

**Interlocal Cooperation Agreement
Between
City of Austin
And
Burnet County
Radio Console Project**

Section 1. Parties and Purpose

- 1.1. The Capital Area Emergency Communications District ("CAECD") is a regional emergency communications district and political subdivision of the State of Texas organized and operating in accordance with Texas Health and Safety Code, Subchapter G, chapter 772, as amended. CAECD Board of Managers, in its action of July 10, 2019, approved improvements to the CAECD Backup Center Radio equipment, a P25 Radio Tower site serving western Burnet County and wireline radio consoles for Burnet County Sheriff as consistent with and supporting the goals of the Strategic Plan for 9-1-1 emergency communications service within the district.
- 1.2. City of Austin ("City") is a home rule city, a political subdivision of the State of Texas
- 1.3. Burnet County is a political subdivision of the State of Texas
- 1.4. This Interlocal agreement (hereinafter, this "Agreement") is entered between Burnet County and City pursuant to Texas Government Code chapter 791 for the purpose of allowing the City to complete installation of Radio Console for Burnet County.
- 1.5. City and Burnet County collectively are referred to as the "Parties" in this document.

Section 2. Scope of Services

- 2.1 The City agrees to complete installation of radio system consoles at a location provided by Burnet County. These efforts will be completed in accordance with the scope of work that is part of the proposal ("CAPCOG BUC Improvements") between City of Austin and Motorola dated October 01, 2019.
- 2.2 Upon completion and final acceptance, Burnet County agrees to assume ownership of the radio consoles and to be responsible for the support and maintenance of the radio consoles.

Section 3. Price and Payment Terms

- 3.1 CAECD has agreed to reimburse City for its costs to perform the services that are, as of the date of this Agreement, estimated to not exceed \$608,641.00.

- 3.2 Burnet County agrees that expenses above the CAECD provided amount will be the responsibility of Burnet County.
- 3.3 In the event that expenses above the \$608,641.00 are identified, City will notify Burnet County with 5 business days. City and Burnet County will discuss options for addressing the funding source of the additional cost.
- 3.4. City and Burnet County will document the additional cost item and Burnet County's actions to pay for the cost.

Section 4. Effective Date and Term of Agreement

- 4.1 This Agreement takes effect on the date it is signed by both Parties and remains in effect until Burnet County has accepted the radio consoles.

Section 5. Rights and Duties

- 5.1. The City agrees to name Burnet County (including those representatives and agents listed in section 1.3 above) as additional insured under the City's general liability insurance policy or membership agreement in any governmental risk pool or other similar entity with a duty to provide a defense, and which is provided by policy or membership agreement so that Burnet County (including those representatives and agents listed in section 1.3 above) may seek coverage upon demand by Burnet County (including those representatives and agents listed in section 1.3 above), in the event of a covered claim.

Section 6. Compliance with Applicable Law and Policy

- 6.1 City agrees to comply with all APPLICABLE LAW and POLICY in carrying out this Agreement, including any purchases or reimbursement requests made hereunder. APPLICABLE LAW and POLICY include but are not limited to the Texas Health and Safety Code Chapter 771.061 and Chapter 772.

Section 7. Independent Contractor, Assignment and Subcontracting

- 7.1 City is not an employee or agent of Burnet County but furnishes goods and services under this Agreement solely as an independent contractor.
- 7.2 City may not assign its rights or subcontract its duties under this Agreement without the prior written consent of Burnet County.

- 7.3 If Burnet County consents to City subcontracting of duties, each subcontract is subject to all the terms and conditions of this Agreement, and City agrees to furnish a copy of this Agreement to each of its subcontractors.
- 7.4 Burnet County consents to the City hiring vendors from time to time to perform responsibilities under this Agreement.
- 7.5 City will manage access, security, and installation of the projects until project completion.

Section 8. Records and Monitoring

- 8.1 City agrees to maintain financial and other records adequate to document its performance, costs and receipts under this Agreement. City agrees to maintain these records at City's offices in accordance with City's established records retention schedule.
- 8.2 Subject to the additional requirement of Section 8.3, City agrees to preserve the records for three fiscal years after receiving its final payment under this Agreement.
- 8.3 If an audit of or information in the records is disputed or the subject of litigation, City agrees to preserve the records until the dispute or litigation is finally concluded, regardless of the expiration or early termination of this Agreement.
- 8.4 Burnet County is entitled to inspect and copy, during normal business hours at City's offices where they are maintained, the records related to performance of this Agreement for as long as the records are preserved, and for that purpose may visit City offices, talk to its personnel, and audit City records, provided reasonable advance notice is given and the cost to inspect, copy, and audit are borne by Burnet County.

Section 9. Nondiscrimination and Equal Opportunity

- 9.1 City shall not exclude anyone or entity from participating in City's duties under this Agreement, unlawfully deny benefits under this Agreement, or otherwise unlawfully discriminate against anyone in carrying out this Agreement because of race, color, religion, sex, age, disability, handicap, veteran status, or national origin.

