

**INTERAGENCY COOPERATION CONTRACT  
BETWEEN  
TEXAS FACILITIES COMMISSION  
AND  
HEALTH AND HUMAN SERVICES COMMISSION**

This Interagency Cooperation Contract (Contract) is entered into by and between the Texas Facilities Commission (TFC) and Texas Health and Human Services Commission (Receiving Agency), pursuant to the authority granted by and in compliance with the provisions of "The Interagency Cooperation Act," TEX. GOV'T CODE ANN. §§ 771.001-.010 (Vernon 2012 & Supp. 2014).

**I. STATEMENT OF WORK TO BE PERFORMED.**

1.01. **SCOPE OF SERVICES.** As required by Senate Bill 200 (SB 200) enacted by the 84<sup>th</sup> Texas Legislature, Regular Session, TFC shall conduct a feasibility study of the Austin State Hospital (ASH) in coordination with the Receiving Agency and the General Land Office (GLO). The study will seek to determine the feasibility, costs, and benefits of transferring operations of ASH from the hospital's facilities as of January 1, 2015 to a new facility at a new location. In addition to the requirements established in SB 200, Receiving Agency requires a study to determine the feasibility of collocating the Austin State Supported Living Center (SSLC) with ASH both at the existing ASH location and at the existing SSLC location. TFC, through its professional services contractor, will study four (4) options for ASH as follows: (i) develop a concept for a consolidated ASH-SSLC facility at the existing ASH campus and identify financial scenarios for either sale or lease options for the campus to be vacated by SSLC. This study will maintain the historical building No. 501; (ii) develop a concept for a consolidated ASH-SSLC facility at the SSLC campus and identify financial scenarios for either sale or lease options for the ASH campus. This study will clearly identify that the historical building No. 501 will be maintained; (iii) develop a concept that locates a replacement ASH facility on other State-owned land and identify financial scenarios for either sale or lease options for the campus to be vacated by ASH. In this study, GLO will have the responsibility to search for suitable parcels once size and features are identified; and (iv) develop a concept that locates a replacement ASH facility on a site not currently owned by the State and identify financial scenarios for either sale or lease options for the campus to be vacated by ASH.

**II. BASIS FOR COMPUTING REIMBURSABLE COSTS.**

2.01. **REIMBURSABLE COSTS.** The basis for computing reimbursable costs under this Contract shall be for actual costs incurred by TFC and developed from estimates received from third-party contractors.

**III. CONSIDERATION.**

3.01. **CONTRACT AMOUNT.** Receiving Agency agrees to pay TFC an amount not to exceed the sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) for providing the services required to fulfill the terms of this Contract.

**3.02 ACTUAL COSTS.** TFC and Receiving Agency agree that payment in advance by Receiving Agency to TFC for services is necessary to effectively and efficiently complete the services, that such payment throughout the term of this Contract would serve a legitimate public purpose, and that the delivery of services may be expedited as a result of advanced payment, as authorized by Section 2155.383 of the Texas Government Code. If actual costs for contracted services provided by third-party contractors for work requested by Receiving Agency will exceed the amount allocated for said service, TFC will provide notice and a revised estimate to Receiving Agency. Prior to exceeding the "maximum contract amount" the parties shall agree to amend this Contract pursuant to Section 8.09 to reimburse for such increased actual costs on a dollar for dollar basis. If actual costs for contracted services by third-party contractors are less than the maximum contract amount, TFC will return any amount that exceeds actual costs to Receiving Agency.

#### **IV. PAYMENT FOR SERVICES.**

**4.01. PAYMENT.** An Interagency Transaction Voucher or Invoice (ITV) for these services will be prepared by TFC for the full amount of this Contract. Receiving Agency shall reimburse TFC within thirty (30) days from receipt of ITV or invoice for the full amount of this Contract. If payment by Receiving Agency is not received within thirty (30) days, TFC may cancel the Contract without further notice to Receiving Agency, and Receiving Agency shall remain liable for all actual costs incurred by TFC in delivering services under this Contract. TFC shall process all expenditures under this Contract as non-TFC capital budget expenses in that Receiving Agency shall have processed these expenditures as capital expenditures pursuant to HB 1, 84<sup>th</sup> Leg., R.S., Art. IX, Sec. 14.03.

**4.02. UNIFORM STATE ACCOUNTING SYSTEM (USAS).** To the extent possible, interagency payments involving only treasury funds will be processed as paperless document transfers in the USAS system subject to audit by the Fund Accounting Division of the Comptroller's Office. Payments from treasury funds for deposit into local bank accounts will be processed in USAS through the paperless purchase vouchers process. Interagency payments received from local funds for deposit into the State Treasury must be submitted according to policies and procedures for USAS deposits.

