

**MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN  
THE CITY OF GLENDALE  
AND  
MARICOPA COUNTY ATTORNEY'S OFFICE**

This Memorandum of Understanding (MOU) is made between the City of Glendale, Arizona, acting through the Glendale Police Department (collectively referred to herein as the "Agency"), and Maricopa County, by and through the Maricopa County Attorney's Office ("MCAO").

WHEREAS, sexual assault and abuse have substantial and detrimental effects on the health and general welfare of the people of Maricopa County;

WHEREAS, sexual assault evidence collection kits ("SAKs") are used to collect physical evidence useful in the investigation of instances of sexual assaults and abuse;

WHEREAS, Agency has "Untested SAKs", which are defined for purposes of this MOU as a SAK that has not been analyzed by a forensic lab within 365 days of being booked into law enforcement evidence. SAKs for cases in which the identity of the offender is not an issue, the statute of limitations has expired, or the offender was convicted without DNA evidence still fall under this definition and are not excluded from this MOU. SAKs that have been tested, but have not been tested for the presence of DNA evidence, also fall under the definition of "Untested SAK" and are not excluded. Untested SAKs do not include SAKs in cases where a victim chooses not to report a crime. Such non-reported, unreported, anonymous or "Jane Doe" SAKs should not be tested under the terms of this MOU unless a victim has decided to make a police report at a later time. In addition, the term "Untested SAK" does not include cases where evidence exists that no crime was committed (e.g., the victim recants or video footage exists demonstrating there was no crime).

WHEREAS, MCAO desires to collaborate with the Agency to have Untested SAKs tested and to report the results of such testing as set out in this MOU;

WHEREAS, MCAO has applied for and been awarded a grant ("Grant") from the District Attorney of New York County, State of New York, ("DANY") under the DANY Sexual Assault Kit Backlog Reduction grant program to assist in the reduction of the number of Untested SAKs in Maricopa County;

WHEREAS, pursuant to the program described in the Grant and the grant agreement executed by MCAO and DANY ("Grant Agreement"), the Agency and MCAO desire to cooperate to submit Untested SAKs to an appropriate and accredited commercial laboratory ("Laboratory") so that evidence contained in Untested SAKS can be tested for

the presence of certain biological substances containing Deoxyribonucleic Acid (“DNA”);

WHEREAS, MCAO and the Agency intend that DNA profiles identified by the Laboratory will be submitted to the State of Arizona Department of Public Safety (the “DPS Lab”) for review and potential submission to the Federal Bureau of Investigation’s combined DNA Index System (“CODIS”), to enable the Agency to develop potential investigative leads that could result in the identification of a suspect or suspects of alleged sexual assault, abuse, or other crimes;

WHEREAS, the Agency intends to cooperate with MCAO in prosecution of the suspect or suspects identified as a result of DNA testing by the Laboratory and the further analysis by the DPS Lab of evidence contained in the Untested SAKs;

WHEREAS, pursuant to its statutory mission, MCAO intends to review charges submitted by law enforcement for potential prosecution and take appropriate action;

NOW, THEREFORE, the parties hereto agree to enter into this MOU according to the terms and conditions set forth below.

## **1. DUTIES OF THE AGENCY**

### **1.1. INVENTORY, SELECTION, AND SHIPPING OF UNTESTED SAKs.**

- 1.1.1. **INVENTORY OF UNTESTED SAKs.** The Agency will create an inventory listing, by a mutually agreed upon tracking system of reference numbers or names, the Untested SAKs that the Agency intends to submit to the Laboratory pursuant to this MOU.
- 1.1.2. **SELECTION.** Upon receipt of the inventory described above, MCAO will advise the Agency of the number of Untested SAKs that the Agency is authorized to deliver to the Laboratory for testing as set out in this MOU. MCAO’s duty to pay the Laboratory for testing applies only with respect to (i) the testing functions contemplated by this MOU, and (ii) the Untested SAKs approved by MCAO, in a written communication to the Agency, for shipment to the Laboratory.
- 1.1.3. **FORKLIFT APPROACH.** The Agency shall use a “Forklift Approach” in identifying the Untested SAK for testing under this MOU. “Forklift Approach” means the testing of all Untested SAKs irrespective of the type of kit. Under a “Forklift Approach” Untested SAKs should not be excluded from the sample of

kits to be tested for reasons including: expired statute of limitations, perceived weaknesses in the case, the nature of the victim/defendant relationship, victim cooperation at the time the crime was reported, previous adjudication of the case, or prior forensic testing.

1.1.4. RANDOM SAMPLING OF UNTESTED SAKs. If MCAO authorization for testing pursuant to this MOU applies to fewer than all the Untested SAKs listed in the inventory submitted by the Agency, the Agency will use a random method of selecting the Untested SAKs authorized by MCAO. Only Untested SAKs selected through use of such a Random Sample selection process will be eligible for testing and reporting as set out in this MOU. "Random Sample" means a process of selecting a subset of SAKs in which each kit in the subset has an equal probability of being selected for testing. For example, if the Agency is authorized by MCAO to test one-fourth of its total backlog of Untested SAKs pursuant to this MOU, the Random Sample should include every fourth Untested SAK, and the Agency is not permitted to select intentionally a specific kit for testing. However, notwithstanding the foregoing, specific Untested SAKs may be selected for testing if a statute of limitations will expire within two years; the Agency will notify MCAO of the Untested SAKs selected based on this statute of limitations provision.

1.1.5. SHIPPING. Upon receipt of authorization from MCAO and, if section 1.1.4 above applies, selection of the Untested SAKs to be submitted for testing, the Agency shall ship the Untested SAKs to the Laboratory designated by MCAO.

1.2. RECEIPT AND PROCESSING OF SAKs FOLLOWING LABORATORY TESTING.

Following the testing by the Laboratory, the SAKs shall be delivered to the DPS Lab for further testing. The DPS Lab must approve and comply with the technical specifications to be used in performing DNA analysis by the Laboratory (see the agreements set out in Attachment A for such specifications), take ownership of the data produced, perform technical review(s) of the data according to the FBI DNA Quality Assurance Standards, and provide to the Agency all eligible profiles for entry into CODIS. The Agency shall enter all eligible profiles into CODIS.

1.3. PAYMENTS TO THIRD PARTIES.

1.3.1. PAYMENT FOR SHIPPING OF SAKs. The Agency shall be responsible for payment of all shipping expenses incurred in submitting the Untested SAKs to the Laboratory and for return of the SAKs and results from the Laboratory.

1.3.2. PAYMENT TO THE LABORATORY. MCAO has executed a separate agreement (see Attachment A) with each Laboratory that provides for payment of a fixed amount to cover certain testing functions related to the Untested SAKs. The Agency will be solely responsible for paying the Laboratory for any additional testing or processing relating to the Untested SAKs.

1.3.3. PAYMENT TO THE DPS LAB. Pursuant to an Intergovernmental Agreement between MCAO and the DPS Lab (the "MCAO/DPS IGA"), MCAO shall pay the DPS Lab a fixed amount per SAK for the services provided by the DPS Lab pursuant to the MCAO/DPS IGA and as described in this MOU. MCAO shall not have any duty to pay the DPS Lab any amount in excess of the fixed amount set forth in the MCAO/DPS IGA. The Agency agrees to pay the DPS Lab for any amounts due in excess of the amounts paid by MCAO pursuant to the MCAO/DPS IGA.

1.4. REQUIRED QUARTERLY REPORTS TO MCAO. Not later than January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup>, and October 10<sup>th</sup> of each year through and including October 10, 2019, the Agency shall report the information set out in Attachment B to MCAO, in a format provided by MCAO (which may include separate reporting of cumulative and interim or periodic data), regarding the SAKs tested pursuant to this MOU. The Agency will cooperate with MCAO to provide all data that may be required by DANY.

1.5. TRACKING AND SHARING INFORMATION. The Agency agrees to track and share with MCAO all information regarding the selection, submittal, and processing of SAKs contemplated by this MOU, including inventory, selection, shipping, DNA testing by the Laboratory, receipt and determination of CODIS eligibility by Forensic Services, follow-up investigation by the Agency, and submittal to MCAO for consideration of prosecution.

1.6. TECHNICAL SPECIFICATIONS AND PRESERVING THE CHAIN OF CUSTODY.

The Agency agrees to the Technical Specifications and Chain of Custody provisions set out in Exhibit I of the agreement between MCAO and the Laboratory (see Attachment A). The Chain of Custody protocols for handling SAKs are intended to document and preserve a record of a continuous chain of custody of the evidence contained in the SAKs; such protocols shall include submitting with the Untested SAKs to the Laboratory a manifest of the contents of the package and appropriate supporting documentation.

