CAPITAL AREA COUNCIL OF GOVERNMENTS
INTERLOCAL CONTRACT FOR
FY2012 SOLID WASTE EQUIPMENT AND SERVICES

The Capital Area Council of Governments (hereafter, CAPCOG) and the agreeing party (hereafter, SUBCONTRACTOR) each certifies that it has authority to perform this Contract under Chapter 391 of the Local Government Code, and Chapter 361 of the Health and Safety Code.

This Solid Waste Interlocal Contract is entered into by and between the parties named below. Neither the Texas Commission on Environmental Quality (TCEQ) nor the State of Texas is a party to this agreement.

I. CONTRACTING PARTIES:

Contractor: Capital Area Council of Governments
Subcontractor: Caldwell County
Contract #: 12-12-G03
Award: $18,349.00

II. SERVICES TO BE PERFORMED:

See Attachment B – “Work Program of SUBCONTRACTOR”
See Attachment C – “Schedule of Deliverables from SUBCONTRACTOR”

III. BUDGET AND PAYMENT PROCEDURES:

See Attachment D – “Budget and Authorizations”

IV. ADDITIONAL CONTRACT PROVISIONS:

See Attachment A – “Special Contract Provisions”
See Attachment E – “General Contract Provisions”
CONTRACTING PARTIES

CONTRACTOR: Capital Area Council of Governments (CAPCOG)

SIGNATURE: 

NAME: Betty Voights

TITLE: Executive Director

DATE: 7-20-12

SUBCONTRACTOR: Caldwell County

SIGNATURE: 

NAME: Hon. Tom Bonn

TITLE: County Judge

DATE: 26 July 12
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ATTACHMENT A
Special Contract Provisions

Article 1: Period of Performance

The period of performance of this Solid Waste Interlocal Contract (hereafter, the Contract) begins on July 16, 2012 and ends, unless sooner terminated under Attachment E, on June 31, 2013. The SUBCONTRACTOR has the time period shown above to complete the tasks as shown in Attachment B of this Contract. The SUBCONTRACTOR may request in writing a time extension, but CAPCOG is not obligated to provide the time extension.

Article 2: Scope of Services

All parties agree that Caldwell County, in consideration of compensation hereinafter described, shall provide as specifically described in the Special and General Provisions of this Solid Waste Interlocal Contract, the services of: Litter and Illegal Dumping and Community Collection Events.

The SUBCONTRACTOR agrees to implement the Project according to the agreed upon budget in an amount not to exceed $18,349 as detailed in Attachment D, Article 3 of this Contract.

Failure on the part of the SUBCONTRACTOR to comply with the conditions set forth in this Contract shall be the basis for termination of the Contract and recovery of any unexpended or inappropriately expended funds.

Article 3: CAPCOG Obligations

(a). Consideration

In consideration of full and satisfactory performance hereunder, CAPCOG will be liable to SUBCONTRACTOR in an amount equal to the allowable costs defined in OMB Circular No. A-87 and incurred by SUBCONTRACTOR in rendering such performance, subject to the following limitations:

1. CAPCOG is not liable for expenditures made in violation of the Authorized Budget and funding guidelines in Attachment D, which outline the standards which shall apply to the SUBCONTRACTOR’S use of funds provided under this Contract, including prohibited activities and expense categories as defined by the TCEQ.

2. CAPCOG is not liable for any costs incurred by SUBCONTRACTOR in the performance of this Contract which have not been billed to CAPCOG within thirty (30) days following termination of this Contract.

3. CAPCOG is not liable to SUBCONTRACTOR for costs incurred or performance rendered by SUBCONTRACTOR for costs incurred by SUBCONTRACTOR before commencement of this Contract or after termination of this Contract.
4. Except as specifically authorized by CAPCOG in writing, CAPCOG is liable only for expenditures made in compliance with the cost principles and administrative requirements set forth in Federal OMB Circular No. A-87. CAPCOG is not liable for expenditures made in violation of Attachment D, Article 2 of this Contract.

(b). Additional Documentation and Financial Monitoring Program

1. Financial Monitoring Program. The SUBCONTRACTOR will adhere to the following financial monitoring requirements in order to receive reimbursement for authorized expenditures and to ensure that the expenditures incurred were reasonable and necessary to the project.

   i) Payments to the SUBCONTRACTOR will be made only on a reimbursement basis. To receive reimbursement the SUBCONTRACTOR must submit the following:

   a) Reimbursement Request Form
   b) Copies of checks
   c) Copies of invoices
   d) List of bid responses for purchases over $5,000
   e) Copy of RFP and list of RFP responses (if applicable)
   f) Equipment inventory information (if applicable)

   ii) If the SUBCONTRACTOR does not have a Purchasing Policy that complies with state law, the SUBCONTRACTOR must adhere to the general provisions of CAPCOG’s Purchasing Policy, which are outlined below:

   a) Purchases over $15,000 must be approved by the organization’s governing body (i.e. school board, city council, and commissioner’s court)
   b) Purchases above $25,000 require formal competitive sealed bids
   c) Purchases between $5,000 and $25,000 require informal bids (at least three written quotes) and must be approved by the governing body
   d) Purchases between $2,500 and $4,999 require informal bids (at least three written quotes)
   e) Purchases between $300 and $2,499 require at least three verbal quotes
   f) Purchase less than $300 do not require quotes
   g) Split purchases to avoid bidding requirements will not be allowed
   h) Cumulative purchases of like items through the fiscal year could be considered circumvention of the policy if it was reasonable to anticipate the purchases in advance

   Note: The use of State Contract items can eliminate the need for many of the bidding requirements. However, purchases over $10,000 still require approval of the organization’s governing body.

iii) The SUBCONTRACTOR is allowed to account for expenses incurred and request reimbursement of outlays under either a cash or an accrual basis, as defined and authorized under the UGMS. To be eligible for reimbursement under this Contract, a cost must have been incurred and either paid by the SUBCONTRACTOR prior to
claiming reimbursement from CAPCOG or incurred by the last day of the time period indicated on a request for reimbursement form and liquidated no later than thirty (30) days after the end of that time period.

iv) CAPCOG will review all materials provided by the SUBCONTRACTOR with a request for reimbursement, and will not make a reimbursement payment unless all required items listed under Article 3 (b)1(i) of this Attachment have been provided and are deemed to be accurate.

v) CAPCOG shall reimburse or otherwise make payment to the SUBCONTRACTOR only for expenses incurred during the term of the Contract between CAPCOG and the SUBCONTRACTOR.

vi) CAPCOG will not reimburse or otherwise make payment to the SUBCONTRACTOR for an expenditure that is not authorized under this Contract. If it is determined by either CAPCOG or the TCEQ that an expenditure that was reimbursed is not an authorized expense, CAPCOG shall request return and reimbursement of those funds from the SUBCONTRACTOR or, where appropriate, the application of those funds to other authorized expenses, and shall not provide additional reimbursements to the SUBCONTRACTOR until the funds are returned or are applied to other authorized expenses.

2. Documentation required. In general, expenditure documentation to be maintained by the SUBCONTRACTOR should be whatever is necessary to show that the work was indeed performed and that the expense was, in fact, incurred. In addition, the documentation should also support the fact that the expenditure was reasonable and necessary to this Contract. Documents that should be maintained, as appropriate for the expense, include but are not limited to the following:

i) Salary/Wages – Time sheets that have been signed and approved.

ii) Travel – Documentation which, at a minimum, is consistent with State Travel Regulations. The purpose of the travel should be documented and supported with actual receipts for hotel accommodations, public transportation receipts, airline receipts, etc.

iii) Equipment – Purchase orders, invoices, and canceled checks.

iv) Supplies – Purchase orders (if issued), invoices, and canceled checks.

v) Contractual – All of the above plus documentation that the costs were reasonable and necessary. The same standards should be applicable to subcontractors.

3. Additional Documentation. If requested by CAPCOG, the SUBCONTRACTOR agrees to provide to CAPCOG the additional expense records and documentation materials, as listed in Section (b) 2 of this Article and appropriate for the expense, for the time period requested by CAPCOG, except that the SUBCONTRACTOR will not be asked to submit records that have already been provided to CAPCOG with a Financial Status Report. CAPCOG will provide reasonable time for the SUBCONTRACTOR to comply with a
request for additional records. If CAPCOG requests to review additional records to be provided by the SUBCONTRACTOR under CAPCOG’s financial monitoring program, CAPCOG will review those records and provide the SUBCONTRACTOR a written summary of the findings of that review. CAPCOG will also allow the SUBCONTRACTOR reasonable time to respond to any findings of noncompliance or other problems identified by the records review.

