

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE  
COUNTY OF EL DORADO**

**AND**

**STATE OF CALIFORNIA, THROUGH THE  
CALIFORNIA DEPARTMENT OF JUSTICE  
(BUREAU OF FORENSIC SERVICES)**

**(FOR ANALYSIS OF DNA SAMPLES USING THE  
EL DORADO COUNTY PROPOSITION 69 MONIES)**

**NO. 571-M1411**

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THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into effective this 1<sup>st</sup> day of June, 2014, between the County of El Dorado, a municipal corporation, hereinafter referred to as "COUNTY", and the State of California through the California Department of Justice, a public entity, hereinafter referred to as "DOJ".

**RECITALS**

WHEREAS, the COUNTY and the DOJ Richmond Laboratory ("DOJ Lab") are desirous of entering into an agreement whereby DOJ Lab performs DNA analysis for the COUNTY pursuant to this MOU; and,

WHEREAS DOJ represents that the current annual cost of a Senior Criminalist is \$164,198.00 ( $\$164,198.00/12 = \$13,683.17$  per month); and by this MOU to allow \$13,683.17 per month to be used for funding the salary, benefits, and operating expenditures of one full-time Senior Criminalist for DNA analysis of El Dorado County evidence starting June 1, 2014, through May 31, 2015. DOJ will also provide quarterly training for law enforcement personnel in the recognition, collection, and proper storage of biological/DNA evidence.

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

1. **Agreement Period**

The period of this MOU is from June 1, 2014, to May 31, 2015. This MOU can be extended with agreement from both parties.

2. **Purpose and Scope of the Program under this MOU**

The purpose of this MOU is for the DOJ Lab to perform DNA analysis, issue reports of those analyses, and testify in court when necessary for the COUNTY. DOJ will also provide quarterly training for law enforcement personnel in the recognition, collection, and proper storage of biological/DNA evidence.

3. **Definitions**

MOU Obligations: DOJ Lab will receive DNA cases delivered to the BFS Richmond Laboratory by law enforcement agencies in El Dorado County. DOJ Lab will perform DNA analysis, issue reports of those analyses, and testify in court when necessary following our policies and procedures. DOJ will also provide quarterly training for law enforcement personnel in the recognition, collection, and proper storage of biological/DNA evidence.

4. **COUNTY Responsibilities**

COUNTY will do the following:

- (a) The COUNTY will reimburse DOJ for the cost of one Senior Criminalist for DNA analysis beginning June 1, 2014, and through May 31, 2015, in the amount of \$13,683.17 per month, not to exceed \$164,198.00 per year.

5. **DOJ Responsibilities**

- (a) Beginning June 1, 2014, provide one (1) Senior Criminal for DNA analysis; and,
- (b) Invoice COUNTY for services performed by one Senior Criminalist within forty-five (45) days following the last day of each month in which the time is worked (see Section 7 below, "Invoicing").

6. All evidence to be submitted to DOJ by El Dorado County Law Enforcement agencies shall be submitted directly by the agencies. However, at the time of submission, case investigators will notify the designated District Attorney liaison of the submission, along with the necessary case information (victim and suspect name, brief statement of facts, summary of items to be submitted and requested analysis). The District Attorney liaison will maintain a log of items submitted for reference by the El Dorado County Sheriff and District Attorney.

Prioritization of work to be done shall be determined jointly by the El Dorado County Sheriff and District Attorney in consultation with the assigned Senior Criminalist and Laboratory Supervisor.

7. **Invoicing**

- (a) Monthly invoices will be submitted to the COUNTY, invoices will be based on actual costs including salary and benefits for a Senior Criminalist.
- (b) The total reimbursement amount under this agreement will not exceed \$164,198.00 per year.
- (c) Indirect costs will not be reimbursed.
- (d) Invoices must be submitted within forty-five (45) days following the last day of each month in which the time is worked. Reimbursement under this agreement is limited to reimbursement of one (1) Senior Criminalist.
- (e) Invoices will be sent to:

El Dorado County Sheriff's Office  
300 Fair Lane  
Placerville, CA 95667  
Attention: Fiscal Administrative Manager

8. **Non-Compliance**

In the case of non-compliance with the terms of this MOU, reimbursement or DOJ Lab services will be stopped until the non-compliance has been resolved.

9. **Termination**

Either party may terminate this MOU with thirty (30) days written notice with or without cause.

## **10. Non-supplanting of State or Local Funds**

- (a) DOJ shall insure that funds made available through this MOU will not supplant state or local funds, but instead will be used to increase the amount of funds that would, in the absence of this MOU, be available from state or local sources for activities funded through this MOU.

