

Capital Area Emergency Communications District

INTERLOCAL CONTRACT FOR PUBLIC SAFETY ANSWERING POINT MAINTENANCE, EQUIPMENT AND TRAINING

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 has developed an annual budget to operate and maintain Next Generation 9-1-1 emergency communications service within the district.
- 1.2. The City of Elgin ("Public Agency") is a Texas home-rule municipality that operates one Public Safety Answering Point (PSAP) that participates in the district as authorized by Texas Health and Safety Code chapter 772.
- 1.3. This Interlocal contract is entered into between CAECD and Public Agency pursuant to Texas Government Code chapter 791 so that Public Agency can maintain its PSAPs, upgrade 9-1-1 equipment and train its personnel to participate in the Next Generation 9-1-1 emergency communications system in the district. For purposes of carrying out CAECD's duties and obligations under this agreement the parties understand and agree that references to CAECD includes its employees, officers, directors, volunteers, agents (including the Capital Area Council of Governments – CAPCOG), and their representatives, individually, officially, and collectively.

Section 2. Rights and Duties of the Contracting Parties

- 2.1 Public Agency agrees to:
 - A. Purchase supplies such as printer paper, printer ink, cleaning materials and other expendable items necessary for the continuous operation of its PSAPs;
 - B. Implement upgrades of its PSAPs equipment and software, as authorized in the current annual budget, through the appropriate CAECD process for the purchase of new equipment and software;
 - C. Protect the PSAPs equipment and secure the PSAPs premises against unauthorized entrance or use;
 - D. Practice preventive maintenance for the PSAPs equipment;

- E. Ensure call-takers/dispatchers receive emergency communications training as required and as described in CAECD's current annual budget;
- F. Protect the confidentiality of 9-1-1 database information and of information furnished by telecommunications providers, and notify CAECD 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;
- G. Use the Regional Notification System (RNS) 9-1-1 derived 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;
- H. Request the use of training facilities by sending an email to CMAC@capcog.org and specifying date of request, time of request and type of resources needed such as Solacom or CritiCall;
- I. In the event the use of the Regional Backup Communications Center (RBUC) is required, operate in accordance with all rules and procedures, and within the allocated space in the RBUC located at 6800 Burluson Road, Building 310, Suite 165;
- J. Be responsible for all furniture, administrative telephones, copier machines and administrative desktop computers located within the Public Agency's operating area;
- K. Hold harmless CAECD from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly on the negligence of, fault of, or breach of contract by CAECD and shall name CAECD (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 CAECD (including those representatives and agents listed in section 1.3 above) may seek coverage upon demand by CAECD (including those representatives and agents listed in section 1.3 above), in the event of a covered claim;
- L. Waive any duty CAECD owes Public Agency by virtue of this agreement in the event any act, event, or condition adversely impacts the cost of performance of, or adversely affects the ability of CAECD to perform any obligation under this agreement and if such act, event or condition, in light of any circumstances is beyond the reasonable control and is not a result of the willful or negligent act, error, omission or failure to exercise reasonable diligence on the part of CAECD such action or inaction shall not be construed as a breach of this agreement or a willful or negligent act, error, omission or lack of reasonable diligence of CAECD. Circumstances included above, by way of example only, are:

- (i) an act of God, landslide, earthquake, fire, explosion, flood, hurricane, tornado, sabotage, or similar occurrence, acts of a public enemy, terrorism, extortion, war, blockade, insurrection, riot or civil disturbance;
- (ii) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;
- (iii) any failure of title to the Facilities or any placement or enforcement of any lien, charge or encumbrance on the Facilities or on any improvements thereon that is not consented to in writing by, or arising out of any action or agreement entered into by, either party to the Agreement;
- (iv) the inability of CAECD and its subcontractors to gain and maintain access to all areas of the Facilities and/or adjoining the Facilities where work is required to be performed hereunder;
- (v) the preemption, confiscation, diversion, destruction, or other interference by, on behalf, or with authority of a governmental body relating to a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action, in the possession of property, equipment or materials located at the Facilities, or in the performance of the Services to be performed by CAECD hereunder;
- (vi) strikes, work stoppages, or labor disputes affecting CAECD and any subcontractor (excluding material suppliers) of CAECD;
- (vii) with respect to CAECD, damage to the Facilities caused by third parties not related to or under the control of the CAECD, including, but not limited to, contractors and subcontractors for the CAECD; and,
- (viii) the failure of any CAECD subcontractor or supplier to furnish services, materials or equipment on the dates agreed to, but only if such failure is the result of an event that would constitute Force Majeure if it affected the CAECD directly, and the CAECD is not able after exercising all reasonable efforts to timely obtain substitutes.

M. Abide by the Regional Backup Communications Center (RBUC) Access Control Policy, included as attachment A, as if recited verbatim herein.

