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## I. SERVICES

Service Provider shall provide services *as an independent contractor* pursuant to terms and policies of the Williamson County Commissioners Court. Service Provider expressly acknowledges that he, she or it is not an employee of the County. The services to be provided by Service Provider hereunder are described in the attached Exhibit “A” - Contract Investigator Project Description and Scope of Services, which is incorporated herein as if copied in full (collectively referred to herein as the “Services”).

Should the County choose to add services in addition to those described above, such Additional Services shall be described in a separate written amendment to this Contract wherein the Additional Services shall be described and the parties shall set forth the amount of compensation to be paid by the County for the Additional Services. Service Provider shall not begin any Additional Services and the County shall not be obligated to pay for any Additional Services unless a written amendment to this Contract has been signed by both parties.

## II. COMPLETION

The Services shall be completed according to the timeframes set forth in Exhibit “A” and all such Services shall fully and finally completed within **Ninety (90) business days** from the date the Services are commenced; provided, however, the County may extend said time period in the event the County deems such extension is necessary. Service Provider shall commence the

Services upon instruction to do so from the Williamson County District Attorney. The County shall, at its sole discretion, determine when the project has been fully and finally completed to its satisfaction.

### **III. COMPENSATION, NOT-TO-EXCEED FEE AND PAYMENT**

The amount of compensation paid to Service Provider shall be paid at the rate of **Forty Dollars (\$40)** for each hour of Services provided under this Contract.

Prior to the execution of this Contract, Service Provider has been advised by County, and Service Provider clearly understands and agrees, such understanding and agreement being of the absolute essence to this Contract, that County shall have available the total maximum sum of **Twenty Eight Thousand Eight Hundred Dollars (\$28,800.00)** specifically allocated to fully discharge any and all liabilities, fees and compensation of any sort to the Service Provider under this Contract and any and all costs for any and all things or purposes inuring under or out of this Contract, irrespective of the nature thereof, shall not exceed said specifically allocated sum, notwithstanding any word, statement or thing contained in or inferred from the preceding provision of this Contract which might in any light by any person be interpreted to the contrary. Service Provider does further understand and agree, said understanding and agreement also being of the absolute essence of this Contract, that the total maximum compensation that Service Provider may become entitled to hereunder and the total maximum sum set forth above that County shall become liable to pay to Service Provider hereunder shall not under any conditions, circumstances or interpretations thereof exceed the said sum.

Payment for the Services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date the County receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the Services. Interest charges for any overdue payments shall be paid by the County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of the County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

County and Service Provider expressly understand that the Services and the continued engagement of Service Provider is completely dependent on continued adequate funding. If the funding or any anticipated funding is deemed by any of the parties to be inadequate, the agreement may be terminated pursuant to the provisions of this Contract.

### **IV. OVERSIGHT**

In addition to the general oversight by the Williamson County Commissioners Court, matters that fall under the jurisdiction of others may require that Service Provider's recommendations and work product be presented and subject to such additional oversight, including but not limited to oversight by the Williamson County District Attorney and the

Williamson County Attorney.

In addition to the general oversight by the Williamson County Commissioners Court, matters that fall under the jurisdiction of the Williamson County Attorney will require that the Service Provider's recommendations and work product be presented to and be subject to oversight by the Williamson County Attorney, or his designee, upon request. Matters that fall under the jurisdiction of the Williamson County District Attorney will require that the Service Provider's recommendations and work product be presented to and subject to oversight by the Williamson County District Attorney, or her designee, upon request.

## **V. NO AGENCY RELATIONSHIP; NO EMPLOYER-EMPLOYEE RELATIONSHIP**

It is understood and agreed that Service Provider shall not in any sense be considered a partner or joint venturer with the County, nor shall Service Provider hold itself out as an agent or official representative of the County unless expressly authorized to do so by a majority of the Williamson County Commissioners Court. Service Provider shall be considered an independent contractor for the purpose of this Contract and shall in no manner incur any expense or liability on behalf of the County other than what may be expressly allowed under this Contract. The County will not be liable for any loss, cost, expense or damage, whether indirect, incidental, punitive, exemplary, consequential of any kind whatsoever for any acts by Service Provider or failure to act relating to the Services being provided.

Further, Service Provider acknowledges and agrees that no employer-employee relationship shall exist pursuant to this Contract and that Service Provider will not be entitled to any benefits generally provided by the County to its employees (including, without limitation, health insurance, retirement, severance, vacation, and disability) or any compensation other than what is set forth herein.

