



WASHOE COUNTY

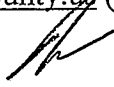
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CM/ACM JS
Finance LC/MS
DA KM
Risk Mgt. DE
HR NA
Grant Mgt. GE

STAFF REPORT

BOARD MEETING DATE: May 24, 2016

DATE: April 26, 2016
TO: Board of County Commissioners
FROM: Kerri Heward, Crime Lab Director WCSO
kheward@washoecounty.us (775) 328-2803
THROUGH: Sheriff Chuck Allen 

SUBJECT: Recommendation to approve the Intrastate Interlocal Contract between Public Agencies, specifically the State of Nevada Acting By and Through Its Office of the Nevada Attorney General and the Washoe County Sheriff's Office – Forensic Science Division Acting by and Through the Washoe County Board of County Commissioners for the testing and shipping of previously un-submitted sexual assault kits in the total amount of [\$414,376.53; \$411,750.00 for testing; \$2,626.53 for related shipping costs] effective from the date of approval through December 31, 2018, with the option of a one (1) year extension with the mutual written consent of the Attorney General and WCSO. (All Commission Districts)

SUMMARY

To provide an arrangement and process for the Attorney General to reimburse WCSO the costs associated with the outsourcing of un-submitted sexual assault kits for DNA testing. Sorenson Forensics, LLC ("Sorenson") of Salt Lake City, Utah was awarded the competitive bid for Sexual Assault Kit Analysis Services. This bid was approved by the BCC on 2/23/2016. Sorenson will perform biological screening and DNA analysis on evidentiary items provided by WCSO, including sexual assault kits and other sources of DNA.

Washoe County Strategic Objective supported by this item: Safe, Secure and Healthy Communities.

PREVIOUS ACTION

RFP for bid of un-submitted sexual assault kit analysis awarded to Sorenson Forensics LLC was approved by BCC on 2/23/2016.

BACKGROUND

Many jurisdictions across the country are looking at the issue of sexual assault kits that have not been submitted to a forensic science laboratory for testing. It is unknown how many un-submitted sexual assault kits there are nationwide. A task force has been created to address this issue in Nevada. The task force consists of representatives from Nevada's

Attorney General's Office, Law Enforcement Agencies, Forensic Science Laboratories, District Attorney's Offices, Legislators, Sexual Assault Response Team, Victim Advocate Groups, and Universities. Based on preliminary counts, it is estimated that between 800 and 1500 un-submitted sexual assault kits exist in Nevada. The goal of this task force is to identify means by which all of the un-submitted sexual assault kits in Nevada are tested in the next 2-3 years.

The WCSO Forensic Science Division (WCSO-FSD) is coordinating the testing of the un-submitted sexual assault kits in northern Nevada. The plan is to outsource these kits to a private laboratory so as to not adversely affect the current caseload at the WCSO-FSD. All data obtained from the testing of these kits will be reviewed by the WCSO-FSD and appropriate DNA profiles entered into the DNA database by the WCSO-FSD.

Competitive Bid RFP was approved by Washoe County Board of County Commissioners on 2/23/2016 and awarded to Sorenson Forensics LLC.

GRANT AWARD SUMMARY

Project/Program Name: *DNA testing on Un-submitted Sexual Assault Kits*

Scope of the Project: *DNA testing of un-submitted sexual assault kits in Northern Nevada.*

Benefit to Washoe County Residents: *Un-submitted Sexual Assault Kits will be processed for DNA . DNA Profiles will be entered into the DNA database. It is expected that this DNA will help identify serial rapists.*

On-Going Program Support: *N/A*

Award Amount: *\$414,376.53*

Grant Period: *Approval date through December 30, 2018*

Funding Source: *Attorney General of the State of Nevada*

Pass Through Entity: *None*

CFDA Number: *N/A*

Grant ID Number: *N/A*

Match Amount and Type: *none*

Sub-Awards and Contracts: *none*

FISCAL IMPACT

Should the board accept this grant award and approve these amendments, the adopted budget will be increased by \$414,376.53 in both revenues and expenditures in the following accounts:

Increase Revenues

| | |
|---------------------------|--------------|
| TBD-485100 Reimbursements | \$414,376.53 |
|---------------------------|--------------|

