

AGREEMENT

THIS AGREEMENT is made and entered into this 22nd day of October, 2019, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and Eurofins DQCI LLC, a Minnesota corporation, whose address is 4842 W. Jacquelyn Avenue, Fresno, CA 93722, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, the COUNTY, through its Department of Public Health (DPH), is the regulatory agency for raw milk and dairy products in Fresno County, and requires a California Department of Food and Agriculture (CDFA) certified laboratory to provide mandated milk and dairy laboratory testing services to ensure dairy products are safe for public consumption, and

WHEREAS, CONTRACTOR is a CDFA certified laboratory, and is qualified and willing to provide such services, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. OBLIGATIONS OF THE CONTRACTOR

A. CONTRACTOR shall perform all services and fulfill all responsibilities for COUNTY's DPH, as identified in Exhibit A – Scope of Work, attached hereto and by this reference incorporated herein.

B. CONTRACTOR shall perform all services and fulfill all responsibilities in a manner consistent with the COUNTY's Request for Quotation (RFQ), dated August 9, 2019, and CONTRACTOR's Response to said RFQ, dated August 23, 2019, both incorporated herein by reference and made part of this Agreement. In the event of any inconsistency among these documents, the inconsistency shall be resolved by giving precedence in the following order of priority: 1) to this Agreement, including all Exhibits, 2) to the RFQ, 3) to the RFQ Response.

C. CONTRACTOR shall provide courier services for pick-up of samples from a single location, as described in Section Two A.

1 D. CONTRACTOR shall provide, via electronic reporting, milk and dairy laboratory
2 analysis results of milk, soft serve and water samples, 7 days a week as described in Exhibit A.

3 2. OBLIGATIONS OF THE COUNTY

4 A. The Department will drop off milk, soft serve and water samples at an agreed
5 upon location, currently located at California Dairies 755 "F" St, Fresno, CA 93706.

6 B. In consideration of the services satisfactorily provided pursuant to Section One (1)
7 of this Agreement, County shall compensate CONTRACTOR as stated in Section Five (5) of this
8 Agreement, entitled "COMPENSATION/INVOICING".

9 3. TERM

10 The term of this Agreement shall be for a period of three (3) years, commencing on November 1,
11 2019 through and including October 31, 2022. This Agreement may be extended for two (2) additional
12 consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days
13 prior to the first day of the next twelve (12) month extension period. The Director or his or her designee is
14 authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S satisfactory
15 performance.

16 4. TERMINATION

17 A. Non-Allocation of Funds - The terms of this Agreement, and the services to
18 be provided hereunder, are contingent on the approval of funds by the appropriating government
19 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
20 Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written
21 notice.

22 B. Breach of Contract - The COUNTY may immediately suspend or terminate this
23 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 24 1) An illegal or improper use of funds;
25 2) A failure to comply with any term of this Agreement;
26 3) A substantially incorrect or incomplete report submitted to the COUNTY;
27 4) Improperly performed service.

28 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach

1 of this Agreement or any default which may then exist on the part of the CONTRACTOR. Except as
2 expressly set forth in this Agreement, CONTRACTOR makes no warranties, expressed or implied, in
3 connection with its performance of services and, to the fullest extent permitted by law, CONTRACTOR
4 specifically disclaims any and all other warranties including, without limitation, any warranty of suitability,
5 merchantability or fitness for a particular purpose. In the event that any services are improperly or
6 inadequately performed by CONTRACTOR, COUNTY's sole remedy, and CONTRACTOR's sole
7 obligation, with respect to such deficient services shall be for COUNTY to either: (i) require CONTRACTOR
8 to re-perform such improper or deficient services, at no additional charge to COUNTY, or (ii) request a
9 refund of all amounts paid to CONTRACTOR for such improperly or inadequately performed services. The
10 COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any
11 funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were
12 not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund
13 any such funds upon demand.

14 C. Without Cause - Under circumstances other than those set forth above, this
15 Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an
16 intention to terminate to CONTRACTOR.