1.7. RECORD KEEPING AND INSPECTION. The Agency shall maintain current, complete, and accurate records and accounts of all actions, obligations, and expenditures regarding performance of this MOU. The Agency shall permit and have readily available for examination and auditing by MCAO and any of its duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this MOU. The Agency shall maintain all such reports and records until all audits and examinations are completed and resolved, or for a period of six years after termination of this MOU, whichever time period is longer.

**2. DUTIES OF MCAO**

2.1. RECEIPT AND REVIEW OF PROPOSED SUBMISSION OF UNTESTED SAKS.

MCAO shall receive and review the inventory submitted by the Agency, and provide written authorization regarding shipment by the Agency of a certain number, determined by MCAO, of Untested SAKs to the Laboratory.

2.2. PAYMENT TO LABORATORY. Pursuant to MCAO's agreement with the Laboratory (attached hereto as Attachment A), MCAO shall pay the Laboratory a fixed amount for services regarding the Untested SAKs processed by the Laboratory as contemplated by this MOU. MCAO shall not have any duty to pay the Laboratory any amount in excess of the fixed amount set forth in the agreement between MCAO and the Laboratory; if the Agency requests the Laboratory to perform services in addition to those covered by the

agreement between MCAO and the Laboratory, the Agency shall be responsible to pay for such additional services.

- 2.3. PAYMENT TO THE DPS LAB FOR SERVICES AND PROCESSING. Pursuant to the MCAO/DPS IGA, MCAO shall pay the DPS Lab a fixed amount per SAK for the services provided by the DPS Lab pursuant to the MCAO/DPS IGA and as described in this MOU. MCAO shall not have any duty to pay the DPS Lab any amount in excess of the fixed amount set forth in the MCAO/DPS IGA. The Agency agrees to pay the DPS Lab for any amounts due in excess of the amounts paid by MCAO pursuant to the MCAO/DPS IGA.
- 2.4. REPORTING TO DANY. MCAO shall submit the reports to DANY as contemplated by the Grant Agreement.
- 2.5. RECORD KEEPING AND INSPECTION. MCAO shall maintain current, complete, and accurate records and accounts of all actions, obligations, and expenditures regarding performance of this MOU. MCAO shall permit and have readily available for examination and auditing by the Agency and any of its duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this MOU. The MCAO shall maintain all such reports and records until all audits and examinations are completed and resolved, or for a period of six years after termination of this MOU, whichever time period is longer.

### **3. MUTUAL DUTIES AND REPRESENTATIONS.**

- 3.1. INDEMNIFICATION. Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the negligent performance of this Agreement, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
- 3.2. COOPERATION. MCAO and the Agency each agree to cooperate with each other and to participate in actions contemplated by the Grant and this MOU, including but not

limited to participation in any task force organized for purposes of establishing, interpreting, or enforcing protocols for elimination of a backlog of Untested SAKs.

3.3. AUTHORITY TO ENTER INTO AND PERFORM THIS MOU. MCAO and Agency each represent that (i) it has the authority to execute this MOU and perform the obligations and actions contemplated in this MOU; and (ii) it has received all required approvals and authorizations for such execution and performance, and such approvals and authorizations have not been revoked or limited in time or scope.

3.4. AGREEMENT TO USE BEST PRACTICES IN MEETING GOALS OF THE GRANT. MCAO and the Agency each agree to cooperate and use its best efforts to cause the following "best practice" procedures to be implemented: (a) all eligible DNA profiles resulting from SAK testing should be entered into CODIS within a reasonable timeframe, (b) law enforcement agencies and prosecutors should be notified of all CODIS hits that result from such testing so that investigation and where appropriate, prosecution can occur, and (c) a coordinated strategy to notify and engage victims following CODIS hits should be implemented.

#### 4. GENERAL PROVISIONS.

4.1. TIME FOR PERFORMANCE. The submittal of Untested SAKs and the processing and submittal of entries into CODIS shall be completed on or before September 30, 2017. The reporting obligations under this MOU shall continue through and include the final quarterly reporting date of October 10, 2019.

4.2. EXTENSION. This MOU may be extended for up to three one-year increments with the written agreement of the parties. The terms and conditions of this MOU shall remain the same during any extension period.

#### 4.3. TERMINATION.

4.3.1. Termination Without Cause. Either party may terminate this MOU on sixty (60) days' advance written notice.

4.3.2. Termination for Cause. Either party may terminate this MOU for cause if the other party fails to perform the duties set out herein. The non-breaching party shall

provide written notice of termination, which shall be effective thirty (30) days following receipt of such notice.

4.3.3. Continuing Duties Following Termination. Termination shall not excuse or release either party from complying with the provisions of this MOU with respect to SAKs submitted to the Laboratory prior to the termination date. Without limitation, the duties to report and indemnify shall continue to be effective beyond any termination of this MOU.

4.3.4. No Submittal of Untested SAKs Following Notice of Termination. No Untested SAKs shall be submitted to the Laboratory following receipt of notice of termination of this MOU.

4.4. LIMITATION OF MCAO FINANCIAL RESPONSIBILITY. MCAO shall be responsible only for obligations regarding testing and processing of Untested SAKs authorized by MCAO as expressly set out in this MOU.

4.5. NOTICES. Whenever written notice is required or permitted to be given by either party to the other, such notice shall have been deemed to have been delivered and received on the date of personal hand-delivery or five (5) business days following deposit in the United States mail of a properly stamped envelope, certified or registered mail, return receipt requested, containing the notice and addressed to:

For MCAO: Operations Division Chief  
301 W. Jefferson, Suite 800  
Phoenix, AZ 85003

For Agency: Lt. Dave Madeya  
Glendale Police Department  
c/o Glendale Family Advocacy Center  
6830 North 57<sup>th</sup> Drive  
Glendale, Arizona 85301

This MOU is hereby entered into effective on date of the last signature set out below.

CITY OF GLENDALE, BY AND THROUGH  
THE GLENDALE POLICE DEPARTMENT  
("AGENCY")

By: Debra Black  
Name: DEBORA BLACK  
Title: POLICE CHIEF  
Date:

MARICOPA COUNTY, BY AND  
THROUGH THE MARICOPA  
COUNTY ATTORNEY'S OFFICE  
("MCAO")

By: William G. Montgomery CHIEF DEPUTY FOR  
Name: William G. Montgomery  
Title: County Attorney  
Date: 6/6/16

Approved as to legal form and  
as being within the powers and  
authority of the Agency:

By: C. A. McL...  
Legal Counsel to the Agency  
Date:

Approved as to legal form and  
as being within the powers and  
authority of MCAO:

By: Steve C. ...  
Legal Counsel to MCAO  
Date: 05-23-16

ATTEST:  
Janie McCle...  
City Clerk

**Attachment A:  
Agreements between MCAO and Each Laboratory**

## FORENSIC DNA TESTING SERVICES AGREEMENT

THIS AGREEMENT is made as of the Effective Date set out below by and between Maricopa County, Arizona, acting through and on behalf of the Maricopa County Attorney's Office (hereinafter "MCAO") and Sorenson Forensics, LLC (hereinafter called "the PRIVATE LAB").

WHEREAS, sexual assault evidence collection kits ("SAKs") are used to collect physical evidence useful in the investigation of instances of sexual assaults and abuse;

WHEREAS, local jurisdictions within Maricopa County, Arizona, and their respective law enforcement agencies (each an "Agency") have "Untested SAKs", which are defined for purposes of this Agreement as a SAK that has not been analyzed by a forensic services laboratory within 365 days of being booked into law enforcement evidence.

WHEREAS, MCAO has applied for and been awarded a grant ("Grant") from the District Attorney of New York County, State of New York, ("DANY") under the DANY Sexual Assault Kit Backlog Reduction grant program to assist in the reduction of the number of Untested SAKs in Maricopa County;

WHEREAS, pursuant to the program described in the Grant and the grant agreement executed by MCAO and DANY ("Grant Agreement"), the Agencies and MCAO have entered into agreements to cooperate to submit Untested SAKs to private forensic laboratories operated by entities such as the PRIVATE LAB, so that evidence contained in Untested SAKs can be tested for the presence of certain biological substances containing Deoxyribonucleic Acid ("DNA");

WHEREAS, the PRIVATE LAB is engaged in the business of providing forensic DNA testing;  
and

WHEREAS, DANY, in pursuance of its efforts to provide for reduction of backlogs of Untested SAKs, has entered into an agreement with the PRIVATE LAB that describes and provides for pricing of services to be provided by the PRIVATE LAB pursuant to this Agreement

WHEREAS, the MCAO desires to enter into this Agreement with the PRIVATE LAB to provide forensic DNA testing of Untested SAKs submitted to the PRIVATE LAB by the Agencies pursuant to their agreements with MCAO, and the PRIVATE LAB desires to provide the services as described herein, in coordination with the crime laboratories used by the Agencies (an "Agency Crime Lab");

### IT IS THEREFORE AGREED AS FOLLOWS:

1. SERVICES. The PRIVATE LAB agrees to perform such forensic DNA testing and expert testimony services as described in the attached Exhibit I, as the same may be modified from time to time by mutual agreement of the PRIVATE LAB and MCAO.
  - 1.1. NON-EXCLUSIVE AGREEMENT. This is a non-exclusive Agreement. MCAO and the Agencies shall have the right to acquire services from other sources during the term of this Agreement.

