

State of Oregon/City of Portland
 INTERGOVERNMENTAL AGREEMENT
 For the Use of U.S. Department of Justice, Office of Justice Programs, National Institute of Justice
 FY10 Solving Cold Cases with DNA Grant Funds
 #2010-DN-BX-K040

COP Contract Number: #30002012

OSP Contract Number: IGA-189-2011

This agreement is made by and between the State of Oregon acting by and through its Department of State Police on behalf of its Police Crime Lab (OSP), and the City of Portland, Oregon on behalf of its Police Bureau Detectives Division (PPB).

RECITALS:

- A. WHEREAS, the Portland Police Bureau desires to use the forensic services of the Oregon State Police Crime Laboratory located in Clackamas, Oregon to perform services related to solving the Portland Police Bureau's cold case crimes, and
- B. WHEREAS, the Oregon's State Police Crime Laboratory desires to perform the forensic services required by the City of Portland's Police Bureau to assist in solving the cold case crimes, and
- C. WHEREAS, the Oregon State Police and the City of Portland have authority to cooperate for any lawful purpose with each other by means of an intergovernmental agreement according to ORS 190.110 et seq. to enter into an agreement to perform any lawful purpose, and
- D. WHEREAS, the purpose of this Agreement is to address payment for services provided by and supplies purchased by the Oregon State Police Laboratory, for work performed as a subcontractor on cold cases submitted by the Portland Police Bureau Detectives Cold Case unit as part of their USDOJ grant, and
- E. WHEREAS, PPB Detectives and OSP desire to enter into this Intergovernmental Agreement.

NOW, THEREFORE, PPB and OSP agree as follows:

1. TERM

This agreement shall be effective as of January 1, 2011, and extend through the length of the grant or until grant funds are exhausted, whichever comes first, unless earlier terminated in accordance with Section 7 of this agreement or modified as provided in Section 15.

2. RESPONSIBILITIES OF OSP

OSP agrees to:

- A. Provide the services of 1.0 FTE limited term Forensic Scientist I. This grant funded position will provide 32 hours of analytical time out of the 40 hour work week performing the following duties and responsibilities specifically for this Agreement:
 - Provide consistent communication with PPB Detectives.
 - Review evidence submittals in accordance with the identified protocol provided by PPB Detectives Cold Case supervisor.
 - Screen the evidence submitted by PPB Detectives for items that can be analyzed for DNA.
 - Conduct DNA analysis on screened items following OSP Lab protocols.
 - Run DNA results through CODIS database when appropriate.
 - Provide results to PPB Detectives Cold Case supervisor and administrative assistant in a timely manner (as affected by other OSP Lab duties and case ratings).
 - Provide monthly updates on analytical and total hours to the PPB Detectives Cold Case supervisor and administrative assistant.

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INTERGOVERNMENTAL AGREEMENT
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FY10 Solving Cold Cases with DNA Grant Funds
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- Provide at minimum, semi-annual reports, including the number of cold cases subjected to DNA analysis, the number of cold cases that yielded a DNA profile, the number of profiles entered in CODIS and the number of CODIS hits.
 - Submit monthly invoices for 1.0 FTE lab personnel hours and purchased lab equipment. Contact the PPB Detectives Cold Case supervisor if, at anytime, there is insufficient grant casework submitted to meet the commitment target. If PPB can not provide grant casework to fulfill the commitment target before grant funds are exhausted, the position will default to the analysis of conventional DNA casework.
 - If the 2080 total position hours (1664 analytical hours) are met prior to the close of this grant, OSP will continue to work PPB cold cases, reporting the semi-annual stats until grant funds are exhausted.
- B. The remaining 8.0 hours per week will be dedicated to the following duties and responsibilities:
- Accurate and timely identification and comparison of biological evidence by DNA analysis including the processing of at least two external proficiency tests each calendar year; one in the first six months and one in the second in the last six months of each calendar year.
 - Plan and coordinate work with other technical staff, monitor quality control and provide peer review. The work productivity must be to a level in order to allow the work group to meet the Division benchmarks.
 - Prepare and maintain accurate records, laboratory notes, and analytical reports to conform with accreditation and court required procedures. Provide expert court testimony regarding analytical findings.
 - Participate as a team member of the Forensic Services Division in training other members in the area of DNA analysis.
 - Work with user agencies in providing information on DNA analysis and other areas of the laboratory. This will be done through personal contact, laboratory tours and formal presentations. Also will work with the public and media in disseminating information about the Forensic Services Division.
 - Must stay current with the assigned disciplines by reading literature, exploring relevant internet sites, belonging to pertinent professional organizations and personal conversations. This includes attending training to meet audit requirements.
 - Other duties as assigned by the supervisor.
3. **RESPONSIBILITIES OF PPB**
- PPB agrees to:
- Provide consistent communication with the OSP Lab.
 - Provide timely submittal of all lab requests.
 - Provide identified protocol for each case submitted, in the way of a rating scale, 1-4 (1 being the most imperative case, 4 being the least).
 - Locate all potential contributors for elimination and for suspect identification purposes when a DNA profile is developed. Obtain buccal swabs and submit to OSP Lab for comparison purposes, when appropriate.
 - Obtain, when appropriate, through consent or with a search warrant, a buccal swab from the contributor if a CODIS hit is developed.