Increase Expenditures

| | |
|------------------------------|--------------|
| TBD—710200 Service Contracts | \$414,376.53 |
|------------------------------|--------------|

- No match amount
 - Grant funds will be drawn as a reimbursement
 - Source of the upfront cash – General Funds.
- No indirect costs included in the grant budget.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the Intrastate Interlocal Contract between Public Agencies, specifically the State of Nevada Acting By and Through Its Office of the Nevada Attorney General and the Washoe County Sheriff's Office – Forensic Science Division Acting by and Through the Washoe County Board of County Commissioners for the testing and shipping of previously un-submitted sexual assault kits in the total amount of [\$414,376.53; \$411,750.00 for testing; \$2,626.53 for related shipping costs] effective from the date of approval through December 31, 2018, with the option of a one (1) year extension with the mutual written consent of the Attorney General and WCSO.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: Move to approve the Intrastate Interlocal Contract between Public Agencies, specifically the State of Nevada Acting By and Through Its Office of the Nevada Attorney General and the Washoe County Sheriff's Office – Forensic Science Division Acting by and Through the Washoe County Board of County Commissioners for the testing and shipping of previously un-submitted sexual assault kits in the total amount of [\$414,376.53; \$411,750.00 for testing; \$2,626.53 for related shipping costs] effective from the date of approval through December 31, 2018, with the option of a one (1) year extension with the mutual written consent of the Attorney General and WCSO.

INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

**A Contract Between the State of Nevada
Acting By and Through Its**

**Office of the Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701**

And

**Washoe County Sheriff's Office – Forensic Science Division
Acting by and Through the**

**Washoe Board of County Commissioners
1001 E. Ninth Street, Reno, NV 89512
775-328-2000**

This Contract Agreement ("Agreement") is made and entered into by and between the **Office of the Attorney General of the State of Nevada ("Attorney General")** and the Washoe Board of County Commissioners, on behalf of, and having the necessary legal authority to bind, the **Washoe County Sheriff's Office ("WCSO")**, hereinafter collectively referred to as "the Parties".

WHEREAS, following an investigation by the Attorney General of Chase Bank, USA N.A. and Chase Bankcard Services, Inc. (collectively, "Chase") concerning their business practices, the Attorney General and Chase reached a settlement agreement to resolve the Attorney General's claims that Chase engaged in multiple violations of Nevada's Deceptive Trade Practices Act, NRS §§ 598.0903, et seq. (the "Chase Settlement"). The terms of the Chase Settlement are found in an Assurance of Discontinuance filed in the Eighth Judicial District Court, Clark County, Nevada on July 8, 2015;

WHEREAS, pursuant to the terms of the Chase Settlement, the State of Nevada was awarded One Million, Seven Hundred Fourteen Thousand, Three Hundred Seventy-Six Dollars and Fifty-Three Cents (\$1,714,376.53) (the "Settlement Funds"). Pursuant to the terms of the Chase Settlement, those funds may be used for any purposes permitted by state law, including the support of Nevada law enforcement efforts to support victims of rape and domestic violence in various ways, including but not limited to providing additional resources to test backlogged rape kits;

WHEREAS, WCSO solicited bids from qualified vendors to provide professional Untested Sexual Assault Kits Analysis, pursuant to the terms and provisions in the bid, and Sorenson Forensics, LLC ("Sorenson") of Salt Lake City, Utah provided the winning

bid, which was accepted when the Washoe Board of County Commissioners approved Sorenson's bid on February 23, 2016 (the "Sexual Assault Kit Services Contract"). Pursuant to the Sexual Assault Kit Services Contract, Sorenson will perform biological screening and DNA analysis on evidentiary items provided by WCSO, including sexual assault kits and other sources of DNA (collectively, "Testing Services").

WHEREAS, the purpose of this agreement is to provide an arrangement and process for the Attorney General to reimburse WCSO a portion of its costs and expenses for approved Testing Services performed by Sorenson.

