



CONTRACT MA-026-14010833
FOR FORENSIC DNA TESTING SERVICES
BETWEEN
COUNTY OF ORANGE
FOR THE OFFICE OF THE DISTRICT ATTORNEY
AND
BODE CELLMARK FORENSICS, INC.

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This Contract for Forensic DNA Testing Services, (hereinafter "Contract") is made and entered into as of the date fully executed by and between Bode Cellmark Forensics, Inc., with a place of business at 10430 Furnace Rd., Ste. 107, Lorton, VA 22079 (hereinafter "Contractor"); and the County of Orange, a political subdivision of the State of California, (hereinafter "County") for the Office of the District Attorney, which are sometimes individually referred to as "Party" or collectively referred to as "Parties".

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (RFP) for Forensic DNA Testing Services; and

WHEREAS, Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract for Forensic DNA Testing Services;

NOW, THEREFORE, the parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, including Attachments and Exhibits, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent."

- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of services that do not conform to the prescribed Scope of Work. Delivery shall not be deemed to be complete until all services, have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received, and completed to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory performance of the services.
- G. **Warranty:** Contractor expressly warrants that the services covered by this Contract meet the industry standard of acceptance for Worker's Compensation Insurance Fraud Document Analyst Services. Acceptance of this Contract shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

- K. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate this Contract shall relieve County of all further obligations.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent contractor and neither the Contractor, employees nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
- P. **Insurance Provisions:** Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**.

If the insurance carrier is not a non-admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the County CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability Including E&O (Professional Liability)	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-for owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.

A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the services. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "HH" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County..
- T. **Force Majeure:** Contractor shall not be in breach of this Contract during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality

that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "P" above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract price, as more fully set forth in Attachment B shall include full compensation for providing all required services as specified herein or when applicable, in the Scope of Work attached to this Contract, as Attachment A and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- EE. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given

the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

- FF. **Authority:** The parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- HH. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** Contractor shall provide Forensic DNA Testing Services for the Office of the District Attorney, and perform all services as further set forth herein, including Attachment A, Scope of Work.
2. **Contract Term:** This Contract shall be effective January 01, 2014 and continue in effect through and including December 31, 2014, unless otherwise terminated by County. This Contract may be renewed for four (4) additional one-year terms with the agreement of both Parties. County does not have to give a reason if it decides not to extend or renew this Contract.
3. **Compensation:** Contractor agrees to accept the specified compensation as further set forth in Attachment B, Pricing and Compensation, as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Under

no circumstances shall County's maximum obligation exceed \$995,000.00 per annum, unless authorized by the County of Orange Board of Supervisors.

4. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being made by the County of Orange Board of Supervisors for each year during the term of this Contract. If such appropriations are not forthcoming, this Contract will be terminated without penalty. Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the State of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
5. **Precedence:** The documents herein consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments and exhibits.
6. **Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this Contract, interpretation and clarification as necessary shall be determined by the County's assigned buyer. If disagreement exists between the Contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.
7. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. Contractor agrees to supply services as requested, as needed by County, at prices listed in the Contract.
8. **Changes:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County, with the Contractor's concurrence, has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment. Said amendment shall be issued by the County-assigned buyer, shall require the mutual consent of all parties, and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work as set forth in this Contract.
9. **Adjustments to Scope of Work:** No adjustments made to the Scope of Work will be authorized or paid for without prior written approval from the County.
10. **Default Reprocurement Costs:** In case of default by Contractor, the County may procure the services from other sources. If the cost for those services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this contract and under law.
11. **Subcontracting:** No performance of this Contract or any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County. Any attempt by

Contractor to assign or subcontract any performance of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

In the event that Contractor is authorized by County to subcontract, this Contract shall prevail and the terms of the subcontract shall incorporate by reference and not conflict with the terms of this Contract. In the manner in which County expects to receive services, County shall look to Contractor for performance and not deal directly with any subcontractor. All matters related to this Contract shall be handled by Contractor with County; County will have no direct contact with the subcontractor in matters related to the performance of this Contract. All work must meet the approval of County.

12. **County Project Manager:** County shall appoint a Project Manager to act as liaison between County and Contractor during the term of this Contract. County's Project Manager shall coordinate the activities of County staff assigned to work with Contractor.

County's Project Manager ~~shall have the right to~~ **may** require the removal and replacement of Contractor's Project Manager and key personnel. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within 14 calendar days after written notice by County's Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager and key personnel. Said approval shall not be unreasonably withheld.

County Project Manager: ~~Scott Scoville~~
 Phone: 714-834-6161
 Email: Scott.Scoville@da.ocgov.com

County Project Manager:	Jennifer Contini
Phone:	714-834-3443 8662
Email:	Jennifer.Contini@da.ocgov.com

13. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of County's Project Manager, which consent shall not be unreasonably withheld.

