MEMORANDUM

TO: Mayor and Council

FROM: Rey Arellano, Assistant City Manager

DATE: October 11, 2016

SUBJECT: Resolution No. 20160512-018 – ILA with Capital Metro for Wheelchair-accessible Van (CIUR 1768)

On May 12, 2016, Council adopted Resolution No. 20160512-018 which directed the City Manager to negotiate and execute an interlocal agreement with the Capital Metropolitan Transportation Authority (CapMetro) for the use of a wheelchair accessible vehicle for the Homeless Outreach Street Team (HOST) pilot program.

Staff from the Austin Police Department, Fleet Services and the Law Office worked with Capital Metro to negotiate and execute the attached interlocal agreement (ILA). The length of the ILA is six months beginning July 15, 2016 and ending on January 13, 2017.

Should you have additional comments or questions, please do not hesitate to contact me at 512-974-2222 or Rey.Arellano@austintexas.gov.

xc: Elaine Hart, Interim City Manager
Assistant City Managers
Chief of Staff
Art Acevedo, Police Chief
Gerry Calk, Fleet Services Officer

INTERLOCAL COOPERATION AGREEMENT
FOR THE TEMPORARY USE OFA MOTOR VEHICLE BETWEEN THE
CITY OF AUSTIN AND CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

This Interlocal Cooperation Agreement ("Agreement") is between the City of Austin, a Texas home rule and municipal corporation ("City"), and Capital Metropolitan Transportation Authority, a rapid transit authority and political subdivision of the State of Texas created under Chapter 451 of the Texas Transportation Code ("Capital Metro") acting by and through their respective signature authorities, pursuant to and under authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The undersigned Local Governments may be referred to in this Agreement individually as a "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, The City of Austin Police Department ("APD") has identified the need for a wheelchair-accessible vehicle capable of transporting individuals and their belongings to services for use in connection with APD's launch of a Homelessness Outreach Team Pilot ("Pilot"); and

WHEREAS, Capital Metro has a wheelchair accessible vehicle Capital Metro is willing to make available to APD for temporary use by the City as part of the Pilot; and

WHEREAS, the City is able and willing to assume all preventive maintenance and repair obligations and all liabilities associated with the use of the vehicle by the City; and

WHEREAS, the Parties desire to enter into a cooperative agreement which will allow the City to use the Capital Metro vehicle; and

WHEREAS, the Parties, acting by and through their respective governing bodies, adopt the foregoing premises as findings of said governing bodies; and

WHEREAS, the Austin City Council authorized the negotiation and execution of this Agreement by resolution on May 12, 2016; and

WHEREAS, the Capital Metro Board of Directors authorized the negotiation and execution of this Agreement by resolution on June 27, 2016; and

NOW THEREFORE, the Parties agree as follows:

ARTICLE I.
PURPOSE

The purpose of this Agreement is set forth the agreement between the Parties relating to the temporary use by the City of the following described motor vehicle ("Vehicle") owned by Capital Metro for the purpose of piloting a homeless outreach program:

Make, Model and Color	**VIN**
Champion Van, G33503, White	1GBJG316781218631

THE CITY ACKNOWLEDGES AND AGREES THAT THE VEHICLE IS BEING MADE AVAILABLE TO THE CITY WITHOUT WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE (INCLUDING WITHOUT LIMITATION, ANY WARRANY OF MARKETABILITY OR FITNESS FOR ANY PURPOSE) AND THE CITY ACCEPTS THE VEHICLE "AS-IS, WHERE IS," WITH ALL FAULTS AND DEFECTS.

Capital Metro agrees to make the Vehicle available to the City for pick up in good working order at a time specifically identified by the City in writing to Capital Metro at 2910 E. Fifth Street, Austin, Travis County, Texas or a location mutually agreed to in writing by the Parties.

The City agrees to return the Property to Capital Metro at the end of the term provided for in Article V and said Vehicle shall be delivered by the City at 2910 E. Fifth Street, Austin, Travis County, Texas or a location mutually agreed to in writing by the Parties.

ARTICLE II.
OBLIGATIONS OF CAPITAL METRO

Capital Metro agrees to allow the City to take temporary possession of the Vehicle for a period of six (6) months, beginning July 15, 2016 and ending on January 13, 2017. Capital Metro will deliver the Vehicle to the City at the following designated location: 715 East Eighth St., Austin Police Department Patrol Building in Austin, Travis County, Texas.

ARTICLE III.
OBLIGATIONS OF THE CITY

The City of Austin Police Department may use the Vehicle, as needed, for the sole purpose of providing transportation services related to APD's homeless outreach pilot program.

The City of Austin Fleet Services Department shall provide all mechanical services to include, preventative, routine, and any major maintenance services necessary to provide for the safe operation of the Vehicle and in compliance with all Original Equipment Manufacturer ("OEM") maintenance specifications.

The City will deliver and surrender possession of the Vehicle to Capital Metro on or before January 13, 2017, by delivering the Vehicle to 2910 E. Fifth Street in Austin, Travis County, Texas.

The City will return the Vehicle to Capital Metro, in the same or better condition than when it took possession of the Vehicle, reasonable wear and tear excepted.

The City shall not install any decals on the Vehicle, without the prior consent of Capital Metro.

