

INTERLOCAL AGREEMENT

This interlocal agreement (the "Agreement") is made by and between **LUBBOCK COUNTY, TEXAS** ("LUBBOCK COUNTY"), a political subdivision of the State of Texas, acting through the Regional Public Defender for Capital Cases (the "PD"), and **TOM GREEN COUNTY, TEXAS** ("PARTICIPANT"), a political subdivision of the State of Texas, (also, individually, a "Party" or, collectively, the "Parties"). This Agreement is made pursuant to the Fair Defense Act, Texas Code of Criminal Procedure 26.044(b), and Texas Government Code Chapter 791.

RECITALS

WHEREAS, each Party finds: 1) that the subject of this Agreement is necessary for the benefit of the public; and 2) that it has the legal authority to perform and to provide the government function or service which is the subject matter of this Agreement; and,

WHEREAS, the performance of this Agreement by LUBBOCK COUNTY and PARTICIPANT will be in the common interest of the Parties;

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I PROGRAM

1.01 **Program Purpose and Term.** The Regional Public Defender for Capital Cases (the "PD"), funded by the Task Force on Indigent Defense Multi-Year Discretionary Grant Program Funds (the "Task Force"), will provide court-appointed counsel for individuals charged with the offense of capital murder (death-eligible) in the participating counties and who cannot afford to hire their own attorney. Inmates in units of the Texas Department of Criminal Justice within the region who are charged with capital murder will continue to be represented by the State Counsel on Offenders, or by private counsel in the case of a conflict. Capital murder cases filed against inmates in units of the Texas Department of Criminal Justice shall not be counted in the average number of capital murder cases filed in a county.

The Task Force will provide funding to hire staff for the PD offices operating in the 4th, 5th, 6th, 7th and 9th Administrative Judicial Regions, as well as start-up costs, during Fiscal Year 2011 (October 1, 2010-September 30, 2011). It is anticipated that expansion will continue to occur into the 2nd and 3rd Administrative Judicial Regions in Fiscal Year 2012 and the 1st and 8th Administrative Judicial Regions in Fiscal Year 2013.

Pursuant to continued funding thereafter, the Task Force is anticipated to provide funds to operate the PD office on a cost-sharing basis (Year 1 of Region's inclusion – 100%, Year 2 of Region's inclusion – 100%, Year 3 of Region's inclusion – 80%, Year 4 of Region's inclusion – 60%, Year 5 of Region's inclusion – 40%, Year 6 of Region's inclusion – 0%). It is possible that the Task Force may consider additional funding mechanisms

during Fiscal Years 2012 through 2017; however, the funding is not anticipated to be less than detailed above. In order to provide sustainable funding for the office and a fund balance for emergency situations, counties in the region will contribute, during Year 1 of inclusion - 0%, Year 2 of inclusion - 30%, Year 3 of inclusion - 40%, Year 4 of inclusion - 60%, Year 5 of inclusion - 80% and Year 6 of inclusion - 100% (with a minimum contribution of \$1,000). All percentages are based upon the amount that would be required with no grant funding available (year 6 of regional inclusion). A detailed county allocation schedule is provided in Attachment 1 and is incorporated herein for all purposes. Based upon this cost-sharing approach, participating counties shall provide the remaining operating costs based upon a formula taking into account the population of the county (50%) and the average number of capital murder cases filed over the past ten years (50%). Such cost share payments shall be made from current funds available to the PARTICIPANT at that time, subject to an annual appropriation. The Oversight Board of the PD will develop a plan to share costs among the counties beyond the grant period; however, the PD's obligation to perform after the grant period is contingent upon receipt of continued funding.

