

STATE OF TEXAS

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COUNTY OF HIDALGO

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
TEXAS DEPARTMENT OF PUBLIC SAFETY
AND COUNTY OF HIDALGO, TEXAS**

THIS Agreement is made on this the ____ day of _____, 2009, by and between the **TEXAS DEPARTMENT OF PUBLIC SAFETY**, hereinafter referred to as "DPS", and the **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as "County", pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH:

WHEREAS, County is a county in the State of Texas;

WHEREAS, DPS is a state agency created under the laws of Texas;

WHEREAS, DPS owns an Intoxilyzer Model 5000 breath testing Instrument DPS Tag No. 395194, Serial No. 68-0002689 (the "Instrument"), used to detect alcohol levels in persons subject to testing;

WHEREAS, the DPS Instrument has been strategically placed at the County jail for use by the County's Sheriff's Office and is believed to be in an optimal location to achieve maximum use;

WHEREAS, the DPS and County have a vested interest in reducing the number of individuals driving under the influence of alcohol;

WHEREAS, the County, through its contractor and/or vendor, proposes to be responsible for the maintenance and calibration of the Instrument through the duration of this Agreement;

WHEREAS, the County further proposes to be responsible for the proper use and care of the Instrument and to be responsible for any damage, loss or theft of the Instrument;

WHEREAS, DPS and County are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Government Code 791.001 et seq., (the "Act") which authorizes local governments to contract with each other to perform governmental functions and services under the terms of the Act;

NOW THEREFORE, DPS and County, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. DPS agrees to provide the Instrument to the County for use by the County's Sheriff's Office to detect alcohol levels in persons subject to testing.
2. County agrees to provide calibration and maintenance of the Instrument in a frequency necessary to keep the Instrument in compliance with local, state and/or federal rules which may affect the validity of the Instrument's readings.
3. County, at its own cost, shall be responsible for the proper use and care of the Instrument and shall be responsible for any damage, loss or theft of the Instrument which may occur while the Instrument is in the custody of County.
4. This Agreement shall be in effect for a period of three (3) years from the date and year of this Agreement as first stated above.
5. County shall make the Instrument available to the Sheriff's Office at all times in order to maximize its benefits.
6. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any (applicable law,) present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement. The Agreement shall be modified only to the extent as necessary to conform the agreement to the applicable law bring them within the legal requirements and only during the time such conflicts exists.
7. **No Waiver.** No waiver by any party hereto of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.
8. **Entire Agreement.** This Agreement contains the entire contract among the parties hereto, and each party acknowledges that no other party has made (either directly or through any agent or representative) any representation or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by DPS and County, and not otherwise.
9. **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.
10. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted

hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to DPS:

If to County:

County of Hidalgo
Attention: J.D. Salinas, III, County Judge
P.O. Box 758
Edinburg TX 78540-0758

Each notice demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

14. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.
15. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
16. **Assignment.** This Agreement shall not be assignable.
17. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.
18. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and so often as may be appropriate.
19. **Authority to Execute.** The execution and performance of this Agreement by each of the parties have been duly authorized by all necessary laws, resolutions, ordinances or government body action, and this Agreement

constitutes the valid and enforceable obligations of the parties hereto in Accordance with its terms.

20. **Governmental Purpose.** Each party hereto is entering into this agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

21. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. 271.903.

22. **Severability.** Should any phrase, clause, sentence or section of this Agreement be judicially declared to be invalid, unenforceable or void, such decision will not have the effect of invalidating or voiding the remainder of this Agreement, and such part of this Agreement will be deemed to have been stricken herefrom and the remainder of this Agreement will have the same force and effect as if such part or parts had never been included herein.

WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.

COUNTY OF HIDALGO

J.D. Salinas, III, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

APPROVE AS TO FORM:

ATLAS & HALL, LLP

By: Stephen Crain