




Interoffice Memorandum

AGENDA ITEM

April 29, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

THRU: Yolanda G. Martinez, EdPhD., PhD., Director
Health Services Department 

FROM: Joshua Stephany, M.D., Manager
Medical Examiner's Office
Contact: 407-836-9424

SUBJECT: Affiliation and Facility Agreements – Donor Recoveries
CorneaGen, Inc. and Lions Eye Institute, Inc.
Consent Agenda – May 11, 2021

Throughout the years the Medical Examiner's Office, has partnered with organ and tissue procurement agencies to donate organs and tissues, when medically and legally permitted, in an effort to fulfill the wishes of the deceased or next of kin and ensure that donated organs and tissues are available to members of the community in need.

In continuation of these partnerships, the Medical Examiner's Office requests approval of the Agreements between the County and eye bank agencies CorneaGen, Inc. and Lions Eye Institute, Inc. The proposed agreements will allow both eye bank agencies to come on County property to recover donated eyes and corneas for use in corneal transplant surgery, research, and education.

ACTION REQUESTED: Approval and execution of Affiliation and Facility Use Agreements related to the Recovery of Donated Organs and Tissues between Orange County, Florida, and CorneaGen, Inc., and Lions Eye Institute for Transplant & Research Foundation, Inc. and authorization for the Mayor or designee to sign any future amendments to these agreements. The agreement periods are for one-year, commencing upon the date of signature by both parties, with up to four, one-year renewals. **(Medical Examiner's Office)**

Attachments

C: Danny Banks, Deputy County Administrator
John Goodrich, Deputy Director, Health Services Department

AFFILIATION AND FACILITY USE AGREEMENT

between

ORANGE COUNTY, FLORIDA

and

CORNEAGEN INC

related to

THE RECOVERY OF DONATED ORGANS AND TISSUES

THIS AFFILIATION AND FACILITY USE AGREEMENT (“Agreement”) is entered into by and between **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida located at 201 South Rosalind Avenue, Orlando, Florida 32801, for the benefit of its Medical Examiner’s Office (the “**County**” or “**Medical Examiner**”) and **CORNEAGEN INC**, a Delaware corporation located at 1200 6th Avenue, Suite 300, Seattle, Washington 98101 (the “**Agency**”). The County and the Agency may be referred to herein individually as “party” or collectively as “parties.”

WHEREAS, the Medical Examiner’s Office has a policy of cooperating with organ and tissue procurement agencies to donate organs and tissues, when medically and legally permitted, in an effort to fulfill the wishes of the deceased, or next of kin, and ensure that donated organs and tissues are available to members of the community in need; and

WHEREAS, the Agency is an eye bank that obtains, evaluates, and distributes eyes and corneas with the mission to recover, process, and distribute corneal and scleral tissue for sight-saving transplant surgery; and

WHEREAS, the County owns the medical facility located at the Medical Examiner’s Office at 2350 Michigan Avenue, Orlando, Florida 32806 (the “**Office**”) and conducts examinations of decedents under the Medical Examiner’s jurisdiction pursuant to Chapter 406, Florida Statutes; and

WHEREAS, the Agency has requested to utilize space within the Office to recover donated eyes and corneas for use in corneal transplant surgery, research, and education (“**Intended Use**”); and

WHEREAS, the County has designated certain areas within the Office to be available to the Agency for the Intended Use, including the main autopsy suite at the station assigned to the relevant decedent and one parking space facing Bumby Avenue located adjacent to the Office’s investigation entrance (“**Facilities**”); and

WHEREAS, the County and Agency desire to set forth the terms and conditions of their agreement for the Agency’s Intended Use of the Facilities; and

WHEREAS, the County has determined that entering into this Agreement is in the interest of the public health, safety, and welfare.

NOW AND THEREFORE, in consideration of the mutual promises herein, the Agency and the County agree as follows:

Section 1. **Recitals.** The above recitals are true and correct and are hereby incorporated as a material part of this Agreement.

Section 2. **Facilities.** The County shall deliver possession and occupancy of the Facilities to the Agency in accordance with the terms of this Agreement. The County agrees to grant a license to the Agency, and the Agency agrees to accept the license from the County, for the use of the Facilities by the Agency’s employees on days and at times scheduled and approved by the County prior to the Agency’s arrival at the Office (collectively, “**Use Hours**”), and subject to the restrictions set forth in this Agreement. The County shall ensure that the Agency has access to the Facilities during the Use Hours.

Section 3. **Use of Facilities.** It is the intent of the parties that the Agency uses the Facilities only for the Intended Use, and that the Agency shall not use the Facilities for uses inconsistent with the Intended Use, or for any other use unless specifically approved in writing by the County. Failure to use the Facilities for the Intended Use, or abandonment of the Facilities for more than sixty (60) days, shall amount to a default under the terms of this Agreement and in such event, the County shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement and in such event of termination, this Agreement shall be null and void and of no further force and effect.

Section 4. **Term and Termination.**

A. **Term.** This Agreement shall become effective upon execution by both parties (“**Commencement Date**”) and continue thereafter for a term of five (5) years (“**Term**”), unless either party hereto elects to terminate this Agreement pursuant to the “**Termination**” Section of this Agreement. The County’s Medical Examiner may exercise any right, on behalf of the County, to terminate this Agreement as set forth herein.

B. **Termination.** Either party may cancel this Agreement at any time, either with or without cause. The terminating party shall give the other party thirty (30) days written notice of its intention to terminate this Agreement, with or without cause. If such notice is given, this Agreement shall terminate at the end of the thirty (30) days’ notice.

Section 5. **Use Fees.** The Agency shall be exempt from paying any use fees to the County for the use of the Facilities. The Agency understands and acknowledges that the exempt rate of the use fees set forth herein is based on the understanding that the Agency is obligated to use the Facilities for the Intended Use in accordance with the terms and conditions of this Agreement.

Section 6. Maintenance.

A. **Maintenance of Facilities.** The County shall, at its sole cost and expense, maintain the Facilities in a safe and orderly manner, ordinary wear and tear excepted. The Agency shall be responsible for ensuring that all portions of Facilities are kept in a clean and neat condition during and after the Agency's use of said Facilities. The Agency shall clean the Facilities to remove trash, litter, or debris that was left during the Agency's use.

B. **Maintenance Request.**

1. **Agency Maintenance Request.** In the event that the Agency identifies a maintenance issue, defect, or deficiency with the Facilities, the Agency shall promptly provide written notice to the County ("**Maintenance Request**") outlining any deficiency, defective, or damaged condition, area in disrepair or in need of maintenance in or about the Facilities (collectively, "**Maintenance Issue**"). Within thirty (30) days of receipt of the Maintenance Request, or as soon as possible thereafter if said Maintenance Issue cannot reasonably be resolved within thirty (30) days, the County shall repair, replace, or maintain that certain Maintenance Issue more specifically identified and outlined in the Maintenance Request. The costs of such repairs, replacements, or maintenance shall be the responsibility of the County, unless the maintenance issue, defect, or deficiency with the Facilities were caused by the Agency's use at which point, such costs will be subject to the reimbursement provision set forth herein.

2. **County Maintenance Request.** In the event that the Agency fails to keep the Facilities in a neat and clean condition, or otherwise damages or destroys the Facilities or any portion of the Office beyond routine maintenance, the County shall promptly provide a Maintenance Request to the Agency outlining any Maintenance Issue in or about the Facilities. Within thirty (30) days of receipt of the Maintenance Request, the Agency, at its sole cost and expense, shall repair, replace, or maintain that certain portion of the Facilities and the Maintenance Issue more specifically identified and outlined in the Maintenance Request. Notwithstanding the foregoing, in the event any Maintenance Issue shall constitute an emergency condition, or impede the County's ability to effectively utilize the Office, or any portion thereof, the County, acting in good faith, shall have the right to cure such Maintenance Issue upon such advance notice as is reasonably possible under the circumstances, or if necessary, without advance notice, so long as notice is given as soon as possible thereafter. In such event, the Agency shall reimburse the County for its reasonable costs of curing the Maintenance Issue ("**Maintenance Cure Costs**") or the Custodial Costs (as later defined), within thirty (30) calendar days following delivery to the Agency of a demand for such reimbursement, which demand shall include reasonable documentation of such Maintenance Cure Costs. The right to cure the Maintenance Issue shall not be deemed to: (i) impose any obligation, liability or responsibility on the County to do so; (ii) render the County liable to the Agency or any third party for an election not to do so; (iii) relieve the Agency from any performance obligation hereunder; or (iv) relieve the Agency from any indemnity obligation as provided in this Agreement.

