

**Joint Powers Agreement Between  
Austin Transit Partnership and  
Capital Metropolitan Transportation Authority and the City of Austin**

This Joint Powers Agreement (“Agreement”) is entered into between Austin Transit Partnership (“ATP”), a joint local government corporation created under Ch. 431 of the Texas Transportation Code, the City of Austin, Texas (the “City”), a home-rule municipality incorporated by the State of Texas, and Capital Metropolitan Transportation Authority (“Capital Metro”), a transportation authority and political subdivision for the State of Texas organized under Chapter 451 of the Texas Transportation Code, each a “Party” and collectively referred to within this Agreement as the “Parties”.

**RECITALS**

The City Council and the Capital Metro Board recognized the benefits of a high-capacity transit system and determined that implementation of the Project Connect System Plan will create an integrated transit system that addresses transit needs for safer, faster, and more reliable transportation that will improve access to essential services, such as education, health care, food access, childcare, jobs, and open space especially in historically underserved and underrepresented communities, and which will manage congestion, create jobs, improve the environment, and better connect people in our community; and

The voters of the City of Austin also recognized the benefits of Project Connect by approving a ballot measure at the November 3, 2020 special election to provide dedicated funding to an independent board to oversee the implementation of the Project Connect System Plan, including investment in transit-supportive anti-displacement strategies; and

The Capital Metro Board voted to provide the balance of its Capital Expansion Fund in the Fiscal Year 2021 and to commit certain long-term contributions to the furtherance of Project Connect upon voter approval; and

The Federal Transit Administration oversees transit and transit-supportive grant programs, providing federal grants to transit projects based on the following criteria: land use, cost effectiveness, mobility improvements, congestion relief, environmental benefits, and economic development, and the programs within the Project Connect System Plan are eligible to seek such a grant; and

The City Council and Capital Metro Board created a joint local government corporation, named Austin Transit Partnership, to serve as the independent entity responsible for the implementation of the Project Connect System Plan, including the financing of acquisition, construction, equipping, and funding operations of the expanded system; and

The City and Capital Metro must take the necessary actions to fulfill the commitments contained in the City Contract with the Voters and the Capital Metro Funding and Community Commitment, which includes entering into a Joint Powers Agreement; and

The City and Capital Metro entered into an interlocal agreement, providing that the Parties will execute a Joint Powers Agreement delineating the roles and responsibilities of all three Parties among other commitments; and

The Parties have properly authorized their agreement in accordance with Interlocal Cooperation Act, Texas Government Code Chapter 791. Through this Agreement the Parties confirm their commitment to and support of Project Connect and agree to cooperate and coordinate in good faith to assist each other in satisfying their respective obligations under this Agreement and to facilitate the timely implementation of Project Connect.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the sufficiency of which is acknowledged, the Parties agree to the terms and conditions stated in this Agreement as follows:

## **SECTION 1. DEFINITIONS**

**1.1. Terms Defined.** In this Agreement, in addition to the terms defined in the preamble to this Agreement, in the above recitals, and elsewhere in this Agreement, the following terms will have these meanings:

- 1.1.1. "Agreement" means this agreement between ATP, the City, and Capital Metro, entered into together with all Attachments thereto.
- 1.1.2. "ATP" means the Austin Transit Partnership, sometimes referred to as the Joint LGC or Corporation. ATP is a local government corporation, incorporated on December 22, 2020, created in compliance with Subchapter D, Chapter 431, Texas Transportation Code ("Chapter 431"), Chapter 394, Texas Local Government Code. ("Chapter 394"), and Chapter 22, Business Organizations Code ("Chapter 22").
- 1.1.3. "ATP Board" means the Austin Transit Partnership Board of Directors, as provided for in the Articles of Incorporation and Bylaws.
- 1.1.4. "Capital Metro Board" means the Board of Directors for the Capital Metropolitan Transportation Authority.
- 1.1.5. "City Council" means the City Council of the City of Austin, Texas.
- 1.1.6. "Executive Leadership" means the City of Austin City Manager, the Capital Metro President & CEO, and the ATP Executive Director.

- 1.1.7. “Federal Transit Administration (FTA)” means the operating administration of the U.S. Department of Transportation which oversees the Capital Investment Grant (CIG) Program and provides oversight and review of grant recipients and operators.
- 1.1.8. “Financial Model” means the September 2020 Project Connect Integrated Financial Model developed by PFM Financial Advisors, LLC which provides the cash flow model for the implementation of Project Connect.
- 1.1.9. “Fiscal Year” means that twelve-month time period between any October 1 and the next following September 30.
- 1.1.10. “Foundational Texts” means the documents that are 1) instrumental to the adoption of the Project Connect System Plan and Locally Preferred Alternatives for the Orange, Blue, Gold, Green, and MetroRapid Lines as a component of Capital Metro’s long-term transit plan and the City of Austin’s Strategic Mobility Plan (the transportation element of the Imagine Austin Comprehensive Plan), 2) instrumental to the corporate formation and establishment of the Austin Transit Partnership, and 3) instrumental to voter approval of Proposition A at the November 3, 2020 tax rate election which dedicated a portion of the City’s property tax revenue to implementation of Project Connect. These documents include:
- 1.1.10.1. Resolutions related to the Project Connect System Plan and Locally Preferred Alternatives (LPAs): The June 10, 2020 concurrent resolutions adopting and supporting the Project Connect System Plan and Locally Preferred Alternatives for Orange, Blue, Gold, Green and MetroRapid Lines. (CMTA Res. No. AI-2020-1273, COA Res. No. 20200610-002).
- 1.1.10.2. Articles of Incorporation: The Articles of Incorporation jointly approved by City Council and the Capital Metro Board and filed with the Secretary of State.
- 1.1.10.3. Bylaws: The bylaws for organization and meetings of the ATP Board approved by the Capital Metro Board and City Council and adopted by ATP.
- 1.1.10.4. Community Commitment and Contract with Voters: The August 12, 2020 concurrent resolutions that provide the funding commitments of the City and Capital Metro and direction to ATP to achieve certain

policy directives. (CMTA Res. No. AI-2020-1297, COA Res. No. 20200812-015, COA Ord. No. 20200812-009).

- 1.1.10.5. Creation of ATP Resolutions: The December 18, 2020 concurrent resolutions directing the creation of ATP and approving the Articles of Incorporation and Bylaws as required by TEX. TRANSP. CODE § 431.101(a). (CMTA Res. No. AI-2020-1399, COA Res. No. 20201218-002).
- 1.1.10.6. Election Order and Canvass: The election order (Ord. No. 20200812-009) providing for a City of Austin tax rate election held on November 3, 2020 allowing voters to approve Proposition A and canvass (COA Res. No. 20201117-001) certifying that Proposition A received a majority of votes and passed. The voter approved ballot language:  
“Approving the ad valorem tax rate of \$0.5335 per \$ 100 valuation in the City of Austin for the current year, a rate that is \$0.0875 higher per \$100 valuation than the voter-approval tax rate of the City of Austin, for the purpose of providing funds for a citywide traffic-easing rapid transit system known as Project Connect, to address traffic congestion, expand service for essential workers, reduce climate change emissions, decrease traffic fatalities, create jobs, and provide access to schools, health care, jobs and the airport; to include neighborhood supportive affordable housing investments along transit corridors and a fixed rail and bus rapid transit system, including associated road, sidewalk, bike, and street lighting improvements, park and ride hubs, on-demand neighborhood circulator shuttles, and improved access for seniors and persons with disabilities; to be operated by the Capital Metropolitan Transportation Authority, expending its funds to build, operate and maintain the fixed rail and bus rapid transit system; the additional revenue raised by the tax rate is to be dedicated by the City to an independent board to oversee and finance the acquisition, construction, equipping, and operations and maintenance of the rapid transit system by providing funds for loans and grants to develop or expand transportation within the City, and to finance the transit-supportive anti-displacement strategies related to Project Connect. Last year, the ad valorem tax rate in the City of Austin was \$0.4431 per \$100 valuation.”
- 1.1.10.7. Interlocal Cooperation Agreement, as Amended, for the Creation of a Local Government Corporation (“Initial Agreement”): The August

7, 2020 approved interlocal agreement between the City and Capital Metro which primarily provides that upon a successful election, 1) a joint local government corporation will be created and a board appointed, 2) the City and Capital Metro will provide the committed funds and support Project Connect until this joint powers agreement is finalized, 3) formally create and appoint members to a Community Advisory Committee.

- 1.1.11. “Investment Map and Associated Implementation Sequence Plan” means the approved map of infrastructure components of Project Connect and sequence plan in which they will be designed, constructed and made operational, as may be amended by the City Council and Capital Metro Board. The Investment Map and Associated Implementation Sequence Plan are provided hereto as Attachment A.

## **SECTION 2. GENERAL TERMS**

- 2.1. Overall Objectives.** In accordance with Creation of ATP Resolutions, the objective is for ATP to “aid and act on behalf of the City and Capital Metro to accomplish a governmental purpose by implementing the Project Connect System Plan”. The Articles of Incorporation provide the purpose and objective of ATP:

“The Corporation is to be the principal entity responsible for financing, designing, building, implementing, and contracting with Capital Metro to operate and maintain assets funded by the Joint LGC in a manner independent of the City and Capital Metro. The implementation of Project Connect is comprised of the financing, design, engineering, and construction of a fixed rail and bus transit system, including customer technology, park & ride hubs, on-demand neighborhood circulators, and associated improvements to roadways, bikeways, sidewalks and street lighting. Project Connect also comprises transit-supportive anti-displacement strategies for the purpose of preventing displacement and encouraging transit-oriented affordable housing along Project Connect transit corridors. The Corporation shall implement Project Connect in accordance with the Initial Investment Map and associated Implementation Sequence Plan, as modified from time to time jointly by Capital Metro and the City.”

- 2.2. Purpose and Scope.** The purpose of this Agreement is to set forth the roles and responsibilities of all three Parties in a manner that further details ATP as the principal entity responsible for implementing Project Connect in a manner independent of the City and Capital Metro. The scope of this Agreement is in accordance with the Foundational Texts.
- 2.3. Agreement Term.** The term of this Agreement shall commence on October 29, 2021, and will terminate upon mutual consent of the Parties; provided, however, that the confidentiality provisions in the Agreement shall survive termination of this Agreement.

