

FORENSIC DNA TESTING SERVICES AGREEMENT
2018-06-GB-DNA

AGREEMENT MADE by and between the **City of Greensboro for the benefit of the Greensboro Police Department** ("CITY") with its offices located at 300 S. Swing Road, Greensboro, North Carolina 27409 and Bode Cellmark Forensics, Inc., a wholly owned subsidiary of Laboratory Corporation of America Holdings, a Delaware corporation with its primary office located at 10430 Furnace Road, Suite 107, Lorton, Virginia 22079 ("BODE CELLMARK").

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

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

IT IS THEREFORE AGREED AS FOLLOWS:

1. TERM AND TERMINATION

This Agreement shall become **effective as of July 1, 2018 and shall have an initial term of one (1) year ("Initial Term") with the option to be renewed for additional one (1) year periods ("Renewal Term")** if modified in writing signed by authorized representatives of both parties. This Agreement may be terminated by either party at any time upon a thirty (30) day prior written notice to the other party.

2. SERVICES

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

3. FEES

BODE CELLMARK agrees to charge, and the CITY agrees to pay, for all forensic DNA testing 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

BODE CELLMARK will submit to the CITY each month an itemized statement of services rendered to the CITY by BODE CELLMARK for the prior month, and the CITY agrees to remit payment to BODE CELLMARK 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 BODE CELLMARK for testing performed for the CITY or for any other party under this or any other Agreement, or would materially increase the cost of BODE CELLMARK'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 the addresses below:

For BODE CELLMARK:

Bode Cellmark Forensics, Inc.
10430 Furnace Road, Suite 107
Lorton, VA 22079
Attn: Contract Department
contracts@bodetech.com

With a copy to:

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

For the CITY:

City of Greensboro Police Department
300 S. Swing Road
Greensboro, NC 27409
Attn: Kelly Tranter

With a copy to:

City Manager's Office
PO Box 3136
Greensboro, NC 27402-3136

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 BODE CELLMARK 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

BODE CELLMARK 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 BODE CELLMARK 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

BODE CELLMARK WARRANTS TO CLIENT THAT ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN ACCORDANCE WITH ESTABLISHED AND RECOGNIZED FORENSIC TESTING PROCEDURES AND WITH REASONABLE CARE IN ACCORDANCE WITH APPLICABLE FEDERAL, STATE, AND LOCAL LAWS. NO OTHER WARRANTIES ARE MADE BY BODE CELLMARK. IN NO EVENT SHALL EITHER PARTY BE HELD RESPONSIBLE FOR PUNITIVE DAMAGES, OR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING LOST

PROFITS OR REVENUE) INCURRED BY THE OTHER PARTY OR OF ANY THIRD PARTY.

11. BENEFIT

This Agreement is intended to inure only to the benefit of BODE CELLMARK 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 BODE CELLMARK 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 CITY and BODE CELLMARK or any delay on the part of BODE CELLMARK in exercising any rights it may have under this Agreement shall operate as a waiver of any of the rights of BODE CELLMARK hereunder, and no express waiver shall affect any condition, covenant, rule or regulations other than the one specified in such waiver and that one 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 BODE CELLMARK, 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.

19. INDEMNIFICATION

BODE CELLMARK 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 BODE CELLMARK, its employees or agents.

The CITY shall indemnify and hold harmless BODE CELLMARK 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 willful misconduct of the CITY, its employees or agents

Nothing in this Agreement shall be construed to affect in any way BODE CELLMARK's 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.

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.

21. E_VERIFY

The Contractor certifies that it currently complies with the requirements of Article 2 of chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. The Contractor also certifies that it will require that all of its subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. The terms "Contractor", "Sub-Contractor" and "comply" shall have the same meanings intended by Chapter 160A Section 20.1(b) of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Agreement.

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.