3. **Materials for Repair.** All maintenance, repair, and replacement shall be conducted with first class materials, in a good and workmanlike manner, of the same or similar quality, quantity, and type as the materials used to initially construct the Office by the County, and in accordance with all rules, regulations and permitting requirements governing the maintenance, repair, replacement, installation or construction of medical facilities, including, without limitation, all industry standards for the construction of medical facilities in the State of Florida, and all permitting and construction requirements.

Section 7. Utilities for Facilities. The County shall be responsible, at its sole cost and expense, for connecting and maintaining all utilities for the Facilities, including, without limitation, water, sewer, fire suppression, electricity charges and deposits (collectively, “Utilities”).

Section 8. Subletting of Facilities. In no event shall the Agency be authorized to enter into an agreement with, assign, transfer, sublet this Agreement or any portion of the Facilities to any third party without the express written consent of the County, which consent may be withheld or denied in the sole and absolute discretion of the County.

Section 9. Payment for Custodial, Utility, and Capital Improvement Costs.

A. **Custodial Costs.** The County, for the benefit of the Agency, shall be solely responsible for any and all costs or expenses for custodial services for the Facilities pursuant to this Agreement (the “Customary Custodial Services”). In the event the Agency fails to maintain the Facilities in a neat and clean condition as required by this Agreement, other than Customary Custodial Services provided by the County and ordinary wear and tear, the County shall have the right, but not the obligation, in its sole and absolute discretion, to provide the Maintenance Request outlined in the “Maintenance” Section of this Agreement outlining the requirement for the custodial services (“Non-Customary Custodial Services”). In the event that the County conducts the Non-Customary Custodial Services, the Agency shall reimburse the County for any and all costs and expenses incurred by the County in providing any Non-Customary Custodial Services provided to the Facilities by the County as result of the Agency’s use thereof and in accordance with the procedures set forth in the “Maintenance” Section of this Agreement.

B. **Utilities Costs.** The County, for the benefit of the Agency, shall be solely responsible for any and all costs or expenses for Utilities for the Facilities pursuant to this Agreement.

C. **Capital Improvements.** Notwithstanding anything contained in this Agreement to the contrary, in the event that the County is required to design, permit, construct, or install any additional capital improvements, repairs or replacements, the County shall be solely responsible for the payment of any and all costs associated with said capital improvement, repairs, or replacements.

Section 10. Applicable Permits and Approvals. Prior to occupying the Facilities, the Agency will obtain all permits and approvals required in order for the Agency to occupy and use the Facilities for the Intended Use.

Section 11. Signage. The Agency shall not be entitled to install additional signage on the Office or Facilities without the written approval of the County, which approval shall be determined in County's sole and absolute discretion. In the event that the Agency delivers a written request to the County of its intent to install, repair, or replace signage on the Office or Facilities ("**Signage Request**"), the County shall have sixty (60) days to review such Signage Request. Failure to respond to the Agency within sixty (60) days of receipt of the Signage Request shall amount to a denial by the County of such proposed Signage Request. Notwithstanding the foregoing, all such signage shall be subject to all applicable permitting requirements.

Section 12. Improvements or Alterations. Except as otherwise permitted herein, the Agency shall not damage, destroy, alter, erect or permit to be erected upon the Office or Facilities such improvements, alterations or modifications to the Office, Facilities, or any fixtures, building systems, or equipment or portion thereof, without the prior written approval of the County, which approval may be withheld in the County's sole and absolute discretion.

Section 13. Obligations of the Agency. In addition to the other covenants and undertakings set forth in this Agreement, the Agency makes the following affirmative covenants governing the Agency's use of the Facilities:

A. **Implementation of Security Measures.** The Agency, at its sole cost and expense, shall take any and all actions reasonably necessary to implement safety and security measures to maintain the safety and security of the Facilities, the Office, and any and all staff or visitors located thereon, including, without limitation, appropriate screening, hiring, and training of staff and employees in accordance with any and all applicable federal, state, and local requirements governing the Agency. Notwithstanding the foregoing, the County reserves the right, in its sole and absolute discretion, to require that all staff, volunteers, employees, and agents of the Agency, or vendors of the Agency that are on-site, at the sole cost and expense of the Agency, undergo and submit to the appropriate screening requirements.

B. **Designation of Liaison.** The Agency shall designate an individual or contact person who shall be responsible for ("**Liaison**"): (a) coordinating and scheduling the Facilities use days, times, and details; (b) maintaining a working relationship with the Medical Examiner's Office; and (c) communicating with the County all notices required under this Agreement. The Agency shall be solely responsible for any and all actions of the Liaison.

C. **Personnel.** The Agency, at its sole cost and expense, shall be solely responsible and liable for the employing, engaging and providing all administrators, personnel, or staffing to safely and effectively operate within the Facilities for the Intended Use.

D. **Supervision Responsibilities.** The Agency shall exercise commercially reasonable efforts to prevent its representatives from performing any disorderly conduct or committing or maintaining any nuisance on the Office, or using the Facilities, Office, or any portion thereof, in any way so as to interfere with the operation of the County's activities or the exercise by other licensees or privileges which the County may grant in the Office.

E. **Incident Reports.** The Agency shall provide written notice to the County promptly and shall use its best efforts to provide such notice within twenty-four (24) hours of the occurrence of any incident resulting in bodily injury or death to any persons, or any damage or vandalism to property of the County or others occurring at any portion of the Office or adjacent premises or in any way connected with the use of Office or adjacent premises. The notice must include details of the time, place and circumstances of the incident, and the names and addresses of any person(s) witnessing the incident.

F. **Compliance with Rules and Regulations.** The Agency shall comply with and abide by all laws, ordinances, rules, regulations, policies, directives and procedures of the County and any other governmental entity having jurisdiction over the Office, any portion thereof, or the Intended Use thereof, including, without limitation, all safety and security protocols, management directives governing the alterations to facilities, and standards for the Agency. This requirement includes, but is not limited to, the applicable provisions of Chapter 765, Florida Statutes, and the standards of Section 59A-1.005, Florida Administrative Code.

G. **Performance of Obligations.** The Agency shall take all such other actions and perform such other obligations as are required or contemplated hereunder including, without limitation, all obligations pertaining to satisfaction of any contingencies of this Agreement or conditions precedent to performance by such party of its obligations hereunder.

H. **Prohibitions of Substances, Devices, or Materials.** Unless otherwise specifically agreed to by the County in writing, the Agency shall not allow or permit the use, consumption, storage or possession of any of the following items on the Office by the Agency or its agents: (a) intoxicating or alcoholic beverages, smoking, or illegal or harmful drugs; (b) gambling devices of any kind; (c) any weapons and firearms; (d) hazardous, flammable or explosive materials, including but not limited to, flammable materials or liquids, fireworks, pyrotechnic devices, explosives, poisonous materials or plants, strong acids or caustics; (e) dangerous animals; or (F) any other substance, material or items prohibited by law or ordinances of fire insurance.

I. **Removal of Property.** The Agency may not remove or damage any County equipment or supplies from any portion of the Facilities or Office.

Section 14. Obligations of the County. In addition to the other covenants and undertakings set forth in this Agreement, the County makes the following affirmative covenants governing the Agency's use of the Facilities:

A. The County shall report potential candidates for organ and tissue donation in accordance with applicable local, state, and federal laws, rules, and regulations.