- 2.4. **Entire Agreement.** All oral agreements between the Parties to this Agreement relating to ATP that were made prior to the execution of this Agreement, including the applicable terms of the Agreement, have been reduced to writing and are contained in this Agreement. In accordance with the Foundational Texts, this Agreement, along with the following attachments, which are hereby incorporated, constitute the entire Joint Powers Agreement between the Parties:

**Attachment A:** The Investment Map and Associated Implementation Sequence Plan.

**Attachment B:** List of existing supplemental agreements between the Parties, as amended.

**Attachment C:** The ATP and City of Austin Interlocal Grant Agreement for Project Connect Anti-Displacement Programs.

**Attachment D:** ATP and City of Austin Interlocal Agreement to Transfer Funds to ATP.

- 2.5. **Agreement Communications.** The Parties agree that, unless otherwise designated specifically in any provision, all communication, requests, questions, or other inquiries related to this Agreement must initially be presented by and through the Executive Director of ATP, President & CEO of Capital Metro and the City Manager for the City or their designees.
- 2.6. **Amendments.** Any Party may propose an Amendment to this Agreement. Requests for alterations, additions or deletions of the terms of this Agreement will be submitted to the Executive Director of ATP for consideration and possible action by the ATP Board, President & CEO of Capital Metro for consideration and possible action by the Capital Metro Board, and to the City Manager for consideration and possible action by City Council. An Amendment to this Agreement is effective upon execution, or as otherwise mutually agreed, of a written agreement by all Parties.
- 2.7. **Supplemental Agreements.** The Parties also recognize that, in addition to this Agreement, the implementation of Project Connect will require the Parties to subsequently address a variety of matters. Therefore, supplemental agreements will be necessary to address specific interagency topics, and will be developed by the appropriate ATP, City and Capital Metro staffs, and, when necessary, adopted by the governing bodies of the Parties. These supplemental agreements must be taken by the appropriate parties and may be bilateral, such as for services or functions provided by the City or Capital Metro to ATP or to address specific project issues related to policy, property acquisition, financing, design, construction, operations or maintenance of the Project Connect system. The existing supplemental agreements between the Parties are listed in Attachment B, and Executive Leadership shall ensure that staff maintains a

publicly accessible list and records of such agreements and actions that relate to Project Connect.

Before final adoption by the governing bodies of the parties, all proposed language, except de minimis language, in supplemental agreements related to equity and anti-displacement must be submitted to the CAC with sufficient time for the CAC to review and comment, absent emergency circumstances. The proposed language must also be made for public feedback by the community at large by following, as applicable, the Boards' public input processes and in accordance with the Community Engagement and Inclusion Commitments outlined in Section 3.2.

- 2.8. Findings.** Each of the Parties find that entering into this Agreement for the purposes in this Agreement is for the benefit of the residents of the City.

## **SECTION 3 COMMITMENTS OF THE PARTIES**

### **3.1 Joint Commitments**

The Parties agree to the following commitments and responsibilities:

- The Parties recognize that Project Connect will bring light rail transit to Austin and truly deliver a citywide transit system with expanded services including, but not limited to, bus, neighborhood circulators, and commuter rail. As such, the nature and scale of the design and linear construction of Project Connect will be the first of its kind within Austin and differs significantly from private development and transportation and public works projects that are familiar to the Parties. The Parties further acknowledge that Project Connect is funded by public tax revenues, and the Parties are responsible for being good stewards of public funds. The Parties further acknowledge the commitment to building and implementing a system rooted in equity and the need to assess and proactively address displacement and equity concerns as stated in the Community Commitment Resolution and Contract with Voters resolutions. Therefore, the Parties commit to being equitable, innovative and holistic in the development of processes, procedures, reviews and regulations tailored to Project Connect to achieve effective decision-making and appropriate stewardship of public dollars. Executive Leadership shall spearhead these efforts and direct staff to develop such process, procedures, and regulations, and when necessary, bring an action for adoption by the governing bodies of the Parties.
- The Parties commit to continuing a working relationship that will provide for the resolution of issues and the completion of Project Connect, in accordance with the Foundational Texts, this Agreement, and the Implementation Sequence Plan. Executive Leadership commits to establishing a dispute resolution process for technical issues that arise during the design, construction, and implementation of the Project Connect program.

- The Parties commit to prioritizing staff resources to support the scope, schedule, and program budgets during planning, design review, construction, and inspections for Project Connect transit projects.
- The Parties commit to prioritizing resources to ensure all permit and inspection documents are complete and permit and inspection approvals are streamlined and efficient to support the Project Connect schedules and program budgets.
- The Parties commit to identifying opportunities for efficiencies, cost sharing, reimbursement method, and other agreements, as appropriate.
- The Parties commit to working together to identify and pursue future opportunities to leverage regional, state and federal funding for Project Connect.
- The Parties commit to working on the Utility Rules of Practice (“UROP”) to serve as the methodology for analyzing, reviewing, and approving potential utility conflicts for Project Connect.
- The Parties commit to negotiating and, if necessary, bringing to the governing bodies for approval, any agreements and resolutions or ordinances required to timely implement the projects in accordance with the Implementation Sequence Plan. Any changes to the Implementation Sequence Plan and Investment Map must be brought before the City Council and Capital Metro Board for approval. The Parties commit to supporting an equitable transit system to benefit the community, recognizing that decisions made within the Project Connect program may impact equitable outcomes, including but not limited to design, accessibility, rollout, and operations.
- ATP and CapMetro commit to prioritizing staff resources towards the development and implementation of transit equity goals and metrics, in coordination with the City. These goals and metrics shall be regularly analyzed and publicly reported on. Creation of goals, metrics, and methods of analyzing and reporting shall include comprehensive opportunities for collecting and responding to feedback from transit users, community members and key stakeholder groups including the advisory committees to ATP and CapMetro. These items must be developed in a timely manner in order to impact the Project Connect program of projects.

### **3.2 Community Engagement and Inclusion Commitments**

- 3.2.1 Community Engagement Process. To effectively engage with members from different neighborhoods with different ethnic and racial identities, income, resource and education levels, abilities and sexual and gender identities, outreach and engagement must be designed specifically for their needs and be sensitive to cultural differences within communities. In their delivery of the Project Connect program elements, each Party will seek to understand each community’s unique history, values, priorities, concerns, and communication methods to help learn from these community members; include their feedback and guidance in project planning, development, implementation and operations; and understand the different needs of each community to improve and increase access to essential services with a direct focus on under-resourced



communities. The process must also include a mechanism to report back to the community about how feedback was used, in accordance with section 3.2.3 and 3.2.4 of this document.

3.2.2 Priority Populations. The communities most likely to be impacted by Project Connect, also referred to as priority populations, that shall be prioritized in the community engagement process are the following:

- BIPOC communities (Black people, Indigenous people, and people of color);
- Women, trans, and non-binary individuals;
- Individuals with disabilities;
- Families of all kinds;
- Members of immigrant and/or undocumented communities;
- Members of the LGBTQIA+ community;
- Youth and students, especially those who are cost-burdened or severely cost-burdened, based on federal guidelines;
- People who are cost-burdened and severely cost-burdened, based on federal guidelines;
- Members from culturally and linguistically diverse communities;
- Renters and the unhoused;
- Senior homeowners;
- Healthcare workers and educational providers;
- Businesses and property owners along the routes;
- Individuals who were previously incarcerated;
- Individuals primarily dependent on transit for transportation needs;
- Small businesses owned and/or operated by BIPOC, women, people with disabilities, and members of LGBTQIA+ community;
- Community, neighborhood, creative, cultural, labor, and nonprofit organizations, particularly those serving communities most likely to be impacted by Project Connect;

3.2.3 Community Engagement Guiding Principles. The Parties shall utilize the following guiding principles in the planning and execution of community engagement work:

- Continue creating in-person and virtual opportunities for priority populations to engage meaningfully in, and provide feedback on, all aspects of the Project Connect program, including but not limited to project planning and proposed anti-displacement strategies.
- Provide greater weight to voices of priority populations in the analysis and use of community feedback.
- All information on how the community can engage shall be provided in English as well as the language of preference for the community sought for engagement. All communication shall be designed and written to be clear and accessible, including to those with hearing and visual impairments.
- In public engagement processes, define how participants' feedback will be included as well as how participant feedback impacts decisions.

- Opportunities shall allow time for community members to review materials, provide informed and meaningful feedback, and understand how feedback is incorporated before a decision is made.
- Results of community engagement, including recommendations and policy/program decisions, will be transparently and accountably documented.
- The Project Connect Community Advisory Committee shall be comprehensively consulted and involved in the process, including being regularly informed in advance of Project Connect-related equity and anti-displacement actions being brought to any of the Parties' policymaking bodies in a timely manner that allows for informed decision-making so that they can effectively assist staff with community engagement processes and create a space for community members to provide feedback on the program.
- All public engagement opportunities shall be highlighted on a publicly available and accessible calendar and shared through various communication methods with clear information on how community members can obtain further information.
- Project Connect program updates shall be shared with the community via digital and nondigital communications.
- Prior to any public meeting, outreach, or engagement opportunity, the responsible party shall provide advance notice for meaningful participation to individuals, businesses, and organizations that will be impacted by the project.

3.2.4. Community Engagement Reporting. The Parties shall make a substantial effort to collect disaggregated demographic data for all participants in its outreach and engagement efforts, including public meeting solicitations and public comments, and shall report that information annually and more frequently prior to decision making related to public comments via the comprehensive Community Engagement Dashboard. The information may include, but not be limited to: race, ethnicity, age, gender, gender identity and expression, housing status (renter/owner/experiencing homelessness), income level, and ZIP code. Any participant asked to provide demographic information will not be required to provide that information as a condition for participating in any outreach or engagement effort or to provide public comment.

