

**FIRST AMENDMENT TO
JOINT POWERS AGREEMENT**

AMONG

**AUSTIN TRANSIT PARTNERSHIP,
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY, AND
THE CITY OF AUSTIN**

This First Amendment to Joint Powers Agreement (this "Amendment") is entered into by and among Austin Transit Partnership, a joint local government corporation created under Chapter 431 of the Texas Transportation Code ("ATP"); Capital Metro Transportation Authority, a transportation authority and political subdivision of the State of Texas organized under Chapter 451 of the Texas Transportation Code ("Capital Metro"); and the City of Austin, a home-rule municipality incorporated under the laws of the state of Texas ("City") to be effective as of February 16, 2024 (the "Effective Date"). Each of ATP, Capital Metro, and the City are referred to herein individually as a "Party" and collectively as the "Parties". Reference is hereby made to that certain Joint Powers Agreement entered into by the Parties and fully effective December 17, 2021, as amended by that Supplemental Agreement to Joint Powers Agreement effective June 6, 2023 (collectively, the "Original Agreement"). Capitalized terms used herein and not otherwise defined shall have the meaning given in the Original Agreement.

BACKGROUND:

A. The Parties entered into the Original Agreement in accordance with the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code (the "Interlocal Cooperation Act"), for purposes of confirming their commitment to and support of Project Connect, to delineate the roles and responsibilities of all three Parties, and to establish their respective commitments and obligations relating to Project Connect.

B. Attached to the Original Agreement as Attachment D was that certain Interlocal Agreement between City of Austin and the Austin Transit Partnership for Terms of Joint Powers Agreement on Transfer of "November 2020 Proposition A" Property Tax Revenue dated to be effective August 17, 2021 (the "Original Funding Agreement").

C. On February 15, 2024, pursuant to City of Austin Resolution No. 20240215-044, City Council approved that certain "Interlocal Cooperation Agreement between Austin Transit Partnership Local Government Corporation and the City of Austin for the Implementation of Project Connect" (the "Replacement Funding Agreement") to supersede and replace the Original Funding Agreement.

D. On February 16, 2024, pursuant to ATP Resolution No. ATP-2024-003, the ATP Board approved the Replacement Funding Agreement.

E. Following the approvals described above, the City and ATP entered into the Replacement Funding Agreement effective February 16, 2024, a true and complete copy of which is attached to this Amendment as Attachment D.

F. The purpose of the Replacement Funding Agreement is to (i) further clarify the City's funding commitment for Project Connect from current revenues of the City, (ii) provide certain third-party beneficiary rights to the Owners and the Trustee under the Trust Agreement (as such terms are defined therein), and (iii) establish the covenants and obligations of ATP relating to the implementation of Project Connect and financing of the light rail components of Project Connect.

G. The Parties desire to amend the Original Agreement to ensure that the provisions thereof conform to the terms and provisions contained in the Replacement Funding Agreement.

H. The Parties have properly authorized this Amendment in accordance with Section 2.6 of the Original Agreement and the Interlocal Cooperation Act.

ACCORDINGLY, in consideration of the foregoing and the covenants, agreements, representations and warranties set forth in this Agreement, the Parties hereby agree as follows:

Section 1. Amendment to Joint Powers Agreement. All references in this Amendment and the Original Agreement to the "Joint Powers Agreement" or the "Agreement" shall hereafter mean and refer to the Original Agreement as amended and modified by this Amendment. All terms and provisions of the Original Agreement, except and to the extent expressly modified by this Amendment, shall continue to remain in full force and effect in accordance with the provisions thereof. The Original Agreement is hereby amended and modified as follows:

(a) *Interlocal Agreement for Transfer of Property Tax.* Attachment D to the Original Agreement is hereby superseded and replaced by the Replacement Funding Agreement attached to this Amendment as Attachment D. All references in the Original Agreement to Attachment D, including, but not limited to the references in Section 2.4, Section 5.2.2, and Section 8.12 of the Original Agreement are hereby modified and amended to refer to the Replacement Funding Agreement attached to this Amendment as Attachment D.

