

**THE STATE OF TEXAS**

**COUNTY OF TRAVIS**

**INTERLOCAL COOPERATION AGREEMENT**

THIS AGREEMENT is entered into by and between the Agencies shown below as Contracting Parties, pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791.

**I. CONTRACTING PARTIES:**

- A. The Receiving Agency:                   **The City of Austin (City)**
- B. The Performing Agency:               **The University of North Texas Health Science Center (UNTHSC)**

**II. RECITALS**

**WHEREAS**, in May 2016, the Austin Police Department (APD) invited members from the Texas Forensics Science Commission (TFSC), the American Society of Crime Laboratory Directors/Laboratory Accreditation Board, and the University of North Texas Health Science Center's Center for Human Identification to conduct a site audit of the APD DNA Laboratory.

**WHEREAS**, findings from that audit prompted the APD to discontinue the analysis of DNA.

**WHEREAS**, in March 2017, Travis County Commissioners Court and Austin City Council approved an interlocal agreement outlining roles, responsibilities, and a cost sharing arrangement to address the DNA testing issues that resulted from the closure of the APD DNA lab.

**WHEREAS**, through that interlocal agreement, the City agreed to contract with a consultant to evaluate the impacts of the audit findings to DNA evidence in criminal cases in Travis County.

**WHEREAS**, UNTHSC possesses the expertise and resources to perform such services.

**NOW THEREFORE, IN CONSIDERATION** of the mutual promises and covenants contained herein, it is agreed as follows:

**III. STATEMENT OF SERVICES TO BE PERFORMED:**

- A. UNTHSC agrees to provide City with services necessary to assess the reliability of the analysis of the APD DNA Lab and determine compliance with scientific standards. UNTHSC agrees to consult with the Travis County District Attorney's Office and the Forensic Project regarding cases in which forensic evidence analyzed by the APD DNA Lab has been determined to be material to the conviction of a defendant. The services are fully described in and shall be provided as set forth in Exhibit A, Scope of Work, attached hereto and made part of this Agreement.

**IV. COMPENSATION**

- A. With the exception of preparing for and testifying in court proceedings if requested by the City on behalf of the Travis County District Attorney or defense counsel, UNTHSC will perform all services described in the Scope of Work at no labor charge to the City. The City agrees to compensate UNTHSC for preparation and testimony in court proceedings related to any criminal case reviewed or forensically analyzed by UNTHSC. The City also agrees to reimburse UNTHSC for the costs associated with travel by UNTHSC personnel to Austin, Texas to attend court proceedings, including mileage, lodging, and meal costs, as necessary.

**V. TERM OF AGREEMENT:**

- A. The initial term of this Agreement will begin upon execution by both Parties and end on September 30, 2022, unless sooner terminated in accordance with the provisions of this Agreement.

**VI. GENERAL TERMS AND CONDITIONS:**

- A. Independent Contractor: UNTHSC's status in the performance of the Services under this Agreement is that of an independent contractor and not an agent, employee, or representative of the City. UNTHSC and its officers and employees shall exercise independent judgment in performing duties and responsibilities under this Contract, and UNTHSC is solely responsible for setting working hours and scheduling the workflow. No term or provision of this Agreement or act of UNTHSC in the performance of this Agreement shall be construed as making UNTHSC or its officers or employees the agents or employees of the City, or making any of UNTHSC's employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its own employees.
- B. Responsibility: Both City and UNTHSC each agree to be responsible for their own negligent acts, errors, or omissions in the performance of this Agreement, without waiving any governmental immunity available to either City or UNTHSC under Texas law. The provisions of this paragraph are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- C. Termination: It is the intent and understanding of the Parties that the obligations of each Party under this Agreement shall remain effective only so long as and provided that each Party has fully appropriated funds for performing such obligations for the Party's current fiscal year. If for any fiscal year of any Party funds are not appropriated for such Party's performance of its obligations under this Agreement, this Agreement shall become void and such Party shall promptly give notice to the other Party of the nonappropriation of funds. Either Party may terminate this Agreement, in whole or in

part, for their convenience upon thirty (30) days advance written notice to the other Party. City will compensate UNTHSC in accordance with the terms of this Agreement for all Services performed for the benefit of City prior to the effective date of such notice. In the event of default, the non-defaulting Party shall have the right to immediately terminate the contract without providing advance written notice.

