

AGREEMENT

BETWEEN THE COUNTY OF SAN MATEO AND CITY OF VALLEJO

THIS AGREEMENT, entered into this ____ day of _____, 2009, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and CITY OF VALLEJO, hereinafter called "City";

WITNESSETH:

WHEREAS, pursuant to Government Code §§ 51300 et seq., County may contract with City for the performance of City functions by the appropriate employees of County; and

WHEREAS, City and County find it necessary and desirable to set forth in this Agreement the specific terms and conditions of the services to be performed and provided by County; and

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. EXHIBITS.

The following exhibits are attached hereto and incorporated by reference herein:

Exhibit A - Services

Exhibit B - Payments and rates

2. SERVICES TO BE PERFORMED BY CONTRACTOR.

In consideration of the payments set forth herein and in Exhibit "B," County shall perform forensic services for City in order to assist in the investigation of criminal matters within the City's law enforcement service jurisdiction, in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. PAYMENTS.

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," City shall make payment to County in the manner specified herein and in Exhibit "B."

In no event shall the City's total fiscal obligation under this Agreement exceed **FOUR HUNDRED NINETY-FIVE THOUSAND DOLLARS AND NO CENTS, (\$495,000.00).**

4. TERM AND TERMINATION.

Subject to compliance with all terms and conditions, the term of this Agreement shall be from **JULY 1, 2009 through JUNE 30, 2012.**

This Agreement may be terminated by City, or the Contractor, the Sheriff or his/her designee at any time without a requirement of good cause upon ninety (90) days' written notice to the other party.

5. RELATIONSHIP OF PARTIES.

Both parties agree and understand that the work/services performed under this Agreement are performed as an independent contractor, and that neither party's employees acquire any of the rights, privileges, powers, or advantages of the other party's employees. No pension

rights of City or County employees will be affected by this Agreement.

6. HOLD HARMLESS.

- A. City shall indemnify and hold harmless County from and against all actions which in any way arise out of, result from, or are connected in any way with City's negligent or intentional acts in performing services under this agreement, except any action which arises solely and exclusively out of the negligent or intentional acts of County.
- B. County shall indemnify and hold harmless City from and against any and all actions which in any way arise out of, result from, or are connected in any way with the County's negligent or intentional acts in performing services under this agreement, except any action which arises solely and exclusively out of the negligent or intentional acts of City.
- C. If an action arises out of the concurrent negligence of City and County, then liability for any damage in that action shall be apportioned between City and County in accordance with the California law of comparative negligence.
- D. As used in this section, "County" means the County, its officers, agents, employees and servants.
- E. As used in this section, "City" means the City, its officers, agents, employees and servants.
- F. As used in this section, "actions" means actions, claims, suits, demands, and liability of every name, kind, and description brought for, or on account of injuries to or death of any person, including City and County, or damage to property of any kind whatsoever and to whomsoever belonging.
- G. The duty of City and County to indemnify and hold harmless, as set forth herein shall include the duty to defend as set forth in Civil Code Section 2778.

7. ASSIGNABILITY AND SUBCONTRACTING.

Neither party may assign the benefits nor delegate the duties set forth in this Agreement, without prior written approval of both parties.

8. INSURANCE.

Both parties shall maintain sufficient insurance, self-insurance, or a combination thereof to comply with the following requirements, and, if requested, each party shall furnish the other party with certificates of insurance evidencing the required coverage. Thirty (30) days' notice must be given, in writing, to the Sheriff's Office and County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- A. Worker's Compensation and Employer's Liability Insurance. Both parties shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance, or an acceptable program of self-insurance providing full statutory coverage. In signing this Agreement, parties certify, as required by Section 1861 of the California Labor Code, that they are aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and parties will comply with such provisions before commencing the performance of the work of this Agreement.
- B. Liability Insurance. City and County shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from City's and County's operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be

combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- 1) Comprehensive General Liability \$1,000,000
- 2) Motor Vehicle Liability Insurance \$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

9. COMPLIANCE WITH LAWS; PAYMENT OF PERMITS/LICENSES.

All services to be performed pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, City certifies that the City and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

City will timely and accurately complete, sign, and submit all necessary documentation of compliance.

10. NON-DISCRIMINATION.

No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

City and County shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. City's and County's equal employment policies shall be made available to either party upon request.

11. RETENTION OF RECORDS.

Each party agrees to provide to the other party, to any federal or state department having monitoring or reviewing authority, to County's or City's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules, and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

City and County shall maintain and preserve all financial records relating to this Agreement for a period of four (4) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater.

12. MERGER CLAUSE.

This Agreement, including the Exhibits hereto constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

13. CONTROLLING LAW.

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

14. MODIFICATIONS / AMENDMENTS.

Modifications and/or amendments made to this Agreement shall be in writing and signed by both parties.

15. PROPERTY / EQUIPMENT.

Any and all property and equipment purchased and/or used in the performance of services hereunder by the County shall be and remain the property and equipment of the County (Sheriff) throughout the term of this Agreement and upon termination of this Agreement.