3.2.5. Public Involvement Plans. Throughout the program, project teams may create project-specific public participation plans for each project in the Project Connect program. The plans will be flexible and adaptable to the needs of the community throughout the given project, and the plans will, at minimum:

- Identify the communities, businesses, organizations, and other stakeholders who are impacted or potentially impacted by the project.
- Design a plan that identifies specific engagement tools and techniques to meaningfully engage stakeholders, prioritizing tools that are most appropriate to the context and community of the specific stakeholders for the project. This should include both online and on-location/in-person opportunities and tools.

- Leverage and coordinate opportunities with other engagement efforts from partner agencies, institutions, and community-based organizations.
- Allow flexibility to amend strategies to aim for greater participation from priority populations if data from outreach and engagement efforts show that priority populations are not proportionally represented.
- Identify a process to “report back” to the communities, individuals, and groups that participated, including information on how their feedback was used or, if not used, why. The online Community Engagement Dashboard shall be used to help further this direction.
- Address accessibility, including language accessibility through translation and interpretation services, diversity of in-person locations and venues, etc., and the ability of people to attend. Provide incentives and other tools to facilitate participation (e.g., food, childcare, variety of meeting times, etc.). The public participation plans shall also leverage resources already mobilized specifically for Project Connect, such as the Project Connect Community Advisory Committee, ATP Board Technical Advisory Committees, the Project Connect Advisory Network (PCAN), and Orange and Blue Line Working Groups.
- The public involvement plans shall be reviewed by the Project Connect Community Advisory Committee and the ATP Board Technical Advisory Committees.

3.2.6. Communications. The Parties shall develop communication tools and strategies to reach racially, ethnically, and geographically diverse communities regarding the Project Connect program. Communications tools will include methods designed to reach marginalized communities and people who do not have access to the internet or other forms of digital communications. These may include, but are not limited to, door-to-door canvassing, telephone canvassing, direct mail, and contracting with community-based organizations with experience serving marginalized and under-resourced communities.

ATP and Capital Metro will also utilize social media and the Project Connect website (ProjectConnect.com) as a communication tool to provide information to the community about the transit elements of the program and allow people to subscribe and receive pre-construction, construction, and operations notifications and other appropriate updates on a regular basis or as they are posted. ATP shall provide equal opportunity for such subscriptions and notifications to individuals who do not have access to the internet.

3.2.7 Community Advisory Committee. The Community Advisory Committee (CAC) was convened to assist ATP, City Council, and the Capital Metro Board in engaging the community and advising on anti-displacement and equity matters related to Project Connect. Additionally, the CAC will assist the community and the City Council in the creation and evaluation of neighborhood-level anti-displacement strategies and priorities and the identification of Key Performance Indicators related to equity and displacement. The CAC will provide input and recommendations on program equity along with the ATP Board Technical Advisory Committees. Staff liaisons will notify CAC members of upcoming Technical Advisory Committee meetings, including providing an annual calendar of

meetings and agendas, as they are prepared. The CAC may appoint delegates to attend TAC meetings on behalf of the CAC.

The recommendations made by the CAC related to displacement mitigation measures or equity issues that impact historically underserved populations must be considered at a public meeting of ATP, the City, or Capital Metro, as appropriate, in accordance with the recommendations made.

The CAC shall be composed of an odd number, at least eleven members, plus an ex-officio member, appointed by the City Council and Capital Metro Board. Five members will be appointed from the following five existing advisory groups (one member each):

- City of Austin Urban Transportation Commission
- City of Austin Mayor's Committee for People with Disabilities
- City of Austin Community Development Commission
- Capital Metro's Customer Satisfaction Advisory Committee
- Capital Metro's Access Advisory Committee

The City Council and Capital Metro Board may appoint additional members to the Committee.

The City and Capital Metro shall initiate a widely publicized nomination process for the CAC Community Members in a manner that is accessible and easy to navigate, and that promotes a large, diverse, and qualified applicant pool, reducing barriers to the application process and committee membership, including but not limited to language access, digital access, or providing information to interested community members. This nomination process shall be articulated on a public facing web page and shall allow for community engagement. To the fullest extent possible, the City shall work with community organizations/groups to ensure that historically marginalized communities most impacted by mass-transit are able to engage with the CAC selection process.

Capital Metro and the City shall form a Nominating Committee for the selection of members to the CAC. A qualified member of the community shall submit an application to the Nominating Committee. The Nominating Committee will consist of the Chairs, or a Committee Member designee of the Chair, of the City Council Housing and Planning Committee, City Council Mobility Committee, City Council Audit and Finance Committee, Capital Metro Finance, Audit and Administration Committee, and Capital Metro Operations, Planning and Safety Committee. After review of the submitted applications, the Nominating Committee shall recommend a slate of at least six applicants based on their qualifications. The City Council and the Capital Metro Board of Directors shall, upon their joint approval of the slate, jointly appoint the CAC Members as nominated by the Nominating Committee.

The slate of candidates selected by the Nominating Committee shall provide for geographic representation as it relates to the proposed transit plans as well as a diversity of viewpoints, socio-economic status, and lived experience. Members shall be selected based on their experience as users of and/or directly impacted by public transportation and connection to community, neighborhood, and/or labor organizations. The Advisory Committee should be representative of Austin's diverse community with nominations for membership inclusive of women, families with small children, Black people, indigenous people, people of color, people from immigrant and/or undocumented populations, members of the LGBTQIA+ community, students, and workers' rights advocates, among others. A variety of interests and experience should also be considered, including community organizing, household affordability, environment and conservation, green planning and design, housing and transportation, urban planning and architecture, health and human services, accessibility, small, local and minority owned business, mobility justice, and/or other relevant topics as they relate to transit.

The CAC bylaws must be approved by the ATP Board, the City Council and Capital Metro Board. The CAC will be supported by ATP and the City staff liaisons. Staff liaisons will ensure the committee complies with the Texas Open Meetings Act, and other rules and statutory requirements. The Parties will provide staff support to help the committee prepare agendas, post meeting notices, schedule briefings, keep the committee apprised of all items being considered by the ATP Board and Technical Advisory Committees, maintain minutes, and keep attendance records for committee members. The CAC meetings shall be recorded and held in locations publicly accessible or virtually, as determined by the CAC. The City and Capital Metro shall send a courtesy copy of their CAC appointments to the ATP staff liaison.

## **SECTION 4. ROLES AND RESPONSIBILITIES OF AUSTIN TRANSIT PARTNERSHIP**

**4.1 Authority of ATP.** ATP shall have all powers allowed by law and as defined in its Articles of Incorporation including but not limited to:

- Contract with persons, governmental entities, and with for-profit and non-profit entities, and employ individuals, for the purposes of implementing Project Connect, conducting the administrative operations of ATP, and to enter into interlocal agreements with Capital Metro for the operation and maintenance of assets constructed by the Corporation.
- Acquire and hold title to real and personal property and interests in real and personal property, and sell real and personal property;
- Procure professional and other services necessary for the design, construction, financing, and permitting of Project Connect;
- Accept funds and property appropriated by the City and Capital Metro and by other entities;
- Apply for grants of funds, services, and things of value and to accept awards of such grants;

- Accept donations of funds, services and things of value;
- Issue bonds, notes, and other debt obligations as necessary for the accomplishment of the implementation of Project Connect as stated above; and
- Engage in other lawful activities to accomplish the implementation of Project Connect as stated above.

## **4.2 Governance of ATP.**

4.2.1 ATP Board. The management of the affairs of the ATP shall be vested in the ATP Board in accordance with the Articles of Incorporation which establishes the membership, terms and appointment process for the ATP Board.

4.2.1.1 Budget. In accordance with the Initial Agreement, the ATP Board shall develop an annual budget for each fiscal year that must be approved by the ATP Board annually.

4.2.1.2 Internal Auditor. In accordance with the Initial Agreement, the ATP Board shall engage an internal auditor to perform advanced audit and finance functions.

4.2.1.3 Financial Reports. In accordance with the Bylaws, the ATP Board shall cause to be maintained a proper and complete system of records and accounts of all transactions, business, and affairs of the corporation. Within a reasonable time after the end of each fiscal year, the ATP Board shall cause the preparation of a financial statement which shall be audited by an independent certified public accountant or firm of independent certified public accountants retained by the ATP Board for such purpose. The financial statement audit must follow generally accepted accounting principles for governments and must be submitted to the City of Austin's Controller's Office no later than January 31 each year for inclusion in the City's Annual Comprehensive Financial Report. For the fiscal year ending September 30, 2021, ATP will make every effort to meet the January 31 deadline, but will submit its audited financial statements no later than March 1, 2022.

4.2.1.4 Advisory Committees. The ATP Board may establish technical advisory committees and select members via a widely publicized and transparent application process. Each committee will have a board liaison and assigned ATP staff. ATP will work with the City and Capital Metro to provide the agenda and meeting information prior to any ATP technical advisory committee meeting to ensure their representation is included, depending on the agenda items. Membership for the committees should be shared publicly. Board liaisons may report on committee feedback at ATP Board meetings. The ATP Board may create additional technical advisory committees as the needs of the Program evolve.

4.2.2 Executive Director. In accordance with the Bylaws, the ATP Board shall appoint an Executive Director. The Executive Director of ATP shall be the chief executive

officer of ATP and shall in general supervise and control all of the business and affairs of ATP.

4.2.3 Joint Annual Meeting. The Executive Director shall organize and provide for a Joint Annual Meeting of the Parties held at least annually to ensure continued support and engagement of all Parties for implementation of Project Connect. A Party may request additional joint meetings and those additional meetings may occur on concurrence of all three parties. The Executive Director shall present on ATP's progress in implementing Project Connect. The annual management report shall include a presentation on the project statuses, financial status of ATP, implementation of and compliance with ATP Workforce and Equity policies, and progress towards implementation of Project Connect. The report shall include any anticipated adjustments to the Implementation Sequence Plan and the scope of any projects. The Parties shall discuss and consider amendments to the JPA, as necessary, which may be brought by any Party.

