

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

1.3. CAPCOG has received funding from Clean Air Coalition members 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 to operate the equipment. Bastrop has a site suitable for locating monitoring equipment, and CAPCOG desires to lease the site for this purpose.

## Sec.2. Lease

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

A 175 square foot portion of Mayfest Park in the City of Bastrop, Bastrop County, Texas, as depicted in Attachment A attached hereto and incorporated herein by reference (the "Premises").

2.2. Bastrop 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. A list of the specific Equipment installed shall be attached to this Agreement as Attachment "B". CAPCOG shall provide an updated list of the name of the equipment, manufacturer and serial number and whether the Equipment is owned by CAPCOG or its contractor prior to installation of the equipment and will update the list when Equipment is replaced, or in any event, at least semi-annually on February 15 and August 15 of each year to ensure there is adequate insurance coverage for the installed Equipment at all times. The most recent updated Equipment list shall be attached as Attachment B to this Lease without need for a formal amendment.

2.3. Bastrop agrees that employees of CAPCOG and CAPCOG's contractor have access to the Premises during Bastrop's normal business hours (Monday to Friday, 8 am to 5 pm, except holidays), to operate the monitoring equipment. CAPCOG agrees that Bastrop employees have access to the Premises for inspection.

2.4. CAPCOG shall have the right to enter the City Property only to access the Premises. CAPCOG agrees to provide Bastrop with notification (email or hand-delivered notice) prior to entry into the facility of any employee of CAPCOG or CAPCOG's contractor. CAPCOG agrees to provide the names and other information Bastrop may reasonably require for each employee of CAPCOG or CAPCOG's

contractor who will have access to the Premises. To the extent that any regulatory body requires that such person(s) be licensed, a copy of the license will be provided to Bastrop.

2.5. Bastrop acknowledges that CAPCOG or CAPCOG's contractor owns the air quality monitoring equipment and the meteorological tower located on the Premises, as shown in Attachment "B", and that this Lease does not transfer ownership of the air quality monitoring equipment or meteorological tower to Bastrop or create a security interest in them for Bastrop's benefit.

2.6. CAPCOG may not assign this Lease or sublet under this Lease without the prior written consent of the Bastrop City Council. An attempted assignment or sublet in violation of this paragraph is void.

2.7. Bastrop agrees to limit any request to relocate the air quality monitoring station to another site within the same City Property to situations which, in Bastrop's discretion, amount to good cause to relocate the operation and provide at least two weeks' advance notice before the effective date of any relocation. In the event that the Equipment is located to a replacement site that is not the area described as the Premises, the parties shall enter into an Amendment to this Lease.

### **Sec. 3. Term**

3.1. This Lease begins on the date it is executed on behalf of Bastrop and it ends on December 31, 2023.

3.2. When this Lease ends, 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.

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 Bastrop acknowledges.

4.2 As additional consideration for this Lease, Bastrop finds that the air quality monitoring that is the permitted use is of municipal benefit to the citizens of Bastrop and the parties agree such public benefit and the rent is adequate consideration for the lease of the Premises to CAPCOG.

### **Sec. 5. Insurance**

5.1. Throughout the term of this Lease, CAPCOG shall provide or cause its contractor to provide and keep in force for the benefit of Bastrop and CAPCOG, at its sole cost and expense, comprehensive general liability insurance in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for bodily injury for each occurrence, and for property damage, or automobile insurance in the amount of Five Hundred Thousand Dollars (\$500,000) in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.



CAPCOG warrants that (1) CAPCOG is insured through the Texas Municipal League Intergovernmental Risk Pool if CAPCOG provides any of the air quality monitoring equipment or meteorological tower; and (2) CAPCOG's contractor has workers' compensation insurance covering its employees working on the Premises, and such comprehensive general liability and automobile liability insurance against death, personal injury, and property damage arising from its operations on the Premises, in at least the amounts set forth in Section 5.1, and Bastrop is named an additional insured on both liability insurance policies. A copy of the certificate of insurance shall be delivered to Bastrop at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued.

5.2 In the event of any construction on the Premises, CAPCOG, at its own cost and expense, shall cause to be made, executed, and delivered to Bastrop payment and performance bonds in compliance with Texas Government Code Section 2253.

### **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 within 15 calendar days of the date of the notice.

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. Each party shall pay half the cost, if any, of the procedure.

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 Burluson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Betty Voights, Executive Director. Bastrop's address is 1311 Chestnut Street, Bastrop, Texas 78602, 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 is the entire agreement of the parties, and an amendment is not effective unless in writing and signed by all parties.

8.3. The Attachments are part of this Lease, and integrated into this agreement as if fully set forth herein.

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

8.5. This Lease is performable in Bastrop County, Texas, and Texas law governs the interpretation and application of this Lease. Venue shall lie in Bastrop County, Texas.

8.6. CAPCOG may not permit any liens or encumbrances upon its leasehold estate or on the Premises or City Property, and will promptly take action to remove any such encumbrances upon notification by Bastrop.

8.7 This Lease may be executed in duplicate originals.

City of Bastrop

By

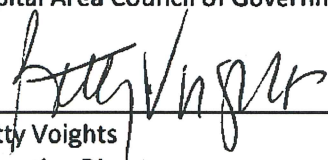
  
Lynda Humble  
City Manager

Date

1/15/19

Capital Area Council of Governments

By

  
Betty Voights  
Executive Director

Date

12/20/18



### 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 trailer, an ozone monitor equipment, meteorological equipment, and communications equipment. CAPCOG may also install additional instruments to measure concentrations of particulate matter, nitrogen oxides, or other pollutants. Prior to setting up the equipment, CAPCOG will secure agreement with the facility management on the precise location on the Premises where the Equipment will be set and any procedures for site installation and access. The address of the location is Mayfest Park, 25 American Legion Dr., Bastrop, TX 78602.



*[Handwritten signature]*

**Attachment "B"**

Inventory will be provided prior to installation. Installation is expected by the end of February 2019.

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and lines.