (60) day closeout period. Any compensation which is not expended by
17 CONTRACTOR pursuant to the terms and conditions of this Agreement shall automatically
18 revert to COUNTY.

19 The services provided by CONTRACTOR under this Agreement are funded in
20 whole or in part by the State of California. In the event that funding for these services is
21 delayed by the State Controller, COUNTY may defer payment to CONTRACTOR. The amount
22 of the deferred payment shall not exceed the amount of funding delayed by the State Controller
23 to COUNTY. The period of time of the deferral by COUNTY shall not exceed the period of time
24 of the State Controller's delay of payment to COUNTY, plus forty-five (45) days."

25 4. Section 5 of the Agreement, located on page 4, lines 10 through 25, is deleted in its
26 entirety, and replaced with the following:

27 " 5. **INVOICING**

28 CONTRACTOR shall invoice COUNTY'S DSS and Probation Department in arrears by

1 the tenth (10th) of each month for actual expenses incurred and services rendered in the
2 previous month. DSS invoices shall be sent to: DSSInvoices@fresnocountyca.gov. Probation
3 Invoices shall be sent either by mail to the Business Office, 3333 E. American Avenue, Suite B,
4 Fresno, CA 93725, or electronically to: ProbationInvoices@co.fresno.ca.us.

5 At the discretion of COUNTY'S DSS Director or Chief Probation Officer, or their
6 respective designees, if an invoice is incorrect or is otherwise not in proper form or substance,
7 the head of the affected department, either COUNTY'S DSS Director or Chief Probation
8 Officer, or their respective designees, shall have the right to withhold payment only as to that
9 portion of the invoice that is incorrect or improper after five (5) days prior written notice to
10 CONTRACTOR. CONTRACTOR agrees to continue to provide services for a period of ninety
11 (90) days after notification of an incorrect or improper invoice. If after the ninety (90) day period
12 the invoice(s) is still not corrected to the COUNTY's satisfaction, COUNTY'S DSS Director or
13 designee may elect to terminate this Agreement, pursuant to the termination provisions stated
14 in Section Three of this Agreement. In addition, for invoices received ninety (90) days after the
15 expiration of each term of this Agreement or termination of this Agreement, at the discretion of
16 COUNTY'S DSS Director or Chief Probation Officer, or their respective designees, COUNTY'S
17 DSS or Probation Department shall have the right to deny payment of any additional invoices
18 received."

19 5. Section 29 of the Agreement, located on page 16, lines 12 through 27, is deleted in its
20 entirety and replaced with the following:

21 " **29. SINGLE AUDIT CLAUSE**

22 As a subrecipient of Federal financial assistance, CONTRACTOR agrees to provide
23 copies of their audit reports, performed in accordance with the requirements of the Single Audit
24 Act of 1984 (31 USC section 7502) and subject to the terms of Office of Management and
25 Budget (OMB) Circulars (A-110, A-122 and A-133), to the County of Fresno. Such audits shall
26 be delivered to COUNTY'S DSS and Probation Department, for review not later than nine (9)
27 months after the close of the CONTRACTOR'S fiscal year in which the funds supplied through
28 this Agreement are expended and/or received for this program. The audits must include a

1 statement of findings or a statement that there were no findings. If there were negative
2 findings, CONTRACTOR must include a corrective action plan signed by an authorized
3 individual. Failure to comply with this Act may result in COUNTY performing the necessary
4 audit tasks, or, at COUNTY'S option, contracting with a qualified accountant to perform this
5 audit. All audit costs related to this Agreement are the sole responsibility of CONTRACTOR
6 who agree to take corrective actions to eliminate any material noncompliance or weakness
7 found as a result of such audits. Audit work performed by COUNTY under this paragraph shall
8 be billed at COUNTY cost as determined by COUNTY'S Auditor-Controller/Treasurer-Tax
9 Collector."

10 6. In Section 36 of the Agreement, located on page 19, lines 11 through 14 are deleted,
11 and replaced with the following:

12 COUNTY

13 Director, County of Fresno
14 Department of Social Services
15 PO Box 1912
16 Fresno, CA 93717-1912

17 Chief Probation Officer
18 3333 E. American Ave., Suite B
19 Fresno, CA 93725

20 CONTRACTOR

21 Chief Executive Officer
22 Avertest LLC, dba Averhealth
23 2916 W. Marshall Street, Suite A
24 Richmond, VA 23230

25 7. Exhibit A is deleted, and replaced with the attached new Exhibit A, incorporated by this
26 reference, and made a part of this Agreement.