2.2 CAECD agrees to:

- A. Be responsible for maintaining all RBUC physical plant including primary electrical systems, 9-1-1 systems, HVAC and network wiring as budgeted and with approved available funds;

- B. Provide access control security as require by the CJIS Security Policy and maintain access control systems and badging for appropriate personnel and contractors;
- C. Provide training facilities, including Solacom and CritiCall consoles;
- D. Schedule training based on priority availability given to training offered on a regional basis and requested according to 2.1.H.; and
- E. Provide space, equipment, security, and staff support to the RBUC as budgeted and with approved available funds.

Section 3. Contract Price and Payment Terms

- 3.1 CAECD agrees to compensate Public Agency in the total amount of not to exceed \$1,000 per fiscal year for its performance of this contract. CAECD must make any payment obligated by this agreement from current revenues available to CAECD. The stated amount is a payment which fairly compensates the Public Agency for the duties performed hereunder.
- 3.2 Within 30 calendar days after the initial effective date of this contract and within 30 calendar days after the start of each fiscal year for which this contract is renewed, CAECD agrees to pay Public Agency \$1,000 for the purchase of supplies as outlined in Section 2.1.A of this contract.
- 3.3 If Public Agency has received payment for expenditures under this contract that are in violation of APPLICABLE LAW or POLICY described in Section 6, Public Agency agrees to repay CAECD for those payments within 60 calendar days from the date CAECD notifies Public Agency of the repayment amount due and the reason repayment is required.
 - A. If Public Agency does not refund the payment when required, CAECD may refuse to purchase 9-1-1 equipment on Public Agency's behalf and may withhold all or part of the unpaid payment from Public Agency's future entitlement to payment under this or future Interlocal contracts between the parties for PSAP maintenance, equipment upgrade, and training.
 - B. Before the 60-day payment period expires, Public Agency may appeal in writing to CAECD its determination that Public Agency refund the payment, explaining why it believes the determination is incorrect, or Public Agency may request CAECD in writing to extend the 60-day payment period, proposing an alternative period and justifying its need, or it may both appeal and propose an extension. The CAECD Board of Managers decision on Public Agency's appeal or proposal or both is final.
 - C. The parties understand and agree that the appeal authorized by Section 3.3.B is the only mechanism for challenging CAECD's determination under Section 3.3. that Public

Agency refund the payment. The early termination provisions of Section 10 and dispute resolution process of Section 11 are not available to challenge CAECD's determination.

Section 4. Effective Date and Term of Contract

- 4.1 This contract takes effect October 1, 2018 and shall continue for a period of two years, unless sooner terminated under Section 10. Thereafter, this contract shall automatically renew each year on October 1 until a Party provides written notice of termination to the other Party no less than sixty days prior to the end of the current term.

Section 5. Performance Reports

- 5.1 Public Agency agrees to document and perform a monthly test on their make busy switch by the 20th of each month. Records are to be kept for up to one year.

Section 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, 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; the current *Uniform Grant Management Standards* (Governor's Office of Budget and Planning); the current CAECD annual budget; CAECD 9-1-1 *Policies and Procedures Manual* and CAPCOG RNS *Policies & Procedures*.

Section 7. Independent Contractor, Assignment and Subcontracting

- 7.1 Public Agency is not an employee or agent of CAECD, 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 CAECD. An attempted assignment or subcontract in violation of this Section 7.2 is void.
- 7.3 If CAECD consents to Public Agency subcontracting of duties, 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.

Section 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 Section 8.3, Public Agency agrees to preserve the records for three 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 CAECD 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. CAECD 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 CAECD 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 Section 6. CAECD 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 CAECD agrees to notify Public Agency at least 24 hours in advance of any intended visit under this Section 8. Upon receipt of CAECD's notice, Public Agency agrees to notify the appropriate department(s) specified in the notice.

Section 9. Nondiscrimination and Equal Opportunity

- 9.1 Public Agency shall not exclude anyone or entity from participating in Public Agency's duties under this contract, unlawfully deny 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 CAECD's affirmative action procurement policy, which is set out in CAECD's *9-1-1 Policies and Procedures Manual*.

Section 10. Early Termination of Contract

- 10.1 Except as provided in Sections 3.3, if CAECD 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, which effort will be described in detail in a correction letter delivered to CAECD 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 the contract or may invoke the dispute resolution process of Section 11.

- 10.2 If this contract is terminated under Section 10, CAECD and Public Agency are each entitled to compensation for any performance undertaken pursuant to the terms of this Interlocal contract, where such performance was provided to the other before receiving notice of the termination. However, neither CAECD nor Public Agency is liable to the other for costs it paid or incurred under this contract made after or in anticipation of 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 CAECD and Public Agency 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 contract either under Section 4 or under this Section 10 does not affect Public Agency's duty:
 - A. To repay CAECD for expenditures made in violation of APPLICABLE LAW or POLICY in accordance with Sections 3.3;
 - B. To preserve its records and permit inspection, copying, and auditing of its 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 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 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 contract. 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 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.
- 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 Interlocal contract.
- 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.

