



AUSTIN TRANSIT PARTNERSHIP  
BOARD OF DIRECTORS MEETING  
AGENDA

Wednesday, November 16, 2022, 10:30 a.m.

ATP Board Room

203 Colorado St. Austin, TX 78701

**ADA Compliance**

*Reasonable modifications and equal access to communications are provided upon request. Please call (512) 369-6040 or email [chloe.maxwell@atptx.org](mailto:chloe.maxwell@atptx.org) if you need more information.*

***BOARD OF DIRECTORS: Veronica Castro de Barrera, Chair, Steve Adler, Vice Chair, Tony Elkins, Jeffrey Travillion, Juan Garza, Gina Fiandaca (ex officio), Dottie Watkins (ex officio).***

The Board of Directors may go into closed session under the Texas Open Meetings Act. In accordance with Texas Government Code, Section 551.071, consultation with attorney for any legal issues, under Section 551.072 for real property issues; under Section 551.074 for personnel matter, or under Section 551.076, for deliberation regarding the deployment or implementation of security personnel or devices; arising regarding any item listed on this agenda.

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7.5.	Approval of a resolution amending the ATP Fiscal Year 2023 Budget to provide funding for the funding of the McKalla Station project in an amount of \$10,703,871, for a total appropriation of \$25,000,000	49
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8.	<b>Adjournment</b>	

# AUSTIN TRANSIT PARTNERSHIP

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**Board of Directors Meeting  
November 16, 2022**

# November 16 - AGENDA

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## 1. Official Seating of New Board Member

## 2. Discussion Items

1. Briefing on Status of Updated Light Rail Implementation Plan

## 3. Public Comment

## 4. Technical Advisory Committee Report

1. Engineering, Architecture & Construction Committee
2. Planning, Sustainability, Equity, and DBE Advisory Committee
3. Finance and Risk Advisory Committee

## 5. Executive Director Report

1. Organizational Update
2. Project Connect Project Status Report / Board Brief

## 6. Partnership Reports

1. Update by CapMetro on MetroRapid and MetroRail Projects
2. Update by City of Austin on proposed Project Connect Ordinance

## 7. Action Items

1. Approval of minutes from the September 21 Board Meeting
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3. Approval of a resolution authorizing the negotiation and execution of a second interlocal agreement with the City of Austin for Support Services through September 30, 2023, with a one-year extension option, in an amount not to exceed \$9,000,000
4. Approval of a resolution authorizing the negotiation and execution of an interlocal agreement with CapMetro for capital reimbursements associated with the McKalla Station Project through September 30, 2023, with a one-year extension option, in an amount not to exceed \$25,000,000
5. Approval of a resolution amending the ATP Fiscal Year 2023 Budget to provide funding for the McKalla Station Project in an amount of \$10,703,871, for a total appropriation of \$25,000,000
6. Adoption of changes to the ATP Investment Policy

## 8. Adjournment

# Official Seating of New Board Member

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## **DISCUSSION ITEM**

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Briefing on Status of Updated Light Rail Implementation Plan

**AUSTIN**  
**TRANSIT**  
PARTNERSHIP

# Updating Light Rail Implementation Plan: *Workplan*



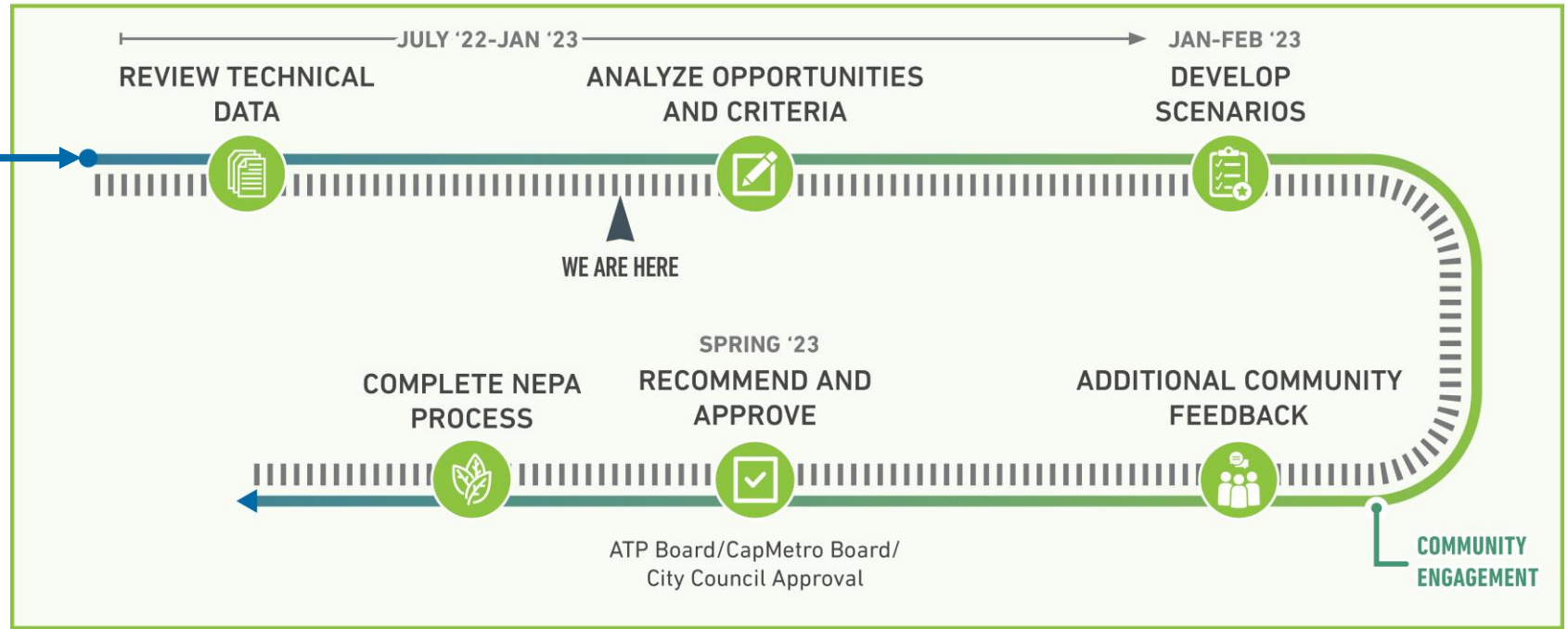
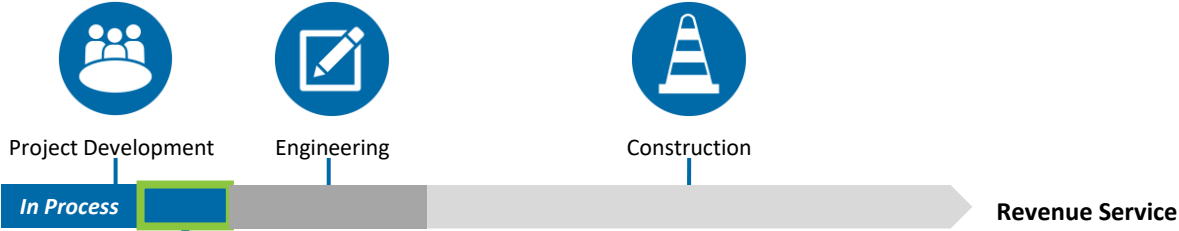
## Objective:

- Develop technical solutions that are aligned with our funding capacity and reflect our community values and aspirations.

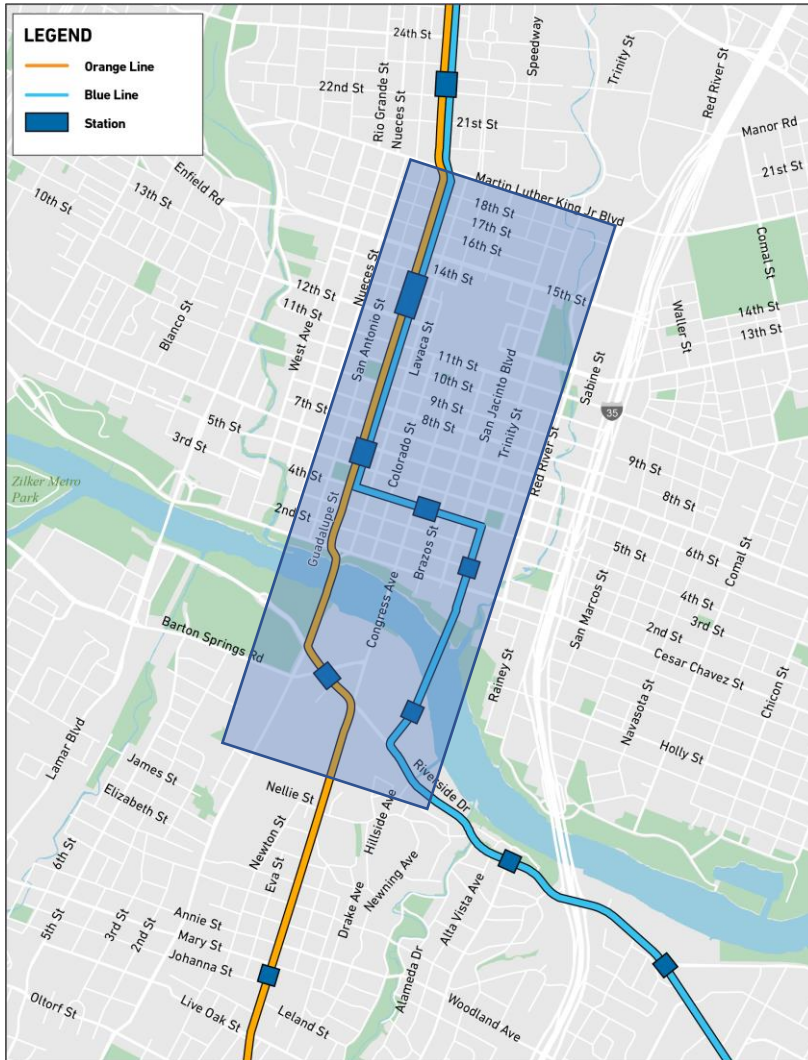
*Spring 2023: Determination of Light Rail scope and phasing*



# Federal Grant Process & Workplan

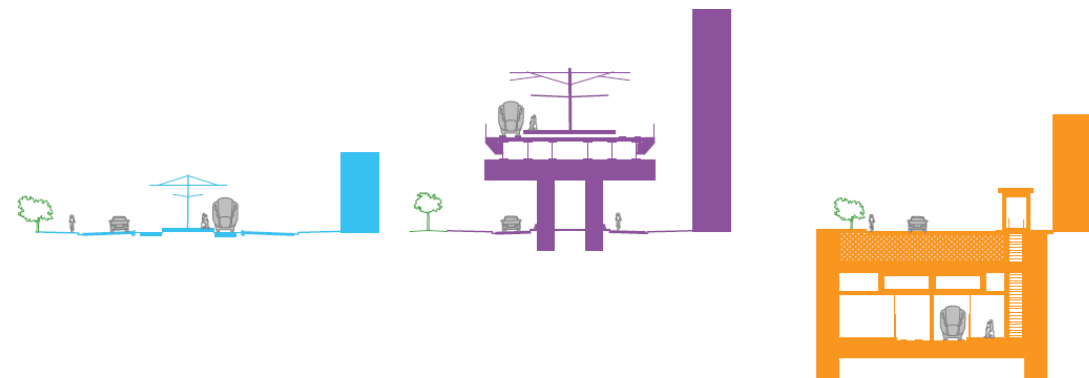


# Downtown: *Technical Analysis*

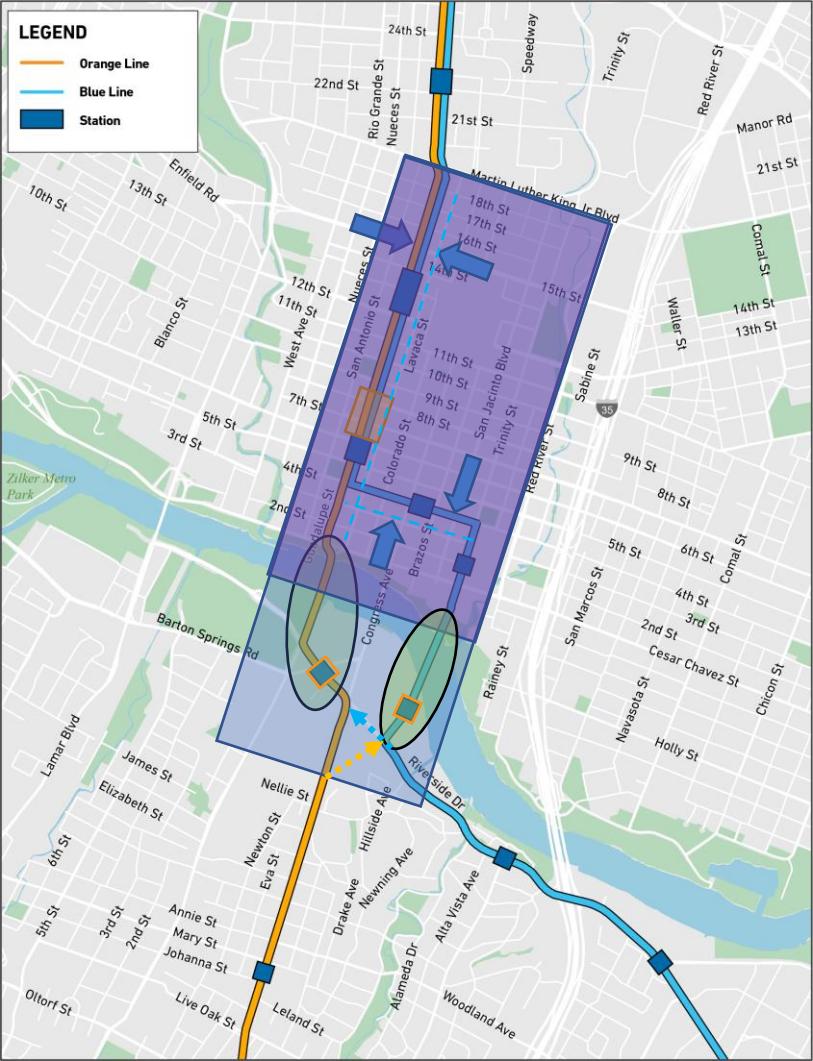


## Downtown: Major Driver

- **Downtown** (MLK to south of the Lake) is the **core of the system**
- What we do Downtown **influences the rest of the system.**
- There are **options** for how to optimize cost downtown and the performance of the system as a whole.



# Downtown: *Technical Analysis*



## Downtown: *Critical Inputs*

Downtown Topo

Traffic & Access

Lake Crossing

Platform & Block Length

Station Location

# Planning: *Criteria for Decision-Making*



FTA Grant  
Competitiveness



Community Values  
Criteria

**EVALUATE FROM EQUITY & SUSTAINABILITY LENS**

# FTA Criteria

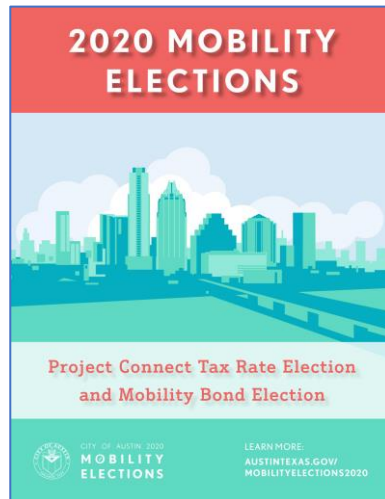
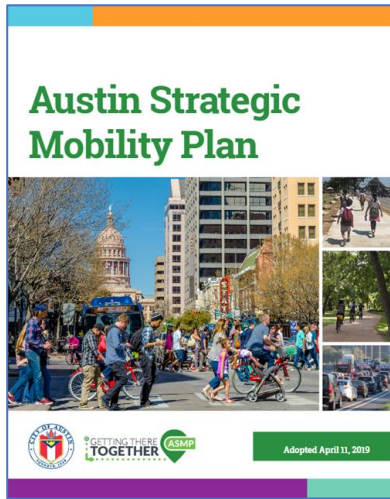


## FTA Grant Competitiveness Evaluation:

 <p><b>Mobility Improvements</b></p>	 <p><b>Cost-Effectiveness</b></p>	 <p><b>Environmental Benefits</b></p>	 <p><b>Financial Plan</b></p>
 <p><b>Congestion Relief</b></p>	 <p><b>Land Use</b></p>	 <p><b>Economic Development</b></p>	



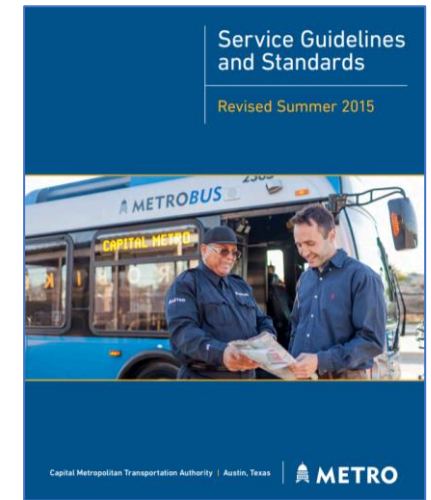
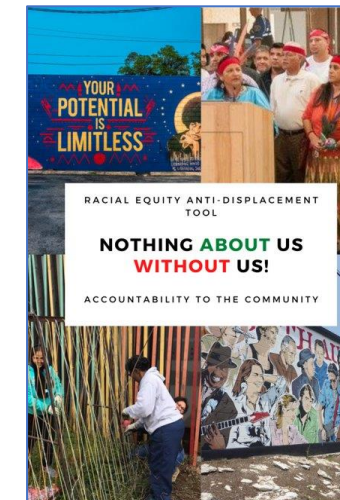
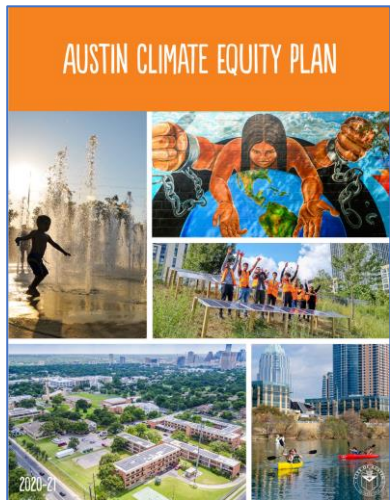
# Community Values Criteria: *Project Roots*



**RESOLUTION NO. 20200807-003**

**WHEREAS**, the Austin Strategic Mobility Plan (“ASMP”) (Ordinance No. 20190411-033) is the transportation element of the Imagine Austin Comprehensive Plan; and

**WHEREAS**, the ASMP establishes that the policy of the City is to invest in a high-capacity transit system to meet our 50/50 mode share goals, stating that the City “must work with our public transportation partners and enhance services to create an experience that attracts and retains riders” and “unprecedented collaboration between the community, the City, and Capital Metro is critical;” and



# Project Purpose and Need

1. Sustainably Support Austin’s Population and Economic Growth
2. Increase Transportation Network Capacity to Meet Increasing Travel Demand
3. Provide Better Transit Options Linking Affordable Housing and Jobs
4. Support Growth and Connectivity to Activity Centers

**12**

**WHAT'S IN IT FOR YOU**

**IMPROVED RELIABILITY**

- The Orange Line will operate in dedicated transitways (separated from general traffic).
- This means fewer service interruptions and freedom from congestion.
- Dedicated lanes take the guesswork out of estimating transit travel times.

**EXPANDED ACCESS TO JOBS**

- 10% of Orange Line corridor households do not have access to a car.
- 23% of Orange Line corridor individuals live below the poverty line.
- 150,000+ jobs will be accessible from the Orange Line.
- The Orange Line will provide a frequent, reliable connection between jobs and the residents who need them.

**EXPANDED SPAN OF SERVICE**

- Orange Line service planning model assumes a start at 5:00 a.m. and end at 2:00 a.m. the following day (except 12:50 a.m. on Sunday).
- The nearly 24-hour, 7-days-a-week modeled service means that the Orange Line will be ready when you are.

**INCREASED FREQUENCY AND FASTER TRAVEL**

- The Orange Line will arrive at your station every 10 minutes throughout most of the day.
- This means you'll spend less time waiting for transit and more time where you want to be.

