

AMENDMENT NUMBER ONE TO INTERLOCAL AGREEMENT FOR FORENSIC SERVICES

This Amendment One to the Interlocal Agreement (“Agreement”) for Forensic Services is made and entered by the City of Austin through its police department, known as the **Austin Police Department** (“City” and “APD” respectively) and the **Houston Forensic Science Center, Inc.**, a Texas local government corporation doing business as the **Houston Forensic Science Center** (HFSC). Both HFSC and the City are a “Party” to the Agreement, and together they constitute the “Parties.”

RECITALS

WHEREAS, The Parties entered into the Agreement for certain Forensic Services on December 1, 2018;

WHEREAS, HFSC also has the capability to perform forensic DNA services, including ownership review and CODIS entry;

WHEREAS, The City desires to retain HFSC to provide these additional services;

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

AMENDMENT TO AGREEMENT

1. ARTICLE 1: TERM

Article 1 of the Agreement is amended by deleting it and replacing it with the following:

Agreement Term. The first term of this Agreement begins on December 1, 2018 (“Effective Date”) and terminates on September 30, 2019. This Agreement automatically renews on October 1st for four additional one-year terms and terminates September 30, 2023, unless terminated earlier in accordance with Article 6, below.

2. ARTICLE 2: HFSC SERVICES

Article 2 of the Agreement is amended by deleting section 2.2 and replacing it with the following:

2.2 The Parties acknowledge that Exhibit “A” describes for each type of Service the rates, fees, expenses and other charges for those services. The rates, fees, expenses and other charges for these services shall not change during the initial one-year term of this Agreement. At any time during the renewal term of this Agreement, HFSC may revise the rates, fees, expenses or other charges by sending APD a revised Exhibit “A.” Such revised Exhibit “A” will be effective no sooner than thirty calendar days after APD

receives the revised Exhibit "A." If the City, through APD, does not agree to the revised Exhibit "A", the City may terminate this Agreement in accordance with Section 6.4 below.

3. Exhibits "A" (Fee Schedule) and "B" (Scope of Services) are amended to reflect the fees for and scope of services to be provided by HFSC for DNA ownership review and CODIS entry.

IN WITNESS WHEREOF, this amendment is executed by duly authorized representatives of each Party.

City of Austin

By: _____



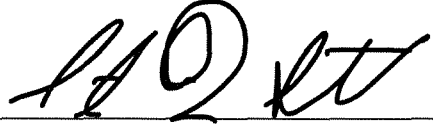
Printed Name: Rey Arellano

Title: Assistant City Manager

Date: 6/10/2019

Houston Forensic Science Center, Inc.

By: _____



Printed Name: Peter Stout, Ph.D.

Title: President and Chief Executive Officer

Date: 6/4/2019

**Exhibit "A" Fee Schedule
Amendment 1 - CODIS**

The following pricing reflects ownership review and CODIS entry for DNA data generated on behalf of the Austin Police Department at a rate of 10-25 reviews per month and a "typical" case consisting of no more than two unique CODIS-eligible DNA profiles.

\$300 per "typical" DNA case with CODIS-eligible DNA results

\$150 for each additional CODIS-eligible DNA profile within a case, in excess of two profiles per case

1. CODIS-eligible profiles in excess of two for a case may not be transferred to other cases.

A surcharge of up to 100% may be applied to RUSH requests (requests for less than a 14 calendar day turn-around-time) for ownership review and CODIS entry – see following table for surcharges. Rush requests may be performed at the discretion of HFSC, based on availability of resources, and according to a mutually agreed upon RUSH schedule and associated pricing prior to conducting the rush analysis.

Rush Timeline	Rush Surcharge
≤7 Calendar Days	100%
≤14 Calendar Days	75%

If necessary, HFSC will conduct an annual audit of the Outsourced Lab at a cost of \$1,000 per day (or part thereof), plus actual documented expenses.

