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P. Hrngs. _____
Pgs. 13
Filed: 04-13-21

Sponsored by: Hosmer

First Reading: _____

Second Reading: _____

COUNCIL BILL 2021- 101

SPECIAL ORDINANCE _____

AN ORDINANCE

1 AUTHORIZING the City Manager, or his designee, to enter into a Professional
2 Service Agreement with the Missouri State Highway Patrol and the
3 Marshall University Research Corporation on behalf of Marshall
4 University Forensic Science Center to provide independent review
5 of privately tested Sexual Assault Forensic Evidence kits.
6
7

8 WHEREAS, City Council recently allocated funding to identify and test all
9 untested Sexual Assault Forensic Evidence kits (“SAFE kits”) currently held by the
10 Police Department through a private laboratory; and
11

12 WHEREAS, all test results from the private laboratory must be reviewed by an
13 independent third-party for potential entry into the Federal Bureau of Investigation
14 (“FBI”) Combined DNA Index System (“CODIS”); and
15

16 WHEREAS, the Marshall University Forensic Science Center (“MUFSC”) is
17 capable of providing the necessary review; and
18

19 WHEREAS, the Missouri State Highway Patrol, Crime Laboratory Division
20 (“MSHP”) has agreed to assist the Springfield Police Department by providing technical
21 leadership for the independent testing and review of SAFE kits, including uploading
22 results into CODIS.
23

24 NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
25 SPRINGFIELD, MISSOURI, as follows, that:
26

27 Section 1 – The City Manager, or his designee, is hereby authorized to enter into
28 a Professional Service Agreement with the Missouri State Highway Patrol and the
29 Marshall University Research Corporation on behalf of Marshall University Forensic
30 Science Center to provide independent review of privately tested Sexual Assault
31 Forensic Evidence kits, said agreement to be substantially in the form of that Agreement
32 which is attached hereto and incorporated herein by reference as “Exhibit A.”
33

34 Section 2 – This Ordinance shall be in full force and effect from and after
35 passage.

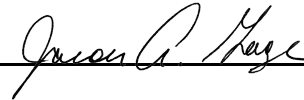
36
37 Passed at meeting: _____

38
39 _____
40 Mayor

41
42 Attest: _____, City Clerk

43
44 Filed as Ordinance: _____

45
46 Approved as to form:  _____, Assistant City Attorney

47
48
49 Approved for Council action:  _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-101

FILED: 04-13-21

ORIGINATING DEPARTMENT: Police

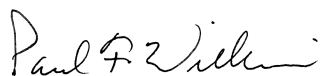
PURPOSE: To authorize the City Manager, or his designee, to enter into a Professional Service Agreement with the Missouri State Highway Patrol and Marshall University for technical review of privately tested Sexual Assault Forensic Evidence kits.

BACKGROUND INFORMATION: City Council recently appropriated funds to allow for the testing by a private laboratory of the remaining untested Sexual Assault Forensic Evidence Kits held by SPD. In order for the test results to be provided to the Missouri State Highway Patrol for entry into the Combined DNA Index System ("CODIS") the results must be first submitted to a third party for independent technical review.

Under this agreement, the third-party review will be conducted by the Marshall University Forensic Science Center. The Missouri State Highway Patrol will provide technical assistance and training to Marshall University and will ultimately submit the test results into CODIS.

Submitted by:

Approved by:



Paul F. Williams, Chief of Police



Jason Gage, City Manager

Exhibit A

PROFESSIONAL SERVICE AGREEMENT
FOR TECHNICAL REVIEW OF SEXUAL ASSAULT KIT TESTING RESULTS

This agreement (AGREEMENT), entered into this _____ day of _____, 2021, by and between the Missouri State Highway Patrol, Crime Laboratory Division (MSHP), the City of Springfield by and through the Springfield Police Department (Springfield Police Department), and the Marshall University Research Corporation (MURC or contractor) on behalf of Marshall University Forensic Science Center (MUFSC) by the Executive Director, collectively referred to hereinafter as the “Parties”.

