

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
FOR CREATION OF A LOCAL GOVERNMENT CORPORATION**

This Interlocal Agreement ("**Agreement**") is entered into between the City of Austin, a Texas (the "**City**"), 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 and Capital Metro have determined that Austin is unable to meet growing demands for safe, reliable and efficient transportation, and that the lack of a complete transit system results in increased traffic congestion, increased travel time, and limits access to jobs, schools, educational opportunities, hospitals, and healthcare for people in our community;

The City Council and the Capital Metro Board have recognized the benefits of a high capacity transit system and transit-oriented development and determined that implementation of the Project Connect System Plan ("Project Connect") will create an integrated transit system that eases traffic, creates jobs, improves the environment, and better connects people in our community;

The City Council and the Capital Metro Board have recognized that though the Project Connect System Plan will benefit all persons visiting, living, and working in Austin, as well as our local businesses, it is the residents, homeowners, renters, and businesses within the City's taxing jurisdiction that will bear the costs of implementing Project Connect, except for parts contributed through Federal transit programs and other non-tax related funding sources;

To address these growing demands Capital Metro adopted Project Connect by Capital Metro Resolution AI-2020-1273 on June 10, 2020 and the City formally supported Project Connect by City Resolution 20200610-02 on June 10, 2020;

The City and Capital Metro have further determined that Project Connect, which includes \$300 million for transit-supportive anti-displacement strategies related to the implementation of Project Connect, should be funded through a funding and investment strategy approved by the City on July 27, 2020 (Resolution No. 20200727-002), Capital Metro funding sources, and federal grant revenue;

The City and Capital Metro have further determined, with community and stakeholder input, that the funds dedicated for the implementation of Project Connect should be held, and the associated projects should be implemented, by a Joint Local Government Corporation ("Joint LGC") with the authority to finance, design, build, implement, and contract with Capital Metro to operate and maintain assets funded by the Joint LGC; and

The City and Capital Metro have further determined that the Joint LGC should be authorized to implement Project Connect in a manner independent of the City or Capital Metro; and

The City and Capital Metro have properly authorized their agreement in accordance with Tex. Gov't Code Sec. 791.011(d)(1) and desire to memorialize their agreement regarding

the creation of a Joint LGC, Articles of Incorporation [**Exhibit A**], Bylaws [**Exhibit B**] and their independent responsibilities and obligations to the Joint LGC in order to finance, design, build, implement and contract with Capital Metro to operate and maintain assets funded by the Joint LGC. The Parties are authorized to enter into this Agreement through the Texas Constitution, Article 3, Section 64, "The Texas Transportation Corporation Act," Tex. Transp. Code, Chapter 431, and "The Interlocal Cooperation Act," Tex. Gov't. Code, Chapter 791.

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 Interlocal Agreement between the City and Capital Metro together with all exhibits and other attachments thereto, as the same may be amended or restated from time to time.
- 1.1.2 "Board" means the Joint LGC Board of Directors.
- 1.1.3 "Capital Metro Board" means the Capital Metro Board of Directors.
- 1.1.4 "City Council" means the City Council of the City of Austin, Texas.
- 1.1.5. "Community Experts" shall mean three (3) individuals, each of whom must reside in the City, one of whom shall have expertise in finance, one of whom shall have expertise in engineering & construction, and one of whom shall have expertise in community planning or sustainability. More specifically, the Community Experts shall, respectively, meet the following criteria:

At the discretion of the Nominating Committee, City Council and Capital Metro Board, alternate forms of experience or qualifications may be substituted to meet the experience requirements below.

Finance	<ul style="list-style-type: none"> • At least 10 years of experience in finance, financial management, banking, or investing with a focus on large capital projects; and • Experience with budgets over \$250M and/or comparable academic financial policy experience.
Engineering & Construction	<ul style="list-style-type: none"> • At least 10 years of experience in engineering or construction of large capital projects in any sector (transit, energy, industrial, commercial); and • Experience with multiple projects over \$100M (price/value/cost) or \$250M cumulative.
Community Planning or Sustainability	<ul style="list-style-type: none"> • At least 10 years of experience in urban planning, community planning, equitable Transit Oriented Development (eTOD), sustainability, or environmental planning; and

