

**INTERLOCAL COOPERATION CONTRACT
BETWEEN
TEXAS FACILITIES COMMISSION
AND
THE COUNTY OF HIDALGO**

This Interlocal Cooperation Agreement (“Agreement”) is entered into by and between the STATE OF TEXAS, acting by and through the Texas Facilities Commission (the “State” or “TFC”) and the COUNTY OF HIDALGO, by and through the Hidalgo County Office of Criminal District Attorney (“County”), pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791 (Vernon 2012 & Supp. 2015).

SECTION I. SERVICES

1.1. **SCOPE OF SERVICES.** (a) TFC and the County agree that the purpose of the Agreement is to accomplish a common goal of the parties to accept and contract for the sale/disposal of the County’s forfeited property by TFC through the State Surplus Property Program. “County Forfeited Property”, means gambling equipment seized and forfeited received from the County of Hidalgo, by and through the Hidalgo County Office of the Criminal District Attorney under Section 263.152(a)(5) of the Texas Local Government Code. Upon the identification of County Forfeited Property, and requested by the county, TFC will make arrangements to have such property transferred from County, and delivered to a location designated by TFC. Upon receipt, TFC will tag, or cause to be tagged, the County Forfeited Property as being received from the County, record the items with an inventory number in accordance with Section 1.01 (b) below, and store the property in the location designated by TFC until the County Forfeited Property is sold to a qualified purchaser as defined in Texas Government Code 2175.904(b). The county may also choose to retain the property and facilitate TFC managed sale at the county’s location.

(b) At the time of delivery of the County Forfeited Property, TFC will price the County Forfeited Property item(s) at fair market value as it does with all other State surplus property. In determining the fair market value of the County Forfeited Property, TFC will consider an item’s condition (damaged, inoperable, worn, new or used), usefulness, and marketability. Gambling equipment will be sold via internet auction to the highest bidder at the time the auction ends.

(c) When TFC accepts and tags the transferred County Forfeited Property, TFC will record the item in the TFC Inventory System. The amount that the County earns will be seventy percent (70%) of the net proceeds. “Net Proceeds” are defined in Texas Government Code, Section 2175.904(c) as “proceeds from the sale of gambling equipment, less the costs of the sale, including costs of advertising, storage, shipping, auctioneer or broker services, and the amount of the fee collected under Section 2175.188.”

1.2. **FORFEITED PROPERTY.** County Forfeited Property transferred to TFC to be sold will be treated the same as State surplus property and will be re-issued or sold “as-is” and “where-is” with no express or implied warranties and with a receipt issued to the purchaser by TFC or designee releasing both the County and TFC of all liability for any and all defects and with appropriate indemnification language to protect TFC and the County from third party claims.

1.3. **APPLICABLE LAWS.** TFC shall be responsible for compliance with any additional or varying laws and regulations regarding the storage and sale of forfeited gambling equipment and other personal property.

SECTION II. CONSIDERATION AND RECONCILIATION

2.01. **CONTRACT AMOUNT.** For consideration for the services provided to the County by TFC for the sale of County Forfeited Property, TFC will remit to the County no more than seventy percent (70%) of net proceeds, as set forth in Section 1.01(c) above. Net proceeds from the sale of County Forfeited Property may be distributed as it occurs but no more frequently than twice a month covering the first (1st) through the fifteenth (15th), and the sixteenth (16th) through the end of the month. As such, County will be compensating TFC for performance of services (including labor, transportation, storage, and auction costs) as set out in this Agreement with funds currently available to the County, in compliance with Section 791.011(d)(3) of the Texas Local Government Code.

SECTION III. AGREEMENT TERM

3.1. **TERM.** The initial term of this Agreement shall commence as of the date executed by the last party and end on August 31, 2019, unless terminated earlier in accordance with Section 3.04. If all forfeited gambling equipment is not sold as of August 31, 2019, this Agreement shall automatically renew until such time as all gambling equipment is sold or otherwise disposed of by TFC.

3.2. **DISPUTE RESOLUTION.** The parties agree to use good-faith efforts to decide all questions or disputes of any nature that may arise under or by this Agreement; however, nothing in this paragraph shall preclude either party from pursuing any remedies as may be available under Texas law.

3.3. **DEFAULT.** A party to this Agreement shall be in default under this Agreement if the party fails to fully, timely, and faithfully perform any of its material obligations under the Agreement, and following notice of default as provided in Section 3.04, fails to timely cure the alleged default as provided such section.

3.4. **TERMINATION.** In the event of default by a party, the other party shall have the right to terminate the Agreement for cause, by written notice delivered to the party alleged to be in default via certified mail. The notice shall be effective within thirty (30) days, unless otherwise specified, after the date of receipt of such notice. During this time period, the party alleged to be in default may cure the event of default or provide evidence sufficient to prove to the other party's reasonable satisfaction that such default does not exist or will be cured in a time satisfactory to the party alleging the default. Each party's rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

3.5. **TERMINATION WITHOUT CAUSE.** Either party may terminate this Agreement upon one hundred twenty (120) days prior written notice to the other. Early termination will be subject to an equitable settlement of the respective interests of the parties accrued up to the date of termination.