B. The County shall ensure that a County staff member is present with the Agency at the Facilities at all times during the scheduled Use Hours.

C. **Removal from Premises.** The County may, in its sole and absolute discretion, remove any Agency employee or agent from the County's premises at any time.

Section 15. Indemnification and Insurance.

A. **Indemnification.** Each party agrees to defend, indemnify, and hold harmless the other party, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, costs and expenses (including attorney's fees) attributable to its own negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Nothing contained in this Agreement shall constitute a waiver of the County's sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions or neglect of the other party.

B. **Insurance.**

1. The Agency shall provide and maintain, for the duration of this Agreement, the following insurance coverage:

a. **Worker's Compensation.** The Agency is responsible for providing worker's compensation coverage for its employees with statutory workers' compensation limits, no less than \$100,000.00 for Employer's Liability and will include a waiver of subrogation in favor of County and its agents, employees and officials.

b. **Commercial General Liability.** The Agency shall provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations and Personal Injury. The limits shall be not less than \$500,000 per occurrence, Combined Single Limits (CSL) or its equivalent. The General Aggregate limit shall either apply separately to this agreement or shall be at least twice the required occurrence limits. The Agency may maintain a self-insurance program with comparable limits and shall provide a statement of self-insurance to the County prior to commencing operations under his agreement.

c. **All-Risk Property.** The Agency shall maintain primary, noncontributory, "all-risk" property insurance covering its personal property leasehold improvements, furniture, fixtures and equipment for the full insurable replacement value of such property.

2. Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, the County acknowledges to be self-insured for General Liability and Automobile Liability with coverage limits of as set forth in Section 768.28, Florida Statutes. The County shall maintain primary, noncontributory, "at risk" property insurance covering the facility and other related structures and its personal property for the full insurable replacement value of such property.

3. Each party hereby waives all rights of subrogation against the other for damage to their respective property and shall require reciprocal waivers of subrogation from their

insurance companies. If the Agency provides general liability coverage through a commercial insurance policy and not through a program of self-insurance, as permitted herein, the County shall be specifically included as an additional insured on the general liability policy. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County.

4. The Agency shall provide coverage for all claims arising out of the services performed within limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. The Agency may maintain a self-insurance program with comparable coverage limits and shall provide a statement of self-insurance to the County prior to commencing operations under this agreement.

5. The County's failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve the Agency of its liability and obligations under this agreement.

Section 16. Protection of Persons and Property. While working or performing services at County facilities, the Agency shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement.

A. The Agency shall take all reasonable precautions for the safety and protection of:

1. All employees and all persons whom the Agency suffers to be on the premises and other persons who may be affected thereby;

2. All property, materials, and equipment on the premises under the care, custody or control of the Agency; and

3. Other property at or surrounding the premises including trees, shrubs, lawns, walks, pavement, and roadways.

B. The Agency agrees that the County does not guarantee the security of any equipment or personal property brought by the Agency, its agents or employees onto the County property and that the County shall in no way be liable for damage, destruction, theft or loss of any equipment and appurtenances regardless of the reason for such damage, destruction, theft or loss.

C. The Agency shall comply with, and shall ensure that its contractors comply with, all applicable safety laws or ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property for their protection from damage, injury or loss. This includes but is not limited to the following:

1. Occupational Safety & Health Act (OSHA)

2. National Institute for Safety and Health (NIOSH)

3. National Fire Protection Association (NFPA)

D. The Agency must also comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address below:

<http://www.ocfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

E. In any emergency affecting the safety of persons or property, the Agency will act with reasonable care and discretion to prevent any threatened damage, injury or loss.

Section 17. HIPAA Privacy, Security Rules, and Personal Information Protection.

A. The parties shall comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d through d-8 (“HIPAA”) and the requirements of any regulations promulgated thereunder including, without limitation, the federal privacy regulations as contained in 45 CFR Part 164 (the “Federal Security Regulations”).

B. Under this Agreement, each party will limit its transmission of data to the other party only to data that either: (1) is not protected health information or personally identifiable information (“PHI” or “PII”), or (2) has been “de-identified” in compliance with the HIPAA Safe Harbor Standard, 45 C.F.R. § 165.514. Notwithstanding the foregoing, the County may use or disclose PHI to the Agency, as an organ procurement organization, for the purpose of facilitating organ, eye or tissue donation and transplantation in accordance with 45 C.F.R. § 164.512(h).

C. Should the need for the transmission of PHI or PII arise that is not permitted for disclosure under 45 C.F.R. § 164.512(h) without the individual’s written authorization, the party transmitting that protected health or personally identifiable information shall ensure – before that transmission – that:

1. A business associate agreement or written authorization form is executed, as applicable; and
2. The Agency complies with the terms of the “**Personal Information Protection**” Section of this Agreement; and
3. All the protections of the HIPAA Privacy and Security Rules and the Florida Information Protection Act have been properly executed.

D. The Agency shall keep confidential all information and data obtained, developed, or supplied by the County, or at the County’s expense, and will not disclose said information to any other party, directly or indirectly, without the County’s prior written consent.

E. Within forty-eight (48) hours of discovery, the Agency shall report to the County’s HIPAA Privacy Officer any use or disclosure in violation of this Agreement, HIPAA, the Federal Privacy Regulations, or the Federal Security Regulations of the patient’s Protected Health Information (“PHI”). The County’s HIPAA Privacy Officer shall be contacted at:

Orange County HIPAA Privacy Officer

2002 A. East Michigan Street

Orlando, FL 32806

Privacy.Officer@ocfl.net

F. Personal Information Protection.

1. In accordance with Florida Statutes, the Agency shall take reasonable measures to protect and secure data in electronic form containing the personal information of donors, next-of-kin, and any other persons that receive Agency services pursuant to this Agreement.
2. Personal information shall mean an individual's initials, first name or first initial and last name in combination with the following:
 - a. A social security number; or
 - b. A driver's license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity; or
 - c. A financial account number or credit card or debit card number in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account; or
 - d. Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
 - e. An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; or
 - f. Any other identifier as referenced in the Department of Health & Human Services "Safe Harbor Standards."
3. Personal information shall also include a user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.
4. The Agency shall take reasonable measures to protect and secure data in electronic form containing the personal information, identified in this Section (collectively hereinafter "Personal Information"), that the Agency has been contracted to maintain, store, or process on behalf of the County.

5. The Agency shall provide notice to the County as expeditiously as possible, but no later than two (2) days, following the determination of the breach, or reasonable suspicion of a breach, of any system containing data in electronic that the Agency has been contracted to maintain, store, or process on behalf of the County. Breach shall mean any unauthorized access of data in electronic form regardless of its source.

6. Notice of any such breach to the County shall include the following:

- a. A synopsis of the events surrounding the breach including the date(s) or date range of the breach of security; and
- b. The number of individuals who were or potentially have been affected by the breach; and
- c. A description of the Personal Information that was accessed or reasonably believed to have been accessed as part of the breach of security; and
- d. The name, address, telephone number, and e-mail address of the employee, agent, contractor, or business associate from whom additional information may be obtained concerning the breach; and
- e. Any additional information requested by the County.

Section 18. Notices. All notices under this Agreement shall be in writing and delivered by hand delivery, express courier, or United States Postal Service certified mail with return receipt requested, and shall be effective upon receipt of the same.

To the County: Orange County, Florida
Attn: Medical Examiner
2350 Michigan Avenue
Orlando, Florida 32806

Copy to: Orange County Administrator
P.O. Box 1393
Orlando, Florida 32802-1393

To the Agency: CorneaGen Inc
1200 6th Avenue, Suite 300
Seattle, Washington 98101

Section 19. Independent Contractor. The relationship of the parties under this Agreement shall be an independent contractor relationship, and not an agency, employment, joint venture or partnership relationship. Neither party shall have the power to contract in the name of the other party. All persons employed by a party in connection with this Agreement shall be considered employees of that party and shall in no way, either directly or indirectly, be considered employees or agents of the other party.