State of Oregon/City of Portland
 INTERGOVERNMENTAL AGREEMENT
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 FY10 Solving Cold Cases with DNA Grant Funds
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- Administer the USDOJ grant in accordance with the designated guidelines and Award Conditions.
- Provide compensation for OSP Lab expenses incurred while performing procedures related directly to cases reviewed under the USDOJ Cold Case DNA Grant within the terms of this agreement as stated in Section 4 and in accordance with Section 2.

4. COMPENSATION

4.1 Not-to-Exceed. Total project costs to be realized by OSP Lab will not exceed \$99,283.72.

4.2 The City, through the USDOJ Cold Case DNA grant, will reimburse the OSP 100% of the total project costs for services rendered including supplies purchased for 1.0 FTE and salary, fringe and benefit personnel costs for 1.0 FTE for work performed on cases submitted as part of the USDOJ grant, with proper expense reimbursement documentation.

4.3 Invoicing. The OSP will submit invoices for actual time and supply expenditures to Portland Police Bureau Fiscal Division at the following address:

PPB Fiscal Division
 Attn: Grants A/R
 1111 SW 2nd Ave., #1406
 Portland, OR 97204

5. PAYMENT TERMS

5.1 Mail To Address. The PPB shall send payment to the OSP within thirty (30) days after receipt of each billing to the following address:

Oregon Department of State Police
 Attn: Accounting
 255 Capitol Street NE
 Salem, OR 97310

5.2 Summary of Costs.

5.2.1 Salary, Fringe and Benefits.

Salary: Forensic Scientist I..... (12 months salaried position)	\$ 53,952.00
<u>Fringe & Benefits</u>	<u>Computation</u>
Employer FICA.....	\$ 4,127.33
Retirement.....	\$ 11,367.69
Health Insurance	\$ 14,640.00
Workers' Comp	\$ 31.20
Employer Relations Board	\$ 21.00
Total Fringe & Benefits:.....	\$ 30,187.22
Total Salary, Fringe & Benefits.....	<u>\$ 84,139.22</u>

State of Oregon/City of Portland
 INTERGOVERNMENTAL AGREEMENT
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 FY10 Solving Cold Cases with DNA Grant Funds
 #2010-DN-BX-K040

5.2.2 Supplies.

Supplies are for the Oregon State Police Crime Laboratory Forensic Scientist I position as required by Oregon State workplace rules and protocol.

<u>Supply Item</u>	<u>Computation</u>	<u>Cost</u>
Computer workstation.....		\$ 1,200.00
PC Monitor.....		\$ 300.00
GMID X Client Software license.....		\$ 7,000.00
LIMS license.....		\$ 3,000.00
Bio-evidence extraction hood.....		\$ 1,500.00
Camera.....		\$ 400.00
Pipettes.....	4 x \$186.00 each.....	\$ 744.00
Magnifying exam light.....		\$ 300.00
Lab stool.....		\$ 700.50

Total Supplies: **\$ 15,144.50**

5.2.3 Total Salary, Fringe, Benefits, and Supplies.

Grand Total **\$ 99,283.72**

6. ACQUISITION AND DISPOSITION OF GRANT-FUNDED SUPPLIES AND EQUIPMENT

Acquisition and disposition of grant-funded supplies and equipment will conform to local purchasing policies and laws, the grant Award Conditions and the current U.S. Department of Justice Office of Justice Programs Financial Guide.

