

CAPITAL AREA COUNCIL, OF GOVERNMENTS
INTERLOCAL CONTRACT FOR PSAP MAINTENANCE, EQUIPMENT
UPGRADE, AND TRAINING

Sec. I. 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, chapter 391 of the Local Government Code, as amended. CAPCOG has developed a *Strategic Plan* to establish and maintain 9-1-1 emergency telephone service in State Planning Region 12, and the Texas Commission on State Emergency Communications has approved its current *Plan*.

1.2. The City of Austin (the "City") is a Texas home-rule municipality 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 the City under chapter 791 of the Government Code so that the City 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. The City 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 *9-1-1 Policies and Procedures Manual*;
- (6) protect the confidentiality of 9-1-1 database information and of information furnished by telecommunications providers, and notify CAPCOG's Emergency Services 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 the City in the total amount of not to exceed **\$7,000** (\$2,000 each for Austin Police Department and CTECC Backup, \$1,500 each for Austin Fire Department and Austin EMS) for its performance of this contract.

3.2. Within thirty (30) calendar days after the effective date of this contract, CAPCOG agrees to pay the City the \$ 7,000 set forth in Section 3.1 above (\$2,000 each for Austin Police Department and CTECC Backup, \$1,500 each for Austin Fire Department and Austin EMS), for the purchase of supplies authorized by the current *Strategic Plan*. the City agrees to certify in writing to CAPCOG, within thirty (30) calendar days after this contract ends or 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 the City made expenditures under this contract in violation of applicable law or policy, the City agrees to repay CAPCOG for those expenditures within sixty (60) calendar days from the date CAPCOG notifies the City of the repayment amount due and the reason repayment is required. If the City does not repay the reimbursement when required, CAPCOG may refuse to purchase 9-1-1 equipment on the City's behalf and may withhold all or part of the unpaid reimbursement from the City'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 sixty (60) day repayment period expires, the City may appeal in writing to CAPCOG its determination that the City repay the reimbursement, explaining why it believes the determination is wrong, or the City may request CAPCOG in writing to extend the sixty (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 the City with a copy of its recommendation. The Commission's decision on the City'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 the City 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, 2007 and it ends, unless sooner terminated under Sec. 10, on August 31, 2008.

Sec. S. Performance Reports

5.1. The City agrees to report quarterly to CAPCOG on its performance of this contract using the CAPCOG 9-1-1 PSAP Quarterly Report, Attachment A to this contract.

5.2. The first Report is due December 15, 2007, the second March 15, 2008, the third June 15, 2008, and the last Report is due September 15, 2008.

Sec. 6. Compliance with Applicable Law and Policy

6.1. The City 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*; and CAPCOG's *9-1-1 Policies and Procedures Manual* and *ENS Policies & Procedures*.

Sec. 7. Independent Contractor, Assignment and Subcontracting

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

7.2. The City 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 the City agrees to furnish a copy of this contract to each of its subcontractors.

Sec. 8. Records and Monitoring

8.1. The City agrees to maintain financial, statistical, and ANI/AL1 records adequate to document its performance, costs, and receipts under this contract. The City agrees to maintain these records at the City's offices.

8.2. Subject to the additional requirement of Sec. 8.3, the City agrees to preserve the records for three (3) 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, the City 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 the City'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 the City'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 the City's offices and monitor its performance of this contract to ensure compliance with applicable law and policy described in Sec. 6. CAPCOG will provide the City a written monitoring report within thirty (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 the City at least twenty four (24) hours in advance of any intended visit under this Sec. 8. Upon receipt of CAPCOG's notice, the City 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. The City 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 the City procures goods or services with funds made available under this contract, the City 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. The City 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 the City under this contract by giving the City notice of the suspension. The suspension is effective five business days after the City's receipt of the notice. Upon suspension of payment, the City's obligations under this contract are also suspended until CAPCOG resumes payment. If the suspension continues for a cumulative total of thirty (30) or more calendar days, or if the Commission terminates its contract with CAPCOG, CAPCOG or the City 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 the City 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 (5) 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 the City under Sec. 10.1, or if this contract is terminated under Sec. 10.1 or 10.2, CAPCOG and the City 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 the City 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 the City 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 the City'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.

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: (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 Sec. 12.2 and signed for on behalf of the party; or (c) three (3) 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 P.Q. Box 17848, Austin, TX 78760-7848, Attention: Executive Director. the City's address is P.O. Box 1088, Austin, Texas 78767-8828, Attention: Chief Information Officer, Computer Technology Management.

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. Attachment A, CAPCOG 9-1-1 PSAP Quarterly Report, is part of this contract.

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

13.5. This contract is executed in duplicate originals.

City of Austin	Capital Area Council Of Governments
By: _____	By: _____
Name: _____	Betty Voight
Title: _____	Executive Director
Date: _____	Date: _____