

FORENSIC DNA TESTING AND LOCAL DATABASE SERVICES AGREEMENT

THIS AGREEMENT is made this ____ day of _____, _____ by and between the City of Greensboro Police Department, (hereinafter called "CITY") and Cellmark Forensics, Inc., (hereinafter called "CELLMARK FORENSICS").

WHEREAS, CELLMARK FORENSICS is engaged in the business of providing forensic DNA testing and local database services; and

WHEREAS, the CITY desires to contract with CELLMARK FORENSICS to provide forensic DNA testing and local database services for the CITY, and CELLMARK FORENSICS desires to provide the services described herein,

IT IS THEREFORE AGREED AS FOLLOWS:

1. **TERM AND TERMINATION**

This Agreement, effective as of _____, shall have an initial term of two (2) years ("Initial Term") with the option to be renewed for an additional one (1) year period ("Renewal Term") at the end of the Initial Term, unless previously terminated by either party. This Agreement may be terminated by either party at any time by giving the other party thirty (30) days prior written notice to the address set forth in Section 7.

2. **SERVICES**

CELLMARK FORENSICS agrees to perform such forensic DNA testing and local database services for the CITY as are ordered by the CITY during the term. Such services shall include DNA forensic testing and local database services as described in Exhibit I (attached hereto), as the same may be modified from time to time by CELLMARK FORENSICS, and such additional services as the parties may agree.

3. **FEES**

CELLMARK FORENSICS agrees to charge, and the CITY agrees to pay, for all forensic DNA testing and local database services, as well as certain other services provided under this Agreement, in the manner and in the amounts set forth in Exhibit II (attached hereto).

4. **BILLING**

CELLMARK FORENSICS will submit to the CITY on or about the fifteenth (15th) of each month an itemized statement of services rendered to the CITY by CELLMARK FORENSICS for the prior month, and the CITY agrees to remit payment to CELLMARK FORENSICS upon receipt of said statement.

5. **CHANGE IN LAW OR REGULATION**

The terms of this Agreement are intended to be in compliance with all federal, state and local statutes, regulations and ordinances applicable on the date the Agreement takes effect. Should legal counsel for either party reasonably conclude that any portion of this Agreement is or may be in violation of such requirements, or subsequent enactment's by federal, state or local authorities, or if any such change or proposed change would materially alter the amount or method of compensating CELLMARK FORENSICS for testing performed for the CITY or for any other party under this or any other Agreement, or would materially increase the cost of CELLMARK FORENSICS's performance hereunder, this Agreement shall terminate upon a thirty (30) day notice thereof to the other party, unless within said thirty (30) day period the parties agree to such modifications of the Agreement as may be necessary to establish compliance with such authorities or to reflect such change in compensation or cost.

6. **NON-ASSIGNABILITY**

This Agreement shall not be assigned, delegated, or transferred by either party without the written consent of the other party. A merger or corporate reorganization shall not be considered an assignment requiring written consent.

7. NOTICES

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail to CELLMARK FORENSICS at:

Cellmark Forensics, Inc.
c/o Laboratory Corporation of America Holdings
1440 York Court
Burlington, NC 27215
Attn: Contract Department

with a copy to:

Laboratory Corporation of America Holdings
531 South Spring Street
Burlington, NC 27215
Attn: Law Department

and to CLIENT at:

Name
Address
City, State, Zip code
Attn:

8. INDEPENDENT RELATIONSHIP

None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship between the CITY and CELLMARK FORENSICS other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective employees shall be construed to be the agent, employer or representative of the other.

9. FORCE MAJEURE

CELLMARK FORENSICS shall not be liable for any claims or damages and shall be excused for such claims, damages, failures and delays in the performance of its obligations under this Agreement due to any act or cause beyond the reasonable control and without the fault of CELLMARK FORENSICS including, without limitation, acts of God such as fire, flood, tornado, earthquake; acts of government (i.e., civil injunctions or enacted statutes and regulations); or acts or events caused by third parties such as riot, strike, power outage or explosion; or the inability due to any of the aforementioned causes to obtain necessary labor or materials.

