

RESOLUTION NO. 20210729-043

WHEREAS, in Resolution 20200812-015 Council established the contract with the voters in regards to the Austin Transit Partnership and funding for Project Connect and related infrastructure; and,

WHEREAS, Council directed establishment of a process for the manner in which funding would be allocated should voters approve the tax rate increase in November of 2020; and,

WHEREAS, Council directed the City Manager to include certain provisions in a draft Joint Powers Agreement, to be reviewed and approved by City Council; and,

WHEREAS, Council directed the City Manager to include in the Joint Powers Agreement a procedure to transfer the Project Connect Tax Revenue in a proportionate amount on an annual and more frequent basis until the debt is paid off and the funds are no longer required for operations, maintenance, or a state of good repair; and,

WHEREAS, the City Manager and the Austin Transit Partnership have developed the procedure, and are bringing it forward at this time for Council approval in the form of an Interlocal Agreement Between City of Austin and Austin Transit Partnership for Terms of Joint Powers Agreement on Transfer of “November 2020 Proposition A” Property Tax Revenue; and,

WHEREAS, Council has reviewed the procedure and desires the City Manager to implement this process; **NOW, THEREFORE**,

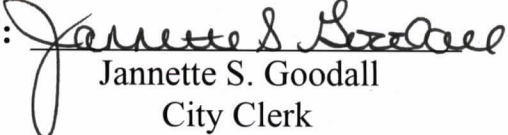
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council gives its approval for the Interlocal Agreement Between City of Austin and Austin Transit Partnership for Terms of Joint Powers Agreement on Transfer of "November 2020 Proposition A" Property Tax Revenue financial process related to transfer of the Project Connect Tax Revenue in a proportionate amount attached to this resolution as Attachment A.

BE IT FURTHER RESOLVED:

The City Manager and the City's Chief Financial Officer are authorized and directed to take any action and to sign, execute, and deliver the Interlocal Agreement Between City of Austin and Austin Transit Partnership for Terms of Joint Powers Agreement on Transfer of "November 2020 Proposition A" Property Tax Revenue and any other documents that are necessary or advisable to comply with the terms of the financial requirements related to the transfer of the proportionate share of the City's maintenance and operations Project Connect Property Tax Revenue. The Joint Powers Agreement will encompass the terms of the financial arrangements between the City and ATP, including but not limited to, financial requirements related to the transfer of tax revenue, payment arrangements for staffing and related costs, and grant agreements related to anti-displacement funding.

ADOPTED: July 29, 2021

ATTEST: 
Jannette S. Goodall
City Clerk

**INTERLOCAL AGREEMENT BETWEEN CITY OF AUSTIN AND THE AUSTIN TRANSIT PARTNERSHIP
FOR TERMS OF JOINT POWERS AGREEMENT ON TRANSFER OF
"NOVEMBER 2020 PROPOSITION A" PROPERTY TAX REVENUE**

The purpose of this Interlocal Agreement Between City of Austin and the Austin Transit Partnership for Terms of Joint Powers Agreement on Transfer of "November 2020 Proposition A" Property Tax Revenue ("Agreement") is to define the process and procedures for the allocation and distribution of November 2020 Proposition A property tax revenue collected by the City of Austin ("City"), to the Austin Transit Partnership ("ATP"). This Agreement is consistent with the direction from City Council in the Contract with the Voters, shall satisfy the requirement of the Contract with Voters to include such process and procedures, and shall be referenced as such when the full Joint Powers Agreement is approved.

Background

On November 3, 2020, voters approved Proposition A ("Prop A") Tax Rate Election, which dedicated \$0.0875 of the approved \$0.5335 City tax year 2020 property tax rate for the current Fiscal Year (FY) 2020-21 for the investment in Project Connect. The FY 2020-21 property tax revenue associated with this \$0.0875 tax rate, and property tax revenue in future years calculated in accordance with a formula defined below, is:

"to be dedicated by the City to an independent board (ATP) to oversee and finance the acquisition, construction, equipping, and operations of the rapid transit system."