2. PRIVATE LAB'S REPRESENTATIONS AND WARRANTIES.

2.1. FORENSIC DNA TESTING. The PRIVATE LAB warrants to MCAO that all services provided hereunder shall be performed in accordance with established and recognized forensics testing standards and procedures and in accordance with applicable federal, state, and local laws.

2.2. PRIVATE LAB'S CAPABILITY AND CAPACITY TO COMPLETE SERVICES. PRIVATE LAB represents and warrants that it has the capability and capacity to provide for the acceptance, testing, and return of up to 3,500 SAKs as contemplated by this Agreement. PRIVATE LAB shall return the SAKs and provide a written report to the Agency Crime Lab detailing the biological screening and DNA testing performed and the results of that testing which will include an interpretive statement for any DNA comparisons with known standards supported by statistical calculations. PRIVATE LAB shall provide completed case files to the Agency Crime Lab within 60 days from receipt of evidence or upon a mutually agreed upon delivery schedule for large bulk shipments of evidence with all such SAKs to be accepted, tested, and returned/shipped to the relevant Agency Crime Labs prior to April 30, 2017. This representation and warranty refers to the PRIVATE LAB's capability and capacity to accept, test, and return SAKs submitted by the Agencies as contemplated by this Agreement, separate from and in addition to any other testing or other activities the PRIVATE LAB may perform for other persons, or for the Agencies pursuant to other agreements between the PRIVATE LAB and one or more Agencies. The PRIVATE LAB understands that time is of the essence, because the testing contemplated by this Agreement is an initial part of a process set out in the Grant Agreement, and that further review, testing, and potential entry into the CODIS data base maintained by law enforcement authorities will be needed regarding the SAKs accepted, tested, and returned by PRIVATE LAB as contemplated in this Agreement.

2.3. PRIVATE LAB'S ACCREDITATION AND QUALITY ASSURANCE. The PRIVATE LAB shall maintain ASCLD/LAB accreditation and maintain ISO/IEC 17025 accreditation. The PRIVATE LAB shall comply with the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories.

2.4. WARRANTY REGARDING CONTAMINATION. PRIVATE LAB shall assess any contamination to determine its possible origin. When possible, samples with sufficient material remaining, will be re-extracted or re-amplified as needed at no additional cost. Any contamination will be documented (to include appropriate corrective action measures taken) and this documentation must accompany the data. If additional sample does not remain or the original results are more complete than additional work performed, results obtained during contamination may be reported (depending on the contamination event). Non-contaminated samples or samples associated with a contaminated blank in a batch may be reported if the contamination event is determined to be a non-systemic single tube event. Please contact MCAO and the relevant Agency Crime Lab as soon as possible when it is determined that a contamination event has taken place to assess how the results will be reported. Cases involving contamination will not be charged to MCAO, the Agency, or the Agency Crime Lab. In addition, they will be re-analyzed if sample permits at no charge.

2.5. WARRANTY REGARDING UNEXPECTED RESULTS. If unexpected DNA results are obtained (e.g. no or partial DNA profile from a bloodstain, etc.), troubleshooting by the PRIVATE LAB will be required prior to returning of DNA data and evidence. If sample

remains (no more than half of the sample will be consumed without the Agency Crime Lab's permission), the PRIVATE LAB will re-analyze the sample. If, based on troubleshooting, it is determined that the PRIVATE LAB extracted an insufficient quantity or encountered an analytical problem that resulted in the inability to obtain a DNA profile, additional testing will be done by the PRIVATE LAB at no charge.

2.6. NO OTHER WARRANTIES. No other warranties are made by PRIVATE LAB.

3. FEES. The PRIVATE LAB agrees to charge, and the MCAO agrees to pay, for all services described in Exhibit I in the manner and in the amounts set forth in the attached Exhibit II.
4. BILLING. The PRIVATE LAB will submit to the MCAO on or about the fifteenth (15th) of each month an itemized statement of services rendered pursuant to this Agreement by the PRIVATE LAB for the prior month, and the MCAO agrees to remit payment to the PRIVATE LAB within sixty (60) days following receipt of said statement.
5. ACCREDITATION OF TESTING SITES. Testing performed hereunder shall be performed at the PRIVATE LAB's forensic DNA testing facility located in Salt Lake City, Utah. The facility is and shall remain a duly licensed forensic laboratory under applicable federal, state and municipal law. Current accreditations and licenses for the facility are available upon request.
6. EFFECTIVE DATE, TERM, AND TERMINATION. This Agreement shall be effective as of the date of the last signature below,
  - 6.1. Termination Without Cause. Either party may terminate this Agreement on sixty (60) days' advance written notice.
  - 6.2. Termination for Cause. Either party may terminate this Agreement for cause if the other party fails to perform the duties set out herein. The non-breaching party shall provide written notice of termination, which shall be effective thirty (30) days following receipt of such notice.
  - 6.3. Continuing Duties Following Termination. Termination shall not excuse or release either party from complying with the provisions of this Agreement with respect to SAKs submitted to the PRIVATE LAB prior to the termination date. Without limitation or exclusion of other duties, the duties to report and indemnify shall continue to be effective beyond any termination of this Agreement.
  - 6.4. No Acceptance of Untested SAKs Following Notice of Termination. PRIVATE LAB shall not accept or begin testing of Untested SAKs submitted to the PRIVATE LAB pursuant to this Agreement following receipt of notice of termination of this Agreement. If such Untested SAKs are received, PRIVATE LAB shall contact MCAO and transfer the Untested SAKs as directed by MCAO.
7. 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 enactments by federal, state or local authorities, or if any such change or proposed change would materially alter the amount or method of compensating the PRIVATE LAB for testing performed pursuant to this Agreement, or would materially increase the cost of the PRIVATE LAB'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.

8. 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.
9. NOTICES. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be hand-delivered (a receipt showing such hand-delivery shall be issued by the receiving party and retained by the delivering party) or sent by postage prepaid certified or registered mail, return receipt requested, to the address set out below. Notices shall be deemed delivered upon delivery or five business days following deposit in the mail, whichever is earlier, and shall be sent to the following addresses:

to the PRIVATE LAB at:

Sorenson Forensics, LLC  
2511 S. West Temple  
Salt Lake City UT 84115  
Attn:

to MCAO at:

Maricopa County Attorney's Office  
301 West Jefferson Street  
Phoenix, AZ 85003  
Attn:

10. 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 MCAO and the PRIVATE LAB 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.
11. FORCE MAJEURE. If either party is prevented from performing any of its obligations under this Agreement due to any cause beyond the party's reasonable control including, without limitation, an act of God, terrorism, fire, flood, earthquake, hurricane, tornado, explosion, war, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers, vandals, or hackers (a "Force Majeure Event") the time for that party's performance will be extended for the period of the delay or inability to perform due to such occurrence; provided, however, that MCAO will not be excused from the payment of any sums of money owed by MCAO to the PRIVATE LAB for services provided prior to the Force Majeure Event and provided further, however, that if a party suffering a Force Majeure Event is unable to cure that event within thirty (30) days of when it first occurred, the other party may immediately terminate this Agreement upon written notice. The foregoing provisions of this section shall not release a party from using its best efforts to avoid or remove such cause for delay nor from immediately notifying the other party, in writing, as soon as it has knowledge of the delay. Further, whenever such cause for delay shall cease to

exist, such party shall also immediately notify the other party in writing and shall continue performance with reasonable promptness.

12. LIMITATION ON LIABILITY. 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.
13. BENEFIT. This Agreement is intended to inure only to the benefit of the PRIVATE LAB and the MCAO. This Agreement is not intended to create, nor shall be deemed or construed to create, any rights in any third parties.
14. NONDISCRIMINATION. All services provided by the PRIVATE LAB 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.
15. 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.
16. 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.
17. 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.
18. WAIVER. No course or dealing between the MCAO and the PRIVATE LAB or any delay on the part of a party in exercising any rights it may have under this Agreement shall operate as a waiver of any of the rights of that party 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.
19. MODIFICATION. This Agreement may not be modified except in writing signed by authorized representatives of both parties. Any other document issued by the PRIVATE LAB or MCAO 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.
20. 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.

21. INDEMNIFICATION. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the negligent performance of this Agreement, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

Nothing in this Agreement shall be construed to affect in any way the PRIVATE LAB's or the MCAO'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.