**A STRONGER NETWORK**

- Investing in congestion-proof transit is a necessary complement to other regional transportation investments, like improving I-35 and TRS, and expanding Austin-Bergstrom International Airport.
- Each of these investments is needed to keep Austin moving.

**13**

**SUPPORT FOR REGIONAL PLANS**

- The Austin Strategic Mobility Plan envisions that 16% of Austinites will use transit to get to work by 2039.
- Fast, reliable, frequent transit service (like the Orange Line) is necessary to make this happen.

**MORE OPTIONS**

- The Orange, Blue, and Gold Line corridors are being designed to maximize connections to where you want to go.
- Congestion-proof transit will get you there without the headache of traffic and parking.
- If you're a driver, there will be fewer cars in front of you.

**THRIVING COMMUNITIES**

- Central Texas' population is expected to nearly double over the next 20 years.
- Housing construction is not meeting this demand, which means housing costs will continue to increase.
- The Orange, Blue, and Gold Lines can be a tool to help preserve affordable housing and produce housing for Austinites of all income levels.

**SUSTAINABILITY AND IMPROVED AIR QUALITY**

- Transportation plays an important role in controlling environmental challenges.
- Investing in the Orange Line will help Austin meet national air quality standards by reducing overall vehicle emissions and pollutants.
- The Orange Line supports the greenhouse gas reduction goals of the City of Austin's Community Climate Plan.

**INVESTMENT IN THE FUTURE**

- The Orange Line corridor is the backbone of Austin and the region.
- Rethinking how we use this space to move people is key to a healthy Austin.
- The Orange Line is a major step toward a more sustainable future and has been future-proofed to evolve with technology.



Reference: Light Rail Purpose and Need Statements

# Community Values Criteria



## Process and Purpose:

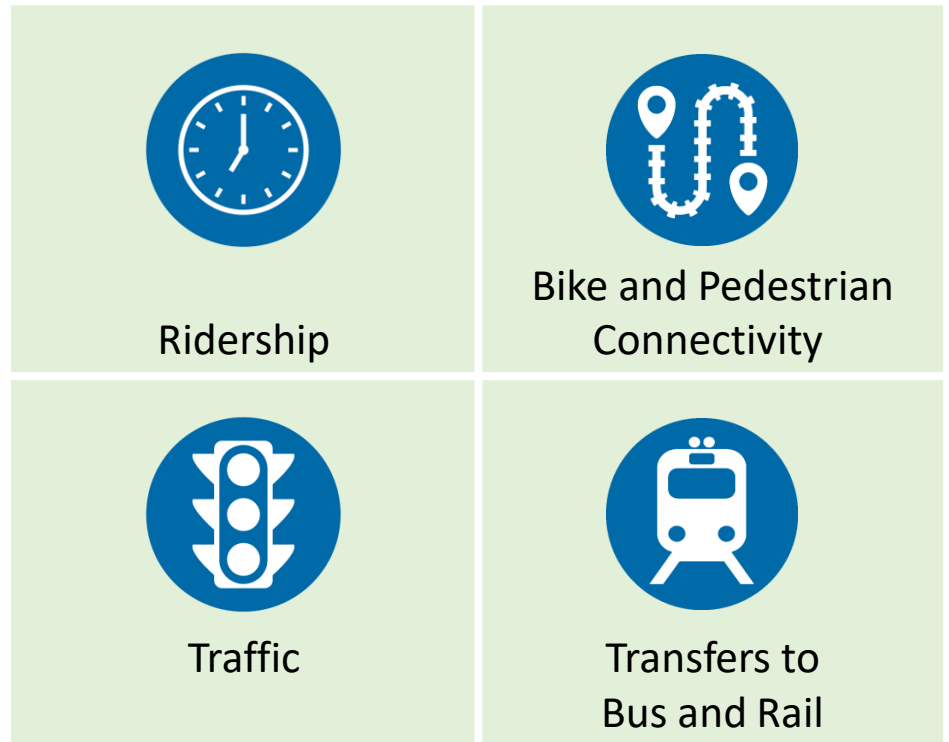
- Validate and refine criteria through community engagement
- Identify key community priorities to inform decision-making about light rail scope and phasing



# Mobility and Customer Experience



## Evaluate:



# Mobility and Customer Experience



Who will benefit from different light rail phasing options?



Multimodal connections to bus and commuter rail transfers, and to bike and pedestrian networks



Traffic impacts

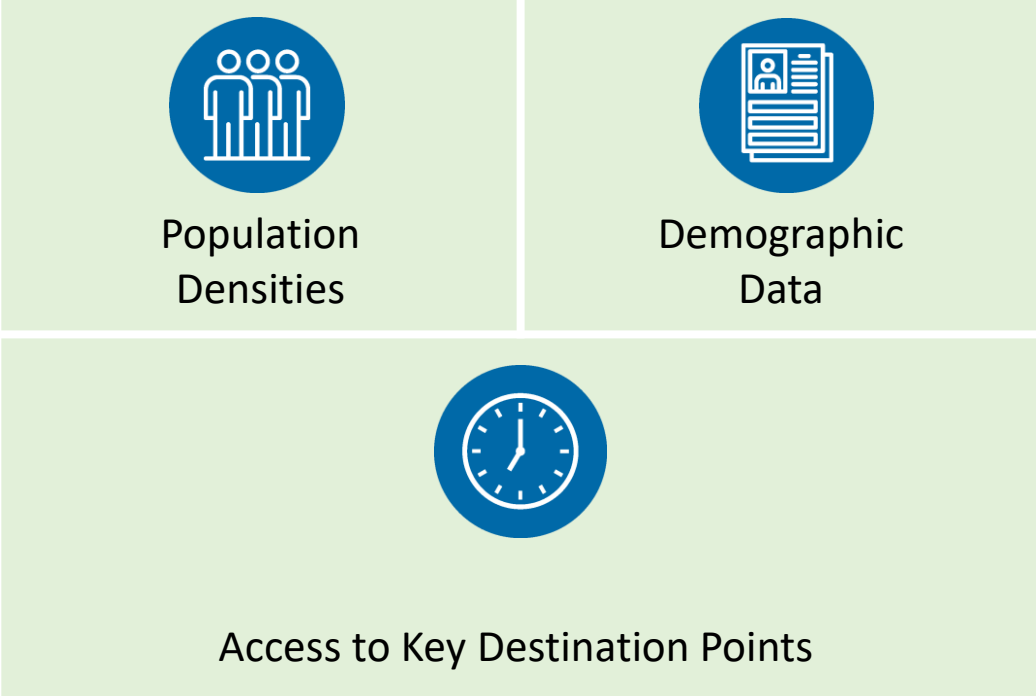


Universal accessibility

# Access to Opportunities



## Evaluate:



# Access to Opportunities



## Quantify access to jobs, services, education

### How?

Look at population densities, destinations near stations, and access under different phasing options



Access for different groups: transit dependent populations, income and demographic groups

# Environmental Benefits



## Evaluate:

- Greenhouse gas emissions
- Impacts on community resources and amenities (e.g., parkland, historic squares, public spaces, trees)
- Water resources and floodplain impact

# Environmental Benefits



## How do different phasing options affect climate goals?

- *Forecast mode shift*
- *Changes in vehicles mile traveled*



## How would sensitive environmental resources be affected?

- *Water resources*
- *Parkland*
- *Heritage trees*

# Land Use and Housing



## Evaluate:

- Affordability benefits
- Current housing and future growth opportunities
- Support anti-displacement and ETOD initiatives

# Land Use and Housing



**What are opportunities for affordable and attainable housing under different phasing options?**



**What are the opportunities for density – and to leverage anti-displacement funding - under different phasing options?**



# ATP Diversity, Equity, and Inclusion Policy

ATP defines diversity, equity, and inclusion as follows:

- *Diversity*. The range of human differences, including but not limited to, race, ethnicity, gender identity and expression, sexual orientation, age, social class, physical ability or attributes, religion, national origin, language, and political beliefs.
- *Equity*. Fairness in process, distribution of resources, opportunity, and provision of varying levels of support upon need to achieve greater fairness of outcomes.
- *Racial equity*. Acknowledgement of historical and current inequity based on race, where race no longer determines one's socioeconomic outcomes and when everyone has what they need to thrive.
- *Inclusion*. Involvement and empowerment, where everyone feels welcomed, respected, supported, and valued.

# Understanding Equity



# Implementing an Equity & Sustainability Lens



## How will Project Connect:



Impact core riders and transit-dependent riders (*e.g., access, reliable service*)



Preserve or enhance community character and community values (*e.g., resources, identity, placemaking*)



Bring co-benefits to transit riders (*e.g., shade, water quality improvements, health equity*)

# Criteria Development: *Community Engagement*



## Objectives

- Connect with, and receive input from, priority communities
- Collect feedback to inform evaluation criteria
- Build trust and demonstrate transparency



## Tools

- Focus Groups for Priority Populations
- Roundtable Discussions
- Community Advisory Committee (CAC)
- Technical Advisory Committees (TACs)
- Project Connect Advisory Network (PCAN)
- Elected Leaders
- Business Community Outreach
- Pop-Ups and At-Stop Outreach
- Social Media and Earned Media

# Discussion



What community values are we missing?



How do we engage the community in value and tradeoff conversations?



Others?



# RECESS

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# PUBLIC COMMENT

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# TECHNICAL ADVISORY COMMITTEE REPORTS

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**COMMITTEE:** Engineering, Architecture and Construction Committee

**DATE:** November 2, 2022

**ATTENDANCE:**

- Veronica Castro de Barrera (ATP Board Chair)
- David Bodenman
- Lyndon Henry
- Efrain Velez
- Karen Bondy
- Justin Adair

**PRIMARY AGENDA ITEMS:**

- Draft Project Connect Ordinance (scheduled to go to Council on 11/15): review and update
- October 22 Light Rail Workshop: recap and next steps

**COMMITTEE RECOMMENDATIONS:**

- Donna Galati with the City's Project Connect office discussed the Project Connect Ordinance that goes to Council on November 15.
  - o Members asked if permits will be required for each individual station or will each one need a separate permit. Donna explained that the goal is to limit the number of site plans and increase their lifecycle.
  - o Members asked about the time it takes to amend the ordinance once its passed. Donna explained that the most time extensive aspect is moving it through the Boards and Commissions and the departments before it goes to Council. As a follow-up, the EAC Members are concerned about additional adjustments being buried in the code revisions. Donna explained that this is not part of the land development code which will help.
- 

**REQUESTS FOR MORE INFORMATION:**

**NEXT STEPS:**

- ATP Board Chair would like to discuss reflections on metro systems from her recent travels in Australia and Hawaii.



**COMMITTEE:** Planning, Sustainability, Equity & DBE Advisory Committee

**DATE:** November 3, 2022

**ATTENDANCE:**

- Gina Fiandaca (City of Austin)
- Vivian Venish
- Jen Cregar

**PRIMARY AGENDA ITEMS:**

- Draft Project Connect Ordinance (scheduled to go to Council on 11/15): review and update
- October 22 Light Rail Workshop: recap and next steps

**COMMITTEE RECOMMENDATIONS:**

- Members asked staff to focus on what the community is asking for and how we are responding and delivering and to focus on how we might decrease the downtown focus to improve overall systemwide connection.
- PSEC Members and ATP staff had a great discussion over who the plans are being designed for- to serve existing riders or to entice new riders.
- Staff talked with PSEC Members about wanting to reduce cost while also prioritizing length and access.
- Donna Galati with the City's Project Connect office discussed the Project Connect Ordinance that goes to Council on November 15.
- 

**REQUESTS FOR MORE INFORMATION:**

- Will/how will the NEPA cumulative impacts analysis consider the combined impacts of concurrent construction with I-35 and other major construction projects? (Conversely, how do we get TxDOT to consider the cumulative impacts from PC and other projects in its analysis?)
- Will a range of building materials, including low-carbon concrete and steel, be considered in the NEPA alternatives analysis, or is it only focused on route/approach alternatives?

- A PSEC Member asked about efforts to electrify the fleet and how we can work in our community to share resources. This is a question better answered by CapMetro and it was proposed that they're invited to a future meeting.

**NEXT STEPS:**

- Workforce development
- East/West connections and how and early goals being achieved
- Invite ATD to discuss the I35 project and the coordination of major infrastructure projects



**COMMITTEE:** Finance & Risk

**DATE:** Oct 17, 2022

**ATTENDANCE:**

- Tony Elkins
- Art Alfaro
- John Langmore
- Cindy Matula
- Sarah Campbell
- Dave Sullivan
- Sumit DasGupta
- Gretchen Flatau (CAC liaison)
- ATP Staff: Jennifer Pyne, Shereen Gendy, Bryan Rivera, Vicky Woodard, Katie Houston, Brandon Carr, Chloe Maxwell, Jamie Atkinson
- Project Connect Partners: Brian Buchanan (HDR), Rich Lopatin (Ernst & Young), Molly King (CapMetro EVP Project Connect)

**PRIMARY AGENDA ITEMS:**

- Welcome – ATP Board Member Tony Elkins
- Discussion on ATP Change Order Process – ATP Chief of Planning & Risk Management Jennifer Pyne
- Project Connect Status Report – HDR VP Brian Buchanan
- Program Financing Update – ATP Treasurer Bryan Rivera
- Current Trends in Transportation Project Delivery and Construction Escalation Risk – ATP Board Member Tony Elkins
- Discussion – ATP Board Member Tony Elkins
  - a. Future location/format preferences: remote, in-person or hybrid
  - b. Future discussion topics
  - c. Member ideas/suggestions

**COMMITTEE RECOMMENDATIONS:**

- Jennifer Pyne led a discussion of ATP's change order policy, which is currently under development. Tony Elkins emphasized that documentation is key in a robust change order policy.

- The Committee heard presentations and discussed options for Project Connect phasing and financing. Suggestions included a review of growth assumptions, escalation rates, and potential new revenue sources, to include local contributions and advertising/branding opportunities.
- John Langmore also suggested that staff monitor the timing of a new political administration and potential impact on the ability to draw down federal funds.

#### **REQUESTS FOR MORE INFORMATION:**

- FAR would like staff to return to the Committee once a draft change order policy is ready for review and further discussion.

#### **NEXT STEPS:**

- FAR's next meeting is December 13<sup>th</sup> and the second Tuesday of every other month thereafter.
- The December meeting will be a hybrid meeting with both an in-person and Teams option for participation.

# EXECUTIVE DIRECTOR REPORT

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# PARTNERSHIP REPORTS

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# CapMetro Project Connect Program Update

Nov. 16, 2022



CapMetro



# CapMetro Project Connect Program Update

## Red Line MetroRail: Lakeline/Leander Double Tracking & McKalla Station Projects

- Both are on-time and on-budget!
- **Lakeline/Leander Double Tracking**
  - Substantially complete with final testing planned
- **McKalla Station:**
  - Construction continuing to progress; Station design at 100%
  - Capital Reimbursement ILA
- Freight and commuter rail service suspension scheduled for Nov. 19 – 27 to support construction of these and other projects



# CapMetro Project Connect Program Update

## Pleasant Valley and Expo Center MetroRapid Lines

- Reached 100% design on shelters
- Inspecting prototype shelter in early December
- Construction completed at 9 stations with 7 more in immediate pipeline
- Permitting and schedule coordination with City ongoing
- Grant Agreement with FTA expected in coming weeks

## MetroRapid Park & Rides (Goodnight Ranch and Expo Center)

- Property acquisition and land-use regulatory processes progressing in partnership with the City
- Expo Center traffic signal necessary to support safe bus movements has reached 100% design



Oltorf/Pleasant Valley Station







# Questions





# Project Connect Foundational Ordinance and Regulations

November 16, 2022  
ATP Board Meeting



# Council Directed Staff to Review City Code, Criteria and Regulations

- October 29th, 2021– City Council passed Resolution #202111029-003.
- The Austin Strategic Mobility Plan (ASMP), voter approval of Project Connect, and the ENO report findings **drove the need** for this review and ordinance initiation.
- Both ATP and CapMetro boards passed supporting resolutions.
- Resolution Directs staff to:
  - “Review City Code, including LDC, Criteria Manuals and permitting procedures to identify impediments to design, construction, implementation and operation of Project Connect.”
- The proposed amendments in **this ordinance address needs we know about today** that will benefit the project as it proceeds.

## RESOLUTION NO. 20211029-003

**WHEREAS**, the Austin Strategic Mobility Plan ("ASMP") (Ordinance No. 20190411-033) is the transportation element of the Imagine Austin Comprehensive Plan and calls for a 50/50 mode share by 2039, which includes increasing use of sustainable modes such as walking, bicycling, teleworking and transit;

**WHEREAS**, City Council adopted Resolution No. 20190808-081 directing the City Manager to "analyze and report on options for the City of Austin and other related or interested public or private entities to leverage resources to support the creation, operation, and maintenance of a high-capacity transit system";

**WHEREAS**, Austin voters approved Project Connect, the regional high-capacity transit system, on November 3, 2020;

**WHEREAS**, on December 18, 2020, the City of Austin and the Capital Metropolitan Transportation Authority created a local government corporation named the Austin Transit Partnership Local Government Corporation to aid the City and Capital Metro and act on their behalf to accomplish the governmental purpose of implementing the Project Connect System Plan;



# Components of This Ordinance

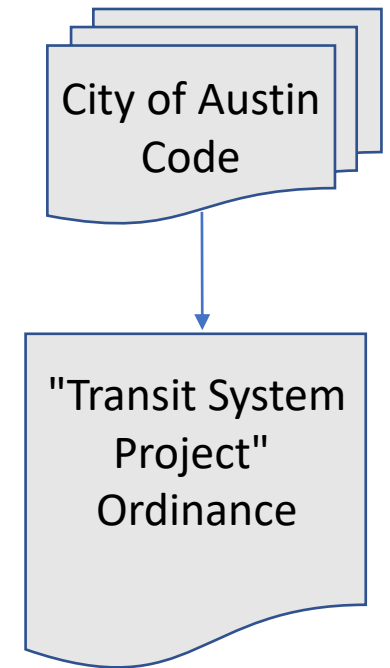
1. Structure for Transit System Project (TSP) Regulations
2. TSP Construction Noise and Mitigation Plan Requirements
3. Adjustments to Permitting Process
4. Transit System Uses
5. Fiscal Exemption Outside the ROW





# 1. Structure for Transit System Project Regulations

- Freestanding ordinance that will house regulations specific to Project Connect.



# 2. Construction Noise and Mitigation Plan Requirements

- ATP **must commit to construction noise mitigations** identified during the NEPA process. These commitments are binding and will be monitored by the FTA.
- The FTA has additional **best practice recommendations that the City will require** for Construction Noise Mitigation.



### 3. Adjustments to Permitting Process

- The current Land Development Code (Chapter 25-5) provides for existing Fast Track and Phased Engineering Site Plan processes, but some adjustments are needed to accommodate Project Connect.
- We are proposing minor changes to Fast Track, Phased Engineering and other site plan provisions:
  - The inclusion of a building is not a pre-requisite for entering the Fast Track process
  - Variances can be processed at the phase level within the Fast Track process
  - Allowing additional phases in Phased Engineering or Fast Track site plans to be added as updates, not revisions
  - Site plans have a 10-year life



## 4. Transit System Uses

- The LDC defines certain broad use categories and lists examples of the types of uses that fall into the broad categories.
- Because this is our first light rail project, there is equipment the City has not previously seen; therefore, we want to define the use in this ordinance.



## 5. Fiscal Exemption Outside the ROW

- The Corridor Program Office (CPO) ordinance approved in May 2022 exempted Public Mobility Projects inside the Right-of-Way (ROW) from the requirement to post fiscal surety.
- This ordinance expands the fiscal exemption to Transit System Projects **outside of the ROW** such as a Park and Ride.



Thanks for joining us.  
Visit [ProjectConnect.com](https://ProjectConnect.com) for more information.