Section 20. Records Management. The Agency shall retain copies of all records associated with this Agreement for a period of five (5) years from the date of termination. In the event of litigation, claim, or audit findings, the record retention period shall be five (5) years from the time of the resolution of the litigation, claim, or audit findings. Should the Agency dissolve or otherwise terminate this Agreement without the capability of retaining the records, as required by this Agreement, all such records shall be transferred to the County.

Section 21. Public Records.

A. All books, documents, records, and accounts related to this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by, or provided to the County or the Agency under the terms of this Agreement are public records or documents made in accordance with Section 119.07, Florida Statutes.

B. The Agency shall make available copies of all records associated with this Agreement for examination or inspection, subject to applicable public records exemptions. The Agency shall comply with all requests for public records associated with this Agreement in accordance with Florida's Public Records Law and other applicable State law requirements. The County shall make available copies of all records associated with this Agreement for examination or inspection. The County shall comply with all requests for public records associated with this Agreement in accordance with Florida's Public Records Law and other applicable State law requirements.

C. If the Agency has questions regarding the application of Chapter 119, Florida Statutes, to the Agency's duty to provide Public Records relating to this Agreement, the Agency will contact the Procurement Records Liaison at 400 East South Street, 2nd Floor, Orlando, Florida 32801, ProcurementRecords@ocfl.net, (407) 836-5897.

D. Notwithstanding anything set forth in any provision of this Agreement to the contrary, neither party will be required to modify records kept in the normal course of business by that party in order to provide copies of those records to the other party, and neither party will be required to destroy any records in its custody in violation of Chapter 119, Florida Statutes.

Section 22. General Provisions.

A. **Compliance with Laws.** It shall be each party's responsibility to be aware of federal, state, and local laws relevant to this Agreement. Each party shall comply in all respects with all applicable legal requirements governing the duties, obligations, and business practices of that party and shall obtain any permits or licenses necessary for its operations. Neither party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party.

B. **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement shall constitute or be in any way construed to be, a waiver of either party's sovereign immunity or the protections and provisions of Section 768. 28, Florida Statutes.

C. **Tobacco Free Campus.** All County operations under the Board of County Commissioners shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to any of the Agency's personnel for the duration of their participation in the Program. Tobacco is defined as tobacco products, including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco, and snuff. Failure to abide by this policy may result in any individual on the County's premises pursuant to this Agreement to have their experimental learning placement terminated.

D. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to, or shall, confer upon any person, other than the parties and their respective successors and permitted assigns, any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.

E. **Non-Exclusive Agreement.** This Agreement shall be non-exclusive to both parties providing both the Agency and the County the right to enter into agreements regarding the same or similar subject matter with other parties.

F. **Assignment.** The parties deem the services to be rendered pursuant to this Agreement to be personal in nature. As such, neither party shall assign, sublet, convey or transfer its interest in this Agreement without the written consent of the other, which consent shall be in the sole determination of the party with the right to consent. Subject to the foregoing, each party binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement.

G. **Performance.** A delay in or failure of performance of either party that is caused by occurrences beyond the control of either party shall not constitute a default under this Agreement, nor shall any such delay give rise to any claim for damages.

H. **Waiver.** No delay or failure on the part of any party to this Agreement to exercise any right or remedy accruing to such party upon the occurrence of an event of violation shall affect any such right or remedy, be held to be an abandonment thereof, or preclude such party from the exercise thereof at any time during the continuance of any event of violation. No waiver of a single event of violation shall be deemed to be a waiver of any subsequent event of violation.

I. **Remedies.** No remedy conferred at law or in this Agreement upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any rights, powers, or remedies under this Agreement shall preclude any other or further exercise that party's available rights, powers, or remedies.

J. **Counterparts.** This Agreement may be executed in one or more counterpart copies. Each counterpart copy shall constitute an agreement and all of the counterpart copies shall constitute one fully executed agreement.

K. **Governing Law.** This Agreement and any and all actions directly or indirectly associated with this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Florida, without reference to any conflicts of law provisions.

L. **Venue.** For any legal proceeding arising out of or relating to this Agreement, each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against the Ninth Judicial Circuit Court in and for Orange County, Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions will be in the Orlando Division of the United States District Court for the Middle District of Florida.

M. **Jury Waiver.** Each party to this Agreement irrevocably waives, to the fullest extent permitted by law, any right it may have to trial by jury in any proceeding directly or indirectly arising out of or relating to this Agreement.

N. **Attorney's Fees and Costs.** Unless explicitly otherwise stated in this Agreement, the parties shall each bear their own costs, expert fees, attorney's fees, and other fees incurred in connection with this Agreement and any dispute or litigation that arises either directly or indirectly from this Agreement.

O. **No Representative and Construction.** Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement. This Agreement is not to be construed against any party as if it were the drafter of this Agreement.

P. **Severability.** The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material term, provision, covenant or condition of this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from the holding.

Q. **Equal Opportunity and Nondiscrimination.** Pursuant to Section 17-288, Orange County Code, the County shall not extend public funds or resources in a manner as would encourage, perpetuate or foster discrimination. As such, any and all person(s) doing business with the County shall recognize and comply with the County's "Equal Opportunity and Nondiscrimination Policy", which is intended to ensure equal opportunities to every person, regardless of race, religion, sex, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified. This policy is enforced by Section 17-314, Orange County

Code, and the County's relevant Administrative Regulations, Section 17-290, Orange County Code, memorializes the County's commitment to its Equal Opportunity and Nondiscrimination Policy, by requiring the following provisions in all County contracts:

1. The Agency represents that the Agency has adopted and shall maintain a policy of nondiscrimination as defined by applicable County ordinance through the term of this Agreement.
2. The Agency agrees that, on written request, the Agency shall permit reasonable access to all business records or employment, employment advertisement, application forms, and other pertinent data and records, by the county, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Agreement, provided, that the Agency shall not be required to produce for inspection records covering periods of time more than one year prior to the date of this Agreement.

R. **Survivorship.** Those provisions which by their own nature are intended to survive the expiration, cancellation, or termination of this Agreement, including by way of example only, the indemnification and public records provisions, shall survive the expiration, cancellation, or termination of this Agreement.

S. **Headings.** The headings or captions of articles, sections, or subsections used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

T. **Authority of Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Agreement as stated.

U. **Written Modification.** This Agreement may be amended upon the mutual written consent of the parties hereto. The County does hereby confer upon the Medical Examiner, or Medical Examiner's designee, the authority to amend this Agreement, provide any consent, notice, or approval hereunder, without formal County approval, provided such amendment, notice, consent or approval does not substantially alter or modify the terms herein. The right to amend or provide consent delegated to the Medical Examiner shall include, but not be limited to, the right of the Medical Examiner to alter or modify the terms that concern the scheduling of hours of use of the Facilities and approvals and consents that are expressly contemplated in this Agreement. Amendments to this Agreement that shall conclusively be presumed to substantially alter or modify the terms hereof include, but are not limited to, those that alter maintenance obligations of the parties and those which increase monetary obligation of the County.

Section 23. Entire Agreement. This Agreement and any documents incorporated or attached to this Agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject about which this Agreement was drafted. This Agreement

supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

ORANGE COUNTY, FLORIDA

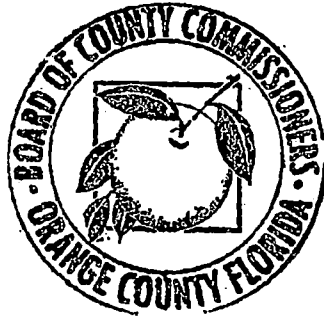
By: Orange County Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

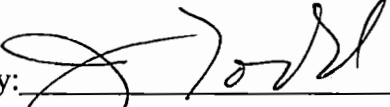
By: *Katie Smith*
Deputy Clerk

Date: 05-11-21



“Agency”

CORNEAGEN INC, a foreign profit corporation organized and existing under the laws of the State of Delaware.

