

**AMENDED AND RESTATED #2
INTERLOCAL COOPERATION AGREEMENT
BY AND BETWEEN
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AND
CITY OF AUSTIN
FOR
THE CAPMETRO BIKESHARE PROGRAM
FKA METROBIKE**

This Amended and Restated #2 Interlocal Cooperation Agreement (this “**Agreement**”) is entered into by and between **Capital Metropolitan Transportation Authority**, a political subdivision of the State of Texas organized under Chapter 451 of the Texas Transportation Code (“**CapMetro**”) and the **City of Austin**, a Texas home rule city and municipal corporation, acting through its Department of Transportation and Public Works (the “**City**”). CapMetro and the City are referred to in this Agreement collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

1. The City formerly operated a bicycle-sharing service program consisting of a fleet of on-demand self-service bicycles located throughout the City of Austin, which could be rented by the minute/hour, by membership card or credit card, and returned to any bicycle-sharing stations (“**Austin B-Cycle**”).
2. To expand access to multi-modal mobility options in the City of Austin, facilitate connections to transit, and increase the volume of electric-assist (e-assist) bicycles in the bicycle-sharing program fleet, the City and CapMetro agreed to integrate Austin B-Cycle into CapMetro’s public transit system as “**MetroBike**,” formerly, the “**MetroBike Program**,” now known as the “**CapMetro Bikeshare Program**” or “**Bikeshare Program**”.
3. CapMetro and the City entered into that certain Interlocal Cooperation Agreement for the Bikeshare Program dated effective August 18, 2020, formalizing the integration of Austin B-Cycle into the CapMetro transit system, and setting forth the roles and responsibilities of the Parties related to the CapMetro Bikeshare Program (the “**Original Agreement**”).
4. Pursuant to the Original Agreement, as amended and restated, CapMetro operates the Bikeshare Program. The City maintains ownership of all Bikeshare Program bicycles, kiosks, and associated hardware; manufactured and licensed by PBSC Urban Solutions, Inc., under CapMetro Contract No. 500131.
5. On September 5, 2022, CapMetro and the City amended and restated the Original Agreement to further elucidate the roles and responsibilities of the parties (the “**First Amended and Restated Agreement**”).
6. In October 2023, the City was awarded approximately \$11.3 million in Federal Transportation Alternative Set-Aside (“**TASA**”) grant funding to expand and enhance the CapMetro Bikeshare Program and transition fully to electric vehicles. The award of these grant funds requires a Local Government Match in the amount of approximately \$2.9 million. Accordingly, the City will contribute a total of approximately \$14.1 million in TASA grant funds, less any federal and state direct and indirect administrative costs, to CapMetro to expand, enhance and electrify the Bikeshare Program in accordance with the terms of the Advanced Funding Agreement (“**AF**A”) finalized between the City and the Texas Department of Transportation (“**TxDOT**”) and this Agreement.

7. With this Agreement, the Parties are exploring a partnership which the Parties define as a shared and equal financial commitment and accountability to fully implement a financially sustainable Bikeshare Program.
8. The Parties now desire to amend and restate the First Amended and Restated Agreement in its entirety to account for the additional TASA grant funding and as further set forth herein.

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.

AGREEMENT

A. Program Goals. The Parties will collaborate to achieve the following goals, without limitation:

1. Preserve, cultivate, and strengthen the valuable CapMetro Bikeshare partnership between CapMetro and the City.
2. Develop and deliver a CapMetro Bikeshare Strategic Expansion Plan that is financially sustainable to: (a) Develop an equitable, affordable, on-demand mobility option to provide access to opportunities and resources; (b) Extend the bikeshare system to provide first/last mile solutions and reach target communities; and (c) Fully integrate the Bikeshare Program with CapMetro’s public transit system.
3. Support the goals and objectives of the [Austin Strategic Mobility Plan](#), [Austin Climate Equity Plan](#), and [Vision Zero](#).
4. Support the goals and objectives of Project Connect.
5. Advance CapMetro’s role as Austin’s mobility provider in the region with an expanded, affordable, and accessible bikeshare system.
6. Migrate the Bikeshare Program from manual bicycles to an all e-assist bicycle fleet.
7. Co-locate electric bicycle infrastructure with mobility hubs, Urban Trails trailheads, and transit facilities.
- 8.
9. SExplore a partnership which the Parties define as a shared and equal financial commitment and accountability to fully implement a financially sustainable Bikeshare Program.
10. Establish a fully equipped operations facility for the Bikeshare Program.

B. Program Governance.

1. As a transit amenity, the location of CapMetro Bikeshare facilities and kiosks throughout the CapMetro service area will meet or exceed guidelines set forth in CapMetro’s Service Standards and Guidelines, as amended from time to time, and as required by Federal Transit Administration (“FTA”) Title VI Circular 4702.1B, as amended.

2. The Parties will coordinate on, and CapMetro will create and deliver, a CapMetro Bikeshare Annual Work Plan and Report to guide the program operation and expansion plans, define the broad strategies and parameters of the CapMetro Bikeshare Program, and make overall Program decisions including but not limited to: locations and designs of bicycle kiosks, advertising agreements related to the CapMetro Bikeshare Program, transit wayfinding signage, oversight expenses, considering ad hoc requests, considering new partnerships, and reviewing CapMetro's Operations and Maintenance plan, subject to and in accordance with CapMetro's Service Standards and Guidelines, other applicable CapMetro policies and procedures, and applicable federal, state, and local laws and regulations.
3. The Parties shall meet monthly to seek consensus on all matters involving the Program and follow documented, clear agendas with action items addressed prior to the following meeting. The City's Transportation and Public Works Department Director may designate a program manager to act on behalf of the City with respect to the Bikeshare Program. CapMetro's Chief Operations Officer may designate a program manager to act on behalf of CapMetro with respect to the Bikeshare Program. The program managers will ensure that action items resulting from such meetings are addressed. In the event a consensus is not reached, the matter shall be referred as soon as possible to CapMetro's Chief Operations Officer and the City's Director of the Austin Transportation and Public Works Department for coordination and mutual resolution.

