

**COUNTY OF LOS ANGELES**

MARVIN J. SOUTHARD, D.S.W.  
Director

ROBIN KAY, Ph.D.  
Chief Deputy Director

RODERICK SHANER, M.D.  
Medical Director



BOARD OF SUPERVISORS

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**DEPARTMENT OF MENTAL HEALTH**

<http://dmh.lacounty.gov>

550 SOUTH VERMONT AVENUE, LOS ANGELES, CALIFORNIA 90020

Reply To: (213) 738-4601  
Fax: (213) 386-1297

November 29, 2011

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

#29 NOVEMBER 29, 2011

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

**REQUEST APPROVAL TO AMEND THE UNILAB CORPORATION  
CLINICAL LABORATORY SERVICES AGREEMENT FOR THE REMAINING  
SIX MONTHS OF FISCAL YEAR 2011-12  
(ALL SUPERVISORIAL DISTRICTS)  
(3 VOTES)**

**SUBJECT**

Request approval to amend the existing Unilab Corporation Clinical Laboratory Services Agreement to extend the provision of clinical laboratory services to Department of Mental Health's clients on a month-to-month basis for a period of up to six months in Fiscal Year 2011-12.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and authorize the Director of Mental Health (Director), or his designee, to prepare, sign, and execute an amendment, substantially similar to the attached format (Attachment), to the existing Clinical Laboratory Services Agreement (Agreement) with Unilab Corporation doing business as Quest Diagnostics (Quest), to extend the provision of clinical laboratory services to Department of Mental Health's (DMH) clients without interruption on a month-to-month basis, for a period of up to six months, beginning January 1, 2012, through June 30, 2012, if fully extended.
2. Delegate authority to the Director, or his designee, to prepare, sign, and execute future amendments and further amend this Agreement, as may be necessary, to purchase additional services of the same type described in the Agreement or to reflect program and/or Board policy changes provided that: 1) sufficient funds are available in the approved Fiscal Year 2011-12 Final Adopted Budget for any increases in compensation; 2) County Counsel approves such amendments as to form prior to execution; and 3) the Director notifies your Board and the Chief Executive Officer

(CEO) in writing within 30 days after execution of each amendment.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

Board approval is required to extend the term of the existing Agreement with Quest on a month-to-month basis for a period of up to six months to allow DMH additional time required to complete the Request for Proposal (RFP) appeal process and award the contract.

### **Implementation of Strategic Plan Goals**

The recommended actions support the County's Strategic Plan Goal 4, Health and Mental Health.

### **FISCAL IMPACT/FINANCING**

Annual funding for clinical laboratory services is included in the Fiscal Year 2011-12 Final Adopted Budget in the amount of \$805,920. This amount is fully funded by Sales Tax Realignment and Mental Health Services Act revenue.

There is no net County cost associated with the recommended actions.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The request for additional extensions of up to six months will provide sufficient time for DMH to complete the RFP appeal process with Quest and allow Quest to continue providing clinical laboratory services to DMH clients without interruption during the interim.

On June 7, 2011, your Board approved an initial six-month contract extension to allow DMH time to complete the RFP appeal process. Following notification of the RFP evaluation outcome, Quest requested a debriefing and subsequently requested advancement to the next phase in the protest process, the Proposed Contractor Selection Review (PCSR). During this initial contract extension period, DMH completed contract negotiations with the prospective contractor and is awaiting the resolution of the second level of the protest process.

The attached Amendment has been approved as to form by County Counsel. The CEO has been advised of the recommended actions. The proposed actions have also been reviewed by the Office of the Medical Director. DMH administrative staff will review and monitor the contractor's adherence to the Agreement and ensure that Agreement provisions and departmental policies are being followed.

### **CONTRACTING PROCESS**

On December 3, 2010 before the initial Agreement was due to expire on June 30, 2011, DMH solicited for proposals for qualified clinical laboratory services. The Department solicited the interest level of potential contractors by advertising in major local newspapers and mailing out the RFP to clinical laboratory service providers on DMH's Bidders' List.

On January 4, 2011, DMH held a Mandatory Proposers' Conference that was attended by five companies. DMH received two proposals on or before the final submission date of February 3, 2011. One was from Primex, and the other was from Quest.