22. INSURANCE. On or prior to the Effective Date of this Agreement, PRIVATE LAB shall procure and maintain for the duration of this Agreement insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the PRIVATE LAB, its agents, representatives, or employees.

22.1. MINIMUM LIMITS OF COVERAGE. Without limiting any obligations or liabilities, the PRIVATE LAB, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to MCAO. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from MCAO. PRIVATE LAB shall maintain limits no less than:

22.1.1. COMMERCIAL GENERAL LIABILITY. Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Agreement or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Agreement which coverage will be at least as broad as Insurance Service Office policy form CG0001 or its equivalent. In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance. In addition, the retro date shall be no later than the start date of the contract. The retro date shall be disclosed on the certificate of insurance. Such policy shall contain a "severability of interests" provision.

22.1.2. WORKER'S COMPENSATION. The PRIVATE LAB shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of PRIVATE LAB employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

22.1.3. AUTOMOBILE LIABILITY. Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any, hired, and non-owned vehicles assigned to or used in performance of the PRIVATE LAB services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any

replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

- 22.1.4. ADDITIONAL INSURED. The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name MCAO, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the PRIVATE LAB shall be primary insurance. The additional insured wording on the commercial general liability policy will be at least as broad as Insurance Services Office policy forms CG2010 04/13 edition and CG2037 04/13 edition or their equivalent. The additional insured wording on the automobile liability policy will be at least as broad as Insurance Services Office policy form CA 20 48 or its equivalent. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of MCAO for applicable deductible amounts under such policy(s).
- 22.1.5. COVERAGE TERM. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted by MCAO. Failure to do so shall constitute a material breach of this Agreement.
- 22.1.6. PRIMARY COVERAGE. PRIVATE LAB's insurance shall be primary insurance to MCAO, and any insurance or self-insurance maintained by MCAO shall not contribute to it.
- 22.1.7. CLAIM REPORTING. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect MCAO.
- 22.1.8. WAIVER. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against MCAO, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the PRIVATE LAB.
- 22.1.9. DEDUCTIBLE/RETENTION. The policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be disclosed by the PRIVATE LAB and shall not be applicable with respect to the coverage provided to MCAO under such policies. PRIVATE LAB shall be solely responsible for deductible and/or self-insurance retention and MCAO, at its option, may require PRIVATE LAB to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- 22.1.10. CERTIFICATES OF INSURANCE. Prior to commencing work or services under this Contract, PRIVATE LAB shall furnish MCAO with certificates of insurance issued by the PRIVATE LAB's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect. Such certificates shall identify this Agreement by number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to MCAO at the address specified for notices under this Agreement.

22.1.11. COPIES OF POLICIES. MCAO shall have the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. MCAO shall not be obligated, however, to review same or to advise PRIVATE LAB of any deficiencies in such policies and endorsements, and such receipt shall not relieve PRIVATE LAB from, or be deemed a waiver of, MCAO's right to insist on strict fulfillment of PRIVATE LAB's obligations under this Agreement.

23. APPLICABLE LAW; DISPUTES; REMEDIES. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. A party to this Agreement shall not commence legal proceeding against the other party 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 agreeing to an in-person meeting to attempt to resolve the dispute. If such attempt to resolve the dispute is unsuccessful, any legal action relating to this Agreement shall be brought in the Arizona Superior Court for Maricopa County in Phoenix, Arizona. No expression of any remedy in this Agreement shall preclude the availability of any other remedy authorized by law or equity.

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.

Maricopa County, on behalf of and through the Maricopa County Attorney's Office ("MCAO")

By: William G. Montgomery  
Name: William G Montgomery  
Title: County Attorney  
Date: 3-9-16

SORENSEN FORENSICS LLC ("PRIVATE LAB")

By: Douglas R. Lagg  
Name: Douglas R. Lagg  
Title: President & CEO  
Date: 15 March 2016

## EXHIBIT I

### SCOPE OF WORK BIOLOGICAL SCREENING & DNA TESTING SERVICES

PRIVATE LAB shall provide biological screening and DNA testing services on an "as needed" basis for the Agencies. Services shall be performed using procedures validated for forensic casework and generally accepted in the forensic scientific community. Standard operating procedures detailing all procedures used in processing Agency cases shall be available for review at any time. MCAO may designate and assign, as set forth herein or in separate written instructions, certain delivery, receipt, and approval functions to a law enforcement agency ("Agency") or the crime laboratory used by such agency ("Agency Crime Lab"). The responsibilities and tasks required of PRIVATE LAB in providing such services include, but shall not be limited to, the following:

**A. Evidence Handling.** PRIVATE LAB shall provide Chain of Custody (COC) forms and establish sample acceptance procedures that are acceptable to PRIVATE LAB, MCAO, and the Agency Crime Lab. MCAO or the Agency Crime Lab may from time-to-time communicate specific instructions and requests to PRIVATE LAB concerning the performance of the work, which is the subject hereof. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with PRIVATE LAB.

1. All evidence samples shall be delivered to PRIVATE LAB by an Agency or Agency Crime Lab via a shipping carrier with tracking number, such as UPS or FedEx.

2. Case items shall be individually and securely sealed and packaged.

3. A case submission form/manifest shall be included with each delivery of case items to PRIVATE LAB. PRIVATE LAB shall compare the submission form/manifest with items received and inspect all evidence seals within one business day of receiving the samples. PRIVATE LAB shall report to MCAO and the Agency or Agency Crime Lab originating the shipment any manifest inconsistencies or problems with package or seal integrity within two business days of PRIVATE LAB's receipt of samples.

4. PRIVATE LAB shall maintain a complete electronic chain of custody for all samples.

5. At no time will PRIVATE LAB consume more than 50% of any item or sub-sample for DNA extraction unless written permission is first obtained from MCAO or the Agency or Agency Crime Lab originating the shipment explicitly authorizing such consumption.

6. Cases with the oldest date of receipt PRIVATE LAB shall be analyzed first. Upon request submitted by both MCAO and the Agency or Agency Crime Lab originating the shipment, PRIVATE LAB shall test a case out of receipt order.

7. A form of Client Work Processing and Reporting Requirement Sheet will be agreed upon by PRIVATE LAB and MCAO or the Agency or Agency Crime Lab originating the shipment prior to any casework being processed.

## **B. Sexual Assault Evidence Collection Kit Processing**

The following standardize set of processing instructions will be incorporated into our proposed flat rate pricing:

- All evidentiary swabs contained within the sexual assault evidence collection kit will be Y-screened\*. Underwear (only) included in the kit will be processed as needed.

\*Note: PRIVATE LAB Forensics Y-screening method includes both RT-PCR quantification for the presence of male DNA and serological testing for seminal fluid and/or saliva using an immunochromatographic assay.

- Up to 3 STR amplifications/kit will be performed under the proposed plan
  - Single contributor– One evidence sample and one reference sample will be analyzed in our DNA process via STR analysis
  - Multiple contributor – Two evidence samples and one reference sample will be analyzed in our DNA process via STR analysis
  - Includes one round of rework that may include re-extraction or re-amplification, as needed.
  - Acceptable reference samples include Buccal *sample* or blood collection tubes
- All interpretation thresholds (RFU values) including baseline, analytical, stochastic, and stutter filter thresholds.
- Additional items of evidence and additional amplification requests will be subject to additional testing charges (this includes YSTR analysis and additional STR testing requests); no additional testing shall be performed without express written authorization from both MCAO and the Agency Crime Lab that shipped the evidence to PRIVATE LAB.
- Vaginal aspirate shall be stored and shipped back to the Agency Crime Lab frozen unless the PRIVATE LAB appropriately preserves the sample for storage and return at room temperature.
- PRIVATE LAB shall extract DNA from evidentiary items and shall amplify and type using the commercial kit designated by the Agency Crime Lab which will take control of

the data produced by PRIVATE LAB for technical review and CODIS entry. PRIVATE LAB must switch to a kit encompassing the new CODIS core loci designated by the Agency Crime Lab at the time requested by the Agency Crime Lab, or no later than September 30, 2016. Agency Crime Lab will give PRIVATE LAB 30 days' notice prior to switching to kit encompassing new CODIS core loci.