	<ul style="list-style-type: none"> • Experience with community engagement with preferably three (3) to five (5) years of specific experience.
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- 1.1.6 "Initial Community Expert Members" shall mean and include the three (3) Community Experts nominated to be initial members of the Board through the nomination process described in Section 3.8.2 below.
- 1.1.7 "Fiscal Year" means that twelve-month time period between any October 1 and the next following September 30.
- 1.1.8 "Initial Joint LGC Board Members" means the five (5) individuals nominated to be the initial members of the Board through the nomination process described in Section 3.8 below, each of whom must reside in either the City of Austin or Capital Metro's service area, as more specifically delineated herein.
- 1.1.9 "Nominating Committee" means and consists of the chairs of the City Council Audit & Finance Committee, City Council Mobility Committee, Capital Metro Finance, Audit and Administration Committee, and Capital Metro Operations, Planning and Safety Committee.
- 1.1.10 "Successful Election" means the passage of the City's planned November 2020 tax rate election providing for an \$0.0875 per \$100 valuation tax increase to fund Project Connect.
- 1.1.11 "Written Application" means a written application for the incorporation of the Joint LGC to act on behalf of the City and Capital Metro that includes the proposed articles of incorporation in substantially the form attached hereto as **Exhibit A** (with the position, name, street address, and term expiration of each nominated Initial Joint LGC Board Member filled in), and which is filed by at least three residents of each of the City and Capital Metro who are citizens of Texas and at least 18 years of age.

SECTION 2. GENERAL TERMS

- 2.1 **Purpose and Scope.** The purpose of this Agreement is to set forth the terms and conditions for the formation and creation of the Joint LGC and the individual roles and responsibilities of the Parties, including contributions to the operation and management of the Joint LGC.
- 2.2 **Agreement Term.** The term of this Agreement begins on September 1, 2020 (the "Effective Date") and will continue until the sooner of: (i) a Joint Powers Agreement is executed in accordance with Section 5; (ii) the date the results of the November 2020 election establishes there was not a Successful Election; or (iii) through June 30, 2021, if the Agreement is not renewed, or the last day of the Renewal Term, if the Agreement is renewed. This Agreement may be renewed for one (1) six-month term (the "Renewal Term") by agreement of the Parties.
- 2.3 **Entire Agreement.** All oral agreements between the Parties to this Agreement relating to the Joint LGC 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.

- 2.4 **Current Revenues.** The Parties acknowledge that (i) any payment(s) made by the Parties pursuant to this Agreement; and (ii) any funding for the Joint LGC will be from current revenues available to each Party, including any available revenues from other sources and potential federal grant revenues.
- 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 President & CEO of Capital Metro and the City Manager for the City.
- 2.6 **Amendments.** Either 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 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 when approved by all Parties.

SECTION 3. CREATION OF THE JOINT LGC; CITY AND CAPITAL METRO INITIAL ROLES AND RESPONSIBILITIES

- 3.1 Upon a Successful Election, and if a Written Application is filed with both the City Council and the Capital Metro Board, the City Council and the Capital Metro Board will each, respectively, take action to adopt a resolution (i) determining that the formation of the Joint LGC is wise, expedient, necessary, or advisable, and (ii) approving the form of the proposed articles of incorporation accompanying the Written Application.
- 3.2 If the City Council and the Capital Metro Board each adopt such a resolution, the articles of incorporation may be filed as provided by law.
- 3.3 Upon a Successful Election, the City and Capital Metro will also: (i) take all other necessary actions to create the Joint LGC; (ii) take all necessary actions to jointly appoint the initial directors of the Joint LGC's Board by January 1, 2021; and (iii) take all necessary actions to fulfill the commitments contained in the City Contract with the Voters (Res. No. _____) and the Capital Metro Funding and Community Commitment for Implementation of Project Connect Resolution (Res. No. _____) to appropriately fund the Joint LGC.
- 3.4 Upon creation of the Joint LGC, both Parties will support implementation of Project Connect as needed until such time as a Joint Powers Agreement, fully delineating the roles and responsibilities of all parties, is executed.
- 3.5 After the creation of the Joint LGC, the Parties will negotiate and execute, by June 30, 2021, a Joint Powers Agreement, as more fully described in Section 5 below.
- 3.6 **City Responsibilities.** The City will call and facilitate the tax rate election in accordance with Tex. Tax Code, Sec. 26.07.
- 3.7 **Capital Metro Responsibilities.** Capital Metro will seek and apply for all available federal funding sources and serve as the Federal Transit Administration ("FTA") Project Sponsor in the federal environmental review process and grantee in the federal grant process for all appropriate and eligible projects within Project Connect. Capital Metro will advance projects in the federal process in the Project Connect System Plan (Initial Investment Map and associated Implementation Sequence Plan

are attached as **Exhibit C**) or as modified from time to time jointly by Capital Metro and the City. Capital Metro will complete the federally required National Environmental Policy Act ("NEPA") Preliminary Engineering process to obtain an FTA Record of Decision for the Locally Preferred Alternatives approved in Project Connect for the Orange, Blue and Gold Lines and MetroRapid.