- D. Dispute Resolution: The Parties shall use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to resolve any disputes under this Agreement.
- E. Non-Incorporation: This Agreement constitutes the entire agreement between the Parties with regard to the matters made the subject of this Agreement. There are no verbal representations, inducements, agreements, or understandings between the Parties other than those specifically set forth herein.
- F. Amendments: No modifications, amendments or supplements to, or waivers of, any provision of this Agreement will be valid unless made in writing and signed by both Parties to this Agreement.
- G. Force Majeure: Neither Party shall be liable to the other for any default or delay in the performance of its obligations under this Agreement caused by force majeure, provided the Party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within the Party's control. Force majeure is defined as those causes beyond the control of the Party required to perform that are generally recognized under Texas law as a force majeure event, such as acts of God, unusual weather conditions, fire, riots, sabotage, acts of domestic or foreign terrorism, or any other cause beyond the reasonable control of such Party.
- H. Governing Law and Venue: This Agreement will be construed under and in accordance with the laws of the State of Texas. Except as otherwise provided by Section 105.151 of the Texas Education Code, venue for any litigation between the Parties will be Travis County, Texas.
- I. Severability: If any provision of this Agreement is held to be invalid, unenforceable, or illegal in any respect, such provision will be fully severable, and the remainder of this Agreement will remain valid and in full force and effect.
- J. Right to review and audit: City may review any and all of the Services performed by UNTHSC under this Agreement, City is hereby granted the right to audit, at City's election, all of UNTHSC's records and billings related to the performance of this Agreement. UNTHSC agrees to retain such records for a minimum of three (3) years following completion of this Agreement.

- K. Entire Agreement: This agreement, along with the exhibits referenced herein, embodies the complete understanding and agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters contained in this Agreement. Except as otherwise provided herein, this Agreement cannot be modified without written supplemental agreement of the Parties.
- L. Notice: Any notice required or permitted under this Agreement will be in writing and will be directed to the Parties as designated below and will be deemed given: (1) when delivered in hand and a receipt granted; (2) when received if sent by certified mail, return receipt requested; (3) upon three business days after deposit in the United States mail; or (4) when received if sent by confirmed facsimile or confirmed email:

If intended for City, to

Austin Police Department  
Brian Manley (or his successor)  
Chief of Police  
715 E 8th Street  
Austin, Texas 78701  
Telephone: (512) 974-6638  
Email: [Brian.Manley@austintexas.gov](mailto:Brian.Manley@austintexas.gov)

If intended for UNTHSC, to:


University of North Texas Health Science Center  
Center for Human ID, Linda LaRose  
3500 Camp Bowie Blvd.  
Fort Worth, TX 76107-2699  
Telephone: (817) 735-2453  
Email: [linda.larose@unthsc.edu](mailto:linda.larose@unthsc.edu)

Either of the Parties may change its address or designated individual(s) to receive notices by giving the other Party written notice as provided herein, specifying the new address and/or individual and the date upon which it will become effective.

THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that, (1) each party paying for the performance of governmental functions or services shall make those payments from current revenues available to the paying Party; and (2) the Parties have the authority to enter into this Agreement.

**Signature Page Follows**

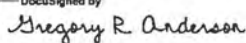
**CITY OF AUSTIN**

By:  Digitally signed by Rey Arellano  
DN: cn=Rey Arellano, o=City of Austin TX,  
ou=City Manager's Office,  
email=Rey.Arellano@austintexas.gov, c=US  
Date: 2017.09.28 08:58:07 -0500

