



# Travis County Commissioners Court Agenda Request

**Meeting Date:** March 19, 2013

**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.

- **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.

The purpose of this interlocal with CAPCOG will be to provide funding toward the continued operation of CAPCOG's air quality monitoring stations known as CAMS 684 and CAMS 601, located in the McKinney Roughs Nature Park and in Fayette County, respectively. The amount provided by Travis County under this agreement will be a not to exceed amount of \$15,000.00.

- **Funding Information:**

- SAP Funds Reservation Document #300000494
- Funding Account(s):
- Comments:



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

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700 Lavaca, Suite 540  
Travis County Administration Building  
P. O. Box 1748  
Austin, Texas 78767  
(512) 854-9383  
FAX (512) 854-4697

February 20, 2013

**MEMORANDUM**

TO: Cyd Grimes, County Purchasing Agent  
FROM: *Carl B. Joseph Jr*  
Steven M. Manilla, P.E., 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 operations of air quality monitoring at continuous air monitoring station (CAMS) numbers 684 and 601.

Due to funding cuts, CAPCOG was required to reduce ozone monitoring in multiple locations. The data collected at the selected locations 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 budgeted funds for FY13 have been pre-encumbered on Funds Reservation 300000494.

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 MONITORING 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 stations, known as CAMS 684 and CAMS 601, located in the McKinney Roughs Nature Park and in Fayette County, respectively.

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 continued operation of air quality equipment at the McKinney Roughs Nature Park and Fayette County as part of the regional air quality program at CAPCOG.

## **Art. 2. Goods and Services**

2.1. CAPCOG agrees to operate and maintain ambient air quality monitoring equipment (the "Equipment") at an ambient air quality monitoring site in the McKinney Roughs Nature Park and in Fayette County, as described in Attachment A to this contract. The Equipment will include at least an ozone analyzer and a data logger. CAPCOG agrees to provide Travis County a copy of any warranty that covers the Equipment, and if requested, documentation of the maintenance of the Equipment at the sites listed in Attachment A. CAPCOG agrees to allow Travis County to inspect the monitoring sites listed in Attachment A to verify the proper operation and maintenance of the Equipment. 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.

2.2 CAPCOG will provide quality-assured data on ozone concentrations, wind speed, and wind direction collected by instruments located at the CAMS 601 (Fayette County) and CAMS 684 (McKinney Roughs) air quality monitoring stations reported to the TCEQ's LEADS system from April 15, 2013, through October 31, 2013. CAPCOG will ensure at least 85% data completeness for each instrument at each site throughout this period. Following completion of monitoring on October 31, 2013, CAPCOG will prepare and submit a report to Travis County on the air quality monitoring activities at

these two sites no later than January 31, 2014. CAPCOG uses a contractor that prepares monthly reports of the data collected by the Equipment. Within 15 days after receiving a report from its contractor, CAPCOG will forward a copy of the report to the County.

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

3.1. The Parties agree that the total cost for CAPCOG to provide the services described in Section 2 is \$15,000. 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 \$15,000. If CAPCOG receives or will receive funding from one or more sources besides Travis County for providing air quality monitoring services at either CAMS 601 or CAMS 684, Travis County's funding obligation under this Section 3 will be reduced in proportion to any funding contribution from a non-Travis County source.

3.2 Within 30 days after CAPCOG provides Travis County with any of the reports described in Section 2.2, CAPCOG will submit an invoice to the following address: Travis County Auditor's Office, P.O. Box 1748, Austin, Texas 78767, with a copy to: Travis County Transportation and Natural Resources Department, P.O. Box 1748, Austin, Texas 78767.

The invoice must include at least the following:

- (i) The name, address, and telephone number of CAPCOG and similar information in the event payment is to be made to a different address;
- (ii) the Travis County contract or Purchase Order number;
- (iii) identification of products or services as outlined in this Agreement;
- (iv) quantity or quantities, applicable unit prices, total prices, and total amount;
- (v) information as to whether CAPCOG has received or will receive funding from other sources besides Travis County for performing air quality monitoring services at either CAMS 601 or CAMS 684, and the amount(s), if any; and
- (vi) any additional payment information called for by this contract.

3.3. 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.

3.4 **TAXPAYER IDENTIFICATION.** CAPCOG shall provide Travis County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any funds are payable.

#### **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 March 1, 2014, whichever comes first.

#### **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. Notices to the County must be sent to:

Travis County  
Transportation and Natural Resources Department  
P. O. Box 1748  
Austin, Texas 78767  
Attention: Adele Noel (or successor)  
Environmental Quality Program Manager

WITH A COPY TO:

Cyd Grimes, C.P.M. (or successor)  
Travis County Purchasing Agent  
P.O. Box 1748  
Austin, Texas 78767

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 Agreement is binding upon and inures to the benefit of Travis County and CAPCOG and their respective successors, executors, administrators, and assigns. Neither Travis 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 TRAVIS COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE TRAVIS COUNTY COMMISSIONERS COURT.

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.

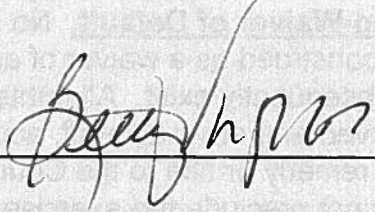
**10.9 Venue.** TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS.

**10.10 Severability.** If any term, condition, or provision in this contract is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this contract. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

TRAVIS COUNTY,  
TEXAS

CAPITAL AREA COUNCIL OF  
GOVERNMENTS

By \_\_\_\_\_

By  \_\_\_\_\_

Samuel T. Biscoe  
County Judge

Betty Voights  
Executive Director

Date \_\_\_\_\_

Date 1-10-13



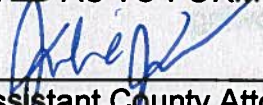
**AVAILABILITY OF FUNDS CONFIRMED:**

By: \_\_\_\_\_  
**Nicki Riley**  
**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 STATIONS**

**CAMS 684**

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 Tanabyte ozone analyzer less than a year old,
- One Zeno data logger less than a year old,
- One Young Instruments Wind Sensor less than a year old.

**CAMS 601**

CAPCOG owns an ambient air quality monitoring station located at 601 Roznov Road, Round Top, Texas (Latitude: 29°57'45"; Longitude: -96°44'45", elevation: 85.0 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 May 18, 2000. The site reports data to the Texas Commission on Environmental Quality ("TCEQ"), which designates the site as Continuous Air Monitoring Station ("CAMS") 601, and calls it "Fayette County." The site's United States Environmental Protection Agency ("EPA") Site Number is 481490001.

The equipment currently installed at the site includes the following:

- One Teledyne ozone analyzer 6 years old,
- One TEOM particulate matter analyzer,
- One Zeno data logger 12 years old,
- One F450 Met Station more than 5 years old.