



Travis County Commissioners Court Agenda Request

Meeting Date: May 20, 2015

Prepared By/Phone Number: David Walch 46663; Marvin Brice 49765

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Approve Interlocal Agreement No. 4400002051, Capital Area Council of Governments (CAPCOG), to provide Air Quality Services.

- **Purchasing Recommendation and Comments:** This procurement action meets the compliance requirements as outlined by the statutes.

CAPCOG is a regional planning commission and political subdivision of the State of Texas organized and operated under the Texas Regional Planning Act of 1965, as amended, chapter 391 of the Local Government Code. CAPCOG's Air Quality Program has been primarily grant funded by the State of Texas to provide air quality modeling, monitoring and to conduct emissions research to assist central Texas with maintaining the federal standard for the ozone.

Travis County's portion of CAPCOG's Air Quality Program budget is \$22,100.00 of a total program budget of \$350,000 for FY14. Travis County's contribution helps insure the emission inventory development, photochemical modeling, and monitoring data interpretation of this work is completed. CAPCOG is the only organization that develops this type of analysis for our area.

- **Contract Expenditures:** Within the last 12 months \$15,000.00 has been spent against this contract/requirement.

- **Contract-Related Information:**

Award Amount: \$22,100.00

Contract Type: Interlocal Agreement

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to agenda@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

Contract Period: May 20, 2014 – March 1, 2015

➤ **Funding Information:**

SAP Shopping Cart #:

Funding Account(s): Funds Reservations 300001046

Comments:

INTERLOCAL CONTRACT FOR AIR QUALITY SERVICES

Article 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 operated under the Texas Regional Planning Act of 1965, as amended, chapter 391 of the Local Government Code.

1.2. Travis County ("County") is a Texas local government that is seeking to obtain air quality modeling and other technical analyses to improve the understanding of the sources and extent of regional air quality problems.

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 completion of technical research projects by CAPCOG's Air Quality Program.

Article 2. Goods and Services

2.1. CAPCOG agrees to perform emissions inventory and air quality modeling research projects as recommended by the Central Texas Clean Air Coalition ("CAC") at its December 11, 2013 meeting using funding from this interlocal agreement and any other funding raised by CAPCOG from CAC members for these projects by January 15, 2014. The County is a member of the CAC.

2.2. The emissions inventory and modeling research projects recommended by the CAC, as funding allows, and in priority order, are:

1. Vehicle Inspection and Maintenance ("I/M") Compliance and Program Evaluation;
2. Sensitivity Modeling for Local Power Plants;
3. Construction Equipment Emissions Inventory; and
4. Quantification of Emission Reduction Impact of Ozone Advance Measures.

2.3. CAPCOG will use funding provided by Travis County to pay some or all of the cost of the vehicle I/M compliance and program evaluation identified as the top priority project in Article 2.2. CAPCOG will collect, compile, and analyze data that can be used to derive an empirically-based compliance rate for the vehicle I/M programs in place in Travis and Williamson Counties. This compliance rate will reflect the percentage of vehicles that are subject to the I/M program and are complying with the program's requirements. This project will involve data from a variety of sources,

including parking lot inspection certificate/registration surveys, analysis of data in the Gordon Darby I/M database, analysis of remote sensing data, reviews of law enforcement data for vehicle sticker fraud, the state's vehicle registration database, and interviews with station operators and law enforcement officials. The I/M compliance rate developed by this project can be used as a direct input into the EPA's on-road emissions model known as "MOVES," and will enable more accurate estimates of on-road emissions in the Central Texas region, more accurate estimates of the emissions benefits of the I/M program, and more accurate estimates of the benefits that are possible from improved enforcement. This in turn will enable Travis County to conduct cost/benefit analyses for increased enforcement efforts.

2.4 By May 31, 2014, CAPCOG shall e-mail Travis County with a detailed accounting of the amounts received from or pledged by CAC members for the projects identified under Article 2.2, and specify which of those projects will be funded.

2.5 CAPCOG shall provide Travis County with electronic and hard copies of a final report and any associated data files produced for the technical projects listed in Article 2.2 no later than December 31, 2014.

2.6 Notwithstanding any provision to the contrary, if CAPCOG fails to provide the County the reports and data files described in Article 2.5, CAPCOG must return the County's \$22,100 contribution to the County by January 31, 2015. This provision will survive the termination of this Agreement.

Article 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 \$22,100 (the "County Contribution"), subject to CAPCOG's compliance with the terms of this contract, and will provide this funding to CAPCOG within 30 days after the effective date of this contract.

