



# Agenda - Final

## Capital Metropolitan Transportation Authority

### Board of Directors

2910 East 5th Street  
Austin, TX 78702

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**Monday, July 24, 2023**

**12:00 PM**

**Rosa Parks Boardroom**

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This meeting will be livestreamed at [capmetrotx.legistar.com](http://capmetrotx.legistar.com)

**I. Call to Order**

**II. Public Comment:**

**III. Advisory Committee Updates:**

**IV. Board Committee Updates:**

1. Operations, Planning and Safety Committee
2. Finance, Audit and Administration Committee
3. Austin Transit Partnership Update

**V. Consent Items:**

1. Approval of minutes from the June 2, 2023 special board meeting, June 6, 2023 Tri-party meeting, and June 26, 2023 board meeting.
2. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute a modification to Contract No. 200770 with SHI Government Solutions to add additional funding of \$201,280 to address expanded Microsoft Office 365 and related licensing needs with a contingency of \$200,000 for a total new contract amount not to exceed \$1,832,671.
3. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute a modification to an existing contract with UNUM for basic life and AD&D insurance, long term and short term disability insurance, FMLA administration paid by Capital Metro, and voluntary life, long term disability buy up, accident, whole life and critical illness voluntary insurance products paid by employees, to increase the contract amount by \$1,600,000, for a new total not to exceed amount of \$3,352,882.
4. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute a modification to an existing contract with Bright Horizons Family Solutions to extend the contract for a 6-month period, from September 1, 2023 to February 29, 2024, in an amount not to exceed \$613,087.

5. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute an interlocal agreement with the City of Austin for use of the Greater Austin-Travis County Regional Radio System (GATRRS) for purposes of CapMetro's Transit Police and Public Safety and Emergency Management Departments, for a base term of one (1) year and optional renewal periods subject to annual budget appropriations.
6. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute an interlocal agreement with Austin Community College for student and employee transit passes for a one (1) year base period, September 1, 2023, to August 31, 2024, and four (4) optional extension periods for a not-to-exceed amount of \$477,988 per year.

**VI. Action Items:**

1. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute an interlocal agreement with Austin Transit Partnership (ATP) for the reimbursement of certain capital costs for the McKalla Station MetroRail projects to CapMetro in the amount of \$25,000,000, as part of the Project Connect program.
2. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute an interlocal agreement with the City of Austin for a period of three (3) years, with an option to extend for an additional three years, for the reimbursement of CapMetro's costs to design, manage, and construct transit facilities the City has identified as necessary for the mitigation of traffic impacts, for a total reimbursement to CapMetro not to exceed \$5,000,000.
3. Approval of a resolution appointing John Langmore to serve as the Community Expert Director - Finance on the Austin Transit Partnership Board of Directors in a term that shall run through January 2025.

**VII. Discussion Items:**

1. FY2024 Budget Proposal

**VIII. Report:**

1. President & CEO Monthly Update

**IX. Memos:**

1. Memo: Update on the 88th Regular Session of the Texas Legislature (July 17, 2023)
2. Memo: Update on Regional Member City Outreach and Engagement January 2023 - June 2023 (July 17, 2023)

**X. Executive Session of Chapter 551 of the Texas Government Code:**

Section 551.071 for Consultation with an Attorney regarding legal issues concerning a proposed interlocal agreement with Austin Transit Partnership for the reimbursement of certain capital costs for the McKalla Station MetroRail projects, as part of Project Connect

**XI. Items for Future Discussion:**

**XII. Adjournment**

**ADA Compliance**

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

*BOARD OF DIRECTORS: Jeffrey Travillion, Chair; Leslie Pool, Vice Chair; Becki Ross, Secretary; Eric Stratton, Paige Ellis, Matt Harriss, Dianne Bangle and Chito Vela.*

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



# Capital Metropolitan Transportation Authority

2910 East 5th Street  
Austin, TX 78702

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Board of Directors

**Item #:** AI-2023-841

**Agenda Date:** 7/24/2023

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Approval of minutes from the June 2, 2023 special board meeting, June 6, 2023 Tri-party meeting, and June 26, 2023 board meeting.





**Minutes**  
**Capital Metropolitan**  
**Transportation Authority**  
**Board of Directors**

2910 East 5th Street  
Austin, TX 78702

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Friday, June 2, 2023

1:30 PM

Rosa Parks Boardroom

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**Special Board Meeting - Light Rail Implementation Plan**

**I. Call to Order**

1:32 p.m. Meeting Called to Order

Board Member Eric Stratton missed the first portion of the meeting, but arrived in time for the meeting to be reconvened so that he could make comments and ask to be counted as an "aye" on Action Item #1.

**Present:** Travillion, Pool, Ross, Harriss, Vela, Bangle, Ellis, and Stratton

**II. Public Comment:**

Bill McCamley from Transit Forward provided public comment.

**III. Action Item:**

1. Approving a resolution adopting modifications to the light rail element of Project Connect and the associated Implementation Sequence Plan by adopting the Austin Light Rail Implementation Plan.

A motion was made by Secretary of the Board Pool, seconded by Board Member Ellis, that this Resolution be adopted. The motion carried by the following vote:

**Aye:** Travillion, Pool, Ross, Harriss, Vela, Bangle, Ellis, and Stratton

**IV. Executive Session of Chapter 551 of the Texas Government Code:**

No Executive Session was held.

Section 551.071 for Consultation with an Attorney regarding legal advice related to the Austin Light Rail Implementation Plan

**V. Items for Future Discussion:**

**VI. Adjournment**

2:22 p.m. Meeting Adjourned

**ADA Compliance**

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**Minutes**  
**Capital Metropolitan**  
**Transportation Authority**  
**Board of Directors**

2910 East 5th Street  
Austin, TX 78702

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Tuesday, June 6, 2023

1:00 PM

Austin City Hall Council Chambers (301 W  
2nd Street)

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**Joint Partnership Meeting**

**I. Call to Order**

1:07 p.m. Meeting Called to Order

**Present:** Travillion, Pool, Ross, Harriss, Vela, Bangle, and Ellis

**Absent:** Stratton

**II. Public Comment:**

Zenobia Joseph, Julio Altamirano, and Awais Azhar provided public comments.

**III. Discussion Item:**

1. Discussion on the adoption of modifications to light rail and implementation plans related to Project Connect.

**IV. Action Items:**

1. Authorize execution of an amendment and supplement to the Joint Powers Agreement between the City of Austin, Capital Metropolitan Transportation Authority, and Austin Transit Partnership to specify party roles and responsibilities related to the implementation and financing of Project Connect.

A motion was made by Board Member Vela, seconded by Board Member Bangle, that this Resolution be adopted. The motion carried by the following vote:

**Aye:** Travillion, Pool, Ross, Harriss, Vela, Bangle, and Ellis

2. Approve amendments to the Project Connect Community Advisory Committee's (CAC) bylaws to allow a member of the CAC to continue to serve after the expiration of the member's term for up to six months if a replacement has not been appointed.

A motion was made by Board Member Vela, seconded by Board Member Harriss, that this Resolution be adopted. The motion carried by the following vote:

**Aye:** Travillion, Pool, Ross, Harriss, Vela, Bangle, and Ellis

**V. Items for Future Discussion:**

**VI. Adjournment**

1:43 p.m. Meeting Adjourned

**ADA Compliance**

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**Minutes**  
**Capital Metropolitan**  
**Transportation Authority**  
**Board of Directors**

2910 East 5th Street  
Austin, TX 78702

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**Monday, June 26, 2023**

**12:00 PM**

**Rosa Parks Boardroom**

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**I. Call to Order**

12:12 p.m. Meeting Called to Order

**Present:** Travillion, Pool, Stratton, Ross, Harriss, Vela, Bangle, and Ellis

**II. Public Comment:**

Leander Mayor Christine DeLisle and Zenobia Joseph provided public comment during this portion of the meeting. After the final action item, the Chair also recognized Sherri Taylor for comments.

**III. Advisory Committee Updates:**

1. Customer Satisfaction Advisory Committee (CSAC)
2. Access Advisory Committee

**IV. Board Committee Updates:**

1. Finance, Audit and Administration Committee
2. CAMPO update
3. Austin Transit Partnership Update

**V. Action Items:**

1. Approval of minutes from the May 22, 2023 board meeting.

A motion was made by Board Member Bangle, seconded by Board Member Ellis, that this Minutes be adopted. The motion carried by the following vote:

**Aye:** Travillion, Pool, Stratton, Ross, Harriss, Vela, Bangle, and Ellis

2. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute a Purchase and Sale Agreement for the purchase of a 5.846-acre tract of land located at 3100 East 5th Street and 618 Tillery Street, Austin, TX 78702, together with the 182,716-square-foot office building and all other improvements thereon, and any easements and rights appurtenant thereto, from 618 Tillery St. (Austin) Owner, LLC, for new CapMetro administrative offices, in an amount not to exceed \$87,250,000 plus closing costs, as well as the payment of a broker fee to CBRE, Inc. in an amount not to exceed \$654,375.

A motion was made by Secretary of the Board Pool, seconded by Board Member Vela, that this Resolution be adopted. The motion carried by the following vote:

**Aye:** Travillion, Pool, Stratton, Ross, Harriss, Vela, Bangle, and Ellis

3. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute an Interlocal Agreement (ILA) with the City of Georgetown for a Transit Development Plan (TDP) in an amount not to exceed \$160,000 in FY23 FTA Section 5307 Funds and \$40,000 in local funds from the City of Georgetown.

A motion was made by Board Member Stratton, seconded by Board Member Vela, that this Resolution be adopted. The motion carried by the following vote:

**Aye:** Travillion, Pool, Stratton, Ross, Harriss, Vela, Bangle, and Ellis

4. Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute a contract with Jay-Reese Contractors, Inc., for the construction and replacement of two (2) bridge spans at Milepost (MP) 52.44 in the East subdivision for a contract term of Three Hundred Sixty-Five (365) calendar days from Notice to Proceed in the amount of \$3,981,000, plus 20% contingency, for a grand total not-to-exceed amount of \$4,777,200.

A motion was made by Board Member Stratton, seconded by Board Member Vela, that this Resolution be adopted. The motion carried by the following vote:

**Aye:** Travillion, Pool, Stratton, Ross, Harriss, Vela, Bangle, and Ellis

5. Approval of a resolution adopting an updated set of Capital Metro Service Standards and Guidelines.

A motion was made by Board Member Bangle, seconded by Board Member Harriss, that this Resolution be adopted. The motion carried by the following vote:

**Aye:** Travillion, Pool, Stratton, Ross, Harriss, Vela, Bangle, and Ellis

## VI. Discussion Items:

1. Sustainability Program Update

## VII. Report:

1. President & CEO Monthly Update

### **VIII. Memos:**

Note: Memos are for information only. Will not be discussed at meeting.

1. Memo: Capital Projects Portfolio, April Year-to-Date (June 20, 2023)
2. Memo: May Board Follow-up (June 26, 2023)

### **IX. Items for Future Discussion:**

### **X. Adjournment**

1:49 p.m. Meeting Adjourned

### **ADA Compliance**

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Board of Directors

Item #: AI-2023-793

Agenda Date: 7/24/2023

**SUBJECT:**

Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute a modification to Contract No. 200770 with SHI Government Solutions to add additional funding of \$201,280 to address expanded Microsoft Office 365 and related licensing needs with a contingency of \$200,000 for a total new contract amount not to exceed \$1,832,671.

**FISCAL IMPACT:**

Funding for this action is available in the FY2024 Operating Budget

**STRATEGIC PLAN:**

**Strategic Goal Alignment:**

1. Internal/External Customer Service Excellence     2. Stakeholder Engagement  
 3. Financial and Environmental Sustainability     4. Staff Development     5. Agency Growth Management

**Strategic Objectives:**

- 1.1 Safety & Risk     1.2 Continuous improvement     1.3 Dynamic Change  
 1.4 Culture of Innovation     2.1 Be an Employer of Choice     2.2 Organization Development  
 2.3 Organization Culture     3.1 Resource optimization     3.2 Safety Culture  
 3.3 Environmental Leadership     4.1 Educate & Call to Action     4.2 Build Partnerships  
 4.3 Value of Transit     4.4 Project Connect

**EXPLANATION OF STRATEGIC ALIGNMENT:** The Office365 productivity software suite provides opportunities for communication and collaboration via integration with various systems and access to Capital Metro’s resources via any web enabled device. The systems also provide a platform for incorporating new, improved and innovative business practices, as well as providing a great customer experience. Maintaining Capital Metro’s systems in a state of good repair ensures stable and reliable systems.

**BUSINESS CASE:** This is a funding increase request where the initial contract award will exceed the \$238,565 contingency amount. This request is to provide funding for the remainder of the SHI Government Solutions DIR contract for Microsoft Office 365 licenses which will expire by November 30<sup>th</sup> 2024. This request is to accommodate expanded user count.



COMMITTEE RECOMMENDATION: This item was presented and recommended for approval by the Operations, Planning and Safety Committee on July 12, 2023.

EXECUTIVE SUMMARY: This funding request will accommodate the expansion of licensing needed for the remainder of the existing SHI Government Solutions DIR contract which expires on November 30<sup>th</sup>, 2024.

DBE/SBE PARTICIPATION: No SBE goal is assigned to this project due to limited subcontracting opportunity. However, the selected vendor is a certified SBE.

PROCUREMENT: On November 22, 2021, Capital Metro awarded Contract No. 200770 to SHI Government Solutions for Microsoft Enterprise Agreement Licensing in an amount not to exceed \$1,192,825., for a three (3) year term. The Capital Metro Board of Directors authorized approval to award via Resolution #AI-2021-142 with a 20% contingency of \$238,565., for a total approval amount of \$1,431,390.

Modification 1 in the amount of \$199,378. was authorized on November 24, 2022, for additional licenses exhausting most of the 20% contingency.

In order to accommodate licensing needs due to additional growth in our organization, Contract No. 200770 requires Modification 2, to add \$201,280 for the remaining months of the current contract year which ends November 30<sup>th</sup>, 2023. A contingency amount of \$200,000 is also being requested to accommodate future growth in year 3 of the contract, which starts December 1, 2023, and runs through November 30<sup>th</sup>, 2024.

The following table summarizes SHI Government Solutions pricing for Modification 2 with Contingency being requested for Board approval:

Description	Amount
Total Prior Board Approval for Years 1 Through 3 with 20% Contingency:	\$1,431,390.00
Modification 2 - Additional Microsoft Licensing:	\$201,280.00
Contingency for Year 3 of the Contract:	\$200,000.00
Grand Total Board Approval for Modification 2 with Contingency:	\$1,832,671.00

RESPONSIBLE DEPARTMENT: Information Technology

**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS  
COUNTY OF TRAVIS**

**AI-2023-793**

WHEREAS, the Capital Metropolitan Transportation Authority Board of Directors and Capital Metro management endeavor to maintain its Microsoft productivity software in good working order to support current operations; and WHEREAS, the Capital Metropolitan Transportation Authority Board of Directors and Capital Metro management recognize the need to provide the necessary office productivity and communications software required by new business initiatives.

NOW, THEREFORE, BE IT RESOLVED by the Capital Metropolitan Transportation Authority Board of Directors that the President & CEO, or her designee, is authorized to finalize and execute a modification to Contract No. 200770 with SHI Government Solutions to add additional funding of \$201,280 to address expanded Microsoft Office 365 and related licensing needs with a contingency of \$200,000 for a total new contract amount not to exceed \$1,832,671.

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

\_\_\_\_\_  
**Secretary of the Board  
Becki Ross**

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Board of Directors

Item #: AI-2023-843

Agenda Date: 7/24/2023

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**SUBJECT:**

Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute a modification to an existing contract with UNUM for basic life and AD&D insurance, long term and short term disability insurance, FMLA administration paid by Capital Metro, and voluntary life, long term disability buy up, accident, whole life and critical illness voluntary insurance products paid by employees, to increase the contract amount by \$1,600,000, for a new total not to exceed amount of \$3,352,882.

**FISCAL IMPACT:**

Funding for this action is available in the proposed FY2023 Operating Budget as well as the proposed 2024 Operating Budget.

**STRATEGIC PLAN:**

**Strategic Goal Alignment:**

- 1. Customer
- 2. Community
- 3. Workforce
- 4. Organizational Effectiveness

**Strategic Objectives:**

- 1.1 Safe & Reliable Service
- 1.2 High Quality Customer Experience
- 1.3 Accessible System
- 2.1 Support Sustainable Regional Growth
- 2.2 Become a Carbon Neutral Agency
- 2.3 Responsive to Community and Customer Needs
- 2.4 Regional Leader in Transit Planning
- 3.1 Diversity of Staff
- 3.2 Employer of Choice
- 3.3 Expand Highly Skilled Workforce
- 4.1 Fiscally Responsible and Transparent
- 4.2 Culture of Safety
- 4.3 State of Good Repair

**EXPLANATION OF STRATEGIC ALIGNMENT:** Employee Life and Disability benefits are offered as a part of the total benefit package for Capital Metropolitan Transportation Authority and ATP employees. The Total Compensation Philosophy is to maintain benefits and compensation at the 50<sup>th</sup> percentile in relation to the external marketplace. This allows Capital Metro and ATP the ability to hire and retain employees reassuring their satisfaction with benefits provided as part of their total compensation.

**BUSINESS CASE:** This contract is to provide basic life, accidental death and dismemberment, long-term and short-term disability insurance (including FMLA administration services), and other Voluntary benefits

(employee paid), which are provided by Capital Metro to our employees. This also allows for employees to purchase additional life and long-term disability buy-up insurance and other voluntary benefits such as Whole Life, Accident and Critical Care. This is a part of the benefit package offered to employees to remain competitive with other local public and private employers.

COMMITTEE RECOMMENDATION: This item was presented and recommended for approval by the Finance, Audit and Administration Committee on July 12, 2023.

EXECUTIVE SUMMARY: The current contract and all option years for Life, AD&D, disability insurance and FMLA Administration for Capital Metro employees expires on December 31, 2024. Additional funds are required to cover current invoices due to the increase in employees/salaries (volume of coverage) that has occurred after the original cost projections, referenced in the original UNUM contract. CapMetro and ATP have experienced growth in headcount, from the date that the current contract (Agreement 200697) was introduced. Additionally, ATP was not an original component of the initial contract, however CapMetro currently includes/administers UNUM benefits for ATP. Current billing encompasses about 600 covered lives for Basic Life, Accidental Death & Dismemberment, FMLA, Short-term Disability, Long Term Disability, and enrollment for new Voluntary plans have also increased due to 3 additional pass-through plans (Critical Illness, Voluntary Accident, and Whole Life) being added to the UNUM administration effective January 2022. The UNUM insurance contract provides the following Life Insurance & Disability benefits, which cannot be disrupted:

- Basic Life and AD&D insurance equal to the employee's annual base salary (\$40,000 minimum)
- Short term disability insurance with a 14-day waiting period with a benefit payment of 60% of weekly earnings up to \$1,000 a week.
- Long term disability insurance with a 90-day waiting period with a benefit payment of 50% of monthly earnings up to \$5,000 a month.
- Voluntary Long-term Disability Buy-Up benefits
- FMLA Administration
- Voluntary & Additional Life Insurance Products

Other voluntary benefits including employee, spouse and child life insurance and long-term disability buy-up insurance are offered to employees and paid through payroll deductions. As an added service to the contract, FMLA administration is included as part of a total Absence Management Program.

DBE/SBE PARTICIPATION: No SBE goal is assigned to this solicitation due to low availability of certified SBE firms in relevant work areas (NAICS Codes): Direct Life Insurance Carriers (524113), Liability Insurance Carriers, Direct (524126), Other Insurance Related Activities (524298), and Insurance Agencies & Brokerage (524210). However, we will work with the selected vendor towards small business participation.

PROCUREMENT: The CapMetro Board of Directors previously authorized CapMetro to enter into a contract with

Unum for a three-year base period. A contract was subsequently awarded to Unum on November 30, 2021, and the 3-year term began January 1, 2022. This contract modification will add additional funds to the contract.

Revised totals are as follows:

TOTAL BASE - YEAR 1 and YEAR 2 thru July 31, 2023 - previously approved by Board	<b>\$1,752,882.00</b>
This board resolution: TOTAL BASE - YEAR 2 Remaining (August 1, 2023 - December 31, 2023)	<b>\$470,588.24</b>
This board resolution: TOTAL BASE - YEAR 3 (January 1, 2024 - December 31, 2024)	<b>\$1,129,411.76</b>
<b>GRAND TOTAL BASE PERIOD: YEARS 1 - 3</b>	<b>\$3,352,882.00</b>

RESPONSIBLE DEPARTMENT: People and Culture

**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS  
COUNTY OF TRAVIS**

**AI-2023-843**

WHEREAS, the Capital Metropolitan Transportation Authority Board of Directors and Capital Metro management endeavor to continue providing life, accidental death and dismemberment insurance, disability benefits, FMLA administration and other voluntary benefits to employees.