## **V I. INDEMNIFICATION**

**INDEMNIFICATION - EMPLOYEE PERSONAL INJURY CLAIMS:** TO THE FULLEST EXTENT PERMITTED BY LAW, THE SERVICE PROVIDER SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF THE COUNTY'S CHOOSING), AND HOLD HARMLESS THE COUNTY, AND THE COUNTY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") AND SHALL ASSUME ENTIRE RESPONSIBILITY AND LIABILITY (OTHER THAN AS A RESULT OF INDEMNITEES' GROSS NEGLIGENCE) FOR ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF THE PERSONAL INJURY, OR DEATH, OF ANY EMPLOYEE OF THE SERVICE PROVIDER, OR OF ANY SUBCONTRACTOR, OR OF ANY OTHER ENTITY FOR WHOSE ACTS THEY MAY BE LIABLE, WHICH OCCURRED OR WAS ALLEGED TO HAVE OCCURRED ON THE WORK SITE OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK. SERVICE PROVIDER HEREBY INDEMNIFIES THE INDEMNITEES EVEN TO THE EXTENT THAT SUCH PERSONAL INJURY WAS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE SOLE, COMPARATIVE OR CONCURRENT NEGLIGENCE OF THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEES BENEFIT ACTS.

**INDEMNIFICATION - OTHER THAN EMPLOYEE PERSONAL INJURY CLAIMS:** TO THE FULLEST EXTENT PERMITTED BY LAW, SERVICE PROVIDER SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF THE COUNTY'S CHOOSING), AND HOLD HARMLESS THE COUNTY, AND THE COUNTY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS CONTRACT OR THE WORK DESCRIBED HEREIN, TO THE EXTENT CAUSED BY THE NEGLIGENCE, ACTS, ERRORS, OR OMISSIONS OF SERVICE PROVIDER OR ITS SUBCONTRACTORS, ANYONE EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY A PARTY INDEMNIFIED HEREUNDER.

## **VII. NO WAIVER OF SOVEREIGN IMMUNITY OR POWERS**

Nothing in this Contract will be deemed to constitute a waiver of sovereign immunity or powers of the County, the Williamson County Commissioners Court, or the Williamson County Judge.

## **VIII. COMPLIANCE WITH ALL LAWS**

Service Provider agrees and will comply with any and all local, state or federal requirements with respect to the Services rendered.

## **IX. TERMINATION**

This Contract may be terminated at any time at the option of either party, without future or prospective liability for performance, upon giving ten (10) days written notice thereof.

## **X. VENUE AND APPLICABLE LAW**

Venue of this Contract shall be Williamson County, Texas, and the laws of the State of Texas shall govern all terms and conditions.

## **XI. EFFECTIVE DATE AND TERM**

This Contract shall be in full force and effect as of the date of the last party's execution below and shall continue until the completion date/time period set out above unless terminated earlier pursuant to the terms of this Contract.

## **XII. SEVERABILITY**

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision in this Contract and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

### **XIII. RIGHT TO AUDIT**

Service Provider agrees that the County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any and all billing records and documentation of Service Provider which are directly pertinent to the Services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Service Provider agrees that the County shall have access during normal working hours to all necessary Service Provider books, documents, papers and records. The County shall give Service Provider reasonable advance notice of intended audits. In accordance with Article XIV. below, at no time shall any items, book, documentation or files that are provided by County, the Williamson County District Attorney or the Williamson County Attorney to Service Provider be taken out of the Williamson County Justice Center or otherwise disclosed to third parties without the express written consent of County, the Williamson County District Attorney and the Williamson County Attorney.

### **XIV. CONFIDENTIALITY**

Service Provider expressly agrees that he or she will not use any incidental confidential information that may be obtained while working in a governmental setting for his or her own benefit, and agrees that he or she will not enter any unauthorized areas or access confidential information and he or she will not disclose any information to unauthorized third parties, and will take care to guard the security of the information at all times.

### **XV. GOOD FAITH CLAUSE**

Service Provider agrees to act in good faith in the performance of this Contract.

### **XVI. NO ASSIGNMENT**

Service Provider may not assign this Contract.

### **XVII. COUNTY JUDGE OR PRESIDING OFFICER AUTHORIZED TO SIGN CONTRACT**

The presiding officer of the County's governing body who is authorized to execute this instrument by order duly recorded may execute this Contract on behalf of the County.

### **XVIII. ENTIRE CONTRACT**

This Contract constitutes the entire agreement between the parties and may not be modified or amended other than by a written instrument executed by both parties.