(b) *Order of Precedence.* Section 8.12 of the Original Agreement is deleted in its entirety and replaced with the following:

"8.12 **Order of Precedence.** To the extent there is a conflict between the terms of this Agreement and any Attachment, the following shall be the order of precedence for interpreting a conflict in terms: 1) this Agreement and any subsequent amendments to this Agreement; 2) any Attachments to this Agreement, as amended; provided, however, that to the extent of any direct conflict between this Agreement and Attachment D ("Interlocal Cooperation Agreement between Austin Transit Partnership Local Government Corporation and the City of Austin for the Implementation of Project Connect") (the "Funding Agreement"), the Funding Agreement shall control, provided that this order of precedence shall not extend to any future amendment or modification of the Funding Agreement unless and until such amendment or modification is incorporated into Attachment D and duly adopted as part of this Agreement."

(c) *Appropriation.* Section 8.13 of the Original Agreement is deleted in its entirety and replaced with the following:

"8.13 **Appropriation.** All funding commitments under this Agreement are subject to annual appropriation by the City, Capital Metro and ATP. "

Section 2. General Provisions.

(a) *Counterparts; e-Signatures.* This Amendment 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 Amendment 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)

The undersigned have signed and delivered this Amendment as of the last date set forth below to be effective as of the Effective Date.

AUSTIN TRANSIT PARTNERSHIP, a Texas nonprofit local government corporation

By: 
Greg Canally, Executive Director

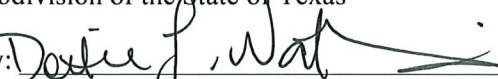
Date: 2/16/24

Approved as to form:


Brandon Carr, General Counsel

Date: 2/16/24

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY, a transportation authority and political subdivision of the State of Texas

By: 
Dottie L. Watkins, President & CEO

Date: 2/14/24

Approved as to form:


Brad Bowman, Chief Counsel

Date: 2/14/24

CITY OF AUSTIN, a Texas home-rule municipality

By: 
Robert Goode, Assistant City Manager

Date: 2/15/24

Approved as to form:


Sean Creegan, Assistant City Attorney

Date: 2/15/24

ATTACHMENT D

(appears on immediately following page)

**AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT
BETWEEN
AUSTIN TRANSIT PARTNERSHIP LOCAL GOVERNMENT CORPORATION AND
THE CITY OF AUSTIN
FOR THE IMPLEMENTATION OF PROJECT CONNECT**

THIS INTERLOCAL COOPERATION AGREEMENT (this "**Agreement**") is dated and entered into as of February 16, 2024 (the "**Effective Date**"), pursuant to Chapter 791 of the Texas Government Code, between the AUSTIN TRANSIT PARTNERSHIP LOCAL GOVERNMENT CORPORATION ("**ATP**"), a public nonprofit local government corporation formed pursuant to Chapter 431 of the Texas Transportation Code, and the CITY OF AUSTIN (the "**City**"), a home rule municipality and political subdivision of the State of Texas. Each of ATP and the City are sometimes referred to herein individually as a "**Party**" and collectively as, the "**Parties**".

BACKGROUND:

- (A) ATP was formed to aid and act on behalf of the City to accomplish the governmental purposes of the City, namely, to implement the Project Connect System Plan as described in the City's Strategic Mobility Plan (the "**ASMP**"), and as originally approved by the City Council pursuant to City Resolution 20200610-002, and as modified by the City Council's adoption of certain updates described as the "Austin Light Rail Implementation Plan" in City Resolution No. 20230601-072, and as such plan may from time to time be amended or supplemented ("**Project Connect**").
- (B) Proposition A, approved by City of Austin voters on November 3, 2020 ("**Proposition A**"), authorized an increase to the City's ad valorem operations and maintenance tax revenue equal to \$0.0875 per \$100 assessed valuation by the City, for the purpose of providing funds for Project Connect (the "**Proposition A Revenue**"), and provided that the Proposition A Revenue would be dedicated by the City to an independent board to oversee and finance the acquisition, construction, equipping, and operations of Project Connect, which includes associated transit-supportive anti-displacement strategies related to Project Connect.
- (C) City of Austin Resolution No. 20200812-015 (the "**Companion Resolution**") clarifies the City's intent that the Proposition A Revenue would be allocated to ATP "until such time as all debt issued and financial obligations incurred by ATP are paid off and funds are no longer required for operations, maintenance, or state of good repair for assets funded by ATP."
- (D) The City has directed its City Manager to develop procedures to pay the Proposition A Revenue in a proportionate amount of the City's operations and maintenance tax rate on an annual or more frequent basis, for the current and future years.
- (E) The City, the Capital Metropolitan Transportation Authority ("**CapMetro**") 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.
- (F) In June of 2023, at the recommendation of ATP, the City and CapMetro adopted modifications to Project Connect and Associated Implementation Sequence Plan, including a first phase project, known as the "**Austin Light Rail Implementation Plan**".

- (G) Following the adoption of the Austin Light Rail Implementation Plan, on June 6, 2023, the City, CapMetro, and ATP have entered into a Supplemental Agreement to the Joint Powers Agreement, effective June 6, 2023, (the "**JPA Supplement**"), in order to more clearly delineate the roles and responsibilities of the three parties in the implementation of Project Connect; particularly to affirm ATP's responsibility for the overall implementation of the light rail components approved by the City and CapMetro in the Austin Light Rail Implementation Plan ("**Austin Light Rail**").
- (H) The Parties originally entered into that certain "Interlocal Agreement between the City of Austin and the Austin Transit Partnership for Terms of Joint Powers Agreement on Transfer of November 2020 Proposition A Property Tax Revenue" to establish the terms for the calculation of the Proposition A Revenue and the timing of the payment of the Proposition A Revenue to ATP on an annual basis (the "**Initial Interlocal Agreement**").
- (I) The Parties desire to enter into this Agreement to amend and restate the Initial Interlocal Agreement to (i) further clarify the City's funding commitment for Project Connect from current revenues of the City, (ii) provide certain third-party beneficiary rights to the Owners and the Trustee under the Trust Agreement (as such terms are defined herein), and (iii) establish the covenants and obligations of ATP relating to the implementation of Project Connect and financing of the light rail components of Project Connect.
- (J) City Council has found that this Agreement will serve the public purposes of the City by using Proposition A Revenue to invest in a citywide traffic-easing rapid transit system as described in Proposition A.

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 the City hereby enter into this Agreement and do hereby agree as follows:

Article 1 Covenants of ATP

Section 1.1 Implementation of Project Connect and Austin Light Rail. ATP acknowledges that it has been created to aid and act on behalf of the City and is responsible for the overall implementation of Project Connect, including for the planning, financing, design, contracting, acquisition, and construction of the light rail components of Project Connect in accordance with the Austin Light Rail Implementation Plan, as the same may be modified from time to time in accordance with the terms of the Companion Resolution.

Section 1.2 Cooperation. Through this Agreement the Parties confirm their commitment to and support of Project Connect and agree to cooperate and coordinate in good faith to assist each other in satisfying their respective obligations under this Agreement and to facilitate the timely implementation of Project Connect.

Section 1.3 Financing for Project Connect. Except as otherwise may be agreed upon by the Parties, ATP shall be responsible for establishing finance programs and securing and approving any and all financing structures that it deems necessary to finance those components of Project Connect for which ATP is responsible, including the issuance of short-term and long-term obligations issued by ATP pursuant to the terms of the Trust Agreement (as defined herein), including notes and bonds, and any loans secured under federal programs as part of ATP's plan of finance (collectively, the "**Obligations**"). Obligations issued by ATP shall never constitute an indebtedness or general obligation of the City, CapMetro, the State of Texas or any other political subdivision of the State.