## **ACTION ITEM 1:**

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Approval of minutes from the September 21, 2022 ATP Board Meeting

# AUSTIN TRANSIT PARTNERSHIP BOARD OF DIRECTORS MEETING

203 Colorado St. Austin, TX 78701

~ Minutes ~

Board Secretary Casey Burack  
512-369-6040

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Wednesday, September 21, 2022  
2:00 PM

2:12 PM Meeting Called to Order  
5:32 PM Meeting Adjourned

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## 1. Public Comment

There was no public comment at the meeting.

## 2. Technical Advisory Committee Reports

ATP's Chief of Architecture & Urban Design reported on behalf of the committee. The Committee discussed the Light Rail Program Project Development.

## 3. Executive Director Report

ATP Interim Executive Director Greg Canally discussed the following items:

- Project Connect Status Report ATP Board Brief
- ATP Organizational Update

## 4. Discussion Items

### 1. Status of Work on Updated Light Rail Implementation Plan

HDR Vice President Brian Buchanan and Chief of Planning and Risk Management Jennifer Pyne presented on this item.

Mayor Adler asked about the process for how staff will take options to the Board and the community. He requested that the Board see options before options are distributed for comment.

Board Member Elkins asked staff questions related to contracting methodology, specifically if ATP will be looking at collaborative or progressive contracting.

Board Member Travillion recommended standardized process in which the Board and staff can report on items such as official business travel.

## 5. Action Items

1. Approval of minutes from the August 24, 2022 Austin Transit Partnership Board Meeting  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Travillion  
**SECONDER:** Elkins  
**AYES:** Castro de Barrera, Travillion, Elkins, Adler  
**ABSENT:**
  
2. Approval of a resolution authorizing award of a contract with Hilltop Securities Asset Management LLC for investment advisory services for 2 years with an option for two additional 1-year terms in an amount not to exceed a percentage of investment assets managed, estimated to be \$150,000 per year  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Elkins  
**SECONDER:** Travillion  
**AYES:** Castro de Barrera, Travillion, Elkins, Adler  
**ABSENT:**
  
3. Approval of a resolution authorizing negotiation and execution of a cooperative contract with Applications Software Technology LLC for an Enterprise Resource Planning system and implementation services for 18 months from date of notice to proceed in an amount not to exceed \$3,000,000  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Adler  
**SECONDER:** Elkins  
**AYES:** Castro de Barrera, Travillion, Elkins, Adler  
**ABSENT:**
  
4. Adoption of the ATP Fiscal Year 2023 Budget with direction to Executive Director and Director of Internal Audit  
**RESULT: ADOPTED [UNANIMOUS] AS AMENDED**  
**MOVER:** Castro de Barrera  
**SECONDER:** Adler  
**AYES:** Castro de Barrera, Travillion, Elkins, Adler  
**ABSENT:**
  
5. Approval of a resolution declaring ATP's official intent to reimburse itself from proceeds of tax-exempt obligations to be issued for Light Rail lines and associated support facilities expenditures in the total amount of \$50,000,000  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Adler  
**SECONDER:** Elkins  
**AYES:** Castro de Barrera, Travillion, Elkins, Adler



**ABSENT:****5. Internal Audit Action Item**

1. Approval of ATP's Fiscal Year 2023 Audit Plan  
**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Travillion  
**SECONDER:** Elkins  
**AYES:** Castro de Barrera, Travillion, Elkins, Adler  
**ABSENT:**

**6. Executive Session****7. Adjournment****ADA Compliance**

*Reasonable modifications and equal access to communications are provided upon request. Please call (512) 369-6040 or email [chloe.maxwell@atptx.org](mailto:chloe.maxwell@atptx.org) if you need more information.*

**BOARD OF DIRECTORS:** Veronica Castro de Barrera, Chair; Steve Adler, Tony Elkins, Jeff Travillion, Gina Fiandaca (ex officio), Dottie Watkins (ex officio).

The Board of Directors may go into closed session under the Texas Open Meetings Act. In accordance with Texas Government Code, Section 551.071, consultation with attorney for any legal issues, under Section 551.072 for real property issues; under Section 551.074 for personnel matters, or under Section 551.076, for deliberation regarding the deployment or implementation of security personnel or devices; arising regarding any item listed on this agenda.

## **ACTION ITEM 2:**

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Approval of a resolution authorizing the negotiation and execution of a contract with HUG (HKS, UNStudio, Gehl) for Systemwide Architecture, Urban Design and Engineering Services for a three-year base term and three one-year extension options, in an amount not to exceed \$16,700,000 for Phase 1A of the Scope of Services

# SYSTEMWIDE ARCHITECTURE, URBAN DESIGN, AND ENGINEERING SERVICES (SAUDES)

RFP P-308115-16

Austin Transit Partnership is seeking sources to provide **Systemwide Architecture, Urban Design and Engineering Services** to Austin Transit Partnership Local Government Corporation (“ATP”) for the purposes of implementing Project Connect. General scope to consist of developing prototypical station design, systemwide guidelines and prototypical design elements as well as site-specific designs for individual stations in alignment to ATP’s system goals and aspirations.

# Solicitation Timeline

Solicitation Issued	May 04, 2022
Pre-Proposal Conference	May 18, 2022
Proposal Submissions	June 28, 2022
Source Evaluations & Interviews	August 29, 2022 – August 31, 2022
Consensus Meeting	September 01, 2022
Board Approval	November 16, 2022
Contract Award NLT <small>(No Later Than)</small>	November 2022

# Solicitation Background

The solicitation was sent to 70 registered vendors.

12 Vendors Responded

The base contract term is 3 years with 3 - 1-year options.

This is a firm fixed-price contract.

DBE Goal – 16% overall contract

# Solicitation Evaluation Results

HUG was evaluated as the highest technical team to perform the scope of services as specified in the RFP. The total points available for the technical score was 100 and 30 for the interviews. The total score for HUG is:

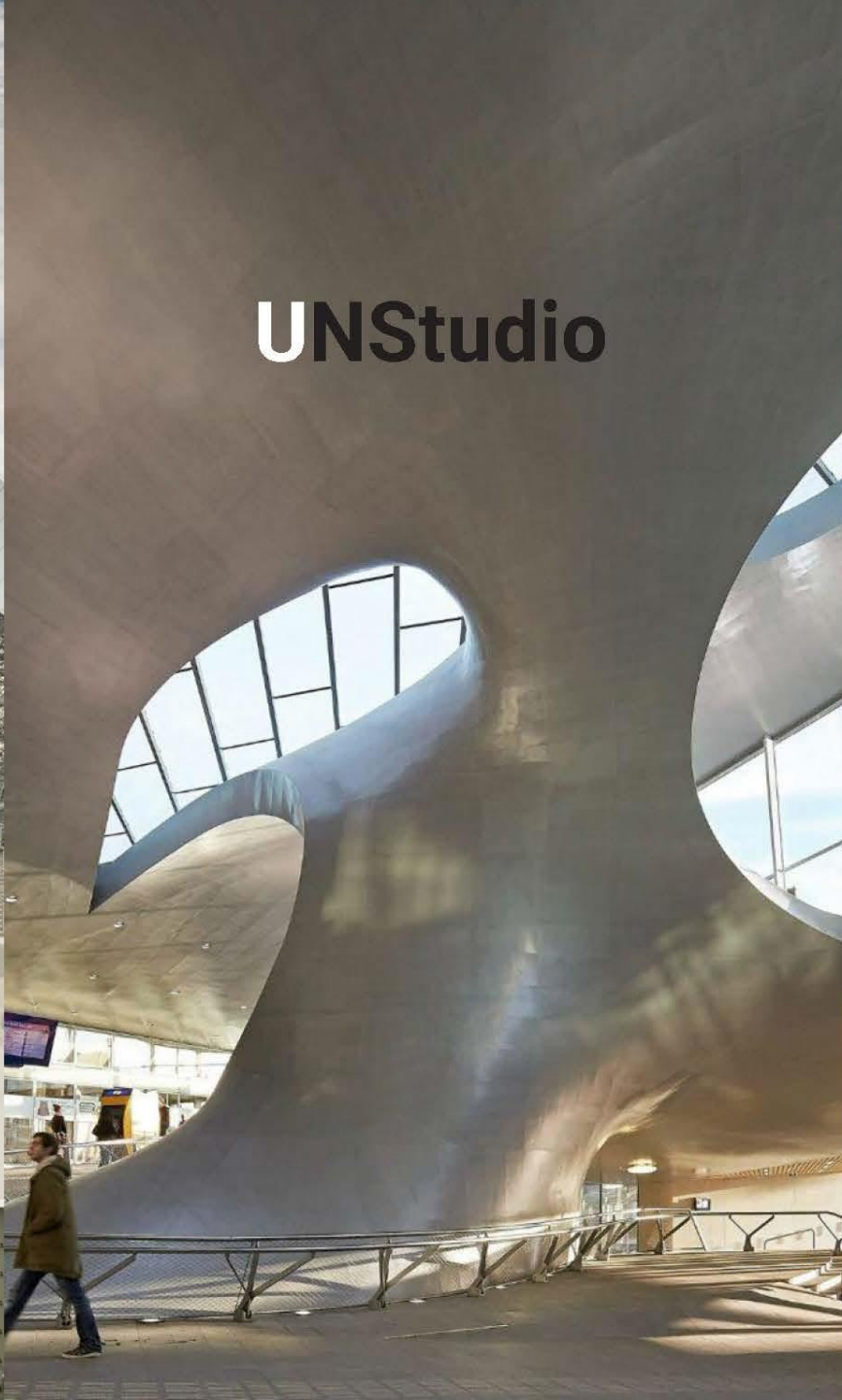
Vendor No.	Firm	Total Score	Rank
02	HUG (HKS, UNSTUDIO, GEHL)	113.17	1



HKS



UNStudio

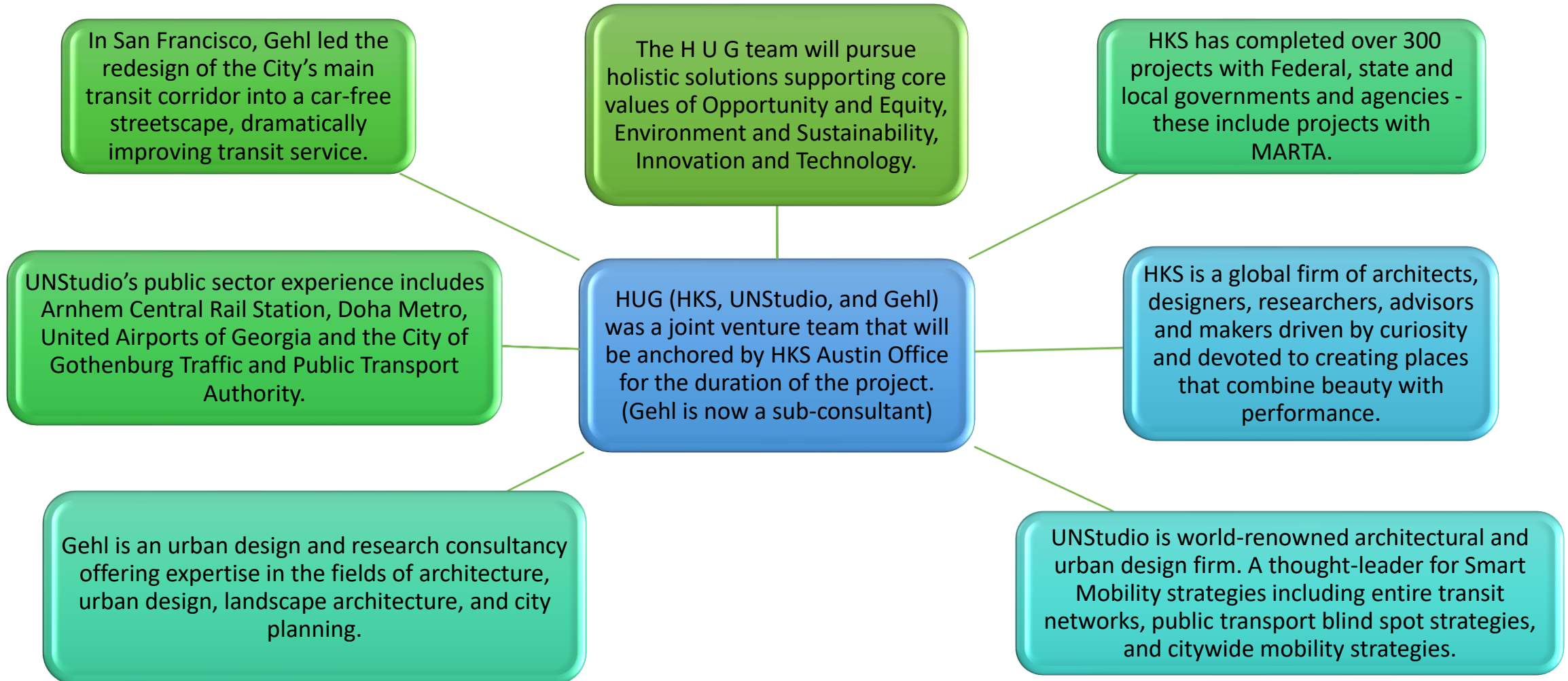


Gehl





# Team Highlights





# The HUG Team

**H**KS, Inc. (Austin), *Project Management and Local Lead*

**U**N Studio (Amsterdam), *Design Lead - Architecture*

**G**ehl Architects (San Francisco and New York City), *Design Lead – Urban Design*

**R**IOS, *Landscape Architecture*

**C**enter for Maximum Potential Building Systems, *Sustainability*

**A**lvarez Consulting, *Community Advancement*

**W**alter P. Moore, *Structural Engineering*

**L**EAP, *Structural Engineering (D/MBE)*

**T.Y.** Lin, *Bridge Engineering*

**S**alas O'Brien, *MEP, Security, Communications, Acoustics*

**V**OLT AIR, *MEP, Fire Protection (D/MBE)*

**S**unland Group, *Cost Estimating (D/WBE)*

**G**arza EMC, *Civil Engineering (D/MBE)*

**K**imley Horn, *Traffic Engineering*

# Project Phases

**The first phase (1A) in an amount not to exceed \$16.7M will include the following:**

- Task 1: Research And Visioning
- Task 2a: Station Design and Typical System Elements (Concept and Schematic Design)
- Task 2b: Typical Station Elements (Design Development)

**(Phase 1A is for Board action and approval)**

The second phase (1B) in an amount not to exceed \$9M includes:

- Underground Stations
- Atypical Station Design, list tbd, including the following stations:
  - UT/West Mall
  - Riverside/Pleasant Valley
  - Crestview
  - Airport
  - South Congress Transit Center
  - South Lamar Transit Center
  - Lady Bird Lake Bridge Landings/Urban Realm

# Award Recommendation: *Board Action Item*

Approval of a resolution authorizing the Austin Transit Partnership (“ATP”) Executive Director, or their designee, to negotiate and execute a contract for Phase 1A with HUG (HKS, UNStudio, and Gehl) for Systemwide Architecture, Urban Design, and Engineering Services for a period not to exceed three years, with three one-year extension options, in an amount not to exceed \$16.7M dollars for Phase 1A of the Scope of Services.

Note: Phase 1B will be brought back to the Board for approval after the program analysis is complete for an amount not to exceed \$9M dollars.



**SUBJECT:** Approval of a resolution authorizing the negotiation and execution of a contract with HUG (HKS, UNStudio, Gehl) for Systemwide Architecture, Urban Design and Engineering Services for a three-year base term and three one-year options, in an amount not to exceed \$16,700,000 for Phase 1A of the Scope of Services.

**FISCAL IMPACT:** Funding for the first year is available in the approved Fiscal Year 2022-23 Approved Budget; funding for the remaining three years of the contract are contingent on future funding.

**RESPONSIBLE DEPARTMENT:** Procurement.

**EXECUTIVE SUMMARY:** This resolution authorizes the ATP Executive Director, or their designee, to negotiate and execute a contract for Phase 1A with HUG for systemwide architecture, urban design, and engineering services for a period not to exceed three years, with three one-year extension options, in an amount not to exceed \$16,700,000 dollars for Phase 1A of the scope of services.

The first phase (1A) will include leadership support, research and visioning, typical stations, and full station design to include concept and schematic and typical station design development.

Phase 1B will be brought to the Board for approval after the program analysis is complete for an amount not to exceed \$9M dollars.

HUG will serve as a key design and engineering advisor to ATP in developing prototypical station design, systemwide guidelines and prototypical design elements as well as site-specific designs for individual stations in alignment to ATP's system goals and aspirations.

The evaluation consisted of evaluation by a Source Evaluation Committee (SEC) of four (4) voting members with relevant technical expertise, who individually and independently reviewed and evaluated the twelve (12) Proposals between July 13, 2022, and July 26, 2022. HUG was evaluated as the highest technical team to perform the scope of services as specified in the Request for Qualifications ("RFP").

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

STATE OF TEXAS

Resolution ID: ATP-2022-015

COUNTY OF TRAVIS

***Contract Award for Systemwide Architecture, Urban Design,  
and Engineering Services***

**WHEREAS**, the Austin Transit Partnership (“ATP”) Board of Directors recognizes the need to procure the services of a qualified firm to provide services in systemwide architecture, urban design, and engineering services to support of the implementation of Project Connect; and

**WHEREAS**, HKS, UNStudio, and Gehl (“HUG”) was evaluated as the highest technical team to perform the scope of services as specified in the Request for Qualifications (RFP P-308115-16); and

**WHEREAS**, the ATP Board of Directors desires to ensure industry best practices and standardized organizational practices for the implementation of Project Connect; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of ATP that the ATP Executive Director, or their designee, has the authority to negotiate and execute a contract for Phase 1A with HUG for systemwide architecture, urban design, and engineering services for a period not to exceed three years, with three one-year extension options, in an amount not to exceed \$16,700,000 dollars for Phase 1A of the Scope of Services.

\_\_\_\_\_  
**Casey Burack**  
**Secretary of the Board**

**Date:** \_\_\_\_\_

## **ACTION ITEM 3:**

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Approval of a resolution authorizing the negotiation and execution of a second interlocal agreement with the City of Austin for Support Services through September 30, 2023, with a one-year extension option, in an amount not to exceed \$9,000,000

# Background on Previous City Agreement

- Entered in February 2021
- Agreement included:
  - National Environmental Policy Act (NEPA) coordination;
  - Utility coordination and approvals;
  - Permitting coordination and approvals; and
  - Other federal grant assistance
- ATP funding flows to the City's Project Connect Office
- Agreement expired September 30, 2021
- JPA anticipated a potential renewal of this Agreement

# New City Agreement

- **Scope:**

- Act as Single Point of Contact with City departments;
- Infrastructure and traffic operations coordination;
- Environmental coordination;
- Permitting assistance; and
- Other support



# New City Agreement

- **ATP Contribution:** not to exceed \$9 million
  - \$2.5 million budgeted in FY22 (\$2.1 million spent)
  - \$3.5 million budgeted for FY23
  - \$3.0 million for FY24
- **Term:** through September 30, 2023, with one one-year extension option



**SUBJECT:** Approval of a resolution authorizing the Executive Director, or his designee, to negotiate and execute an interlocal agreement with the City of Austin for the provision of certain dedicated technical support functions related to design, review and permitting for the implementation of the Project Connect System through September 30, 2023, with one one-year extension option, in an amount not to exceed \$9,000,000.

**FISCAL IMPACT:** Funding for this item was approved in the Fiscal Year 2022 Budget and is available in the approved FY2023 Budget.

**BUSINESS CASE:** Austin Transit Partnership (“ATP”) will benefit from the City of Austin providing technical support functions for the implementation, operation, and maintenance of the Project Connect System, including with respect to utilities, permitting and other support necessary to further the federal environmental review process for the Project Connect System until the end of the current fiscal year. The City of Austin is undertaking these services in order to ensure the Project Connect Program remains aligned with the voter-approved Program Sequence Plan.

**EXECUTIVE SUMMARY:** The Joint Powers Agreement executed by ATP, Capital Metropolitan Transportation Authority (“Capital Metro”) and the City of Austin in December 2021 anticipated that ATP would enter, provided funding was available, another interlocal agreement with the City of Austin to fund the City’s Project Connect Office and certain services in support of Project Connect to be performed by the City of Austin.

