

COUNTY OF KAUFMAN §
 §
STATE OF TEXAS §

LOCAL AGREEMENT
RESPECTING FORFEITED CONTRABAND UNDER CHAPTER 59
TEXAS CODE OF CRIMINAL PROCEDURE

PREAMBLE

This Local Agreement (“Agreement”) is made by and between the KAUFMAN COUNTY CRIMINAL DISTRICT ATTORNEY OFFICE (“Attorney Representing the State”) and the MESQUITE POLICE DEPARTMENT (“Law Enforcement Agency”) pursuant to Chapter 59 of the Texas Code of Criminal Procedure. Attorney Representing the State or the Law Enforcement Agency may hereinafter be referred to individual as a “Party,” or collectively, the “Parties.”

The Kaufman County Criminal District Attorney’s Office represents the State of Texas in forfeiture proceedings involving contraband seized pursuant to Chapter 59 of the Texas Code of Criminal Procedure. The Mesquite Police Department is the law enforcement agency of the City of Mesquite, a political subdivision of Texas authorized by law to employ peace officers. Art. 59.06 of Chapter 59 of the Texas Code of Criminal Procedure has authorized the Mesquite Police Department as the law enforcement agency and the Kaufman County Criminal District Attorney’s Office as the attorney representing the state to execute this Agreement. The definitions of Chapter 59, *supra*, are incorporated in this agreement and referenced as if fully set forth herein.

CUSTODY OF CONTRABAND AFTER SEIZURE

All contraband which is current money of the United States, and which is seized by the Law Enforcement Agency shall be deposited with appropriate City of Mesquite Finance Department asset forfeiture accounts in accordance with Art. 59.03(c) of the Texas Code of Criminal Procedure. Pursuant to the provisions of this Agreement pertaining to the disposition of forfeited contraband, Law Enforcement Agency shall deposit all forfeited monies, with the deduction of applicable court costs, necessary expenses and any interest earned once deposited into a City of Mesquite asset forfeiture account, into a specially designated Seizure Account in the county treasury for the benefit of the Attorney Representing the State in accordance with Art. 59.06(c)(1).

All contraband or the proceeds thereof shall be safely kept by the Law Enforcement Agency according to the requirements of this Agreement and of Chapter 59, *supra*, and other applicable laws pending final disposition.

DISPOSITION OF FORFEITED CONTRABAND

The parties hereby agree to the following disposition of contraband forfeited to the Attorney Representing the State as the agent for the State:

1. **In the event of a default forfeiture hearing where no answer is filed by an interest holder.** Thirty (30) days after a final judgment of forfeiture has been signed without a Motion for New Trial or a Notice of Appeal, all forfeited contraband, including current money of the United States and proceeds from the sale of property, will be divided between the Law Enforcement Agency and the Attorney Representing the State in the following manner:

70% of the money and proceeds to the Law Enforcement Agency; and

30% of the money and proceeds to the Attorney Representing the State,

after deducting court costs and other necessary expenses (to include service of process costs and/or cost of sale) and inclusive of any interest earned on the money once deposited in the City of Mesquite asset forfeiture account.

2. **In the event of a contested forfeiture hearing where an answer is filed by an interest holder.** Thirty (30) days after a final judgment of forfeiture has been signed without a Motion for New Trial or a Notice of Appeal, all forfeited contraband, including current money of the United States and proceeds from the sale of property, will be divided between the Law Enforcement Agency and the Attorney Representing the State in the following manner:

65% of the money and proceeds to the Law Enforcement Agency; and

35% of the money and proceeds to the Attorney Representing the State,

after deducting court costs and other necessary expenses (to include service of process costs) and inclusive of any interest earned on the money once deposited in the City of Mesquite asset forfeiture account.