Section 1.4 Use of Funds. ATP acknowledges that it has been incorporated to aid and to act on behalf of the City to accomplish the City's governmental purposes, namely to implement Project Connect. ATP covenants and agrees that all amounts paid pursuant to the terms of this Agreement shall be utilized solely for purposes reasonably necessary to accomplish the governmental purposes for which ATP was formed, namely the implementation of Project Connect (the "**Permitted Uses**").

Section 1.5 Reporting Requirements to the City. ATP shall report the following to the City:

- (a) **Quarterly Updates.** Not later than January 31, March 1, June 1, and September 1 of each fiscal year, ATP shall provide City Finance staff with a quarterly update in the same form as provided to the ATP Board of Directors (each a "Quarterly Update"). The Quarterly Update shall include a summary of current revenues, current administrative expenses, transit-supportive anti-displacement investments, and capital expenditures for the then-current fiscal year.
- (b) **Annual Forecast.** In addition to the annual audited financial report of ATP required pursuant to Section 4.2.1.3 of the Joint Powers Agreement and annually beginning with its Fiscal Year following entry into engineering pursuant to the Federal Transit Administration's capital investment grant program, but no later than the beginning of Fiscal Year 2028, ATP shall provide City Finance staff with a financial plan for both a short term period (three-to-five-years) and a long term period (the term of which shall be at least 20 years or such greater term as determined by the Chief Financial Officers of the City and ATP); such financial plan must include all sources of revenues (inclusive of ATP revenues, federal funding, and bond proceeds), operating and maintenance expenditures, and capital expenditures (inclusive of the annual debt service payments for each anticipated series of bonds).

Article 2

Funding Commitment of the City

Section 2.1 Funding Commitment. Subject to Appropriation (as defined herein) by the City Council, the City shall, on an annual basis, pay to ATP the Proposition A Revenue, as calculated pursuant to **Section 2.2** (the "**Funding Commitment**"), solely for purposes of implementing Project Connect. The City's Funding Commitment shall be a commitment of current revenues only, subject to Appropriation and collection of sufficient tax revenues (as defined in **Section 2.4**).

Section 2.2 Annual Calculation of the Proposition A Revenue. On an annual basis, the Proposition A Revenue shall be calculated as follows:

- (a) **Proposition A Percentage.** The Proposition A Revenue shall initially refer to an amount equal to 20.789% of the City's maintenance and operations voter-approval tax rate, as such term is defined and used in Chapter 26 of the Texas Tax Code (the "**Voter-Approval Tax Rate**"), such percentage being the portion of the Voter-Approval Tax Rate approved by City voters to fund Project Connect for the 2020 tax year (\$0.0875 of the City's \$0.4209 of the operations and maintenance tax rate per \$100 of taxable assessed valuation) (the "**Proposition A Percentage**"); subject, however, to the deductions described in **Section 2.2(b)** below. Delinquent collections and penalties and interest related to tax years prior to tax year 2020 are excluded from this Agreement.
- (b) **Deductions.**
 - (i) **Reinvestment Zones and Homestead Preservation Zones.** The City had approved (i) the Mueller Tax Increment Reinvestment Zone the Waller Creek Tax Increment Reinvestment Zone, and the Colony Park Tax Increment Reinvestment Zone (collectively, the "**Existing TIRZs**"), to which 100% of the incremental property tax revenue collected within the boundaries of each such zone is currently allocated; and (ii) one Homestead Preservation Zone (the "**HPZ**"), to which 20% of

the incremental ad valorem property tax revenue collected within the HPZ boundaries is currently allocated. For purposes of calculating the Proposition A Revenue, the ad valorem property tax revenue required for each Existing TIRZ and the HPZ shall first be deducted from the total ad valorem property tax revenue received by the City.

