

**SUPPLEMENTAL AGREEMENT TO
JOINT POWERS AGREEMENT**

AMONG

**AUSTIN TRANSIT PARTNERSHIP,
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY, AND
THE CITY OF AUSTIN**

This Supplemental Agreement to Joint Powers Agreement (this "Supplement") is entered into by and among Austin Transit Partnership, a joint local government corporation created under Ch. 431 of the Texas Transportation Code ("ATP"); Capital Metro Transportation Authority, a transportation authority and political subdivision of the State of Texas organized under Chapter 451 of the Texas Transportation Code ("Capital Metro"); and the City of Austin ("City") to be effective as of June 6, 2023 (the "Effective Date"). Each of ATP, Capital Metro, and the City are referred to herein individually as a "Party" and collectively as the "Parties". Reference is hereby made to that certain Joint Powers Agreement entered into by the Parties and fully executed on December 17, 2021 (the "Original Agreement"). Capitalized Terms used herein and not otherwise defined shall have the meaning given in the Original Agreement.

BACKGROUND:

A. The Parties entered into the Original Agreement in accordance with the Interlocal Cooperation Act, Texas Government Code Chapter 791 (the "Interlocal Cooperation Act"), for purposes of confirming their commitment to and support of Project Connect, and to delineate the roles and responsibilities of all three Parties, and to establish their respective commitments and obligations relating to Project Connect.

B. Section 2.7 of the Original Agreement contemplates that the implementation of Project Connect will require the Parties to subsequently address a variety of matters that will require supplemental agreements to address specific inter-agency topics, and such supplemental agreements are subject to the approval of the governing bodies of the Parties.

C. On May 24, 2023, pursuant to ATP Resolution No. ATP-2023-011, the ATP Board requested that the City and Capital Metro adopt modifications to Project Connect and Associated Implementation Sequence Plan in accordance with the Austin Light Rail Implementation Plan, including a first phase project, as depicted in EXHIBIT A attached hereto (the "Austin Light Rail Implementation Plan").

D. On June 1, 2023, pursuant to City of Austin Resolution No. [____], City Council adopted the Austin Light Rail Implementation Plan as requested by ATP, and further authorized the City Manager to negotiate and execute an amendment to the Original Agreement to incorporate the attached EXHIBIT A to modify and supplement the Attachment A to the Original Agreement.

E. On June 2, 2023, pursuant to Capital Metro Resolution No. [____], the Capital Metro Board of Directors adopted the Austin Light Rail Implementation Plan as requested by ATP, and further authorized the President & CEO to negotiate and execute an amendment to the Original Agreement to incorporate the attached EXHIBIT A to modify and supplement the Attachment A to the Original Agreement.

F. On June 6, 2023, the Austin Transit Partnership Board, pursuant to Resolution No. [____], also adopted the Austin Light Rail Implementation Plan and directed the ATP Executive

Director to amend and supplement the Original Agreement to reflect the terms contained in this Supplement.

G. The Austin Light Rail Implementation Plan was developed by ATP after an extensive priority population-focused engagement feedback process, connecting with over 7,000 community members regarding the proposed modifications to Project Connect, hosting over 80 community engagement events, and connecting with more than 3,000 core transit riders at 45 unique bus stop locations.

H. The Parties desire to revise and clarify their respective roles and responsibilities regarding the financing, construction, improvement and implementation of certain components of Project Connect, specifically: (i) the light rail components approved by the Parties in the Austin Light Rail Implementation Plan ("Austin Light Rail"), and (ii) MetroRail/Red Line and Green Line (commuter rail), MetroRapid (bus rapid transit), MetroExpress (commuter bus), MetroBus, MetroAccess (ADA paratransit), MetroBike (bike share), Park & Rides, Circulators (micro transit or Pickup by CapMetro), and related operations and maintenance facilities, components of Project Connect (the "Capital Metro Components").

I. The Parties have properly authorized this Supplement in accordance with Sections 2.6 and 2.7 of the Original Agreement and the ILA Act.

