INTERLOCAL AGREEMENT

This interlocal agreement (the "Agreement") is made by and between the **REGIONAL PUBLIC DEFENDER OFFICE LOCAL GOVERNMENT CORPORATION** ("RPDO"), and **BROWN 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, Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, authorizes all local governments to contract with each other to provide a governmental function or service that each party to the contract is authorized to perform individually and in which the contracting parties are mutually interested; and

WHEREAS, the RPDO is a public, non-profit corporation organized under Subchapter D, Chapter 431 of the Texas Transportation Code a "local government" pursuant to Section 791.003(4)(B) of the Texas Government Code and is authorized to participate on behalf of Lubbock County to oversee and provide defense services to indigent defendants in Lubbock County and other counties which enter into interlocal agreements with the RPDO to provide defense services; and

WHEREAS, Participant has a need for and desires the RPDO to provide defense services to indigent defendants in Brown County, Texas outlined herein; and

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 RPDO 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 "RPDO"), funded in part by the Texas Indigent Defense Commission ("TIDC") Multi-Year Discretionary Grant Program Funds and in part by Program Participants, 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 be represented by the State Counsel for 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.

A participating county's costs are based on several factors including: (i) funds received by the RPDO from the TIDC Multi-Year Discretionary Grant Program Funds; (ii) the participating county's population; (iii) the number of counties participating in the Program; (iv) a participating county's population as a percentage of the total population of all participating counties; and (iv) the average number of capital murder cases filed in the participating county (the average number of capital cases is based on the previous ten (10) years). The minimum cost per participating county shall be $1,000.00. Attached hereto as Attachment 1 is each county's cost for participating in the Program.

The Interlocal Agreements shall become effective the date signed by Brown County Commissioners Court and continue through September 30, 2026. Thereafter, the agreements shall renew automatically on October 1st for one successive one-year term through September 30, 2027, unless terminated under this Agreement.

The parties agree that RPDO will only be obligated to perform Duties and Responsibilities set forth herein related to prosecutions for conduct on or after the date this agreement is signed.

1.02 **Judges Authorized to Appoint RPDO.** The Program allows the Honorable Judge(s) of the Judicial District having jurisdiction within Participant's geographic boundaries to appoint the RPDO for the trial defense of a defendant in a death-eligible capital murder cases by completing and submitting to the RPDO the attached application (Attachment 2). In the event of a death-eligible capital murder case with multiple defendants, the trial court shall appoint the RPDO to only one eligible defendant. Any other attorneys appointed for other defendants in such case shall be at the Participant's expense.

1.03 **Duties and Responsibilities of the RPDO.** Subject to the terms and conditions outlined herein, the RPDO will represent qualifying defendants charged with the offense of capital murder (death-eligible) in all criminal proceedings directly related thereto from appointment through trial disposition. The RPDO does not represent defendants' post-conviction or in motions for new trial. The RPDO will exercise sole discretion as legal counsel in its representation of the defendant in compliance with the duties of a licensed attorney in the State of Texas and, as determined at the sole and absolute discretion of the RPDO: (i) the *Texas Disciplinary Rules of Professional Conduct;* (ii) the *State Bar of Texas Guidelines and Standards for Texas Capital Counsel;* (iii) the *Supplementary Guidelines and Standards for the Mitigation Function of Defense Teams in Texas Death Penalty Cases*; (iv) the *American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*; (v) the *American Bar Association Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*; (vi) all applicable state statutes including but not limited to Article 26.044(j) of the Texas Code of Criminal Procedure; (vii) all state and federal case law applicable for the provision of effective assistance of counsel in death penalty cases; and (viii) any applicable case load management policies as may be adopted by the RPDO.

1.04 **Right to Audit.** The RPDO will conduct an annual audit that, upon written request, will be made available to the Participant. Participant may request and be provided with an opportunity to audit any relevant and non-confidential records of the RPDO directly related to Participant's agreement with the RPDO that support the calculations of charges invoiced to the Participant under this Agreement. Such audits shall be conducted at Participant's sole cost and expense and under mutually acceptable terms at RPDO's premises in a manner that minimizes any interruption in the daily activities at such premises.