ARTICLE III.
REPRESENTATIONS OF THE CITY

In consideration of said Agreement, the City covenants and agrees as follows:

a. To use the Vehicle solely for the uses described in this Agreement.
b. To safely keep and carefully use the Vehicle.

c. The City shall, during the term of this Agreement and until return and re-delivery of the Vehicle to Capital Metro, abide by and conform to, and cause others to abide and conform to, all federal, state and local laws, orders, rules and regulations controlling or in any manner affecting possession, operation or use of said Vehicle.
d. Neither the City nor others shall have the right to incur any mechanic's or other lien in connection with the repair, maintenance or storage of said Property, and the City agrees that neither the City nor others will attempt convey or mortgage or create any lien of any kind or character against the same or do anything or take action that might mature into such a lien.
e. The City shall be responsible and liable to Capital Metro for any and all damage to the Vehicle that occurs in any manner from any cause or causes during the term of this Agreement or until return and re-delivery of the Vehicle to Capital Metro.
f. The City shall be responsible, at its sole cost and expense, for all fuel needed to operate the Vehicle during the term of this Agreement and shall return the Vehicle with a fuel tank full of the proper fuel.

ARTICLE IV.
OBLIGATIONS OF THE CITY
COMPENSATION

The City agrees to perform preventive maintenance and repair services on the Vehicle at all time when the Vehicle is in possession of the City; assume all legal liability for operation of the Vehicle while in possession of the City; and return the Vehicle to Capital Metro in the same condition as when the City takes possession for a six (6) month period and pay Two Thousand Five Hundred Dollars ($2,500.00) to Capital Metro for use of the Vehicle.

Due to the age of the Vehicle being loaned to the City, any significant maintenance issue the City determines renders the Vehicle inoperable or unsafe within the initial thirty (30) days of the date Capital Metro makes delivery of the Vehicle to the City, Capital Metro agrees to work with the City Fleet Services Department to find an alternative vehicle, if available.

ARTICLE V.
TERM

The term of this Agreement shall commence on the date on which all Parties have executed this Agreement ("Effective Date") and shall end one hundred and eighty (180) days from execution. This Agreement shall remain in full force and effect unless superseded by a supplemental agreement or terminated as provided in this Agreement.

ARTICLE VI.
TERMINATION

Either Party may terminate this Agreement in whole or in part if the other Party fails to comply with any term or condition of the Agreement. The terminating Party shall notify the other Party of the decision to terminate this Agreement at least thirty (30) calendar days before the effective date of termination. The other Party may avoid termination by correcting the reasons for termination prior to the effective date of termination stated in the notice to the satisfaction of the terminating Party.

ARTICLE VII.
CURRENT REVENUE

The Parties warrant that all payments, expenditures, contributions, fees, costs, and disbursements, if any, required of it hereunder or required by any other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment, addendum or associated document, shall be paid from current revenues available to the paying Party. The Parties hereby warrant that no debt is created by this Agreement and that any debt created through a purchase shall be the sole obligation of the purchasing Party and no obligation or liability for such debt shall be a liability or obligation of the other Party.

ARTICLE VIII.
FISCAL FUNDING

The financial obligations of the Parties, if any, under this Agreement are contingent upon the availability and appropriation of sufficient funding. Any Party may withdraw from this Agreement without penalty in the event funds are not available or appropriated. However, no Party will be entitled to a refund of amounts previously contributed in the event of withdrawal for lack of funding.

ARTICLE IX.
INDEMNIFICATION

To the extent allowed by Texas law, the City agrees that it is responsible to the exclusion of any such responsibility of Capital Metro for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this Agreement, provided that the execution of this Agreement will not be deemed a negligent act.

ARTICLE IX.
INSURANCE

City is self-insured for all third party liability coverage. As such, City has established a Liability Reserve Fund to pay for claims for which the City is legally liable.

ARTICLE X.
MISCELLANEOUS

a. Notice. Any notice required or permitted to be delivered hereunder shall be in writing and may be effected by personal delivery in writing or by registered or certified mail return receipt requested addressed to the respective Party at the address set forth as follows:

b. Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

c. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

d. Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas. Venue for any action concerning this Agreement shall lie in Travis County, Texas.

e. Entire Agreement. This Agreement represents the entire agreement between the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

f. Recitals. The recitals to this Agreement are incorporated herein.

g. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original constituting one and the same instrument.

h. No Assignment. The Parties may not assign or transfer their rights under this Agreement.

i. Compliance with Law. Each Party is responsible for complying with any additional or varying laws and regulations regarding purchases.

j. Certifications. The signers of this Agreement certify that they possess the right, power, legal capacity and full legal authority to execute this Agreement on behalf of their respective Parties and to bind their respective Parties to the terms and conditions set forth herein.

k. No Waiver of Rights. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or equity to a Party, including the defense of sovereign immunity, nor to create any legal rights or claims on behalf of a person not a party to this Agreement.

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

This Agreement is executed to be effective the date of the last party to sign.

CAPITAL METROPOLITAL TRANSPORTATION AUTHORITY

By: _____ Date: _____

Name: Linda Watson

Title: President/CEO

Address: 2910 E. Fifth St., Austin, TX 78702

Phone: 512-389-7403 Fax: 512-389-7559

CITY OF AUSTIN, TEXAS

By: _____ Date: 7/13/16

Name: Rey Arellano

Assistant City Manager

Title: City of Austin

Office of the City Manager

City of Austin

P.O. Box 1088-3, Austin, TX 78767

Phone: 512-974-2222

FOR CITY, APPROVED AS TO LEGAL FORM:

By: _____ Date: 7/13/2016

Name: Angela C. Rodriguez

Title: Assistant City Attorney

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By: _____ Date: 7.13.16

Name: Linda Watson

Title: President/CEO

Address: 2910 E. Fifth St., Austin, TX 78702

Phone: 512-389-7403 Fax: 512-389-7559