If any Existing TIRZ is extended or expanded or any new TIRZ or HPZ is created by the City, the incremental ad valorem property tax revenue collected by the City as a result of such new TIRZ or HPZ shall not be deducted prior to calculating the Proposition A Revenue, unless ATP shall first have agreed to such deduction in writing; provided, however, the City may create a TIRZ on city owned property without the consent of ATP, including a TIRZ in which city owns a majority (50.1%) of the acres included in the zone.

- (ii) *Disannexation.* For purposes of calculating the Proposition A Revenue, the ad valorem property tax revenue received from any area disannexed pursuant to the provisions of Section 43.163 of the Texas Local Government Code (the "**Chapter 43 Disannexed Parcels**") shall first be deducted from the total ad valorem property tax revenue received by the City.
- (iii) *Economic Incentive Agreements.* The City has entered to the following four economic incentive agreements (the "**Existing 380 Agreements**"), pursuant to which the City has agreed to rebate all or some of the property tax paid by the parties thereto (the "**Existing Tax Rebates**"):

Corporation	Reimbursement Calculation	Expiration Date
Samsung	In years 1-10, 100% of tax on new equipment and machinery purchased and real property improvements made after 1/1/2006 for the 300 mm Fab; in years 11-20, 75% of taxes on same.	12/31/2027
Domain	25% of the City's incremental property tax, based on 5/1/2003 property valuation of \$235,228 per acre. Baseline value is \$12,504,720	12/31/2028
Apple	100% of the City's incremental property tax on improvements and on business personal property.	12/31/2026
HDI	100% of the City's incremental property tax on improvements and on business personal property	12/31/2024

For purposes of calculating the Proposition A Revenue, the Existing Tax Rebates to be paid to the corporations described above shall first be deducted from the total property tax revenue received by the City.

If any Existing 380 Agreement is amended to extend or increase the Existing Tax Rebates, or any new Chapter 380 agreement is created by the City granting new tax rebates, such additional tax rebates shall not be deducted prior to calculating the Proposition A Revenue, unless ATP shall first have agreed to such deduction in writing.

- (c) Proposition A Revenue Calculation. The Proposition A Revenue calculation, including deductions, is summarized below:

Step 1		Total City Property Tax Revenue collected for eligible tax year
Step 2	(less)	Deduct revenues allocable under Existing TIRZs and HPZ
Step 3	(less)	Deduct revenues allocable to Chapter 43 Disannexed Parcels
Step 4	(less)	Deduct amounts payable for Existing Tax Rebates
	=	Adjusted Total Property Tax Revenue
Step 5	(less)	Share of revenue associated with annual debt service tax rate
	=	Adjusted City M&O Tax Revenue
Step 6	x	Proposition A Percentage
	=	Proposition A Revenue

- (d) Adjustment of Proposition A Percentage. If City voters approve an increase to the Voter-Approval Tax Rate (a "**Tax Rate Election**"), the Proposition A Percentage shall be adjusted by: (1) multiplying the Proposition A Percentage in effect prior to the successful Tax Rate Election by the Voter-Approval Tax Rate (expressed in dollars per \$100 valuation) in the tax year in which the election takes place to determine the effective Proposition A Revenue share of the Voter-Approval Tax Rate, expressed in dollars per \$100 assessed valuation (the "**Current Proposition A Revenue Share**"), and then (2) dividing the Current Proposition A Revenue Share by the total Voter-Approval Tax Rate (expressed in dollars per assessed \$100 valuation) inclusive of the successful Tax Rate Election.

Section 2.3 Payment Process.

- (a) Remittance Schedule.