Contractor's Project Manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to Contractor's Project Manager.

Contractor Project Manager: Erin Sweeney
 Phone: 703-646-9763
 Email: Erin.Sweeney@bodetech.com

14. **Contractor Personnel:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

15. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of

the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by U.S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the addresses stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Office of the District Attorney

Name: Anna Nevarez

Address 401 Civic Center Drive West
Santa Ana, CA 92701

Email: Anna.Nevarez@da.ocgov.com

Phone: (714) 347-8427

Facsimile: (714) 796-8007

Contractor: The Bode Technology Group

Name: Terry Smith

Address: 10430 Furnace Road, Suite 107
Lorton, VA 22079

Email: Terry.Smith@bodetech.com

Phone: 703-646-9875

Facsimile: 703-646-9742

16. **Contingent Fees:** Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of Contractor or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, County shall have the right to terminate this Contract in accordance with the termination clause and at its sole discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.
17. **Audit/Record Retention:** The Office of the District Attorney/Project Manager shall have access, at reasonable times, to all reports, contract records, bank accounts records, documents, files and personnel necessary to examine and audit Contractor's books of account and records and supporting documents at any and all times for the purposes of determining the accuracy thereof, and of the monthly statements of income and monies received/dispensed. The Office of the District Attorney/Project Manager shall have the right to reproduce any of the aforesaid documents.

Contractor agrees to retain records on each program participant or case, for a minimum of three (3) years from the final disposition date. Contractor further agrees to retain all financial records relating to this Contract for a period of five (5) years from the date this agreement is terminated.

Should the Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the Office of the District Attorney/Project Manager.

18. **Conflict of Interest – Contractor’s Personnel:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to: Contractor; Contractor’s employees, agents, and relatives; sub-tier Contractors; and third parties associated with accomplishing work and services hereunder. Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of County.
19. **Conflict of Interest – County Personnel:** County of Orange Board of Supervisors’ policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
20. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County shall have the right to terminate the Contract immediately, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any goods or services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.
21. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
22. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
1. Afford Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 2. Discontinue payment to Contractor for and during the period in which Contractor is in breach; and
 3. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.
23. **Disputes:**
- A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s project manager and the County’s project manager, such matter shall be brought to the attention of the County’s Purchasing Agent by way of the following process:
 1. The Contractor shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.

24. **Waivers:** The failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
25. **Validity:** The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision of the Contract.
26. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of this Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
27. **Contractor's Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from County. Storage of records in another county will require written approval from County assigned buyer.
28. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction without no additional costs to County.

29. **Data – Title To:** All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.
30. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole-property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
31. **News/Information Release:** Contractor agrees that it will not issue any news releases in connection with either the award of this contract or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from County through County's project manager.
32. **County of Orange Child Support Enforcement:** In order to comply with the child support enforcement requirements of County of Orange, within ten (10) days of notification of selection of award of contract but prior to official award of contract, the selected Contractor agrees to furnish to the contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:
- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
 - B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity;
 - C. A certification that Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - D. A certification that Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.
- Failure of Contractor to timely submit the data and/or certifications required may result in the contract being awarded to another Contractor. In the event a contract has been issued, failure of Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach within 60 calendar days of notice from County shall constitute grounds for termination of the contract.
33. **Equal Employment Opportunity:** Contractor shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

34. **Americans with Disabilities Act (ADA):** Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract the date set forth opposite their signatures. Contractor shall provide two corporate signatures as follows: 1) the first signature must be either the Chairman of the Board, President, or any Vice President; 2) the second signature must be that of the secretary, an assistant secretary, the Chief Financial Officer, or any assistant treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

Contractor: Bode Cellmark Forensics, Inc.

Print Name

Title

Signature

Date

Print Name

Title

Signature

Date

County of Orange, a political subdivision of the State of California
Purchasing Agent/Designee Authorized Signature:

Print Name

Title

Signature

Date

Approved as to Form
Office of the County Counsel
Orange County, California

By: _____

Title: Deputy County Counsel

Date: _____

ATTACHMENT A-2**SCOPE OF WORK****SCOPE OF WORK OVERVIEW:**

Contractor shall receive DNA samples; process all DNA samples using ~~Identifiler~~ Globalfiler or comparable and approved STR DNA kit to produce autosomal DNA profile of a minimum of 45 22 uploadable Identifiler loci including the 43 20 CODIS core STR loci and amelogenin; additionally process male DNA samples using ~~Y-filer~~ PowerPlex Y23 or comparable and approved Y-STR DNA kit to produce a DNA profile of a minimum of 47 23 uploadable Y-filer loci; provide results with supporting documentation in electronic format including related controls for all testing; implement procedures and protocols for retesting and quality assurance; provide results within requested timeframe; and securely store samples and packaging during testing process; return DNA samples upon request; and, destroy DNA work product upon request.

