

Capital Area Council of Governments Interlocal Agreement for 2024-2025 Solid Waste Grant 25-12-02

Sec. 1. Parties and Purpose

- 1.1. The Capital Area Council of Governments ("CAPCOG") is a regional planning commission and political subdivision of the State of Texas organized and operating under the Texas Regional Planning Act of 1965, as amended, Chapter 391 of the Local Government Code.
- 1.2. Burnet County ("GRANT RECIPIENT") is a county in the State of Texas.
- 1.3. CAPCOG has received funding from the Texas Commission on Environmental Quality (TCEQ) for the implementation of the Regional Solid Waste Management Plan (RSWMP).
- 1.4. GRANT RECIPIENT has applied for grant funding from CAPCOG to fund solid waste management activities that support CAPCOG's RSWMP.
- 1.5. TCEQ has authorized CAPCOG to award funding to GRANT RECIPIENT for eligible activities.
- 1.6. This agreement is entered into between CAPCOG and GRANT RECIPIENT pursuant to Texas Government Code chapter 791.
- 1.7. For purposes of carrying out CAPCOG's duties and obligations under this agreement, the parties understand and agree that references to CAPCOG includes its employees, officers, directors, volunteers, agents (including the Capital Area Council of Governments – CAPCOG) and their representatives, individually, officially, and collectively.
- 1.8. Each CAPCOG and GRANT RECIPIENT being referred to individually as the "Party" or collectively are referred to as "Parties" in this document.

Sec. 2. Goods and Services

- 2.1. GRANT RECIPIENT agrees to carry out the work described in Attachment A – Scope of Work.
- 2.2. GRANT RECIPIENT shall not proceed to carrying out the scope of work until it has:
 - 2.2.1. Completed a mandatory grant management workshop provided by CAPCOG; and
 - 2.2.2. Received a notice to proceed from the CAPCOG Project Representative listed in Attachment B.

Sec. 3. Term of Agreement

- 3.1. The effective date of this agreement is September 1, 2024, and ends, unless sooner terminated or extended under Sec. 12, Sec. 13, or Sec. 14, on April 30, 2025, or extended by written mutual agreement of the Parties. As indicated in Attachment A, there are obligations that extend beyond the term of the contract.

Sec. 4. Agreement Price and Payment Terms

- 4.1. CAPCOG agrees to provide GRANT RECIPIENT a grant of \$35,000.00 on a reimbursement basis in accordance with the terms in Attachment A. CAPCOG may unilaterally increase this amount if funding allows as described in Attachment A.
- 4.2. GRANT RECIPIENT agrees to submit a reimbursement request for all grant-funded activities to CAPCOG no later than May 30, 2025, on forms provided by CAPCOG according to any instructions provided by CAPCOG.
- 4.3. Any costs incurred prior to CAPCOG's issuance of a Notice to Proceed shall not be eligible for reimbursement.
- 4.4. GRANT RECIPIENT agrees to certify each reimbursement request as follows:

Burnet County certifies that this reimbursement request is correct and complete and that the amount requested has not been received.
- 4.5. CAPCOG agrees to pay GRANT RECIPIENT the amount owed on each reimbursement request within 30 calendar days after its receipt, subject to acceptance of the deliverable as specified in Attachment A.

Sec. 5. Rights and Duties

- 5.1. To the extent authorized under Texas law, as to any judicial or administrative suit, claim, investigation, or proceeding (each a "Proceeding") brought by someone other than GRANT RECIPIENT that arises out of GRANT RECIPIENT's breach of this agreement or any negligent or intentional act of GRANT RECIPIENT under this agreement or any of the transactions contemplated under this agreement, GRANT RECIPIENT shall indemnify CAPCOG, its directors, officers, employees, and agents (collectively, "CAPCOG Indemnitees") against all (a) amounts awarded in, or paid in settlement of, the Proceeding, including any interest, and (b) any out-of-pocket expense incurred in defending the Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys' and other professionals' fees and disbursements (collectively, "Indemnifiable Losses") except to the extent that a CAPCOG Indemnitee negligently or intentionally caused those Indemnifiable Losses. To the extent authorized under Texas law, as to any Proceeding brought by someone other than CAPCOG that arises out of CAPCOG's breach of this agreement or any negligent or intentional act of CAPCOG under this agreement or any of the transactions contemplated under this agreement, CAPCOG shall indemnify GRANT RECIPIENT, its officers, employees, and agents (collectively, "GRANT RECIPIENT Indemnitees") against all Indemnifiable Losses except to the extent that a GRANT RECIPIENT Indemnitee negligently or intentionally caused those Indemnifiable Losses.
- 5.2. For purposes of this agreement, "Force Majeure Event" means, with respect to a Party, any event or circumstance, whether or not foreseeable, that was not caused by that Party (other than a strike or other labor unrest that affects only that Party, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstance that results in that Party's not having sufficient funds to comply with an obligation to pay money) and any consequences of that event or circumstance. If a Force Majeure Event prevents a Party from complying with any one or more obligations under this agreement, that inability to comply will not constitute breach if (1) that Party uses reasonable efforts to perform those

