

AGREEMENT BETWEEN
THE CITY OF AUSTIN
AND
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
For
TRANSIT SERVICES

This agreement (Agreement) effective October 1, 2009, is an Interlocal Agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter. Each party represents and warrants that the compensation to be made to the performing party contemplated in this Agreement are in amounts that fairly compensate the performing party for the services or functions described in this Agreement, and are made from current revenues available to the paying party.

Recognizing the importance of a regional mobility system, and the desire to encourage city employees to access public transportation, the City of Austin, a home rule municipal corporation, ("City") and Capital Metropolitan Transportation Authority ("Capital Metro") a transportation authority organized under the provision of the Texas Transportation code, Chapter 451, enter into this Agreement as follows:

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

- 1.1 **Engagement of Capital Metro.** Subject to the provisions of the Terms and Conditions contained herein, Capital Metro is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 **Responsibilities of Capital Metro.** Capital Metro shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for Capital Metro to perform services beyond those stated in the Scope of Work, Capital Metro and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the activities and services under this Agreement. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Agreement, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Capital Metro, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give Capital Metro timely feedback on the acceptability of progress and task reports.
- 1.4 **Designation of Key Personnel.** Capital Metro's Contract Manager for this engagement shall be Aida Douglas, Phone: (512) 369-6200. The City's Contract Manager for the engagement shall be Tommy Tucker, (512) 974-3220.

SECTION 2. SCOPE OF WORK.

- 2.1 **Capital Metro's Obligations.** Capital Metro shall fully and timely provide all deliverables described herein in accordance with the terms, covenants, and conditions of the Agreement and all applicable Federal, State, and local laws, rules, and regulations.
- 2.2 **Purpose.** City employees shall have access and use of Capital Metro's Transportation Services (the "Services") upon presentation of a valid transportation pass.
 - 2.2.1 **Tasks.**
 - A. Capital Metro shall allow City employees to have unlimited use of all Capital metro's Services (e.g. bus and rail except MetroAccess (handicapped) and RideShare (vanpools) Services upon presentation of a valid transportation pass. Capital Metro shall deliver annual i-Ride cards and annual passes for RideShare and MetroAccess to the city of Austin Human Resources Department who will distribute the passes to employees. Capital Metro shall

deliver 1,000 i-Ride cards, 40 Ride Share, and 20 MetroAccess passes to the City no later than September 15, 2009.

- B. Capital Metro shall monitor, compile and analyze the ridership data through the use of i-Ride cards at bus and rail fare boxes and provide quarterly agreed upon reports to the City based on this data. Capital Metro and the city will reconcile RideShare and Metro Access ridership services and employee eligibility each month. Capital Metro will submit quarterly invoices for these services based on these reconciliations. Quarterly invoices for RideShare and MetroAccess will be submitted simultaneously with the ridership data reports.
- C. The City at its discretion can purchase additional i-Ride cards at \$100 per card in lots of fifty (50) during the period of October 1, 2009 through September 30, 2010.
- D. The City shall promote transit use to their employees with the assistance of the Capital Metro Public Information Office.
- E. Capital Metro and the City mutually understand the need for coordination and prior approval(s) of their respective governing bodies regarding services, activities and initiatives that involve additional funds.

SECTION 3. COMPENSATION:

- 3.1 **Agreement Amount.** In exchange and receipt of 1,000 i-Ride cards, Capital Metro will be paid an amount not-to-exceed \$100,000 annually for all Metro Ride passes.

- 3.1.1 The City shall make a lump sum payment of \$100,000 within thirty (30) days from receipt of an invoice in exchange for the use of the Services for a twelve (12) month period (beginning October 1, 2009 and ending September 30, 2010).
- 3.1.2 In the event the City purchases additional i-Ride cards as described in Paragraph 2.2.1 C, City will amend contract increasing the not-to-exceed amount as appropriate.
- 3.1.3 City employee(s) access to RideShare and MetroAccess will be reimbursed to Capital Metro at \$45 a month per employee for RideShare and \$22.50 a month per employee for MetroAccess through December 31, 2009 for services rendered. Payment will be made within 30 days after receipt of an invoice.
- 3.1.4 Beginning January 1, 2010, monthly rates for RideShare and MetroAccess will be reimbursed at the then current rates.

