

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

This Interlocal Cooperation Contract (“Contract”) is entered into by and between the State of Texas, acting by and through the Texas Facilities Commission, an agency of the State of Texas (the “State” or “TFC”), specifically the Center for Alternative Finance and Procurement (“CAP”), and City of Austin (“COA”), a Texas municipality, pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791 (West 2018).

SECTION I. SERVICES

1.01. **SCOPE OF SERVICES.** TFC and COA agree that the purpose of the Contract is to accomplish the following scope of work as described in the attached Exhibit A “Project Scope” attached hereto and made a part hereof. TFC and COA agree that the purpose of the Contract is to accomplish the Project Scope in consultation with CAP, to include utilization of TFC Consultants in the attached Exhibit B “List of P3 Consultants” attached hereto and a part hereof.

SECTION II. CONSIDERATION AND RECONCILIATION

2.01. **CONTRACT AMOUNT.** For consideration for the services described above, COA will remit to TFC a cost recovery fee for TFC’s services. The cost recovery amount is based upon a mutually agreed projected budget (estimate, proposal, hourly rate). The total amount of the cost recovery fee shall not exceed \$10,000. Pursuant to Tex. Gov. Code Chapters 2267 and 2268, the COA will be responsible for paying a 3% cost recovery fee. It is mutually agreed that the cost recovery fee shall exclude any fees associated with site selection and acquisition. The total amount of the Contract, including the fee and the costs for site selection and acquisition, is detailed in the mutually agreed project budget. This total amount shall not exceed \$500,000. Should CAP be requested to engage in significant discussions with COA or others, the proposed cost for the services may be adjusted. If COA requests discussions with CAP that require an adjustment to the proposed cost, CAP will inform COA before engaging in the discussions.

SECTION III. CONTRACT TERM

3.01. **TERM.** The initial term of this Contract shall commence as of the date executed by the last party and shall terminate no later than December 31, 2022.

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

3.04. **TERMINATION.** In the event of default by a party, the other party shall have the right to terminate the Contract for cause, by written notice delivered to the party alleged to be in default via certified mail. 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 Contract are cumulative and are not exclusive of any other right or remedy provided by law.

SECTION IV. FUNDING

4.01. **NO DEBT.** This Contract 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. § 49. Furthermore, this Contract shall not be construed as creating a debt on behalf of the COA in violation of Tex. Const. Art. 11 § 5. In compliance with Tex. Const. Art. VIII, § 6, it is understood that all obligations of the parties hereunder are subject to the availability of state funds, and/or, in the case of COA, the allocation of funds by the City of Austin. 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.

4.02. **PAYMENT.** All payments to be made to a third-party consultant's for services performed under this Contract shall be paid by TFC directly to third-party consultants(s). TFC and COA agree to coordinate with the selected consultants to implement a process which incorporates a pre-review of consultant invoices by COA prior to consultant invoices being submitted to TFC for review, approval and payment by TFC. Invoices for services rendered by advisor(s) will be prepared by TFC for submission to COA. COA shall reimburse TFC within thirty (30) calendar days from receipt of the invoice. If payment by COA is not received within thirty (30) calendar days, TFC may cancel the Contract without further notice to COA, and COA shall remain liable for all actual costs and recovery costs incurred by TFC prior to the termination of this Contract in delivering services under this Contract.

SECTION V. FORCE MAJEURE

5.01. **FORCE MAJEURE.** Neither TFC nor the COA 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 Contract.

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 Contract.

6.03. **GOVERNING LAW AND VENUE.** This Contract shall be governed and construed in accordance with the laws of the State of Texas. **VENUE OF ANY SUIT BROUGHT FOR BREACH OF THIS CONTRACT 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 Contract 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 Contract and shall not affect the validity of all other provisions of this Contract, which shall remain of full force and effect.

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

6.06. **NOTICES.** Any notice, request, or other communication required or appropriate to be given under this Contract 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 COA and TFC shall be addressed as follows:

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

COA: City of Austin
 PO Box 1088
 Austin, TX 78767
 Attention: Office of the City Attorney
 Phone: (512) 974-1888

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

6.07. **GOVERNMENTAL IMMUNITY.** Nothing in this Contract 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 COA 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.

6.08. **RIGHT TO AUDIT.** TFC and the COA agree that the representatives of TFC and the COA, or other authorized representatives of TFC and the COA, shall have access to, and the right to audit, examine, or reproduce, any and all records of TFC and the COA related to the performance under this Contract, including performance by the Financial Advisory Consultants. TFC and the COA shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that TFC and the COA has brought to the attention of TFC and the COA, respectfully, are resolved, whichever is longer. TFC and the COA agree to jointly cooperate to recover from TFC Financial Advisory Consultants any refund to the COA any overpayments disclosed by any such audit for payments made to the Financial Advisory Consultants through this contract.

