

**INTERLOCAL AGREEMENT BETWEEN CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY AND AUSTIN TRANSIT PARTNERSHIP
FOR SUPPORT SERVICES AND PROJECT IMPLEMENTATION**

This Interlocal Agreement, ATP-Capital Metro Partnership Agreement No. 1, (this **Agreement**), dated as of February 3, 2021, is entered into by and between Capital Metropolitan Authority, a transportation authority and political subdivision for the State of Texas organized under Chapter 451 of the Texas Transportation Code (“**Capital Metro**”), 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 of Austin, Texas (the “**City**”) and 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 Capital Metro to provide support functions in connection with the operation, implementation and maintenance of the assets funded by ATP and further to perform certain projects 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 Capital Metro Board of Directors adopted a resolution on August 7, 2020, committing future funding 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 (AI-2020-1297); and

WHEREAS, in order to meet the schedule laid out in the Program, Capital Metro and ATP desire to move forward at this time to identify certain roles and responsibilities for the Parties (i) with respect to the support functions and (ii) on these certain projects described on Exhibit A to this Agreement in furtherance of the Program; and

WHEREAS, 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 Program as ATP focuses on other aspects of Project Connect and the Program; and

WHEREAS, the City and the Parties intend that Capital Metro will operate and maintain the transit infrastructure funded by ATP and, in this connection, provide certain support functions and other services to ATP as set out in this Agreement and to execute the projects described on Exhibit A hereto, which Agreement the Parties are authorized to enter into 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. Capital Metro shall provide ATP with the corporate functions and project-related services 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 (annually or otherwise) pursuant to Section 8 or Section 1(b) or in accordance with the terms and conditions of such Exhibit A.

(b) Annual Budget Process.

(i) Initial Term. As of the date of this Agreement and as shown on Exhibit A to this Agreement, the Capital Metro Chief Financial Officer and the incoming ATP Chief Financial Officer have negotiated in good faith projects and associated costs as part of the budget applicable through September 30, 2021 of the “Initial 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 Capital Metro and ATP Chief Financial Officers (subject, if required by Section 8, to approval by the respective Boards of Directors of Capital Metro and ATP). Thereafter, for each of the respective budget years ending September 30, 2022 and September 30, 2023, the Capital Metro and ATP Chief Financial Officers shall during the respective annual budget process meet, negotiate in good faith and approve an annual budget consistent with Exhibit A to this Agreement, including the projects and associated costs; procedures for ensuring completion of projects within the scope of the budget; and procedures for validating and approving invoices for services performed as part of the budget. Such budgets may be periodically updated, supplemented or amended during such budget year by the Capital Metro and ATP Chief Financial Officers (subject, if required by Section 8, to approval by the respective Boards of Directors of Capital Metro and ATP).

(ii) Option Term. If there is an “Option Term” (as defined in Section 5), the Capital Metro and ATP Chief Financial Officers shall during the annual budget process meet, negotiate in good faith and approve a budget (which budget must also be approved by the respective Boards of Directors of Capital Metro and ATP) including the projects and associated costs; procedures for ensuring the completion of projects within the scope of the budget; and processes for validating and approving invoices for services performed as part of the budget for such Option Term. Such budget for the Option Term may (subject to Section 8) be periodically updated, supplemented or amended during such budget by the Capital Metro and ATP Chief Financial Officers (subject, if required by Section 8, to approval by the respective Boards of Directors of Capital Metro and ATP).

(iii) Clarification. For the purpose of clarification, the Parties acknowledge and agree (A) Exhibit A hereto may at any particular time include estimates for multiple projects and, furthermore, one or more of such estimates may cover more than one budget

year and such estimates may take the form of a “not-to-exceed” estimate; and (B) the expenditures may, upon the approval of the Capital Metro and ATP Chief Financial Officers, be re-allocated among the various projects so long as the expenditures for the year or for over the years, as applicable, do not exceed the “not-to-exceed” estimate(s) for the pertinent projects.

(c) Third-Party Providers. Capital Metro shall have the right in its sole discretion to cause one or more of its affiliates to perform all or any portion of its respective Services. In addition, Capital Metro shall have the right in its sole discretion to hire third-party providers or subcontractors (each a “**Third-Party Provider**” and collectively the “**Third Party Providers**”) to provide all or part of any Service hereunder subject to the then-current budget.

2. Standard of Service.

(a) Capital Metro 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. Capital Metro 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 Capital Metro 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 CAPITAL METRO 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 Capital Metro Chief Financial Officer and the incoming ATP Chief Financial Officer have, based upon the Project Connect Integrated Financial Model developed as the basis for the funding of the Initial Investment of the Locally Preferred Alternative, agreed upon the funding that Capital Metro shall provide to ATP as part of the budget for the Initial Term to support the overall funding and financing of Project Connect and the Program. Such Capital Metro funding contemplated by such Exhibit A may, upon compliance with Section 8, be periodically updated, supplemented or amended during the Initial Term by the Capital Metro and ATP Chief Financial Officers. If there is an Option Term, the funding that Capital Metro shall provide to ATP to support the overall funding and financing of Project Connect and the Program shall be as set out in the budget for such Option Term.

