



**BRADFORD R. FENOCCHIO      PLACER COUNTY DISTRICT ATTORNEY**

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**To:                    The Honorable Board of Supervisors**  
**From:                Bradford R. Fenocchio, District Attorney**  
**Date:                 April 21, 2009**  
**Subject:             MOU with Department of Justice for Solving Cold Cases with DNA Grant**

**Action Request**

Your Board is requested to authorize the District Attorney to execute the Memorandum of Understanding with the Department of Justice Bureau of Forensic Services to analyze DNA cold cases in an amount Not-To-Exceed \$73,069 as part of the Solving Cold Cases with DNA Grant. The MOU is dated April 1, 2009 through March 31, 2010. The grant provides for services of 50% of a Senior Criminalist dedicated to this grant. We believe the authorization of \$73,069 will cover the cost of these services.

**Background**

Your Board accepted the Solving Cold Cases with DNA Grant in November, 2008. This grant included a provision to fund 50% of a Senior Criminalist to provide services to this grant. Through the identification, review and prioritization of unsolved cases with DNA evidence, forensic testing, investigation and prosecution, the Placer County Cold Case Crimes Unit expects to reduce the backlog of unsolved homicides, sexual assaults, and other violent crime cases. In order to accomplish these goals, services are required from the Department of Justice professional services. Consulting fees will be paid to the Department of Justice (DOJ) to process the DNA for the cold cases to the extent funding are available through the grant. An MOU for these services was prepared between Placer County District Attorney and the Department of Justice. Your Board's authorization for the District Attorney to execute the MOU is required.

**Fiscal Impact**

The \$73,069 in grant funds has already been approved by the Board for this MOU within the District Attorney's appropriation. The Department of Justice will bill the District Attorney's Department for the time the Sr. Criminalist provides to these operations to fulfill grant requirements. No General Fund dollars will be applied to this MOU.

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**Memorandum of Understanding**  
**Between the**  
**County of Placer**  
**Placer County District Attorney's Office**  
**and**  
**State of California, through the**  
**California Department of Justice**  
**(Bureau of Forensic Services)**  
**(For Solving Cold Cases with DNA Grant Program)**

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Jill Spriggs, Bureau Chief  
Bureau of Forensic Services  
California Department of Justice

George Anderson, Director  
Division of Law Enforcement  
Office of Attorney General

Brad Fenocchio, District Attorney  
Placer County District Attorney's Office

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into effective this 1st day of March, 2009 between the County of Placer, a municipal corporation, hereinafter referred to as "COUNTY", and the State of California through the California Department of Justice, a public entity, hereinafter referred to as "DOJ."

**RECITALS**

WHEREAS, the U.S. Office of Justice Programs, National Institute of Justice (NIJ), awarded COUNTY a grant through a Cooperative Agreement (project award number 2008-DN-BX-K207, hereinafter referred to as "Grant") incorporated herein by reference, under the NIJ Grant Program entitled "Solving Cold Cases with DNA" ("Program"), for the Grant period of January 2, 2009 to June 30, 2010; and

WHEREAS, \$73,069 of the Grant was budgeted for costs of a half time Senior or qualified Criminalist at the DOJ Sacramento Crime Laboratory to perform screening and DNA analysis of evidence submitted by Placer County District Attorney's Office associated with its unsolved cold homicide and sexual assault cases ("Cases");

WHEREAS, COUNTY has obtained NIJ approval to allow for the use of such portion of the Grant monies for funding the actual proportionate salary and fringe benefit costs of one half-time Criminalist or Senior Criminalist dedicated to biological screening and DNA analysis of Cases; and

WHEREAS, the COUNTY and the DOJ Sacramento Crime Laboratory ("DOJ Lab") are desirous of entering into an agreement whereby DOJ Lab performs biological screening and DNA analysis for Cases pursuant to the Grant guidelines; and

WHEREAS, DOJ represents that the current annual cost of a Senior Criminalist mid range is \$151,930; and by this MOU to allow \$73,069 ( $\$151,930/12=\$12,661$  per month while  $\$12,661$  per month/2= $\$6,330$  x 11.5 months) of the portion of the Grant monies to be used for funding the salary, benefits and operating expenditures of one half-time Criminalist or Senior Criminalist dedicated to biological screening for DNA analysis and DNA analysis Cases starting April 1, 2009 through March 31, 2010 of the Grant period; and

