

**INTERLOCAL AGREEMENT REGARDING THE NORTH TEXAS
CLEAN AIR NETWORK**

This **INTERLOCAL AGREEMENT REGARDING THE NORTH TEXAS CLEAN AIR NETWORK** (“Agreement”) is entered into as of the Effective Date as defined herein by and among **DALLAS COUNTY, TEXAS** (“the County”), the **CITY OF DALLAS, TEXAS** (“Dallas”), and the **CITY OF PLANO, TEXAS** (“Plano”), all of whom are Texas local governmental entities operating under the authority of their respective governing bodies (hereinafter sometimes referred to collectively as “the Local Governments”) and the **NORTH TEXAS CLEAN AIR NETWORK, INC.** (“NTCAN”), a Texas non-profit local government corporation (the Local Governments and NTCAN hereafter referred to as the “Parties” or individually as a “Party”).

RECITALS:

WHEREAS, the Local Governments are all political subdivisions within the State of Texas engaged in the provision of governmental services for the benefit of its citizens; and

WHEREAS, NTCAN is a Texas local government corporation organized by the Local Governments pursuant to Subchapter D of Chapter 431 of the Texas Transportation Code to assist the Local Governments in the performance of their governmental functions to promote the common good and general welfare of the Local Governments, including without limitation, overseeing the establishment and operation of modern calibrated air quality sensors within the jurisdictions of the Local Governments, using such monitors to further advance understanding of local air quality, support local air quality education and research, and assist in responding to local public health threatened caused by poor air quality; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “Act”), provides authority for local governments of the State of Texas to enter into interlocal agreements with each other and with local government corporations for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, concomitant with the execution of this Agreement by the Local Governments, NTCAN is being created by the Local Governments, as reflected in NTCAN’s Articles of Incorporation, attached herein and incorporated for all purposes as Exhibit 1, and Bylaws, attached herein and incorporated for all purposes as Exhibit 2, to provide for the funding of NTCAN’s functions necessary to provide the services to be provided by NTCAN to the Local Governments; and

WHEREAS, the Parties desire to enter this Agreement for the purpose of establishing the agreement of the Parties regarding NTCAN’s provision of the services referenced herein.

NOW, THEREFORE, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the Local Governments agree as follows:

ARTICLE I.

PURPOSES OF THE NORTH TEXAS CLEAN AIR NETWORK

A. The Local Governments agree and acknowledge that the purposes of NTCAN, as reflected in its Articles of Incorporation and Bylaws, are as follows:

1. To supervise the implementation and maintenance of a publicly accessible, secure and scientifically credible regional air sensor network (hosted by AAЕON via the Microsoft Cloud) providing simultaneous real-time air quality information from multiple locations within member or contracted jurisdictions via the World Wide Web;
2. To provide the best, most up-to-date factual information about local air quality;
3. To provide fact-based public education resources on local air quality;
4. To support scientific research on local air quality by local colleges, universities, hospitals and schools;
5. To work with regulatory agencies and entities to further local clean air goals;
6. To raise capital to support policy goals, as needed; and
7. To prepare annual written reports, the contents and format of which shall be determined by NTCAN, to the Local Governments detailing progress to date and goals for the future.

B. To accomplish the foregoing purposes of NTCAN, it shall be authorized to engage in the following:

1. Contract with persons, and with governmental, for-profit and non-profit entities for the procurement of services and supplies and the hiring of personnel;
2. Acquire and hold title to real property and interests in real property;
3. Accept funds and property appropriated by the Local Governments and by other public or private entities;
4. Apply for grants of funds, services, and things of value and to accept awards of such grants;
5. Accept donations of funds, services and things of value;
6. Issue bonds, notes, and other debt obligations as necessary for the accomplishment of the governmental purposes stated above, provided that NTCAN shall not

incur debt without the consent of each Local Government's governing body, as evidenced by an ordinance, order or resolution approved by same; and

7. Engage in other lawful activities to accomplish the governmental purpose stated above.

ARTICLE II.

