

## INTERLOCAL AGREEMENT

THIS AGREEMENT ("Agreement" or "Interlocal Agreement"), is made and entered into \_\_\_\_\_, 20\_\_\_\_, by and between the City of Boca Raton, Florida, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter "BOCA RATON"), the City of Delray Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter "DELRAY BEACH"), and the City of Boynton Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter "BOYNTON BEACH"), collectively referred to as the "Parties."

### WITNESSETH:

WHEREAS, the Parties to this agreement are authorized pursuant to the Florida Interlocal Cooperation Act of 1969 as set forth in Section 163.01, et seq., Florida Statutes (hereinafter the "Act") to make efficient use of their respective powers, resources, authority and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby provide the facilities and efforts identified herein in the manner that will best utilize existing resources, powers and authority available to each of them; and

WHEREAS, it is the purpose of the Act to provide a means by which BOCA RATON, DELRAY BEACH and BOYNTON BEACH may exercise their respective powers, privileges and authority which they may separately, but which pursuant to this Interlocal Agreement and the Act they may exercise collectively; and

WHEREAS, BOCA RATON entered into an interlocal agreement with the Palm Beach County Sheriff's Office ("PBSO") relating to the construction and operation of a Biology Processing Laboratory ("BPL"), which was thereafter constructed at the City facility located at 6500 Congress Avenue in Boca Raton, Florida; and

WHEREAS, pursuant to the Interlocal Agreement with PBSO, all DNA sample evidence prescreened in the BPL is given certain priority by the PBSO Forensic Biology Unit in the event DNA analysis is warranted; and

WHEREAS, on March 8, 2016, the Parties entered into an interlocal agreement to provide for pre-screening of their respective DNA sample evidence in the BPL because such common use would better utilize municipal personnel and capital resources and increase the efficiency and effectiveness of prescreening DNA sample evidence,

WHEREAS, the prior interlocal agreement between the Parties established the terms and conditions for the operation of the BPL and provided for shared costs of personnel/operating expenses; and

WHEREAS, the BPL is currently in operation and used by the Parties, but the

existing interlocal agreement between the Parties will expire on November 18, 2020; and

WHEREAS, the Parties desire to enter into a new Interlocal Agreement in order to continue the operation of the BPL and to provide terms and conditions for the continued operation and maintenance of the BPL; and

WHEREAS, entering into this Interlocal Agreement is in the best interests of the citizens of the Parties; and

NOW THEREFORE, in consideration of the premises, mutual covenants, provisions and representations contained herein, constituting good and valuable consideration, the Parties hereto agree as follows:

#### Section 1. STATEMENT OF PURPOSE

The purpose of this Interlocal Agreement is to establish an agreement between BOCA RATON, DELRAY BEACH, and BOYNTON BEACH in regard to the continued operation and maintenance of the BPL, located at 6500 Congress Avenue in the City of Boca Raton, which is currently providing, and shall continue to provide, pre-screening of DNA sample evidence for the Parties.

#### Section 2. DEFINITIONS

- 2.1 "Pre-screening" shall mean the process by which evidence is evaluated by an analyst to determine if there is usable and recoverable DNA in the sample.
- 2.2 "Touch DNA evidence" shall mean DNA evidence that is left behind from skin cells when a person touches or comes in contact with an item.

#### Section 3. ADMINISTRATION AND SERVICES PROVIDED

- 3.1 BOCA RATON shall own, manage and operate the BPL.
- 3.2 The BPL shall provide the following services: pre-screening of DNA sample evidence, processing of DNA sample evidence for the confirmation of blood and semen, and swabbing items for touch DNA evidence.
- 3.3 Following pre-screening at the BPL, all DNA sample evidence will be submitted to the PBSO Forensic Biological Unit for further DNA analysis. Pursuant to the Interlocal Agreement between BOCA RATON and PBSO, all evidence pre-screened at the BPL will be given priority for PBSO DNA analyst assignment pursuant to a separate agreement between PBSO and BOCA RATON.

