



Austin Transit Partnership Board of Directors Resolution

Meeting Date: Dec. 15, 2021

ATP-2021-036

Resolution Authorizing the General Counsel to Proceed with the Proposed Process for Independent Analysis

SUBJECT: Resolution authorizing a process and approach for the performance of an independent analysis to be undertaken by the ATP Board of Directors to determine the appropriate leadership model for ATP, and directing the Chair of the ATP Board of Directors to finalize and execute a third-party contract with the Eno Center for Transportation for independent consulting services for the performance of the independent analysis.

FISCAL IMPACT: See Executive Summary for further explanation.

BUSINESS CASE: Does not apply.

EXECUTIVE SUMMARY: This resolution authorizes a process and approach for the performance of an independent analysis to be undertaken by the ATP Board of Directors to determine the appropriate leadership model for ATP (the "Independent Analysis"), and directs the Chair of the ATP Board of Directors to finalize and execute a third-party contract with the Eno Center for Transportation (the "Independent Consultant") for independent consulting services for the performance of the Independent Analysis. This independent analysis is an undertaking of the ATP Board of Directors pursuant to Section 4.2.2 of the Joint Powers Agreement authorized and entered into by ATP, the City of Austin, and Capital Metro.

As contemplated in this resolution, the Independent Analysis contemplates a community engagement process and the delivery of an impartial report prepared by the Independent Consultant evaluating the advantages and disadvantages of both separate and joint leadership models between ATP and Capital Metro, and any variations thereof. This report will serve as the basis for the ATP Board of Directors to determine the appropriate leadership model for ATP. The amount of compensation payable to the Independent Consultant shall not exceed two hundred thousand dollars (\$200,000) in the aggregate, unless otherwise approved by the ATP Board of Directors.

RESPONSIBLE DEPARTMENT: Legal.

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

STATE OF TEXAS

Resolution ID: ATP-2021-036

COUNTY OF TRAVIS

AUTHORIZING A PROCESS AND APPROACH FOR THE PERFORMANCE OF AN INDEPENDENT ANALYSIS TO BE UNDERTAKEN BY THE ATP BOARD OF DIRECTORS TO DETERMINE THE APPROPRIATE LEADERSHIP MODEL FOR ATP, AND DIRECTING THE CHAIR OF THE ATP BOARD OF DIRECTORS TO FINALIZE AND EXECUTE A THIRD-PARTY CONTRACT WITH THE ENO CENTER FOR TRANSPORTATION FOR INDEPENDENT CONSULTING SERVICES FOR THE PERFORMANCE OF THE INDEPENDENT ANALYSIS

WHEREAS, the Austin City Council approved Council Resolution No.20200807-003 and Ordinance 20200812-009, establishing a Contract with the Voters related to Project Connect (the "Contract with the Voters"), and Capital Metro approved Resolution AI-2020-1297, the Funding and Commitment Resolution for Project Connect (the "Funding and Commitment Resolution"); and

WHEREAS, the Contract with the Voters and Funding and Commitment Resolution jointly established the objectives for the development and implementation of Project Connect as a citywide rapid transit system that comprises a fixed rail and bus rapid transit system, and associated improvements; and

WHEREAS, the Capital Metro Board and the City Council have each approved an interlocal agreement (the "Initial ILA"), committing to, upon voter approval of the Project Connect Tax Revenue, create the Austin Transit Partnership, a joint local government corporation governed by an independent board, with articles of incorporation and bylaws; and

WHEREAS, voters approved Proposition A in November 2020, approving a tax rate to be used as a dedicated funding source for the Austin Transit Partnership (referred to by the City as the "Project Connect Tax Revenue") to further the objectives of the development and implementation of Project Connect, including funding for transit supportive anti-displacement strategies, and for the purpose of approving funding for a fixed rail system; and

WHEREAS, according to the Contract with the Voters, the Funding and Commitment Resolution, and the ATP Articles of Incorporation, ATP is to be the principal entity responsible for



the implementation of the Project Connect System Plan, including the financing, designing, building, implementing, and contracting with Capital Metro to operate and maintain Project Connect; and

WHEREAS, pursuant to the Initial ILA, each of the City, Capital Metro, and ATP have approved the execution of the Joint Powers Agreement with the City and Capital Metro ("JPA"), to delineate the roles and responsibilities of all three parties; and

WHEREAS, pursuant to Section 4.2.2. of the JPA and the directives contained in ATP Resolution No. 2021-028, Chair Castro de Barrera has been authorized and directed by the ATP Board to work directly with the ATP General Counsel to identify the proposed process and approach for the ATP Board of Directors to conduct an independent analysis and community engagement process to determine the appropriate leadership model for ATP (the "Independent Analysis"); and

