



# Huntsville, Alabama

308 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 6/22/2023

**File ID:** TMP-3067

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**Department:** Urban Development

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to enter into an Expansion Project Development Agreement between the City and the HudsonAlpha Institute for Biotechnology respecting incentives for a major expansion project within the City by HudsonAlpha.

Resolution No.

**Finance Information:**

**Account Number:** TBD

**City Cost Amount:** NA

**Total Cost:** NA

**Special Circumstances:**

**Grant Funded:** NA

**Grant Title - CFDA or granting Agency:** NA

**Resolution #:** NA

**Location: (list below)**

**Address:** HudsonAlpha Institute

**District:** District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

**Additional Comments:**

**RESOLUTION NO. 23-\_\_\_\_\_**

**WHEREAS**, the City Council (the “Council”) of the City of Huntsville, Alabama (the “City”), does hereby declare that the Mayor be and he is hereby authorized to execute and deliver, by and on behalf of the City, an Expansion Project Development Agreement among the City and the HudsonAlpha Institute for Biotechnology, an Alabama non-profit corporation (the “Company”), the form of which is attached hereto and identified as “Expansion Project Development Agreement between the City of Huntsville and HudsonAlpha Institute for Biotechnology,” consisting of seventeen (17) pages including exhibits, and the date of June 22, 2023, appearing on the first page, together with the signature of the President or President Pro Tem of the City Council, with such changes thereto as the Mayor shall deem necessary or desirable (the “Development Agreement”), an executed copy of the Development Agreement being permanently kept on file in the Office of the City Clerk; and

**WHEREAS**, the Council hereby further recites that the City’s obligations under and in furtherance of the Development Agreement and the transactions therein described are being undertaken pursuant to the authority of Amendment 772 to the Constitution of Alabama of 1901, as amended, recodified as Section 94.01 of the Official Recompilation of the Constitution of Alabama of 1901 (“Amendment 772”), that such obligations are being undertaken by the City in furtherance of any power or authority authorized in Amendment 772, and that the Council has determined that the expenditure of public funds for the purposes specified in the Development Agreement and the transactions therein contemplated or described will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities;

**NOW, THEREFORE, BE IT RESOLVED** that the Council hereby authorizes and approves the Development Agreement, and that the Mayor be and he is hereby authorized to execute on behalf of the City the Development Agreement, along with such notices, certificates, instruments, agreements and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Development Agreement.

**ADOPTED** this the 22<sup>nd</sup> day of June, 2023

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President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 22<sup>nd</sup> day of June, 2023

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Mayor of the City of  
Huntsville, Alabama

## **EXPANSION PROJECT DEVELOPMENT AGREEMENT**

**THIS EXPANSION PROJECT DEVELOPMENT AGREEMENT** (this "Agreement") is hereby made and entered into on June 22nd, 2023 (the "Effective Date"), by and between the **CITY OF HUNTSVILLE**, an Alabama municipal corporation (the "City"), and **HUDSONALPHA INSTITUTE FOR BIOTECHNOLOGY**, an Alabama non-profit corporation (the "Company"). The City and the Company are herein together sometimes referred to collectively as the "Parties" and, individually, as a "Party".

### **RECITALS**

**WHEREAS**, the Company is a nonprofit institute dedicated to innovation in the field of genomic technology and sciences across a spectrum of biological problems with a three-fold mission that includes (1) conducting genomics-based research to improve human health and well-being; (2) sparking economic development; and (3) providing educational outreach to nurture the next generation of biotech researchers and entrepreneurs and creating a biotech literate public; and

**WHEREAS**, the Company is a leader in biotechnology and genomic research, making discoveries in ALS, childhood genetic disorders and kidney cancer; expanded research in bipolar and schizophrenia and continued critical research in other devastating conditions, including cancer, Parkinson's, lupus, multiple sclerosis and more; and, further, the Company is specializing in applying genomic techniques to understand how plants function in response to environmental stimuli and provides de novo whole genome sequencing, assembly and analysis; and

**WHEREAS**, the Company also works to recruit, relocate, and expand start-up, early-stage, and established human health and agriculture-focused biotech companies at facilities located within its approximately 152 acre campus and the CFD Research, Inc. facility within the Cummings Research Park Biotech Campus of the Cummings Research Park (collectively, the "Huntsville Facility"), and presently has 47 biotechnology businesses operating within the Huntsville Facility (the "Huntsville Facility Tenants") that, collectively, employ over approximately 1,000 individuals; and