obligations, (2) that Party's inability to perform those obligations is not due to its failure to (a) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (b) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that Party complies with its obligations under this section. If a Force Majeure Event occurs, the noncomplying Party shall promptly notify the other Party of the occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying Party expects it to last. Thereafter the noncomplying Party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying Party shall use reasonable efforts to limit damages to the other Party and to resume its performance under this agreement.

Sec. 6. Compliance with Applicable Law and Policy

- 6.1. GRANT RECIPIENT agrees to comply with all APPLICABLE LAW and POLICY in carrying out this Agreement, including any purchases or reimbursement requests made hereunder.

Sec. 7. Independent Contractor

- 7.1. GRANT RECIPIENT is not an employee or agent of CAPCOG, but it performs this contract solely as an independent contractor.

Sec. 8. Insurance

- 8.1. GRANT RECIPIENT agrees to maintain its own commercial general liability insurance, or the equivalent in amount and coverage of self-insurance, during the term of this contract and to name CAPCOG an additional insured on the policy. GRANT RECIPIENT agrees to provide the minimum primary insurance coverage of \$500,000 general aggregate and \$250,000 each occurrence plus \$500,000 excess coverage.
- 8.2. GRANT RECIPIENT's liability insurance must contain provisions, to the extent legally permitted, that the insurer will notify CAPCOG in writing at least 10 calendar days in advance of (1) cancellation of non-renewal of the policy; (2) any reduction in the policy amounts; and (3) deletion of CAPCOG as an additional insured.
- 8.3. GRANT RECIPIENT agrees to furnish CAPCOG with a certificate of the GRANT RECIPIENT's commercial liability insurance or copy of its policy, or to certify in writing that it has in force the equivalent amount and coverage of self-insurance if requested.

Sec. 9. Assignment and Subcontracting

- 9.1. Except as specified in the attached scope of services, GRANT RECIPIENT may not assign its rights or subcontract its duties under this Agreement without the prior written consent of CAPCOG. An attempted assignment or subcontract in violation of this Sec. 9.1 is void.

Sec. 10. Records and Inspections

- 10.1. GRANT RECIPIENT agrees to maintain records adequate to document its performance, costs, and receipts under this Agreement. GRANT RECIPIENT agrees to maintain these records at GRANT RECIPIENT's office address described in Sec. 16.
- 10.2. Subject to the additional requirement of Sec. 10.3, GRANT RECIPIENT agrees to preserve the records for four years after receiving its final payment under this Agreement.

- 10.3. If an audit of or information in the records is disputed or the subject of litigation, GRANT RECIPIENT agrees to preserve the records until the dispute or litigation is finally concluded, regardless of the ending or early termination of this Agreement.
- 10.4. CAPCOG is entitled to inspect and copy, during normal business hours at GRANT RECIPIENT's offices where they are maintained, the records maintained under this Agreement for as long as they are preserved.
- 10.5. CAPCOG is also entitled to visit GRANT RECIPIENT's offices and talk to its personnel during normal business hours to assist in evaluation of its performance under this Agreement.

Sec. 11. Proprietary or Confidential Information

- 11.1. All information in CAPCOG's possession is public information and is subject to disclosure to third parties upon request, unless exempted from disclosure by the Texas Public Information Act.
- 11.2. If GRANT RECIPIENT believes that information it submits to CAPCOG is proprietary or confidential and is not disclosable to a third party, GRANT RECIPIENT must clearly mark the information as proprietary or confidential and inform CAPCOG in writing that GRANT RECIPIENT will contest disclosure of the information if disclosure is requested under the Texas Public Information Act.
- 11.3. If the allegedly proprietary or confidential information is clearly marked as such and CAPCOG was informed of GRANT RECIPIENT's desire to keep the information confidential, CAPCOG agrees to use the information only in performing this Agreement and to take reasonable precautions to protect the information from unauthorized disclosure to third parties. CAPCOG agrees to refuse to disclose the information, if requested to do so under the Texas Public Information Act, and instead to request an Attorney General's decision on whether the information may be disclosed. CAPCOG agrees to inform GRANT RECIPIENT of any request for disclosure of the information under the Texas Public Information Act.