(c). **SUBCONTRACTOR Close Out Report**

No later than thirty (30) days following the termination of this Contract, SUBCONTRACTOR must submit to CAPCOG final Progress Reporting and Reimbursement Request Forms, which indicates that the reports are the "Final Reports." If all expenditures have been completed before the end of the Contract, SUBCONTRACTOR shall submit a final Progress Reporting Form, indicating project completion. SUBCONTRACTOR shall also submit a final Results Tracking Form one year after the termination of the biennium under which funding was received.

(d). **Independent Contractor**

SUBCONTRACTOR is not an employee or agent of CAPCOG, but provides goods and performs services under this Contract solely as an independent contractor.

**Article 4: Reporting Requirements**

(a). The SUBCONTRACTOR shall prepare and submit to CAPCOG progress reports as designated in Attachment C of this Contract. These reports concern the performance under this Contract documenting program accomplishments and units of work performed under Attachment B of this Contract. These progress reports, to be submitted by the SUBCONTRACTOR, shall include:

1. **Progress Reporting Form** which documents the progress and completion of tasks and includes the Results Tracking Form.
2. **Reimbursement Request Form** which will be used to request reimbursement and will require sufficient backup documentation. Reimbursement requests may be submitted at any time during the grant period, but must be submitted at least as often as required under Attachment C Schedule of Deliverables. Requirements for reimbursement requests are detailed under Subsection (b) of Article 3.

Payments (reimbursements) required under this Contract will be withheld by CAPCOG until such time as any past due progress reports are received.

(b). The SUBCONTRACTOR progress reports required under Subsection (a) of Article 4 contain descriptions of activities and costs for CAPCOG to ensure that the provisions of this Contract are being complied with. In particular, any legal research and related legal activities shall be clearly detailed in the quarterly progress reports in order to assure CAPCOG that the activities are not prohibited under Attachment D Article 2 of this Contract (relating to Supplemental Funding Standards). The SUBCONTRACTOR shall comply with any reasonable request by CAPCOG for additional information on activities conducted in order for CAPCOG to
adequately monitor the SUBCONTRACTOR’s progress in completing the requirements of and adhering to the provisions of this Contract.

(c). The SUBCONTRACTOR will certify in writing to CAPCOG through a final progress report, the satisfactory completion of all activities and deliverables required under this Contract. The final progress report shall consist of the forms described in Section A of this Article 4.

(d). The SUBCONTRACTOR shall maintain the information required by the forms listed in Part (a) of this Section so that a follow-up results report can be prepared. The SUBCONTRACTOR shall provide CAPCOG with a follow-up Progress Reporting Form to be due approximately September 2014 so that CAPCOG can report to the TCEQ the results of the projects funded under this Contract.

(e). The SUBCONTRACTOR’S failure to comply with the requirements of this Article shall constitute a breach of this Contract.

(f). The SUBCONTRACTOR shall maintain documentation on the results of the project activities for the life of the program or activity.

(g). The reporting requirements of this Article 4 survive the ending or early termination of this Contract.

Article 5: Monitoring Requirements

(a). CAPCOG may periodically monitor SUBCONTRACTOR for:

1. The degree of compliance with the terms of this Contract, including compliance with applicable rules, regulations, and promulgations referenced herein; and

2. The administrative and operational effectiveness of the project.

(b). CAPCOG shall conduct periodic analysis of SUBCONTRACTOR’S performance under this Contract for the purpose of assessing the degree to which contractual objectives and performance standards, as identified in this Contract or as subsequently amended, are achieved by SUBCONTRACTOR.

Article 6: Title To and Management of Real Property and Equipment

(a). Subject to the obligations and conditions set forth in this Agreement, title to real property and equipment (together hereafter referred to in this Article as “property”) acquired under this Agreement by the SUBCONTRACTOR will vest upon acquisition or construction in CAPCOG or the SUBCONTRACTOR respectively.

(b). Subject to the provisions of this Agreement, and as otherwise provided by state statutes, property acquired or replaced under this Agreement shall be used for the duration of its
normally expected useful life to support the purposes of this Agreement whether or not the original projects or programs continue to be supported by state funds.

(c). The SUBCONTRACTOR shall not grant or allow to a third party a security interest in any original or replacement property purchased or constructed with funds made available to the SUBCONTRACTOR under this Agreement.

(d). The use of property acquired under this Agreement, both during the term of this Agreement and for the useful life of the property or until compensation is provided to the FUNDING AGENCY for the applicable percentage share of the fair market value of the property, shall be in compliance with §361.014(b) of the TEXAS HEALTH & SAFETY CODE ANN., which directs that a project or service funded under this program must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(e). The SUBCONTRACTOR may develop and use their own property management systems, which must conform with all applicable federal, state, and local laws, rules and regulations. If an adequate system for accounting for property owned by the SUBCONTRACTOR is not in place or is not used properly, the Property Accounting System Manual issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the SUBCONTRACTOR must meet the requirements set forth in this Section.

1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, and the cost of the property, percentage of state participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

2. A physical inventory of all equipment acquired or replaced under this Agreement shall be conducted no less frequently than once every two years and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the SUBCONTRACTOR shall include adequate safeguards to prevent loss, damage, or theft of the acquired property. Any loss, damage, or theft shall be investigated. The SUBCONTRACTOR shall develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event such property is sold.

3. Certain types of equipment are classified as “controlled assets” and are subject to annual revision. In accordance with the UGMS, the SUBCONTRACTOR should contact the Texas Comptroller of Public Accounts’ property accounting staff or review the Comptroller’s state Property Accounting User Manual available on the Internet, for the most current listing.

(f). The SUBCONTRACTOR may for the purpose of replacing property acquired under this Agreement, either trade in or sell the property and use the proceeds of such trade-in or sale to offset the cost of acquiring needed replacement property.
(g). The SUBCONTRACTOR agrees that if a determination is made that any property acquired with funds provided under this Agreement with a current per-unit fair market value of $1,000 or more is no longer needed for the originally authorized purpose, CAPCOG has the right to require disposition of the property by the SUBCONTRACTOR in accordance with the provisions of this Article.

(h). When, during the useful life of property acquired with grant funds under this Agreement by the SUBCONTRACTOR and with a current per-unit fair market value of $1,000 or more, the property is no longer needed for the originally authorized purpose, SUBCONTRACTOR agrees to request disposition instructions from the CAPCOG or, if CAPCOG is no longer administering a Regional Solid Waste Grants Program, the TCEQ. CAPCOG shall, in turn, request authorization from the TCEQ to provide disposition instructions to the SUBCONTRACTOR. Disposition instructions shall solicit, at a minimum, information on the source and amount of funds used in acquiring the property, the date acquired, the fair market value and how the value was determined (e.g., by appraisal, bids, etc.), and the proposed use of the proceeds. The assessment of whether to authorize the proposed disposition of the property must include a determination that the disposition plan will comply with the private industry provisions of §361.014(b) of the TEXAS HEALTH & SAFETY CODE ANN. In cases where SUBCONTRACTOR fails to take appropriate disposition actions, CAPCOG may direct SUBCONTRACTOR to take appropriate disposition actions. The disposition instructions may provide for one of the alternatives as set forth in this Section.

1. Retain title, sell, or otherwise disposed of with no obligation to compensate CAPCOG.

2. Retain title after compensating CAPCOG. If CAPCOG is compensated by the SUBCONTRACTOR for property acquired using funds provided under this Agreement, CAPCOG will in turn compensate the TCEQ or, upon authorization by the TCEQ, use those funds for other projects or activities that support this or similar future programs conducted by the TCEQ. The amount due will be computed by applying the percentage of state-funded participation in the cost of the original purchase to the fair market value of the property.

