

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS APPROVING THE BYLAWS OF THE TEXAS CLEAN AIR CITIES COALITION (THE "COALITION") OR COALITION OF CITIES AND OTHER LOCAL GOVERNMENT ENTITIES AND ORGANIZATIONS FORMED TO PURSUE MUTUAL INTERESTS IN RESPECT OF CERTAIN COAL-BURNING ELECTRIC POWER PLANTS PROPOSED FOR CONSTRUCTION IN TEXAS, AND TO PRESERVE THE RIGHTS OF TEXAS LOCAL GOVERNMENTS TO PROTECT THEIR AIR QUALITY AND THEIR ACCESS TO SUFFICIENT AND REASONABLY PRICED ELECTRIC ENERGY; ACCEPTING MEMBERSHIP IN SAID COALITION; APPOINTING A REPRESENTATIVE TO SERVE ON BEHALF OF THE CITY OF EL PASO; ACCEPTING A DONATION OF THE AMOUNT NECESSARY TO PAY A MEMBERSHIP ASSESSMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Texas local governments and local government organizations are dedicated to attaining clean air and reasonably-priced electric energy in sufficient quantities;

WHEREAS, pending plans for the construction of approximately sixteen coal-burning electric power plants in Texas before 2010 may adversely impact air quality in numerous Texas locales; may adversely affect local governments' ability to attain and maintain federally-mandated clean air standards, may adversely affect the health, morale, and productivity of local government officers and employees and of local governments' residents, and may adversely affect the attractiveness, usefulness of outdoor venues including parks and other entertainment and recreation facilities, and cause diminution of local government revenue associated with such adverse affects;

WHEREAS, the Coalition is committed to ensuring that said plants use generation methods best calculated to minimize air pollution while still providing sufficient electric generating capacity for Coalition members' needs at reasonable prices;

WHEREAS, the Coalition seeks to ensure that the federal and state governmental agencies that are responsible for permitting said construction provide full and fair consideration of the Coalition's concerns, and that appropriate studies, reports, and expert opinions are presented to these agencies in the course of their decision-making process;

WHEREAS, the adoption of full and fair procedures and standards by state and federal agencies that adjudicate and adopt rules on environmental matters is of fundamental importance to all members of the Coalition;

WHEREAS, failure to attain and maintain federal-mandated clean air standards, insufficient electric energy, and unreasonably priced electric energy each can substantially and adversely affect, among other important things, the level of economic activities in the Coalition members' jurisdictions and hence their respective tax,

franchise, right-of-way compensation and other sources of funding for their respective general funds;

WHEREAS, jointly participating in permitting proceedings and related efforts with other local governments and local government organizations will allow the City of El Paso to benefit from the outcome of intervention in these proceedings while minimizing the costs of intervention;

WHEREAS, upon the review and consideration of the Bylaws for the Coalition, the City Council of the City of El Paso is of the opinion that it is in the best interest of the City of El Paso and its residents to become a member of the Coalition;

WHEREAS, a donation has been made to the Coalition by Don Henley to cover the initial membership assessment of \$10,000.00 for the City of El Paso;

WHEREAS, the City Council further finds that Charles F. McNabb, City Attorney, should be appointed as the official representative for the City of El Paso to the Coalition and should be authorized to act and vote on behalf of the City of El Paso in all respects in relation to the Coalition including any intervention in permit proceedings and related appeals or, with the consent of this Council, other litigation that the Coalition may conduct.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, THAT:

Section I. The recitals contained in the preamble of this Resolution are determined to be true and correct and are hereby adopted as a part of this Resolution.

Section II. The Participation Agreement and Bylaws of the Texas Clean Air Cities Coalition (the "Coalition") attached hereto as Exhibit "A" are hereby approved.

Section III. The City of El Paso accepts membership in the Coalition.

Section IV. The City Council hereby accepts the donation made by Don Henley to the Coalition in accordance with the Participation Agreement and By-Laws of the Coalition of the initial membership assessment of \$10,000.00 to be due and payable on the dates to be set by the Coalition.

