

**INTERLOCAL COOPERATION CONTRACT
BETWEEN
TEXAS FACILITIES COMMISSION AND CITY OF AUSTIN
FOR
THE CAPITOL AREA DEVELOPMENT PLAN**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Interlocal Cooperation Contract is made and entered into by and between the City of Austin (the "**City**"), a home rule municipality and political subdivision of the State of Texas, acting by and through its duly authorized City Manager or designee, and the Texas Facilities Commission (the "**Commission**"), an agency of the State of Texas (the "**State**") and organized under the provisions of the Texas Government Code, Chapter 2152, pursuant to the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code (collectively, the "**Parties**").

WHEREAS, the Commission among other responsibilities is charged with the management and development of certain real property owned by the State and long range strategic facility planning for State agencies' space needs;

WHEREAS, the Commission adopted a Comprehensive Asset Management and Development Strategy including other objectives to ascertain the economic feasibility and benefits of interim development of the State's underdeveloped and nonperforming real property in Travis County, Texas (the "**Capitol Area Development Strategy**"), which includes site specific planning; and

WHEREAS, the City is committed to working with the Commission toward a shared vision for the capitol area that maximizes the taxpayer's investment as memorialized in Resolution No. 20101118-061, as amended by Resolution No. 2012_____ and for other Planning Areas as defined herein; and

WHEREAS, the Parties desire to coordinate and collaborate on site specific plans as part of the Capitol Area Development Strategy.

NOW, THEREFORE, in consideration of the mutual covenants and promises stated in this Agreement, the Parties agree as follows:

I. PURPOSE.

1.01 The Parties will study development feasibility and performance of administrative and governmental functions and services as those terms are defined by Sections 791.003(1) and

791.003(3) of the Texas Government Code, respectively, and to plan and provide governmental functions and services that each party is authorized to perform.

1.02 The Commission has requested the City, and the City has agreed, to coordinate and collaborate with the Commission on site-specific plans (collectively referred to as the "**Plan**") as part of the Capitol Area Development Strategy, which shall be prepared in accordance with the Scope of Work attached as Exhibit A and fully incorporated herein by reference for all purposes. Although the Plan may generally track the *1956 Capitol Area Master Plan*, the *1963 Capitol Master Plan and its Development*, the *1979 Development Study for the Capitol Complex*, and the *1981 Human Services Center Master Plan* each having stated purposes and specific recommendations for policies and implementation for the construction needs of State government in the Capitol Area, the Plan will also address other State-owned properties that either serve the public or are placeholders for future government but used on an interim basis by the private sector to generate revenue from non-tax sources for the State and provide an otherwise unattainable tax base for the City and other local governments.

1.03 The planning areas contemplated by this Agreement are the underdeveloped and nonperforming State-owned properties in Travis County, Texas, as follows (collectively, the "**Planning Areas**"):

- (a) the Capitol Complex means the State-owned property within the area bounded on the north by Martin Luther King, Jr. Boulevard, bounded on the east by Trinity Street, bounded on the south by 10th Street, and bounded on the west by Lavaca Street;
- (b) the North Austin Complex including the North Austin Campus including the DSHS Complex at 1100 W. 49th Street, the Brown Heatly Building at 4900 N. Lamar Blvd., the DARS Administration Building at 4800 N. Lamar Blvd., the John H. Winters Complex at 701 W. 51st Street, and THHS (formerly MHMR Buildings 1 & 2) at 909 W. 45th Street;
- (c) the South Campus which includes the Austin State Hospital (ASH) at 4110 Guadalupe Street;
- (d) the Bull Creek Annex and Camp Hubbard at Bull Creek Road and West 45th Street;
- (e) a to be designated parcel out of a portion of Camp Mabry; and
- (f) the Hobby Complex and State Parking Garage N.

SECTION II. STATEMENT OF WORK.

2.01 With respect to completion of the Plan, the Commission will have the duties and responsibilities as follows:

(a) compile the Plan including outsourced tasks from procured professional advisors and consultants;

(b) manage the work, including the budget, the schedule, and the contributions of any consultants, consistent with timely completion (collectively, the "**Work**").