NOW, THEREFORE, BE IT RESOLVED by the Capital Metropolitan Transportation Authority Board of Directors that the President & CEO, or her designee, is authorized to finalize and execute a modification to an existing contract with UNUM for basic life and AD&D insurance, long term and short term disability insurance, FMLA administration paid by Capital Metro, and voluntary life, long term disability buy up, accident, whole life and critical illness voluntary insurance products paid by employees, to increase the contract amount by \$1,600,000, for a new total not to exceed amount of \$3,352,882.

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

\_\_\_\_\_  
**Secretary of the Board  
Becki Ross**

# CapMetro

## Basic Life, AD&D, Voluntary Life, LTD, STD & Other Voluntary Products

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UNUM

Board Finance Audit & Administration Committee

July 12, 2023

## Background Information

- UNUM began providing services to CapMetro in 2021
- Eligible Participants: approx. 600 employees
- Benefits extended to ATP employees



# Benefits Offered

- Basic Life
- Accidental Death & Dismemberment
- Voluntary Life
  - Employee Life
  - Spouse Life
  - Child Life
- Short Term Disability
- Long Term Disability
- Long Term Disability Buy Up
- Family Medical Leave Act Administration
- Critical Illness
- Voluntary Accident
- Whole Life

# Benefit Type and Responsible Party

Benefit Type	Responsible Party	
	Employee	CapMetro/ATP
Basic Life		X
AD&D		X
Voluntary Life	X	
STD		X
LTD		X
LTD Buy -Up	X	
FMLA Administration		X
Critical Illness	X	
Group Accident	X	
Whole Life	X	

# Benefit Utilization

Benefit Type	# of Employees
Basic Life	581
AD&D	581
Voluntary Life - EE	290
Voluntary Life - SP	93
Voluntary Life - CHD	79
STD	581
LTD	581
LTD Buy -Up	128
FMLA Administration	581
Critical Illness	229
Group Accident	287
Whole Life	101

# Cost of Benefit

		CapMetro EE Paid	CapMetro ER Paid	ATP EE Paid	ATP ER Paid
Budget per Base Yr.		<i>90% of Annual Budget</i>		<i>10% of Annual Budget</i>	
BASE - YEAR 1 and YEAR 2 thru July 31, 2023	\$1,752,882.00	<i>662,589.40</i>	<i>915,004.40</i>	<i>52,586.46</i>	<i>122,701.74</i>
BASE - YEAR 2 Remaining (August 1, 2023 – December 31, 2023)	\$470,588.24	<i>194,823.53</i>	<i>228,705.88</i>	<i>14,117.65</i>	<i>32,941.18</i>
TOTAL BASE - YEAR 3 (January 1, 2024 – December 31, 2024)	\$1,129,411.76	<i>518,400.00</i>	<i>498,070.59</i>	<i>33,882.35</i>	<i>79,058.82</i>
GRAND TOTAL BASE PERIOD: YEARS 1 - 3	\$3,352,882.00	1,375,812.93	1,641,780.87	100,586.46	234,701.74

# Summary

- Cost of Benefit
  - \$3,352,882
- Amount approved at contract award
  - \$1,752,882
    - \$1,602,882 – Contract Award
    - \$150,000 - Contingency
- Action today: Amount needed to fulfill the term of the contract
  - August 1, 2023 – December 31, 2024
  - \$1,600,000

CapMetro

Thank you!

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Board of Directors

Item #: AI-2023-889

Agenda Date: 7/24/2023

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**SUBJECT:**

Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute a modification to an existing contract with Bright Horizons Family Solutions to extend the contract for a 6-month period, from September 1, 2023 to February 29, 2024, in an amount not to exceed \$613,087.

**FISCAL IMPACT:**

Funding for this action is available in the FY2023 Operating Budget

**STRATEGIC PLAN:**

**Strategic Goal Alignment:**

- 1. Customer
- 2. Community
- 3. Workforce
- 4. Organizational Effectiveness

**Strategic Objectives:**

- 1.1 Safe & Reliable Service
- 1.2 High Quality Customer Experience
- 1.3 Accessible System
- 2.1 Support Sustainable Regional Growth
- 2.2 Become a Carbon Neutral Agency
- 2.3 Responsive to Community and Customer Needs
- 2.4 Regional Leader in Transit Planning
- 3.1 Diversity of Staff
- 3.2 Employer of Choice
- 3.3 Expand Highly Skilled Workforce
- 4.1 Fiscally Responsible and Transparent
- 4.2 Culture of Safety
- 4.3 State of Good Repair

**EXPLANATION OF STRATEGIC ALIGNMENT:** The Child Care and Learning Center (Center) was opened in 2006 to attract and retain employees with childcare needs so that the employee would be able to work closely to their young children and have assurance that they are receiving high quality early childhood education. This gives employees the peace of mind that their child’s developmental needs are being met and they can easily visit them during the day. This contributes to employee higher morale and job focus.

**BUSINESS CASE:** On July 25, 2016, the CapMetro Board of Directors authorized CapMetro to enter into a contract with Bright Horizons for a period of one base year and six 1-year option period for the amount of \$6,443,323. A contract was subsequently awarded to Bright Horizons on August 16, 2016. Additional funds were added in the amount of \$448,373 which includes a contingency of \$150,000. We are requesting \$613,087 in additional funds for a 6-month extension of this contract while we conduct a feasibility survey and award a new contract in early calendar year 2024. The funding for this project is included in the approved FY

2023 Operating Budget. The operating costs for the Childcare center are also supported through enrollment fees and tuition.

COMMITTEE RECOMMENDATION: This item was presented and recommended for approval by the Finance, Audit and Administration Committee on July 12, 2023.

EXECUTIVE SUMMARY: Over the course of the contract, the agency opened the facility to the community in order to maintain a full center and to provide childcare services in the area that was currently unavailable. The Center is currently at or near capacity with approximately 54 full-time children. The Center serves children and grandchildren of Capital Metro and service provider employees and community children whose parents work or live close to the Capital Metro Pleasant Valley offices. Maintaining the Center allows Capital Metro to provide an important benefit to our employees and to fill a childcare void in the community.

DBE/SBE PARTICIPATION: Any DBE participation will be captured as race neutral.

PROCUREMENT: On July 25, 2016, the CapMetro Board of Directors authorized CapMetro to enter into a contract with Bright Horizons for a period of one base year and six 1-year option periods. A contract was subsequently awarded to Bright Horizons on August 16, 2016. This contract modification will exercise the six (6) month extension under the contract which will extend services from September 1, 2023 - February 29, 2024.

RESPONSIBLE DEPARTMENT: People & Culture



**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS  
COUNTY OF TRAVIS**

**AI-2023-889**

WHEREAS, the Capital Metropolitan Transportation Authority Board of Directors and Capital Metro management recognize the need to provide a benefit that gives access to affordable child care and learning experiences for employees' children and the community; and

WHEREAS, the Capital Metropolitan Transportation Authority Board of Directors and Capital Metro management recognize the need to outsource the management of the Center to a third party.

NOW, THEREFORE, BE IT RESOLVED by the Capital Metropolitan Transportation Authority Board of Directors that the President & CEO, or her designee, is authorized to finalize and execute a modification to an existing contract with Bright Horizons Family Solutions to extend the contract for a 6-month period, from September 1, 2023 to February 29, 2024, in an amount not to exceed \$613,087.

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

\_\_\_\_\_  
**Secretary of the Board  
Becki Ross**

# CapMetro

## CapMetro / Bright Horizons Child Care & Early Learning Center

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### Board Finance Audit & Administration Committee

July 12, 2023

# Background Information

- Bright Horizons began providing services to CapMetro in 2006
- Licensed Capacity: 65 children
- Average Annual Utilization: 75%-80% full
  - CapMetro Team Members: 20%
  - Community: Remaining 80%
- Accepts Child Care Services (CCS) program to provide eligible families with childcare scholarships to help cover childcare costs
- Ages infant to pre-school
- Located in 624 Pleasant Valley building

# Child Care & Early Learning Center Accreditations

## National Accreditation Commission (NAC)

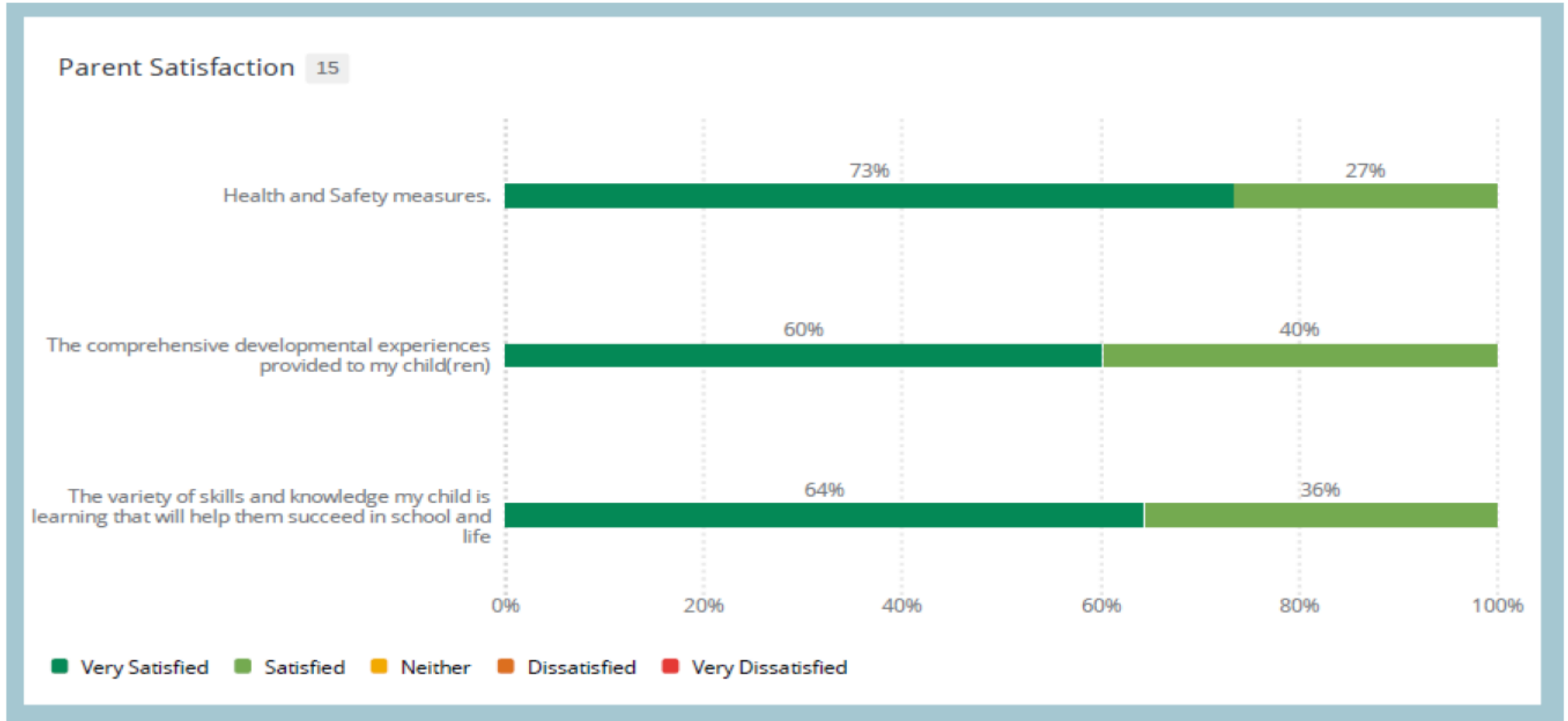
- Trained faculty
- Staff-child ratios and group sizes
- Comprehensive curriculum
- Stringent health and safety standards

## National Association for Education of Young Children (NAEYC)

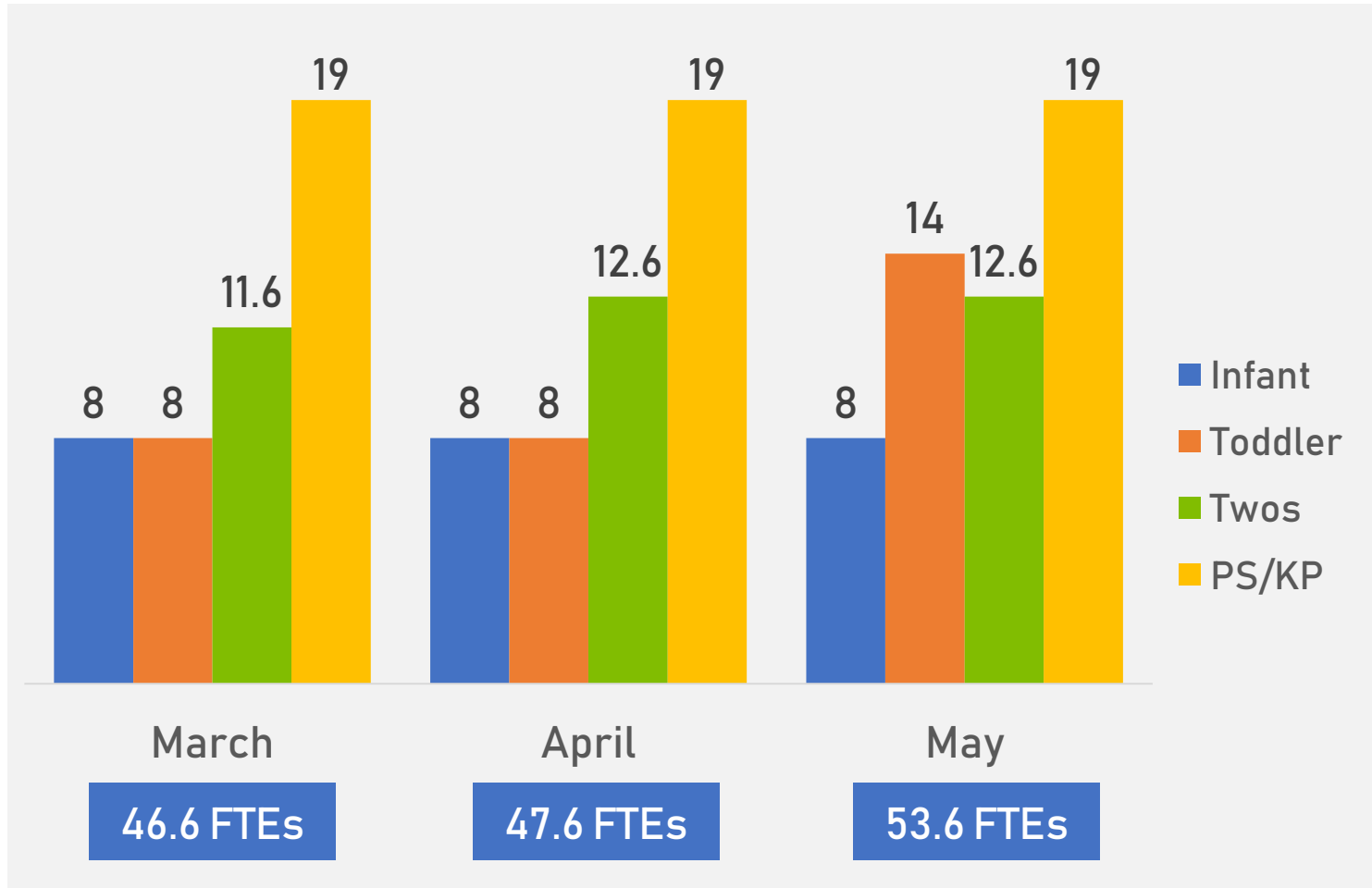
- Gold standard for early childhood programs across the country
- Sets professional standards for high quality programs



# 2022 Parent Satisfaction Survey



# Enrollment Information



FTE	CapMetro	Community
Infant	2	6
Toddler	2	10
Twos	0	11.6
PS	1	7
K-Prep	2	9
<b>Total</b>	<b>7</b>	<b>44.6</b>

\*FTE - Full Time Enrollee

# Cost and Revenue – FY23

- **Contract with Bright Horizons Annual Fee**
  - \$1,226,172
- **Annual Tuition Revenue**
  - \$540,000\*
- **Agriculture Department Food Subsidy Grant**
  - \$12,840
- **Net Annual Subsidy**
  - \$673,332



\*We subsidizes tuition for CapMetro families, but community families pay the full tuition rates.

# Needs and Partnerships

- **Employee Childcare Needs Survey**
  - Texas Transportation Institute
  - July to August 2023
- **Workforce Solutions Capital Area Mobility and Infrastructure Sector Partnership**
  - Goal is to promote positive child outcomes
    - Forecast for childcare workforce through 2040
    - Inventory of regional wrap-around/childcare programs for trades/mobility workforce
    - Identify best practices to draw insights to create comprehensive action plan
- **United Way SUCCESS BY 6**
  - Goal, at the end of each child's first 2,000-day journey – that they are happy, healthy, and ready to succeed in school and in life



# Upcoming Contracting Activities

- **Expression of Interest Process (EOI)**
  - June and July 2023
  - Gather feedback from childcare providers on scope and childcare options
- **Request for Proposal (RFP)**
  - Issue Date – August 2023
  - Completion – October 2023
  - Will include options for meeting childcare needs in addition to current on-site center



CapMetro

Thank you!

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Board of Directors

Item #: AI-2023-890

Agenda Date: 7/24/2023

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**SUBJECT:**

Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute an interlocal agreement with the City of Austin for use of the Greater Austin-Travis County Regional Radio System (GATRRS) for purposes of CapMetro’s Transit Police and Public Safety and Emergency Management Departments, for a base term of one (1) year and optional renewal periods subject to annual budget appropriations.

**FISCAL IMPACT:**

Refer to executive summary for clarification.

**STRATEGIC PLAN:**

**Strategic Goal Alignment:**

- 1. Customer       2. Community
- 3. Workforce       4. Organizational Effectiveness

**Strategic Objectives:**

- 1.1 Safe & Reliable Service       1.2 High Quality Customer Experience       1.3 Accessible System
- 2.1 Support Sustainable Regional Growth       2.2 Become a Carbon Neutral Agency
- 2.3 Responsive to Community and Customer Needs       2.4 Regional Leader in Transit Planning
- 3.1 Diversity of Staff       3.2 Employer of Choice       3.3 Expand Highly Skilled Workforce
- 4.1 Fiscally Responsible and Transparent       4.2 Culture of Safety       4.3 State of Good Repair

**EXPLANATION OF STRATEGIC ALIGNMENT:** This interlocal agreement will support CapMetro’s commitment to providing a safe and reliable transit system for our customers. CapMetro’s use of GATRRS will ensure CapMetro’s effectiveness in responding to public safety incidents on the CapMetro system and support the interdependencies with our local and regional public safety partners.

**BUSINESS CASE:** Ensuring the safety of the CapMetro system requires a timely and effective response to public safety incidents. Frequent and close coordination with our regional public safety partners is the key to an effective response. Operational coordination with our partners will become even more important as CapMetro launches its own Transit Police department which will rely on close communication and coordination with regional public safety partner agencies.

COMMITTEE RECOMMENDATION: This item was presented and recommended for approval by the Operations, Planning and Safety Committee on July 12, 2023.

EXECUTIVE SUMMARY: This is an interlocal agreement for use of the Greater Austin-Travis County Regional Radio System (GATRRS). CapMetro's use of the GATRRS is needed to ensure effective internal communications by the CapMetro Transit Police and Public Safety and Emergency Management Departments. These departments will also need to communicate and coordinate effectively with regional public safety partners on the GATRRS that respond to public safety incidents on the transit system. The annual cost for the use of GATRRS will be identified and presented to the CapMetro Board of Directors as part of the regular budget process each fiscal year during the term of this interlocal agreement.

DBE/SBE PARTICIPATION: Does not apply.

PROCUREMENT: Does not apply.