1.05 **Data for the Analysis.** As consideration for its participation in the Program, Participant agrees to provide the RPDO 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 **Experts.** Participant will continue to incur the expense of experts as approved by the local court. Participant may be required to deposit funds with the RPDO as necessary to pay for the expense of experts as requested by the RPDO or required by the district court with jurisdiction over the applicable capital murder case.

1.07 **Fact Investigators and Mitigation Specialists.** The RPDO will provide a fact investigator and mitigation specialist to cases assigned to the RPDO office.

1.08 **No other Costs Incurred.** Neither the TIDC nor the RPDO 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.** Any notice required by this Agreement shall be deemed to be properly served, if (i) provided in person, by e-mail with delivery confirmation; or (ii) deposited in the United States mail by certified letter, return receipt requested, addressed to the recipient at recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described:

If to RPDO:

Edward Ray Keith Jr.
Chief Public Defender
Regional Public Defender for Capital Cases
PO Box 2097
Lubbock, Texas 79408
E-Mail: rkeith@rpdo.org

If to Participant:

Honorable
Brown County
E-Mail:

2.02 **Governmental Function/No Waiver of Immunity**. The parties to this Agreement acknowledge that the services contracted for in this Agreement relate to the governmental functions of the Participant and the RPDO. Nothing in this Agreement shall be construed to impair or affect any sovereign or governmental immunity or official immunity enjoyed by or otherwise available to the Participant, the RPDO, or their respective officers and employees. No waiver of sovereign or official immunity, whether express or implied, is intended or made by this Agreement.

2.03 **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.

2.04 **Employee Status**. RPDO shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate its employees. RPDO's employees will not be considered, for any purpose, employees of Participant within the meaning or the application of any federal, state or local law or regulation, including without limitation, laws, rules or regulations regarding or related to unemployment insurance, health insurance, old age benefits, workers compensation, labor, personal injury or taxes of any kind.

2.05 **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.

2.06 **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.

2.07 **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.

2.08 **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.

2.09 **Non-Appropriation.** RPDO and Participant recognize that any payments made for performance under this Agreement and any services provided shall be and are subject to the current revenues, staffing and allocated resources available to the respective party. The RPDO or the Participant executing this Agreement may terminate this Agreement, without incurring any liability to the other except to pay for any services already rendered, if funds, staffing or allocated resources are not appropriated or are insufficient to provide the services as determined by the respective governing bodies of the parties. In such event, this Agreement shall terminate automatically on the last day of the then-current fiscal year or when the appropriation made for the then-current fiscal year for the services covered by this Agreement is spent, whichever occurs first.

2.10 **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.

2.11 **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.

2.12 **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 in writing to the RPDO. The effective date of voluntary withdrawal shall be the last day of the applicable term of the Agreement after the one hundred and eighty (180) day notice provided by the withdrawing Participant.

(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 RPDO and shall not be deemed to be in default until the expiration of thirty (30) days after receipt of the written notice.

(c) In the event that Participant withdraws under (a) or (b) and the RPDO is representing an individual or individuals after having been appointed by a court in Participant's County, beginning on the effective date of the withdrawal, Participant shall be responsible for timely payment of $250.00 per hour for the first chair attorney, $200.00 per hour for the second chair attorney, $125.00 per hour for the mitigation specialist and $100.00 per hour for the investigator. Additionally, Participant shall also timely pay upon receipt and documentation all investigative costs incurred by the RPDO including but not limited to travel, lodging, meals and records collection.

SIGNED AND EXECUTED this _____ day of _____, 20___.

REGIONAL PUBLIC DEFENDER OFFICE LOCAL GOVERNMENT CORPORATION

_____
Board Chairman

ATTEST:

_____
Board Secretary

APPROVED AS TO CONTENT:

_____
Edward Ray Keith Jr.
Chief Public Defender
Regional Public Defender for Capital Cases

REVIEWED FOR FORM:

_____
Slater C. Elza
Underwood Law Firm
General Counsel

COUNTY OF BROWN

_____
Honorable
County Judge

ATTEST:

_____
County Clerk

APPROVED AS TO CONTENT:

_____

REVIEWED FOR FORM:

_____