- 1.02 **Judges Authorized to Appoint PD.** The District Courts in the 4th, 5th, 6th, 7th and 9th Administrative Judicial Region may participate in the Program. The Program allows the Honorable Judge(s) of the Judicial District having jurisdiction within PARTICIPANT's geographic boundaries (so long as the jurisdiction lies within the noted Administrative Judicial Regions) to appoint the PD for the trial defense of death-eligible capital murder cases. In the event of a conflict of interest among defendants or a legal liability for the PD to accept appointment, the trial court shall appoint an attorney or attorneys other than the PD at the PARTICIPANT's expense.
- 1.03 **Duties and Responsibilities of the PD.** The PD will represent defendants at the trial or re-trial phase only. All decisions pertaining to the presentation of the case will be at the sole discretion of the PD. The PD will at all times be guided by and comply with his or her duties as a licensed attorney in the State of Texas and the Texas Disciplinary Rules of Professional Conduct in making these determinations.
- 1.04 **Program Analysis.** At least quarterly throughout the period of the grant and at the end thereof, the PD will prepare an analysis of the Program, as well as an estimated cost for PARTICIPANT's continued participation after all grant funds are expended. The analysis will consist of a fiscal analysis and an analysis of the effectiveness of the PD in meeting pre-established goals and objectives. The PD will provide copies of the analysis to PARTICIPANT's Commissioners Court and to the Honorable Judges identified of the 4th, 5th, 6th, 7th and 9th Administrative Judicial Regions. PARTICIPANT shall have three months from the date the cost analysis is provided to the Commissioners Courts to consider the analysis and determine whether it will continue to participate in the Program. If PARTICIPANT requests to continue participating in the Program, a new interlocal agreement as to funding and the funding cycle will be necessary.
- 1.05 **Data for the Analysis.** As consideration for its participation in the Program, PARTICIPANT agrees to provide the PD information as needed to conduct the analysis,

including the current payment schedule for court-appointed counsel on capital murder cases, and the previous five fiscal years' data on the amount PARTICIPANT paid for appointed counsel on capital murder cases, if available.

- 1.06 **Additional Experts.** PARTICIPANT will continue to incur the expense of additional experts as approved by the local court.
- 1.07 **Fact Investigators and Mitigation Specialists.** The PD will provide a fact investigator and mitigation specialist to cases assigned to the office.
- 1.08 **No other Costs Incurred.** Neither the Task Force nor the PD will assume any additional costs associated with representation of indigent defendants. Costs of interpreters or any other collateral cost must be absorbed by PARTICIPANT.

ARTICLE II **OTHER TERMS AND CONDITIONS**

- 2.01 **Notice and Addresses.** Unless otherwise specifically provided herein, all notices, reports, and invoices required under this Agreement shall be given in person or by certified or registered mail, addressed to the proper Party, at the following address:

If to LUBBOCK COUNTY:

Honorable Tom V. Head
County Judge
Lubbock County
PO Box 10536
Lubbock, Texas 79408

And:

Jack Stoffregen
Chief Public Defender
Regional Public Defender for Capital Cases
PO Box 10536
Lubbock, Texas 79408

If to PARTICIPANT:

Honorable Michael D. Brown
County Judge
Tom Green County
122 West Harris
San Angelo, Texas 76903

- 2.02 **No Partnership.** Nothing contained in this Agreement is intended to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. This Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of the other Party, for any purpose whatsoever.
- 2.03 **Waiver.** The failure of any Party to insist upon the performance of any terms or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that Party's right to insist upon appropriate performance or to assert any such right on any future occasion.
- 2.04 **Benefit of the Parties.** The terms and conditions of this Agreement are solely for the benefit of the Parties and are not intended to create any rights, contractual or otherwise, for any other person or entity.
- 2.05 **Force Majeure.** If the performance of any obligation under this Agreement is delayed by something reasonably beyond the control of the Party obligated to perform ("Force Majeure"), that Party shall be excused from performing the obligation during that period, so that the time period applicable to the performance shall be extended for a period of time equal to the period that Party was delayed due to the event of Force Majeure.
- 2.06 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- 2.07 **Prior Agreements Superseded.** This Agreement constitutes the only agreement of the Parties and supersedes any prior understanding or written or oral agreements between the Parties respecting the within subject matter.
- 2.08 **Amendments.** In order to be binding, an amendment to this Agreement must be in writing, dated subsequent to the date of this Agreement, and executed by the Parties.
- 2.09 **Withdrawal by Party.**
- (a) **Voluntary Withdrawal.** Voluntary withdrawal by PARTICIPANT from the Agreement shall occur upon the affirmative decision by PARTICIPANT's Commissioners Court to withdraw from the Agreement and the withdrawing PARTICIPANT giving at least one hundred and eighty (180) calendar days notice to LUBBOCK COUNTY and the PD. The effective date of voluntary withdrawal shall be one hundred and eighty (180) calendar days after the withdrawing Participant gives notice to LUBBOCK COUNTY.
- (b) **Involuntary Withdrawal.** PARTICIPANT shall be deemed to have involuntarily withdrawn from the Agreement upon the failure by the PARTICIPANT to pay any cost-sharing payment by the due date, as provided in a notice to the PARTICIPANT.

