

City of Houston, Texas, Resolution No. 2012- 17

A RESOLUTION AUTHORIZING THE CITY'S CREATION OF HOUSTON FORENSIC SCIENCE LGC, INC., A LOCAL GOVERNMENT CORPORATION, APPROVING THE CERTIFICATE OF FORMATION, AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

WHEREAS, Chapter 431 of the Texas Transportation Code ("Chapter 431") authorizes the creation of a local government corporation to aid and act on behalf of a local government to accomplish any governmental purpose of the local government; and

WHEREAS, Chapter 431 requires that a local government corporation be created in accordance with Chapter 394 of the Texas Local Government Code ("Chapter 394"); and

WHEREAS, Chapter 394 provides that three or more persons (the "Incorporators," each of whom must be at least eighteen old, residents of the local government, and citizens of the State of Texas) may incorporate a local government corporation by signing a Certificate of Formation (the "Certificate") and filing the Certificate with the Secretary of State of Texas; and

WHEREAS, Chapter 394 further requires, as a condition of the filing of the Certificate, the governing body of the local government first to adopt a resolution finding the creation of the local government corporation to be wise, expedient, necessary, or advisable and approving the form of the Certificate; and

WHEREAS, the City Council of the City of Houston, Texas (the "City") finds that the creation of a local government corporation to operate an independent center providing the City with accurate and timely analysis of forensic evidence and related services is wise, expedient, necessary, and advisable, and will accomplish an important governmental purpose, namely, to enhance the welfare and safety of the public; and

WHEREAS, the City Council desires to create Houston Forensic Science LGC, Inc. (the "Corporation"), a local government corporation to aid and act on behalf of the City to accomplish the said governmental purpose; and

WHEREAS, as prescribed by Section 394.011 of the Texas Local Government Code, the Incorporators have filed with the City Council a written application (the "Application," an accurate copy of which is attached hereto as Exhibit A) for approval of the Certificate in the form attached hereto as Exhibit A-1; and

WHEREAS, the City Council desires to approve the Application and the form of the Certificate, specifically including the Corporation's initial Board of Directors named in the Certificate; **NOW, THEREFORE**;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Resolution are declared to be true and correct and are adopted as part of this Resolution.

Section 2. That the Application, the form of the Certificate, and the filing of the Certificate of Formation with the office of the Secretary of State of Texas all are APPROVED.

Section 3. That each Director of the Corporation shall be a "covered person" within the meaning of Section 2-302 of the Code of Ordinances, City of Houston, Texas.

Section 4. That, notwithstanding the Corporation's actions on behalf of the City to accomplish the governmental purpose described herein, the Corporation is not a political subdivision or political authority within the meaning of the laws of the State of Texas (including, without limitation, Article III, Section 52, Texas Constitution), and no agreement, bond, debt, or obligation of the Corporation is or ever shall be deemed an agreement, bond, debt, obligation, lending of credit, or a grant of public money or thing of value, of or by the City or any other political subdivision or authority or government agency of the State of Texas, or a pledge of the faith and credit of any of them. No action of the Corporation shall be deemed an action of the City or any of its agents or employees, nor shall this Resolution create a joint enterprise between the City and the Corporation.

Section 5. That the approvals contained herein are intended to comply with the requirements of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations and Internal Revenue Service rulings issued pursuant thereto, and the Corporation shall be deemed a constituted authority acting on behalf of the City pursuant

to applicable law.

Section 6. That, if any provision, section, subsection, sentence, clause, or phrase of this Resolution, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Resolution or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Resolution that no provision hereof shall become inoperative or fail by reason of any unconstitutionality or other invalidity of any other portion hereof, and all provisions of this Resolution are declared to be severable for that purpose.

Section 7. That this Resolution shall take effect immediately upon its passage and approval by the Mayor; however, in the event the Mayor does not sign this Resolution within five days after its passage and adoption, the Resolution shall take effect in accordance with Article VI, Section 6, of the Houston City Charter.

PASSED and ADOPTED this 6th day of June, 2012.

APPROVED this 6th day of June, 2012.



Mayor of the City of Houston

Requested by Charles McClelland
Chief, Houston Police Dept.

