

Capital Area Council of Governments Lease of Site for Air Quality Monitoring

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

1.2. The City of Pflugerville ("Pflugerville") is a home rule city of the State of Texas, located in Travis County, Texas that owns land suitable for location of air quality monitoring equipment ("City Property").

1.3. CAPCOG has received funding from the Texas Commission on Environmental Quality (TCEQ) to monitor air quality in the Central Texas region. CAPCOG has acquired air quality monitoring equipment and a meteorological tower to carry out the grant, and CAPCOG has a contractor, approved by Pflugerville, to operate the equipment. Pflugerville has a site suitable for locating monitoring equipment, and CAPCOG desires to lease the site for this purpose.

Sec.2. Lease

2.1. Pflugerville leases to CAPCOG and CAPCOG leases from Pflugerville the site which is a portion of City Property, shown on the Attachment "A" to this lease, generally described as:

A 200 square foot portion of the property located at 17912 Becker Farm Rd, Pflugerville, TX 78660, in the City of Pflugerville, Travis County, Texas, as depicted in Attachment A attached hereto and incorporated herein by reference (the "Premises").

2.2. Pflugerville agrees that CAPCOG may locate air quality monitoring equipment and a meteorological tower on the Premises ("Equipment") and such is the exclusive permitted use of the Premises. CAPCOG agrees to pay for installation and provision of necessary utilities to the Equipment.

2.3. Pflugerville agrees that employees of CAPCOG and CAPCOG's contractor have access to the Premises during normal business hours, to operate the monitoring equipment. CAPCOG agrees that Pflugerville employees have access to the Premises for inspection.

2.4. Pflugerville acknowledges that CAPCOG or CAPCOG's contractor owns the air quality monitoring equipment located on the site and that this Lease does not transfer ownership of the air quality monitoring equipment to Pflugerville or create a security interest in them for Pflugerville's benefit.

2.5. CAPCOG may not assign this Lease to another Contractor or assignee or sublet under this Lease without the prior written consent of Pflugerville. An attempted assignment or sublet in violation of this paragraph is void.

2.6. Pflugerville agrees to limit any request to relocate the air quality monitoring station to situations which, in Pflugerville's discretion, amount to good cause to relocate the operation and provide at least four (4) weeks advance notice before the effective date of any relocation.

Sec. 3. Term

3.1. This Lease begins on the date it is executed on behalf of Pflugerville and it ends on December 31, 2026.

3.2. When this Lease ends, whether by expiration or termination, CAPCOG agrees, at its expense, to remove the air quality monitoring equipment and meteorological tower (aka the Equipment) from the Premises and to restore the Premises to its prelease condition, ordinary wear and tear excepted, within 60 days. If the Equipment is not timely removed, Pflugerville may remove the Equipment from the premises and charge the actual costs of removal and disposition of the Equipment and restoration of the Premises to CAPCOG. Pflugerville may choose to allow additional time to remove the equipment and restore the Premises if requested by CAPCOG.

3.3. Either Party may terminate this contract with thirty (30) days written notice to the other Party.

Sec. 4. Rent

4.1. Total rent for lease of the Premises is \$1, the receipt and adequacy of which Pflugerville acknowledges.

Sec. 5. Insurance

5.1. CAPCOG warrants that (1) CAPCOG is insured through the Texas Municipal League Intergovernmental Risk Pool if CAPCOG provides the air quality monitoring equipment; and (2) CAPCOG's contractor has workers' compensation insurance covering its employees working on the site and comprehensive general liability and automobile liability insurance against death, personal injury, and property damage arising from its operations on the site, and Pflugerville is named an additional insured on both liability insurance policies.

Sec. 6. Dispute Resolution

6.1. The parties desire to resolve disputes arising under this Lease without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute among themselves. To this end, the parties agree not to sue one another, except to enforce compliance with this Sec. 6, toll the statute of limitations, or seek an injunction, until they have exhausted the procedures set out in this Sec. 6.

6.2. At the written request of a party, each party shall appoint a representative to negotiate informally and in good faith to resolve any dispute arising under this Lease. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations.

6.3. 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.

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

Sec. 7. Notice to Parties

7.1. Notice to be effective under this Lease 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 7.2 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 paragraph 7.2.

7.2. CAPCOG's address is 6800 Burleson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Betty Voights, Executive Director. Pflugerville's address is 100 W Main St, Pflugerville, TX 78660, Attention: City Manager.

7.3. A party may change its address by providing notice of the change in accordance with paragraph 7.1.

Sec. 8. Miscellaneous

8.1. Each individual signing this Lease 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.

8.2. This Lease states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by all parties.

8.3. Attachment "A" is part of this Lease

8.4. This Lease is binding on and inures to the benefit of the parties' successors in interest.

8.5. This Lease is performable in Travis County, Texas, and Texas law governs the interpretation and application of this Lease.

8.6. This Lease is executed in duplicate originals.

City of Pflugerville

Capital Area Council of Governments

By _____
Sereniah Breland
City Manager,
City of Pflugerville

By _____
Betty Voights
Executive Director

Date _____

Date _____

Attachment "A"

The following map shows the approximate location, outlined in red, where CAPCOG plans to locate the monitoring equipment, which will consist of, at a minimum, a particulate matter monitor equipment, meteorological equipment, and communications equipment. CAPCOG may also install additional instruments to measure concentrations of other pollutants. The address of the location is 17912 Becker Farm Rd, Pflugerville, TX 78660.

