

**INTERLOCAL COOPERATION AGREEMENT
CITY OF AUSTIN AND CAPITAL METROPOLITAN TRANSPORTATION
AUTHORITY RELATING TO EVENING AND WEEKEND METRORAIL SERVICE**

STATE OF TEXAS

COUNTY OF TRAVIS

This Agreement is made and entered into by and between the City of Austin, Texas (the "City"), a home rule city, and the Capital Metropolitan Transportation Authority ("Capital Metro"), a transportation authority and political subdivision for the State of Texas under the provisions of the Texas Transportation Code, Chapter 451, each individually referred to as a "Party" or collectively referred to as the "Parties", upon the premises and for the consideration stated herein.

WHEREAS, the City and Capital Metro have demonstrated that the current multi-modal transportation network serving the region's core activity center (Austin Central Business District, Capitol Complex, and University of Texas) is significantly constrained and that a capacity deficit exists, especially during peak commute periods and when festivals are present in the downtown; and

WHEREAS, the ability to make short term transportation improvements to the roadways serving the regional core by the City or by other transportation providers in the region is limited and expanding transit ridership into and out of the core would improve mobility as identified as part of the Austin Strategic Mobility Plan, Downtown Austin Plan, and emerging Imagine Austin Comprehensive Plan; and

WHEREAS, the City and Capital Metro are currently operating or pursuing the development of the following passenger rail infrastructure within Central Texas under the 2035 Campo Regional Transportation Plan; it is important that their efforts be fully coordinated and integrated to achieve a unified system of service; and

WHEREAS, the City is currently studying the potential design and feasibility of an Urban Rail line that could ultimately provide service between Austin-Bergstrom International Airport, downtown Austin, the Texas State Capital, University of Texas and the Robert Mueller Development; and

WHEREAS, Capital Metro operates the MetroRail Red Line providing commuter rail service from Leander to downtown Austin and has proposed future commuter service from Elgin to downtown Austin and is currently evaluating options for MetroRail service in the North Central Corridor; and

WHEREAS, as part of these infrastructure initiatives the City of Austin, Capital Metro and the Lone Star Rail District have entered into interlocal agreements for mutual support and resource sharing to assure the connectivity and compatibility of the design and operation of these rail line initiatives; and

WHEREAS, it is imperative to the success of these rail initiatives that the involved public entities go beyond their existing agreements and extend their efforts to the fullest extent practical to further coordinate and align their individual efforts to develop rail lines that function as an integrated system that also creates new opportunities for community economic development and social benefits; and

WHEREAS, it is timely and in the best interests of each of the entities to further advance their respective rail projects and the potential establishment of a rail system through a collaborative working arrangement that assures clarity of purpose and entity responsibility, fosters unified objectives and consistent direction and, establishes a coordinated organizational structure and joint administrative understanding; and

WHEREAS, this Agreement demonstrates the Parties' commitment to achieving the ultimate goal of expanding MetroRail service and utilizing transit sales tax funds to reimburse the City as they become available under Capital Metro's Quarter Cent Program; and

WHEREAS, Capital MetroRail has proven to be a high-quality reliable transportation option and the Parties now desire to cooperate in the expansion of Capital Metro's MetroRail service into and out of the regional core and Austin's central business district ("CBD") by extending rail service to include Friday evenings and Saturdays within the City's jurisdictional limits. The addition of mid-day service and minor schedule adjustments has resulted in significant ridership increases that have exceeded initial projections. The extended service will maximize potential of initial rail investment and leverage the use of resources already dedicated for transit. Additionally, extended service will broaden and further boost MetroRail ridership, thereby reducing the need for some citizens and visitors to rely on the private automobile to access the primary regional core (Austin Downtown) and other stations along the MetroRail within the City of Austin; and

WHEREAS, the Parties intend to conform this Agreement in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001, et seq.;

NOW, THEREFORE, in consideration of mutual covenants and agreements contained herein, the Parties agree to the terms and conditions below as evidenced by the signatures of their respective authorized representatives.

1. Term:

(a) The initial term of this agreement will be from the date of execution, which shall be no later than March 23, 2012, and will expire January 19, 2014. Following this initial term, the Agreement will automatically renew without interruption on January 20, 2014 ("Renewal Date") and expire January 18, 2015 ("Renewal Period"), unless otherwise terminated under this agreement. At the end of the renewal period the parties may mutually agree to extend this agreement as applicable. Any extensions beyond the Renewal Period are subject to the review and approval of the Capital Metro Board of Directors and the Austin City Council.