3. Sell the property and compensate CAPCOG. If CAPCOG is compensated by the SUBCONTRACTOR for property acquired using funds provided under this Agreement, CAPCOG will in turn compensate the TCEQ or, upon authorization by the TCEQ, use those funds for other projects or activities that support the goals of this or similar future programs conducted by the TCEQ. The amount due will be calculated by applying CAPCOG's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When SUBCONTRACTOR is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

4. Transfer title to CAPCOG or to a third-party designated/approved by the TCEQ. If the SUBCONTRACTOR participated financially in the original purchase of the property, the SUBCONTRACTOR may be authorized payment from the receiving party of an amount calculated by applying the percentage of the participation in the original purchase of the property to the current fair market value of the property.
(i). Items of property with a current per-unit fair market value of less than $1,000 may be retained, sold or otherwise disposed of by the SUBCONTRACTOR with no further obligation to CAPCOG. Methods used to determine per-unit fair market value must be documented, kept on file and made available to CAPCOG and the TCEQ upon request.

Article 7: Compliance with Applicable Laws

The SUBCONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and order of any public authority bearing on the performance of this Contract including, but not limited to, the laws referred to in this Contract. If the SUBCONTRACTOR or CAPCOG observes that this Contract is at variance, the observing party shall promptly notify the other party in writing, and any necessary changes shall be addressed by appropriate Contract modification. On request, the SUBCONTRACTOR shall furnish CAPCOG modification. The main governing standards include, but may not be limited to the following:

(a). Section 361.014, TEX. HEALTH & SAFETY CODE ANN;

(b). Section 330.569 of the TCEQ Municipal Solid Waste Regulations (30 TAC Chapter 330); and

(c). The Uniform Grant and Contract Management Act, Chapter 783 of the TEX. GOV'T CODE ANN, and the Uniform Contract Management Standards, 1 Texas Administrative Code Section 5.141 et. seq. (UGMS).

Article 8: Authorized Representatives

(a). CAPCOG hereby designates the person named in Exhibit A-1, Project Representative, to this Attachment A, as the individual authorized to give direction to the SUBCONTRACTOR for the purposes of this Contract. CAPCOG Project Representative shall not be deemed to have authority to bind CAPCOG in Contract unless the Executive Director of CAPCOG has delegated such authority in writing.

(b). Immediately upon execution of this Contract, the SUBCONTRACTOR shall identify, as its Project Representative, the person authorized to receive direction from CAPCOG, to manage the work being performed, and to act on behalf on the SUBCONTRACTOR as Project Representative. The SUBCONTRACTOR's Project Representative shall be deemed to have authority to bind the subcontractor in Contract unless the SUBCONTRACTOR, in writing, specifically limits or denies such authority to the SUBCONTRACTOR's Project Representative with respect to the administration of the Contract.

(c). Either party may change its Project Representative. In addition, the Project Representative of either party may further delegate his or her authority as necessary, including any delegation of authority to a new Project Representative. The party making the change in Project Representative shall provide written notice of the change to the other party.

(d). The SUBCONTRACTOR shall ensure that its Project Representative, or his or her delegate, is available at all times for consultation with CAPCOG. If the project representative will be absent during the term of this Contract, the SUBCONTRACTOR shall designate an alternate that will be available to consult with CAPCOG.
Exhibit A-1

The Capital Area Council of Governments hereby designates the individual below as the person to give direction to the SUBCONTRACTOR as Project Representative of CAPCOG:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Kelly Freeman</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td>Solid Waste Program Manager</td>
</tr>
<tr>
<td>Address:</td>
<td>6800 Burleson, Bldg 310, Ste 165</td>
</tr>
<tr>
<td></td>
<td>Austin, TX 78704</td>
</tr>
<tr>
<td>Phone:</td>
<td>(512) 916-6040</td>
</tr>
<tr>
<td>Fax:</td>
<td>(512) 916-6001</td>
</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:kfreeman@capcog.org">kfreeman@capcog.org</a></td>
</tr>
</tbody>
</table>

The SUBCONTRACTOR hereby designates the individual named below as the person authorized to receive direction from CAPCOG, to manage the work being performed, and to act on behalf of the SUBCONTRACTOR as a Project Representative:

(Please complete all of the following information)

<table>
<thead>
<tr>
<th>Name:</th>
<th>Hon. Tom Bonn</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td>County Judge</td>
</tr>
<tr>
<td>Address:</td>
<td>110 S. Main St., Rm. 302</td>
</tr>
<tr>
<td></td>
<td>Lockhart, Texas 78644</td>
</tr>
<tr>
<td>Phone:</td>
<td>512-376-1779</td>
</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:tom.bonn@co.caldwell.tx.us">tom.bonn@co.caldwell.tx.us</a></td>
</tr>
</tbody>
</table>
ATTACHMENT B
Work Program of SUBCONTRACTOR

Task 1: Identify target communities and coordinate events
Person: County Judge’s Office
Deadline: October 2012

Task 2: Select vendors and contractors, coordinate volunteers
Person: County Judge’s Office
Deadline: October 2012

Task 3: Conduct event(s)
Person: County Judge’s Office
Deadline: June 2013

Task 4:
Person:
Deadline:
ATTACHMENT C
Schedule of Deliverables from SUBCONTRACTOR

REQUIRED REPORTS

<table>
<thead>
<tr>
<th>Report</th>
<th>Reporting Period</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Progress, Results, Reimbursement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report #2</td>
<td>July 2012 - June 2013</td>
<td>July 15, 2013</td>
</tr>
<tr>
<td>Progress, Results, Reimbursement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Results Only</td>
<td></td>
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</tr>
</tbody>
</table>

NOTE: Additional Reimbursement Requests may be submitted at any time during the grant period, as needed. For the purposes of preparing progress and results reports, it is suggested that the SUBCONTRACTOR maintain the Results Tracking Form on a monthly basis.

Please see Attachment A Article 4 for forms that are due at the above due dates. The reporting forms will be sent to the SUBCONTRACTOR after this Contract becomes effective.
ATTACHMENT D
SUBCONTRACTOR Budget and Authorizations

Article 1: Expense Category Standards

In addition to the other standards and requirements of this Agreement, the definitions and requirements set forth in Sections (a) – (h) of this Article shall apply to the SUBCONTRACTOR’s use of funds provided under this Agreement and assignment of expenses to the expense categories of the budget set forth in Attachment D Article 3 of this Agreement.

(a). Personnel. In accordance with §391.0117 of the Local Government Code, as amended by the 76th Legislature, the SUBCONTRACTOR shall utilize the Salary Administration Provisions and Schedules, and Position Classification Schedules applicable to state agencies for all salaries of employees of the SUBCONTRACTOR funded under this Agreement.

1. The SUBCONTRACTOR’s employee positions covered in this Agreement are set forth in Detailed Budget Sheet 2 of the grant application. Any change in employee position constitutes a minor amendment pursuant to Article 9 of the General Provisions (Attachment E) of this Agreement.

(b). Travel. The SUBCONTRACTOR shall comply with state travel regulations as required by §391.0115 of the Local Government Code, for all of the SUBCONTRACTOR’s travel expenses to be reimbursed with funds provided under this Agreement as set forth in this Section.

1. The SUBCONTRACTOR shall obtain prior written authorization from CAPCOG for reimbursement under this Agreement of any travel outside of the State of Texas.

2. Except as provided for under Subsection 1 of this Section, the SUBCONTRACTOR shall obtain prior written authorization from CAPCOG for reimbursement from the travel expense category of the budget set forth in Attachment D Article 3, of any travel expenses for persons not employed by the SUBCONTRACTOR, and for travel by any employee not included in Detailed Budget Sheet 2 of the grant application.

(c). Supplies. Expenses included under the Supplies expense category of the budget set forth in Attachment D Article 3, shall be for non-construction related costs for goods and materials having a unit acquisition cost (including freight) of less than $1,000. Such expenditures shall generally relate to the routine purchase of office supplies (paper, pencils, and staplers) or other goods which are consumed by the SUBCONTRACTOR in a relatively short period of time, in the regular performance of the general activities funded under this Agreement.

1. Non-routine expenditures of goods and materials, not falling under the definition of Equipment under Section (d), of these Program Conditions, shall be charged to the Other expense category.

(d). Equipment. Expenses included under the Equipment expense category of the budget set forth in Attachment D Article 3, shall be for non-construction related, tangible, personal property
having a unit acquisition cost of $5,000 or more (including freight and set up costs) with an estimated useful life of over one year.

1. No purchases of equipment to be charged to the equipment expense category of the budget set forth in Attachment D Article 3, shall be allowed under this Agreement unless approved ahead of time, in writing, by CAPCOG. Approvals for equipment purchases in conjunction with COG-managed projects shall be included with the overall approvals for those projects.

