

STATE OF TEXAS §

COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN TEXAS PARKS AND WILDLIFE DEPARTMENT AND
THE COUNTY OF HIDALGO, TEXAS**

This Agreement is made and entered into upon the date of the last party to sign this Agreement by and between the County of Hidalgo, a political subdivision of the State of Texas (hereinafter referred to as "County") and the PARKS AND WILDLIFE DEPARTMENT of the State of Texas, a state agency, (hereinafter referred to as "TPWD") pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH:

WHEREAS, County was awarded a grant hereinafter referred to as "Operation Stonegarden" or the "Grant" in the amount of \$3,115,631.78 from the U.S. Department of Homeland Security ("DHS") with CFDA# 97.067 through the State Administrative Agency ("SAA") and the Texas Department of Public Safety ("TxDPS"), of which certain funds are intended to be subcontracted to various local and state police departments including TPWD's law enforcement division;

WHEREAS, the purpose of the Grant is to assist counties along the United States borders to enhance law enforcement preparedness and operational readiness among regional law enforcement agencies in a joint mission to secure the borders;

WHEREAS, the Grant allows local law enforcement agencies that have completed the 2013 Eligibility Certification Form, attached hereto as **Exhibit "C"**, to use funds for certain law enforcement operating expenses while participating in border security operations approved by DHS;

WHEREAS, the Grant requires County, as the grant recipient, to comply with certain terms and conditions more particularly described in **Exhibit "A"** attached hereto and entitled, "Texas Department of Public Safety 2012 Sub-Recipient Agreement for Hidalgo County," dated April 25, 2012, and further requires any sub-recipient accepting funding from the Grant through a subcontract or agreement to also comply with certain provisions of the terms and conditions stated in the attached **Exhibit "A"**;

WHEREAS, TPWD desires to carry out DHS eligible activities as described in the **Statement of Work** attached hereto as **Exhibit "D"**;

WHEREAS, the County proposes to contract with TPWD in order that the eligible activities described in **Exhibit "D"** can be carried out for the benefit of the residents of County and TPWD.

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

SECTION I RULES AND REGULATIONS

The TPWD agrees to cooperate with the County in respect to the implementation of the Grant within its jurisdiction and as supported under Public Law 110-161, Department of Homeland Security Appropriation Act of 2008.

SECTION II DEBARMENT/SUSPENSION CERTIFICATION

TPWD certifies that TPWD and its contractors/vendors associated with this Agreement are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System found at <http://sam.gov> (as per State Administrative Agency Bulletin No. 12-003 attached as **Exhibit "F"** or its successor).

SECTION III TERMS AND CONDITIONS AND STATEMENT OF WORK

TPWD represents that it has read and understood the Sub-Recipient Agreement between the County and the TPWD attached hereto as **Exhibit "A"** and as a condition of participating in the Grant, TPWD agrees to comply with all terms and conditions required of entities accepting funds through an agreement and TPWD further agrees to perform services as outlined in the Statement of Work (**Exhibit "D"**) for and in consideration of reimbursement from County in an amount not to exceed \$292089.60 as delineated in the **TPWD Grant Budget (See attached Exhibit "E") and cost Reimbursement Request Form (See attached Exhibit "F")**. The performance period will begin on June 1, 2014 and end on July 18, 2014.

TPWD agrees to attain scheduling approval from Customs and Border Protection/Border Patrol prior to performing any work, and shall provide County with approved schedule. TPWD further represents and understands that TPWD shall not receive any Grant funds and/or reimbursements for any work not previously approved or that is outside the approved schedule.

TPWD agrees to notify County in writing and obtain from County written approval, prior to any proposed changes, delays or departures from the Statement of Work (**See Exhibit "D"**) and the TPWD Grant Budget (**See Exhibit "E"**).

County shall not be liable for costs incurred or performances rendered by TPWD before commencement of this Agreement or after termination of this Agreement and shall not be responsible for reimbursements pertaining to costs incurred or performances rendered that are not in compliance with the Statement of Work (**See Exhibit "D"**) and the TPWD Grant Budget (**See Exhibit "E"**).

TPWD agrees to provide County with copies of all current and applicable payment and overtime policies, workers compensation policies, retirement rates, unemployment rates, and any other reimbursable benefit and rates of payment as required for reimbursement under the TPWD Grant Budget (**See Exhibit “E”**).

TPWD shall tag and inventory all equipment and assets purchased with Grant funds by tagging and placing identification labels identifying the Grant name and year in accordance with State Administrative Agency Bulletin No. 12-004 or its successor (**See Exhibit “F”**). TPWD shall conduct physical inventory on a monthly basis and provide County with a complete and accurate listing of equipment/assets including tag numbers, id numbers and serial numbers with photographs depicting same.

TPWD shall take ownership and complete control of equipment/assets purchased with Grant funds after grantee has completed all required work relating to the Grant or once the period of performance for the Grant ends, whichever comes first.

