

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 30th day of September, 2003 by and between **CITY OF HOOVER, ALABAMA**, a municipal corporation (the "City"), and **ALABAMA DEPARTMENT OF FORENSIC SCIENCES**, an instrumentality of the State of Alabama ("DFS").

R E C I T A L S:

Contemporaneously herewith the City has transferred and conveyed to DFS that certain real property (the "Property") situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

The City is the owner of that certain real property (the "Overall Parcel") situated in Shelby County, Alabama which is more particularly described in Exhibit B attached hereto and incorporated herein by reference. The Overall Parcel is situated adjacent to and is contiguous with the Property. The Overall Parcel has been previously developed as an industrial warehouse facility (the "Warehouse Facility") containing approximately 280,000 square feet, more or less, of warehouse space, as well as loading docks, dock levelers, parking areas and drives.

The Property and the Overall Parcel are each shown and described on that certain subdivision plat entitled "Hoover Public Safety Center Subdivision" which has been recorded in Map Book 31, Page 141 in the Office of the Judge of Probate of Shelby County, Alabama (the "Subdivision Plat").

The City desires to grant to DFS certain easements to utilize portions of the Overall Parcel for access, utilities and other uses, all as more particularly described in this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and DFS do hereby agree as follows:

1. **Grant of Primary Access Easement.** The City does hereby grant to DFS, for the benefit of the Property, a permanent, perpetual and non-exclusive easement over, across, through and upon that portion of the Overall Parcel which is more particularly described as the "Primary Access Easement" on the Subdivision Plat.

2. **Parking Easements.**

(a) The City does hereby grant to DFS, for the benefit of the Property, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon that portion of the Overall Parcel which is more particularly described as the “Access and Parking Easement” on the Subdivision Plat (the “Parking Area”) for the purposes of providing (i) vehicular and pedestrian ingress and egress to and from the Access Drive and the Property and (ii) surface parking within the Parking Area.

(b) The City does further grant to DFS, for the benefit of the Property, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon any other portions of the Overall Parcel which, from time to time, are made available for public, non-restricted parking areas.

3. **Secondary Access Easements.**

(a) The City does hereby grant to DFS, for the benefit of the Property, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon that portion of the Overall Parcel which is more particularly described as the “Secondary Access Easement” on the Subdivision Plat (the “Secondary Access Drive”) which will provide access to and from the Parking Area and U.S. Highway 31.

(b) The City does further grant to DFS, for the benefit of the DFS Property, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon that portion of the Overall Parcel which is more particularly described as the “16’ Property Access Easement” on the Subdivision Plat (the “16-Foot Property Access Drive”) which will provide access between the Parking Area and the Patio Area, as hereinafter defined.

(c) DFS acknowledges and agrees that the Secondary Access Drive and the 16-Foot Property Access Drive may cross through secured or restricted areas (the “Restricted Area”) which the City may gate, at its sole cost and expense, so long as access rights are granted to DFS through such Restricted Area or any gate constructed or installed thereon. DFS further acknowledges and agrees that the Secondary Access Drive and the 16-Foot Property Access Drive may be relocated by the City from time to time so long as (i) access to and from the Parking Area and U.S. Highway 31 is provided at all times and (ii) access to and from the Parking Area and the northwestern corner of the Patio Area is provided at all times.

4. **Patio Access Easement.** The City does hereby grant to DFS, for the benefit of the Property, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon that portion of the Overall Parcel which is more particularly described as the “Patio Access Easement Area” on the Subdivision Plat (the “Patio Area”) which is situated along the northernmost side of the Property for use by DFS, its agents, employees, invitees, successors and assigns for (i) pedestrian access to and from the Property and the Parking Area and (ii) the construction, installation and maintenance thereon of a wall, screen, landscaping planters and other landscaping materials.

5. **Easement to Use Dock Facilities.**

(a) The City does hereby grant to DFS, for the benefit of the Property, a permanent, perpetual and non-exclusive easement appurtenant over, across, through, under and upon (i) those portions of the Parking Area which provide access between the Access Drive and the loading dock (the "Loading Dock") situated within the Warehouse Facility near the southeasternmost corner of the Property at the southwesternmost corner of the Parking Area, (ii) the Loading Dock situated within the Warehouse Facility as described above, (iii) that portion of the interior of the Warehouse Facility situated adjacent to the Loading Dock and the Property (the "Dock Access Area") as more particularly described as the "Dock Access Easement" on the Subdivision Plat and (iv) an area adjacent to the Loading Dock and the Parking Area (the "HVAC Equipment Easement Area") which is more particularly described as the "HVAC Equipment Easement" on the Subdivision Plat for use by DFS for the installation, maintenance, operation, repair and replacement of heating, ventilating and air conditioning units, compressors and cooling towers.

