



## Travis County Commissioners Court Agenda Request

**Meeting Date:** January 31, 2012

**Prepared By/Phone Number:** Danny Hobby/854-4416

**Elected/Appointed Official/Dept. Head:** Danny Hobby

**Commissioners Court Sponsor:** County Judge Samuel T. Biscoe

### **AGENDA LANGUAGE:**

CONSIDER AND TAKE APPROPRIATE ACTION REGARDING AN INTERLOCAL CONTRACT BETWEEN TRAVIS COUNTY AND CAPITAL AREA COUNCIL OF GOVERNMENTS FOR USE OF REVENUE RETURNED UNDER COMMISSION ON STATE EMERGENCY COMMUNICATIONS RULE 251.3.

### **BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:**

Under 251.3 of the Texas Health and Safety Code, CAPCOG returns unused 9-1-1 revenue to Travis County to help purchase 9-1-1 related services and equipment. These funds come to the County every two years. In previous funding cycles, the funds have been used to construct the Combined Transportation, Emergency, and Communications (CTECC) 9-1-1 Backup Center, and to support 9-1-1 call-taking systems at CTECC. This request is to allow for the disbursement of \$513,872.00 from CAPCOG to Travis County to be used for the Lakeway Police Department Public Safety Answering Point (\$59,194.00) and the remaining amount (\$454,678.00) to be used for eligible 9-1-1 costs for public safety agencies at CTECC.

### **STAFF RECOMMENDATIONS:**

Emergency Services management staff support the approval of the interlocal contract (see attached) and the funding recommendation to benefit the Lakeway Police Department and eligible 9-1-1 costs at CTECC for public safety agencies.

**ISSUES AND OPPORTUNITIES:**

This request is important for the timely replacement and maintenance of equipment at the Lakeway Police Department Public Safety Answering Point and at CTECC which provides vital 9-1-1 service to our residents in Travis County. Rule 251.3 was developed for the purpose of assisting with operational expenditures at CTECC and for our public safety agencies. To have this revenue stream has proven to save our general fund dollars over the years we have received it.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

There is no fiscal impact since we will be receiving the funds from CAPCOG.

**REQUIRED AUTHORIZATIONS:**

**Barbara Wilson, County Attorney's Office, 854-9567**

**Kapp Schwebke, Auditor's Office**

**Bill Derryberry, PBO**

**Marvin Brice, Purchasing Office**

**Christine Lego, Emergency Services**

**Toby Fariss, Emergency Services**



# EMERGENCY SERVICES

DANNY HOBBY, COUNTY EXECUTIVE  
P.O. BOX 1748, AUSTIN, TEXAS 78767  
(512) 854-4416, FAX (512) 854-4786

*Emergency Management  
Pete Baldwin, Emergency Mgmt.  
Coordinator*

*Fire Marshal  
Hershel Lee*

To: Travis County Commissioners Court

From: Danny Hobby, County Executive for Emergency Services

*Chief Medical Examiner  
Dr. David Dolinak*

Date: January 23, 2012

*STAR Flight  
Casey Ping, Program Director*

Subject: CAPCOG Interlocal Contract for Use of Revenue  
Returned Under CSEC Rule 251.3 in FY-2012

*Technology & Communications*

## Proposed Motion:

*APPROVE INTERLOCAL CONTRACT BETWEEN CAPITAL AREA COUNCIL OF GOVERNMENTS ("CAPCOG") AND TRAVIS COUNTY FOR USE OF REVENUE RETURNED UNDER COMMISSION ON STATE EMERGENCY COMMUNICATIONS ("CSEC") RULE 251.3. (TCES)*

## Summary & Staff Recommendation:

This is a request for Travis County Commissioners Court to consider and take appropriate action on approving a Contract (see attached) with CAPCOG for use of returned 9-1-1 revenue under CSEC Rule 251.3, allowing for the disbursement of \$513,872.00 from CAPCOG.