WHEREAS, Springfield Police Department was provided with testing funds from the Springfield City Council; and

WHEREAS, the MSHP has agreed to assist in the implementation of the Springfield project to provide technical leadership for the outsourcing of DNA testing of approximately 119 sexual assault kits and the technical review of testing results, including uploading results into the FBI CODIS system; and

WHEREAS, the Federal Bureau of Investigation’s (FBI) Quality Assurance Standards (QAS) for Forensic DNA Testing Laboratories, Standard 17, requires the National DNA Indexing System (NDIS) participating Laboratory (MSHP) to show ownership of outsourced DNA testing through the completion of a technical review prior to entry of forensic DNA profiles into the Combined DNA Index System (CODIS) and allows for a contract employee reviewer to complete these requirements; and

WHEREAS, MSHP and the Springfield Police Department requires the resources of a contract employee reviewer for both CODIS eligible and CODIS ineligible STR profiles for the purposes of the grant; and

WHEREAS, in accordance with Section 34.046, RSMo, MSHP and the Springfield Police Department, governmental units within the State of Missouri, may contract directly with MURC, a non-profit affiliate of Marshall University, a governmental entity under this section, for the technical review of DNA testing results services.

NOW THEREFORE, for and in consideration of the promises, mutual covenants and agreements herein contained, and other valuable consideration, MSHP, the Springfield Police Department and MURC on behalf of the MUFSC agree as follows:

ARTICLE I- SCOPE OF SERVICES

- A. MURC on behalf of MUFSC will:
1. Cooperate with the MSHP, the Springfield Police Department and contractual private DNA testing lab to perform the technical review of the results and reports submitted by the laboratory for review on a schedule approved by the parties;
 2. Fulfill laboratory requirements of Standard 17 of FBI’s Quality Assurance Standards (QAS) for Forensic DNA Testing Laboratories, including all accreditation and compliance requirements;
 3. Ensure contract employees follow all current MSHP Biology/DNA technical review protocols and utilize the review documentation form provided by MSHP;

4. Only assign forensic DNA scientists who meet the education, experience, training and competency requirements as detailed in the FBI's QAS for Forensic DNA Testing Laboratories to conduct technical reviews under the terms of this Agreement;
5. Provide MSHP written notice thirty days in advance of any changes in the status of the contract technical review personnel associated with this contract (Note: MSHP will qualify, test and maintain documentation to show that all contract employees performing technical review services are currently qualified or previously qualified, in the technology, platform and typing amplification test kit used to generate the data and participate in an NDIS laboratory's proficiency-test program as per Standard 17.6 of the FBI's Quality Assurance Standards for Forensic Testing Laboratories.) (Further Note: All personnel must be approved in writing by the MSHP DNA Technical Leader prior to conducting reviews.);
6. Accept training from the MSHP to include, but not limited to, CODIS eligibility requirements, DNA profile entry criteria, components of the technical review and documentation of the technical review;
7. Maintain competency and proficiency testing using Short Tandem Repeats (STR) analysis utilizing capillary electrophoresis with the PowerPlex Fusion 6C genetic loci system using MSHP interpretation guidelines;
8. Receive secure electronic copies of completed case files for technical review directly from a MSHP contractual vendor testing laboratory;
9. Complete approximately 50 – 100 technical reviews per month (the number of technical reviews will vary month to month) over the duration of this Agreement (Note: The technical reviews must include documentation of the technical review on a standardized technical review form provided by MSHP and an electronic file for uploading to CODIS that includes DNA profiles eligible for entry into CODIS.);
10. Conduct a review that must include, but not limited to, the following items on a DNA report/case file:
 - Data Review (including DNA types, mixture interpretation, associated controls, internal lane standards and allelic ladders);
 - Chain of Custody; and
 - Final report to include each item submitted to the vendor laboratory, results, conclusions and documentation.
11. Invoice the Springfield Police Department on the 15th day of each month for all technical reviews completed during the previous month at a rate of \$55 per technical review for negative kits and \$91.00 per technical review for positive kits completed by the MUFSC employees in accordance to the terms of this Agreement (Note: If the 15th falls on a federally recognized holiday or weekend, the invoice must be sent on the next business day.);
12. As necessary, allow on-site visits that include, at a minimum, continued competency test through proficiency testing by the MHP staff to ensure compliance with the FBI's QAS for Forensic DNA Testing Laboratories.
13. Shall be available to provide expert testimony on cases where review was performed by MURC, at the request of law enforcement, local prosecutors or defense counsel at the expense of the requesting party (Note: MSHP will not pay for or be responsible for any expense related to testimony.).