**4.3 Commitments of ATP.** ATP recognizes equity is a core value of Project Connect. As Project Connect continues to develop, ATP's internal policies will grow to reflect this value across every stage of project development and delivery. The Community Commitment Resolution and Contract with Voters Resolutions requires ATP to adopt policies that will meet all the commitments made by City Council and the Capital Metro Board to the voters. The ATP Board has taken action to either meet these commitments or ensure they will be met. ATP agrees to effectuate these policies to ensure that the vision of Project Connect as an equitable transit system is realized. ATP commits to implementing the following policies ("Workforce and Equity Policies"):

- Developing, adopting and implementing a business impact mitigation strategy that includes approaches for establishing robust business outreach and communications, supporting business access and operations, and creating effective project scheduling and sequencing that minimizes the length of construction impacts. To further clarify the community engagement component of the business impact mitigation strategy, ATP commits that the business impact mitigation Strategy shall be reviewed by the CAC, the TACs, and available for public input prior to adoption. ATP commits to reaching out to organizations and businesses located along the Project Connect corridors to seek input and guidance on the mitigation strategy.
- Developing and implementing a Disadvantaged Business Enterprise Program to meet and comply with federal regulations to ensure that maximum opportunities are available to women, minority, and small businesses, including veteran-owned businesses, to participate.
- Developing and implementing a policy that ensures worker protections and workforce development through participation in the Better Builder Program® or a similar program which ensures compliance with all applicable federal, state, and local safety laws and includes :

- Completion of OSHA 10-hour training for workers;
  - Completion of OSHA 30-hour training for supervisors;
  - Receipt of personal protective equipment free-of-charge for workers in accordance with federal laws and regulations;
  - Coverage by workers' compensation insurance; and,
  - On-site monitoring independent of construction companies and their affiliates. The ATP Board must make a determination that the on-site monitors are: 1) independent of construction companies or their affiliates; and 2) not fiscally sponsored by construction companies or industry trade groups, and 3) accredited by a community organization that represents the interest of workers
- Developing and implementing a construction careers program which meets the requirements of federal law and regulations and includes City of Austin hiring goals to hire workers from apprenticeship and craft training programs, and which promotes the hiring of local workers so long as possible within the existing workforce.
  - Developing and implementing a policy that ensures a living wage as established by the City of Austin or prevailing wage under the Davis-Bacon Act for all workers under the contract, ensure access to health care and paid sick leave to the extent possible. To further clarify the living wage component of the program, workers whose prevailing wage under the Davis Bacon Act is above a living wage as established by the City shall be required to be paid at least the prevailing wage under the Davis Bacon Act, as required by law. Workers whose prevailing wage under the Davis Bacon Act is below a living wage as established by the City shall be required to be paid at least the living wage as established by the City. Therefore, contracts will ensure a living wage or a prevailing wage under Davis Bacon, depending on the classification of worker. All workers shall be paid by check. In all instances the JPA terms shall comply with state and federal wage and hour laws.

**4.4 Responsibilities of ATP.** As stated herein, it is the responsibility of ATP to implement Project Connect. ATP shall work with Capital Metro (the region's designated grant recipient) and FTA to meet the requirements for New Starts Capital Investment Grants and other grant opportunities. ATP shall work with the City and Capital Metro to comply with applicable City and Capital Metro policies and regulations. ATP shall receive funding from: (i) the City and Capital Metro, (ii) federal or other grants, and (iii) other funding sources as necessary.

**4.4.1 Financial Modeling and Planning.** The Financial Model shall not be updated or changed until the light rail project components reach 30% design. Thereafter, ATP shall update and review the cash flow model annually in concert with the



Implementation Sequence Plan, and as otherwise needed to establish the financial status of ATP in implementing Project Connect.

The review should determine if the Implementation Sequence Plan requires adjustment. ATP shall present its findings and recommended actions at the Joint Annual Meeting but may also request a special-called meeting of the Parties for changes to the Implementation Sequence Plan as needed.

Annually, the ATP Executive Director shall review and make recommendations to the City and Capital Metro on options for revising the cashflow allocation plan for transit-supportive anti-displacement dollars in order to make funds available for transit-supportive anti-displacement strategies earlier in each of the three \$100-million allotments, while maintaining the transit projects' required cashflow and schedules.

4.4.2 Funding Allocations and Procedures for Use of Funds for Transit-Supportive Anti-Displacement Strategies Related to the Implementation of Project Connect. ATP shall follow the procedures in the ATP and City of Austin Interlocal Grant Agreement for Project Connect Anti-Displacement Programs (approved by City Council on March 25, 2021 [Item No. 35], and ATP Board on March 17, 2021 [Resolution No. ATP-2021-012; Action Item No. 3]), provided hereto as Attachment C, which requires ATP to reimburse up to \$300 million for the City to implement transit-supportive anti-displacement strategies.

4.4.3 Utility and Right-of-Way Agreements. Project Connect transit projects will largely be delivered within existing City of Austin right-of-way or Capital Metro right-of-way.

- ATP shall coordinate with the City and Capital Metro to align coordination between the Parties and both public and private utilities.
- ATP shall work with the City to develop a Utilities Rules of Practice, subject to final approval by the City.
- ATP shall coordinate with the City and Capital Metro for temporary and permanent use of right-of-way, with adoption by City Council for permanent uses.

4.4.4 Design Review and Permitting Standards. In accordance with Sections 3 and 5 of this Agreement, ATP shall provide and prioritize resources to develop and provide for design review and permitting standards that support the scope, schedule, and program budgets of Project Connect.

4.4.5 Records. ATP shall maintain records documenting its implementation of and compliance with the policies listed in Section 4.3, and shall make such documents

available to the City and Capital Metro at ATP's offices, at all reasonable times and as often as the City or Capital Metro may deem necessary during the Agreement.

4.4.6 Funding Allocation for Project Connect Office. ATP shall reimburse the City for staffing a Project Connect Office in accordance with the terms and conditions of an interlocal agreement between the ATP and City of Austin.

4.4.7 Notifications. ATP shall notify the City Manager or City Manager's designee of substantive changes to the above Workforce and Equity Policies.

## **SECTION 5. ROLES AND RESPONSIBILITIES OF THE CITY OF AUSTIN AND CAPITAL METRO**

5.1. **Joint Responsibilities of City Council and the Capital Metro Board.** The Capital Metro Board and City Council have the following duties:

- supporting ATP in the implementation of Project Connect to ensure ATP achieves the governmental purpose for which it was jointly created;
- appointing ATP Board members in accordance with the nomination and appointment process provided for in the Articles of Incorporation;
- reviewing and adopting proposed amendments to the Articles of Incorporation and Bylaws as put forth by ATP; and
- modifying the Implementation Sequence Plan by joint action of both City Council and the Capital Metro Board as requested by ATP.

5.2. **City of Austin Roles and Responsibilities.**

5.2.1. **City of Austin Officials.** The principal City officials and representatives:

5.2.1.1. **City Council.** In addition to other responsibilities as provided in this Agreement, City Council approval is required for certain supplemental interlocal agreements, and for reviewing and approving code variances and waivers beneficial to support to support the unique nature of Project Connect design and construction.

5.2.1.2. **City Manager.** In addition to other responsibilities as provided in this Agreement, the City Manager shall ensure that a "City of Austin Project Connect Office" (PCO) is established for the duration of the implementation of Project Connect to the extent funding is provided by ATP and/or approved by Council, and that adequate staff resources are available to support the implementation of Project Connect. The City Manager shall direct staff to:

- interpret and apply regulations applicable to Project Connect in a manner that best facilitates the equitable design and construction

of Project Connect when a regulation may be reasonably interpreted in different ways; and

- support ATP and Capital Metro in achieving ATP's goals and schedules by reviewing all submitted plans and documents in a manner and timeframe necessary and reasonable in order to adhere to the project sequence plan in the Contract with the Voters and associated schedule and committing to combine its public and technical review processes with ATP's wherever possible, including making all plans and documents publicly available and allowing for community engagement in accordance with standard City procedures, including making all plans and documents publicly available and allowing for community engagement in accordance with City procedures; and
- review the Fee Schedule to recommend to City Council any updates that are required to fully and accurately reflect permitting and review costs; and
- review the City Code and provide recommendations to the City Council for approval, identifying any variances or waivers of City Code, regulations, or processes that will facilitate the unique nature of Project Connect design and construction, while still ensuring that Project Connect is designed and constructed in an equitable manner and in accordance with commonly accepted engineering and construction practices and in a manner that is cognizant of other City policies; and
- Ensure utilities coordination and services are prioritized to facilitate program delivery and avoid construction delays.

5.2.1.3. **Project Connect Office (PCO).** Provided funding is available, the City, through its Project Connect Office, shall provide ATP with professional services to assist with overall coordination of input from relevant City departments and for the design review, permitting, and inspection of Project Connect. ATP shall pay the City for the services provided on a cost reimbursement basis up to the amount included in the then-current budget, which shall align with the Interlocal Agreement approved by the City Council and ATP Board. The payments for such services shall be made in accordance with the timelines set forth in Chapter 2251 of the Texas Government Code (the "Prompt Payment Act") and shall not be unreasonably withheld. As part of the annual budget process for the Project Connect Office, the PCO staff will submit its proposed annual budget to ATP annually by April 1<sup>st</sup>. The City and ATP staff shall work to reach agreement by May 31<sup>st</sup> on a proposed budget to be submitted to the City Council and ATP Board for approval. The proposed budget shall be presented to City Council and the ATP Board for approval through each party's budget adoption process.

5.2.2. **City of Austin Responsibilities.** In accordance with the Foundational Texts, and in addition to other provisions of this Agreement, the City shall:

- transfer Project Connect tax revenue in accordance with the Community Contract with Voters and the ATP and City of Austin Interlocal Agreement to Transfer Funds to ATP, (approved by ATP Board on June 16, 2021 [Resolution No. ATP-2021-020; Action Item No. 5], and City Council on July 29, 2021 [Item 43]), attached and incorporated as Attachment D.
- utilize the \$300 million dedicated to transit-supportive anti-displacement strategies to 1) acquire real property for transit-supportive development that will preserve and/or increase the amount of affordable housing proximate to transit corridors, 2) implement financing tools for funding anti-displacement strategies related to Project Connect, and 3) implement any other anti-displacement programs related to the Project Connect, which may include, but are not limited to:
  - creating with the community, neighborhood-level prevention and mitigation strategies based on the Equity Assessment Tool, and
  - creating a publicly available key performance indicators dashboard to track progress on the strategies identified for implementation.
- Seek reimbursement from ATP in accordance with the Interlocal Grant Agreement, Attachment C and subsection 5.2.1.3 of this agreement.