Prepared by 

First Assistant City Attorney

LD File No. 0421100101001

AYE	NO	
✓		MAYOR PARKER
....	COUNCIL MEMBERS
	✓	BROWN
	ABSENT	DAVIS
✓		COHEN
✓		ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		BURKS
✓		NORIEGA
✓		BRADFORD
	✓	CHRISTIE
CAPTION	ADOPTED	



CITY OF HOUSTON

Annise D. Parker

Mayor

P.O. Box 1562
Houston, Texas 77251-1562

Telephone – Dial 311
www.houstontx.gov

May 29, 2012

BY HAND DELIVERY

Ms. Anna Russell
City Secretary

Re: Certificate of Formation for Houston Forensic Science LGC, Inc.

Dear Ms. Russell:

We the undersigned are the incorporators of Houston Forensic Science LGC, Inc., a local government corporation. In keeping with Section 2-67 of the Code of Ordinances, please accept for filing the enclosed Certificate of Formation. Together with its enclosure, this letter constitutes an "Application" within the meaning of Section 394.011, Texas Local Government Code (made applicable to this matter by operation of Section 431.102(a), Texas Transportation Code). Our understanding is that Chief McClelland will be requesting the City Council's adoption of a resolution approving creation of the corporation.

We appreciate your assistance.

Very truly yours,

David M. Feldman
City Attorney

Andrew F. Iken
Chief Development Officer

Tom P. Allen
First Assistant City Attorney

Encl.

Council Members: Helena Brown Jerry Davis Elien R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez
James G. Rodriguez Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C.O. "Brad" Bradford Jack Christie
Comptroller: Ronald C. Green

EXHIBIT A

CERTIFICATE OF FORMATION

HOUSTON FORENSIC SCIENCE LGC, INC.

We, the undersigned persons, each of whom is at least eighteen years of age, a resident and a qualified voter of the City of Houston, Texas (the "City") and a citizen of the State of Texas, acting as incorporators of a local government corporation under the provisions of Chapter 431, Subchapter D, of the Texas Transportation Code ("Chapter 431"), do hereby adopt this Certificate of Formation ("this Certificate") for the said corporation:

ARTICLE I. NAME

The name of the corporation shall be HOUSTON FORENSIC SCIENCE LGC, INC. (the "Corporation").

ARTICLE II. NON-PROFIT

The Corporation shall be a non-profit local government corporation created and operated in accordance with Chapter 431 and other applicable laws.

ARTICLE III. DURATION

The period of the duration of the Corporation shall be perpetual.

ARTICLE IV. PURPOSE, ACTIVITIES

- A. The Corporation shall be incorporated to aid and to act on behalf of the City to accomplish a governmental purpose of the City; namely, to operate an independent center (the "Houston Forensic Science Center" or the "Center") to provide accurate and timely analysis of forensic evidence and related services. To accomplish the said purpose, the Corporation shall be authorized:
1. To contract with persons and with governmental, for-profit, and non-profit entities for the procurement of facilities, equipment, and services; the hiring of personnel; and the operation of the Center;
 2. To acquire, hold, and convey interests in real and personal property;
 3. To accept funds and property appropriated by the City, other governments, individuals, and for-profit and non-profit entities;
 4. To apply for grants of funds, services, and things of value and to accept awards of such grants;

5. To accept donations of funds, services, and things of value;
 6. To issue bonds, notes, and other debt obligations as necessary for the accomplishment of the governmental purpose stated above, *provided that* the Corporation shall not incur debt without the consent of the City Council of the City (the "City Council"), as evidenced by a resolution approved by a majority vote; and
 7. To engage in other lawful activities to accomplish the governmental purpose stated above.
- B. To the extent permitted by law, the Corporation shall comply with the City's prevailing wage and minority/women, disadvantaged business enterprise policies.
- C. The Corporation shall comply with all applicable provisions of the Texas Open Meetings Act (Chapter 551, Texas Government Code) and the Texas Public Information Act (Chapter 552, Texas Government Code).

ARTICLE V. NO MEMBERS; NO STOCK

The Corporation shall have no members and no stock.