3. The Mesquite Police Department will retain possession and ownership of all firearms and ammunition that is seized and forfeited under Chapter 59, Texas Code of Criminal Procedure.
4. All currency equivalent, such as stocks, bonds, securities, negotiable instruments and other documents representing things of value, and things of value, such as jewelry, precious metals, coins, aircraft, boats, boat motors, and real property, shall be sold and the proceeds divided pursuant to the terms set out in paragraph 1 and 2 above, between the parties after deducting court costs, expenses of sale, and other necessary litigation related expenses. The value of all currency equivalent and things of value will be based on the market value immediately following thirty (30) days after a final judgment has been signed without a Motion for New Trial or a Notice of Appeal.
5. All other finally forfeited personal property, such as cars, trucks, television sets, stereos, etc., shall be sold and the proceeds divided pursuant to the terms set out in paragraph 1 and 2 above, between the parties after deducting court costs, expenses of sale, and other necessary expenses.
6. If the Law Enforcement Agency intends to use any finally forfeited contraband for official purposes once the property is free of interest from any interest holder, Law Enforcement Agency shall advise the Attorney Representing the State of the use in writing any time before such contraband is sold or otherwise disposed of. If such finally forfeited contraband is later sold, the proceeds shall be divided pursuant to the terms set out in paragraph 1 and 2 above.
7. If finally forfeited contraband is to be sold and not used for official purposes as prescribed by Chapter 59 of the Code of Criminal Procedure, such contraband must be sold and disbursements made in accordance with this Agreement not later than sixty (60) days after the sale of the finally forfeited contraband.
8. Pursuant to Article 59.06(b) of the Texas Code of Criminal Procedure, the Attorney Representing the State, may transfer ownership of a forfeited motor vehicle to the Law Enforcement Agency for use by the Law Enforcement Agency to maintain, repair, use, operate, or loan for official purposes as prescribed by Chapter 59 of the Texas Code of Criminal Procedure. If a forfeited motor vehicle that has been transferred to a Law Enforcement Agency is later sold, the proceeds of that sale will be distributed to the Attorney Representing the State pursuant to the terms of paragraph 1 and 2 above, unless the vehicle is sold for \$850.00 or less, in which case 50% of the proceeds will be distributed to the Law Enforcement Agency and 50% of the proceeds will be distributed to the Attorney Representing the State.

9. The parties shall receive, keep, and use all forfeited property and the proceeds thereof for the purposes and in the manner prescribed by Chapter 59 of the Code of Criminal Procedure and other applicable laws.
10. If the Law Enforcement Agency or Attorney Representing the State expend significant amounts of time and effort in investigative efforts or trial efforts on a particular case, or if other special circumstances exist which are not adequately taken into account herein, then this Agreement may be modified with the consent of both parties to provide for the distribution of forfeited contraband between the Law Enforcement Agency and Attorney Representing the State commensurate with the amount of time and effort expended by each. Any such modifications shall be reduced to writing.
11. This agreement applies to all things forfeited pursuant to Chapter 59 of the Texas Code of Criminal Procedure after the effective date of this Agreement. Currency and property will be considered to have been finally forfeited to the State when the forfeiture judgment has become final and no motion for new trial or appeal has been taken (or all such motions and appeals have been disposed of).
12. Disbursement of forfeited currency into the Attorney Representing the State's designated Seizure Account in the county treasury, as described in this Agreement, shall be made no later than sixty (60) days after Law Enforcement Agency's receipt of a final judgment or order.
13. If disbursements are not made within the time periods established by this agreement this agreement shall be suspended until such time as disbursements have been made to the satisfaction of both parties. The party who fails to receive its disbursement in accordance with this agreement shall notify the other party in writing that the agreement has been suspended, with a specific explanation for the suspension. During a period of suspension neither party is obligated to act. The parties will be required to execute individual agreements for any additional seizure or forfeiture actions which may be initiated during the suspension of this Agreement.
14. The parties may from time to time reach a special separate agreement regarding the holding and disposition of any seized property without affecting the validity of or continuation of this Agreement.

TERM OF AGREEMENT AND TERMINATION

This Agreement becomes effective _____ and continues in effect until modified by a subsequent agreement in writing or until either party gives written notice to the other party of its intention to withdraw from the same. Either party may terminate this Agreement for any reason or no reason at all by giving the other party (30) days advance written notice.