SECTION IV. FUNDING

4.01. **NO DEBT.** This Agreement shall not be construed as creating any debt on behalf of the State of Texas and the Texas Facilities Commission in violation of TEX. CONST. Art. III, § 49. Furthermore, this Agreement shall not be construed as creating a debt on behalf of the County in violation of Tex. Const. Art. 11 § 5. In compliance with TEX. CONST. Art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

SECTION V. FORCE MAJEURE

5.01. **FORCE MAJEURE.** Neither TFC nor the County is liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise or due foresight, such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome force majeure. Each party must inform the other in writing with proof of receipt within five (5) business days of the existence of force majeure.

SECTION VI. MISCELLANEOUS PROVISIONS

6.1. **ASSIGNMENT.** Neither party shall assign or transfer its rights under this Agreement.

6.2. **INCORPORATION BY REFERENCE.** Incorporated by reference the same as if specifically written herein are the rules, regulations, and all other requirements imposed by law, including but not limited to compliance with those applicable rules and regulations of the State of Texas and the federal government, all of which shall apply to the performance of the services under this Agreement.

6.3. **GOVERNING LAW AND VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas. **VENUE OF ANY SUIT BROUGHT FOR BREACH OF THIS AGREEMENT SHALL BE IN ANY COURT OF COMPETENT JURISDICTION IN TRAVIS OR HIDALGO COUNTY, TEXAS;** provided, however, the foregoing shall not be construed as a waiver of sovereign immunity by either party.

6.4. **SEVERANCE.** Should any one or more provisions of this Agreement be held to be void, voidable, or unenforceable by a court of competent jurisdiction, such provision(s) shall be construed as severable from the remainder of this Agreement and shall not affect the validity of all other provisions of this Agreement, which shall remain of full force and effect.

6.5. **HEADINGS.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

6.6. **NOTICES.** Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be considered delivered seven (7) business days after postmarked if sent by U.S. Postal Service Certified Mail, Return Receipt Requested, addressed to the party designated for receipt, and postage prepaid. Hand-delivered notices are considered delivered upon receipt by the addressee, which may be noted in a courier confirmation report. The Parties may make routine communications by first class mail, email, fax, or other commercially accepted means. Notices and routine communications to the County and TFC shall be addressed as follows:

TFC: Texas Facilities Commission
1711 San Jacinto Blvd.
Austin, Texas 78711-3047
Attention: Legal Services
Phone: (512) 475-2400
Fax: (512) 236-6171

County: County of Hidalgo
Hidalgo County Office of Criminal District Attorney
100 East Canto St.
Edinburg, Texas 78539
Attention: Rosalinda Cantu, Office Administrator
Phone: 956-292-7604
Fax: 956-318-2078
Email: rosalinda.cantu@da.co.hidalgo.tx.us

Either party may change its address for notice by written notice to the other party.

6.7. **THEFT OR DAMAGE TO FORFEITED PROPERTY.** Within seven (7) days of theft or damage to County Forfeited Property transferred to TFC, TFC agrees to provide written notification to the County of this and provide a listing of the County Forfeited Property affected.

6.8. **GOVERNMENTAL IMMUNITY.** Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or equity to either of the parties, nor to create any legal rights or claims on behalf of any third party. Neither the County nor TFC waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental (sovereign) immunity under the laws of the State of Texas.

6.9. **RIGHT TO AUDIT.** TFC agrees that the representatives of the Office of the County Auditor, or other authorized representatives of the County, shall have access to, and the right to audit, examine, or reproduce, any and all records of TFC related to the performance under this Agreement. TFC shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that the County has brought to the attention of TFC are resolved, whichever is longer. TFC agrees to refund to the County any overpayments disclosed by any such audit.

6.10. **SURVIVAL OF OBLIGATIONS.** All provisions of this Agreement that impose continuing obligations on the parties, including but not limited to contract amount, reconciliation, right to audit, governmental immunity, disclaimer, limitation of liability, insurance, and theft or damage to forfeited property shall survive the expiration or termination of this Agreement.

6.11. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties. No other agreement, statement, or promise that is not contained in this Agreement shall be binding except a subsequent written amendment to this Agreement signed by both parties.

TFC certifies that it has the authority to enter into this Agreement by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 791.

County certifies that it has the authority to enter into this Agreement by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 791.

TEXAS FACILITIES COMMISSION

HIDALGO COUNTY, TEXAS

Kay Molina
General Counsel

Ricardo Rodriguez, Jr.
Hidalgo County Criminal District Attorney

Date of execution: _____

Date of execution: _____

 Dir.

D.E.D