

# H-GAC

Houston-Galveston Area Council  
P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

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Intergovernmental Agreement - Contract - Fort Bend County - Transportation - ID: 11727 - CFDA/FALN  
Number: 66.046, FAIN Number: 02F39301, Federal Award Date: 09/07/23

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## ENVIRONMENTAL PROTECTION AGENCY - CLIMATE POLLUTION REDUCTION INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (“Agreement”), is made and entered by and between the Houston-Galveston Area Council, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and the Fort Bend County, (the Local Government Authority) having its principal place of business at 301 Jackson, Richmond, TX 77469. These entities are hereby defined as the Parties to this Agreement.

### WITNESSETH:

WHEREAS, the Houston-Galveston Area Council (H-GAC) is a regional planning commission operating under Chapter 391 Texas Local Government Code;

WHEREAS, H-GAC, in partnership with the Environmental Protection Agency (EPA) through the Climate Pollution Reduction Grant is working to develop or update existing regional climate mitigation plans to address greenhouse gas (GHG) emissions and reduction measures throughout the metropolitan area, and to conduct meaningful engagement with low-income and disadvantaged communities;

WHEREAS, the Local Government Authority has agreed to participate in the study or plan as detailed in the attached Scope of Work document;

WHEREAS, under the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code, H-GAC and the Local Government Authority are authorized to enter into agreements to perform governmental functions and services, and under Texas Local Government Code § 391.005, H-GAC and the Local Government Authority are authorized to contract together for H-GAC to perform certain services for the Local Government Authority.

NOW, THEREFORE, H-GAC and the Local Government Authority do hereby agree as follows:

### **Article 1: Legal Authority**

Both Parties mutually agree that they each possess adequate legal authority to enter into this Agreement. The Local Government Authority warrants and represents that it is not in breach of any other contract, obligation or covenant that would affect the Local Government Authority’s ability to perform hereunder and, as a result of entering into this Agreement, will not breach any such contract, obligation, or covenant,

### **Article 2: Applicable Laws**

H-GAC and the Fort Bend County agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, ordinances, and laws in effect or promulgated during the term of this Agreement.

### **Article 3: Performance Period**

This Agreement shall be performed during the period which begins 10/01/23 and ends 09/30/27. All services and/or deliverables under this Agreement must be rendered within this performance period unless extended by mutual consent through a written amendment to this Agreement.

### **Article 4: Whole Agreement**

This Interlocal Agreement and attachments, as provided herein, constitute the complete Agreement between the Parties hereto, and supersedes any and all oral and written agreements between the Parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the Parties.

### **Article 5: Independent Parties**

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Local Government Entity. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Local Government Entity the agent, servant, or employee of H-GAC, the State of Texas, or the United States Government, or vice versa.

### **Article 6: Party Liability**

Each Party shall have no liability whatsoever for the actions of, or failure to act by, any employees, contractors, subcontractors, agents, representatives, or assigns of the other Party in connection with the Agreement, and the Parties covenants and agree, to the extent permitted by law, that each shall be solely responsible for, and with respect to any claim or cause of action arising out of or with respect to any act, omission, or failure to act by its respective employees, contractors, subcontractors, agents, representatives, or assigns, in connection with the Agreement.

### **Article 7: Scope of Services**

The work to be performed by the H-GAC and Fort Bend County is detailed further in the Scope of Work, Attachment A, included herein with this Agreement.

### **Article 8: Payment**

Any payment or funding claimed under this agreement shall be paid only under the specific terms set forth in the Scope of Work and Budget. As per the Interlocal Cooperation Act, each Party paying for the performance of governmental functions or services must make those payments from current revenues available

### **Article 9: Retention of Records**

The Fort Bend County and H-GAC shall maintain all records pertinent to this Agreement, and all other financial, programmatic, statistical, property, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final contract closeout. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

### **Article 10: Audit**

Notwithstanding any other audit requirement, H-GAC and Fort Bend County agree that expenditures of cumulative state or federal funds exceeding seven-hundred fifty thousand dollars (\$750,000.00) in a fiscal year shall be subjected to audit in compliance with 2 CFR 200.

#### **Article 11: Amendments**

Any changes in the Agreement provisions or obligations of the parties hereto shall be enacted by written amendment and executed by both parties.

#### **Article 12: Termination Procedures**

The H-GAC and Fort Bend County acknowledge that this Agreement may be terminated for Convenience or Default.

##### ***A. Convenience***

Either Party may terminate this Agreement at any time, in whole or in part, with or without cause, whenever the Parties determines that for any reason such termination is in the best interest, and by providing written notice by certified mail to the other Party. Upon receipt of notice of termination, all services hereunder shall cease to the extent specified in the notice of termination.

Either Party may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to the other Party via certified mail. Neither Party may give notice of cancellation after it has received notice of default from the other Party.

##### ***B. Default***

In the event of default, this Agreement may be terminated for the following scenarios:

- (1) If the performing Party fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the performing Party fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances the performing Party does not cure such failure within a period of ten (10) business days (or such longer period of time as may be authorized and agreed upon by the Parties in writing) after receiving written notice by certified mail of default.