The Travis County Emergency Services ("TCES") recommendation is to approve the Contract. Doing so will comply with the current CSEC Rule for the Largest County. The funds will be used for the sole purpose of reimbursing and funding eligible 9-1-1 system operation and network expenditures in compliance with Rule 251.3.

A portion of the funds may be allocated to other entities within Travis County that have qualifying expenditures. This Contract addresses a specific payment back to CAPCOG in the amount of \$59,194.00 to cover eligible 9-1-1 costs in FY 2012 and FY 2013 for the Lakeway Police Department Public Safety Answering Point ("PSAP"). The remaining amount of \$454,678.00 will be used for eligible 9-1-1 costs for public safety agencies at the Combined Transportation, Emergency & Communications Center ("CTECC").

TCES management staff support the funding recommendation with CAPCOG to benefit the Lakeway Police Department and eligible 9-1-1 costs at CTECC for public safety agencies.

There appear to be no issues or concerns with approving the requested action, as this is a routine and expected occurrence. Commissioners Court previously approved a similar Contract on July 26, 2011.

**Budgetary Impact:**

The amount payable under this contract to Travis County by CAPCOG is \$513,872.

Funding to County Fund 073 – CAPCOG 9-1-1 Fees	\$454,678
Funding back to CAPCOG for Lakeway PSAP	\$ 59,194
Fiscal Year in which Funding Originated	County FY 2009 (rolled over each year)

**Attachment(s):**

Interlocal Contract for Use of Revenue Returned Under Rule 251.3 by CAPCOG

**Cc:**

Audit –	Jose Palacios, Kapp Schwebke, Mike Crawford
Legal –	Barbara Wilson, John Hille
PBO –	Bill Derryberry
Purchasing –	Marvin Brice
TCES –	Brad Bearden, Christine Lego, Toby Fariss (TF)

**INTERLOCAL CONTRACT FOR  
USE OF REVENUE RETURNED UNDER RULE 251.3  
BY CAPCOG**

This Interlocal Contract is entered into by the following parties:

Travis County, Texas ("County") and the Capital Area Council of Governments ("CAPCOG")

**RECITALS**

CAPCOG is a regional planning commission and political subdivision of the State of Texas organized and operating under the Texas Regional Planning Act of 1965, as amended, chapter 391 of the Local Government Code.

Travis County, a political subdivision of the State of Texas, is a member of CAPCOG. Pursuant to Rule 251.3, the Commissioner on State Emergency Communications Rule for the Largest County ("CSEC Rule"), CAPCOG must return certain funds to County. County must use these funds for the sole purpose of reimbursing and funding eligible 9-1-1 system operation and network expenditures in compliance with that rule.

The purpose of this Contract is to return funds to County under the CSEC Rule provide CAPCOG with a portion of those funds for reimbursement of certain 9-1-1 system related expenditures.

CAPCOG and County are authorized to enter into this contract in all respects by TEX. GOV'T. CODE ANN., ch. 791.

**AGREEMENT**

NOW, THEREFORE, County and CAPCOG agree to the following terms and conditions:

1 Term.

1.1 Contingent Term. This agreement is contingent upon both the continuation of and the existence of Rule 251.3, the CSEC Rule. If this Rule is changed or amended so that funding is not provided to County for any reason, this agreement is automatically terminated.

1.2 Initial Term. This agreement commences on the date on which it is signed by the last party to sign it. This agreement continues in force until the earlier of September 30, 2012 or the occurrence of one of the contingencies that automatically terminate this agreement.

1.3 Automatic Renewal. If the contingency in 1.1 has not occurred, this agreement automatically renews on October 1 of each year for a term of one (1) year unless either this agreement is terminated sooner pursuant to 10.0.

## 2 Amendments

2.1 Amendment of Contract. Any change to the provisions of this Contract except for changes to Attachment A must be made in writing and signed by both parties: County and CAPCOG. It is acknowledged by CAPCOG that no officer, agency, employee or representative of County has any authority to change the provisions of this agreement unless expressly granted that authority by Commissioners Court.