Section V. The City Council hereby appoints Charles F. McNabb, City Attorney, to serve as the City of El Paso's representative to the Coalition and to act on its behalf in all respects in relation to the Coalition including any intervention in permitting proceedings, including related appeals, or other litigation that the Coalition may conduct, without diminishing the power and authority of the City Attorney to conduct litigation and of this City Council to approve settlement and matters reserved to the Council by Charter. It is understood that before the Coalition commences any litigation not directly concerned with the permitting proceedings or related appeals, that

the Coalition membership other than associate members will be giving reasonable notice and an opportunity to object, and that members who did not approve other litigation that the Coalition authorizes may withdraw from the Coalition but without refund of any dues or assessments.

Section VI. The City Council agrees that the City Council's representative is authorized to take those steps that are reasonable and necessary to comply with the intent of this Resolution.

Section VII. This Resolution shall become effective immediately upon its passage.

APPROVED this 31st day of October 2006.

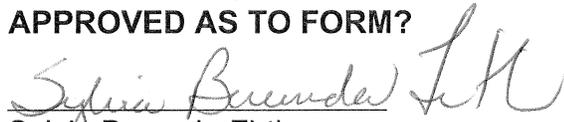
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM?


Sylvia Borunda Firth
Senior Assistant City Attorney

THE STATE OF TEXAS	§	TEXAS CLEAN AIR CITIES
	§	PARTICIPATION AGREEMENT AND
COUNTY OF <u>EL PASO</u>	§	<u>BY-LAWS</u>

THESE PARTICIPATION AGREEMENT AND BY-LAWS ("Agreement") are made and effective as of 31 day of October, **2006**, by, between and among the **CITY OF DALLAS, TEXAS** ("City"), the CITY OF HOUSTON, TEXAS, and the **OTHER MEMBER LOCAL GOVERNMENT UNITS AND ORGANIZATIONS** of the **TEXAS CLEAN AIR CITIES COALITION** (the "Coalition" or "TCACC"). This Agreement is authorized by the Texas Interlocal Cooperation Act (V.T.C.A. Texas Government Code, Chapter 791), and other authorities.

WITNESSETH:

WHEREAS, the members of the Coalition are dedicated to attaining clean air and reasonably-priced electric energy in sufficient quantities;

WHEREAS, the construction of many coal-burning electric power plants in Texas before 2010 may adversely impact air quality in numerous Texas cities and other local government jurisdictions including several of the Coalition members and adversely affect their ability to attain and maintain federally-mandated clean air standards and adversely affect the health, morale, and productivity of their officers and employees and of their residents, as well as the attractiveness, usefulness of outdoor venues including parks and other entertainment and recreation facilities, and diminution of their revenue associated with such adverse affects;

WHEREAS, the members of the Coalition are committed to ensuring that said plants use technology and operating processes that minimize air pollution while still providing sufficient electric generating capacity for their needs at reasonable prices;

WHEREAS, the Coalition members are deeply concerned that the governmental agencies that are responsible for permitting said construction may not be using procedures and standards that provide full and fair consideration TCACC's concerns, including procedures and standards that adequately consider the potential cumulative impact of numerous additional plants and which require the cleanest practicable available processes and technologies;

WHEREAS, the adoption of full and fair procedures and standards by state and federal agencies that adjudicate and adopt rules on environmental matters is of fundamental importance to all members of TCACC;

WHEREAS, failure to attain federally-mandated clean air standards, insufficient electric energy, and unreasonably priced electric energy each can substantially and adversely affect, among other important things, the level of economic activities in the environs of Coalition members and hence their tax, franchise, right-of-way compensation and other sources of funding for their respective general funds including the General Fund of the City;

WHEREAS, jointly participating in permitting proceedings and litigation and related efforts with other Coalition members will allow the City to benefit from the outcome of the litigation while minimizing the costs of litigation and of other efforts; and

NOW THEREFORE,

In consideration of the premises, agreements, covenants and promises set forth herein, it is agreed as follows:

1.