- 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.
- Samples shall be stored and handled in a proper manner to prevent loss, cross transfer, contamination and/or deleterious change.
- Submitting Agencies and their designated labs must accept both the kits and DNA Extracts.
  - Extracted DNA samples shall be returned with the evidence samples to the lab designated by MCAO and/or the submitting Agency on ice. All sample extracts will be returned on ice. Variation from this may result in additional charges.
  - The PRIVATE LAB shall return all samples sealed in their original containers. The acceptable mode of transportation must provide proper ambient conditions to protect the integrity of the samples, safeguard the chain of custody, and assure prompt turnaround.
  - MCAO agrees that Agency Crime Labs will accept processed kits back in as few as 30-days from case review. Variation from this may result in additional charges.
- No hair analysis will be performed

**C. Data Reporting.** PRIVATE LAB shall provide a written report detailing the biological screening and DNA testing performed and the results of that testing which will include an interpretive statement for any DNA comparisons with known standards supported by statistical calculations. PRIVATE LAB shall provide completed case files to the Agency Crime Lab within 60 days from receipt of evidence or upon a mutually agreed upon delivery schedule for large bulk shipments of evidence. PRIVATE LAB shall provide formal pre-trial DNA case consultation at no charge. PRIVATE LAB Forensics will provide trial expert witness testimony services upon request at the prices stated in Exhibit "B". MCAO shall have the right to receive copies of any data reports made by PRIVATE LAB.

PRIVATE LAB will issue a report to MCAO and to the Agency Crime Lab for all cases submitted to the PRIVATE LAB under this Agreement, including the results of male DNA screening.

For all cases, provide for extraction, quantitation, amplification, and electrophoresis information, including electropherograms and raw data, shall be provided to the Agency Crime Lab. In addition to the information set out above, the PRIVATE LAB shall provide to the Agency Crime Lab copies of all communication within the PRIVATE LAB relating to the case work, including without limitation all emails, documentation of technical review, and the State of Arizona Sexual Assault Examination Report. All documentation shall be properly labeled in accordance with ASCLD/LAB criteria and FBI "Quality Assurance Standards for Forensic DNA Testing Laboratories" to permit a quality review to be conducted by Agency Crime Lab personnel.

PRIVATE LAB shall provide to the Agency Crime Lab interpretation guidelines used in the determination of alleles calls and report conclusions. Guidelines should, at a minimum, address the following:

- All interpretation thresholds (RFU values) including baseline, analytical, stochastic, and stutter filter thresholds;
- Peak height imbalance interpretation;
- Interpretation of controls.

D. **Confidentiality.** Case information and test results are confidential criminal justice information. Access to case information and evidence, including sub-samples and DNA extracts, must be controlled by PRIVATE LAB's laboratory and limited to those personnel identified to the MCAO as working under this contract. PRIVATE LAB cannot provide information concerning cases to anyone other than specified representatives of the MCAO; specified representatives of MCAO shall be deemed to include representatives of the Agency or Agency Crime Lab that originated shipment of the relevant case evidence. Any "outside" inquiries related to the processing of samples shall be immediately reported to the MCAO designee.

E. **Subcontracting.** PRIVATE LAB shall not sub-contract any services without prior written permission from the MCAO explicitly stating so. PRIVATE LAB shall be responsible for all payments due to the subcontractor for all tests and analyses performed hereunder and PRIVATE LAB shall be responsible for any amounts paid to the subcontractor that are in excess of the then effective contract rates that the MCAO is required to pay for such tests hereunder.

F. **Testimony and Interviews.** The services set forth below shall be provided by PRIVATE LAB upon request by MCAO for all cases/SAKs analyzed by PRIVATE LAB pursuant to this Agreement, regardless of whether this Agreement is then active or has been terminated, cancelled, or expired:

- One telephonic interview or in-person interview at the PRIVATE LAB site of each analyst or analyst's supervisor involved in processing the case proceeding to court

will be provided by the PRIVATE LAB and paid by MCAO at a rate of \$100 an hour.

- Travel expenses (flight, lodging, and per diem for food) for one witness per case will be provided by the MCAO.
- Expert testimony, to be paid at the rate of \$100 an hour (travel time not included, but time in the courthouse testifying or waiting to testify are included).

**Exhibit II**

**PRICE SCHEDULE**

**I. GENERAL**

A. Prices stated include all costs associated with the performance of the services specified, including materials, supervision, labor, insurance, transportation, delivery, fuel or other surcharges, demurrage, and related costs. No other charges shall be allowed. All prices and fees are stated in U.S. dollars.

B. The Client is exempt from sales, use, and federal excise taxes on these products and/or services.

C. Prices and/or discounts stated shall be firm for the full term of this Agreement.

**II. PRICING**

<b>Service Offering</b>	<b>Contract Price</b>
Flat Rate Sexual Assault Evidence Collection Kit* (Scope of Work detailed below)	<b>\$598.00/kit</b>
Y-screening of additional items of evidence in Sexual Assault Investigation (post-kit analysis)	<b>\$150/item</b>
Additional STR and/or YSTR amplifications (includes data analysis and applicable comparison)	<b>\$180/sample</b>
Rush Service – 10 business day TAT	<b>100% per sample charge</b>
Rush Service – 15 business day TAT	<b>50% per sample charge</b>
Expert Witness Testimony (rate applies to telephonic or in person interview at PRIVATE LAB site, and to onsite services in Arizona) -excludes travel related costs for expert	<b>\$100/hour</b>

\*Flat rate pricing includes the following testing:

- Y-screening of kit contents to include all probative body swabs and underwear (only if included inside the kit)
- Single Contributor Cases – 1 evidence and 1 reference sample will proceed for STR testing
- Multiple Contributor Cases – 2 evidence and 1 reference sample will proceed for STR testing
- NO AMOUNTS IN EXCESS OF THE PRICE PER KIT SET OUT IN THIS EXHIBIT II, ITEM NO. 1 MAY BE CHARGED TO MCAO FOR ANY SERVICE UNLESS MCAO PROVIDES ITS WRITTEN CONSENT TO SUCH ADDITIONAL CHARGE; SUCH CONSENT MUST BE OBTAINED PRIOR TO PERFORMING THE SERVICE FROM WHICH THE ADDITIONAL CHARGE ARISES.

**III. INVOICING AND PAYMENT**

Client shall make payment to Sorenson for all products and/or services provided by Sorenson pursuant to this Agreement. Sorenson shall submit a monthly invoice for Services rendered and Client shall pay the invoiced fee within thirty (30) days after receipt of the invoice by the Client.

Invoices shall be submitted to:

Name/Agency: Maricopa County Attorney's Office

Attention: Gretchen McClellan

Address: 301 W. Jefferson, 5<sup>th</sup> floor

Phoenix AZ 85003

Phone No: 602.506.0041

Email: [mccleg01@mcao.maricopa.gov](mailto:mccleg01@mcao.maricopa.gov)

Two methods of payment are authorized under this Agreement:

By a client check drawn on a U.S. bank, or by a wire transfer to the following Sorenson account:

Account Name: Sorenson Forensics, LLC

Account # 934629692

Routing# 124-001545

ABA# 021000021

Bank Name: JP Morgan Chase Bank, UT

South Salt Lake City Office

Salt Lake City, Utah 84101 USA

## FORENSIC DNA TESTING SERVICES AGREEMENT

THIS AGREEMENT is made as of the Effective Date set out below by and between Maricopa County, Arizona, acting through and on behalf of the Maricopa County Attorney's Office (hereinafter "MCAO") and Bode Cellmark Forensics, Inc. a wholly owned subsidiary of Laboratory Corporation of America Holdings (LabCorp) (hereinafter "BODE CELLMARK").

WHEREAS, sexual assault evidence collection kits ("SAKs") are used to collect physical evidence useful in the investigation of instances of sexual assaults and abuse;

WHEREAS, local jurisdictions within Maricopa County, Arizona, and their respective law enforcement agencies (each an "Agency") have "Untested SAKs", which are defined for purposes of this Agreement as a SAK that has not been analyzed by a forensic services laboratory within 365 days of being booked into law enforcement evidence.

WHEREAS, MCAO has applied for and been awarded a grant ("Grant") from the District Attorney of New York County, State of New York, ("DANY") under the DANY Sexual Assault Kit Backlog Reduction grant program to assist in the reduction of the number of Untested SAKs in Maricopa County;

WHEREAS, pursuant to the program described in the Grant and the grant agreement executed by MCAO and DANY ("Grant Agreement"), the Agencies and MCAO have entered into agreements to cooperate to submit Untested SAKs to private forensic laboratories operated by entities such as BODE CELLMARK, so that evidence contained in Untested SAKs can be tested for the presence of certain biological substances containing Deoxyribonucleic Acid ("DNA");

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

WHEREAS, DANY, in pursuance of its efforts to provide for reduction of backlogs of Untested SAKs, has entered into an agreement with BODE CELLMARK that describes and provides for pricing of services to be provided by BODE CELLMARK pursuant to this Agreement;

WHEREAS, the MCAO desires to enter into this Agreement with BODE CELLMARK to provide forensic DNA testing of Untested SAKs submitted to BODE CELLMARK by the Agencies pursuant to their agreements with MCAO, and BODE CELLMARK desires to provide the services as described herein, in coordination with the crime laboratories used by the Agencies (an "Agency Crime Lab");

IT IS THEREFORE AGREED AS FOLLOWS:

1. SERVICES. BODE CELLMARK agrees to perform such forensic DNA testing and expert testimony services as described in the attached Exhibit I (hereinafter "Services"), as the same may be modified from time to time by mutual agreement of BODE CELLMARK and MCAO.
  - 1.1. NON-EXCLUSIVE AGREEMENT. This is a non-exclusive Agreement. MCAO and the Agencies shall have the right to acquire services from other sources during the term of this Agreement.