**WHEREAS**, the Company has been in the process of constructing and developing 108,000 square feet of buildings to expand the Huntsville Facility (the "Expansion Project" and, together with the Huntsville Facility, the "Expanded Huntsville Facility") so the Expanded Huntsville Facility can house the global headquarters of Discovery Life Sciences, LLC's operations and the HudsonAlpha Center for Plant Genomics & Sustainable Agriculture's Greenhouse and Learning Laboratories; and

**WHEREAS**, the Company represents to the City that the Expansion Project, once in full operation, will create at least one hundred (100) Full-Time Employee (as hereinafter defined) positions at the Expanded Huntsville Facility over the number of Full-Time Employee positions operating within the Huntsville Facility, either as full-time employees of the Company or full-time employees of Huntsville Facility Tenants, as of the Expansion Project Commencement Date (hereinafter defined); and

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President of the City Council of the  
City of Huntsville, Alabama  
Date: June 22, 2023

**WHEREAS**, development of the Expansion Project commenced on November 19, 2020 (the "Expansion Project Commencement Date"), but costs of the Expansion Project have substantially exceeded original budgeted amounts due to rising construction and labor costs, supply chain issues, inflation and other factors such that the Company has asked the City for up to \$2,000,000 of financial assistance to enable the completion and full operations of the Expansion Project planned as intended on the Expansion Project Commencement Date; and

**WHEREAS**, the Company's activities have promoted, expanded, and enhanced research and development activities within the City and have been a critical element in enhancing the national and global reputation of Huntsville as a center for various types of advanced scientific research, development, and innovation; and

**WHEREAS**, the City has determined that the location and operation of the Expansion Project at the Huntsville Facility is in the best interest of the City by (i) promoting, improving and expanding bioscience research facilities in the City, (ii) increasing the number and diversity of bioscience jobs and related bioscience research and development opportunities within the City; (iii) promoting economic development and assisting the City's efforts to retain, attract, and locate therein other research and development enterprises in the City; and (iv) expanding the overall tax base of the City; and

**WHEREAS**, the City is willing to provide up to \$2,000,000 in financial assistance to help offset Expansion Project costs, on the condition that the Company create (or cause Huntsville Facility Tenants to create) at least one hundred (100) Full-Time Employee positions over the number of Full-Time Employee positions operating within the Huntsville Facility as of the Expansion Project Commencement Date and as further set forth and described herein; and

**WHEREAS**, full development and operation of the Expansion Project will assist in the expansion of economic developments that are critical to the sustained economic health and well-being of the City, and the City finds that providing financial assistance for the Expansion Project as described in this Agreement is being made under and in furtherance of any power and authority authorized by Amendment 772 to the Constitution of Alabama of 1901 (the "Alabama Constitution"), and the City has determined that the expenditure of public funds for the purposes herein specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

**NOW, THEREFORE**, for and in consideration of the foregoing premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, agree and bind themselves as follows:

**ARTICLE I**  
**REPRESENTATIONS AND WARRANTIES**

**Section 1.1 Representations and Warranties of the City.** The City hereby makes the following representations and warranties:

(a) The City, by action of its governing body, has duly authorized the execution, delivery and performance of this Agreement.

(b) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the City, violates, constitutes a default under or a breach of any agreement, instrument, contract, mortgage, ordinance, resolution or indenture to which the City is a party or to which the City or its assets or properties are subject.

(c) There is not now pending nor, to the knowledge of the City, threatened, any litigation affecting the City which questions (i) the validity or organization of the City, (ii) the members, titles or positions of the members of the City Council of the City or the manner in which the officers of the City are selected, or (iii) the subject matter of this Agreement.

**Section 1.2 Representations and Warranties of the Company.** The Company hereby makes the following representations and warranties:

(a) The Company is duly organized and validly existing as a non-profit corporation under the laws of the State of Alabama and has duly authorized its execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the Company requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity), except for such consents, filings, notices and hearings described herein, or already held or maintained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Company, violates, constitutes a default under or a breach of (i) the organizational documents of the Company, (ii) any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject, or (iii) any judgment, decree, order, ordinance, regulation, consent or resolution applicable to the Company or any of its assets.

(d) There is not now pending nor, to the knowledge of the Company, threatened, any litigation affecting the Company which questions the validity or organization of the Company, or any of the representations and warranties of the Company contained herein.