The Evaluation Committee, comprised of five evaluators and a facilitator, convened on March 7, 2011 to March 10, 2011, to evaluate and score the program components of the proposals via an Informed Averaging rating. The Department's Executive Management Team reviewed the Evaluation Committee's results and presented it to the Director of Mental Health for approval. It was determined that Primex could best meet the needs of the Department. After notification of the RFP evaluation results and completing the requested debriefing, Quest, the non-recommended proposer, requested advancement to the next phase in the protest process, the PCSR. During this stage of the appeal, DMH finalized contract negotiations with the prospective contractor and is awaiting resolution of the second level protest process.

DMH will return to your Board to request authorization to award and execute an Agreement with a laboratory services contractor upon resolution of the RFP appeal process.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

An additional extension of up to six months will help ensure that there will be no interruption in clinical laboratory services at mental health clinics and program sites throughout the County, during DMH's completion of the RFP appeal process.

Respectfully submitted,



MARVIN J. SOUTHARD, D.S.W.

Director of Mental Health

MJS:RS:WC:RK:co

h

Enclosures

c: Chief Executive Officer  
County Counsel  
Executive Officer, Board of Supervisors  
Chairperson, Mental Health Commission

**Attachment**

CONTRACT NO. MH110001

AMENDMENT NO. \_\_\_

THIS AMENDMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between the COUNTY OF LOS ANGELES (hereafter "County") and Unilab Corporation dba Quest Diagnostics (hereafter "Contractor").

WHEREAS, County and Contractor have entered into a written Agreement, dated June 13, 2006, identified as County Agreement No. MH110001, and any subsequent amendments (hereafter collectively "Agreement"); and

WHEREAS, County and Contractor intend to amend Agreement only as described hereunder; and

WHEREAS, County and Contractor intend to amend Agreement to extend clinical laboratory services on a month-to-month basis for up to six additional months, beginning January 1, 2012 through June 30, 2012, if fully extended, to allow for completion of the clinical laboratory services solicitation appeal process; and

WHEREAS, to comply with Auditor-Controller's recommendations relevant to billing and payment issues and to better ensure conformity with the purpose and intent of the Agreement, County and Contractor wish to amend Agreement to revise Section 6 (BILLING AND PAYMENT) to clarify County's responsibility as payor of last resort and to include a maximum period of up to six (6) months for Contractor to bill County for reimbursement, a payment withhold clause, and a requirement that Contractor obtain

and maintain proof of documentation relevant to a patient's/client's Medi-Cal eligibility status before billing County; and

WHEREAS, County and Contractor wish to amend Agreement to revise Section 19 (INDEMNIFICATION AND INSURANCE), Paragraph B (General Provisions for all Insurance Coverage), Subparagraph (3) Cancellation of or Changes in Insurance), to include a provision that County shall receive written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period, and also that failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Agreement, in the sole discretion of the County, upon which the County may immediately suspend or terminate this Agreement; and

WHEREAS, County and Contractor wish to amend Agreement to revise Section 19 (INDEMNIFICATION AND INSURANCE), Paragraph B (General Provisions for all Insurance Coverage), Subparagraph (4) (Failure to Maintain Insurance), to include that the County may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to Contractor and/or pursue Contractor for reimbursement.

NOW, THEREFORE, County and Contractor agree that Agreement shall be amended only as follows:

1. County and Contractor intend to amend Agreement to extend clinical laboratory services on a month-to-month basis for up to six additional months, beginning January 1, 2012 through June 30, 2012, if fully extended, to allow for completion of the clinical laboratory services solicitation appeals process.

2. For FY 2011-12, Paragraph 6 (BILLING AND PAYMENT) shall be deleted in its entirety and the following substituted therefor:

“A. Contractor shall bill County monthly in arrears for all clinical laboratory tests provided for patients/clients at the clinic according to the schedule approved by the County and as otherwise requested by the County. All payments by County to Contractor shall be based on the number and types of clinical laboratory tests provided for patients/clients at the clinic and shall be in accordance with Contractor's Unit Prices Per Test as shown on Exhibit B-1 (TEST PRICE LIST).