Notes:

"Case" means an examination or analysis in one forensic area.

Price excludes testimony.

HFSC will use good faith efforts to complete casework within thirty calendar days of HFSC's receipt of necessary materials from APD.

**Exhibit "B" Scope of Services
Amendment 1 - CODIS**

Services to be provided by Contractor:

1. For the purposes of CODIS ownership review and entry in compliance with the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories (QAS), Standard 17 and all sub standards of standard 17, all CODIS-eligible reviewable data must be generated by an accredited and QAS- compliant laboratory using the following technologies and chemistries:

Amplification Chemistry	Capillary Electrophoresis Platform and Data Analysis
<ul style="list-style-type: none">• GlobalFiler® PCR Amplification Kit• Identifiler Plus® PCR Amplification Kit	<ul style="list-style-type: none">• AB3130xL• AB3500xL

2. Provide analysis and reporting of results, including:
 - 2.1. A copy of all case documentation (electronic copy preferred) and Genemapper® ID-X electronic data for all samples and associated controls, sufficient for a full independent review by Houston Forensic Science Center (HFSC) analysts and/or designated independent analysts.
 - 2.2. Case documentation must include, at a minimum: extraction worksheets that clearly document extract volumes of all samples and controls, quantification values for all samples and controls; documentation that all qPCR standards meet the vendor laboratories SOP specifications; amplification template volume or target amount for all samples and controls; CE injection times; ladders used for analysis; and analyzed data for all samples and controls.
 - 2.3. Documentation of 100% technical review by a qualified Technical Reviewer, as defined in the QAS.
 - 2.4. A written report that complies with FBI Quality Assurance Standards for all samples tested. Case details or facts that can be used to support the CODIS-eligibility of each sample that will be reviewed for potential CODIS entry. Documentation shall indicate how each item of evidence originated from or is associated with a crime scene, and why the source of any DNA obtained from an item of evidence may be attributable to the putative perpetrator. All reference sample samples shall be clearly categorized for potential CODIS

entry (e.g., complainant, witness, consensual sex partner, suspect, etc.).

3. Provide a contact from the testing laboratory directly associated with the Austin Police Department project for technical issues/questions.
4. Provide all transportation, supplies, equipment, personnel, supervision, and certifications necessary for HFSC to accept ownership of Austin Police Department (APD) DNA data for the purposes of CODIS entry. No shipping costs will be charged to HFSC.
5. Ownership review and CODIS entry will be completed by HFSC within 30-60 business days from receipt of QAS-compliant examination documentation and case facts that support the CODIS- eligibility for each sample that is to be reviewed.
6. Any CODIS activity or information that results from entries made by the HFSC on behalf of the APD will be provided to the APD. Subsequent testing and comparison of known samples collected and submitted by the APD in response to such CODIS activity will not be performed by the HFSC under this agreement. However, upon request a new agreement could be issued that includes pricing and terms for this type of analysis.

INTERLOCAL AGREEMENT FOR FORENSIC SERVICES

This INTERLOCAL AGREEMENT FOR FORENSIC SERVICES (this "Agreement") is between Houston Forensic Science Center, Inc., a Texas local government corporation doing business as the Houston Forensic Science Center ("HFSC"), and the City of Austin through its police department, known as the Austin Police Department ("City" and "APD" respectively). Both HFSC and the City are a "Party" to this Agreement, and together they constitute the "Parties." The Parties' respective addresses for notice, which either Party may change by giving written notice to the other Party, are as follows:

Houston Forensic Science Center, Inc.
Attn: Peter Stout, Ph.D.
President and Chief Executive Officer
1301 Fannin Street, Suite 170
Houston, TX 77002

Austin Police Department Forensic Science Bureau
Attn: Dana Kadavy, Ph.D.
Executive Director
P.O. Box 689001
Austin, TX 78768-9001

WHEREAS, HFSC provides forensic services including laboratory analyses and evidence processing as well as consultation services; and

WHEREAS, The City desires to retain HFSC to provide certain forensic services; NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

ARTICLE 1: TERM

Agreement Term. The first term of this Agreement begins on December 1, 2018 ("Effective Date") and terminates on November 30, 2019. This Agreement automatically renews on December 1, 2019, for one additional one year term and terminates November 30, 2020, unless terminated earlier in accordance with Article 6, below.