**ARTICLE II**  
**OBLIGATIONS AND COMMITMENTS OF THE COMPANY**

**Section 2.1 Completion of Expansion Project.** The Company acknowledges that the citizens of the City anticipate the receipt of substantial economic benefit to its local economy in return for the investment of public money for the Expansion Project, and the Company agrees to diligently prosecute the acquisition, development, construction and equipping of the Expansion Project by Completing the Expansion Project by not later than December 31, 2023 (the "Completion Deadline").

**Section 2.2 Capital Commitment.** The Company will acquire, develop, construct and equip the Expansion Project as it deems necessary and appropriate, in its sole discretion, so as to be suitable for the operation of the Expansion Project, and in connection therewith shall cause to be invested at least \$45,000,000 of Capital Costs for the Expansion Project by December 31, 2023.

**Section 2.3 Jobs Commitment.** (a) The Company hereby represents, warrants and confirms that on the Expansion Project Commencement Date the Company and all then-existing Huntsville Facility Tenants employed 878 Full-Time Employee positions at the Huntsville Facility (the "FTE Baseline").

(b) The Company shall have until December 31, 2023 (the "FTE Target Deadline") to cause to have been employed at the Huntsville Facility, as expanded by the Expansion Project, not less than one hundred (100) Full-Time Employee positions to be in operation at the Huntsville Facility, as expanded by the Expansion Project, over the FTE Baseline (the "FTE Target").

**Section 2.4 Company Reporting.**

(a) If on or before the FTE Target Deadline the Company has Completed the Expansion Project and determined the FTE Target has been met, the Company shall furnish to the IDB, as agent for the City, a certificate, the form of which is attached as Exhibit A hereto, signed by the President of the Company (the "FTE Target Certificate"), certifying (i) that the Expansion Project has been Completed, (ii) the number of FTE positions operating at the Expanded Huntsville Facility as of the date of such certificate, and (iii) that such number is at least 100 FTE in excess of the Huntsville Facility FTE Baseline.

(b) The Company may, at any time during the period between the first anniversary of the Second City Payment and December 31, 2025 (such period, the "FTE Target Maintenance Deadline") to furnish to the IDB, as agent for the City, a certificate, the form of which is attached as Exhibit B hereto (the "FTE Target Maintenance Certificate"), signed by the President of the Company, certifying, for each of the immediately preceding three (3) calendar months:

(i) the number of Full-Time Employee positions operating at the Expanded Huntsville Facility as of the last business day of such month, and

(ii) that at least 100 Full-Time Employee positions in excess of the FTE Baseline were operating at the Expanded

Huntsville Facility for such month.

For the avoidance of doubt, in no event shall the Company submit, or be required to submit, the FTE Target Maintenance Certificate if the Company has not satisfied the FTE Target by the FTE Target Deadline.

## **Section 2.5 Additional Obligations and Commitments.**

(a) Any construction activities of the Company regarding the Expansion Project shall be conducted in compliance with all applicable laws, ordinances, rules and regulations of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws. The Company shall require any architect, general contractor, subcontractor or other business performing any work in connection with the Expansion Project to obtain all necessary permits, licenses and approvals to construct the same. It is understood and acknowledged that the City will not waive any fees, access fees, or related expenses for any permits, licenses or approvals that must be obtained from the City or any other governmental authority in connection with the Expansion Project.

(b) At all times while this Agreement is in effect, the Company shall be in material compliance with all applicable laws, ordinances, rules and regulations of the City and, further, shall be current in payment of any and all taxes, fees, and other charges imposed by the City and all local government entities that are applicable to the Company.

## **ARTICLE III** **CITY COMMITMENT**

### **Section 3.1 City Payments.**

(a) In consideration of the Company developing and operating the Expansion Project at the Huntsville Facility, as well as satisfying and maintaining the FTE Target as hereinabove set forth in this Agreement, the City shall make payments to the Company, through the IDB, in an aggregate amount of up to \$2,000,000 (such payments, the "City Payments") to reimburse the Company for Capital Costs incurred by the Company in connection with the Expansion Project. The Company shall submit to the IDB, as agent for the City, reasonable supporting documentation which demonstrates the total Capital Costs for the Expansion Project at such time as the Expansion Project is Completed.