The prior agreement expired on September 30, 2021, but the City continued to provide technical services to ATP, for which they were paid \$2,100,000 out of a budgeted \$2,500,000 in Fiscal Year 2022. This new agreement backdates to October 1, 2021 and anticipates an expenditure of \$3,500,000 in services to be provided by the City to ATP in Fiscal Year 2023, with a renewal option in the amount of \$3,000,000 in Fiscal Year 2024.

This new agreement provides: a single point of contact for City departments, infrastructure and traffic operations coordination, environmental coordination, permitting assistance, and other support.

**RESPONSIBLE DEPARTMENT:** Legal

**PROCUREMENT SUMMARY:** Does not apply.



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

STATE OF TEXAS

**Resolution ID: ATP-2022-016**

COUNTY OF TRAVIS

***Second Interlocal Agreement for City of Austin Project  
Connect Technical Support***

**WHEREAS**, the Austin Transit Partnership (“ATP”) entered into an Interlocal Agreement with the City of Austin (“City”) for Project Connect Support Services in February 2021 (the “Initial Agreement”); and

**WHEREAS**, the Initial Agreement expired on September 30, 2021, but ATP continued to receive and pay for the City’s technical services; and

**WHEREAS**, the Austin Transit Partnership Board of Directors (the “Board”) recognizes the importance of receiving continued technical assistance from the City of Austin, primarily through the City Project Connect Office; and

**WHEREAS**, the Board acknowledges that the City of Austin is in the best position to provide such support functions related to design review and permitting for the Project Connect program in connection with the Federal environmental review process; and

**WHEREAS**, the Joint Powers Agreement entered between ATP, the City of Austin, and Capital Metropolitan Transportation Authority anticipated, provided funding was available, another interlocal agreement with the City of Austin to fund the City’s Project Connect Office and certain services in support of Project Connect to be performed by the City of Austin; and

**WHEREAS**, the Board desires to move forward at this time to identify certain roles and responsibilities for the City of Austin and ATP in order to meet the schedule laid out in the Project Connect program in this Second Interlocal Agreement between the City of Austin and ATP for Support Services.

**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 a Second Interlocal Agreement between the City of Austin and Austin Transit Partnership for Support Services for the provision of certain City support staff functions through September 30, 2023, with a one one-year extension option, in an amount not to exceed \$9,000,000, substantially in accordance with the draft attached hereto as Exhibit A.

\_\_\_\_\_  
**Casey Burack**  
**Secretary of the Board**

**Date:** \_\_\_\_\_

**SECOND INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUSTIN AND AUSTIN  
TRANSIT PARTNERSHIP  
FOR PROJECT CONNECT SUPPORT SERVICES**

This Second Interlocal Agreement between ATP and the City of Austin (this “**Agreement**”), dated as of \_\_\_\_\_, 2022, 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 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-supportive anti-displacement strategies known as the Project Connect System (“**Project Connect**”); and

**WHEREAS**, the 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 (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 (Resolution No. 20200812-015); and

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

**WHEREAS**, the Parties entered into the Interlocal Agreement Between the City of Austin and Austin Transit Partnership for Support Services No. 1 (“ILA for Support Services”), on February 24, 2021; and

**WHEREAS**, the Parties desire to amend and restate the ILA for Support Services to provide for ongoing support for the work required to implement the Program that was approved by the voters in November of 2020, and that is the subject of the Joint Powers Agreement approved by the Parties and Capital Metro in 2021; and

**WHEREAS**, the Parties intend that the City will provide ATP with the scope of services set forth on Exhibit A and anticipate that this will be one of many interlocal agreements between the City and ATP in support of the Program; and

**WHEREAS**, to provide such scope of services, the City will hire certain support staff positions in accordance with the budget requests as provided in its annual budget; and

**WHEREAS**, 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.

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

## **Article 1**

### **Roles and Responsibilities; Purpose and Scope of this Agreement**

**Section 1.01 Defined Terms.** Capitalized terms used in this Agreement and not otherwise defined have the meaning given in the Joint Powers Agreement.

**Section 1.02 General Roles and Responsibilities of the Parties.** The roles and responsibilities of the Parties are established in the Joint Powers Agreement. In general, they are as follows:

- (a) ATP has been designated by the City and Capital Metro to be the principal entity responsible for financing, building, and implementing the Project Connect System Plan in a manner independent of the City and Capital Metro. Specifically, ATP is responsible for the planning, design, financing, acquisition, procurement and construction of the light rail components of the Project Connect System Plan, including, initially, the light rail projects known as the "Orange Line" and the "Blue Line".
- (b) One of the City's roles in respect to the Project Connect System Plan is to cause to be collected and transmitted the property tax revenue as authorized by the Voters with the passage of Proposition A ("Project Connect Tax Revenues"), to transfer the property tax revenue to ATP consistent with Proposition A, provide such support services as outlined in the Joint Powers Agreement, and implement the transit-supportive anti-displacement program.

**Section 1.03 Purpose and Scope of This Agreement.** This Agreement is an interlocal cooperation agreement to supersede and replace the ILA for Support Services. The purpose and scope of this Agreement is to clearly identify the City Project Connect Office support services relating to Project Connect, to establish the terms and conditions for the performance of such services by the City, and to direct the reimbursement for such services by ATP.

**Section 1.04 Collaboration and Communication Between the Parties.** The City and ATP agree to share any necessary financial and operating information, data, and reports to sufficiently account for the expenditure of the property tax revenues transferred by the City to ATP consistent with Proposition A and to support each entity's annual budgets, Annual Comprehensive Financial Reports, and ATP's sale of a "public security" as defined in Section 1201.002(2) of the Texas Government Code (collectively "Public Securities") including primary offering disclosure and continuing disclosure in accordance with federal securities laws. Both Parties agree that their respective staff will work to support any such request for this information, data, and reports.

## **Article 2**

### **Project Support Services Provided by the City**

**Section 2.01 Agreement to Provide Support 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 support and coordination services described on Exhibit A to this Agreement (collectively, the “**Support Services**”). The Parties acknowledge and agree that Exhibit A to this Agreement may be periodically updated, supplemented, or amended pursuant to Section 8. The City further acknowledges that it will work in good faith to ensure that the activities performed under this Agreement are attributable to the Support Services. However, the Parties also recognize that ATP may request, and the City may provide, services that are not directly attributable to the Support Services, but which may be necessary to further the Project. Unless agreed to in writing by both parties, the City shall not be authorized to perform Support Services and shall not be reimbursed for costs: (A) for which funding has not been approved by ATP in accordance with Article 3; and (B) in excess of the services and associated costs budgeted and approved and therefore expressly authorized by this Agreement. Should ATP request additional services beyond those initially budgeted for, they will do so in writing and provide the budgeted funds for those additional services.

- (b) Collocation. The City agrees, to the extent permissible under applicable laws, that some City staff positions necessary to deliver the services described in this Agreement may work in the same physical location as the ATP staff to ensure close collaboration as the Parties work together to develop the Program. However, the City staff have the same right and opportunity to work remotely as all other City employees. Office space, utilities, and other facilities needed for working within the office will be provided by ATP for City Project Connect Office staff at no cost to the City.
- (c) Term. The Term of this Agreement shall run from October 1, 2021 to September 30, 2023. The Agreement may be renewed by the mutual agreement of the Parties, in writing, for an additional 1-year term.

## **Section 2.02 Standard of Service**

- (a) The City represents, warrants, and covenants that the Support 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 Support 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 Support Service. The City agrees to work with ATP to implement Project Connect in accordance with the timelines set forth in the Contract with Voters Sequence Plan. The City of Austin Project Connect Office (City PCO) will act, to the extent feasible, as a single point of contact for ATP for Project Connect and ATP may rely on the City PCO to speak on behalf of the City Manager regarding administrative responsibilities related to Project Connect. Expenditures made for Support Services will be undertaken in a manner consistent with Proposition A.
- (b) THERE ARE NO WARRANTIES BY THE CITY WITH RESPECT TO THE SERVICES. 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 EXCLUDED AND WAIVED.

### Article 3

#### Approval and Reimbursement for Support Services

##### Section 3.01 Funding and Payment

- (a) Funding. As reflected in the Joint Powers Agreement, ATP shall pay the City for the Support Services provided by the City PCO on a cost reimbursement basis up to the amount included in the then-current budget, which shall align with this Interlocal Agreement approved by City Council and the ATP Board, in accordance with this Article 3.
- (b) Payment for Support Services. In consideration for the performance of the Support Services by the City PCO, ATP shall pay to the City compensation (the “**Services Payment**”) as provided for in the then current budget, payable pursuant to the quarterly invoices referenced in Section 3(c). In addition to reimbursement of the City of the actual costs and expenses incurred in connection with the Support Services, and in consideration for the performance and administration of the Support Services by the City, ATP shall pay to the City the agreed upon cost of the City PCO, including the City costs of staff, contractuels, and commodities, in connection with the administration of the Support Services, and the performance of the Support Services directly by City staff. As with all services under this Agreement, City contractuels and commodities, including third-party studies, staff trainings, travel, and employee development must be agreed to by ATP prior to incurring the expense. Such costs shall be reasonable and commensurate with the services provided and shall not exceed the annual funding established in this Agreement and included in the annual budget approved by the City Council and ATP Board for this Agreement (“Approved Annual Support Services Budget”), as provided for in this Section 3.01. Should ATP request Support Services for which ATP has not budgeted, ATP shall obtain additional authorization from its Board to pay for these services.
- (c) Invoices. The City shall provide ATP with a quarterly invoice specifying the Support Services costs for the immediately preceding quarter in accordance with the schedule for the payment of the Support Services costs in the agreed annual budget. The payment 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 City, the City PCO staff will submit its proposed annual budget to ATP by April 1<sup>st</sup> using the ATP Budget Request Form starting with April 1, 2023. The City and ATP staff shall work to reach agreement by May 31<sup>st</sup> on a proposed budget to be submitted to City Council and ATP Board for approval through the Approved Annual Support Services Budget. The Parties further acknowledge and agree, notwithstanding anything else in this Agreement to the contrary, that ATP’s obligation with respect to the Support Services payment is subject to, and governed by, Article 11, Section 5 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, Section 5 of the Texas Constitution.



- (d) **Funding Out.** The financial obligations of the Parties, if any, under this Agreement are contingent upon the availability and appropriation of sufficient funding. The obligation of ATP to pay or reimburse the City for the Support Services is subject to the receipt of Proposition A dedicated funding from the City and annual approval and appropriation of funds as set forth in the Approved Annual Support Services Budget, as defined in this Section 3.01 of this Agreement. Each Party paying under this Agreement must make those payments from current revenues available to the paying Party. Any Party may withdraw from this Agreement without penalty in the event that funds are not available or appropriated. However, no Party will be entitled to a refund of amounts previously contributed in the event of withdrawal for lack of funding. Any Party withdrawing from this Agreement due to lack of appropriated funding shall follow the termination provisions set forth below.
  
- (e) **Planning Cap.** ATP's reimbursement obligation under this Agreement shall not exceed \$9,000,000, substantially divided as follows:

<b>Term</b>	<b>Amount</b>
October 1, 2021-September 30, 2022	\$2,500,000
October 1, 2022-September 30, 2023	\$3,500,000
October 1, 2023-September 30, 2024	\$3,000,000 (Option Year)

**Section 3.02 Subordination.** The City acknowledges and agrees that notwithstanding any present or future appropriation of funds by ATP to fulfill its payment obligations under this Interlocal Agreement, all payment obligations of ATP to the City under this Agreement shall constitute unsecured contractual obligations of ATP, and shall be expressly subject and subordinate to any present or future pledge by ATP of its revenues securing any lien for the repayment of its Public Securities, credit or liquidity agreements or other debt obligations of ATP for the financing of all components or any component of Project Connect. The City agrees to deliver any additional instruments, estoppels or other assurances as may be reasonably required by ATP, any trustee, ATP investors or credit/liquidity providers to evidence timing or subordination constraints. In the event of any conflict between this Agreement and any Public Security Authorization, as defined in Section 1201.002(3) of the Texas Government Code, the Public Security Authorization shall prevail. Failure of ATP to appropriate funds for this Interlocal Agreement due to this provision or any other provision in this Agreement shall be an event of default for which the City may exercise its right to cease provision of services under this Agreement subject to the good faith mitigation efforts provided in Section 3.03 below.

**Section 3.03 Budget Shortfalls.** ATP shall provide prompt written notice to the City of any actual or anticipated shortfalls in ATP's annual operating budget. Such notice shall specify in sufficient detail the expected impact of any such budget shortfall on the current Approved Annual Support Services Budget. Upon the occurrence of any such event, the Parties agree to work in good faith to make any necessary amendments or modifications to the then current Approved Annual Support Services Budget to mitigate the impact of such budget shortfall. Should the services requested by ATP be anticipated to exceed their budgeted funding, both parties agree to work in good faith to seek ATP Board approval for payment of such costs.

**Section 3.04 Invoicing.** The invoice submitted by the City shall be on City letterhead and include the invoice number, invoice date, expenditure amount summarized by General Category (personnel, services, supplies, travel/training/equipment), and the service period covered by the invoice.

**Section 3.05 Payment.** If the City requests payment by ACH or wire the invoice should include the appropriate ACH or wiring instructions (full Routing Number and last four digits of the Account Number). If the City requests payment by check, the invoice will need the “remit to” information.

**Section 3.06 Invoice Corrections.** In the event the amount charged to ATP is incorrect for any reason, the adjustment may be applied to the next invoice. The City is not expected nor required to issue a supplemental invoice for the adjustment amount. The parties will develop a process to timely resolve invoice corrections.

## **Article 4**

### **General Provisions**

**Section 4.01 Insurance.** Should the City use consultants to perform any of the City PCO support services authorized under this Interlocal Agreement, the parties will take such steps as are necessary to maintain appropriate insurance for such work as is recommended by each party’s risk management staff.

**Section 4.02 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, provided however that each Party will endeavor to provide notice to the other Party prior to the release of any information marked confidential or proprietary.

### **Section 4.03 Default, Termination; Dispute Resolution.**

- (a) Default. A party shall be in default under the Agreement if the party (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement; and following receipt of notice of such failure as provided in Section 4.15, fails timely to cure the failure within the time periods provided below, or (b) fails to provide adequate assurance of performance.
- (b) Termination of Agreement. This Agreement may be terminated in its entirety only if ATP fully pays for any outstanding actual costs of existing commitments to the City.
- (c) Termination for Convenience. This Agreement may be terminated in whole or in part, by either Party, for any reason or no reason whatsoever. If either Party terminates this Agreement for convenience, the Party terminating must provide written notice to the other Party not less than six months prior to the beginning of the next fiscal year for the other Party. If such termination notice is provided by either Party, the City and ATP will work together to ensure that all invoices up to the October 1<sup>st</sup> date of the beginning of the new fiscal year are submitted in proper format and are timely paid in full.
- (d) Termination for Cause. A default shall occur if either Party fails to perform any material obligation under this Agreement. In the event of default by a Party, the other Party shall have the right to terminate the Agreement for cause, by written notice delivered by certified mail to the Party in default. Unless the Party giving notice specifies a different time in the notice, the contract is terminated 30 calendar days after the date of the notice. During this time period, the Party alleged to be in default may cure the default or provide evidence sufficient to prove to the other Party’s reasonable satisfaction that the default does not exist or will be cured in a time satisfactory to the Party alleging the default.

- (d) **Dispute Resolution.** Upon request of either Party, the Parties will make an informal attempt to negotiate a resolution of any dispute arising under this Agreement. Such request shall be in writing and shall seek a meeting between representatives of each Party within 14 calendar days after receipt of the request or such later period as agreed by the Parties. Each Party shall provide for the meeting, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they shall proceed directly to mediation as described below. Informal negotiation may be waived by a written agreement signed by both Parties, in which event the Parties shall proceed directly to mediation as described below.
- (1) The mediation shall take place in Austin, Texas. The Parties shall select a mediator within 30 calendar days of the written waiver, or within sixty 60 calendar days of the informal negotiation meeting. The Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute. If the time period for selecting the mediator has expired with no agreement on the mediator, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The Parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The Parties will share the costs of mediation equally.

**Section 4.04 Limitation of Liability.** THE PARTIES ACKNOWLEDGE AND AGREE THAT THE AGGREGATE LIABILITY OF THE PARTIES FOR ANY CLAIMS ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF SERVICE PAYMENTS ACTUALLY OWED. FURTHERMORE, NEITHER PARTY SHALL BE LIABLE FOR PUNITIVE, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES IN ANY FORM OR AMOUNT TO THE OTHER PARTY FOR CLAIMS ARISING UNDER THIS AGREEMENT.

**Section 4.05 Audit and Inspection Rights.** ATP shall have the right, at its cost and expense, to have the books and records of the City related to this Agreement:

- (i) reviewed by ATP from time to time during the Term, and
- (ii) audited by a nationally or regionally recognized independent certified public accountant, under appropriate confidentiality provisions, for the purpose of verifying the accuracy of all service costs and cost calculations under this Agreement; provided, that any such audit shall be conducted no more than once per budget year (a "budget year" being defined as October 1 through September 30) and shall be conducted, in each case, upon at least 30 calendar days' advance written notice; provided further, that no review or audit shall be conducted outside of normal business hours or in a manner that interferes unreasonably with the City's business.
- (iii) The results of any such audit by the independent certified public accountant shall be reduced to writing and delivered to each Party. Any underpayment or overbilling determined by ATP pursuant to the review referenced in clause (i)

above shall, upon the agreement of the City (or if there is a dispute, then upon resolution of such dispute pursuant to Section 5(e)), promptly be paid by ATP or refunded by the City, as applicable. Any underpayment or overbilling determined by independent certified public accounting firm pursuant to the audit referenced in clause (ii) above shall, upon the agreement of ATP and the City (or if there is a dispute, then upon resolution of such dispute pursuant to Section 5(e)), promptly be paid by ATP or refunded by the City, as applicable. The Parties shall retain all records created or maintained under this Agreement for a period of three years after final payment on this Agreement or until all audit and litigation matters that the Parties have brought to the attention of the other Party are resolved, whichever is longer.

**Section 4.06 No Violation of Prevailing Law.** Neither Party shall be required to perform any act or refrain from performing any act under this Agreement if that performance or non-performance would constitute a violation of the constitution or laws of the State of Texas or federal law or regulation.

**Section 4.07 Governmental Purpose Statement.** ATP is entering into this Agreement in its capacity as a public, nonprofit corporation organized by the City and Capital Metro to accomplish the governmental purposes of the City and Capital Metro pursuant to Chapter 431 of the Texas Transportation Code, as amended and in accordance with ATP's The parties shall be in compliance with policies and procedures applicable to Project Connect as established by the Contract with the Voters, and the governing bodies of the parties.

**Section 4.08 Effect on Other Agreements.** Neither Party shall be justified or otherwise permitted, by virtue of an Event of Default of the other Party under this Interlocal Agreement, to withhold performance, or suspend performance of its obligations or responsibilities under any other agreement between the Parties, including without limitation, the Joint Powers Agreement.

**Section 4.09 No Waiver of Sovereign Immunity.** Neither Party waives or releases its rights and privileges, if any, it may have in any proceeding before any court or tribunal in any jurisdiction to assert the affirmative defense of sovereign immunity based upon their status as a governmental entity with respect to the adjudication of any claim arising or relating to this Agreement, including but limited to any breach of this Agreement.

**Section 4.10 Waiver of Attorneys' Fees.** The Parties do knowingly and intentionally waive their rights to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Agreement.

**Section 4.11 Waiver.** Any claim or right arising out of a breach of the Agreement cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is in writing signed by the aggrieved Party. No waiver by either Party of any one or more events of default by the other Party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**Section 4.12 Binding Effect, Successors and Assigns.** This Agreement shall be binding upon and shall inure to the exclusive benefit of, Parties and their respective successors and assigns. There are no third-party beneficiaries to this Agreement. Neither party may assign any part or all of its rights, interests or obligations under this Agreement without the prior written consent of the other Party, and any assignment

made by either Party without the prior written consent of the other Party shall be null, void and of no force or effect.

