

Interlocal Agreement to Establish the Capital Area Pavement Engineering Council

This interlocal agreement (the "Agreement") is made and entered into by and between each political subdivision listed in Exhibit A and Exhibit B (individually, the "Participating Entity" or "Party" and collectively, the "Participating Entities" or the "Parties") pursuant to Chapter 791 of the Texas Government Code for the purposes and consideration described herein.

WHEREAS, improving the quality of pavement in the Central Texas area would lower the life-cycle cost of pavement maintenance that are borne by the Participating Entities and the taxpayers thereof;

WHEREAS, it would be of benefit to the Participating Entities listed in Exhibit A and Exhibit B and the citizens thereof if the Participating Entities work together to improve pavement design, construction, and maintenance practices in the Central Texas area;

WHEREAS, the development of standardized pavement design methods and construction specifications would lower costs for the Participating Entities, improve the quality of pavement, enable more efficient inspection and testing, significantly improve the transportation infrastructure, and advance public safety in the Central Texas area; and

WHEREAS, the pooling of knowledge and financial resources by the Participating Entities would enable the Participating Entities to more expeditiously and efficiently achieve the public purposes stated above;

NOW, THEREFORE, the Participating Entities, each acting by and through their respective governing bodies, enter into this Interlocal Agreement.

1.0 Establishment of the Capital Area Pavement Engineering Council

1.1 The Parties by resolution or order enter into this Agreement to form an organization to improve pavement engineering in the Central Texas area. The Parties hereby establish the Capital Area Pavement Engineering Council ("CAPEC" or the "Council").

2.0 Term and Membership

2.1 The term of this Agreement will be one (1) year from August 1, 2009 to July 31, 2010 and will automatically renew from year to year, subject to the other provisions of this Agreement.

2.2 **Voting Members.** A Participating Entity whose governmental body has by order or resolution committed funds for Council-approved initiatives is a Voting Member of the Council. The amount to be contributed by each Voting Member for each Council-approved initiative that requires funding will be determined by the Board of Governors, as defined in Section 5.0 of this Agreement, and will be based on each Voting Member's pro-rata share of

that Council-approved initiative. A list of Participating Entities that are Voting Members is attached hereto as Exhibit A, which exhibit is incorporated herein for all purposes.

2.3 Associate Members. A Participating Entity whose governing body has by order or resolution approved joining the Council but which has not approved the commitment of funding for Council-approved initiatives is an Associate Member of the Council. An Associate Member does not have voting authority on the Council and is not a part of the Board of Governors of the Council. However, Associate Members may attend all CAPEC meetings and would be placed on a mailing list to receive mailings and announcements. A list of Participating Entities that are Associate Members is attached hereto as Exhibit B, which exhibit is incorporated herein for all purposes.

2.4 Change in Membership Status. Each Participating Entity acknowledges and understands that the pooling of knowledge and financial resources is essential to achieving CAPEC goals and objectives in an expeditious and affordable manner. An Associate Member whose governing body approves funding for a Council-approved initiative subsequent to the Participating Entity's execution of this Agreement will become a Voting Member of the Council. A Voting Member whose governing body refuses or is unable to release funding for a Council-approved initiative will become an Associate Member of the Council. If less than all of the contemplated parties execute this Agreement prior to commencement of Council activities, this Agreement will operate as an Interlocal Agreement between the signatories listed in Exhibit A and Exhibit B.

2.5 Nongovernmental Members. Individuals and firms from the private sector such as engineers, geotechnical consultants, contractors, suppliers, and other individuals or groups that are interested in the Council's activities can join as Nongovernmental Members of the Council. A Nongovernmental Member is not a party to this Agreement but may attend all CAPEC meetings and ask to be placed on a mailing list to receive mailings and announcements.

3.0 Goals and Objectives

3.1 The purpose of the Council is to advance the state of the art in pavement design and construction with the goal that governmental entities in the Central Texas area will adopt uniform specifications and construction standards that will improve the quality of pavement, enable more efficient inspection and testing, significantly improve the transportation infrastructure, and advance public safety.

3.2 The Participating Entities and the Associate Members agree to work together to achieve the following goals:

3.2.1 Improving the quality of pavements throughout the Central Texas area, and lowering the life-cycle cost of pavement maintenance at the local level through the use of standardized paving materials and uniform design, construction, maintenance, and management practices. This goal is to be

initially achieved through development of a uniform design and construction specification manual for local governments in the Central Texas area.