5.2.3. **Capital Metro Responsibilities.** In accordance with the Foundational Texts, and in addition to other provisions of this Agreement, Capital Metro shall:

- Dedicate the balance of its Capital Expansion to the implementation of Project Connect as provided in the Community Commitment Resolution.
- Commit all estimated revenues identified in the Estimated Long-Term Contribution as provided for in the Community Commitment Resolution.
- Capital Metro (the region's designated grant recipient) shall work with ATP and FTA to meet the requirements for New Starts Capital Investment Grants and other grant opportunities and may serve as FTA Project Sponsor, in partnership with ATP, and if applicable transfer funds received from any grants received through the Capital Investment Grants Program.
- Complete the federally required National Environmental Policy Act ("NEPA" ) Preliminary Engineering process to obtain an FTA Record of Decision for the approved Locally Preferred Alternatives approved for the Orange, Blue and Gold Lines and MetroRapid.
- Complete the MetroRapid and MetroRail program projects and obtain reimbursement from ATP.
- Enter in interlocal agreements with ATP to transfer funding to operate and maintain Project Connect assets.

- Develop operational readiness program for each project to contract, hire, and train staff and complete other requirements to prepare for revenue service operation.
- Direct, or via contract support, perform safety inspections and complete any FTA safety certification or other requirements.
- Continue to operate transit service and shall provide information to the community and customers about anticipated service changes and service change processes so they may be engaged and informed.

## **SECTION 6. TERMINATION**

- 6.1 **Automatic Termination.** This Agreement will terminate upon the earlier to occur of: 1) execution of a written termination by all Parties; 2) the dissolution of the ATP; or 3) ten years, and shall automatically renew for additional ten-year terms, unless terminated by the Parties. If there is a superseding agreement put in place, all existing parties shall produce a timeline by which the superseding agreement shall be executed, which allows for community engagement.
- 6.2 **Other Reasons for Termination.** Any Party to this Agreement may terminate this Agreement if such Party is unable to comply with changes required by federal or state laws or regulations that relate directly to the purpose of this Agreement, provided however that the Party notifies the other Parties and provides at least a 30-day cure period prior to proceeding to a notice of termination.
- 6.3 **Notice of Termination.** Any Party to this Agreement may terminate this Agreement for the reasons described in this section by providing the other Party with sixty (60) days' written notice as described in Section 7.1, below.

## **SECTION 7. DEFAULT AND REMEDIES**

### **7.1 Events of Default.**

7.1.1 A Party shall not be in breach or default under the terms of this Agreement for any act, omission, or failure to perform hereunder except as expressly provided in this Section.

7.1.2 Prior to declaring an Event of Default (as defined in Section 7.1.3 below) against another Party hereunder a Party must first deliver written notice to such other Party's executive officer (as described in Section 2.5) and general counsel, specifying the events and circumstances regarding such alleged breach and specifying any action which the notifying party desires the receiving Party to take to remedy such alleged breach ("Default Advisory Notice"). The receiving Party shall work in good faith with the notifying Party to resolve the matter within a reasonable amount of time but in any event no less than sixty (60) days.

7.1.3 If after delivering a Default Advisory Notice, the alleged breach is not resolved to the reasonable satisfaction of the notifying Party within sixty (60) days, then the notifying Party may declare an Event of Default against the receiving Party by delivering written notice thereof to the defaulting Party (a "Default Notice"); provided, however, that no Party shall be authorized to deliver a Default Notice unless the governing body of the notifying Party has taken official action declaring the defaulting Party to be in material breach under the terms of this Agreement in an open meeting (an "Event of Default") and directing staff to deliver such Default Notice to the defaulting Party. After receiving a Default Notice, the defaulting Party shall have an additional sixty (60) days to cure such Event of Default or such additional amount time as may be reasonably necessary to cure such Event of Default, but only so long as such defaulting Party is diligently seeking to cure such Event of Default the ("Cure Period").

7.2 **Limitation on Remedies.** A Party shall not be entitled to pursue any remedies (whether at law or in equity) against any other Party hereunder except with respect to an Event of Default declared in accordance with Section 7.1, and then only if the defaulting Party has failed to reasonably cure such default prior to the expiration of the Cure Period therefor. The Parties' remedies for an Event of Default shall be limited to seeking declaratory or injunctive relief against the defaulting party. No Party shall be justified or otherwise permitted, by virtue of an Event of Default of another Party, to terminate this Agreement or any Supplemental Agreement, withhold performance, or suspend performance of its obligations or responsibilities hereunder or under any Supplemental Agreement, nor shall any Party be entitled to seek punitive, actual or consequential damages.

7.3 **Effect on Other Agreements.** This Section 7 shall apply only to this Agreement, and shall not apply to any Supplemental Agreement entered into by any of the Parties prior to or following the execution and delivery of this Agreement.

## **SECTION 8. MISCELLANEOUS PROVISIONS**

### **8.1 Notices.**

8.1.1 **Requirements.** Except as otherwise specifically noted herein, any notice required or permitted to be given under this Agreement by one Party the others must be in writing and will be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the Party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address hereinafter specified.

8.1.2 **ATP Address.** The address of ATP for all purposes under this Agreement and for all notices:

Casey Burack (or her successor)

General Counsel  
700 Lavaca Street  
Fourteenth Floor  
Austin, TX 78701

- 8.1.3 **Capital Metro Address.** The address of Capital Metro for all purposes under this Agreement and for all notices:

Ashley Glotzer (or her successor)  
Chief Counsel  
2910 E. 5th Street  
Austin, TX 78702

- 8.1.4 **City of Austin Address.** The address of City of Austin for all purposes under this Agreement and for all notices is the following:

Deborah Thomas (or her successor)  
Interim City Attorney  
301 W. 2nd Street  
Fourth Floor  
Austin, TX 78701

- 8.1.5. **Change of Address.** Each Party may change the address for notice to it by giving written notice of the change. Any change of address by a Party, including a change in the Party's authorized representative, must be reported to the other Parties within twenty (20) days of the change.

- 8.2 **Dispute Resolution/Mediation.** Initial disputes and unresolved questions or issues of Parties must initially be presented by submission in writing in accordance with the Notice provisions above. If satisfactory resolution cannot be achieved between the representatives of the Parties within a reasonable time, and should mediation be acceptable to all Parties in resolving a dispute arising under this Agreement, the Parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in the TEX. CIV. PRAC. AND REM. CODE, Section 154.023. Unless all Parties (or if the dispute is between two Parties, both Parties) are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in TEX. CIV. PRAC. AND REM. CODE, Section 154.073, unless the involved Parties agree, in writing, to waive the confidentiality.

- 8.3 **Law and Venue.** This Agreement is governed by the laws of the State of Texas and all obligations under this agreement are performable in Travis County, Texas.

- 8.4 **Force Majeure.** No Party will be financially liable to the other Party for delays or failures to perform under the Agreement where such failure is caused by force majeure (i.e. those causes generally recognized under Texas law as constituting unforeseeable and impossible conditions). Such delays or failures to perform will extend the period of performance until these exigencies have been removed or until the Parties agree in writing to either amend or terminate the Agreement. The Party seeking to avail itself of this clause shall endeavor to notify the other Party or Parties within five (5) business days of the occurrence of the force majeure event , unless notification is impractical under the circumstances, in which case notification shall be done in as timely a manner as possible.
- 8.5 **Liability.** To the extent allowed by Texas law, the Parties agree that each Party is responsible for its own proportionate share of any liability for the negligent or grossly 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 or gross negligence, tort or other action, arising out of or in connection with this Agreement, even if advised of the possibility thereof.
- 8.6 **Notice of Claim.** Within five (5) business days of receiving notice of any claim, demand, suit, or any action made or brought against any Party, arising under this Agreement, the Party will give written notice to the other Party of such claim, demand, suit or other action. Said notice will include: (a) the name of the claimant; (b) the basis of the claim, action or proceeding; (c) the court, if any, where such claim, action, or proceeding was instituted; and (d) the name or names of any person or persons against whom such claim is being made.
- 8.7 **Third Party Beneficiary.** This Agreement sets out the agreements and obligations between the Parties only, and no provision in this Agreement creates any rights in any person or entity that is not a Party to this Agreement. The rights to performance in this Agreement are only enforceable by ATP, the City and Capital Metro.
- 8.8 **Legal Authority.** The person or persons signing this Agreement on behalf of each Party warrant that he, she or they have been duly authorized by their respective entities to sign this Agreement on behalf of the entity and to bind the entity validly and legally to all terms, performances, and provisions in this Agreement. Each Party warrants that the Party possesses the legal authority to enter into this Agreement and to perform the services that Party has obligated itself to perform under this Agreement.
- 8.9 **Invalid Provision.** Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not



impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

8.10 **Public Information Act.** The Parties are subject to the Public Information Act and any information shared between the Parties may be subject to disclosure pursuant to Texas Government Code Chapter 552, as amended.

8.11 **Confidential Information.** Notwithstanding Section 8.10 (Public Information Act) above, the Parties may be granted access to certain of the other Party's (or Parties') or licensor's confidential information or data (including inventions, employee information, confidential know-how, confidential business information, and other information which the Parties or their licensors consider confidential) ("Confidential Information") to provide Project Connect. Confidential Information will be transmitted in writing and clearly marked "Confidential," "Proprietary," or similarly, or if disclosed orally will be reduced to writing by disclosing Party, clearly marked "Confidential," "Proprietary," or similarly, and transmitted to the receiving Party within thirty (30) days after oral disclosure. The Parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing Party and its licensors, and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the non-disclosing Party and its licensors.