RESPONSIBLE DEPARTMENT: Public Safety and Emergency Management

**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS  
COUNTY OF TRAVIS**

**AI-2023-890**

WHEREAS, the City of Austin is a party to a certain interlocal agreement for operation and maintenance of the Greater Austin-Travis County Regional Radio System which provides for the organizational structure and funding for the operation and maintenance of the GATRRS, and authorizes the City of Austin to enter into interlocal agreements for use of the GATRRS with organizations that are eligible under FCC rules and regulations to use the licensed frequencies of the GATRRS; and

WHEREAS, the Capital Metropolitan Transportation Authority Board of Directors recognizes the need for CapMetro to participate in the GATRRS to ensure CapMetro's effectiveness in responding to public safety incidents on the CapMetro system and support the interdependencies with CapMetro's local and regional public safety partners; and

WHEREAS, the annual cost for the use of GATRRS will be identified and presented to the CapMetro Board of Directors as part of the regular budget process each fiscal year during the term of the interlocal agreement.

NOW, THEREFORE, BE IT RESOLVED that the Capital Metropolitan Transportation Authority Board of Directors authorizes the President & CEO, or her designee, to finalize and execute an interlocal agreement with the City of Austin for use of the Greater Austin-Travis County Regional Radio System for purposes of the CapMetro Transit Police and Public Safety and Emergency Response Departments for a base term of one (1) year and optional renewal periods subject to annual budget appropriations.

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

\_\_\_\_\_  
**Secretary of the Board  
Becki Ross**

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Board of Directors

Item #: AI-2023-891

Agenda Date: 7/24/2023

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**SUBJECT:**

Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute an interlocal agreement with Austin Community College for student and employee transit passes for a one (1) year base period, September 1, 2023, to August 31, 2024, and four (4) optional extension periods for a not-to-exceed amount of \$477,988 per year.

**FISCAL IMPACT:**

This action reimburses CapMetro for transit passes.

**STRATEGIC PLAN:**

**Strategic Goal Alignment:**

- 1. Customer
- 2. Community
- 3. Workforce
- 4. Organizational Effectiveness

**Strategic Objectives:**

- 1.1 Safe & Reliable Service
- 1.2 High Quality Customer Experience
- 1.3 Accessible System
- 2.1 Support Sustainable Regional Growth
- 2.2 Become a Carbon Neutral Agency
- 2.3 Responsive to Community and Customer Needs
- 2.4 Regional Leader in Transit Planning
- 3.1 Diversity of Staff
- 3.2 Employer of Choice
- 3.3 Expand Highly Skilled Workforce
- 4.1 Fiscally Responsible and Transparent
- 4.2 Culture of Safety
- 4.3 State of Good Repair

**EXPLANATION OF STRATEGIC ALIGNMENT:** CapMetro has a valuable partnership with Austin Community College, including providing transit passes and access to ACC students and staff. This enhances CapMetro's presence in the community and supports ridership growth.

**BUSINESS CASE:** CapMetro has maintained a partnership with ACC for several years to support transit access for ACC students and staff. The existing agreement with ACC is about to expire, necessitating the need for a new agreement. By continuing this partnership, ACC students and staff will be able to use CapMetro services, enhancing transit awareness, mobility options, and access to education for more people in the CapMetro service area.

COMMITTEE RECOMMENDATION: This item was presented and recommended for approval by the Finance, Audit and Administration Committee on July 12, 2023.

EXECUTIVE SUMMARY: As part of CapMetro's desire to build strong community partnerships that further CapMetro's mission and vision and as part of CapMetro's and Austin Community College's continued joint effort to promote sustainability through transportation alternatives, this interlocal agreement renews CapMetro's relationship with Austin Community College for student and employee transit passes. This new agreement provides eligible ACC students and staff with local and commuter transit service passes and Metro Access service passes, all paid for by ACC. This agreement has a base term of one year from September 1, 2023, to August 31, 2024, and four optional extension periods. The not-to-exceed amount payable by Austin Community College to CapMetro each year of the term is \$477,988, for a total estimated not-to-exceed amount of \$2,389,940 for the life of the ILA.

DBE/SBE PARTICIPATION: Does not apply.

PROCUREMENT: Does not apply.

RESPONSIBLE DEPARTMENT: Finance

**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS  
COUNTY OF TRAVIS**

**AI-2023-891**

WHEREAS, the Capital Metropolitan Transportation Authority Board of Directors and CapMetro management endeavor to build strong community partnerships that further CapMetro’s mission and vision; and

WHEREAS, the Capital Metropolitan Transportation Authority Board of Directors and CapMetro management recognize the need to build ridership and increase market share of alternate transit use.

NOW, THEREFORE, BE IT RESOLVED by the Capital Metropolitan Transportation Authority Board of Directors that the President & CEO, or her designee, is authorized to finalize and execute an interlocal agreement with Austin Community College for student and employee transit passes for a one (1) year base period, September 1, 2023, to August 31, 2024, and four (4) option extension periods for a not-to-exceed amount of \$477,988 per year.

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

\_\_\_\_\_  
**Secretary of the Board  
Becki Ross**



**INTERLOCAL COOPERATION AGREEMENT  
BY AND BETWEEN AUSTIN COMMUNITY COLLEGE DISTRICT  
AND CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

This Interlocal Agreement ("**Agreement**") is entered into by and between Austin Community College District ("**ACC**") a public junior college and political subdivision of the State of Texas, and Capital Metropolitan Transportation Authority ("**CapMetro**"), a transportation authority and political subdivision of the State of Texas organized under Chapter 451 of the Texas Transportation Code. CapMetro and ACC are referred to in this Agreement collectively as the "Parties" and individually as a "Party".

**RECITALS**

- A. **Whereas**, the Parties recognize the importance of regional mobility and the desire to encourage ACC's students and employees to access public transportation.
- B. **Whereas**, each of the Parties represent that in the performance of its respective obligations set forth in this Agreement, it is carrying out a duly authorized governmental function that is authorized to perform individually under the applicable statutes of the State of Texas or its charter.
- C. **Whereas**, the Parties represent that the compensation paid under this Agreement is fair and reasonable considering the services and functions to be performed in this Agreement.
- D. **Whereas**, the Parties now desire to enter into a mutually beneficial Agreement that meets the transportation and mobility needs of both Parties, as authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

**AGREEMENT**

**Now therefore**, in consideration of mutual covenants and agreements herein, the Parties agree to the terms and conditions below as evidenced by the signatures of their respective authorized representatives.

**I. Certain Definitions**

- 1. "**ACC Green Pass**" means the custom transit passes, both physical and digital, for Services provided by CapMetro to ACC for Eligible ACC Employees and Students.
- 2. "**Commuter Service**" means CapMetro's Rail services and all "Express" services, being CapMetro's routes 900 through 990.
- 3. "**Eligible ACC Employees and Students**" means ACC's employees and students who are eligible for an ACC Green Pass as determined by ACC.
- 4. "**Local Service**" means all of CapMetro's Bus, Flyer, UT Shuttle, Rapid and High-Frequency Routes.
- 5. "**Metro Access Service**" means CapMetro's services to certified mobility impaired persons.
- 6. Other capitalized terms will have the definitions given to them in this Agreement.

## II. Scope

1. **Services.** The purpose of this Agreement is to provide ACC employees and students access to the use of CapMetro's Local and Commuter Services, and MetroAccess Service (collectively, the "Services"). Rideshare services are not included in or subject to this Agreement.

1.1 **Local and Commuter Transit Services.** Eligible ACC Employees and Students will have unlimited use of the Services when they swipe or otherwise validate valid ACC Green Passes and present ACC identification cards to the CapMetro operator upon request. All fares of Eligible ACC Employees and Students will be borne by ACC and no fares will be required by CapMetro to be paid by such students and employees.

1.2 **Metro Access.** Metro Access Service will be provided to Eligible ACC Employees and Students who have been certified for Access service via CapMetro's certification process. Such certified Eligible ACC Employees and Students must follow the CapMetro process for reservations and services.

2. **ACC Green Passes.**

2.1 **Distribution.** ACC is responsible for ordering and distributing physical and digital ACC Green Passes to Eligible ACC Employees and Students. ACC may make one order of physical ACC Green Passes per semester. This order must be made at least eight (8) weeks before the start date of each semester during the Term, and must include the number of physical ACC Green Passes needed for the applicable semester. CapMetro will make available to ACC the ACC Green Passes at least two (2) weeks before the start date of each semester. CapMetro will provide the physical ACC Green Passes to ACC either by U.S. mail or through pickup by ACC at the CapMetro Transit Store. ACC will access digital ACC Green Passes through CapMetro's secure website. ACC will be responsible for distributing the ACC Green Passes to Eligible ACC Employees and Students. ACC will distribute digital ACC Green Passes to Eligible ACC Employees and Students only through ACC-affiliated email addresses. ACC will make the ACC Green Pass available to all Eligible ACC Students and Employees at no point-of-sale cost.

2.2 **Deactivation.** If ACC learns that a physical ACC Green Pass has been stolen, lost, become inoperable or held by individuals who are no longer Eligible ACC Employees and Students, ACC will contact CapMetro to deactivate the ACC Green Pass. ACC is entitled to four (4) free batch deactivations of physical ACC Green passes per semester at no cost. ACC will be assessed a \$10.00 fee for each additional batch deactivation of physical ACC Green Passes. At no cost to ACC, ACC will deactivate digital ACC Green Passes that are deemed lost, stolen, inoperable or held by individuals who are no longer Eligible ACC Employees and Students. Digital pass deactivation may be conducted by ACC staff at will at any time, and ACC staff will ensure that necessary deactivation occurs on at least a monthly basis.

3. **Schedule.** The following holidays are observed by CapMetro and may alter the level of Services on the dates indicated:

<b>Holiday</b>	<b>Date Observed</b>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

4. **Monitoring and Reporting.** CapMetro will use its fare collection system to monitor, compile and analyze Eligible ACC Employees and Students ridership data with respect to physical ACC Green Passes and activation data with respect to digital ACC Green Passes. CapMetro will provide monthly reports to ACC based on this data.
5. **Coordination.** CapMetro and ACC understand the need for coordination and prior approval of their respective governing bodies regarding services, activities and initiatives. The Parties agree to work together in good faith to coordinate any approvals necessary to obtain services, activities and initiatives that further the goals of this Agreement. Such cooperation and coordination shall include the following:
- 5.1 CapMetro and ACC staff will outline the various roles and responsibilities needed to promote and increase ACC Employee and Student ridership. This may include, but is not limited to, providing more efficient access to and between ACC campuses and the currently available programs for transit or alternative transportation subject to and in accordance with CapMetro's Service Standards and Guidelines and applicable service change policies and procedures.

### **III. Term and Termination**

1. **Term.** The term of this Agreement ("**Term**") will commence on September 1, 2023 ("**Effective Date**") and will remain in effect through August 31, 2024. The Parties may extend the Term by mutually written agreement for up to four (4) additional twelve (12)-month option extension periods (each, an "**Extension Period**"), subject to review and approval of both the CapMetro Board of Directors and the ACC Board of Trustees. If CapMetro chooses to extend the Term, CapMetro will provide written notice of its desire to continue the Agreement to ACC ninety (90) calendar days prior to the expiration of the Term. Any changes to the payment terms will be negotiated in good faith between the Parties at least sixty (60) days prior to the expiration of the Term.
2. **Termination.** Either Party may terminate this Agreement, in whole or part, without cause, upon ninety (90) days' prior written notice. Upon receipt of a termination notice from ACC, CapMetro will cease all Services on the ninetieth day following the date of the termination notice. ACC will pay CapMetro for all Services performed and obligations incurred prior to the termination of the Agreement.

#### IV. Compensation and Payment

1. **Contract Amount.** For the Initial Term and each Extension Period (unless the Parties have negotiated different prices or payment terms for that Extension Period), ACC will pay to CapMetro an amount not to exceed \$477,988 for Eligible Students and Employees' use of the Services, at the rates set forth in Table 1 and Paragraphs 1.1, 1.2, 1.3, and 1.4 below. CapMetro will invoice ACC on a monthly basis for the Services.

1.1 During the Term of this Agreement, ACC will pay CapMetro for bus and rail services on a per ride basis, at the rates set forth in Table 1 or the then-current, per-ride rates for each class of service. ACC will pay CapMetro for Access Services for Access-certified Eligible Employees and Students at the monthly rate set forth in Table 1.

Table 1. Prices for services from September 1, 2023 through August 31, 2024 and for each Extension Period unless the Parties negotiate different prices or payment terms for that Extension Period.

Service	Promotional Fare Price
Local	\$0.81 per ride
Commuter	\$2.28 per ride
MetroAccess (Paratransit)	\$46.50 per month per rider

1.2 In addition to the Per Ride Fee, ACC will reimburse CapMetro for CapMetro's out of pocket costs for production of physical or digital transit passes.

2. **Invoices.** Each CapMetro invoice sent to ACC will contain the following: 1) a unique invoice number (i.e. invoices will not have duplicate numbers); 2) the purchase order or delivery order number, if applicable; 3) the Department's name and 4) the name of the point of contact for the Department. Invoices will be mailed and sent electronically to:

**Austin Community College District**

**Attn: Neil Vickers, EVC Finance & Administration**

**6101 Highland Campus Dr, Building 3000, Room 4230.31**

**Austin, Texas 78754**

[Payables@austincc.edu](mailto:Payables@austincc.edu)

3. **Prompt Pay.** ACC will pay all invoices on a monthly basis in accordance with Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

4. **Non-Appropriations.** This Agreement is dependent upon the availability of ACC funding. ACC's payment obligations are payable only from current funds appropriated and available for the Agreement. ACC will provide CapMetro written notice if it fails to appropriate funds to pay the amounts due under this Agreement. ACC will also notify CapMetro as soon as practicable if there is a reduction of the appropriated funds necessary for ACC to perform under this Agreement.

## V. General Terms and Conditions

### 1. Right to Audit.

**1.1** ACC agrees to allow authorized CapMetro representatives reasonable access to and the right to audit, examine, or reproduce all records related to this Agreement. In addition, ACC agrees to only distribute Green Passes to Eligible ACC Employees and Students. ACC will take adequate measures to prevent the transference of Green Passes to individuals not associated with ACC.

**1.2** CapMetro agrees to allow authorized representatives of the Office of the ACC Auditor, or other authorized representatives of ACC, reasonable access to, and the right to audit, examine, or reproduce all CapMetro records related to the performance of this Agreement. CapMetro will retain records for the period set forth in Section V (4) of this Agreement. CapMetro agrees to refund to ACC any overpayments disclosed by an ACC audit.

2. **Amendment.** This Agreement may be amended only in writing by an instrument signed by an authorized representative of each of the Parties; however, CapMetro expressly reserves the right in its sole discretion, to amend this Agreement unilaterally with ten (10) business days' written notice to ensure compliance of this Agreement with state or federal law or other regulation.

3. **Texas Public Information Act.** It will be the responsibility of each Party to comply with the provisions of Chapter 552, Texas Government Code, ("**Texas Public Information Act**") and the Attorney General Opinions issued under that statute. Neither Party is authorized to receive requests or take any action under the Texas Public Information Act on behalf of the other Party. Responses for requests for confidential information shall be handled in accordance with the provisions of the Texas Public Information Act. The provisions of this Section shall survive the termination of this Agreement.

4. **Maintenance of Records.** CapMetro and ACC will maintain and retain supporting fiscal documents adequate to ensure that claims for Agreement funds are in accordance with applicable State of Texas requirements. These supporting fiscal documents will be maintained and retained for a period of four (4) years from the later of: (a) termination of this Agreement, (b) submission of the final invoices, or (c) until resolution of all billing questions.

5. **Applicable Law.** This Agreement will be governed by and construed in accordance with the laws and constitution of the State of Texas.

6. **Venue.** Venue for any action arising under this Agreement will be in Travis County, Texas.

7. **Successors and Assigns.** This Agreement may be not assigned, in whole or in part, by either Party without prior written consent of the other Party. Any attempt to assign this Agreement, without the consent of the non-assigning Party, will be void. This Agreement will be binding upon and inure to the benefit of the Parties and their successors (if any).

8. **Independent Contractor.** This Agreement will not be construed as creating an employer-employee relationship, a partnership, or a joint venture between the Parties.

9. **Disputes.** The Parties will make every possible attempt to resolve, in an amicable manner, all disputes between the Parties concerning the interpretation of this Agreement. ACC will submit written notice of any claim of breach of contract under this Agreement to CapMetro, who will examine ACC's claim and any counterclaim and negotiate with ACC in an effort to resolve the claim.

10. **Liability.** THE PARTIES AGREE THAT EACH GOVERNMENTAL ENTITY IS RESPONSIBLE FOR ITS OWN PROPORTIONATE SHARE OF ANY LIABILITY FOR THE NEGLIGENCE ACTS OR OMISSIONS OF ITS EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS ARISING OUT OF, CONNECTED WITH, OR AS A CONSEQUENCE OF ITS

PERFORMANCE UNDER THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO LOSS OF BUSINESS, REVENUE, PROFITS, OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, TORT OR OTHER ACTION, ARISING OUT OF OR ON IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

11. **Force Majeure.** Except as otherwise provided, neither Party is liable for any delay in, or failure of performance, or a requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing Party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, or the common enemy, or the result of war, riot, civil corruption, sovereign conduct, strikes, fires, explosions, pandemics, epidemics, or other causes that are beyond the control of either Party and that by exercise or due foresight, such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome. Each Party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure.

12. **Severance.** Should any one or more provisions of this Agreement be deemed invalid, illegal, or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision held to be void, voidable, or for any reason whatsoever or no force and effect, such provision will be construed as severable from the remainder of this Agreement and will not affect the validity of all provisions of this Agreement, which will remain of full force and effect.

13. **Headings.** The headings contained in this Agreement are for reference purposes only and do not in any way affect the meaning or interpretation of this Agreement.

14. **Notices.** Any notice required or permitted to be delivered under this Agreement will be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, 'addressed to ACC or CapMetro, at the addresses set forth below. Notice given in any other manner will be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party.

ACC: ACC: Austin Community College District  
Attn: Executive Vice Chancellor of Finance & Administration  
6101 Highland Campus Dr,  
Building 3000, Room 4230.31  
Austin, Texas 78754

CapMetro: Capital Metropolitan Transportation Authority  
Attn: Chief Counsel  
2910 E. 5th Street  
Austin, Texas 78702

16. **Government Entities.** The Parties to this Agreement are governmental entities within the State of Texas and nothing in this Agreement waives or relinquishes the right of the Parties to claim any exemptions, privileges and immunities as may be provided by law.

17. **Entire Agreement.** This Agreement represents the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the Parties to the subject matter contained in this Agreement. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by further agreement in writing duly executed by authorized representatives of each of the Parties. No official, representative, agent, or employee of CapMetro, has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the CapMetro Board of Directors.

#### **VI. Certifications.**

THE UNDERSIGNED PARTIES do hereby certify that: (a) the Services specified above are necessary and essential and are properly within the statutory functions and programs of the affected governmental entity; (b) the proposed arrangements serve the interest of efficient and economical administration of CapMetro and ACC; (c) the Services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under an Agreement given to the lowest responsible bidder nor is this Agreement prohibited by Texas Government Code, Section 771.003(b); and (d) this Agreement neither requires nor permits either party to exceed its duties and responsibilities or the limitations of its appropriated funds.

*[Signatures Page Follows]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their undersigned, duly authorized representatives to be effective as of the date of the last Party to sign.

**Capital Metropolitan  
Transportation Authority**

**Austin Community College District**

By: \_\_\_\_\_

Catherine Walker  
Executive Vice President, Chief Financial  
and Risk Officer

By: \_\_\_\_\_

Richard M. Rhodes, Ph.D.  
Chancellor

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

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



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Board of Directors

Item #: AI-2022-627

Agenda Date: 7/24/2023

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**SUBJECT:**

Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute an interlocal agreement with Austin Transit Partnership (ATP) for the reimbursement of certain capital costs for the McKalla Station MetroRail projects to CapMetro in the amount of \$25,000,000, as part of the Project Connect program.

**FISCAL IMPACT:**

This action reimburses CapMetro \$25M towards capital costs incurred for the duration of the project.

**STRATEGIC PLAN:**

Strategic Goal Alignment:

- 1. Customer
- 2. Community
- 3. Workforce
- 4. Organizational Effectiveness

Strategic Objectives:

- 1.1 Safe & Reliable Service
- 1.2 High Quality Customer Experience
- 1.3 Accessible System
- 2.1 Support Sustainable Regional Growth
- 2.2 Become a Carbon Neutral Agency
- 2.3 Responsive to Community and Customer Needs
- 2.4 Regional Leader in Transit Planning
- 3.1 Diversity of Staff
- 3.2 Employer of Choice
- 3.3 Expand Highly Skilled Workforce
- 4.1 Fiscally Responsible and Transparent
- 4.2 Culture of Safety
- 4.3 State of Good Repair

**EXPLANATION OF STRATEGIC ALIGNMENT:** The McKalla Station project will significantly improve CapMetro Redline service by providing increased mobility and transit options for the North Burnet area and beyond and improve connectivity to housing, employment, and high-activity destinations in the North Burnet neighborhood.