#### **Article 13: Severability**

The Parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

#### **Article 14: Force Majeure**

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the performing party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. In the event of force majeure, the affected Party must provide the other Party written notice of force majeure and the estimated impact to performance of this Agreement.

**Article 15: Ownership of Material**

Except as may be specified in the Special Provisions (if applicable) and Scope of Work, all data, reports, research, etc., developed by the performing Party as a part of its work under this Agreement, shall be shared with the other Party upon completion of this Agreement, or in the event of termination or cancellation hereof. All such data and material shall be furnished by the performing Party at no charge and upon request and in the format specified.

**Article 16: Subcontracting**

If Fort Bend County uses subcontractors, Fort Bend County shall apply the terms and conditions indicated in this Agreement and the Scope of Work to any subcontracted work. Fort Bend County shall at all times be responsible for the performance of its subcontractors. No term or agreement of Fort Bend County agreement with any Subcontractor shall alter the terms and conditions of this Agreement. Fort Bend County remain responsible for the work of its subcontractors.

**Article 17: Federal Compliance**

Local Government Entity agrees to comply with all applicable federal statutes relating to nondiscrimination, labor standards, and environmental compliance. Additionally, for work to be performed under the Agreement or subcontract thereof, including procurement of materials or leases of equipment, Local Government Entity shall notify each potential subcontractor or supplier of the Local Government Entity's federal compliance obligations. These may include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement; (l) applicable provisions of the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1251), Executive Order 11738, and the Environmental Protection Agency regulations at 40 CFR Part 15; (m) applicable provisions of the Davis Bacon Act (40 U.S.C. 276a - 276a-7), the Copeland Act (40 U.S.C. 276c), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as set forth in Department of Labor Regulations at 20 CFR 5.5a; (n) the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

**Article 18: Texas Public Information Act**

The Parties expressly acknowledge that this Agreement is subject to the Texas Public Information Act, Tex. Gov't Code. §§ 552.001 *et seq.*, as amended (the "Act"). Since both Parties are subject to the Act, each shall be entitled to release any and all information necessary to comply with Texas law without the

prior written consent of the other. In the event a Party to this Agreement receives a written request for information pursuant to the Act that affects one rights, title to, or interest in any information or data or a part thereof under this Agreement, then the Party receiving the request shall promptly notify the other Party to this Agreement of such request. The Party receiving the request may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. The Party receiving the request is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. The Party receiving the request solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.

#### **Article 19: Universal Identifier and System for Award Management (SAM)**

In accordance with 2 CFR Title 2, Subtitle A, Chapter I, Part 25 as it applies to a Federal awarding agency's grants, cooperative agreements, loans, and other types of Federal financial assistance as defined in 2 CFR 25.406. The Local Government Authority understands and as it relates to 2 CFR 25.205(a), a Federal awarding agency may not make a Federal award or financial modification to an existing Federal award to an applicant or recipient until the entity has complied with the requirements described in 2 CFR 25.200 to provide a valid unique entity identifier and maintain an active SAM registration ([www.SAM.gov](http://www.SAM.gov)) with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110). 2 CFR 25.200(b) requires that registration in the SAM **prior to submitting an application or plan**; and maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and provide its unique entity identifier in each application or plan it submits to the Federal awarding agency. To remain registered in the SAM database after the initial registration, the applicant is required to review and update its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete. At the time a Federal awarding agency is ready to make a Federal award, if the intended recipient has not complied with an applicable requirement to provide a unique entity identifier or maintain an active SAM registration with current information, the Federal awarding agency: (1) May determine that the applicant is not qualified to receive a Federal award; and (2) May use that determination as a basis for making a Federal award to another applicant.

#### **Article 20: Procurement of Recovered Materials**

In accordance with 2 CFR 200.323, the Houston-Galveston Area Council and the Local Government Authority must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Pursuant to the Federal Rule above, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c)(3)(A)(i)), the Contractor or Subrecipient certifies that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the Agreement will be at least the amount required by the applicable contract specifications or other contractual requirements.

**Article 21: Fraud, Waste or Abuse Hotline**

H-GAC shall immediately report to the County through the County's Fraud, Waste, or Abuse Hotline and also notify the County in accordance with all the Notice provisions contained in this Agreement all suspected or known instances and facts concerning fraud, waste, abuse, or criminal activity under this Agreement. The County's Fraud, Waste, or Abuse Hotline can be accessed by phone at 866-556-8181 or online at <https://secure.ethicspoint.com/domain/media/en/gui/68174/index.html>.

**Article 22: Definitions**

Unless otherwise stated in this Agreement, words which have well-known technical, or industry meanings are used in accordance with such recognized meaning.

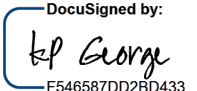
**Article 23: Choice of Law - Venue**

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas.

**Signatures**

This Agreement, in duplicate originals, has been executed by the Parties hereto as follows:

**Fort Bend County**

Signature  F546587DD2BD433...

Name KP George

Title County Judge

Date 2/14/2024

**H-GAC**

Signature  82EC270D5D61423...

Name Chuck Wemple

Title Executive Director

Date 2/15/2024