

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SPECIMEN SPECIALISTS OF AMERICA, INC.

This Agreement is entered into this _____ day of _____, 2015, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Specimen Specialists of America, Inc., hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing forensic phlebotomy services.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A - Services

Exhibit B - Payments and Rates

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed **FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$450,000.00)**. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from **SEPTEMBER 1, 2015** through **AUGUST 31, 2018**.

5. Termination; Availability of Funds

This Agreement may be terminated by Contractor or by the Sheriff or Sheriff's designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full

payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

11. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- ☒ Comprehensive General Liability \$1,000,000
(Applies to all agreements)

- ☒ Motor Vehicle Liability Insurance \$1,000,000
(To be checked if motor vehicle used in performing services)
- ☒ Professional Liability \$1,000,000
(To be checked if Contractor is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

12. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

13. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- ☒ Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- ☐ Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- ☐ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 12, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- 1) termination of this Agreement;
- 2) disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- 3) liquidated damages of \$2,500 per violation; and/or
- 4) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

14. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if

Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed Section 3, above, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

15. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

16. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

17. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

18. **Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Ginger Martinez, Management Analyst

Address: San Mateo County Sheriff's Office

400 County Center

Redwood City, CA 94063

Telephone: (650) 363-7819

Email: gbalkus@smcgov.org

In the case of Contractor, to:

Name/Title: Annette Filice

Company: Specimen Specialists of America, Inc.

Address: 2003-A Opportunity Drive, Suite #5

Roseville, CA 95678

Telephone: (800) 568-6808

Email: afilice@ssoai.com

19. **Electronic Signature**

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☒ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☒ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

* * *

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands

COUNTY OF SAN MATEO

*A Political Sub-division of the
State of California*

BY: _____
PRESIDENT, BOARD OF SUPERVISORS

DATE: _____

ATTEST:

BY: _____
CLERK OF SAID BOARD

SPECIMEN SPECIALISTS OF AMERICA, INC.

BY:  _____
(SIGNATURE)

Annette Filice, Vice President

(PRINTED NAME)

DATE: 9/17/15

(April 1, 2015 CCC issued contract template version)

EXHIBIT A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

- A. Contractor will provide on-site phlebotomy services when requested by County or law enforcement agencies within the County.
- 1) Phlebotomy services will be provided 24 hours/7 days a week, 365 days of the year.
 - 2) Phlebotomists may be required to participate in blood-draws with or without the consent of the individual, as required by the presenting situation.
- B. Contractor will gather forensic evidence to aid in the prosecution of individuals accused of a crime. Contractor will assist in gathering evidence by withdrawing blood from:
- Arrested or incarcerated individuals
 - Individuals involved in a motor vehicle collision who voluntarily wish to have forensic blood specimen taken
 - Public safety personnel involved in critical incidents (e.g. officer involved shooting, vehicle accident, etc.)
- C. Blood withdrawal services will be provided at law enforcement agencies in the County and at other sites which include but are not limited to:

Maguire Correctional Facility	300 Bradford Street	Redwood City
Women's Correctional Center	1590 Maple Street	Redwood City
First Chance Drop-off Center	826 Mahler Road	Burlingame
Kaiser Redwood City	1150 Veterans Blvd.	Redwood City
Kaiser South San Francisco	1200 El Camino	So. San Francisco
Mills-Peninsula Hospital	1783 El Camino	Burlingame
San Francisco General Hospital	1001 Potrero Ave.	San Francisco
San Mateo Medical Center	222 39 th Ave.	San Mateo
Sequoia District Hospital	170 Alameda de las Pulgas	Redwood City
Seton Medical Center Daly City	1900 Sullivan	Daly City
Seton Coastside	Marine Blvd. & Etheldore	Moss Beach
Stanford University Medical Center	300 Pasteur Drive	Palo Alto