(b) Notwithstanding anything provided herein to the contrary, the City reserves the right to limit and restrict public access to the Dock Access Area and the Loading Dock, including the installation and maintenance of fences, gates, guardhouses and other devices thereon; provided, however, that in all cases, Purchaser shall have the access rights to the Dock Access Area and the Loading Dock.

(c) Notwithstanding anything provided herein to the contrary, DFS acknowledges and agrees that the HVAC Equipment Easement Area shall be used in common with the City and any heating, ventilating and air-conditioning units, compressors and cooling towers which DFS may desire to construct or install within the HVAC Equipment Easement Area must be approved in writing by the City.

6. **Temporary Construction Easements.** The City does hereby grant to DFS, for the benefit of the Property, a temporary, non-exclusive easement over, across, through, under and upon the Parking Area for the temporary storage of construction materials and the temporary location of a construction trailer thereon to be used in the construction of any improvements on the Property, which temporary construction easement shall cease and terminate at such time as DFS occupies any portion of the Property for the conduct of its general business and affairs. Any utilities necessary or required for use of any such construction trailers shall be provided by DFS at its sole cost and expense. Following initial occupancy of the Property by DFS, if DFS desires to make future improvements to the Property or any of the improvements thereon, then the City agrees, in good faith, to attempt to determine an area within the Overall Parcel which can be used by DFS for the temporary storage of construction materials and the placement of a construction trailer thereon, which temporary construction easement must be evidenced by a written easement agreement to be executed by DFS and the City. Nothing contained in this Paragraph 6 shall be deemed to create any easements on any portion of the Overall Parcel other than within the Parking Area, which easement is temporary and shall automatically cease and be of no further force or effect at such time as DFS occupies any portion of the Property for the conduct of its general business and affairs.

7. **Construction, Maintenance Obligations and other Improvements.**

(a) Promptly after the execution of this Agreement, the City shall commence construction of and diligently pursue to completion the Access Road and surface parking within the Parking Area with a minimum of 100 parking spaces. The Access Road shall be paved with either concrete or asphalt and shall contain appropriate curbing, gutters and storm drainage facilities. The Parking Area shall be paved with either concrete or asphalt. The City may elect, but does not have any obligation, to (i) construct and install landscaping islands within the Parking Area and any other improvements thereto as the City, in its sole and absolute discretion, determines to make within the Parking Area, (ii) make any improvements within the Restricted Area or (iii) make any improvements within the Parking Area, the Dock Access Area or the Loading Dock, including, without limitation, retaining walls, concrete, curbing, gutters or any other improvements; provided, however, that (1) to the extent the City determines that any retaining walls may be necessary within the Parking Area, then the same will be constructed and maintained by the City and (2) the Loading Dock shall at all times be maintained in an operable condition.

(b) The City shall, at its sole cost and expense, maintain in good repair and condition the Access Drive, the Parking Area, the Secondary Access Drive, the Dock Access Area and the Loading Dock; provided, however, that any damages to the Access Drive, the Parking Area, the Dock Access Area or the Loading Dock caused by any negligent act or omission of DFS or any of its agents, employees, invitees or contractors shall be promptly repaired at the sole cost and expense of DFS.

(c) Promptly following the execution of this Agreement, DFS shall, at its sole cost and expense, construct and install two (2) demising walls (collectively, the “Demising Walls”) along the western and southern boundaries of the Property. The Demising Walls should at all times be constructed and maintained by DFS in accordance with all applicable governmental rules and regulations. The Demising Walls will constitute part of the Property and will **not** be considered party walls.

(d) DFS shall have the right, at its sole cost and expense, to construct and install exterior landscaping along the easternmost and northernmost boundaries of the Property.