**4.03. REIMBURSEMENT.** Reimbursements with funds contained in the State Treasury shall be made via USAS funds transfers, with Receiving Agency initiating the transfers. TFC will provide Receiving Agency with all the necessary USAS coding elements. Reimbursement with funds outside the State Treasury shall be made by Receiving Agency issuing warrants for payment to TFC.

All reimbursements must be made through the use of local funds or drawn on the appropriated item(s) or account(s) of Receiving Agency from which the agency would ordinarily make expenditures for similar services or resources. Reimbursements will be credited to the appropriation year in which the expenses were incurred.

To comply with HB 1, 84<sup>th</sup> Leg., R.S., Art. IX, Sec. 6.08, entities making payments from funding sources other than General Revenue Fund appropriations, shall remit an additional amount equal to the percentage of direct labor costs, necessary to cover the cost of the benefits.

## V. TERM OF CONTRACT.

5.01. **TERM.** This Contract shall be effective upon the date of the last party to sign and shall terminate on August 31, 2017, unless terminated earlier by either party, as provided in Section 5.03.

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

5.03. **EARLY TERMINATION.** Either party may terminate this Contract upon thirty (30) days prior written notice to the other. Upon receipt of notice of early termination, TFC shall cancel, withdraw, or otherwise terminate outstanding orders or subcontracts which relate to the performance of this Contract and shall otherwise cease to incur costs under this Contract. Early termination will be subject to an equitable settlement of the respective interests of the parties accrued up to the date of termination.

If this Contract is terminated for any reason, TFC will not be liable for any damages, claims, or losses, or any other amounts arising from or related to any such termination.

## VI. FUNDING.

6.01. **NO DEBT.** This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or Receiving Agency and/or TFC in violation of TEX. CONST. art. III, § 49. 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.

## VII. FORCE MAJEURE.

7.01. **FORCE MAJEURE.** Except as otherwise provided, neither TFC nor Receiving Agency 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. Each

**party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure.**

### VIII. MISCELLANEOUS PROVISIONS.

**8.01. INDEPENDENT CONTRACTOR.** It is further mutually understood and agreed that Receiving Agency is contracting with TFC as an independent contractor.

**8.02. 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.

**8.03. CAPITAL BUDGET AUTHORITY.** Pursuant to Rider 16 entitled *Capital Construction on Behalf of State Agencies* for TFC found in HB 1, 84<sup>th</sup> R.S., Art. I, any capital items related to construction of buildings and facilities including minor construction projects greater than \$100,000 performed by TFC on behalf of other state agencies do not apply to TFC for the purpose of the capital budget rider limitations specified in HB 1, 84<sup>th</sup> Leg., R.S., Art. IX, Sec. 14.03. By signing this Contract, Receiving Agency certifies it has the requisite capital budget authority to fund the services to be provided under this Contract.

**8.04. 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 FIXED 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.

**8.05. SEVERANCE.** Should any one or more provisions of this Contract be held to be void, voidable, or for any reason whatsoever of no force and effect, 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.

**8.06. 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.

**8.07. NOTICES.** Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TFC or Receiving Agency, as the case may be, at the addresses set forth below:

TFC: Texas Facilities Commission  
1711 San Jacinto Boulevard.  
Austin, Texas 78701  
Attention: Legal Services

With copy to: Texas Facilities Commission  
1711 San Jacinto Boulevard  
Austin, Texas 78701  
Attention: Peter Maass, Deputy Executive Director  
Email: [Peter.Maass@tfc.state.tx.us](mailto:Peter.Maass@tfc.state.tx.us)

Receiving Agency: Health and Human Services Commission  
4900 North Lamar Boulevard  
Austin, Texas 78751  
Attention: Rolando Garza, Deputy Executive Commissioner  
Email: [Rolando.Graza@hhsc.state.tx.us](mailto:Rolando.Graza@hhsc.state.tx.us)

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

8.08. **AUDIT.** Pursuant to Section 2262.154 of the TEX. GOV'T CODE, TFC and the Receiving Agency agree to the following:

(i) the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract;

(ii) acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and

(iii) under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

8.09. **ENTIRE AGREEMENT.** 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.

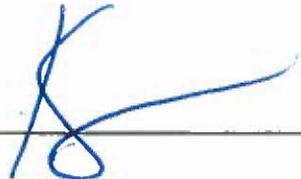
**THE UNDERSIGNED** do hereby certify that, (1) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of those agencies, and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract to the lowest responsible bidder.

TFC certifies that it has the authority to enter into this Contract by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 771.

Receiving Agency further certifies that it has the authority to enter into this Contract by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 771.

**TEXAS FACILITIES COMMISSION**

**HEALTH AND HUMAN SERVICES COMMISSION**

By:   
Kay Molina

By: Rolando garza  
Rolando Garza

General Counsel

Deputy Executive Commissioner

Date of execution: 2/15/16

Date of execution: 2-17-16

 G.C.

 Dir.

 D.E.D.