Section 4.

AGREEMENT NON-EXCLUSIVE

- 4.1. DELRAY BEACH and BOYNTON BEACH agree and understand that this agreement is non-exclusive, and that BOCA RATON may enter into additional agreements or amend this Interlocal Agreement to allow other governmental agencies to utilize the BPL. In the event BOCA RATON contracts with other governmental agencies, there shall be a corresponding and proportional decrease in the amount of the annual fee paid by BOCA RATON, DELRAY BEACH and BOYNTON BEACH which is identified in paragraph 5.5 of this Agreement.

Section 5.

BPL CENTER FOR OPERATIONS

- 5.1. The BPL shall continue to be located at 6500 Congress Avenue, Boca Raton, Florida.
- 5.2. The BPL equipment and records will be maintained by BOCA RATON at the BPL.
- 5.3. DELRAY BEACH and BOYNTON BEACH shall annually appropriate and pay to BOCA RATON an annual fee, in an amount equal to a proportional share of the costs to operate the BPL. BOCA RATON shall provide an invoice to DELRAY BEACH and BOYNTON BEACH each year for the annual fee and DELRAY BEACH and BOYNTON BEACH shall make the annual payment to BOCA RATON within sixty (60) days of receipt of BOCA RATON's invoice.
- 5.4. The total annual fee shall be determined by BOCA RATON, in its sole discretion, through an annual calculation of the personnel costs, the cost of equipment and supplies, the cost of maintenance, the cost of utilities, and any other cost which is reasonably related to the operation of the BPL.
- 5.5. The annual fee shall be paid proportionately as follows:
- |               |      |         |
|---------------|------|---------|
| BOCA RATON    | - 34 | PERCENT |
| DELRAY BEACH  | - 33 | PERCENT |
| BOYNTON BEACH | - 33 | PERCENT |
- 5.6. The annual fee to be paid by DELRAY BEACH and BOYNTON BEACH for the first year of this Agreement shall be \$66,200.00, which shall be paid within sixty (60) days of the effective date of this Agreement.
- 5.7. Following the initial year of this Agreement, the fee shall be adjusted annually to reflect the proportional shares of the actual costs as defined in paragraph 5.4 of this Agreement. However, it is not expected that the fee will increase more than 10% per year.

- 5.8 DELRAY BEACH and/or BOYNTON BEACH'S right to receive services at the BPL pursuant to this Agreement shall be immediately suspended if either fails to timely transmit to BOCA RATON its proportional payment as required under this Agreement. The suspension of the right to receive services at the BPL shall continue through the date the full payment is received by BOCA RATON. If a payment is not received by BOCA RATON within 30 days of the date of the non-paying party's receipt of the invoice from BOCA RATON, then BOCA RATON shall send to the non-paying party a notice of default. The non-paying party shall thereafter also pay a 10% penalty on the past due arrearages. If such past due arrearages plus the 10% penalty are not paid in full within 15 days of the date of notice of default, then BOCA RATON, in its sole discretion, shall have authority to terminate this Agreement in regard to the non-paying party only.

## Section 6. PERSONNEL AND OPERATIONS

- 6.1 BOCA RATON shall employ and train two Forensic Analysts to work at the BPL.
- 6.2 BOCA RATON shall be solely responsible for the hiring, supervision and evaluation and all aspects of employment for all personnel associated with the BPL.
- 6.3 BOCA RATON shall be solely responsible for the maintenance and repair of the BPL facility.
- 6.4 BOCA RATON shall be solely responsible for the operation of the BPL.

## Section 7. RECORDS

- 7.1 BOCA RATON shall be responsible for maintaining records of DNA sample evidence submitted by DELRAY BEACH and BOYNTON BEACH for the purpose of prescreening analysis in accordance with Biology Processing Laboratory standards.
- 7.2 DELRAY BEACH and BOYNTON BEACH agree to provide BOCA RATON with case dispositions for any items processed through the BPL as they become available.

