

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF AUSTIN
AND
THE CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
FOR THE PRODUCTION AND CABLECASTING OF THE BOARD OF DIRECTORS
MEETINGS**

This Interlocal Agreement ("Agreement") is entered into by and between the City of Austin, a Texas home rule city and municipal corporation, acting through its Communications and Public Information Office (the "City"), and Capital Metropolitan Transportation Authority ("Capital Metro"), a transportation authority and political subdivision organized under Chapter 451 of the Texas Transportation Code, collectively referred to as the "Parties".

1. This Agreement is authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code;
2. Each Party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function that it is authorized to perform individually under the applicable statutes of the State of Texas or its charter;
3. The City has reserved the use of one (1) access television channel provided to the City of Austin by cable service providers for governmental programming;
4. Capital Metro is a local transportation authority which holds Board of Director ("Board") meetings on a monthly basis;
5. The City is willing to provide production and cablecasting services for each Capital Metro Board meeting, which the Parties agree will benefit the public by allowing the viewing of Capital Metro Board deliberations; and

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.

ARTICLE I. PARTY OBLIGATIONS

1. CAPITAL METRO OBLIGATIONS.

(a) Capital Metro shall provide all appropriate equipment necessary to videotape and cablecast each monthly Capital Metro Board of Directors meeting.

(b) Capital Metro shall provide all audio equipment for all Board meetings, which includes:

- (i) 24X4 Broadcast media feed (XLR, Phone and mini plug)
- (ii) One (1) cordless handheld microphone
- (iii) Channels gates noises canceling mixer
- (iv) Eight (8) Channel sub-mixer
- (v) All appropriate cables

(c) Capital Metro shall provide any additional equipment necessary for closed-captioning the videotape and cablecast, and any additional contract necessary for securing closed-captioning services.

(d) Capital Metro shall be responsible for the repairs of Capital Metro furnished equipment.

(e) All meetings will be held within the Capital Metro service area.

2. CITY OBLIGATIONS.

(a) The City shall provide production and cablecasting services for each Capital Metro Board of Directors meeting as scheduled.

(b) The City shall set-up and test all video equipment and have the equipment ready for use no later than one (1) hour prior to each monthly Board of Directors meeting. The City will attempt to shoot the meeting with a single camera on a tripod, which the City shall provide, if the equipment provided by Capital Metro does not work properly.

(c) The City shall have at least one (1) video production staff on-site throughout the duration of each monthly Board of Directors meeting.

(d) The City shall schedule the monthly Capital Metro Board meeting on its channel for viewing.

(e) The City shall cablecast each monthly Board meeting no less than four (4) times within the thirty (30) day period following the meeting.

(f) The City will file a DVD copy of Board meetings at the Austin History Center Library at 810 Guadalupe Street, Austin, Texas and a copy will be given to the Capital Metro Board Manager after each recorded meeting.

(g) The City shall include Board meetings in the ATXN Video Archive at www.ATXN.tv.

(h) The City is responsible for operating and trouble-shooting video equipment failures that may occur during normal usage. The City will recommend equipment repairs but the costs associated with the repair or replacement of Capital Metro owned equipment is the responsibility of Capital Metro.

ARTICLE II. PAYMENT AND INVOCIES

1. **PAYMENT.** As an initial administrative fee, Capital Metro will pay the City an amount of \$2,000. Capital Metro shall pay the City \$400 for each meeting recorded by the City of Austin. Checks shall be made payable to the order of City of Austin ATXN.

2. **INVOICES.** For the administrative fee referenced in Section 1(a) above, the City shall submit an invoice to Capital Metro within five (5) days of the Effective Date. The City of Austin shall submit quarterly invoices for the payment of recording services for each meeting no later than the fifth (5th) day following the end of each calendar quarter.

ARTICLE III. TERM AND TERMINATION

1. **TERM.** The initial term of this Agreement begins September 1, 2019 ("Effective Date") and will

continue for one calendar year. The Parties may agree to renew this Agreement for up to nine (9) additional one (1) year periods. Each optional renewal year would start automatically on the anniversary of the effective date.

2. **TERMINATION.** Notwithstanding the termination or expiration of the Agreement, certain provisions *e.g.*, indemnification, right to audit, shall survive the termination or expiration of the Agreement. Any subsequent extensions periods that go beyond the optional renewal periods, included above, will be mutually agreed to in writing by the Parties and subject to approval by the Austin City Council and the Capital Metro Board.

ARTICLE IV. MISCELLANEOUS

1. **AMENDMENT.** This Agreement may be amended only in writing by an instrument signed by an authorized representative of each Party. The City's City Manager and the Capital Metro President/CEO will have the authority to negotiate and execute amendments to this Agreement without further City Council action or action from the Capital Metro Board of Directors, but only to the extent necessary to implement and further the clear intent of the respective City Council and Capital Metro Board of Directors' approval, and not in such a way as would constitute a substantive modification of the terms and conditions hereof or otherwise violate Chapter 791 of the Texas Government Code. Any amendments that would constitute a substantive modification to the Agreement must be approved by the governing bodies of the Parties.

2. **NOTICE.** Any notice required or permitted to be delivered under this Agreement shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a Party, at the addresses set forth below or when received electronically. Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other party as herein provided.