- B. MSHP and Springfield Police Department will:
1. Provide training to MUFSC employees regarding CODIS, the training will include, at a minimum, CODIS eligibility requirements, DNA profile entry criteria, components of the technical review and documentation of the technical review;
 2. Springfield Police Department will compensate, if necessary, the MUFSC for the employee training at the rate of \$30 per hour, per analyst. Limited to eight (8) hours of training for four (4) employees during the grant period (Note: Each analyst will be required to pass a competency provided by MSHP prior to performing technical reviews.);
 3. Coordinate efforts with the independent contractual testing laboratory to provide training to MUFSC contract employees, if necessary, on their file organization and interpretational guidelines;
 4. Coordinate with the independent contractual testing laboratory on any inquiries generated by MUFSC contract employees during the technical reviews. The MSHP will resolve all inquiries with the contractual third-party DNA testing provider independent of the MUFSC contract employees;
 5. MSHP will conduct random review of the technical reviews conducted by MUFSC employees in under this agreement. This random review will encompass a minimum one (1%) of the overall number of technical reviews conducted by MUFSC contract employees;
 6. Springfield Police Department will pay MURC at the rate of \$55 per kit for the review of negative results and \$91 per kit for the review of positive results for work completed by MUFSC employees in accordance with the terms of this Agreement. The MURC will invoice Springfield Police Department on the 15th of each month for all technical reviews completed during the previous month. Springfield Police Department agrees to pay all invoices approved by MSHP and/or Springfield Police Department within thirty (30) days of receipt if all documents and paperwork are concluded for kits reflected in the invoice;
 7. As required by the FBI's QAS for Forensic DNA Testing Laboratories, the MSHP will administer proficiency tests to each MUFSC contract employee consistent with the full extent of analytical support services being provided to the MSHP by the employee (Note: The proficiency tests shall be conducted under the MSHP proficiency test program.);
 8. All proficiency testing of MUFSC employees required by the FBI's QAS will be provided by MSHP without costs to the MURC or MUFSC.
- C. The Parties agree to the following.
1. For the purposes of compliance with the FBI's QAS Forensic DNA Testing Laboratories, MUFSC employees who provide technical review services of the private independent DNA Testing Laboratory data and reports shall be considered to be contract employees of the MSHP, as the term "contract employees" is defined in the FBI's QAS for Forensic DNA Testing Laboratories, effective September 1, 2020.
 - a. The FBI's QAS for Forensic DNA Testing Laboratories, effective July 1, 2020, defines a contract employee as an individual that provides DNA typing and/or analytical

support services to the NDIS participating laboratory (MSHP). The persons performing these services must meet the relevant qualifications for the equivalent position in the NDIS participating laboratory (MSHP). A contract employee cannot serve as the casework CODIS administrator or technical leader and cannot be counted as a full-time, qualified analyst for purposes of satisfying the definition of a laboratory.