17 5. COMPENSATION/INVOICING:

18 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as
19 described in Exhibit B, attached hereto and incorporated herein by this reference. Compensation for
20 services shall be based on actual volume of tests performed. There is no minimum order quantity. The
21 County reserves the right to increase or decrease orders or quantities. Prices shall be firm for the contract
22 period. CONTRACTOR shall submit monthly invoices to the County of Fresno Department of Public Health
23 within (30) days of the end of the preceding month. CONTRACTOR invoices shall include all proper
24 supporting documentation, including but not limited to dairy name, sample type and charge. Payments by
25 COUNTY shall be in arrears within forty-five (45) days after receipt and verification of invoices by
26 COUNTY'S Department of Public Health.

27 In no event shall services performed under this Agreement be in excess of One Hundred Seventy
28 Nine Thousand Nine Hundred Twenty One and No/100 Dollars (\$179,921.00) during the initial three year



1 term. If the first one-year extension is exercised, the maximum compensation shall not exceed Two
2 Hundred Thirty Eight Thousand Eight Hundred Fifty Two and 50/100 Dollars (\$238,
3 852.50). If the second one-year extension is exercised, the maximum compensation shall not exceed Three
4 Hundred Three Thousand Six Hundred Eighty Three and 50/100 Dollars (\$303,683.50) during the term of
5 this Agreement, inclusive of the optional extension periods. It is understood that all expenses incidental to
6 CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

7 INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations assumed by
8 CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including
9 any and all of the CONTRACTOR'S officers, agents, and employees will at all times be acting and
10 performing as an independent contractor, and shall act in an independent capacity and not as an officer,
11 agent, servant, employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY
12 shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall
13 perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as
14 to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions
15 thereof.

16 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and
17 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

18 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right
19 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable
20 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In
21 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating
22 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all
23 other regulations governing such matters. It is acknowledged that during the term of this Agreement,
24 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

25 6. MODIFICATION: Any matters of this Agreement may be modified from time to time by the
26 written consent of all the parties without, in any way, affecting the remainder.

27 7. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement
28 nor their rights or duties under this Agreement without the prior written consent of the other party.

1 8. HOLD HARMLESS LIABILITY: CONTRACTOR agrees to indemnify, save, hold harmless,
2 and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs
3 and expenses (including reasonable attorney's fees and costs), damages, liabilities, claims, and losses
4 occurring or resulting to COUNTY as a result of third party claims to the extent caused by the negligence or
5 misconduct of CONTRACTOR, its officers, agents, or employees under this Agreement. In no event shall
6 either Party be responsible for any indirect, consequential, incidental, punitive or special damages
7 (including without limitation damages for lost profits or revenue, loss of use, business interruption, loss of
8 information, or for the procurement of substitute services) of the other Party or of any third party, even if
9 such Party has been advised of the potential for such damages and whether such damages arise in
10 contract negligence, tort (including death or personal injury), under statute, in equity, at law or otherwise. In
11 no event shall either Party be liable pursuant to this Agreement for any amount that exceeds, in the
12 aggregate, the amount of fees paid for the Services giving rise to the claim.

13 9. INSURANCE

14 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third
15 parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance
16 policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or
17 Joint Powers Agreement (JPA) throughout the term of the Agreement:

18 A. Commercial General Liability

19 Commercial General Liability Insurance with limits of not less than Two Million Dollars
20 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
21 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
22 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
23 liability or any other liability insurance deemed necessary because of the nature of this contract.

24 B. Automobile Liability

25 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
26 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto
27 used in connection with this Agreement.
28

1 C. Professional Liability

2 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
3 providing services, Professional Liability Insurance with limits of not less than One Million Dollars
4 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

5 D. Worker's Compensation

6 A policy of Worker's Compensation insurance as may be required by the California Labor
7 Code.

8 Additional Requirements Relating to Insurance

9 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming
10 the County of Fresno, its officers, agents, and employees, individually and collectively, as additional
11 insured, but only insofar as the operations under this Agreement are concerned. Such coverage for
12 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
13 by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
14 provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without
15 a minimum of thirty (30) days advance written notice given to COUNTY.

