

## CAPITAL AREA COUNCIL OF GOVERNMENTS

### INTERLOCAL CONTRACT FOR PSAP MAINTENANCE, EQUIPMENT UPGRADE, AND TRAINING

#### 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. CAPCOG has developed a *Strategic Plan* to establish and maintain 9-1-1 emergency telephone service in State Planning Region 12, and the Texas Advisory Commission on State Emergency Communications has approved its current *Plan*.

1.2. Williamson County ("Public Agency") is a Texas county that operates one or more Public Service Answering Points (PSAPs) that assist in implementing the *Strategic Plan* as authorized by chapter 771 of the Health and Safety Code.

1.3. This contract is entered into between CAPCOG and Public Agency under chapter 791 of the Government Code so that Public Agency can maintain its PSAP(s), upgrade its equipment, and train its personnel to participate in the enhanced 9-1-1 emergency telephone system in the Region.

#### Sec. 2. Goods and Services

2.1. Public Agency agrees to:

(1) purchase supplies such as printer paper, printer ribbons, cleaning materials, etc. necessary for the continuous operation of its PSAP(s);

(2) upgrade its PSAP equipment and software, as authorized in the current *Strategic Plan*, by requesting CAPCOG to purchase new equipment and software;

(3) protect the PSAP equipment and secure the premises of its PSAP(s) against unauthorized entrance or use;

(4) practice preventive maintenance for the PSAP equipment;

(5) provide emergency communications training to call-takers/dispatchers as described in CAPCOG's current *Strategic Plan*.

(6) protect the confidentiality of 9-1-1 database information and of information furnished by telecommunications providers, and notify CAPCOG's Emergency Communications Department in writing within two business days of the receipt of a request for 9-1-1 database information, or for information furnished by telecommunications providers, made under the Texas Public Information Act;

(7) use the Emergency Notification Services database information only to warn or alert citizens of an emergency situation where property or human life is in jeopardy, and protect the database information from unauthorized use.

### **Sec. 3. Contract Price and Payment Terms**

3.1. CAPCOG agrees to compensate Public Agency in the total amount of not to exceed \$ 1,500.00 for its performance of this contract.

3.2. Within 30 calendar days after the effective date of this contract, CAPCOG agrees to pay Public Agency \$ 1,500.00 for the purchase of supplies authorized by the current *Strategic Plan*. Public Agency agrees to certify in writing to CAPCOG, by October 15, 2010 and by October 15, 2011, or within 30 calendar days after this contract is terminated early, that it expended all or a specified portion of the amount received to purchase supplies, and to refund to CAPCOG any unexpended portion

3.3. If Public Agency made expenditures under this contract in violation of applicable law or policy described in Sec. 6, Public Agency agrees to repay CAPCOG for those expenditures within 60 calendar days from the date CAPCOG notifies Public Agency of the repayment amount due and the reason repayment is required. If Public Agency does not repay the reimbursement when required, CAPCOG may refuse to purchase 9-1-1 equipment on Public Agency's behalf and may withhold all or part of the unpaid reimbursement from Public Agency's future entitlement to reimbursement under this or future interlocal contracts between the parties for PSAP maintenance, equipment upgrade, and training.

3.4. (a) Before the 60-day repayment period expires, Public Agency may appeal in writing to CAPCOG its determination that Public Agency repay the reimbursement, explaining why it believes the determination is wrong, or Public Agency may request CAPCOG in writing to extend the 60-day repayment period, proposing an alternative period and justifying its need, or it may both appeal and propose an extension. CAPCOG agrees to submit the appeal or proposal or both to the Texas Commission on State Emergency Communications with its recommendation and to furnish Public Agency with a copy of its recommendation. The Commission's decision on Public Agency's appeal or proposal or both is final.

