



Interlocal Agreement ATP-Capital Metro Partnership Agreement No.1

SUBJECT: Approval of a resolution authorizing the Executive Director, or his designee, to finalize and execute an Interlocal Agreement ("Partnership Agreement") with the Capital Metropolitan Transportation Authority ("Capital Metro") for the provision of certain support functions and services and to execute certain projects in the Project Connect System Plan program for a term of three years and one, one-year option and the contribution of funds from Capital Metro for the Project Connect System Plan program as defined in Exhibit A of the Partnership Agreement.

FISCAL IMPACT: See Executive Summary for further explanation.

BUSINESS CASE: Austin Transit Partnership ("ATP") will benefit from Capital Metro providing corporate support functions and other services through economies of scale on existing contracts and current Capital Metro staff resources. Capital Metro has the experience and expertise to complete certain projects in the Project Connect System Plan Program ("Program"). Capital Metro is leading these projects and services in order to ensure the Program remains aligned to the voter approved Program Sequence Plan.

EXECUTIVE SUMMARY: The Interlocal Agreement approved by Capital Metro and the City of Austin on August 7, 2020, for the creation of ATP contained provisions for future agreements between ATP and Capital Metro and the City of Austin for the provision of services, project execution and the establishment of roles and responsibilities. This proposed agreement, ATP-Capital Metro Partnership Agreement No. 1, provides for certain functions and projects related to Project Connect to be performed by Capital Metro and reaffirms Capital Metro's financial commitment to ATP for the next three years.

Capital Metro will provide administrative and other corporate support functions to ATP such as human resources, including payroll, benefits, hiring and recruiting services, IT hardware and support, marketing and communications expertise, accounting services, and a variety of other support functions on an as needed basis. During the term of the agreement, appropriate service levels and associated costs will be established through negotiation between the two entities during their respective annual budget development processes.

The Interlocal Agreement between the City of Austin and Capital Metro also obligates Capital Metro to implement certain projects that are a part of the Program. Partial funding for these projects comes from funds available to ATP. This Partnership Agreement No. 1, further delineates those projects to be executed during the term and identifies estimated costs based on the Integrated Financial Model that ATP will provide for the execution of these projects. Funding for projects during each year of the agreement will be dependent on the current status of the project and will be established through negotiations between the two entities during the annual budget development process.

The ATP Board of Directors will consider and approve the final amount for these services and projects with its consideration of the annual budget.

Partnership Agreement No. 1 further defines the establishment of processes and procedures between ATP and Capital Metro to ensure accountability in the flow of funds between the two entities. This is identified as Partnership Agreement No.1 in anticipation of numerous future agreements that will be necessary between ATP and Capital Metro and the City over the life of the Program. Future agreements will be numbered sequentially for the sake of clarity in identification.

RESPONSIBLE DEPARTMENT: Finance

PROCUREMENT SUMMARY: Does not apply.



**RESOLUTION
OF THE
AUSTIN TRANSIT PARTNERSHIP
BOARD OF DIRECTORS**

STATE OF TEXAS

Resolution ID: ATP-2021-004

COUNTY OF TRAVIS

***Interlocal Agreement ATP-Capital Metro Partnership
Agreement No.1***

WHEREAS, the Austin Transit Partnership Board of Directors ("Board") recognizes that an Interlocal Agreement between Capital Metro and the City of Austin for the creation of Austin Transit Partnership ("ATP") requires Capital Metro to provide support functions in connection with the operation, implementation and maintenance of the assets funded by ATP and to implement certain projects;

WHEREAS, the Board desires to move forward at this time to identify the roles and responsibilities for the two entities in order to meet the schedule laid out in the Program in this ATP-Capital Metro Partnership Agreement No. 1 ("Partnership Agreement");

WHEREAS, the Board acknowledges that Capital Metro has developed, implemented and administered projects of a similar nature and has the staff expertise and organizational experience to execute these projects in furtherance of the Project Connect System Plan Program ("Program") as ATP focuses on other aspects of Project Connect and the Program; and

WHEREAS, the Board recognizes that the Capital Metro Board of Directors committed future funding for implementation of the Program, including funding for corporate functions and projects in the Program, and the Board desires to formalize that commitment of funds in this Partnership Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Austin Transit Partnership Board of Directors that the Executive Director, or his designee, is authorized to finalize and execute an Interlocal Agreement, ATP-Capital Metro Partnership Agreement No.1, with Capital Metro for the provision of corporate functions and execution of certain projects for a three year term with one, one-year option as defined in Exhibit A of the Partnership Agreement.





