

INTERLOCAL GRANT AGREEMENT BETWEEN

THE CITY OF AUSTIN

AND

AUSTIN TRANSIT PARTNERSHIP

RELATED TO PROJECT CONNECT ANTI-DISPLACEMENT PROGRAM

EXPENDITURES

This interlocal grant agreement (the “**Grant Agreement**”), dated and effective upon the date the Grant Agreement is signed by both Parties, is entered into by and between the Austin Transit Partnership (“**Grantor**” or “**ATP**”), a joint local government corporation under Chapter 431 of the Texas Transportation Code, and the City of Austin (“**Grantee**” or the “**City**”), a home-rule municipality incorporated by the State of Texas, each a “**Party**” and collectively referred to herein as the “**Parties**.”

RECITALS

WHEREAS, the City Council adopted Resolution No. 20200423-038, expressing its support of an equitable transit system to benefit the whole community, and calling for data-driven policies and funding to “prevent transportation investment-related displacement and ensure people of different incomes can benefit from transportation investments”; and

WHEREAS, on November 3, 2020, voters approved a ballot measure to dedicate funding to ATP for the implementation of Project Connect, a high-capacity transit system and investment in transit-supportive anti-displacement strategies; and

WHEREAS, pursuant to the Resolution No. 20200812-015, known as the City’s “Contract with the Voters,” ATP is to provide a total of \$300,000,000 of the Project Connect Tax Revenue (“**Project Connect Anti-Displacement Funding**”) in accordance with the Implementation Sequence Plan (attached as Exhibit A) to the City through a grant agreement; and

WHEREAS, the City subsequently requested that ATP accelerate distribution of the first \$100,000,000 of the Project Connect Anti-Displacement Funding during the first three years of the Implementation Sequence Plan; and

WHEREAS, the “Contract with the Voters” provides that the City must utilize the \$300,000,000 to (1) acquire real property for transit supportive development that will preserve and/or increase the amount of affordable housing proximate to transit corridors, or (2) financing tools and other anti-displacement strategies related to the implementation of Project Connect (“**Project Connect Anti-Displacement Programs**”); and

WHEREAS, the “Contract with the Voters” and Resolution No. 20210204-062 require the City to develop a “community-informed partnership and process” for the use of these funds; and

WHEREAS, the “Contract with the Voters” provides that the Neighborhood Housing and Community Development, with assistance from other departments such as the Equity Office and Sustainability Office, shall develop proposals based on the community-informed process for approval by City Council; and

WHEREAS, Resolution No. 20200903-044 expresses the intent of City Council to work with impacted neighborhoods in the creation of neighborhood-level anti-displacement strategies and priorities and the identification of Key Performance Indicators related to equity and displacement; and

WHEREAS, the City and the Capital Metropolitan Transportation Authority entered into an interlocal agreement, which provides for the creation of a Community Advisory Committee to assist the community and the City Council in the creation and evaluation of neighborhood-level anti-displacement strategies and priorities and the identification of Key Performance Indicators related to equity and displacement; and

WHEREAS, the City has developed, implemented and administered anti-displacement programs of a similar nature and has the staff, expertise, and corporate experience to execute the Project Connect Anti-Displacement Programs in furtherance of the Project Connect System Plan as ATP focuses on other aspects of Project Connect; and

WHEREAS, in order to meet the schedule laid out in the Implementation Sequence Plan, ATP and the City desire to enter into this Grant Agreement; and

WHEREAS, the City and ATP have authority to enter this interlocal grant agreement through the Texas Constitution, Article 3, Section 64, Texas Transportation Code Chapter 431 (“The Texas Transportation Corporation Act”), and Texas Government Code Chapter 791 (“The Interlocal Cooperation Act”);

NOW, THEREFORE, the Parties agree as follows:

GRANT AGREEMENT

1. Purpose. The purpose of the Grant Agreement is to provide funding for the City to administer and implement the Project Connect Anti-Displacement Programs as described in the Contract with the Voters. This program supports the “Economic Opportunity and Affordability,” “Mobility,” and “Government that Works for All” objectives in the City’s Strategic Directions 2023. This Grant Agreement is entered pursuant to the Texas Constitution, Article 3, Section 64; Texas Transportation Code Chapter 431 (“The Texas Transportation Corporation Act”); and Texas Government Code Chapter 791 (The Interlocal Cooperation Act”).