Section 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 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 CAECD's address is 6800 Burleson Rd., Bldg. 310, Ste. 165, Austin, TX 78744, Attention: Executive Director.
- 12.3 Public Agency's address is _____, Attention: _____.
- 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 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. The undersigned warrants that he or she:
 - A. Has actual authority to execute this contract on behalf of the governing body identified as the Public Agency 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 Interlocal 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.
- 13.3 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.
- 13.4 The following Attachment is part of this contract:
 - A. Regional Backup Communications Center (RBUC) Access Control
- 13.5 This contract 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.
- 13.6 This contract is executed in duplicate originals.

CITY OF ELGIN, TEXAS

CAPITAL AREA EMERGENCY
COMMUNICATIONS DISTRICT

By _____
Name _____
Title _____
Date _____

By _____
Betty Voights
Executive Director
Date _____

Date of governing body approval: _____

ATTACHMENT A

Access Control Policy Regional Backup Center

Section 1. Applicability

- 1.1 This section applies to all Public Agencies using the Regional Backup Center (RBUC).
- 1.2 CAPCOG refers to the Capital Area Council of Governments.
- 1.3 CJIS is the Criminal Justice Information Services, and herein refers to the requirements of compliance with the FBI CJIS Security Policy.

Section 2. Access

- 2.1 Keycards
 - A. CAPCOG issued keycards are required for entry to the RBUC.
 - A valid Combined Transportation Emergency Communications Center (CTECC) keycard may also be used for entry to the RBUC.
 - B. All individuals while in the RBUC must display keycards in plain view.
 - C. CAPCOG keycards are the exclusive property of CAPCOG.
 - D. No CAPCOG keycard shall be duplicated or altered.
 - E. Individuals shall only use keycards assigned to them.
 - F. No person shall allow the use of a keycard to give unescorted access to a person who does not have CJIS clearance to the RBUC.
 - G. Any individual providing escorted access to a person is responsible for escorting the person the entire time in the RBUC and ensuring that they exit properly.
 - H. Intentional misuse of a keycard may result in a disciplinary action report filed with the keycard holder's Public Agency.
- 2.2 The CAPCOG Information Technology Division is responsible for:
 - A. Maintaining and installing all card printing equipment, card blanks, readers and access control security technology.
 - B. Issuing keycards by appointment to pre-authorized individuals Monday through Friday from 8:30 am to 4:00 pm.
 - Pre-authorized individuals can make appointments for keycards by emailing rbucaccess@capcog.org. Reply emails will provide details of the process to the individuals.

- CTECC Law Enforcement may send an email notice to rbucaccess@capcog.org letting CAPCOG know a person has been cleared for CTECC and BUC access. The email must include the CTECC Access Card Number for each individual needing access.
- 2.3 The CAPCOG Emergency Communications Division Director or designated staff is responsible for the following:
- A. Maintaining PSAP rosters and other listings signed by authorized Public Agency representatives for issuance and use of all keycards.
 - B. Determining the deactivation of keycards at any time with or without notice. The holder of a deactivated card shall promptly return it to their PSAP Manager or supervisor.
- 2.4 The Public Agency is responsible for the following:
- A. Gathering and returning all keycards to CAPCOG as soon as an employee terminates or there is no longer a need for the card.
 - B. Immediately notifying CAPCOG using rbucaccess@capcog.org in the event a keycard is misplaced, lost or stolen.
 - C. Keycard holders must immediately notify their PSAP Manager or supervisor if a keycard is misplaced, lost or stolen. The Public Agency will be charged for a replacement card.
 - D. Immediately notifying CAPCOG at rbucaccess@capcog.org of any change in employment or CJIS status that will result in restricting or terminating any agency representative's access to the RBUC.
 - E. PSAP Managers must sign and date the PSAP roster acknowledging that every listed employee has completed a CJIS Security Awareness Training as of a specified date and a current, complete criminal history background check is on file with the Public Agency.
 - F. For personnel requiring unescorted access to the Regional Backup Center a separate listing or letter may be submitted. The document must certify that everyone listed has completed CJIS Security Awareness Training as of a specified date and a current, complete criminal history background check is on file with the Public Agency. The document must be signed by an authorized official of the Public Agency and include an expiration date for the named employee's clearance and CJIS Security Awareness Training.

Section 3. Security

- 3.1 Individuals whose positions require unescorted access into the RBUC or Data Center shall comply with the provisions of the CJIS security policy.
- 3.2 Individuals without CJIS clearance require escorted access to the RBUC. Instances of unescorted access will be reported to the Public Agency.

Adopted 09-13-2017

Revised 05-15-2018