(b) Notwithstanding any other term or condition herein, to this Agreement, either Party may terminate the Agreement upon 90 days written notice, so long as the termination coincides with a Capital Metro Service change date, and as described in Paragraph 24 of this Agreement.

2. Project Management:

(a) The City Manager or his designee (the "City Manager") will act on behalf of the City with respect to the extended service arrangement, coordinate with Capital Metro, receive and transmit information and instructions, and will have the authority necessary to interpret and define the City's policies and decisions with respect to the extended service and subsequent service operation. The City Manager will designate an Extended Service Manager and may

designate other representatives to transmit instructions and act on behalf of the City with respect to the extended service.

(b) The Capital Metro President / CEO (the "President/CEO"), or the President/CEO's designee, will act on behalf of Capital Metro with respect to the extended service, coordinate with the City, receive and transmit information and instructions, and will have the authority necessary to interpret and define Capital Metro's policies and decisions with respect to the extended service and subsequent service operation. The President/CEO may also designate a representative to transmit instructions and act on behalf of Capital Metro with respect to the Project ("Project Manager").

(c) Capital Metro will be responsible for the contractor and shall engage the contractor for all services. Capital Metro will be the sole contact to the contractor. The City will make all service requests and address all service related issues to the Capital Metro Project Manager or designee.

3. Extended Service Description:

(a) Extended Service will be MetroRail Service provided by Capital Metro on Friday evenings and Saturdays ("Extended Service"). Extended Service is service provided under this Agreement that occurs outside of Capital Metro's normal hours of MetroRail operations. The effective date of this Agreement will be the date of the last Party to sign ("Effective Date"). The execution date of this Agreement will be March 23, 2012 ("Execution Date"). Extended Service will begin on the Execution Date of this Agreement. Capital Metro will provide Extended Service on Friday evenings and Saturdays in accordance with Section 1 of this Agreement for an amount not to exceed \$3,700,259 for the initial term described in Section 1. The extended service shall begin on Friday evenings at 7:00 pm and terminate at 12:00 am (midnight) and on Saturdays beginning at 4:00 pm and terminating at 12:00 am (midnight). For the Renewal Period, Capital Metro will extend MetroRail service on Friday evenings and Saturdays in accordance with Paragraph 1 of this Agreement for an amount not to exceed \$2,018,324.

(b) The City and Capital Metro may elect to evaluate further extension of service options for special events or festivals outside the specified services times specified in the preceding paragraph ("Special Event Service"). Special Event Service will be decided on an event by event basis. Capital Metro will provide a standard pricing agreement list for such Special Event Service. All cost related to Special Event Services are not included in the cost of this Agreement. The cost for all Special Event Services include, but are not limited to, advertising, marketing and promotion. Special Event costs will be paid for separately by the City. The pricing agreement for the Special Event Service must be mutually agreed to by both Parties and will require the authorization and approval of the Austin City Council and Capital Metro Board of Directors.

(c) Special Event Service will be coordinated with potential windows for services included in the Capital Metro contract with its service provider. Any Special Event Services will be subject to Capital Metro's contract with its Third Party service contractor, the available service windows, scope of services in the contractor agreement and limitations due to freight service.

4. Extended Service and Special Event Service Parameters:

(a) Extended Service: Friday evening Extended Service will be between the hours of 7:00 pm to 12:00 am (midnight). Capital Metro shall be responsible for operating MetroRail

service between Lakeline Station, the most westerly MetroRail station that is within the corporate limits of the City of Austin and the Downtown Station on 60 minute headways. Capital Metro reserves the right, in its sole discretion, to operate between Leander Station and the Downtown Station on Friday nights between 7:00 pm to 12:00 am (midnight). The cost of operations between Lakeline Station and the Leander Station will not be charged to the City for Friday night Extended Service.

Saturday Extended Service will have 35 minute headways between the hours of 4:00 pm and 12:00 am (midnight). During Saturday Extended Service Capital Metro will operate MetroRail service between Lakeline Station and the Downtown Station.

(b) Marketing and Promotion: Capital Metro shall be responsible for all advertising, marketing, and promotion related to Friday and Saturday Extended Service and all Special Event Service. Advertising, marketing, and promotion of Special Event Services are not included in the cost of this Agreement. The cost for all advertising, marketing and promotion of Special Event Services will be paid for separately by the City. Capital Metro and the City will work collaboratively to develop the marketing and communication plan for Special Event Services.