SECTION IV RECORDS AND REPORTS

TPWD agrees to establish and maintain all necessary records and reports that may be necessary for reimbursement from County of Grant funds, including but not limited to the Cost Reimbursement Form (**See Exhibit “F”**), Activity Log (**See Exhibit “H”**), and the Annual Inventory Control Requirement Form (**See Exhibit “F”**) which must be submitted to County by August 15, 2014. TPWD shall provide County with a weekly report (**See Exhibit “G”**). TPWD shall further provide County with a monthly Property Acquisition Form to include photographs of each equipment/asset and updates on equipment/assets secured with Grant funds. (**See Exhibit “I”**). The Inventory Log shall meet federal requirements by identifying assets with an appropriate tag number, identification or serial number affixed to the corresponding equipment/asset, and photographs showing same. (**See Exhibit “F”** including State Administrative Agency Bulletin No. 12-004 or its successor attached thereto.)

TPWD understands that it is solely the TPWD’s responsibility to keep all records and reports pertaining to Grant activity within their municipality in a manner acceptable to County. Failure to maintain records and reports may result in delay or forfeiture of the TPWD’s designated Grant funds.

SECTION V MONITORING VISITS

TPWD shall allow County to conduct on-site monitoring visits to assure compliance with applicable federal requirements, terms and conditions, and adequacy of timeliness of performance by TPWD and those performance goals are being achieved, if applicable. TPWD shall give Homeland Security, SAA, TxDPS, the Comptroller General of the United States, County, County Auditor, and any of their duly authorized representative, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things or property belonging to or in use by TPWD pertaining to this Agreement.

SECTION VI PAYMENT REQUESTS

TPWD agrees to submit to the County Auditor's Office, a properly completed SSA/Division of Emergency Management Cost Reimbursement Request (**See Exhibit "F"**) and all supporting documentation, including but not limited to General Ledger Reports, Payroll Distribution Reports, Time Sheets, Activity Logs (**See Exhibit "H"**), Property Acquisition Form (**See Exhibit "I"**), Copies of Invoices, and other related information whether or not requested by County on a monthly basis no later than the 15th of each month for the previous month. Each Cost Reimbursement Request shall be completed pursuant to the instructions and State Administration Agency Bulletin Nos. 11-005 and 12-005 (or their successors) included in the attached **Exhibit "F"**.

TPWD and County agree that all unused Grant funds at the end or termination of this Agreement will be reallocated or reprogrammed by County.

SECTION VII AUDIT REQUIREMENTS

TPWD agrees to comply with the applicable requirements and standards as set forth in OMB Circular A-133, Audits of States, Local Governments and Non-Profit organizations.

If TPWD expends Five Hundred Thousand Dollars, (\$500, 000.00) or more in federal grant funds in the fiscal year, TPWD must, within nine (9) months from the end of the fiscal year, supply County with an audit of revenues and expenditures conducted by a certified public accountant. If the TPWD expends less than \$500,000.00 in federal grant funds in a calendar year, then it is exempt from the OMB Circular A-133 audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, the General Accounting Office and County. If a TPWD is exempt, TPWD will provide to County a copy of TPWD's Financial Statements for the most recent fiscal year ended. TPWD must complete and provide to County a completed Property Acquisition Form **Exhibit "I"** to be submitted monthly. If applicable, TPWD agrees to cooperate with the County relating to any inquires regarding audits and TPWD acknowledges that a Financial Audit shall be provided to County at the expense of the TPWD. Audit information shall be available to County staff, and any and all applicable federal agencies.

TPWD shall further provide County with a final report and all documentation required no later than 60 days prior to the completion of the project.

SECTION VIII SUSPENSION AND TERMINATION

TPWD understands that this Agreement may be suspended or terminated if TPWD materially fails to comply with the provisions of the Agreement or the provisions so listed in attached **Exhibits "A"** through **"I"**.

If TPWD fails to fulfill in a timely and proper manner its obligations under this Agreement, or TPWD violates any of the agreements or stipulations of this Agreement, then the County shall provide TPWD written notification of such non-performance. Such non-performance may be the basis for immediate termination of the Agreement. **Should any breach by the TPWD of this Agreement relate to a violation of federal law or regulation that results in SAA, TxDPS or Homeland Security demanding reimbursement from the County or the TPWD or its successor, the County will terminate Agreement and seek reimbursement of all funds from TPWD.** TPWD shall not be relieved of the liability to the County for damages sustained by the County by virtue of any breach of this Agreement by TPWD and County may withhold any payments to TPWD for violations of state, local or federal regulations. Should the county become aware of any activity by TPWD, which would jeopardize the County's position with Homeland Security, SAA, TxDPS or any other state or federal agency, or which would cause a payback of federal funds, than the County may take appropriate action including injunctive relief against TPWD to prevent the transaction as aforesaid. The failure of the County to exercise any right shall in no way constitute a waiver by the County to otherwise demand payment or seek any other relief in law or in equity to which it may be justly entitled.

It is expressly agreed that this Agreement may not be amended except in writing upon the joint action of the governing bodies of both the County and TPWD.

SECTION IX ASSETS

TPWD shall not purchase any asset unless so permitted by the County and such procurement shall be done in the form and manner so required by the County.