Rey Arellano  
Assistant City Manager

Date: 9/28/2017

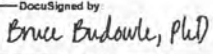
**UNIVERSITY OF NORTH TEXAS  
HEALTH SCIENCE CENTER AT FORT WORTH**

By:  DocuSigned by  
Gregory R. Anderson  
BB721ECAD5ED411

Gregory R. Anderson  
Executive Vice President for Finance & Operations

Date: 9/27/2017

*Read & Understood:*

By:  DocuSigned by  
Bruce Budowle, PhD  
1B332807F-LA38442

Bruce Budowle, PhD  
Professor - Center for Human ID  
Date: 9/27/2017

HSC Contract # 2017-1086

**EXHIBIT A**  
**Scope of Work**  
**Materiality of Evidence Case Review**

**UNTHSC's Responsibilities**

- 1) UNTHSC shall provide resumes and/or curriculum vitae for all personnel involved in case review upon execution of this Agreement.
- 2) UNTHSC shall inform the City, the Travis County District Attorney's Office, and the Forensic Project of the process for supervision and review of the work conducted by UNTHSC.
- 3) Upon request by the Travis County District Attorney's Office or the Forensic Project, UNTHSC shall assess the reliability of the analysis of the APD DNA Lab regarding each sample in question in accordance with the protocols attached hereto and determine whether it meets rigorous scientific standards.
- 4) If UNTHSC finds underlying casework problematic for any reason, UNTHSC shall document its concerns, outlining the scientific issues and explaining the effects on original casework and what may be done to rectify any errors.
- 5) If retesting is recommended, the UNTHSC, with consultation from the Texas Department of Public Safety's Capital Area Laboratory, shall document if the forensic evidence is unable to be retested and provide explanation as the reason(s).
- 6) UNTHSC shall provide to both the Travis County District Attorney's Office and the Forensic Project a report for each case reviewed in accordance with guidelines developed between the parties. UNTHSC may discuss the case with either party at any time.
- 7) UNTHSC shall work closely and coordinate with the Travis County District Attorney's Office and the Forensic Project in determining the impact on casework of each finding including customer impact.
- 8) UNTHSC shall provide testimony in subsequent legal actions, if and when needed as requested by the District Attorney or the defense attorney. Costs associated with trial preparation/consultation including travel and related expenses shall be charged at \$125.00 per hour and shall not exceed one thousand dollars (\$1,000) per day per individual case.
- 9) UNTHSC shall attend quarterly Texas Forensic Science Commission (TFSC) meetings in Austin as well as other meetings of the City's City Council, Travis County Commissioners Court, and meetings with management and personnel with the City and Travis County as needed to provide updates on the various items contained in this section and work with the TFSC as needed to expedite the successful completion of the UNTHSC's responsibilities. UNTHSC shall be reimbursed for travel and expenses, provided rates and customary charges do not exceed per diem GSA and IRS mileage reimbursement guidelines. The current guidelines can be found on the web at <https://www.gsa.gov/portal/category/100120> and <https://www.irs.gov/pub/irs-pdf/p5137.pdf> respectively.



- 10) UNTHSC shall provide aggregated data to the City and Travis County summarizing the work completed. This shall include number of cases reviewed, in how many cases: specific audit issues observed, necessary retesting, a sample was deemed uninterpretable or inconclusive.

#### **Administrative Responsibilities**

**Business Records:** UNTHSC shall be required to maintain and be able to provide complete and accurate records on all business transactions including but not limited to maintenance records and financial records if applicable with the City and Travis County related to the performance of the Agreement.

**Contact Persons:** UNTHSC shall designate a person or persons whom the Travis County District Attorney's Office and the Forensic Project shall contact to arrange and coordinate the creation and transfer of materials throughout the life of the Agreement.

**Access to Records:** The City and Travis County shall, subject to limitations provided by law with respect to rights of privacy, have the right to within three business days examine all records of UNTHSC, including financial and maintenance records generated by UNTHSC and its subcontractors in connection with performance of the Agreement.