**Section 4.13 Headings.** The headings 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.

**Section 4.14 Amendment.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party and approved by the City Council and Board of Directors of ATP. However, Exhibit A to this Agreement or any budget may be updated, supplemented or amended, without the approval of the City Council 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 Payment from ATP to the City for the fiscal year, and the Services are not substantially different than as reflected in Exhibit A.

**Section 4.15 Notices.**

(a) Requirements. Except as otherwise specifically noted, 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 10 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:

Annick Beaudet (or her successor)  
Mobility Officer, Project Connect Office  
Email: [Annick.Beaudet@austintexas.gov](mailto:Annick.Beaudet@austintexas.gov)

With additional copy to:

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

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

Diane Siler (or her successor)  
Interim Chief Financial Officer  
203 Colorado Street  
Austin, Texas 78701  
Email: [Diane.Siler@atptx.org](mailto:Diane.Siler@atptx.org)

With additional copy to:

Casey Burack (or her successor)  
General Counsel and Chief Administrative Officer

203 Colorado Street  
Austin, Texas 78701  
Email: [Casey.Burack@atptx.org](mailto:Casey.Burack@atptx.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 20 days of the change.

**Section 4.16 Relationship of the Parties (Independent Contractor).** Nothing in this Agreement shall be deemed to create any partnership or agency relationship among the Parties, or confer upon any of the Parties any express, implied or apparent authority to incur any obligation or liability on behalf of the other. No Party shall bind the other Party to any obligation without the express written consent of the other Party.

**Section 4.17 City Employees.** The City may temporarily assign employees to perform work for ATP under this Agreement. At all times during any such temporary assignment, the City employee shall: (a) remain solely an employee of the City and not ATP or its affiliates for all compensation and benefits purposes; (b) remain under the exclusive direction, control and supervision of the City and not ATP; and (c) be subject to the personnel policies, benefits, perquisites, or privileges and other terms and conditions of employment administered by the City regarding its employees generally (including but not limited to payment of salary/compensation, health benefits and workers' compensation coverage), and shall not be entitled to receive any such benefits, perquisites, or privileges from ATP or its affiliates. The City shall accept full and exclusive responsibility for such employees' actions performed in service to ATP under this Agreement and the City shall have the sole right at all times to exercise all authority with respect to the employment (including termination of employment), assignment, and compensation of any City employee temporarily assigned to perform work for ATP under this Agreement. ATP funding for any City staff position is not funded beyond the terms and expiration of this Agreement.

**Section 4.18 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.

**Section 4.19 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. Venue for any cause of action arising under the terms of this Agreement shall be exclusively in the district courts of Travis County, Texas.

**Section 4.20 Severability.** 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 shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

**Section 4.21 Entire Agreement.** This Agreement and Exhibit A 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.

**Section 4.22 Legal Authority.** The persons signing this Agreement on behalf of each Party warrant that 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)

Approved as to form:

By: \_\_\_\_\_  
Leela Fireside  
Assistant City Attorney

**AUSTIN TRANSIT PARTNERSHIP**

By: \_\_\_\_\_  
Greg Canally  
Interim Executive Director

Approved as to form:

By: \_\_\_\_\_  
Casey Burack  
General Counsel and Chief Administrative Officer



**EXHIBIT A**  
**SCOPE OF SERVICES**

The City of Austin Project Connect Office (City PCO) will provide the following support and coordination services for Project Connect implementation:

1. Leadership and Management

- a. City PCO executive and management staff to provide leadership and management of staff and resources to realize the City's role in the integrated program management approach to Project Connect implementation. Leadership staff will include a Mobility Officer-Project Connect and two Transportation Officers to serve as a Deputy Officer and Chief of Staff, as well program area leads;
- b. Coordinate with City Council, Boards and Commissions, and Mayor and Council information exchange;
- c. Prepare Requests for Council Action related to City business needed to implement Project Connect;
- d. Coordinate the City's role in assisting the Program to meet the Program Sequence Plan timelines and other milestones, as referenced in the Joint Powers Agreement;
- e. Monitor the Joint Powers Agreement and assist and/or lead on amendments or other actions related to the document and any other supplemental agreements.
- f. Assist with ATP Board business, Technical Advisory Committees and Community Advisory Committee as needed.
- g. Assist with planning participatory processes, public information, and community engagement.
- h. Process Public Information Requests for Project Connect submitted to the City.
- i. Prepare annual support services budget in coordination with Austin Transit Partnership staff;
- j. PCO to act as a single point of contact to assist Austin Transit Partnership staff with items needed from the City including, but not limited to, coordination of meetings with staff and policy makers, gathering and/or producing technical information and data.
- k. Work with the appropriate City staff to perform the responsibilities identified in Section 5.2.1.2 of the Joint Powers Agreement.
- l. Procure and manage consultant services as needed to support City-related planning, analyses, and technical review.

2. Infrastructure and Traffic Operations Coordination

- a. Coordinate project design, development and review with City departments as applicable and will include funding positions to reside in departments as necessary.
- b. Coordinate with the Austin Transportation Department to minimize conflicts with the Project(s) in relation to transportation operations and design; policy, regulation, process, and rules review and development, for design phase and construction phase;
- c. Assist with coordinating between City utilities and ATP to streamline review of utility criteria, relocations, upgrades and replacements and assist with production of documents and materials to memorialize agreements (including, but not limited to a Utilities Rules of Practice document and any City Code and/or criteria amendments needed;

3. Environmental and Planning Coordination

- a. Coordinate the City's role in the National Environmental Protection Act, Record of Decision, Full Funding Grant Agreement, and other federal processes for multiple program projects.

- b. Coordinate the City's role in equity related analysis, planning and programming;
  - c. Assist ATP in ensuring that it is coordinating with the appropriate City staff in regard to equitable transit-oriented development planning and coordination;
  - d. Coordinate City's role in meeting design milestones per ATP established and communicated deadlines.
4. Permitting Assistance
- a. PCO support to deliver Project Connect System Plan and Sequence Plan as per Contract with the Voters:
    - i. Coordinate with staff for streamlining of site inspections;
    - ii. Coordinate with staff for streamlining permitting;
    - iii. Coordinate with staff for Right of Way permits;
    - iv. Coordinate with staff for amendments to City code, criteria and/or administrative processes needed to realize Project Connect implementation;
  - b. Assist in review of the City's applicable fees and processes to streamline review and minimize fees to the extent permissible by law;
  - c. Advise and coordinate with ATP and CapMetro staff on current development applications from the perspective of Project Connect needs on behalf of the tri-party partnership (this includes but is not limited to rezoning and zoning, subdivision, site plan, building permits, variances).
  - d. Coordinate with the City's real estate staff to assist with real estate acquisition.
5. Other Support
- a. Professional related travel, training, licenses and certifications and employee development opportunities that enhance City Project Connect Office staff's ability to perform support functions.

## **ACTION ITEM 4:**

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Approval of a resolution authorizing the negotiation and execution of an interlocal agreement with CapMetro for capital reimbursements associated with the McKalla Station Project through September 30, 2023, with a one-year extension option, in an amount not to exceed \$25,000,000

# Highlights – McKalla Station Project

- McKalla Station: a regional rail transit station located along the east side of the Major League Soccer Stadium (Q2 Stadium), near Delta Drive, on the MetroRail Red Line between Braker Lane and Rutland Drive
- McKalla Station Project includes platforms, canopies, accessibility ramps, pedestrian crossings, utility relocations, and plaza area modifications.
- All local funding – no federal money

# Highlights – McKalla Station Project

- **ATP Contribution:** \$25 million (total cost over \$50 million)
- **Estimated Completion:** November/December 2023
- **Final Inspection Authorities:** CapMetro, City of Austin, and Federal Railroad Administration



***Resolution Authorizing Negotiation and Execution of an Interlocal Agreement with Capital Metropolitan Transportation Authority for McKalla Station Capital Reimbursements***

**SUBJECT:** Approval of a resolution authorizing the negotiation and execution of an interlocal agreement with Capital Metropolitan Transportation Authority for capital reimbursements associated with the McKalla Station Project through September 30, 2023, with a one-year extension option, in an amount not to exceed \$25,000,000.

**FISCAL IMPACT:** Funding for this item is available in the approved Fiscal Year 2023 Budget.

**RESPONSIBLE DEPARTMENT:** Legal

**EXECUTIVE SUMMARY:** The ATP Board of Directors is being asked to authorize the Executive Director to negotiate and execute a capital reimbursement agreement to provide CapMetro with funding for the Red Line McKalla Station Project in accordance with the Initial Investment and Sequencing Plan adopted by the City of Austin Contract with the Voters, CapMetro Funding and Commitment Resolution, and the Joint Powers Agreement.

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

**STATE OF TEXAS**

**Resolution ID: ATP-2022-017**

**COUNTY OF TRAVIS**

**Authorization of Negotiation and  
Execution of an Interlocal  
Agreement with Capital  
Metropolitan Transportation  
Authority for McKalla Station  
Project Capital  
Reimbursements**

**WHEREAS**, the Austin Transit Partnership (“ATP”) was created to finance, design, engineer, construct, implement, and to contract with CapMetro to operate and maintain Project Connect assets, including the new McKalla Station Project and supporting infrastructure, in accordance with the Initial Investment Map & Sequencing Plan approved by the City of Austin Contract with the Voters and CapMetro Funding and Commitment Resolution; and

**WHEREAS**, ATP entered into a Joint Powers Agreement with the City of Austin and CapMetro wherein CapMetro is responsible for completing the McKalla Station Project and obtaining reimbursement from ATP; and

**WHEREAS**, this Interlocal Grant Agreement will provide the roles and responsibilities of each party and provide CapMetro with funding for the completion of the McKalla Station Project (“McKalla”); and

**WHEREAS**, ATP and Capital Metro have agreed that CapMetro will receive capital reimbursements associated with the McKalla Station Project through September 30, 2023, with a one-year extension option, in an amount not to exceed \$25,000,000 (the “Interlocal Agreement”); and

**WHEREAS**, this funding is available in ATP’s Fiscal Year 2023 budget and provided for in a companion resolution ATP-2022-018;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of ATP that the Executive Director of ATP is hereby authorized to negotiate and execute the Interlocal Agreement for capital reimbursements related to the McKalla Station Project for capital reimbursements through September 30, 2023, with a one-year extension option, in an amount not to exceed \$25,000,000 substantially in accordance with the draft attached hereto as Exhibit A.

\_\_\_\_\_  
**Casey Burack**  
**Secretary of the Board**

**Date:** \_\_\_\_\_



**INTERLOCAL COOPERATION GRANT AGREEMENT  
BETWEEN  
AUSTIN TRANSIT PARTNERSHIP AND  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY FOR  
CAPITAL REIMBURSEMENT OF THE MCKALLA STATION PROJECTS OF THE  
PROJECT CONNECT SYSTEM PLAN**

THIS INTERLOCAL COOPERATION AGREEMENT (this "**Agreement**") is dated and entered into as of [REDACTED], 2022 (the "**Effective Date**"), pursuant to Chapter 791 of the Texas Government Code, between AUSTIN TRANSIT PARTNERSHIP ("**ATP**"), a public nonprofit joint local government corporation formed pursuant to Chapter 431 of the Texas Transportation Code, 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 of ATP and Capital Metro are sometimes referred to herein individually as a "**Party**" and collectively, the "**Parties**". Capitalized terms used herein and not otherwise defined have the meaning given in the Joint Powers Agreement (defined below).

**BACKGROUND**

1. ATP was created by the City of Austin (the "**City**") and Capital Metro following the approval of a ballot measure by the voters of the City 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 ("**Proposition A**").
2. ATP was formed to aid and act on behalf of the City and Capital Metro to accomplish their governmental purpose, namely, to implement the Project Connect System Plan ("**Project Connect**") as it is more particularly described in Capital Metro Resolution No. AI-2020-1273, City Resolution No. 20200610-02, and City Resolution No. 20200812-015 (such resolution more commonly known as the "**Contract with Voters**").
3. ATP has been designated by the City and Capital Metro to be the principal entity responsible for the financing, design, engineering, construction, and contracting with Capital Metro to operate and maintain assets funded by ATP for Project Connect in a manner independent of the City and Capital Metro.
4. Project Connect includes the construction of the McKalla Station, a regional rail transit station located along the east side of the Major League Soccer Stadium (Q2 Stadium), near Delta Drive, on the MetroRail Red Line between Braker Lane and Rutland Drive in Austin, Texas (the "**McKalla Station Project**").
5. In order to expedite the planning and design of Project Connect, Capital Metro and ATP have agreed on certain administrative and project-related services pursuant to that certain Interlocal Agreement between the Parties for Support Services and Project Implementation dated February 3, 2021 (the "**Initial Funding Agreement**").
6. Since entering into the Initial Funding Agreement, the City, Capital Metro and ATP have entered into a Joint Powers Agreement, effective December 17, 2021 (the "**Joint Powers Agreement**"), delineating the roles and responsibilities of the three parties and to confirm their commitment and support of Project Connect.
7. The Joint Powers Agreement contemplates that the parties will enter into various supplemental agreements relating to the implementation of Project Connect.

8. The Parties desire to enter into this Agreement to supersede and replace the Initial Funding Agreement specifically and solely as to any funding provisions related to the McKalla Station Project and for the limited purposes of establishing the terms and conditions of payment by ATP and Capital Metro in order to encourage transparency and financial accountability, and to establish the terms and conditions for the reimbursement by ATP for certain capital costs incurred by Capital Metro for the planning, development, design, construction and equipping of the McKalla Station Project. This Agreement does not affect either of the Parties' funding commitment in the Initial Funding Agreement other than those specifically identified in this Agreement.

ACCORDINGLY, in consideration of the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, ATP and Capital Metro hereby enter into this Agreement and do hereby agree as follows:

### **Article 1**

#### **General Terms; Roles and Responsibilities; Purpose and Scope of this Agreement**

**Section 1.1 Defined Terms.** Capitalized terms used in this Agreement and not otherwise defined have the meaning given in the Joint Powers Agreement.

**Section 1.2 General Roles and Responsibilities of the Parties.** The roles and responsibilities of the Parties are established in the Joint Powers Agreement and the Foundational Texts referenced in the Joint Powers Agreement.

**Section 1.3 Purpose and Scope of This Agreement.** This Agreement is one of multiple interlocal cooperation agreements intended to be entered between the Parties to supersede and replace the Initial Funding Agreement, in this case, specifically and solely as to the McKalla Station Project as further described in this Agreement. The purpose and scope of this Agreement is to establish the terms and conditions for the payment and reimbursement of the McKalla Station Project by ATP to Capital Metro as contemplated in Section 5 of the Joint Powers Agreement and as further described in this Agreement. This Agreement does not include any terms relating to other components of Project Connect or for the operation and maintenance of any Project Connect assets on completion; and the Parties acknowledge that these matters have been or will be separately addressed between the Parties in other interlocal cooperative agreements.

**Section 1.4 Collaboration and Communication Between the Parties.** Capital Metro and ATP agree to share any necessary financial and operating information, data, and reports to sufficiently account for the expenditure of public funds including the conditions and requirements applicable to the expenditure of the property tax revenue as authorized by the voters with the passage of Proposition A ("**Project Connect Tax Revenues**") and to support each Party's annual budgets, annual comprehensive financial reports, compliance with federal requirements under Section 3.4 of this Agreement, and ATP's issuance of debt obligations, including primary offering disclosure and continuing disclosure in accordance with federal securities laws. Both Parties agree that their respective staff shall work to support any such request for this information, data, and reports. Capital Metro agrees to periodically report its progress on the McKalla Station Project to the ATP Chief of Planning and Risk Management or her delegee, and the ATP Board, as requested by ATP. ATP agrees to periodically report its progress on the reimbursement obligation and ATP's oversight of the quality process to the CapMetro Vice President of Facilities and Construction or their delegee, and the CapMetro Board, as requested by CapMetro.

## Article 2

### Funding and Reimbursement Commitments of the Parties

**Section 2.1 Capital Metro's Funding Obligation.** Capital Metro will complete the McKalla Station Project. Capital Metro shall fund costs relating to the planning, development, design, construction and equipping of the McKalla Station Project, including platforms, canopies, accessibility ramps, pedestrian crossings, utility relocations, and plaza area modifications (collectively, the "**McKalla Station Capital Costs**"). The McKalla Station Project has an estimated completion date of December 31, 2023.

**Section 2.2 ATP's Reimbursement Obligation.** Subject to the terms and conditions set forth in this Agreement, ATP agrees to reimburse Capital Metro for the McKalla Station Capital Costs, in the amount of \$25,000,000 (the "**ATP Reimbursement Obligation**"), as generally contemplated in Section 5 of the Joint Powers Agreement. The terms for the payment of the ATP Reimbursement Obligation and process for addressing additional costs incurred for the completion of the McKalla Station Project are set forth in Article 4 hereof.

**Section 2.3 Cooperation of the Parties.** The Parties acknowledge their respective obligations and commitments to the Contract with Voters and the Joint Powers Agreement and their interdependence for meeting such obligations and commitments. In furtherance of the letter and spirit of the Contract with Voters and the Joint Powers Agreement, the Parties agree to cooperate in good faith to accomplish the completion of the McKalla Station Project.

## Article 3

### Covenants and Obligations of Capital Metro

**Section 3.1 Capital Metro General Responsibilities.** Except as hereinafter provided, Capital Metro shall undertake all actions required for the procurement, design and construction of the McKalla Station Project, including all required utility relocations and adjustments and including the design, construction and commissioning of the station and facilities, unless otherwise agreed to by the Parties in writing. Capital Metro shall provide a project manager for the McKalla Station Project who will be responsible for the delivery of the project, including managing all aspects of the project and supervising and managing consultants, contractors and vendors providing services to Capital Metro for the construction of the McKalla Station Project. Capital Metro shall comply with applicable Federal Railroad Administration and applicable City of Austin requirements (as determined by CapMetro) for the McKalla Station Project. Capital Metro shall be fully responsible for:

- (a) ensuring that all environmental permits, issues, and commitments are addressed in its project design,
- (b) addressing field changes for potential environmental impacts and obtaining any necessary environmental permits, issues, and commitments for such field changes,
- (c) selection of consultants, construction managers, engineers, architects, surveyors, testing engineers and laboratories, inspecting engineers, geotechnical engineers and scientists, suppliers, contractors, subcontractors, vendors, insurers, and other parties retained in connection with the design or construction of the McKalla Station Project,
- (d) commencement, sequencing and timing of design and construction activities and other work subject to the obligation to deliver the McKalla Station Project estimated to be substantially completed by December 31, 2023, other than any delays related to the

acquisition of real property or an Excusable Delay/Force Majeure Event, as defined below, related to the McKalla Station Project or any delays caused by ATP,

- (e) design of the McKalla Station Project and all features thereof,
- (f) ensuring that all construction plans are signed, sealed and dated by a professional engineer duly licensed and registered by the Texas Board of Professional Engineers and Land Surveyors to engage in the practice of engineering in the State of Texas,
- (g) securing construction oversight and inspection, as well as materials testing, and for safety, safety inspections and any related certifications required by FTA,
- (h) quality control and quality assurance and the acceptance or rejection of work or other deliverables,
- (i) investigations and risk assessments, site safety and security,
- (j) negotiation, bidding, letting and management of contracts for the McKalla Station Project,
- (k) resolution of any disputes under such contracts,
- (l) testing and commissioning of the McKalla Station Project prior to commencement of revenue service,
- (m) public information requests and communications relating to the McKalla Station Project,
- (n) complying with applicable City of Austin utility requirements, and
- (o) operational readiness of the McKalla Station Project.

**Section 3.2 ATP Responsibilities.** ATP shall be responsible for its reimbursement obligations under the terms and conditions of this Agreement. ATP and CapMetro will collaborate in providing oversight of the Quality process as noted in the program-wide Quality Management Plan, and ATP will function in an advisory capacity as needed on technical issues.

**Section 3.3 Joint Responsibilities.** Parties shall comply with, and Capital Metro cause its consultants, contractors and vendors performing services pursuant to this Agreement to comply with, all federal state and local laws, ordinances, statutes and regulations applicable to the McKalla Station Project and the services performed pursuant to this Agreement and in effect at the time such services are performed.