In the Contract with the Voters approved by City Council (Resolution 20200812-00315) the City committed that:

"Upon voter approval of the tax rate, beginning in Fiscal Year 2020-21, the City Manager is directed to transfer the Project Connect Tax Revenue to Austin Transit Partnership."

Further, the City Manager was directed:

"to develop procedures to transfer the Project Connect Tax Revenue in a proportionate amount on an annual or more frequent basis, for the current and future years, and include those procedures in a future Joint Powers Agreement ("JPA") between the City and Austin Transit Partnership. The transfer of the Project Connect Tax Revenue will continue until such time as all debt issued and financial obligations incurred by Austin Transit Partnership are paid off and funds are no longer required for operations, maintenance, or state of good repair for assets funded by Austin Transit Partnership."

Property Tax Revenue

Language in the Contract with the Voters that directs the City Manager to develop procedures to transfer the Project Connect Tax Revenue in a proportionate amount was crafted with the purpose and intent of acknowledging that tax rates generally change each year. As background, the City's annual tax rate is set by the City Council based on the interplay between taxable property values (certified by each of the appraisal districts that have property in the City limits: Travis Central Appraisal District, Williamson Central Appraisal District, and Hays Central Appraisal District), the City's revenue needs, and the calculation formula mandated by State law. Currently, State law allows the City to adopt an operations and maintenance property tax rate that would generate up to 3.5% more property tax revenue for operations

and maintenance than in the previous year from properties taxed in both years, net of certain adjustments. A property tax rate increase in excess of this level requires approval by the voters in a citywide election. As taxable property values rise, it exerts downward pressure on the property tax rate. Conversely, if taxable values were to decrease, it would generate upwards pressure on the tax rate. The Project Connect financial model was created and presented, not based on a static property tax rate, but on a proportionate share basis recognizing this dynamic. At the time the model was developed, when the City Council approved the Prop A ballot, and when the City adopted the Fiscal Year 2020-21 tax rate, ATP's proportionate share of the operations and maintenance property tax rate was 20.789% and the allocation formula detailed below is intended to provide ATP with this same proportion of operations and maintenance property tax revenue in future years.

Section 1: Allocation of Property Tax Revenue

A: Revenue Definition

For the purposes of this agreement, Property Tax Revenue shall refer to the revenue collected by the City for maintenance and operations ("M&O"). It shall exclude revenue pertaining to the debt service portion of the total annual property tax rate. With respect to revenue associated with the maintenance and operations property tax rate, it includes current collections, delinquent collections, and penalties and interest incurred or accrued beginning with the 2020 tax year. Delinquent collections, and penalties and interest related to tax years prior to tax year 2020 are excluded from this agreement.

B: Apportionment Formula

The apportionment of the annual property tax revenue collected, beginning in FY2020-21 shall be calculated using the following formula. It is based on the first-year (Tax year 2020 and City fiscal year 2020-21) voter-approved M&O ad valorem rate of \$0.4209 per \$100 of taxable valuation, with \$0.0875 dedicated to Project Connect. All future property tax revenue shall be apportioned using this formula until use of the formula is superseded by subsequent voter action (such as another Tax Rate Election for any purpose) or amendment to this agreement (see 4C for amendment process) or the dissolution of ATP (consistent with the Contract with the Voters).

City Share of Maintenance and Operations Property Tax Revenue = $0.3334/0.4209 = 79.211\%$

Austin Transit Partnership Share of Maintenance and Operations Property Tax Revenue = $0.0875/0.4209 = 20.789\%$

In the event of a successful future City Tax Rate Election that increases the City's Maintenance and Operations Property Tax Rate, these calculations shall be amended to adjust the percentage of the ATP share of the City Maintenance and Operations Property Tax Revenue. This percentage shall be calculated by:

- 1) multiplying the current Austin Transit Partnership Share of Maintenance and Operations Property Tax Revenue apportionment percentage by the City Maintenance and Operations Property Tax Rate prior to the successful Tax Rate Election in the tax year in which the election takes place to determine the effective ATP share of the City's Maintenance and Operations Property Tax Rate; and then,

2) dividing this effective ATP share of the City's Maintenance and Operations Property Tax Rate by the total City Maintenance and Operations Tax Rate inclusive of the successful Tax Rate Election to generate the new Austin Transit Partnership Share of Maintenance and Operations Property Tax Revenue percentage.

