

**INTERLOCAL AGREEMENT  
BETWEEN THE CAPITAL AREA COUNCIL OF GOVERNMENTS AND  
CITY OF PFLUGERVILLE, TEXAS  
FOR CONTINUATION AND SUPPORT OF THE CAPCOG REGIONAL AIR QUALITY  
PROGRAM**

This Agreement is by and among City of Pflugerville, Texas 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 pollution.

**Whereas**, the 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**, the program's primary source of funding has been through grants from the Texas Commission on Environmental Quality (TCEQ), and that funding was vetoed by the Governor of Texas on June 12, 2017, for our region and for all near-nonattainment air quality areas of the state.

**Whereas**, the Ozone Advance Program Action Plan was intended to be implemented through December 31, 2018.

**Whereas**, the region depends upon CAPCOG's air quality program and staff for emissions data, regulatory guidance and information on air quality.

**Whereas**, the region's 2016 design value was 66 ppb and increasing – the 2017 design value is already 68 ppb halfway through the ozone season – leaving our residents and communities vulnerable to the conditions of poor air quality.

**Whereas**, Without CAPCOG air quality program, the region would be totally dependent on TCEQ/EPA on air quality issues.

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 City of Pflugerville to support the continuation of regional air quality monitoring and planning activities as provided by CAPCOG and as sufficient funding allows.

### **Section 2. CAPCOG's Responsibilities.**

CAPCOG agrees to continue to perform near-nonattainment program duties to include program planning and management; monitoring & research activities; technical assistance & coordination, outreach/education, and core staff operations as guided by the Capital Area Clean Air Coalition and authorized by the CAPCOG Executive Committee, details of which are attached hereto as Exhibit A and incorporated into this Agreement.

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 data collection and required reporting for adequate closeout of the existing grant with the TCEQ, and will use these local funds for activities continued beyond the closeout of that grant, anticipated no later than June, 30, 2018.

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. City of Pflugerville's Responsibilities.**

City of Pflugerville agrees to contribute an amount of \$6769. 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.

#### **Section 4. Agreement Term**

The term of this Agreement commences on the date the signed agreement is returned to CAPCOG and continuing until September 30, 2018, unless sooner terminated due to lack of funds.

#### **Section 5. Termination**

City of Pflugerville 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 City of Pflugerville 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 to City of Pflugerville within 30 days after the notice date, less the value of any deliverables submitted by the notice date.

#### **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.

#### **Section 7. Notice.**

All notices sent pursuant to this Agreement shall be in writing and may be hand delivered, or sent by registered or certified mail, postage prepaid, return receipt requested.

When notices sent are hand delivered, notice shall be deemed 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.

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:

City of Pflugerville  
Brandon Wade  
City Manager  
P.O. Box 589  
Pflugerville, TX 78691-0589

CAPCOG: Betty Voights  
Executive Director  
6800 Burluson Road, Building 310, Suite 165  
Austin, Texas 78744

**Section 8. 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.

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: \_\_\_\_\_

City of Pflugerville

By: \_\_\_\_\_  
Brandon Wade  
City Manager

Date: \_\_\_\_\_