Casey Burack
Secretary of the Board

Date: Jan 21, 2021



INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUSTIN AND AUSTIN TRANSIT PARTNERSHIP FOR SUPPORT SERVICES NO. 1

This Interlocal Agreement, ATP-City of Austin Agreement No. 1, (this **Agreement**), dated as of February 24, 2021, is entered into by and between the City of Austin, a Texas home-rule municipality (the “**City**”), and the Austin Transit Partnership, a joint local government corporation under Chapter 431 of the Texas Transportation Code (“**ATP**”), each a “**Party**” and collectively referred to herein as the “**Parties**.”

RECITALS

WHEREAS, pursuant to the Interlocal Cooperation Agreement, dated August 7, 2020 (the “**ILA**”) between the City and Capital Metropolitan Transportation Authority (“**Capital Metro**”), the City and Capital Metro have created ATP as a joint local government corporation with the authority to finance, design, build and implement a high-capacity transit system and transit-oriented development known as the Project Connect System (“**Project Connect**”); and

WHEREAS, ILA requires the City to provide support functions in connection with the operation, implementation and maintenance of the assets funded by ATP and further to perform certain projects, some of which are described on Exhibit A hereto (which Exhibit A may be periodically updated, supplemented or amended upon the agreement of the Parties); and

WHEREAS, in connection with the ILA, the City Council adopted a resolution on August 13, 2020, providing guidance on dedicating tax revenue for implementation of Project Connect in accordance with the Project Connect System Plan program (the “**Program**”), including but not limited to funding for corporate functions and projects in the Program (20200812-015); and

WHEREAS, in order to meet the schedule laid out in the Program, the City and ATP desire to move forward at this time to identify certain roles and responsibilities for the Parties with respect to the City’s early support functions described on Exhibit A to this Agreement in furtherance of the Program; and

WHEREAS, the Capital Metro and the Parties intend that the City will provide ATP with the scope of services set forth on Exhibit A hereto and anticipate that this will be the first of many interlocal agreements between the City and ATP in support of the Program. To provide such scope of services, the City will initially hire certain support staff positions in accordance with the budget requests as provided in Exhibit A. The Parties are authorized to enter into Agreements 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; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SERVICES

1. Services.

(a) General. The City shall provide ATP with the professional technical services necessary to assist with the design review and permitting for the Program as part of the National Environmental Policy Act ("NEPA") environmental review process as described on Exhibit A to this Agreement (collectively, the "Services"). The Parties acknowledge and agree that Exhibit A to this Agreement may be periodically updated, supplemented, or amended pursuant to Section 8 or in accordance with the terms and conditions of such Exhibit A. The Parties further acknowledge that the Services exclude any activities not attributed to the NEPA process.

(b) Collocation. The City hereby agrees, to the extent permissible under applicable laws, that the support staff positions described in Exhibit A shall work in the same physical location as the ATP staff to ensure close collaboration as the Parties work together to develop the Program.

(c) Term. As of the date of this Agreement and as shown on Exhibit A to this Agreement, the City and the ATP have negotiated in good faith Services and associated costs as part of the budget applicable through September 30, 2021 of the "Term" (as defined in Section 5) and deemed to be a part of this Agreement, which budget may be periodically updated, supplemented or amended during such budget by the City and ATP Chief Financial Officers (subject, if required by Section 8, to approval by the City Council and Board of Directors of ATP).

2. Standard of Service.

(a) The City represents, warrants and covenants that the Services shall be provided in good faith, in accordance with applicable laws and in a professional and work person-like manner. The City shall not be responsible for any inability to provide a Service or any delay in doing so to the extent that such inability or delay is the result of the failure of ATP to provide, or any delay in providing, the information necessary for the City to provide such Service.

