

H-GAC

Houston-Galveston Area Council

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

**Intergovernmental Agreement - Contract - Fort Bend County - Transportation - ID: 11951 - CFDA/FALN
Number: 20.205, FAIN Number: 693JJ21930000L40ETX1902325/693JJ21930000Z400TX1902325, Federal
Award Date: Aug 09 2019**

GENERAL PROVISIONS

This Agreement is made and entered into, 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 Fort Bend County, hereinafter referred to as the Local Government Entity, having its principal place of business at 301 Jackson, Richmond, TX 77469.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Local Government Entity to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Local Government Entity has agreed to perform such services in accordance with the specifications of the Agreement;

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

ARTICLE 1: LEGAL AUTHORITY

The Local Government Entity warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Local Government Entity's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Local Government Entity to the terms of this Agreement and any subsequent amendments hereto.

ARTICLE 2: APPLICABLE LAWS

The Local Government Entity agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Local Government Entity shall furnish H-GAC with satisfactory proof of its compliance therewith.

ARTICLE 3: INDEPENDENT CONTRACTOR

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. Employees of the Local Government Entity are subject to the exclusive control and supervision of the Local Government Entity. The Local Government Entity is solely responsible for employee related disputes and discrepancies, including employee payrolls and any claims arising therefrom.

ARTICLE 4: WHOLE AGREEMENT

The General Provisions, Special Provisions, and Attachments, as provided herein, constitute the complete Agreement ("Agreement") between the parties hereto, and supersede 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: SCOPE OF WORK

The services to be performed by the Local Government Entity are outlined in an Attachment to this Agreement.

ARTICLE 6: PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins Mar 01 2024 and ends Feb 28 2025. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 15, which shall be fully executed by both parties to this Agreement.

ARTICLE 7: PAYMENT OR FUNDING

Any payment or funding claimed by Local Government Entity shall be paid by H-GAC only under the specific terms set forth in the Special Provisions and Scope of Work. Local Government Entity agrees that payments are predicated upon properly documented and verified proof of performance delivered, and costs incurred by the Local Government Entity, in accordance with the terms outlined by the Special Provisions of this Agreement.

ARTICLE 8: REPORTING REQUIREMENTS

If the Local Government Entity fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may withhold payments otherwise due and owing the Local Government Entity hereunder. Local Government Entity's failure in reporting or performance may be considered cause for termination of this Agreement. If H-GAC withholds such payments, it shall notify the Local Government Entity of its decision. Payments withheld pursuant to this Article may be held by H-GAC until such time as the delinquent obligations for which funds are withheld are fulfilled by the Local Government Entity. The Local Government Entity's failure to timely submit any report may also be considered cause for termination of this Agreement.

Any additional reporting requirements shall be set forth in the Special Provisions of this Agreement.

ARTICLE 9: NON-FUNDING CLAUSE

Any obligation of H-GAC created by this Agreement is conditioned upon the availability of state or federal funds appropriated or allocated for the payment of such obligations. H-GAC shall not be otherwise obligated or liable for any future payments due, or for any damages as a result of interruption of payment or termination.

ARTICLE 10: INSURANCE

Local Government Entity shall maintain insurance coverage for work performed or services rendered under this Agreement as outlined and defined in the attached Special Provisions.

ARTICLE 11: SUBCONTRACTS

Except as may be set forth in the Special Provisions, the Local Government Entity agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC. The Local Government Entity acknowledges that H-GAC is not liable to any subcontractor or assignee of the Local Government Entity. The Local Government Entity shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Local Government Entity. Local Government Entity shall give all required notices, and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable law or regulation, H-GAC shall not be responsible for monitoring Local Government Entity's compliance, or that of Local Government Entity's subcontractors, with any laws or regulations.

ARTICLE 12: AUDIT

Notwithstanding any other audit requirement, H-GAC reserves the right to conduct or cause to be conducted an independent audit of any transaction under this Agreement, such audit may be performed by the H-GAC local government audit staff, a certified public accountant firm, or other auditors designated by H-GAC and will be conducted in accordance with applicable professional standards and practices. Local Government Entity who spend seven-hundred fifty thousand dollars (750,000) or more of federal assistance under this contract or cumulatively under all federal contracts in a fiscal year are required to have an audit conducted annually in compliance with 2 CFR 200. Local Government Entity agrees to submit all written reports of monitoring or audits to H-GAC within 30 days of issuance. Any reports that contain findings from an auditor must also include a corrective action plan from the Local Government Entity in accordance with 2 CFR 200.511.

The Local Government Entity understands and agrees that the Local Government Entity shall be liable to the H-GAC for anything disallowed as a result of audit, in which case future payments are predicated upon repayment as set forth in the Special Provisions.

ARTICLE 13: EXAMINATION OF RECORDS

The Local Government Entity shall maintain during the course of the work complete and accurate records of all of the Local Government Entity's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas, and United States Government, shall have the right at any reasonable time to inspect, copy and audit those records on or off the premises by authorized representatives of its own or any public accounting firm selected by H-GAC. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Local Government Entity shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Local Government Entity's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Local Government Entity's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Local Government Entity further agrees to include in all its subcontracts, permitted pursuant to Article 11 hereof. The Local Government Entity agrees that H-GAC and its duly authorized representatives shall until the expiration of seven (7) years after final payment under the subcontract or until all audit findings have been resolved, have access to and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving transactions relating to the subcontract.