27 8. Exhibit B is deleted, and replaced with the attached new Exhibit B, incorporated by this
28 reference, and made a part of this Agreement.

9. **ELECTRONIC SIGNATURES.** The parties agree that this First Amendment may be
executed by electronic signature as provided in this section. An "electronic signature" means any
symbol or process intended by an individual signing this First Amendment to represent their signature,
including but not limited to (1) a digital signature; (2) a faxed version of an original handwritten
signature; or (3) an electronically scanned and transmitted (for example by PDF document) of a
handwritten signature. Each electronic signature affixed or attached to this First Amendment (1) is
deemed equivalent to a valid original handwritten signature of the person signing this First Amendment
for all purposes, including but not limited to evidentiary proof in any administrative or judicial

1 proceeding, and (2) has the same force and effect as the valid original handwritten signature of that
2 person. The provisions of this section satisfy the requirements of Civil Code section 1633.5,
3 subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5,
4 beginning with section 1633.1). Each party using a digital signature represents that it has undertaken
5 and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1)
6 through (5), and agrees that each other party may rely upon that representation. This First Amendment
7 is not conditioned upon the parties conducting the transactions under it by electronic means and either
8 party may sign this First Amendment with an original handwritten signature.

9 COUNTY and CONTRACTOR agree that this First Amendment is sufficient to amend the
10 Agreement and, that upon execution of this First Amendment, the Agreement and this First
11 Amendment together shall be considered the Agreement.

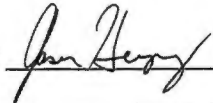
12 The Agreement, as hereby amended, is ratified and continued. All provisions, terms,
13 covenants, conditions, and promises contained in the Agreement and not amended herein shall
14 remain in full force and effect.


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1 EXECUTED AND EFFECTIVE as of the date first above set forth.

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3 **CONTRACTOR:**
4 **Avertest LLC, dba Avertest**

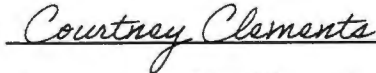
COUNTY OF FRESNO

5 By: 

By: 
Steve Brandau, Chairman of the Board of
Supervisors of the County of Fresno

6 Print Name: Jason Herzog
7
8 Title: Chief Executive Officer
9 Chairman of the Board, or
10 President, or any Vice President

ATTEST:
BERNICE E. SEIDEL
Clerk of the Board of Supervisors of the County of
Fresno, State of California

11 By: 

12 Print Name: Courtney Clements
13 Title: Secretary

By: 
Deputy

14 Secretary (of Corporation), or
15 any Assistant Secretary, or
16 Chief Financial Officer, or
17 any Assistant Treasurer

18 Mailing Address:
19 2916 W. Marshall Street, Suite A
20 Richmond, VA 23230
21 Phone No: (804) 977-0443
22 Attn: Jason Herzog, Chief Executive Officer

23 **FOR ACCOUNTING USE ONLY:**

24 **DSS:**

25 Fund: 0001
26 Subclass No: 10000
27 ORG: 56107001
28 Account: 7870/0

Probation:

Fund: 0001
Subclass No: 10000
ORG: 34300300
Account: 7295

Random Drug Testing Services Summary of Services

ORGANIZATION: Avertest, LLC, dba Averhealth

ADDRESS: 2916 W. Marshall Street, Suite A
Richmond, VA 23230

SERVICES ADDRESS: 2113 Merced Street
Fresno, CA 93721

TELEPHONE: (559) 781-8029

CONTACT PERSON: Tory Meier, Regional Manager

CONTRACT PERIOD: July 1, 2020 – June 30, 2023 with two (2) possible, one (1) year extensions by written mutual consent

SUMMARY OF SERVICES:

Overview

Avertest, LLC, dba Averhealth (CONTRACTOR) is to provide a randomized drug testing program for participants involved with the County of Fresno Department of Social Services' (DSS) Child Welfare Services and the Probation Department. CONTRACTOR will maintain sole responsibility for the randomized drug testing services and the reporting/availability of results to DSS and/or Probation staff, as appropriate. Specific test panels to be administered and methods are outlined in Exhibit B, along with cost per unit.