By: 

Print Name: Julie Todd

Title: Director of Operations, Ocular Program

Date: 3/30/2021

STATE OF FLORIDA)
)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by _____, as _____ of CorneaGen Inc, a foreign profit corporation organized and existing under the laws of the State of Delaware, on behalf of CorneaGen Inc, who is personally known to me or had produced _____ (type of identification) as identification.

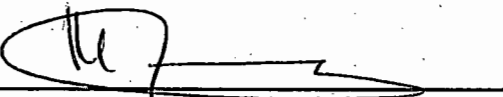
AFFIX NOTARY STAMP

NOTARY PUBLIC OF FLORIDA
Print Name: _____
Commission No.: _____
Expires: _____

**FLORIDA NOTARY ACKNOWLEDGEMENT
(CORPORATION)**

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of physical presence online notarization, this 30 day of March, 2021, by Julie Todd, CEPT (Name of Officer or Agent, Title of Officer or Agent) of CorneaGen (Name of Corporation Acknowledging), a Washington (State or Place of Incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced Florida Driver License (Type of Identification) as identification.

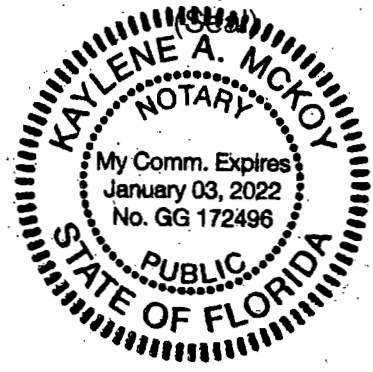


Signature of Notary Public

KAYLENE A. MCKOY
Print, Type or Stamp Name of Notary

NOTARY PUBLIC
Title or Rank

GG 172496
Serial Number, if any



AFFILIATION AND FACILITY USE AGREEMENT

between

ORANGE COUNTY, FLORIDA

and

LIONS EYE INSTITUTE FOR TRANSPLANT & RESEARCH FOUNDATION, INC.

related to

THE RECOVERY OF DONATED ORGANS AND TISSUES

THIS AFFILIATION AND FACILITY USE AGREEMENT (“Agreement”) is entered into by and between **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida located at 201 South Rosalind Avenue, Orlando, Florida 32801, for the benefit of its Medical Examiner’s Office (the “**County**” or “**Medical Examiner**”) and **LIONS EYE INSTITUTE FOR TRANSPLANT & RESEARCH FOUNDATION, INC.**, a Florida not for profit corporation located at 1410 N. 21st Street, Tampa, Florida 33605 (the “**Agency**”). The County and the Agency may be referred to herein individually as “party” or collectively as “parties.”

WHEREAS, the Medical Examiner’s Office has a policy of cooperating with organ and tissue procurement agencies to donate organs and tissues, when medically and legally permitted, in an effort to fulfill the wishes of the deceased, or next of kin, and ensure that donated organs and tissues are available to members of the community in need; and

WHEREAS, the Agency is an eye bank that obtains, evaluates, and distributes eyes and corneas with the mission to recover, process, and distribute corneal and scleral tissue for sight-saving transplant surgery; and

WHEREAS, the County owns the medical facility located at the Medical Examiner’s Office at 2350 Michigan Avenue, Orlando, Florida 32806 (the “**Office**”) and conducts examinations of decedents under the Medical Examiner’s jurisdiction pursuant to Chapter 406, Florida Statutes; and

WHEREAS, the Agency has requested to utilize space within the Office to recover donated eyes and corneas for use in corneal transplant surgery, research, and education (“**Intended Use**”); and

WHEREAS, the County has designated certain areas within the Office to be available to the Agency for the Intended Use, including the main autopsy suite at the station assigned to the relevant decedent and one parking space facing Bumby Avenue located adjacent to the Office’s investigation entrance (“**Facilities**”); and

WHEREAS, the County and Agency desire to set forth the terms and conditions of their agreement for the Agency’s Intended Use of the Facilities; and

WHEREAS, the County has determined that entering into this Agreement is in the interest of the public health, safety, and welfare.

NOW AND THEREFORE, in consideration of the mutual promises herein, the Agency and the County agree as follows:

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated as a material part of this Agreement.

Section 2. Facilities. The County shall deliver possession and occupancy of the Facilities to the Agency in accordance with the terms of this Agreement. The County agrees to grant a license to the Agency, and the Agency agrees to accept the license from the County, for the use of the Facilities by the Agency’s employees on days and at times scheduled and approved by the County prior to the Agency’s arrival at the Office (collectively, “**Use Hours**”), and subject to the restrictions set forth in this Agreement. The County shall ensure that the Agency has access to the Facilities during the Use Hours.

Section 3. Use of Facilities. It is the intent of the parties that the Agency uses the Facilities only for the Intended Use, and that the Agency shall not use the Facilities for uses inconsistent with the Intended Use, or for any other use unless specifically approved in writing by the County. Failure to use the Facilities for the Intended Use, or abandonment of the Facilities for more than sixty (60) days, shall amount to a default under the terms of this Agreement and in such event, the County shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement and in such event of termination, this Agreement shall be null and void and of no further force and effect.

Section 4. Term and Termination.

A. **Term.** This Agreement shall become effective upon execution by both parties (“**Commencement Date**”) and continue thereafter for a term of five (5) years (“**Term**”), unless either party hereto elects to terminate this Agreement pursuant to the “**Termination**” Section of this Agreement. The County’s Medical Examiner may exercise any right, on behalf of the County, to terminate this Agreement as set forth herein.

B. **Termination.** Either party may cancel this Agreement at any time, either with or without cause. The terminating party shall give the other party thirty (30) days written notice of its intention to terminate this Agreement, with or without cause. If such notice is given, this Agreement shall terminate at the end of the thirty (30) days’ notice.

Section 5. Use Fees. The Agency shall be exempt from paying any use fees to the County for the use of the Facilities. The Agency understands and acknowledges that the exempt rate of the use fees set forth herein is based on the understanding that the Agency is obligated to

use the Facilities for the Intended Use in accordance with the terms and conditions of this Agreement.

Section 6. Maintenance.

A. **Maintenance of Facilities.** The County shall, at its sole cost and expense, maintain the Facilities in a safe and orderly manner, ordinary wear and tear excepted. The Agency shall be responsible for ensuring that all portions of Facilities are kept in a clean and neat condition during and after the Agency's use of said Facilities. The Agency shall clean the Facilities to remove trash, litter, or debris that was left during the Agency's use.

B. **Maintenance Request.**

1. **Agency Maintenance Request.** In the event that the Agency identifies a maintenance issue, defect, or deficiency with the Facilities, the Agency shall promptly provide written notice to the County ("**Maintenance Request**") outlining any deficiency, defective, or damaged condition, area in disrepair or in need of maintenance in or about the Facilities (collectively, "**Maintenance Issue**"). Within thirty (30) days of receipt of the Maintenance Request, or as soon as possible thereafter if said Maintenance Issue cannot reasonably be resolved within thirty (30) days, the County shall repair, replace, or maintain that certain Maintenance Issue more specifically identified and outlined in the Maintenance Request. The costs of such repairs, replacements, or maintenance shall be the responsibility of the County, unless the maintenance issue, defect, or deficiency with the Facilities were caused by the Agency's use at which point, such costs will be subject to the reimbursement provision set forth herein.