ACCORDINGLY, in consideration of the foregoing and the covenants, agreements, representations and warranties set forth in this Agreement, the Parties hereby agree as follows:

Section 1 Amendment to Joint Powers Agreement. The Original Agreement is hereby amended, modified, and supplemented as set forth in this Supplement. All references in this Supplement and the Original Agreement to the "Joint Powers Agreement" or the "Agreement" shall hereafter mean and refer to the Original Agreement as amended, modified and supplemented by this Agreement. All terms and provisions of the Original Agreement, except and to the extent amended or superseded by this Supplement, shall continue to remain in full force and effect in accordance with the provisions thereof. In the event of a conflict between the terms of this Supplement and the terms of the Original Agreement, this Supplement shall control.

Section 2 Austin Light Rail.

(a) *Light Rail Implementation Plan.*

- (i) Attachment A of the Original Agreement is amended by incorporating the Austin Light Rail Implementation Plan as the first phase of the light rail portion of Project Connect.
- (ii) The Parties hereby affirm that ATP shall be responsible for the overall implementation, including, planning, design, contracting, acquisition, construction, and financing, of Austin Light Rail in accordance with the Austin Light Rail Implementation Plan.

(b) *ATP to Serve as Direct Grant Recipient.* As the entity responsible for the implementation of Austin Light Rail, the Parties agree, upon FTA approval or concurrence, for ATP to serve as the sole applicant and direct grant recipient for all New Starts Capital Investment Grants and other federal competitive grant opportunities for Austin Light Rail. The City and Capital Metro shall cooperate and support ATP in seeking FTA eligibility as the applicant and direct grant recipient.

(c) *Engineering; Ownership of Plans and Specifications.* ATP shall be responsible for all design and engineering elements of Austin Light Rail. ATP shall maintain ownership of all plans and specifications for Austin Light Rail, and shall hold all future contracts for the planning, design, and

project management for planning, design and construction of Austin Light Rail. Capital Metro shall take all steps necessary to cause all existing plans and specifications and other instruments of service for Austin Light Rail now licensed to or owned by Capital Metro to be transferred and assigned over to ATP.

- (d) *NEPA Process.* The Parties agree that, upon any necessary FTA approval or concurrence, ATP shall serve as the lead local agency and project sponsor with respect to the completion of the NEPA environmental clearance process for Austin Light Rail and shall work diligently with FTA to obtain an FTA Record of Decision for the approved locally preferred alternatives for Austin Light Rail. ATP shall provide the City and Capital Metro with reasonable opportunities to review and comment on the draft environmental impact statements and any mitigation plan measures described therein, and shall consider comments from the City and Capital Metro in good faith. Capital Metro and the City (i) shall cooperate with ATP and participate and provide needed expertise (for example, regarding safety, operations and service planning, or utility relocation or permitting); and (ii) shall work in good faith with ATP to undertake reasonable mitigation measures, as applicable and necessary to reach an FTA Record of Decision for Austin Light Rail.
- (e) *Financing.* ATP shall be responsible for establishing any and all finance programs and securing and approving any and all financing structures that it deems necessary to finance, and sufficiently fund operations, maintenance and state of good repair, of the Austin Light Rail, including the issuance of short-term and long notes and bonds, any loans secured under federal programs; as well as necessary debt and operating reserve requirements. Obligations issued by ATP shall never constitute an indebtedness or general obligation of the City, Capital Metro, the State of Texas or any other political subdivision of the State. The parties acknowledge that the obligation of the City to transfer funds to ATP is subject to the budgetary process of the City and is subject to annual appropriation by the City in accordance with its budgetary process.
- (f) *Operation of Austin Light Rail.* Capital Metro will be the sole operator of all public transit service included in the Project Connect program. ATP, the City, and Capital Metro will enter into a separate implementation agreement(s) governing the process for the operational and safety certification, commissioning of Austin Light Rail, and for Capital Metro's operation of Austin Light Rail in accordance with FTA requirements, including state of good repair, warranties (if any), and reimbursement of these costs from ATP to Capital Metro. An agreement under this paragraph shall be designed to the extent possible to ensure that Capital Metro is able to meet its federal regulatory obligations and that CapMetro has access to any plans and specifications necessary to fulfill its obligations as operator.

Section 3 Capital Metro Components.