2. Any equipment that will be used for other projects or activities, in addition to the funded project, may only be funded at an amount reflecting the appropriate percentage of time that the equipment will be directly used for the funded project. The special conditions and requirements set forth in the grant agreement (relating to Title to and Management of Equipment and Constructed Facilities), also apply to equipment purchased with pass-through grant funding.

(e). Construction. Expenses included under the Construction expense category of the budget set forth in Attachment D Article 3, shall be for costs related to projects, administered by the SUBCONTRACTOR, concerned with the enhancement or building of permanent facilities.

1. Expenses budgeted under the construction expense category of the budget set forth in Attachment D Article 3, should be for costs related to the enhancement or building of permanent facilities. Appropriate costs to include under the Construction expense category are set forth in this Section.

   i) The cost of planning the project.
   ii) The cost of materials and labor connected to the construction project.
   iii) The cost of equipment attached to the permanent structure.
   iv) Any subcontracts, including contracts for services, which are performed as a portion of the project administered by the SUBCONTRACTOR.

2. No expenditures under the Construction expense categories of the budget set forth in Attachment D Article 3, shall be allowed under this Agreement unless approved ahead of time, in writing, by CAPCOG.

(f). Contractual Expenses. Expenses included under the Contractual expense category of the budget set forth in Attachment D Article 3, shall be for costs for professional services or tasks provided by a firm or individual who is not employed by the SUBCONTRACTOR as set forth in the Section.

1. No contractual expenses included under the contractual expenses category of the budget set forth in Attachment D Article 3, shall be allowed under this Agreement unless such contracts’ scope of work has been approved ahead of time, in writing, by CAPCOG.

2. Any amendment to the SUBCONTRACTOR’s subcontract authorized for reimbursement under this Agreement, whether or not such subcontract required CAPCOG pre-approval, which will result in or require substantive changes to any of the tasks required to be performed under this Agreement, as set forth in these Program Conditions, must be approved in writing by CAPCOG.
3. All applicable laws and regulations concerning bidding and contracting for services shall be followed.

(g). **Other Expenses.** All expenses under the Other expense categories of the budget set forth in Attachment D Article 3, shall be in connection with the tasks and activities to be performed under this Agreement. Expenses not falling under the main expense categories may be included under the Other expense category if appropriate for the proposed project as set forth in this Section.

1. No expenses under the Other expense category including computer hardware or software purchases not included under the Equipment expense category, shall be eligible for reimbursement under this Agreement unless approved ahead of time, in writing, by CAPCOG.

2. Subcategories of Other expenses for which prior authorization, as described in Subsection 1. of this Section, is not required are set forth in this Section.

i) Books and reference materials.

ii) Dues and membership fees for the SUBCONTRACTOR's affiliation with organizations and associations which directly relate to the performance of activities under this Agreement (dues for individual employee affiliation to particular organizations or professional associations, unless listed in Detailed Budget Sheet 8 of the grant application, must be approved individually, in writing, by CAPCOG).

iii) Subscriptions, only insomuch as they relate directly to the performance of activities under this Agreement.

iv) Postage, telephone, FAX, and utilities expenses.

v) Printing and reproduction expenses.

vi) Advertising and public notices.

vii) Registration fees and other staff training costs (fees and training costs for persons not employed by the SUBCONTRACTOR, unless listed in Detailed Budget Sheet 8 of the grant application, must be approved individually by CAPCOG).

viii) Repair and maintenance costs.

ix) Office furniture, not falling under the definition of equipment under Attachment D Article 1 of the Agreement.

x) Space and equipment rentals.

xi) Signs.

xii) Additional Other expenses listed in Detailed Budget Sheet 8 of the grant application.

3. The SUBCONTRACTOR shall ensure that expenditures charged under the Other expense category are not also included within the expenses reimbursed through the Indirect Costs category.

(h). **Indirect Cost Rates.** Not withstanding this section or any other part of this Agreement, the SUBCONTRACTOR shall comply with all provisions of §391.0115 of the Texas Local Government Code relating to the restrictions on commission costs, and shall advise CAPCOG in writing in the event such compliance will necessitate a reduction or other change to the indirect cost rate(s) set forth in the budget portion of this Agreement. The SUBCONTRACTOR
shall comply with all requirements and rules to be adopted by the Office of the Governor pursuant to §391.009 of the Texas Local Government Code relating to the operations and oversight of Regional Planning Commissions.

**Article 2: Supplemental Funding Standards**

In addition to the standards set forth in applicable laws and regulations, the standards outlined below apply to all uses of the funds provided under this Agreement. Unless authorization is otherwise specifically provided for in or under the terms of this Agreement, the use of funds provided under this Agreement shall be in accordance with the supplemental funding standards set forth in this Article.

1. **Payment of Fees.** Local and regional political subdivisions subject to the payment of state solid waste disposal fees and whose payments are in arrears are not eligible to receive grant funding.

2. **Land Acquisition Costs.** Funds provided under this Agreement may not be used to acquire land or an interest in land.

3. **Municipal Solid Waste-Related Programs Only.** Funds provided under this Agreement may not be used for programs dealing with wastes that are not considered municipal solid waste (MSW), including programs dealing with industrial or hazardous wastes.

4. **Programs Solely Related to Collection of Certain Wastes.** Funds provided under this Agreement may not be used for programs and activities solely related to the management of automotive wastes, to include: scrap tires, used oil, oil filters, antifreeze, lead-acid batteries, or other similar wastes excluded from disposal in MSW landfills. Funds may also not be used for the processing of scrap tires, such as through the purchase of equipment to shred or split the tires. However, collection of these materials may be included as part of a comprehensive household hazardous waste collection and management program, so long as that is not the sole intent of the program.

5. **Activities Related to the Disposal of Municipal Solid Waste.** Except as may be specifically authorized under an eligible project category, funds provided under this Agreement may not be used for activities related to the disposal of municipal solid waste. This restriction includes: solid waste collection and transportation to a disposal facility; waste combustion (incineration or waste-to-energy); processing for reducing the volume of solid waste which is to be disposed of; any landfill-related facilities or activities, including the closure and post-closure care of a landfill; or other activities and facilities associated with the ultimate disposal of municipal solid waste. This provision does not apply to activities specifically included under an authorized project category, to include citizens' collection stations, and small registered transfer stations.

6. **Projects Requiring a TCEQ Permit.** Funds may not be used for expenses related to projects or facilities that require a permit from the TCEQ and/or that are located within the boundaries of a permitted facility, including landfills, wastewater treatment plants, and other facilities. This provision, however, may be waived by the TCEQ, at its discretion, for otherwise eligible activities to be located at a closed permitted facility and/or for recycling activities that will take place within the boundaries of an open facility. Recycling activities that may qualify for such a waiver may include recyclables collection, composting, and land application of biosolids for
beneficial use. The applicant should request a preliminary determination from the TCEQ as to the eligibility of the project prior to consideration for funding.

7. **Projects Requiring TCEQ Registration.** Projects or facilities that require registration from the TCEQ, and which are otherwise eligible for funding, may be funded. However, the registration for the facility must be finally received before that project can be selected for funding.

8. **Projects that Create a Competitive Advantage Over Private Industry.** In accordance with §361.014(b) of the Texas Health and Safety Code, a project or service funded under this Agreement must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services. Under this definition, the term private industry includes non-profit entities.

9. **Supplanting Existing Funds.** Funds provided under this Agreement may not be used to supplant existing funds. In particular, staff positions where the functions assigned to that position will remain the same and that were active at the time of the grant application, and were funded from a source other than a previous solid waste grant, are not eligible for grant funding. This provision does not apply to the salaries for staff of the SUBCONTRACTOR in its conduct of activities under this Agreement.

10. **Food/Entertainment Expenses.** Funds provided under this Agreement may not be used for food or entertainment expenses, including refreshments at meetings and other functions. This provision does not apply to authorized employee per diem expenses for food costs incurred while on travel status.

11. **Use of Alcoholic Beverages.** Funds provided under this agreement may not be used for payment of salaries to any employee who uses alcoholic beverages on active duty. None of these funds may be used for the purchase of alcoholic beverages, including travel expenses reimbursed with these funds.