Contractor shall consult with OCDA and, when agreed upon, shall expeditiously validate the ~~PowerPlex® Fusion System or Life Technologies GlobalFiler and the PowerPlex® Y23 System~~ most current STR and shall immediately notify OCDA when validation of these systems has been completed. Y-STR DNA kits. OCDA may then elect to have DNA samples tested using one or more of these newly validated systems.

Further Contractor Requirements:

- Must be an ASCLD/LAB accredited or FQSI certified DNA testing lab and have retained said accreditation/certification for the past five (5) years and provide proof of accreditation/certification
- Analytical protocols must adhere to the specifications outlined in the FBI's "Quality Assurance Standards for Forensic DNA Testing Laboratories" and "Quality Assurance Standards for DNA Databasing Laboratories"
- Use Life Technologies Genetic Analyzer Model 31XX or 3500 series
- Provide screenshots of Off ladder alleles or sample anomalies for review
- Provide notes describing any anomalies
- Provide tables of failed samples with description of attempts/retests and reason for failure
- ~~Genemapper~~ GeneMapper final analysis project should only contain reported barcodes, excluding any failures
- Provide complete raw data files upon request
- Permit periodic site visits and inspections of the lab
- Allow open or blind proficiency samples for quality assurance purposes during the term of the Contract

Contractor shall also be able to provide customized DNA Collection Kits that shall include the following:

- (1) Buccal DNA Collector
- (1) Transport Pouch with Dessicant
- (1) White Outer Envelope with Customized Label
- (1) Customized Barcode Pod with 5 Barcode Labels
- (1) Red Evidence Tape

Contractor shall provide custom storage vaults to protect ~~from degradation~~ of the collected DNA contained on the buccal ~~DNA collector~~ applicator from degradation. Each vault will include eight pouches, and each pouch will store approximately eleven buccal DNA collectors. Each buccal DNA collector will be stored in an envelope and then stored in the custom storage pouch. Additionally, a reagent will be applied to each sample to enhance the storage life and protect from degradation.

TURNAROUND TIMES:

Defined as period between Contractor's receipt of a sample and the time the Contractor electronically transmits DNA profiles. ~~Fee structure required to address two specified turnaround times. The main turnaround time required is within (30) calendar days. The second turnaround time is within five (5) calendar days for rush samples which would be a rare occurrence~~ Multiple turnaround times are included within the fee structure to accommodate the needs of the OCDA.

SAMPLE CHARACTERISTICS:

It is anticipated that approximately 13,000 to 20,000 samples will be submitted annually for processing for autosomal markers during the contract period. Approximately 70% of the submitted samples will also require Y-STR testing. The samples will be submitted as buccal swabs or plain cotton swabs coded with a barcode. Occasionally, a blood sample may be submitted in lieu of a buccal sample.

FILE & FILE TRANSFER REQUIREMENTS:

The file formats for DNA profile information may include records being written on a single row or on multiple rows. The files provided by the Contractor that contain DNA profile information should allow for fixed length and/or a delimiter. At a minimum, the following delimiters must be available; comma, semi-colon, pipe, and tab. Contractor must have the ability to change their file format of the DNA profile information to meet the needs of the OCDA. ~~The preferred file type is GeneMapperID-X CODIS table export file.~~

All file transfers of electronic data between the Contractor and the ~~County of Orange, Office of the District Attorney,~~ OCDA must be secure. At a minimum, 128 bit encryption must be used. ~~The Contractor's proposal must address Contractor shall comply with the needs of OCDA for the suggested method of ensuring the security~~ secure transfer of data transferred between the Contractor and the County.

CONFIDENTIALITY, SAMPLE STORAGE AND DESTRUCTION:

The Contractor must protect the confidentiality of the profile data. Any use, sale, or offering of this data in any form by the Contractor, or their employees, except by valid subpoena or court order for testimony or discovery purposes, will be considered in violation of the Contract.

The Contractor must securely store samples upon receipt, during testing, and prior to sample return in a temperate controlled environment designed to maintain the integrity of sample, with limited access, and with documentation of Contractor personnel accessing sample, including chain of custody documentation. Portions of samples that the Contractor will be required to temporarily store include extracts; amplified DNA product; any remaining swab(s); portion of swab(s) or portions of buccal collectors; and remaining original packaging. Upon notification by OCDA, the Contractor will return any remaining swab(s); portion of swab(s) or portions of buccal collectors; and remaining original packaging to OCDA in Uline S-9846 17 1/4 x 11 1/4 x 4" White Tab Locking Literature Mailers.