**Section 3.4 Project Completion and Acceptance.** Completion and acceptance of the McKalla Station Project will be subject to the following:

Project	Substantial Completion and Acceptance
<u>Platforms and canopies</u>	final inspection by the construction inspectors from Capital Metro’s construction management contractor, Hill International

<u>Utilities</u>	final inspection by City of Austin
<u>Railroad Crossings and Road Profile</u>	final inspection by City inspectors
<u>Track and signals</u>	final approval of cutover and the system testing of the signalization and PTC

**Section 3.5 Required Program Compliance.** Capital Metro hereby represents and warrants to ATP, and further covenants that all contracts entered into by Capital Metro for the planning, development, design, construction and equipping of the McKalla Station Project have, and shall at all times require compliance with the following:

- (a) **Better Builder Program.** For all contracts for the performance of construction services, contractors shall comply with the Better Builder Program or similar program as required for Project Connect for all construction workers, including City of Austin hiring goals as allowed by federal law and regulations, completion of OSHA ten-hour training, workers' compensation, on-site monitoring independent of construction companies and their affiliates, and in compliance with all state, federal, and local laws.
- (b) **Disadvantaged Business Enterprise (DBE) Program.** Capital Metro shall include the Disadvantaged Business Enterprise Program (the "**DBE Program**") requirements in all procurement solicitations for future contracts for the implementation of Project Connect, and shall ensure that contractors comply with the terms and conditions of the DBE Program in accordance with 49 CFR Part 26, which are incorporated herein by this reference.
- (c) **Living Wage Program.** For all contracts for the implementation of Project Connect, contractors shall comply with the City of Austin Living Wage program or Davis-Bacon, whichever is higher, for wages and benefits for workers employed on the McKalla Station Project.

**Article 4**

**Payment of ATP’s Reimbursement Obligation**

**Section 4.1 General.** ATP agrees to pay or reimburse Capital Metro the entire ATP Reimbursement Obligation for the McKalla Station Project, subject to and in accordance with the terms and conditions set forth in this Agreement.

**Section 4.2 Concurrent Appropriation.** Concurrent to this Agreement, ATP will make a budget appropriation for the entire ATP Reimbursement Obligation to be allocated to Fiscal Year 2023 with funds to be paid out to Capital Metro pursuant to this Agreement.

**Section 4.4 [RESERVED.]**

**Section 4.5 [RESERVED]**

**Section 4.6 Subordination. Capital Metro acknowledges and agrees that notwithstanding any present or future appropriation of funds by ATP to fulfill its payment obligations hereunder, all payment obligations of ATP to Capital Metro under this Agreement shall constitute unsecured**

contractual obligations of ATP payable from current funds, and shall be expressly subject and subordinate to any present or future pledge by ATP of its revenues securing any lien for the repayment of its public securities, credit or liquidity agreements or other debt obligations of ATP for the financing of all components or any component of Project Connect. Capital Metro agrees to deliver any additional instruments, estoppels or other assurances as may be reasonably required by ATP, any trustee, ATP investors or credit/liquidity providers to evidence timing or subordination constraints. In the event of any conflict between this Agreement and any Public Security Authorization, as defined in Section 1201.002(3) of the Texas Government Code, the Public Security Authorization shall prevail.

**Section 4.7 [RESERVED]**

**Section 4.7 [RESERVED.]**

**Section 4.8 Invoicing.** By the 15<sup>th</sup> of each month, Capital Metro shall submit to ATP an invoice that has expenditures summarized by the McKalla Station Project and includes the appropriate ACH or wiring instructions (full Routing Number and last four digits of the Account Number). Along with the invoice, Capital Metro shall provide to ATP supporting documentation that provides the following information for each transaction covered by the invoice:

- (i) Payee
- (ii) Invoice number or journal ledger number
- (iii) Date of payment
- (iv) Period covered by payment
- (v) Description of service provided
- (vi) Amount of payment which shall be equal to 43% of the invoiced expenditures
- (vii) Related Project, if applicable

**Section 4.9 True-Up.** On December 1, 2023 (“**True-Up Date**”), there shall be a true-up where ATP shall deliver to Capital Metro additional payment (“**True-Up Payment**”) if total reimbursement as of the True-Up Date is less than the ATP Reimbursement Obligation. In such event, ATP shall deliver to Capital Metro by December 31, 2023, the difference between the reimbursements delivered to Capital Metro under this Agreement as of the True-Up Date and the ATP Reimbursement Obligation. For the avoidance of doubt, if the total reimbursement as of the True-Up Date is equal to the ATP Reimbursement Obligation, then ATP shall have no obligation to deliver a True-Up Payment to Capital Metro. Capital Metro shall deliver to ATP a notice informing ATP of the amount of the True-Up Payment it is obligated to deliver to Capital Metro as of the True-Up Date, provided that if Capital Metro does not deliver any such notice ATP shall not be relieved of its obligation to deliver True-Up Payment pursuant to this section.

**Section 4.10 Invoice Corrections.** In the event the amount charged to ATP is incorrect for any reason, the adjustment may be applied to the next invoice. Capital Metro may, but is not expected nor required, to issue a supplemental invoice for the adjustment amount.

**Section 4.11 Processing Payments.** ATP will process payment within 30 days of receipt of a complete and accurate invoice in accordance with Chapter 2251 of the Texas Government Code (the “**Prompt Payment Act**”).



**Section 4.12 Payment Method.** ATP shall make payments to Capital Metro using electronic funds transfer.

**Article 5**

**Additional Agreements of the Parties**

**Section 5.1 Provisions Relating to Third-Party Agreements.**

(a) ***Contractor Records and Correspondence.*** Capital Metro shall require all contractors, consultants, and vendors providing services for the McKalla Station Project to maintain accurate books and records relating to the services performed. Upon reasonable notice, at any time upon the request of the ATP CFO or their designee, Capital Metro shall cause its contractors to provide copies of its books, records, invoices, receipts, notices, and other correspondence with ATP and Capital Metro relating to the services performed.

(b) ***Insurance Requirements.*** Before any part of the services is commenced, Capital Metro and its contractors, consultants, and vendors providing services for the McKalla Station Project shall, at their sole cost, cause to be issued and maintained, insurance policies providing for not less than the minimum levels of insurance coverage set forth below:

(1) **Commercial General Liability (CGL)**

Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability

Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation

Workers' Compensation Insurance providing statutory limits in accordance with the Texas Workers' Compensation Act and/or other State or Federal law as may be applicable to the work being performed under this contract. Employer Liability Insurance with minimum limits of One Million Dollars and No/100 Dollars (\$1,000,000).

(4) Professional Liability (Errors and Omissions)

Insurance appropriate to the Contractor's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

**Section 5.2 Insurance Certificates.** Capital Metro shall be responsible for maintaining copies of all insurance certificates and surety bonds required from its consultants, contractors and vendors, for the time period required pursuant to standard FTA grant requirements.

**Section 5.3 No Agency Relationship.** Nothing in this Agreement shall authorize the officers, representatives, agents or employees of either Party to bind the other Party or to make any commitments or representations on behalf of the other Party.

**Article 6**  
**Term and Termination**

**Section 6.1 Term.** The term of this agreement is from the Effective Date through September 30, 2024, which may be extended up to 12 additional months upon the mutual consent of both Parties.

**Section 6.2 Termination for Cause.** Either Party may terminate this Agreement in whole or in part, for cause if the other Party has committed an Event of Default that has not been cured within the required Cure Period. In the event of termination for cause, ATP shall reimburse to Capital Metro compensation for undisputed McKalla Station Project rendered and amounts owed.

**Section 6.3 Termination by Agreement.** If the Parties mutually determine that it is in the best interest of both Parties, the Parties may mutually agree, in a writing signed by both Parties, to terminate this Agreement prior to the expiration of the Term for any cause or no cause whatsoever either immediately or within an agreed timeframe.

**Section 6.4 Event of Default.** 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.

- a. Prior to declaring an Event of Default against another Party hereunder, a Party must first deliver written notice to such other Party's Chief Financial Officer 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.

- b. 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**").
- c. **Remedies.** After providing a Default Advisory Notice and Default Notice and to the extent the material breach is not resolved during the Cure Period in accordance with this Article 6:
  - (1) Capital Metro agrees that ATP may suspend payments to Capital Metro under this Agreement if Capital Metro has materially breached, failed to comply with, or violated the terms of this Agreement. ATP's rights under this Section 6.4(c) are without prejudice to its right to terminate and other remedies under this Agreement and at law.
  - (2) Capital Metro reserves its right to pursue ATP for failure to reimburse Capital Metro under this Agreement if ATP has materially breached, failed to comply with, or violated the terms of this Agreement in addition to any other remedies under this Agreement and at law.

**Section 6.4 Material Breach.** The Parties agree that a breach, failure, or violation by Capital Metro with respect to this Agreement which cannot be cured and jeopardizes the delivery of the McKalla Station Project under this Agreement will be deemed a material breach for the purposes of Article 6 of this Agreement. Third-party delays such as with City of Austin zoning, platting and permitting, eminent domain process, and Chapter 26 processes shall not be considered a material breach for purposes of Article 6 of this Agreement. The McKalla Station Project schedule and any related contingency is identified in this Agreement. Capital Metro shall provide immediate written notice to ATP: (a) if any change in circumstances or event adversely affects Capital Metro's ability to carry out its obligations under this Agreement or any related grant agreement.

## **Article 7** **General Provisions**

**Section 7.1 Obligations Subject to Appropriation.** Any payment obligations of either Party under this Agreement may be subject to appropriation from year to year in accordance with State law. The Parties further acknowledge and agree, notwithstanding anything else in this Agreement to the contrary, that ATP's obligation with respect to the McKalla Station Project reimbursement compensation is subject to, and governed by, Article 11, Section 5 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, Section 5 of the Texas Constitution. ATP must make the described payments from current revenues available to ATP. Neither Party will be entitled to a refund of amounts previously contributed or owed in the event of a termination of this Agreement for lack of funding.

**Section 7.2 No Violation of Prevailing Law.** Neither Party shall be required to perform any act or refrain from performing any act under this Agreement if that performance or non-performance would constitute a violation of the constitution or laws of the State of Texas or federal law or regulation.

**Section 7.3 Governmental Purpose Statement.** ATP is entering into this Agreement in its capacity as a public, nonprofit local government corporation organized by the City and Capital Metro to accomplish the governmental purposes of the City and Capital Metro pursuant to Chapter 431 of the Texas Transportation Code, as amended and in accordance with ATP's articles of incorporation. Capital Metro is entering into this Agreement in its capacity as a transportation authority and political subdivision for the State of Texas organized under Chapter 451 of the Texas Transportation Code, as amended.

**Section 7.4 Audit and Inspection Rights.** Upon reasonable prior written notice, ATP shall have the right to review and inspect all data and work relevant to the expenses billed to ATP by Capital Metro. ATP shall have the right, at its cost and expense, to have the books and records of Capital Metro related to this Agreement:

- (a) reviewed by ATP from time to time during the Term; and
- (b) audited by a nationally or regionally recognized independent certified public accountant, under appropriate confidentiality provisions, for the purpose of verifying the accuracy of all fees and cost calculations under this Agreement; provided, that any such audit shall be conducted no more than once per budget year (a "budget year" being defined as October 1 through September 30) and shall be conducted, in each case, upon at least 30 days' advance written notice; provided further, that no review or audit shall be conducted outside of normal business hours or in a manner that interferes unreasonably with Capital Metro's business.
  1. The results of any such audit by the independent certified public accountant shall be reduced to writing and delivered to each Party. Any underpayment or overbilling determined by ATP pursuant to the review referenced in clause (a) above shall, upon the agreement of Capital Metro (or if there is a dispute, then upon resolution of such dispute pursuant to Section 7.11, promptly be paid by ATP or refunded by Capital Metro, as applicable. Any underpayment or overbilling determined by independent certified public accounting firm pursuant to the audit referenced in clause (b) above shall, upon the agreement of ATP and Capital Metro (or if there is a dispute, then upon resolution of such dispute pursuant to Section 7.11, promptly be paid by ATP or refunded by Capital Metro, as applicable. The Parties shall retain all records created or maintained under this Agreement for a period of three years after final payment on this Agreement or until all audit and litigation matters that the Parties have brought to the attention of the other Party are resolved, whichever is longer.

**Section 7.6 Records Retention.** Capital Metro shall manage all files pertaining to the McKalla Station Project regardless of the format in accordance with its Records Retention Schedule and applicable FTA requirements. At a minimum, Capital Metro shall maintain records required under the terms of this Agreement in accordance with 49 CFR 18.36(i), which requires project-related documents to be retained for 3 years following project completion.

**Section 7.7 Ownership of Work Product.** Capital Metro contracted with third-party vendors for the McKalla Station Project for Project Connect and will be reimbursed by ATP through the invoicing process outlined in this Agreement. Ownership of the assets will reside with Capital Metro; and Capital Metro will operate and maintain these assets in accordance with a separate agreement to be executed

subsequently with ATP. Such ownership does not create a gift of public funds because this Agreement is entered into in furtherance of, and for the fulfillment of, the purpose for which ATP was created, namely, to deliver Project Connect.

**Section 7.8 Limitation on 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. **THE PARTIES ACKNOWLEDGE AND AGREE THAT THE AGGREGATE LIABILITY OF THE PARTIES FOR ANY CLAIMS ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF REIMBURSEMENT COSTS ACTUALLY OWED. FURTHERMORE, NEITHER PARTY SHALL BE LIABLE FOR PUNITIVE, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES IN ANY FORM OR AMOUNT TO THE OTHER PARTY FOR CLAIMS ARISING UNDER THIS AGREEMENT.**

**Section 7.9 Effect on Other Agreements.** Subject to the provisions of Section 7.15, neither Party shall be justified or otherwise permitted, by virtue of an Event of Default of the other Party hereunder, to withhold performance, or suspend performance of its obligations or responsibilities under this Agreement or any other agreement between the Parties, including without limitation, the Joint Powers Agreement.

**Section 7.10 No Waiver of Sovereign Immunity.** Neither Party waives or releases its rights and privileges, if any, it may have in any proceeding before any court or tribunal in any jurisdiction to assert the affirmative defense of sovereign immunity based upon their status as a governmental entity with respect to the adjudication of any claim arising or relating to this Agreement, including but limited to any breach of this Agreement.

**Section 7.11 Resolution of Disputes.** Upon request of either Party, an informal attempt shall be made to negotiate a resolution of any dispute arising under this Agreement. Such request shall be in writing and shall seek a meeting between representatives of each Party within 14 calendar days after receipt of the request or such later period as agreed by the Parties. Each Party shall provide for the meeting, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they shall proceed directly to mediation as described below. Informal negotiation may be waived by a written agreement signed by both Parties, in which event the Parties shall proceed directly to mediation as described below.

- a. The mediation shall take place in Austin, Travis County, Texas. The Parties shall select a mediator within 30 calendar days of the written waiver, or within sixty 60 calendar days of the informal negotiation meeting. The Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute. If the time period for selecting the mediator has expired with no agreement on the mediator, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The Parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The Parties will share the costs of mediation equally.
- b. Nothing in this Section 7.11 shall limit either Party's right to terminate this Agreement for cause; provided, however, this Section 7.11 shall survive termination of this Agreement.

**Section 7.12 Waiver of Attorneys' Fees.** The Parties do hereby knowingly and intentionally waive their rights to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Agreement.

**Section 7.13 Notices.** Any notice, demand, statement, request or consent made hereunder shall be in writing and may be personally served or sent by mail or courier service and shall be deemed to have been given when delivered by mail or by courier service to the addresses set forth below. Notices delivered by email to the Parties' designated representatives shall also be deemed to have been delivered only if receipt is expressly and personally acknowledged in writing by the recipient.

**a. ATP Address.** The address of ATP for all purposes under this Agreement and for all notices:

Diane Siler (or their successor)  
Interim Chief Financial Officer  
203 Colorado Street  
Austin, Texas 78701  
Email: [Diane.Siler@atptx.org](mailto:Diane.Siler@atptx.org)

With additional copy to:

Casey Burack (or their successor)  
General Counsel and Chief Administrative Officer  
203 Colorado Street  
Austin, Texas 78701  
Email: [Casey.Burack@atptx.org](mailto:Casey.Burack@atptx.org)

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

Catherine Walker (or their successor)  
Chief Financial Officer  
2910 E. 5th Street  
Austin, Texas 78702  
Email: [Catherine.Walker@capmetro.org](mailto:Catherine.Walker@capmetro.org)

With additional copy to:

Kerri Butcher (or their successor)  
Chief of Staff  
2910 E. 5th Street  
Austin, Texas 78702  
Email: [Kerri.Butcher@capmetro.org](mailto:Kerri.Butcher@capmetro.org)

**c. 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.

**Section 7.14 Waiver.** Any claim or right arising out of a breach of the Agreement cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is in writing signed by the aggrieved Party. No waiver by either Party of any one or more events of default by the other Party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**Section 7.15 Excusable Delay/Force Majeure.** Neither Party shall be in default because of any failure to perform under the terms of this Agreement if the failure arises from causes beyond the control and without the fault of the Party. Examples of these causes are: (1) acts of God or of the public enemy, (2) acts of the state or federal government in either their sovereign or contractual capacity, (3) fires, (4) floods and/or hurricanes, (5) epidemics and/or pandemics, (6) quarantine restrictions, (7) unforeseen strikes or labor shortages, (8) freight embargoes, (9) unusually severe weather, (10) court orders (*i.e.*, those causes generally recognized under Texas law as constituting unforeseeable and impossible conditions), (11) supply chain disruptions, (12) extended and unusual delays caused by third parties, such as the City of Austin regarding permit approvals or right-of-way agreements, and (13) shortages of materials or equipment (“**Excusable Delay/Force Majeure Event**”). Each Party will endeavor to notify the other Party of an Excusable Delay/Force Majeure Event within 10 calendar days of the occurrence of the event. Capital Metro shall continue to receive progress payments from ATP if there is an Excusable Delay/ Force Majeure Event and Capital Metro is able to continue performing.

**Section 7.16 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. Venue for any cause of action arising under the terms of this Agreement shall be exclusively in the federal and district courts of Travis County, Texas.

**Section 7.17 Binding Effect, Successors and Assigns.** This Agreement shall be binding upon and shall inure to the exclusive benefit of, Parties and their respective successors and assigns, if applicable. There are no third-party beneficiaries to this Agreement. Neither party may assign any part or all of its rights, interests or obligations under this Agreement without the prior written consent of the other Party, and any assignment made by either Party without the prior written consent of the other Party or against applicable law shall be null, void and of no force or effect.

**Section 7.18 Severability.** If any agreement, condition, covenant or term hereof or any application hereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, all agreements, conditions, covenants and terms hereof and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**Section 7.19 Entire Agreement; Amendment; Controlling Language.** This Agreement represents the final, entire agreement among the Parties and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of the Parties hereto. There are no unwritten oral agreements among the parties hereto. The provisions hereof may be amended or waived only by an instrument in writing signed by the Parties. To the extent that any provisions of this Agreement contradict or are not in alignment with the Joint Powers Agreement or the Contract with Voters, the language of the Joint Powers Agreement and ultimately the Contract with Voters controls.

**Section 7.20 Counterparts; e-Signatures.** This Agreement may be signed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons

required to bind any Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the Parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages. The Parties agree that digital or facsimile signatures shall be given the same legal effect as original signatures, and the Parties hereby agree to accept delivery of digital signatures by e-mail in "pdf" form, or via DocuSign, Adobe Sign, or any similar means of digital delivery.