2. Term of Agreement. The Grant Agreement shall be in effect for each fiscal year (October 1st to September 30th) beginning with the execution of this Grant Agreement and

until ATP has transferred the Project Connect Anti-Displacement Funding to the City in accordance with the Implementation Sequence Plan, or the Grant Agreement is terminated (the “Term”).

3. Designation of Key Personnel. The City’s Housing and Planning Department (“HPD”) shall serve as the City Manager’s designee for purposes of this Grant Agreement. HPD has the technical and community capacity to perform the responsibilities of this Grant Agreement. HPD shall engage other City departments and personnel as needed to ensure success in the implementation of selected strategies. The ATP Chief Financial Officer/Chief Development Officer or their designee shall serve as ATP’s designee for purposes of this Grant Agreement.

4. Responsibilities of the Parties.

(a) Annual Budget. For each fiscal year during the term of the Grant Agreement, the City and ATP Chief Financial Officers, along with the City Director of HPD shall, during the annual budget process, meet, negotiate, and approve in good faith the amount of the annual funding allocation in accordance with the Implementation Sequence Plan to implement and administer the Project Connect Anti-Displacement Programs. The planned schedule of annual funding allocations is listed in Exhibit B. The annual funding allocation must be included as part of the annual proposed budget for each Party, which must also be approved by the City Council of the City of Austin and the Board of Directors of the ATP. The Parties acknowledge and agree that the Parties shall endeavor to commence the annual budget process prior to the commencement of the fiscal year.

(b) Reimbursement of Funds. ATP will provide grant reimbursement to the City based on actual expenditures, which can include costs of staff time to implement the Project Connect Anti-Displacement Programs in a manner consistent with the Contract with the Voters. The Parties will work to create “Grant Reimbursement Procedures,” which will be adopted prior the first request for reimbursement and amended thereafter as necessary, to include the necessary forms and documentation to process grant reimbursement requests. All grant reimbursements shall be paid only out of ATP’s current revenues or any other funds lawfully available therefore (and appropriated for such purpose) in accordance with Article 11, Sections 5 and 7 of the Texas Constitution.

(c) Federal Grant Opportunities for Real Property Acquisition. The Parties acknowledge and agree that the Contract with the Voters provides that any real property acquired with the Project Connect Anti-Displacement Funding should, where possible, comply with Federal Transit Agency (“FTA”) requirements, and the City will endeavor to comply with such requirements, including to amend this Grant Agreement as ATP deems necessary.

(d) Real Property Acquisition Technical Approval. If HPD identifies any real property acquisition that is directly adjacent to the alignment of any light rail, bus, or commuter rail investments, prior to initiating the acquisition, HPD shall first notify ATP of such potential acquisition and must receive approval prior to initiating such acquisition from the ATP Chief Program Officer to ensure there are no design or engineering conflicts. ATP shall review any such approval requests in a timely manner.

(e) **Real Property Acquisition Assistance.** HPD may, to the extent ATP determines such acquisition is compliant with FTA and the Project Connect technical requirements, request that ATP acquire a real property interest on behalf of HPD with the Project Connect Anti-Displacement Funding. ATP shall be under no obligation to acquire such property on behalf of the City.

5. **Responsibilities of the City.** HPD, as the City Manager's designee, shall complete the tasks as directed by City Council in Resolution Nos. 20200812-015, 20200903-044, and 20210204-062. Additional policy direction from City Council, as long as it is consistent with the Contract with Voters, can be accomplished outside of this Grant Agreement, and will not require amendment(s) to this Grant Agreement.

6. **Termination.** This Grant Agreement may be terminated in its entirety in accordance with any of the following:

(a) by either Party, in the event ATP fails to appropriate funds in any budget year in this Grant Agreement in an amount sufficient to meet ATP's obligations hereunder, upon the first date such funding is not met pursuant to this Grant Agreement;

(b) by either Party, upon ninety (90) days' written notice to the other Party;

or

(c) by City, immediately upon written notice to ATP should ATP fail to make any payment by the forty-fifth (45th) day following City's provision of the relevant invoice or reimbursement documentation to ATP.

