



## Travis County Commissioners Court Agenda Request

**Meeting Date:** February 28, 2012

**Prepared By/Phone Number:** Loren Breland, 854-4854

**Elected/Appointed Official/Dept. Head:** Cyd Grimes

**Commissioners Court Sponsor:** Judge Biscoe

**Agenda Language: Approve Interlocal Agreement between Travis County and the Capital Area Council of Governments (CAPCOG) for air quality monitoring.**

Ø **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.

On September 13, 2011, Travis County's Commissioner's Court approved \$12,500 to assist CAPCOG in the purchase of equipment for an air quality monitor at McKinney Roughs if other local entities agreed to assist CAPCOG as well. San Marcos, Round Rock, Williamson County, Hays County and Bastrop County are also assisting in the funding of monitors. The actual cost for the equipment will not exceed \$10,500.

The data collected at this site shows the impact of ozone transport and provides important information which will assist in the development of effective targeted pollution control strategies. Unlike other air quality work, monitoring data is unique and cannot be done at a late date.

The TX Legislature budget proposal cut funding for CAPCOG by 50%. This drastic reduction in funding required CAPCOG to eliminate or reduce important monitoring. The McKinney Roughs monitor shows the impact of ozone transport towards Travis County. Without the data from the monitor, it will be difficult to show the extent to which Travis County is affected by ozone transport. This data is becoming increasingly important as the standard for ozone is lowered and as Travis County is on the edge of not meeting the standard. Furthermore, this data is important for the development of control strategies for a State

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, [Cheryl.Aker@co.travis.tx.us](mailto:Cheryl.Aker@co.travis.tx.us) by Tuesdays at 5:00 p.m. for the next week's meeting.

Implementation Plan (SIP) if Travis County is declared nonattainment for ozone. If not collected during the 2012 ozone season, the data is lost – we cannot go back and collect or create it.

The attached Interlocal Agreement details the agreement between Travis County and CAPCOG regarding the purchase of the equipment for monitoring purposes.

Ø **Funding Information:**

Purchase Requisition in H.T.E.:

Funding Account(s):

Comments: On September 13, 2011, Commissioner's Court approved \$12,500.00 to assist CAPCOG in the purchase of air quality monitoring equipment. Actual cost will not exceed \$10,500.00

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**TRANSPORTATION AND NATURAL RESOURCES  
STEVEN M. MANILLA, P.E., COUNTY EXECUTIVE**

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411 West 13<sup>th</sup> Street  
Executive Office Building, 11<sup>th</sup> Floor  
P. O. Box 1748  
Austin, Texas 78767  
(512) 854-9383  
FAX (512) 854-4697

February 14, 2012

**MEMORANDUM**

TO: Cyd Grimes, County Purchasing Agent  
FROM: *Steven M. Manilla*  
Steven M. Manilla, County Executive, TNR  
SUBJECT: Interlocal Agreement  
Air Quality Monitoring

TNR requests that Travis County enter into an interlocal agreement with The Capital Area Council of Governments ("CAPCOG") to assist in the purchase of equipment for air quality monitoring at McKinney Roughs.

Due to funding cuts, CAPCOG was required to reduce ozone monitoring in multiple locations. The data collected at the McKinney Roughs location demonstrates the direct impact of ozone transport on Travis County. This information is required to develop effective targeted pollution control strategies within Travis County.

The Commissioners' Court placed an earmark of \$12,500 during budget markup on September 13, 2011.

If you should have any questions or need further information, please contact Christina Jensen at (512) 854-7670.

CJ:SMM:cj

**CAPITAL AREA COUNCIL OF GOVERNMENTS**

**INTERLOCAL CONTRACT FOR AIR QUALITY SERVICES**

**Art. 1. Parties and Purpose**

1.1. The Capital Area Council of Governments ("CAPCOG") is a regional planning commission and political subdivision of the State of Texas organized and operates under the Texas Regional Planning Act of 1965, as amended, chapter 391 of the Local Government Code.