TCACC and Standing Steering Committee
Membership

The TCACC members hereby form the **TEXAS CLEAN AIR CITIES COALITION** ("TCACC"), a Texas not-for-profit unincorporated association. Each member shall approve its membership in the TCACC and designate its representative to receive notices and participate in and vote at TCACC meetings. The TCACC shall be composed of all cities and other local government units and organizations of Texas paying the current nonrefundable membership fee. The fee for the initial period (approximately one year) is \$10,000 for each member. The members shall elect a Steering Committee consisting of no more than five (5) persons, each such member being the designated representative to TCACC of a different member which shall function as the Board of Directors. The Steering Committee shall at least include a representative from the cities of Dallas and Houston. The remainder of the representatives shall be selected by the members as of the time of selection based upon diversity of geographic location and population size. Each member of TCACC and each member on the Steering Committee shall have one vote as to decisions of their respective bodies.. Meetings of the Steering Committee shall be open for observation to each member of TCACC whether or not it has a representative on the Steering Committee. Decisions of TCACC shall be by majority of members participating in any proceeding or meeting at which a vote is taken. Cities may participate and vote via telephone and/or via written proxy in form acceptable to the presiding officer, who shall be the senior officer of the Steering Committee present or otherwise participating in a proceeding, or if there be none, then a person selected by members participating at the proceeding. Members who join after the date hereof shall be bound by this instrument as of the date of their membership after having executed a duplicate counterpart hereof and delivered it to the secretary/treasurer. Any member may at any time substitute any other person for any original designated representative to TCACC or for any Original Steering Committee Member and other Steering Committee member by reasonable notice to the secretary/treasurer or to any Steering Committee member if the substitution would replace the secretary/treasurer. Said substitution may be permanent or temporary in accordance with the notice. The substitution should be described for the minutes of the Steering Committee by the substitute or by another Steering Committee member at the first opportunity. The substitute assumes any offices and duties of the replaced member for the duration of the substitution.

2.

Powers of the Steering Committee

The TCACC members delegate to the Steering Committee the power to commence litigation in support of and to intervene in, on behalf of TCACC members, either in their respective individual names or as members of TCACC if TCACC intervenes as an association, permitting proceedings, rulemaking, and related dockets and appeals thereof, represent the interests of cities in matters related to or affecting the construction or permitting of electric generation plants before state and federal legislative, executive, and judicial bodies, and settle, withdraw from, and pay for such activities. The Steering Committee shall fix the amount of the

membership fee from time to time, but no more than once within any twelve-month period. A majority of TCACC members may fix a special assessment in addition to any membership fee. Notice of the amount and due date for any fee shall be sent to the designated representative of member. Members may participate and vote via telephone and/or via written proxy in form acceptable to the presiding officer. Any representative or other designee of any class of member is eligible to serve on a subcommittee of the Steering Committee unless otherwise decided by the Steering Committee. Members of any subcommittee may attend any Steering Committee meeting at which the activities or subject of that subcommittee is to be discussed or reported and may speak at the discretion of the chair.

3.

Election of Officers

The officers of the Steering Committee shall be a chair, one or more co-chairs, and a secretary/treasurer. Subcommittee chairs are not by reason of that office Steering Committee officers. The Steering Committee shall elect a chair and any co-chairs and subcommittee chairs as it deems necessary and form any subcommittees that the Steering Committee deems advisable. The Steering Committee shall also elect a secretary/treasurer who shall, among other duties and powers as may be assigned by the Steering Committee, make, keep current and maintain records of the meetings and transactions of the Steering Committee, of TCACC subject to legal advice, monitor invoices submitted to TCACC by professionals and others, the status of their payment, the reasonableness and necessity of the services represented by said invoices, and of the amounts thereof, and report on such matters and other financial affairs of TCACC to the Steering Committee.

4.