2. **County Maintenance Request.** In the event that the Agency fails to keep the Facilities in a neat and clean condition, or otherwise damages or destroys the Facilities or any portion of the Office beyond routine maintenance, the County shall promptly provide a Maintenance Request to the Agency outlining any Maintenance Issue in or about the Facilities. Within thirty (30) days of receipt of the Maintenance Request, the Agency, at its sole cost and expense, shall repair, replace, or maintain that certain portion of the Facilities and the Maintenance Issue more specifically identified and outlined in the Maintenance Request. Notwithstanding the foregoing, in the event any Maintenance Issue shall constitute an emergency condition, or impede the County's ability to effectively utilize the Office, or any portion thereof, the County, acting in good faith, shall have the right to cure such Maintenance Issue upon such advance notice as is reasonably possible under the circumstances, or if necessary, without advance notice, so long as notice is given as soon as possible thereafter. In such event, the Agency shall reimburse the County for its reasonable costs of curing the Maintenance Issue ("**Maintenance Cure Costs**") or the Custodial Costs (as later defined), within thirty (30) calendar days following delivery to the Agency of a demand for such reimbursement, which demand shall include reasonable documentation of such Maintenance Cure Costs. The right to cure the Maintenance Issue shall not be deemed to: (i) impose any obligation, liability or responsibility on the County to do so; (ii) render the County liable to the Agency or any third party for an election not

to do so; (iii) relieve the Agency from any performance obligation hereunder; or (iv) relieve the Agency from any indemnity obligation as provided in this Agreement.

3. **Materials for Repair.** All maintenance, repair, and replacement shall be conducted with first class materials, in a good and workmanlike manner, of the same or similar quality, quantity, and type as the materials used to initially construct the Office by the County, and in accordance with all rules, regulations and permitting requirements governing the maintenance, repair, replacement, installation or construction of medical facilities, including, without limitation, all industry standards for the construction of medical facilities in the State of Florida, and all permitting and construction requirements.

Section 7. Utilities for Facilities. The County shall be responsible, at its sole cost and expense, for connecting and maintaining all utilities for the Facilities, including, without limitation, water, sewer, fire suppression, electricity charges and deposits (collectively, “Utilities”).

Section 8. Subletting of Facilities. In no event shall the Agency be authorized to enter into an agreement with, assign, transfer, sublet this Agreement or any portion of the Facilities to any third party without the express written consent of the County, which consent may be withheld or denied in the sole and absolute discretion of the County.

Section 9. Payment for Custodial, Utility, and Capital Improvement Costs.

A. **Custodial Costs.** The County, for the benefit of the Agency, shall be solely responsible for any and all costs or expenses for custodial services for the Facilities pursuant to this Agreement (the “Customary Custodial Services”). In the event the Agency fails to maintain the Facilities in a neat and clean condition as required by this Agreement, other than Customary Custodial Services provided by the County and ordinary wear and tear, the County shall have the right, but not the obligation, in its sole and absolute discretion, to provide the Maintenance Request outlined in the “Maintenance” Section of this Agreement outlining the requirement for the custodial services (“Non-Customary Custodial Services”). In the event that the County conducts the Non-Customary Custodial Services, the Agency shall reimburse the County for any and all costs and expenses incurred by the County in providing any Non-Customary Custodial Services provided to the Facilities by the County as result of the Agency’s use thereof and in accordance with the procedures set forth in the “Maintenance” Section of this Agreement.

B. **Utilities Costs.** The County, for the benefit of the Agency, shall be solely responsible for any and all costs or expenses for Utilities for the Facilities pursuant to this Agreement.

C. **Capital Improvements.** Notwithstanding anything contained in this Agreement to the contrary, in the event that the County is required to design, permit, construct, or install any additional capital improvements, repairs or replacements, the County shall be solely responsible for the payment of any and all costs associated with said capital improvement, repairs, or replacements.

Section 10. Applicable Permits and Approvals. Prior to occupying the Facilities, the Agency will obtain all permits and approvals required in order for the Agency to occupy and use the Facilities for the Intended Use.

Section 11. Signage. The Agency shall not be entitled to install additional signage on the Office or Facilities without the written approval of the County, which approval shall be determined in County's sole and absolute discretion. In the event that the Agency delivers a written request to the County of its intent to install, repair, or replace signage on the Office or Facilities ("**Signage Request**"), the County shall have sixty (60) days to review such Signage Request. Failure to respond to the Agency within sixty (60) days of receipt of the Signage Request shall amount to a denial by the County of such proposed Signage Request. Notwithstanding the foregoing, all such signage shall be subject to all applicable permitting requirements.

Section 12. Improvements or Alterations. Except as otherwise permitted herein, the Agency shall not damage, destroy, alter, erect or permit to be erected upon the Office or Facilities such improvements, alterations or modifications to the Office, Facilities, or any fixtures, building systems, or equipment or portion thereof, without the prior written approval of the County, which approval may be withheld in the County's sole and absolute discretion.

Section 13. Obligations of the Agency. In addition to the other covenants and undertakings set forth in this Agreement, the Agency makes the following affirmative covenants governing the Agency's use of the Facilities:

A. **Implementation of Security Measures.** The Agency, at its sole cost and expense, shall take any and all actions reasonably necessary to implement safety and security measures to maintain the safety and security of the Facilities, the Office, and any and all staff or visitors located thereon, including, without limitation, appropriate screening, hiring, and training of staff and employees in accordance with any and all applicable federal, state, and local requirements governing the Agency. Notwithstanding the foregoing, the County reserves the right, in its sole and absolute discretion, to require that all staff, volunteers, employees, and agents of the Agency, or vendors of the Agency that are on-site, at the sole cost and expense of the Agency, undergo and submit to the appropriate screening requirements.

B. **Designation of Liaison.** The Agency shall designate an individual or contact person who shall be responsible for ("**Liaison**"): (a) coordinating and scheduling the Facilities use days, times, and details; (b) maintaining a working relationship with the Medical Examiner's Office; and (c) communicating with the County all notices required under this Agreement. The Agency shall be solely responsible for any and all actions of the Liaison.

C. **Personnel.** The Agency, at its sole cost and expense, shall be solely responsible and liable for the employing, engaging and providing all administrators, personnel, or staffing to safely and effectively operate within the Facilities for the Intended Use.

D. **Supervision Responsibilities.** The Agency shall exercise commercially reasonable efforts to prevent its representatives from performing any disorderly conduct or committing or maintaining any nuisance on the Office, or using the Facilities, Office, or any portion thereof, in

any way so as to interfere with the operation of the County's activities or the exercise by other licensees or privileges which the County may grant in the Office.

E. **Incident Reports.** The Agency shall provide written notice to the County promptly and shall use its best efforts to provide such notice within twenty-four (24) hours of the occurrence of any incident resulting in bodily injury or death to any persons, or any damage or vandalism to property of the County or others occurring at any portion of the Office or adjacent premises or in any way connected with the use of Office or adjacent premises. The notice must include details of the time, place and circumstances of the incident, and the names and addresses of any person(s) witnessing the incident.

F. **Compliance with Rules and Regulations.** The Agency shall comply with and abide by all laws, ordinances, rules, regulations, policies, directives and procedures of the County and any other governmental entity having jurisdiction over the Office, any portion thereof, or the Intended Use thereof, including, without limitation, all safety and security protocols, management directives governing the alterations to facilities, and standards for the Agency. This requirement includes, but is not limited to, the applicable provisions of Chapter 765, Florida Statutes, and the standards of Section 59A-1.005, Florida Administrative Code.

G. **Performance of Obligations.** The Agency shall take all such other actions and perform such other obligations as are required or contemplated hereunder including, without limitation, all obligations pertaining to satisfaction of any contingencies of this Agreement or conditions precedent to performance by such party of its obligations hereunder.

H. **Prohibitions of Substances, Devices, or Materials.** Unless otherwise specifically agreed to by the County in writing, the Agency shall not allow or permit the use, consumption, storage or possession of any of the following items on the Office by the Agency or its agents: (a) intoxicating or alcoholic beverages, smoking, or illegal or harmful drugs; (b) gambling devices of any kind; (c) any weapons and firearms; (d) hazardous, flammable or explosive materials, including but not limited to, flammable materials or liquids, fireworks, pyrotechnic devices, explosives, poisonous materials or plants, strong acids or caustics; (e) dangerous animals; or (F) any other substance, material or items prohibited by law or ordinances of fire insurance.