*(Signature Page Follows)*

DRAFT

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

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

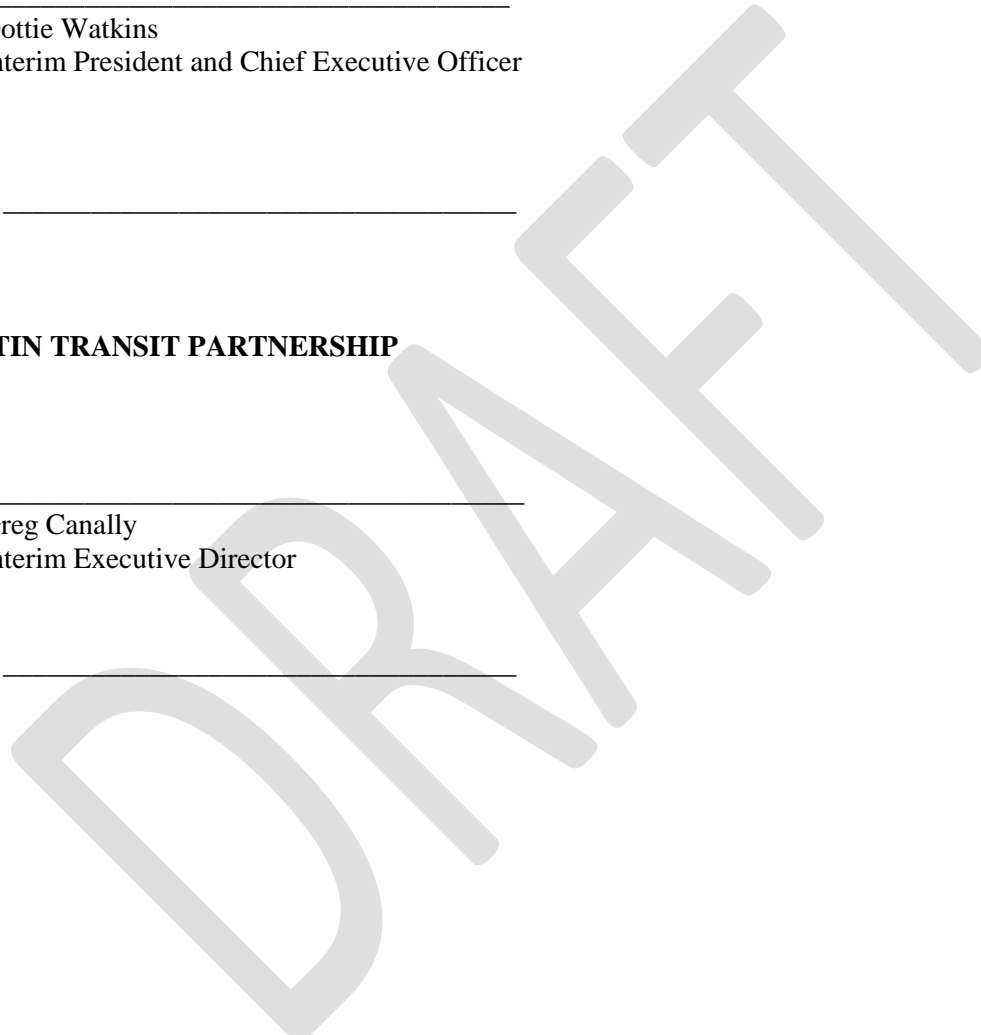
By: \_\_\_\_\_  
Dottie Watkins  
Interim President and Chief Executive Officer

Date: \_\_\_\_\_

**AUSTIN TRANSIT PARTNERSHIP**

By: \_\_\_\_\_  
Greg Canally  
Interim Executive Director

Date: \_\_\_\_\_





## **ACTION ITEM 5:**

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Approval of a resolution amending the ATP Fiscal Year 2023 Budget to provide funding for the McKalla Station Project in an amount of \$10,703,871, for a total appropriation of \$25,000,000





**SUBJECT:** Approval of a resolution amending the ATP Fiscal Year 2023 Budget to provide funding for the McKalla Station Project in an amount of \$10,703,871, for a total appropriation of \$25,000,000.

**FISCAL IMPACT:** Funding for this item is available in the unallocated project reserve of the approved Fiscal Year 2023 Budget.

**RESPONSIBLE DEPARTMENT:** Finance

**EXECUTIVE SUMMARY:** The ATP Board of Directors is being asked to approve the full allocation of funding for the McKalla Station Project in Fiscal Year 2023 to support Capital Metropolitan Transportation Authority construction of this station as a part of Project Connect. The total ATP funding commitment is \$25 million; however, \$10,703,871 in additional Fiscal Year 2023 allocation is necessary to fully fund the project this fiscal year.

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

**STATE OF TEXAS**

**Resolution ID: ATP-2022-018**

**COUNTY OF TRAVIS**

**Adoption of Amendment to the ATP  
Fiscal Year 2023 Budget for McKalla  
Station Project Capital Funding**

**WHEREAS**, the Austin Transit Partnership (“ATP”) was created to finance, design, engineer, construct, implement, and to contract with Capital Metropolitan Transportation Authority to operate and maintain Project Connect assets, including a new McKalla Station Project on the Red Line (“McKalla Station”) and supporting infrastructure, in accordance with the Initial Investment Map & Sequencing Plan approved by the City of Austin Contract with the Voters and Capital Metro Funding and Commitment Resolution; and

**WHEREAS**, ATP entered into a Joint Powers Agreement with the City of Austin and CapMetro wherein CapMetro is responsible for completing the McKalla Station Project and obtaining reimbursement from ATP; and

**WHEREAS**, the original Project Connect funding model included a \$25 million contribution by ATP for the McKalla Station Project; and

**WHEREAS**, ATP and CapMetro have agreed that ATP’s portion of the funding for the McKalla Station Project is \$25 million; and

**WHEREAS**, allocating the full ATP capital funding commitment for the McKalla Station Project, by allocating \$10,703,871 from the unallocated project reserve in the Fiscal Year 2023 budget, will help CapMetro complete this project during the expected timeframe of fall 2023; and

**WHEREAS**, the ATP Board of Directors desires to provide coordination and cooperation to ensure CapMetro is successful in completing McKalla Station Project; and

**WHEREAS**, this funding is available in the unallocated project reserve of ATP’s Fiscal Year 2023 budget;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of ATP that the ATP Fiscal Year 2023 budget is hereby amended in an amount not to exceed \$10,703,871 in accordance with the budget amendment attached hereto as Exhibit A.

\_\_\_\_\_  
**Casey Burack**  
**Secretary of the Board**

**Date:** \_\_\_\_\_

## ATP FY 2023 Operating Fund Summary

	Approved Budget	This Action	Amended Budget
<b>Balance from Prior Year</b>	19,855,174	-	19,855,174
<b>Revenue</b>			
Prop A Property Tax	158,970,567	-	158,970,567
Capital Metro	30,000,000	-	30,000,000
Other Revenue	3,924,235	-	3,924,235
<b>Total Revenue</b>	<b>192,894,802</b>	<b>-</b>	<b>192,894,802</b>
<b>Expenditures</b>			
Transfer to Capital	-	10,703,871	10,703,871
Transfer to Anti-Displacement Investments Fund	35,000,000	-	35,000,000
Transfer to Operating Reserve	20,000,000	-	20,000,000
Operating Expenses	35,552,489	-	35,552,489
<b>Total Expenditures</b>	<b>90,552,489</b>	<b>10,703,871</b>	<b>101,256,360</b>
<b>Reserved for Future Project Commitments</b>	<b>122,197,487</b>	<b>(10,703,871)</b>	<b>111,493,616</b>

## ATP Capital Budget

<b>Project Name</b>	<b>Approved Budget</b>	<b>This Action</b>	<b>Amended Budget</b>
Light Rail Projects	205,055,015	-	205,055,015
MetroRapid Lines	59,786,412	-	59,786,412
MLS Rail Station (McKalla)	14,296,129	10,703,871	25,000,000
Other Project Connect Projects	3,373,000	-	3,373,000
<b>Total</b>	<b>282,510,556</b>	<b>10,703,871</b>	<b>293,214,427</b>

## **ACTION ITEM 6:**

---

Adoption of changes to the ATP Investment Policy

# Investment Policy

- Texas Local Government Code, Chapter 2256, also known as the Public Funds Investment Act (“PFIA”)
  - PFIA outlines which investments can be entered into, the proposed Investment Policy is a bit more restrictive.
- Main Objectives
  - Safety of assets on hand
  - Maintaining ample liquidity
  - Achieving yield objectives
- Annual Approval
  - As required per Section 2256.005(e) of PFIA, the Investment Policy will be brought before the Board annually for approval.

# Investment Policy (continued)

- Proposed changes
  - Section 4(b) – Operating Reserve Fund Strategy
    - Added section in lieu of the new Operating Reserve Fund established via the Fiscal Year 2023 Budget
  - Section 4(c) - Debt Service Reserve Fund Strategy
    - Included a maturity limit of 5 years
  - Section 5(a) - Eligible Investments
    - Added Repurchase Agreements
  - Section 5(c)2 – Security Ratings
    - Tied minimum credit ratings to PFIA requirements
  - Section 5(c)6 – Repurchase Agreement Required Document
    - Added clarity around the documentation needed prior to entering into a repurchase agreement

# Investment Policy (continued)

- Proposed changes (continued)
  - Section 5(c)7(d) – Collateralization
    - Minor edit notating that the Master Repurchase Agreement is reviewed by the Investment Committee, not created by the Investment Committee
  - Section 5(c)10(a) – Portfolio Diversification
    - Added Repurchase Agreements portfolio diversification limit
  - Section 6(e)1 – Investment Training
    - Updated entity name for Hilltop Securities
  - Section 6(f)1 – Investment Committee
    - Added the Accounting Director





**Subject:** Approval of a resolution adopting Austin Transit Partnership’s Fiscal Year 2022-2023 Investment Policy

**Fiscal Impact:** Does not apply.

**Business Case:** Does not apply.

**Executive Summary:** The Public Funds Investment Act (PFIA), Chapter 2256 of the Texas Government Code, is the state law that governs the investment of public funds. In Section 2256.005(e), the PFIA required governmental bodies to adopt an investment policy on an annual basis to serve as the guideline for the investment of public funds. The PFIA provides the legal parameters for Austin Transit Partnership’s investments, which are further narrowed by the adoption of the proposed Investment Policy.

**Responsible Department:** Finance - Treasury

**Procurement Summary:** Does not apply.



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

STATE OF TEXAS

**Resolution ID: ATP-2022-019**

COUNTY OF TRAVIS

***Adoption of ATP Fiscal Year 2022-2023  
Investment Policy***

**WHEREAS**, the Austin Transit Partnership (“ATP”) is a local government corporation organized jointly by the City of Austin and Capital Metropolitan Transportation Authority pursuant to Chapter 431, Subchapter D of the Texas Transportation Code, as amended (the “Act”); and

**WHEREAS**, ATP will be the recipient of public funds from both local and federal sources of funding; and

**WHEREAS**, the Public Funds Investment Act (PFIA), Chapter 2256 of the Texas Government Code, is the state law that governs the investment of public funds; and

**WHEREAS**, Section 2256.005(e) of the PFIA requires governmental bodies to adopt an investment policy on an annual basis to serve as the guideline for the investment of public funds; and

**WHEREAS**, the PFIA provides the legal parameters for ATP’s investments, which are further narrowed by the adoption of the proposed Investment Policy.

**NOW, THEREFORE, BE IT RESOLVED** that the ATP Board of Directors has reviewed and adopted the ATP Fiscal Year 2022-2023 Investment Policy, attached as Exhibit A.



**Austin Transit Partnership Board of Directors Resolution**  
**Meeting Date: 11/16/2022**  
**ATP-2022-019**  
**Adoption of ATP Fiscal Year 2022-2023 Investment Policy**

**BE IT FURTHER RESOLVED** that the ATP Board of Directors directs the Executive Director or his designee to implement the ATP Fiscal Year 2022-2023 Investment Policy to invest ATP funds in a manner that is consistent with the requirements of the Texas Public Funds Investment Act (Texas Government Code Chapter 2256) to ensure understanding of the suitability of an investment for ATP, and to primarily emphasize, in order of priority, preservation and safety of principal, liquidity, the marketability of an investment if the need arises to liquidate the investment, investment diversification, and yield.

\_\_\_\_\_  
**Casey Burack**  
**Secretary of the Board**

**Date:** \_\_\_\_\_



**Austin Transit Partnership  
Investment Policy**



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**1. POLICY STATEMENT**

It is the policy of the Austin Transit Partnership (the "Corporation") that all available funds shall be invested in conformance with these legal and administrative guidelines. Public funds will be invested in a manner to allow for the safety of principal and maximizing the highest reasonable market return while ensuring the cash flow needs of the Corporation are met.

Effective cash management is recognized as essential to good fiscal management. The Corporation's investment portfolio shall be designed and managed to take advantage of investment interest as a viable revenue source for all operating funds. The portfolio shall be designed and managed in a manner responsive to the public trust and consistent with local, state and federal law.



**2. PURPOSE**

**a. Authorization**

This Policy is to be authorized by the Board of the Corporation in accordance with Section 2256.005 of Texas Local Government Code, Chapter 2256, also known as the Public Funds Investment Act (the “Act”).

**b. Scope**

This Policy shall govern the investment of all funds of the Corporation as entrusted to the Treasurer of the Board, as custodian, according to Section 3.6 of the Corporation’s Bylaws. In addition to the Policy, bond funds (including debt service and reserve funds) shall be managed by their authorizing documents and Federal Law, including the Tax Reform Act of 1986 and subsequent legislation.

**c. Review and Amendment**

This Policy shall be reviewed annually by the Board of the Corporation, and adopted annually after such review, even if there are no changes.





### 3. INVESTMENT OBJECTIVES

#### a. **General Statement**

The Corporation shall manage and invest its investment portfolio with five primary objectives, three of which are required pursuant to Section 2256.06 (a)(1) – (3) of the Act:

1. Preservation of capital and protection of principal;
2. Maintenance of sufficient liquidity to meet operating needs;
3. Security of the Corporation’s funds and investments;
4. Diversification of investments to avoid unreasonable or avoidable risks; and
5. Maximization of return of the portfolio

#### b. **Preservation and safety of principal**

The safety of principal is the foremost objective of the Corporation’s investment program for the portfolio. The specific policies that will be implemented to ensure safety of principal are reflected in Section 5(c) “Ensuring Safety of Principal”.

#### c. **Maintenance of Sufficient Liquidity**

The Corporation’s investment portfolio must be structured in a manner which will provide liquidity as needed to pay obligations as they become due. As projects entrusted to and undertaken by the Corporation progress, ensuring adequate liquidity is maintained will become a vital role in ensuring contractual obligations are met. The specific policies that will be implemented to ensure Maintenance of Sufficient Liquidity are reflected in Section 5(d) “Ensuring Liquidity”.

#### d. **Security of Funds**

As detailed by Section 6(b) “Internal Controls”, the Corporation’s focus will be to implement controls to prevent losses of public funds arising from fraud, employee error, misrepresentation of third parties, or imprudent actions by employees or Investment Offices of the Corporation

#### e. **Diversification of Portfolio**

The Corporation will ensure that the investment portfolio is diversified by security type and institution as appropriate for prudent risk management. The Policy limits surrounding diversification limits are reflected in Section 5(c)(10) “Portfolio Diversification”.



**f. Return on Portfolio**

In accordance with the Act, it will be the Corporation's objective to optimize the return of the investment portfolio within the parameters outlined per the Safety and Liquidity objectives mentioned above. Investments shall be made in permitted obligations at yields equal to or greater than the bond equivalent yield on United States Treasury obligations of comparable maturity. Section 5(e) "Enhancing and Achieving Yield Objectives" outlines policies related to the investment rate of return.

Bond Proceeds received by the Corporation may have Federal yield or arbitrage restrictions. The primary objectives of the investment of these funds shall be to obtain satisfactory market yields and to minimize the costs associated with investment of such funds. See subsection (h) of this section below.

**g. Standard of Care**

As defined by the Act, in accordance with Section 2256.006, investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and probable income to be derived. The aforementioned description is also known as the "prudent person rule".

In determining whether an Investment Officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

1. the investment of all funds, or funds under the Corporation's control, over which the Investment Officer had responsibility rather than a consideration as to the prudence of a single investment; and
2. whether the investment decision was consistent with this Policy.

Specific policies describing the Corporation's prudence and ethical stands can be found in Section 6 "Responsibility and Controls".

**h. Issuance and Incurrence of Public Securities**

The Corporation has the legal authority to issue or incur bonds, notes and other obligations, either sold in the open market, negotiated with private placement purchasers, or negotiated with federal or state agencies (collectively, referred to in this Policy as "public securities") pursuant to documents authorized by the Board of the Corporation. Those documents may address the investment of funds (1) during the construction of a project, (2) used for the payment of debt service on the public securities, (3) placed in reserve as security for the payment of debt service on the public securities, (4) for the purpose of retiring the public securities, including defeasance of outstanding public securities, and (5) for other uses relating to the projects financed or refinanced. Notwithstanding anything in this Policy to the



contrary, if a conflict arises between this Policy and the investment of funds in accordance with the documents authorizing the issuance of public securities, the provisions of the documents authorizing the issuance of public securities shall control.



#### 4. INVESTMENT STRATEGY

The Corporation will maintain at times through the life of the organization, three separate portfolios which will have a specific investment strategy consideration designed to address the unique characteristic of the respective investment portfolio.

##### a. Operating Funds

The primary objective of the Corporation's investment strategy for Operating Funds is to assure that anticipated cash flows are matched with adequate investment liquidity. The secondary objective of the investment strategy for Operating Funds is to have a diversified portfolio of investments that can weather economic cycles with minimal volatility. To achieve these objectives, the portfolio will be structure either with a laddered or barbell maturity structure coupled with quality short to medium-term securities. The dollar weighted average maturity of 365 days or less will be calculated using the stated final maturity dates of each security. Securities may not be purchased that have a final stated maturity date which exceeds three (3) years.

##### b. Operating Reserve Funds

The primary objective of the Corporation's investment strategy for Operating Reserve Funds shall be to ensure safety of principal, allowing for payment of unexpected future costs or obligations, while earning a competitive market rate. Investment of such funds shall be restricted to securities permitted within this policy and limited to maturities not to exceed five (5) years.

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##### b-c. Debt Service Funds

The primary objective of the Corporation's investment strategy for Debt Service Funds shall be to assure adequate investment liquidity to cover debt service obligations on required payment dates. Securities purchased for the benefit of these portfolios shall not have a final maturity date which exceeds the debt service payment date, unless otherwise provided in the documents authorizing the issuance of public securities.

##### e-d. Debt Service Reserve Funds

The primary objective of the Corporation's investment strategy for Debt Service Reserve Funds shall be to generate a reliable and steady revenue stream for the respective debt service fund by utilizing securities with a low degree of volatility, consistent with the provisions of the documents authorizing the issuance of public securities. For example, the documents authorizing the issuance of public securities may provide that a Debt Service Reserve Fund may consist, in addition to or in lieu of money invested in securities, of a letter or line of credit issued by a financial institution, a surety bond issued by an insurance company, or any combination thereof. Securities purchased for the benefit of these portfolios should be high quality and should have short to medium-term maturities, not to exceed five (5) years.



**AUSTIN**  
**TRANSIT**  
PARTNERSHIP



## 5. INVESTMENT POLICY

### a. Eligible Investments

As a nonprofit entity acting on behalf of the City of Austin and Capital Metropolitan Transportation Authority, the Corporation is subject to the Act and is subject to certain restrictions associated with the investment of funds. The investments described below are authorized pursuant to the Act. Subject to market conditions, the purchase of certain securities may be prohibited or limited at times. Funds governed under this Policy may be invested in:

1. Obligations of the United States or its agencies and instrumentalities.
2. Direct obligations of the State of Texas.
3. Other obligations, the principal and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States or its agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States.
4. Obligations of states, agencies, counties, cities, and other political subdivisions of any state having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than AA or its equivalent.
5. Bankers' acceptance, so long as each such acceptance has a stated maturity of 270 days or less from the date of its issuance, will be liquidated in full at maturity, is eligible collateral for borrowing from a Federal Reserve Bank and is accepted by a domestic bank whose short-term obligations are rated at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency or which is the largest subsidiary of a bank holding company whose short-term obligations are so rated.
6. Commercial paper with a stated maturity of 365 days or less from the date of its issuance that either:
  - a. Is rated not less than A-1, P-1, or the equivalent by at least two nationally recognized credit rating agencies; or,
  - b. Is rated at least A-1, P-1, or the equivalent by at least one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state thereof.