1.2. Travis County is a Texas local government that is seeking to ensure reliable, high-quality ambient air quality monitoring data is collected at CAPCOG's air quality monitor located in the McKinney Roughs Nature Park.

1.3. This contract is entered into between CAPCOG and Travis County under chapter 791 of the Government Code so that Travis County can contribute funding toward the purchase and continued operation of air quality equipment at the McKinney Roughs Nature Park as part of the regional air quality program at CAPCOG.

**Art. 2. Goods and Services**

2.1. CAPCOG agrees to purchase, install, operate, and maintain, new ambient air quality monitoring equipment (the "Equipment") at an ambient air quality monitoring site in the McKinney Roughs Nature Park described in Attachment A in this contract. The Equipment will include at least the following: an ozone analyzer, a wind sensor, and a data logger. CAPCOG agrees to provide Travis County with a copy of the receipt for the purchase of any monitoring equipment that will be paid for with funds from this contract, a copy of any warranty that covers the Equipment, and documentation of the installation of the Equipment at the site listed in Attachment A. CAPCOG agrees to allow Travis County to inspect the monitoring site listed in Attachment A to verify installation and the proper operation and maintenance of the Equipment purchased under this contract. CAPCOG shall cause the Equipment to be installed before April 1, 2012. CAPCOG agrees to fully enforce all warranties relating to the Equipment in addition to any agreements that CAPCOG has relating to the operation or maintenance of the Equipment.

**Art. 3. Contract Price and Payment Terms**

3.1. Travis County agrees to provide funding to CAPCOG under this contract, solely from current revenues available to Travis County, with a total value not to exceed \$10,500. CAPCOG will submit an invoice to Travis County upon installation of the equipment for Travis County's share of the cost of the equipment, along with a receipt for CAPCOG's purchase of the equipment and evidence of its installation at the site listed in Attachment A. This amount represents 100% of the cost of installing, operating,

and maintaining the equipment CAPCOG plans to deploy in the McKinney Roughs Nature Park in 2012.

3.2. Travis County agrees to pay the invoice within 30 days after it receives the invoice, as required by the Prompt Payment Act, chapter 2251 of the Government Code.

#### **Art. 4. Effective Date and Term of Contract**

4.1. This contract takes effect on the date it is signed on behalf of CAPCOG and it ends, unless sooner terminated under Art. 6 or 7, or on October 31, 2012, whichever comes first.

4.2 Upon the termination of this contract, the County may request that CAPCOG, at no charge to the County, transfer ownership of the Equipment to the County and either deliver the Equipment to the County or allow the County to remove the Equipment. CAPCOG must deliver the Equipment to the County within 30 days after receiving a request from the County. The County has 45 days following the termination of this contract to remove the Equipment.

#### **Art. 5. Nondiscrimination and Equal Opportunity**

5.1. CAPCOG and Travis County will not unlawfully discriminate against anyone in carrying out this contract because of race, color, religion, national origin, sex, age, disability, handicap, or veteran status.

#### **Art. 6. Termination of Contract for Unavailability of Funds**

6.1. Travis 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 or performance.

6.2. CAPCOG terminates this contract for unavailability of funds by giving Travis 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.

#### **Art. 7. Termination for Breach of Contract**

7.1. If Travis County or CAPCOG 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,



the parties may agree to terminate the contract or either party may invoke the dispute resolution process of Art. 8.

7.2. Termination for breach under Art. 7.1 does not waive either party's claim for damages resulting from the breach.

### **Art. 8. Dispute Resolution**

8.1. 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 Art. 8, toll the statute of limitations, or seek an injunction, until they have exhausted the procedures set out in this Art. 8.

8.2. At the written request of either party, each party shall appoint one nonlawyer 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.

8.3. 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. 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 are to remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

8.4. The parties agree to continue performing their duties under this contract, which are unaffected by the dispute, during the negotiation and mediation process.

### **Art. 9. Notice to Parties**

9.1. Notice to be effective under this contract must be in writing and received by the party against whom it is to operate. Notice is received by a party: (1) when it is delivered to the party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address specified in paragraph 9.2 and signed on behalf of the party; or (3) three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the party's address specified in Art. 9.2.