Section 10. Early Termination of Agreement

- 10.1 Except as provided in Sections 3.3, if Burnet County or City 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, which effort will be described in detail in a

correction letter delivered within five business days from the receipt of the notice to correct. 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 non-breaching party may terminate this Agreement or may invoke the dispute resolution process of Section 11.

- 10.2 If this Agreement is terminated under Section 10, either party is entitled to compensation for expenses incurred for performing an obligation for which the party is otherwise entitled to compensation under the terms of this Agreement, provided the expenses were incurred prior to receiving notice of termination. However, neither Burnet County nor City is liable to the other for costs paid or incurred under this Agreement after its receipt of notice of termination.
- 10.3 Termination for breach under Section 10.1 does not waive either party's claim for direct damages resulting from the breach, and both Burnet County and City among other remedies may withhold from compensation owed the other an amount necessary to satisfy its claim against the other. Any such claim(s) shall survive the termination of this agreement by either party for the purpose of enforcement.
- 10.4 The termination of this Agreement either under Section 4 or under this Section 10 does not affect either party's duty:
- A. To repay the other party for expenditures made in violation of APPLICABLE LAW or POLICY in accordance with Sections 3.3;
 - B. To preserve records and permit inspection, copying, and auditing of records and visitation of its premises and personnel under Section 8.

Section 11. Dispute Resolution

- 11.1 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. To this end, the Parties agree not to sue one another, except to enforce compliance with this Section 11, toll the statute of limitations or seek an injunction, until they have exhausted the procedures set out in this Section.
- 11.2 At the written request of either party, each party shall promptly appoint one non-lawyer representative to negotiate informally and in good faith to resolve any dispute arising under this Agreement. The representatives appointed shall promptly determine the location, format, frequency and duration of the negotiations.
- 11.3 If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the Parties agree to refer the dispute to the Dispute Resolution Center of Austin for mediation in accordance with the Center's mediation procedures by

a single mediator assigned by the Center. Each party shall pay half the cost of the Center's mediation services.

- 11.4 The Parties agree to continue performing their duties under this Agreement, which are unaffected by the dispute, during the negotiation and mediation process.
- 11.5 If mediation does not resolve the Parties' dispute, the Parties may pursue their legal and equitable remedies.
- 11.6 A party's participation in or the results of any mediation or other non-binding dispute resolution process under this section or the provisions of this section shall not be construed as a waiver by a party of: (1) any rights, privileges, defenses, remedies or immunities available to a party; (2) a party's termination rights; or (3) other termination provisions or expirations dates of this Agreement.
- 11.7 Nothing shall prevent either party from resorting to judicial proceedings if (a) good faith efforts to resolve a dispute under these procedures have been unsuccessful, or (b) interim resort to a court is necessary to prevent serious and irreparable injury to a party or to others.
- 11.8 The Venue for all legal proceedings shall be Travis County, Texas.

Section 12. Notice to Parties

- 12.1 Notice to be effective under this Agreement must be in writing and received by the party against whom it is to operate. Notice is received by a party:
 - A. When it is delivered to the party personally;
 - B. 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 Section 12.2 or 12.3 and signed for on behalf of the party; or
 - C. Three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the party's address specified in Section 12.2 or 12.3.
- 12.2 Burnet County's address is: Attention County Attorney 220 S. Pierce Street Burnet, Texas 78611.
- 12.3 City's address is P.O. BOX 1088, Austin, Texas 78767, Attention Project Manager for Communications and Technology Management.
- 12.4 A party may change its address by providing notice of the change in accordance with Section 12.1.

Section 13. Miscellaneous

- 13.1 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. The undersigned warrants that he or she:
- A. Has actual authority to execute this Agreement on behalf of the governing body identified as the City in this Agreement and;
 - B. Verifies the governing body, by either minute order, resolution or ordinance approved this Agreement as required by Texas Government Code section 791, as amended.
- 13.2 This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. Venue for all disputes hereunder shall be solely in Travis County.
- 13.3 This Agreement states the entire agreement of the Parties, and may be amended only by a written amendment executed by both Parties, except that any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and 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.
- 13.4 This Agreement is binding on and inures to the benefit of the Parties' successors in interest and may not be assigned without the express written permission of CAECD.
- 13.5 This Agreement is executed in duplicate originals.

[signature page follows]

CITY OF AUSTIN, TEXAS

By YPR
Name ~~Spencer Cronk~~ Nuria Rivera-Vandermyde
Title ~~City Manager~~ Deputy City Manager
Date 8.19.20

BURNET COUNTY

By J. Oakley
James Oakley
Burnet County Judge
Date 7/28/20

Approved as to Form:

Clark Cornwell
Assistant City Attorney