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2020-0898

**SECOND AMENDMENT TO FIRST INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF HOUSTON
AND
HOUSTON FORENSIC SCIENCE CENTER, INC.**

THIS SECOND AMENDMENT TO FIRST INTERLOCAL AGREEMENT (“Second Amendment”) is made by and between the **CITY OF HOUSTON** (the “City”), a Texas home-rule city principally situated in Harris County, and **HOUSTON FORENSIC SCIENCE CENTER, INC.** (“HFSC” or the “Corporation”), a Texas local government corporation, and is effective on the date countersigned by the City Controller. The City and HFSC are collectively referred to hereinafter as the “Parties.”

RECITALS

WHEREAS, the City and HFSC are each a “local government” as defined by Texas Government Code Chapter 791, and engaged in the provision of governmental services for the benefit of the residents of the City; and

WHEREAS, pursuant to Resolution No. 2012-17, passed and adopted by the City Council on June 6, 2012, the City Council created HFSC, a local government corporation, to operate a forensic science center to provide the City with accurate and timely analysis of forensic evidence and related services, to accomplish an important governmental purpose, namely to enhance the welfare and safety of the public; and

WHEREAS, pursuant to Ordinance No. 2014-165, passed and adopted by the City Council on February 26, 2014, the City and HFSC entered into the First Interlocal Agreement (“Original ILA”), whereby the City transferred to the Corporation, control of, and responsibility for, the “Forensic Operations” as defined in the Original ILA and agreed to fund the Corporation’s operations as deemed necessary to accomplish the Corporation’s objectives; and

WHEREAS, the President of the United States, the Governor of the State of Texas, the County Judge of Harris County, and the Mayor of the City of Houston have issued emergency declarations and executive orders in response to the Coronavirus Disease 2019 (“COVID-19”) pandemic; and

WHEREAS, on March 27, 2020, the President signed into federal law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which established the Coronavirus Relief (“CRF”) Fund and appropriated \$150 billion out of the Fund for the Department of Treasury to make payments to, among other governmental entities, certain local governments; and

WHEREAS, pursuant to the CARES Act, the United States Department of Treasury has provided the City with a direct payment from the Fund for the City to cover costs that are necessary expenditures incurred due to the public health emergency with respect to COVID-19; were not

accounted for in the City's budget most recently approved as of March 27, 2020; and were incurred on March 1, 2020 through and including December 30, 2020; and

WHEREAS, as a result of COVID-19, Corporation has incurred, or may incur in the future, operating expenses relating to provision of Forensic Operation services that are critical to support ongoing criminal investigations and adjudications and are eligible for reimbursement from the CRF Fund or other sources including, but not limited to, funds administered by the Federal Emergency Management Agency ("FEMA") or funds from federal or state agencies relating to COVID-19 or other declared disasters (hereinafter, "Disaster Funds"); and

WHEREAS, the City desires to make Disaster Funds, including CRF Funds, available to the Corporation to reimburse it for expenses related to COVID-19 or other declared disasters and necessary for performing safe and efficient Forensic Operations critical to public safety; and

WHEREAS, the City and Corporation desire to formalize a mechanism for the City's provision of Disaster Funds in the event of future declared disasters for the Corporation to use to cover the Forensic Operations, including without limitation its operating expenses; and

WHEREAS, the City and Corporation now desire to amend the Original ILA according to the terms and conditions as set forth hereunder.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, agreements and benefits contained in the Original ILA, the City and Corporation agree as follows:

I.

Article 11 is hereby amended by inserting the following as new Sections 11.06, 11.07, 11.08, and 11.09:

11.06 Operations in Response to COVID-19.

"The City has received the Disaster Funds, including CRF Funds, and may receive additional Disaster Funds in the future. As such, Corporation may seek reimbursement for eligible COVID-19 or other disaster-related expenses (collectively, "Reimbursable Expenses") from City. COVID-19 related expenses will be reimbursed out of the CRF Fund portion of the Disaster Funds. In the event that City, at the sole discretion of the City's Finance Director, determines that Corporation has incurred Reimbursable Expenses, City shall make the Disaster Funds available to Corporation, subject to the terms of this Second Amendment. Corporation agrees to comply with all applicable local, state and federal laws, regulations, executive orders, policies, procedures and directives regarding the use of Disaster Funds, including CRF Funds. Without limiting the foregoing, Corporation further agrees to comply with guidance from the City's Finance Director and any applicable federal or state agency, such as FEMA and the U.S. Department of Treasury, regarding the eligibility of Corporation to receive reimbursement from the Disaster Funds, including without limitation CRF Funds. Corporation shall cooperate with City in any review or audit of the eligibility of Corporation's use of Disaster Funds, including without limitation, CRF Funds, including retaining and providing to City all necessary documentation or other information necessary to establish Corporation's compliance with all applicable requirements. Corporation

shall retain all documents related to its use of the Disaster Funds that originate from the federal government for at least 7 years from the date Corporation incurred the expense.”