12. **Funds to Law Enforcement Agencies.** Funds provided under this Agreement may not be provided to any law enforcement agency regulated by Chapter 415 of the Texas Government Code, unless the law enforcement agency is in compliance with all rules developed by the Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 415 of the Texas Government Code, or the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

13. **Funds for Compliance.** Funds may not be used to assist an entity or individual to comply with an existing or pending federal, state, or local judgment or enforcement action. This restriction includes assistance to an entity to comply with an order to clean up and/or remediate problems at an illegal dumpsite. However, the TCEQ may waive this restriction, at its discretion and on a limited case-by-case basis, to address immediate threats to human health or the environment, and where it is demonstrated that the responsible party does not have the resources to comply with the order.
14. **Funds to Pay Penalties.** Funds may not be used to pay penalties imposed on an entity for violation of federal, state, or local laws and regulations. This restriction includes expenses for conducting a supplemental environmental project (SEP) under a federal or state order or penalty. Funds may be used in conjunction with SEP funds to support the same project.

15. **Funds for Lobbying Activities.** Funds may not be used for employment, contracts for services of a lobbyist, or for dues to an organization, which employs or otherwise contracts for the services of a lobbyist.

16. **Use of Funds.** The provisions of the Uniform Grant Management Standards (UGMS) issued by the Office of the Governor apply to the use of these funds, as well as the supplement financial administration provided in the CAPCOG program Administrative Procedures.

17. **Procurement and Purchasing.** Recipients of funds under this Contract, including the COG, pass-through grant recipients, and subcontractors shall comply with all applicable state and local laws and regulations pertaining to the use of state funds, including laws concerning the procurement of goods and services and competitive purchasing requirements.
### Article 3: SUBCONTRACTOR’s Authorized Budget

<table>
<thead>
<tr>
<th>Budget Category</th>
<th>Funding Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel / Salaries</td>
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<tr>
<td>List personnel, # of hours, salary charged to grant</td>
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<tr>
<td>Fringe Benefits</td>
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</tr>
<tr>
<td>Travel</td>
<td>$</td>
</tr>
<tr>
<td>List &amp; itemize travel expenditures</td>
<td>$</td>
</tr>
<tr>
<td>Supplies</td>
<td></td>
</tr>
<tr>
<td>List &amp; itemize detailed travel expenditures</td>
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</tr>
<tr>
<td>Garbage bags, 10 boxes @ $25.98 = $259.80</td>
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<tr>
<td>Pest repellent 25 @ $3.58 = $89.50</td>
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<tr>
<td>Wheelbarrows 5 @ $49.98 = $249.90</td>
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<tr>
<td>Shovels 10 @ $9.98 = $99.80</td>
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<tr>
<td>Rakes 10 @ $14.98 = $149.80</td>
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<td>Safety vests 50 @ $4.35 = $217.50</td>
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<td>Safety glasses 50 @ $.89 = $44.50</td>
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<td>Leather work gloves 50 pair @ $2.14 = $107</td>
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<td>Equipment</td>
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<td>List &amp; itemize equipment expenditures (must have a unit cost of $5,000 or more)</td>
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<tr>
<td>Construction</td>
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<td>List &amp; itemize construction expenditures</td>
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<tr>
<td>Contractual</td>
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<td>List &amp; itemize contractual expenditures (other than construction)</td>
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<td>Eagle Disposal - Collection and disposal of MSW (labor and equipment) $9,280</td>
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<tr>
<td>Eagle Disposal - 3 roll-off dumpsters @$475 x 4 events $5,700</td>
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<td>Contractor TBD - Tire recycling $400</td>
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<td>List &amp; itemize other expenditures</td>
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<td>Printing for advertisement of event and education on proper disposal and recycling:</td>
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<td>Double sided brochures 10,000 @ $.1284 $1,284</td>
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<tr>
<td>Item</td>
<td>Quantity</td>
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<td>Flyers</td>
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<tr>
<td>Posters</td>
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<td>Discount from Printing</td>
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<tr>
<td>Solutions as in-kind</td>
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<tr>
<td>Indirect Charges</td>
<td></td>
</tr>
</tbody>
</table>

Total Funding $18,349

* Regardless of the amounts included in the fringe and indirect budget categories, the charges to those categories may not exceed the rates shown and authorized herein. If desired, the COG will have the opportunity to request changes to the indirect rate based on the approval of a new indirect cost rate for the period of the contract term. TCEQ accepts an approval granted by the COG's Federal Cognizant Agency or State Coordinating Agency, for a new indirect cost rate which is based on a recent, independently performed audit that specifically examines and reports the indirect cost rate for the accounting period covered by the grant contract. Indirect charges must conform to §391.0115(e), Local Government Code.
ATTACHMENT E
General Contract Provisions

Article 1: Legal Authority and Indemnification

The SUBCONTRACTOR warrants and assures CAPCOG that it possesses adequate legal authority to enter into this Contract. The SUBCONTRACTOR's governing body where applicable has authorized the signatory official(s) to enter into this Contract and bind the SUBCONTRACTOR to the terms of this Contract and any subsequent amendments hereto. The SUBCONTRACTOR agrees to adhere to the provisions of Section 361.014 of the Texas Health and Safety Code, Title 30 Texas Administrative Code section 330.569, to the provisions of section 330.59 of the TCEQ Municipal Solid Waste Regulations, this agreement and the Uniform Grant Management Standards ("UGMS").

Indemnification

(a) To the extent allowed by Texas law, SUBCONTRACTOR agrees at its own expense to defend CAPCOG and TCEQ, their 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), arising out of any act or omission of SUBCONTRACTOR's governing body member, officer, employee, or agent under this Contract.

(b) If SUBCONTRACTOR is served with process in a suit or proceeding described in Subsection (a), SUBCONTRACTOR agrees to furnish CAPCOG promptly with a copy of the process.

(c) SUBCONTRACTOR agrees that its indemnification obligations under Subsection (a) 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.

Article 2: Scope of Services

The services to be performed by the SUBCONTRACTOR are herewith outlined in the General Contract Provisions (Attachment E) and the Special Contract Provisions (Attachment A), which are hereby incorporated into and made a part of this Contract as if set out word-for-word herein.

Article 3: Purpose

(a) The purpose of this Contract is to accomplish the goals of the Solid Waste Disposal Act of 1989, as amended, as they relate to distributing solid waste fee revenue funds to support local and regional solid waste projects consistent with the regional solid waste management plans approved by the TCEQ and to update and maintain those plans.
(b). Under the overall goals of the funding program the purposes of this Contract are:

1. To enable CAPCOG to carry out or conduct various municipal solid waste management-related services and support activities within CAPCOG’s regional jurisdiction; and

2. To enable CAPCOG to report to the Legislature and promote the continuation of pass-through grant funding; and

3. To administer an efficient and effective, region-wide, pass-through (subgrantee) assistance grants program and/or, where authorized by CAPCOG in accordance with Article 5 of this Attachment, to conduct various CAPCOG - managed projects.

Article 4: Eligible Entities

(a). Only those local and regional political subdivisions located within the State of Texas as listed below are eligible to receive funding from CAPCOG as a pass-through grant:

1. Cities;
2. Counties;
3. Public schools and school districts (does not include Universities or post secondary educational institutions); and
4. Other general and special law districts created in accordance with state law, and with the authority and responsibility for water quality protection or municipal solid waste management, to include river authorities;
5. Councils of Governments.

(b). Local and regional political subdivisions that are subject to the payment of state solid waste disposal fees and whose fee payments are in arrears, as determined by CAPCOG, are not eligible to receive pass-through grant funding from CAPCOG. CAPCOG shall allow a potential pass-through grant applicant that is listed as being in arrears in its fee payments the opportunity to provide documentation of payment of the fees owed the state. If the potential applicant provides CAPCOG with documentation of payment of the fees, such as a canceled check or receipt from the state, CAPCOG may consider that applicant to be eligible to receive pass-through grant funding under this Contract.

Article 5: Implementation Project Categories

The standards and requirements set forth in this Article shall apply to all implementation projects funded under this Agreement. CAPCOG shall be responsible for ensuring that the implementation projects funded under this Agreement comply with the standards set forth in this Article.