2. BODE CELLMARK'S REPRESENTATIONS AND WARRANTIES.

FORENSIC DNA TESTING. BODE CELLMARK warrants to MCAO that all services provided hereunder shall be performed in accordance with established and recognized forensics testing standards and procedures and 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.

2.1. BODE CELLMARK'S ACCREDITATION AND QUALITY ASSURANCE. BODE CELLMARK shall maintain ASCLD/LAB accreditation and maintain ISO/IEC 17025 accreditation. BODE CELLMARK shall comply with the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories.

2.2. NO OTHER WARRANTIES. No other warranties are made by BODE CELLMARK.

3. FEES. BODE CELLMARK agrees to charge, and the MCAO agrees to pay, for all services described in Exhibit I in the manner and in the amounts set forth in the attached Exhibit II.
4. BILLING. BODE CELLMARK will submit to the MCAO on or about the fifteenth (15th) of each month an itemized statement of services rendered pursuant to this Agreement by BODE CELLMARK for the prior month, and the MCAO agrees to remit payment to BODE CELLMARK within ninety (90) days following receipt of said statement.
5. ACCREDITATION OF TESTING SITES. Testing performed hereunder shall be performed at BODE CELLMARK'S forensic DNA testing facility located in Lorton, Virginia. The facility is and shall remain a duly licensed forensic laboratory under applicable federal, state and municipal law. Current accreditations and licenses for the facility are available upon request.
6. EFFECTIVE DATE, TERM AND TERMINATION. This Agreement shall be effective as of the date of the last signature below,
- 6.1. Termination Without Cause. Either party may terminate this Agreement upon sixty (60) days' advance written notice to the other party.
- 6.2. Termination for Cause. Either party may terminate this Agreement for cause if the other party fails to perform the duties set out herein. The non-breaching party shall provide written notice of termination, which shall be effective thirty (30) days following receipt of such notice.
- 6.3. Continuing Duties Following Termination. Termination shall not excuse or release either party from complying with the provisions of this Agreement with respect to SAKs submitted to BODE CELLMARK prior to the effective date of the termination. Without limitation or exclusion of other duties, the duties to report and indemnify shall continue to be effective beyond any termination or expiration of this Agreement.

6.4. No Acceptance of Untested SAKs Following Notice of Termination. BODE CELLMARK shall not accept or begin testing of Untested SAKs submitted to BODE CELLMARK pursuant to this Agreement following receipt of notice of termination of this Agreement. If such Untested SAKs are received, BODE CELLMARK shall contact MCAO and transfer the Untested SAKs as directed by MCAO.

7. 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 enactments 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 pursuant to this 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.
8. 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.
9. NOTICES. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be hand-delivered (a receipt showing such hand-delivery shall be issued by the receiving party and retained by the delivering party) or sent by postage prepaid certified or registered mail, return receipt requested, to the address set out below. Notices shall be deemed delivered upon delivery or five business days following deposit in the mail, whichever is earlier, and shall be sent to the following addresses:

to BODE CELLMARK at:

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

with a copy to:

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

to MCAO at:

Maricopa County Attorney's Office  
301 West Jefferson Street  
Phoenix, AZ 85003  
Attn:

10. 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 MCAO 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.
11. FORCE MAJEURE. If either party is prevented from performing any of its obligations under this Agreement due to any cause beyond the party's reasonable control including, without limitation, an act of God, terrorism, fire, flood, earthquake, hurricane, tornado, explosion, war, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers, vandals, or hackers (a "Force Majeure Event") the time for that party's performance will be extended for the period of the delay or inability to perform due to such occurrence; provided, however, that MCAO will not be excused from the payment of any sums of money owed by MCAO to BODE CELLMARK for services provided prior to the Force Majeure Event and provided further, however, that if a party suffering a Force Majeure Event is unable to cure that event within thirty (30) days of when it first occurred, the other party may immediately terminate this Agreement upon written notice. The foregoing provisions of this section shall not release a party from using its best efforts to avoid or remove such cause for delay nor from immediately notifying the other party, in writing, as soon as it has knowledge of the delay. Further, whenever such cause for delay shall cease to exist, such party shall also immediately notify the other party in writing and shall continue performance with reasonable promptness.
12. LIMITATION ON LIABILITY. 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.
13. BENEFIT. This Agreement is intended to inure only to the benefit of BODE CELLMARK and the MCAO. This Agreement is not intended to create, nor shall be deemed or construed to create, any rights in any third parties.
14. 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.
15. 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.
16. 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.
17. 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.

18. WAIVER. No course or dealing between the MCAO and BODE CELLMARK or any delay on the part of a party in exercising any rights it may have under this Agreement shall operate as a waiver of any of the rights of that party 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.
19. MODIFICATION. This Agreement may not be modified except in writing signed by authorized representatives of both parties. Any other document issued by BODE CELLMARK or MCAO 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.
20. 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.
21. INDEMNIFICATION. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all third party claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the negligent performance of this Agreement, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

Nothing in this Agreement shall be construed to affect in any way BODE CELLMARK'S or the MCAO'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.

22. INSURANCE. On or prior to the Effective Date of this Agreement, BODE CELLMARK shall procure and maintain for the duration of this Agreement insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by BODE CELLMARK, its agents, representatives, or employees.
  - 22.1. MINIMUM LIMITS OF COVERAGE. Without limiting any obligations or liabilities, BODE CELLMARK, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to MCAO. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from MCAO. BODE CELLMARK shall maintain limits no less than:
    - 22.1.1. COMMERCIAL GENERAL LIABILITY. Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Agreement or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products,

completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Agreement which coverage will be at least as broad as Insurance Service Office policy form CG0001 or its equivalent. In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance. In addition, the retro date shall be no later than the start date of the contract. The retro date shall be disclosed on the certificate of insurance. Such policy shall contain a "severability of interests" provision.

- 22.1.2. WORKER'S COMPENSATION. BODE CELLMARK shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of BODE CELLMARK employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.
- 22.1.3. ADDITIONAL INSURED. The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name MCAO, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded BODE CELLMARK shall be primary insurance. The additional insured wording on the commercial general liability policy will be at least as broad as Insurance Services Office policy forms CG2010 04/13 edition and CG2037 04/13 edition or their equivalent. The additional insured wording on the automobile liability policy will be at least as broad as Insurance Services Office policy form CA 20 48 or its equivalent. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of MCAO for applicable deductible amounts under such policy(s).
- 22.1.4. COVERAGE TERM. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted by MCAO. Failure to do so shall constitute a material breach of this Agreement.
- 22.1.5. PRIMARY COVERAGE. BODE CELLMARK'S insurance shall be primary insurance to MCAO, and any insurance or self-insurance maintained by MCAO shall not contribute to it.
- 22.1.6. CLAIM REPORTING. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect MCAO.
- 22.1.7. WAIVER. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against MCAO, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of BODE CELLMARK.
- 22.1.8. DEDUCTIBLE/RETENTION. The policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be disclosed by BODE CELLMARK and shall not be applicable with respect to the coverage provided to MCAO under such policies. BODE CELLMARK shall be solely responsible for deductible and/or self-insurance retention and MCAO, at its option, may

require BODE CELLMARK to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

22.1.9. CERTIFICATES OF INSURANCE. Prior to commencing work or services under this Contract, BODE CELLMARK shall furnish MCAO with certificates of insurance issued by BODE CELLMARK'S insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect. Such certificates shall identify this Agreement by number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to MCAO at the address specified for notices under this Agreement.

22.1.10. COPIES OF POLICIES. MCAO shall have the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. MCAO shall not be obligated, however, to review same or to advise BODE CELLMARK of any deficiencies in such policies and endorsements, and such receipt shall not relieve BODE CELLMARK from, or be deemed a waiver of, MCAO's right to insist on strict fulfillment of PRIVATE LAB's obligations under this Agreement.

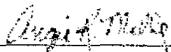
23. APPLICABLE LAW; DISPUTES; REMEDIES. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. A party to this Agreement shall not commence legal proceeding against the other party for breach or any other legal claim associated with or arising out of this Agreement before first bringing the alleged breach or problem to the other party's attention in writing and agreeing to an in-person meeting to attempt to resolve the dispute. If such attempt to resolve the dispute is unsuccessful, any legal action relating to this Agreement shall be brought in the Arizona Superior Court for Maricopa County in Phoenix, Arizona. No expression of any remedy in this Agreement shall preclude the availability of any other remedy authorized by law or equity.