(a) If for the City:

City of Austin
ATXN
P.O. Box 1088
Austin, Texas 78767
ATTN: Keith Reeves
E-mail: keith.reeves@austintexas.gov

(b) If for Capital Metro:

Capital Metropolitan Transportation Authority
2910 E. 5th Street
Austin, Texas 78702
ATTN: Ed Easton
E-mail: Ed.Easton@capmeto.org

3. **SCHEDULE APPOINTMENTS.** Capital Metro shall provide the City of Austin with a schedule of the monthly Board meeting and shall provide a 72-hour written notice of any schedule or location adjustments of each monthly Board meeting. The City shall notify Capital Metro within 24-hours of receiving notice of the adjustment if the City is unable to commit to video production resources to the rescheduled or relocated event.

4. **CONTINGENCY.** City's obligations under this Agreement are directly contingent on the approval of City Council and upon its authority to use and designate an Access Channel for government use under cable television services franchises. Lack of such authority shall render this Agreement null and void to the extent the authority is curtailed or abrogated. Capital Metro's obligations under this Agreement are payable only and solely from funds appropriated by Capital Metro. Payments are subject to future appropriations.

5. **COOPERATION.** The Parties to this Agreement agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

6. **APPLICABLE LAW.** This Agreement will be governed by and construed in accordance with the laws and constitution of the State of Texas.

7. **VENUE.** Venue for any action arising under this Agreement will be in Travis County, Texas.

8. **SUCCESSORS AND ASSIGNS.** This Agreement will be binding upon and inure to the benefit of the Parties and their successors and assigns, including without limitation, any receivers, administrators, or trustees in bankruptcy.

9. **INTERPRETATION OF LAWS AND AUTHORITIES.** All federal and state contractual provisions, as applicable, will be included in any corresponding contracts or procurements by the Parties. The Parties shall be responsible for the settlement of all contractual and administrative issues arising out of procurement entered into by the individual Party in support of the contract work. The Parties will retain responsibility for ensuring that the performances rendered under any subcontracts comply with all requirements of this Agreement as if the respective Party, entering into the subcontract, rendered such performances. In no event does this provision relieve either Party of its individual responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Agreement.

10. **INDEPENDENT CONTRACTOR.** This Agreement will not be construed as creating an employer-employee relationship, a partnership, or a joint venture between the Parties.

11. **INDEMNIFICATION. THE PARTIES AGREE THAT EACH GOVERNMENTAL ENTITY IS RESPONSIBLE FOR ITS OWN PROPORTIONATE SHARE OF ANY LIABILITY FOR THE NEGLIGENT ACTS OR OMISSIONS OF ITS EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS ARISING OUT OF, CONNECTED WITH, OR AS A CONSEQUENCE OF ITS PERFORMANCE UNDER THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, REVENUE, PROFITS, OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, TORT OR OTHER ACTION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.**

12. **FORCE MAJEURE.** Except as otherwise provided, neither Party is liable to the other for any delay in, or failure of performance, of a requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due

diligence to perform. Force majeure is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the control of either party and that by exercise or due foresight, such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each Party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure.

13. INCORPORATION BY REFERENCE. Incorporated by reference the same, as if specifically written herein, are the rules, regulations, and all other requirements imposed by law, including but not limited to compliance with those applicable rules and regulations of the State of Texas and the federal government, all of which shall apply to the performance of the services under this Agreement.

14. SEVERANCE. Should any one or more provisions of this Agreement be deemed invalid, illegal, or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision held to be void, voidable, or for any reason whatsoever of no force and effect, such provision(s) shall be construed as severable from the remainder of this Agreement and shall not affect the validity of all other provisions of this Agreement, which shall remain of full force and effect.

15. HEADINGS. The heading contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

16. ASSIGNMENT. This Agreement shall not be assigned, in whole or in part, by either party without the prior written consent of the other party. Any attempt to do so shall be void.

17. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of the parties, their representatives, successors in interest and authorized assigns.

18. NO WAIVER. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect the right to require such performance at any time thereafter nor shall the waiver by either party of a breach of any provision be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

19. COUNTERPARTS/ELECTRONIC SUBMISSION. This Agreement may be executed in duplicate counterparts, which taken together shall constitute one single representation between the Parties. A facsimile or other electronic transmission of a Party's signature page binds that Party with the same force and effect as if signed and delivered in original

20. SOVEREIGN IMMUNITY. The Parties to this Agreement are governmental entities within the State of Texas and nothing in this Agreement waives or relinquishes the right of the Parties to claim any exemptions, privileges and immunities as may be provided by law.

21. ENTIRE AGREEMENT. This Agreement, together with the applicable exhibits, attachments, appendices represents the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the Parties pertaining to the subject matter herein.

ARTICLE V.CERTIFICATIONS

THE UNDERSIGNED AGREEMENTING PARTIES do hereby certify that: (a) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected governmental entity; (b) the proposed arrangements serve the interest of efficient and economical administration of the governmental function; (c) the services, supplies or materials contracted for are not

required by Section 21 of Article 16 of the Constitution of Texas to be supplied under an Agreement given to the lowest responsible bidder nor is this Agreement prohibited by Texas Government Code, Section 791; and (d) this Agreement neither requires nor permits either party to exceed its duties and responsibilities or the limitations of its authority.

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: _____

By: _____

Randy Clarke

Name: _____

President/CEO

Title: _____

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____

By: _____

CMTA Legal Dept.

(Assistant City Attorney)