(d) ATP shall pay City for all costs incurred and services rendered prior to termination of the Grant Agreement.

7. **Reporting.** HPD shall provide an annual progress report on expenditures and outcomes of the use of the funds.

8. **Audit Rights.** ATP shall have the right, at its cost and expense, to have the books and records of the City related to the Grant Agreement (i) reviewed by ATP from time to time during the Term, and/or (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 fees and cost calculations under this Grant 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 thirty (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 the City's business. 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 21), 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 21), promptly be paid by ATP or refunded by the City, as applicable. 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.

9. Proprietary Materials. If a Party, any of its affiliates or its third-party service providers furnishes or makes available to the other Party (each, a “Disclosing Party”) any Proprietary Materials (as defined below) pursuant to this Grant Agreement, the Disclosing Party shall retain exclusive ownership therein. As used herein, “Proprietary Materials” means all information, data and knowledge marked proprietary and furnished or made available by any Disclosing Party to the other Party as part of the Services, or used in the performance of Services hereunder, and copies thereof, including software, documentation, techniques, tools, templates, processes, procedures, discoveries, inventions and technical data.

10. Confidentiality.

(a) Confidentiality. Except as otherwise permitted herein or as otherwise provided by law, each Party shall, and shall cause its affiliates and their respective officers, directors, employees, accountants, counsel, consultants, advisors and agents to, keep all information marked confidential regarding the business, affairs or plans (“Confidential Information”) of the Disclosing Party provided pursuant to this Grant Agreement strictly confidential. Notwithstanding the foregoing, this Section 10(a) shall not apply to Confidential Information which (1) becomes generally available to the public other than as a result of a disclosure by the Party that received such information or its representatives (“Recipient”), (2) was made available to the Recipient on a non-confidential basis prior to its disclosure to such Person pursuant to this Grant Agreement, (3) becomes available to the Recipient on a non-confidential basis from a source other than the Disclosing Party who did not acquire the Confidential Information from the Disclosing Party or (4) is required to be disclosed by legal process, a court decision, a government agency, or an administrative order; *provided* that the Recipient timely informs the Disclosing Party so that the Disclosing Party may seek a protective order, confidential treatment or other remedy, if possible.

(b) No Rights to Confidential Information. Each Party acknowledges and agrees that it will not acquire any right, title or interest in or to any Confidential Information of the Disclosing Party hereto by reason of this Grant Agreement or the provision or receipt of Services hereunder.

(c) Safeguards. Each Party agrees to establish and maintain administrative, physical and technical safeguards, data security procedures and other protections against the destruction, loss, unauthorized access or alteration of the Disclosing Party’s Confidential Information that are no less rigorous than those otherwise maintained for its own Confidential Information but in no event using less than reasonable care.

(d) Texas Public Information Act. Notwithstanding any terms and conditions in this Grant Agreement to the contrary, this Grant Agreement and related

documents are 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.

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

12. Amendment and Waiver. This Grant Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party, including in the case of ATP the approval of the ATP Board of Directors. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Grant Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

13. Notices.

(a) **Requirements.** Except as otherwise specifically noted herein, any notice required or permitted to be given under this Grant Agreement by one Party to another must be in writing and will be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the Party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address hereinafter specified.

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

Rosie Truelove (or her successor)
Director, Housing & Planning
Street-Jones Building
1000 E. 11th St., Suite 200
Austin, TX 78702

Ed Van Eenoo (or his successor)
Chief Financial Officer
301 W. 2nd Street
Austin, Texas 78701

With additional copy to:

Anne L. Morgan (or her successor)
City Attorney
301 W. 2nd Street
Austin, Texas 78701

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

Greg Canally (or his successor)
Chief Financial Officer
700 Lavaca Street
Suite 1400
Austin, Texas 78701

With additional copy to:

Casey Burack (or her successor)
General Counsel
700 Lavaca Street
Suite 1400
Austin, TX 78701

(d) Change of Address. Each Party may change the address for notice to it by giving written notice of the change. Any change of address by a Party, including a change in the Party's authorized representative, must be reported to the other Parties within twenty (20) days of the change.