10. WARRANTY

FORENSIC DNA TESTING

CELLMARK FORENSICS WARRANTS TO CLIENT THAT ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN ACCORDANCE WITH ESTABLISHED AND RECOGNIZED FORENSICS TESTING PROCEDURES AND IN ACCORDANCE WITH APPLICABLE FEDERAL, STATE, AND LOCAL LAWS.

LOCAL DATABASE SERVICES

CELLMARK FORENSICS DISCLAIMS ANY AND ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THE DATABASE PRODUCT, ITS FUNCTIONALITY, ITS USE OF THE INTERNET OR ANY RESULTS PROVIDED FOR THE SERVICES PROVIDED UNDER THIS AGREEMENT.

11. BENEFIT
This Agreement is intended to inure only to the benefit of CELLMARK FORENSICS and the CITY. This Agreement is not intended to create, nor shall be deemed or construed to create, any rights in any third parties.
12. NONDISCRIMINATION
All services provided by CELLMARK FORENSICS hereunder shall be in compliance with all applicable Federal and State laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap or veteran status.
13. HEADINGS
The headings appearing in this Agreement are for convenience and reference only, and are not intended to, and shall not, define or limit the scope of the provisions to which they relate.
14. ENFORCEABILITY/SEVERANCE CLAUSE
The invalidity or unenforceability of any terms or provisions hereto in any jurisdiction shall in no way affect the validity or enforceability of any of the other terms or provisions in that jurisdiction or of the entire Agreement in any other jurisdiction.
15. INTEGRATION
This instrument is intended by the parties as a final expression of their agreement and as a complete statement of the terms thereof, and shall supersede all previous understandings and agreements. The parties shall not be bound by any representation, promise or inducement made by either party or agent of either party that is not set forth in this Agreement. If the terms or conditions contained in any exhibit or attachment to this Agreement or any document incorporated by reference is in conflict with the terms and conditions set forth in the body of the Agreement, the terms and conditions in the Agreement shall control.
16. WAIVER
No course or dealing between the parties or any delay on the part of either party in exercising any rights it may have under this Agreement shall operate as a waiver of any of its rights hereunder. No express waiver shall affect any condition, covenant, rule or regulations other than the one specified in such waiver and only for the time and in the manner specifically stated.
17. MODIFICATION
This Agreement may not be modified except in writing signed by authorized representatives of both parties. All modifications must also be accepted in writing by CELLMARK FORENSICS, Contracts Department. Any purchase order or other document issued by the CITY with respect to the subject matter of this Agreement shall be subject to and governed by the terms and conditions hereof, and the terms and conditions of this Agreement shall supersede any conflicting, different or additional terms and conditions of such purchase order or other document whether or not they would materially alter this Agreement.
18. USE OF NAME
Each party acknowledges that the other has either a proprietary or general interest in its name and reputation. Therefore, each party agrees that it shall not use the other's name nor shall either party mention or describe this Agreement or its relationship with the other party in any press release, advertising, marketing, and promotional materials or other publications or materials without first obtaining the prior written approval from the other party, except where required under applicable law.
19. INDEMNIFICATION
CELLMARK FORENSICS shall indemnify and hold harmless the CITY from and against any and all third party claims, liability, damages, losses and costs arising from the operations and implementation of this Agreement to the extent such liabilities are caused by the negligence or willful misconduct of CELLMARK FORENSICS, its employees or agents.

The CITY shall indemnify and hold harmless CELLMARK FORENSICS from and against any and all third party claims, liability, damages, losses and costs arising from the operation and implementation of this Agreement to the extent such liabilities are caused by the negligence or willful misconduct of the CITY, its employees or agents

Nothing in this Agreement shall be construed to affect in any way CELLMARK FORENSICS' or the CITY's rights, privileges, and immunities or defenses (including but not limited to sovereign immunity), which may exist by statute or common law with regard to any claim, action or cause of action by or on behalf of any third party.