- 3.2.2 Improving information sharing and providing educational opportunities for the CAPEC membership concerning the planning, design, materials, specifications, construction practices, maintenance practices, pavement management, inspection, and testing of pavements. Improving communication among jurisdictions including CAPEC, Capital Area Council of Governments ("CAPCOG"), Texas Department of Transportation ("TxDOT"), Federal Highway Administration ("FHWA"), universities, private industry, and industry associations such as the Asphalt Institute, Texas Asphalt Pavement Association ("TAPA"), and the American Concrete Pavement Association ("ACPA").
- 3.2.3 Providing and promoting continuing education and awareness of critical pavement-related information within the CAPEC area that is appropriate for all of the necessary levels of decision-making and public awareness.
- 3.2.4 Ensuring that any new pavement design specifications, standards, materials, and testing procedures developed at the state and federal levels under consideration for use at the local level are feasible and applicable.
- 3.2.5 Improving the awareness of local, state, and federal engineers and officials concerning the extent of paving work accomplished in the Central Texas area and the financial implications of this work for the citizens we serve.
- 3.2.6 Promoting pavement management programs for all local governments in the Central Texas area and providing experienced technical assistance to the members in the implementation of individual pavement management and pavement preservation programs.
- 3.2.7 Working to resolve pavement design, maintenance, and management issues common to all of the members of CAPEC.

4.0 Authority to Enter into Contracts

4.1 Each Participating Entity hereby designates and authorizes Travis County (1) to provide administrative and fiscal oversight of CAPEC, including receiving and disbursing funds contributed by each Participating Entity, and (2) to utilize Travis County policies and procedures to procure services and products on behalf of CAPEC. To accomplish CAPEC goals, each Participating Entity may commit funds to pay for Council-approved initiatives. The amount to be contributed by each Participating Entity for each Council-approved initiative will be determined by the CAPEC Board of Governors and is subject to approval by the governing body of each Participating Entity; each such initiative will be memorialized by a separate instrument from this Interlocal Agreement. Travis County will utilize its procurement policies and procedures to enter into contracts, commission studies, partner with various agencies and universities to conduct studies, and engage in other activities necessary for fulfilling CAPEC goals,

provided CAPEC makes payments to Travis County for any such obligations from its currently available funding. CAPEC must have sufficient funding on deposit with Travis County prior to execution of any contracts.

4.2 Each Participating Entity acknowledges and agrees that no representative of any Participating Entity shall be deemed to have authority to bind the Participating Entity in Contract unless the governing body of that Participating Entity has delegated such authority in writing. Each Participating Entity further acknowledges and agrees that no representative of any Participating Entity shall be deemed to have authority to bind the Council in Contract unless the Board of Governors and the governing body of the Participating Entity have delegated such authority in writing.

5.0 Governance of the Council

5.1 Each Voting Member will each appoint a representative to serve on a Board of Governors of the Council (the "Board"). Each Voting Member may also appoint an alternate representative to represent the Party whenever the designated representative is unable to attend a CAPEC meeting. The governing body of a Voting Member may designate in writing a change in that Voting Member's representative and alternative representative on the Board.

5.2 The Board will:

- (1) elect a chairperson, vice-chairperson, secretary, and treasurer from its membership and set forth their respective duties and responsibilities;
- (2) set the policy of the Council;
- (3) receive reports concerning the activities of the Council;
- (4) meet annually on a date selected by its chairperson and at other times as set by the board;
- (5) organize the Council to most effectively utilize Council resources in the accomplishment of its objectives;
- (6) appoint a committee to develop standard operating procedures for the Council and to submit the procedures to the Board for its approval;
- (7) organize and implement Council operations;
- (8) establish meeting schedules;
- (9) designate points of contact and determine agency responsibility;
- (10) elect a Council coordinator to coordinate the day-to-day operation of the Council; and
- (11) perform other tasks that it determines are necessary to fulfill the purposes of the Council.

6.0 Dissolution

6.1 The Council can be dissolved by a vote of a simple majority of the Voting Members listed in Exhibit A as of the date of the vote.

6.2 Upon the dissolution of the Council, any assets, including accrued interest, remaining after paying or making provision for the payment of all liabilities and obligations of the Council shall be distributed back to the Participating Entities in proportion to the financial contribution paid by each Participating Entity.

7.0 Records

7.1 Travis County agrees to maintain accurate accounting records of any funds received or disbursed pursuant to this Agreement and, if requested, to allow any Participating Entity access to the records annually for the purpose of performing inspections and audits.

8.0 Legal Responsibilities

8.1 If any representative assigned to the Council is cited as a defendant in any civil law suit arising out of his or her official acts as a representative assigned to the Council, the representative will have the same benefits from the Participating Entity that such representative would be entitled to receive if such civil action had arisen out of an official act within the scope of his or her duties as an employee or officer of that Participating Entity.

8.2 It is expressly understood and agreed that by executing this Agreement, no Party waives, nor shall be deemed to waive, any immunity or defense otherwise available to it against any claims arising in the exercise of governmental powers and functions.

9.0 Termination

9.1 Any party may, upon written notice to all other parties, withdraw from this Agreement at any time.

9.2 A party that withdraws from this Agreement pursuant to Section 9.1 may submit a request in writing to Travis County for the return of any unobligated funds the party has contributed to CAPEC plus any accrued interest on such unobligated funds. For the purpose of this Agreement, funds are unobligated if (1) neither CAPEC nor the withdrawing party has executed a separate contract for the expenditure of those funds, and (2) neither CAPEC nor Travis County has obligated nor otherwise encumbered the funds.

