

**CAPITAL AREA COUNCIL OF GOVERNMENTS
CONTRACT for SERVICES**

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. _____ Inc. ("Contractor"), is a business corporation with offices located in Austin, Texas.

1.3. The Capital Area Council of Governments ("CAPCOG") has received funding from local governments to complete air quality planning monitoring activities in the region.

1.4. CAPCOG solicited competitive proposals and has awarded a Contract to _____, Inc. to provide services to _____.

1.5. This Contract is entered into under chapter 391 of the Local Government Code.

SEC. 2. GOODS AND SERVICES

2.1. Contractor agrees to provide CAPCOG the goods and services described in Attachment A, Scope of Work and in accordance with the rates and budget as itemized in Attachment A.

SEC. 3. EFFECTIVE DATE AND TERM OF CONTRACT

3.1. This Agreement takes effect on the date it is signed on behalf of CAPCOG, and it ends, unless sooner terminated under Sections 13, 14, or 15, on December 31, 2021.

SEC. 4. CONTRACT PRICE AND PAYMENT TERMS

4.1. CAPCOG agrees to compensate the Contractor for the goods and services provided under this Contract, in a total amount not to exceed \$_____ through December 31, 2021.

4.2. The compensation is payable as reimbursement for budgeted, allowable costs paid or incurred by Contractor in carrying out this Contract. Budgeted costs are described in Attachment A, Scope of Work - Budget section.

4.3. Contractor agrees to invoice CAPCOG on a monthly basis for reimbursable costs paid or incurred, itemized by monitoring station and task. For subtasks 3.1 – 3.5 of the Scope of Work, Contractor may group costs for each invoice by each subtask without itemizing the costs by monitoring station. Contractor agrees to submit with each invoice a monthly report of deliverables for the month, a schedule of planned activities for the remainder of the year, and, if CAPCOG requests, copies of timesheet records, purchase orders, receipts, paid invoices, and other documents evidencing Contractor's payment or incurrence of the costs for which reimbursement is requested.

4.4. Contractor agrees to certify each invoice as follows:

The Contractor certifies that this invoice is correct and complete, that the amount requested has not been received.

4.5. CAPCOG agrees to pay Contractor the amount owed on each invoice within 30 calendar days after its receipt and acceptance by CAPCOG staff.

SEC. 5. INDEPENDENT CONTRACTOR

5.1. Contractor is not an employee or agent of CAPCOG, but it performs this contract solely as an independent Contractor.

SEC. 6. ASSIGNMENT AND SUBCONTRACTING

6.1. Except as described herein, CONTRACTOR 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. 6.1 is void.

SEC. 7. LIABILITY INSURANCE

7.1. Contractor agrees to maintain throughout the term of this contract sufficient insurance coverage to meet the following requirements: (1) commercial general liability insurance with the minimum coverages of \$2,000,000 for each occurrence, \$4,000,000 annual aggregate, and \$2,000,000; (2) Texas workers' compensation insurance with coverage satisfying the statutory requirements plus Employers' Liability insurance with minimum coverages per employee of \$500,000 for bodily injury and \$500,000 for disease for each accident; and (3) comprehensive automobile liability insurance with limits of at least \$1,000,000 combined single limit for bodily injury and property damage for each occurrence. If Contractor's insurance policies are not written for amounts specified above, Contractor shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it shall follow the form of the primary coverage.

7.2. Contractor agrees to name CAPCOG and all monitoring site lease holders as an additional insured on each of the insurance policies, except the worker's compensation policy, maintained under Sec. 7.1. Each of Contractor's insurance policies maintained under Sec. 7.1.2 must contain provisions (1) that the Contractor will notify CAPCOG least 30 calendar days in advance of (i) cancellation or nonrenewal of the policy, (ii) or any reduction in the policy amounts., and (iii) deletion of CAPCOG as an additional insured; and waivers of subrogation in CAPCOG's favor.

7.3. Contractor agrees to furnish CAPCOG a copy of the declarations page or a certificate of insurance for each insurance policy maintained under Sec. 7.1.2 within 30 calendar days after the effective date of this contract.

7.4. Contractor is responsible for all insurance-related provisions of the site lease agreements CAPCOG holds for the duration of this contract. Any provisions included in those site lease agreements not specifically mentioned here are incorporated by reference.

SEC. 8. INDEMNIFICATION

8.1. Contractor agrees at its own expense to defend CAPCOG, its governing body members, officers, employees, and agents against any claim, suit, or administrative proceeding, and to indemnify them against any liability (including all expenses and reasonable counsel fees incurred), to the extent arising out of any intentional, grossly negligent, or negligent act or omission of Contractor's governing body member, officer, employee, or agent under this contract.

8.2. If Contractor is served with process in a suit or proceeding described in Sec. 8.1, Contractor agrees promptly to furnish CAPCOG with a copy of the process.

8.3. Contractor agrees that its obligations under Secs. 8.1 and 8.2 apply to causes of action accruing during the term of this contract, and that for this purpose the obligations will survive the ending or early termination of this contract.

SEC. 9. RECORDS AND INSPECTIONS

9.1. Contractor agrees to maintain records adequate to document its performance, costs, and receipts under this contract. Contractor agrees to maintain these records at Contractor 's office address described in Sec. 16.

9.2. Subject to the additional requirement of Sec. 9.3, Contractor agrees to preserve the records for seven (7) years after receiving its final payment under this contract.

9.3. If an audit of or information in the records is disputed or the subject of litigation, Contractor agrees to preserve the records until the dispute or litigation is finally concluded, regardless of the ending or early termination of this contract.