- (i) From Appropriated funds, the City shall, in Fiscal Year 2024, pay the Proposition A Revenue to ATP in three installments throughout the year according to the following due date:

Month-End	Time Period	Payment Due
January	October 1 to January 31 for Fiscal Year 2024; plus, audit adjustment transactions from prior Fiscal Year	April 20
June	February 1 to June 30 for Fiscal Year 2024	July 20
October	July 1 September 30 for Fiscal Year 2024	November 20

- (ii) Beginning in Fiscal Year 2025, the City shall annually pay from Appropriated funds the Proposition A Revenue to ATP in four installments throughout the year according to the following due date:

Property Tax Collection Time Period	Due Date
October 1 – December 31	February 15
January 1 – January 31	March 15
February 1 – May 31*	June 30*
June 1 – September 30	November 30

*Amounts on this date should also reflect any audit adjustment transactions from the prior fiscal year.

- (b) Payment Method. The City shall make payments to ATP using electronic funds transfer. ATP shall provide a letter on ATP's letterhead at least 30 days prior to the payment due dates listed above with

the appropriate Automated Clearing House (ACH) or wiring instructions (full Routing Number and last four digits of the Account Number) so that this information may be verified against ATP's vendor code in the City's financial system. The ACH or wiring instructions must match the payment address that contains these instructions in the City's financial system.

- (c) Credits. If the calculated payment to ATP results in a net credit to the City, the credit will be applied to the next positive payment balance. ATP is not expected nor required to issue a payment to the City for the credit amount.
- (d) Remittance Documentation. Concurrent with each payment remitted to ATP, the City shall provide ATP documentation that details the computations underlying the payment amount. The Total City Property Tax Revenue Collected from Step 1 shown in Section 2.2(c) shall be shown by revenue type (current collections, delinquent collections, and penalties and interest collections).
- (e) Forecasting. On or before May 1 of each year, the City shall provide ATP a projection of the Proposition A Revenue expected to become payable to ATP in accordance with the terms of this Agreement for the current fiscal year and the upcoming five fiscal years. The City will endeavor to provide ATP with periodic updates on projected Proposition A Revenue for the current fiscal year throughout the fiscal year.

Section 2.4 Obligations Subject to Appropriation. Notwithstanding anything in this Agreement or any other agreement to the contrary, the City's Funding Commitment shall be a commitment of current revenues only, it being understood that the remittance of the Proposition A Revenue to ATP shall be subject to Appropriation of available funds therefor. "Appropriate" or "Appropriation" means the approval by the Austin City Council of the City's budget or amendments to the City's budget for a fiscal year which includes the City's Funding Commitment during the fiscal year as calculated pursuant to the terms of this Agreement. If the City Council does not appropriate funds for the payment of the City's Funding Commitment in any fiscal year the City shall not be liable to ATP or third party beneficiaries for such payments.

Article 3 Additional Covenants of the City

Section 3.1 Covenants to Owners of Obligations. The City agrees and acknowledges that all funds paid to ATP under this Agreement (the "ATP Revenues") shall, immediately upon receipt by ATP, be the revenue and income of ATP for purposes of Section 1201.044 of the Texas Government Code, and such ATP Revenues shall be assigned and subject to the terms of that certain Master Trust Agreement to be entered into between ATP and the trustee designated thereunder (the "Trustee") (as the same may from time to time be supplemented and amended, the "Trust Agreement") upon the issuance of the initial Obligations thereunder. As additional security for the owners (the "Owners") of ATP's Obligations, the City hereby covenants and agrees for the benefit of the Owners, subject to Appropriation, to pay its Funding Commitment to ATP as calculated in accordance with the procedures specified in this Agreement. Upon payment of the Proposition A Revenue to ATP, and (to the extent of any attempted rescission or other claim by the City) such amounts are "encumbered funds" for purposes of the City's Charter not subject to further transfer or retransfer by the City. Prior to the payment of funds to ATP, all funds, including interest earnings on any funds, shall remain revenue and income of the City.