#### **City and Travis County Responsibilities**

- 1) APD will coordinate the providing of manuals, records, and case files from APD to UNTHSC. The appropriate delivery method will be determined upon execution of the Agreement.
- 2) APD will provide assistance with gathering requested data on an as needed bases.
- 3) APD will provide access to all Polymerase Chain Reaction (PCR) amplification kits, instrumentation, software and any other laboratory materials including evidence and evidentiary data to the extent permitted by law, as needed for UNTHSC to perform this project.
- 4) The City and Travis County will own all materials created as a result of this project.
- 5) The City and Travis County will make available employees of the APD DNA Lab and the Travis County District Attorney's office for interviews and questions concerning items identified by UNTHSC. The City and Travis County will make reasonable attempts to make available any prior APD DNA Lab or Travis County District Attorney's office employee who may have relevant information.

**AUSTIN POLICE DEPARTMENT DNA LAB**  
**RETROACTIVE REVIEW OF CASEWORK**

**Retroactive Case Review Should Include Following Review Protocol:**

1. Assess possible carryover or other contamination
2. Review potential stochastic issues (including 30 cycle fusion, Profiler Plus and Co-filer)
3. Re-interpret mixtures (where applicable)
4. Identify possible missed stains within case due to AP-negative results that may have been attributable to laboratory practice regarding mixing of AP reagent
5. Assess whether evidence packaged properly (DPS Cap Area Lab)

**Notes:**

Any prior mixture interpretation work involving 4 or more contributors should be deemed uninterpretable due to lack of validation studies, allele sharing, potential of allele drop out and other stochastic effects.

Mixture with 3 persons must be assessed on a case-by-case basis as follows: 3 person mixtures for which a major contributor (or two person major) can be identified may be interpretable and thus will be evaluated further; 3 person mixtures without a distinguishable major component will likely be deemed uninterpretable due to the same limitations for 4 or more person mixtures.

*Due to resource limitations, all cases will undergo a legal/materiality triage process before they are subjected to the review protocol set forth above. Only cases forwarded for review by THE FORENSIC PROJECT and/or the Travis County District Attorney's office (TCDA) will be subjected to the review protocol. Retroactive case reviews will be performed by UNTHSC-CHI assuming sufficient resources. When possible, and to be effective and efficient THE FORENSIC PROJECT and/or TCDA will identify the pertinent samples/DNA profiles that require review per case.*

**Responsible Party:** THE FORENSIC PROJECT, TCDA, and UNTHSC-CHI, except for evidence packaging assessment will be performed by DPS

**Timeline:** Rolling Basis as Cases are Identified by THE FORENSIC PROJECT and/or TCDA.



## Certificate Of Completion

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Status: Completed

Subject: Signature request on RUSH\_Contract Interlocal Coop Agmnt for Austin PD, # 2017-1086

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Document Pages: 8

Signatures: 2

Envelope Originator:

Supplemental Document Pages: 0

Initials: 0

Contract Administration

Certificate Pages: 5

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Office of Contract Administration

Envelopeld Stamping: Enabled

3500 Camp Bowie Boulevard

Time Zone: (UTC-06:00) Central Time (US & Canada)

Forth Worth, TX 76107

contractadmin@unthsc.edu

IP Address: 66.179.165.140

## Record Tracking

Status: Original

Holder: Contract Administration

Location: DocuSign

9/26/2017 1:36:21 PM

contractadmin@unthsc.edu

## Signer Events

Bruce Budowie, PhD

Bruce.Budowie@unthsc.edu

Security Level: Email, Account Authentication (None)

## Signature

DocuSigned by  
Bruce Budowie, PhD  
1B3D809FDAB4442

## Timestamp

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## Electronic Record and Signature Disclosure:

Accepted: 9/12/2017 12:21:22 PM

ID: 6e833e25-5472-42df-9410-354388275a2a

Gregory R. Anderson

Gregory.Anderson@unthsc.edu

Executive Vice President for Finance & Opera

Security Level: Email, Account Authentication (None)

DocuSigned by  
Gregory R. Anderson  
6B721ECAD6FD411

Sent: 9/27/2017 9:23:11 AM

Viewed: 9/27/2017 9:38:20 AM

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## Electronic Record and Signature Disclosure:

Accepted: 9/27/2017 9:38:20 AM

ID: 948f2127-ccc1-42c0-96ec-bdc0f5198c89

## In Person Signer Events

## Signature

## Timestamp

## Editor Delivery Events

## Status

## Timestamp

## Agent Delivery Events

## Status

## Timestamp

## Intermediary Delivery Events

## Status

## Timestamp

## Certified Delivery Events

## Status

## Timestamp

## Carbon Copy Events

## Status

## Timestamp

Aleta Wheeler

aleta.wheeler@unthsc.edu

Security Level: Email, Account Authentication (None)

COPIED

Sent: 9/27/2017 9:23:11 AM

## Electronic Record and Signature Disclosure:

Not Offered via DocuSign

## Notary Events

## Signature

## Timestamp

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| Envelope Sent                              | Hashed/Encrypted | 9/27/2017 9:39:01 AM |
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| Signing Complete                           | Security Checked | 9/27/2017 4:13:53 PM |
| Completed                                  | Security Checked | 9/27/2017 4:13:53 PM |
| Payment Events                             | Status           | Timestamps           |
| Electronic Record and Signature Disclosure |                  |                      |

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, University of North Texas Health Science Center (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact University of North Texas Health Science Center:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [contractadmin@unthsc.edu](mailto:contractadmin@unthsc.edu)

**To advise University of North Texas Health Science Center of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [contractadmin@unthsc.edu](mailto:contractadmin@unthsc.edu) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from University of North Texas Health Science Center**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [contractadmin@unthsc.edu](mailto:contractadmin@unthsc.edu) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with University of North Texas Health Science Center**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [contractadmin@unthsc.edu](mailto:contractadmin@unthsc.edu) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

|                            |   |
|----------------------------|---|
| Operating Systems:         | Windows2000? or WindowsXP?  |
| Browsers (for SENDERS):    | Internet Explorer 6.0? or above   |
| Browsers (for SIGNERS):    | Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)  |
| Email:                     | Access to a valid email account   |
| Screen Resolution:         | 800 x 600 minimum   |
| Enabled Security Settings: | <ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul> |

**\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.**

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify University of North Texas Health Science Center as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by University of North Texas Health Science Center during the course of my relationship with you.



**THE STATE OF TEXAS**

**COUNTY OF TRAVIS**

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- E. Non-Incorporation: This Agreement constitutes the entire agreement between the Parties with regard to the matters made the subject of this Agreement. There are no verbal representations, inducements, agreements, or understandings between the Parties other than those specifically set forth herein.
- F. Amendments: No modifications, amendments or supplements to, or waivers of, any provision of this Agreement will be valid unless made in writing and signed by both Parties to this Agreement.
- G. Force Majeure: Neither Party shall be liable to the other for any default or delay in the performance of its obligations under this Agreement caused by force majeure, provided the Party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within the Party's control. Force majeure is defined as those causes beyond the control of the Party required to perform that are generally recognized under Texas law as a force majeure event, such as acts of God, unusual weather conditions, fire, riots, sabotage, acts of domestic or foreign terrorism, or any other cause beyond the reasonable control of such Party.
- H. Governing Law and Venue: This Agreement will be construed under and in accordance with the laws of the State of Texas. Except as otherwise provided by Section 105.151 of the Texas Education Code, venue for any litigation between the Parties will be Travis County, Texas.
- I. Severability: If any provision of this Agreement is held to be invalid, unenforceable, or illegal in any respect, such provision will be fully severable, and the remainder of this Agreement will remain valid and in full force and effect.
- J. Right to review and audit: City may review any and all of the Services performed by UNTHSC under this Agreement, City is hereby granted the right to audit, at City's election, all of UNTHSC's records and billings related to the performance of this Agreement. UNTHSC agrees to retain such records for a minimum of three (3) years following completion of this Agreement.