WHEREAS, the Independent Analysis will serve as the basis for the ATP Board of Directors to make a determination as to the appropriate leadership model for ATP; and

WHEREAS, the ATP Board of Directors desires to establish the principal objectives and priorities of ATP for determining the appropriate leadership model, and to approve a process and approach whereby the Independent Analysis will be performed in an impartial manner under the direct supervision of the ATP Board of Directors.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF ATP AS FOLLOWS:

Section 1. General Overview. The process and approach for the Independent Analysis, as more fully contemplated herein, is hereby approved by the Board of Directors. The Independent Analysis shall be administered by the ATP General Counsel as the staff liaison to the ATP Board of Directors, and the ATP General Counsel shall report directly to the ATP Board of Directors. The ATP General Counsel shall take all steps necessary to ensure that the Independent Analysis shall be conducted in an impartial and independent manner. The Independent Analysis shall be concluded upon the delivery of an impartial report prepared by the Independent Consultant (the "Independent Report"), evaluating the advantages and disadvantages of both separate and joint leadership models between ATP and Capital Metro, and any variations thereof.

Section 2. Objectives and Priorities. The Independent Analysis shall serve as the basis for the ATP Board of Directors to make a determination, in the sole discretion of the ATP Board, as to the appropriate leadership model for ATP. The ATP Board of Directors hereby establishes the following objectives and priorities:

- (a) *Fulfill the Contract with the Voters.* ATP's primary responsibility is to ensure the success of Project Connect in accordance with the Project Connect Investment Map, Implementation Sequence Plan and other commitments that have been made to the voters. ATP will honor the Contract with the Voters in carrying out its obligations.



- (b) *Delivery On Time and On Budget.* ATP recognizes the importance of the delivery of Project Connect on time and on budget. The successful delivery of Project Connect will depend on ATP's ability to timely achieve key milestones, such as grant funding, financing, feasibility analysis, design progress, procurement, and construction delivery.
- (c) *Program Equity.* In keeping with the Contract with the Voters, ATP prioritizes anti-displacement and equity, including the implementation of neighborhood-level anti-displacement strategies and priorities, and addressing issues that impact historically underserved populations.
- (d) *Public Trust and Compliance With Law.* ATP prioritizes transparency and the preservation of public trust. ATP will also ensure that all aspects of Project Connect will follow applicable local, state and federal laws.

Section 3. Key Factors. In keeping with the objectives and priorities established in Section 2 above, the Independent Consultant shall take into consideration, without limitation, the following key factors when performing the Independent Analysis:

- (a) *Accountability.* Pursuant to the Contract with the Voters and ATP's governing documents, ATP was established as the principal entity responsible for financing, designing, building, and implementing Project Connect in a manner independent of the City and Capital Metro. The Independent Analysis should consider ways in which ATP's governance structure may be designed to create accountability for ATP.
- (b) *Partnership with the City and Capital Metro.* ATP was created to aid and act on behalf of the City and Capital Metro in performing certain respective governmental functions with respect to the implementation of Project Connect. Project Connect will be funded by City, Capital Metro and federal funds, and primarily built in City owned right-of-way and with City taxpayer funds. Additionally, light rail will be incorporated into existing and evolving transportation systems, which are largely owned and operated by these entities. Collaboration with the City and Capital Metro is therefore essential to carrying out ATP's contractual obligations and commitments to the City and Capital Metro and ensuring alignment with long-term policy goals.
- (c) *Innovation and Industry Best Practices.* ATP seeks to take an innovative approach to the implementation of Project Connect that incorporates and improves upon transit industry best practices and successful transit delivery models.
- (d) *Financing for Project Connect.* ATP is responsible for financing Project Connect. Project Connect will be financed through contract revenue bonds issued by ATP, as well as other short-term borrowings and Federal loan programs secured by the Project Connect Tax Revenue and federal grant funds. Capital Metro is also providing annual funding for Project Connect. The Independent Analysis should consider the impacts of any potential governance structure on ATP's overall creditworthiness and ability to borrow funds and issue bonds for Project Connect.