ARTICLE VI. BOARD OF DIRECTORS

- A. The affairs of the Corporation shall be managed by nine Directors appointed by the Mayor of the City (the "Mayor") and confirmed by the City Council, as evidenced by a resolution approved by a majority vote. As prescribed by Section 431.102(c), Texas Transportation Code, a majority of the Directors shall be residents of the City. In the aggregate, the Directors shall be qualified to govern a forensic science center and to provide guidance regarding forensic science issues from the perspectives of science, law enforcement, public policy, business, persons accused of crimes, and the general public.
- B. The initial terms of Director Nos. 1, 3, 5, 7, and 9 shall expire on June 30, 2015. The initial terms of Director Nos. 2, 4, 6, and 8 shall expire on June 30, 2014. After completion of the first term, the term of each Director shall be three years.
- C. Director No. 1 shall be the Chairman of the Board.
- D. A Director may be removed from the Board only by a resolution approved by a majority vote of the City Council finding that the Director has committed one or more of the acts or omissions described in Section 7.001(c), Texas Business Organizations Code.

- E. The number of Directors may be revised only by amendment of this Certificate. Notwithstanding Paragraph D immediately above, one or more of Director Nos. 5 through 9 may be removed from the Board by an amendment of this Certificate to add one or more other governmental entities, including but not limited to Harris County, Texas, as a joint sponsor of the Corporation and to provide for the appointment of Directors by such other entity or entities. Removal of a Director under the circumstances contemplated by this Paragraph E shall be without cause and shall not constitute any judgment whatsoever regarding the Director's service to the Corporation.
- F. Should a Director resign, be removed, or become incapacitated before the end of his or her term, the position shall be filled for the remainder of the unexpired term by appointment of the Mayor, which appointment shall be confirmed by the City Council, as evidenced by a resolution approved by a majority vote.
- G. As required by Section 431.101(c), Texas Transportation Code, the provisions of Chapter 22, Texas Business Organizations Code, relating to powers, standards of conduct, and interests in contracts apply to each Director.
- H. Other matters pertaining to the affairs of the Corporation shall be governed by the Bylaws of the Corporation, which Bylaws shall not be inconsistent with this Certificate or with the laws of the State of Texas.
- I. The Mayor may designate an attorney licensed to practice law in Texas to serve as an ex-officio, non-voting member of the Board in the manner prescribed by Section 22.210, Texas Business Organizations Code. An attorney so designated shall serve at the pleasure of the Mayor and may be compensated by the City.

ARTICLE VII. INITIAL BOARD

The initial Directors of the Corporation shall be as follows:

Director	Name	Address
1	Hon. Scott Hochberg	7011 Harwin Dr., No. 230 Houston, Texas 77036
2	Nicole B. Cásarez	c/o Communication Department University of St. Thomas 3800 Montrose Blvd. Houston, Texas 77006

3	Marcia Johnson	c/o Thurgood Marshall School of Law Texas Southern University 3100 Cleburn St., Suite 236-B Houston, Texas 77004
4	Enrique V. Barrera	c/o Dept. of Mechanical Engineering Rice University P.O. Box 1892 Houston, Texas 77251-1892
5	Hiram A. "Art" Contreras	P.O. Box 130383 Houston, Texas 77219-0383
6	Catherine Lambolely	P.O. Box 27557 Houston, Texas 77227
7	Donna Fujimoto Cole	c/o Cole Chemical & Distributing, Inc. 1500 S. Dairy Ashford, Suite 450 Houston, Texas 77077
8	Willie E. B. Blackmon	218 De Haven St. Houston, Texas 77029
9	Sandra Guerra Thompson	c/o University of Houston Law Center 100 Law Center Houston, Texas 77204

ARTICLE VIII. TECHNICAL ADVISORY GROUP

At such times and under such circumstances as the Board deems necessary, the Board may appoint persons to the Corporation's Technical Advisory Group (the "TAG"), whose members shall advise the Board individually or collectively regarding best practices for the management and operation of a forensic science center, especially with regard to obtaining and maintaining the highest levels of accreditation through the ASCLD/LAB-*International* Program or its equivalent. No member of the Board shall be appointed to the TAG. Members of the TAG shall serve under such terms as may be determined by the Board, which terms may include the payment of reasonable compensation.