**BUSINESS CASE:** Because the McKalla Station project is being constructed as part of the Project Connect System Plan, this interlocal agreement ensures Austin Transit Partnership (“ATP”) reimburses CapMetro for expenditures for the McKalla Station project as contemplated in the interlocal agreement between the parties for support services and project implementation dated February 3, 2021 (the “Initial Funding Agreement”) and the Joint Powers Agreement between the City of Austin, CapMetro and ATP dated effective December 17,

2021.

COMMITTEE RECOMMENDATION: This item was presented to the Operations, Planning and Safety Committee on July 12, 2023.

EXECUTIVE SUMMARY: CapMetro and ATP entered into an interlocal agreement commonly referred to as the Initial Funding Agreement to facilitate services and financial transactions between the entities. As the projects have progressed, the parties desire to enter into this new interlocal agreement to supersede portions of the Initial Funding Agreement related to capital costs for the McKalla Station Redline project as described in this ILA.

The McKalla Station project and associated improvements to the CapMetro Redline service is a part of the commitments to the community for the Project Connect program. This ILA identifies the terms for delivery of the McKalla Station project by CapMetro and reimbursement by ATP in the amount of Twenty-Five Million Dollars (\$25,000,000). The estimated substantial completion date for the project is January 31, 2024.

DBE/SBE PARTICIPATION: Does not apply.

PROCUREMENT: Does not apply.

RESPONSIBLE DEPARTMENT: Capital Projects

**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS  
COUNTY OF TRAVIS**

**AI-2022-627**

WHEREAS, the Capital Metropolitan Transportation Authority (“CapMetro”) Board of Directors and Austin City Council approved the Project Connect System Implementation Plan in 2020, including capital improvements to the MetroRail line and construction of the McKalla Station (the “McKalla Station Project”); and

WHEREAS, the CapMetro Board of Directors approved a resolution in August 2020 committing to the community its available financial resources in support of the Implementation Plan, including the McKalla Station Project; and

WHEREAS, the voters of the City of Austin approved a referendum in November 2020 to fund projects in the Implementation Plan; and

WHEREAS, CapMetro and the City of Austin created Austin Transit Partnership (“ATP”), a joint local government corporation, to assist in the financing, funding and construction of the Project Connect Implementation Plan; including providing a portion of the funding for the McKalla Station Project; and

WHEREAS, CapMetro is committed to completing the McKalla Station Project in accordance with the contract with the voters and the Joint Powers Agreement between the City, CapMetro and ATP, and has committed funding for the project in its budget and its 5-year Capital Improvement Plan; and

WHEREAS, CapMetro and ATP entered into an interlocal agreement for services and funding related to the Project Connect program in February 2021 and now desire to enter into this new interlocal agreement specifically related to delivery and funding of the McKalla Station Project; and

WHEREAS, this interlocal agreement identifies the terms for delivery of the McKalla Station Project by CapMetro and reimbursement by ATP; and

WHEREAS, pursuant to the terms of this interlocal agreement, ATP will reimburse CapMetro in the total amount of \$25,000,000.

NOW, THEREFORE, BE IT RESOLVED that the Capital Metropolitan Transportation Authority Board of Directors authorizes the President & CEO, or her designee, to finalize and execute an interlocal agreement with Austin Transit Partnership (ATP) for the reimbursement of certain capital costs for the McKalla Station MetroRail projects to CapMetro in the amount of \$25,000,000, as part of the Project Connect program.

\_\_\_\_\_  
**Secretary of the Board**  
**Becki Ross**

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



# McKalla Station Capital Interlocal Agreement (ILA)

Jacob Calhoun– Director, Transit System Enablement

**CapMetro**

# CapMetro-ATP Rail McKalla Station Capital ILA

- ILA between CapMetro and Austin Transit Partnership (ATP)
  - Reimbursement for Capital Costs
  - Up to \$25M
  - Replaces and supersedes Initial Funding Agreement specifically for McKalla Station Project
  - Costs incurred until September 30, 2024
    - Up to 12 month extension



# Funding and Reimbursement Commitments

- CapMetro
  - Funds costs related to planning, development, design, construction and equipping of the McKalla Station Project
- ATP
  - Reimburses CapMetro for McKalla Station capital costs up to \$25M



EVENT PLATFORM

## Board Action

- Approval of ILA (AI-2022-627) between CapMetro & ATP in which ATP reimburses CapMetro for capital costs incurred on the McKalla Station project for up to \$25M from effective date until September 30, 2024 with the option of a 12 month extension.



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

THIS INTERLOCAL COOPERATION AGREEMENT (this "**Agreement**") is dated and entered into as of [REDACTED], 2023 (the "**Effective Date**"), pursuant to Chapter 791 of the Texas Government Code, between AUSTIN TRANSIT PARTNERSHIP ("**ATP**"), a public nonprofit joint local government corporation formed pursuant to Chapter 431 of the Texas Transportation Code, and CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY ("**CapMetro**"), a transportation authority and political subdivision for the State of Texas organized under Chapter 451 of the Texas Transportation Code. Each of ATP and CapMetro are sometimes referred to herein individually as a "**Party**" and collectively, the "**Parties**". Capitalized terms used herein and not otherwise defined have the meaning given in the Joint Powers Agreement (defined below).

**BACKGROUND**

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

8. The Joint Powers Agreement and the JPA Supplement contemplate that the parties will enter into various supplemental agreements relating to the implementation of Project Connect.
9. The Parties desire to enter into this Agreement to supersede and replace the Initial Funding Agreement specifically and solely as to any funding provisions related to the McKalla Station Project and for the limited purposes of establishing the terms and conditions of payment by ATP and CapMetro in order to encourage transparency and financial accountability, and to establish the terms and conditions for the reimbursement by ATP for certain capital costs incurred by CapMetro for the planning, development, design, construction and equipping of the McKalla Station Project. This Agreement does not affect either of the Parties’ funding commitment in the Initial Funding Agreement other than those specifically identified in this Agreement.

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

## **Article 1**

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

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

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

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

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

oversight of the quality process to the CapMetro Vice President of Facilities and Construction or their delegee, and the CapMetro Board, as requested by CapMetro.

## **Article 2**

### **Funding and Reimbursement Commitments of the Parties**

**Section 2.1 CapMetro's Funding Obligation.** CapMetro will complete the McKalla Station Project. CapMetro shall fund costs relating to the planning, development, design, construction and equipping of the McKalla Station Project, including platforms, canopies, accessibility ramps, pedestrian crossings, utility relocations, and plaza area modifications (collectively, the "**McKalla Station Capital Costs**"). The McKalla Station Project has an estimated completion date of January 31, 2024.

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

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

## **Article 3**

### **Covenants and Obligations of CapMetro**

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

- (a) ensuring that all environmental permits, issues, and commitments are addressed in its project design,
- (b) addressing field changes for potential environmental impacts and obtaining any necessary environmental permits, issues, and commitments for such field changes,
- (c) selection of consultants, construction managers, engineers, architects, surveyors, testing engineers and laboratories, inspecting engineers, geotechnical engineers and scientists, suppliers, contractors, subcontractors, vendors, insurers, and other parties retained in connection with the design or construction of the McKalla Station Project,

- (d) commencement, sequencing and timing of design and construction activities and other work subject to the obligation to deliver the McKalla Station Project estimated to be substantially completed by January 31, 2024, other than any delays related to the acquisition of real property or an Excusable Delay/Force Majeure Event, as defined below, related to the McKalla Station Project or any delays caused by ATP,
- (e) design of the McKalla Station Project and all features thereof,
- (f) ensuring that all construction plans are signed, sealed and dated by a professional engineer duly licensed and registered by the Texas Board of Professional Engineers and Land Surveyors to engage in the practice of engineering in the State of Texas,
- (g) securing construction oversight and inspection, as well as materials testing, and for safety, safety inspections and any related certifications required by FTA,
- (h) quality control and quality assurance and the acceptance or rejection of work or other deliverables,
- (i) investigations and risk assessments, site safety and security,
- (j) negotiation, bidding, letting and management of contracts for the McKalla Station Project,
- (k) resolution of any disputes under such contracts,
- (l) testing and commissioning of the McKalla Station Project prior to commencement of revenue service,
- (m) public information requests and communications relating to the McKalla Station Project,
- (n) complying with applicable City of Austin utility requirements, and
- (o) operational readiness of the McKalla Station Project.

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

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

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

Project Elements	Substantial Completion and Acceptance
<u>Platforms and canopies</u>	final inspection by the construction inspectors from CapMetro's construction

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

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

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

#### **Article 4**

#### **Payment of ATP's Reimbursement Obligation**

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

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

**Section 4.4 [RESERVED.]**

**Section 4.5 [RESERVED]**

**Section 4.6 Subordination.** CapMetro acknowledges and agrees that notwithstanding any present or future appropriation of funds by ATP to fulfill its payment obligations hereunder, all payment

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

**Section 4.7 [RESERVED]**

**Section 4.7 [RESERVED.]**

**Section 4.8 Invoicing.** Within 30 days of the Effective Date of this Agreement, CapMetro shall submit to ATP an invoice that has expenditures summarized by each McKalla Station project element, incurred prior to the Effective Date. Thereafter, by the 15<sup>th</sup> of each month, CapMetro shall submit to ATP an invoice that has expenditures summarized for each McKalla Station project element and includes the appropriate ACH or wiring instructions (full Routing Number and last four digits of the Account Number). Along with the invoice, CapMetro shall provide to ATP supporting documentation that provides the following information for each transaction covered by the invoice:

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

**Section 4.9 True-Up.** On January 1, 2024 (“**True-Up Date**”), there shall be a true-up where ATP shall deliver to CapMetro additional payment (“**True-Up Payment**”) if total reimbursement as of the True-Up Date is less than the ATP Reimbursement Obligation. In such event, ATP shall deliver to CapMetro by January 31, 2024, the difference between the reimbursements delivered to CapMetro under this Agreement as of the True-Up Date and the ATP Reimbursement Obligation. For the avoidance of doubt, if the total reimbursement as of the True-Up Date is equal to the ATP Reimbursement Obligation, then ATP shall have no obligation to deliver a True-Up Payment to CapMetro. CapMetro shall deliver to ATP a notice informing ATP of the amount of the True-Up Payment it is obligated to deliver to CapMetro as of the True-Up Date, provided that if CapMetro does not deliver any such notice ATP shall not be relieved of its obligation to deliver True-Up Payment pursuant to this section.

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

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

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

## **Article 5**

### **Additional Agreements of the Parties**

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

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

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

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

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

(2) Automobile Liability

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

(3) Workers' Compensation

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

(4) Professional Liability (Errors and Omissions)

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

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

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

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

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

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

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

**Section 6.4 Event of Default.** A Party shall not be in breach or default under the terms of this Agreement for any act, omission, or failure to perform hereunder except as expressly provided in this Section.

- a. Prior to declaring an Event of Default against another Party hereunder, a Party must first deliver written notice to such other Party's Chief Financial Officer and General Counsel, specifying the events and circumstances regarding such alleged breach and specifying any action which the notifying party desires the receiving Party to take to remedy such alleged breach ("**Default Advisory Notice**"). The receiving Party shall work in good faith with the



notifying Party to resolve the matter within a reasonable amount of time but in any event no less than sixty (60) days.

- b. If after delivering a Default Advisory Notice, the alleged breach is not resolved to the reasonable satisfaction of the notifying Party within sixty (60) days, then the notifying Party may declare an Event of Default against the receiving Party by delivering written notice thereof to the defaulting Party (a "**Default Notice**"); provided, however, that no Party shall be authorized to deliver a Default Notice unless the governing body of the notifying Party has taken official action declaring the defaulting Party to be in material breach under the terms of this Agreement in an open meeting (an "**Event of Default**") and directing staff to deliver such Default Notice to the defaulting Party. After receiving a Default Notice, the defaulting Party shall have an additional sixty (60) days to cure such Event of Default or such additional amount time as may be reasonably necessary to cure such Event of Default, but only so long as such defaulting Party is diligently seeking to cure such Event of Default the ("**Cure Period**").
- c. **Remedies.** After providing a Default Advisory Notice and Default Notice and to the extent the material breach is not resolved during the Cure Period in accordance with this Article 6:
  - (1) CapMetro agrees that ATP may suspend payments to CapMetro under this Agreement if CapMetro has materially breached, failed to comply with, or violated the terms of this Agreement. ATP's rights under this Section 6.4(c) are without prejudice to its right to terminate and other remedies under this Agreement and at law.
  - (2) CapMetro reserves its right to pursue ATP for failure to reimburse CapMetro under this Agreement if ATP has materially breached, failed to comply with, or violated the terms of this Agreement in addition to any other remedies under this Agreement and at law.

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

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

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

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

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

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

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

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

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

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

**Section 7.8 Limitation on Liability.** To the extent allowed by Texas law, the Parties agree that each Party is responsible for its own proportionate share of any liability for the negligent or grossly negligent acts or omissions of its employees, agents, contractors or subcontractors arising out of, connected with, or as a consequence of its performance under this Agreement. **THE PARTIES ACKNOWLEDGE AND AGREE THAT THE AGGREGATE LIABILITY OF THE PARTIES FOR ANY CLAIMS ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF REIMBURSEMENT COSTS ACTUALLY OWED. FURTHERMORE, NEITHER PARTY SHALL BE LIABLE FOR PUNITIVE, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES IN ANY FORM OR AMOUNT TO THE OTHER PARTY FOR CLAIMS ARISING UNDER THIS AGREEMENT.**

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

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

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

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

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

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

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

Bryan Rivera (or their successor)  
SVP, Treasurer  
203 Colorado Street  
Austin, Texas 78701  
Email: [Bryan.Rivera@atptx.org](mailto: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](mailto:Brandon.Carr@atptx.org)

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

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

With additional copy to:

Brad Bowman (or their successor)  
Chief Counsel  
2910 E. 5th Street  
Austin, Texas 78702  
Email: [Brad.Bowman@capmetro.org](mailto:Brad.Bowman@capmetro.org)

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

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

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

**Section 7.16 Governing Law and Venue.** This Agreement is governed by the laws of the State of Texas and all obligations under this agreement are performable in Travis County, Texas. Venue for any cause of action arising under the terms of this Agreement shall be exclusively in the federal and district courts of Travis County, Texas.

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

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

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

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

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

*(Signature Page Follows)*

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

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

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

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

**AUSTIN TRANSIT PARTNERSHIP**

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

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

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Board of Directors

Item #: AI-2022-687

Agenda Date: 7/24/2023

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**SUBJECT:**

Approval of a resolution authorizing the President & CEO, or her designee, to finalize and execute an interlocal agreement with the City of Austin for a period of three (3) years, with an option to extend for an additional three years, for the reimbursement of CapMetro’s costs to design, manage, and construct transit facilities the City has identified as necessary for the mitigation of traffic impacts, for a total reimbursement to CapMetro not to exceed \$5,000,000.

**FISCAL IMPACT:**

This action reimburses Capital Metro for expenses incurred.

**STRATEGIC PLAN:**

**Strategic Goal Alignment:**

1. Customer       2. Community

**Strategic Objectives:**

- 1.1 Safe & Reliable Service       1.2 High Quality Customer Experience       1.3 Accessible System  
 2.1 Support Sustainable Regional Growth

**EXPLANATION OF STRATEGIC ALIGNMENT:** This agreement will permit the construction and improvement of multiple stops, stations, and MetroBike stations in the CapMetro network necessary to mitigate traffic impacts caused by identified development projects. The agreement obligates the City to reimburse CapMetro for its efforts to optimize bus stops, construct rail stations, construct rails with trails, and install new MetroBike stations, all of which enhance customer experience, support our growth, makes the system more accessible, and improves speed, reliability, and safety.

**BUSINESS CASE:** These funds will enable CapMetro to utilize developer fees, paid to the City of Austin for the purposes of mitigating traffic impacts, to expand and improve its existing footprint and better serve customers impacted by the identified developments.

**COMMITTEE RECOMMENDATION:** This item was presented and recommended for approval by the Operations, Planning and Safety Committee on July 12, 2023.



EXECUTIVE SUMMARY: Prior to the passage of the Street Impact Fee Ordinance in December of 2020, developers within the City of Austin were required to mitigate their projects' impact to adjacent traffic volumes, and many elected to pay fees in lieu of making the necessary improvements. These fees must fund the specific projects identified, including improvements to the adjacent transit network. This ILA permits CapMetro to design, manage, and construct these specific projects and to receive reimbursement from the City of Austin out of the fees collected.

DBE/SBE PARTICIPATION: Does not apply.

PROCUREMENT: Project design, management, and construction will be procured through existing contracts.

RESPONSIBLE DEPARTMENT: Capital Projects

**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

**AI-2023-687**

WHEREAS, the City of Austin (the "City") and the Capital Metropolitan Transportation Authority (CapMetro) recognize that transit investments are key to realizing the Austin Strategic Mobility Plan's goal that 16 percent of Austinites use transit to get to work by the year 2040; and

WHEREAS, under certain circumstances, the City has collected a fee from a development to mitigate the impact of development, rather than requiring the development to build the infrastructure necessary to mitigate the impact of the development on the transportation network (fee-in-lieu); and

WHEREAS, CapMetro is the sole transit provider for the City and under state law has the authority to determine routes and acquire, construct, develop, own, operate, and maintain the transit system; and

WHEREAS, to mitigate the impact of the developments for which applicants only paid fees-in-lieu, CapMetro is currently constructing or will construct the mitigation improvements; and

WHEREAS, CapMetro and the City seek to establish a mechanism through which the City can reimburse CapMetro for work CapMetro has performed, is performing, and will perform to implement transportation mitigation funded by new development in the form of fees-in-lieu collected for transit-related improvements; and

WHEREAS, the City has agreed to reimburse CapMetro up to \$5,000,000 for CapMetro's cost to design, manage, and construct projects associated with traffic mitigation identified as necessary by the City for the improvement of transit facilities.

NOW, THEREFORE, BE IT RESOLVED by the Capital Metropolitan Transportation Authority Board of Directors that the President & CEO, or her designee, is authorized to finalize and execute an interlocal agreement with the City of Austin for a period of three (3) years, with an option to extend for an additional three years, for the reimbursement of CapMetro's costs to design, manage, and construct transit facilities the City has identified as necessary for the mitigation of traffic impacts, for a total reimbursement to CapMetro not to exceed \$5,000,000.

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

\_\_\_\_\_  
**Secretary of the Board  
Becki Ross**

**CapMetro**

# Development Mitigation Interlocal Agreement

Presentation Review: June 28, 2023

# Agenda

Background

Development Mitigation Transit Project Types

Development Mitigation Transit Projects

# Background

- 2018: City of Austin uses rough proportionality to determine developer's impact to surrounding traffic. Developers pay a fee-in-lieu for those impacts.
- 2018 – 2020: City collects ~\$3.1M in transit specific mitigation fees.
- 2020: Street Impact Fee goes into effect.
- No current mechanism for the City of Austin to reimburse CapMetro for transit-related mitigations.
- This ILA allows CapMetro to utilize these funds.



