

INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND TRAVIS COUNTY
FOR THE PURPOSE OF COST SHARING IN PROJECT DESIGNED TO ADDRESS THE CRIMINAL
JUSTICE ISSUES RELATING TO THE AUSTIN POLICE DEPARTMENT DNA UNIT

PARTIES

This Interlocal Agreement (“Agreement”) is entered into between the following parties: the City of Austin, a Texas home rule municipal corporation and political subdivision of the State of Texas (“City”) and Travis County, a political subdivision of the State of Texas (“County”).

RECITALS

This Agreement is made under the authority of the Interlocal Cooperation Act, Chapter 791 of the Government Code.

Each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that Party.

BACKGROUND

In May and June of 2016, the Texas Forensic Science Commission (“TFSC”) conducted an audit of the Austin Police Department (APD) DNA Unit’s Laboratory. Based on the audit and subsequent report published by TFSC, raising concerns about the quality of analysis of DNA evidence conducted, the City closed the DNA Unit and the Austin Police Department began using outside analysts to conduct casework on DNA in new cases.

Shortly after the closure of the DNA Unit, the Parties started discussing mutually beneficial options for the future DNA laboratory to serve the community stakeholders. The Parties also sought means to work cooperatively to address potential harm that could flow from DNA evidence analyzed by APD and used in criminal cases. In April of 2017, the Parties entered an interlocal cooperation agreement (the “Original Agreement”) to share costs related to APD’s DNA Unit closure. The Original Agreement, with its extended terms, ends on September 30, 2022.

The Original Agreement established shared funding for two projects with separate professional services agreements (PSAs) addressing past and future needs of the community regarding a DNA laboratory unit. The first PSA retained a consulting group with technical expertise in the scientific and criminal justice fields (the Quattrone Center) to address the TFSC audit report’s findings and determine how to structure a future DNA laboratory that would present options to restore integrity to DNA testing in Austin/Travis County. The Quattrone Center presented their final assessment and report to both Parties and gave options to the governing bodies concerning moving forward with future scientific analysis of DNA evidence. The second PSA retained a group of attorneys (CAPDS Forensic Project) to examine the legal

materiality of the DNA evidence used in past convictions and litigate cases where a person may have been wrongfully convicted due to DNA evidence analyzed by APD's DNA Unit. CAPDS Forensic Project's work is ongoing.

The Parties amended the Original Agreement after discovering that approximately 300 cases were initially prosecuted in juvenile court. Juvenile court has original jurisdiction of cases where the offense occurred while the accused is between the ages of 10 and 17. The special habeas procedure provided by Article 64 and 11.071 of the Texas Code of Criminal Procedure applies only to cases in which the accused has been sentenced to prison for criminal convictions and does not apply to juvenile cases. Most juvenile cases are handled by the Travis County Juvenile Public Defender's Office ("JPDO"). Because these juvenile cases primarily involved former clients of the JPDO, the Parties found that JPDO was uniquely suited to handle those cases. The JPDO needed to temporarily supplement its staff to accommodate new legal work on the 300 former cases, so those costs were added to the Parties' shared financial obligations of the Original Agreement. JPDO's work is ongoing.

The Parties find that the ongoing work of CAPDS Forensic Project and JPDO continues to be necessary to ensure that all past convictions based on evidence analyzed in the former APD DNA Unit are appropriately reviewed or litigated. Accordingly, the Parties agree that it is necessary to continue funding the CAPDS Forensic Project's and JPDO's work. The Parties believe this Agreement serves the best interest of the community, justice, and the Parties' shared interest in accomplishing the goals of this Agreement and sharing the costs to ensure that justice is served.

NOW THEREFORE, the City and County agree as follows:

Section 1

Term

Initial Term.

The initial term of this Agreement will begin on October 1, 2022, and continue through September 30, 2024.

Renewal.

Subject to continued funding by the County and the City, this Agreement will automatically renew for two consecutive twelve (12) month terms ending on September 30, 2026, unless sooner terminated by either party as provided herein.

One Year Review.

If this Agreement is then in effect, the Parties will convene a work group in August 2023 to review the terms of this Agreement, analyze the progress of the CAPDS Forensic Project and the Juvenile Probation Department, and propose any changes or amendments.

Termination.

Either Party may terminate this Agreement by giving the other Party written notice of such termination at least ninety (90) days before the effective date of the termination.

Section 2

Purpose of Interlocal Cooperation Agreement

This Interlocal Cooperation Agreement documents the obligations and responsibilities of the County and City regarding funding the extra temporary staff in the JPDO and the PSA with CAPDS Forensic Project in order to address and rectify the criminal justice-related issues arising from the closing of the Austin Police Department (APD) Lab that processed DNA evidence. A general description of the substance of the PSA and the County's funding of the JPDO's work follows:

Current Costs.