The requirements for real and personal property acquired with federal awards are contained in the Common rule of the Office of Management and Budget (OMB) Circular A-102, "Grants and Cooperative Agreements with State and Local Governments." The Common Rule of OMB Circular A-102 has been adopted by reference in the Uniform Grant Management Standards (UGMS). Recipients and sub-recipients of federal pass-through and other funds from state agencies are subject to the requirements of UGMS.

UGMS requires grant recipients and Sup-recipients to maintain property records, perform a physical inventory at least once every two years, reconcile results of the physical inventory to property records, safeguard the property, maintain the property, and use proper sales procedures to ensure the highest possible return.

To comply with the federal and state requirements regarding property records, TPWD is required to keep a Property Acquisition Form to include a list of equipment and assets acquired with grant funds. This list should include a description of the property, a serial number or other identification number, the source of property, name of title holder, the acquisition date, cost of the property, percentage of federal or state participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property (**See Exhibit "I"**).

The disposition of any asset improved or acquired in part or in whole with Grant funds by the TPWD during the Grant period or after expiration of the Grant period, must have prior written approval of the County and County shall be reimbursed for the asset, if sold, in the full amount of the fair market value of the disposed asset. Upon such reimbursement to the County, the TPWD shall become the owner of such asset purchased or acquired through the Grant funds and shall be responsible for the care, maintenance and repair of same. This reimbursement process shall also be applicable and in full force and effect for any asset which is no longer used for its intended Grant purpose by the TPWD at any time during the Grant period or after expiration of the Grant period. The Parties are further required to comply with 44 CFR 13.32(e) regarding the disposition of assets acquired with Grant funds.

SECTION X LIABILITY FOR DISALLOWED COSTS

The TPWD understands and agrees that it shall be liable to County for any costs disallowed pursuant to financial and compliance audit(s) of TPWD agreement funds. The TPWD further understands and agrees that reimbursement to County of such disallowed costs shall be paid by the TPWD from funds that were not provided or otherwise made available to TPWD pursuant to this Agreement or any other federal contract.

SECTION XI INDEMNITY CLAUSE AND INSURANCE REQUIREMENT

To the extent allowed under the constitution and laws of the State of Texas, TPWD agrees to hold harmless the County its elected officials, officers, employees, consultants, or agents and to indemnify County's elected officials, employees, consultants or agents and to defend County against any and all claims brought against County by elected officials, officers, employees, or agents of TPWD or brought by any third person arising in any manner directly or indirectly from TPWD programs, activities or events conducted pursuant to this Agreement.

TPWD shall acquire, maintain and furnish to County a Certificate of Insurance as proof that it has secured and paid for policies of public liability and automobile insurance to cover all operations and services under this Agreement with limits of not less than \$300,000.00 per occurrence, \$1,000,000.00 aggregate, covering all risks incident to or in connection with the execution, performance, attempted performance or non-performance of this Agreement. This requirement shall be to meet TPWD's duty of indemnification under this paragraph. The County understands that TPWD, as a state agency, does not maintain insurance coverages.

SECTION XII PROCUREMENT

TPWD agrees to conform to its own applicable purchasing laws, regulations, employment policies and procedures with respect to any purchases or employment in relation to the Grant and/or this Agreement.

**SECTION XIII
CONFLICT OF INTEREST**

TPWD covenants that none of its elected officials, officers, employees, consultants, or agents who exercise influence on the decision-making process presently has or will have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities funded by the Grant. TPWD agrees that all elected officials, officers, employees, consultants or agents shall comply fully with the applicable requirements of Texas Government Code and/or the Texas Parks and Wildlife Code.

TPWD agrees that no person who is an elected official, officer, employee, consultant, or agent of the TPWD's organization or the County's organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities so listed in the attached Exhibit "A" during the Grant period or for a period of one (1) year thereafter.

TPWD is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

**SECTION XIV
MISCELLANEOUS PROVISIONS**

Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any 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 shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflicts exists.

No Waiver. No waiver by County 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.

Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations 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 County and TPWD, and not otherwise.

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.

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 electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile to the parties at the addresses set forth below, as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: County of Hidalgo
302 W. University Dr.
Edinburg, TX 78539

If to TPWD: Executive Director
Texas Parks and Wildlife Department
4200 Smith School Rd.
Austin, TX 78744

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.

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.

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.

Assignment. This Agreement shall not be assignable by TPWD. County may assign this Agreement without the consent of TPWD.

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 or paragraph hereof.

Gender and Number. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

Authority to Execute. The execution and performance of this Agreement by County and TPWD have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and TPWD in accordance with its terms.

WITNESS THE HANDS OF THE PARTIES effective as of the date of the last party to sign this Agreement.

TEXAS PARKS AND WILDLIFE DEPARTMENT



Carter Smith, Executive Director

Date: 7/24/2014

THE COUNTY OF HIDALGO

_____ Date: _____
Ramon Garcia, County Judge

ATTEST

Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:

Office of Hidalgo County Criminal District Attorney,
Rene Guerra

By: _____
Michael L. Garza,
Assistant District Attorney