NORTH TEXAS CLEAN AIR NETWORK BOARD OF DIRECTORS

A. The Parties agree that NTCAN shall be governed by an eleven (11) member Board of Directors. The Board of Directors shall consist of the following members:

1. A current Dallas City Council Member;
2. A Dallas Office of Environmental Quality representative;
3. A City of Dallas Public Advocate representative;
4. A current Dallas Commissioners Court member;
5. A Parkland Health and Hospital representative;
6. A Dallas County Public Advocate representative;
7. A Dallas County Medical Society representative;
8. A current City of Plano Council Member;
9. A Plano Sustainability & Environmental Education Division representative;
10. A Plano Public Advocate representative; and
11. A Dallas Independent School District representative.

B. Directors 1-3, as referenced above, and their successors shall be nominated by the Mayor of the City of Dallas ("Dallas Mayor") and shall be confirmed by the Dallas City Council. Directors 4-6, as referenced above, and their successors shall be nominated by the Dallas County Judge ("Dallas County Judge") and confirmed by the Dallas County Commissioner's Court. Directors 8-10, as referenced above, and their successors shall be nominated by the Mayor of the City of Plano (Plano Mayor") and confirmed by the Plano City Council. Directors 7 and 11, as referenced above, shall be nominated by the Chair of the Board and confirmed by the Board. Directors shall serve staggered terms of three years. Directors 1-6, as referenced above, shall serve

terms which will end on September 30 of each even-numbered year. These Directors' initial terms shall end on September 30, 2020, or until a successor is appointed. Directors 7-11 shall

serve terms which will end on September 30 of each odd-numbered year. These Directors' initial terms shall end on September 30, 2021, or until a successor is appointed.

ARTICLE III.

TERM

The term of this Agreement shall be for one (1) year from the Effective Date as defined herein, unless otherwise terminated by any of the Parties, pursuant to Article 5.1 of the Bylaws ("Term"). Thereafter this Agreement may be renewed or extended by mutual written consent of all the Parties for additional one-year terms (each such additional one-year term a "Renewal Term"). All renewals or extensions shall be based on existing terms and conditions in the executed Agreement or as amended and approved in writing by the Parties.

ARTICLE IV.

GENERAL PROVISIONS

A. Assignment. This Agreement may not be assigned. This Agreement embodies and constitutes the entire understanding between the Parties with respect to the matters referenced herein, and this Agreement may not be amended except by an agreement in writing signed by the Parties hereto, and approved by the respective governing bodies.

B. Severability. In the event that one or more of the provisions contained in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

C. Authority. The Parties acknowledge and agree that each has the requisite power and authority to enter into this Agreement; that this Agreement has been duly authorized and approved by each Party's respective governing body; and that the person executing the Agreement on the behalf of each Party has been duly authorized to do so.

D. Governing Law/Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas and exclusive venue shall lie in Dallas County, Texas.

E. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be binding on the Party executing and all of which shall be deemed originals, but such counterpart copies shall constitute one and the same instrument.

F. Good Faith/Mediation. In the event of any dispute regarding this Agreement or the terms contained herein, after good-faith negotiation by and between the Parties, the Parties agree that they shall submit such dispute to non-binding mediation.

G. Sovereign Immunity. This Agreement is expressly made subject to each Party's sovereign immunity, Title 5 of the Texas Practice and Civil Remedies Code, and all applicable State and federal law. The Parties expressly agree that no provision of this Agreement is in any way intended to limit or constitute a waiver of any immunities from suit or from liability that the Parties have by operation of law.