# Development Mitigation Transit Project Types

- Bus Stop Improvements:
  - Relocate stops to protected or signalized crossing
  - Consolidate stops or construct new stops to meet spacing standards
  - Add benches or shelters to existing stops
- New MetroBike Stations
- CapMetro Rail Station Improvements
  - New Stations
  - Improved connections to CapMetro Rail Stations



# Development Mitigation Transit Projects

Development Site Plan #	Development Mitigation Transit Project	Projected Completion	Fee-In-Lieu (\$)
SP-2017-0166C	11th Street at Red River Street: Reconstruct stop ID 6382 and incorporate a bikeshare station.	Winter 2023	46,000
SP-2020-0419C	403 East Koenig Lane: Add amenities (Stop ID 6248, 5494), relocate stop ID 2428.	Summer 2023	69,000
SP-2020-0027C	6200 Middle Fiskville Road: Install bikeshare station.	Fall 2025	60,000
SP-2020-0147C	8th Street and Congress Boulevard: Bus stop improvement, add amenities.	Winter 2023	15,000
SP-2021-0076C	Airport Boulevard at Glissman Road: Relocate stops, add amenities.	Summer 2025	244,160
SP-2019-0512C.F3	Airport Boulevard at Goodwin Avenue: Relocate stops in coordination with the Corridor Program Office, add amenities.	Summer 2025	71,824
SP-2019-0512C.F2	Airport Boulevard at Oak Springs Drive: MetroRapid shelter for NB Pleasant Valley Route.	Winter 2023	150,000
SP-2019-0512C.F4	Airport Boulevard at Springdale Road: Relocate stops in coordination with the Corridor Program Office, add amenities.	Summer 2025	124,470
SP-2020-0257C	Berkman Drive at Briarcliff Boulevard: Relocate stops	Winter 2023	80,000



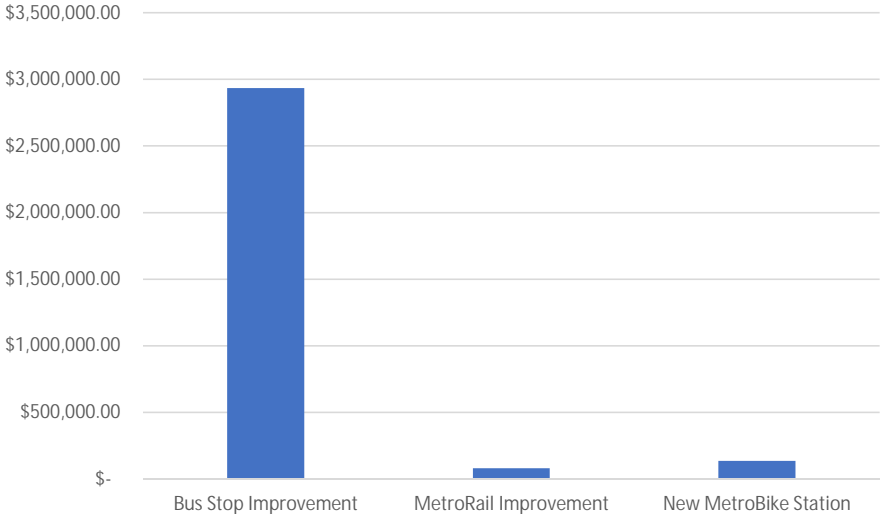
# Development Mitigation Transit Projects

Development Site Plan #	Development Mitigation Transit Project	Projected Completion	Fee-In-Lieu (\$)
SP-2019-0403C	Burnet Road at Greenlawn Parkway: Relocate stops, add amenities.	Summer 2023	44,890
SP-2020-0339C	FM 969 and Craigwood Drive: Add amenities	Winter 2023	265,791
SP-2019-0463C	Guadalupe /Lavaca Street: 3rd to 6th Streets: Reconstruct stops.	Fall 2025	128,961
SP-2020-0147C	Guadalupe /Lavaca Street: 3rd to 6th Streets: Reconstruct stops.	Fall 2025	55,600
SP-2020-0123C	Highland Mall Boulevard: Install bikeshare.	Fall 2025	51,600
SP-2019-0144C	Lamar Boulevard at 31st Street: Relocate stop.	Spring 2023	55,600
SP-2020-0144C	McKalla Station: New station and transit connectivity improvements.	Winter 2023	15,000
SP-2020-0258C	McKalla Station: New station and transit connectivity improvements.	Winter 2023	20,000
SP-2020-0331C	McKalla Station: New station and transit connectivity improvements.	Winter 2023	33,400
SP-2020-0058C	McKalla Station: New station and transit connectivity improvements.	Winter 2023	12,000
C14-2018-0026	River Park PUD: CapMetro Rapid Pleasant Valley (PV) stations along Pleasant Valley from Lakeshore Boulevard to Riverside Drive.	Winter 2023	1,606,000
		TOTAL	3,149,296.00

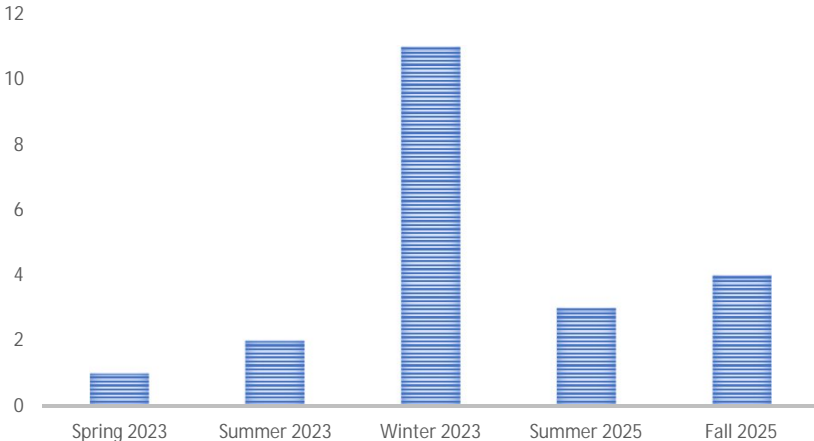


# More Info...

COST PER PROJECT TYPE



SCHEDULE OF IMPLEMENTATION



CapMetro

Thank you!

**INTERLOCAL COOPERATION AGREEMENT  
FOR  
TRANSPORTATION IMPACT MITIGATION FUNDING  
BETWEEN  
THE CITY OF AUSTIN  
AND  
THE CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

This Interlocal Cooperation Agreement (“Agreement”) is made by and between the City of Austin (“City”), a Texas home-rule city and municipal corporation, and The Capital Metropolitan Transportation Authority (“CapMetro”), a transportation authority and political subdivision for the State of Texas organized under Chapter 451 of the Texas Transportation Code (individually referred to as a “Party” and collectively referred to as the “Parties”), upon the premises and for the consideration stated herein.

WHEREAS, the City and CapMetro recognize that transit investments are key to realizing the Austin Strategic Mobility Plan’s goal that 16 percent of Austinites use transit to get to work by the year 2040; and

WHEREAS, under certain circumstances, the City has collected a fee from a development to mitigate the impact of development, rather than requiring the development to build the infrastructure necessary to mitigate the impact of the development on the transportation network (fee-in-lieu), such as those new developments set forth in “Exhibit A” attached hereto and incorporated herein; and

WHEREAS, CapMetro is the sole transit provider for the City and under state law has the authority to determine routes and acquire, construct, develop, own, operate, and maintain the transit system; and

WHEREAS, to mitigate the impact of the developments for which applicants only paid fees-in-lieu, CapMetro is currently constructing or will construct the mitigation improvements set forth in “Exhibit A”; and

WHEREAS, the Parties seek to establish a mechanism through which the City can reimburse CapMetro for work CapMetro has performed, is performing, and will perform to implement transportation mitigation funded by new development in the form of fees-in-lieu collected for transit-related improvements;

NOW, THEREFORE, BE IT RESOLVED, the Parties therefore hereby agree as follows:

**1) TERM.**

(a) The initial term of this Agreement is three (3) years from the date of the last Party to sign

("Effective Date"), or when earlier terminated in accordance with the terms of this Agreement. Following this initial term, this Agreement may be renewed for an additional three- (3-) year term upon written approval by the City Manager and the CapMetro President and CEO, or their designees.

- (b) This Agreement may be terminated by the written agreement of both Parties. If either Party is in default of its material obligations under this Agreement and fails to remedy such default within sixty (60) days after receipt of written notice, this Agreement may be terminated at the option of the Party not in default upon expiration of the sixty (60) day period. Termination or cancellation of this Agreement will not affect the rights and obligations of the Parties accrued prior to termination.
- (c) It is the intent and understanding of the Parties that the obligations of each Party under this Agreement shall remain effective only so long as and provided that each Party has fully appropriated funds for performing such obligations for the Party's current fiscal year. If for any fiscal year that any Party's funds are not appropriated for such Party's performance of its obligations under this Agreement, this Agreement shall become void and such Party shall promptly give notice to the other Parties of the non-appropriation of funds.

## 2) **SCOPE.**

The scope of this Agreement is for the reimbursement to CapMetro for its costs to design, manage, and construct projects associated with traffic mitigation identified as necessary by the City during the development case review process (each, a "Project"). Those Projects can include, but are not limited to, sidewalk construction, accessibility improvements, bus stops, markings, signage, pavement markings, pedestrian safety improvements, bike racks and other bicycle facilities, and other traffic devices and improvements within City rights-of-way, in CapMetro easements, or on CapMetro property (collectively "Improvements"). Reimbursement by the City for Projects identified in "Exhibit A", including those commenced prior to this Agreement but not yet complete, shall be in accordance with Section 3 of this Agreement. Notwithstanding in this Agreement to the contrary, CapMetro and the City, upon written agreement by the City Manager and the CapMetro President and CEO or their designees, may jointly amend "Exhibit A" to add a Project or Projects to the scope, provided such additions do not cause the total reimbursement amount to exceed the City's not-to-exceed obligation of this Agreement. The identification of additional Projects, and the scope and cost of each Project, is to be determined jointly by the City and CapMetro, but Projects that conform to the guidelines set forth in Section 6 of the City of Austin Transportation Criteria Manual, or other applicable standards agreed upon by the parties in writing, shall be reimbursable under this Agreement. Funds issued under this Agreement will not be used for any aspect of on-going operating costs or maintenance, including a prohibition on the purchase of vehicles

associated with operations or maintenance.

**3) REIMBURSEMENT.**

Before receiving reimbursement for any Project identified in “Exhibit A”, CapMetro will submit to the City an accounting of expenditures showing the amount spent for that identified Project. For any Improvements that are constructed within the City’s right-of-way, acceptance by the City must occur before reimbursement will be made by the City. The reimbursement amount will not exceed the dollar amount collected as fee-in-lieu for each Project.

**4) OBLIGATIONS.**

City will fund and reimburse CapMetro for the construction, development, or installation of Improvements under this Agreement in an amount not to exceed five million dollars (\$5,000,000.00). If additional opportunities arise, this Agreement may be amended per amendment terms.

**5) PROJECT DESIGN, COORDINATION, AND PERMITTING.**

Except as expressly stated in this Agreement, CapMetro shall be responsible for surveying, and for the management of the design of any Project subject to this Agreement.

- (a) CapMetro will design and plan each Project in a manner consistent with the City’s construction standards and traffic safety standards in effect on the Effective Date of this Agreement, applicable Texas Accessibility Standards, applicable provisions of the Americans with Disabilities Act, and other applicable law.
- (b) CapMetro will construct all Improvements related to this Agreement within City rights-of-way, in CapMetro easements, or on CapMetro property. The City has sole discretion regarding the placement of Improvements within City rights-of-way and shall exercise its approval authority in accordance with existing agreements between the Parties.
- (c) Project plans and specifications shall be subject to the City’s review in accordance with City Land Development Code, and the City shall endeavor to review and approve, approve with conditions, or disapprove any Project plans and specifications within thirty (30) days of CapMetro’s submittal of said plans and specifications to the City and in accordance with applicable state law.
- (d) Sets of plans, as-built drawings, and specifications required to be provided to the City under this Agreement shall be delivered to the City as complete sets electronic drawings. The electronic drawings shall be in a program format agreed upon by the Parties.

**6) CONSTRUCTION AND INSTALLATION.**

CapMetro shall be responsible for the letting, procurement, and management of the construction and installation of the Improvements related to this Agreement. CapMetro shall pay, in full, all persons who perform labor or furnish materials on the Improvements in accordance with applicable law.

**7) OPERATIONS & MAINTENANCE**

Each party will be responsible for the operation and maintenance of its own assets.

**8) COMMUNICATION.**

(a) Dispute Resolution. If a disagreement between the Parties arises regarding a Project or any other requirement or provision of this Agreement, and the disagreement is not resolved among the City and CapMetro representatives, the matter shall be referred as soon as possible to the City Manager, or designee, and CapMetro's CEO, or designee, for resolution.

(b) General. Should any dispute arise between the Parties to this Agreement, then the City and CapMetro agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either Party may make a written request for a meeting between representatives of each Party within ten (10) days after receipt of the request or such later period as agreed by the Parties. Each Party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of such a meeting and any subsequent meeting with respect to such a dispute shall be to attempt in good faith to negotiate a resolution of the dispute. If, within twenty (20) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, the Parties will, upon written notice of one Party to the other Party, given within ten (10) days following the expiration of such twenty (20) day period (a "Request for Mediation"), proceed directly to non-binding mediation as described below.

(c) Mediation. If the efforts to resolve such dispute through negotiation fail within the period set forth in the foregoing section, or the City and CapMetro each waive the negotiation process, the Parties may select, within twenty (20) days after the date of the Request for Mediation or mutual waiver of negotiation, as applicable, a mediator trained in mediation skills to assist with resolution of the dispute. The Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the Parties fail to agree on a mediator within twenty (20) days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute

Resolution Center. The mediation shall take place in Austin, Texas. The Parties agree to participate in mediation in good faith for up to thirty (30) days from the date of the first mediation session. The Parties shall share the costs of the mediator equally. In the absence of a separate written agreement of the Parties to the contrary, the results of this mediation shall not be binding on either of the Parties.

9) **MISCELLANEOUS.**

- (a) Merger. This writing constitutes the entire agreement between the City and CapMetro concerning the subject matter of this Agreement. No other terms and conditions are applicable, unless amended and agreed to by both parties. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the Parties.
- (b) Force Majeure. In the event that the performance by the City or CapMetro of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act of conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.
- (c) Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY: City of Austin, Department of Transportation & Public Works  
Attn: Richard Mendoza, Interim Director of Transportation & Public Works  
901 S. MoPac Expy, Building 5, Suite 300  
Austin, Texas 78746

WITH COPY TO: Anne Morgan, City Attorney  
City of Austin Law Department  
301 W. 2nd Street  
Austin, Texas 78701

CAPMETRO: Dottie Watkins  
President and CEO  
Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

WITH A COPY TO: Chief Counsel

Capital Metropolitan Transportation Authority  
700 Lavaca Street, Suite 1400  
Austin, Texas 78701

- (d) Other Instruments. The Parties covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (e) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (f) Responsibility for Liability. Each Party acknowledges that the other Party is a governmental entity with sovereign immunity, and this Agreement in no way is intended to waive any claim thereto. To the extent allowed by Texas law, the City and CapMetro agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions. In addition, the design consultant and construction contractor for any Improvements shall be required to provide workers compensation insurance, auto liability and general liability insurance in the standard amounts required by the City.
- (g) Recitals. The parties agree that the recitals set forth above in this Agreement are true and correct, and the representations, covenants and recitations set forth therein are made a part hereof for all purposes.
- (h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- (i) Venue. The venue of any suit brought for any breach of this Agreement is fixed in any court of competent jurisdiction of Travis County, Texas.
- (j) Time of the Essence. Time is of the essence in the performance of this Agreement and all-time limits shall be strictly construed and rigidly enforced. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period or by a particular date that ends or occurs on a non-business day (i.e., Saturday, Sunday or a holiday recognized by the U.S. federal government or the State of Texas), then such period or date will be extended until the immediately following business day.
- (k) Authority. Each party certifies that this Agreement has been authorized by its governing body in accordance with Chapter 791 of the Texas Government Code.



- (l) No Third-Party Beneficiaries. The Parties agree that the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and is made solely and specifically for their benefit. No other person shall have any rights, interest or claims under this Agreement.
- (m) Amendments. Except for an amendment to add Project(s) to the scope set forth in “Exhibit A” by mutual agreement, in accordance with Section 2 of this Agreement, any amendments to this Agreement must be approved by each Party’s governing body.
- (n) Counterparts. This Agreement may be executed in multiple counterparts which, taken together, will collectively constitute a single agreement. The City shall retain all counterparts and file them with the City Clerk of the City of Austin. In making proof of such Agreement, any Party may obtain certified copies of all counter parts from the City Clerk. It will not be necessary to provide original counterparts.
- (o) Texas Public Information Act. It will be the responsibility of each Party to comply with provisions of Chapter 552, Texas Government Code, (“Texas Public Information Act”) and the Attorney General Opinions issued under that statute. Neither Party is authorized to receive requests or take any other action under the Texas Public Information Act on behalf of the other Party. Responses to requests for confidential information shall be handled in accordance with the provisions of the Texas Public Information Act. The provisions of this section survive the termination or expiration of this Agreement.

**10) EXHIBITS.**

“**Exhibit A**” – Transit-Related Transportation Impact Mitigation Projects

**CITY OF AUSTIN, TEXAS**

By: \_\_\_\_\_

Robert Goode  
Interim Assistant City Manager

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

Approved as to form:

\_\_\_\_\_  
Angela C. Rodriguez  
Assistant City Attorney

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_

Dottie Watkins, President & CEO

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

Approved as to form:

\_\_\_\_\_  
James C. Kachelmeyer  
Associate Counsel

**Exhibit A – Transit-Related Transportation Impact Mitigation Projects**

No.	Development Site Plan #	Project	Projected Completion	Fee-In-Lieu (\$)
1	SP-2017-0166C	11th Street at Red River Street: Reconstruct stop ID 6382 far-side of Red River and incorporate a bikeshare station.	Winter 2023	46,000.00
2	SP-2020-0419C	403 East Koenig Lane: Install bench at 6248. Install bench and shelter at 5494. Relocate 2428 to far-side of Avenue F.	Summer 2023	69,000.00
3	SP-2020-0027C	6200 Middle Fiskville Road: Installation of a MetroBike station near Wilhelmina Delco Drive and Middle Fiskville Road. MetroBike is currently in RFP procurement phase. Once expansion has begun, bikes and docks will be purchased for this location.	Fall 2025	60,000.00
4	SP-2020-0147C	8th Street and Congress Boulevard: Extend curb at stop ID 5937 to accommodate rear door boarding/alighting. May include impacts to adjacent inlet.	Winter 2023	15,000.00
5	SP-2021-0076C	Airport Boulevard at Glissman Road: Relocate stops (3259 and 3303) to far-side in coordination with the Corridor Program Office. Provide bus stop amenities.	Summer 2025	244,160.00
6	SP-2019-0512C.F3	Airport Boulevard at Goodwin Avenue: Relocate stops (3300 and 3261) to far-side in coordination with the Corridor Program Office. Provide bus stop amenities.	Summer 2025	71,824.00
7	SP-2019-0512C.F2	Airport Boulevard at Oak Springs Drive: MetroRapid shelter for NB Pleasant Valley Route.	Winter 2023	150,000.00
8	SP-2019-0512C.F4	Airport Boulevard at Springdale Road: Relocate stops (3260 and 5100) to far-side in coordination with the Corridor Program Office. Provide bus stop amenities.	Summer 2025	124,470.00
9	SP-2020-0257C	Berkman Drive at Briarcliff Boulevard: City of Austin pursuing Active Transportation Planning efforts along the corridor. Relocate Stop ID 1398, 5781, and new SB stop.	Winter 2023	80,000.00
10	SP-2019-0403C	Burnet Road at Greenlawn Parkway: Relocate stops (827 and 5745) closer to signal in coordination with the Corridor Program Office. Provide bus stop amenities.	Summer 2023	44,890.00
11	SP-2020-0339C	FM 969 and Craigwood Drive: Add amenities to Stop IDs 5914 and 5915.	Winter 2023	265,791.00
12	SP-2019-0463C	Guadalupe Street/Lavaca Street between 3rd and 6th Streets: Incorporate at least five floating stops on these corridors.	Fall 2025	128,961.00
13	SP-2020-0147C	Guadalupe Street/Lavaca Street between 3rd and 6th Streets: Incorporate at least two floating stops on these corridors.	Fall 2025	55,600.00

<b>14</b>	SP-2020-0123C	Highland Mall Boulevard: Installation of a MetroBike station with sixteen (16) bikes/docks. MetroBike is currently in RFP procurement phase. Once expansion has begun, bikes and docks will be purchased for this location.	Fall 2025	51,600.00
<b>15</b>	SP-2019-0144C	Lamar Boulevard at 31st Street: Relocate stop ID 4125 to the PHB. Stop may have to be located near-side due to narrow sidewalk far-side.	Spring 2023	55,600.00
<b>16</b>	SP-2020-0144C	McKalla Station: MetroRail and transit connectivity improvements including station design and construction and trail and sidewalk connections.	Winter 2023	15,000.00
<b>17</b>	SP-2020-0258C	McKalla Station: MetroRail and transit connectivity improvements including station design and construction and trail and sidewalk connections.	Winter 2023	20,000.00
<b>18</b>	SP-2020-0331C	McKalla Station: MetroRail and transit connectivity improvements including station design and construction and trail and sidewalk connections.	Winter 2023	33,400.00
<b>19</b>	SP-2020-0058C	McKalla Station: MetroRail and transit connectivity improvements including trail and sidewalk connections.	Winter 2023	12,000.00
<b>20</b>	C14-2018-0026	River Park PUD: MetroRapid Pleasant Valley (PV) stations along Pleasant Valley from Lakeshore Boulevard to Riverside Drive are in design. Will seek reimbursement upon construction.	Winter 2023	1,606,000.00
			<b>TOTAL</b>	<b>3,149,296.00</b>

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Board of Directors

Item #: AI-2023-838

Agenda Date: 7/24/2023

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**SUBJECT:**

Approval of a resolution appointing John Langmore to serve as the Community Expert Director - Finance on the Austin Transit Partnership Board of Directors in a term that shall run through January 2025.