6.09. **SURVIVAL OF OBLIGATIONS.** All provisions of this Contract 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 Contract.

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

TFC certifies that it has the authority to enter into this Contract by virtue of the authority granted in Tex. Gov. Code Ann., Chapter 791, and Tex. Gov. Code §2267.008.

COA certifies that it has the authority to enter into this Contract by virtue of the authority granted in Tex. Gov. Code Ann., Chapter 791.

TEXAS FACILITIES COMMISSION

CITY OF AUSTIN

By: _____

By: _____

Michael Novak

J. Rodney Gonzales

Executive Director

Assistant City Manager

Date of Execution: _____

Date of Execution: _____

____ GC

____ Dir

____ CFO

Exhibit A

Project Scope

Bond for Creative Space Procurement, Submittal Evaluation, and Selection Recommendation

The Center for Alternative Finance and Procurement (“CAP”) will consult with the City of Austin (“COA”) to assist in fulfilling the project scope, detailed below, including assistance in selection from the available TFC Consultants, as provided in Exhibit B. CAP will provide monitoring and oversight of the selected financial consultant as required for by TFC’s vendor reporting requirements.

After selection of the TFC Consultant(s), the proposed scope of work includes the following:

The selected TFC Consultant(s) will assist the City of Austin with the development and implementation of a competitive process to solicit, evaluate, and select a cultural and creative arts and/or music facility at a property that will be purchased and/or renovated. TFC Consultant(s) will also assist in the evaluation of potential site operators for the facility or facilities.

A comprehensive solicitation package will be developed by the TFC Consultant(s), who will provide technical advisory, quality control and quality assurance for the information assembled for a multi-step process consisting of: Step 1: Request for Information; Step 2: Evaluation of Sites; Step 3: Evaluation of Operator(s) for acquired Site(s); and Step 4: Acquisition of Site(s)..

All tasks will be developed and coordinated with, and approved by, the City of Austin Purchasing Office and Economic Development Department. Consultation with CAP will be available as needed. The development of a fair, transparent and timely transaction is the joint responsibility of the selected TFC Consultant(s) and the City’s Economic Development Department and will consist of the following tasks:

TASK 1. Project Delivery Planning

Meet with stakeholders to define project goals, preferred facility types, project schedule, and roles and responsibilities.

Review and finalize project delivery method for the property acquisition and operator selection process.

Develop identification and evaluation criteria for both Sites and Operators..

TASK 2: Request for Information Process

Develop Request for Information (RFI) for distribution to potential facility and programmatic operators. The RFI is intended to focus market interest in the project; gauge operators’ level of interest in different types of facilities and assess potential City-Operator business terms.

During this process, the TFC Consultants will review and analyze responses; brief the City on findings; and recommend an RFP process informed by the RFI responses.

TASK 3. Qualified Management Services Request for Proposals Package Development

Coordinate with City Staff to develop the Operator selection schedule and criteria.

TASK 4. Pre-Proposal Support

Support drafting of responses to questions during the RFP phase and review any resulting addenda to be issued.

Prepare the response evaluation framework, to include the selection criteria and the scoring system to be utilized during the evaluation process.

Support pre-submittal conference by drafting a presentation and agenda and coordinating logistics with City staff.

Provide site information and tours of down-selected properties as necessary to potential operators.

Develop scoring sheets and evaluation templates to be used by the Site and Operator selection teams as well as coordinate, prepare and facilitate evaluation team preparation meetings.

TASK 5. Response Submittal Evaluation Down-Selection

For potential Sites, review and evaluate potential properties for acquisition with a focus on viability for the proposed cultural uses, reasonable renovation costs, and alignment with potential Operator financial plans.

For potential Operators, perform an evaluation of all programmatic and financial aspects of the proposals, in accordance with established Operator evaluation criteria.

TASK 6. Property Acquisition

Act as liaison between the City, Site owners, and potential Operators in the site negotiation process(es). TFC Consultants will represent the City as Broker to complete real estate transaction(s) and will provide all necessary support during acquisition negotiations.

Review real estate acquisition and renovation transaction documents, which will likely include, but are not limited to: letters of intent (LOI), Purchase and Sale Agreement (PSA), and ground lease. Provide recommendations for the City to negotiate with real estate sellers, to ensure that transaction aligns with project delivery strategy.

Exhibit B
List of P3 Consultants

Contractor	TFC Contract No.
Alvarez & Marsal Public Sector Services	17-071-000
Arup Advisory Inc.	17-070-000
Jones Lang LaSalle, Americas, Inc.	17-099-000
P3 Point Corporation	17-074-000
PFM Financial Advisors LLC	17-069-000