2.02 With respect to its contributions to the Plan, the City will have the duties and responsibilities as follows:

(a) provide relevant data and information within its possession and control, including regulatory information, Geographic Information Systems (GIS) data, and land use and transportation data;

(b) participate in the development and analysis of development scenarios;

(c) participate in all progress and review meetings;

(d) review and comment on all interim and final deliverables;

(e) share expertise and experience regarding City public private partnerships and redevelopment projects;

(f) assist with the formulation of economic impact analysis, economic feasibility, and planning initiatives;

(g) integrate State planning and feasibility efforts into City planning initiatives including, but not limited to, transportation, infrastructure, and economic growth and redevelopment initiatives;

(h) coordinate and facilitate interaction between the City's departments and the Commission; and

(i) in accordance with Chapter 2267, entitled *Public and Private Facilities and Infrastructure Act*, Texas Government Code (the "**P3 Act**"), if the Commission participates in the process as set forth in this chapter, the City shall:

(1) Designate the recipient and implement review and comment by the City as an affected jurisdiction as required by Section 2267.055(b); and

(2) Facilitate the timely development or operation of a qualifying project, that provides a municipal benefit to the City by adding property to the City's tax rolls, as defined in Section 2267.001(10)(A) and Section 2267.001(10)(B).

2.03 The Parties will assess the benefit and utilization of various financing mechanisms, public funds investment, and tax reinvestment options.

2.04 Communications and management decisions for the parties to this Contract will be by the following project managers or their designees.

Commission: Aundre Dukes, Portfolio Manager
Planning and Real Estate Management Division
Texas Facilities Commission
1711 San Jacinto Boulevard, Room 404B
Austin, Texas 78701

City: Jim Robertson
Planning and Development Review Department
City of Austin
One Texas Center, Suite 500
505 Barton Springs Rd
Austin, Texas 78704-1245

SECTION III. PROJECT BUDGET AND THE CITY'S CONTRIBUTION.

3.01 The City's monetary contribution for the production of the Plan shall not exceed \$_____. The Commission will invoice the City upon completion of the Plan, and the City will pay in accordance with the *Prompt Payment Act* of the Texas Government Code, Section 2251.021(b). The City shall receive a copy of the completed Plan (ten hard copies and one electronic copy) and any other associated deliverables. Any additional scope or subsequent phases of the Plan are not the responsibility of the City, and will be subject to a new or amended Agreement as submitted to City Council for approval as needed, except funding that has been previously approved by Council resolution.

3.02 Payment by each party for the performance of governmental functions or services shall be made from current revenues available to the party.

SECTION IV. TERMINATION.

4.01 This Agreement will terminate following acceptance by City of the Plan as required by Section 3.01.

4.02 This Agreement may be terminated at any time by the written agreement of both Parties.

4.03 In the event that either party is in default of its material obligations under this Agreement and fails to remedy such default within sixty (60) days after receipt of written notice of default, this Agreement may be terminated at the option of the party not in default upon expiration of the sixty (60) day period.

4.04 Termination or cancellation of the Agreement will not affect the rights and obligations of the Parties that accrued prior to termination.

SECTION V. GENERAL PROVISIONS.

5.01 This Agreement is binding upon and inure to the benefit of the Parties, their respective successors and assigns, including without limitation, any receivers, administrators, or trustees in bankruptcy.

5.02 If any word, phrase, clause, sentence, paragraph, section or other portion of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of the Agreement will not be affected by the invalidity and will be construed as if the invalid portion was not contained in the Agreement. The provisions of this Agreement are expressly deemed severable for this purpose.

5.03 The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

5.04 This Agreement will not be construed as creating an employer/employee relationship, a partnership, or a joint venture, as to either the Parties or any consultants engaged hereunder. The Commission's services will be those of independent contractor. The Commission understands that the Agreement does not grant any rights or privileges established for employees of the City.

5.05 This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter of this Agreement.

5.06 Any amendment of this Agreement must be in writing and signed by the authorized representative of each party to this Agreement.

5.07 Unless otherwise expressly stipulated in this Agreement, this Agreement is separate from and is not an amendment or modification of any other agreement between the parties.

5.08 This Agreement is governed by and construed in accordance with the laws of the State of Texas, exclusive of its choice of law provisions.

5.09 Venue for any action arising hereunder will be in Travis County, Texas.

5.10 Notice provided under this Agreement is sufficient if forwarded by hand-delivery or via U.S. Postal Service, postage prepaid, to the address of a party as shown below:

Texas Facilities Commission
1711 San Jacinto Blvd.,

Austin, Texas 78701
 Attention: Legal Services
 Cc: Aundre Dukes

City of Austin
 City Manager _____
 301 W. 2nd Street _____
 Austin, Texas 78702_

City of Austin
 Director of Planning
 One Texas Center
 505 Barton Springs Road
 Austin, Texas 78702

5.11 This Agreement will be effective on the date it has been executed by the authorized representative of the Parties whereupon the Commission shall proceed with the Work.