Sec. 12. Termination of Agreement without Cause

- 12.1. Agreement may be terminated by either Party with a 60-day written notice delivered under the terms of Sec. 16.

Sec. 13. Suspension or Termination of Agreement for Unavailability of Funds

- 13.1. GRANT RECIPIENT acknowledges that CAPCOG is a governmental entity without taxing power and agrees that CAPCOG may suspend its payment obligations under or terminate this Agreement in whole or part if CAPCOG learns that funds to pay for all or part of the goods and services will not be available at the time of delivery or performance. If CAPCOG suspends or terminates only part of this agreement for unavailability of funds, GRANT RECIPIENT agrees to perform the unsuspended or unterminated part if CAPCOG so requests.
- 13.2. CAPCOG suspends or terminates this agreement for unavailability of funds by giving GRANT RECIPIENT notice of the suspension or termination, as soon as it learns of the funding unavailability, specifying the suspension or termination date, which may not be fewer than 10 business days from the notice date, and describing the part or parts suspended or terminated. The Agreement is suspended or terminates on the specified termination date.

- 13.3. If this agreement is suspended or terminated for unavailability of funds under this Sec. 13, GRANT RECIPIENT is entitled to compensation for the services it performed before it received notice of suspension or termination. However, CAPCOG is not liable to GRANT RECIPIENT for costs it paid or incurred under this Agreement after or in anticipation of its receipt of notice of suspension or termination.

Sec. 14. Termination for Breach of Contract

- 14.1. If GRANT RECIPIENT or CAPCOG breaches a material provision of this Agreement, the other may notify the breaching Party describing the breach and demanding corrective action. The breaching Party has five business days from its receipt of the notice to correct the breach, or to begin and continue with reasonable diligence and in good faith to correct the breach. If the breach cannot be corrected within a reasonable time, despite the breaching party's reasonable diligence and good faith effort to do so, the parties may agree to terminate the Agreement or either party may invoke the dispute resolution process of Sec. 15.
- 14.2. Termination for breach under this section does not waive either party's claim for damages resulting from the breach.

Sec. 15. Dispute Resolution

- 15.1. The parties desire to resolve disputes arising under this Agreement without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between themselves.
- 15.2. CAPCOG shall use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this contract and such process is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practice and Remedies Code. CAPCOG must submit written notice of a claim of breach of contract under this chapter to Burnet County, Attn: Honorable James Oakley, Burnet County Judge, 220 South Pierce Street, Burnet, TX 78611.
- 15.3. The parties agree to continue performing their duties under this Agreement, which are unaffected by the dispute, during the negotiation and mediation process.

Sec. 16. Notice to Parties

- 16.1. Notice to be effective under this contract must be in writing and received by the party against whom it is to operate. Notice is received by a party: (1) when it is delivered to the party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address specified in Sec. 16.2 and signed on behalf of the party; or (3) three business days after it's deposited in the United States mail, with first-class postage affixed, addressed to the party's address specified in Sec. 16.3.
- 16.2. CAPCOG's address is 6800 Burleson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Betty Voights, Executive Director, bvoights@capcog.org.
- 16.3. GRANT RECIPIENT's address is: 220 South Pierce Street, Burnet, TX 78611, Attn. Honorable James Oakley, Burnet County Judge.
- 16.4. A Party may change its address by providing notice of the change in accordance with Sec. 16.1.

Sec. 17. Attachments

17.1. The following attachments are part of this agreement:

Attachment A: Scope of Services

Attachment B: Project Representatives and Records Location

Sec. 18. Miscellaneous

- 18.1. Each individual signing this Agreement on behalf of a party warrants that he or she is legally authorized to do so and that the party is legally authorized to perform the obligations undertaken.
- 18.2. This Agreement states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by all parties.
- 18.3. This Agreement is binding on and inures to the benefit of the parties' successors in interest.
- 18.4. This Agreement is performable in Travis County, Texas, and Texas law governs the interpretation and application of this contract.
- 18.5. This Agreement is executed through signatures by both parties transmitted electronically.