20. APPLICABLE LAW: DISPUTES

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. The venue of any action for any dispute arising under this Agreement shall be in Guilford County, North Carolina.

A party to this Agreement shall not commence legal proceeding against another party to this Agreement for breach or any other legal claim associated with or arising out of this Agreement before first bringing the alleged breach or problem to the other party's attention in writing and seeking mediation.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their names as their official acts by their respective representatives, each of whom is duly authorized to execute the same.

CITY

By: _____
Name: _____ Date: _____
Title: _____

CELLMARK FORENSICS

By: _____
Name: Angie R. Miller Date: _____
Title: Contract Manager

EXHIBIT I

A. BACKGROUND

CELLMARK FORENSICS is a forensic DNA testing laboratory that offers a local databasing service (“BioTracksSM”) for the analysis, storage, search, match, and retrieval of DNA profiles. The CITY will submit DNA profile data to CELLMARK FORENSICS for entry into BioTracksSM where it will be compared to DNA profiles already in the system with the overall objective of generating various types of matches or “HITS” which can be utilized as investigational leads in the CITY’s cases.

B. SERVICES

1. CELLMARK FORENSICS will provide the services described below for the price listed in Exhibit II.
2. Training:
 - a. CITY may elect to have training at the CELLMARK FORENSICS facility in Dallas, Texas, at locations desirable to the CITY, or via web conferencing. A training schedule will be implemented as mutually agreed upon.
 - b. CELLMARK FORENSICS will prepare training materials and conduct training seminars for crime scene investigators, detectives, officers, and others identified by the CITY to address:
 - I. Identification of evidence/sources most likely to yield viable DNA profile;
 - II. DNA reference sample collection, and abandoned property collection, etc.;
 - III. DNA evidence collection techniques;
 - IV. Proper methods for the packaging and submission of evidence, and
 - V. The use of BioTracksSM web interface.
3. Processing Evidence and Reference Samples/Entry and Sharing of DNA Profiles in BioTracksSM
 - a. Evidence, surreptitious and reference sample profiles (hereinafter “samples”) will be collected by the CITY and submitted to CELLMARK FORENSICS for DNA testing. Necessary information for each sample collected will be provided to CELLMARK FORENSICS on electronic and/or paper forms provided by CELLMARK FORENSICS and/or CITY generated forms.
 - b. All chain of custody procedures and forms will be evaluated by the parties and revised as agreed to meet applicable legal and accreditation standards.
 - c. Those profiles that have been determined to be suitable will be entered into the CITY database and searched according to CELLMARK FORENSICS procedures.
 - d. Each party has certain rights, responsibilities and obligations with respect to all reports, profiles or similar related electronic documents, and/or other work products developed by the CELLMARK FORENSICS pursuant to this Agreement shall become the property of CITY and CONTRACTOR. In the event this Agreement is terminated or expires without renewal, the CITY will be allowed to obtain a full copy of all profiles in the database obtained from the CITY’s samples. Except as permitted by law, CELLMARK FORENSICS will not provide the CITY’s DNA profile data to any person or entity outside of the CITY

without the express written consent of the CITY. CELLMARK FORENSICS shall have the right to use the CITY's samples to perform non-consuming tests for system validation purposes that do not disclose DNA profiles or release personally identifiable information. Samples will not be removed from BioTracksSM without written confirmation from the submitting agency.