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.

Maricopa County, on behalf of and through the Maricopa County Attorney's Office ("MCAO")

By:   
Name: William G. Montgomery  
Title: Maricopa County Attorney  
Date: 5-23-16

Bode Cellmark Forensics, Inc. ("BODE CELLMARK")

By:   
Name: Angie R. Miller  
Title: Contract Manager  
Date: April 29, 2016

## EXHIBIT I

### SCOPE OF WORK BIOLOGICAL SCREENING & DNA TESTING SERVICES

BODE CELLMARK shall provide biological screening and DNA testing services on an "as needed" basis for the Agencies. Services shall be performed using procedures validated for forensic casework and generally accepted in the forensic scientific community. Standard operating procedures detailing all procedures used in processing Agency cases shall be available for review at any time. MCAO may designate and assign, as set forth herein or in separate written instructions, certain delivery, receipt, and approval functions to a law enforcement agency ("Agency") or the crime laboratory used by such agency ("Agency Crime Lab"). The responsibilities and tasks required of BODE CELLMARK in providing such services include, but shall not be limited to, the following:

BODE CELLMARK shall return the SAKs and provide a written report to the Agency Crime Lab detailing the biological screening and DNA testing performed and the results of that testing which will include an interpretive statement for any DNA comparisons with known standards supported by statistical calculations. BODE CELLMARK shall provide completed case files to the Agency Crime Lab upon a mutually agreed upon delivery schedule for large bulk shipments of evidence with all such SAKs to be accepted, tested, and returned/shipped to the relevant Agency Crime Labs prior to April 30, 2017 or a mutually agreed upon date. BODE CELLMARK reserves the right to not accept shipments if shipment is beyond an agreed upon schedule.

BODE CELLMARK will consult with MCAO and the Agency Crime Lab and a delivery schedule will be agreed upon and confirmed in writing (email communication is acceptable) prior to shipment of SAKs to BODE CELLMARK.

**A. Evidence Handling.** BODE CELLMARK shall provide Chain of Custody (COC) forms and establish sample acceptance procedures that are acceptable to BODE CELLMARK, MCAO, and the Agency Crime Lab. MCAO or the Agency Crime Lab may from time-to-time communicate specific instructions and requests to BODE CELLMARK concerning the performance of the work, which is the subject hereof. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with BODE CELLMARK.

1. All evidence samples shall be delivered to BODE CELLMARK by an Agency or Agency Crime Lab via a shipping carrier with tracking number, such as UPS or FedEx.
2. Case items shall be individually and securely sealed and packaged.
3. A case submission form/manifest shall be included with each delivery of case items to BODE CELLMARK. BODE CELLMARK shall compare the submission form/manifest with items received and inspect all evidence seals within one business day of receiving the

samples. BODE CELLMARK shall report to MCAO and the Agency or Agency Crime Lab originating the shipment any manifest inconsistencies or problems with package or seal integrity within two business days of BODE CELLMARK's receipt of samples.

4. BODE CELLMARK shall maintain a complete electronic chain of custody for all samples.

5. At no time will BODE CELLMARK consume more than 50% of any item or sub-sample for DNA extraction unless written permission is first obtained from MCAO or the Agency or Agency Crime Lab originating the shipment explicitly authorizing such consumption.

6. Cases with the oldest date of receipt BODE CELLMARK shall be analyzed first. Upon request submitted by MCAO or the Agency or Agency Crime Lab originating the shipment, BODE CELLMARK shall test a case out of receipt order.

7. A form of Client Work Processing and Reporting Requirement Sheet will be agreed upon by BODE CELLMARK and MCAO or the Agency or Agency Crime Lab originating the shipment prior to any casework being processed.

#### **B. Sexual Assault Evidence Collection Kit Processing**

The following standardize set of processing instructions will be incorporated into our proposed flat rate pricing:

- All evidentiary swabs contained within the sexual assault evidence collection kit will be Y-screened\*. Underwear (only) included in the kit will be processed at an additional charge, but such additional charge may be collected from MCAO only as set out in Exhibit II.

\*Note: BODE CELLMARK Forensics Y-screening method includes both RT-PCR quantification for the presence of male DNA and, if requested, serological testing (at an additional charge at the BODE CELLMARK published list price) for seminal fluid and/or saliva using an immunochromatographic assay. Additional testing is only to be done with the approval of MCAO.

- Up to 3 STR amplifications/kit will be performed under the proposed plan
  - Single contributor– One evidence sample and one reference sample will be analyzed in our DNA process via STR analysis
  - Multiple contributor – Two evidence samples and one reference sample will be analyzed in our DNA process via STR analysis
  - Includes one round of rework that may include re-extraction or re-amplification, as needed.

- Acceptable reference samples include Buccal *sample* or blood collection tubes
- All interpretation thresholds (RFU values) including baseline, analytical, stochastic, and stutter filter thresholds.
- Additional items of evidence and additional amplification requests will be subject to additional testing charges (this includes YSTR analysis and additional STR testing requests); no additional testing shall be performed without express written authorization from both MCAO and the Agency Crime Lab that shipped the evidence to BODE CELLMARK.
- Vaginal aspirate shall be stored and shipped back to the Agency Crime Lab frozen unless BODE CELLMARK appropriately preserves the sample for storage and return at room temperature.
- BODE CELLMARK shall extract DNA from evidentiary items and shall amplify and type using the commercial kit designated by the Agency Crime Lab which will take control of the data produced by BODE CELLMARK for technical review and CODIS entry. BODE CELLMARK must switch to a kit encompassing the new CODIS core loci designated by the Agency Crime Lab at the time requested by the Agency Crime Lab, or no later than September 30, 2016. Agency Crime Lab will give BODE CELLMARK 30 days' notice prior to switching to kit encompassing new CODIS core loci. Cases already in progress at time of notification can be completed utilizing initial commercial kit.
- 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.
- Samples shall be stored and handled in a proper manner to prevent loss, cross transfer, contamination and/or deleterious change.
- Submitting Agencies and their designated labs must accept both the kits and DNA Extracts.
  - Extracted DNA samples shall be returned with the evidence samples to the lab designated by MCAO and/or the submitting Agency on ice. All sample extracts will be returned on ice. Variation from this may result in additional charges.
  - BODE CELLMARK shall return all samples sealed in their original containers. The acceptable mode of transportation must provide proper ambient conditions to protect the integrity of the samples, safeguard the chain of custody, and assure prompt turnaround.

- MCAO agrees that Agency Crime Labs will accept processed kits back in as few as 30-days from case review. Variation from this may result in additional charges.

No hair analysis will be performed.

- **CONTAMINATION:** BODE CELLMARK shall assess any contamination to determine its possible origin. When possible, samples with sufficient material remaining, will be re-extracted or re-amplified as needed at no additional cost. Any contamination will be documented (to include appropriate corrective action measures taken) and this documentation must accompany the data. If additional sample does not remain or the original results are more complete than additional work performed, results obtained during contamination may be reported (depending on the contamination event). Non-contaminated samples or samples associated with a contaminated blank in a batch may be reported if the contamination event is determined to be a non-systemic single tube event. Reporting of results associated with a contamination event must follow BODE CELLMARK'S Quality System and guidelines. Please contact MCAO and the relevant Agency Crime Lab as soon as possible when it is determined that a contamination event has taken place to assess how the results will be reported. In the event that a sample cannot be reported due to contamination, the sample will not be charged to MCAO, the Agency, or the Agency Crime Lab in so far as the contamination event is caused by the negligence, mishandling, or willful misconduct of BODE CELLMARK.

**C. Data Reporting.** BODE CELLMARK shall provide a written report detailing the biological screening and DNA testing performed and the results of that testing which will include an interpretive statement for any DNA comparisons with known standards supported by statistical calculations. BODE CELLMARK shall provide completed case files to the Agency Crime Lab within 60 days from receipt of evidence or upon a mutually agreed upon delivery schedule for large bulk shipments of evidence. BODE CELLMARK shall provide formal pre-trial DNA case consultation at no charge. BODE CELLMARK Forensics will provide trial expert witness testimony services upon request at the prices stated in Exhibit "B". MCAO shall have the right to receive copies of any data reports made by BODE CELLMARK.

BODE CELLMARK will issue a report to MCAO and to the Agency Crime Lab for all cases submitted to the BODE CELLMARK under this Agreement, including the results of male DNA screening.