2.2 Amendment of Attachment A CAPCOG may amend the funding stated in Attachment A—Fiscal Year 2012 as needed by sending a notice of amendment change in compliance with 15.01 to County. If County does not send a notice in compliance with 15.01 stating that the change is not acceptable before its effective date, County shall accept the changes stated in the notice of amendment. If County sends a notice that the change is not acceptable, no funding is available to County during that Contract Year.

### PART 1 TRANSFER OF FUNDS FROM CAPCOG

#### 3. CAPCOG Obligations—Part 1

3.1 Payment of Funds. In compliance with the CSEC Rule for the Largest County, CAPCOG shall pay County the sum stated in the Attachment A for the current fiscal year.

3.2 Current Revenue. CAPCOG shall pay for its obligations under this interlocal contract from current revenue funds.

#### 4. County Obligations—Part 1

4.1 Use of Funds. County shall use these funds for the sole purpose of reimbursing and funding eligible 9-1-1 system operation and network expenditures in compliance with CSEC rule 251.3.

### PART 2 TRANSFER OF FUNDS FROM CAPCOG—FY 2012

#### 5. County Obligations—Part 2

5.1 Payment of Funds. In County Fiscal Year 2012, County shall pay CAPCOG the \$59,194.00 within 30 days after execution of this contract by both parties.

5.2 Current Revenue. County shall pay for its obligations under this interlocal contract from current revenue funds.

6. CAPCOG Obligations—Part 2

6.1 Use of Funds. CAPCOG shall use these funds for the sole purpose of covering the eligible 9-1-1 costs of the Lakeway Police Department Public Safety Answering Point which will be due to CAPCOG for Fiscal Years 2012 and 2013.

6.2 Current Revenue. CAPCOG shall pay for its obligations under this interlocal contract from current revenue funds.

6.3 CAPCOG Retention of Records. CAPCOG shall maintain all records and documentation for the use of funds for Fiscal Years 2012 and 2013 to be funded under this contract in a readily available state and location for three (3) years after the Contract term in which CAPCOG last received funds.

6.4 County Access to Records. CAPCOG shall give County, or its duly authorized representatives, access to and the right to examine all records, and other papers related to use of funds for Fiscal Years 2012 and 2013 to be funded under this contract, at reasonable times and for reasonable periods. These rights to access continue as long as these records are retained by CAPCOG.

6.5 County Audit of Records. County has the right to conduct a financial audit of the CAPCOG's performance of this contract. CAPCOG agrees to permit County, or its authorized representatives, to audit CAPCOG's records that relate to this contract and to obtain any document, materials or information necessary to facilitate this audit.

GENERAL PROVISIONS

7. Limit on Agents. No agent, official, employee, or representative of County has the authority to amend or assign this Contract or waive violations of it unless expressly granted this specific authority by the Commissioners Court. No agent, official, employee or representative of CAPCOG has the authority to amend or assign this Contract or waive violations of it unless expressly granted this specific authority by the CAPCOG Board.

8 Dispute Resolution. When mediation is acceptable to both parties in resolving a dispute arising under this contract, the parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in the TEX. CIV. PRAC. AND REM. CODE ANN., § 154.073. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in TEX. CIV. PRAC. AND REM. CODE ANN., § 154.073, unless both parties agree, in writing, to waive the confidentiality.

9 Breach. The failure of either party to comply with the terms and conditions of this Contract is a breach of this Contract.

