

**INTERLOCAL COOPERATION CONTRACT
BETWEEN
TEXAS FACILITIES COMMISSION
AND
CITY OF AUSTIN**

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 CITY OF AUSTIN, TRAVIS COUNTY, TEXAS ("City"), pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791 (Vernon Supp. 2008 & Supp. 2014).

SECTION I. SERVICES.

1.01. **SCOPE OF SERVICES.** (a) TFC and the City agree that the purpose of the Agreement is to accomplish a common goal of the Parties to: (i) accept and contract for the sale/disposal of the City's surplus property by TFC to the public and State agencies through the State Surplus Property Program; and, (ii) permit the City to acquire or purchase State surplus property held by TFC. "City Surplus Property" means movable equipment, furniture, or other personal property the City Materials Management Division has identified as at the end of a useful life but may be salvageable for reuse. Upon the identification of City Surplus Property, the City will deliver such property to the TFC Surplus Property Warehouse located at 6506 Bolm Road, Austin, Texas. However, this Agreement is not exclusive; the City may utilize other methods of disposal of City Surplus Property. Upon receipt, TFC will tag the City Surplus Property as being received from the City, record the item's fair market value on the TFC item tag in accordance with Section 1.01 (b) below, provide the City with a dated and signed receipt with the fair market value noted, and store the property in the TFC Surplus Property Warehouse until the City Surplus Property is either sold to another State agency or sold to the public.

(b) At the time of delivery of the City Surplus Property, TFC will price the City Surplus Property item(s) at fair market value as it does with all other State surplus property. In determining the fair market value of the City Surplus Property, TFC will consider an item's condition (damaged, inoperable, worn, new or used) and usefulness. An "item" for determining value may be defined as a single item or a collection/group of similar like items, as determined by TFC. For example: three (3) mismatched chairs and a desk would be considered four (4) separate items for value calculations while fifty (50) identical chairs might be considered a single item for valuation as they can be resold as a group or lot. If the City objects to the TFC's estimated value of item, the City may choose to withdraw the item transferred to TFC or TFC may reevaluate its determination.

(c) When TFC accepts and tags the transferred City Surplus Property, TFC will record the credit for the City and provide the City with a receipt. The amount that the City earns will be fifty percent (50%) of the estimated value of the item when the estimated value is equal to or greater than \$100.00, and zero percent for an item with an estimated value of less than \$100.00.

(d) TFC agrees the City may purchase and pick up State surplus property held at TFC for the City's use based on the amount of credit the City has accrued. The City may exceed this

credit amount by a total amount of \$25,000.00 for each Agreement term and shall reconcile the excess at the end of each quarter in accordance with Section 2.02 of this Agreement. TFC shall provide receipt for each City purchase.

1.02. **SURPLUS PROPERTY.** City Surplus 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 releasing both the City and TFC of all liability for any and all defects and with appropriate indemnification language to protect TFC and the City from third party claims.

1.03. **DISCLAIMER.** **THE CITY SURPLUS PROPERTY IS PROVIDED “AS IS”. THE CITY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ONLY TO THE EXTENT ALLOWED BY LAW REGARDING THE CITY SURPLUS PROPERTY.**

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

SECTION II. CONSIDERATION AND RECONCILIATION.

2.01. **CONTRACT AMOUNT.** For consideration for the services provided to the City by TFC for the sale of City Surplus Property to the public or State agencies, TFC will retain one hundred percent (100%) of proceeds minus credit accrued to the City for all City surplus property sold under this Agreement, as set forth in Section 1.01(c) above.

2.02. **RECONCILIATION.** (a) TFC will bill each transfer of property from TFC to City on City employee’s individual City procurement card versus TFC billing one source each quarter.

(b) TFC will accumulate credits (value of City property transferred to TFC, in accordance with Section 1.01) in City’s account and will notify City of credit accumulation value each quarter. City’s point of contact will determine how to apply the accumulated credits. Options for applications of credit include a credit to high dollar property transfer from TFC to City.”

(c) Any item that requires TFC to remit to another state agency is not eligible under this Agreement, such as vehicles, boats, and/or any State Property Accounting (SPA) item.

(d) At the end of the term of this Agreement the accumulated credit will be applied according to Subsection (b) above until the City’s credit is exhausted.

SECTION III. AGREEMENT TERM.

3.01. **TERM.** The initial term of this Agreement shall commence as of the date executed by the last party and shall terminate on August 31, 2017, unless terminated earlier in accordance with Section 3.04. This Agreement will automatically renew for three (3) two (2) year renewal

terms unless either party gives written notice of its intent not to renew no later than sixty (60) days prior to the next renewal term.

3.02. **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.

3.03. **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.

3.04. **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. If this Agreement is terminated for cause, the parties shall reconcile the City credits for transferred City Surplus Property and City purchases of State surplus property. Each party agrees to promptly make the required payment due to the other party as appropriate. Each party's rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

3.05. **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 City 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 City 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.

6.01. **ASSIGNMENT.** Neither party shall assign or transfer its rights under this Agreement. This Agreement is not exclusive. The City may utilize other disposal approaches including traditional auctioneer services and sealed bids.

6.02. **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.

6.03. **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 COUNTY, TEXAS;** provided, however, the foregoing shall not be construed as a waiver of sovereign immunity by either party.

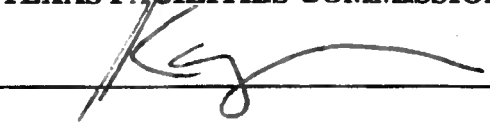
6.04. **SEVERANCE.** Should any one or more provisions of this Agreement be held to be void, voidable, or unenforceable by a court of competent jurisdiction, such provision(s) shall be construed as severable from the remainder of this Agreement and shall not affect the validity of all other provisions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

6.05. **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.

6.06. **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 three (3) 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 City and TFC shall be addressed as follows:

TFC:	Texas Facilities Commission 1711 San Jacinto Blvd., Room 400 Austin, TX 78701 Attention: Legal Services Division Phone: (512) 475-2400 Fax: (512) 236-6171
------	---

TEXAS FACILITIES COMMISSION



Kay Molina

General Counsel

Date of execution: 12/29/2014

Dir. mp
C.F.O. DW

CITY OF AUSTIN



Michael Benson, CAO

Printed Name: Michael Benson

Title: Chief Administrative Officer

Date of execution: 12/18/14

Printed Name: _____

Title: _____