Powers of the Officers

Each officer elected shall serve at the pleasure of the Steering Committee up to a term of four (4) years. The Steering Committee shall elect or re-elect officers at least every four (4) years. Unless terminated by the Steering Committee or the respective member, the officer shall perform the duties of office until a replacement has been elected. Meetings of the Steering Committee and TCACC shall be upon call of the chair or two (2) members of the Steering Committee. The Steering Committee shall meet at least annually. The chair is authorized by action of the Steering Committee to engage consultants and attorneys and to pay for such services. Any attorneys engaged by the chair to represent the TCACC shall report to the Steering Committee and / or to officers appointed by the Steering Committee for this purpose. The chair or co-chair shall preside at meetings of TCACC and of the Steering Committee. In the absence of a chair or co-chair, participating cities shall select a pro tem presiding officer by majority vote of the cities participating in any meeting or proceeding in person or via telephone.

5.

Classes of Membership

The Steering Committee may establish one or more classes of associate membership in TCACC for entities with special circumstance such as small size that may allow for lower membership fees, limited or no voting rights, limited or no eligibility to serve on committees, and other qualifications, and limits, in recognition of the size of applicants for membership or other relevant factors. Any entity enjoying any class of membership shall be entitled to attend and be heard orally or in writing as appropriate at any meeting of TCACC and shall have the right to attend meetings of the Steering Committee and to be heard at such meeting orally or in

writing if the Steering Committee is entertaining comments from any non-members of the Steering Committee. Any member in any class of membership shall have the right to consult with attorneys representing the Coalition and receive legal advice from such attorneys regarding matters relevant to TCACC to the same extent as full members who are not members of the Steering Committee, and shall be bound by the joint litigation agreement embodied in this instrument. Individuals other than official representatives of local governmental units solely in their respective representative capacities are not eligible for any class of membership in TCACC.

6.

Termination of Membership

A member may terminate its membership by written notice to the secretary/treasurer effective upon said officer's actual receipt of said notice. If a member fails to pay its membership fee in full within one-hundred eighty (180) days after notification of fee due, that member's membership is terminated without further action. A member is considered notified on the day written notice is sent to its last designated representative on file with the secretary/treasurer. In the event of such termination, the member shall return all documents reports or similar materials, including all copies and all electronic files, developed in furtherance of the activities of TCACC to the chair of the Steering Committee or other person designated by the chair for that purpose.

7.

Money Held in Trust

The officers shall hold and manage all money collected in trust for the benefit of TCACC and its members collectively. Officers may establish prudent fund accounts that accumulate funding for activities and to pay authorized expenses. Officers and others member representatives and designees shall serve without pay, but may be reimbursed reasonable out-of-pocket expenses as approved by the Steering Committee. Any member of any class may request and receive a statement of TCACC revenues and expenses each year. Instead of maintaining the accounts of TCACC, the Steering Committee may authorize one or more law firms retained by TCACC to do so in trust for TCACC, but the Steering Committee and the Secretary/Treasurer shall monitor, report on, and be responsible for said account to TCACC by whomever held.

8.

Payment for Performance of Governmental Functions and Services Made from Current Revenues

By entering into this Agreement, each member affirms that it is paying for the performance of governmental functions or services from current revenues available. The payments made under this agreement fairly and adequately compensate the TCACC for the services or functions performed under the contract.

9.

Legal Construction

In case any one or more of the terms, provisions, phrases or clauses contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if such invalid, illegal or unenforceable portion had never been contained herein.

10.

Entire Agreement

This instrument embodies the complete agreement of the parties hereto superseding all oral or written previous and contemporary agreements between the parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of the parties. This instrument may be executed in multiple counterparts, which together shall be deemed a single instrument. Signatures hereon via telephone facsimile or other electronic, magnetic, or chemical means shall be deemed to be original signatures.

11.

No Other Obligations

By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

12.

Immunity

It is expressly understood and agreed that in the execution of this Agreement, neither any member nor TCACC waives, nor shall be deemed to waive, any immunity or defense that would otherwise be available to each against claims arising in the exercise of governmental powers and functions.

13.