Section 3.2 Continuing Disclosure Obligations. The City agrees and acknowledges that for purposes of the Rule 15c2-12 promulgated by the U.S. Securities and Exchange Commission (as may from time to time be amended, the "Rule"), the City shall be deemed to be an "obligated person," with respect to Obligations subject to the Rule and that it will provide to ATP the information as further agreed in writing between the Chief Financial Officers of the City and ATP within the times required to enable ATP to timely

meet its continuing disclosure obligations in accordance with the Rule and its financing documents. Nothing in this section shall require the City to enter into a separate continuing disclosure obligation in connection with public securities issued by ATP unless required by the Rule.

Article 4 Term and Termination

Section 4.1 Term of This Agreement. Unless earlier terminated, the term of this Agreement is from the Effective Date and shall continue until the ATP Board of Directors shall have determined by resolution that the purposes for which the Corporation was formed have been substantially met and all Obligations incurred by ATP shall have been fully paid or irrevocable provisions have been made for their payment.

Section 4.2 Early Termination. Notwithstanding the foregoing to the contrary, the City Council shall have the right to terminate this Agreement at the expiration of any fiscal year of the City by delivering written notice of termination to ATP no later than July 31 of such fiscal year. In the event of an exercise of such termination option by City Council, the Parties hereby agree as follows:

- (i) Notwithstanding such termination of this Agreement, the City agrees that it shall continue to pay all Proposition A Revenue Appropriated by City Council prior to such termination but remaining unpaid to ATP until such amounts have been fully paid.
- (ii) Upon such termination, ATP shall be authorized, in its sole discretion, to utilize any and all ATP Revenues to wind up its affairs and to extinguish its outstanding liabilities, including without limitation, the repayment of any and all outstanding Obligations.

Article 5 Defaults and Remedies

Section 5.1 Default by the City.

- (a) Events of Default of the City. The City shall not be in default under this Agreement for failure to appropriate funds for the payment of its Funding Commitment in any fiscal year, it being understood that the City's payment obligations hereunder are a commitment of current revenues only. However, in any fiscal year in which the City Council lawfully Appropriates funds for the payment of its Funding Commitment to ATP, then the City shall be in default under this Agreement if it fails to timely pay the Proposition A Revenue to ATP from lawfully Appropriated funds in accordance with the payment procedures set forth in this Agreement. The City acknowledges that the collection, remittance and payment of the Proposition A Revenue to ATP in a fiscal year that the City has Appropriated such funds is a ministerial act of the City.
- (b) Remedies. Upon the occurrence of an event of default of the City, ATP shall give written notice to the City of such event of default, after which the City shall have thirty (30) calendar days to cure such breach. If after the expiration of such thirty (30) day period, the City has failed, in the reasonable judgment of ATP, to cure such breach, ATP shall be entitled to pursue any and all remedies at law or in equity to recover unpaid Appropriated ATP Revenues, and/or seek a writ of mandamus, to the extent authorized by law, to compel the City to make such payments then due under the terms of this Agreement.

Section 5.2 Default by ATP.

- (a) Events of Default of ATP. ATP shall be in default under this Agreement if in the judgment of City Council, ATP uses the ATP Revenues for any purposes other than for the Permitted Uses.
- (b) Remedies. Upon the occurrence of an event of default of ATP, the City shall give written notice to ATP of such event of default, after which ATP shall have sixty (60) calendar days to cure such breach. If after the expiration of such sixty (60) day period, ATP has failed, in the reasonable judgment of the City, to cure such breach, City Council shall be entitled to terminate this Agreement by giving written notice thereof to ATP.