The Parties (including their employees, Subcontractors, agents, or representatives) agree to maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the disclosing Party, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of a court or other governmental authority (including a Texas Attorney General Opinion) with proper jurisdiction. In all cases, the Parties agree to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective order. The Parties agree to use protective measures no less stringent than the Parties use in their own business to protect their own most valuable information. In all circumstances, the Parties' protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

8.12 **Order of Precedence.** To the extent there is a conflict between the terms of this Agreement and any Attachment, the following shall be the order of precedence for interpreting a conflict in terms: 1) this Agreement and any subsequent amendments to this Agreement; 2) any Attachments to this Agreement, as amended.

8.13 **Appropriation.** Other than as provided in Attachment C and Attachment D, all funding commitments under this Agreement are subject to annual appropriation by the City, Capital Metro, and ATP.

8.14 **Recitals.** The recitals contained in the preamble are not made a part of this Agreement.

In witness whereof, the Parties have caused duly authorized representatives to execute this Agreement on the dates set forth below to be effective as of the Effective Date (as defined above).

**AUSTIN TRANSIT PARTNERSHIP:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Casey Burack, General Counsel

**CAPITAL METRO:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Ashley Glotzer, Chief Counsel

**CITY OF AUSTIN:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Deborah Thomas, Acting City Attorney

**ATTACHMENTS:**

**Attachment A:** The Investment Map and Associated Implementation Sequence Plan.

**Attachment B:** List of existing supplemental agreements between the Parties, as amended.

**Attachment C:** The ATP and City of Austin Interlocal Grant Agreement for Project Connect Anti-Displacement Programs.

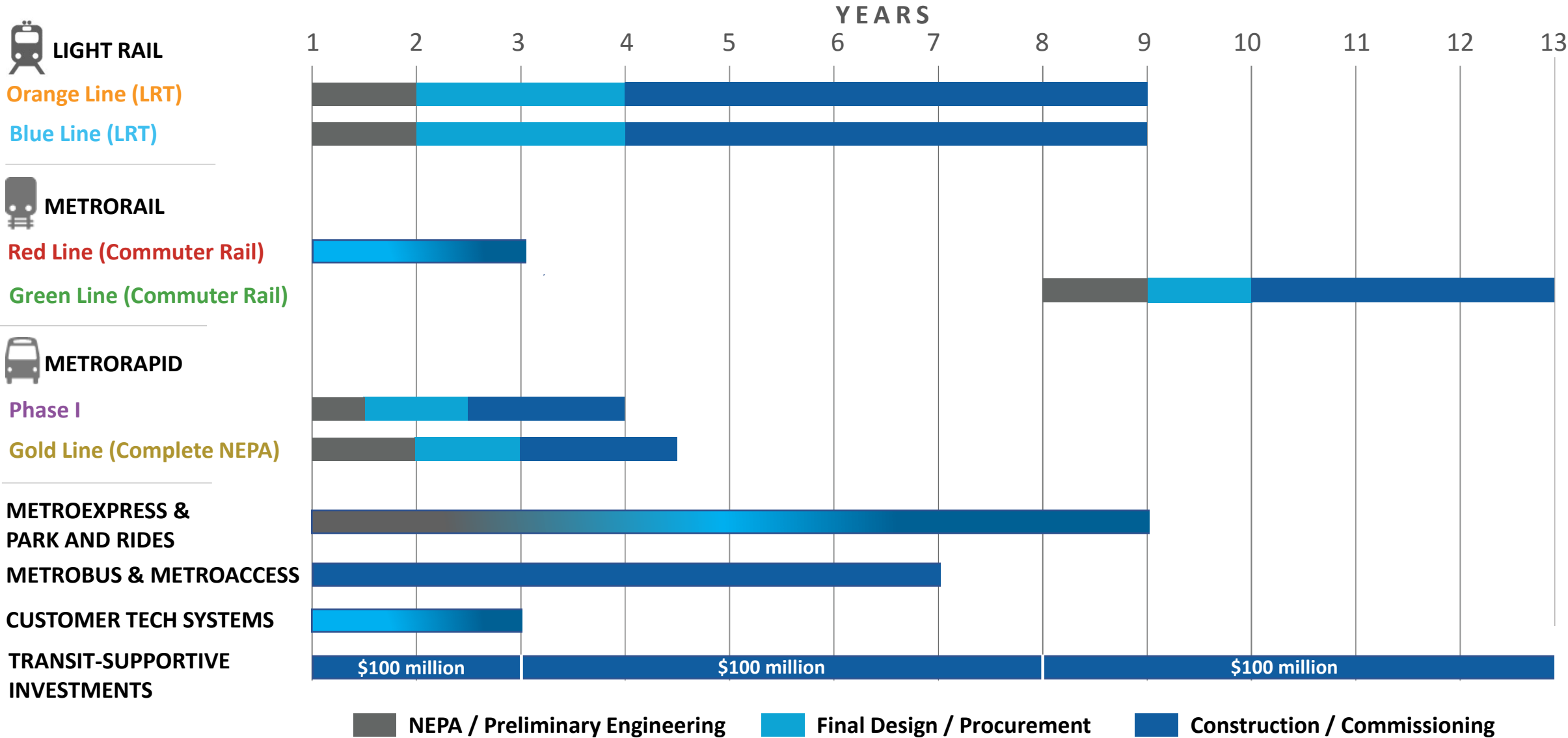
**Attachment D:** ATP and City of Austin Interlocal Agreement to Transfer Funds to ATP.

**Attachment A:** The Investment Map and Associated Implementation  
Sequence Plan.

Map represents 15-percent design of program.

# Initial Investment Sequence Plan

Years based on federal NEPA and funding approvals



**Attachment B:** List of existing supplemental agreements between the Parties, as amended.

**List of existing supplemental agreements between the Parties, as amended.**

<b>Date</b>	<b>Purpose</b>	<b>Parties</b>
August 2020	Interlocal agreement committing to the creation of the ATP local government corporation.	Capital Metro & City of Austin
December 2020	Joint resolutions creating the ATP, approving and adopting the corporations Articles of Incorporation and Bylaws, and appointing the initial Board (Articles of Incorporation were subsequently filed with the Attorney General's Office and Bylaws adopted by the ATP Board).	Capital Metro & City of Austin
December 2020	Amendment to the August 2020 Interlocal agreement related to the Project Connect Community Advisory Committee.	Capital Metro & City of Austin
January 2021	Interlocal agreement for Capital Metro to provide certain administrative and corporate support functions to ATP, and for Capital Metro to implement certain projects that are part of the Project Connect program.	Capital Metro & ATP
March 2021	Interlocal agreement to transfer funding from ATP to the City of Austin for the City of Austin's support in the implementation of the Project Connect transit program.	ATP & City of Austin
March 2021	Interlocal agreement to transfer funding from ATP to the City of Austin for transit-supportive anti-displacement programs, as required by the Contract with Voters.	ATP & City of Austin
July 2021	Interlocal agreement establishing procedures to transfer Proposition A revenue from the City to ATP to implement Project Connect, as required by the Contract with Voters	City of Austin & ATP



**Attachment C: The ATP and City of Austin Interlocal Grant Agreement  
for Project Connect Anti-Displacement Programs.**

**INTERLOCAL GRANT AGREEMENT BETWEEN**  
**THE CITY OF AUSTIN**  
**AND**  
**AUSTIN TRANSIT PARTNERSHIP**  
**RELATED TO PROJECT CONNECT ANTI-DISPLACEMENT PROGRAM**  
**EXPENDITURES**

This interlocal grant agreement (the “**Grant Agreement**”), dated and effective upon the date the Grant Agreement is signed by both Parties, is entered into by and between the Austin Transit Partnership (“**Grantor**” or “**ATP**”), a joint local government corporation under Chapter 431 of the Texas Transportation Code, and the City of Austin (“**Grantee**” or the “**City**”), a home-rule municipality incorporated by the State of Texas, each a “**Party**” and collectively referred to herein as the “**Parties**.”

**RECITALS**

WHEREAS, the City Council adopted Resolution No. 20200423-038, expressing its support of an equitable transit system to benefit the whole community, and calling for data-driven policies and funding to “prevent transportation investment-related displacement and ensure people of different incomes can benefit from transportation investments”; and

WHEREAS, on November 3, 2020, voters approved a ballot measure to dedicate funding to ATP for the implementation of Project Connect, a high-capacity transit system and investment in transit-supportive anti-displacement strategies; and

WHEREAS, pursuant to the Resolution No. 20200812-015, known as the City’s “Contract with the Voters,” ATP is to provide a total of \$300,000,000 of the Project Connect Tax Revenue (“**Project Connect Anti-Displacement Funding**”) in accordance with the Implementation Sequence Plan (attached as Exhibit A) to the City through a grant agreement; and

WHEREAS, the City subsequently requested that ATP accelerate distribution of the first \$100,000,000 of the Project Connect Anti-Displacement Funding during the first three years of the Implementation Sequence Plan; and

WHEREAS, the “Contract with the Voters” provides that the City must utilize the \$300,000,000 to (1) acquire real property for transit supportive development that will preserve and/or increase the amount of affordable housing proximate to transit corridors, or (2) financing tools and other anti-displacement strategies related to the implementation of Project Connect (“**Project Connect Anti-Displacement Programs**”); and

WHEREAS, the “Contract with the Voters” and Resolution No. 20210204-062 require the City to develop a “community-informed partnership and process” for the use of these funds; and

WHEREAS, the “Contract with the Voters” provides that the Neighborhood Housing and Community Development, with assistance from other departments such as the Equity Office and Sustainability Office, shall develop proposals based on the community-informed process for approval by City Council; and

WHEREAS, Resolution No. 20200903-044 expresses the intent of City Council to work with impacted neighborhoods in the creation of neighborhood-level anti-displacement strategies and priorities and the identification of Key Performance Indicators related to equity and displacement; and

WHEREAS, the City and the Capital Metropolitan Transportation Authority entered into an interlocal agreement, which provides for the creation of a Community Advisory Committee to assist the community and the City Council in the creation and evaluation of neighborhood-level anti-displacement strategies and priorities and the identification of Key Performance Indicators related to equity and displacement; and

WHEREAS, the City has developed, implemented and administered anti-displacement programs of a similar nature and has the staff, expertise, and corporate experience to execute the Project Connect Anti-Displacement Programs in furtherance of the Project Connect System Plan as ATP focuses on other aspects of Project Connect; and

WHEREAS, in order to meet the schedule laid out in the Implementation Sequence Plan, ATP and the City desire to enter into this Grant Agreement; and

WHEREAS, the City and ATP have authority to enter this interlocal grant agreement through the Texas Constitution, Article 3, Section 64, Texas Transportation Code Chapter 431 (“The Texas Transportation Corporation Act”), and Texas Government Code Chapter 791 (“The Interlocal Cooperation Act”);

NOW, THEREFORE, the Parties agree as follows:

## **GRANT AGREEMENT**

**1. Purpose.** The purpose of the Grant Agreement is to provide funding for the City to administer and implement the Project Connect Anti-Displacement Programs as described in the Contract with the Voters. This program supports the “Economic Opportunity and Affordability,” “Mobility,” and “Government that Works for All” objectives in the City’s Strategic Directions 2023. This Grant Agreement is entered pursuant to the Texas Constitution, Article 3, Section 64; Texas Transportation Code Chapter 431 (“The Texas Transportation Corporation Act”); and Texas Government Code Chapter 791 (The Interlocal Cooperation Act”).