H. INDEMNIFICATION. ALL PARTIES, INCLUDING THEIR RESPECTIVE EMPLOYEES AND ELECTED OFFICIALS, AGREE THAT EACH SHALL BE RESPONSIBLE FOR ITS OWN NEGLIGENT ACTS OR OMISSIONS OR OTHER TORTIOUS CONDUCT IN THE COURSE OF PERFORMANCE OF THIS AGREEMENT, WITHOUT WAIVING ANY SOVEREIGN IMMUNITY, GOVERNMENTAL IMMUNITY, OR OTHER DEFENSES AVAILABLE TO THE PARTIES UNDER TEXAS AND OTHER APPLICABLE LAWS. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, IN OR TO ANY THIRD PERSONS OR ENTITIES. ALL PARTIES AGREE THAT ANY SUCH LIABILITY OR DAMAGES OCCURRING DURING THE PERFORMANCE OF THIS CONTRACT CAUSED BY THE JOINT OR COMPARATIVE NEGLIGENCE OF THE PARTIES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS, SHALL BE DETERMINED IN ACCORDANCE WITH COMPARATIVE RESPONSIBILITY LAWS OF TEXAS.

THIS PROVISION SHALL SURVIVE TERMINATION, EXPIRATION, OR CANCELLATION OF THIS AGREEMENT, OR ANY DETERMINATION THAT THIS AGREEMENT OR ANY PORTION HEREOF IS VOID, VOIDABLE, INVALID, OR UNENFORCEABLE.

I. Insurance. Plano, Dallas, and NTCAN agree that they will at all times during the Term of this Agreement or any Renewal Term maintain in full force and effect insurance, or self-insurance, to the extent permitted by applicable law under a plan of self-insurance, that is also maintained in accordance with sound accounting practices. It is expressly agreed that Dallas will be solely responsible for all costs of such insurance; any and all deductible amounts in any policy; and any denials of coverage made by its respective insurers.

J. Fiscal Funding. Notwithstanding any provisions contained in this Agreement, the obligations of any governmental entity under this Agreement are expressly contingent upon the availability of funding for each item and obligation for the Term of the Agreement and any pertinent extensions or Renewal Terms. No Party to this Agreement shall have any right of action against the any other governmental entity in the event a governmental entity is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that a governmental entity is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, any governmental entity, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to all Parties at the earliest possible time prior to the end of its fiscal year.

K. Notices. All notices hereunder will be sufficient if sent by certified mail, email, or facsimile transmission with confirmation of delivery, addressed to:

Dallas County:

Dallas County Judge
411 Elm Street #200
Dallas, Texas 75202

With copies to:

Dallas District Attorney's Office Civil Division
411 Elm Street, Fifth Floor
Dallas, Texas 75202

City of Dallas
(Address)

City of Plano
(Address)

NTCAN
(Address)

L. Cooperation of the Parties. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement. Without limitation, each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

M. Authority to Execute. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that each Party has had an opportunity to confer with its counsel.

N. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

O. Applicable Laws. This Agreement is subject to all applicable Federal and State laws, as they exist, may be amended or in the future arising, and any applicable permits, ordinances, rules, orders and regulations of any local, State or Federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of

any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

P. Agreement Drafted Equally by Parties. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and the presumption or principle that the language herein is to be construed against a Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this Agreement.

Q. Entire Agreement. This Agreement, including the attached exhibits and Recitals, contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties with respect to such matter.

R. Force Majeure. No Party shall be in default or responsible for delays or failures in performance resulting from causes beyond its control. Such acts include but are not limited to acts of God, fire, storm, flood, earthquake, natural disaster, nuclear accident, strike, air traffic disruption, lockout, riot, freight embargo, public regulated utility, or governmental statutes, orders, or regulations superimposed after the fact. Any Party delayed by force majeure shall as soon as reasonably possible give the other Parties written notice of the delay. The Party delayed shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the Party delayed shall immediately give the other Parties written notice thereof and shall resume performance under this Agreement as soon as practicable. The date of delivery or of performance shall be extended for at least a minimum time period equal to the time lost by reason of the delay.