3.8 Initial Joint LGC Board Member Selection. Capital Metro and the City will initiate a nomination process for the five (5) Initial Joint LGC Board Members in a timely manner. The position, name, street address, and term expiration of each nominated Initial Joint LGC Board Member shall be inserted into the proposed articles of incorporation attached hereto as **Exhibit A** prior to or at the time the Written Application is filed.

3.8.1 City and Capital Metro Board Appointees. By January 1, 2021, the City and Capital Metro will each nominate a member of their respective governing bodies to serve as Initial Joint LGC Board Members as follows:

3.8.1.1 City Council Director. The City will nominate one (1) Initial Joint LGC Board Member who must be a member of the City Council. The City Council will define its process for nominating the City Council Director.

3.8.1.2 Capital Metro Director. Capital Metro will nominate one (1) Initial Joint LGC Board Member who must be a member of the Capital Metro Board and reside within the Capital Metro service area. The Capital Metro Board will define its process for nominating the Capital Metro Director.

3.8.2 Initial Community Expert Members. Upon a Successful Election, the Nominating Committee shall begin a process for seeking Initial Community Expert Members. The Initial Community Expert Members shall be selected through a nomination and appointment process wherein qualified members of the community shall submit an application to the Nominating Committee. After review of the submitted applications, the Nominating Committee shall, by January 1, 2021, recommend a slate of three applicants based on their qualifications. It is the intent of the Capital Metro and City that the Nominating Committee will nominate individuals that represent our diverse and inclusive community. The City Council and the Capital Metro Board shall, upon their joint approval of the slate, jointly appoint the Initial Community Expert Members as nominated by the Nominating Committee.

SECTION 4. LOCAL GOVERNMENT CORPORATION INITIAL ROLES AND RESPONSIBILITIES

4.1 Overall Objectives. The Parties intend that the Joint LGC must take actions as appropriate to implement Project Connect as adopted by the Capital Metro Board of Directors by Resolution AI-2020-1273 on June 10, 2020 and as it may be modified from time to time. The Parties will contribute funding as described in Section 6 below to accomplish the objectives herein. The Joint LGC will be authorized to accept funds that result from a Successful Election, from the City and Capital Metro, or from other available sources, and will not be prohibited from raising and utilizing funds from other legal sources.

4.2 Authority to Act. It is the intent of the Parties that the Joint LGC shall have all powers allowed by law and as defined in its Articles of Incorporation necessary to carry out the Overall Objectives, as will be more fully defined in the Joint Powers Agreement, except that it is intended if Project Connect, or the associated Implementation Sequence Plan

require modification, such action may only be taken upon the approval of the governing bodies of the City and Capital Metro.

- 4.3 **Adoption of Bylaws.** Upon creation of the Joint LGC, the Parties will present proposed Bylaws, in substantially the form attached hereto as **Exhibit B**, to the Board. Upon approval of the proposed Bylaws by the Board, the Parties will present such Bylaws to the City Council and the Capital Metro Board for their respective approval by resolution.
- 4.4 **Expected Performance.** The Parties intend that the Board will ensure all appropriate staff and resources are provided to implement the overall objectives herein.
- 4.5 **Budget of the LGC.** The Parties will require the Board to develop an annual budget that must be approved by the Board annually.
- 4.6 **Audits.** The Parties will require the Board to engage or obtain independent auditing services that will produce annual reports for presentation to an annual joint meeting of the Capital Metro Board of Directors and City Council on the financial status of the Joint LGC and implementation of approved projects and other Joint LGC matters as more fully delineated in the Joint Powers Agreement.
- 4.7 **Community Advisory Committee ("Committee").** The Parties will require the Board to form a Community Advisory Committee, to assist Capital Metro and the City in engaging the community and advising on anti-displacement and equity matters related to Project Connect. The Joint Powers Agreement will further delineate membership, roles and responsibilities of the Committee. The recommendations made by the Committee related to displacement mitigation measures or social equity issues that impact vulnerable populations must be considered at a public meeting of the Board.

