

INTERLOCAL COOPERATION CONTRACT

THE STATE OF TEXAS
COUNTY OF BRAZOS

THIS CONTRACT AND AGREEMENT is entered into by and between the governmental agencies shown below as Contracting parties, pursuant to the authority granted and in compliance with the provisions of "The Interlocal Cooperation Act," Texas Government Code, Chapter 791.

I. CONTRACTING PARTIES:

Texas Forest Service

City of College Station, Texas, a Texas Home-Rule Municipal Corporation

II. STATEMENT OF SERVICES TO BE PERFORMED:

The Texas Forest Service will utilize the City of College Station, Texas's existing Agreement To Sell By Public Auction (Contract No. 00-108) as contracted with SWICO Auctions of College Station, Texas. Agreement term is May 12, 2000 to May 11, 2001 and has been extended through May 12, 2005. The Texas Forest Service will adhere to all terms and conditions of the Agreement and will work directly with SWICO Auctions for services, performance and payment.

Both parties will mutually benefit from the efficiency achieved by obtaining auction services from a common source.

III. BASES FOR CALCULATING REIMBURSABLE COSTS:

No cost to utilize the Agreement.

IV. CONTRACT AMOUNT:

The total amount of this Contract shall not exceed:

N/A
(Words or figures)

V. PAYMENT FOR SERVICES:

The Texas Forest Service shall pay for services received from appropriation items or accounts of the Texas Forest Service from which like expenditures would normally be paid, based upon special vouchers drawn by the Texas Forest Service, or through electronic transactions, payable to SWICO Auctions. No payments will be made by the Texas Forest Service to the City of College Station for the services performed by SWICO Auctions under Contract No. 00-108.

Payments for services performed shall be billed:

N/A
(weekly, monthly, lump sum, etc.)

VI. TERM OF CONTRACT:

This Contract is to begin: December 1, 2004 and shall terminate: May 11, 2005.
(Term of the Contract cannot transcend the biennium.)

VII. CONTRACT EXTENSIONS:

No extensions.

VIII. CONTRACT TERMINATIONS:

Either party may terminate this agreement any time upon seven (7) days written notice to the other party to the termination of service. In the event of early termination, the Texas Forest Service shall only be liable for payment of services performed to termination. If termination is not at the end of a full month, payment will be prorated on a cost per day basis by dividing monthly fee by the number of days in the terminating month, multiply by the number of days in which the services were received to termination of contract for total due.

IX. CONTRACT AMENDMENTS:

This Agreement may be amended by written application from one party to the other and written concurrence by the responding party.

X. CONTRACT CONTACTS:

Texas Forest Service
Attn: Jimmy Stephens
John B. Connally Building
301 Tarrow, Suite 419
College Station, Texas 77840-7896
Phone: 979-458-7380
Fax: 979-458-7386

City of College Station, Texas
Attn: Cheryl K. Turney
PO Box 9960
1101 Texas Avenue
College Station, TX 77840
Phone: 979-764-3557
Fax: 979-764-3899

XI. AUTHORIZATION:

The Texas Forest Service and the City of College Station represent that each is independently authorized to perform the functions contemplated by this Agreement;

XII. INDEMNITY

Subject to the limitations as to liability and damages in the Texas Tort Claims Act and without waiving its governmental immunity, each Party agrees to hold harmless each other, its governing board, officers, agents and employees for any liability, loss, damages, claims

or causes of action caused or asserted to have been caused directly or indirectly by any other Party to this Agreement, or any of its officers, agents or employees, or as the result of its performance, or any of its officers, agents or employees, under this Agreement, to the extent permitted by the laws and the constitution of the State of Texas.

XIII. FUNDING

Each Party to this Agreement shall participate with funds available from current revenues of the Party. No funds shall be transferred between the Parties.

XIV. ASSIGNMENT

This Agreement may not be assigned by either Party without the written consent of the other Party.

XV. OTHER TERMS

Invalidity. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the Parties.

Entire Agreement. This Agreement constitutes the entire agreement between the Parties and will not be explained, modified, or contradicted by any prior or contemporaneous negotiations, representations, or agreements, either written or oral. Only a subsequent, written agreement can modify this Agreement.

Choice of Law and Place of Performance. This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

Consent to Suit. Neither the City of College Station nor the Texas Forest Service by entering into this Agreement gives its consent to suit.

Authority to Contract. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of the respective Party.

Waiver. Failure of any Party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the Parties thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach, to the extent permitted by the laws and the constitution of the State of Texas.

Agreement Read. The Parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

Multiple Originals. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that: (1) the services specified above are necessary and authorized for activities that are properly within the statutory functions and programs of the affected agencies of Government, and (2) the services, materials, or equipment contracted for are not required by Section 21 of Article XVI of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

The Texas Forest Service further certifies that it has the authority to enter into this contract by authority granted in: Texas Government Code Title 7, Chapter 791, Subchapter B, Section 791.011.

The City of College Station further certifies that it has authority to enter into this contract by authority granted in: Texas Government Code Title 7, Chapter 791, Subchapter B, Section 791.011.

The undersigned parties bind themselves to the faithful performance of this contract.

Texas Forest Service _____

City of College Station, Texas _____

By: *Robby DeWitt*

By: _____

Title: Associate Director For
Finance And Administration

Title: _____

Date: 12/13/04

Date: _____

ATTEST:

Connie Hooks, City Secretary

APPROVED:

Thomas E. Brymer, City Manager

Director of Finance & Strategic Planning

Carla A. Robinson
City Attorney