9.2. CAPCOG's address is 6800 Burleson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Betty Voights, Executive Director. Travis County's address is P.O. Box 1748, 1010 Lavaca Street, Austin, Texas 78767, Attention: Adele Noel, Environmental Quality Program Manager.

9.3. A party may change its address by providing notice of the change in accordance with Art. 9.1.

#### **Art. 10. Miscellaneous**

10.1. Each individual signing this contract 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.

10.2. (a) This contract states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by all parties.

(b) Attachment A is part of this contract.

10.3-. This contract is binding on and inures to the benefit of the parties' successors in interest.

10.4. This contract is executed in duplicate originals.

10.5 **Non-Waiver of Default.** No payment, act, or omission by the County may constitute or be construed as a waiver of any breach or default of CAPCOG which then exists or may subsequently exist. All rights of the County under this Agreement are specifically reserved and any payment, act, or omission is not to be construed to impair or prejudice any remedy or title to the County under it. Any right or remedy in this Agreement does not preclude the exercise of any other right or remedy under this Agreement or under any law, except as expressly provided in this Agreement, nor will any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

10.6 **No Waiver of Immunity.** It is expressly understood and agreed by the Parties that neither the execution of this Agreement nor any conduct of any representative of CAPCOG or County relating to this Agreement will be considered to waive, nor will it be deemed to have waived, any immunity or defense that would otherwise be available to that entity against claims arising in the exercise of its governmental powers and functions, nor will it be considered a waiver of sovereign immunity to suit.

10.7. This Agreement is between Travis County and CAPCOG. This Agreement is not intended, nor may it be construed, to confer any benefits, rights, or remedies upon any person not a party hereto.

10.8 If performance by any Party of any obligation under this Agreement is interrupted or delayed by reason of unforeseeable event beyond its control, whether such event is an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct other than acts of the County under this Agreement, or the act of conduct of any person or persons not a party or privy hereto, then such Party

will be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

**10.9 Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the County and CAPCOG and their respective successors, executors, administrators, and assigns. Neither the County nor CAPCOG may assign, sublet, or transfer its interest in or obligations under this Agreement without the written consent of the other party hereto. IT IS EXPRESSLY ACKNOWLEDGED THAT NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT.

TRAVIS COUNTY,  
TEXAS

CAPITAL AREA COUNCIL OF  
GOVERNMENTS

By \_\_\_\_\_

By \_\_\_\_\_

Sam Biscoe  
County Judge

Betty Voights  
Executive Director

Date \_\_\_\_\_

Date \_\_\_\_\_



**AVAILABILITY OF FUNDS CONFIRMED:**

By: \_\_\_\_\_  
Susan Spataro  
Travis County Auditor

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Cyd V. Grimes, C.P.M.  
Travis County Purchasing Agent

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Assistant County Attorney

**ATTACHMENT A**  
**CAPCOG AIR QUALITY MONITORING STATION INFORMATION**

The Capital Area Council of Governments ("CAPCOG") owns an ambient air quality monitoring station located at 1884 State Highway 71 West, Cedar Creek, Texas (Latitude: 30.1408770 degrees; Longitude: -97.458897 degrees, elevation: 158.0 meters). This air quality monitoring station collects ambient ozone concentrations, wind speed, and wind direction during ozone season from April through October, and has been active since August 16, 2006. The site reports data to the Texas Commission on Environmental Quality ("TCEQ"), which designates the site as Continuous Air Monitoring Station ("CAMS") 684, and calls it "McKinney Roughs." The site's United States Environmental Protection Agency ("EPA") Site Number is 480210684..

The equipment currently installed at the site includes the following:

- One Teledyne-API ozone analyzer over 6 years old,
- One Zeno data logger over 8 years old,
- One Young Instruments Wind Sensor over 10 years old.

CAPCOG will replace each of these instruments with new instruments prior to the first day of the 2012 ozone season, which is April 1, 2012.