SECTION 5. JOINT POWERS AGREEMENT

The Parties intend that the City, Capital Metro and the Board will meet in a timely manner following appointment of the Initial Joint LGC Board Members to negotiate an agreement delineating the full roles and responsibilities of all three (3) parties with the intent to finalize and execute a Joint Powers Agreement by no later than June 30, 2021, at the first annual joint meeting of the Capital Metro Board and City Council. The Joint Powers Agreement will delineate roles and responsibilities of all three parties in a manner that confirms and establishes the LGC as the principal entity responsible for financing, designing, building, implementing, and contracting with Capital Metro to operate and maintain assets funded by the Joint LGC. The roles and responsibilities shall include, but not be limited to: establishment of corporate functions, responsibility and costs; financial policies; funding allocations and procedures for use of funds for transit-supportive anti-displacement strategies related to the implementation of Project Connect; term and conditions of appointment of the Capital Metro President & CEO as a succeeding Executive Director of the Joint LGC; utility and right of way agreements; design review and permitting standards; development of a Disadvantaged Business Enterprise program consistent with federal laws and regulations; development of worker safety and wage requirements; and a community engagement process, as contemplated in section 4.7 above.

SECTION 6. FINANCIAL TERMS

- 6.1 **Payment.** The Parties intend that, for and in consideration of the actions to be taken and the services rendered by the Joint LGC pursuant to this Agreement, that the City and Capital Metro will pay to the Joint LGC funds as enumerated more fully in the Joint Powers Agreement, the City Contract with the Voters (Res. No. _____) and

the Capital Metro Funding and Community Commitment for Implementation of Project Connect Resolution (Resolution No. _____).

- 6.2 Funding for the LGC.** All costs for operation of the Joint LGC, including but not limited to, all costs for the completion of projects, will be funded jointly by the City and Capital Metro from a variety of federal and local funding sources.

In the event of a significant disruption to expected revenue for the Joint LGC, the City and Capital Metro may jointly agree to require the Joint LGC to amend its annual budget or revise planned projects or sequencing, provided that it continues to operate in a manner that enables the LGC to honor financial commitments it has made with respect to debt or other obligations issued by the LGC.

In the event additional funds are available for the projects being implemented by the Joint LGC from any source, the City and Capital Metro agree to continue to contribute funding as agreed to in the Joint Powers Agreement to advance Project Connect elements or to provide additional transit operating service on the transit network located within the City.

SECTION 7. TERMINATION

- 7.1 Automatic Termination.** This Agreement will automatically terminate as provided under Section 2.2, should a Successful Election not occur, or upon execution by all Parties of a succeeding Joint Powers Agreement among the City, Capital Metro and the Joint LGC for the purposes outlined in this Agreement.
- 7.2 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 or the succeeding Joint Powers Agreement.
- 7.3 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 thirty (30) days' written notice as described in Section 8.1, below.

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 to another must be in writing and will be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the Party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address hereinafter specified.
- 8.1.2 Capital Metro Address.** The address of Capital Metro for all purposes under this Agreement and for all notices:

Randy Clarke (or his successor)
President & CEO
2910 E. 5th Street

Austin, Texas 78702

With additional copy to:

Kerri Butcher (or her successor)
Chief Counsel
2910 E. 5th Street
Austin, Texas 78702

8.1.3 City Address. The address of the City for all purposes under this Agreement and for all notices:

Spencer Cronk (or his successor)
City Manager
P.O. Box 1088
Austin, Texas 78767

8.1.4 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 are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in TEX. CIV. PRAC. AND REM. CODE, Section 154.073, unless both Parties agree, in writing, to waive the confidentiality.

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 notify the other Party within five (5) business days of the occurrence of the force majeure event or otherwise waive the right as a defense, unless notification is impractical under the circumstances, in which case notification shall be done in as timely a manner as possible.

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 out of the activities conducted pursuant to 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 and address of the claimant; (b) the basis of the claim, action or proceeding; (c) the court, if any, where such claim, action, or proceeding was instituted; and (d) the name or names of any person or persons against whom such claim is being made.
- 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 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.

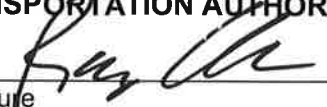
Exhibit A - Articles of Incorporation

Exhibit B - Bylaws

Exhibit C – Initial Investment Map and associated Implementation Sequence Plan

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).

**CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY**

By: 
Signature

Name: RANDY CLARKE
Printed Name

Title: CEO

Date: 10/7/2020

Approved as to Form:

CMTA Legal Department

CITY OF AUSTIN

By: 
Signature

Name: Spencer Cronk
Printed Name

Title: City Manager

Date: 9/18/2020

Approved as to Form:
Ashley Glotzer/s/
Assistant City Attorney