

**INTERLOCAL AGREEMENT
BETWEEN THE CAPITAL AREA COUNCIL OF GOVERNMENTS AND
WILLIAMSON COUNTY
FOR CONTINUATION AND SUPPORT OF THE CAPCOG REGIONAL AIR QUALITY
PROGRAM**

This Agreement is by and among Williamson County and the Capital Area Council of Governments (CAPCOG) (also referred to as the “Parties” or a “Party”).

RECITALS

Whereas, the Capital Area Council of Governments has operated an Air Quality Program to coordinate regional air quality planning and perform air quality technical research, especially focusing on ground-level ozone (O₃) pollution;

Whereas, the CAPCOG Air Quality Program's planning efforts include coordinating development and implementation of voluntary regional air quality plans, providing technical assistance to organizations that participate in the air quality plans, administering regional pollution reduction grants and conducting air quality education and outreach to reduce emissions and exposure to air pollution. Technical research efforts include air quality monitoring, emissions inventory development, data analysis, modeling, and pollution control strategy evaluation;

Whereas, through 2017, the primary source of funding for CAPCOG’s Air Quality Program was a recurring state grant from the Texas Commission on Environmental Quality (TCEQ) to ten “near-nonattainment” metro areas across the state, but funding for state fiscal years 2018 and 2019 was vetoed by the Governor of Texas on June 12, 2017;

Whereas, the Central Texas region depends upon CAPCOG’s Air Quality Program for emissions data, regulatory guidance and information on air quality;

Whereas, Central Texas’s 2017 O₃ “design value” was 69 parts per billion (ppb), just 1% below the 70 ppb maximum allowable level under the National Ambient Air Quality Standard (NAAQS) for ground-level O₃, leaving the region vulnerable to negative economic and regulatory consequences of non-compliance with the O₃ NAAQS;

Whereas, Central Texas experienced seven days in 2017 when air pollution levels were considered “Unhealthy for Sensitive Groups” and an additional 110 days when air pollution levels were considered “Moderate,” leaving the region’s residents and communities vulnerable to negative health impacts from air pollution; and

Whereas, Without CAPCOG’s regional air quality program, Central Texas would be totally dependent on TCEQ and EPA to address the region’s air quality issues or would need to field separate air quality programs in each individual jurisdiction.

This Agreement is authorized by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each party's monetary obligations, if any, are for the performance of governmental functions or services and are payable only from the current revenues appropriated and available for the performance of those functions or services.

AGREEMENT

Section 1. Purpose

This Agreement authorizes Williamson County to support the continuation of CAPCOG's regional air quality program as part of a joint effort among members of the Clean Air Coalition to enable CAPCOG to maintain its core planning, data collection, technical analysis, and outreach capabilities through 2019.

Section 2. CAPCOG's Responsibilities.

CAPCOG agrees to continue to conduct regional Air Quality planning and program management; air quality monitoring; air quality data analysis, technical assistance for implementing air quality improvement projects, air quality outreach and education, and other core air quality program staff operations as guided by the Central Texas Clean Air Coalition and authorized by the CAPCOG Executive Committee, details of which are attached hereto as Exhibit A and incorporated into this Agreement. Since this project is being funded in conjunction with several other organizations, deliverables will be considered "final" unless Williamson County or another organization providing funding objects within five business days of submission.

CAPCOG agrees to maintain fund accounting and financial systems for the Air Quality program so as to provide continued tracking of funds, whether grant or local contributions, and as required by law and policies of CAPCOG.

CAPCOG agrees to maintain and make available data collected and reporting developed as related to the use of these funds in air quality activities.

CAPCOG agrees to maintain and staff the Clean Air Coalition for the full extent of this agreement or as long as funding allows, whichever comes first, in order to guide the work program and to receive regular reporting on behalf of the jurisdictions participating in the air quality program.

Section 3. Williamson County's Responsibilities.

Williamson County agrees to contribute an amount of \$45,992.00 in support of continued staff and activities within the CAPCOG Air Quality Program, details of which are attached hereto as Exhibit A and incorporated into this Agreement. Williamson County recognizes that this amount will only represent a portion of the funding that CAPCOG will need to

carry out the work in Exhibit A, and represents a pro-rata contribution to carrying this effort out, but that full performance of all tasks is dependent upon other organizations providing similar contributions on a pro-rata basis.

Section 4. Agreement Term

The term of this Agreement commences on the date the signed agreement is returned to CAPCOG and continuing until December 31, 2019, unless sooner terminated due to lack of funds.

Section 5. Termination

Williamson County acknowledges that CAPCOG is a governmental entity without taxing power and agrees that CAPCOG may terminate this contract in whole or part if CAPCOG learns that funds to pay for the goods or services will not be available at the time of delivery of performance.