7. EARLY TERMINATION

This agreement may be terminated prior to the end of the grant upon sixty (60) days mutual written consent of the parties or upon ninety (90) days written notice by one party. Termination under any provision of this paragraph shall not affect any rights, obligation, or liability of State of Oregon or the City of Portland, which accrued prior such termination.

8. INDEMNIFICATION CONTRIBUTION

8.1 IF ANY THIRD PARTY MAKES ANY CLAIM OR BRINGS ANY ACTION, SUIT OR PROCEEDING ALLEGING A TORT AS NOW OR HEREAFTER DEFINED IN ORS 30.260 ("THIRD PARTY CLAIM") AGAINST A PARTY (THE "NOTIFIED PARTY") WITH RESPECT TO WHICH THE OTHER PARTY ("OTHER PARTY") MAY HAVE LIABILITY, THE NOTIFIED PARTY MUST PROMPTLY NOTIFY THE OTHER PARTY IN WRITING OF THE THIRD PARTY CLAIM AND DELIVER TO THE OTHER PARTY A COPY OF THE CLAIM, PROCESS, AND ALL LEGAL PLEADINGS WITH RESPECT TO THE THIRD PARTY CLAIM. EITHER PARTY IS ENTITLED TO PARTICIPATE IN THE DEFENSE OF A THIRD PARTY CLAIM, AND TO DEFEND A THIRD PARTY CLAIM WITH COUNSEL OF ITS OWN CHOOSING. RECEIPT BY THE OTHER PARTY OF THE NOTICE AND COPIES REQUIRED IN THIS PARAGRAPH AND MEANINGFUL OPPORTUNITY FOR THE OTHER PARTY TO PARTICIPATE IN THE INVESTIGATION, DEFENSE AND SETTLEMENT OF THE THIRD PARTY CLAIM WITH COUNSEL OF ITS OWN CHOOSING ARE CONDITIONS PRECEDENT TO THE OTHER PARTY'S LIABILITY WITH RESPECT TO THE THIRD PARTY CLAIM.

8.2 WITH RESPECT TO A THIRD PARTY CLAIM FOR WHICH THE STATE IS JOINTLY LIABLE WITH THE CITY (OR WOULD BE IF JOINED IN THE THIRD PARTY CLAIM), THE

State of Oregon/City of Portland
INTERGOVERNMENTAL AGREEMENT

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FY10 Solving Cold Cases with DNA Grant Funds
#2010-DN-BX-K040

STATE SHALL CONTRIBUTE TO THE AMOUNT OF EXPENSES (INCLUDING ATTORNEYS' FEES), JUDGMENTS, FINES AND AMOUNTS PAID IN SETTLEMENT ACTUALLY AND REASONABLY INCURRED AND PAID OR PAYABLE BY THE CITY IN SUCH PROPORTION AS IS APPROPRIATE TO REFLECT THE RELATIVE FAULT OF THE STATE ON THE ONE HAND AND OF THE CITY ON THE OTHER HAND IN CONNECTION WITH THE EVENTS WHICH RESULTED IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS, AS WELL AS ANY OTHER RELEVANT EQUITABLE CONSIDERATIONS. THE RELATIVE FAULT OF THE STATE ON THE ONE HAND AND OF THE CITY ON THE OTHER HAND SHALL BE DETERMINED BY REFERENCE TO, AMONG OTHER THINGS, THE PARTIES' RELATIVE INTENT, KNOWLEDGE, ACCESS TO INFORMATION AND OPPORTUNITY TO CORRECT OR PREVENT THE CIRCUMSTANCES RESULTING IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS. THE STATE'S CONTRIBUTION AMOUNT IN ANY INSTANCE IS CAPPED TO THE SAME EXTENT IT WOULD HAVE BEEN CAPPED UNDER OREGON LAW IF THE STATE HAD SOLE LIABILITY IN THE PROCEEDING.