(b) EXCEPT FOR THE WARRANTIES AND UNDERTAKINGS EXPLICITLY SET FORTH HEREIN, IN EXHIBIT A HERETO (I) THERE ARE NO WARRANTIES BY THE CITY WITH RESPECT TO THE SERVICES AND (II) ALL WARRANTIES, STIPULATIONS AND UNDERTAKINGS AND ALL TERMS AND CONDITIONS (INCLUDING ANY IMPLIED BY STATUTE OR OTHERWISE) WITH RESPECT TO THE SERVICES (WHETHER AS TO MERCHANTABILITY, QUALITY, DESCRIPTION, SATISFACTORY QUALITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE WHERE MADE KNOWN OR NOT, CARE, SKILL OR OTHERWISE) ARE HEREBY EXCLUDED AND WAIVED.

3. Funding; Fees; Payment.

(a) Funding. As evidenced in Exhibit A to this Agreement, the City and the incoming ATP Chief Financial Officer have, agreed upon the funding that ATP shall provide to the City as part of the budget for the Term to support the overall funding of the Services. Such City

funding contemplated by such Exhibit A may, upon compliance with Section 8, be periodically updated, supplemented or amended during the Term by the City and ATP Chief Financial Officers.

(b) Fees. In consideration for the performance of the Services by the City, ATP shall pay to the City compensation (the “**Services Fees**”) as provided for in the then current budget, payable pursuant to the monthly invoices referenced in Section 3(c). The Parties acknowledge and agree that Exhibit A to this Agreement may be periodically updated, supplemented, or amended pursuant to Section 8. The Parties further acknowledge and agree, notwithstanding anything else in this Agreement to the contrary, that ATP’s obligation with respect to the Services Fees is subject to, and governed by, Article 11, Sections 5 and 7 of the Texas Constitution and must be paid only out of ATP’s current revenues or any other funds lawfully available therefore (and appropriated for such purpose) in accordance with Article 11, Sections 5 and 7 of the Texas Constitution.

(c) Payment. The City shall provide the ATP with a monthly invoice specifying the Services Fees for the immediately preceding month in accordance with the schedule for the payment of the Service Fees by ATP to the City pursuant to Section 3(b). ATP shall remit payment for the amount reflected on such invoice in accordance with Chapter 2251 of the Texas Gov’t Code (the “**Prompt Payment Act**”). ATP presently intends to continue this Agreement each budget year through the Agreement’s term, to pay all payments due, and to fully and promptly perform all of its obligations under this Agreement. All Services Fees shall be paid only out of ATP’s current revenues or any other funds lawfully available therefore (and appropriated for such purpose) in accordance with Article 11, Sections 5 and 7 of the Texas Constitution.

4. **Texas Public Information Act**. Notwithstanding any terms and conditions in this Agreement to the contrary, this Agreement is subject to the “Texas Public Information Act,” Texas Gov’t Code, Chapter 552. The City and ATP are subject to the Texas Public Information Act and must release information required to be released under the Texas Public Information Act and regulations promulgated thereunder.

5. **Term; Termination**.

(a) Term. The term of this Agreement shall commence on the date of this Agreement and shall continue until September 30, 2021 (“**Term**”).

(b) Termination of Agreement. This Agreement may be terminated in its entirety only upon the written agreement of the Parties, which agreement must include provisions for fulfillment or reimbursement of actual costs of termination of existing commitments of ATP.

6. **Limitation of Liability**. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE AGGREGATE LIABILITY OF THE CITY TO ATP FOR ANY CLAIMS ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF SERVICE FEES ACTUALLY PAID TO THE CITY.

7. **Headings**. The headings appearing herein are for convenience and reference only and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

8. Amendment. Except as provided in the last sentence of this Section 8, this Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party and approved by the City and Board of Directors of ATP. Exhibit A to this Agreement or any budget may be updated, supplemented or amended, without the approval of the City and Board of Directors of ATP, upon the written approval of their respective Chief Financial Officers so long as such update, supplement or amendment is not projected to increase the overall Service Fees from ATP to the City for the Term, as the case may be.

9. Notices.

(a) 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 delivered in person or by email to the applicable address set forth in, or provided pursuant to, this Section 9 for the Party to whom the notice is given.