14. Successors and Assigns. Neither this Grant Agreement nor any of the rights or obligations of the Parties hereunder may be assigned by any Party without the prior written consent of the other Parties. Any attempted assignment or delegation in contravention hereof shall be null and void. Subject to the foregoing, this Grant Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

15. No Third Party Beneficiary Rights. This Grant Agreement is not intended to and shall not be construed to give any Person or entity other than the Parties signatory hereto (and successors and assigns permitted under Section 14) any interest or rights

(including, without limitation, any third-party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

16. Force Majeure. ATP will not be financially liable to the City and City shall not be liable for delays or failures to perform under the Grant Agreement where such failure is caused by force majeure (i.e., those causes generally recognized under Texas law as constituting unforeseeable and impossible conditions). Such delays or failures to perform will extend the period of performance until these exigencies have been removed or until the Parties agree in writing to either amend or terminate the Grant Agreement. The affected Party shall notify the other Party within five (5) business days of the occurrence of the force majeure event or delay, whichever occurs later, or otherwise waive the right as a defense, unless notification is impractical under the circumstances, in which case notification shall be done in as timely a manner as possible.

17. No Right of Set-Off. Notwithstanding any other provisions of this Grant Agreement or any other agreement among the Parties, any payment to be made by any Party under this Grant Agreement will be made free of any set-off and will be promptly remitted to the Party entitled to receive payment hereunder. However, notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

18. Expenses. Except as otherwise expressly provided herein, the Parties shall bear their own respective expenses (including, but not limited to, all compensation and expenses of counsel, financial advisors, consultants and independent accountants) incurred in connection with the preparation and execution of this Grant Agreement and consummation of the transactions contemplated hereby, unless otherwise expressly agreed in writing.

19. Counterparts. This Grant 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 Grant 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 Grant Agreement.

20. Governing Law and Venue. This Grant Agreement is governed by the laws of the State of Texas and all obligations under this Grant Agreement are performable in Travis County, Texas. Any suits relating to this Grant Agreement will be filed in a district court or federal court in Travis County, Texas.

21. Dispute Resolution/Mediation. Disputes and unresolved questions or issues of Parties must initially be presented by submission in writing in accordance with the Notice provisions above with copies to the Chief Financial Officers of each of the City and ATP. If satisfactory resolution cannot be achieved between the Chief Financial Officers within a reasonable time, and should mediation be acceptable to all Parties in resolving a dispute arising under this Grant Agreement, the Parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in the Tex. Civ. Prac. and Rem. Code, Section 154.023. Unless all Parties are satisfied with the result

of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Tex. Civ. Prac. and Rem. Code, Section 154.073, unless both Parties agree, in writing, to waive the confidentiality.

22. Notice of Claim. Within five (5) business days of receiving notice of any claim, demand, suit, or any action made or brought against any Party, arising out of the activities conducted pursuant to this Grant Agreement, the Party will give written notice to the other Party of such claim, demand, suit or other action. Said notice will include: (a) the name and address of the claimant; (b) the basis of the claim, action or proceeding; (c) the court, if any, where such claim, action, or proceeding was instituted; and (d) the name or names of any person or persons against whom such claim is being made.

23. Severability. If in any jurisdiction any term or provision hereof is determined to be invalid or unenforceable, (a) the remaining terms and provisions hereof shall be unimpaired, (b) any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction, and (c) the invalid or unenforceable term or provision shall, for purposes of such jurisdiction, be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

24. Entire Agreement. This Grant Agreement and the Exhibits hereto, together with the any SOW, shall constitute the entire understanding and agreement among the Parties to it in relation to the subject matter of this Grant Agreement and shall together supersede all previous agreements among the Parties in relation to the same subject matter.

25. Legal Authority. The person or persons signing this Grant Agreement on behalf of each Party warrant that he, she or they have been duly authorized by their respective entities to sign this Grant Agreement on behalf of the entity and to bind the entity validly and legally to all terms, performances, and provisions in this Grant Agreement. Each Party warrants that the Party possesses the legal authority to enter into this Grant Agreement and to perform the services that Party has obligated itself to perform under this Grant Agreement.