(c) The City of Austin will explore potential parking options for customers wishing to park and then ride MetroRail. These parking options could include, among other options, an agreement with Austin Community College, who is the property owner of the Highland Mall tract, to utilize their parking lot, as well as exploring the utilization of any City of Austin owned or controlled property located adjacent to any rail station.

5. Special Event Service Parameters:

(a) Special Event Services: By mutual agreement of the Parties, Capital Metro may operate additional service to and from the Downtown Station to provide added access for downtown festivals and events beyond the Friday and Saturday Extended Services described herein. Special Event Service shall be limited to MetroRail service.

(b) The provision of Special Event Services is contingent upon the times and available operating parameters as well as the provisions of Capital Metro's contract with its third party contractor for MetroRail service. Capital Metro shall provide a costs schedule and service operating parameters for Special Event Services on an event by event basis. The provision of Special Event Service shall be by mutual agreement between the City of Austin and Capital Metro at least 90 days prior to the scheduled event.

(c) Special Event Working Group: Within 45 days of the execution of this agreement, Capital Metro and the City will form a joint working group to identify special event opportunities and will develop and manage the special event planning process. The special event planning process will be documented, in writing, and will be incorporated into any subsequent agreement concerning Special Event Service prior to the implementation of the Special Event Service. Any such Special Event Service agreements will require separate authorization and approval of the Austin City Council and the Capital Metro Board of Directors.

(d) Special Event Service under this Agreement does not include special events contracted for, or by and between, Capital Metro and third parties as part of Capital Metro's normal business operations. Capital Metro reserves the right, in its sole discretion, to initiate and

operate special event service independent of this agreement. All Capital Metro special event service will be scheduled during hours outside of the Extended Service hours described herein.

6. Project Costs:

(a) Costs associated with the Extended Service will not exceed \$3,700,259 for the initial term. This amount excludes cost for Special Event Services. This amount does include, however, contractor fixed and variable cost, insurance, fuel, security, marketing, facility maintenance, signage production and installation, an economic impact analysis study and other related start-up costs. Fare recovery revenues collected during periods described in Section 3 of this Agreement will offset costs associated with Extended Service.

Following the initial term, the Agreement will automatically renew without interruption on January 20, 2014 for one twelve month term, unless otherwise terminated under this agreement, for an amount not to exceed \$2,018,324.

(1) Capital Metro will invoice the City thirty (30) days in advance of the first day of each fiscal year quarter after the initial start-up payment identified in Section 7 (Payment Schedule). Capital Metro's Fiscal Year starts on October 1 and ends on September 30 (Fiscal Year). At the conclusion of each contract term, the City and Capital Metro will "true-up" or adjust the balances for all amounts due or credited to reflect actual cost paid by the respective Party. Capital Metro will refund any amounts paid by the City in excess of the actual costs associated with Extended Service. City will pay to Capital Metro any amounts owed under this Agreement that are not covered by the actual cost paid by the City; this includes, but is not limited to, amounts set forth in Section 6(a)(2) below. Under no circumstances will the City pay an amount in excess of the not-to-exceed amounts set forth in Section 6(a) above unless additional authorization is approved by the City Council and Capital Metro Board of Directors.

(2) In the event, that during the initial term and all renewals or extensions of this Agreement, the actual cost are projected to exceed the amounts set forth in the Agreement, Capital Metro will notify the City immediately. Within 30 days of the notice the Parties will meet to consider amending the agreement, subject to the review and approval by the Capital Metro Board of Directors and the City Council. If the Parties are unable to obtain approval, this Agreement will be terminated. All reasonable termination costs as identified and agreed upon by the Parties will be paid by the City.