3.2 **Invoices.**

- 3.2.1 Based upon reconciled RideShare and Metro Access ridership services and employee eligibility each month, Capital Metro shall submit itemized invoices including ridership data reports for RideShare and MetroAccess services.
- 3.2.2 **Invoices shall contain a non duplicated invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Capital Metro's invoice. Invoices received without all required information cannot be processed and will be returned to the Capital Metro. Invoices shall be mailed to the below address:

| | |
|------------------------------|----------------------------|
| | City of Austin |
| Department | Human Resources Department |
| Attn: | Jim Linton |
| Address: | P. O. Box 1088 |
| City, State, Zip Code | Austin, Texas 78767 |

3.3 **Payment.**

- 3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the invoice and ridership data reports.

- 3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of one percent (1%) per month or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- 3.3.3 Notice is hereby given of Article VIII, Section 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.
- 3.4 **Non-Appropriation.** The awarding or continuation of this Agreement is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Agreement. The absence of Appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to Capital Metro. The City shall provide Capital Metro written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

SECTION 4. TERM AND TERMINATION

- 4.1 **Term.** This Agreement shall become effective on October 1, 2009 and shall be in effect for a term of 12 months ending September 30, 2010.
- 4.2 **Right to Assurance.** Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.
- 4.3 **Default.** Either party shall be in default under the Agreement if either party (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, or (b) fails to provide adequate assurance of performance under the Right to Assurance paragraph contained herein.
- 4.4 **Termination.** Either party shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, Capital Metro shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay Capital Metro, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

SECTION 5. OTHER DELIVERABLES

5.1 Insurance.

5.1.1 General Requirements.

- 5.1.1.1 Capital Metro shall at, a minimum, carry insurance in the types and amounts indicated herein for the duration of the Agreement.
- 5.1.1.2 Capital Metro shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Agreement execution and within fourteen (14) calendar days after written request from the City.
- 5.1.1.3 Capital Metro must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired as verification of continuing coverage.
- 5.1.1.4 Capital Metro shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of Capital Metro hereunder and shall not be construed to be a limitation of liability on the part of Capital Metro.

- 5.1.1.5 Capital Metro must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the Agreement.
- 5.1.1.6 Capital Metro's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 5.1.1.7 All endorsements naming the City as additional insured as well as the Certificate of Insurance shall contain the Agreement contract number, the Buyer's name and address, and shall be mailed to the following address:

City of Austin
Purchasing Office
Attn: Malinda Horitski
P. O. Box 1088
Austin, Texas 78767

- 5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and Capital Metro, shall be considered primary coverage as applicable.
 - 5.1.1.9 If insurance policies are not written for amounts specified in this section, Capital Metro shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
 - 5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
 - 5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as Capital Metro.
 - 5.1.1.12 Capital Metro shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
 - 5.1.1.13 Capital Metro shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
 - 5.1.1.14 Capital Metro shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.
- 5.1.2 **Specific Coverage Requirements.** Capital Metro shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of Capital Metro.
- 5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.
 - 5.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Agreement and all other Contracts related to the project.
 - 5.1.2.1.2 Independent Contractor's Coverage.
 - 5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** Capital Metro shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

5.1.2.3 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.1.2.4 **Certificate.** The following statement must be shown on the Certificate of Insurance.

The City of Austin is an Additional Insured on the general liability and the auto liability policies.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** This Agreement does not abrogate Cap Metro's responsibility to comply with all applicable federal, state and local non-discrimination laws.

5.2.2 **Americans with Disabilities Act (ADA) Compliance.** Capital Metro or Capital Metro's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 **Rights to Contractual Material.** All material submitted by Capital Metro to the City shall become property of the City upon receipt. Any portions of such material claimed by Capital Metro to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.

