



MEMORANDUM

**City of Austin
Financial & Administrative Services Department
Purchasing Office**

DATE: July 17, 2017
TO: Memo to File
FROM: Erin D'Vincent, Procurement Specialist IV
RE: MA 8700 NI170000018

This is an interlocal between APD and Travis County. The MA includes all the documents that were submitted.

INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND TRAVIS COUNTY
FOR THE PURPOSE OF COST SHARING IN PROJECTS DESIGNED TO ADDRESS
THE CRIMINAL JUSTICE ISSUES RELATING TO THE AUSTIN POLICE
DEPARTMENT DNA UNIT

PARTIES

This Interlocal Agreement (“Agreement”) is entered into between the following parties: the City of Austin, a Texas home rule municipal corporation and political subdivision of the State of Texas (“City”) and Travis County, a political subdivision of the State of Texas (“County”).

RECITALS

This Agreement is made under the authority of the Interlocal Cooperation Act, Chapter 791 of the Government Code.

Each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party.

Each governing body finds that the performance of this Agreement is in the best interest of justice, that the undertaking will benefit the public, and that each party has an interest in accomplishing the goals of this Agreement and sharing the costs in order to achieve fair and competent DNA evidence analysis for the community in the future and to take action toward rectifying possible issues in the past to ensure that justice is served.

NOW THEREFORE, the City and County agree as follows:

Section 1
Term

The initial term of this Agreement will begin upon execution and end on September 30, 2017. Subject to continued funding by the County and the City, this Agreement will automatically renew for one consecutive twelve month term ending on September 30, 2018, unless sooner terminated by either party as provided herein.

Either party may terminate this Agreement by giving the other party written notice of such termination at least ninety days before the effective date of the termination.

Section 2

Purpose of Interlocal Cooperation Agreement

This Interlocal Cooperation Agreement documents the obligations and responsibilities of the County and City regarding two separate Professional Service Agreements (PSAs) and a commitment to sharing the possible continuing costs related to addressing and rectifying the criminal justice-related issues arising from the closing of the Austin Police Department (APD) Lab that processed DNA evidence. A general description of the substance of each of the two PSAs and the City's and County's obligations and responsibilities concerning each are as follows:

PSA One: The City will enter into a PSA with expert consultants (consultants) who will address the findings of the Texas Forensic Science Commission's (TFSC) *Final Audit Report for Austin Police Department Forensic Services Division DNA Section* (Audit Report). The consultants will assist with addressing the Audit Report recommendations as well as evaluating the impacts of the Audit Report findings to DNA evidence in criminal cases in Travis County. Additionally, under the terms of PSA One, the consultants will research and identify options and best practices for appropriate DNA lab testing services for the Austin-Travis County area going forward. The County agrees to pay the City fifty percent of the costs incurred for hiring the consultants for these purposes.

PSA Two: The County will enter into a PSA with the Capital Area Private Defenders Service (CAPDS) to review the legal materiality of DNA evidence processed by the APD DNA Lab and used to secure convictions in Travis County courts. Further, under the terms of PSA Two, when necessary, CAPDS will provide post-conviction writ litigation services to defendants who were convicted of a crime based on DNA evidence that was material to the criminal case and that was processed by the APD DNA lab. The City agrees to pay the County fifty percent of the costs incurred for hiring CAPDS for these purposes.

Continuing Costs: Under PSA Two, CAPDS will review DNA cases and litigate writs, but that Agreement does not cover the future cost of possible retrials. Criminal defendants whose cases involved APD Lab DNA evidence that have not been resolved by re-testing DNA or writ relief may have to be retried in the Travis County Criminal Courts. In the event that one of these cases needs to be retried because of the failure of the APD Lab to correctly analyze, interpret, or preserve the integrity of the DNA evidence, the City agrees to assist in sharing some of the expenses of retrial, such as appointed defense counsel, expert witnesses and investigators. These costs cannot be captured at the execution of this Agreement, nor do the parties expect any retrials within the first term of this Agreement, but the County and City agree to separately negotiate cost sharing or amend this Agreement to account for these anticipated future costs as the need arises.

Other Obligations: The City agrees to work with the Travis County District Attorney's Office to prioritize cases for which DNA evidence must be retested, and the City agrees to utilize the laboratory under contract with the City that is most capable of expediting each requested retest.

The City Manager and the County Judge will each appoint a Co-Project Manager to work collaboratively in overseeing the provisions of this Agreement. With the assistance of the Co-Project Managers, the City Manager and the County Judge will appoint an advisory panel of subject matter experts to advise, as appropriate, the Co-Project Managers in carrying out the intent of this Agreement. Subject areas represented on the advisory panel may include, but are not limited to: DNA analysis, prosecution, legal defense, contracts, forensics lab operation, law enforcement, as well as other areas as needed.