(b) The fare structure for this service and all special event service will conform to the approved fare structure and fare policy that have been reviewed by the Federal Transportation Administration (FTA) and adopted by the Capital Metro Board of Directors. Fare revenue derived from the Extended Service under this Agreement shall be credited against any cost associated with this Agreement for Extended Service. Revenue will be the full fare and discounted Daily and One-Way passes sold after 6:00pm on Friday and all day Saturday. Extended Service Fare revenue under this Agreement includes the full fare revenue generated after 6pm on Friday and all day Saturday from the sale of Day Passes, One Way Reduced Fare Passes, and One-Way Passes ("Extended Service Revenue"). Extended Service Revenue does not include revenue generated by the sale of any Capital MetroRail passes sold before 6pm on Friday. Extended Service Revenue also excludes Regional Day Passes, Regional Day Passes Reduced, Regional 7 Day Passes, Regional 7 Day Passes Reduced, Regional 31 Day Passes, and Regional 31 Day Passes Reduced that are sold after 6pm on Friday and all day Saturday.

(c) Payments made by the City under this Agreement will be repaid to the City by Capital Metro under provisions of the "Interlocal Agreement: Regional Mobility and Transportation Projects between Capital Metropolitan Transportation Authority and City of Austin" dated May 23, 2003 and under provisions of the Amendment thereto executed April 26, 2010 ("Quarter Cent Agreement"). To facilitate this and other provisions of this Agreement, the City Council and Capital Metro Board, included with the authorization for this Agreement, have both authorized the extended service under this Agreement as a project under the Quarter Cent Agreement. Reimbursements under the Quarter Cent Agreement occur annually in November. If insufficient funds are available under the Quarter Cent Agreement to fully reimburse costs paid by the City under this Agreement in any year, then costs will be fully reimbursed in subsequent years when funds are available under the Quarter Cent Agreement.

(d) Quiet Zones. Capital Metro adheres to Federal Regulations regarding train horns at certain crossings. To mitigate the effects of train horn noise in certain communities due to the Extended Service hours Capital must establish new "quiet zones." Operating a safe and efficient rail system is a top priority of Capital Metro so Capital Metro will implement safety improvements for quiet zones at certain crossing in accordance with federal regulations for same. The cost of the safety improvements are in addition to the cost of the Extended Service cost set forth herein. The cost to create the quiet zones will be in an amount not to exceed \$60,000.00.

7. Payment Schedule:

Annual fee for extended Friday and Saturday service shall be paid by the City of Austin in quarterly payments. The first payment shall be paid within 30 days of service initiation (April 23, 2012) and subsequent quarters in accordance with the attached fee schedule, Exhibit A, incorporated herein. The quarterly payments shall be made by the City to Capital Metro no later than the last day of the first month in each quarter in accordance with Paragraph 6 (a)(1) of this Agreement.

8. Provision of Service:

Capital Metro shall be solely responsible for providing the defined Extended Service and Special Events Service under its standard operating policies and procedures. Capital Metro will operate in accordance with all Federal, State and Local regulations and will have sole authority for all safety related decisions.

9. Ridership and Accounting of Cost Information:

Capital Metro will provide the City with an accounting of how many riders utilize MetroRail during the Extended Service hours and during Special Events Service. This accounting is due on the twentieth day of every month and will reflect the Extended Service rider utilization of the MetroRail or Special Event ridership for MetroRail for the month prior to the submission. In addition, Capital Metro will provide the City with an accounting of costs for each budgeted item within the Capital Metro budget estimate schedule for each reporting month.

10. Audit:

Capital Metro agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any

and all records of Capital Metro related to the performance under this Agreement. Capital Metro shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of Capital Metro are resolved, whichever is longer. Capital Metro agrees to refund to the City any overpayments disclosed by any such audit.

11. Current Funds and No Federal Funds:

As required by the Interlocal Cooperation Act, the party or parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying party. Capital Metro agrees that no federal funds will be used to fund the extended service.

12. Responsibility for Liability

To the extent allowed by Texas law, the Parties agree that they are responsible to the exclusion of any such responsibility of the other Party to this Agreement for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this Agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act.

13. Entire Agreement:

This Agreement, including any attached exhibits, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter of this Agreement.

14. Amendment:

No amendment of this Agreement will be effective until the amendment has been reduced to writing; each party has duly approved it, and is signed by the authorized representatives of the parties. Any amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

15. No Amendment of Other Agreements:

Unless otherwise expressly stipulated, this Agreement is separate from and will not constitute an amendment or modification of any other agreement between the parties.

16. Other Instruments, Actions:

The parties agree that they will take such further actions and execute and deliver any other consents, authorizations, instruments, or documents that are necessary or incidental to achieve the purposes of this Agreement.

17. No Third Party Beneficiaries:

Except as expressly provided in this Agreement, nothing will be construed to confer upon any person other than the parties any rights, benefits or remedies under or because of this Agreement.

