

**AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR
BETWEEN
COUNTY OF SANTA BARBARA
AND
EXXONMOBIL MEDICINE AND OCCUPATIONAL HEALTH
FOR QUANTIFERON TB TESTING
FOR 2007-08**

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and **ExxonMobil Medicine and Occupational Health** having its principal place of business at **800 Bell Street, Houston, Texas 77002** (hereafter EXXONMOBIL) wherein COUNTY agrees to provide the services specified herein.

WHEREAS, the Public Health Department's Public Health Laboratory has received State certification to provide the more accurate and sensitive QuantiFeron test to determine whether a patient is infected with tuberculosis; and

WHEREAS, the Public Health Department has included the QuantiFeron test on its public fee schedule as a test available to the public; and

WHEREAS, EXXONMOBIL has requested that the Public Health Department perform QuantiFeron tests on its employees;

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

1. **DESIGNATED REPRESENTATIVE.** Michael Hartley at phone number (805) 681 5255 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Margaret A. Carlson at phone number (713) 656 8638 is the authorized representative for EXXONMOBIL. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY: Michael D. Harris
 Deputy Director
 Public Health Department
 300 North San Antonio Road
 Santa Barbara, CA 93110

To EXXONMOBIL: Margaret A. Carlson
 ExxonMobil Medicine and Occupational Health
 CORP-EMB-3180
 800 Bell Street
 Houston, TX 77002

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** COUNTY agrees to provide services to EXXONMOBIL in accordance with **EXHIBIT A** attached hereto and incorporated herein by reference.

4. **TERM.** CONTRACT shall commence on **March 1, 2007** and end upon completion, but no later than **June 30, 2008** unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF COUNTY.** COUNTY shall be paid at the published rate on the County Public Health Department fee schedule (which on July 1, 2006 is \$50.00 per specimen, but may be subject to change in the future) for each QuantiFeron TB test that it performs for EXXONMOBIL. EXXONMOBIL shall pay claims submitted by COUNTY within thirty (30) days of presentation. Payment for all tests performed must be made by EXXONMOBIL. Under no circumstances will COUNTY bill any insurance or third-party payors for the services performed pursuant to this Agreement. COUNTY'S current capacity for performing QuantiFeron TB tests under this Agreement is 600 tests per annum. If the capacity changes during the term of this Agreement COUNTY shall advise EXXONMOBIL.

6. **INDEPENDENT CONTRACTOR.** COUNTY and EXXONMOBIL agree that the relationship created by this Agreement is that of two independent contracting parties. At no time whatsoever shall EXXONMOBIL or EXXONMOBIL's employees be regarded as agents, servants or employees of the COUNTY as a result of the services performed pursuant to this Agreement. At no time whatsoever shall COUNTY or COUNTY'S employees be regarded as agents, servants or employees of EXXONMOBIL as a result of the services performed pursuant to this Agreement.

7. **STANDARD OF PERFORMANCE.** COUNTY represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, COUNTY shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which COUNTY is engaged. All products of whatsoever nature, which COUNTY delivers to EXXONMOBIL pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in COUNTY'S profession. COUNTY shall correct or revise any errors or omissions, at EXXONMOBIL'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by COUNTY without additional compensation.

8. **TAXES.** COUNTY shall not be responsible for paying any taxes on EXXONMOBIL's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, EXXONMOBIL agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. EXXONMOBIL shall not be responsible for paying any taxes on COUNTY's behalf, and should EXXONMOBIL be required to do so by state, federal, or local taxing agencies, COUNTY agrees to promptly reimburse EXXONMOBIL for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

9. **CONFLICT OF INTEREST.** EXXONMOBIL covenants that EXXONMOBIL presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this Agreement. EXXONMOBIL further covenants that in the performance of this Agreement, no person having any such interest shall be employed by EXXONMOBIL. COUNTY covenants that COUNTY presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this Agreement. COUNTY further covenants that in the performance of this Agreement, no person having any such interest shall be employed by COUNTY.

10. **OWNERSHIP OF DOCUMENTS.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion.

11. **INDEMNIFICATION** The COUNTY shall defend, indemnify, and hold EXXONMOBIL, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of COUNTY, its officers, employees or agents.

EXXONMOBIL shall defend, indemnify, and hold COUNTY, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of EXXONMOBIL, its officers, employees or agents.

12. **NONDISCRIMINATION**. COUNTY hereby notifies EXXONMOBIL that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and EXXONMOBIL agrees to comply with said ordinance.

13. **ASSIGNMENT**. COUNTY shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of EXXONMOBIL and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

14. **TERMINATION**. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. EXXONMOBIL shall pay COUNTY for all tests performed up until the date of termination.

15. **SECTION HEADINGS**. The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

16. **SEVERABILITY**. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17. **REMEDIES NOT EXCLUSIVE**. No remedy herein conferred upon or reserved to either party to this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

18. **TIME IS OF THE ESSENCE**. Time is of the essence in this Agreement and each covenant and term is a condition herein.

19. **NO WAIVER OF DEFAULT**. No delay or omission of either party to this Agreement to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to either party to this Agreement shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of that party.

20. **ENTIRE AGREEMENT AND AMENDMENT**. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either

oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

21. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. **COMPLIANCE WITH LAW.** Each party shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of a party in any action or proceeding against such party, whether the other party be a party thereto or not, that the party has violated any such ordinance or statute, shall be conclusive of that fact as between the parties.

23. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

24. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

25. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, each party hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which it is obligated, which breach would have a material effect hereon.

26. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **EXXONMOBIL Medicine and Occupational Health**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

By: _____
Chair, Board of Supervisors

Date: _____

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED AS TO FORM:
ELLIOT SCHULMAN
PUBLIC HEALTH DEPARTMENT

APPROVED AS TO FORM:
RAY AROMATORIO
RISK MANAGEMENT

By: _____
Director Public Health Department

By: _____
Risk Manager

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Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **EXXONMOBIL Medicine and Occupational Health**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

EXXONMOBIL

By: _____

EXXONMOBIL

By: _____

SocSec or TaxID Number: _____

EXHIBIT A

STATEMENT OF WORK

EXXONMOBIL desires testing of its employees for exposure to tuberculosis (TB). The COUNTY agrees that, through its Public Health Laboratory in Santa Barbara, California, it can provide laboratory services of QuantiFeron TB tests.

The COUNTY'S Public Health Laboratory will perform the services subject to and in accordance with the Santa Barbara County Public Health Laboratory's "Laboratory Procedures" manuals, and any applicable federal or state laws and regulations in connection with the work required by this contract including the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 USC 263a. COUNTY will handle and test all specimens in accordance with the technical requirements specified in the Federal Drug Administration (FDA) package insert for the QuantiFeron-TB Gold test kit.

EXXONMOBIL will submit batches in amounts of twenty (20) specimens unless other arrangements are made in advance with COUNTY. EXXONMOBIL will be responsible for delivering the specimens to the COUNTY Public Health Laboratory with delivery of the specimens to take place no later than 2:00 p.m. on the date the specimens are drawn. EXXONMOBIL will handle all specimens in accordance with the conditions specified in the Federal Drug Administration (FDA) package insert for the QuantiFeron-TB Gold test kit.

COUNTY will notify EXXONMOBIL of the results of the tests within five (5) working days from the date the specimens are received by COUNTY. The COUNTY will either electronically transmit or send by certified mail a copy of the test results to a representative of EXXONMOBIL as designated in writing by EXXONMOBIL.

QuantiFeron TB Gold test kits are manufactured in packets of 40 tests. The test kit expires 90 days from date of first use. EXXONMOBIL will reimburse COUNTY at the rate of \$21 per test for all unused tests within an opened kit when the test kit reaches the expiration date.

Contract Summary Form: Cont

- D1. Fiscal Year : 2007-08
- D2. Budget Unit Number (plus -Ship/-Bill codes in paren's)... : 041
- D3. Requisition Number :
- D4. Department Name..... : Public Health Department
- D5. Contact Person : Michael Harris
- D6. Phone : 681 5214

- K1. Contract Type (check one): Personal Service Capital Project/Construction
 - K2. Brief Summary of Contract Description/Purpose : Revenue to County for Quantiferon TB testing
 - K3. Original Contract Amount : \$Fee for service
 - K4. Contract Begin Date..... : March 1, 2007
 - K5. Original Contract End Date..... : June 30, 2008
 - K6. Amendment History (leave blank if no prior amendments):
- | <u>Seq#</u> | <u>EffectiveDate</u> | <u>ThisAmndt</u> | <u>AmtCum</u> | <u>AmndtTo</u> | <u>DateNew</u> | <u>TotalAmt</u> | <u>NewEnd</u> | <u>Date</u> | <u>Purpose (2-4 words)</u> |
|-------------|----------------------|------------------|---------------|----------------|----------------|-----------------|---------------|-------------|----------------------------|
| | | \$ | \$ | | | \$ | | | |

K7. Department Project Number :

- B1. Is this a Board Contract? (Yes/No)..... : Yes
- B2. Number of Workers Displaced (if any)..... : n/a

B3. Number of Competitive Bids (if any).....: n/a
 B4. Lowest Bid Amount (if bid).....: \$n/a
 B5. If Board waived bids, show Agenda Date.....: n/a
 B6. ... and Agenda Item Number.....: #n/a
 B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) : Multiple

F1. Encumbrance Transaction Code.....: 1701
 F2. Current Year Encumbrance Amount.....: \$n/a
 F3. Fund Number.....: 0001
 F4. Department Number.....: 041
 F5. Division Number (if applicable).....: 12
 F6. Account Number.....:
 F7. Cost Center number (if applicable).....: 1485
 F8. Payment Terms.....: Net 30

V1. Vendor Numbers (A=uditor; P=urchasing).....:
 V2. Payee/Contractor Name.....: ExxonMobil Medicine and Occupational Health
 V3. Mailing Address.....: CORP-EMB-3180, 800 Bell Street
 V4. City State (two-letter) Zip (include +4 if known): Houston, TX 77002
 V5. Telephone Number.....: (713) 656 8638
 V6. Contractor's Federal Tax ID Number (EIN or SSN)..:
 V7. Contact Person.....: Margaret A. Carlson
 V8. Workers Comp Insurance Expiration Date.....:
 V9. Liability Insurance Expiration Date[s] (G=enl; P=rofl):
 V10. Professional License Number.....: #
 V11. Verified by (name of County staff).....: Margaret A. Granger
 V12. Company Type (Check one): Individual Sole Proprietorship Partnership Corporation

I certify: information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date : Authorized Signature