- (e) *Legal Considerations.* The Independent Analysis should consider the funding and contracting constraints of ATP under applicable law, and how possible ATP governance structures may give rise to conflicts of interest with respect to ATP's contractual arrangements with the City, Capital Metro, and others.
- (f) *Contract Risk.* ATP will enter into various contracts and agreements with architects, engineers, developers, and contractors in connection with Project Connect. These third parties will factor program risk when pricing services and committing to delivery schedules. The Independent Analysis should consider how the ATP governance structure may be designed to maximize ATP's ability to successfully negotiate these third-party contracts on the best overall terms.
- (g) *Community Participation.* The Independent Analysis should consider ways in which ATP's governance structure may be designed to effectively conduct community engagement, respond to community input, achieve transparency, and preserve public trust throughout the implementation of Project Connect.
- (h) *Equity and Anti-Displacement.* The Independent Analysis should consider the various models and delivery methods for transit-supportive and Equitable Transit-Oriented Development (ETOD), and how ATP's governance structure may be designed to best achieve the equity and anti-displacement goals of Project Connect.
- (i) *Operational Readiness and Maintenance.* The Contract with the Voters and the Funding and Commitment Resolution, and the ATP Articles of Incorporation provide that Project Connect will be operated and maintained by Capital Metro. The Independent Analysis should consider the various models of transit systems where separate entities are responsible for the design and implementation and the operation and maintenance of transit systems, the advantages and disadvantages of these models, and how they may be integrated into ATP's governance structure. Specifically, the Independent Analysis should consider (without limitation) how overall system integration will occur to effectively manage transit-labor relations; safety and security compliance and certification; multi-modal service planning; fare and customer systems integration; possible creation of a new light rail division at Capital Metro; FTA grant management; and facilities management and FTA asset management compliance.
- (j) *Executive Director Recruitment.* The Independent Analysis should consider the implications of a governance model on Executive Director recruitment and compensation.

Section 4. Third-Party Independent Consultant. The ATP Board hereby selects the Eno Center for Transportation to serve as the Independent Consultant for the performance of the Independent Analysis. The ATP Board Chair is hereby authorized and directed to finalize and execute a professional services agreement with the Independent Consultant to perform the Independent Analysis, which shall consist of conducting community and stakeholder interviews, and the delivery of the Independent Report. The amount of compensation payable to the



Independent Consultant shall not exceed two hundred thousand dollars (\$200,000) in the aggregate, unless otherwise approved by the ATP Board of Directors.

Section 5. Community and Stakeholder Engagement Process. Under the direction and with the assistance of the ATP General Counsel, the Independent Consultant shall conduct community and stakeholder outreach to obtain perspectives pertaining to the appropriate leadership model for ATP. The Independent Consultant shall document and take into account such perspectives in the Independent Report.

- (a) *Interviews.* As part of the community and stakeholder engagement process, the Independent Consultant shall conduct interviews with the parties identified below, as well as any others deemed reasonably necessary by the ATP General Counsel. The interview process shall be conducted in a manner that fosters candid and meaningful feedback.
 - (i) Project Connect Community Advisory Committee ("CAC");
 - (ii) Each of the three Project Connect technical advisory committees (the "TACs");
 - (iii) Each member of the ATP Board of Directors;
 - (iv) Selected members of ATP staff and/or consultants;
 - (v) Selected members of the Capital Metro Board of Directors, committees, and/or executive staff; and
 - (vi) Other key community stakeholders as recommended by the CAC and the ATP General Counsel.
- (b) *Preliminary Report and Town Hall Meeting.* After conducting a preliminary review and analysis, the Independent Consultant shall produce a preliminary report discussing the range of possible governance approaches for ATP to deliver Project Connect. The preliminary report will include comparable examples from domestic and international transit systems. The preliminary report will also consider the priorities and objectives and key factors described in Section 2 and Section 3 hereof.

Upon completion of the preliminary report, ATP shall convene a Town Hall Meeting at which the Independent Consultant shall present its preliminary report to the public. The Town Hall Meeting will serve as a public forum for community members and stakeholders to become informed on the preliminary report and to provide comments and feedback to the Independent Consultant.

Section 6. Timeline for Completion. The ATP General Counsel shall endeavor to cause the Independent Analysis to be concluded and the Independent Report to be delivered on



or before March 31. A general timeline of events for the completion of the Independent Analysis is set forth below:

Date	Milestone
December 15, 2021	ATP Board approves resolution outlining process and approach, and authorizing hiring of Independent Consultant
December 2021 – January 2022	Preliminary review, analysis and research
January – February 2022	Conduct interviews with community members and stakeholders
Late January or early February 2022	Preliminary report posted on ATP website
Two weeks following posting of Preliminary Report	Community Town Hall to review and discuss preliminary report
February – March 2022	Complete analysis and research
March 23, 2022 ATP Board Meeting	Consultant presentation to ATP Board
March 31, 2022	Independent Report posted on ATP Website
April 20, 2022 ATP Board Meeting	ATP Board determination regarding the appropriate leadership model for ATP.

Section 7. General Authorization. The ATP Board Chair or her designee is hereby authorized to take any and all actions as are necessary and appropriate to carry out the purposes of this Resolution.

Casey Burack
Secretary of the Board

Date: _____