ATP shall be promptly notified of the newly calculated Austin Transit Partnership Share of Maintenance and Operations Property Tax Revenue percentage.

C: Allowances

The City currently has three approved Tax Increment Reinvestment Zones (TIRZ), the Mueller, Waller Creek, and Seaholm TIRZs, to which 100% of the incremental property tax revenue collected within the TIRZ boundaries is currently allocated, and one Homestead Preservation Zone (HPZ), to which 20% of the incremental property tax revenue collected within the HPZ boundaries is currently allocated. Tax revenue required for each TIRZ and HPZ shall first be deducted from the total tax property tax revenue received by the City, prior to the proportional (based on share of the tax rate) disbursement of the revenue to the General Fund (M&O), Project Connect Fund (M&O) and debt service.

Prior to the amendment of an existing TIRZ, or approval of any future TIRZ or HPZ, the City shall require the consent of ATP only as to whether the ATP share of Prop A property tax revenue can be included in the capture rate of the TIRZ or HPZ. However, the City may create a TIRZ on city owned property without the consent of ATP, including a TIRZ in which city property is the majority (50.1%) of the acres included in the zone.

In addition, the City has four economic incentive agreements (Chapter "380") in which the City has agreed to rebate all or some of the property tax paid back to the partner corporation. The corporation, terms of the agreement, and expiry dates of the agreements are included in the following table:

Corporation	Reimbursement Calculation	Expiry
Samsung	In years 1-10, 100% of tax on new equipment and machinery purchased and real property improvements made after 1/1/2006 for the 300 mm Fab; in years 11-20, 75% of taxes on same.	12/31/2027
Domain	25% of City's incremental property tax, based on 5/1/2003 property valuation of \$235,228 per acre. Baseline value is \$12,504,720.	12/31/2028
Apple	100% of the City's incremental property tax on improvements and on business personal property.	12/31/2026

HDI	100% of the City's incremental property tax on improvements and on business personal property.	12/31/2024
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In the calculation of the apportionment of property tax revenue, the City shall retain the portion of the property tax rebates related to ATP's share of the property tax paid by these corporations that is required to be reimbursed per the agreement between the City and the corporation. The retained property tax revenue will be paid to the corporations the following fiscal year in accordance with the agreements. The remittance to ATP will be net the pro rata share of the rebate agreements for the remaining term of the agreements.

If the City negotiates a new agreement, whether with these existing firms or new firms/corporations/entities to rebate property taxes for any reason, the City shall not include in any such agreement the portion of the Prop A property tax revenue without ATP's consent.

D: Remittance Calculation

The calculation below shall be based on transactions recorded by the City for the time periods outlined in Section 2A.

Step 1		Total City Property Tax Revenue Collected for tax years 2020 and later
Step 2	(less)	TIRZ and HPZ capture revenue
Step 3	(less)	Chapter 380 Requirements
Step 4	=	Adjusted Total Property Tax Revenue
Step 5	(less)	Share of revenue associated with annual debt service tax rate
Step 6	=	Adjusted Total M&O Property Tax Revenue
Step 7	X	ATP Share
Step 8	=	ATP Property Tax Revenue

Section 2: Payment Process

A: Remittance Schedule

The City shall make payments of annual Property Tax Revenue to ATP through the term of this Agreement according to the following schedule:

Month-End	Time Period	Payment Due
January	October 1 to January 31 for current fiscal year; plus, audit adjustment transactions from prior fiscal year	April 20 th *
June	February 1 to June 30 for the current Fiscal Year	July 20 th
October	July 1 to September 30 for the current Fiscal Year	November 20 th

* The first payment to ATP will be made no later than 30 days after this agreement is signed by both parties and shall be based on the time period(s) per schedule, to accommodate the adoption of this Agreement.