8.3 WITH RESPECT TO A THIRD PARTY CLAIM FOR WHICH THE CITY IS JOINTLY LIABLE WITH THE STATE (OR WOULD BE IF JOINED IN THE THIRD PARTY CLAIM), THE CITY SHALL CONTRIBUTE TO THE AMOUNT OF EXPENSES (INCLUDING ATTORNEYS' FEES), JUDGMENTS, FINES AND AMOUNTS PAID IN SETTLEMENT ACTUALLY AND REASONABLY INCURRED AND PAID OR PAYABLE BY THE STATE IN SUCH PROPORTION AS IS APPROPRIATE TO REFLECT THE RELATIVE FAULT OF THE CITY ON THE ONE HAND AND OF THE STATE ON THE OTHER HAND IN CONNECTION WITH THE EVENTS WHICH RESULTED IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS, AS WELL AS ANY OTHER RELEVANT EQUITABLE CONSIDERATIONS. THE RELATIVE FAULT OF THE CITY ON THE ONE HAND AND OF THE STATE ON THE OTHER HAND SHALL BE DETERMINED BY REFERENCE TO, AMONG OTHER THINGS, THE PARTIES' RELATIVE INTENT, KNOWLEDGE, ACCESS TO INFORMATION AND OPPORTUNITY TO CORRECT OR PREVENT THE CIRCUMSTANCES RESULTING IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS. THE CITY'S CONTRIBUTION AMOUNT IN ANY INSTANCE IS CAPPED TO THE SAME EXTENT IT WOULD HAVE BEEN CAPPED UNDER OREGON LAW IF IT HAD SOLE LIABILITY IN THE PROCEEDING.

9. INSURANCE

Each party shall each be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.

10. OREGON LAW AND FORUM

This agreement shall be construed according to the laws of the State of Oregon. Any action regarding this agreement or work performed under this agreement shall be filed in Multnomah County or in the United States District Court for the district of Oregon.

11. NON-DISCRIMINATION

Parties will comply with all federal, state, and local statutes regarding civil rights and non-discrimination practices.

12. ACCESS TO RECORDS

Each party shall have access to the books, documents and other records of the other which are related to this agreement for the purpose of examination, copying and audit, unless otherwise limited by law. The

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INTERGOVERNMENTAL AGREEMENT
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FY10 Solving Cold Cases with DNA Grant Funds
#2010-DN-BX-K040

books, documents and other records related to this agreement shall be maintained as long as stipulated in the Grant or by federal law, whichever is the longer.

13. SUBCONTRACTS AND ASSIGNMENT

Neither party shall subcontract or assign any part of this agreement without the written consent of the other party.

14. FORCE MAJEURE

Neither OSP nor PPB shall be held responsible for delay or default caused by fire, riot, acts of nature, power outage, government fiat, terrorist acts or other acts of political sabotage, civil unrest, labor unrest, or war, where such cause is beyond the reasonable control of OSP or PPB. However, both parties shall make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

15. MODIFICATION

This agreement may be modified by mutual consent of the parties. Any modification to provisions of this agreement shall be reduced to writing and signed by all parties.

16. ENTIRE AGREEMENT

This agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

17. ALTERNATIVE DISPUTE RESOLUTION.

The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

18. SEVERABILITY

18.1. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term held to be invalid.

19. COUNTERPARTS

19.1. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

20. ADDITIONAL TERMS AND CONDITIONS: NONE

State of Oregon/City of Portland
INTERGOVERNMENTAL AGREEMENT
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FY10 Solving Cold Cases with DNA Grant Funds
#2010-DN-BX-K040

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS, AND HAS THE AUTHORITY TO SIGN AND BIND ITS AGENCY.

STATE OF OREGON
Acting by and through its
DEPARTMENT OF STATE POLICE

CITY OF PORTLAND, OREGON:

Major Joel Lujan, Public Safety Services

Sam Adams, Mayor

Date: _____

Date: _____

Approved: _____
LaVonne Griffin-Valade, City Auditor

Date: _____

Oregon Dept. of Justice
Legal sufficiency review not required
per OAR 137-045-0030
or by ORS 190.430

Approved as to form:

APPROVED AS TO FORM

Sandra Henry
CITY ATTORNEY

By: _____
Portland City Attorney

Date: 4/13/2011