(b) Fees. In consideration for the performance of the Services by Capital Metro, ATP shall pay to Capital Metro compensation (the “**Services Fees**”) as provided for in the then current budget (as such budget was approved as provided by Section 1(b)), 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 (annually or otherwise) pursuant to Section 8 or Section 1(b). 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 Capital Metro and ATP Chief Financial Officers shall determine, for each budget year, the schedule for the payment of the Service Fees by ATP to Capital Metro pursuant to Section 3(b) and for the funding by Capital Metro to ATP pursuant to Section 3(a). Capital Metro shall, in accordance with such schedule, provide the contemplated Section 3(a) funding to ATP and further shall, also in accordance with such schedule, provide ATP with a monthly invoice specifying the Services Fees for the immediately preceding month in accordance with such schedule. 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. Capital Metro 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, 2023 ("**Initial Term**") and thereafter may, upon the prior approval of the respective Boards of Directors of Capital Metro and ATP, be renewed for one (1) additional term of one year from October 1, 2023 year through September 30, 2024 (the "**Option Term**"), subject to and conditioned upon prior to the expiration of the Initial Term (i) the approval by the respective Boards of Directors of Capital Metro and ATP of the budget for the Option Term and (ii) ATP's appropriation of funds for the Option Term in an amount sufficient to meet ATP's obligations pursuant to such budget.

(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 Capital Metro.

6. Limitation of Liability. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE AGGREGATE LIABILITY OF CAPITAL METRO TO ATP FOR ANY CLAIMS

ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF SERVICE FEES ACTUALLY PAID TO CAPITAL METRO.

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 Board of Directors of each of Capital Metro and ATP. Exhibit A to this Agreement or any budget may be updated, supplemented or amended, without the approval of the Board of Directors of each of Capital Metro and 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 fees from ATP to Capital Metro for the Initial Term or for the Option Term, as the case may be; updates, supplements or amendments that are projected to increase the overall fees from ATP to Capital Metro for the Initial Term or for the Option Term will require approval of the Board of Directors of each of Capital Metro and ATP.

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) **Capital Metro Address.** The address of Capital Metro for all purposes under this Agreement and for all notices:

Reinet Marneweck (or her successor)
Chief Financial Officer
2910 E. 5th Street
Austin, Texas 78702
Email: Reinet.Marneweck@capmetro.org

With additional copy to:

Kerri Butcher (or her successor)
Chief Counsel
2910 E. 5th Street
Austin, Texas 78702
Email: Kerri.Butcher@capmetro.org

(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 Street

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) Capital Metro' Employees. All employees of Capital Metro, including those Capital Metro employees explicitly seconded to ATP, shall be deemed for purposes of all compensation and employee benefits to be employees of Capital Metro and not employees of ATP or its Affiliates. In performing the Services, such employees shall be under the direction, control and supervision of Capital Metro and not ATP. Capital Metro 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.

16. Capital Metro Disadvantaged Business Enterprise Program/Policy Statement. Capital Metro advises that it has established a Disadvantaged Business Enterprise program (“**DBE Program**”) in accordance with regulations of the U.S. Department of Transportation, 49 CFR Part 26. Capital Metro’s DBE Program is regularly reviewed by the Federal Transportation Administration, and Capital Metro advises that it will follow its DBE Program in order to ensure that expenditures, as eligible and applicable, can be reimbursed with Federal funds.

[SIGNATURE PAGE FOLLOWS]

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

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

By: E-SIGNED by Reinet Marneweck
on 2021-01-29 19:35:40 GMT
Reinet Marneweck
Chief Financial Officer

Date: January 29, 2021

AUSTIN TRANSIT PARTNERSHIP

By: E-SIGNED by Randy Clarke
on 2021-02-03 22:33:46 GMT
Randy Clarke
Executive Director

Date: February 03, 2021

EXHIBIT A

Capital Metro contributions to ATP

Estimates in \$'Millions	FY2021 Budget	FY2022	FY2023	Total
Capital Metro Sales Tax	\$5.0	\$10.4	\$20.0	\$35.4
Capital Expansion Funds	\$60.0	\$10.0		\$70.0
Total Contributions	\$65.0	\$20.4	\$20.0	\$105.4

Services provided by Capital Metro for ATP

Estimates in \$'Million*	FY2021 Budget	FY2022	FY2023	Total
Corporate functions				
Payroll costs for CMTA seconded employees	1.1	1.7	1.8	4.6
Professional Services & Temporary Help	0.8	1.1	1.1	3.0
Computer Hardware, Software & Maintenance	0.8	1.1	1.1	3.0
Advertising/Promotion Media	0.4	0.5	0.6	1.5
Lease, Rentals and Office expenses	0.2	0.3	0.3	0.9
Shared Services	0.3	0.9	1.0	2.2
Contingency	0.4	0.5	0.5	1.4
Total Corporate functions	\$4.0	\$6.2	\$6.3	\$16.6
Project related costs				
Orange Line - 30% design & NEPA 2021-2022	\$13.6	\$7.7		\$21.3
Blue Line - 30% design & NEPA 2021-2022	12.4	6.1		18.5
PMOR	12.1	12.4	12.6	37.2
MetroRapid - Expo, Pleasant Valley, South Lamar	7.5	53.3	60.0	120.8
Red Line Improvements	6.7	18.3		25.0
Neighborhood Circulators	2.6	2.7	2.8	8.1
Customer Technology Investments	0.2	2.0	2.0	4.2
Contingency	5.0	10.0	8.0	23.0
Total Project related costs	\$60.1	\$112.6	\$85.5	\$258.2
Total Services	\$64.1	\$118.8	\$91.8	\$274.7

*Conceptual rough order of magnitude estimates as part of an overall integrated financial model. Variances may occur for each project/task as projects progress through design, engineering and procurement.