Contractor Responsibilities

CONTRACTOR will manage a random drug testing program, which shall include the following:

- Enrollment of participants;
- Initial orientation session that includes, but is not limited to, discussion/explanation of the Notification Card, Medication Guide, and the Drug & Alcohol Testing Agreement;
- Random selection to ensure all participants (in rural areas and Metro Fresno) have an equal probability of testing on any given day;
- Adjustments to participant's frequency groups as determined by DSS and/or Probation;
- Maintenance of a web-based application Aversys to manage the program;
- A multilingual, interactive notification system that clients will call on a daily basis to determine if they are required to test or not;
- Notification to DSS and/or Probation if a participant fails to contact the notification system or is a no-show for testing;
- Consistent and valid chain of custody procedures;

- The agreement between Averhealth and Subcontractor (Quest) for rural testing; and
- Submission/access to results and other reports to DSS and/or Probation.

CONTRACTOR shall maintain test sites and hours of operation that meet the needs of participants.

Testing hours for Fresno Metro are as follows:

- Downtown Fresno (Averhealth's Location): 9:00am – 6:00pm Monday- Friday, 9:00am – 12:00pm on Weekends and Holidays.

Tentative testing hours for rural areas are as follows:

- *Coalinga (Subcontracted Site): 9:00am – 2:00pm Monday- Friday, 9:00am – 12:00pm on Weekends
- *Selma (Subcontracted Site): 10am – 2:00pm Monday- Friday, 9:00am – 12:00pm on Weekends
- Kerman (Subcontracted Site): 6:30am – 3:30pm Monday- Friday

*Weekend hours have not been confirmed and are pending further discussion between CONTRACTOR and Subcontractor. Location of test sites and hours of operation can be revised with written agreement of CONTRACTOR and COUNTY's Director of DSS, or designee.

CONTRACTOR shall provide annual Civil Rights training to their staff within the first 60 days of the agreement and then within the first quarter of every calendar year. Relevant proof to be provided to DSS by April 1, for each year of the contract.

Reporting

CONTRACTOR shall provide the following reports to the Departments (including, but not limited to):

- Individual participant testing history;
- Summary of participant testing history;
- History of testing compliance and participation/non-participation;
- Report on testing adulterations, substitutions, and/or diluted samples, or other situations where an individual could not provide a sample;
- Monthly summaries of enrollments/dismissals by established random groups;
- Monthly summaries of all tests conducted for the month;
- Cumulative no-show list;
- Monthly summary of individuals who have not enrolled;
- Monthly summary of frequency group totals;
- Quarterly testing summary including trends, graphical descriptions, drug classes testing positive;
- Comparative analysis of no-show rates; and
- Other reports as requested by the Departments.

Outcomes

Outcomes/indicators associated with attaining the following goals:

Outcome	Indicator
1. Establishment of a professional and welcoming testing environment (i.e. clean office, friendly staff, minimal wait times, etc.).	<ul style="list-style-type: none"> • Participants will be given a survey on a quarterly basis and show at least an 80% satisfaction rate regarding outlined expectations
2. Provision of drug testing results within the timeline expected by DSS and/or Probation.	<ul style="list-style-type: none"> • Spot test preliminary results (dip kit results) available within one hour • Random program test results provided within one business day • Confirmation (GC/MS or LC-MS/MS) results provided within two business days • Hair test results provided within five business days • “No shows” reported same day • Any effort by a participant to adulterate a specimen or collection process shall be reported same day
3. Assurance of testing standards for reliability/validity are maintained.	<ul style="list-style-type: none"> • Lab maintains accreditation with CLIA, CAP-FDT, and the DEA

COUNTY Responsibilities

- COUNTY will provide appropriate referrals to CONTRACTOR and designate each Department’s point of contact;
- COUNTY will provide a written protocol on participant frequency groups;
- COUNTY’s DSS and Probation staff will meet and/or consult with CONTRACTOR individually as often as necessary to address any issues or concerns; and
- COUNTY’s DSS staff to meet with CONTRACTOR at least quarterly to discuss contract progress and any issues or concerns.

Random Drug Testing Services Pricing Summary

PRICING:

The following is the established price schedule for drug testing services.