Article 6 General Provisions

Section 6.1 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. 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 6.2 Governmental Purpose Statement. The Parties have entered into this Agreement pursuant to Chapter 791 of the Texas Government Code, as amended. ATP is entering into this Agreement in its capacity as a public, nonprofit local government corporation organized by the City to accomplish the governmental purposes of the City pursuant to Chapter 431 of the Texas Transportation Code, as amended, Chapter 22, Texas Business Organizations Code and in accordance with ATP's articles of incorporation. The City is entering into this Agreement in its capacity as a home rule municipality and political subdivision for the State of Texas organized under the Constitution and laws of the State of Texas.

Section 6.3 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 6.4 Waiver of Attorneys' Fees. The Parties do hereby knowingly and intentionally waive their rights to attorney's fees under Section 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 6.5 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.

The address of ATP for all purposes under this Agreement and for all notices:

Bryan Rivera (or their successor)
Chief Financial Officer
203 Colorado Street
Austin, Texas 78701
Email: Bryan.Rivera@atptx.org

With additional copy to:

Brandon Carr (or their successor)
SVP of Legal Services and General Counsel
203 Colorado Street
Austin, Texas 78701
Email: Brandon.Carr@atptx.org

The address of the City for all purposes under this Agreement and for all notices:

Ed Van Eenoo
Chief Financial Officer
301 W 2nd Street, 4th Floor
Austin, Texas 78701

With additional copy to:

Anne Morgan (or successor)
City Attorney
301 W 2nd Street, 4th Floor
Austin, Texas 78701

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 6.6 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 6.7 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 state district courts of Travis County, Texas.

Section 6.8 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. The Owners and the Trustee, on behalf of the Owners, are intended third-party beneficiaries of this Agreement and the Owners and the Trustee may enforce the rights of ATP hereunder to secure any Obligations issued under the Trust 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 6.9 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 6.10 Entire Agreement; Amendment. This Agreement represents the final, entire agreement among the Parties. 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. The foregoing notwithstanding, ATP covenants not to permit any amendment of this Agreement that will in any manner (1) materially impair the rights of the Owners of the Obligations or (2) which would adversely affect the status of any Obligations issued as obligations the interest on which is excluded from gross income under the provisions of the Internal Revenue Code of 1986, as amended. To the extent this Agreement directly conflicts with any other agreement entered into by and/or between the City and ATP, this Agreement shall control.

Section 6.11 No Liability of Public Officials. To the extent permitted by State law, no director of ATP, nor any employee or agent of ATP, and no employee of the City, nor any elected official or agent of the City, shall be personally responsible for any liability arising out of this Agreement, or operations of ATP under the terms of this Agreement.

Section 6.12 Required Certifications.

- (a) As required by Section 2271.002, Texas Government Code, as amended, ATP does hereby certify that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates (collectively, the "**ATP Parties**") do not boycott Israel will not during the term of this Agreement boycott Israel. For purposes of this paragraph, "boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.
- (b) As required by Section 2274.002, Texas Government Code, as amended, ATP does hereby certify that it and the ATP Parties do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and are authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. For purposes of this paragraph, "discriminate against a firearm entity or firearm trade association", "firearm entity" and "firearm trade association" each have the meaning provided in Section 2274.001 of the Texas Government Code.
- (c) As required by Section 2276.002, Texas Government Code, as amended, ATP does hereby certify that it and the ATP Parties do not boycott energy companies and, will not boycott energy companies during the term of this Agreement. For purposes of this paragraph, "boycott energy company" has the meaning provided in Section 809.001 of the Texas Government Code.
- (d) ATP does hereby certify that it and the ATP Parties are not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code.

Notwithstanding anything contained herein, the certifications and covenants contained in this Section 6.12 shall survive termination of the Agreement until the statute of limitations has run.

The foregoing certifications are made solely to comply with the State laws referenced above, and only to the extent that such State laws do not contravene applicable federal law.

Section 6.13 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)

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

CITY OF AUSTIN, TEXAS

By: _____
Ed Van Eenoo, Chief Financial Officer

AUSTIN TRANSIT PARTNERSHIP

By: _____
Bryan Rivera, Chief Financial Officer