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

Diana Thomas (or her successor)
Controller
124 West Eight Street, Suite 140
Austin, Texas 78701
Email: Diana.Thomas@austintexas.gov

With additional copy to:

Anne Morgan (or her successor)
City Attorney
Austin City Hall
301 W. 2nd Street, 4th Floor
Austin, TX 78701
Email: Anne.Morgan@austintexas.gov

(c) ATP Address. The address of the ATP for all purposes under this Agreement and for all notices:

Greg Canally (or his successor)
Chief Financial Officer
700 Lavaca
Suite 1400
Austin, Texas 78701
Email: Greg.Canally@austintransitpartnership.org

With additional copy to:

Casey Burack (or her successor)
General Counsel and Chief Administrative Officer
700 Lavaca Street
Suite 1400
Austin, Texas 78701
Email: Casey.Burack@austintransitpartnership.org

(d) **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.

10. Relationship of the Parties.

(a) **Independent Contractor.** Nothing herein contained shall be deemed to create any partnership or agency relationship among the Parties, or confer upon any of the Parties hereto any express, implied or apparent authority to incur any obligation or liability on behalf of the other. No Party shall bind the other Parties to any obligation without the express written consent of the other Parties.

(b) **City Employees.** All employees of the City, including those City employees explicitly seconded to ATP, shall be deemed for purposes of all compensation and employee benefits to be employees of the City and not employees of ATP or its Affiliates. In performing the Services, such employees shall be under the direction, control and supervision of the City and not ATP. The City shall have the sole right to exercise all authority with respect to the employment (including termination of employment), assignment and compensation of employees, including those explicitly seconded to ATP.

11. No Third-Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any Person or entity other than the Parties signatory hereto any interest or rights (including, without limitation, any third-party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

13. Governing 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.


14. Entire Agreement. This Agreement and Exhibit A hereto shall constitute the entire understanding and agreement among the Parties to it in relation to the subject matter of this Agreement and shall together supersede all previous agreements among the Parties in relation to the same subject matter.

15. 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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above.

CITY OF AUSTIN

By: 
Gina Fiandaca
Assistant City Manager (Mobility Outcome)

Date: June 11, 2021

Approved as to Form:

Katherine Kuzmickas Digitally signed by Katherine Kuzmickas
DN: cn=Katherine Kuzmickas, o=City of Austin,
ou=Assistant City Attorney,
email=Katherine.Kuzmickas@austintexas.gov, c=US
Date: 2021.06.10 14:37:06 -05'00'
Assistant City Attorney

AUSTIN TRANSIT PARTNERSHIP

E-SIGNED by Greg Canally
By: on 2021-05-07 17:03:04 GMT
Greg Canally
Chief Financial Officer

May 07, 2021
Date: _____

Approved as to Form:

E-SIGNED by Casey Burack
on 2021-05-07 16:28:58 GMT
ATP General Counsel

EXHIBIT A
SCOPE OF SERVICES AND BUDGET

The work of the City of Austin's Project Connect support services team will include coordination and expediting (as necessary) of relevant approvals of technical processes such as permitting, utility coordination, design, equity, real estate, and environmental in lieu of standard City permitting procedures. The City agrees to minimize fees and expedite processes through the support services team structure to the extent possible. This will be accomplished by the retention of certain FTEs whose functions are described below, in an amount not to exceed \$400,000 in FY2021:

PROJECT CONNECT OFFICE FY2021

	Function
Position 1	Assist Mobility Officer with management activities & supervise activities of technical employees over NEPA, Utility Coordination & Approvals, Permitting Coordination & Approvals. Orientation to secondary tasks.
Position 2	Utility Coordination and Approvals across multiple utilities (energy, water, drainage, including private utilities): research & investigate needs for utility relocation & modification & develops appropriate documentation & processes as required to meet Project Connect needs & timelines. Key position in development of the Project Connect Criteria Manual.
Position 3	Permit Coordination and Approvals: facilitating and/or approving Temporary Use of Right of Way Permits & proactively planning for CIP related permits, in coordination with Development Services Department. Identification of improvements to CIP permitting process needed required to meet Project Connect timelines.
Position 4	Coordinate Federal Granting requirements, including NEPA, for COA as a Participating Agency.