Section 3 Scope of First Professional Services Agreement (PSA One)

City agrees to seek out a highly qualified Technical Expert in the scientific field with the appropriate academic qualifications and experience who can address the recommendations in the Audit Report. This Technical Expert will coordinate with the Travis County District Attorney's Office and other stakeholders such as CAPDS in evaluating the impact on DNA samples of past and pending cases that may have been affected by the audit findings.

The first objective of this PSA is to assist the City in addressing the recommendations contained in Section V of the Audit Report. The second objective is to provide the City and the County with a comprehensive understanding of the impact on forensic casework of the audit findings presented in Section III of the Audit Report. The third objective is to identify strategies for the operation and governance of a DNA testing lab and present options to restore integrity to DNA testing in Austin/Travis County. The options may include, but are not limited to, a new DNA testing lab independent of the APD, reopening of the APD DNA Unit, providing additional staffing to the Texas Department of Public Safety, and other options as appropriate. Each option should include pros and cons, staffing recommendations, and an estimated cost.

The City agrees to arrange for the expert to provide an initial briefing for the City and County Co-Project Managers and TFSC; quarterly status reports to the TFSC and Co-Project Managers; and a final report.

The City and the County will collaborate and reach consensus on the selection of the Technical Expert. The Co-Project Managers will work collaboratively in developing and managing the PSA, each of whom has equal authority to enforce the Agreement's provisions and assess the quality of the deliverables. Upon completion of a deliverable, the Co-Project Managers must each agree the deliverable is satisfactory before it can be considered finished and approved for payment. Should the Co-Project Managers fail to agree on the sufficiency of a particular deliverable, the issue will be escalated to the City Manager and County Judge for a final decision.

Section 4
Scope of Second Professional Services Agreement (PSA Two)

The County has entered into a PSA with CAPDS to provide a legal review and post-conviction writ litigation of the APD DNA Cases impacted by the Audit Report findings. This legal case review and writ litigation project (CAPDS Forensic Project) will assess the materiality of potentially impacted DNA evidence and will provide representation for affected defendants opting to re-open their case through post-conviction writ litigation. Staffing will be based on the demands of the project to complete this review, and includes attorneys, an investigator, and necessary support staff. Funding for personnel, office space, equipment, operational costs, investigation, case specific expert fees, and other reasonable and necessary expenses to complete a legal case review and litigation will be shared equally by the City and the County, which will be negotiated with CAPDS during the development of the PSA. City and County agree that for cases where the CAPDS Forensic Project has identified a conflict, assigned counsel will be appointed. For conflict cases, the materiality reviews, attorney fees, investigation fees, expert fees, and all other expenses will be paid for by the County and City in amounts that shall be negotiated separately from this Agreement. The PSA will be renewed on an annual basis, with an expected completion within five years and an estimated yearly budget of 645,200.00.

Section 5
Publicity Surrounding Projects

City and County agree to keep the public apprised of the progress of PSA One. In any publicity prepared or distributed by or for City related to this Agreement, the participation and contributions of County shall be mentioned as having made the project possible, either through use of the County logo or in applicable text. Prior to publication or any disbursement of such publicity, City must provide a copy of the final form of the publicity to County. When appropriate as determined by the County Project Manager, City may publicize the services and activities of City and County under this Agreement. City will work with County to allow for distribution from appropriate County locations of any materials prepared related to services provided under this Agreement. When appropriate, City and County Co-Project Managers will jointly distribute updates and status reports to City and County officials.

Section 6
Potential Liability

Nothing in the performance of this Agreement will impose any liability for claims against City or County other than claims for which liability may be imposed by the Texas Tort Claims Act.

Each party to this Agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

**Section 7
Billing**

Costs will be calculated quarterly, with four calculations for each year of this Agreement. At the end of each quarter, the City will submit the total costs it incurred in administering PSA One and the County will submit the total costs incurred in administering PSA Two. The parties will then calculate the difference between the two cost totals and the party incurring the lesser cost will pay fifty percent of that difference to the other party within thirty days. Costs and expenses that are not anticipated, disclosed to, and approved by the parties before payment will not be considered properly incurred unless later agreed upon by City Manager and County Judge.

Section 8

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, the parties do not intend to create any rights in any third party by virtue of this Agreement.


CITY OF AUSTIN



Rey Arellano, Assistant City Manager

4/2/2017
Date

COUNTY OF TRAVIS



Sarah Eckhardt, County Judge

APR 20 2017
Date