Burnet County

Capital Area Council of Governments

By_____

By_____

James Oakley

Betty Voights

Burnet County Judge

Executive Director

Date:_____

Date:_____

If local government is a County government, provide the date the Commissioners' court approved the contract. If a Commissioners' Court delegated authority to sign this agreement to someone other than the county judge, please provide a copy of the meeting minutes documenting this.

Attachment A: Scope of Services

Grant Summary

GRANT RECIPIENT agrees to carry out work identified in its grant application for funding to CAPCOG, which is summarized below and incorporated by reference:

Project Name: HHW Collection Event – October 2024
Project Category: Household Hazardous Waste Collection Event
Project Type: Event
Total Project Cost: \$38,889.38
Funding Awarded: 90.00% of Approved, Eligible Costs up to \$35,000.00

Narrative Description

The Burnet County Household Hazardous Waste (HHW) Collection Event is a regional collaborative effort with eight municipalities, the Central Texas Groundwater Conservation District, several private entities, and Burnet County. This event is tentatively scheduled for Saturday, October 19, 2024, at the Burnet County Recycle and Reuse Center at 2411 FM 963, Burnet, TX 76539. All HHW is to be sorted and packaged by Green Planet and transported by Green Planet, to their facility located at 6371 State Hwy 276 W., Royse City, TX 75189, for processing under Industrial Hazardous Waste Permit. Scrap tires will be collected by Reliable Tire Disposal, MSW (Tire Transporter) and MSW (Scrap Tire Processor), transported to their facility in Burnet, TX for recycling, and chipped into 1" pieces and sold as Tire Derived Fuel, and steel removed will be sold to the highest bidder. Used oil will be collected as well.

GRANT RECIPIENT understands that any changes to the scale or scope of the project may require re-approval by CAPCOG and TCEQ and must notify CAPCOG ahead of time before making any significant changes to ensure eligibility of costs and continued funding. GRANT RECIPIENT understands that it was awarded funding based on the full scope of the project as described in its application and that any significantly modified project may not have been awarded funding had it been presented to the Solid Waste Advisory Committee with the modifications being requested.

Budget

Table 1. Budget Summary

Budget Category	Total Project Cost	Grant Amount (Total Cost * Grant %)
Personnel (salaries + fringe)	\$0.00	\$0.00
Travel	\$0.00	\$0.00
Supplies	\$0.00	\$0.00
Equipment (per-unit acquisition cost of \$5,000 or more)	\$0.00	\$0.00
Construction	\$0.00	\$0.00
Contractual	\$38,889.38	\$35,000.00
Other	\$0.0000	\$0.00
Indirect	\$0.00	\$0.00
TOTAL	\$38,889.38	\$35,000.00

Reporting of Activities

GRANT RECIPIENT will provide notice of the activities indicated below to CAPCOG PROJECT REPRESENTATIVE by email at the address indicated in Attachment B no later than the date indicated for each activity. The table that corresponds:

Table 2. Reporting Required for Project Type Collection Events

<u>Activity</u>	<u>Due Date</u>	<u>Notice Must Include</u>
Date of collection event is established	No later than 14 days prior to the event	The date, time, and location of the event.
Collection event completed	No later than seven days after the event	The estimated volume of items collected, people served, vehicles received, and other information which indicates the activity of the event.
Collection event cancelled or date changed	No later than three days after the cancellation or the change of date of the event	The previous date, time, and location, the rescheduled date, time and location of the event, and the reason why it is being rescheduled.
Intent to submit reimbursement request	No later than seven days prior to submitting the reimbursement request	The expected date that the reimbursement request is going to be submitted and the estimated amount of the requested reimbursement.

Table 3. Reporting Required for Project Type Equipment Purchase

<u>Activity</u>	<u>Due Date</u>	<u>Notice Must Include</u>
Date that an order for the equipment has been placed	No later than 7 days after the date the order was placed.	The expected delivery date of the equipment, the cost of the equipment, and the equipment vendor.
Date that the equipment was received	No later than 7 days after the date the equipment was received.	The date that the equipment was received and the actual cost of the equipment, including an explanation of any difference between the actual cost and the expected cost.
Intent to submit reimbursement request	No later than seven days prior to submitting the reimbursement request	The expected date that the reimbursement request is going to be submitted and the estimated amount of the requested reimbursement.