## Section 8. DURATION AND TERMINATION

- 8.1. This Interlocal Agreement shall become effective upon being executed on behalf of each party and filed with the City Clerks of BOCA RATON, DELRAY BEACH and BOYNTON BEACH. This Interlocal Agreement shall remain in effect for five years and may be extended for two (2) additional five-year terms upon written approval of the Parties.
- 8.2. In the event the agreement between BOCA RATON and PBSO providing priority

to BPL pre-screened evidence is terminated, BOCA RATON shall have the authority, in its sole discretion, to terminate this Interlocal Agreement upon thirty (30) days written notice to DELRAY BEACH and BOYNTON BEACH, and in the event BOCA RATON terminates this Interlocal Agreement pursuant to this subsection, BOCA RATON shall have no further obligation to DELRAY BEACH or BOYNTON BEACH.

- 8.3. BOCA RATON, DELRAY BEACH, or BOYNTON BEACH may terminate participation in this Interlocal Agreement for any reason upon one hundred eighty (180) days written notice to the other Parties. In the event either DELRAY BEACH or BOYNTON BEACH terminate participation, this Interlocal Agreement shall remain in effect or terminate in its entirety in BOCA RATON's sole discretion. In the event this Interlocal Agreement remains in effect, the non-terminating party (either DELRAY BEACH or BOYNTON BEACH) shall thereafter continue to pay the same percentage of the annual fee set out in Section 5.5 above. The terminating party shall have no rights or privileges under this Interlocal Agreement following the effective date of their termination.
- 8.4. In the event BOCA RATON terminates its participation, this Interlocal Agreement shall terminate in its entirety. If BOCA RATON terminates operation of the BPL pursuant to this subsection, BOCA RATON shall refund to DELRAY BEACH and BOYNTON BEACH the portion of their paid annual fees, on a prorated basis, that were for the time period between the date on which the BPL ceases operations and the end of the annual period for which the fees were paid.
- 8.5. This Section shall continue indefinitely and survive the cancellation, termination, expiration, lapse, or suspension of this Interlocal Agreement.

## Section 9. DISPUTE RESOLUTION

- 9.1 Disputes under this Interlocal Agreement may be resolved by a meeting of the Parties' authorized representatives. If such authorized representatives are unable to reach a resolution and any of the Parties believe the issue is of sufficient merit, the Parties shall select a mediator acceptable to all Parties to conduct a non-binding mediation of the issues involved and make a recommendation regarding resolution of the issue. The Parties agree to be responsible for their respective costs and fees incurred during the mediation and that they shall pay the mediator's fees and costs in equal amounts. If the non-binding mediation is also unsuccessful, the dispute shall be resolved pursuant to Florida law.
- 9.2 This Agreement shall be governed by the laws of the State of Florida. Any legal action to enforce the Agreement will be filed in Palm Beach County. In any litigation brought to enforce the terms of this Interlocal Agreement, each party shall bear its own costs and attorney's fees incurred in connection therewith.

**9.3 BY ENTERING INTO THIS AGREEMENT, THE PARTIES EXPRESSLY WAIVE ANY RIGHT EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION OR ANY CLAIM RELATED TO THIS AGREEMENT.**

**Section 10. LIABILITIES AND INDEMNITY**

10.1. Each party to this Agreement shall be liable for its own actions and negligence and, to the extent permitted by law, BOCA RATON shall be responsible to and indemnify DELRAY BEACH and/or BOYNTON BEACH for any actions, claims or damages arising out of BOCA RATON'S negligence in connection with this Agreement, and DELRAY BEACH and BOYNTON BEACH shall each indemnify and be individually responsible to BOCA RATON and/or to the other for any actions, claims or damages arising out of DELRAY BEACH or BOYNTON BEACH'S negligence in connection with the Agreement. The foregoing shall not constitute a waiver of any Parties' sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, and nothing herein is meant to or shall serve as a waiver of any of the requirements or limitations contained in Section 768.28, Florida Statutes. This indemnification provision shall continue indefinitely and survive the cancellation, termination, expiration, lapse, or suspension of this Interlocal Agreement. .