11.07 Reimbursable Expenses.

“To be eligible for reimbursement from the Disaster Funds, Corporation must submit to the City’s Finance Director all incurred expenses, along with all requested supporting documentation, including all invoices, contracts for services entered into by Corporation, and other information as may be required to establish whether the expenses qualify as Reimbursable Expenses under the rules, regulations and/or guidance applicable to the federal, state or municipal program providing or administering the Disaster Funds. The City’s Finance Director shall, at his or her sole discretion, determine the eligibility of the Reimbursable Expenses for the Disaster Funds. All payments and reimbursements for Reimbursable Expenses shall be subject to the Limitation of Appropriation in Section 11.09 below.”

11.08 Repayment of CRF Funds.

“If any audit or inspection performed by the City, the U.S. Treasury Department, FEMA, or any other local, state or federal entity providing Disaster Funds results in the disallowance, recapture, repayment, refund, return and/or reimbursement of funds used by the City to provide Disaster Funds to Corporation, Corporation shall repay, refund, and/or reimburse the City for all of such fees and/or expenses. Corporation shall be given written notification of the findings of such audit or inspection. Any adjustments or payments that must be made as a result of any such audit or inspection of the Disaster Funds paid to Corporation shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the written findings by the City to Corporation. Each Party shall bear its own costs of any such audit.”

11.09 Limitation of Appropriation.

“11.09.1 The City's duty to provide Disaster Funds, including but not limited to CRF Funds, to Corporation is limited in its entirety by the provisions of this Section.”

“11.09.2. The City has previously appropriated and allocated funds under the Original ILA during the City’s fiscal year 2020 (the “Original Allocation”). In order to comply with Article II, Sections 19 and 19a of the City’s Charter and Article XI, Section 5 of the Texas Constitution, the City has further appropriated and allocated the supplemental sum of \$1,358,652.00 (One Million Three Hundred Fifty Eight Thousand and Six Hundred and Fifty-Two Dollars) to the Corporation under this Second Amendment for the City’s fiscal year 2020 (the “Disaster Allocation”).”

“11.09.3 The City, in its discretion, may further allocate supplemental funds (each a “Supplemental Allocation”) in addition to the Original Allocation and the Disaster Allocation but is not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies set forth below.”

“11.09.4 The City has not allocated supplemental funds or made any other Supplemental Allocation to the Corporation unless the City has issued to Corporation a form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____”

“11.09.5 The Original Allocation, the Disaster Allocation, plus any Supplemental Allocations are the “Allocated Funds.” Pursuant to the terms of the ordinance approving this Second Amendment, the City’s Finance Director, in his or her sole discretion, may reduce the amount of Allocated Funds, which reduction shall accordingly release the City’s obligation and liability for any amount in excess of the reduced amount of Allocated Funds. The City shall never be obligated to provide funds to Corporation in excess of the Allocated Funds, as reduced, if any such reduction occurs.”

II.

In the event of a conflict between the Original ILA and this Second Amendment, this Second Amendment shall prevail. Except as amended hereby, the Original shall remain in full force and effect.

III.

The Parties may execute this Second Amendment in multiple copies, each of which is an original. The Parties agree that each Party may sign and deliver this Second Amendment electronically and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding and effective as an original signature. Each person signing this Second Amendment represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Second Amendment. Each Party represents and warrants to the other that the execution and delivery of this Second Amendment and the performance of such Party’s obligations hereunder have been duly authorized and that the Second Amendment is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

APPROVED AS TO FORM:

By: Akilah M. Mance
Name: Akilah Mance
Title: General Counsel, HFSC

**HOUSTON FORENSIC SCIENCE CENTER,
INC., a Texas Local Government Corporation**

By: Peter Stout
Name: Peter Stout, Ph.D.
Title: President and CEO, HFSC

ATTEST/SEAL:

Art J. Hanuel
City Secretary
Interim

CITY OF HOUSTON, TEXAS

Signed by:
Annemnda Washington
Mayor
Annemnda Washington 10-22-2020
COUNTERSIGNED BY:
Ch. B. Brown
City Controller Jared Pelt

APPROVED:

DocuSigned by:
Tantri Emo
E73A5FD3483F467...
Director, Finance Department

APPROVED AS TO FORM:

J. Washington
Sr. Assistant City Attorney
L.D. File No. 0342000137001

DATE COUNTERSIGNED:

10-26-2020