- K. **Entire Agreement:** This agreement, along with the exhibits referenced herein, embodies the complete understanding and agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters contained in this Agreement. Except as otherwise provided herein, this Agreement cannot be modified without written supplemental agreement of the Parties.
- L. **Notice:** Any notice required or permitted under this Agreement will be in writing and will be directed to the Parties as designated below and will be deemed given: (1) when delivered in hand and a receipt granted; (2) when received if sent by certified mail, return receipt requested; (3) upon three business days after deposit in the United States mail; or (4) when received if sent by confirmed facsimile or confirmed email:

If intended for City, to

Austin Police Department  
Brian Manley (or his successor)  
Chief of Police  
715 E 8th Street  
Austin, Texas 78701  
Telephone: (512) 974-6638  
Email: [Brian.Manley@austintexas.gov](mailto:Brian.Manley@austintexas.gov)

If intended for UNTHSC, to:

University of North Texas Health Science Center  
Center for Human ID, Linda LaRose  
3500 Camp Bowie Blvd.  
Fort Worth, TX 76107-2699  
Telephone: (817) 735-2453  
Email: [linda.larose@unthsc.edu](mailto:linda.larose@unthsc.edu)

Either of the Parties may change its address or designated individual(s) to receive notices by giving the other Party written notice as provided herein, specifying the new address and/or individual and the date upon which it will become effective.

THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that, (1) each party paying for the performance of governmental functions or services shall make those payments from current revenues available to the paying Party; and (2) the Parties have the authority to enter into this Agreement.

**Signature Page Follows**

**CITY OF AUSTIN**

**UNIVERSITY OF NORTH TEXAS  
HEALTH SCIENCE CENTER AT FORT WORTH**

By: \_\_\_\_\_

Rey Arellano  
Assistant City Manager

Date: \_\_\_\_\_

By: \_\_\_\_\_

Gregory R. Anderson  
Executive Vice President for Finance & Operations

Date: \_\_\_\_\_

*Read & Understood:*

By: \_\_\_\_\_

Bruce Budowle, PhD  
Professor - Center for Human ID

Date: \_\_\_\_\_

HSC Contract # 2017-1086

**EXHIBIT A**  
**Scope of Work**  
**Materiality of Evidence Case Review**

**UNTHSC's Responsibilities**

- 1) UNTHSC shall provide resumes and/or curriculum vitae for all personnel involved in case review upon execution of this Agreement.
- 2) UNTHSC shall inform the City, the Travis County District Attorney's Office, and the Forensic Project of the process for supervision and review of the work conducted by UNTHSC.
- 3) Upon request by the Travis County District Attorney's Office or the Forensic Project, UNTHSC shall assess the reliability of the analysis of the APD DNA Lab regarding each sample in question in accordance with the protocols attached hereto and determine whether it meets rigorous scientific standards.
- 4) If UNTHSC finds underlying casework problematic for any reason, UNTHSC shall document its concerns, outlining the scientific issues and explaining the effects on original casework and what may be done to rectify any errors.
- 5) If retesting is recommended, the UNTHSC, with consultation from the Texas Department of Public Safety's Capital Area Laboratory, shall document if the forensic evidence is unable to be retested and provide explanation as the reason(s).
- 6) UNTHSC shall provide to both the Travis County District Attorney's Office and the Forensic Project a report for each case reviewed in accordance with guidelines developed between the parties. UNTHSC may discuss the case with either party at any time.
- 7) UNTHSC shall work closely and coordinate with the Travis County District Attorney's Office and the Forensic Project in determining the impact on casework of each finding including customer impact.
- 8) UNTHSC shall provide testimony in subsequent legal actions, if and when needed as requested by the District Attorney or the defense attorney. Costs associated with trial preparation/consultation including travel and related expenses shall be charged at \$125.00 per hour and shall not exceed one thousand dollars (\$1,000) per day per individual case.
- 9) UNTHSC shall attend quarterly Texas Forensic Science Commission (TFSC) meetings in Austin as well as other meetings of the City's City Council, Travis County Commissioners Court, and meetings with management and personnel with the City and Travis County as needed to provide updates on the various items contained in this section and work with the TFSC as needed to expedite the successful completion of the UNTHSC's responsibilities. UNTHSC shall be reimbursed for travel and expenses, provided rates and customary charges do not exceed per diem GSA and IRS mileage reimbursement guidelines. The current guidelines can be found on the web at <https://www.gsa.gov/portal/category/100120> and <https://www.irs.gov/pub/irs-pdf/p5137.pdf> respectively.