7. Certificates of deposit issued by depository institutions that have a main office or branch office in Texas that are:
  - a. guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor; or,
  - b. secured by obligations that are described by 1-4 above, which are intended to include all direct federal agency or instrumentality issues that have a market value of not less than 102% of the principal amount plus accrued interest of the certificates.
8. Share Certificates issued by a depository institution that has a main office or branch office in Texas and that is guaranteed or insured by the National Credit Union Share Insurance Fund or its successor.
9. Securities and Exchange Commission (SEC)-registered and regulated, no-load money market mutual funds that comply with the SEC Rule 2a7, and provides the Corporation with a Prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940. Excluding bond proceeds, no more than 80% of the Corporation's monthly average fund balance may be invested in money market mutual funds. And excluding bond proceeds, the Corporation may not invest funds under its control in an amount that exceeds 10% of the total assets of any individual money market mutual fund.
10. Local government investment pools (LGIP) organized in accordance with the Interlocal Cooperation Act (Chapter 791, Texas Government Act) and that meet the requirements of Section 2256.016 of the Act, to include:
  - a. assets that consist exclusively of the obligations that are described by Section 5(a) 1-8 above and/or money market mutual funds permitted in 9 above that are also consistent with the Investment Policies and Objectives adopted by the LGIP.
  - b. continuously rated no lower than AAA , AAA-m or at an equivalent rating by at least one nationally recognized rating service.
  - c. provide the Corporation with all required reporting, financial, and disclosure information pursuant to the Act.



- 11. A securities lending program that meets the following conditions:
  - a. A securities lending agreement shall be executed in writing.
  - b. The securities lending agreement and all loans shall be executed only with:
    - i. a primary securities dealer, as defined by the Federal Reserve; or
    - ii. a financial institution doing business in the state of Texas that has a senior debt rating of at least A or its equivalent by two nationally recognized rating services.
  - c. The securities lending agreement shall have a term of one year or less.
  - d. All loans shall be terminable at any time.
  - e. The securities lending agreement shall require that all collateral be pledged to or owned by the Corporation, held in the Corporation's name, and, as applicable, deposited simultaneously as the security loaned with a third party approved by the Corporation.
  - f. Collateralization requirements for all loans shall:
    - i. include the term or maturity of all collateral that ends no later than the expiration date of the specific loan transaction;
    - ii. be collateralized at not less than 102% of the market value of the securities loaned to included accrued interest and be marked-to-market daily with market value reported daily to the Corporation;
    - iii. be collateralized by:
      - 1. pledged securities issued by the United States government or its agencies or instrumentalities as defined in Section 5(a)(1-4) above;
      - 2. cash invested in accordance with Section 5(a) (1-4, 6, or 10) listed above.

12. Repurchase Agreements secured by any combination of cash and U.S. Treasury or Federal Agency issues as collateral with a market value which equals or exceeds 102% of the City's investment plus accrued interest and are pledged and held with the Corporation's custodial bank, or an approved third-party safekeeping agent. Repurchase agreements can only be made with Primary Dealers and banks within the State of Texas in accordance with State law. Maximum term for repurchase agreements is 90 days from delivery unless the repurchase agreement is associated with the investment of bond proceeds.

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**b. Prohibited Investments**

- 1. Investments in collateralized mortgage obligations are strictly prohibited. These securities are also disallowed for collateral positions.
- 2. Repurchase agreements are prohibited until a Master Repurchase Agreement is approved by the Investment Committee.





**c. Ensuring Safety of Principal**

**1. Protection of Principal**

- a. The Corporation, through the investment officers, designated officials, or Investment Advisor if one is contracted with the Corporation, will strive to control the risk of loss due to the failure of a particular security issuer, or grantor, by investing only in the safest types of securities as defined in this Policy, by doing the following:
  - i. qualifying the broker, dealer, and financial institution with whom the Corporation plans on transacting business ;
  - ii. by collateralizing the Corporation’s accounts as required by law;
  - iii. by diversifying the investment portfolio; and
  - iv. by limiting the term of the maturities.

**2. Security Ratings**

- a. The ratings of securities held in the portfolio will be actively monitored to ensure compliance with the rating requirements outlined in the Act and to help mitigate the risk of loss due to the failure of a security. If a security is rated by more than one nationally recognized credit rating agency (Moody’s Investor Services, S&P Global Ratings, and/or Fitch Ratings) then the lowest outstanding rating shall be the rating that is utilized to govern investment decisions. In the event that any Eligible Investment is downgraded below the minimum credit rating requirements established in [Texas Government Code 2256](#)~~Section 5(a) of this Policy~~, it will be the Corporation’s policy to convene an emergency meeting of the Investment Committee to determine whether liquidation of the position is warranted. This meeting notification should take place within 5 business days of notification of the credit downgrade. Consistent with the provisions of Section 2256.021 of the Act, should an investment no longer be eligible to be held by the Corporation, the Corporation shall take such steps as deemed prudent to effect the liquidation of such an investment.

**3. Security Execution**

- a. Securities purchased for the benefit of the Corporation’s investment portfolio shall be delivered via a “delivery versus payment” process. Executing securities in this manner will ensure that Corporation funds are not released until the security has been received by the Corporation.

**4. Portfolio Pricing**

- a. Securities held in the Corporation’s investment portfolio shall be priced to market values by month-end through a third-party pricing source. If an Investment Advisor is contracted by the Corporation, securities will be marked to market and distributed at minimum on a monthly basis to the Corporation.



**5. Approved Brokers/Dealers**

- a. Investments will only be executed with firms and institutions who have:
  - i. Acknowledged receipt, review, and understanding of the Corporation's Investment Policy; and,
  - ii. Met the qualifications and standards established by the Corporation's Investment Committee and set forth in the Investment Procedures Manual.
- b. In addition to limiting investment purchases to firms that meet the two requirements above, the Investment Committee shall approve and review a list of broker/dealers with whom the Corporation can conduct business. If an Investment Advisor is contracted with the Corporation, then the Investment Advisor will bring before the Investment Committee a list of firms which it can purchase securities from on the Corporation's behalf to have reviewed and approved. The list of approved broker/dealers shall be reviewed and adopted at least annually by the Investment Committee in accordance with Section 2256.025 of the Act.

**6. Repurchase Agreement Required Document**

- a. ~~Before entering into a repurchase agreement, the Corporation and the agreement counterparty will develop, in conjunction with the Investment Advisor if one is contracted, review and sign a standard industry Master Repurchase Agreement outlining the terms and conditions of the agreement and responsibilities of interested parties, prior to entering into any repurchase agreements or reverse repurchase agreements. Once the Master Repurchase Agreement is developed it will be presented and approved by the Investment Committee. Only after the Master Repurchase Agreement is approved, the Corporation will be allowed to enter these types of transactions. Once approved, to execute a repurchase agreement or reverse repurchase agreement, the issuer must sign a copy of the Corporation's Master Repurchase Agreement prior to entering into a transaction.~~

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**7. Collateralization**

- a. Pursuant to Texas Local Government Code Chapter 2257, known as the Public Funds Collateral Act, the Corporation will require all banks, savings banks and credit union deposits to be federally insured or collateralized with eligible securities. The Corporation will require any institution serving as a Depository and/or safekeeping agent, to enter into an agreement with the Corporation documenting the rights to the collateral in the event of default, bankruptcy, or closure. The following can be accepted by the Corporation as depository collateral:
  - i. any investment listed as an "Eligible Investment" under Section 5(a) of this Policy;



- ii. a surety bond to which the Corporation is the named insured and is of credit quality as determined by the Corporation's Investment Committee;
  - iii. and letters of credit issued to the Corporation by the Federal Home Loan Bank, if approved by the Corporation in advance.
- b. Collateral will be valued at current market values plus interest accrued through the date of valuation. This will be monitored at least weekly by the Treasury Office of the Corporation. Monthly reports with market values of the pledged securities will be required from all financial institutions which serve as the Corporation's Depository. If the collateral pledged by a financial institution serving as the Corporation's Depository falls below the value of deposits on hand less FDIC or National Credit Union Share insurance, the institution will be notified by the Treasury Office and will be required to pledge additional securities no later than the end of the next succeeding business day. Business day shall have the meaning of any day other than a Saturday, a Sunday, federal legal holiday in the United States or any day on which banking institutions are closed.
- c. For Certificates of Deposit/Share Certificates, the market value of collateral pledged must at all times be no less than the par value of the certificate of deposit plus accrued interest, less the amount insured by the FDIC or the National Credit Union Share Insurance Fund or their successors. This will be monitored at least weekly by the Treasury Office of the Corporation. Monthly reports with market values of the pledged securities will be required from all financial institutions which the Corporation has Certificates of Deposits/Share Certificates. If the collateral pledged for a certificate of deposit or share certificate falls below the par value of the deposit, plus accrued interest less FDIC or National Credit Union Share insurance, the institution will be notified by the Treasury Office and will be required to pledge additional securities no later than the end of the next succeeding business day
- d. Repurchase agreements must also be collateralized in accordance with State Law. Parameters surrounding allowable collateral, and collateral levels, will be determined once the Master Repurchase Agreement is ~~created~~ reviewed and approved by the Investment Committee. As discussed in Section 5(c)(6), only once the Master Purchase Agreement is approved, the Corporation will be allowed to enter into these types of transactions.

**8. Collateral Substitution**

- a. Collateral pledged for investments, certificates of deposits, share certificates and funds held by the Corporation's Depository may require substitution. Any request for substitution, on behalf of a broker or financial institution, must contact the Corporation's Treasury Office for approval and settlement. The security being proposed shall have a value equal to or greater than required value as detailed in Section 5(c)(7). The Corporation's Treasurer, or their designee will give notification, within a reasonable time frame, to the financial institution or



safekeeping agent holding the collateral of the decision. Collateral substitution should be limited to minimize potential administrative problems, administrative burden, and transfer expense. The Corporation's Treasurer will retain the right to limit substitution of collateral.

**9. Collateral Reductions**

- a. Any financial institution serving in a capacity to the Corporation which would warrant pledging collateral may request approval from the Corporation's Treasurer to reduce the amount of collateral held in the Corporation's name should the collateral's market value exceed the required amount. A reduction in Collateral will only be permitted if the Corporation's records indicate that the collateral's market value exceeds the required amount.

**10. Portfolio Diversification**

- a. By diversifying the investment types within the Corporation's investment portfolio, the risk of principal loss will be limited. Diversifying the investment portfolio will also limit any undue financial burden on the Corporation, by limiting its reliance on any single issuer or broker. The following limitations will be applicable to the Corporation's investment portfolio at the time an individual security is purchased. The limitations will not apply to bond proceeds:

Investment Type:	% of Portfolio
Certificates of Deposits	50%
Share Certificates	5%
U.S. Treasury Notes/Bonds/Bills	100%
U.S. Agencies/Government Sponsored Enterprises	75%
<u>Repurchase Agreements</u>	<u>50%</u>
Money Market Mutual funds	
Local Government Investment Pools	100%
Commercial Paper	15%
Municipal/State Obligations	10%
Banker Acceptances	15%



- b. Additional limitations will apply to Commercial Paper. The Corporation will limit the exposure to any single issuer to no more than 5% of the value of the Corporation's overall portfolio at the time the security is purchased. The limits above may be exceeded for a maximum of five business days following the receipt of bond and grant proceeds. Lastly, these limitations are also applicable to Investment Advisors who may be contracted to manage the Corporation's investment portfolio.
- c. Bond Proceeds
  - i. Proceeds of a single bond issue may be invested in a single security or investment if the Investment Committee determines that such an investment is (A) necessary to comply with Federal arbitrage restrictions or to facilitate arbitrage record keeping and calculation and (B) consistent with the proceedings authorizing the issuance of the bond issue.

**11. Maturity Guidelines**

- a. While it is the intent of the Corporation to hold investments to their stated maturity, the Corporation will seek to minimize the risk of loss due to interest rate fluctuations by ensuring that investment maturities will not exceed anticipated cash flow requirements of the Corporation. Below are Maturity guidelines for the Operating Fund, Debt Service Fund, Debt Service Reserve Fund and Bond Proceeds:
  - i. Operating Fund
    - 1. The dollar weighted average days to final stated maturity (WAM) shall be 365 days or less. The Investment Committee will monitor and make changes if needed.
  - ii. Debt Service Fund, Debt Service Reserve Fund and Bond Proceeds
    - 1. The following shall be considered when selecting maturities for Debt Service Funds, Debt Service Reserve Funds and Bond Proceeds:
      - a. the anticipated cash flow requirements of the funds,
      - b. the "temporary period" as defined by Federal tax law during which time bonds proceeds may be invested at an unrestricted yield. After the expiration of the temporary period, bond proceeds subject to yield restriction shall be invested considering the anticipated cash flow requirements of the funds, and
      - c. the provisions of the authorizing documents authorizing the issuance of such bonds.



**12. Safekeeping**

- a. The Corporation shall enter into a contract with a bank, banks, or a third-party custodian for the safekeeping of securities either owned by the Corporation as part of its investment portfolio or held as collateral to secure certificates of deposits. Once a Master Repurchase Agreement is approved by the Investment Committee, collateral held for repurchase agreements will also be subject to the safekeeping requirements outlined in this section.
- b. Securities pledged as collateral for deposits at a bank, savings bank, and credit union must be held by an independent third-party banking institution approved by the Corporation, or collateral may be held at the Federal Reserve Bank.
- c. Securities pledged as collateral for repurchase agreements with dealers must be delivered to an independent third-party custodian which the Corporation has entered into a third-party safekeeping agreement with.

**d. Ensuring Liquidity**

- 1. To ensure anticipated cashflow needs and unanticipated cashflow needs are met, the investment officers, designated officials, and Investment Advisor if one is contracted by the Corporation, shall invest in securities with active secondary markets, invest in eligible money market mutual funds, and local government investment pools. Securities may be liquidated to meet unanticipated cash requirements or to adjust the portfolio as needed.

**e. Enhancing and Achieving Yield Objectives**

- 1. Fund managed as part of the Corporation's Operating Portfolio either by investment officers, designated officials, or an Investment Advisor if one is contracted by the Corporation, shall be actively managed to enhance overall interest income. This shall be conducted within the context of the "prudent person rule" as defined in Section 3(g).
- 2. Competitive Bidding
  - a. It is the Corporation's policy to require competitive bidding (no less than 3 bids) in all transactions involving individual securities. Bids can be solicited via any method provided by law. In situations where obtaining multiple bids is impractical or unreasonable due to market conditions, comparable security prices may be documented or an explanation of the circumstances surrounding the decision must be included with the trade documentation. All bids must be documented and kept for auditing purposes. Transactions executed under the following conditions are exempt from competitive bid requirements:
    - i. transactions entered into with a money market mutual fund or local government investment pool which are considered to be made at prevailing market rates; and
    - ii. government securities purchased at issue through a primary dealer at auction price



## 6. RESPONSIBILITIES AND CONTROLS

### a. Authority to Invest

1. The authority to invest Corporation funds and the execution of any documentation necessary to evidence the investment of Corporation funds is granted to the Treasurer of the Board as documented in Section 3.6 of the Corporation's Bylaws. The Treasurer of the Board will designate in writing those Treasury Office personnel and Finance Officers ("Investment Officers") authorized to invest on behalf of the Corporation. The foregoing notwithstanding, proceeds of public securities shall be invested in a manner consistent with the proceedings authorizing the issuance of the public securities.
2. The Corporation may contract with an investment advisor, whom shall adhere to this Policy and invest funds with the same Standard of Care as outlined in Section 3(g). The investment advisor must be registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940 as well as with the Texas State Securities Board. The investment advisors' responsibilities may consists of, but not be limited to:
  - a. management of Corporation's funds
  - b. review of the investment policy
  - c. development of investment strategy within the constraints outlined in the investment policy
  - d. trade execution
  - e. security analysis, clearance, and documentation
  - f. broker dealer compliance
  - g. investment reporting

### b. Internal Controls

1. The Treasurer of the Board, in conjunction with the Treasurer and Controller of the Corporation, shall establish a system of internal controls and document these controls in the Investment Procedures Manual.

### c. Investment Management Indemnification

1. The Investment Officers, as designated by this Policy, shall act and perform their duties in accordance with the Investment Procedures Manual and adopted Investment Policy. Investment Officers acting in good faith and in accordance with the policy and procedures manual shall be relieved of personal liability.



**d. Ethics and Conflicts of Interest**

1. The Investment Officers, as designated by this Policy, shall adhere to the Corporation's Ethics, Conflicts and Nondisclosure Policy as approved by the Corporation's Board. Investment Officers involved in administering the investment program shall not have a personal business relationship with a business organization offering to engage in an investment with the Corporation.
2. As defined within the Act, Section 2256.005 (i), an Investment Officer has a personal business relationship with a business organization if:
  - a. the Investment Officer owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
  - b. funds received by the investment officer from the business organization exceed 10 percent of the Investment Officer's gross income for the previous year; or
  - c. the Investment Officer has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the Investment Officer.
3. An Investment Officer who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the Corporation shall file a statement disclosing the relationship. A statement required under this subsection must be filed with the Texas Ethics Commission and Corporation pursuant to the Act.

**e. Investment Training**

1. As required per section 2256.008 of the Act the Chief Financial Officer, the Treasurer and those personnel authorized to execute investment transactions, shall attend at least one investment training session, containing at least 10 hours of instruction within 12 months after taking office or assuming duties. State law requires that training relating to investment responsibilities must be provided by an independent source as approved by the Investment Committee. For these purposes, courses or seminars offered by ~~First Southwest Company~~/Hilltop Securities, Government Finance Officers Association, Government Finance Officers Association of Texas, Government Treasurers Organization of Texas, PFM Asset Management, Public Trust Advisors, Texas Municipal League, Texpool, or University of North Texas will satisfy the training requirements. Independent sources not listed may be approved by the Investment Committee at regularly scheduled Quarterly Investment Committee meetings. Personnel authorized to execute investment transactions must receive at least 8 hours of investment training within a two-year period that begins on the first day of the fiscal year and consists of the two consecutive fiscal years after that date. Recognizing that the training and education of the Investment Officers contributes to efficient and effective investment management, the Corporation will encourage its Investment Officers to obtain appropriate professional certifications and provide training toward such certifications from available funds.





**f. Investment Committee**

1. An Investment Committee shall be formed to determine investment guidelines, general strategies, and monitor performance. The Committee shall be comprised of the Chief Financial Officer (as chair), the Corporation's Treasurer (as Vice Chair), the Corporation's Budget Director, [the Corporation's Accounting Director](#), a representative from the Law Department, and a representative from Corporation's Financial Advisor. The Investment Committee shall meet at minimum semi-annually to review performance, strategy and procedures.

**g. Reporting**

1. As required per Section 2256.023 of the Act, the Treasurer of the Corporation will provide detailed reports to the Chief Financial Officer, the Investment Committee and the Corporation's Board on a quarterly basis. The report must include the following:
  - a. describe in detail the investment position of the Corporation on the date of the report;
  - b. be prepared by the Investment Officers and designated officials;
  - c. be signed by the Investment Officers and designated officials;
  - d. contain a summary statement for each pooled fund group that states the
    - i. beginning market value for the reporting period;
    - ii. ending market value for the period; and
    - iii. fully accrued interest for the reporting period;
  - e. state the book value and market value of each separately invested asset at the end of the reporting period by the type of asset and fund type invested;
  - f. state the maturity date of each separately invested asset that has a maturity date;
  - g. state the account or fund or pooled fund group in the state agency or local government which each individual investment was acquired; and
  - h. state the compliance of the investment portfolio as it relates to;
    - i. the investment strategy expressed in the Corporation's investment policy; and
    - ii. relevant provisions of the Act.
2. An independent auditor will perform a formal annual review of the quarterly reports with the results reported to the Corporation's Board.

**h. Certification**

1. Any bank, dealer, or broker wishing to transact investment business with the Corporation will be provided a copy of this investment policy. Firms must acknowledge receipt and review the Corporation's Investment Policy before business is transacted. Before transacting with a Local Government Investment Pool, a certification must be signed by a qualified representative assigned to the Corporation's account.

**i. Compliance Audit.**

1. In conjunction with its annual financial audit, the Corporation shall perform a compliance audit of management controls on investments and adherence to this Policy. The results of the compliance audit shall be reported to the Investment Committee and the Corporation's Board.