ARTICLE 14: RETENTION OF RECORDS

The Local Government Entity shall maintain all records pertinent to this Agreement, and all other financial, statistical, property, participant records, 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 15: CHANGES AND AMENDMENTS

- A. Any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in federal or state Law or by regulations, are automatically incorporated without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

- B. To ensure the legal and effective performance of this Agreement, both parties agree that H-GAC may amend performance under this Agreement, during the contract period, by issuing policy directives to establish or clarify performance requirements under this Agreement. After a period of no less than 30 days subsequent to written notice, unless sooner implementation is required by law, such policy directives shall have the effect of qualifying the terms of this Agreement and shall be binding upon the Local Government Entity as if written herein, provided however that such policy directives shall not alter the terms of this Agreement so as to relieve H-GAC of any obligation specified in this Agreement to reimburse Local Government Entity for costs properly incurred prior to the effective date of such policy directives.
- C. Except as specifically provided by subsections A and B of this Article, any other alterations, additions, or deletions to the terms of this Agreement shall be by modification hereto in writing, and executed by both parties to this Agreement.

ARTICLE 16: TERMINATION PROCEDURES

The Local Government Entity acknowledges that this Agreement may be terminated for Convenience or Default.

A. *Convenience*

H-GAC may terminate this Agreement at any time, in whole or in part, with or without cause, whenever H-GAC determines that for any reason such termination is in the best interest of H-GAC, by providing written notice by certified mail to the Local Government Entity. Upon receipt of notice of termination, all services hereunder of the Local Government Entity and its employees and subcontractors shall cease to the extent specified in the notice of termination.

The Local Government Entity may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to H-GAC via certified mail. The Local Government Entity may not give notice of cancellation after it has received notice of default from H-GAC.

B. *Default*

H-GAC may, by written notice of default to the Local Government Entity, terminate the whole or any part of the Agreement, in any one of the following circumstances:

- (1) If the Local Government Entity fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Local Government Entity 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 does not cure such failure within a period of ten (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

ARTICLE 17: SEVERABILITY

H-GAC and Local Government Entity 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 18: 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 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. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 19: COPYRIGHTS

H-GAC, and any related state or federal awarding agency, reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state or federal government or H-GAC purposes:

- A. The copyright of all maps, data, reports, research or other work developed under this Agreement;
- B. Any copyrights or rights of use to copyrighted material which the Local Government Entity purchases with funding under this Agreement. All such data and material shall be furnished to H-GAC upon request.

ARTICLE 20: OWNERSHIP OF MATERIALS

Except as may be specified in the Special Provisions, all data, reports, research, etc., developed by the Local Government Entity solely as a part of its work under this Agreement, shall become the property of the H-GAC upon completion of this Agreement, or in the event of termination or cancellation hereof. All such data and material shall be furnished to H-GAC at no charge and upon request. Local Government Entity further agrees not to release information about results or deliverables connected to this Agreement to anyone outside of H-GAC, without first obtaining written release authorization from H-GAC.

ARTICLE 21: POLITICAL ACTIVITY; LOBBYING

Nothing related, connected to, or provided under this Agreement may be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with state or local legislators. The Local Government Entity, if a recipient of Federal assistance exceeding 100,000 dollars through an H-GAC subcontract, will comply with section 319, Public Law 101-121 (31 U.S.C. 1352).

ARTICLE 22: SECTARIAN INVOLVEMENT PROHIBITED

The Local Government Entity shall ensure that no funds under this Agreement are used, either directly or indirectly, in the support of any religious or anti-religious activity, worship, or instruction.

ARTICLE 23: CONFLICT OF INTEREST

No officer, member or employee of the Local Government Entity or Local Government Entity's subcontractor, no member of the governing body of the Local Government Entity, and no other public officials of the Local Government Entity who exercise any functions or responsibilities in the review or Local Government Entity approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

ARTICLE 24: FEDERAL COMPLIANCE

Local Government Entity agrees to comply with all 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 25: CRIMINAL PROVISIONS AND SANCTIONS

The Local Government Entity agrees to perform the Agreement in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of any related state or federal agency. The Local Government Entity agrees to promptly notify H-GAC of any actual or suspected fraud, abuse, or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Local Government Entity shall notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to the Local Government Entity from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Local Government Entity further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit, in carrying out a full investigation of all such incidents.

The Local Government Entity shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Local Government Entity pertaining to this Agreement or which would adversely affect the Local Government Entity's ability to perform services under this Agreement.

ARTICLE 26: TITLES NOT RESTRICTIVE

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

ARTICLE 27: JOINT WORK PRODUCT

This Agreement is the joint work product of H-GAC and the Local Government Entity. This Agreement has been negotiated by H-GAC and the Local Government Entity and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against any party.

ARTICLE 28: DISPUTES

All disputes concerning questions of fact or of law arising under this Agreement, which are not addressed within the Whole Agreement as defined pursuant to Article 4 hereof, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Local Government Entity. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, the Local Government Entity requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Local Government Entity shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Local Government Entity may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction.

Pending final decision of a dispute hereunder, the Local Government Entity shall proceed diligently with the performance of the Agreement and in accordance with H- GAC's final decision.

ARTICLE 29: 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.

ARTICLE 30: ORDER OF PRIORITY

In the case of any conflict between or within this Agreement, the following order of priority shall be utilized: 1) General Provisions, 2) Special Provisions, 3) Scope of Work, and, 4) Other Attachments.

ARTICLE 31: 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. Contractor 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) 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 32: PROCUREMENT OF RECOVERED MATERIALS

In accordance with 2 CFR 200.323, the Houston-Galveston Area Council and the Contractor or Subrecipient 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.

SIGNATURES:

H-GAC and the Local Government Entity have read, agreed, and executed the whole Agreement as of the date first written above, as accepted by:

Local Government Entity

Signature  DocuSigned by:
F546587DD2BD433...

Name KP George

Title County Judge

Date 2/29/2024

H-GAC

Signature  DocuSigned by:
82EC270D5D61423...

Name Chuck Wemple

Title Executive Director

Date 3/4/2024