(b) The appeal authorized by Sec. 3.4 (a) is the only mechanism for challenging CAPCOG's determination under Sec. 3.3 that Public Agency repay the reimbursement. The early termination provisions of Sec. 10 and dispute resolution process of Sec. 11 are not available to challenge CAPCOG's determination.

### **Sec. 4. Effective Date and Term of Contract**

4.1. This contract takes effect September 1, 2009 and it ends, unless sooner terminated under Sec. 10, on August 31, 2011.

## **Sec. 5. Performance Reports**

5.1. Public Agency agrees to report quarterly to CAPCOG on its performance of this contract using the CAPCOG reporting tool located at [www.psap.capcog.org](http://www.psap.capcog.org) or at the latest URL address provided by CAPCOG.

5.2. The first report for Fiscal Year 2010 is due December 15, 2009, the second March 15, 2010, the third June 15, 2010, and the last report is due September 15, 2010. The first report for Fiscal Year 2011 is due December 15, 2010, the second March 15, 2011, the third June 15, 2011, and the last report is due September 15, 2011.

## **Sec. 6. Compliance with Applicable Law and Policy**

6.1. Public Agency agrees to comply with all applicable law and policy in carrying out this contract. Applicable law and policy include but are not limited to the State Administration of Emergency Communications Act, chapter 771, Texas Health and Safety Code; rules implementing the Act contained in title I, part XII, Texas Administrative Code; the current *Uniform Grant Management Standards* (Governor's Office of Budget and Planning); Texas Commission on State Emergency Communications, *9-1-1 PROGRAMS Policies and Procedures* and *Program Policy Statements*; the current CAPCOG *Strategic Plan*; and CAPCOG's *9-1-1 Policies and Procedures Manual* and *ENS Policies & Procedures*.

## **Sec. 7. Independent Contractor, Assignment and Subcontracting**

7.1. Public Agency is not an employee or agent of CAPCOG, but furnishes goods and services under this contract solely as an independent contractor.

7.2. Public Agency may not assign its rights or subcontract its duties under this contract without the prior written consent of CAPCOG. An attempted assignment or subcontract in violation of this Sec. 7.2 is void.

7.3. If CAPCOG consents to subcontracting, each subcontract is subject to all of the terms and conditions of this contract, and Public Agency agrees to furnish a copy of this contract to each of its subcontractors.

## **Sec. 8. Records and Monitoring**

8.1. Public Agency agrees to maintain financial, statistical, and ANI/ALI records adequate to document its performance, costs, and receipts under this contract. Public Agency agrees to maintain these records at Public Agency's offices.

8.2. Subject to the additional requirement of Sec. 8.3, Public Agency agrees to preserve the records for three state fiscal years after receiving its final payment under this contract.

8.3. If an audit of or information in the records is disputed or the subject of litigation, Public Agency agrees to preserve the records until the dispute or litigation is finally concluded, regardless of the expiration or early termination of this contract.

8.4. CAPCOG is entitled to inspect and copy, during normal business hours at Public Agency's offices where they are maintained, the records maintained under this contract for as long as they are preserved. CAPCOG is also entitled to visit Public Agency's offices, talk to its personnel, and audit its records, all during normal business hours, to assist in evaluating its performance under this contract.

8.5. CAPCOG will at least once per year visit Public Agency's offices and monitor its performance of this contract to ensure compliance with applicable law and policy described in Sec. 6. CAPCOG will provide Public Agency a written monitoring report within 30 calendar days of the visit. The report will describe any compliance issues and schedule a follow-up visit if necessary.

8.6. CAPCOG agrees to notify Public Agency at least 24 hours in advance of any intended visit under this Sec. 8. Upon receipt of CAPCOG's notice, Public Agency agrees to notify the appropriate department(s) specified in the notice.

8.7. The Texas Commission on State Emergency Communications and the Texas State Auditor have the same inspection, copying, and visitation rights as CAPCOG.