(e) If DFS so desires, DFS may, at its sole cost and expense, make additional improvements within the Parking Area so long as such improvements are approved in writing by the City prior to commencement of the same. DFS shall at all times maintain all landscaping constructed or installed by DFS within the Parking Area.

(f) DFS shall, at its sole cost and expense, maintain in good repair and condition all portions of the Property, including, without limitation, all exterior portions of the building situated on the Property, including the roof thereof, the Patio Area and any exterior landscaping constructed or installed from time to time by DFS on the Property, within the Patio Access Area or within the Parking Area.

(g) No alterations or improvements of any nature shall be made by DFS to the Access Drive, the Parking Area, the Patio Area, the Secondary Access Drive, the 16-Foot

Property Access Drive, the Loading Dock, the Dock Access Area or the Temporary Construction Easement Area without the prior written consent of the City.

(h) DFS shall, at its sole costs and expense, be solely responsible for any and all other alterations and improvements to be made to the Property, including, without limitation, installation of doors, windows and the removal if required, of any dock levelers on the Property.

8. **Signage and Exterior Alterations.** No exterior signs and no alterations, improvements or modifications may be made to the exterior of the building situated on the Property, including the roof thereof, without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed. The foregoing restrictions shall also apply to any exterior painting of any building situated on the Property as well as the re-roofing of any such building.

9. **Use Restrictions.** Purchaser acknowledges and agrees that the Property shall be used solely for forensic sciences and laboratory uses and a morgue and no other uses of any nature unless otherwise approved in writing by the City.

10. **Amendments.** This Agreement may be amended and modified only by a written instrument duly executed by the then owner of the Overall Parcel and then owner of the Property.

11. **Miscellaneous.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the City and DFS and their respective successors and assigns, forever. The paragraph headings and captions used herein are for convenience of reference only and shall in no way define, limit, describe, or restrict the scope or intent of this Agreement or in any way affect the terms and provisions hereof. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law. Each party hereto covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformitory or otherwise, which may be reasonably requested by any other party hereto for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters described herein. This agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

12. **Notices.** Any and all notices required or permitted to be given hereunder shall be in writing and shall be served on the parties at the following addresses:

If to Seller: City of Hoover, Alabama
Mayor's Office
City Hall
100 Municipal Drive
Hoover, Alabama 35216
Attention: Mayor
Facsimile No. (205) 444-77232

If to Purchaser: Alabama Department of Forensic Sciences
991 Wire Road
Auburn, AL 36831
Attention: F. Taylor Noggle, Jr.
Facsimile: (334) 887-7531

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when either (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States Mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above or (iii) deposited with a nationally recognized overnight delivery courier service for next business day delivery and addressed as set forth above. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

IN WITNESS WHEREOF, the City and DFS have executed this Agreement as of the day and year first above written.

CITY OF HOOVER, ALABAMA, an Alabama
municipal corporation

By: Barbara B. McCollum
Its: Mayor

**ALABAMA DEPARTMENT OF FORENSIC
SCIENCES**, an instrumentality of the State of
Alabama

By: F. Taylor Noggle, Jr.
F. Taylor Noggle, Jr.
Its Director

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Barbara B. McCollum, whose name as Mayor of City of Hoover, Alabama, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 30th day of September, 2003.

Margie Handley
Notary Public
My commission expires: 4/28/06

[NOTARIAL SEAL]

STATE OF ALABAMA)
 :
COUNTY OF Montgomery)

I, the undersigned, a notary public in and for said county in said state, hereby certify that F. Taylor Noggle, Jr., whose name as Director of, Alabama Department of Forensic Sciences, an instrumentality of the State of Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Director and with full authority, executed the same voluntarily for and as the act of said instrumentality.

Given under my hand and official seal this 25th day of September, 2003.

Charlotte Wilkerson
Notary Public
My commission expires: 6/21/05

[NOTARIAL SEAL]

This instrument prepared by and
Upon recording should be returned to:

Stephen R. Monk, Esq.
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104
Telephone: (205) 521-8429

EXHIBIT A

Legal Description of Property

Lot 1B according to the Hoover Public Safety Center Subdivision, as recorded in Map Book 31, Page 141 in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT B

Legal Description of Overall Parcel

Lot 1A according to the Hoover Public Safety Center Subdivision, as recorded in Map Book 31, Page 141 in the Office of the Judge of Probate of Shelby County, Alabama.