(b) City Payments shall be payable to the Company, in up to three installments, as follows:

(i) A \$500,000 payment (the "First City Payment") shall be made to the Company upon the Company's delivery to the IDB, as agent for the City, a certificate, the form of which is attached as Exhibit C hereto (the "First City Payment Certificate") signed by the President of the Company that not less than \$500,000 has been spent by the Company on Capital Costs of the Expansion Project, along with all documentation and information

necessary to reasonably demonstrate and support the information and amounts so certified. The First City Payment shall be due to the Company within thirty (30) days of the IDB's receipt of the First City Payment Certificate;

(ii) A \$500,000 payment shall be made to the Company if the Company has Completed the Expansion Project and has satisfied the FTE Target by the FTE Target Deadline (the "Second City Payment"). Subject to the preceding sentence of this clause (ii), the Second City Payment shall be made to the Company within 60 days after the Company furnishes to the IDB, as agent for the City, the FTE Target Certificate signed by the President of the Company, along with all documentation and information necessary to reasonably demonstrate and support the information and employment levels so certified; and

(iii) A \$1,000,000 payment shall be made to the Company if, for any three (3) consecutive calendar months during the FTE Maintenance Period, the Company shall have satisfied the FTE Maintenance Requirement for each such month (the "Third City Payment"). Subject to the preceding sentence of this clause (iii), the Third City Payment shall be made to the Company within 60 days after the Company furnishes to the IDB, as agent for the City, the FTE Maintenance Certificate signed by the President of the Company, along with all documentation and information necessary to reasonably demonstrate and support the information and employment levels so certified.

#### **ARTICLE IV** **EVENTS OF DEFAULT AND REMEDIES**

##### **Section 4.1 Events of Default by the City.**

(a) Any one or more of the following shall constitute an event of default by the City under this Agreement (a "City Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or if a petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer



is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii) failure by the City to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of 30 days after written notice thereof from the Company, unless (A) the Company shall agree in writing to an extension of such period prior to its expiration, or (B) during such 30-day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action.

(b) If a City Event of Default occurs, the Company shall have available to it all rights and remedies, both legal and equitable, provided by law (including without limitation specific performance or mandamus); provided, however, the Company shall not be entitled to any punitive, incidental or consequential damages, whether arising at law, in equity or otherwise.

#### **Section 4.2 Events of Default by the Company.**

(a) Any one or more of the following shall constitute an event of default by the Company under this Agreement (a "Company Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) at any time prior to the completion by the Company of its obligations and commitments hereunder, the Company is dissolved or liquidated, or the filing by the Company of a voluntary petition in bankruptcy, or the Company seeking or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Company as a bankrupt, or any assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors, or if a petition or answer is filed by the Company proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii) failure by the Company to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of 30 days after written notice thereof from the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such 30-day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action.

(b) During any period after the City has provided written notice to the Company specifying the existence of a Company Event of Default and during which the Company has failed to cure said Company Event of Default, the City shall not be required to make available the City Payments to the Company or perform any other obligation hereunder. If a Company Event of

Default exists, the City shall have available to it all rights and remedies, both legal and equitable, provided by law (including without limitation specific performance or mandamus); provided, however, the City shall not be entitled to any punitive, incidental or consequential damages, whether arising at law, in equity or otherwise.

**Section 4.3 Remedies Subject to Applicable Law.** All rights, remedies and powers provided in this Article IV may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article IV are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

## **ARTICLE V**

### **MISCELLANEOUS PROVISIONS**

**Section 5.1 Severability; Enforceability.** If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

**Section 5.2 Entire Agreement.** This Agreement contains the entire agreement of the Parties regarding the transactions described herein, and there are no representations, oral or written, relating to the transactions described herein which have not been incorporated herein. Any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement in whole or in part unless such agreement is in writing, and is signed by the Party against whom enforcement of any change, modification, or discharge is sought.

**Section 5.3 Counterparts; Assignment.** This Agreement may be executed in two or more counterparts, each of which shall constitute but one and the same agreement. This Agreement is not assignable by any Party hereto except upon the written consent of the other Party hereto, not to be unreasonably withheld.

**Section 5.4 Binding Effect; Governing Law.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective successors and assigns. This Agreement shall be governed exclusively by, and construed and interpreted in accordance with, the laws of the State of Alabama.