MISCELLANEOUS TERMS AND CONDITIONS

1. LIABILITY.

ALL PARTIES AGREE TO BE RESPONSIBLE FOR EACH OF THEIR OWN NEGLIGENT ACTS OR OMISSIONS, OR OTHER TORTIOUS CONDUCT IN THE COURSE OF PERFORMANCE OF THIS AGREEMENT WITHOUT WAIVING ANY SOVEREIGN IMMUNITY, GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO THE PARTIES UNDER FEDERAL OR STATE LAW. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, IN OR TO ANY THIRD PERSONS OR ENTITIES. ALL PARTIES AGREE THAT ANY SUCH LIABILITY OR DAMAGES OCCURRING DURING THE PERFORMANCE OF THIS AGREEMENT CAUSED BY THE JOINT OR COMPARATIVE NEGLIGENCE OF THE PARTIES, OR THEIR EMPLOYEES, AGENTS, OR OFFICERS, SHALL BE DETERMINED IN ACCORDANCE WITH COMPARATIVE RESPONSIBILITY LAWS OF TEXAS. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

2. Any notice of certification required or permitted to be delivered under this Agreement shall be deemed to have been given when personally delivered, or if mailed, seventy-two (72) hours after the deposit of the same in the United States Mail, postage prepaid, certified, or registered, return receipt requested, properly addressed to the contact person shown at the respective addresses set forth below, or at such other addresses as shall be specified by written notice delivered in accordance herewith:

If intended for Attorney Representing the State:

Kaufman County Criminal District Attorney's Office
PO Box 729
Kaufman, TX 75142
ATTN: Administrative Attorney

If intended for the Mesquite Police Department, to:

Chief of Police
Mesquite Police Department
777 N. Galloway Avenue, Box 850137
Mesquite, TX 75149

3. Entire Agreement and Amendment.

This Agreement, including any exhibits and attachments, constitutes the entire agreement between the Parties and supersedes any other agreements concerning the subject matter of this transaction, whether oral or written. This Agreement and the respective rights and obligations of the Parties hereto shall be binding upon the successors and assigns of the Parties hereto, as well as the Parties themselves. No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the Parties. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in federal or state law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

4. Counterparts, Number/Gender and Headings.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

5. Severability.

If any provisions of this Agreement is construed to be illegal, invalid, void or unenforceable, this construction will not affect the legality or validity of any of the remaining provisions. The unenforceable or illegal provision will be deemed stricken and deleted, but the remaining provisions shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

6. Sovereign Immunity.

This Agreement is expressly made subject to the Attorney Representing the State's Governmental Immunity, including, without limitation, Title 5 of the Texas Civil Practices and Remedies Code and all applicable State and federal laws. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability, or a waiver of any tort limitation, that the Attorney Representing the State or the Law Enforcement Agency has by operation of law, or otherwise. Nothing in this Agreement is intended to benefit any third party beneficiary.

7. Compliance with Laws and Venue.

In carrying out the obligations required by this Agreement, Law Enforcement Agency must observe and comply with all licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials, and all applicable federal, State, and local statutes, ordinances, rules, and regulations. Texas Law shall govern this Agreement and venue shall lie exclusively in State Court in Kaufman County, Texas, and Federal Court located in Dallas, Texas.

8. Relationship of Parties.

Each Party is an independent contractor and not an agent, servant, joint enterpriser, joint venturer or employee of the other Party.

9. Contra Proferentum.

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be construed against the Party who drafted the Agreement, and such Party shall not be responsible for the language used.

10. Assignment.

Neither Party may transfer or assign its interest in this Agreement without prior written consent of the non-assigning Party.


11. Continuing Obligations.

All obligations of this Agreement which expressly or by their nature survive the expiration, termination or transfer of this Agreement shall continue in full force and effect after and notwithstanding its expiration, termination or transfer until such are satisfied in full or by their nature expire.

12. Signatory Warranty.

The Parties represent that each has the full right, power and authority to enter and perform this Agreement in accordance with all of the terms and conditions herein, and that the execution and delivery of this Agreement is made by authorized representatives of the Parties to validly and legally bind the Parties to all terms, performances and provisions set forth in this Agreement.

AGREED AND EXECUTED this 6th day March, 23.


Erleigh N. Wiley, Criminal District Attorney
Kaufman County Criminal District Attorney
1902 E. US Highway 175
PO Box 729
Kaufman, TX 75142
ewiley@kaufmancounty.net

David Gill
Chief of Police
Mesquite Police Department
777 North Galloway Avenue
Mesquite, TX 75149

CITY OF MESQUITE

By: _____
Cliff Keheley, City Manager

ATTEST

By: _____
Sonja Land, City Secretary

APPROVED AS TO FORM:
David L. Paschall, City Attorney

By: _____
Assistant City Attorney