- 10) UNTHSC shall provide aggregated data to the City and Travis County summarizing the work completed. This shall include number of cases reviewed, in how many cases: specific audit issues observed, necessary retesting, a sample was deemed uninterpretable or inconclusive.

#### **Administrative Responsibilities**

**Business Records:** UNTHSC shall be required to maintain and be able to provide complete and accurate records on all business transactions including but not limited to maintenance records and financial records if applicable with the City and Travis County related to the performance of the Agreement.

**Contact Persons:** UNTHSC shall designate a person or persons whom the Travis County District Attorney's Office and the Forensic Project shall contact to arrange and coordinate the creation and transfer of materials throughout the life of the Agreement.

**Access to Records:** The City and Travis County shall, subject to limitations provided by law with respect to rights of privacy, have the right to within three business days examine all records of UNTHSC, including financial and maintenance records generated by UNTHSC and its subcontractors in connection with performance of the Agreement.

#### **City and Travis County Responsibilities**

- 1) APD will coordinate the providing of manuals, records, and case files from APD to UNTHSC. The appropriate delivery method will be determined upon execution of the Agreement.
- 2) APD will provide assistance with gathering requested data on an as needed bases.
- 3) APD will provide access to all Polymerase Chain Reaction (PCR) amplification kits, instrumentation, software and any other laboratory materials including evidence and evidentiary data to the extent permitted by law, as needed for UNTHSC to perform this project.
- 4) The City and Travis County will own all materials created as a result of this project.
- 5) The City and Travis County will make available employees of the APD DNA Lab and the Travis County District Attorney's office for interviews and questions concerning items identified by UNTHSC. The City and Travis County will make reasonable attempts to make available any prior APD DNA Lab or Travis County District Attorney's office employee who may have relevant information.



**AUSTIN POLICE DEPARTMENT DNA LAB**  
**RETROACTIVE REVIEW OF CASEWORK AND RELATED ISSUES**

**I. Retroactive Case Review Should Include Following Review Protocol:**

1. Assess possible carryover or other contamination
2. Review potential stochastic issues (including 30 cycle fusion, Profiler Plus and Co-filer) \*
3. Re-interpret mixtures (where applicable)
4. Identify possible missed stains within case due to AP-negative results that may have been attributable to laboratory practice regarding mixing of AP reagent
5. Assess whether evidence packaged properly (DPS Cap Area Lab)

**Notes:**

All mixtures will require an INC call at each locus with potential dropout.

Any prior mixture interpretation work involving 4 or more contributors should be deemed uninterpretable due to lack of validation studies, allele sharing, potential of allele drop out and other stochastic effects.

Mixture with 3 persons must be assessed on a case-by-case basis as follows: 3 person mixtures for which a major contributor (or two person major) can be identified may be interpretable and thus will be evaluated further; 3 person mixtures without a distinguishable major component will likely be deemed uninterpretable due to the same limitations for 4 or more person mixtures.

*Due to resource limitations, all cases will undergo a legal/materiality triage process before they are subjected to the review protocol set forth above. Only cases forwarded for review by THE FORENSIC PROJECT and/or the Travis County District Attorney's office (TCDA) will be subjected to the review protocol. Retroactive case reviews will be performed by UNTHSC-CHI assuming sufficient resources.*

**Responsible Party:** THE FORENSIC PROJECT, TCDA, and UNTHSC-CHI, except for evidence packaging assessment will be performed by DPS

**Timeline:** Rolling Basis as Cases are Identified by THE FORENSIC PROJECT and/or TCDA.

## **II. Stochastic and Analytical Threshold Assessments**

DPS plans to conduct stochastic and analytical threshold studies for Profiler Plus and Cofiler because thousands of cases were analyzed using these kits and a RFU-based ST will be helpful to the retroactive evaluation of cases.

There were an additional approximately 400 cases using the 30-cycle Fusion chemistry. No separate AT/ST study will be performed for Fusion 30-cycle cases due to resource limitations. However, Dr. Budowle will use data from other studies to inform his assessment of 30-cycle Fusion cases identified by THE FORENSIC PROJECT, but mainly will interpret profiles/loci in which it is reasonable to assume that allele drop out is unlikely and where subtraction of a known contributor of the mixture is reasonable.

