

December 2023

Joint Powers Agreement and Related Agreements



Background

In 2020, the City of Austin (COA) and Capital Metro Transit Authority (CapMetro) came together to seek voter approval to create the Austin Transit Partnership (ATP) to develop a light rail program and oversee Project Connect. The COA, CapMetro, and ATP (the “tri-parties”) entered into a Joint Powers Agreement (JPA) in December 2021 to define the roles and responsibilities of the tri-parties. The JPA confirmed ATP as “the principal entity responsible for implementing Project Connect.”

During the early days of ATP, the organization operated under the “shared leadership model” in which the CapMetro Executive Director oversaw operations of both ATP and CapMetro. This shared leadership model was in place from ATP’s inception in January 2021 until the ATP Board voted to separate leadership in April 2022. Following the April 2022 vote to establish a separate and independent leadership model for ATP, the ATP Board hired an interim executive director, and later appointed that executive director to lead the organization.

On June 6th, 2023 the tri-parties unanimously approved a supplemental agreement to the JPA to revise and clarify their respective roles and responsibilities related to Project Connect. Specifically, the supplemental agreement defined two components of Project Connect:

- “Austin Light Rail”: the light rail components approved by the tri-parties in the Austin Light Rail Implementation Plan
- “Capital Metro Components”: MetroRail/Red Line and Green Line (commuter rail), MetroRapid (bus rapid transit), MetroExpress (commuter bus), MetroBus, MetroAccess (ADA paratransit), MetroBike (bike share), Park & Rides, Circulators (micro transit or Pickup by CapMetro), and related operations and maintenance facilities

The agreement further designated ATP as the entity responsible for the implementation of Austin Light Rail and CapMetro as the entity responsible for implementation of the Capital Metro Components. It stated that ATP would serve as the FTA grant recipient and NEPA project sponsor for Austin Light Rail and CapMetro would serve as the FTA grant recipient and NEPA project sponsor for the Capital Metro Components. The agreement clarifies that CapMetro would be the sole operator of all Project Connect components and said the parties would enter into further agreement(s) to govern operations and maintenance processes as Project Connect progresses.



Results

ATP has designed and implemented processes to ensure it fulfills the key provisions of the JPA applicable to ATP. The passage of the supplemental agreement to the JPA resolved risks that we identified early on in our review, particularly the lack of clarity around who would serve as the NEPA project sponsor and FTA grant recipient for the light rail component of Project Connect. With those risks mitigated, we focused this work on the various commitments and responsibilities of ATP laid out in the JPA and related agreements to determine how ATP currently fulfills those commitments and where there was room for improvement. Results are summarized below and the audit report can be found at: www.atptx.org/about/internal-audit/.



Objective

Are processes being designed and implemented to ensure ATP fulfills relevant provisions of the joint powers agreement and related agreements?



Scope

ATP’s administrative and light rail planning activities from 2020 to September 30, 2023.



Recommendations

We issued four recommendations related to the operation and governance of Technical Advisory Committees, Project Connect dashboards, permitting process improvements, and monitoring of partner work.

Management agreed with the recommendations and plans to implement corrective actions by December 2024.

ATP Internal Audit Team

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Legal Agreements: ATP has entered into many agreements with the COA, CapMetro, and third-party contractors to accomplish the activities under the authority and responsibility of ATP in both the JPA and the June 6th supplemental agreement. These agreements include:

- Interlocal Agreements (ILA) with the COA (renewed for FY24) and CapMetro for shared services (not renewed for FY24)
- ILAs with the COA for the transfer of the Proposition A property tax revenue and for the reimbursement and transfer of anti-displacement funds
- ILAs with CapMetro for project costs associated with CapMetro components of Project Connect
- Contract executed in January 2023 with HUG (HKS, UNStudio, and Gehl) for systemwide architecture, urban design, and engineering services
- Contracts executed in May 2023 with AECOM Technical Services, Inc. and HNTB Cooperation for Conceptual Engineering Services for the Austin Light Rail
- Contract executed in May 2023 with HDR Engineering, Inc. for project management of Austin Light Rail and to perform NEPA activities under the oversight of ATP
- An ILA with the COA for use of the right-of-way is under development by the Real Estate team

Technical Advisory Committees: The ATP Board is given the authority in the JPA to establish Technical Advisory Committees (TACs) and ATP staff is tasked with supporting the TACs. Management noted some needed improvements to the bylaws related to member attendance, bylaw changes, and staff roles related to TACs. We reviewed best practices from the City of Austin and State of Texas advisory committees to develop recommendations for improvement to the TAC bylaws and operations. See the appendix for recommendation details. The Board approved amendments to the Community Advisory Committee (CAC) bylaws at the September 2023 Board Meeting related to membership composition, terms of membership, the appointment process, staff liaison roles, and authorizing the negotiation and execution of related amendments to the JPA.

Community Engagement: The JPA includes specific guidance for the tri-parties to follow when conducting community engagement efforts related to Project Connect. We found that ATP followed this guidance during the six-week engagement process that commenced after the five light rail plan options were presented to the community in March 2023.

Dashboards: The JPA requires two types of dashboards: a Community Engagement Dashboard and a key performance indicators dashboard to accompany the Equity Assessment Tool. We recommend that ATP develop the Community Engagement Dashboard and a key performance indicators dashboard to accompany the Equity Assessment Tool, as required by the JPA, and determine the best place to host the dashboards on a public-facing website.

Bond Authority: ATP is given the authority in the JPA to issue bonds, notes, and other debt obligations needed to implement Project Connect. ATP management shared that ATP is working on establishing the framework for the credit structure that will be utilized in the future to finance Austin Light Rail.

Permitting: The JPA advises the tri-parties to provide and prioritize resources to develop a streamlined and efficient permitting process for Project Connect. The ENO Center for Transportation recommends that project sponsors of transit projects, like ATP, have authorization to be self-permitting, but Texas state law limits ATP's authority in this area. We made a recommendation for ATP to work with the COA to explore options for expediting the permitting process for Project Connect.

FTA Grant Recipient: Following the passage of the June 6th supplemental agreement, management asserted that ATP recently engaged with FTA to prepare to be a grant recipient, which requires ATP to demonstrate the appropriate legal, financial, and technical capacity to manage and deliver Austin Light Rail. Work in these areas is ongoing.

Monitoring of Partner Work: ATP works closely with the COA and CapMetro on Project Connect implementation, including reimbursing the COA for property acquisitions using anti-displacement funds and monitoring CapMetro's progress on the CapMetro Components. We recommend that ATP establish a formal process for monitoring partner work related to Project Connect including quality audits, ATP attendance at partner meetings, and regular reports to the ATP Board.

Equity and Workforce Policies: The JPA describes the requirements of ATP to develop an equitable transit system through implementing equity and workforce policies. ATP has many responsibilities under this section, and we found that all activities are currently underway or implemented under this section.