For all cases, provide for extraction, quantitation, amplification, and electrophoresis information, including electropherograms and raw data, shall be provided to the Agency Crime Lab. In addition to the information set out above, BODE CELLMARK shall provide to the Agency Crime Lab copies of all communication within BODE CELLMARK relating to the case work, including without limitation all emails, documentation of technical review, and the State of Arizona Sexual Assault Examination Report. All documentation shall be properly labeled in accordance with ASCLD/LAB criteria and FBI "Quality Assurance Standards for Forensic DNA Testing Laboratories" to permit a quality review to be conducted by Agency Crime Lab personnel.

BODE CELLMARK shall provide to the Agency Crime Lab interpretation guidelines used in the determination of alleles calls and report conclusions. Guidelines should, at a minimum, address the following:

- All interpretation thresholds (RFU values) including baseline, analytical, stochastic, and stutter filter thresholds;
- Peak height imbalance interpretation;
- Interpretation of controls.

**UNEXPECTED RESULTS:** If unexpected DNA results are obtained (e.g. no or partial DNA profile from a bloodstain, minor male in sperm fraction of 2+ or greater sperm sample, etc.), troubleshooting by BODE CELLMARK will be required prior to returning of DNA data and evidence. If sample remains (no more than half of the sample will be consumed without the Agency Crime Lab's permission), BODE CELLMARK will re-analyze the sample. If, based on troubleshooting, it is determined that BODE CELLMARK extracted an insufficient quantity or encountered an analytical problem that resulted in the inability to obtain a DNA profile, additional testing will be done by BODE CELLMARK at no charge.

**D. Confidentiality.** Case information and test results are confidential criminal justice information. Access to case information and evidence, including sub-samples and DNA extracts, must be controlled by BODE CELLMARK's laboratory and limited to those personnel identified to the MCAO as working under this contract. BODE CELLMARK cannot provide information concerning cases to anyone other than specified representatives of the MCAO; specified representatives of MCAO shall be deemed to include representatives of the Agency or Agency Crime Lab that originated shipment of the relevant case evidence. Any "outside" inquiries related to the processing of samples shall be immediately reported to the MCAO designee.

**E. Subcontracting.** BODE CELLMARK shall not sub-contract any services without prior written permission from the MCAO explicitly stating so. BODE CELLMARK shall be responsible for all payments due to the subcontractor for all tests and analyses performed hereunder and BODE CELLMARK shall be responsible for any amounts paid to the subcontractor that are in excess of the then effective contract rates that the MCAO is required to pay for such tests hereunder.

**F. Testimony and Interviews.** The services set forth below shall be provided by BODE CELLMARK upon request by MCAO for all cases/SAKs analyzed by BODE CELLMARK pursuant to this Agreement, regardless of whether this Agreement is then active or has been terminated, cancelled, or expired:

- One telephonic interview or in-person interview at the BODE CELLMARK site of each analyst or analyst's supervisor involved in processing the case proceeding to court will be provided by BODE CELLMARK and paid by MCAO at a rate of \$100 an hour.

- Travel expenses (flight, lodging, and per diem for food) for one witness per case will be provided by the MCAO.
- Expert testimony, to be paid at the rate of \$100 an hour (travel time not included, but time in the courthouse testifying or waiting to testify are included).

## Exhibit II

### PRICING PROVISIONS:

1. The price per kit will be \$625/ kit with project completion in 12-24 months. A \$20/ kit surcharge will be applied to processing with a 24 loci kit.

NO AMOUNTS IN EXCESS OF THE PRICE PER KIT SET OUT IN THIS EXHIBIT II, ITEM NO. 1 MAY BE CHARGED TO MCAO FOR ANY SERVICE UNLESS MCAO PROVIDES ITS WRITTEN CONSENT TO SUCH ADDITIONAL CHARGE; SUCH CONSENT MUST BE OBTAINED PRIOR TO PERFORMING THE SERVICE FROM WHICH THE ADDITIONAL CHARGE ARISES.

2. If the technical specifications are modified to the workflow, the Price per kit will be subject to change.
3. If the submitting MCAO requires serology, an additional serology fee will be applied. Any changes to price as a result of a process modification will be quoted prior to processing.
4. Pricing is based on Direct to DNA screening all evidentiary swabs and STR testing one sample, the most probative/male DNA positive unknown sample.
5. For SAK kits that have multiple alleged perpetrators, recent consensual sex reported (within 120 hours), have a female assailant, or are male-to-male crime, additional testing may be necessary. Pricing includes testing up to 3 samples for these circumstances.
6. New York District Attorney (DANY) will only pay for the testing of the swabs to include the victim's reference. Additional samples are \$195/sample.
7. "Unused" STR tests from one case cannot be applied to another case.

**Attachment B:  
Information to be Reported Pursuant to the DANY  
Sexual Assault Kit Backlog Elimination Grant Program**

**Quarterly Performance Metrics Report**

**Definitions**

- In a “Forensic Hit” or “Case to Case Match,” the new profile matches DNA from another forensic sample.
- In an “Offender/Arrestee Hit” or “Match to a Known Offender,” the new profile matches the DNA of an offender or arrestee profile already in CODIS (i.e. the match is to a sample in the offender index).
- In a “Confirmatory Hit,” the profile matches with the previously named suspect.
- A “John Doe” warrant or indictment is intended to stop the statute of limitations for an unknown offender.

**Baseline Information:**

1. Agency Name
2. How many kits did Agency apply for to test under this MOU?
3. Have the kits that will be tested under this MOU been fully inventoried? (Yes/No)
  - a. If no, how is your inventory process progressing?
4. What is the Agency’s policy for notifying victims following a CODIS hit? (Please note any trends that the Agency observed in victim response and lessons learned from the Agency’s. If some victims chose not to cooperate with law enforcement following notification, please describe any reasons they gave.)

For all the following questions, the Agency should please report only activity that occurred during the most recent quarter.

**Data to be completed by the Agency:**

1. The number of Untested SAKs that qualify for the Grant (this will be set out in the inventory described in the MOU).
2. The number of Untested SAKs submitted to Laboratory for testing.
3. The number of SAKs that produced a CODIS eligible profile.
4. The number of DNA profiles entered into CODIS.
5. The number of hits in CODIS.
6. The number of “Forensic” or “Case to “Case” matches.

7. The number of “Offender/Arrestee hits” or “Matches to Known Offenders”.
8. The number of “Confirmatory Hits”.
9. The number of CODIS hits that match to a profile associated with another sexual assault case.
10. The number of victims the Agency attempted to notify following a CODIS hit.
11. The number of victims the Agency successfully notified following a CODIS hit.
12. The number of cases the Agency re-opened (or opened for the first time) as a result of identification through CODIS (a “CODIS hit”) based on a DNA profile resulting from the testing contemplated by this MOU.
13. The number of cases beyond the statute of limitations.
14. The number of arrests made as a result of a CODIS hit.

**Testing Data (to be completed by the DPS Lab):**

1. Number of kits submitted for testing
2. Number of kits that did not generate any or sufficient DNA for upload
3. Number of kits that produced a CODIS eligible profile

**Programmatic Information to be completed by the Agency:**

1. How has your jurisdiction coordinated with the other agencies within your multi-disciplinary strategy this quarter? (Please include the number of stakeholder meetings held and the agencies that participated. Include examples of successful coordination among agencies in your jurisdiction as a result of this project, as well as any challenges that you have faced.)
2. Are all kits associated with a reported crime now submitted to the lab? Are all such kits tested as they come in? If not, what is the practice?
3. Would your jurisdiction potentially benefit by and utilize training and technical assistance in any of the following areas if it were available? Check all that apply.
  - a. CODIS functionality
  - b. The forklift approach
  - c. Best practices training for law enforcement
  - d. Best practices training for hospital staff
  - e. Best practices training for victim services staff
  - f. Best practice training for prosecutors

- g. Interagency coordination
- h. Identifying additional funding sources
- i. Organizational consulting or assistance with process efficiency
- j. Other \_\_\_\_\_

**Prosecution-related Data (to be completed by MCAO):**

1. Number of felony prosecutions commenced
  - a. Number of prosecutions commenced with homicide as the top charge
  - b. Number of prosecutions commenced with felony sexual assault as the top charge
  - c. Number of prosecutions commenced with felony burglary as the top charge
  - d. Number of prosecutions commenced with felony robbery as the top charge
  - e. Number of prosecutions commenced with another felony as the top charge
2. Number of misdemeanor prosecutions commenced
3. Number of "John Doe" warrants or indictments obtained
4. Number of cases that resulted in a felony conviction
5. Number of cases that resulted in a misdemeanor conviction
6. Number of cases that resulted in a sexual assault conviction
7. Number of cases that resulted in an acquittal (on all charges)
8. Number of cases that resulted in a dismissal (on all charges)
9. Number of cases in which the CODIS hit identified a different assailant than the one originally named or prosecuted
10. Number of exonerations