#### AGREEMENT

NOW, THEREFORE, for and in consideration of the covenants contained herein, the parties hereby agree as follows:

1. Agreement Period. The period of this MOU is a portion of the Grant Program term as approved in the Grant. This MOU may be extended on a year to year basis or a portion thereof contingent upon NIJ approval of same and the written approval of both parties. COUNTY will apply for and be responsible for an extension of the Grant. Additional funds applied to this agreement will require an MOU amendment approved by the COUNTY.
2. Purpose and Scope of the Program under this MOU.

The purpose of this MOU is to carry out the objectives, products and services as required by the Grant Program.

  - (a) The purpose of the Grant is to solve Cases with DNA. DNA evidence profiles from Cases are required to be entered into CODIS, and NDIS when applicable, and compared with existing and developing DNA data profiles as outlined by the Grant.
  - (b) The services carried out by DOJ through the DOJ Lab and COUNTY through Placer County District Attorney's Office shall be consistent with those contained in the Grant proposal attached and will become a part hereto.
  - (c) Objectives and products of Grant activities, and by extension this MOU, will not be changed or modified by DOJ or DOJ Lab without prior approval from NIJ and upon written agreement between DOJ and COUNTY.
3. Definitions.
  - (a) MOU Obligations. DOJ Lab will complete no fewer than, but not limited to, 10 Cases for biological screening and DNA analyses over the term of the MOU and complete more Cases if MOU funding allows and time allows. Placer County District Attorney's Office is responsible identifying qualifying Cases. DOJ Lab is responsible for identifying the screening and analysis method that will best identify the DNA. Cases, evidence and methodology will be

discussed by DOJ Lab with Placer County District Attorney's Office grant designee(s).

(b) **Eligible Cases.** A cold case is any case with biological evidence where investigative leads are inconclusive, all investigative leads have been exhausted, named suspects have been eliminated or the originating agency has deemed cold. COUNTY cases will be targeted as outlined in the Grant.

4. COUNTY Responsibilities. Placer County District Attorney's Office will do each of the following:

(a) The COUNTY will reimburse DOJ for the cost of the actual proportionate services of one half-time Criminalist or Senior Criminalist dedicated to biological screening and DNA analysis of Cases beginning April 1, 2009 and through March 31, 2010 pursuant to Grant guidelines and as approved by NIJ in the amount of \$6,330 per month, not to exceed \$73,069 for the term of this agreement.

(b) The COUNTY will be responsible for all reporting requirements to NIJ for Grant Program.

(c) Perform or have performed audits, if necessary, to ensure adherence to the Grant requirements and specifications as it relates to this agreement.

5. DOJ Responsibilities. DOJ Lab will do each of the following:

(a) Beginning April 1, 2009, provide one half-time Criminalist or Senior Criminalist dedicated to biological screening and DNA analysis for Eligible Cases for COUNTY.

(b) Criminalist or Senior Criminalist will meet with COUNTY staff assigned to Grant Program to review, discuss, and prioritize Eligible Cases. Methodology of testing will be reviewed and an anticipated turnaround timeline will be established for each Case depending on the type of screening and analysis to be performed.

(c) A monthly progress report of completed and in-progress screening and analysis of Cases will be submitted by the 20<sup>th</sup> day of the month following the last day of each month in which work is performed (see section 6, below Reporting Requirements).

(f) Invoice Placer County District Attorney's Office for services performed by one half-time Criminalist or Senior Criminalist within 45 days following the last day of each month in which the time is worked (see Section 7, below, Invoicing).

(g) Make all records available for inspection pursuant to this agreement and/or audit by Placer County District Attorney's Office and NIJ and retain such records for a period of 3 years following final payment by Placer

County District Attorney's Office hereunder. This requirement shall survive expiration or termination of this MOU.

6. Reporting Requirements.

(a) The monthly progress reports will be submitted in the format required Placer County District Attorney's Office in accordance with Grant requirements.