(a). Implementation Project Categories. CAPCOG shall ensure that all implementation projects funded under this Agreement fit within the categories set forth in this Section. The category-specific funding limitations outlined for each category shall apply to all uses of funds under implementation projects conducted for that category.
1. **Local Enforcement.** This category consists of projects which contribute to the prevention of illegal dumping of municipal solid waste, including liquid wastes. Under this category, grant recipients may investigate illegal dumping problems; enforce laws and regulations pertaining to the illegal dumping of municipal solid waste, including liquid waste; establish a program to monitor the collection and transport of municipal liquid wastes, through administration of a manifesting system; and educate the public on illegal dumping laws and regulations. Funding limitations specific to this category are set forth in this Section.

   i. As provided by the General Appropriations Act (79th Leg. R.S.), funds may not be expended to any law enforcement agency regulated by Chapter 1701, Texas Occupations Code, unless: (a) the law enforcement agency is in compliance with all rules on Law Enforcement Standards and Education; or (b) the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

   ii. When funding is to be provided for salaries of local enforcement officers, the funds recipient must certify that at least one of the officers has attended or will attend within the term of the funding agreement the TCEQ's Criminal Environmental Law Enforcement Training or equivalent training.

   iii. Local enforcement vehicles and related enforcement equipment purchased entirely with funds provided under this Agreement may only be used for activities to enforce laws and regulations pertaining to littering and illegal dumping, and may not, to the extent practicable, be used for other code enforcement or law enforcement activities. Vehicles and equipment that are only partially funded must be dedicated for use in local enforcement activities for a percentage of time equal to the proportion of the purchase expense funded.

   iv. Entities receiving funds for a local enforcement officer, enforcement vehicles, and/or related equipment for use by an enforcement officer, must investigate major illegal dumping problems, on both public and private property, in addition to investigating general litter problems on public property.

   v. Entities receiving funds to conduct a local enforcement program must cooperate with the TCEQ's regional investigative staff in identifying and investigating illegal dumping problems. Lack of cooperation with the TCEQ staff may constitute a reason to withhold future funding to that entity for local enforcement activities.

   vi. Funds may not be used for investigation and enforcement activities related to the illegal dumping of industrial and/or hazardous waste. Instances where industrial or hazardous waste is discovered at a site do not preclude the investigation of that site, so long as the intent and focus of the investigation and enforcement activities are on the illegal dumping of municipal solid waste.

   vii. Funds may not be used to purchase ammunition or firearms.

2. **Source Reduction and Recycling.** This category includes projects which provide a direct and measurable effect on reducing the amount of municipal solid waste going into landfills, by diverting various materials from the municipal solid waste stream for reuse or recycling, or by reducing waste generation at the source. Activities funded under this category may include: diversion from the waste stream and/or collection, processing for transport, and transportation of materials for reuse and/or recycling; implementation of
efficiency improvements in order to increase source reduction and recycling, to include full-cost accounting systems and cost-based rate structures, establishment of a solid waste services enterprise fund, and mechanisms to track and assess the level of recycling activity in the community on a regular basis; and educational and promotional activities to increase source reduction and recycling. Funding limitations specific to this category are set forth in this Section.

i. Programs and projects funded under this category shall have as a goal and be designed to provide a measurable effect on reducing the amount of municipal solid waste being disposed of in landfills.

ii. Any program or project aimed at demonstrating the use of products made from recycled and/or reused materials shall have as its primary function the education and training of residents, governmental officials, and others, in order to encourage support for recycling efforts.

3. **Citizens’ Collection Stations and “Small” Registered Transfer Stations.** The design and construction of the facilities identified below may be funded. Other registered or permitted facilities may receive funding upon prior authorization from the TCEQ on a case by case basis. Funds may be used for projects to construct and equip citizens’ collection stations, as these facilities are defined under 30 TAC §330.3, TCEQ Regulations. Projects funded for these types of facilities shall include consideration of an integrated approach to solid waste management, to include providing recycling services at the site, if appropriate to the management system in place. The following MSW facilities may qualify on a case by case basis for funding:

i. Notification tier municipal solid waste transfer stations that qualify under 30 TAC 330.11(g).

ii. Registered municipal solid waste transfer stations that qualify under 30 TAC 330.9(b)(1) through (3), or (f).

iii. Notification tier citizens’ collection stations that qualify under 30 TAC 330.11(e)(1).

iv. Exempt local government recycling facilities as provided for under 30 TAC 328(a)(1).

v. Notification tier recycling facilities that qualify under 30 TAC 330.11(e)(2).

vi. Notification tier composting facilities which qualify under 30 TAC 332.21 – 332.23.

vii. Notification tier liquid waste temporary storage facilities which qualify under 30 TAC 330.11(e)(5).

viii. Liquid waste transfer stations which qualify for registration in 30 TAC 330.9(g) and (o).

ix. Notification tier used oil collection facilities which qualify under 30 TAC 324.71(1) or (3).

4. **Household Hazardous Waste Management.** Funds may be used for projects that provide a means for the collection, recycling or reuse, and/or proper disposal of household hazardous waste, including household chemicals, electronic wastes, and other materials. Funded activities may include: collection events; consolidation and transportation costs associated with collection activities; recycling or reuse of materials; proper disposal of
materials; permanent collection facilities, education and public awareness programs; and, School Chemical Clean-out Campaign (SC3) events and programs.

i. All HHW events must meet the requirements of 30 TAC 335, Suchapter N, and must be coordinated through the TCEQ HHW Program.

ii. All HHW collection event activities must be conducted under an operational plan which meets the requirements of 30 TAC 335.405(a), to be maintained onsite, which addresses collection, ingress and egress, storage, transportation, recycling, and disposal.

iii. The funded entity must submit to the TCEQ HHW Program a 45 Day Notice which meets the requirements of 30 TAC 335.403(b) (if hosting an HHW event for covered materials).

5. Educational and Training Projects. Educational components are encouraged under the other categories in order to better ensure public participation in projects; those educational components should be funded as part of those projects and not separately under this category. This category may be used for “stand-alone” educational projects dealing with a variety of solid waste management topics. This category may include funding for information-exchange activities, subject to the other limitations on travel expenses. Funding limitations specific to this category are set forth in this Section.

i) Programs and projects funded under this category shall be primarily related to issues involved in the management of municipal solid waste. Education or training events that cover a broader range of environmental issues may be funded on a partial basis appropriate to the extent to which municipal solid waste issues are covered.

6. Litter and Illegal Dumping Cleanup and Community Collection Events. Funds can be used for ongoing and periodic activities to clean up litter and illegal dumping of municipal solid waste, excluding cleanup of scrap tire dumping sites. NOTE: Scrap tire specific projects should be funded under the “Other” project category. Projects may include support for Lake and Waterway Cleanup events, conducted in conjunction with the TCEQ’s and Keep Texas Beautiful’s Lake and Waterway Cleanup Program. Funded activities may include: waste removal; disposal or recycling of removed materials; fencing and barriers; and signage. Placement of trash collection receptacles in public areas with chronic littering problems may also be funded. To the extent feasible, reuse or recycling options should be considered for managing the materials cleaned up under this program. Funds may also be used for periodic community collection events, held not more frequently than four times per year, to provide for collection of residential waste materials for which there is not a readily-available collection alternative, such as large and bulky items that are not picked up under the regular collection system.

i. Lake and Waterway Cleanup events must be coordinated with the TCEQ’s Lake and Waterway Cleanup Program by contacting the Keep Texas Beautiful organization, which is contracted by the TCEQ to administer the Texas Waterway Cleanup program through the TCEQ’s Small Business and Environmental Assistance, Pollution Prevention & Education Program.

ii. Projects funded to clean up litter or illegal dumping on private property must be conducted through a local government sponsor or the COG. Funds may not be provided directly to a private landowner or other private responsible party for cleanup expenses. The local government sponsor or the COG must
either contract for and oversee the cleanup work, or conduct the work with its own employees and equipment.

iii. The costs for cleanup of hazardous waste and/or Class 1 nonhazardous industrial waste that may be found at a municipal solid waste site must be funded from other sources, unless a waiver from this restriction is granted by the TCEQ’s Waste Permits Division to deal with immediate threats to human health or the environment.

iv. The cleanup of Class 2 and 3 nonhazardous industrial wastes that may be found at a municipal solid waste site may be funded in conjunction with the cleanup of the municipal solid waste found at a site.

v. All notification, assessment, and cleanup requirements pertaining to the release of wastes or other chemicals of concern, as required under federal, state, and local laws and regulations, including 30 TAC Chapter 330, TCEQ’s MSW Rules, and 30 TAC Chapter 350, TCEQ’s Risk Reduction Rules, must be complied with as part of any activities funded under this Agreement.

vi. All materials cleaned up using funds provided under this Agreement must be properly disposed of or otherwise properly managed in accordance with all applicable laws and regulations. To the extent feasible, it is recommended that as much material as possible be diverted from area landfills and targeted for reuse or recycling.