I. **Removal of Property.** The Agency may not remove or damage any County equipment or supplies from any portion of the Facilities or Office.

Section 14. Obligations of the County. In addition to the other covenants and undertakings set forth in this Agreement, the County makes the following affirmative covenants governing the Agency's use of the Facilities:

A. The County shall report potential candidates for organ and tissue donation in accordance with applicable local, state, and federal laws, rules, and regulations.

B. The County shall ensure that a County staff member is present with the Agency at the Facilities at all times during the scheduled Use Hours.

C. **Removal from Premises.** The County may, in its sole and absolute discretion, remove any Agency employee or agent from the County's premises at any time.

Section 15. Indemnification and Insurance.

A. **Indemnification.** Each party agrees to defend, indemnify, and hold harmless the other party, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, costs and expenses (including attorney's fees) attributable to its own negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Nothing contained in this Agreement shall constitute a waiver of the County's sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions or neglect of the other party.

B. **Insurance.**

1. The Agency shall provide and maintain, for the duration of this Agreement, the following insurance coverage:

a. **Worker's Compensation.** The Agency is responsible for providing worker's compensation coverage for its employees with statutory workers' compensation limits, no less than \$100,000.00 for Employer's Liability and will include a waiver of subrogation in favor of County and its agents, employees and officials.

b. **Commercial General Liability.** The Agency shall provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations and Personal Injury. The limits shall be not less than \$500,000 per occurrence, Combined Single Limits (CSL) or its equivalent. The General Aggregate limit shall either apply separately to this agreement or shall be at least twice the required occurrence limits. The Agency may maintain a self-insurance program with comparable limits and shall provide a statement of self-insurance to the County prior to commencing operations under his agreement.

c. **All-Risk Property.** The Agency shall maintain primary, noncontributory, "all-risk" property insurance covering its personal property leasehold improvements, furniture, fixtures and equipment for the full insurable replacement value of such property.

2. Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, the County acknowledges to be self-insured for General Liability and Automobile Liability with coverage limits of as set forth in Section 768.28, Florida Statutes. The County shall maintain primary, noncontributory, "at risk" property insurance covering the facility and other related structures and its personal property for the full insurable replacement value of such property.

3. Each party hereby waives all rights of subrogation against the other for damage to their respective property and shall require reciprocal waivers of subrogation from their insurance companies. If the Agency provides general liability coverage through a commercial insurance policy and not through a program of self-insurance, as permitted herein, the County shall be specifically included as an additional insured on the general liability policy. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County.

4. The Agency shall provide coverage for all claims arising out of the services performed within limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. The Agency may maintain a self-insurance program with comparable coverage limits and shall provide a statement of self-insurance to the County prior to commencing operations under this agreement.

5. The County's failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve the Agency of its liability and obligations under this agreement.

Section 16. Protection of Persons and Property. While working or performing services at County facilities, the Agency shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement.

A. The Agency shall take all reasonable precautions for the safety and protection of:

1. All employees and all persons whom the Agency suffers to be on the premises and other persons who may be affected thereby;
2. All property, materials, and equipment on the premises under the care, custody or control of the Agency; and
3. Other property at or surrounding the premises including trees, shrubs, lawns, walks, pavement, and roadways.

B. The Agency agrees that the County does not guarantee the security of any equipment or personal property brought by the Agency, its agents or employees onto the County property and that the County shall in no way be liable for damage, destruction, theft or loss of any equipment and appurtenances regardless of the reason for such damage, destruction, theft or loss.

C. The Agency shall comply with, and shall ensure that its contractors comply with, all applicable safety laws or ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property for their protection from damage, injury or loss. This includes but is not limited to the following:

1. Occupational Safety & Health Act (OSHA)

2. National Institute for Safety and Health (NIOSH)
3. National Fire Protection Association (NFPA)

D. The Agency must also comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address below:

<http://www.ocfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

E. In any emergency affecting the safety of persons or property, the Agency will act with reasonable care and discretion to prevent any threatened damage, injury or loss.

Section 17. HIPAA Privacy, Security Rules, and Personal Information Protection.

A. The parties shall comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d through d-8 (“**HIPAA**”) and the requirements of any regulations promulgated thereunder including, without limitation, the federal privacy regulations as contained in 45 CFR Part 164 (the “**Federal Security Regulations**”).

B. Under this Agreement, each party will limit its transmission of data to the other party only to data that either: (1) is not protected health information or personally identifiable information (“**PHI**” or “**PII**”), or (2) has been “de-identified” in compliance with the HIPAA Safe Harbor Standard, 45 C.F.R. § 165.514. Notwithstanding the foregoing, the County may use or disclose PHI to the Agency, as an organ procurement organization, for the purpose of facilitating organ, eye or tissue donation and transplantation in accordance with 45 C.F.R. § 164.512(h).

C. Should the need for the transmission of PHI or PII arise that is not ~~authorized~~ permitted for disclosure under 45 C.F.R. § 164.512(h) without the individual’s ~~consent~~ written authorization, the party transmitting that protected health or personally identifiable information shall ensure – before that transmission – that:

1. A business associate agreement or ~~consent~~ or written authorization form is executed, as applicable; and
2. The Agency complies with the terms of the “**Personal Information Protection**” Section of this Agreement; and
3. All the protections of the HIPAA Privacy and Security Rules and the Florida Information Protection Act have been properly executed.

D. The Agency shall keep confidential all information and data obtained, developed, or supplied by the County, or at the County’s expense, and will not disclose said information to any other party, directly or indirectly, without the County’s prior written consent.

E. Within forty-eight (48) hours of discovery, the Agency shall report to the County's HIPAA Privacy Officer any use or disclosure in violation of this Agreement, HIPAA, the Federal Privacy Regulations, or the Federal Security Regulations of the patient's Protected Health Information ("PHI"). The County's HIPAA Privacy Officer shall be contacted at:

Orange County HIPAA Privacy Officer
2002 A. East Michigan Street
Orlando, FL 32806
Privacy.Officer@ocfl.net

F. **Personal Information Protection.**

1. In accordance with Florida Statutes, the Agency shall take reasonable measures to protect and secure data in electronic form containing the personal information of donors, next-of-kin, and any other persons that receive Agency services pursuant to this Agreement.

2. Personal information shall mean an individual's initials, first name or first initial and last name in combination with the following:

- a. A social security number; or
- b. A driver's license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity; or
- c. A financial account number or credit card or debit card number in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account; or
- d. Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
- e. An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; or
- f. Any other identifier as referenced in the Department of Health & Human Services "Safe Harbor Standards."

3. Personal information shall also include a user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

4. The Agency shall take reasonable measures to protect and secure data in electronic form containing the personal information, identified in this Section (collectively hereinafter "Personal Information"), that the Agency has been contracted to maintain, store, or process on behalf of the County.

5. The Agency shall provide notice to the County as expeditiously as possible, but no later than two (2) days, following the determination of the breach, or reasonable suspicion of a breach, of any system containing data in electronic that the Agency has been contracted to maintain, store, or process on behalf of the County. Breach shall mean any unauthorized access of data in electronic form regardless of its source.

6. Notice of any such breach to the County shall include the following:

a. A synopsis of the events surrounding the breach including the date(s) or date range of the breach of security; and

b. The number of individuals who were or potentially have been affected by the breach; and

c. A description of the Personal Information that was accessed or reasonably believed to have been accessed as part of the breach of security; and

d. The name, address, telephone number, and e-mail address of the employee, agent, contractor, or business associate from whom additional information may be obtained concerning the breach; and

e. Any additional information requested by the County.

Section 18. Notices. All notices under this Agreement shall be in writing and delivered by hand delivery, express courier, or United States Postal Service certified mail with return receipt requested, and shall be effective upon receipt of the same.