PARTICIPANT shall be given thirty (30) days written notice of non-payment by LUBBOCK COUNTY and shall not be deemed to be in default until the expiration of thirty (30) days after receipt of the written notice.

SIGNED AND EXECUTED this 24th day of May, 2011.

COUNTY OF LUBBOCK

COUNTY OF TOM GREEN

Honorable Thomas V. Head
County Judge

[Signature]

Honorable Michael D. Bost
County Judge
PRO-TEM



ATTEST:

ATTEST:

Honorable Kelly Pinion
Lubbock County Clerk

[Signature]

Honorable Elizabeth McGill
Tom Green County Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

Jack Stoffregen
Chief Public Defender
Regional Public Defender
for Capital Cases

REVIEWED FOR FORM:

REVIEWED FOR FORM:

B.J. "Beni" Hemmeline
Civil Division Chief
Criminal District Attorney's Office
Lubbock County

Attachment 1

County	Admin Reg	2000 Pop	% Total Pop	10-yr Avg Cases Added	% Total Cases	FY2008	FY2009	FY2010	FY2011	FY2012+
Andrews	7th	13,004	0.82320%	1.4	6.009%	\$0	\$16,742	\$14,047	\$21,070	\$33,484
Borden	7th	729	0.04615%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Brown	7th	37,674	2.38490%	1.3	5.579%	\$0	\$19,513	\$16,375	\$24,563	\$39,025
Callahan	7th	12,905	0.81693%	0.4	1.717%	\$0	\$6,207	\$5,209	\$7,814	\$12,415
Coke	7th	3,864	0.24461%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,199
Coleman	7th	9,235	0.58461%	0.3	1.288%	\$0	\$4,587	\$3,849	\$5,774	\$9,174
Concho	7th	3,966	0.25106%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,230
Crane	7th	3,996	0.25296%	0.1	0.429%	\$0	\$1,671	\$1,403	\$2,104	\$3,343
Dawson	7th	14,985	0.94860%	0.4	1.717%	\$0	\$6,530	\$5,480	\$8,220	\$13,060
Ector	7th	121,123	7.66752%	1.3	5.579%	\$0	\$32,455	\$27,237	\$40,855	\$64,910
Fisher	7th	4,344	0.27499%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,347
Gaines	7th	14,467	0.91581%	0.4	1.717%	\$0	\$6,450	\$5,413	\$8,119	\$12,900
Garza	7th	4,872	0.30842%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,511
Glasscock	7th	1,406	0.08900%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Haskell	7th	6,093	0.38571%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,190	\$1,890
Howard	7th	33,827	2.12871%	0.5	2.146%	\$0	\$10,473	\$8,789	\$13,184	\$20,946
Irion	7th	1,771	0.11211%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Jones	7th	20,785	1.31577%	1.0	4.292%	\$0	\$13,739	\$11,530	\$17,295	\$27,477
Kent	7th	859	0.05438%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Loving	7th	67	0.00424%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Lynn	7th	6,550	0.41464%	0.2	0.858%	\$0	\$3,119	\$2,617	\$3,926	\$6,238
McCulloch	7th	8,205	0.51941%	0.0	0.000%	\$0	\$1,273	\$1,068	\$1,602	\$2,545
Martin	7th	4,746	0.30044%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,472
Menard	7th	2,360	0.14940%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Midland	7th	116,009	7.34379%	1.5	6.438%	\$0	\$33,765	\$28,336	\$42,504	\$67,530
Mills	7th	5,151	0.32608%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,006	\$1,598
Mitchell	7th	9,698	0.61392%	0.0	0.000%	\$0	\$1,504	\$1,262	\$1,893	\$3,008
Nolan	7th	15,802	1.00032%	0.2	0.858%	\$0	\$4,554	\$3,822	\$5,732	\$9,108
Reeves	7th	13,137	0.83162%	0.0	0.000%	\$0	\$2,037	\$1,710	\$2,565	\$4,075
Runnels	7th	11,495	0.72767%	0.0	0.000%	\$0	\$1,783	\$1,496	\$2,244	\$3,566
Schleicher	7th	2,935	0.18580%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Scurry	7th	16,361	1.03571%	0.2	0.858%	\$0	\$4,640	\$3,894	\$5,842	\$9,281
Shackelford	7th	3,302	0.20903%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,024
Sterling	7th	1,393	0.08818%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Stonewall	7th	1,693	0.10717%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Taylor	7th	126,555	8.01139%	1.6	6.867%	\$0	\$36,452	\$30,591	\$45,887	\$72,904
Throckmorton	7th	1,850	0.11711%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Tom Green	7th	104,010	6.58421%	1.7	7.296%	\$0	\$34,007	\$28,539	\$42,809	\$68,014
Ward	7th	10,909	0.69058%	0.1	0.429%	\$0	\$2,743	\$2,302	\$3,454	\$5,487
Winkler	7th	7,173	0.45408%	0.0	0.000%	\$0	\$1,112	\$1,000	\$1,400	\$2,225