**FISCAL IMPACT:**

This action has no fiscal impact.

**STRATEGIC PLAN:**

Strategic Goal Alignment:

- 1. Customer
- 2. Community
- 3. Workforce
- 4. Organizational Effectiveness

Strategic Objectives:

- 1.1 Safe & Reliable Service
- 1.2 High Quality Customer Experience
- 1.3 Accessible System
- 2.1 Support Sustainable Regional Growth
- 2.2 Become a Carbon Neutral Agency
- 2.3 Responsive to Community and Customer Needs
- 2.4 Regional Leader in Transit Planning
- 3.1 Diversity of Staff
- 3.2 Employer of Choice
- 3.3 Expand Highly Skilled Workforce
- 4.1 Fiscally Responsible and Transparent
- 4.2 Culture of Safety
- 4.3 State of Good Repair

**EXPLANATION OF STRATEGIC ALIGNMENT:** Appointment of a Community Expert Director with a background in Finance helps to ensure financial stability and transparency for the Project Connect program of projects, which CapMetro will operate once constructed.

**BUSINESS CASE:** The CapMetro Board is required to appoint Community Expert Directors to the Austin Transit Partnership Board, as part of a joint appointment with the Austin City Council.

**COMMITTEE RECOMMENDATION:** The joint nominating committee of the CapMetro Board and Austin City Council have met, discussed and agreed in their recommendation of John Langmore. This item will be presented at the City Council meeting on July 20, and CapMetro Board meeting on July 24, 2023.

**EXECUTIVE SUMMARY:** This item appoints John Langmore, to serve on the Austin Transit Partnership (ATP)

Board of Directors as one of three Community Expert Directors jointly appointed by the CapMetro Board and Austin City Council. The CapMetro Board and City Council are required to jointly appoint Community Expert Directors to the ATP Board following a process prescribed in the ATP Articles of Incorporation (Articles). The Austin City Council considered this appointment at their meeting on July 20, 2023.

A vacancy on the ATP Board was created when former ATP Board Member Mr. Tony Elkins announced his resignation from the Board effective April 30, 2023. The vacancy is the Community Expert Director representing the Finance field. As prescribed in the Articles, a Nominating Committee consisting of the Chairs of the two CapMetro Board Committees, and the Chairs of the Austin City Council Audit & Finance and Mobility Committees, met to review applicants to fill the vacancy. A letter from the Nominating Committee to the Austin City Council and CapMetro Board names Mr. Langmore as their recommended candidate.

If confirmed by both the Austin City Council and the CapMetro Board, the Community Expert Director vacancy will be filled and the successful applicant will be seated at the August 2023 meeting of the ATP Board. The candidate will complete the remainder of Mr. Elkin's term on the ATP Board, serving through January 2025. More information about the application and Nominating Committee process can be found at [atptx.org/atp-leadership/atp-board/board-vacancy](http://atptx.org/atp-leadership/atp-board/board-vacancy). If this recommended candidate is not approved, the item would be sent to the nominating committee for further consideration.

DBE/SBE PARTICIPATION: Does not apply.

PROCUREMENT: Does not apply.

RESPONSIBLE DEPARTMENT: Executive Department

**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS  
COUNTY OF TRAVIS**

**AI-2023-838**

WHEREAS, the City of Austin and CapMetro jointly created the Austin Transit Partnership (ATP) to implement the Project Connect transit expansion program; and

WHEREAS, the ATP Articles of Incorporation (the Articles) require the CapMetro Board and Austin City Council to approve candidates to serve as Community Expert Directors on the ATP Board of Directors, following a process outlined in the Articles; and

WHEREAS, a Nominating Committee of the CapMetro Board and Austin City Council was formed in accordance with the Articles, and the Nominating Committee has identified Mr. John Langmore as the recommended candidate to fill the Community Expert Director - Finance vacancy on the ATP Board of Directors;

NOW, THEREFORE, BE IT RESOLVED the Capital Metro Board of Directors appoints John Langmore to serve as the Community Expert Director - Finance on the Austin Transit Partnership Board of Directors in a term that shall run through January 2025.

BE IT FURTHER RESOLVED, this appointment is contingent on approval by both the Capital Metro Board of Directors and Austin City Council, as prescribed in the Austin Transit Partnership Articles of Incorporation.

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

\_\_\_\_\_  
**Secretary of the Board  
Becki Ross**



**TO:** Capital Metro Board of Directors  
Austin City Council

**FROM:** ATP Board Vacancy Nominating Committee

**DATE:** June 14, 2023

**RE:** Recommendation to fill the vacancy on the ATP Board

Dear City Council and CapMetro Board Colleagues,

We are pleased to inform you of our recommended candidate to serve on the Austin Transit Partnership (ATP) Board of Directors. As you know, a nominating committee was formed, as described in ATP's governing documents, to recommend a candidate to fill a current vacancy on the ATP Board. ATP is responsible for implementing Project Connect, in partnership and collaboration with the City of Austin and CapMetro.

We are pleased today to recommend the CapMetro Board and Austin City Council appoint John Langmore to serve on the ATP Board of Directors.

Mr. Langmore is a graduate of the University of Texas at Austin with an MBA and a law degree from the School of Law. After working in a law firm, Mr. Langmore served as in-house counsel with Caterpillar, and later as a consultant on several multi hundred-million-dollar transportation projects across the U.S. Mr. Langmore has also served on the Boards of Capital Metro and the Central Texas Regional Mobility Authority as well as the 2017 and 2023 Travis County Bond Advisory Committees.

The vacancy application opened in May and remained open for several weeks. Staff from the City, CapMetro and ATP worked to share the application broadly via a variety of communications methods and community engagement networks. The nominating committee received three applications from passionate and qualified members of this community who are eager to serve in the implementation of Project Connect. More about the process and requirements is available online here: <https://atptx.org/atp-leadership/atp-board/board-vacancy>

The candidate to fill the vacancy must be approved by the Austin City Council and CapMetro Board. The Austin City Council will consider this appointment during their regular meeting on July 20, 2023, and the CapMetro Board will consider this during their meeting on July 24, 2023. The appointee will be sworn in during the ATP Board meeting in August 2023.



The nominating committee wants to thank the community for supporting this process and helping to share this valuable opportunity with their networks, as well as the staff from each of the Project Connect partners who provided administrative support. Additionally, we want to thank our colleagues for their trust in our work on the nominating committee.

Finally, we want to thank the individuals who applied for this opportunity, and we want to encourage them to stay eager and engaged in the Project Connect transit expansion program.

Regards,



Paige Ellis, Mayor Pro Tem and Chair, Mobility Committee, Austin City Council



William M. Harriss, Chair, Finance, Audit and Administration Committee, Capital Metro Board of Directors



Leslie Pool, Council Member and Vice Chair, Audit and Finance Committee, Austin City Council



Eric Stratton, Chair, Operations, Planning and Safety Committee, Capital Metro Board of Directors



# Capital Metropolitan Transportation Authority

2910 East 5th Street  
Austin, TX 78702

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Board of Directors

**Item #:** AI-2023-840

**Agenda Date:** 7/24/2023

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FY2024 Budget Proposal

**CapMetro**

# FY2024 Budget Proposal

Board of Directors 7/24/2023

## Discussion Outline

- Budget Development Calendar
- Budget Overview
- Operating Budget Highlights
- Capital Improvement Plan Update

# FY2024 Budget Development Calendar



- Feb 7 Operating and Capital Budget kick-off meeting with departments
- Apr 14 Capital and Operating Budget requests received from departments
- May 10 Board Committees review proposed budget calendar
- Jun 7 Initial review with Access Advisory Committee
- Jun 14 Initial review with Customer Satisfaction Advisory Committee
- Jun 14 Board Committees initial review and discussion
- Jun 23 Initial review with Public Safety Advisory Committee
- Jul 24 Budget proposal presented to Board of Directors

# FY2024 Budget Community Engagement

- Aug 2 Presentation to Access Advisory Committee
- Aug 9 Presentation to Customer Satisfaction Advisory Committee
- Aug 14 Update Board Committees
- Aug 21-25 Budget public outreach and webinar
- Aug 25 Presentation to Public Safety Advisory Committee
- Aug 25 Proposed budget document is published online
- Sep 13 Update Board Committees
- Sep 13 Public hearing on proposed budget and capital improvement plan
- Sep 25 Board of Directors considers budget proposal for adoption

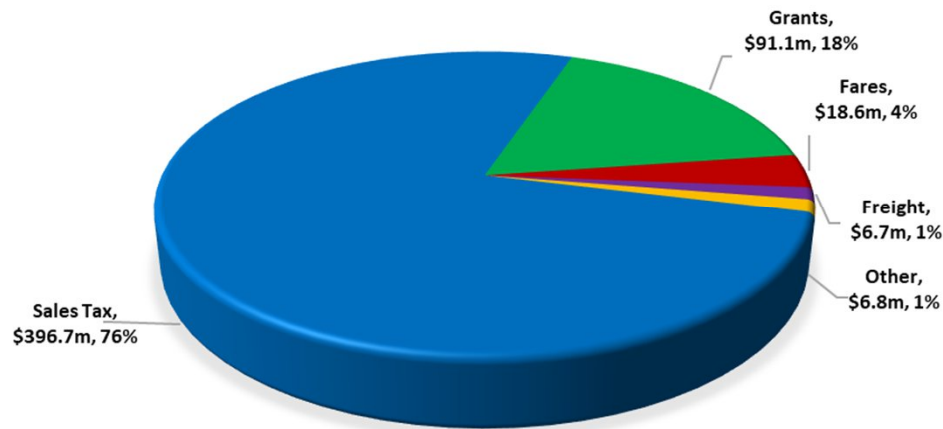
# Proposed Budget Overview



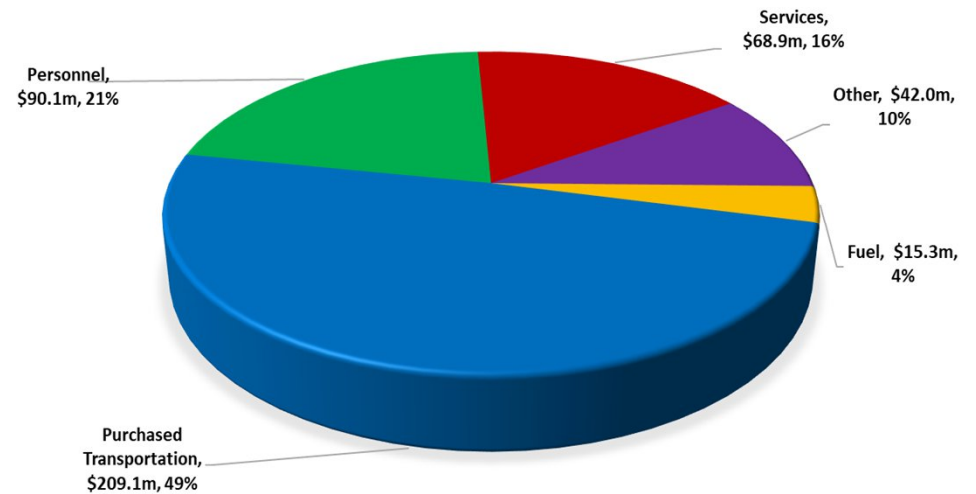
- Proposed budget is structurally sound and balanced
  - Ongoing revenue is sufficient to fund operations and provide funds for capital needs
- Meets operating reserve requirements
  - Statutory operating and budget stabilization reserves are fully funded
- Projected sales tax growth of 4.5% for Fiscal Year 2024
  - Steady growth in Fiscal Year 2023
- Service funding based on August Service Plan changes
- Investment in customer-focused transit infrastructure projects

# FY2024 Operating Budget Summary

**FY2024 Operating Revenue**  
\$520.0 Million



**FY2024 Operating Expenses**  
\$425.4 Million



- Heavily dependent on sales tax revenue and grants for annual funding
- Grants include 5307 formula funds and operating contributions from the Austin Transit Partnership

- Majority of the budget pays for contracted transit services
- Includes funding for Project Connect operations, maintenance and support services
- Fuel per gallon increase of 8% from FY2023





**METRO**

# FY2024 BUDGET OPERATING COSTS

# Operating Cost Drivers



- Service levels based on August Service Plan changes
  - Purchased transportation costs are developed using budgeted hours and contractual rates
- Fuel prices remain stable over the next fiscal year with hedging in place
  - Diesel estimate of \$2.60 per gallon, net of hedging activities
  - Fuel hedge is 75% of projected fuel usage
- Continuation and expansion of Pickup innovative mobility zones
- Performance-based average annualized pay increase for employees
- Strategic plan initiatives considered in budget preparation

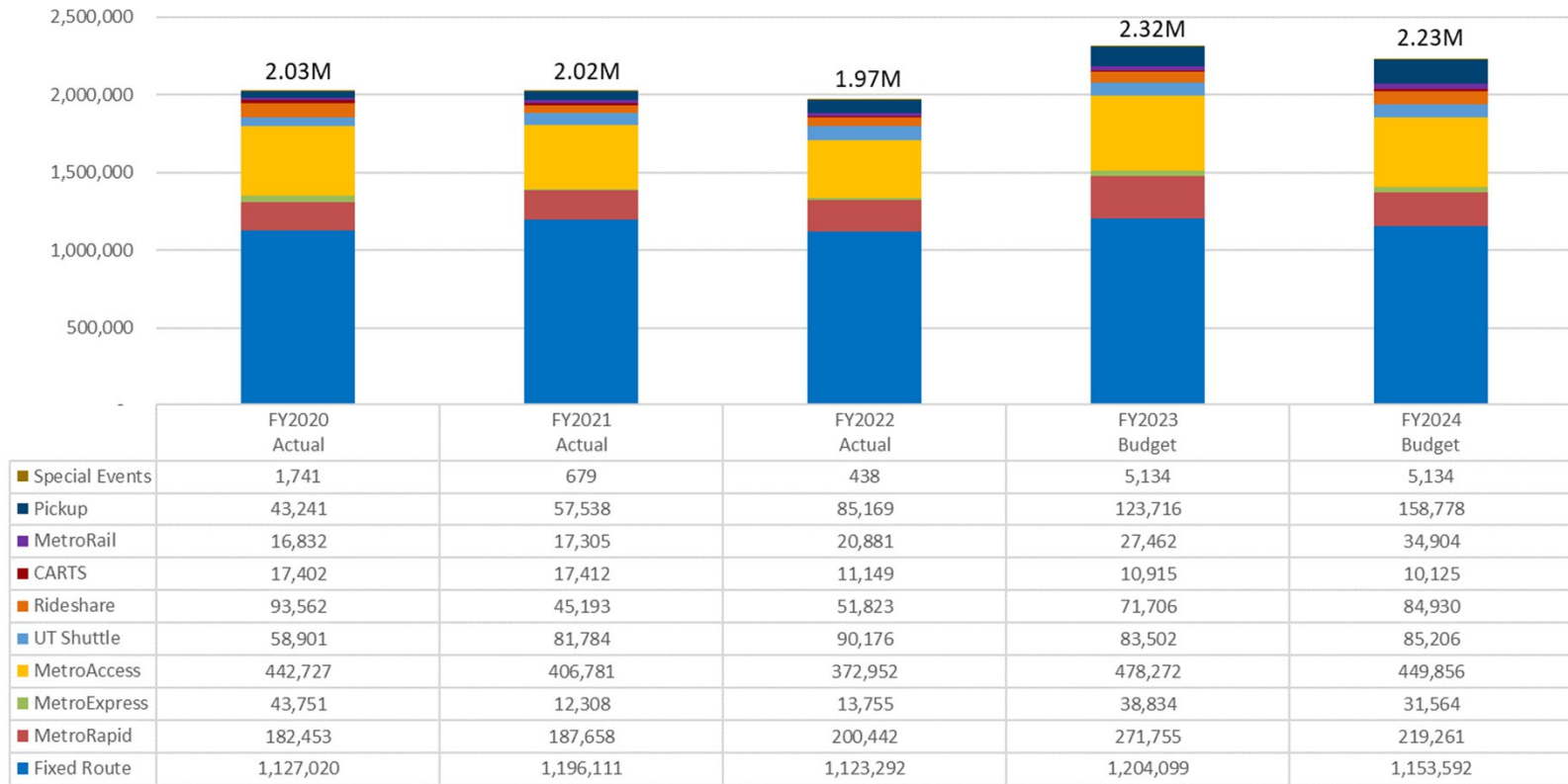
# Operating Expense Comparison

\$' Million Expense Category	FY2022 Actual	FY2023 Forecast	FY2023 Budget	FY2024 Budget	\$ Increase / (Decrease)
Salaries and Benefits	\$62.9	\$83.2	\$84.0	\$90.1	\$6.0
Professional Services	38.6	46.8	60.5	68.9	8.4
Materials and Supplies	7.0	17.4	18.7	17.6	(1.1)
Fuel and Fluids	10.9	16.4	16.4	15.3	(1.2)
Utilities	3.5	4.5	4.3	5.4	1.2
Purchased Transportation	166.3	200.6	182.8	209.1	26.3
Lease/Rentals	2.3	6.3	6.4	6.2	(.2)
Other Expenses	4.3	7.6	14.3	12.7	(1.5)
<b>Total Operating Expense</b>	<b>\$295.8</b>	<b>\$382.9</b>	<b>\$387.5</b>	<b>\$425.4</b>	<b>\$37.9</b>

- Salaries and Benefits – Includes merit increase, return of seconded personnel, Transit Police and additional headcount
- Professional Services – Bus repair and maintenance, security services, Information Technology software and hardware
- Purchased Transportation – Bus pass-through expense and additional Rail and Pickup hours

# Service Levels

Vehicle Hours







**METRO**

# FY2024 BUDGET REVENUES

# Operating Revenue

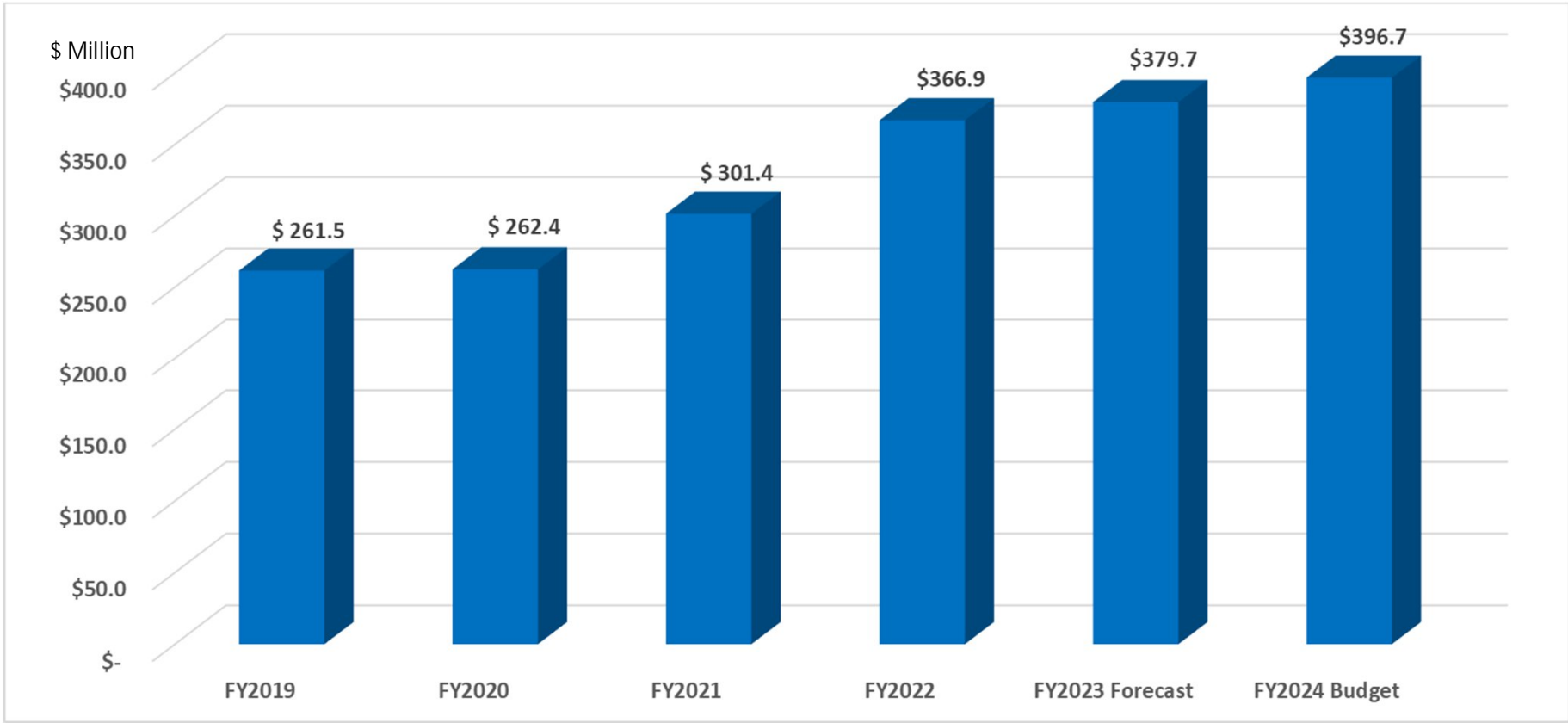
- Fare Revenue
  - Fare revenue based on continuing return of ridership in FY2024
- Federal Grants
  - Approximately \$44.2 million annually in Section 5307 funds
    - Carryover of FY2023 Section 5307 funds into FY2024
- Freight Railroad Revenue
  - Mainline revenue on target with FY2023 Budget of \$6.8 million
  - Section 45G Railroad Track Maintenance Tax Credit of \$544 thousand