County shall have responsibility for the maintenance of facilities, equipment, and property used in the performance of services hereunder by Sheriff.

16. NOTICES.

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

In the case of County, to: San Mateo County Sheriff's Office
Greg Munks, Sheriff
400 County Center
Redwood City, CA 94063

In the case of Contractor, to: City of Vallejo
c/o Vallejo Police Department
111 Amador Street
Vallejo, CA 94590

EXHIBIT A

SERVICES

In consideration of the payments set forth in Exhibit "B", County (Sheriff) shall provide the following services:

I. INTRODUCTION.

The purpose of this Agreement is to provide the City of Vallejo with forensic services through the San Mateo County Sheriff's Office Forensic Laboratory, which services will assist in the investigation of criminal matters within the territorial limits of the City.

II. SERVICES TO BE PERFORMED BY COUNTY.

- A. A Sheriff's Forensic Team will respond, upon request by the City, to:
1. City's police officer involved shootings, or City's law enforcement officers injured or killed in the line of duty.
 2. Call-outs for homicides, if Department of Justice (DOJ) and Contra Costa County are unable to respond.
- B. A Sheriff's Forensic Supervisor will be available to assist the City via telephone 24/7.
- C. The Sheriff's Forensic Laboratory will assist the City by providing training to the City's staff in the collection and preservation of evidence.
- D. The Sheriff's Forensic Laboratory will perform the following forensic examinations for City, or seek out a provider at Sheriff's direct costs for the following services:
- | | |
|--------------------------------------|---------------------------------------|
| ▪ Blood pattern interpretations | ▪ Forensic biology serology screening |
| ▪ CODIS entry | ▪ Forensic biology DNA typing |
| ▪ Crime scene reconstruction | ▪ Fracture analysis |
| ▪ Distance determination | ▪ Gun identification |
| ▪ DOJ/AFIS entry | ▪ Gun shot residue physical match |
| ▪ Fingerprint comparison | ▪ Latent print AFIS searches |
| ▪ Fingerprint processing of evidence | ▪ Serial number restoration |
| ▪ Firearms comparison | ▪ Shoe/tire impressions |
| ▪ Firearms NIBIN entry (no charge) | ▪ Tool mark comparison |
| ▪ Firearms NIBIN searches | ▪ Trace analysis, (hair/fibers) |
- * The Sheriff's Forensic Laboratory does not conduct analysis of arson / explosives evidence, but will seek out a provider at Sheriff's direct costs, if requested.
- E. City will deliver to the Sheriff's Forensic Laboratory items/material for analyzing.
- F. Each year the Sheriff's Forensic Laboratory Director shall meet with the City's Chief of Police to establish specific service level objectives for the upcoming contract period.

The Sheriff's Laboratory Director shall provide the Police Chief with a written report as part of the annual report, containing a summary of activity for the previous period, by October 31 following the end of the contract period.

EXHIBIT B

PAYMENTS & RATES

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth in Exhibit "A," City shall make payment to County in the manner specified below.

I. PAYMENTS.

A. Rates / Service Fees.

1. For FY 2009-10, the following service fees shall apply:
 - Forensic examination - \$165 per hour.
 - Court testimony - \$85 per hour, including travel time (first two hours per court appearance - no charge).
2. Each subsequent year of service (July 1 through June 30) an inflation adjustment of no less than four percent (4%) but no more than six percent (6%) will be applied to the minimum flat rate as well as the hourly rate for service beyond the 900 hour minimum. Service fees shall be determined by mutual discussion and agreement between the Chief of Police (or the Chief's designee) and the Sheriff (or Sheriff's designee) prior to April 10 of each calendar year beginning with 2010.
3. Each fiscal year, City shall be charged for a minimum of 900 service hours but no more than 1,000 service hours. County will notify City in the event that service hours provided are in the proximity of the maximum limit.

B. Payments.

1. For the minimum 900 hours of services provided in FY 2009-10, City shall pay County a total of \$148,500.
 - City shall make semi-annual payments of \$74,250 on July 1, 2009 and January 1, 2010.
 - City shall be invoiced monthly for services should the City exceed 450 hours in any six month period at an hourly rate of \$165.
2. Each subsequent year of service (July 1 through June 30):
 - City shall make semi-annual payments on July 1 and January 1.
 - If service hours exceed 900, County will invoice City monthly for exceeded hours at the service hour rate specified herein, subject to adjustments as specified in section A.2 of this Exhibit.
 - City shall receive a credit for unused hours which will be applied to the following year.

C. Billing / Invoicing.

1. County will send a bill/invoice to the City on a semi-annual basis in accordance with section B above, with invoices submitted at the beginning of June and December, and payment due by the end of said month, or within 30 days of receipt of invoice in the event of a billing delay.
2. Questions regarding billing should be directed to the Sheriff's Forensic Laboratory Director at (650) 312-5306 or by mail to:

San Mateo County
Sheriff's Office Forensic Laboratory
50 Tower Road
San Mateo, CA 94402