1. All billings shall be submitted on forms approved by the County and shall clearly identify each specific test billed and Contractor's Unit Price Per Test as shown on Exhibit B-1 as well as the other information required under this Agreement.

2. Billings shall be submitted electronically to County no later than the 15<sup>th</sup> day of the month following the month the test was provided.

3. County shall pay Contractor within 30 calendar days after confirmation of complete, verified, and correct billings less adjustments, if any.

4. Contractor has up to a maximum of six (6) months from the date of each clinical laboratory services requisition order to bill County for reimbursement. County will not pay Contractor for any late invoices submitted after the six-month limit from the date of the clinical laboratory services requisition orders.

B. County is the Payor of Last Resort: County is only responsible for patients/clients who have no health insurance. If the patient/client has other health insurance, e.g., Medi-Cal, Medi-Cal HMO, Medicare, private health insurance, or any other third-party payor, such other third party payors must be billed first for the clinical

laboratory services. County shall have no obligation to pay any portion of said bills until after other health insurance payor sources have paid their portions and all review and appeals processes, if any, for disallowed laboratory tests have been completed. Contractor shall, in cooperation with County clinics, develop processes to ensure all processed laboratory request orders are documented with valid DMH client identification numbers also known as Integrated System (IS) numbers for the purpose of verifying eligibility and client identification. It is the responsibility of Contractor to ensure that: (1) claims are billed appropriately by reviewing each bill before it is sent to County, reviewing each monthly statement issued by County and issuing a refund check to the County for any claims that were inappropriately billed and/or paid within 30 days of discovery of the error; (2) a patient's/client's eligibility or ineligibility is verified for a Third-Party Insurer and should a patient/client be covered by a Third-Party Insurer, Contractor shall submit claims to County only for laboratory tests that are disallowed by Third-Party Insurers provided that proof of documentation of denial of service is attached; and (3) proof of documentation relevant to the patient's/client's Medi-Cal eligibility status is obtained and maintained before billing the County.

C. Contractor shall cooperate with County to bill Medi-Cal or other third-party payors and reimburse County for prior paid claims when eligible patients/clients are identified and transmitted to Contractor. County may withhold such reimbursable amounts from future payments to Contractor.

D. County's Withholding of Payment for Inappropriately Billed Claims: County shall conduct a quarterly review of paid claims against a Medi-Cal claims database to determine questionable or inappropriately billed claims. If Contractor fails

to submit service data as required by County, then the County may, in its discretion, withhold all or a portion of its payment until County is in receipt of complete and correct service data and such service data has been reviewed and approved by the County. As part of the review, County may request data from Contractor relating to billing and service provision. Additionally, County reserves the right to recover funds paid on inappropriately billed claims by withholding payments or by requesting reimbursement from Contractor. Repeated improper billing practices may be cause for contract termination.

1. The County shall provide Contractor with written notice of the County's decision to withhold payment, including the reason(s) for the intended action and identification of the incomplete or incorrect service data within 60 days of the close of the fiscal year quarter. Contractor may, within 30 calendar days, respond and appeal in writing to each withholding.

2. It is anticipated that County shall withhold amounts approximately 75 days after the date of the withhold notification, or 135 days after the end of the quarter period under review. The timeframe between notification of the withhold and the actual withhold, which is usually about 75 days, is in part to allow the Contractor time to appropriately bill Medi-Cal or other third-party payor source.

E. County Suspension of Payment for Default: The County may suspend payments to Contractor if the County determines that Contractor is in default under any of the provisions of this Agreement.

1. Except in cases of alleged fraud or similar intentional wrongdoing or a reasonable good faith determination of Contractor's impending insolvency, County shall



provide Contractor with at least 30 calendar days' notice of such suspension, including a statement of the reason(s) for such suspension. Thereafter, Contractor may, within 15 calendar days, request reconsideration of the County's decision to suspend payment. Suspension of payment to Contractor shall not take effect pending the results of such reconsideration process.

2. Upon receiving a request for reconsideration from Contractor, County shall, within 15 calendar days, schedule a meeting with Contractor to consider Contractor's request to reconsider its action. At said meeting, Contractor may present to the County information or documentation relevant to the circumstances that led the County to take such actions and may propose alternative actions.