The County will continue to fund the additional temporary employees in the JPDO and the PSA with the CAPDS Forensic Project to review the legal materiality of DNA evidence processed by the APD DNA Lab and used to secure convictions in Travis County courts. Further, under the terms of the PSA, when necessary, CAPDS will provide post-conviction writ litigation services to defendants who were convicted of a crime based on DNA evidence that was material to the criminal case and that was processed by the APD DNA lab. The City agrees to pay the County fifty percent (50%) of the costs incurred for hiring CAPDS for these purposes. The City further agrees to pay the County fifty percent (50%) of the costs incurred by JPDO to hire additional temporary employees to perform the work described herein.

Continuing Potential Costs.

The CAPDS Forensic Project and JPDO will review DNA cases and litigate writs, but their work may not cover the future cost of possible retrials. Criminal defendants whose cases involved APD Lab DNA evidence that have not been resolved by re-testing DNA or writ relief may have to be retried in the Travis County Courts. In the event that one or more of these cases needs to be retried because of the failure of the APD Lab to correctly analyze, interpret, or preserve the integrity of the DNA evidence, the City agrees to assist in sharing some of the expenses of retrial, such as appointed defense counsel, expert witnesses, and investigators. These costs cannot be captured at the execution of this Agreement, nor do the Parties expect any retrials within the first term of this Agreement, but the County and City agree to separately negotiate cost sharing or amend this Agreement to account for these anticipated future costs as the need arises.

Additional Obligations.

The City agrees to work with the Travis County District Attorney's Office to prioritize cases for which DNA evidence must be retested, and the City agrees to utilize the laboratory under contract with the City that is most capable of expediting each necessary retest.

Cooperation.

The City Manager and the County Judge will each appoint a Co-Project Manager to work collaboratively in overseeing the provisions of this Agreement.

Section 3

Scope of CAPDS Forensic Project's Professional Services Agreement and JPDO's Costs

The County continues a PSA with CAPDS Forensic Project to provide legal review and post-conviction writ litigation of the APD DNA Cases impacted by the Audit Report findings. This legal case review and writ litigation project assesses the materiality of potentially impacted DNA evidence and provides representation for affected defendants opting to re-open their case through post-conviction writ litigation. Staffing is based on the demands of the project to complete this review, and includes attorneys, an investigator, and necessary support staff. Funding for personnel, office space, equipment, operational costs, investigation, case specific expert fees, and other reasonable and necessary expenses to complete a legal case review and litigation will be shared equally by the City and the County. City and County agree that for cases where the CAPDS Forensic Project has identified a conflict, assigned counsel will be appointed. For conflict cases, the materiality reviews, attorney fees, investigation fees, expert fees, and all other expenses will be paid for by the County and City in amounts that shall be negotiated separately from this Agreement. The PSA is currently in effect and will be renewed on an annual basis, with an expected completion within two (2) years and an estimated yearly budget of \$950,000.00. The JPDO's estimated cost for the additional temporary staff is \$160,000.00.

Section 4

Publicity Surrounding Projects

City and County agree to keep the public apprised of the progress of CAPDS Forensic Project's and the JPDO's work. In any publicity prepared or distributed by or for City related to this Agreement, the participation and contributions of County shall be mentioned as having made the project possible, either through use of the County logo or in applicable text. Prior to publication or any disbursement of such publicity, City must provide a copy of the final form of the publicity to County. When appropriate as determined by the County Project Manager, City may publicize the services and activities of City and County under this Agreement. City will work with County to allow for distribution from appropriate County locations of any materials prepared related to services provided under this Agreement. When appropriate, City and County Co-Project Managers will jointly distribute updates and status reports to City and County officials.

Section 5

Potential Liability

Nothing in the performance of this Agreement will impose any liability for claims against City or County other than claims for which liability may be imposed by the Texas Tort Claims Act.

Each Party to this Agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other Party.

Section 6

Billing

Costs will be calculated quarterly, with four (4) calculations for each year of this Agreement. At the end of each quarter, the County will submit the total costs incurred for administering its PSA with CAPDS Forensic Project and the additional budget required for the JPDO. The City will pay fifty percent (50%) of

those costs to the County within thirty days. Costs and expenses that are not anticipated, disclosed to, and approved by the Parties before payment will not be considered properly incurred unless later agreed upon by City Manager and County Judge.

Section 7
No Third-Party Rights

By entering into this Agreement, the Parties do not intend to create any obligations express or implied other than those set out herein; further, the Parties do not intend to create any rights in any third-party by virtue of this Agreement.

Section 8
Signatory Authority

The undersigned persons have authority to sign on behalf of each governmental entity:

CITY OF AUSTIN

COUNTY OF TRAVIS

Rey Arellano, Assistant City Manager

Andy Brown, County Judge

Date

Date