

**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 in 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 list and records of such agreements and actions that relate to Project Connect.

- 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. Therefore, the Parties commit to being innovative and holistic in the development of processes, procedures, reviews and regulations tailored to Project Connect to achieve effective decision-making and cost effectiveness. 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 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.

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, 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 voices in project planning, development, and implementation; and understand the different needs of each community to improve and increase access to essential services with a direct focus on under-resourced communities.

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;
- 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 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 regularly informed 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 notice to individuals, businesses, or 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 or more frequently via the Community Engagement Dashboard or another tool. The information may include, but not be limited to: race, ethnicity, age, gender, gender identity and expression, housing tenure (renter/owner/other), 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 may 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 should 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.

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 on program equity along with the ATP Board Technical Advisory Committees. CAC members may attend TAC meetings.

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 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. 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 CAC will be supported by ATP and the City staff liaisons. 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 _____ each year for inclusion in the City's Annual Comprehensive Financial Report.

4.2.1.4 **Advisory Committees.** ATP Board Technical Advisory Committees. The ATP Board may establish technical advisory committees and select members via a widely publicized 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. 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, ATP shall appoint an Executive Director. The Executive Director of the Corporation shall be the chief executive officer of ATP and shall in general supervise and control all of the business and affairs of ATP. The ATP Board and Capital Metro Board shall define the terms and conditions under which the ATP Board will appoint succeeding Executive Directors and evaluate performance.

4.2.3 **Joint Annual Meeting.** The Executive Director shall organize and provide for a Joint Annual Meeting of the Parties. The Executive Director shall present on ATP's progress in implementing Project Connect. The annual report shall include a presentation on the project statuses, financial status of ATP, implementation of and compliance of ATP Workforce and Equity policies, and progress towards implementation of Project Connect.

4.3 **Commitments of ATP.** The Community Commitment Resolution and Contract with Voters Resolutions requires ATP to adopt policies that will meet 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 Workforce and Equity Policies:

- Developing 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.
- 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 includes City of Austin hiring goals as allowed by federal law and regulations, completion of OSHA 10-hour training, workers' compensation, on-site monitoring independent of construction companies and their affiliates, and in compliance with all applicable state, federal, and local laws.
- Developing and implementing a procurement policy that ensures ensure 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, and that promote the hiring of local workers where allowed by federal law and regulation.
- Notify the City Manager or City Manager's designee of substantive changes to the above Workforce and Equity Policies.

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 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.

- 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.
- ATP shall coordinate with the City and Capital Metro for temporary and permanent use of right-of-way.

- 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.

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 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 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 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; 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 to identify 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 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 for ATP. 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 1st. The City and ATP staff shall work to reach agreement by May 31st 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 of 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 \$300,000,000 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, and 2) to implement financing tools and other anti-displacement strategies related to the implementation of Project Connect, which includes:
 - creating with the community, neighborhood-level prevention and mitigation strategies based on the Equity Assessment Tool, and
 - creating a publicly available performance dashboard to track progress on the strategies identified for implementation.
- Seek reimbursement from ATP in accordance with the Interlocal Grant Agreement, Attachment C.

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.

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.
- 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 ninety (90) 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:

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

Casey Burack, General Counsel

CAPITAL METRO:

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

Ashley Glotzer, Chief Counsel

CITY OF AUSTIN:

By: _____

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.