CAPCOG terminates this contract for unavailability of funds by giving Williamson County notice of the termination, as soon as it learns of the funding unavailability, and specifying the termination date, which may not be less than 15 calendar days from the notice date. The contract terminates on the specified termination date. Notwithstanding any provision to the contrary, if CAPCOG terminates this contract for unavailability of funds, CAPCOG will return a pro-rata balance (based on the jurisdiction's July 1, 2016, population, as estimated by the U.S. Census Bureau) to Williamson County within 30 days after the notice date, less the value of any deliverables submitted by the notice date.

Williamson County's funding obligations under this Agreement do not constitute a general obligation or indebtedness for which Williamson County is obligated to levy, pledge, or collect any form of taxation. It is understood and agreed that Williamson County shall have the right to terminate this Agreement at the end of any Williamson County fiscal year if the governing body of County does not appropriate sufficient funds as determined by Williamson County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination at the end of its then-current fiscal year.

Section 6. Limitation of Liability and Governmental Immunity

Each party to this Agreement agrees that it shall have no liability whatsoever for the actions and/or omissions of the other party's employees, officers, or agents, regardless of where the individual's actions and/or omissions occurred. Each party is solely responsible for the actions and/or omissions of its employees, officers, and agents; however, such responsibility is only to the extent required by Texas law. Where injury or property damage results from the joint or concurring acts and/or omissions of the parties, any liability shall be shared by each party in accordance with the applicable Texas law,

subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defenses available by law.

Williamson County agrees to waive any duty CAPCOG owes Williamson County by virtue of this agreement in the event any act, event, or condition adversely impacts the cost of performance of, or adversely affects the ability of CAPCOG to perform any obligation under this agreement and if such act, event or condition, in light of any circumstances is beyond the reasonable control and is not a result of the willful or negligent act, error, omission or failure to exercise reasonable diligence on the part of CAPCOG such action or inaction shall not be construed as a breach of this agreement or a willful or negligent act, error, omission or lack of reasonable diligence of CAPCOG. Circumstances included above, by way of example only, are:

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

- (viii) the failure of any CAPCOG subcontractor or supplier to furnish services, materials or equipment on the dates agreed to, but only if such failure is the result of an event that would constitute Force Majeure if it affected the CAPCOG directly, and the CAPCOG is not able after exercising all reasonable efforts to timely obtain substitutes

Section 7. Notice

All notices sent pursuant to this Agreement shall, at a minimum, be sent by e-mail. Copies of notices may also be hand-delivered or sent by U.S. mail. E-mail notice shall be deemed effective within 1 business day of submission of the e-mail or upon receipt of an e-mail notice documenting receipt of the e-mail, whichever is first. When notices are hand-delivered, it will be deemed effective upon receipt. When notices are mailed by registered or certified mail, notice shall be deemed effective three days after deposit in a U.S. mail box or at a U.S. post office.

Either Party may change its address for notice under this Agreement by providing a notice of the change in compliance with this paragraph to the other Party.

Notice will be provided to the following persons or their successors:

Williamson County:

Williamson County Judge
710 Main Street, Ste. 101
Georgetown, Texas 78626

CAPCOG:

Betty Voights
Executive Director
bvoights@capcog.org
6800 Burlleson Road, Building 310, Suite 165
Austin, Texas 78744

Each party may designate a primary point of contact for this agreement. Primary points of contact are authorized to submit and accept deliverables and invoices, change deadlines or deliverables in Exhibit A upon mutual agreement, and otherwise ensure each party's obligations are carried out. The primary point of contract for this agreement are listed below:

Williamson County:
Gary Boyd
Williamson County Parks and Recreation
Environmental Program Coordinator
gboyd@wilco.org
219 Perry Mayfield
Leander, TX 78641

(512) 943-1920

CAPCOG: Andrew Hoekzema
Director of Regional Services
ahoekzema@capcog.org
(512) 916-6043
6800 Burleson Road, Building 310, Suite 165
Austin, Texas 78744

Section 8 County's Right to Audit

CAPCOG agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of CAPCOG which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. CAPCOG agrees that County shall have access during normal working hours to all necessary CAPCOG facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give CAPCOG reasonable advance notice of intended audits.

Section 9 Miscellaneous

Each individual signing this Agreement on behalf of a Party warrants that he or she is legally authorized to do so and that the Party is legally authorized to perform the obligations undertaken. The undersigned warrants that he or she:

- A. Has actual authority to execute this contract on behalf of the governing body identified as the Public Agency in this agreement and;
- B. Verifies the governing body, by either minute order, resolution or ordinance approved this agreement as required by Texas Government Code section 791, as amended.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. Venue for all disputes hereunder shall be solely in Travis County.

This Agreement states the entire agreement of the Parties, and an amendment to it is not effective unless in writing and signed by both Parties.

This Agreement is executed in duplicate originals.

Capital Area Council of Governments

By: _____
Betty Voights
Executive Director

Date: _____

Williamson County

By: Cynthia Long
Printed Name: CYNTHIA LONG

Date: 10/16/17

Representative Capacity: Presiding Officer, Williamson County Commissioners Court

EXHIBIT A: March 2, 2018, Letter from Betty Voights to County Judge