## **11. Capacity of Parties**

- (a) In pursuit of this MOU the parties shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the other party. Each party shall retain the right to administer this MOU so as to verify that the other party is performing its obligations in accordance with the terms and conditions there.
- (b) Because of its status as an independent contractor, DOJ, DOJ Lab and each of their officers, agents and employees shall have absolutely no right to employment rights and benefits available to COUNTY employees. Because of its status as an independent contractor, COUNTY and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to DOJ employees. Each party shall be solely liable and responsible for all its respective payroll and tax withholding and for providing to, or on behalf of, its respective employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this MOU, each party shall be solely responsible, indemnify, defend, and save the other party harmless from all matters relating to employment and tax withholding for and payment of their respective employees, including, without limitation: (i) Compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and, (ii) any claim of right or interest in the other party's employment benefits, entitlements, programs and/or funds, offered to employees whether arising by reason of any common law, *de facto*, leased, or co-employee rights or other theory. It is acknowledged that during the term this MOU, DOJ may be providing services to others unrelated to COUNTY or to this MOU. Any Senior Criminalist providing DNA analysis pursuant to this MOU shall remain the employees of DOJ or DOJ Lab, and shall not be employees of COUNTY.

## 12. Assignment

- (a) Neither party shall assign, transfer or sub-contract this MOU, nor their rights or duties under this MOU without the prior written consent of the other party.
- (b) DOJ hereby agrees not to assign the payment of any monies due DOJ Lab from COUNTY under the terms of this MOU to any other individual(s), corporation(s), or entity(ies). COUNTY retains the right to pay any and all monies due DOJ directly to DOJ Lab.

## 13. Insurance and Indemnification

- (a) Without limiting the indemnification below, each party, at its sole expense, shall maintain in full force and affect the following insurance policies or a program of self-insurance, including, but not limited to, an insurance pooling arrangement or Joint Powers Agreement throughout the term of this MOU. Coverage shall be provided for general liability, automobile liability, and workers' compensation. Evidence of insurance shall not be required of either party under this MOU.
- (b) Each party shall indemnify, hold harmless, and at its sole expense defend the other party and each of its officials, officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting from or in connection with the performance, or failure to perform, by the indemnifying party, its officials, officers, agents, or employees under this MOU, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, corporation, or any personal or real property, who/that may be injured or damaged by the performance, or failure to perform, of said indemnifying party, its officials, officers, agents, or employees under this MOU, provided nothing herein shall constitute a waiver by either party of governmental immunities including California Government Code §810, *et. seq.*
- (c) Neither party assumes liability for the acts or omissions of persons other than its own respective officials, officers, agents, and employees.
- (d) In the event of concurrent negligence on the part of both parties or any of their officials, officers, agents, or employees, the liability for any and all costs and expenses, damages, liabilities, claims and losses shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

(e) This section shall survive termination or expiration of this MOU.

14. **Notices**

Any notice required or intended to be given to either party under the terms of this MOU shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by a telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this MOU or at such other addresses as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above-described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. **Binding**

Once this MOU is signed by all parties, it shall be binding upon, and shall insure the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, or representatives.

16. **Compliance with the Law**

Each party shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matters herein.

17. **Waiver**

The waiver by either party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU. No provisions of this MOU may be waived unless in writing and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

18. **Governing Law and Venue**

This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws which would apply the law of another jurisdiction. Venue for purposes of the filing of

any action regarding the enforcement or interpretation of this MOU and any rights and duties hereunder shall be El Dorado County, California.

19. **Headings**

The section "headings" in this MOU are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this MOU.

20. **Severability**

The provisions of this MOU are severable. The invalidity or unenforceability of any one provision of this MOU shall not affect the other provisions.

21. **Interpretation**

The parties acknowledge that this MOU in its final form is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

22. **Cumulative Remedies**

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

23. **Extent of MOU and Certification of Authority**

Each party acknowledges that they have read and fully understand the contents of this MOU and is fully authorized to execute it. This MOU represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This MOU may be modified only by written instrument duly authorized and executed by both COUNTY and DOJ.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the day and year first hereinabove written.

COUNTY OF EL DORADO

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE

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VERN PIERSON  
District Attorney  
El Dorado County

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JOHN YOSHIDA, Bureau Chief  
Bureau of Forensic Services

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NORMA SANTIAGO, Chair  
Board of Supervisors

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LARRY WALLACE, Director  
Division of Law Enforcement

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JOHN D'AGOSTINI, Sheriff  
El Dorado County

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DAVE HARPER, Assistant Director  
Division of Administrative Support

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ED KNAPP, County Counsel  
El Dorado County

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GARY SIMS, Laboratory Director  
Bureau of Forensic Services

Addresses:

El Dorado County Sheriff's Office  
300 Fair Lane  
Placerville, CA 95667  
Attention: Fiscal Administrative Manager

California Department of Justice  
Accounting Services  
P.O. Box 944255  
Sacramento, CA 94244-2550