- b. As used in the Agreement, “technical review” is prescribed the same meaning as it is given in the FBI’s QAS for Forensic DNA Testing Laboratories, effective July 1, 2020, as “An evaluation of reports, notes, data and other documents to ensure there is an appropriate and sufficient basis for the scientific conclusions.”
2. Except as provided in C.1.a. above, MURC and MUFSC employees shall not be considered to be employees of the MSHP or Springfield Police Department for any purpose whatsoever, including, but not limited to, tax purposes, employment benefits, indemnification, fees or other costs not specifically agreed to herein, worker compensation claims, lawsuits, immunity or third-party liability claims.
3. All MSHP and Springfield Police Department case information is confidential criminal justice information. Access to MSHP and Springfield Police Department case information shall be controlled by contract employee(s) and limited to those personnel identified to the MSHP as working under this contract. MUFSC employees shall not provide information concerning MSHP or Springfield Police Department cases to anyone other than a representative of MSHP or Springfield Police Department without first notification to and approval of that agency. All technical review shall be at the facility identified by MURC.
4. At no time will DNA profiles generated from MSHP or Springfield Police Department casework be entered into internal or external databases by for searching by law enforcement personnel, scientific personnel or anyone else for investigative purposes.

ARTICLE II – TERM

The term of the Agreement shall be for a period beginning January 1, 2022 and ending December 31, 2022.

ARTICLE III- FEES AND PAYMENTS

1. The cost to the Springfield Police Department for services and training provided during the contract period shall not exceed the amount of Eleven Thousand (\$11,000.00) for the provision of technical review services and training provided in this Agreement, and all payments shall be contingent upon appropriations of sufficient funds to the Springfield Police Department for these services.
2. Springfield Police Department will pay training fees in accordance with the process set forth more fully in Article I, provided the MURC fulfills its obligations set forth more fully in Article I.
3. Invoices should be directed to the Springfield Police Department as set out in Article VI.
4. All purchases and charges pursuant to the Agreement are tax exempt and no tax is to be passed through or billed to the Springfield Police Department or included within fixed lump sum charges in any manner.

ARTICLE IV - TERMINATION

1. Either party may terminate this Agreement for any reason, provided that at least thirty (30) days advance written notice is given to all other parties.
2. If any party is in breach of the Agreement, the other parties may terminate if the breaching party fail to cure the breach within thirty (30) days of written notice of the same.
3. In event of such termination, all work papers, records, reports and collected data will be promptly returned to the MSHP and/or Springfield Police Department by the MURC, MUFSC, or other contracted provider. In the event of early termination, the Springfield Police Department will pay MURC for all technical reviews completed up to the effective date of termination provided all materials, work products and reports submitted to the MSHP or Springfield Police Department.
4. Notwithstanding anything to the contrary herein, it is expressly understood by the parties that the Agreement shall terminate upon failure of budgetary fund appropriations with no resulting liability to the MSHP or Springfield Police Department. The MSHP and Springfield Police Department will exercise its best effort to notify MURC of any budgetary failure in appropriations in advance. MURC will not be paid for any lost profits or damages because of termination.

ARTICLE V- ASSIGNABILITY

The parties shall not subcontract, assign or transfer this Agreement nor any portion thereof without the prior written consent of the other party and any failure to so comply shall be deemed cause for termination of the Agreement.

ARTICLE VI – POINTS OF CONTACT

Points of Contacts MURC on behalf of MUFSC will be:

Mr. Jason Chute, DNA Technical Leader

Marshall University Forensic Science Center
1401 Forensic Science Drive, Huntington, WV 25701-3628
jchute@marshall.edu
304-691-8946 (telephone)
304-691-8928 (fax)

Joseph Ciccarello, Associate Executive Director

Marshall University Research Corporation
One John Marshall Drive, Huntington, WV 25755
ciccarello@marshall.edu
304-696-4837 (telephone)
304-697-2770 (fax)

Point of Contact for Missouri State Highway Patrol, Crime Lab Division:

Jackson Scanlon, DNA Technical Leader
Missouri Highway Patrol - Crime Laboratory
425 East Phelps Street, Springfield, MO 65806
Jackson.Scanlon@mshp.dps.mo.gov
417-868-9400 x4446 (telephone)
417-895-6354 (fax)