**2. Term of Agreement.** The Grant Agreement shall be in effect for each fiscal year (October 1<sup>st</sup> to September 30<sup>th</sup>) beginning with the execution of this Grant Agreement and

until ATP has transferred the Project Connect Anti-Displacement Funding to the City in accordance with the Implementation Sequence Plan, or the Grant Agreement is terminated (the “Term”).

**3. Designation of Key Personnel.** The City’s Housing and Planning Department (“HPD”) shall serve as the City Manager’s designee for purposes of this Grant Agreement. HPD has the technical and community capacity to perform the responsibilities of this Grant Agreement. HPD shall engage other City departments and personnel as needed to ensure success in the implementation of selected strategies. The ATP Chief Financial Officer/Chief Development Officer or their designee shall serve as ATP’s designee for purposes of this Grant Agreement.

**4. Responsibilities of the Parties.**

(a) Annual Budget. For each fiscal year during the term of the Grant Agreement, the City and ATP Chief Financial Officers, along with the City Director of HPD shall, during the annual budget process, meet, negotiate, and approve in good faith the amount of the annual funding allocation in accordance with the Implementation Sequence Plan to implement and administer the Project Connect Anti-Displacement Programs. The planned schedule of annual funding allocations is listed in Exhibit B. The annual funding allocation must be included as part of the annual proposed budget for each Party, which must also be approved by the City Council of the City of Austin and the Board of Directors of the ATP. The Parties acknowledge and agree that the Parties shall endeavor to commence the annual budget process prior to the commencement of the fiscal year.

(b) Reimbursement of Funds. ATP will provide grant reimbursement to the City based on actual expenditures, which can include costs of staff time to implement the Project Connect Anti-Displacement Programs in a manner consistent with the Contract with the Voters. The Parties will work to create “Grant Reimbursement Procedures,” which will be adopted prior the first request for reimbursement and amended thereafter as necessary, to include the necessary forms and documentation to process grant reimbursement requests. All grant reimbursements shall be paid only out of ATP’s current revenues or any other funds lawfully available therefore (and appropriated for such purpose) in accordance with Article 11, Sections 5 and 7 of the Texas Constitution.

(c) Federal Grant Opportunities for Real Property Acquisition. The Parties acknowledge and agree that the Contract with the Voters provides that any real property acquired with the Project Connect Anti-Displacement Funding should, where possible, comply with Federal Transit Agency (“FTA”) requirements, and the City will endeavor to comply with such requirements, including to amend this Grant Agreement as ATP deems necessary.

(d) Real Property Acquisition Technical Approval. If HPD identifies any real property acquisition that is directly adjacent to the alignment of any light rail, bus, or commuter rail investments, prior to initiating the acquisition, HPD shall first notify ATP of such potential acquisition and must receive approval prior to initiating such acquisition from the ATP Chief Program Officer to ensure there are no design or engineering conflicts. ATP shall review any such approval requests in a timely manner.

(e) Real Property Acquisition Assistance. HPD may, to the extent ATP determines such acquisition is compliant with FTA and the Project Connect technical requirements, request that ATP acquire a real property interest on behalf of HPD with the Project Connect Anti-Displacement Funding. ATP shall be under no obligation to acquire such property on behalf of the City.

5. Responsibilities of the City. HPD, as the City Manager's designee, shall complete the tasks as directed by City Council in Resolution Nos. 20200812-015, 20200903-044, and 20210204-062. Additional policy direction from City Council, as long as it is consistent with the Contract with Voters, can be accomplished outside of this Grant Agreement, and will not require amendment(s) to this Grant Agreement.

6. Termination. This Grant Agreement may be terminated in its entirety in accordance with any of the following:

(a) by either Party, in the event ATP fails to appropriate funds in any budget year in this Grant Agreement in an amount sufficient to meet ATP's obligations hereunder, upon the first date such funding is not met pursuant to this Grant Agreement;

(b) by either Party, upon ninety (90) days' written notice to the other Party;  
or

(c) by City, immediately upon written notice to ATP should ATP fail to make any payment by the forty-fifth (45<sup>th</sup>) day following City's provision of the relevant invoice or reimbursement documentation to ATP.

(d) ATP shall pay City for all costs incurred and services rendered prior to termination of the Grant Agreement.

7. Reporting. HPD shall provide an annual progress report on expenditures and outcomes of the use of the funds.

8. Audit Rights. ATP shall have the right, at its cost and expense, to have the books and records of the City related to the Grant Agreement (i) reviewed by ATP from time to time during the Term, and/or (ii) audited by a nationally or regionally recognized independent certified public accountant, under appropriate confidentiality provisions, for the purpose of verifying the accuracy of all fees and cost calculations under this Grant Agreement; provided, that any such audit shall be conducted no more than once per budget year (a "budget year" being defined as October 1 through September 30) and shall be conducted, in each case, upon at least thirty (30) days' advance written notice; provided further, that no review or audit shall be conducted outside of normal business hours or in a manner that interferes unreasonably with the City's business. The results of any such audit by the independent certified public accountant shall be reduced to writing and delivered to each Party. Any underpayment or overbilling determined by ATP pursuant to the review referenced in clause (i) above shall, upon the agreement of the City (or if there is a dispute, then upon resolution of such dispute pursuant to Section 21), promptly be paid by ATP or refunded by the City, as applicable. Any underpayment or overbilling determined by independent certified public accounting firm pursuant to the audit referenced in clause (ii)

above shall, upon the agreement of ATP and the City (or if there is a dispute, then upon resolution of such dispute pursuant to Section 21), promptly be paid by ATP or refunded by the City, as applicable. Parties shall retain all records created or maintained under this Agreement for a period of three years after final payment on this Agreement or until all audit and litigation matters that the Parties have brought to the attention of the other Party are resolved, whichever is longer.

**9. Proprietary Materials.** If a Party, any of its affiliates or its third-party service providers furnishes or makes available to the other Party (each, a “Disclosing Party”) any Proprietary Materials (as defined below) pursuant to this Grant Agreement, the Disclosing Party shall retain exclusive ownership therein. As used herein, “Proprietary Materials” means all information, data and knowledge marked proprietary and furnished or made available by any Disclosing Party to the other Party as part of the Services, or used in the performance of Services hereunder, and copies thereof, including software, documentation, techniques, tools, templates, processes, procedures, discoveries, inventions and technical data.

**10. Confidentiality.**

(a) Confidentiality. Except as otherwise permitted herein or as otherwise provided by law, each Party shall, and shall cause its affiliates and their respective officers, directors, employees, accountants, counsel, consultants, advisors and agents to, keep all information marked confidential regarding the business, affairs or plans (“Confidential Information”) of the Disclosing Party provided pursuant to this Grant Agreement strictly confidential. Notwithstanding the foregoing, this Section 10(a) shall not apply to Confidential Information which (1) becomes generally available to the public other than as a result of a disclosure by the Party that received such information or its representatives (“Recipient”), (2) was made available to the Recipient on a non-confidential basis prior to its disclosure to such Person pursuant to this Grant Agreement, (3) becomes available to the Recipient on a non-confidential basis from a source other than the Disclosing Party who did not acquire the Confidential Information from the Disclosing Party or (4) is required to be disclosed by legal process, a court decision, a government agency, or an administrative order; *provided* that the Recipient timely informs the Disclosing Party so that the Disclosing Party may seek a protective order, confidential treatment or other remedy, if possible.

(b) No Rights to Confidential Information. Each Party acknowledges and agrees that it will not acquire any right, title or interest in or to any Confidential Information of the Disclosing Party hereto by reason of this Grant Agreement or the provision or receipt of Services hereunder.

(c) Safeguards. Each Party agrees to establish and maintain administrative, physical and technical safeguards, data security procedures and other protections against the destruction, loss, unauthorized access or alteration of the Disclosing Party’s Confidential Information that are no less rigorous than those otherwise maintained for its own Confidential Information but in no event using less than reasonable care.

(d) Texas Public Information Act. Notwithstanding any terms and conditions in this Grant Agreement to the contrary, this Grant Agreement and related

documents are subject to the “Texas Public Information Act,” Texas Gov’t Code, Chapter 552. The City and ATP are subject to the Texas Public Information Act and must release information required to be released under the Texas Public Information Act and regulations promulgated thereunder.

**11. Headings.** The headings appearing herein are for convenience and reference only and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Grant Agreement.

**12. Amendment and Waiver.** This Grant Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party, including in the case of ATP the approval of the ATP Board of Directors. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Grant Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**13. Notices.**

(a) Requirements. Except as otherwise specifically noted herein, any notice required or permitted to be given under this Grant Agreement by one Party to another must be in writing and will be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the Party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address hereinafter specified.