- e. Improvements to BioTracksSM may be made available to the CITY at no additional charge during the term of this Agreement.
- f. CITY understands that CELLMARK FORENSICS may facilitate the sharing of database information between various jurisdictions. CITY may participate in such sharing and make its information available to or access information from, other jurisdictions by either (1) notifying CELLMARK FORENSICS of a legal arrangement with another jurisdiction for the extension of a Forensics DNA Testing and Local Database Services Agreement ("Piggyback"); or (2) through the completion of CELLMARK FORENSICS standard database sharing form.
 - (1) In the event that CITY intends to allow another jurisdiction to Piggyback on its Forensics DNA Testing and Local Database Services Agreement, then CITY shall notify CELLMARK FORENSICS of such intent, and CELLMARK FORENSICS shall work with the piggybacking jurisdiction ("Piggybacking Jurisdiction") in executing a Memorandum of Understanding or other document that describes the piggybacking services (DNA Testing and Local Database Services), and which allows for full and complete database information to be shared between the jurisdictions.
 - (2) In the event that the CITY desires to allow another jurisdiction to share its "HIT" database information, then the CITY and such other jurisdiction ("Sharing Jurisdiction") shall execute CELLMARK FORENSICS's standard database sharing form, whether a paper copy or electronically, which shall be delivered to CELLMARK FORENSICS, and which authorizes the jurisdictions to mutually share each jurisdiction's "HIT" database information. For purposes of this subsection (2), "database information," shall mean "HIT" information only, and shall not include access to full and complete database information. CITY understands that CELLMARK FORENSICS is not under any obligation to share information unless it has been authorized through the process set forth herein.

CELLMARK FORENSICS assumes no liability or responsibility for how the CITY or any of the CITY's employees or other persons uses the BioTracksSM database, including but not limited to the CITY's use of the BioTracksSM database's capability of sharing DNA database information with other BioTracksSM database participants/users from other jurisdictions (including Piggybacking Jurisdictions and Sharing Jurisdictions). The CITY also agrees that the CITY is solely responsible for communicating any and all sharing requests and/or restrictions. The CITY acknowledges that Sharing Jurisdictions have an independent right to revoke sharing privileges at any time, and furthermore that Piggybacking Jurisdictions have an independent right,

as allowable under applicable law, to terminate its piggybacking contract, which shall also terminate any sharing rights.

The CITY acknowledges and agrees that all rights, title, interest and ownership of the BioTracksSM database shall remain with the CELLMARK FORENSICS and nothing contained in this Agreement shall be construed as transferring any rights, title or interest to the CITY. Furthermore, the CITY acknowledges that each party has certain rights, responsibilities and obligations with respect to the all information transmitted by, received from, or stored in this system.

C. QUALIFICATIONS AND QUALITY ASSURANCE

CELLMARK FORENSICS shall notify CITY immediately upon any change in CELLMARK FORENSICS' accreditation status.

D. BioTracksSM SERVICE/COMPLIANCE WITH APPLICABLE LAW

CITY agrees that it is its sole responsibility to satisfy all applicable federal and state requirements relating to the collection, use, and storage of DNA samples and DNA profiles.

Exhibit II

Fee Schedule

Up-front or set up cost	No Charge
Cost per submission (<i>evidence or presumed knowns</i>)	\$95.00/sample for
Cost per submission (<i>reference samples: standard buccal swab</i>)	\$75.00/sample for
Database maintenance fees	None
Cost associated with database updates	No Charge
Cost per sample to upload RapidHIT samples and search profiles	\$25.00
<i>(Includes: upload, analyze, compare against database and basic reporting of RapidHIT samples)</i>	
Court Testimony (<i>in person</i>).....	\$1,000/day plus travel expenses
Court Testimony (<i>via telephone or video</i>).....	No Charge
Court-ready forensic case report and case file.....	\$500
Expedited analysis (<i>same business day; in by 9 am – report by midnight</i>).....	Additional \$2,400/sample
Expedited analysis (<i>5 business-days</i>)	Additional \$1,000/sample
Expedited analysis (<i>10 business days</i>).....	Additional \$800/sample
Expedited analysis (<i>15 business days</i>).....	Additional \$600/sample
Annual fees	None
Labeled envelopes for collection	\$0.60 each
Shipping of samples	No Charge
<i>(shipping by Federal Express, US Mail, or LabCorp Courier)</i>	
Training (<i>initial session</i>).....	No Charge
Additional Training beyond Initial Session (<i>on-site</i>)	\$2,000/day on-site
Additional Training beyond Initial Session (<i>video or web-based event</i>)	\$250/hour