3. Within 15 calendar days of said meeting, County shall, in writing, notify Contractor of its final decision. The decision of the Director will be final.

F. Contractor agrees to hold harmless both the State and beneficiary in the event County cannot or will not pay for services performed by Contractor pursuant to this Agreement.”

3. For FY 2011-12, Paragraph 19 (IMDEMNIFICATION AND INSURANCE) shall be deleted in its entirety and the following substituted therefor:

“A. Indemnification: Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officials, officers, agents, employees, and volunteers from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Contractor's acts and/or omissions arising from and/or relating to this Agreement.

B. General Provisions for all Insurance Coverage: Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Subparagraphs B and C of this Paragraph 19. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Agreement.

(1) Evidence of Coverage and Notice to County

(a) Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) have been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Agreement.

(b) Renewal Certificates shall be provided to County not less than ten (10) days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Subcontractor insurance policies at any time.

(c) Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on

the Certificate shall match the name of the Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000) dollars, and list any County required endorsement forms.

(d) Neither the County's receipt of or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), nor the County's failure to obtain the Required Insurance for Contractor, shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

Los Angeles County - Department of Mental Health  
Contracts Development and Administration Division  
550 S. Vermont Ave., 5<sup>th</sup> Floor  
Los Angeles, CA 90020

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its sub-contractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

(2) Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, elected and appointed officials, officers, agents, employees and volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents' additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as additional insureds, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

(3) Cancellation of or Changes in Insurance

Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may

constitute a material breach of the Agreement, in the sole discretion of the County, upon which the County may immediately suspend or terminate this Agreement.

(4) Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Contractor resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to Contractor or pursue Contractor reimbursement.

(5) Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

(6) Contractor's Insurance Shall Be Primary

Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

(7) Waivers of Subrogation

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required

Insurance for any loss arising from or relating to this Agreement. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

(8) Subcontractor Insurance Coverage Requirements

Contractor shall include all subcontractors as insureds under Contractor's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein, and shall require that each Subcontractor name the County and Contractor as additional insureds on the Subcontractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Subcontractor request for modification of the Required Insurance.

(9) Deductibles and Self-Insured Retentions (SIRs)

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

(10) Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement.

Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

(11) Application of Excess Liability Coverage

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as (“follow form” over) the underlying primary policies, to satisfy the Required Insurance provisions.

(12) Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

(13) Alternative Risk Financing Programs

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

(14) County Review and Approval of Insurance Requirements

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County’s determination of changes in risk exposures.

C. Insurance Coverage

(1) Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

(2) Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

(3) Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of



any federal workers or workmen's compensation law or any federal occupational disease law.

(4) Unique Insurance Coverage

a. Sexual Misconduct Liability

Insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than \$2 million per claim and \$2 million aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature.

b. Professional Liability/Errors and Omissions

Insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$1 million per claim and \$3 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

c. Property Coverage

Contractors given exclusive use of County owned or leased property shall carry property coverage at least as broad as that provided by the ISO special causes of loss (ISO policy form CP 10 30) form. The County and its Agents shall be named as an Additional Insured and Loss Payee on Contractor's insurance as its interests may

appear. Automobiles and mobile equipment shall be insured for their actual cash value. Real property and all other personal property shall be insured for their full replacement value.”

4. Except as provided in this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Amendment to be subscribed by County's Director of Mental Health or his designee, and Contractor has caused this Amendment to be subscribed on its behalf by its duly authorized officer, on the day, month, and year first above written.

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
MARVIN J. SOUTHARD, D.S.W.  
Director of Mental Health

Unilab Corporation dba Quest Diagnostics  
CONTRACTOR

By \_\_\_\_\_

Name Robert F. Moverley

Title Managing Director  
(AFFIX CORPORATE SEAL HERE)

APPROVED AS TO FORM:  
OFFICE OF THE COUNTY COUNSEL

APPROVED AS TO CONTRACT  
ADMINISTRATION:

DEPARTMENT OF MENTAL HEALTH

By \_\_\_\_\_  
Chief, Contracts Development  
and Administration Division

Clinical Laboratory Services – Unilab 2011-12 – 2<sup>nd</sup> mo-to-mo extension