ARTICLE 2: HFSC SERVICES

2.1 In exchange for the City's promise to compensate HFSC as stated in Article 3 below, HFSC will provide to APD the "Services" described in Exhibit "A" and Exhibit "B" attached to this Agreement and incorporated herein for all purposes, subject to the provisions of this Article 2.

2.2 The Parties acknowledge that Exhibit "A" describes for each type of Service the rates, fees, expenses and other charges for firearms analysis, reporting and testimony. The rates, fees, expenses and other charges for these services shall not change during the initial one-year term of this Agreement. At any time during any renewal term of this Agreement, HFSC may revise the rates, fees, expenses or other charges by sending APD a revised Exhibit "A". Such revised Exhibit "A" will be effective no sooner than thirty calendar days after APD receives the revised Exhibit "A". If the City, through APD, does not agree to the revised Exhibit "A", the City may terminate this Agreement in accordance with Section 6.4 below.

2.3 The Parties acknowledge that HFSC shall perform for APD the services as outlined in attached Exhibit "B" Scope of Services. If APD desires additional services beyond the original Scope of Services outlined under Exhibit "B" and HFSC agrees to provide those additional services, a description of such

additional services will be added to Exhibit "B" and APD agrees to pay HFSC for any additional Services beyond the original Scope at HFSC's rates, fees, and expenses for said Services. If additional Services are requested by APD, HFSC shall revise Exhibit "A" Rate Schedule to include the rates, fees, and expenses for additional Services and said revised Exhibit "A" shall be incorporated herein and made part of this agreement.

2.4 The Parties further acknowledge that the rates, fees, expenses and other charges shown on Exhibit "A" are not appropriate for a case that is larger or more complicated than the average case ("Atypical" case). Therefore, notwithstanding any other provision of this Agreement, if APD requests Services in connection with what HFSC determines, in its sole discretion, is an Atypical case, HFSC may notify APD that HFSC declines to provide Services in connection with the case. HFSC will only provide Services in connection with an Atypical case if the Parties agree in writing upon revised and specific rates, fees, expenses or other charges for the Atypical case.

ARTICLE 3: PAYMENT BY THE CITY

3.1 The City, through APD, will compensate HFSC for Services rendered and expenses incurred in accordance with the rates, fees, expenses or other charges as outlined in the attached Exhibit "A" and Exhibit "B" Scope of Services and in accordance with Article 2 of this Agreement.

3.2 HFSC will invoice the City, through APD, monthly for Services performed and expenses incurred. If approved, the City, through APD, will make payments to HFSC directly within thirty calendar days of submission of HFSC's invoice to APD via electronic mail, United States mail, courier, or in person. Payment by check will be mailed to HFSC at its address as stated in the preamble of this Agreement. The City may not unreasonably delay or withhold the approval or payment of any invoice.

3.3 HFSC's monthly invoice will reflect the rates, fees, expenses and other charges for Typical cases, as described in Exhibit "A" attached to this Agreement and incorporated herein for all purposes, and/or revised and specific rates, fees, expenses or other charges agreed upon by the Parties for additional Scope of Services and Atypical cases, in accordance with Section 2.3 and 2.4 above.

3.4 If APD disputes any item in HFSC's invoice for any reason, including lack of supporting documentation, APD will hold the disputed item and pay HFSC the remainder of the invoice. APD will promptly notify HFSC of the dispute and request further information regarding the disputed charge.