5.12 This Agreement may be executed in multiple counterparts, all of which shall be considered as one agreement.

SECTION VI. PUBLIC INFORMATION.

6.01 The Parties are committed to compliance with the Texas Public Information Act ("Act"). Should either Party receive a request for information pursuant to the Act seeking information related to the Project, the Parties will cooperate and work together to respond to the request or seek a ruling from the Texas Attorney General when appropriate.

This Agreement is hereby accepted and agreed to by the following individuals or officers who are duly authorized to bind the Parties as set forth above.

TEXAS FACILITIES COMMISSION

CITY OF AUSTIN

By: _____
 Name: Terry Keel, Executive Director

By: _____
 Name: Marc Ott, City Manager

Date: _____, 2012

Date: _____, 2012

Approved as to form:

Approved as to form:

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A**Phase One: Understanding and Data Collection**

In Phase One, the City will make available and assist the Commission's project team to compile and assemble existing data, studies, and plans (collectively, the "**Data Base**") concerning the Planning Areas. The Data Base may include:

1. Land surveys.
2. Facility condition assessments.
3. Inventories and assessments of existing utility and transportation infrastructure,
4. Planned infrastructure and other capital improvements.
5. Land use and development plans.
6. Transportation plans and mobility patterns.
7. Inventory and analysis of existing State and local land use regulatory controls.
8. Environmental inventory and assessments, including critical environmental features.
9. Emerging projects.

The Commission's project team and the City will work together to compile the Data Base including a report summarizing the findings of Phase One. The Data Base, along with any other information and factors generated by the Commission's Work, will form the foundation for Phase Two hereafter.

Phase Two: Strategic Feasibility Analysis, Planning, Asset Valuation and Revenue Forecasting

In Phase Two, the Commission's project team and the City will prepare at least two site specific, development scenarios ("Development Scenario" or collectively, Development Scenarios") for each of the planning areas indicating the highest and best use and market demand for development of the properties. The development scenarios will integrate programmed elements, natural conditions, infrastructure and systems within the sites representing differing market conditions to ensure developments plans are achievable yet flexible to evolve with changing conditions and preserve future options. The development scenarios will take into account the information gathered in Phase One and other information, analysis, and goals identified by the Commission in the Facilities Master Plan and overall Capitol Area Development Plan, such as: anticipated staffing and space requirements and required capital improvements.

The components of the feasibility analyses and development scenarios will include:

1. Identification and evaluation of opportunities, constraints, and external factors that influence development of the properties including: site evaluations and contextual analyses, traffic impacts analysis, and market research to estimate existing supply, forecast demand and develop an absorption framework of market driven uses;
2. Identification of alternatives and recommendations to address constraints;
3. Comparison of current inventory with future needs to project the gap in space requirements, make reservations for such space and quantify the net development area for each of the tracts;
4. Land use plans identifying natural features and reflecting existing improvements that are expected to remain and prospective improvements;
5. Urban design assessment addressing: pedestrian and vehicular circulation, transportation linkage, parking , open space, building mass and placement;
6. Information regarding the consistency of the proposed Development Scenario with the City's Imagine Austin Plan;
7. Development capacity analysis and allocation of square footage that each scenario could produce for interim uses including phasing and sequencing plans;
8. Illustrative development programs of the preferred scenarios including: preliminary site plans, infrastructure demand forecasts of capital improvements needed to support the scenarios, and graphical renderings and physical or computer aided models; and
9. Financial analysis including: identification of sources and uses of funds; project cost estimates; conceptual pro formas evaluating returns on investments, payback periods; and other financial impacts of each scenario to estimate residual land values resulting from development of interim uses, illustrate long-term cash flows, financial feasibility and the yield of the highest returns and the lowest risk.

The development scenarios prepared in Phase Two will allow the Commission to identify site-specific opportunities, constraints, and external factors, which support the Commission's selection of land use scenarios and assist in future plans of the Planning Areas for the State's use and the evaluation of proposals submitted pursuant to the P3 Act.

Project Reporting and Recommendations:

As the final deliverable the project team will prepare a comprehensive Development Feasibility and Asset Valuation Report including the findings of Phase One and Two. The report will include details of each preferred scenario including: economic impacts, priorities, constraints and opportunities, assumptions, policy recommendations, phasing of capital improvement projects, and tactical funding strategies (action plans) including sources and uses necessary to fund the capital improvements contemplated in the preferred scenarios. The report will recommended courses of action that can be supported which provide the framework to shape standards, guidelines and site development plans for the tracts.