Table 4. Reporting Required for Project Type Construction

Activity	Due Date	Notice Must Include
Date that bids for construction have been advertised, if applicable	No later than seven days after the date that bids were advertised	The dates and places that the advertisement will appear or has appeared.
Date that a contract for construction has been executed, if applicable	No later than seven days after the contract has been executed	The date the contract was fully executed, the name of the contractor, and the contract completion date.
Date that an order for the equipment has been placed, if applicable and not included in the construction contract	No later than 7 days after the date the order was placed.	The expected delivery date of the equipment, the cost of the equipment, and the equipment vendor.
Date that the equipment was received, if applicable and not included in the construction contract	No later than 7 days after the date the equipment was received.	The date that the equipment was received and the actual cost of the equipment, including an explanation of any difference between the actual cost and the expected cost.
Date that construction has begun on the facility	No later than seven days after the beginning of construction	The date that construction began and the expected completion date.
Date that construction on the facility is completed	No later than seven days following the completion of construction	The date that construction was completed and the estimated costs.
Intent to submit reimbursement request	No later than seven days prior to submitting the reimbursement request	The expected date that the reimbursement request is going to be submitted and the estimated amount of the requested reimbursement.

Reporting of Results

As a condition of funding, TCEQ and CAPCOG require GRANT RECIPIENT to provide detailed reporting on the results achieved through the grant funding on forms provided by CAPCOG. For discrete activities, this will include quantities of solid waste collected or diverted within the time frame of the grant contract. For projects involving equipment or construction, this will involve a “Follow-up Results Report” that identifies activities completed since the new capital asset was put into service, and which will be due the following year.

TCEQ Grant Contract with CAPCOG Incorporated by Reference

GRANT RECIPIENT also agrees to abide by all terms of CAPCOG’s Grant Contract 582-24-50081 with TCEQ, which is incorporated by reference, as it relates to subawards, including all terms in the FY 2024-

2025 Regional Solid Waste Program Administrative Procedures and submitting Follow-up Results Reports on the use of the equipment in accordance with TCEQ requirements.

TCEQ's Administrative Procedures include a number of special requirements for projects that involve equipment or construction. Please refer to section I-E of that document and otherwise review other parts of the document applicable to equipment and construction. The requirements identified in TCEQ's Administrative Procedures are incorporated into this contract.

Ability to Add Funds

During the term of the contract or after it has terminated, CAPCOG may unilaterally award additional funds above the amount listed above and in Sec. 4. If this occurs, CAPCOG may request an updated reimbursement request from GRANT RECIPIENT, or it may unilaterally adjust payment based on the documentation provided.

Attachment B: Project Representatives and Records Location

CAPCOG Project Representative

The individual named below is the CAPCOG Project Representative, who is authorized to give and receive communications and directions on behalf of CAPCOG. All communications including all payment requests must be addressed to the CAPCOG Project Representative or his or her designee. The CAPCOG Project Representative may indicate a designee through an e-mail to jteague@burnetcountytexas.org

Ken May
(Name)
Solid Waste Program Manager
(Title)

Telephone No.: (512) 916-6040

E-mail: kmay@capcog.org

Capital Area Council of Governments
6800 Burleson Road
Building 310, Suite 165
Austin, Texas 78744

GRANT RECIPIENT Project Representative

The individual named below is the GRANT RECIPIENT Project Representative, who is authorized to give and receive communications and directions on behalf of GRANT RECIPIENT. All communications must be addressed to the GRANT RECIPIENT Project Representative or his or her designee. The GRANT RECIPIENT Project Representative may indicate a designee through an e-mail to kmay@capcog.org.

Jana Teague
(Name)
Grant Manager
(Title)

Telephone No.: 512-715-5229

E-mail: jteague@burnetcountytexas.org

Burnet County
220 Pierce St.
Burnet, TX 78611

Submittal of Payment Requests

All payment requests must be made on the form provided by CAPCOG and sent to kmay@capcog.org, ktrevino@capcog.org, and apinvoices@capcog.org in accordance with the schedule in Attachment A.

Designated Location for Records Access and Review

GRANT RECIPIENT designates the physical location below for record access and review pursuant to any applicable provision of this Contract:

133 E Jackson St.
Burnet, TX 78611