Point of Contact for Springfield Police Department:

Major Stacey Parton
Springfield Police Department
321 E. Chestnut Expwy.
Springfield, MO 65802
sparton@springfieldmo.gov
417 864-1754

ARTICLE VII – GENERAL PROVISIONS

- A. **STANDARD OF CARE.** In performing the services under the Agreement, MUFSC employees will use the degree of care and skill ordinarily exercised under similar circumstances by members of the forensic science profession. Any problems relating to the services provided herein should be brought to the attention of the MSHP as soon as encountered and, if possible, prior to the issuance of the analytical report. If reasonable under the circumstances, the MUFSC will be required to correct any errors.
- B. **RECORDS MADE AVAILABLE.** The contractor agrees to make all records relating to this Agreement available for inspection by representatives of the MSHP during normal business hours.
- C. **INDEPENDENT CONTRACTOR.** The contractor agrees to perform duties hereunder as an independent contractor and not as an employee. Neither the contractor nor any agent or employee of the contractor shall be deemed to be an agent or employee of the MSHP, except as set out in Article I C.1.a. The contractor shall pay, when due, all required employment taxes and income withholding consistent with state law, shall provide and keep in force worker's compensation insurance and unemployment compensation insurance as required by law, and shall be solely responsible for acts of the contractor, contractor employees and agents.
- D. **NO PROMISE FUNDING.** Other than as specifically set forth herein, this Agreement is not an obligation or commitment of funds, nor a basis for transfer of funds. Each party shall bear its own costs in relation to this Agreement. expenditures by each party will be subject to applicable budgetary processes and to availability of funds pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that this in no way implies any appropriation, tender, or allocation of funds for such expenditures.

- E. HEADINGS. Item or section headings, if any, are for convenience only and are not to be used to interpret or define the provisions of the Agreement.
- F. NUMBER AND GENDER IFFELEVANT. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- G. SEVERABILITY. Nothing in this Agreement is intended to conflict with applicable laws, regulations or directives. Accordingly, the provisions of this Agreement are severable and, in the event any provision of this Agreement is determined to be invalid, in whole or in part, such unenforceable or invalid provision shall not affect the legality, enforceability, or validity of the rest of this Agreement.
- H. NO PRIVATE RIGHT. This agreement is between MSHP, Springfield Police Department, and MURC, on behalf of MUFSC. It does not create nor confer any right or benefit that is substantive or procedural, enforceable by any third party against the parties, or other officers, employees, agents, or associated personnel of the parties. Nothing in this Agreement is intended to restrict the authority of either party to act as provided by law, statute, or relation, or to restrict any party from administering or enforcing any laws within its authority or jurisdiction.
- I. ISSUE RESOLUTION. Throughout the course of this Agreement, issues such as scope, interpretation of provisions, and other concerns may arise. Both parties agree to appoint their respective representative identified in Article VI, or other point of contact, to work in good faith toward a resolution.
- J. ENTIRE MOU. This Agreement constitutes the entire Agreement between the parties with regard to the terms and matters set forth herein. This Agreement may be modified upon the mutual written consent of the parties, however any such changes must be in writing, and duly signed by their authorized representatives. This Agreement, including any amendments, will be reviewed annually on or around the anniversary of its effective date.
- K. RESPONSIBILITY ONLY FOR OWN ACTIONS. To the extent governed by applicable state law, each party will be responsible for its own acts and results arising from those actions, and shall not be responsible for the acts of the other party and results arising from those actions.
- L. ASSUMPTION OF RISK AND LIABILITY ONLY FOR OWN ACTIONS. Each party agrees, to the extent allowed by law, that it will assume all risk and liability to itself and its agents and employees for any cause of action resulting from any operations or conduct of its agents or employees under this Agreement. Applicable state law shall govern each party's liabilities.
- M. NO WAIVER OF IMMUNITY. Nothing in this agreement shall be construed as a waiver by the state of Missouri or the City of Springfield of any applicable immunity, including sovereign immunity as enjoyed by the State and the City of Springfield under § 537.600 of the Revised Statutes of Missouri.

