

**MEMORANDUM OF UNDERSTANDING BETWEEN THE  
COUNTY OF SANTA CLARA AND THE CITY OF MILPITAS FOR CRIME  
LABORATORY MAJOR CASE WORK**

This Memorandum of Understanding (MOU) is made and entered into by and between the CITY OF MILPITAS (CITY), a municipal corporation, and the COUNTY OF SANTA CLARA (COUNTY), a political subdivision of the State of California (each a Party and collectively the Parties). CITY and COUNTY are agencies that work together to provide services related to the investigation and prosecution of criminal cases in Santa Clara County. The District Attorney's Crime Laboratory provides services related to this activity. The services related to major cases would otherwise need to be procured by CITY through other sources. As a result, and pursuant to Government Code § 51350, both parties desire to set forth this agreement defining CITY's payments to COUNTY for Crime Laboratory services related to Major Case Work, as defined below.

**Term:** This agreement shall commence upon the last signature date and continue for ten years or until its termination by either party in accordance with Section H of this MOU.

Crime Laboratory Major Case Work shall include and be defined as cases requiring review and analysis of any of the following:

- Audio Analysis
- Bloodstain Pattern Analysis
- DNA/Forensic Biology
- Computer Forensics (including Cell Phones)
- Firearms Examinations
- Impression Evidence
- Latent Print Processing
- Trace Evidence
- Video Analysis

COUNTY and CITY both acknowledge that the Crime Laboratory calculates the costs of its Major Case services billed to CITY as follows:

Each calendar year, the total cost of working Major Cases is calculated. The cost includes Crime Laboratory personnel salaries and benefits, supplies, and other operating costs (including equipment and maintenance) associated with providing services to non-County law enforcement agencies. The calculated total amount does not include the cost of working Toxicology and Controlled Substances cases, or the cost of working Major Cases for County entities, like the Santa Clara County Sheriff's Office.

Also, each calendar year, statistics are generated on the total number of Major Case submissions to the Crime Laboratory, and these are broken down by each law enforcement agency. (Note: A Major Case submission is considered any agency case that is assigned a single laboratory "M" number, and as such different Major Cases may have widely different numbers of individual evidence items.) The number of Major Case submissions by each law enforcement agency is expressed as a

percentage of the total number submitted by all city agencies, and excludes County entities, like the Santa Clara County Sheriff's Office.

This percentage is used to calculate the dollar amount to bill CITY based upon the total cost of working all non-County law enforcement agency Major Cases. As the parties have a mutual interest in the performance of services related to major cases, COUNTY agrees to recover approximately 55% of its costs (based on actual costs for the prior year) for these services. In order to minimize the impact of a sudden spike in Major Case submissions, the percentage used each year is an average of five prior years. In addition, so that CITY can budget for the upcoming fiscal year, CITY is billed for a dollar amount calculated one year prior.

As an example, in January 2020, CITY will receive a bill based upon the average number of Major Case submissions from 2014-2018 and calculated in January 2019. Each annual invoice will detail the dollar amount due, and the dollar amount to budget for in the next fiscal year.

#### **A. ENTIRE MOU**

This MOU and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this MOU. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this MOU.

#### **B. AMENDMENTS**

This MOU may only be amended by a written instrument signed by the Parties.

#### **C. CONFLICTS OF INTEREST**

CITY shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this MOU and is grounds for immediate termination of this MOU by COUNTY.

In accepting this MOU, CITY covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this MOU.

CITY further covenants that, in the performance of this MOU, it will not employ any contractor or person having such an interest. CITY, including but not limited to CITY's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this MOU, and (2) prohibits such persons from making or participating in making decisions that will foreseeably

financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this MOU, CITY shall, upon execution of this MOU, provide COUNTY with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to CITY's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of CITY's service to COUNTY under this MOU. CITY shall immediately notify COUNTY of the names and email addresses of any additional individuals later assigned to provide such service to COUNTY under this MOU in such a capacity. CITY shall immediately notify COUNTY of the names of individuals working in such a capacity who, during the course of the MOU, end their service to COUNTY.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this MOU, CITY shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this MOU, annually by April 1, and within 30 days of their termination of service pursuant to this MOU.

#### **D. INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by Party shall not be shared pro rata but, instead, COUNTY and CITY agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this AGREEMENT. No party, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Parties hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Parties under this AGREEMENT.

#### **E. GOVERNING LAW, VENUE**

This MOU has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this MOU shall be in the County of Santa Clara.

#### **F. ASSIGNMENT**

No assignment of this MOU or of the rights and obligations hereunder shall be valid without the prior written consent of the other Party.

#### **G. WAIVER**

No delay or failure to require performance of any provision of this MOU shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

#### **H. TERMINATION**

COUNTY and CITY may, by 60 day written notice to the other party, terminate all or part of this MOU at any time for convenience. The notice shall specify the effective date and the scope of the termination. Upon receipt of the documents, COUNTY shall be compensated based on the completion of services provided.

#### **I. COUNTY NO-SMOKING POLICY**

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

#### **J. CALIFORNIA PUBLIC RECORDS ACT**

COUNTY and CITY are public agencies subject to the disclosure requirements of the California Public Records Act ("CPRA"). In the event of a request received by one party for information or records received from the other party, the party that received the CPRA request will make best efforts to provide notice to the other party prior to disclosing the information or records. If the party that provided the information or records contends that any are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara COUNTY before the party that received the CPRA request is required to respond to the CPRA request. If the party fails to obtain such remedy within the time the party that received the CPRA request is required to respond, the latter party may disclose the requested information.

#### **K. THIRD PARTY BENEFICIARIES**

This MOU does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

**L. CONTRACT EXECUTION**

Unless otherwise prohibited by law or COUNTY policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by COUNTY.

**IN WITNESS WHEREOF**, COUNTY and CITY hereby agree to the terms of this MOU.

**COUNTY OF SANTA CLARA**

**CITY OF MILPITAS**

\_\_\_\_\_  
CINDY CHAVEZ, President  
Board of Supervisors  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ (name)  
\_\_\_\_\_ (title)  
Date: \_\_\_\_\_

Signed and certified that a copy of this Document has been delivered by electronic Or other means to the President, Board of Supervisors

ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors  
Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
LESLEY PAK  
Deputy County Counsel  
Date: \_\_\_\_\_