(b) City of Austin Address. The address of City of Austin for all purposes under this Grant Agreement and for all notices:

Rosie Truelove (or her successor)  
Director, Housing & Planning  
Street-Jones Building  
1000 E. 11th St., Suite 200  
Austin, TX 78702

Ed Van Eenoo (or his successor)  
Chief Financial Officer  
301 W. 2nd Street  
Austin, Texas 78701

With additional copy to:

Anne L. Morgan (or her successor)  
City Attorney  
301 W. 2nd Street  
Austin, Texas 78701

(c) ATP Address. The address of the ATP for all purposes under this Grant Agreement and for all notices:

Greg Canally (or his successor)  
Chief Financial Officer  
700 Lavaca Street  
Suite 1400  
Austin, Texas 78701

With additional copy to:

Casey Burack (or her successor)  
General Counsel  
700 Lavaca Street  
Suite 1400  
Austin, TX 78701

(d) Change of Address. Each Party may change the address for notice to it by giving written notice of the change. Any change of address by a Party, including a change in the Party's authorized representative, must be reported to the other Parties within twenty (20) days of the change.

**14. Successors and Assigns.** Neither this Grant Agreement nor any of the rights or obligations of the Parties hereunder may be assigned by any Party without the prior written consent of the other Parties. Any attempted assignment or delegation in contravention hereof shall be null and void. Subject to the foregoing, this Grant Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

**15. No Third Party Beneficiary Rights.** This Grant Agreement is not intended to and shall not be construed to give any Person or entity other than the Parties signatory hereto (and successors and assigns permitted under Section 14) any interest or rights



(including, without limitation, any third-party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

**16. Force Majeure.** ATP will not be financially liable to the City and City shall not be liable for delays or failures to perform under the Grant Agreement where such failure is caused by force majeure (i.e., those causes generally recognized under Texas law as constituting unforeseeable and impossible conditions). Such delays or failures to perform will extend the period of performance until these exigencies have been removed or until the Parties agree in writing to either amend or terminate the Grant Agreement. The affected Party shall notify the other Party within five (5) business days of the occurrence of the force majeure event or delay, whichever occurs later, or otherwise waive the right as a defense, unless notification is impractical under the circumstances, in which case notification shall be done in as timely a manner as possible.

**17. No Right of Set-Off.** Notwithstanding any other provisions of this Grant Agreement or any other agreement among the Parties, any payment to be made by any Party under this Grant Agreement will be made free of any set-off and will be promptly remitted to the Party entitled to receive payment hereunder. However, notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

**18. Expenses.** Except as otherwise expressly provided herein, the Parties shall bear their own respective expenses (including, but not limited to, all compensation and expenses of counsel, financial advisors, consultants and independent accountants) incurred in connection with the preparation and execution of this Grant Agreement and consummation of the transactions contemplated hereby, unless otherwise expressly agreed in writing.

**19. Counterparts.** This Grant Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be the same agreement. A signed copy of this Grant Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Grant Agreement.

**20. Governing Law and Venue.** This Grant Agreement is governed by the laws of the State of Texas and all obligations under this Grant Agreement are performable in Travis County, Texas. Any suits relating to this Grant Agreement will be filed in a district court or federal court in Travis County, Texas.

**21. Dispute Resolution/Mediation.** Disputes and unresolved questions or issues of Parties must initially be presented by submission in writing in accordance with the Notice provisions above with copies to the Chief Financial Officers of each of the City and ATP. If satisfactory resolution cannot be achieved between the Chief Financial Officers within a reasonable time, and should mediation be acceptable to all Parties in resolving a dispute arising under this Grant Agreement, the Parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in the Tex. Civ. Prac. and Rem. Code, Section 154.023. Unless all Parties are satisfied with the result

of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Tex. Civ. Prac. and Rem. Code, Section 154.073, unless both Parties agree, in writing, to waive the confidentiality.

**22. Notice of Claim.** Within five (5) business days of receiving notice of any claim, demand, suit, or any action made or brought against any Party, arising out of the activities conducted pursuant to this Grant Agreement, the Party will give written notice to the other Party of such claim, demand, suit or other action. Said notice will include: (a) the name and address of the claimant; (b) the basis of the claim, action or proceeding; (c) the court, if any, where such claim, action, or proceeding was instituted; and (d) the name or names of any person or persons against whom such claim is being made.

**23. Severability.** If in any jurisdiction any term or provision hereof is determined to be invalid or unenforceable, (a) the remaining terms and provisions hereof shall be unimpaired, (b) any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction, and (c) the invalid or unenforceable term or provision shall, for purposes of such jurisdiction, be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

**24. Entire Agreement.** This Grant Agreement and the Exhibits hereto, together with the any SOW, shall constitute the entire understanding and agreement among the Parties to it in relation to the subject matter of this Grant Agreement and shall together supersede all previous agreements among the Parties in relation to the same subject matter.

**25. Legal Authority.** The person or persons signing this Grant Agreement on behalf of each Party warrant that he, she or they have been duly authorized by their respective entities to sign this Grant Agreement on behalf of the entity and to bind the entity validly and legally to all terms, performances, and provisions in this Grant Agreement. Each Party warrants that the Party possesses the legal authority to enter into this Grant Agreement and to perform the services that Party has obligated itself to perform under this Grant Agreement.

**Exhibits:**

**I. Exhibit A – Contract with Voters and Sequencing Plan**

**II. Exhibit B - Planned Annual Allotment of \$300 Million in Anti-Displacement Funds**

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Grant Agreement to be executed and effective as of the date first set forth above.

**CITY OF AUSTIN**

By: Rodney Gonzales

Name: Rodney Gonzalez

Title: Assistant City Manager

Date: April 8, 2021

Approved as to form:

Brandon W. Carr  
Brandon W. Carr, Assistant City Attorney

**AUSTIN TRANSIT PARTNERSHIP**

By: E-SIGNED by Greg Canally  
on 2021-04-05 21:59:55 GMT

Greg Canally  
Chief Financial Officer

Date: April 05, 2021

Approved as to form:

E-SIGNED by Casey Burack  
on 2021-04-05 17:17:20 GMT

Casey Burack, General Counsel

Exhibit A

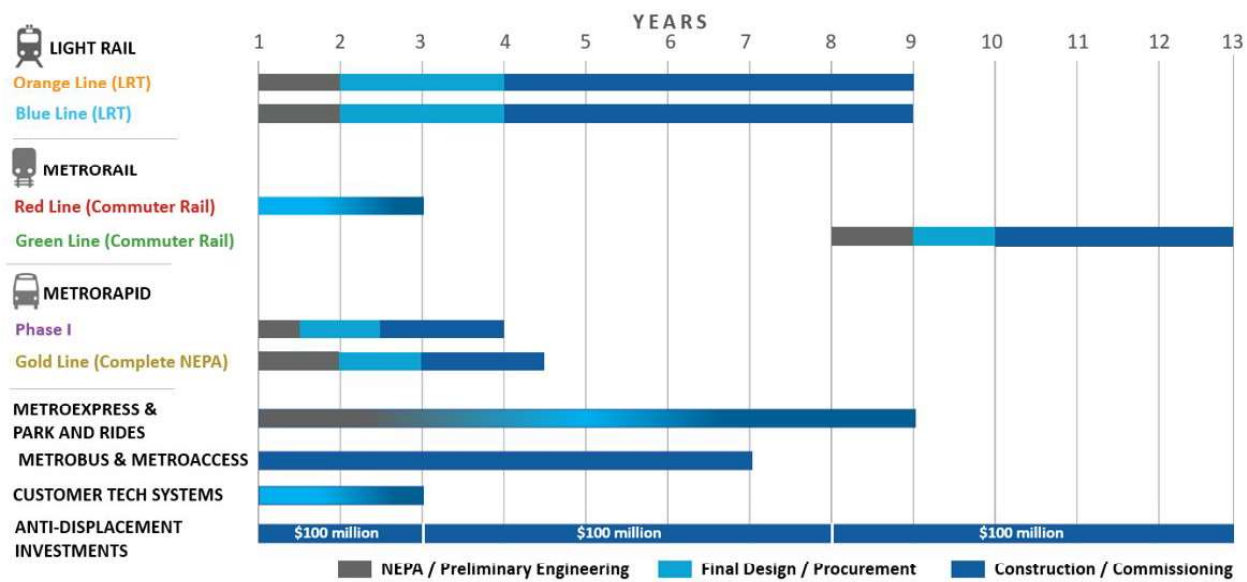


Exhibit B  
Planned Annual Allotment of \$300 Million in Anti-Displacement Funds

Implementation Sequencing Plan	FY	Amount
Years 1-3 \$100 million	FY 2020-21	\$23 million
	FY 2021-22	\$42 million
	FY 2022-23	\$35 million
Years 4-8 \$100 million	FY 2023-24	\$20 million
	FY 2024-25	\$20 million
	FY 2025-26	\$20 million
	FY 2026-27	\$20 million
	FY 2027-28	\$20 million
Years 9-13 \$100 million	FY 2028-29	\$20 million
	FY 2029-30	\$20 million
	FY 2030-31	\$20 million
	FY 2031-32	\$20 million
	FY 2032 -33	\$20 million

**Attachment D: ATP and City of Austin Interlocal Agreement to Transfer Funds to ATP.**

**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 4D for amendment process) or the dissolution of ATP (consistent with the Contract with the Voters).

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

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

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:

<b>Corporation</b>	<b>Reimbursement Calculation</b>	<b>Expiry</b>
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 <sup>th</sup> *
June	February 1 to June 30 for the current Fiscal Year	July 20 <sup>th</sup>
October	July 1 to September 30 for the current Fiscal Year	November 20 <sup>th</sup>

\* 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 20<sup>th</sup> 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.

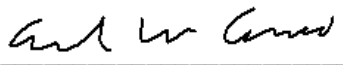
If an amendment is necessary to address changes in applicable law, that amendment will be brought forth in a manner consistent with the applicable law and the contract with the voters.

E: 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: 8/17/2021

By: 

Ed Van Eenoo, Chief Financial Officer  
City of Austin

Date: 8/2/21

By: 

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