- D. A phlebotomist will arrive on-site within 40 - 60 minutes of receiving notification.
- 1) The parties understand and agree that it would be difficult to quantify the amount of damage caused by failures of the contractor to satisfy these time requirements. That damage includes wasted public resources when others are forced to wait for Contractor. Accordingly, the parties agree that Contractor will pay in liquidated damages \$75 for every instance that Contractor arrives on-site within 61-75 minutes of receiving notification, \$150 for every instance that Contractor arrives on-site within 76-90 minutes of receiving notification, \$300 for every instance that Contractor arrives within 91-120 minutes of receiving notification and \$600 for every instance that Contractor arrives on site more than

121 minutes of receiving notification. Contractor's failure to meeting its obligations pursuant to this section will be documented by email or other written correspondence sent to Contractor and the liquidated damages may be deducted from any payment due to Contractor. The existence of this liquidated damages clause does not impact the County's ability to terminate the agreement under Paragraph 5.

- E. Obtain blood alcohol kits and supplies (including needles, syringes) from the Sheriff's Office Forensic Laboratory, which will be provided without charge. Other equipment and supplies, such as genetic marker kits will be provided by the Sheriff's Office at the Maguire Correctional Facility. If warranted, Contractor will assign a lead phlebotomist to coordinate the local distribution of supplies.
- F. Contractor will appear in court, when requested by County, at the requested time for cases as a result of services rendered pursuant to subpoena at no additional cost to County.
- G. Contractor will contact designated County staff or First Chance Manager monthly to discuss any concerns, issues, and exchange information. Contractor will be available to meet if requested during the regular work week hours to discuss any issues related to Contractor's services.
- H. Contractor will bring supplies from the Sheriff's Office Crime Lab to First Chance Drop-off Center and to other non-medical sites.
 - 1) Contractor will supply Sharps disposal containers, tourniquets, gloves, and will include a copy of declaration of person qualified to perform ventipuncture.
- I. County will be single point of contact for all operational issues requiring attention and resolution. Contractor will not directly approach the various law enforcement agencies. Contractor will meet regularly at the request of County to address any operational issues.
- J. Contractor will assign phlebotomists, as needed, for any scheduled DUI Strike operations.
- K. Contractor will provide regular statistical and management reports as requested by County.
- L. Additional Responsibilities Contractor.
 - 1) Phlebotomists must be certified by the California State Department of Health Services to draw blood in accordance with sound medical practices.
 - 2) All phlebotomists provided by Contractor will require a Sheriff's Office background check prior to being allowed in the correctional facilities.

EXHIBIT B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

A. RATES.

- 1) County agrees to pay Contractor according to the following rates for the services set forth in Exhibit A:
 - Per draw Charge \$75.66
 - Cancelled Requests (Dry Runs) .. \$75.66
 - Court time no charge
 - Travel time no charge
- 2) If the services below are requested by County, County agrees to pay Contractor according to the following rates:
 - Urine Collection\$75.66 per collection
 - DNA Collection\$75.66 per collection

B. METHOD OF PAYMENT.

- 1) Invoicing Procedures.
 - a) Contractor shall submit **MONTHLY** invoices to the following:

San Mateo County Sheriff's Office
Forensic Laboratory
50 Tower Road
San Mateo, CA 94402-4035
 - b) County shall pay Contractor, upon receipt of an invoice, for services rendered. Each invoice submitted must include the following information, at a minimum:
 - Agreement number
 - Detailed statement of services/work completed for the invoiced period.
 - A report (as an attachment) capturing the following information:

▪ Service date	▪ Suspect's name
▪ Requesting agency	▪ Offense
▪ Agency case number	▪ Phlebotomist
▪ Officer	▪ Location
▪ Badge Number	
- 2) Contractor shall prepare and submit a monthly invoice for payment of services rendered in accordance with the policies and procedures established by the County Controller's Office. In any event, the total payment for services of Contractor shall not exceed \$290,000.00 during the term of this agreement. County shall have the right to withhold payment if County determines that the quality or quantity of work performed is unacceptable. Payments shall be made within 30 days from the date of the applicable undisputed invoice.