SECTION 6. MISCELLANEOUS

6.1 **Compliance with Health, Safety, and Environmental Regulations.** Capital Metro, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City. In case of conflict, the most stringent safety requirement shall govern.

6.2 **Right to Audit.**

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

6.2.2 Capital Metro shall include this provision in all subcontractor agreements entered into in connection with this Agreement

6.3 **Claims.** If any claim, demand, suit, or other action is asserted against Capital Metro which arises under or concerns the Agreement, or which could have a material adverse affect on Capital Metro's ability to perform

thereunder, Capital Metro shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by Capital Metro. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

- 6.4 Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and Capital Metro shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Beverly Mendez, Contract Administrator

P O Box 1088

Austin, TX 78767

To Capital Metro:

Capital Metropolitan Transportation Authority

ATTN: Executive Vice President of Business
Development and Strategies

2910 East Fifth Street

Austin, Texas 78702

- 6.5 Advertising.** Neither party shall advertise or publish works without the other party's prior consent nor the fact that both parties have entered into this Agreement, except to the extent required by law.

- 6.6 Independent Contractor.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. Capital Metro's services shall be those of an independent contractor. Capital Metro agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

- 6.7 Modifications.** The Agreement can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Capital Metro invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

- 6.8 Interpretation.** The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

6.9 Dispute Resolution.

- 6.9.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute.

- 6.10 Jurisdiction and Venue.** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis

County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

- 6.11 Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.
- 6.12 Waiver; Consents.** No consent or waiver, express or implied, by either party hereto or of any breach or default by the other party in the performance by the other of its obligations hereunder shall be valid unless in writing, and no such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any other instance by or on behalf of any party hereto shall not be construed to waive or limit the need for such consent in any other or subsequent instance.
- 6.13 Force Majeure.** Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.
- 6.14 Remedies.** All rights, powers and remedies granted to either party by any particular term of this Agreement are in addition to, and not in limitation of, any rights, powers or remedies which it has under any other term of this Agreement, at common law, in equity, by statute, or otherwise. All such rights powers and remedies may be exercised separately or concurrently, in such order and as often as may be deemed expedient by either party. No delay or omission by either party to exercise any right, power or remedy shall impair such right, power or remedy or be construed to be a waiver of or an acquiescence to any breach or default. A waiver by either party of any breach or default hereunder shall not constitute a waiver of any subsequent breach or default.
- 6.15 Assignment.** No party hereto shall have the right, power or authority to assign this Agreement, or any portion hereof or any monies due or to become due hereunder, without the prior written approval of the other party.
- 6.16 Successor in Interest.** All of the rights, benefits, duties, liabilities, and obligations of the parties hereto shall inure to the benefit of and be binding upon the parties and their permitted successors and assigns and nothing expressed or mentioned in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provisions of this Agreement; this Agreement and conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties and for the benefit of no other person.
- 6.17 Right to Sue.** Capital Metro and the City have the exclusive right to bring suit to enforce this Agreement, and no other party may bring suit, as a third party beneficiary or otherwise, to enforce this agreement.
- 6.18 Holidays.** The following holidays are observed by the City:

| <u>Holiday</u> | <u>Date Observed</u> |
|------------------------------------|-------------------------|
| New Year's Day | January 1 |
| Martin Luther King, Jr.'s Birthday | Third Monday in January |

| | |
|---------------------------|-----------------------------|
| President's Day | Third Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | First Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Day | Fourth Thursday in November |
| Friday after Thanksgiving | Friday after Thanksgiving |
| Christmas Eve | December 24 |
| Christmas Day | December 25 |

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

6.19 Incorporation of Documents. Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Agreement by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.ci.austin.tx.us/purchase/standard.htm> .

In witness whereof, the parties have caused duly authorized representatives to execute this Agreement on the dates set forth below.

**CAPITAL METROPOLITAN TRANSPORTATION
AUTHORITY**

CITY OF AUSTIN

By: _____
Signature

By: _____
Signature

Name: _____
Printed Name

Name: _____
Printed Name

Title: _____

Title: _____

Date: _____

Date: _____