Attachment 1

County	Admin Reg	2000 Pop	% Total Pop	10-yr Avg	% Total	FY2008	FY2009	FY2010	FY2011	FY2012+
				Cases Added	Cases					
Armstrong	9th	2,148	0.13598%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Bailey	9th	6,594	0.41742%	0.6	2.575%	\$0	\$7,332	\$6,153	\$9,229	\$14,663
Baylor	9th	4,093	0.25910%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,270
Briscoe	9th	1,790	0.11331%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Carson	9th	6,516	0.41249%	0.3	1.288%	\$0	\$4,165	\$3,495	\$5,243	\$8,330
Castro	9th	8,285	0.52447%	0.0	0.000%	\$0	\$1,285	\$1,078	\$1,618	\$2,570
Childress	9th	7,688	0.48668%	0.0	0.000%	\$0	\$1,192	\$1,001	\$1,501	\$2,385
Cochran	9th	3,730	0.23612%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,157
Collingsworth	9th	3,206	0.20295%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Cottle	9th	1,904	0.12053%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Crosby	9th	7,072	0.44768%	0.1	0.429%	\$0	\$2,148	\$1,803	\$2,704	\$4,297
Dallam	9th	6,222	0.39387%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,215	\$1,930
Deaf Smith	9th	18,561	1.17498%	0.0	0.000%	\$0	\$2,879	\$2,416	\$3,624	\$5,757
Dickens	9th	2,762	0.17484%	0.2	0.858%	\$0	\$2,531	\$2,124	\$3,187	\$5,063
Donley	9th	3,828	0.24233%	0.1	0.429%	\$0	\$1,645	\$1,381	\$2,071	\$3,290
Floyd	9th	7,771	0.49193%	0.0	0.000%	\$0	\$1,205	\$1,011	\$1,517	\$2,410
Foard	9th	1,622	0.10268%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Gray	9th	22,744	1.43978%	0.7	3.004%	\$0	\$10,888	\$9,137	\$13,706	\$21,776
Hale	9th	36,602	2.31704%	0.4	1.717%	\$0	\$9,883	\$8,294	\$12,441	\$19,766
Hall	9th	3,782	0.23941%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,173
Hansford	9th	5,369	0.33988%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,048	\$1,665
Hardeman	9th	4,724	0.29905%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,465
Hartley	9th	5,537	0.35051%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,081	\$1,718
Hemphill	9th	3,351	0.21213%	0.3	1.288%	\$0	\$3,674	\$3,083	\$4,625	\$7,348
Hockley	9th	22,716	1.43800%	0.1	0.429%	\$0	\$4,575	\$3,889	\$5,759	\$9,149