**Section 11. AMENDMENT OF THIS AGREEMENT**

11.1. Amendments to this Interlocal Agreement shall be made by unanimous consent of all the Parties in writing.

**Section 12. EXECUTION OF AGREEMENT**

12.1 This Agreement shall be executed on behalf of each party by its authorized representative pursuant to an appropriate resolution of the respective local governmental unit. Each party to this Agreement shall be bound to the terms of this Agreement as of the date it is signed by that party.

**Section 13. SEVERABILITY**

13.1. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void or voidable, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void or voidable provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being held void should a provision which is of the essence of the Agreement be determined to be void by a court of competent jurisdiction.

## Section 14. NOTICES

- 14.1 Any notice given pursuant to the terms of this Agreement shall be in writing and done by Certified Mail, Return Receipt Requested. The effective date of such notice shall be the date of receipt, as evidenced by the Return Receipt. All notices shall be addressed to the following:

As to BOCA RATON:

City Manager, City of Boca Raton  
201 W. Palmetto Park Rd.  
Boca Raton, FL 33432

With copy to:

Chief of Police  
100 NW Boca Raton Blvd.  
Boca Raton, FL 33432

As to DELRAY:

City Manager, City of Delray Beach  
100 NW First Avenue  
Delray Beach, FL 33444

With Copy to:

Chief of Police  
300 W Atlantic Avenue  
Delray Beach, FL 33444

As to BOYNTON BEACH:

City Manager, City of Boynton Beach  
PO Box 310  
Boynton Beach, FL 33425

With Copy to:

Chief of Police  
PO Box 310  
Boynton Beach, FL 33425

Section 15: FILING

A copy of this Agreement shall be filed by BOCA RATON with the Clerk of the Circuit Court in and for Palm Beach County.

Section 16: DELEGATION OF DUTY

Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of any party.

Section 17: FORCE MAJEURE

Any party delayed by a Force Majeure Event, as defined herein, in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of such Force Majeure Event. A delay due to a Force Majeure Event shall serve to toll the time to perform under this Agreement. "Force Majeure Event" shall mean any act of God, fire, flood, earthquake, explosion, hurricane, riot, sabotage, terrorist attack, windstorm, failure of utility service, or labor dispute.

Section 18: CONSTRUCTION

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 19: NO THIRD PARTY BENEFICIARY

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of any party.

Section 20: ASSIGNMENT

No party may assign, mortgage, pledge, or encumber this Agreement in whole or in part, without prior written consent of the other party, which may be granted or withheld at the other party's absolute discretion. This provision shall be construed to include a prohibition against an assignment, mortgage, pledge, encumbrance or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.



#### Section 21: SEVERABILITY

If any term of the Agreement or the application thereof to any person or circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### Section 22: COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

#### Section 23: EFFECTIVE DATE

This Agreement is expressly contingent upon the approval of all Parties. and shall become effective only when signed by all Parties.

**[The remainder of the page had been intentionally left blank.]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on the date and year first written above.

**CITY OF BOCA RATON**

Attest:

\_\_\_\_\_  
Susan Saxton, City Clerk

Date:\_\_\_\_\_

By: \_\_\_\_\_

Name: Scott Singer

Title: Mayor

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Diana Grub Frieser, City Attorney

**CITY OF DELRAY BEACH**

Attest:

\_\_\_\_\_  
Katerri Johnson, City Clerk

Date:\_\_\_\_\_

By: \_\_\_\_\_

Name: Shelly Petrolia

Title: Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
Lynn Gelin, City Attorney

**CITY OF BOYNTON BEACH**

Attest:

By: \_\_\_\_\_  
Crystal Gibson, City Clerk

Date:\_\_\_\_\_

By: \_\_\_\_\_

Name: Steven B. Grant

Title: Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
James Cherof, City Attorney