

# Capital Area Council of Governments Interlocal Agreement for 2023 Solid Waste Implementation Grant 23-12-08

## 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. The City of Rollingwood ("GRANT RECIPIENT") is a city 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 Municipal Solid Waste Plan (RSWMP).
- 1.4. GRANT RECIPIENT has requested funding from CAPCOG to purchase equipment that will be used exclusively for managing municipal solid waste.
- 1.5. This agreement is entered into between CAPCOG and GRANT RECIPIENT pursuant to Texas Government Code chapter 791.
- 1.6. For purposes of carrying out CAPCOG's duties and obligations under this agreement, the parties understand 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.
- 1.7. 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 carry out the work described in Attachment A.

## Sec. 3. Term of Agreement

- 3.1. The effective date of this agreement upon execution, and ends, unless sooner terminated under Sec. 9, 10 ,or 11, on August 31, 2023, or extended by written mutual agreement of the Parties. As indicated in the Scope of Work, 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 \$25,000.00 grant on a reimbursement basis for the work described in Attachment A. CAPCOG may unilaterally increase this amount if funding allows.
- 4.2. GRANT RECIPIENT shall bill CAPCOG no later than November 30, 2023.
- 4.3. The invoice requesting payment must be delivered via e-mail to CAPCOG's project representative described in Attachment B.

- 4.4. GRANT RECIPIENT agrees to certify each invoice as follows:  
GRANT RECIPIENT certifies that this invoice 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 invoice 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. Assignment and Subcontracting**

- 8.1. 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. 8.1 is void.

## **Sec. 9. Records and Inspections**

- 9.1. 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. 15.
- 9.2. Subject to the additional requirement of Sec. 9.3, GRANT RECIPIENT agrees to preserve the records for four years after receiving its final payment under this Agreement.
- 9.3. 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.
- 9.4. 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.
- 9.5. 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. 10. Proprietary or Confidential Information**

- 10.1. 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.
- 10.2. 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.
- 10.3. 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. 11. Termination of Agreement without Cause**

- 11.1. Agreement may be terminated by either Party with a 60 day written notice delivered under the terms of Section 15.

## **Sec. 12. Suspension or Termination of Agreement for Unavailability of Funds**

- 12.1. 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.
- 12.2. 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.
- 12.3. If this agreement is suspended or terminated for unavailability of funds under this Sec. 12, 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. 13. Termination for Breach of Contract**

- 13.1. 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. 14.
- 13.2. Termination for breach under this section does not waive either party's claim for damages resulting from the breach.

## **Sec. 14. Dispute Resolution**

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.

- 14.1. 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 City of Rollingwood, Attn: Ashley Wayman, City Administrator, 403 Nixon Dr. Rollingwood, TX 78746, [awayman@rollingwoodtx.gov](mailto:awayman@rollingwoodtx.gov). The parties agree to continue performing their duties under this Agreement, which are unaffected by the dispute, during the negotiation and mediation process.

## **Sec. 15. Notice to Parties**

- 15.1. 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. 15.2 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. 15.2.
- 15.2. CAPCOG's address is 6800 Burleson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Betty Voights, Executive Director, [bvoights@capcog.org](mailto:bvoights@capcog.org).

GRANT RECIPIENT's address is Attn: City of Rollingwood 403 Nixon Dr. Rollingwood, TX 78746, [awayman@rollingwoodtx.gov](mailto:awayman@rollingwoodtx.gov).

- 15.3. A Party may change its address by providing notice of the change in accordance with Sec. 15.1.

## **Sec. 16. Attachments**

- 16.1. The following attachments are part of this agreement:

Attachment A: Scope of Services

Attachment B: Project Representatives and Records Location

## **Sec. 17. Miscellaneous**

- 17.1. 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.
- 17.2. 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.
- 17.3. This Agreement is binding on and inures to the benefit of the parties' successors in interest.
- 17.4. This Agreement is performable in Travis County, Texas, and Texas law governs the interpretation and application of this contract.
- 17.5. This Agreement is executed through signatures by both parties transmitted electronically.

City of Rollingwood

Capital Area Council of Governments

By \_\_\_\_\_

By \_\_\_\_\_

Gavin Massingill

Betty Voights

Mayor

Executive Director

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

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

## **Attachment A: Scope of Services**

GRANT RECIPIENT agrees to carry out work identified in its 6/15/2023 application for funding to CAPCOG, which is summarized below and incorporated by reference:

Eligible Activity: Purchase a Wood Chipper

Total Equipment Cost: \$35,000.00

Amount Requested: \$25,000.00

Minimum Acceptable: \$17,500.00

GRANT RECIPIENT shall meet the following milestones for this project, or it risks forfeiting the funding:

1. Provide an anticipated timeline for completion of the project to CAPCOG by August 11, 2023;
2. Provide a status update to CAPCOG by August 25, 2023, including whether there have been any changes in the anticipated cost of the project or timeline for completion;
3. Submit a purchase order (PO) to a selected vendor no later than August 31, 2023, and provide a copy to CAPCOG upon submission of the PO;
4. Pay for the equipment no later than September 30, 2023;
5. Notify CAPCOG within two business days after payment occurs;
6. Invoice CAPCOG no later than November 30, 2023.

GRANT RECIPIENT agrees to provide updates to CAPCOG regarding the possibility of any delays in receiving the equipment, or any other occurrence, that would cause GRANT RECIPIENT to be unable to pay for the equipment by September 30, 2023.

GRANT RECIPIENT also agrees to abide by all terms of CAPCOG's Grant Contract 582-22-30110 with the Texas Commission on Environmental Quality (TCEQ), which is incorporated by reference, as it relates to subawards, including all terms in the FY 2022-2023 Regional Solid Waste Program Administrative Procedures and submitting follow-up results reports on the use of the equipment in accordance with TCEQ requirements.

CAPCOG may unilaterally award additional funds above \$25,000, if funding allows, up to the total eligible costs of the project. 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 [\[E-mail\]](#).

Ken May

(Name)

Solid Waste Program Manager

(Title)

Telephone No.: (512) 916-6040

Facsimile No.: (512) 916-6001

E-mail: [kmay@capcog.org](mailto: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](mailto:kmay@capcog.org)

Ashley Wayman

(Name)

City Administrator

(Title)

Telephone No.: Office: (512) 327-1838 Cell: (737) 218-8326

Facsimile No.: (512) 327-1869

E-mail: [awayman@rollingwoodtx.gov](mailto:awayman@rollingwoodtx.gov)

403 Nixon Dr. Rollingwood, TX 78746

## **Submittal of Payment Requests**

Payment requests must be submitted to the CAPCOG Project Representative.

## **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:

403 Nixon Dr. Rollingwood, TX 78746