Authority

The undersigned officers and/or agents are properly authorized to execute this Agreement on behalf of the parties hereto, and each hereby certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.

14.

Original Members, Officers, and Steering Committee Members

The Original Members of TCACC are the Cities of Dallas and Houston, Texas. The original designated member of the Original Steering Committee for the City of Dallas is Mayor Laura Miller and for the City of Houston is Elena M. Marks. Until at least three additional cities shall join the Coalition and pay their initial membership fees, and designate representatives to the Coalition, and the five or more member Cities choose a Steering Committee as provided hereunder, said representatives of Dallas and Houston shall serve as co-chairs of the Original Steering Committee and each shall have the power and duty to do all things that the Steering Committee can do hereunder by majority vote, including the power to execute counterparts of this Agreement on behalf of the Coalition, except that the concurrence of both members of the Original Steering Committee or their designees shall be necessary to retain counsel and other professionals and authorize any expenditures.

15.

Privileged Communications

A joint privilege respecting lawyer-client communications is necessary for the effective pursuit of litigation and other legal proceedings contemplated by the Coalition. All communications by and among any members of whatever classes of membership with any attorney who is representing, or discussing whether to represent, any such member or representing or considering whether to represent the Coalition (an "Attorney") shall be privileged to the fullest extent permitted by law. Each member by joining the Coalition agrees not to disclose any privileged information received after the date hereof from another member or Attorney unless the member wishing to disclose the information first obtains the consent of all other members who may be entitled to claim any privilege or protection with respect to such information, except to the extent explicitly permitted pursuant to a different section of this Agreement or by the Steering Committee. This nondisclosure obligation continues after any member's membership has terminated for any reason, after the conclusion of any litigation, and after this Coalition may be dissolved.

16.

Additional Provisions Related to Legal Representation

The members of TCACC acknowledge that it is possible that one or more of the law firms engaged by the Steering Committee may presently, or may in the future, be engaged in factually unrelated litigation or other representation in which the law firm is adverse to one or more of the individual members of TCACC. The members of TCACC agree that the Steering Committee chair shall have the authority subject to paragraph 4 to engage law firm(s) despite the fact that the law firm(s) may be engaged in such representation, so long as the representation involves a factually unrelated matter. The members of the TCACC further acknowledge that at least one of the law firms likely to be engaged by the Steering Committee, Lowerre & Frederick, presently represents Environmental Defense in closely related power plant litigation (i.e., the appeal of the Sandy Creek Energy Associates permit) and is a frequent consultant or counsel for environmental organizations and local governments in opposition to power plant draft permits. The members of the TCACC agree that the Steering Committee chair subject to paragraph 4, nonetheless and subject to such contractual conflicts-of-interest safeguards as the Steering Committee deems adequate, may engage Lowerre & Frederick on behalf of the TCACC. Further, the Steering Committee chair may in the chair's discretion, subject to paragraph 4, engage additional law firms to represent TCACC where the law firm is or may become engaged in matters factually related to matters for which such firms are to represent TCACC, so long as such firms are not representing clients whose interests or positions are directly adverse to those of TCACC in specific matters in which such firms represent TCACC.

17.

Dissolution

TCACC may be dissolved in the same manner as any other unincorporated association may be dissolved under the laws of the State of Texas or by the vote of more than two-thirds of its full members. After dissolution, the officers and Steering Committee members retain the power to wind up the affairs of TCACC. If there remain any funds after payment of TCACC's lawful obligations, the surplus shall be refunded to members of all classes in direct proportion to their respective aggregate payments to TCACC from on and after the date hereof.

EXECUTED this 31st day of October 2006.

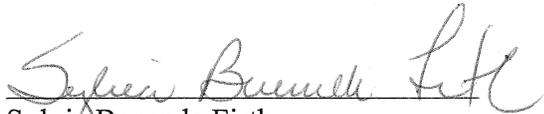
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sylvia Borunda Firth
Senior Assistant City Attorney

3 30 10 11 09 31
3 30 10 11 09 31