10.0 Payments

10.1 Travis County is authorized by the Board of Governors and each Participating Entity to provide oversight of CAPEC funds. Upon receiving authorization from the CAPEC Board of Governors Travis County shall pay for the performance of governmental functions or services and shall make payments therefor from current CAPEC revenues. Travis County shall act as an escrow agent for the management of the CAPEC funds and shall deposit the CAPEC funds into an interest bearing account. Travis County shall invest the funds in accordance with the Public Funds Investment Act, Chapter 2256 of the Texas Government Code, and other applicable laws, or bond

covenants. The interest which accrues on the escrowed funds shall be credited to the CAPEC account and may be used to pay any of the obligations of CAPEC hereunder. Any funds remaining in the CAPEC account upon dissolution of CAPEC shall be returned in accordance with Section 6.2.

11.0 Notice

11.1 Any notice given hereunder by any Party to the other Parties shall be in writing and may be effected by personal delivery in writing, by registered or certified mail, return receipt requested, when mailed to the proper party, in care of the official signing this Agreement or by fax transmission as agreed to by the Parties and as evidenced by a confirming return fax transmission.

12.0 Legal Construction

12.1 If any one or more of the provisions of this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision and the Agreement will be construed without the invalid, illegal, or unenforceable provision.

12.2 Whenever the context of this Agreement requires, the masculine, feminine or neuter gender and the singular of plural number shall each be deemed to include the others. Any portion of this Agreement held by a court of competent jurisdiction to be invalid illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

13.0 Entire Agreement

13.1 This is the complete and entire Agreement between the Parties with respect to the matters herein and supersedes all prior negotiations, agreements, representations and understandings, if any. Except as provided below relating to the addition or withdrawal of members to the Council, this Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by the Parties hereto. No official, representative, agent, or employee of any Participating Entity has any authority to modify this Agreement, except pursuant to such express written authorization as may be granted by the governing body of the Participating Entity.

14.0 Additional Agreements

14.1 The Parties agree to execute such other and further instruments and documents as are or may become necessary or convenient to carry out the purposes of this Agreement.

15.0 Applicable Law

15.1 This Agreement shall be construed under the laws of the State of Texas. Any suits relating to this Agreement will be filed in a district court of Travis County, Texas.

16.0 No Third Party Rights

16.1 Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights or remedies under or by reason of this Agreement.

17.0 Multiple Counterparts

17.1 This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument. In like manner, from and after the time it executes a consent or other document authorized or required by the terms of the Agreement, such consent or other document shall be binding upon such party.

17.2 This Agreement is entered into by the duly authorized officials of each respective governmental entity.

18.0 Amendment/Modification of Exhibit A or Exhibit B

18.1 The Participating Entities acknowledge and agree that Exhibit A and Exhibit B may be amended to reflect the participation of additional entities or the nonparticipation of certain entities. The Participating Entities hereby agree to future amendments of Exhibit A and Exhibit B and authorize the Council to enter into such amendments of Exhibit A and Exhibit B on their behalf without the necessity of the Entities having to sign the future amendments. The Council agrees to notify all Participating Entities of any amendments to Exhibit A or Exhibit B.

19.0 Force Majeure

19.1 In the event that the performance by a Participating Entity of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God or the result of war, riot, civil commotion, sovereign conduct, or the act or condition of any persons not a party or in privity thereof, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

20.0 Breach

20.1 In the event that any Participating Entity breaches any of its obligations under this Agreement, the non-breaching part(ies) shall be entitled to pursue any and all rights and remedies allowed by law.

21.0 Mediation

EXHIBIT A: PARTICIPATING ENTITIES WHICH ARE VOTING MEMBERS

Name of Participating Entity TRAVIS COUNTY

Address P.O. BOX 1748
AUSTIN TEXAS 70767

Name of Authorized Signatory JOSEPH P. GIESELMAN

Title of Authorized Signatory EXECUTIVE MANAGER

Signature 

Date signed 3/17/10

Name of Participating Entity City of Austin

Address 505 Barton Springs Rd, Ste 1300
Austin, TX 78704

Name of Authorized Signatory Robert Hinojosa

Title of Authorized Signatory Acting Director Public Works Dept.

Signature 

Date signed 3.17.10

Name of Participating Entity CITY OF AUSTIN

Address 301 W. 2ND ST
AUSTIN, TX 78701

Name of Authorized Signatory HOWARD LAROUS

Title of Authorized Signatory Asst. Assistant City Manager / Public Works Director

Signature 

Date signed 4/5/10

EXHIBIT B: PARTICIPATING ENTITIES WHICH ARE ASSOCIATE MEMBERS

Name of Associate Member _____

Address _____

Name of Authorized Signatory _____

Title of Authorized Signatory _____

Signature _____

Date signed _____

Name of Associate Member _____

Address _____

Name of Authorized Signatory _____

Title of Authorized Signatory _____

Signature _____

Date signed _____

Name of Associate Member _____

Address _____

Name of Authorized Signatory _____

Title of Authorized Signatory _____

Signature _____

Date signed _____