S. Continuing Obligations. All obligations of this Agreement which expressly or by their nature survive the expiration, termination or transfer of this Agreement shall continue in full force and effect after and notwithstanding its expiration, termination or transfer until such are satisfied in full or by their nature expire.

T. Relationship of Parties. No Party to this Agreement is an agent, servant, joint enterpriser or employee of the other Parties. Each governmental entity represents that it shall, or will, secure at its own expense, all personnel and consultants required in performing the services herein. All personnel and consultants required in performing the obligations herein shall not be employees of or have any contractual relationship with the other Parties to this Agreement.

U. Default/Cumulative Right. It is not a waiver of default if the non-defaulting Party fails to declare a default or delays in taking any action. Waiver of any term, covenant, condition or violation of this Agreement shall not be deemed or construed a waiver unless made in authorized written instrument, nor shall such waiver be deemed or construed a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. The rights and remedies provided by this Contract are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. Pursuit of any remedy provided in this Agreement shall not preclude pursuit of any

other remedies herein provided or any other remedies provided by law or equity, including injunctive relief, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any obligation of the defaulting party hereunder or of any damages accruing by reason of the violation of any of the terms, provisions, and covenants herein contained.

V. NTCAN's Obligation. NTCAN shall approve this this Agreement within thirty (30) business days after its incorporation, and the failure to do so shall render this Agreement null and void and of no further force and effect.

IN WITNESS WHEREOF, the Local Governments execute this Agreement on the dates listed below. The "Effective Date" of this Agreement shall be the date of the last signature below.

EXECUTED AS OF THE ____ day of and month of _____, 2018, by the **CITY OF DALLAS** signing by and through its **CITY MANAGER** duly authorized to execute this Agreement by Resolution No. _____, adopted by the City Council on _____, 2018.

APPROVED AS TO FORM:

LARRY E. CASTO
City Attorney

CITY OF DALLAS

T.C. BROADNAX
City Manager

BY _____
Assistant City Attorney

BY _____
Assistant City Manager

EXECUTED AS OF THE ____ day of and month of _____, 2018, by the **CITY OF PLANO** signing by and through its **CITY MANAGER** duly authorized to execute this Agreement by Resolution No. _____, adopted by the City Council on _____, 2018.

APPROVED AS TO FORM:

PAGE MIMS
City Attorney

CITY OF PLANO

BRUCE GLASSCOCK
City Manager

BY _____

BY _____

EXECUTED AS OF THE ____ day of and month of _____, 2018, by the **DALLAS COUNTY** signing by and through its **COUNTY JUDGE** duly authorized to execute this Agreement by Court Order No. _____, approved by the Commissioners Court on _____, 2018.

DALLAS COUNTY, TEXAS:

Clay Lewis Jenkins
County Judge
Dallas County, Texas

RECOMMENDED:

Gordon Hikel
Assistant County Administrator
Dallas County, Texas

APPROVED AS TO FORM*:

**FAITH JOHNSON
DISTRICT ATTORNEY**

**RUSSELL RODEN
CHIEF CIVIL DIVISION**

James R. Palomo
Assistant District Attorney

***BY LAW, THE DISTRICT ATTORNEY'S OFFICE MAY ONLY ADVISE OR APPROVE CONTRACTS OR LEGAL DOCUMENTS ON BEHALF OF ITS CLIENTS. IT MAY NOT ADVISE OR APPROVE A LEASE, CONTRACT, OR LEGAL DOCUMENT ON BEHALF OF OTHER PARTIES. OUR REVIEW OF THIS DOCUMENT WAS CONDUCTED SOLELY FROM THE LEGAL PERSPECTIVE OF OUR CLIENT. OUR APPROVAL OF THIS DOCUMENT WAS OFFERED SOLELY FOR THE BENEFIT OF OUR CLIENT. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL, AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE ATTORNEY(S).**

EXHIBIT 1

(Articles of Incorporation)

EXHIBIT 2

(Bylaws of North Texas Clean Air Network)