To the County: Orange County, Florida
Attn: Medical Examiner
2350 Michigan Avenue
Orlando, Florida 32806

Copy to: Orange County Administrator
P.O. Box 1393
Orlando, Florida 32802-1393

To the Agency: Lions Eye Institute for Transplant & Research Foundation, Inc.
1410 N. 21st Street
Tampa, Florida 33605

Section 19. Independent Contractor. The relationship of the parties under this Agreement shall be an independent contractor relationship, and not an agency, employment, joint venture or partnership relationship. Neither party shall have the power to contract in the name of the other party. All persons employed by a party in connection with this Agreement shall be considered employees of that party and shall in no way, either directly or indirectly, be considered employees or agents of the other party.

Section 20. Records Management. The Agency shall retain copies of all records associated with this Agreement for a period of five (5) years from the date of termination. In the event of litigation, claim, or audit findings, the record retention period shall be five (5) years from the time of the resolution of the litigation, claim, or audit findings. Should the Agency dissolve or otherwise terminate this Agreement without the capability of retaining the records, as required by this Agreement, all such records shall be transferred to the County.

Section 21. Public Records.

A. All books, documents, records, and accounts related to this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by, or provided to the County or the Agency under the terms of this Agreement are public records or documents made in accordance with Section 119.07, Florida Statutes.

B. The Agency shall make available copies of all records associated with this Agreement for examination or inspection, subject to applicable public records exemptions. The Agency shall comply with all requests for public records associated with this Agreement in accordance with Florida's Public Records Law and other applicable State law requirements. The County shall make available copies of all records associated with this Agreement for examination or inspection. The County shall comply with all requests for public records associated with this Agreement in accordance with Florida's Public Records Law and other applicable State law requirements.

C. If the Agency has questions regarding the application of Chapter 119, Florida Statutes, to the Agency's duty to provide Public Records relating to this Agreement, the Agency will contact the Procurement Records Liaison at 400 East South Street, 2nd Floor, Orlando, Florida 32801, ProcurementRecords@ocfl.net, (407) 836-5897.

D. Notwithstanding anything set forth in any provision of this Agreement to the contrary, neither party will be required to modify records kept in the normal course of business by that party in order to provide copies of those records to the other party, and neither party will be required to destroy any records in its custody in violation of Chapter 119, Florida Statutes.

Section 22. General Provisions.

A. **Compliance with Laws.** It shall be each party's responsibility to be aware of federal, state, and local laws relevant to this Agreement. Each party shall comply in all respects with all applicable legal requirements governing the duties, obligations, and business practices of that party

and shall obtain any permits or licenses necessary for its operations. Neither party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party.

B. **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement shall constitute or be in any way construed to be, a waiver of either party's sovereign immunity or the protections and provisions of Section 768. 28, Florida Statutes.

C. **Tobacco Free Campus.** All County operations under the Board of County Commissioners shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to any of the Agency's personnel for the duration of their participation in the Program. Tobacco is defined as tobacco products, including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco, and snuff. Failure to abide by this policy may result in any individual on the County's premises pursuant to this Agreement to have their experimental learning placement terminated.

D. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to, or shall, confer upon any person, other than the parties and their respective successors and permitted assigns, any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.

E. **Non-Exclusive Agreement.** This Agreement shall be non-exclusive to both parties providing both the Agency and the County the right to enter into agreements regarding the same or similar subject matter with other parties.

F. **Assignment.** The parties deem the services to be rendered pursuant to this Agreement to be personal in nature. As such, neither party shall assign, sublet, convey or transfer its interest in this Agreement without the written consent of the other, which consent shall be in the sole determination of the party with the right to consent. Subject to the foregoing, each party binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement.

G. **Performance.** A delay in or failure of performance of either party that is caused by occurrences beyond the control of either party shall not constitute a default under this Agreement, nor shall any such delay give rise to any claim for damages.

H. **Waiver.** No delay or failure on the part of any party to this Agreement to exercise any right or remedy accruing to such party upon the occurrence of an event of violation shall affect any such right or remedy, be held to be an abandonment thereof, or preclude such party from the exercise thereof at any time during the continuance of any event of violation. No waiver of a single event of violation shall be deemed to be a waiver of any subsequent event of violation.

I. **Remedies.** No remedy conferred at law or in this Agreement upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at

law or in equity or by statute or otherwise. No single or partial exercise by any party of any rights, powers, or remedies under this Agreement shall preclude any other or further exercise that party's available rights, powers, or remedies.

J. **Counterparts.** This Agreement may be executed in one or more counterpart copies. Each counterpart copy shall constitute an agreement and all of the counterpart copies shall constitute one fully executed agreement.

K. **Governing Law.** This Agreement and any and all actions directly or indirectly associated with this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Florida, without reference to any conflicts of law provisions.

L. **Venue.** For any legal proceeding arising out of or relating to this Agreement, each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against the Ninth Judicial Circuit Court in and for Orange County, Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions will be in the Orlando Division of the United States District Court for the Middle District of Florida.

M. **Jury Waiver.** Each party to this Agreement irrevocably waives, to the fullest extent permitted by law, any right it may have to trial by jury in any proceeding directly or indirectly arising out of or relating to this Agreement.

N. **Attorney's Fees and Costs.** Unless explicitly otherwise stated in this Agreement, the parties shall each bear their own costs, expert fees, attorney's fees, and other fees incurred in connection with this Agreement and any dispute or litigation that arises either directly or indirectly from this Agreement.

O. **No Representative and Construction.** Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement. This Agreement is not to be construed against any party as if it were the drafter of this Agreement.

P. **Severability.** The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material term, provision, covenant or condition of this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from the holding.

Q. **Equal Opportunity and Nondiscrimination.** Pursuant to Section 17-288, Orange County Code, the County shall not extend public funds or resources in a manner as would encourage, perpetuate or foster discrimination. As such, any and all person(s) doing business with the County

shall recognize and comply with the County's "Equal Opportunity and Nondiscrimination Policy", which is intended to ensure equal opportunities to every person, regardless of race, religion, sex, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified. This policy is enforced by Section 17-314, Orange County Code, and the County's relevant Administrative Regulations, Section 17-290, Orange County Code, memorializes the County's commitment to its Equal Opportunity and Nondiscrimination Policy, by requiring the following provisions in all County contracts:

1. The Agency represents that the Agency has adopted and shall maintain a policy of nondiscrimination as defined by applicable County ordinance through the term of this Agreement.
2. The Agency agrees that, on written request, the Agency shall permit reasonable access to all business records or employment, employment advertisement, application forms, and other pertinent data and records, by the county, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Agreement, provided, that the Agency shall not be required to produce for inspection records covering periods of time more than one year prior to the date of this Agreement.

R. **Survivorship.** Those provisions which by their own nature are intended to survive the expiration, cancellation, or termination of this Agreement, including by way of example only, the indemnification and public records provisions, shall survive the expiration, cancellation, or termination of this Agreement.

S. **Headings.** The headings or captions of articles, sections, or subsections used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

T. **Authority of Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Agreement as stated.

U. **Written Modification.** This Agreement may be amended upon the mutual written consent of the parties hereto. The County does hereby confer upon the Medical Examiner, or Medical Examiner's designee, the authority to amend this Agreement, provide any consent, notice, or approval hereunder, without formal County approval, provided such amendment, notice, consent or approval does not substantially alter or modify the terms herein. The right to amend or provide consent delegated to the Medical Examiner shall include, but not be limited to, the right of the Medical Examiner to alter or modify the terms that concern the scheduling of hours of use of the Facilities and approvals and consents that are expressly contemplated in this Agreement. Amendments to this Agreement that shall conclusively be presumed to substantially alter or modify the terms hereof include, but are not limited to, those that alter maintenance obligations of the parties and those which increase monetary obligation of the County.

Section 23. Entire Agreement. This Agreement and any documents incorporated or attached to this Agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject about which this Agreement was drafted. This Agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Date: 05-11-21