16 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
17 employees any amounts paid by the policy of worker's compensation insurance required by this
18 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
19 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
20 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

21 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
22 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
23 foregoing policies, as required herein, to the County of Fresno, (Name and Address of the official who will
24 administer this contract), stating that such insurance coverage have been obtained and are in full force; that
25 the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the
26 policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents
27 and employees, individually and collectively, as additional insured, but only insofar as the operations under
28 this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance



1 and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,
2 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein;
3 and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance,
4 written notice given to COUNTY.

5 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein
6 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
7 Agreement upon the occurrence of such event.

8 All policies shall be issued by admitted insurers licensed to do business in the State of California,
9 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
10 FSC VII or better.

11 10. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during business
12 hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination
13 all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR
14 shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data
15 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

16 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to
17 the examination and audit of the Auditor General for a period of three (3) years after final payment under
18 contract (Government Code Section 8546.7).

19 11. NOTICES: The persons and their addresses having authority to give and receive notices
20 under this Agreement include the following:

21 COUNTY

22 COUNTY OF FRESNO
23 Director, Department of Public Health
P.O. Box 11867
Fresno, CA 93775

CONTRACTOR

Eurofins DQCI LLC
Ryan Baker, Business Manager
4842 W. Jacquelyn Ave
Fresno, CA 93722

24 All notices between the COUNTY and CONTRACTOR provided for or permitted under this
25 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by
26 an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by
27 personal service is effective upon service to the recipient. A notice delivered by first-class United States
28 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,



1 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one
2 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,
3 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by
4 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is
5 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
6 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the
7 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section
8 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
9 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
10 beginning with section 810).

11 12. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall
12 only be in Fresno County, California.

13 The rights and obligations of the parties and all interpretation and performance of this Agreement
14 shall be governed in all respects by the laws of the State of California.

15 13. DISCLOSURE OF SELF-DEALING TRANSACTIONS

16 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit
17 or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes its status
18 to operate as a corporation.

19 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions
20 that they are a party to while CONTRACTOR is providing goods or performing services under this
21 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party
22 and in which one or more of its directors has a material financial interest. Members of the Board of
23 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a
24 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit C and incorporated herein by
25 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
26 immediately thereafter.

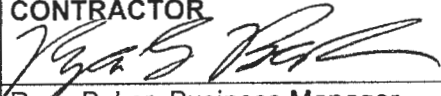
27 14. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
28 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous



1 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
2 understanding of any nature whatsoever unless expressly included in this Agreement.

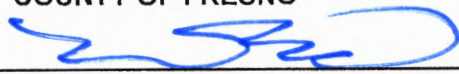
3 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year
4 first hereinabove written.

5
6 **CONTRACTOR**

7 
8 Ryan Baker, Business Manager
(Authorized Signature)

9 Mailing Address:
10 4842 W. Jacquelyn Ave
11 Fresno, CA 93722
(559) 753-7320

COUNTY OF FRESNO


Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

12
13
14
15 By: 
Deputy

16
17 **FOR ACCOUNTING USE ONLY:**

18 Fund:0001

19 Subclass:10000

20 ORG:5620

21 Account:7295
22
23
24
25
26
27
28

EXHIBIT A
SCOPE OF WORK

The County of Fresno's Department of Public Health Environmental Health is the regulatory agency for raw milk and dairy products in Fresno County. Milk and dairy testing is mandated under State of California Department of Food and Agriculture (CDFA) to ensure dairy products are safe for public consumption. The testing can only be performed by laboratories that are certified by CDFA.

Services to be included are analytical testing of milk and dairy samples, electronic reporting of results, and courier pick up of samples from a single location. The capability to provide testing on weekends and after standard business hours and/or an arrangement for weekend drop off for retesting of samples obtained from degraded dairies is required.