(b) Progress reports will be sent to:

Attn: Grants Unit-Nancy Aplanalp  
Placer County District Attorney's Office  
10810 Justice Center Drive,  
Suite 240  
Roseville, CA 95678

7. Invoicing.

(a) Monthly invoices will be submitted in the format required by COUNTY in accordance with Grant requirements. A timekeeping log, accounting for all hours worked during the period and the work performed, outlining each Case, will accompany each invoice. Invoices will be based on actual costs including salary, benefits and operating expenditures for Criminalist or Senior Criminalist. Copies of checks or check register to support the payment will accompany each invoice.

(b) The total reimbursement amount under this agreement will not exceed \$73,069. The final payment, approximately one month or \$6,330, will be withheld until all screening and analysis results or progress reports for Cases submitted within the MOU period are received by COUNTY.

(c) Indirect costs will not be reimbursed.

(d) Invoices must be submitted within 45 days following the last day of each month in which the time is worked. Reimbursement under this agreement is limited to reimbursement of one half-time Criminalist or Senior Criminalist.

(f) Invoices and accompanying time logs will be sent to:

Attn: Grants Unit- Nancy Aplanalp  
Placer County District Attorney's Office  
10810 Justice Center Drive,  
Suite 240  
Roseville, CA 95678

8. Non-Compliance. In the case of non-compliance with the terms of this MOU, reimbursement will be stopped until the non-compliance has been cured.
9. Audits. COUNTY is the recipient of the Grant and will be responsible for compliance with the conditions specified in the Grant. DOJ, as sub recipient, agrees to cooperate with COUNTY. DOJ Lab will agree to cooperate with Placer County District Attorney's Office in this regard and to comply with the Grant Program requirements applicable to DOJ including, without limitation, the organizational audit requirements of the U.S. Office of Management and Budgets (OMB) Circular A-133, Audits of States, Local Governments, and non-Profit Organizations and any audits by or on behalf of Placer County District Attorney's Office and the NIJ.
10. Termination.
  - ✓ (a) Either party may terminate this MOU with 30 days written notice with or without cause.
  - (b) In the event COUNTY terminates this MOU before the end of the Grant Program term, Placer County District Attorney's Office and/or COUNTY may negotiate and enter into agreement(s) with other qualified laboratory (ies).
  - (c) No event of termination shall relieve the parties of Grant Program obligations, Certifications and Assurances which survive termination.
11. COUNTY Non-liability. COUNTY obligations under this MOU are contingent on the approval of Grant funds by NIJ. In the event sufficient funds are not allocated by NIJ, the activities/services provided for herein may be modified accordingly, or this MOU may be terminated as provided above. Nothing in this MOU obligates the COUNTY general fund or taxing or borrowing authority.
12. Nonsupplanting of State or Local Funds.
  - (a) DOJ shall ensure that the Grant funds made available through this MOU will not supplant State or local funds, but instead will be used to increase the amount of funds that would, in the absence of Grant funds, be available from state or local sources for activities funded through this MOU.
  - (b) DOJ agrees to notify Placer County District Attorney's Office immediately if DOJ or DOJ Lab receives new State or local funding for any of the purposes included under this MOU.
13. Capacity of Parties.
  - (a) In pursuit of this MOU the parties shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the other party. Each party shall retain the right to administer this MOU so as to verify that the other party is performing its obligations in accordance with the terms and conditions hereof.
  - (b) Because of its status as an independent contractor, DOJ, DOJ Lab and each of their officers, agents and employees shall have absolutely no

right to employment rights and benefits available to COUNTY employees. Because of its status as an independent contractor, COUNTY and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to DOJ employees. Each party shall be solely liable and responsible for all its respective payroll and tax withholding and for providing to, or on behalf of, its respective employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this MOU, each party shall be solely responsible, indemnify, defend and save the other party harmless from all matters relating to employment and tax withholding for and payment of their respective employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in the other party's employment benefits, entitlements, programs and/or funds offered its employees whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this MOU, DOJ may be providing services to others unrelated to COUNTY or to this MOU. Any Criminalists providing DNA analysis pursuant to this MOU shall remain the employees of DOJ, or DOJ Lab, and shall not be employees of COUNTY.