BODE CELLMARK:

Signature: _____

Mike Cariola, General Manager

Date: _____

For the CLIENT:

Signature: _____

Wayne Scott, Chief of Police

Date: _____

EXHIBIT I: TECHNICAL SPECIFICATIONS

A. BACKGROUND

BODE CELLMARK is a forensic DNA testing laboratory that offers forensic DNA services to law enforcement agencies. BODE CELLMARK also provides a local databasing service (“BodeHITS”) for the analysis, storage, search, match, and retrieval of DNA profiles. Under this Agreement, the CITY will submit DNA samples for analysis to BODE CELLMARK and notify BODE CELLMARK that the sample will be required to be entered in the Combined DNA Index System (CODIS). BODE CELLMARK will seek approval to process from a CODIS lab prior to processing. Once approved, BODE CELLMARK will initiate testing and generate a report for a NDIS lab to review and enter into CODIS. If applicable, BODE CELLMARK will also ensure the resulting DNA profile will be entered into the CITY’s BodeHITS database, as required pursuant to the current Forensic DNA Testing and Local Database Services Agreement with an effective date of _____ incorporated herein by reference, where it will be compared to DNA profiles already in the system.

B. SERVICES

1. BODE CELLMARK will provide the services described below for the price listed in Exhibit II.
2. 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 BODE CELLMARK pursuant to this Agreement shall become the property of CITY and BODE CELLMARK. 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, BODE CELLMARK will not provide the CLIENT’s DNA profile data to any person or entity outside of the CITY without the express written consent of the CITY. BODE CELLMARK 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 BodeHITS without written confirmation from the submitting agency.

C. QUALIFICATIONS AND QUALITY ASSURANCE

BODE CELLMARK shall maintain ISO/IEC 17025 accreditation. BODE CELLMARK shall notify CITY immediately upon any change in BODE CELLMARKS' accreditation status.

D. 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.

E. TECHNICAL SPECIFICATIONS

1. BODE CELLMARK shall extract DNA, using any validated extraction method from evidentiary items and shall amplify and type using the Promega Fusion[®] kit on the Applied Biosystems 3500xl Genetic Analyzer. The analysis shall be produced using "GeneMapper ID-X" 1.5 (or later version). Alternative suitable amplification kits, CE platforms, and software may be agreed upon.
2. Quantification shall occur via real-time PCR using any validated method.
3. Allele sizes and designations shall be determined with an appropriate internal lane standard and allelic ladder which represents all of the common alleles for that particular locus. BODE CELLMARK shall provide the CODIS lab interpretation guidelines used in the determination of alleles calls and report conclusions. Guidelines should, at a minimum, address the following: (1) all interpretation thresholds (RFU values) including baseline, (2) analytical and stochastic thresholds, (3) peak height imbalance interpretation, and (4) interpretation of controls.
4. All samples regardless of quantification results will be amplified. Allele sizes and designations shall be determined with an appropriate internal lane standard and allelic ladder which represents all of the common alleles for that particular locus.
5. BODE CELLMARK shall issue a signed court-ready report to the CITY lab that includes the agency case number, items tested, analysis results, conclusions with statistical analysis when appropriate, and DNA profile results from each sample. The court-ready report shall be well organized and comprehensible.
6. For cases requiring review by an NDIS laboratory for possible CODIS upload, copies of all extraction, amplification, and electrophoresis information, including electropherograms and raw data, shall be provided to the NDIS lab. All documentation shall be properly labeled in accordance with the FBI Quality Assurance Standards criteria to permit a quality review to be conducted by the NDIS lab. BODE must have approval from an NDIS lab before starting the case if CODIS entry is desired.

EXHIBIT II: FEE SCHEDULE

| Line Item | Services Provided | Discounted Unit Price |
|-----------|---|--|
| | STR DNA Analysis | |
| 1 | Unknown Swabs (non-differential) <i>The unit price applies to each sample that is processed.</i> | \$700.00 Per sample |
| 2 | Sexual Assault Kit sample (differential) <i>The unit price applies to each sample that is processed.</i> | \$1,006.50 Per sample |
| 3 | Known Swabs <i>The unit price applies to each sample that is processed.</i> | \$450.00 |
| | Testimony | |
| 4 | Expert Witness (Video) | \$250/ hr |
| 5 | Expert Witness (On Site) <i>This unit price does not include travel expenses.</i> | \$1,000/ 1 st day \$1,900/ day for additional days Plus travel expenses |
| | <u>Expedited Analysis –</u> <u>SUBJECT TO AVAILABILITY</u> Must be confirmed by the lab prior to testing | |
| 6 | Expedited Analysis – Same day (in by 9am – report by midnight) | Additional \$2,400 Per sample |
| 7 | Expedited Analysis – 5 business days | Additional \$1,000 Per sample |
| 8 | Expedited Analysis – 10 business days | Additional \$800 Per sample |