- (a) *Generally.* The Parties also hereby affirm that Capital Metro shall be responsible for the financing, design, construction, improvement and implementation of the Capital Metro Components and that any financial contributions by ATP to fund the implementation of the Capital Metro Components will require the approval of the ATP Board. Capital Metro and ATP shall work together to ensure long-term planning for funding commitments or obligations of Capital Metro that are payable or reimbursable from ATP funds. CapMetro shall cooperate with ATP, to provide reasonable access to ATP, its consultants, and other authorized representatives shall have the right to access any books, documents, papers and records of Capital Metro concerning Capital Metro expenditures in which ATP will reimburse Capital Metro.
- (b) *Federal Grant Funding.* Capital Metro shall be the sole applicant and direct grant recipient for all federal grant opportunities for the funding of the Capital Metro Components, and for all other

federal formula and competitive funds aside from Austin Light Rail. The Parties agree to cooperate, and enter into separate agreements as necessary, to credit any federal grant proceeds received for the purpose of operations of either Austin Light Rail or Capital Metro Components toward the operating expenses of the respective project or as mutually agreed.

- (c) *NEPA Process.* As the entity responsible for the implementation of the Capital Metro Components, Capital Metro shall serve as the lead local agency and project sponsor with respect to the completion of applicable NEPA environmental clearance processes for the Capital Metro Components, as necessary. Capital Metro shall provide the City and ATP with reasonable opportunities to review and comment on the draft environmental impact statements and mitigation plans and shall consider the comments of the City and ATP in good faith.

Section 4 General Provisions.

- (a) *Events of Default; Remedies.* Notwithstanding Section 7.3 of the Original Agreement to the contrary, Sections 7.1 (Events of Default) and 7.2 (Limitation on Remedies) of the Original Agreement shall apply to this Supplement in the same manner as they apply to the Original Agreement. A default under this Supplement by any Party shall constitute an "Event of Default" under the Original Agreement.
- (b) *Decision-making Framework and Dispute Resolution.* The Parties shall work cooperatively to establish a framework for partner requirements regarding implementation decisions about particular elements of Project Connect. The Parties agree to exercise good faith efforts to resolve any disputes arising under this Agreement and shall communicate regularly about the status of implementing Project Connect. In the event of a dispute, the Parties agree to attempt in good faith to resolve the dispute at the appropriate staff level. If the dispute is not resolved within 10 business days, and upon written request of any Party, the dispute shall be referred to the ATP Executive Director, the City Manager, and CapMetro's President and CEO, or their respective designees, who shall work diligently to achieve a consensus in resolving the dispute. In the event a dispute is not resolved in accordance with this section, then the Parties shall engage in the process under Section 8.2 of the Original Agreement.
- (c) *Counterparts; e-Signatures.* This Supplement may be signed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Supplement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages. The Parties agree that digital or facsimile signatures shall be given the same legal effect as original signatures, and the Parties hereby agree to accept delivery of digital signatures by e-mail in "pdf" form, or *via* DocuSign, Adobe Sign, or any similar means of digital delivery.

(Signature Page Follows)

The undersigned have signed and delivered this Supplement as of the dates set forth below to be effective as of the Effective Date.

AUSTIN TRANSIT PARTNERSHIP, a Texas nonprofit
local government corporation

By: _____
Greg Canally, Executive Director

Date: _____

Approved as to form:

Brandon Carr, General Counsel

Date: _____

**CAPITAL METROPOLITAN TRANSPORTATION
AUTHORITY**, a transportation authority and political
subdivision of the State of Texas

By: _____
Dottie L. Watkins, President & Chief Executive
Officer

Date: _____

Approved as to form:

Brad Bowman, Chief Counsel

Date: _____

CITY OF AUSTIN, a Texas home-rule municipality

By: _____
Robert Goode, Interim Assistant City Manager

Date: _____

Approved as to form:

Sean Creegan, Assistant City Attorney

Date: _____

EXHIBIT A
AUSTIN LIGHT RAIL IMPLEMENTATION PLAN

(appears on immediately following page)

LEGEND:

- AUSTIN LIGHT RAIL PHASE I
- AUSTIN LIGHT RAIL PHASE I PRIORITY EXTENSION*
- FUTURE AUSTIN LIGHT RAIL
- STATION
- PARK & RIDE
- MAINTENANCE FACILITY

*The priority extensions could be accelerated if additional funding becomes available