WHEREAS, NRS § 277.180 authorizes one or more public agencies to contract for the performance of any governmental service, activity or undertaking which any of them are authorized by law to perform. As a joint and cooperative law enforcement effort, the Parties desire to use a portion of the Settlement Funds to test sexual assault kits in the possession of WCSO pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and of the mutual promises and covenants contained herein, the Parties agree as follows:

1. REQUIRED APPROVAL. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. AGREEMENT TERM. This Agreement shall be effective upon approval of the appropriate governing body(ies) ("Effective Date") until December 31, 2018, unless sooner terminated by either party as set forth in this Agreement. At any time prior to the expiration of the initial term, or any extended term, the term of this Agreement may be extended by up to one year upon the mutual written consent of the Attorney General and WCSO.
4. TERMINATION. This Agreement may be terminated immediately by mutual consent of both Parties. This Agreement may also be terminated by either Party without cause prior to the date set forth in paragraph three (3), provided that a termination shall not be effective until thirty (30) days after a Party has served written notice upon the other Party. This Agreement may also be terminated immediately by the Attorney General for cause upon the first occurrence of any of the following events: (i) in the event any portion of the Testing Kit Funds (defined below) or Testing Related Shipping Costs (defined below) are used for any purpose other than for reimbursing the cost of Testing Services described herein; (ii) in the event WCSO becomes incapable of using the Testing Kit Funds for the intended purpose, as determined by either WCSO or the Attorney General; (iii) in the event WCSO becomes, or is found to be, insolvent; (iv) in the event the objectives and the goals of Testing Services are not met; or (v) in the event the Attorney General is not approved by the Nevada Legislature, any legislative committee including without limitation the Interim Finance Committee, or the

State Board of Examiners to use funds from the Chase Settlement for the purpose of reimbursing WCSO for Testing Services.

5. NOTICE. All notices required under this Agreement shall be considered effective upon deposit if sent by U.S. Certified Mail, Return Receipt Requested, and addressed to the Parties at their addresses captioned above.

6. INCORPORATED DOCUMENTS. WCSO has contracted with Sorenson, which has all necessary certifications or accreditations necessary to perform professional Testing Services. This Agreement incorporates the terms of the Sexual Assault Kit Services Contract between WCSO and Sorenson, to the extent they do not conflict with this Agreement.

ATTACHMENT A: Sexual Assault Kit Services Contract between WCSO and Sorenson.

7. CONSIDERATION. The Testing Services procured by WCSO will assist the Attorney General in achieving one of its goals in the Chase Settlement. In exchange, and subject to WCSO's compliance with all terms of this Agreement, the Attorney General agrees to reimburse WCSO for the costs of the Testing Services, excluding shipping costs, at the rate of up to **\$675** per kit tested, up to an aggregate amount not to exceed Four Hundred Eleven Thousand Seven Hundred Fifty Dollars and Zero Cents (**\$411,750.00**) ("Testing Kit Funds"). In addition, the Attorney General agrees to reimburse WCSO for shipping costs borne by WCSO in connection with the Testing Services, up to an aggregate amount not to exceed Two Thousand Six Hundred Twenty-Six Dollars and Fifty-Three Cents (**\$2,626.53**) ("Testing Related Shipping Costs"). Subject to WCSO preparing and providing all reports required by this Agreement, the Attorney General will reimburse WCSO for approved Testing Services expenses, and approved Testing Related Shipping Costs, once every thirty (30) day period.

8. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Agreement are also specifically a part of this Agreement and are limited only by their respective order of precedence and any limitations expressly provided. Notwithstanding the generality of the foregoing, if at any time the Attorney General has reason to doubt the credentials, qualifications or capabilities of the company or agents providing the Testing Services, the Attorney General may refuse further reimbursements to WCSO from the Testing Kit Funds until such time as the Attorney General's concerns are adequately resolved. In the event the Attorney General refuses further reimbursements to WCSO pursuant to this paragraph 8, the Attorney General agrees to provide written notice to WCSO reasonably identifying its concerns.