**Section 5.5 Notices.**

(a) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the Party or to an officer of the Party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

(i) If to the City:

The City of Huntsville  
308 Fountain Circle  
8<sup>th</sup> Floor  
Huntsville, AL 35801  
Attn: City Attorney

(ii) If to the IDB:

The Industrial Development Board of the City of Huntsville  
225 Church Street NW  
Huntsville, AL 35801  
Attn: Secretary

(iii) If to the Company:

The HudsonAlpha Institute for Biotechnology  
601 Genome Way  
Huntsville, AL 35806  
Attn: Chief Financial Officer

With a copy to:

The HudsonAlpha Institute for Biotechnology  
601 Genome Way  
Huntsville, AL 35806  
Attn: Vice President for Economic Development

(b) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of 3 days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

**Section 5.6 Liabilities of the City.** Any provision hereof to the contrary notwithstanding, the Parties agree and acknowledge that the obligations and commitments of the City as set forth herein are limited by the limitations imposed by the Alabama Constitution.

**Section 5.7 Survival of Covenants.** The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms.

**Section 5.8 No Waiver.** No consent or waiver, express or implied, by any Party hereto to any breach or default by any other Party in the performance by such other Party of its obligations and commitments hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations or commitments of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare such other Party in default, irrespective of how long such failure

continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall be construed to be a waiver or limit the need for such consent in any other or subsequent instance.

**Section 5.9 Venue.** Each of the Parties irrevocably submits to the jurisdiction of the Alabama state courts sitting in Madison County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement or any transaction undertaken in connection therewith (an "Agreement Action"); and waives, to the fullest extent permitted by law, any objection or defense that such Party may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts.

**Section 5.10 No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture among the Parties and their respective permitted successors and assigns.

**Section 5.11 Headings.** The headings in the Sections in this Agreement are for convenience of reference only and shall not form a part hereof.

**Section 5.12 No Third-Party Beneficiaries.** This Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest, obligations or commitments hereunder, is intended for the benefit of any other person or third-party.

## **ARTICLE VI**

### **CERTAIN DEFINED TERMS**

All initially capitalized terms used and not otherwise defined in this Agreement shall have the following meanings:

"Capital Costs" shall mean all costs and expenses incurred in connection with the acquisition, development, construction, and equipping of the Expansion Project at the Huntsville Facility, which are required to be capitalized for federal income tax purposes, determined without regard to any rule that permits expenditures properly chargeable to a capital account to be treated as current expenditures.

"Completed" means (i) that the Company has received a certificate from its general contractor that those capital improvements constituting the Expansion Project are substantially completed with the exception of punch-list items, and (ii) that operations respecting the Expansion Project have started therein.

"Fringe Benefits" shall include, but are not limited to, health insurance, retirement, life insurance, workers' compensation, unemployment compensation, and the employer portion of Federal Insurance Contribution Act taxes.

"FTE Maintenance Deadline" shall mean December 31, 2025.

"FTE Maintenance Period" shall be a period that commences on the first anniversary of the FTE Target Certificate having been submitted by the Company to the IDB and ends on the FTE Maintenance Deadline.

"FTE Maintenance Requirement" shall mean, for any calendar month, that the number of Full-Time Employee positions at the Expanded Huntsville Facility as of the last business day of such month exceeds the FTE Baseline by at least 100.

"Full-Time Employee" means, as respects the Company or a Huntsville Facility Tenant, a person that is (i) being paid directly by the Company or a Huntsville Facility Tenant for not less than 36 hours per week, is employed in the City within the Expanded Huntsville Facility, and who the Company or a Huntsville Facility Tenant, as the case may be, identifies as its employee to the U.S. Internal Revenue Service or the Alabama Department of Revenue or the Alabama Department of Labor on returns or reports filed with the foregoing, including but not limited to, IRS Form 941, (ii) an employee of a direct contractor of the Company or a Huntsville Facility Tenant who is paid by the Company's direct contractor or by a Huntsville Facility Tenant's direct contractor, as the case may be, for working within the Expanded Huntsville Facility for not less than 36 hours per week, or (iii) working under a contract with the Company or a Huntsville Facility Tenant for working within the Expanded Huntsville Facility for not less than 36 hours per week.

[SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF**, the City and the Company have each caused this Agreement to be duly executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and have caused this Agreement to be dated the Effective Date.