10 Termination.

10.1 CAPCOG Termination. CAPCOG may terminate this Contract for one or more of the following reasons at any time in compliance with 10.2

10.1.1 County has failed to use the funds provided in compliance with this Contract and Rule 251.3,

10.1.2 County has failed to comply with any term or condition of this Contract, or

10.1.3 CAPCOG has failed to provide any funds pursuant to Rule 251.3 for five consecutive years.

10.2 Procedure. At least twenty (20) days before the effective date of termination, CAPCOG must notify County in compliance with **15.01** of the decision to terminate this Contract, the existence and nature of the breach, and the effective date of termination. County may avoid termination of this Contract pursuant to 10.1 if County cures the breach to the satisfaction of CAPCOG within twenty (20) days of receipt of this notice. This time to cure may be extended, at the sole discretion of CAPCOG, as long as the County diligently continues to work toward completion of the cure. If the breach is not cured to the satisfaction of CAPCOG prior to the effective date of termination or any extension of the date allowed by CAPCOG in writing, the County is in default and the participation of the County is automatically terminated on that date.

10.3 County Termination. County may terminate the provisions in Part 2 of this Contract at any time in compliance with 10.4 for one or more of the following reasons:

10.3.1 CAPCOG has failed to use the funds provided in compliance with this Contract and Rule 251.3, or

10.3.2 CAPCOG has failed to comply with any term or condition of this Contract.

10.4 Procedure. At least twenty (20) days before the date of termination, County must notify CAPCOG in compliance with **15.01** of the decision to terminate this Contract, the existence and nature of the breach, and the effective date of termination. CAPCOG may avoid termination of this Contract pursuant to 10.1 if CAPCOG cures the breach to the satisfaction of County within twenty (20) days of receipt of this notice. This time to cure may be extended, at the sole discretion of County, as long as the CAPCOG diligently continues to work toward completion of the cure. If the breach is not cured to the satisfaction of County prior to the effective date of termination or any extension of the date allowed by County in writing, CAPCOG is in default and the participation of CAPCOG is automatically terminated on that date.

10.5 Mutual Termination. Either party has the right to terminate this Contract when both parties agree, in writing, that the continuation of the activities under this Contract

would not produce beneficial results commensurate with the further expenditure of funds and what conditions of termination will apply, including the effective date of termination.

11 Non-Waiver and Reservation of Remedies.

11.1 Non-Waiver. Any act of forbearance by either party to enforce any provision of this Contract must not be construed as a modification of this Contract or as a waiver of any breach or default of the other party which then exists or may subsequently exist. The failure of either party to exercise any right or privilege granted in this Contract must not be construed as a waiver of that right or privilege. In this Contract, County and CAPCOG do not waive any immunity or defense that would otherwise be available to them against claims arising in the exercise of their governmental powers and functions.

11.2 Reservation of Rights and Remedies. All rights of both parties under this Contract are specifically reserved. Any payment, act or omission by a party must not impair or prejudice any remedy or right of that party under this Contract. Any right or remedy stated in this Contract must not preclude the exercise of any other right or remedy under this Contract, the law or at equity, nor must any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

12 Entire Agreement.

12.1 Attachment. Attachment A-Fiscal Year 2012 is made a part of this contract and constitutes promised performances by CAPCOG under this Contract.

12.2 Contract All Inclusive. All oral and written agreements between the parties to this Contract relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained in this document.

13 Assignability. Neither party may assign any of the rights or duties created by this Contract without the prior written approval of the other party. It is acknowledged by CAPCOG that no officer, agency, employee or representative of County has any authority to grant such assignment unless expressly granted that authority by the Commissioners Court.

14. County Right to Contract: Other Entities. County may contract with other entities to provide for the use of revenue returned pursuant to Rule 251.3.

15     Notices

15.1 Method of Notice. Any notice required or permitted to be given under this Contract by one party to the other shall be in writing and either hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested.

15.2 Time of Delivery. When notices sent are hand delivered, notice is effective upon delivery. 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.