SERVICE	DESCRIPTION	UNIT PRICE
5-Panel	Standard urine panel comprised of Breath Alcohol Test and five (5) of the following drugs: <ul style="list-style-type: none"> • Amphetamines (Amphetamines, Ecstasy, Methamphetamines); • Barbiturates; • Benzodiazepines; • Cannabinoids (THC); • Cocaine; • Ecstasy; • Methadone; • Methamphetamine; • Opiates (Morphine, Heroin, Hydrocodone, Hydromorphone, Oxycodone, Oxymorphone); • PCP; and/or • Propoxyphene. 	9-hour weekdays FY 2020-21 \$18.50 12-hour weekdays FY 2020-21 \$23.50 *Annual price increase not to exceed 3% per FY -Pricing includes weekends/holidays
6-Panel	Standard urine panel comprised of Breath Alcohol Test and any of the five (5) following drugs plus EtG or other specialty drug: <ul style="list-style-type: none"> • Amphetamines (Amphetamines, Ecstasy, Methamphetamines); • Barbiturates; • Benzodiazepines; • Cannabinoids (THC); • Cocaine; • Ecstasy; • Methadone; • Methamphetamine; • Opiates (Morphine, Heroin, Hydrocodone, Hydromorphone, Oxycodone, Oxymorphone); • PCP; and/or • Propoxyphene. 	9-hour weekdays FY 2020-21 \$20.00 12-hour weekdays FY 2020-21 \$25.00 *Annual price increase not to exceed 3% per FY -Pricing includes weekends/holidays
Standard Drug Add-on	Any of the following drugs added-on to a urine panel: Amphetamines (Amphetamines, Ecstasy, Methamphetamines), Barbiturates, Benzodiazepines, Cannabinoids (THC), Cocaine, Ecstasy, Methadone, Methamphetamine, Opiates (Morphine, Heroin, Hydrocodone, Hydromorphone, Oxycodone, Oxymorphone), PCP, and Propoxyphene	.50¢ per drug added-on
Synthetic Cannabinoids	Urine Analysis for Synthetic Cannabinoids	\$25.00
Synthetic Stimulants	Urine Analysis for Synthetic Stimulants (Bath Salts)	\$35.00
Standard Oral Fluid Panel	Standard Oral Fluid Panel including the five (5) following drugs: Benzodiazepines, Cocaine, Methamphetamine, THC, and Opiates	\$19.50
Oral Fluid Add-ons	Add-on any of the following to the Standard Oral Fluid Panel: Buprenorphine, Methadone, Oxycodone, or Tramadol	\$1.00 per drug added-on
Hair Test	Hair Test	\$70.00

SERVICE	DESCRIPTION	UNIT PRICE
Transdermal	Transdermal Sweat Patch	\$75.00
Spot Testing	Spot/Emergency Test which includes dip kit (with initial positive or negative result relayed to DSS and/or Probation within 1 hour) followed by a double EMIT test (with results relayed to DSS and/or Probation within 24 hours)	\$5.00 for dip kit only Additional panel prices apply for double EMIT and/or confirmation testing
Standard Confirmation Test	Confirmation Test completed via LC/MS/MS with results relayed within five business days	Included if requested for <5% total monthly volume. \$25.00 each thereafter
In-Person Expert Witness	In-Person Expert Witness Testimony for Court	\$750.00 per (2) day period
Litigation Packet	Litigation Packet for Court	\$150.00

*Avertest LLC, dba Averhealth (CONTRACTOR) shall submit a request in writing for all annual increases on Urine Analysis panel testing to County of Fresno, Department of Social Services (DSS) and the County of Fresno Probation Department at least 30 days prior to the changed pricing taking effect. In no event shall the annual increase be more than 3%.

In-kind services included with Contract at no extra charge:

- Information Management System
- Client Notification System
- Video testimony
- Training and consultation sessions
- Participations in Court staffing sessions

Co-Payments

Drug testing participants may incur a share of cost in the form of a co-payment. Co-payments will be at the discretion of DSS and/or Probation. If DSS and/or Probation continues to have participants make co-payments, CONTRACTOR will be responsible for the collection and management of participant co-payments as follows:

Urine analysis: CONTRACTOR agrees to collect a DSS or Probation determined co-payment per urine analysis screen from program participants and bill the remaining difference to DSS or Probation. DSS or Probation shall determine the amount of the co-payment required by each program participant.

Hair collection and analysis: CONTRACTOR agrees to collect the full \$70.00 cost of a hair analysis from the participant instead of DSS or Probation when the test is conducted as a result of non-compliance with the drug testing program. (Non-compliance occurs when a participant repeatedly fails to appear for urine analysis testing. COUNTY will specify non-compliance status on the referral to CONTRACTOR).

The share of cost is established by COUNTY and cannot be modified without the expressed authorization of COUNTY. CONTRACTOR is to collect payment from participants at the time of testing. Participants unprepared to pay will not be allowed to test and recorded as a "no-show." CONTRACTOR will provide data upon the request of the COUNTY as to the number of participants denied testing due to non-payment.

Exceptions will be made at the discretion of COUNTY. CONTRACTOR will be informed of any exceptions or exemptions prior to testing.