The Contractor shall only destroy amplified DNA product and DNA extracts after: 1) any remaining swab(s), portion of swab(s) and remaining original packaging has been returned and received by OCDA;

and, 2) OCDA has completed sample analysis review and Contractor has received written notification from OCDA authorizing destruction of specified amplified DNA product and extracts.

ATTACHMENT B-2
COMPENSATION AND PAYMENT

COMPENSATION:

This is a fixed fee price Contract between the County and Contractor for services as specified in this Contract. The Contractor agrees to accept the specified compensation as set forth. The County shall have no obligation to pay any sum in excess of \$995,000.00 per annum unless authorized by an amendment.

Forensic DNA Testing Services:

Turnaround Time	Autosomal		Y-STR	PowerPlex Y23	Future Autosomal
Five (5) calendar days	\$50.00		\$50.00	\$50.00	Pricing TBD when available
Fifteen (15) calendar days	\$27.00			--	
Twenty (20) calendar days	\$25.75			--	
Thirty (30) calendar days	\$19.45 23.30	\$21.45	\$23.60		Pricing TBD when available

Customized Buccal DNA Collection "9" Series and Field :3" Series Kits:

Catalogue Number:	Product Description: ("9" Series or Court Kits)	Unit Price:
P08C10-OC	Customized Buccal DNA Collection Kit to include (no Information Card): 1 Buccal DNA Collector 1 Transport Pouch with Desiccant 1 White outer envelope 1 Customized barcode pod with 5 barcode labels 1 Red Evidence tape	\$4.70 per kit plus S&H

Catalogue Number:	Product Description: ("9" Series or Court Kits)	Unit Price:
P17C10-OC	Customized Buccal DNA Collection Kit to include (no Information Card): 1 Bode Buccal DNA Collector 1 Custom Reduced Size Transport Pouch with Desiccant 1 White outer envelope 1 Customized Barcode Pod with 5 barcode labels 1 Reduced Size Red Evidence tape	\$4.80 per kit plus S&H

	1 Fingerprint Ink Removal Pad	
Catalogue Number:	Product Description: ("3" Series or Field Kits)	Unit Price:
P13COC-15	Customized Buccal DNA Collection Field Kit to include: 1 Buccal DNA Collector 1 Transport Pouch with 1 gm Desiccant with peel and seal adhesive on flap with custom orange dot 1 Kit Instruction sheet with collection instructions 1 Pair of large Polygloves 1 White outer envelope (7.5 x 10.5") with white custom printed label 1 Customized field barcode card with 5 barcode labels (Barcode Series TBD) 1 Fingerprint Ink Strip 1 70% Isopropyl Alcohol Pad/Wipe 1 Red Evidence Tape 1 OC Field Consent Form – 2-sided custom printed, heavy stock card	\$5.95 per kit plus S&H

Catalogue Number:	Product Description:	Unit Price:
P01D28	100 Bode Buccal DNA Collectors	\$345.00 per box of 100 plus S&H

Services/Products to enhance the DNA stability of samples during long-term storage:

Catalogue Number:	Product Description:	Unit Price:
P16D01	Custom Buccal Collector Storage Vault 8 Vapor Loc-Foil Barrier Bag with Zipper (per Vault) Width: 9.0" OD, Length: 11.0" OD Laminated materials: VF48A, (PET/White LDPE/Foil/LLDPE) or (Polyethylene terephthalate/Low-density Polyethylene/Foil/Linear low-density polyethylene) 2 - "V" tear notches, centered above the zipper Head space: 1.5" above the zipper Heat seal width: 0.375" 2 Packs of P13D09 Ten 10 gram Desiccants (per Vault) * One-time discount for initial order at \$10.00 per vault, plus S&H	\$21.00 per vault plus S&H

Catalogue Number	Product Description:	Unit Price:
P17D06-R+S	Bode Armor: Application of Bode Armor reagent by Bode Cellmark Personnel at Laboratory	\$1.00 per sample
P17D06	Bode Armor: Bode Armor reagent (To be applied by OCDA	\$0.65 per

Personnel)

sample

County will pay for shipping/handling costs.

Payment:

Payment will be net 30 days after receipt of monthly invoice in a format acceptable to County, verified and approved by the County Project Manager and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with Contractor.

Invoices are to be submitted to the following address:

Office of the District Attorney
Attn: Accounts Payable
Post Office Box 808
Santa Ana, CA 92702-0808

Contractor shall reimburse County for any monies paid to Contractor for services not provided or when services do not meet Contract requirements. Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

Contractor will provide a two-part invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from 1, above
3. Delivery/service address
4. Contract number MA-026-14010833
5. Date services rendered
6. Service description, quantity, and prices
7. Total

The County offers Contractors the option of receiving payment directly to their bank account via Electronic Fund Transfer (EFT) process in lieu of a check payment. Payments via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the agency/department representative listed in this Contract.