Hutchinson	9th	23,857	1.51023%	0.2	0.858%	\$0	\$5,803	\$4,870	\$7,305	\$11,606
King	9th	356	0.02254%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Knox	9th	4,253	0.26923%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,319
Lamb	9th	14,709	0.93113%	0.1	0.429%	\$0	\$3,333	\$2,797	\$4,195	\$6,666
Limpscomb	9th	3,057	0.19352%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Lubbock	9th	242,628	15.35923%	3.3	14.163%	\$0	\$72,330	\$60,701	\$91,051	\$144,659
Moore	9th	20,121	1.27373%	0.5	2.146%	\$0	\$8,378	\$7,031	\$10,547	\$16,756
Motley	9th	1,428	0.09027%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Ochiltree	9th	9,006	0.57011%	0.0	0.000%	\$0	\$1,397	\$1,172	\$1,758	\$2,794
Oldham	9th	2,185	0.13832%	0.3	1.288%	\$0	\$3,493	\$2,932	\$4,398	\$6,987
Parmer	9th	10,016	0.63405%	0.1	0.429%	\$0	\$2,605	\$2,186	\$3,279	\$5,210
Potter	9th	113,546	7.18787%	1.2	5.150%	\$0	\$30,228	\$25,368	\$38,052	\$60,457
Randall	9th	104,312	6.60333%	1.9	8.155%	\$0	\$36,157	\$30,343	\$45,515	\$72,313
Roberts	9th	887	0.05615%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Sherman	9th	3,186	0.20169%	0.0	0.000%	\$0	\$1,000	\$1,000	\$1,000	\$1,000
Swisher	9th	8,378	0.53036%	0.0	0.000%	\$0	\$1,299	\$1,090	\$1,636	\$2,599

Attachment 1

County	Admin Reg	2000 Pop	% Total Pop	10-yr Avg Cases Added	% Total Cases	FY2008	FY2009	FY2010	FY2011	FY2012+
Terry	9th	12,761	0.80782%	0.0	0.000%	\$0	\$1,979	\$1,661	\$2,491	\$3,958
Wheeler	9th	5,284	0.33450%	0.1	0.429%	\$0	\$1,871	\$1,570	\$2,355	\$3,742
Wilbarger	9th	14,676	0.92904%	0.2	0.858%	\$0	\$4,379	\$3,875	\$5,513	\$8,758
Yoakum	9th	7,322	0.46351%	0.0	0.000%	\$0	\$1,136	\$1,000	\$1,430	\$2,271
Total (7th)	40 counties	779,106	49.32021%	12.6		\$0	\$263,356	\$223,971	\$327,052	\$511,983
Total (9th)	45 counties	800,583	50.67979%	10.7		\$0	\$245,791	\$209,213	\$305,094	\$477,278
Total (85 Counties)		1,579,689	100.00000%	23.3		\$0	\$489,131	\$433,184	\$632,146	\$989,262
Total (including grant)						\$650,685	\$1,311,568	\$1,050,012	\$1,043,364	\$989,262
Grant Amount						\$650,685	\$822,437	\$616,828	\$411,218	\$0
County Share						\$0	\$489,131	\$433,184	\$632,146	\$980,239