# Revenue Comparison

\$' Million Revenue Category	FY2022 Actual	FY2023 Forecast	FY2023 Budget	FY2024 Budget	\$ Increase / (Decrease)
Sales Tax	\$366.9	\$379.7	\$371.0	\$396.7	\$25.7
Passenger Revenue	15.2	17.2	17.6	18.6	1.0
Freight Railroad Revenue	6.8	6.7	6.8	6.7	(.1)
Other Revenue	6.9	5.0	7.1	6.8	(.3)
Operating Contributions and Grants	214.3	85.9	132.9	91.1	(41.8)
Capital Grants and Contributions	8.3	31.8	88.6	77.4	(11.2)
Project Connect Capital Contributions	44.2	98.9	157.7	97.6	(60.1)
<b>Total Revenue</b>	<b>\$662.5</b>	<b>\$625.0</b>	<b>\$781.9</b>	<b>\$695.0</b>	<b>\$(86.9)</b>

- Sales Tax – Projected 4.5% increase for Fiscal Year 2024 Budget over Fiscal Year 2023 Forecast
- Operating Grants – FY2024 includes Section 5307 funding and operating contributions from Austin Transit Partnership
- Capital Grants and Contributions – FY2024 includes MetroRapid Expo and Pleasant Valley Small Start grants, electric vehicle grants, CRISI bridge replacement grant and 5339a and 5337 formula grants

# Sales Tax Revenue





# Ridership Summary

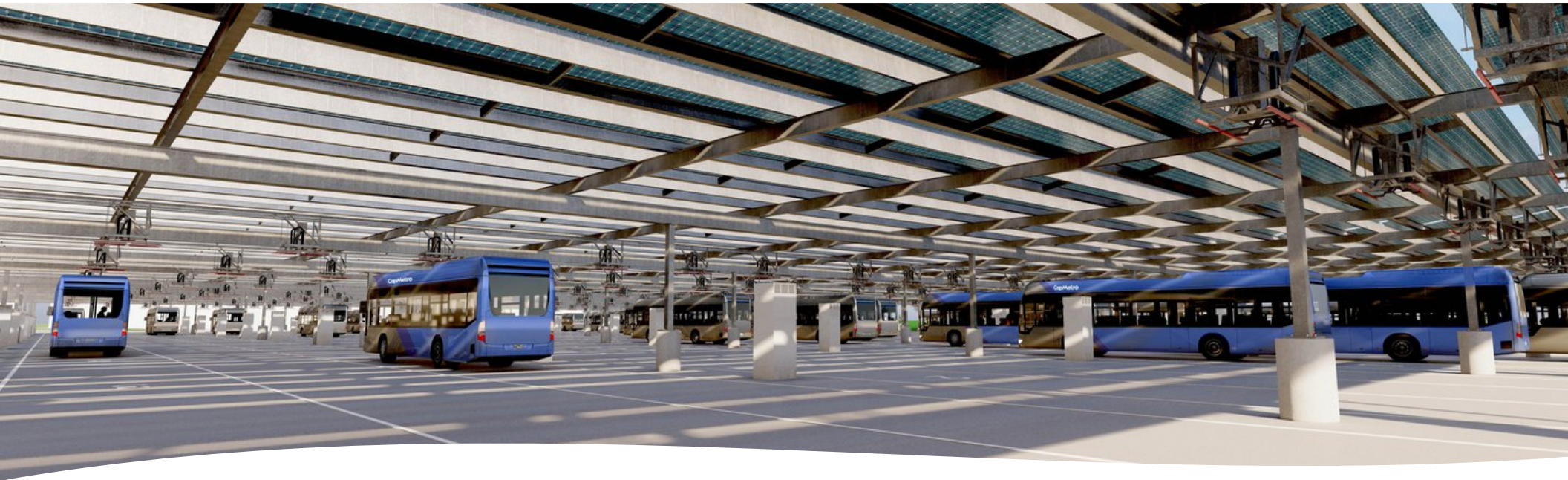
Ridership Summary	FY2020 Actual	FY2021 Actual	FY2022 Actual	FY2023 Budget	FY2024 Budget
CapMetroBus	12,343,286	12,867,345	14,961,223	16,276,239	17,784,266
CapMetroRapid	2,875,021	2,532,239	3,052,354	4,088,460	3,947,805
UT Shuttle	1,028,068	413,684	849,786	1,139,715	1,136,269
CapMetroExpress	393,156	39,545	88,573	197,768	252,276
Special Events	48,873	3,665	4,580	17,986	17,986
CapMetroRail	325,669	256,983	473,312	534,725	727,830
CapMetroAccess	370,393	395,007	527,142	646,512	627,669
Pickup	57,940	93,516	224,850	258,478	327,780
MetroRideShare	341,961	235,438	281,009	333,300	333,300
CARTS	34,874	23,157	19,765	25,912	28,117
<b>Total Ridership</b>	<b>17,819,241</b>	<b>16,860,579</b>	<b>20,482,594</b>	<b>23,519,095</b>	<b>25,183,298</b>



**METRO**

**FY2024 CAPITAL BUDGET**





## Capital Budget Highlights

- Electric bus purchases and infrastructure construction
- Bus stop enhancements and improvements
- Bus operations and maintenance facility
- Demand response operations and maintenance facility
- MetroBike station expansion and replacements



## Project Connect Highlights

- MetroRapid Lines – vehicles, stations and electric charging
- McKalla Station at Q2 Stadium
- Continued and new Pickup zones operations
- Master facility plan expansion
- Organizational development and operational readiness
- Continued interlocal agreements for capital projects, operations, maintenance and support services



# Proposed 5-Year Capital Plan

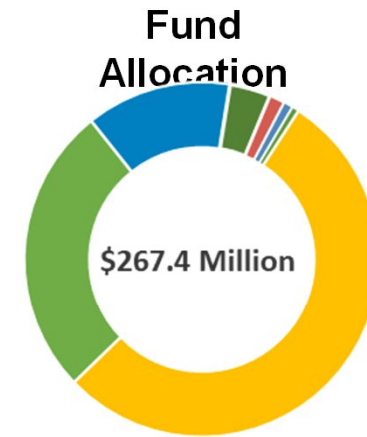
\$' Million Project Category	FY2024	FY2025	FY2026	FY2027	FY2028	Total
Bus and Paratransit	\$66.8	\$5.4	\$101.5	\$46.7	\$26.0	\$246.4
Commuter Rail	5.2	1.7	1.9	1.7	1.0	11.4
Facilities	64.7	67.9	78.5	33.0	5.3	249.3
Freight Railroad	.0	.0	.0	.0	.0	.2
Information Technology	14.5	15.3	14.7	10.8	8.6	63.9
Other	22.3	3.7	5.6	4.4	4.2	40.3
Project Connect	148.2	56.3	86.6	94.0	54.0	439.1
Property and Asset Mgmt	30.5	15.4	1.0	1.0	1.7	49.6
<b>Total Capital Projects</b>	<b>\$352.2</b>	<b>\$165.7</b>	<b>\$289.8</b>	<b>\$191.5</b>	<b>\$100.9</b>	<b>\$ 1,100.2</b>
<b>Funding</b>						
Local Funding	177.2	92.9	183.9	75.3	34.2	563.5
Grants/Contributions	175.0	72.8	105.9	116.3	66.7	536.7
<b>Total Capital Projects</b>	<b>\$352.2</b>	<b>\$165.7</b>	<b>\$289.8</b>	<b>\$191.5</b>	<b>\$100.9</b>	<b>\$ 1,100.2</b>
<b>Project Type</b>						
Enhancement	280.5	142.0	170.1	134.4	64.9	791.8
State of Good Repair	71.7	23.7	119.7	57.1	36.1	308.4
<b>Total Capital Projects</b>	<b>\$352.2</b>	<b>\$165.7</b>	<b>\$289.8</b>	<b>\$191.5</b>	<b>\$100.9</b>	<b>\$ 1,100.2</b>



# METRO SUMMARY

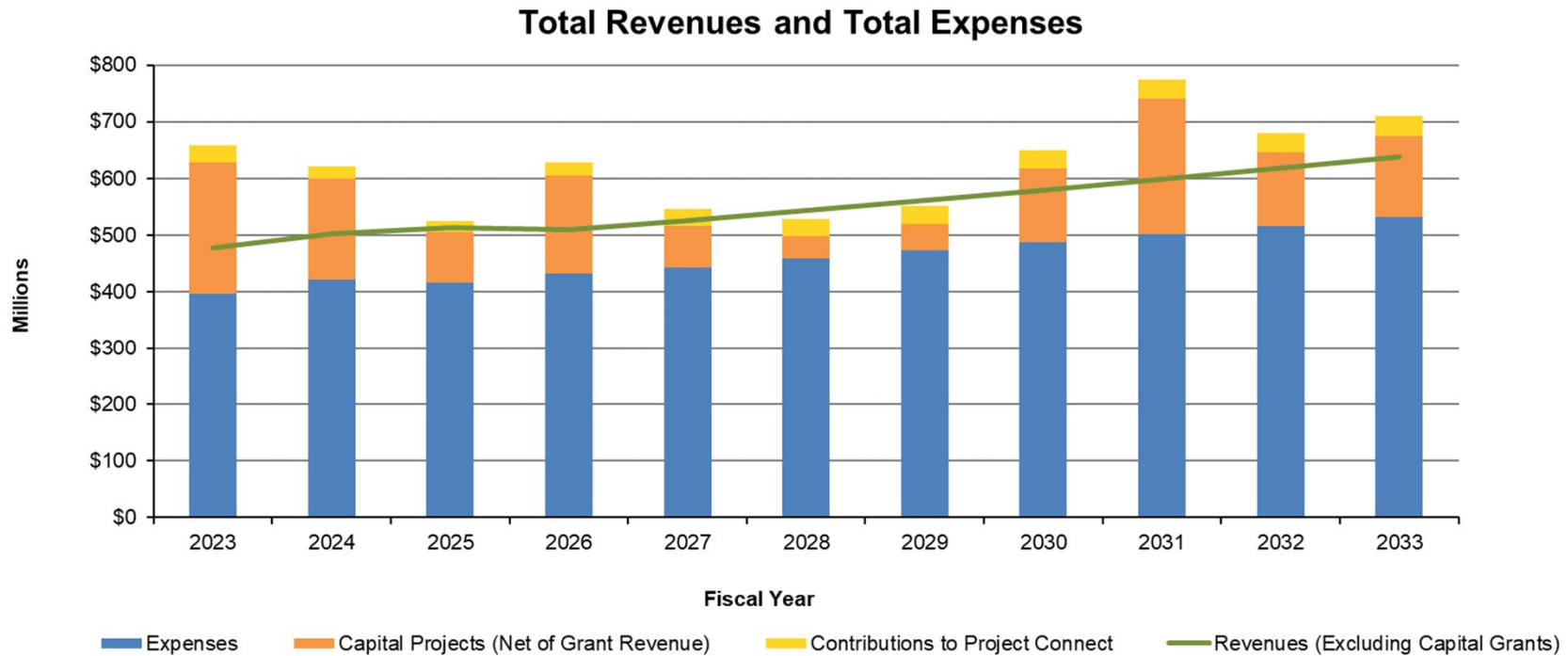
# Fund Balance and Reserves

FY2024 Projected Activity	\$' Million
Projected Beginning Balance	\$382.6
+ Revenue	695.0
- Operating Expenses	(425.4)
- Capital Projects	(352.2)
- Contribution to Project Connect	(20.6)
- Interlocal Agreements	(12.0)
Projected Ending Balance	\$267.4



■ Statutory Operating Reserve	\$70.9m
■ Budget Stabilization Reserve	\$35.4m
■ Sustainability Capital Fund	\$10.0m
■ City of Austin Mobility Programs	\$3.7m
■ Small Cities Infrastructure Fund	\$2.3m
■ Self-Insurance Reserve	\$1.7m
■ Funding of 5-Year CIP	\$143.3m

# Long-Range Financial Model



- Ongoing revenue assumption is sufficient to fund operations and capital needs through Fiscal Year 2026
- Budget risk if sales tax growth does not develop as projected



## Next Steps

- Review budget proposal with Board's advisory committees
- Publish draft budget document online
- Public outreach across CapMetro's service area and virtually
- Public hearing on the proposed budget
- Budget updates to Board Committees
- Final Board approval scheduled for September 25
- Board update on Long-Range Financial Plan

CapMetro

Thank you!



# Capital Metropolitan Transportation Authority

2910 East 5th Street  
Austin, TX 78702

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Board of Directors

**Item #:** AI-2022-585

**Agenda Date:** 9/26/2022

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President & CEO Monthly Update



# Capital Metropolitan Transportation Authority

2910 East 5th Street  
Austin, TX 78702

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Board of Directors

**Item #:** AI-2023-905

**Agenda Date:** 7/24/2023

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Memo: Update on the 88th Regular Session of the Texas Legislature (July 17, 2023)

**To:** CapMetro Board of Directors  
**From:** Leroy Alloway, Vice President, Government Affairs  
**Date:** July 17, 2023  
**Subject:** Update on the 88<sup>th</sup> Regular Session of the Texas Legislature

The purpose of this memo is to provide the Board of Directors with a list of legislation that has become law after the completion of the 88th Regular Legislative Session. The list contained within this memo does not cover every piece of legislation enacted into law from the 88<sup>th</sup> Regular Session. This memo highlights those bills, shown by general subject of the legislation, which staff wish to draw to the attention of the Board of Directors. An analysis of the potential impact of these pieces of legislation will be provided by CapMetro’s Chief Counsel.

Recognizing the potential for such a listing and analysis to be extensive, of the legislation listed, we want to highlight five bills for the Board’s attention, which have either received public focus during the session or may be seeing more public discussion as the practical implications of the legislation comes into focus in the coming weeks and months. A more detailed description of each of these items is contained within the legislative recap details (Attachment A) of this memo as well.

Bill Reference	General Description	Effective Date
<a href="#">SB 505 by Senator Nichols</a>	Relating to imposing an additional fee for the registration of an electric vehicle.	September 1, 2023
<a href="#">HB 14 by Representative Harris, Cody</a>	Relating to third-party review of plats and property development plans, permits, and similar documents, and the inspection of an improvement related to such a document.	September 1, 2023
<a href="#">HB 3699 by Representative Wilson</a>	Relating to municipal regulation of subdivisions and approval of subdivision plans or plats.	September 1, 2023
<a href="#">HB 1819 by Representative Cook</a>	Relating to the repeal of the authority of political subdivisions to adopt or enforce juvenile curfews.	September 1, 2023
<a href="#">HB 2127 by Representative Burrows</a>	Relating to the state preemption of and the effect of certain municipal and county regulation.	September 1, 2023

\*Bill list above contains embedded hyperlinks to the Texas Legislature Online for the bill text, history, and major milestones each piece of legislation followed during the 88th regular session.

As referenced in previous memos, every two years (odd calendar years) the Texas Legislature convenes for a 140-day regular legislative session to pass legislation. During this time, legislators are not limited to the topics they can address. The 88th Texas Legislature, Regular Session, convened on January 10, 2023, and adjourned sine die on May 29, 2023.

By the end of the 88th Regular Session, the Legislature introduced 8,046 bills (5,413 House Bills (HB) and 2,633 Senate Bills (SB)). Of those bills, 1,246 (744 HBs and 502 SBs) passed both chambers and were sent to the Governor's desk for review. The deadline for bills to be signed into law, or become law without the Governor's signature, unless vetoed, was June 18, 2023. The Governor signed into law 1,124 pieces of legislation and allowed 132 pieces of legislation to become law without his Signature.

While the Governor did veto 76 pieces of legislation after the conclusion of the 88<sup>th</sup> Regular Session, most of those bills did include a veto statement indicating the Governor's openness to adding the topic to a future special session for reconsideration once property tax relief was provided.

## **1st and 2nd Special Session Recap**

When the House and Senate failed to reach a compromise on property tax relief or border security throughout the duration of the 88<sup>th</sup> Regular Session, the Governor immediately called lawmakers into a special session hours after the regular session came to an end. The first 30-day special session ended on June 27, 2023, without compromise or agreement on property taxes between the House and Senate. That same day, the Governor called a second special session focused solely on the issue of property tax relief and a goal of eliminating school district maintenance and operations property tax within the state.

On July 10, 2023, the Lt. Governor and Speaker of the House issued a joint statement that an agreement on proposed legislation had been reached, which passed both chambers on July 13, 2023, ending the second special session of the 88<sup>th</sup> Legislature. As part of the agreed upon plan for property tax relief, the Legislature will: 1) provide an approximately \$18 billion tax cut for school district local property taxes; 2) provide an increase in the homestead exemption from \$40,000 per homesteaded home to \$100,000 per home; 3) provide a non-homestead property with a value under \$5 million, including residential and commercial properties, with a 20% circuit breaker on appraised values as part of a 3-year pilot; 4) and create three countywide elected positions, for counties with a population of over 75,000 residents, for the local appraisal boards. Voters will be asked, as part of the November 2023 ballot, to approve a constitutional amendment which would authorize the legislative actions necessary to deliver the property tax relief and creation of the elected local appraisal board members.

Government Affairs staff will continue to monitor this issue, and others that may develop as a result of the prior statements from the Governor on adding items for future special sessions during this legislative term.

If you have any questions regarding this update, please reach out to Ed Easton ([Ed.Easton@capmetro.org](mailto:Ed.Easton@capmetro.org)) and he will coordinate a response or a briefing time.

## Attachment A – Selected Legislation Listing

The supplemental pages to this memo contain a more detailed description of the general topic and focus of the legislation, as passed into law. Each listing contains a hyperlink to the Texas Legislature Online for the bill text, history, and major milestones each piece of legislation followed during the 88<sup>th</sup> regular session. Legislation shown is grouped by topic category.

### Law Enforcement/Public Safety

**[HB 568 by Representative Bowers](#)**: Relating to education and training for peace officers on interacting with persons with Alzheimer's disease and other dementias.

This legislation requires TCOLE to establish education and training for peace officers on interacting with persons with Alzheimer's disease and other dementias. The intended goal is to improve interactions between law enforcement and this population by equipping officers with techniques for recognizing symptoms, communicating effectively, utilizing alternatives to physical restraints, and identifying signs of abuse, neglect, or exploitation.

TCOLE will have until April 1, 2024, to revise TCOLE's education and training programs as necessary to implement the changes in law made by this Act. Note that this new training requirement is prospective in application, meaning that it does not apply to persons who apply for a peace officer license before April 1, 2024. ***Effective Date: September 1, 2023***

**[HB 3424 by Representative Frazier](#)**: Relating to the eligibility and training requirements for commissioned security officers and personal protection officers.

As an effect of the COVID-19 pandemic, many of the state-mandated training programs for security personnel were transitioned to online, virtual platforms. These online training programs do not require any in-person weapons training which represents a risk to the security officers and the people they encounter throughout their duties.