7. Local Solid Waste Management Plans. Funds can be used for projects to develop a local solid waste management plan. In addition, in accordance with §363, Texas Health and Safety Code, and 30 TAC §330, TCEQ Rules, funds can be used for the TCEQ adoption by of a local solid waste management plan. Funds may be used to amend an existing local solid waste management plan that has been adopted by the TCEQ. Local solid waste management plans must be consistent with the goals and objectives of the RSWMP.

i. All local solid waste management plans funded under this Agreement must be consistent with the COG’s RSWMP, and prepared in accordance with 30 TAC §330, Subchapter O, TCEQ Rules, and the Content and Format Guidelines provided by the TCEQ.

8. Technical Studies. Funds may be awarded for projects which include the collection of pertinent data, analysis of issues and needs, evaluation of alternative solutions, public input, and recommended actions, to assist in making solid waste management decisions at the local level. Projects may also include research and investigations to determine the location, boundaries, and contents of closed municipal solid waste landfills and sites, and to assess possible risks to human health or the environment associated with those landfills and sites.

Article 6: Liability Insurance

(a). Contractor agrees to maintain its own commercial general liability insurance, or the equivalent in amount and coverage of self-insurance, during the term of this Contract and to name CAPCOG an additional insured on the policy Contractor agrees to provide the minimum
primary insurance coverage of $500,000 general aggregate and $250,000 each occurrence plus $500,000 excess coverage.

(b). Contractor’s liability insurance must contain provisions, to the extent legally permitted, that the insurer will notify CAPCOG in writing at least 10 calendar days in advance of (1) cancellation of non-renewal of the policy; (2) any reduction in the policy amounts; and (3) deletion of CAPCOG as an additional insured.

(c). SUBCONTRACTOR agrees to furnish CAPCOG with a certificate of the Contractor’s commercial liability insurance or copy of its policy, or to certify in writing that it has in force the equivalent amount and coverage of self-insurance, within 30 calendar days after the date this Contract is signed on behalf of CAPCOG.

(d). SUBCONTRACTOR shall maintain and supervise all safety precautions and programs in connection with its performance of the work program.

Article 7: Audit/Access to Records

(a). The SUBCONTRACTOR shall maintain and make available for review, inspection and/or audit books, records, documents, and other evidence reasonably pertinent to performance on all work under this Contract, including negotiated changes or amendments thereto, in accordance with accepted professional practice, appropriate accounting procedures and practices at the SUBCONTRACTOR’S Texas office. The SUBCONTRACTOR shall also maintain and make available at its Texas Office the financial information and data used by the SUBCONTRACTOR or its designee (including independent financial auditors) in the preparation or support of any cost submission or cost (direct and indirect), price or profit analysis for this Contract or any negotiated sub-agreement or change order and a copy of the cost summary submitted to CAPCOG. CAPCOG, TCEQ, Texas State Auditor’s Office or any of CAPCOG’s duly authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of review, inspection and/or audit. During the conduct of any such review, audit or inspection, SUBCONTRACTOR’S books, records, and other pertinent documents may, upon prior conference with the SUBCONTRACTOR, be copied by CAPCOG or any of its duly authorized representatives. All such information shall be handled by the parties in accordance with good business ethics. The SUBCONTRACTOR shall provide proper facilities within the State of Texas for such access and inspection.

(b). Audits conducted pursuant to this provision shall be in accordance with State law, regulations and policy, and generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.

(c). The SUBCONTRACTOR agrees to the disclosure of all information and reports resulting from access to records pursuant to Section (a) above to CAPCOG. Where the audit concerns the SUBCONTRACTOR, the auditing agency will afford the SUBCONTRACTOR an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report.

(d). Records under Sections (a) above shall be maintained and made available during the entire period of performance of this Contract and until three (3) years from date of final CAPCOG
payment for the project. In addition, those records which relate to any dispute, litigation, or
the settlement of claims arising out of such performance, or costs or items to which an audit
exception has been taken shall be maintained and made available until completion of such
action and resolution of all issues which arise from it, or until the end of the regular three-year
period, whichever is later.

(e). Access to records is not limited to the required retention periods. The authorized
representatives designated in Section (a) of this Article shall have access to records at any
reasonable time for as long as the records are maintained.

(f). This audit/access to records Article applies to financial records pertaining to all subagreements
and all subagreement change orders and amendments. In addition, this right of access applies
to all records pertaining to all subagreements, subagreement change orders and subagreement
amendments: to the extent the records reasonably pertain to subagreement performance; if
there is any indication that fraud, gross abuse or corrupt practices may be involved; or if the
subagreement is terminated for default or for convenience.

(g). CAPCOG reserves the right to require the reimbursement of any over-payments determined as
a result of any audit or inspection of records kept by the SUBCONTRACTOR on work
performed under this Contract.

(h). The SUBCONTRACTOR agrees to include Sections (a) through (g) of this Article in all
subagreements and all change orders directly related to project performance.

**Article 8: Independent Financial Audit**

The SUBCONTRACTOR shall adhere to the Single Audit requirements of the UGMS. The
SUBCONTRACTOR shall deliver to CAPCOG any applicable audit report within thirty (30) days of
completion of the audit report. The SUBCONTRACTOR is responsible for including the Single Audit
requirements in all subagreements and shall be responsible for insuring adherence to those
requirements by all subgrantees and subcontractors.

CAPCOG reserves the right to conduct or cause to be conducted an independent audit of all funds
received under this Contract which may be performed by the local government audit staff, a certified
public accountant firm, or other auditors as designated by CAPCOG, at CAPCOG's expense. Such
audit will be conducted in accordance with applicable professional standards and practices.
SUBCONTRACTOR understands and agrees that the SUBCONTRACTOR shall be liable to CAPCOG
for any costs disallowed as a result of audit.

**Article 9: Amendments to Contract**

Any alterations, additions, or deletions to the terms of this Contract which are required by changes in
Federal 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,
provided if the SUBCONTRACTOR may not legally comply with such change, SUBCONTRACTOR may terminate its participation herein as authorized by Article 10.

CAPCOG may, from time to time, require changes in the Scope of the Services of the SUBCONTRACTOR to be performed hereunder. Such changes that are mutually agreed upon by and between CAPCOG and the SUBCONTRACTOR in writing shall be incorporated into this Contract.

Any changes in personnel whose salaries are funded under this Contract or any other Contract amendments, including increasing or decreasing the amount of total funding, altering budget category allocations, extending or shortening the term of the agreement, or making significant changes in the scope of work, schedule or deliverables, must be approved in advance by CAPCOG. A detailed description of the proposed change(s) shall be submitted in writing by the SUBCONTRACTOR to CAPCOG for approval. Authorization to amend the Contract will be documented in writing and copies of the authorization retained in the files of both CAPCOG and SUBCONTRACTOR.