**"CITY":**

**CITY OF HUNTSVILLE, ALABAMA**

ATTEST:

\_\_\_\_\_  
Shaundrika Edwards, City Clerk

By: \_\_\_\_\_  
Tommy Battle, Mayor

(SEAL)

**"COMPANY":**

**HUDSONALPHA INSTITUTE FOR  
BIOTECHNOLOGY**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**FORM OF FTE TARGET CERTIFICATE**

**FTE Target Certificate**

The undersigned, as President of the HudsonAlpha Institute for Biotechnology, a non-profit corporation organized under the laws of the State of Alabama ("HAIB"), hereby certifies to the City of Huntsville (the "City"), pursuant to the provisions of that certain Expansion Project Development Agreement dated June \_\_\_\_, 2023 (the "Development Agreement"), between HAIB and the City, as follows:

1. HAIB has Completed the Expansion Project,
2. that as of [\_\_\_\_], 2023, there are at least \_\_\_\_ Full-Time Employee positions in operation at the Expanded Huntsville Facility, and attached as Appendix I hereto is the break-down of such reported Full-Time Employee positions among the Company and each of the Huntsville Facility Tenants being reported, and
3. as set forth and shown herein and on Appendix I attached hereto, the number of Full-Time Employee positions in operation at the Expanded Huntsville Facility exceeds by at least 100 the FTE Baseline.

Capitalized terms used and not otherwise defined in this certificate shall have the meaning given to them in the Development Agreement.

Dated this \_\_\_\_ day of \_\_\_\_, 2023.

**HudsonAlpha Institute for Biotechnology**

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

## Appendix I to FTE Target Certificate

[illegible]

<sup>1</sup> Company to insert name of each tenant at the Expanded Huntsville Facility being reported along with, for each such tenant reported, the number of Full-Time Equivalent positions for that tenant.

<sup>2</sup> Company to add-up and show the total Full-Time Equivalent positions being reported at the Expanded Huntsville Facility.



## EXHIBIT B

### FORM OF FTE TARGET MAINTENANCE CERTIFICATE

#### FTE Target Maintenance Certificate

The undersigned, as President of the HudsonAlpha Institute for Biotechnology, a non-profit corporation organized under the laws of the State of Alabama ("HAIB"), hereby certifies to the City of Huntsville (the "City"), pursuant to the provisions of that certain Expansion Project Development Agreement dated June \_\_\_\_, 2023 (the "Development Agreement"), between HAIB and the City, as follows:

1. that as of the last business day of the month of \_\_\_\_, 20\_\_ ("Month 1"), there were at least \_\_\_\_ Full-Time Employee positions in operation at the Expanded Huntsville Facility,
2. that as of the last business day of the month of \_\_\_\_, 20\_\_ ("Month 2"), there were at least \_\_\_\_ Full-Time Employee positions in operation at the Expanded Huntsville Facility,
3. that as of the last business day of the month of \_\_\_\_, 20\_\_ ("Month 3"), there were at least \_\_\_\_ Full-Time Employee positions in operation at the Expanded Huntsville Facility, and
4. attached as Appendix I to this certificate is the break-down, for each of Month 1, Month 2, and Month 3, of all such reported Full-Time Employee positions among the Company and each of the Huntsville Facility Tenants.
5. as set forth and shown herein and on Appendix I attached hereto, the number of Full-Time Employee positions in operation at the Expanded Huntsville Facility for each of Month 1, Month 2 and Month 3 exceeds by at least 100 the FTE Baseline.

Capitalized terms used and not otherwise defined in this certificate shall have the meaning given to them in the Development Agreement.

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_.

**HudsonAlpha Institute for Biotechnology**

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

Exhibit B

## Appendix I to FTE Target Maintenance Certificate

[illegible]

<sup>3</sup> Company to insert name of each tenant at the Expanded Huntsville Facility being reported for each applicable month, along with, for each such tenant reported, the number of Full-Time Equivalent positions for that tenant for such month.

<sup>4</sup> Company to add-up and show the total Full-Time Equivalent positions being reported at the Expanded Huntsville Facility for each month.

## EXHIBIT C

### FORM OF FIRST CITY PAYMENT CERTIFICATE

#### **First City Payment Certificate**

The undersigned, as President of the HudsonAlpha Institute for Biotechnology, a non-profit corporation organized under the laws of the State of Alabama ("HAIB"), hereby certifies to the City of Huntsville (the "City"), pursuant to the provisions of that certain Expansion Project Development Agreement dated June \_\_\_\_, 2023 (the "Development Agreement"), between HAIB and the City, as follows:

1. The Company has spent not less than \$500,000 on Capital Costs of the Expansion Project, and
2. Included herewith is all documentation and information necessary to reasonably demonstrate and support the information and amounts herein certified.

Capitalized terms used and not otherwise defined in this certificate shall have the meaning given to them in the Development Agreement.

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_.

**HudsonAlpha Institute for Biotechnology**

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