9.4. CAPCOG is entitled to inspect and copy, during normal business hours at Contractor '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 Contractor 's offices and talk to its personnel during normal business hours to assist in evaluating its performance under this contract.

9.5. The Texas Health and Human Services Commission, providing funding for this contract, and the State Auditor have the same the access to and right to examine all records, books, papers, contracts, or other documents related to this Contract.

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 CONTRACTOR believes that information it submits to CAPCOG is proprietary or confidential and is not disclosable to a third party, Contractor must clearly mark the information as proprietary or confidential and inform CAPCOG in writing that Contractor 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 Contractor's desire to keep the information confidential, CAPCOG agrees to use the information only in performing this contract 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 Contractor of any request for disclosure of the information under the Texas Public Information Act.

10.4. CAPCOG's sole obligation to protect allegedly proprietary or confidential information submitted by Contractor is described in this Sec. 10.

SEC. 11. INTELLECTUAL PROPERTY

11.1. For purposes of this Sec. 11, "intellectual property" means a discovery or invention for which patent, trademark, or trade secret rights may be acquired; designs, plans, maps, computer programs, reports, manuals, or other copyrightable materials; and any other materials in which intellectual property rights have been or may be acquired.

11.2. Unless specifically identified in accordance with Section 11.3, CAPCOG will hold an exclusive right to all intellectual property produced under this contract.

11.3. If Contractor creates intellectual property in the performance of this contract or purchases intellectual property with contract funds, Contractor shall promptly notify CAPCOG of the creation or purchase and supply CAPCOG with sufficient technical detail to identify the property and describe its likely applications.

11.4. CAPCOG reserves an irrevocable, nonexclusive, and royalty-free right to use, reproduce, copy, sell, or license, and to license others to use, reproduce, copy, sell, or license, for a governmental purpose, any intellectual property created in the performance of this contract and to use, reproduce, or copy data purchased with contract funds.

SEC. 12. APPLICABLE LAW

12.1. In carrying out this contract, Contractor agrees to comply with all applicable laws and policies. This Contract is governed by and shall be construed in accordance with the laws of the State of Texas. Venue for suit of any kind shall be filed in a court of competent jurisdiction in Travis County, Texas. All claims against the Agency by the Subrecipient seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to the contract shall be filed in Travis County, Texas.

SEC. 13. SUSPENSION OR TERMINATION OF CONTRACT FOR UNAVAILABILITY OF FUNDS

13.1. CONTRACTOR acknowledges that CAPCOG is a governmental entity without taxing power and agrees that CAPCOG may suspend its payment obligations under or terminate this contract in whole or part if CAPCOG learns that funds to pay for all or part of the goods or services will not be available at the time of delivery or performance. If CAPCOG suspends or terminates only part of this contract for unavailability of funds, CONTRACTOR agrees to perform the unsuspending or unterminated part if CAPCOG so requests.

13.2. CAPCOG suspends or terminates this contract for unavailability of funds by giving CONTRACTOR 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 contract is suspended or terminates on the specified termination date.

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

SEC. 14. TERMINATION FOR BREACH OF CONTRACT

14.1. If CONTRACTOR or CAPCOG 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. 14.

14.2. Termination for breach under this section does not waive either party's claim for damages resulting from the breach.

SEC. 15. SUSPENSION OR TERMINATION OF CONTRACT FOR CONVENIENCE

15.1. CAPCOG may, upon providing at least 10 days' written notice to Contractor, partially or fully suspend or terminate this contract for convenience. Termination shall not prejudice any other right or remedy of CAPCOG or Contractor. Contractor may request reimbursement for conforming work and timely, reasonable costs directly attributable to termination. Contractor shall not be paid for work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of or resulting from termination. If CAPCOG suspends or terminates only part of this contract, Contractor agrees to perform the unsuspended or unterminated part if CAPCOG so requests.

SEC. 16. DISPUTE RESOLUTION

16.1. 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. 15, toll the statute of limitations, or seek an injunction, until they have exhausted the procedures set out in this Sec. 15.

16.2. 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.

16.3. 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.

16.4. The parties agree to continue performing their duties under this contract, which are unaffected by the dispute, during the negotiation and mediation process.

SEC. 17. NOTICE TO PARTIES

17.1. 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. 17.2 and signed 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. 16.2.

17.2. CAPCOG's address is 6800 Burluson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Betty Voights, Executive Director. Contractor's address is _____.

17.3. A party may change its address by providing notice of the change in accordance with Sec.17.1.

SEC. 18. MISCELLANEOUS

18.1 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.

18.2 This contract 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.

18.3 This contract 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 contract which are required by changes in Federal and State law or regulations are automatically incorporated into this contract without written amendment hereto and shall become effective on the date designated by such law or regulation.

18.4 This contract is executed in duplicate originals.

ATTACHMENTS

The following Attachments are part of this Contract:

- A. Scope of Work
- B. Data Usage Agreement (DUA)
- C. Certifications
 - 1. Signed Certification of Compliance with Small, Disadvantaged, Minority, Women-Owned, and Historically Underutilized Business Policy
 - 2. Signed Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Lower-Tier Covered Transactions
 - 3. Signed Certification Regarding Lobbying
 - 4. Prohibition on Contracts with Companies Boycotting Israel
 - 5. Conflict of Interest Questionnaire

CONTRACTOR

Capital Area Council of Governments

By _____

By _____

Betty Voights
Executive Director

Date _____

Date _____