3.5 The Parties will negotiate the disputed billing in good faith until a mutually agreed upon resolution is reached or one Party terminates this Agreement. If the dispute is settled, HFSC will include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

ARTICLE 5: FORCE MAJEURE

Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement, if, while, and to the extent such default or delay is caused by acts of God, acts of domestic or foreign terrorism, fires, floods, riots, sabotage, strikes, or any other cause beyond the reasonable control of such party. Force majeure does not include economic or market conditions that affect a party's cost but not its ability to perform. The Party invoking force majeure shall give prompt, timely, and adequate notice to the other party by email transmission or by telephone confirmed promptly thereafter in writing and shall use due diligence to remedy the event of force majeure as soon as reasonably possible. In the event of default or delay in Agreement performance due to any of the foregoing causes, then the time for completion of the Services will be extended by a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

ARTICLE 6 TERMINATION

6.1 Termination by HFSC for Convenience. HFSC may terminate this Agreement at any time by giving thirty (30) calendar days' written notice to APD. HFSC will invoice APD for the services performed under this Agreement to the date of termination. HFSC's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

6.2 Termination by HFSC for Cause. HFSC may terminate this Agreement in the event of a material default by the City. If such default occurs, HFSC will have the right to terminate all or part of its duties under this Agreement as of the tenth (10th) calendar day following the receipt by APD of a written notice from HFSC describing such default and intended termination, provided that such termination will be ineffective if within the said ten-day period the City cures the default.

6.3 Termination by the City for Cause. The City may terminate this Agreement only in the event of a material default by HFSC. If such default occurs, the City will have the right to terminate all or part of its duties under this Agreement as of the tenth (10th) calendar day following the receipt by HFSC of a written notice from the City describing such default and intended termination, provided that such termination will be ineffective if within the said ten-day period HFSC cures the default.

6.4 Termination by the City in Connection with Exhibit "A" Revision. If HFSC notifies APD of a revised Exhibit "A" and APD does not agree with the revision(s), The City through APD may terminate this Agreement by giving ten (10) calendar days' written notice to HFSC.

6.5 Payment Through Date of Termination. If this Agreement is terminated by either Party in accordance with this Article 6, the City will pay the stated charges to HFSC for the Services performed under this Agreement up to the date of termination in the same manner as prescribed by Article 3 above. Any installments or lump sum fees will be prorated in accordance with the progress of the Services on the effective date of termination.

ARTICLE 7: MISCELLANEOUS

7.1 Applicable Law; Construction. This Agreement is performable in Harris County, Texas. The laws of the State of Texas govern the interpretation, validity, performance, and enforcement of this Agreement. Any action brought to enforce or interpret this Agreement must be brought in the court of

appropriate jurisdiction in Houston, Harris County, Texas. If any provision of this Agreement requires judicial interpretation, the Parties hereby agree that the court interpreting the provision should not presume that a provision hereof is to be more strictly construed against the Party that prepared the provision. The Parties agree that both Parties have participated in the preparation of this Agreement and that each Party has had an opportunity to consult its legal counsel before the execution of this Agreement. Captions contained in this Agreement are for reference only and therefore have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement. If there is any conflict between any provision of the body of this Agreement and any exhibit hereto, the provision of the body of this Agreement will control.

7.2 Remedies Cumulative. Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future.

7.3 Notices. Whenever any notice, consent, or approval (collectively, a "Notice") is required or permitted under this Agreement, the Notice will be in writing and will be deemed to be delivered five calendar days after being deposited in the United States mail, postage prepaid, Certified Mail, Return Receipt Requested, or, if delivery is in person, by facsimile, by electronic mail, or by courier, upon actual receipt (or upon attempted delivery if receipt is refused) by the Party to whom the Notice is being given.

7.4 Independent Contractor. HFSC is acting hereunder as an independent contractor. HFSC is not and will not be deemed an agent, employee, joint venture, or partner of or with APD. HFSC is free to perform services for other parties while performing the Services for APD.