3.2. The County Contribution represents Travis County's population-based share of an approximately \$60,000 cost for completing the research projects listed in Article 2.2.

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.

Article 4. Effective Date and Term of Contract

4.1. This contract takes effect when it is signed by both CAPCOG Travis County, and it ends, unless sooner terminated under Articles 6 or 7, or on March 1, 2015, whichever comes first.

Article 5. Nondiscrimination and Equal Opportunity

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

Article 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 of 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. Notwithstanding any provision to the contrary, if CAPCOG terminates this contract for unavailability of funds, CAPCOG will return the County's \$22,100 contribution to the County within 30 days after the notice date.

Article 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 Article 8.

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

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

Article 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 Article 8.2 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 Article 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)

WITH A COPY TO: Cyd Grimes, C.P.M., CPPO (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 Article 9.1.

Article 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. 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.

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 right 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 an 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 or 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.

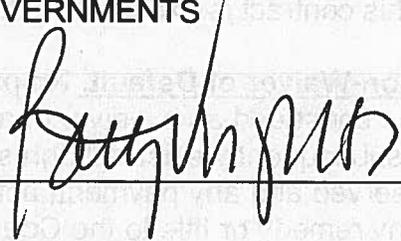
10.9. **Venue.** TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT THE VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS.

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 provision, 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 4/30/14

Manilla
David
2/7/14
SW



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

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

RECEIVED
TRAVIS COUNTY
PURCHASING
OFFICE
2014 FEB -6 AM 10:27

January 30, 2014

MEMORANDUM

TO: Cyd Grimes, County Purchasing Agent
FROM: *Carol B. Joseph*
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") for air quality services. This contract will involve emissions inventory and air quality modeling research projects as recommended by the Central Texas Clean Air Coalition (CAC) at its December 11, 2013, meeting and approved by Travis County Commissioner's Court on Nov. 26, 2013.

The funds have been reserved on Funds Reservation 300001046.

If you should have any questions or need further information, please contact April Rodriguez at (512) 854-7676.

AR AR:SMM:ar



Travis County Commissioners Court Agenda Request

Meeting Date: November 26, 2013

Prepared By: Adele Noel, Environmental Project Manager

Phone #: (512) 854- 7211

Division Director/Manager: Jon White/Tom Weber - NREQ

Department Head: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: County Judge Samuel T. Biscoe

AGENDA LANGUAGE: Consider and take appropriate action on a request to provide \$22,100 to Capital Area Council of Government (CAPCOG) programs to support air quality modeling and other technical analysis to improve understanding of the sources and extent of regional air quality problems.

BACKGROUND/SUMMARY OF REQUEST:

CAPCOG's air quality program has been funded primarily by a grant provided by the State of Texas for air quality planning in near-nonattainment areas. The grant funds enable CAPCOG to provide technical work, including air quality modeling, monitoring, and conducting emissions research to assist the area with maintaining the federal standard for the ozone. In prior years through 2012, approximately \$410,000 per year was spent for air quality planning for Central Texas. The 83rd legislative session (2013) reduced funding for the grant to CAPCOG. The new contract provides \$350,000 for FY14, which covers current staff, monitor operations, and limited analysis, but does not allow for contractual support for emissions inventory research or modeling, both of which are important in ensuring that our air quality planning efforts continue to be based on sound science.

By funding this request Travis County will help insure that emission inventory development, photochemical modeling, and monitoring data interpretation of this work is completed. CAPCOG is the only organization that develops this type of analysis for our area. This work is essential for development and implementation of effective control measures in order to maintain compliance with air quality standards. Failure to develop effective control measures could be costly for businesses and government entities. TNR does not have the staff or resources to complete this type of technical work. Instead, TNR works with local jurisdictions and other entities to maintain compliance with air quality standards and to improve air quality for residents.

Travis County will be joining multiple entities to contributing funding to improve and better understand air quality in Central Texas. With this funding CAPCOG will select a qualified contractor to prepare emissions inventories for key emissions categories or perform photochemical modeling. The scope of these projects will be defined in a project plan subject to Travis County approval. For any emissions inventory project the project plan shall define the source categories, geographic scope, and time periods the performing party proposes to prepare emissions inventories for, as well as proposed techniques for preparing the inventories. For any modeling project, the project plan shall define the scenarios to be modeled and how the modeling data will be developed. Upon completion of any projects, CAPCOG shall submit a report (or multiple reports) documenting the development of the emissions inventories or modeling. The report will describe the steps taken, any approved deviations from the previously developed project plan, and any background CAPCOG feels is relevant to the project. CAPCOG will also submit documentation showing what portion of these projects Travis County and any other entities contributed towards completion.