B: Payment Method

The City shall make payments to ATP using electronic funds transfer. ATP shall provide a letter on ATP's letterhead at least 30 days prior to the payment due dates listed above with the appropriate Automated Clearing House (ACH) or wiring instructions (full Routing Number and last four digits of the Account Number) so that this information may be verified against ATP's vendor code in the City's financial system. The ACH or wiring instructions must match the payment address that contains these instructions in the City's financial system. This 30-day window will allow time for updates to ATP's vendor record if necessary.

C: Credits

In the event the calculated payment to ATP results in a net credit to the City, the credit will be applied to the next positive payment balance. ATP is not expected nor required to issue a payment to the City for the credit amount.

D: Interest for Late Payments

Payments remitted 15 days past the due date due to no fault of ATP shall accrue interest, if such late remittance is caused by actions or events within the control of the City. The interest rate shall be equal to the One-Year Treasury Constant Maturity rate on the day the payment is due. Interest shall accrue until the payment is remitted and shall be compounded and calculated by the City. The interest shall be added to the next payment.

E: Remittance Documentation

Concurrent with each payment remitted to ATP, the City shall provide to ATP documentation that details the computations underlying the payment amount. The April 20th payment shall include for the prior fiscal year the final remittance calculation outlined in 1D as well as any credits or interest from late payments applied to the payment. In addition, the Total City Property Tax Revenue Collected from Step 1, 1D shall be shown by revenue type (current collections, delinquent collections, and penalties and interest incurred).

Section 3: Annual Budget

A: Estimation and Projections of Payment

On or before May 1 of each year, commencing May 1, 2022, the City shall provide to ATP a projection of payments consistent with this agreement to be made for the current and following five fiscal years. The City will endeavor to provide ATP updates on projected payments throughout the year.

B: Annual Budget

For the term of this Agreement, as authorized and directed by the voters and council, in the November 2020 election and the Contract with the Voters, the City Manager will provide a budget for council

adoption that provides the appropriate proportionate share of the City's M&O tax rate following the calculations and procedures in this Agreement, specifically Section 2A of this Agreement.

Section 4: Miscellaneous

A: Term

This agreement shall remain in place from date of execution until the earlier of:

- 1) The date all debt issued and financial obligations incurred by Austin Transit Partnership are paid off and funds are no longer required for operations, maintenance, or state of good repair for assets funded by ATP; or
- 2) The dissolution of ATP, in accordance with state law.

B: Audit Requirements

Upon reasonable prior written notice, ATP shall have the right to review all data and work relevant to the Property Tax Revenue calculations and payments to ATP. The City shall also have the right to review data and work relevant to determining if the Property Tax Revenue has been spent by ATP in accordance with the Contract with the Voters.

C: Financial Cooperation

The City and ATP agree to share any necessary financial information, data, and reports to support each entities' annual budgets, Comprehensive Annual Financial Reports, and bond sales. Both entities also agree that staff of each entity shall work to support any such request for this information, data, and reports.

D: Amendment

This agreement may be modified only by a written instrument executed by both the City and ATP.

If an amendment is necessary to address changes in applicable law, that amendment will be brought forth in a manner consistent with the applicable law and the contract with the voters.

D: Effective Date of Agreement

The provisions of the agreement will come into full force and effect upon the execution and delivery by the parties.

By signing this agreement, each party represents that the person executing this agreement is duly authorized to do so, and that each party agrees to the terms.

Date: _____

By: _____

Ed Van Eenoo, Chief Financial Officer
City of Austin

Date: _____

By: _____

Greg Canally, Chief Financial Officer/Chief
Development Officer
Austin Transit Partnership