This legislation seeks to address this issue by requiring in-person classroom instruction on handgun proficiency be included as part of the basic training course for *commissioned security officers*. Commissioned security officers will also be required to receive instruction on self-defense tactics and undergo a psychological test. ***Effective Date: September 1, 2023***

**[HB 3858 by Representative Frazier](#)**: Relating to peace officer wellness programs within certain law enforcement agencies.

This legislation adds Chapter 425, Peace Officer Wellness Program, to the Government Code. Chapter 425 provides, amongst other things, that a law enforcement agency (which is defined to include a political subdivision "that employs at least 20 peace officers to answer emergency calls for service or conduct patrol operations, traffic enforcement, or criminal investigations") may establish and maintain a wellness program for the agency's peace officers. The wellness program must comply with any requirements established by TCOLE. TCOLE must establish and administer a grant program to assist law enforcement agencies in establishing and maintaining the wellness program. ***Effective Date: September 1, 2023***

**SB 252 by Senator Alvarado**: Relating to the licensing of certain veterans by the Texas Commission on Law Enforcement and the hiring of those veterans by political subdivisions.

This legislation amends the Local Government Code Chapter 370 and Occupations Code Chapter 1701, Subchapter G, to authorize the hiring and commissioning of a *lawful permanent resident* of the U.S. who is an honorably discharged veteran of the U.S. armed forces with at least two years of service before discharge and who holds the appropriate license issued by TCOLE. In addition, TCOLE is required to ensure the potential peace officer meets the requirements of the Occupations Code and any rules adopted by the commission.

SB 252 prohibits a political subdivision from appointing or employing a person under this section to hold a supervisory position until the person becomes a United States citizen. TCOLE must amend its rules to comply with SB 252 by December 1, 2023, and the rule will apply prospectively. **Effective Date: September 1, 2023**

**SB 1852 by Senator Flores**: Relating to active shooter training for peace officers.

This legislation amends Section 1701.253 of the Occupations Code by adding a requirement for officers to complete a minimum of 16 hours on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University—San Marcos, as part of the basic peace officer training course, or a TCOLE approved equivalent.

- An officer shall complete the program not later than the last day of the first full continuing education training period that begins on or after the date the officer is licensed unless the officer completes the program as part of the officer's basic training course.
- Completion of a training program under this subsection satisfies any other requirement for the officer to complete a training program on responding to active shooters, including under Section 37.0812(a), Education Code.

This bill requires TCOLE to adopt rules to implement Section 1701.253(q), Occupations Code, as added by this Act, as soon as practicable after September 1, 2023. It also ensures that minimum curriculum requirements under Section 1701.253(q), Occupations Code, as added by this Act, apply to an officer who first begins to satisfy those requirements on or after January 1, 2024. **Effective Date: September 1, 2023**

## **Electric Vehicles / Charging**

**HB 3014 by Representative Harris, Caroline**: Relating to the motor vehicle safety inspection of electric vehicles.

This legislation amends the Transportation Code to exempt a motor vehicle that uses electricity as its only source of motor power and is not equipped with an internal combustion engine from certain vehicle inspection requirements relating to emissions and exhaust systems.

As soon as practicable after the effective date, the public safety director of the Texas Department of Public Safety will be required to adopt or amend department rules necessary to implement the bill. **Effective Date: September 1, 2023**



**SB 505 by Senator Nichols:** Relating to imposing an additional fee for the registration of an electric vehicle.

This legislation amends the Transportation Code to create an additional fee for EVs. EVs are defined as motor vehicles with a gross weight of 10,000 pounds or less and use electricity as their only source of motor power. The definition used in this legislation excludes battery electric buses from this fee. The CapMetro non-revenue vehicle fleet of battery electric vehicles will be subject to this new fee. The payment of the additional fee will take place during the time of registration: \$400 for the registration of a new EV; \$200 for the registration or renewal of an EV. ***Effective Date: September 1, 2023***

**SB 1001 by Senator Nichols:** Relating to the regulation of electric vehicle supply equipment; requiring an occupational registration; authorizing fees; authorizing an administrative penalty.

Until the signing by the Governor of SB 1001, the Texas Department of Licensing and Regulation (TDLR) had oversight of gas pumps across the state, but no oversight over electric charging stations. This legislation addressed that by amending the Occupations Code to authorize the TDLR to establish standards related to the accuracy of the measuring devices located inside the EV charging stations. Granting TDLR the authority to adopt national standards and enforce compliance will provide Texas's EV owners assurances they are receiving accurate electric fuel charges when refueling at commercial charging stations in Texas. ***Effective Date: Immediately***

## **Social Media/Technology**

**SB 1893 by Senator Birdwell:** Relating to prohibiting the use of certain social media applications and services on devices owned or leased by governmental entities.

This legislation requires a governmental entity to adopt a policy prohibiting the installation of covered applications (TikTok & app created or owned by ByteDance Limited) on any government device. Provides for the installation and use of information security measures.

This legislation will also require each governmental entity, not later than the 60th day after the date the Department of Information Resources (DIR) and Department of Public Safety (DPS) make available the model policy required by Section 620.003(b) of the Tex. Gov't Code, to adopt the policy required by Section 620.003(a) of the Tex. Gov't Code.

***Effective Date: Immediately***

## Commercial Driver's License

**[HB 1846 by Representative Ashby](#)**: Relating to the skills test required for a commercial driver's license for certain commercial learner's permit holders.

This legislation amends the Transportation Code to require the Department of Public Safety (DPS) to administer a skills test to a person who holds a commercial learner's permit issued by another state or jurisdiction. In addition, it requires DPS, on completion, to send the test results to the state or jurisdiction that issued the person's learner's permit.

**Effective Date**: September 1, 2023

## Local Government

**[HB 14 by Representative Harris, Cody](#)**: Relating to third-party review of plats and property development plans, permits, and similar documents, and the inspection of an improvement related to such a document.

This legislation amends the Local Government Code to permit approved third-party individuals to review a development document if a regulatory authority did not approve, disapprove, or conditionally approve the document within 15 days after the date prescribed by an applicable statute. Development documents will be defined as documents required to be approved for a person to develop or improve land, including applications for plats, plans, and development permits. Regulatory authorities will include political subdivisions or departments of political subdivisions responsible for reviewing development documents and conducting development inspections. Beginning September 1, 2023, only plats must be approved, disapproved, or conditionally approved by a date prescribed by statute (within 30 days of the date the application is filed, per Local Government Code Section 212.901), since HB 3699 removed all other development documents from the applicability of Chapter 212 and its timelines.

**Effective Date**: September 1, 2023

**[HB 1819 by Representative Cook](#)**: Relating to the repeal of the authority of political subdivisions to adopt or enforce juvenile curfews.

This legislation will prohibit a political subdivision from adopting or enforcing an order, ordinance, or other measure that imposed a curfew to regulate the movements or actions of persons younger than 18. This prohibition will not apply to a curfew implemented for purposes of emergency management.

Accordingly, the legislation will repeal provisions relating to county juvenile curfews, juvenile curfews in a general-law municipality, procedures for children taken into custody for violation of juvenile curfew or order, and other provisions relating to juvenile curfews.

**Effective Date**: September 1, 2023

**[HB 2127 by Representative Burrows](#)**: Relating to state preemption of and the effect of certain municipal and county regulation.

This legislation, known as the Texas Regulatory Consistency Act, prohibits the adoption or enforcement of city or county ordinances, orders, or rules that regulate conduct in a ‘field’ for which there is already a state statute. It is important to note that this *does not* apply to CapMetro, does not discuss city policies (only rules), and does not refer to state regulations, only "fields of regulation" occupied by an existing statute. Areas of focus include Ag Code, Finance Code, Insurance Code, Labor Code, Natural Resources Code, or Occupations Code.

**Effective Date: September 1, 2023**

**HB 2518 by Representative Bell, Keith:** Relating to required lease terms for public property leased to a nongovernmental entity; creating a criminal offense.

This legislation amends Government Code Chapter 2252 to require a governmental entity, in a lease of “public property,” to include lease terms that require the other party to 1) post payment and performance bonds before performing any work to construct, alter, or repair any improvement, and 2) provide the governmental entity with 90 days’ notice prior to commencing such work. Such notice shall include certain required information, and misrepresentation by the nongovernmental entity in the notice of commencement is a Class A Misdemeanor. The legislation also grants the governmental entity the right to disapprove of the work to be performed, provided such disapproval is transmitted within 10 days of the nongovernmental entity providing the aforementioned notice.

The legislation does not include a minimum construction value, so it appears to apply to all work performed on public property, even minor in nature. “Public property” is undefined in the legislation, but the legislative history of HB 2518 demonstrates that the intent was to apply these requirements to leases in which a governmental entity is the owner of the property and the lessor.

**Effective Date: September 1, 2023**

**HB 3699 by Representative Wilson:** Relating to municipal regulation of subdivisions and approval of subdivision plans or plats.

This legislation amends the Local Government Code authorizing cities to adopt street and drainage standards for the construction of new subdivisions and prohibits cities from requiring the construction of, or dedication of right-of-way for, streets as a condition of plat approval, unless the street is identified in the city’s five-year capital improvement plan (CIP).

HB 3699 also clarifies various procedural requirements of the plat approval process by requiring cities to post specific filing (“completeness”) requirements online and to accept conforming application, defining the date an application is “filed” with the city, authorizing cities’ adoption of submittal calendars, authorizing cities to delegate review of plats to administrative staff, and removing “site plans” from the applicability of Chapter 212 of the Local Government Code (which governs cities’ plat approval processes). The legislation will provide greater clarity and consistency to developers regarding the platting process, but the narrowing of the scope of Chapter 212 will give cities greater authority to regulate development permits that are not plats.

**Effective Date: September 1, 2023**

**HB 4559 by Representative Darby:** Relating to the application of statutes that classify political subdivisions according to population.

Many statutes are limited in their application to a certain class of political subdivisions by means of a population bracket that establishes an upper or lower limit or both for the target class of political subdivision. Because of this, population brackets are updated in the regular session immediately following the publication of the census. Due to the delay in the release of the 2020 census data, the legislature was unable to pass the needed legislation in the 2021 Regular Session. This legislation modifies the population brackets for political subdivisions throughout the statutes to conform to the 2020 census data.

**Effective Date: September 1, 2023**

**SB 29 by Senator Birdwell:** Relating to prohibited governmental entity implementation or enforcement of a vaccine mandate, mask requirement, or private business or school closure to prevent the spread of COVID-19.

This legislation prohibits government entities from implementing or enforcing mask or vaccine mandates to prevent the spread of Covid-19, or a variant, unless required by a rule of the Centers for Medicare and Medicaid Services. The definition of government entities includes a local government entity as defined by Government Code Section 418.004 and an agency of such an entity. Per that Section, “local government entity” means “a county, incorporated city, independent school district, public junior college district, emergency services district, other special district, joint board, or other entity defined as a political subdivision under the laws of this state that maintains the capability to provide mutual aid.”

**Effective Date: September 1, 2023**

## **Liability Claims/Worker’s Rights**

**HB 2965 by Representative Vasut:** Relating to certain construction liability claims concerning public buildings and public works.

Some local government entities have been circumventing Chapter 2272 Certain Construction Liability Claims of the Government Code, which was created 2019 by HB 1999 (86R). They are doing this by forcing contractors to waive this chapter either before filing a bid or after contracts have been awarded. This is an unintentional loophole that these entities are taking advantage of and has negatively affected the predictability of the business environment. Additionally, some projects, such as civil works project for city and road construction, are not currently covered by Chapter 2272.

Under HB 2965, civil works projects will now be included which means that City and County roads, and other types of infrastructure will be subject to right to repair. Additionally, the bill will now require that governmental entities cannot force contractors to waive Chapter 2272 in contract. **Effective Date: September 1, 2023**

## Open Records

**HB 567 by Representative Bowers**: Relating to discrimination on the basis of hair texture or protective hairstyle associated with race.

This legislation, also known as the Crown Act, amends the Education Code, Labor Code, and Property Code to provide for a prohibition on race-based hair discrimination in school dress codes, workplaces and housing. With respect to workplaces, this Act provides that any provision in Chapter 21 (Texas' employment discrimination law) that refers to discrimination because of or on the basis of race includes discrimination because of or on the basis of an employee's hair texture or protective hairstyle commonly or historically associated with race. "Protective hairstyle" is defined in the Act to include braids, locks, and twists. Further, the Act provides that an employer, labor union or employment agency commits an unlawful employment practice if they adopt or enforce a dress or grooming policy that discriminates against a hair texture or protective hairstyle commonly or historically associated with race.

**Effective Date**: September 1, 2023

**HB 915 by Representative Craddick**: Relating to a requirement that employers post notice of certain information regarding reporting instances of workplace violence or suspicious activity.

This legislation amends the Labor Code to allow for local law enforcement to be notified of workplace violence even if there's not an immediate emergency by requiring employers to post a notice to employees of the contact information for reporting instances of workplace violence or suspicious activity to the Department of Public Safety (DPS). The notice must be posted in a conspicuous place in the employer's place of business, in sufficient locations that are convenient to all employees, and in English and Spanish, as appropriate. DPS by rule will prescribe the form and content of the notice, which shall at least (1) contain the contact information for reporting workplace violence to DPS and (2) inform employees of their right to report to DPS.

**Effective Date**: September 1, 2023

**HB 1817 by Representative Capriglione**: Relating to the validity of a contract for which a disclosure of interested parties is required.

In 2022, a development company filed suit against a municipality for breach of contract. In the ruling on this matter, the judge found that the municipality had not verified whether a Form 1295 from the Texas Ethics Commission was submitted and on file, in accordance with a 2015 legislative requirement. This legislation will establish a cure period of 10 business days if a Form 1295 is found not to be on file, in order to avoid the potential of governmental contracts to be voided without an opportunity to correct. HB 1817 will stipulate that a governmental contract with a business entity could be considered void for failure to provide the disclosure of interested parties only if:

- the government or state agency submitted written notice to the business entity written notice of the entity's failure to provide the required disclosure; and
- the entity failed to provide the government or state agency with the required disclosure within 10 business days after receiving the written notice.

These provisions will apply only to a contract that requires an action or vote by the governing body of the entity or agency before the contract may be signed; has a value of at least \$1 million; or is for services that would require a person to register as a lobbyist under Chapter 305 of the Texas Government Code. ***Effective Date: Immediately***

**HB 3033 by Representative Landgraf**: Relating to the public information law.

Currently, state public information law provides a governmental body the opportunity to delay the release of information subject to a public information request by requesting an opinion from the Office of the Attorney General regarding whether the information may legally be withheld. The opinion process as currently written does not ensure the timely release of requested information and thus effectively permits governmental bodies to delay the response to a public information request for an extended amount of time. HB 3033 will address this issue and ensure a timelier release of information subject to public information law by implementing a number of safeguards, including requiring a governmental body to take action within 30 days after the issuance of an opinion by the attorney general following a request from the governmental body. ***Effective Date: September 1, 2023***

**SB 271 by Senator Johnson**: Relating to state agency and local government security incident procedures.

This legislation amends the Government Code, clarifying the current definition of “security incident” to incorporate cyberattacks that do not involve a data breach, such as a distributed denial of service (DDoS) attack. It also adds *local governments* to the list of entities required to report security incidents not later than the 10th business day after the date of the eradication, closure, and recovery from a security incident, to notify the Texas Department of Information Resources, including the chief information security officer, of the details of the security incident, rather than event, and include in the notification an analysis of the cause of the security incident. ***Effective Date: September 1, 2023***

**SB 1319 by Senator Huffman**: Relating to the reporting of certain overdose information and the mapping of overdose for public safety purposes.

This bill amends current law to allow a public health authority, local health authority, or law enforcement agency to provide overdose information to a governmental entity that maintains a computerized system through a participation agreement. Information that is eligible to be disclosed to the system can only be specific to the overdose and not include any personal information of the victim. Access to this overdose data will help public health agencies mobilize prevention and intervention response, and hopefully, save lives. ***Effective Date: September 1, 2023***



# Capital Metropolitan Transportation Authority

2910 East 5th Street  
Austin, TX 78702

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Board of Directors

**Item #:** AI-2023-906

**Agenda Date:** 7/24/2023

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Memo: Update on Regional Member City Outreach and Engagement January 2023 - June 2023 (July 17, 2023)



**To:** CapMetro Board of Directors  
**From:** Leroy Alloway, Vice President, Government Affairs  
**Date:** July 17, 2023  
**Re:** CapMetro Member City Outreach Update

Coming out of 2022, with multiple member cities holding elections on the question of continued membership within the CapMetro service area, the Board of Directors and the President & CEO identified the need to improve our regional profile, strengthen our regional relationships, and the promotion of regional coordination as a priority for the agency. Since January 2023, the CapMetro Government Affairs team has been focused on building, strengthening, and maintaining connections with leadership from the six regional member cities. This memo outlines the activities undertaken for the first half of the calendar year and provides a brief overview of the common themes expressed by many of the member cities.

As we continue to advance regionally significant projects for Central Texas, Government Affairs will be focused on ensuring that communication is frequent, meaningful, and targeted to the specific items raised within each member city. For most of these meetings and engagements, Government Affairs has focused on listening to learn more than sharing specific CapMetro information. This will continue to be our practice as we build a stronger foundation for CapMetro services and growth across the service area.

As shown below, each member city has had multiple interactions with Government Affairs since January 2023. Variances in the number of interactions have occurred based on services being provided and frequency in follow-up. Aside from this formal tracking, Government Affairs has also provided notices around service shutdowns due to construction and extended engagement during systemwide emergencies, such as the ice storm in early 2023, to all member cities to ensure awareness of system status, and shared major news, such as the RAISE grant award, with the service area.

<b>Member City</b>	<b>Number of meetings and interactions (January to June 2023)</b>
Jonestown	5
Lago Vista	4*
Leander	9
Manor	8
Point Venture	5
San Leanna	4

\* An initial meeting with Lago Vista was held post-election in November 2022, but is not included in this number to reflect the January to June 2023 timeframe.



## **Common Themes Expressed**

Over the course of the last six months, while each member city has slightly different priorities and needs, there were four common themes which have emerged and remained constant in the conversations to date.

First, the member cities have expressed concerns over past interactions with the agency. From concerns of data sharing to questions if attention was being paid to their respective communities, there has been a willingness expressed to engage in a reset of the relationship and continue to build positive momentum moving forward. We take the nature of these concerns very seriously and will continue to do all we can to ensure that the concerns raised are not repeated in the future.

Second, the member cities have discussed, in numerous ways, a desire to ensure their perspectives, and those of their citizens, are considered in developing and updating future services provided by CapMetro. As a step toward ensuring this foundation is integrated into future actions of the agency, Government Affairs arranged, with support from the Planning Department, for technical staff in each member city to be engaged in the review of the Service Standards and Guidelines adopted by the board in June 2023. As we move forward with future service changes, updates, and overall service planning, we will be in direct contact with municipal leadership to seek their input and perspective on any proposed modifications prior to consideration by the Board of Directors.

Specifically, member cities have expressed interest in the expansion of Pickup Service Zones based on growth being experienced, new traffic generators that have opened after zones were initially established, and a desire for a better understanding of the planning and operational nature of these services. Some cities have also expressed interest in having more regional connections offered by Pickup, or other means, to allow residents to access services and goods that may not be present within the current trip boundaries.

Third, with the continued growth of the Central Texas Region, discussions have been brought forward over the potential usage of the Build Central Texas program. Government Affairs will continue to work with member cities and appropriate departments within CapMetro to bring together future discussions on the usage of these funds to ensure we are cognizant of the demands being placed upon municipal budgets as a result of continued rapid growth.

Fourth, and finally, building off the continued rapid growth of the Central Texas region, we have heard interest in exploring how CapMetro can be a partner in addressing service expansion with economic development opportunities across the community. This will be an additional area of focus and assessment for further discussion and consideration.

## **Next Steps**

While the first six months of 2023 have provided an opportunity for initial engagement and interaction, there is a tremendous amount of opportunity and work ahead for CapMetro to continue providing valued regional services, in coordination and cooperation with the elected and appointed leadership as well as administrative staff of our regional member cities.

Government Affairs will provide future updates to the Board of Directors on engagement opportunities to build upon these efforts to hear, listen, and understand the position of our regional member cities.

Over the next six months, Government Affairs, in coordination with the Office of Mobility Management, will begin similar dialogues and discussions with partner cities who contract services under the Transit Development Plan program.

If you have any questions regarding this update, please reach out to Ed Easton (Ed.Easton@capmetro.org) and he will coordinate a response or a briefing time.