18. No Joint Venture, Partnership, Agency:

This Agreement will not be construed in any form or manner to establish a partnership, joint venture or agency, express or implied, nor any employer-employee or borrowed servant relationship by and among the parties.

19. Applicable Law:

This Agreement will be construed under and according to the laws of the State of Texas.

20. Severability:

The provisions of this Agreement are severable. If any court of competent jurisdiction ever holds any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance to be invalid or unconstitutional for any reason, it will not affect the remainder of this Agreement and, in such event, this Agreement will be construed as if it had never contained such invalid or unconstitutional portion in it.

21. Force Majeure:

If, by reasons of Force Majeure, any party will be rendered wholly or partially unable to carry out its obligations under this Agreement after its effective date, then such party will give written notice of the particulars of such Force Majeure to the other party or parties within a reasonable time after the occurrence of it. They will suspend the obligations of the party giving such notice, to the extent affected by such Force Majeure, during the continuance of the inability claimed and for no longer period and any such party will in good faith exercise its best efforts to remove and overcome such inability.

The term "Force Majeure" as utilized in this Agreement will mean and refer to acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or other public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts; other natural disasters; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not reasonably within the control of the party claiming such inability.

22. Venue:

Venue for any suit arising under this Agreement will be in Travis County, Texas.

23. Duplicate Originals:

The parties may execute this Agreement in one or more duplicate originals each of equal dignity.

24. Notices. When notices or other communications are required to be given under this Agreement, the parties will give written notice to the address of the party to be noticed by either:

- (a) delivering it in person;
- (b) depositing it in the United States Mail, first class mail, postage prepaid;

(c) depositing it with a nationally recognized courier service; or

(d) by sending it by email, or telefax (subject to electronic confirmation) with confirming copy sent by mail. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

CITY: Robert Spillar, P.E., Director
City of Austin
Transportation Department
505 Barton Springs Road, Suite 800
Austin, Texas 78704

WITH COPY TO: _____
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767

CAPITAL METRO: Elaine Timbes, Executive Vice President and Chief Operating Officer
Capital Metro
2910 East 5th Street
Austin, Texas 78702

WITH COPY TO: _____
Kerri Butcher, Chief Legal Counsel
Capital Metro
2910 East 5th Street
Austin, Texas 78702

25. The undersigned agreeing parties do hereby certify that this agreement conforms to the provisions of Texas Government Code, Chapter 791 (Interlocal Cooperation Contracts).

26. **IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their undersigned, duly authorized representatives to be effective as of the date of the last party to sign.

**Capital Metropolitan
Transportation Authority**

City of Austin

By: _____

Linda S. Watson

President/CEO

Date: _____

By: _____

Marc A. Ott

City Manager, City of Austin

Date: _____

Approved as to form:

Approved as to form:

By: _____
Denise S. Young, Staff Attorney

By: _____
Assistant City Attorney

RECEIVED
CITY OF DENVER
OFFICE OF THE CITY ATTORNEY
JAN 10 2007

Exhibit A
Extended Weekend Service
Fee Schedule



FINANCIAL		Capital Metro Billing	City of Austin Payment	Capital Metro Payment
2012	\$1,126,234			DRAFT
January				
February				
March		\$563,117		
April			\$563,117	
May				
June		\$563,117		
July			\$563,117	
August				
September		\$486,994		
2013	\$1,947,977			
October			\$486,994	
November				\$1,126,234
December		\$486,994		
January			\$486,994	
February				
March		\$486,994		
April			\$486,994	
May				
June		\$486,994		
July			\$486,994	
August				
September		\$482,834		
2014	\$1,931,335			
October			\$482,834	
November				\$1,947,977
December		\$482,834		
January			\$482,834	
February				
March		\$482,834		
April			\$482,834	
May				
June		\$482,834		
July			\$482,834	
August				
September		\$356,519		
2015	\$713,037			
October			\$356,519	
November				\$1,931,335
December		\$356,519		
January			\$356,519	
February				
March		Final True-Up	Final True-Up	
April				
May				
June				

July					
August					
September					
October					
November					\$713,037
December					
TOTAL	\$5,718,583	\$5,718,583		\$5,718,583	\$5,718,583

NOTE: CMTA billing reflects costs only. Actual revenue fare recovery to be deducted in subsequent quarterly billing.