ARTICLE IX. INITIAL REGISTERED OFFICE AND REGISTERED AGENT

The street address of the Corporation's initial registered office is c/o City Attorney, 900 Bagby, 4th Floor, Houston, Texas, 77002. The initial registered agent is David M. Feldman, the City Attorney of the City and a resident of the State of Texas. Mr. Feldman has consented to this appointment.

ARTICLE X. INCORPORATORS

The names of the incorporators, each of whom is more than 18 years of age and resides in the City, are as follows:

Name	Address
David M. Feldman	900 Bagby St., 4 th Floor, Houston, Texas 77002
Andrew F. Icken	901 Bagby St., 4 th Floor, Houston, Texas 77002
Tom P. Allen	900 Bagby St., 4 th Floor, Houston, Texas 77002

ARTICLE XI. LIMITED LIABILITY

No Director of the Corporation shall be liable for monetary damages for an act or omission in the Director's capacity as a Director unless the Director has committed one or more of the acts or omissions described in Section 7.001(c), Texas Business Organizations Code. Any repeal or amendment of this Article shall be prospective only and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable set forth in this Article XI, a Director shall not be liable to the fullest extent permitted by any amendment to any Texas statute hereafter enacted that further limits the liability of a director.

ARTICLE XII. TAX MATTERS

In accordance with Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and regardless of any other provision of this Certificate, the Corporation (a) shall not permit any part of its net earnings to inure to the benefit of any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation in effecting its governmental purpose); (b) shall not devote more than an insubstantial part of its activities or income to attempting to influence legislation; and (c) shall not participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office by any means, including the publication or distribution of statements.

ARTICLE XIII. PUBLIC INSTRUMENTALITY

The Corporation is a constituted authority and a public or governmental instrumentality within the meaning of the regulations of the United States Treasury Department and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code. Although the Corporation is authorized to act on behalf of one or more governmental entities as provided in this Certificate, the Corporation is not a political subdivision or political authority of the State of

Texas within the meaning of the constitution and laws of the State of Texas, including, without limitation, Article III, Section 52, of the said constitution, and no agreement, bond, debt, or obligation of the Corporation shall be deemed to be the agreement, bond, debt, or obligation, or the lending of credit, or a grant of public money or thing of value, of or by the City or any other political subdivision or authority or agency of the State of Texas, or a pledge of the faith and credit of any of them. No action of the Corporation shall be an action of the City or its agents or employees, and neither this Certificate nor any action by the Board or the City Council shall create a joint enterprise.

ARTICLE XIV. AMENDMENT

This Certificate may not be amended without the prior consent of the City Council, as evidenced by a resolution approved by a majority vote.

ARTICLE XV. DISSOLUTION

The Corporation may be dissolved only in the manner prescribed by Section 394.026, Texas Local Government Code, *provided that* no certificate effecting a dissolution of the Corporation shall be executed without the prior consent of the City Council, as evidenced by a resolution approved by a majority vote.

ARTICLE XVI. RULES OF CONSTRUCTION; DEFINITIONS

This Certificate shall be construed under the laws of the State of Texas, and all references to statutes, regulations, ordinances, and orders shall be construed to include any amendments of the said laws. The rules of construction and definitions in Section 1-2 of the City's Code of Ordinances shall apply to this Certificate.

ARTICLE XVII. SPONSOR

The City has authorized the Corporation to act on the City's behalf to further the governmental purpose stated above. The City Council approved the form of this Certificate by adopting Resolution No. 2012-_____ on _____, 2012.

ARTICLE XVIII. EFFECTIVE DATE; AUTHORIZATION TO FILE

This Certificate shall be effective when fully executed and filed with the Office of the Texas Secretary of State. Each of the undersigned executes this instrument subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that he is authorized to execute this instrument.

David M. Feldman, Incorporator
City Attorney
City of Houston
900 Bagby St., 4th Floor
Houston, Texas 77002

Andrew F. Icken, Incorporator
Director of Development
City of Houston
901 Bagby St., 4th Floor
Houston, Texas 77002

Tom P. Allen, Incorporator
First Assistant City Attorney
City of Houston
900 Bagby St., 4th Floor
Houston, Texas 77002