All members of the Clean Air Coalition are being asked to contribute in proportion to their population. CAPCOG is requesting a total of \$60,200 from members. The Clean Air Coalition is comprised of elected officials from the existing 5 counties Austin-Round Rock Metropolitan Statistical Area who are representatives of the governmental agencies that are signatories to the Central Texas 8-hour O3 Flex Plan.

STAFF RECOMMENDATIONS:

TNR recommends approval.

ISSUES AND OPPORTUNITIES:

Without additional funding from either local governments or TCEQ, CAPCOG will need to eliminate almost all technical research and will only be able to provide a limited set of air quality services to Travis County and the other local governments that are participating in the regional air quality planning efforts. The goal of CAPCOG's air quality program is to provide regional leadership in air quality planning efforts based on sound science. Technical research efforts that would be cut back or eliminated for the region include operation of the regional ozone monitors, photochemical modeling, data analysis, and more complex emissions inventory work that requires outside professional services. This ongoing technical research is essential to understanding and tracking ozone and emissions trends in the region, and to assessing the costs and benefits of different emission reduction strategies. Without it CAPCOG would still be able to provide some level of services to the local government in facilitating discussions and planning efforts but those efforts would be hampered for lack of up-to-date data.

For the 2013 ozone season, the Austin area experienced 4 days when the ozone level exceeded the levels EPA considers healthy 75 parts per billion (ppb). In 2012, the region was only 2 ppb away from being out of compliance with the 3 year average EPA uses to determine if areas are in attainment (the design value). With the EPA now considering tightening the standard (range of 60-70 ppb), additional efforts will be needed to ensure continued compliance.

FISCAL IMPACT AND SOURCE OF FUNDING:

TNR originally requested this funding be included in the FY14 budget: however, it was rejected and received a low priority by PBO. Therefore, TNR requests that Allocated Reserve be the appropriate source of funding.

ATTACHMENTS/EXHIBITS:

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429

CC:

Jon White	Division Director	TNR	(512) 854-7212
Thomas Weber	Environmental Program Manager	TNR	(512) 854-4629
Alan Miller	Budget Analyst	PBO	(512) 854-9726
Adele Noel	Environmental Project Manager	TNR	(512) 854-7211

**AN:AD:ad
0801 - NREQ - CAPCOG**

Draft Updated Funding Request (11/14/13)

Dear Clean Air Coalition Members and Clean Air Coalition Advisory Committee Members:

This spring, CAPCOG's Air Quality Program asked local CAC jurisdictions to consider helping make up an anticipated \$150,000 shortfall in grant funding from TCEQ that would be needed to sustain all staff and most of our contractual activities. We now know the gap to maintain the key components of our program will be \$60,000. Therefore, we respectfully request each of the jurisdictions to consider the proportionately reduced share outlined on the table below.

Jurisdiction	2010 Population	% of Combined Population	Original Funding Request	Updated Funding Request
Bastrop County	74,171	2.67%	\$4,000	\$1,600
Caldwell County	38,066	1.37%	\$2,000	\$800
Hays County	157,107	5.65%	\$8,500	\$3,400
Travis County	1,024,266	36.83%	\$55,250	\$22,100
Williamson County	422,679	15.20%	\$22,750	\$9,100
City of Austin	790,390	28.42%	\$42,500	\$17,100
City of Bastrop	7,218	0.26%	\$500	\$200
City of Cedar Park	48,937	1.76%	\$2,600	\$1,100
City of Elgin	8,135	0.29%	\$500	\$200
City of Georgetown	47,400	1.70%	\$2,500	\$1,000
City of Lockhart	12,698	1.37%	\$750	\$300
City of Luling	5,411	0.19%	\$250	\$100
City of Round Rock	99,887	3.59%	\$5,500	\$2,200
City of San Marcos	44,894	1.61%	\$2,250	\$1,000
TOTAL COMBINED	2,781,259	100%	\$149,850	\$60,200

In prior years through 2012, approximately \$410,000 per year was spent for our full range of program activities. Our new contract provides \$350,000 for FY 2014, which covers current staff, monitor operations, and very limited analysis, but does not allow for contractual support for emissions inventory research or modeling, both of which are important in ensuring that our air quality planning efforts continue to be based on sound science. If your jurisdiction is willing to provide the requested funding, please let us know by the end of January so that we can properly plan our activities for next year.

Thank you,

Andrew Hoekzema, CAPCOG Air Quality Program Manager