ARTICLE VIII – CONFLICT OF INTEREST

- 1. MURC on behalf of MUFSC covenants that:
 - a. It presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under the Agreement;
 - b. In the performance of the Agreement no person having such interest shall be employed by the contractual service provider; and

- c. In the performance of the Agreement, neither the contractual service provider nor any of its agents or employees, are or shall become an employee of the State of Missouri, a member of the General Assembly, or a statewide elected official.
2. Employment of a contract employee by multiple NDIS participating and/or vendor laboratories shall be disclosed and shall only be permitted subject to the approval by the technical leader of the NDIS participating laboratory (MSHP) for which the contract employee is performing DNA typing and/or analytical services.

ARTICLE IX – GOVERNING LAW/VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. It is further agreed by the parties that any action at law, suit in equity or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted in a court of competent jurisdiction.

ARTICLE X – INSURANCE

1. The contractor at its expense, at all times during the term hereof, shall be insured on an occurrence basis against all claims and demands by third persons for bodily injury, including wrong death, and property damage arising or alleged to arise out of the activities of the contractor, its officers, agents and employees, and independent contractors pursuant to the Agreement under the following types of coverage:
 - a. General Comprehensive;
 - b. Automobile (all vehicles);
 - c. Professional Liability for Error and Omissions;
 - d. Information Security Liability / Cyber Liability
 - e. Workers Compensation; and
 - f. Unemployment compensation

Contractor agrees to maintain limits of insurance of at least \$1,000,000 per occurrence for all types of coverage. Liability coverage must include unauthorized access to Protected Health Information (PHI).

2. Each party to this Agreement agrees that it will be responsible for its own negligent acts or omissions and the results thereof and shall not be responsible for the negligent acts or omissions of the other parties and the results thereof.
3. In no event shall any party be liable to the other for any indirect, incidental, special, punitive or consequential damages whatsoever; suffered by the other party, any affiliate, licensee, or any third party resulting from the other party's, any affiliate's, licensee's or any third party's use of the data under this Agreement.

ARTICLE XI – NON-DISCRIMINATION

All parties agree in the performance of this Contract not to discriminate on the ground or because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of said parties or applicant for employment and, if required by applicable law, shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 {2246534;7} 7 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

ARTICLE XII – CONFIDENTIALITY

The contractor shall not use or disclose any information it receives from the State or Springfield Police Department under this contract that State or Springfield Police Department have previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by the State. The State shall not disclose any information it received from contractor that contractor has previously identified as confidential and that the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the State of Missouri Sunshine Law, Chapter 610 of the Revised Statutes of Missouri (RSMo). The duty of the State and contractor to maintain confidentiality of information under this section continues beyond the term of this contract.

ARTICLE XIII – UNAUTHORIZED ALIEN EMPLOYEES

1. The contractual provider shall in compliance with all applicable provisions of Section 285.525 through 285.555 RSMo, provide to the MSHP and Springfield Police Department by sworn affidavit and provision of documentation, a statement of affirmation that the contractor does not knowingly employ any person who is an unauthorized alien in connection with this service contract, and further, that the contractor is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the service contract.
2. The contractor has executed an affidavit, attached as an exhibit hereto, which shall remain in full force and effect during the term of this Agreement. The contractor has an obligation to immediately notify the MSHP and Springfield Police Department in writing of any change in the provisions of this affidavit.

ARTICLE XIV – CERTIFICATE OF COMPLIANCE WITH 34.600 RSMO. (ANTI-DISCRIMINATION AGAINST ISRAEL ACT).

Pursuant to Missouri Revised Statute Sections 34.600 et., seq., MURC must provide a written certification of compliance with the Anti-Discrimination Against Israel Act, RSMo. 34.600 et.,seq. that MURC is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in