9. INSPECTION & AUDIT.

- a. Documentation of WCSO Expenditures. No Testing Kit Funds or Testing Related Shipping Costs will be provided until such expenses have been incurred by WCSO

and the Attorney General has approved reimbursing the expenses. More specifically, in order to receive any Testing Kit Funds or Testing Related Shipping Costs, WCSO shall provide a monthly expenditure report by the fifteenth (15th) day of each month to the Attorney General, which shall include the following: a certified monthly financial report form (on a form supplied by the Attorney General) which identifies each expenditure, its date and amount, and copies of back-up documentation, including copies of invoices and payment checks for each expenditure reported. Upon review and approval of WCSO's monthly expenditure report, payment will be provided by the Attorney General for approved expenses. Payment reimbursement may not be requested more than once every thirty (30) day period. The Attorney General will reject requests for reimbursement of any approved expenditure submitted more than 90 days after the occurrence of such expenditure. If any expenses are not approved, WCSO agrees to utilize another funding source and to cover such expenses.

- b. Progress Reports. The Attorney General reserves the right to request certified progress reports from WCSO, which will describe the progress and success of the Testing Services and respond to any performance benchmarks identified by the Attorney General at the time of request. The Attorney General may, but is not required to, request such reports once every three (3) months during the term of this Agreement. Upon receipt of such a request, WCSO shall provide the certified progress report within fifteen (15) days. All progress reports shall be addressed to the Attorney General at 100 N. Carson Street, Carson City, Nevada 89701, Attention: Assistant Attorney General.

For any progress reports requested by and provided to the Attorney General, WCSO understands and acknowledges that the Attorney General will monitor the progress indicators therein for purposes of its own evaluation and may additionally utilize and refer to the information reported by WCSO for public consumption, including but not limited to, in its own reports to the Nevada Legislature.

- c. Books and Records. Each Party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the other Party, the State of Nevada or their authorized representatives, upon audits or reviews, and sufficient information to determine compliance with any applicable regulations and statutes.
- d. Inspection & Audit. Each Party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the Party, financial statements and supporting documentation, and documentation described in subparagraphs 9(a) and (b) shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the other Party, the State Auditor, the Department of Administration, Budget Division, and the State Legislative Auditor.

e. Period of Retention. All books, records, reports, and statements relevant to this Agreement must be retained by each Party for a minimum of three years and the retention period runs from the date of termination, completion or other expiration of this Agreement. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. BREACH; REMEDIES. Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

11. LIMITED LIABILITY. The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both Parties shall not be subject to punitive damages. To the extent applicable, actual contract damages for any breach shall be limited by NRS 353.260 and NRS 354.626.

12. FORCE MAJEURE. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

13. INDEMNIFICATION. Neither party waives any right or defense to indemnification that may exist in law or equity.

14. INDEPENDENT PUBLIC AGENCIES. The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement, and in respect to performance of services pursuant to this Agreement, each Party is and shall be a public agency separate and distinct from the other Party and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other Party.

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.

16. SEVERABILITY. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such

provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

17. ASSIGNMENT. Neither Party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other Party.

18. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law or this Agreement, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, plans, data, system designs, computer code, or any other documents or drawings, prepared or in the course of preparation by either Party in performance of its obligations under this Agreement shall be the joint property of both Parties.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The Parties agree to assert all claims to confidentiality available by law or a common law balancing of interests before disclosing any particular record that is subject to this Agreement.

20. CONFIDENTIALITY. Subject to the Attorney General's right to use progress reports, as described in paragraph 9(b), each Party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that Party to the extent that such information is confidential by law or otherwise required by this Agreement.

21. PROPER AUTHORITY. The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and that the parties are authorized by law to enter into this Agreement.

22. GOVERNING LAW; JURISDICTION. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The Parties consent to the jurisdiction of the Nevada district courts for enforcement of this Agreement.

23. ENTIRE AGREEMENT AND MODIFICATION. This Agreement and its integrated attachment(s) constitute the entire agreement of the Parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

Office of the Nevada Attorney General

Adam Paul Laxalt,
Attorney General, State of Nevada

Date

Washoe Board of County Commissioners

Kitty K. Jung, Chair
Washoe County Commission

Date

APPROVED BY BOARD OF EXAMINERS

Signature – Nevada State Board of Examiners

On _____
Date

Approved as to form by:

Deputy Attorney General for Attorney General,
State of Nevada

On _____
Date