### **Sec. 9. Nondiscrimination and Equal Opportunity**

9.1. Public Agency shall not exclude anyone from participating under this contract, deny anyone benefits under this contract, or otherwise unlawfully discriminate against anyone in carrying out this contract because of race, color, religion, sex, age, disability, handicap, veteran status, or national origin.

9.2. If Public Agency procures goods or services with funds made available under this contract, Public Agency agrees to comply with CAPCOG's affirmative action procurement policy, which is set out in CAPCOG's *9-1-1 Policies and Procedures Manual*.

### **Sec. 10. Suspension and Early Termination of Contract**

10.1. Public Agency acknowledges that CAPCOG's sole source of funding for this contract is a legislative appropriation distributed under contract between CAPCOG and the Texas Commission on State Emergency Communications. If the Commission does not make timely payments to CAPCOG under its contract, CAPCOG may suspend payment to Public Agency under this contract by giving Public Agency notice of the suspension. The suspension is effective five business days after Public Agency's receipt of the notice. Upon suspension of payment, Public Agency's obligations under this contract are also suspended until CAPCOG resumes payment. If the suspension continues for a cumulative total of 30 or more calendar days, or if the Commission terminates its contract with CAPCOG, CAPCOG or Public Agency

may terminate this contract by giving the other notice of termination, and this contract terminates five business days after the receipt of notice.

10.2. Except as provided in Secs. 3.3 and 3.4, if CAPCOG or Public Agency breaches a material provision of this contract, 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 contract or either party may invoke the dispute resolution process of Sec. 11.

10.3. If CAPCOG suspends payment to Public Agency under Sec. 10.1, or if this contract is terminated under Sec. 10.1 or 10.2, CAPCOG and Public Agency are each entitled to compensation for goods and services each provided the other before receiving notice of the suspension or termination. However, neither CAPCOG nor Public Agency is liable to the other for costs it paid or incurred under this contract after or in anticipation of its receipt of notice of suspension or termination.

10.4. Termination for breach under Sec. 10.2 does not waive either party's claim for damages resulting from the breach, and both CAPCOG and Public Agency among other remedies may withhold from compensation owed the other an amount necessary to satisfy its claim against the other.

10.5. The ending of this contract under Sec. 4 or its early termination under this Sec. 10 does not affect Public Agency's duty:

(1) to repay CAPCOG for expenditures made in violation of applicable law or policy in accordance with paragraphs 3.3 and 3.4;

(2) to preserve its records and permit inspection, copying, and auditing of its records and visitation of its premises and personnel under Sec. 8.

## **Sec. 11. Dispute Resolution**

11.1. The parties desire to resolve disputes arising under this contract 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 Sec. 11, toll the statute of limitations, or seek an injunction, until they have exhausted the procedures set out in this Sec.

11.2. At the written request of either party, each party shall appoint one nonlawyer representative to negotiate informally and in good faith to resolve any dispute arising under this contract. The representatives appointed shall 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 contract, 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.

## **Sec. 12. Notice to Parties**

12.1. 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. 12.2 and signed for on behalf of the party; or (3) three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the party's address specified in Sec. 12.2.

12.2. CAPCOG's address is 6800 Burleson Rd., Bldg. 310, Ste. 165, Austin, TX 78744, Attention: Executive Director. Public Agency's address is \_\_\_\_\_, Attention: \_\_\_\_\_.

12.3. A party may change its address by providing notice of the change in accordance with Sec. 12.1.

## **Sec. 13. Miscellaneous**

13.1. Each individual signing this contract 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.

13.2. This contract states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by all parties.

13.3. This contract is binding on and inures to the benefit of the parties' successors in interest.

13.4. This contract is executed in duplicate originals.

[The next page is the signature page.]

Williamson County

By  \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: 8-17-09

CAPITAL AREA COUNCIL OF  
GOVERNMENTS

By \_\_\_\_\_

Betty Voights  
Executive Director

Date: \_\_\_\_\_