Milk, dairy, and dairy water sample analysis shall be provided for the following tests:

- Standard Plate Count – Raw Cow Milk
- Standard Plate Count – Goat Milk, Ice Cream, Other
- Coliform Plate Count
- Lab Pasteurized Count
- Growth Inhibitor test by Delvotest P-5 Pack
- Electronic Somatic Cell Count
- Direct Microscopic Cell Count
- Direct Microscopic Cell Count (Goat)
- Added Water (Freezing Point/Cryoscope)
- California Mastitis Test
- Yeast & Mold
- Dairy Water, 10-Tube, MPN, Coliliert
- Dairy Water, Heterotropic Plate Count

After-hours services shall be provided for retesting of samples as needed. After-hours services are considered those hours outside of standard office hours (8:00 a.m.– 5:00 p.m.).

Calibration of thermometers will be completed on an as-needed basis.

EXHIBIT B

FEE SCHEDULE

ANALYSIS	Description	Turn Around Time	Year One	Year Two	Year Three	Year Four	Year Five
			Unit Price	Unit Price	Unit Price	Unit Price	Unit / Price
SPC (Standard Plate Count)	Raw Cow Milk (Performed by Bactoscan)	1 day	\$3.25	\$3.25	\$3.36	\$3.46	\$3.50
SPC (Standard Plate Count)	Goat Milk, Ice Cream, others	2 days	\$8.95	\$8.95	\$9.26	\$9.54	\$9.80
Coliform (Coliform Plate Count)		2 days	\$5.75	\$5.75	\$5.95	\$6.13	\$6.30
LPC (Lab Pasteurized Count)		3 days	\$5.95	\$5.95	\$6.16	\$6.34	\$6.50
Inhibitor test by Delvotest P-5 Pack		1 day	\$6.00	\$6.00	\$6.21	\$6.40	\$6.59
ESCC (Electronic Somatic cell)	SCC Alternative to DMCC Raw Milk	1 day	\$1.95	\$1.95	\$2.02	\$2.08	\$2.13
DMSCC (Direct Microscopic Somatic Cell Count)	Confirmation only	1 day	\$16.00	\$16.00	\$16.56	\$17.06	\$17.55
DMSCC- Goat	Confirmation only	1 day	\$16.00	\$16.00	\$16.56	\$17.06	\$17.55
Added Water (Freezing Point/Cryos cope)		1 day	\$1.60	\$1.60	\$1.66	\$1.71	\$1.75
Sediments		1 day	\$5.25	\$5.25	\$5.43	\$5.59	\$5.76
CMT (California Mastitis Test)	Run samples on ESCC	1 day	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Yeast & Mold		5 days	\$8.95	\$8.95	\$9.26	\$9.54	\$9.80

ANALYSIS	Description	Turn Around Time	Year One	Year Two	Year Three	Year Four	Year Five
			Unit Price	Unit Price	Unit Price	Unit Price	Unit Price
Dairy Water, 10-Tube, MPN, Lauryl Trptose Broth		1 Day	\$14.50	\$14.50	\$15.00	\$15.45	\$15.90
Dairy Water, 10-Tube, MPN, Colilert		1 day	\$14.50	\$14.50	\$15.00	\$15.45	\$15.90
Dairy Water, Heterotropic Plate Count		2 days	\$8.95	\$8.95	\$9.26	\$9.54	\$9.80
Thermometer Calibration	Per calibration		\$25	\$25	\$25	\$25	\$25
Reports Mode (Electronic, Mail, Fax, Telephone, etc)	Electronic Preferred - CSV or PDF files Other report methods are available as needed		No charge	No charge	No charge	No charge	No charge
Other Fees: (Courier Fees, etc.)	No charge for Courier Service -7 days a week		No charge	No charge	No charge	No charge	No charge
Must be available 7 days a week			No charge	No charge	No charge	No charge	No charge
Weekend drop off for retesting of samples obtained from degraded dairies			No charge	No charge	No charge	No charge	No charge

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit C

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	