Responsible Party: DPS Cap Area for Profiler Plus and Cofiler; UNTHSC-CHI for 30-cycle Fusion cases

Timeline: ASAP

## **III. Corrective Action for Carryover Contamination Case Identified in Commission Report**

The APD crime laboratory has not yet conducted a root cause analysis or completed a corrective action in the carryover contamination case discussed in the Commission's July report. This needs to be completed by the QA division (with possible assistance from DPS capital area laboratory on technical issues).

Responsible Party: Lynn Garcia will reach out to Troy Gay to determine who is point person at APD lab for this action.

Timeline: Immediate

## **IV. Completion of CODIS Contingency Plan**

Under the DPS capital area laboratory plan submitted to Doug Hares (FBI), Jody Koehler has committed to evaluating all single source profiles previously uploaded into CODIS for possible contamination. All mixture profiles will be technically reviewed as well. Approximately 1,800 cases will be encompassed in this review.

Acceptable profiles will be uploaded into CODIS under the DPS capital area laboratory's new ORI and unacceptable profiles will be removed from CODIS. Stakeholder notification will be made for any cases in which possible contamination is identified.

Responsible Party: DPS Cap Area

Timeline: Per FBI Agreement

#### **V. Comparison Study on AP Reagent**

The Commission recommended a comparison study be done to identify how long the SERI AP reagent could be used outside the manufacturer's "mix fresh daily" instructions. DPS capital area laboratory will conduct the study and make recommendations about what cases may need to be reviewed based on the results of the study. For this category of cases, reviews would apply to those cases for which evidentiary items resulted in an AP-negative result. Accordingly, the THE FORENSIC PROJECT legal/materiality triage process may be a limited tool for identifying or prioritizing these cases. Additional AP-negative cases may need to be triaged under a separate methodology.

Responsible Party: DPS Cap Area and Travis Co. DA/THE FORENSIC PROJECT

Timeline: within 90 days

#### **VI. Assessment of Laboratory's Quality System Overall**

DPS Austin performed an assessment of two key SOP documents (FSD SOP and QA SOP) and made some observations. Implications of the observations and an action plan based on the observations should be discussed in the near term.

Responsible Party: DPS Austin/APD/TFSC/Travis Co. DA

Timeline: Discussion at next Commission meeting (May 26)

#### **VII. The Freezer Malfunction**

Stakeholders believe the best approach to the freezer malfunction is to look for possible degradation on a case-by-case basis utilizing the triage process. An in-depth study is unlikely to yield any definitive results for individual cases, and thus signs of degradation must be handled case-by-case as necessary. Having



said this, DPS capital area lab will check packaging of stored evidence to ensure there are no red flags in the packaging of evidence.

Responsible Party: DPS Austin/UNTHSC/THE FORENSIC PROJECT

Timeline: Rolling basis as cases are identified

**VIII. Assessment of Future Structure for Laboratory (aka "Look Forward")**

Considering that the DPS capital area lab has a five-year MOU with the City of Austin, it may be advisable to re-assess this relationship after the items set forth above are completed and the DPS capital area lab is fully staffed.

**IX. Retroactive Assessment of Root Cause (aka "Look Back")**

Because there is a desire to memorialize the reasons for the APD labs failure to perform at an acceptable level a statement document will be prepared describing the general root causes that resulted in the shortcomings of the lab. It is not necessary to repeat full reviews as the causes already have been identified through the Commission's review. The causes were: poor management; inappropriate scientific practices and understandings of legal requirements/obligations; poor quality management system; a laboratory culture that did not promote communication and transparency; inadequate training of analysts, TLs, and managers; insular nature of the lab; and inadequate auditing and accreditation by outside groups/agencies. The NIJ's sentinel review process may afford an opportunity to more deeply explore these issues, but the more pressing priority is the retroactive case review.

Responsible Party: All stakeholders

Timeline: TBD (depending in discussion with stakeholders on 5/10/2017)