**Article 10: Termination of Contract for Convenience**

a) CAPCOG may terminate this Contract in whole or part for its convenience. CAPCOG terminates this Contract for convenience by giving SUBCONTRACTOR at least 30 calendar days notice of the termination, specifying the termination date, and describing the part or parts terminated.

b) Upon receipt of the termination notice, SUBCONTRACTOR agrees to stop work on or before the termination date, cancel all subcontracts and orders entered into under this Contract, and settle all claims resulting from cancellation of the subcontracts and orders. If CAPCOG terminates only part of the Contract, Contractor agrees to complete the un-terminated part if CAPCOG so requests.

c) At CAPCOG's request, following termination of the Contract for convenience, SUBCONTRACTOR agrees to transfer title and deliver to CAPCOG, at CAPCOG's expense, all work produced in performing this Contract. SUBCONTRACTOR agrees to preserve and protect the work until it is delivered to CAPCOG.

d) SUBCONTRACTOR agrees to submit to CAPCOG a written termination claim itemizing and documenting the amounts due because of termination of the Contract. If Contractor does not submit the termination claim within 90 calendar days from the effective date of termination, SUBCONTRACTOR's termination claim is barred.

e) If SUBCONTRACTOR's termination claim is timely submitted, complete, and correct, CAPCOG agrees to pay SUBCONTRACTOR the following amounts in full settlement of SUBCONTRACTOR's termination claim: (1) the reasonable cost of all work performed through the date of termination; and (2) the reasonable cost of settling and paying claims resulting from cancellation of subcontracts and orders. However, CAPCOG's total payment under this paragraph may not exceed the total Contract price, less amounts already paid SUBCONTRACTOR under this Contract, any lawful offsets, and the Contract price for any work not terminated.
Article 11: Suspension or Termination of Contract for Unavailability of Funds

a) SUBCONTRACTOR acknowledges that CAPCOG is a governmental entity without taxing power and that its only source for paying SUBCONTRACTOR under this Contract is the Municipal Solid Waste Disposal and Transportation Revenue Fee administered by TCEQ under Contract with CAPCOG. If TCEQ suspends or terminates its Contract with CAPCOG, SUBCONTRACTOR 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, SUBCONTRACTOR agrees to perform the unsuspended or unterminated part if CAPCOG so requests.

b) CAPCOG suspends or terminates this Contract for unavailability of funds by giving SUBCONTRACTOR notice of the suspension or termination, as soon as it learns of the funding unavailability, specifying the suspension or termination date, and describing the part or parts suspended or terminated. CAPCOG agrees to promptly return to SUBCONTRACTOR at CAPCOG's expense any goods Contractor shipped to CAPCOG before receiving notice of suspension or termination.

c) If this Contract is terminated for unavailability of funds under this Article 11, SUBCONTRACTOR is entitled to compensation for goods it furnished and services it performed before it received notice of termination. However, CAPCOG is not liable to SUBCONTRACTOR for costs it paid or incurred under this Contract after or in anticipation of its receipt of notice of termination.

Article 12: Termination for Breach of Contract

(a). If CAPCOG or SUBCONTRACTOR 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, either party may terminate the Contract for breach by notifying the other party of the termination date, which may be no sooner than 10 calendar days from the notice date, or either party may invoke the dispute resolution process of Article 18.

(b). If this Contract is terminated for breach under Subsection (a), Contractor is entitled to compensation for services it performed and goods it provided before it received notice of 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 termination.

(c). Termination for breach under Subsection (a) does not waive CAPCOG's claim for damages resulting from the breach, and CAPCOG among other remedies may withhold from compensation owed Contractor an amount necessary to satisfy CAPCOG's claim. 
Article 13: Severability

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

Article 14: Data and Publicity

All data and other information developed under this Contract shall be furnished to CAPCOG and shall be public data and information except to the extent that it is exempted from public access by the Texas Open Records/Public Information Act, TEX. GOV'T CODE Chapter 552. Upon termination of this Contract, all data and information shall become the joint property of CAPCOG and the SUBCONTRACTOR.

Article 15: Intellectual Property

(a). For the purpose of this Article, "intellectual property" refers to 1) any discovery or invention for which patent rights may be acquired, and 2) any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials, and 3) any other materials in which intellectual property rights may be obtained.

(b). If the SUBCONTRACTOR conceives of, actually puts into practice, discovers, invents or produces any intellectual property during the course of its work under this Contract, it shall report that fact to CAPCOG.

(c). The SUBCONTRACTOR may obtain governmental protection for rights in the intellectual property. However, CAPCOG and TCEQ hereby reserve a nonexclusive, royalty-free and irrevocable license to use, publish, or reproduce the intellectual property for sale or otherwise, and to authorize others to do so. CAPCOG and TCEQ also reserve a royalty-free nonexclusive, and irrevocable license to use, publish, or reproduce for sale or otherwise, and to authorize others to use, publish, or reproduce, for sale or otherwise (to the extent consistent with the rights of third parties) any intellectual property for which the SUBCONTRACTOR obtains rights with funds received under this Contract.

(d). In performing work under this Contract, the SUBCONTRACTOR shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third party’s intellectual property rights. To the extent permitted by the laws and Constitution of the State of Texas, it shall hold CAPCOG and the TCEQ harmless for, defend and indemnify CAPCOG against, any claims for infringement related to its work under this Contract.

Article 16: Energy Efficiency Standards
The SUBCONTRACTOR is encouraged to follow standards and policies on energy efficiency which are contained in the Texas State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Article 17: Identification of Funding Sources

The SUBCONTRACTOR shall acknowledge the financial support of the TCEQ and CAPCOG whenever work funded, in whole or part, by this Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, other than documents prepared exclusively for internal use within CAPCOG, shall carry the following notation (or one similar) on the front cover or title page:

SUPPORTED WITH FUNDS FROM
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)
THROUGH THE CAPITAL AREA COUNCIL OF GOVERNMENTS (CAPCOG)

Article 18: Dispute Resolution

(a). 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 Article 18, until they have exhausted the procedures set out in these subsections.

(b). At the written request of either party, each party shall appoint one non-lawyer 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.

(c). 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.

(d). The parties agree to continue performing their duties under this Contract, which are unaffected by the dispute, during the negotiation and mediation process.

Article 19: Oral and Written Contracts

All oral or written agreements between the parties hereto relating to the subject matter of this Contract which were developed and executed prior to the execution of this Contract have been reduced to writing and are contained herein.

Article 20: Nondiscrimination and Equal Opportunity
(a) Subsection (b) summarizes the nondiscrimination requirements applicable to SUBCONTRACTOR’s performance under this Contract that are set out in detail in title 41, chapter 60, and title 28, parts 35 and 36, Code of Federal Regulations. The SUBCONTRACTOR agrees to comply with the detailed requirements.

(b) SUBCONTRACTOR 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, or national origin.

Article 21: Utilization of Small, Minority, and Women’s Business Enterprises

(a) A Historically Underutilized Business (HUB) is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which as least 51 percent is owned, operated, controlled and actively managed by a person or persons who are historically underutilized (socially disadvantaged) because of their identification with members of certain groups, including Black Americans, Hispanic Americans, Asian Pacific Americans, Native Americans (American Indians) and Women who suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control.

(b) The SUBCONTRACTOR agrees that qualified Historically Underutilized Businesses (HUBs) shall have the maximum practicable opportunity to participate in the performance of this Contract.

Article 22: Force Majeure

(a) Subject to the requirements of Subsections (b) and (c) and the limitation of Subsection (d), a party’s obligations under this Contract are suspended during any period the party is unable to perform its obligations because of work stoppage or strike resulting from a labor dispute; fire, flood, wind, earthquake, or other natural disaster; epidemic, riot, sabotage, rebellion, or war; governmental intervention; or other cause beyond the party’s control.

(b) Subsection (a) does not apply unless the party invoking it notifies the other party of the force majeure event within five business days after it occurs, describing the nature of the event in detail and estimating its likely duration. The party invoking Subsection (a) has the burden of proving that the force majeure event exists.

(c) If the other party is reasonably satisfied that the force majeure event exists, it shall notify the invoking party that the obligations of this Contract are suspended from the effective date of the event throughout its duration. The party invoking Subsection (a) shall notify the other party within five business days after the force majeure event ends. When the force majeure event ends, the obligations of this Contract are reinstated for the remainder of the Contract’s term.
(d). If the obligations of this Contract are suspended because of a force majeure event for a cumulative period of more than 30 calendar days, either party may terminate this Contract in whole or part for convenience under Article 10.

Article 23: Conflict of Interest

(a). SUBCONTRACTOR agrees to comply with its internal policy prohibiting conflict of interest and with Chapter 171 of the TEX. LOCAL GOVT. CODE ANN. in carrying out this Contract.

(b). If SUBCONTRACTOR learns that one of its governing body members, officers, employees, or agents has violated or may violate its internal policy or Chapter 171, SUBCONTRACTOR agrees promptly to take corrective and appropriate disciplinary action and to notify CAPCOG in writing of the actual or potential violation and the corrective and disciplinary action taken.

Article 24: Miscellaneous

(a). All representations and warranties of SUBCONTRACTOR, together with all continuing obligations described in this Contract, survive the ending or early termination of this Contract.

(b). This Contract states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by both parties.

(c). This Contract is binding on and inures to the benefit of the parties' successors in interest.

(d). This Contract is performable in Travis County, Texas, and Texas law governs the interpretation and application of this Contract.

(e). This Contract is executed in duplicate originals.