14. Assignment.

(a) Neither party shall assign, transfer or sub-contract this MOU, nor their rights or duties under this MOU without the prior written consent of the other party, and subject to requirements of the Grant Program.

(b) DOJ hereby agrees not to assign the payment of any monies due DOJ Lab from COUNTY under the terms of this MOU to any other individual(s), corporation(s) or entity(ies). COUNTY retains the right to pay any and all monies due DOJ directly to DOJ Lab.

15. Insurance and Indemnification.

(a) Without limiting the indemnification below, each party at its sole expense, shall maintain in full force and affect the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement throughout the term of this MOU: coverage shall be provided for general liability, automobile liability, and workers' compensation. Evidence of Insurance shall not be required of either party under this MOU.

(b) Each party shall indemnify, hold harmless, and at its sole expense defend the other party and each of its officials, officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting from or in connection with the performance, or failure to perform, by the indemnifying party, its officials, officers, agents, or employees under this MOU, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, corporation, or any personal or real property, who/that may be injured or damaged by the

performance, or failure to perform, of said indemnifying party, its officials, officers, agents, or employees under this MOU, provided nothing herein shall constitute a waiver by either party of governmental immunities including California Government Code Section 810 et seq.

(c) Neither party assumes liability for the acts or omissions of persons other than its own respective officials, officers, agents and employees.

(d) In the event of concurrent negligence on the part of both parties or any of their officials, officers, agents or employees, the liability for any and all costs and expenses, damages, liabilities, claims, and losses shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

(e) This section shall survive termination or expiration of this MOU.

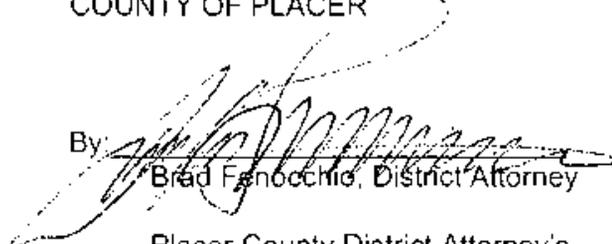
16. Notices. Any notice required or intended to be given to either party under the terms of this MOU shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this MOU or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
17. Binding. Once this MOU is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.
18. Compliance With Law. Each party shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matters herein.
19. Waiver. The waiver by either party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU. No provisions of this MOU may be waived unless in writing and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
20. Governing Law and Venue. This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this MOU and any rights and duties hereunder shall be Placer County, California.

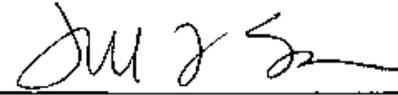
21. Headings. The section headings in this MOU are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this MOU.
22. Severability. The provisions of this MOU are severable. The invalidity or unenforceability of any one provision in this MOU shall not affect the other provisions.
23. Interpretation. The parties acknowledge that this MOU in its final form is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
24. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
25. Extent of MOU and Certification of Authority. Each party acknowledges that they have read and fully understand the contents of this MOU and is fully authorized to execute it. This MOU represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral (including, without limitation, the 2009 MOU). This MOU may be modified only by written instrument duly authorized and executed by both COUNTY and DOJ.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the day and year first hereinabove written.

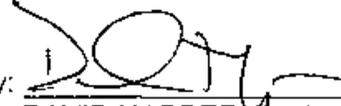
COUNTY OF PLACER

STATE OF CALIFORNIA,  
CALIFORNIA DEPARTMENT OF JUSTICE

By:   
Brad Fenocchio, District Attorney

By:   
JILL SPRIGGS, Bureau Chief  
Bureau of Forensic Services  
California Department of Justice

Placer County District Attorney's  
Office

By:   
DAVID HARPER, Assistant Director  
California Department of Justice  
Division of Administrative Support

Approved as to Form:

By:   
County Counsel  
County of Placer

Addresses:

Placer County District Attorney's Office  
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Criminal Investigator  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678  
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CDOJ (Sacramento Laboratory)  
Attn: Kurtis Smith, Director  
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Sacramento, CA 95820  
Phone: (916) 227-3777  
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