7.5 No Third-Party Beneficiaries. The terms, provisions, and covenants contained in this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and legal representatives. This Agreement is not made for the benefit of, nor may it be relied upon by, any third party.

7.6 Non-Waiver. A failure of either Party to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies hereunder will not be considered a waiver of the Party's right to insist on and to enforce strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

7.7 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected thereby.

7.8 Survival. Each Party will remain obligated to the other Party under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or the termination of this Agreement.

7.9 No Assignment. This Agreement is not assignable by either Party.

7.10 No Conflict of Interest. The City warrants that it is free to enter into this Agreement and that this engagement does not violate the terms of any agreement between the City and any third party.

7.11 Publicity. Unless APD has received advance written approval from HFSC, APD will not make any announcement or release of information concerning matters pertinent to this Agreement or use HFSC's name or logo in marketing materials or in any other way.

7.12 Further Assurances. Each Party agrees to cause to be executed and delivered such other

instruments as reasonably may be required to carry out the intentions and the terms of this Agreement.

7.13 Authority. Each Party represents and warrants that all consents or approvals required for the respective Party's execution, delivery and performance of this Agreement have been obtained and that the respective Party has the right and authority to enter into and perform its obligations under this Agreement.

7.14 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and no agreement will be effective to change or modify this

Agreement in whole or in part unless such agreement is in writing and duly authorized and signed by the Party against whom enforcement of such change or modification is sought. This Agreement supersedes all prior proposals and previous negotiations, if any.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives on the dates indicated below. This Agreement may be executed in multiple copies, each of which will be deemed an original.

City of Austin

By: 

Printed name: Rey Arellano

Title: Assistant City Manager

Date: 12/13/2018

Houston Forensic Science Center, Inc.

By: **Peter Stout**

Digitally signed by Peter Stout
DN: c=local, dc=HFS, ou=Operations,
ou=Administrative/Management, ou=Users,
cn=Peter Stout
Date: 2018.12.07 09:16:23 -0500

Printed name: Peter Stout, Ph.D.

Title: President and CEO

Date: 12/7/18

Exhibit "A" Fee Schedule

Interlocal Agreement for Forensic Services

Houston Forensic Science Center, Inc. and APD

<u>Forensic Discipline</u>	<u>Price per Case</u>
Firearms	\$3,000
Firearms NIBIN	\$150

Notes:

- A) "Case" means an examination or analysis in one accredited forensic area.
- B) Price excludes testimony. For Directors, Managers and Analysts, testimony will be billed at \$1,000 per day, plus expenses.
- C) For a Firearms Case, there is no charge for the entry of evidence into any federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) database -- owned or ATF-maintained automated ballistics technology used in the National Integrated Ballistic Information Network Program.
- D) HFSC will use good faith efforts to complete casework within thirty (30) calendar days of HFSC's receipt of necessary materials from Customer.

Exhibit "B" Scope of Services

Services to be provided by Contractor:

- 1. Provide analysis and reporting of results, including:**
 - 1.1. A copy of all case documentation (electronic copy preferred) and electronic data for all observations, examinations, and conclusions, sufficient for a full independent review by Houston Forensic Science Center (HFSC) analysts and/or designated independent analysts.**
 - 1.2. Case documentation must include, at a minimum (if applicable): evidence inventory; documentation of microscopic comparisons, including representative photographs; all examination notes and observations, including GRC analysis and lists; documentation of the examination and test firing of firearms; and details on NIBIN entry.**
 - 1.3. Documentation of 100% technical review by a qualified Technical Reviewer, as well as documentation of second analyst verification, when required by HFSC Firearms SOPs.**
 - 1.4. A court ready written report to include observations, examinations, and conclusions as required by HFSC Firearms SOPs. Additional information may be included in the report at the request of the customer and agreed upon by HFSC.**
- 2. Provide a contact from the testing laboratory directly associated with the Austin Police Department project for technical issues/questions.**