15.3 County Address. Notice sent pursuant to this Contract shall be delivered or sent to County at one of the following addresses for each of the following persons:

If hand delivered to:  
Honorable Samuel T. Biscoe  
(or his successor in office)  
County Judge, Travis County  
314 West 11th Street, Room 520  
Austin, Texas 78701

If mailed to:  
Honorable Samuel T. Biscoe  
(or his successor in office)  
County Judge, Travis County  
P.O. Box 1748  
Austin, Texas 78767

and

If hand delivered to:  
Danny Hobby (or his successor)  
County Executive  
Emergency Services  
5501 Airport Boulevard  
Austin, Texas 78757

If mailed to:  
Danny Hobby (or his successor)  
County Executive  
Emergency Services  
P.O. Box 1748  
Austin, Texas 78767

15.4 Notice to County Attorney. To be effective against County, a copy of any notice sent to County must also be sent to the Travis County Attorney's office at the following address:

Honorable David Escamilla (or his successor in office)  
Travis County Attorney  
P. O. Box 1748  
Austin, Texas 78767-1748  
File No. 260.66

15.5 CAPCOG Address. Notices sent pursuant to this Contract shall be delivered or sent to CAPCOG at one of the following addresses:

If hand delivered to:

Executive Director  
Capital Area Council of Governments  
6800 Burleson Road Building 310 Suite 165  
Austin, Texas 78744

If mailed to:

Executive Director  
Capital Area Council of Governments  
6800 Burleson Rd. Bldg 310, Ste 165  
Austin, Texas 78744

15.6 Change of Address. Each party may change the address for notice to it by giving notice of the change in accordance with the provisions of 15.1.

16 Compliance with Laws. County shall comply with all applicable laws, rules and regulations in the performance of this contract.

17 Interpretation of Contract.

17.1 Third Party Rights Not Created This Contract is not intended and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it and neither County nor CAPCOG is waiving any defense or immunity to which it is entitled against any person or legal entity that is not a party to it.

17.2 Law. This Contract is governed by the laws of Texas and is performable in Travis County, Texas.

17.3 Severability. If any portion of this Contract is ruled invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of the Contract must be construed as if that portion were not included in the Contract and the remainder remains valid and binding.

17.4 Definitions. In this Contract,

17.4.1 CAPCOG "CAPCOG" means the Capitol Area Council of Governments.

17.4.2 Contract Year. "Contract Year" means the year ending with the Travis County fiscal year which ends September 30 of each calendar year.

17.4.3 Day. "Day" means calendar day.

17.5 Computation of Time. When any period of time is stated in this Contract, the time must be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday or a day that either County or CAPCOG has declared a holiday for its employees, these days must be omitted from the computation.

17.6 Number and Gender. Words of any gender in this Contract must be construed to include any other gender and words in either number must be construed to include the other unless the context in the Contract clearly requires otherwise.

17.7 Headings. The headings at the beginning of the various provisions of this Contract have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this Contract.

18 Legal Authority.

18.1 CAPCOG Signors. The person or persons signing this Contract on behalf of CAPCOG, or representing themselves as signing this Contract on behalf of CAPCOG, do hereby warrant and guarantee that he, she or they have been duly authorized by CAPCOG to sign this Contract on behalf of CAPCOG and to bind CAPCOG validly and legally to all terms, performances, and provisions in this Contract.

18.2 County Signors. The person or persons signing this Contract on behalf of County, or representing themselves as signing this Contract on behalf of County, do hereby warrant and guarantee that he, she or they have been duly authorized by County to sign this Contract on behalf of County and to bind County validly and legally to all terms, performances, and provisions in this Contract.

19 Duplicate Originals.

19.1 This document is executed in duplicate originals.

CAPITAL AREA COUNCIL OF GOVERNMENTS

TRAVIS COUNTY, TEXAS

By:

  
\_\_\_\_\_  
Betty Voights  
Executive Director

By:

\_\_\_\_\_  
Samuel T. Biscoe  
County Judge

Date:

12-2-11

Date:

\_\_\_\_\_

ATTACHMENT A—FY 2012

County Fiscal Year of Term	2012
Amount Payable	\$513,872.00
Fiscal Year In Which Funding Originated	County Fiscal Year 2009 and rolled over each year since then