The County reserves the right and discretion (pursuant to public policy and Texas Constitutional principles) to determine applicable provisions where there is any conflict between this Contract and any of the above-referenced contract documents/exhibits or incorporated

documents.

WITNESS that this Contract shall be effective as of the date of the last party's execution below.

**WILLIAMSON COUNTY:**

**SERVICE PROVIDER:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_, 20\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

## Exhibit “A”

# CONTRACT INVESTIGATOR PROJECT DESCRIPTION AND SCOPE OF SERVICES

### Exigent Circumstances Creating the Need

The Williamson County District Attorney’s Office has recently been notified that the FBI database used to calculate the rarity of a STR genetic profile and published between 1999 and 2001 contained discrepancies **which may have affected certain DNA testing results between 1999 and 2015**. DNA Labs were notified of the potential for error caused by these discrepancies in May 2015.

The District Attorney’s Office was also advised of changes to DNA mixture interpretation protocols that may have a material impact on criminal cases when prosecutors from the Harris County District Attorney’s Office shared their experience with this issue at a prosecutor’s conference in September 2015. While unrelated to the FBI’s updated STR population statistics, the nature of the issue came to light when the Harris County District Attorney’s Office requested and received statistical recalculations in certain cases.

The Texas Department of Public Safety’s Laboratory Division, which is the primary lab that provides DNA analysis for Williamson County’s criminal cases, has notified the District Attorney that **there are 955 Williamson County samples** which were analyzed between 1999 and May 2015 that involve DNA mixtures interpretations and may be impacted by these issues.

Please refer to the attached “Erratum” published in the July 2015 edition of the American Academy of Forensic Sciences’ Journal of Forensic Sciences, a notice letter distributed to members of the Texas Criminal Justice Community from Vincent J. M. DiMaio, M.D., Presiding Officer of the Texas Forensic Science Commission, the attached publication recently issued by the Commission, “Unintended Catalyst: the Effects of 1999 and 2001 FBI STR Population Data Corrections on an Evaluation of DNA Mixture Interpretation in Texas,” and a letter from Brady W. Mills, Deputy Assistant Director of the Texas Department of Public Safety Crime Laboratory Service discussing this issue for a detailed description of these issues.

### Objective

The Williamson County District Attorney’s objective is to take a proactive approach to facilitate any request for re-analysis of DNA mixture samples utilized as evidence in any case prosecuted by the Williamson County District Attorney’s Office between 1999 and May, 2015.

The Scope of Services for this project will be the creation of a master spread sheet that will serve as a snap-shot of the depth of the situation, and, the creation of digital file-folder for each of the potentially affected cases in preparation to respond to any request for re-analysis of DNA mixture samples and any subsequent writs the may follow.

# **Exhibit “A”**

## **Scope of Services**

Timeframe:

Phase 1 - Creation of a Master Spread Sheet - Completion Date (30 days after start)

The first phase will consist of creating a master spread sheet that serves to provide an overview of the depth of the situation. The spread sheet will categorize each of the potentially affected cases by their disposition; first by determining whether or not the test results were used as evidence at trial and whether or not the case resulted in a conviction. Then, based on this first categorization each case disposition that resulted in a conviction will be further categorized by the type of disposition such as, defendant on death row, defendant in prison, defendant on parole, etc.

Phase 2 - Locating Defendants - Completion Date (60 days after start)

Once it is determined which cases have been potentially affected by the discrepancies in the related lab analysis, each defendant for those cases will be located and notified of the potential implications created by the discrepancies in the related lab analysis. A report will be completed for each case detailing the efforts made to locate the defendant, which will serve as proof of diligence in the search, in the event a defendant is not located.

Phase 3 – Creation of a Digital File Folder - Completion Date (85 days after start)

A digital file folder will be created for each case containing the report described in phase 2 above, the defendant’s notification letter, the original lab report, an offense summary, a report containing a description of evidence available to re-analyze, etc.

Phase 4 – Notifications - Completion Date (90 days after start)

Notifications to defendants in each case will be filed with the District Clerk’s Office and delivered to the defendants at the direction of the District Attorney’s Appellant Attorney. In addition, notifications to the defendant’s attorney of record and victims may be made at the direction of the District Attorney’s Appellant Attorney.

## **Monitoring and Evaluation**

The day- to- day progress will be monitored by the Williamson County District Attorney or her designee. The District Attorney, or her designee, will provide the Williamson County Commissioners’ Court with notification of the project’s progress at the end of the 90 day period OR upon their request.