Exhibits:

I. Exhibit A – Contract with Voters and Sequencing Plan

II. Exhibit B - Planned Annual Allotment of \$300 Million in Anti-Displacement Funds

[SIGNATURE PAGE FOLLOWS]

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

CITY OF AUSTIN

By: *Rodney Gonzalez*

Name: Rodney Gonzalez

Title: Assistant City Manager

Date: April 8, 2021

Approved as to form:

Brandon W. Carr
Brandon W. Carr, Assistant City Attorney

AUSTIN TRANSIT PARTNERSHIP

By: E-SIGNED by Greg Canally
on 2021-04-05 21:59:55 GMT
Greg Canally
Chief Financial Officer

Date: April 05, 2021

Approved as to form:

E-SIGNED by Casey Burack
on 2021-04-05 17:17:20 GMT
Casey Burack, General Counsel

Exhibit A

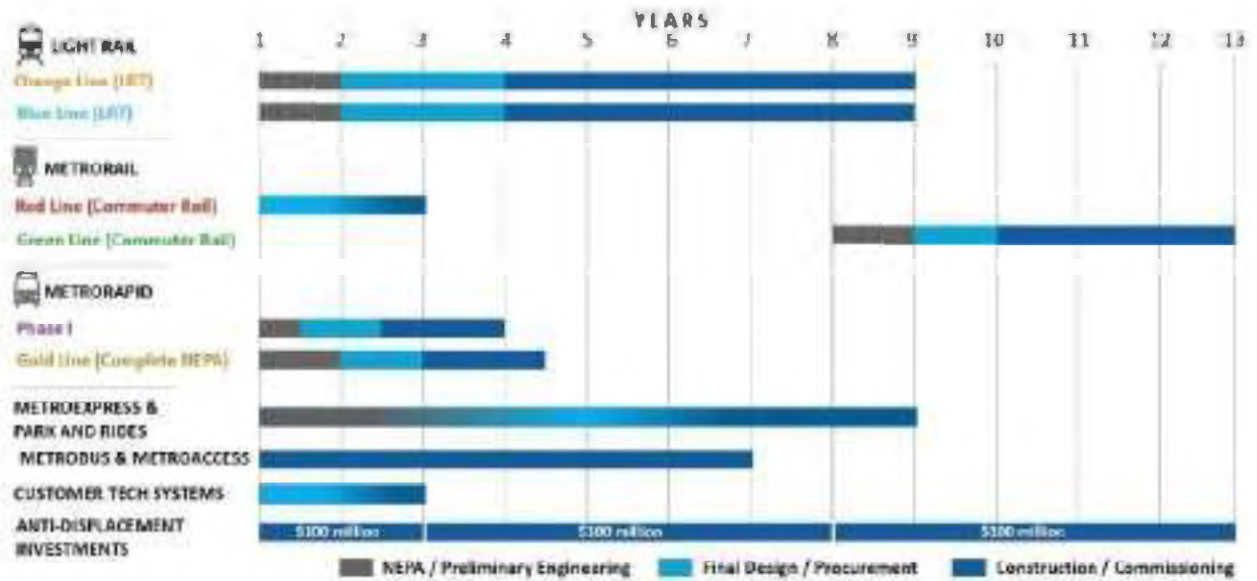


Exhibit B
Planned Annual Allotment of \$300 Million in Anti-Displacement Funds

Implementation Sequencing Plan	FY	Amount
Years 1-3 \$100 million	FY 2020-21	\$23 million
	FY 2021-22	\$42 million
	FY 2022-23	\$35 million
Years 4-8 \$100 million	FY 2023-24	\$20 million
	FY 2024-25	\$20 million
	FY 2025-26	\$20 million
	FY 2026-27	\$20 million
	FY 2027-28	\$20 million
Years 9-13 \$100 million	FY 2028-29	\$20 million
	FY 2029-30	\$20 million
	FY 2030-31	\$20 million
	FY 2031-32	\$20 million
	FY 2032 -33	\$20 million