C. Financial Contributions.

1. The City's financial contribution toward the Program will include an Operations and Maintenance (O&M) Contribution and a Capital Contribution as follows:
 - i. Operations and Maintenance (O&M) Contribution:
 1. The City will contribute up to \$250,000 per fiscal year for Fiscal Years 2025 through 2027 (the "**Annual O&M Contribution**") for a total amount not to exceed \$750,000 (the "**City O&M Contribution**") as shown in **Exhibit "A."** The Annual O&M Contribution will be applied toward CapMetro's operating budget for the ongoing operations and maintenance of the Bikeshare Program. The Annual O&M Contribution amount from the City will be determined by:
 - a. Deducting all relevant Bikeshare O&M expenses from all sources of Bikeshare revenue (fares and passes, sponsorships and advertising, operating grants, etc.), and
 - b. Dividing any expenses that exceed revenue by 2 ("the resulting amount")

If the resulting amount for each party is less than \$250,000, the City will pay that lesser amount. If the resulting amount is equal to or greater than \$250,000 for each party, the City will pay \$250,000.

2. The City will be responsible for on-going electrification expenses (e.g., monthly electric fees associated with charging bikes at Bikeshare stations)

when the station is connected to a City meter (the “**Electrification Costs**”). CapMetro will be responsible for on-going electrification expenses (e.g., monthly electric fees associated with charging bikes at Bikeshare stations) when the station is connected to a CapMetro meter.

3. On April 1, 2026, the Parties will meet and work together in good faith to determine the City’s O&M Contribution for Fiscal Years 2028 through 2034 at the Contribution Meeting. The program managers shall ensure the timely scheduling of the Contribution Meeting.

ii. Capital Contribution:

1. The City will contribute an estimated \$1,200,000.00 per fiscal year for Fiscal Years 2025 through 2027 (the “**Annual City Capital Contribution**”) for a total capital contribution to the Bikeshare Program in an amount not to exceed \$3,600,000.00 as shown on **Exhibit “A”** (the “**City Capital Contribution**”). The Annual City Capital Contribution will be funded using TASA Grant Funds, Local Government Match, revenue derived from the Sale of City Assets, as each is defined herein, or other contributions made under this Agreement. Exact annual contribution amounts are dependent on CapMetro’s delivery of capital assets each year by the TASA Grant. Should delivery of capital assets exceed \$1,200,000.00, and both parties mutually agree to a new total Annual City Capital Contribution, the total contribution may be adjusted accordingly.
2. TASA Grant Funds: The City will contribute the TASA grant funds for the expansion of the Bikeshare Program as set forth in the AFA, (“**TASA Grant Funds**”) which will be credited toward the City Capital Contribution.
3. Local Government Match: The City will contribute \$2,823,325.00 in local government match funds for the TASA Grant as required by the AFA (the “**Local Government Match**”), which will be credited toward the Capital Contribution in accordance with **Exhibit “A”**.
4. Sale of City Assets: Any funds derived from the sale of City-owned Bikeshare Program assets, including but not limited to the sale of legacy assets, B-Cycle equipment, and any other Bikeshare Program hardware that has reached its end of useful life (the “**City Assets**”), will be credited towards the City’s Capital Contribution (the “**Sale of City Assets**”). State of good repair and all decisions regarding the City Assets including whether to surplus, resale, dispose, or recycle City Assets, will be determined solely by CapMetro. CapMetro will invest all revenue obtained from the disposal of City Assets into the Bikeshare Program.
5. The Parties will meet and work together in good faith to determine the City’s Capital Contribution for Fiscal Years 2028 through 2034 at the Contribution Meeting.

6. CapMetro will invoice the City for capital expenses monthly. The City will pay these invoices within 45 days in accordance with the Texas Prompt Payment Act.
2. The City has been awarded \$11.29 million in Federal TASA grant funds requiring a 20 percent Local Government Match.
 - i. After the City provides CapMetro with a formal written notice to proceed using TASA grant funds after the AFA between the City and TxDOT is executed (anticipated fall 2024), CapMetro will invoice the City monthly for reimbursement of allowable TASA expenses and direct payments will be made to CapMetro.
 - ii. Any Bikeshare Program assets purchased prior to the AFA being executed are not reimbursable by the City.
 - iii. CapMetro is responsible for ensuring that all TASA-funded activities undertaken by CapMetro comply with the terms of the AFA. Any funds expended by CapMetro that are not substantially in compliance with the terms of the AFA will be the sole responsibility of CapMetro.
 - iv. Each Party is responsible for ensuring the retention and provision of any financial and contractual documentation in accordance with the AFA and state and local regulations.
3. CapMetro's financial contributions to the Program include:
 - i. Operations and Maintenance Contribution: CapMetro will be responsible for operations and maintenance expenses for the Bikeshare Program that exceed the City's O&M Contribution in Paragraph C.1.i. above. The annual operating and maintenance budget for the Bikeshare Program shall follow the established CapMetro annual budgeting process and is subject to approval by the CapMetro Board of Directors.
 - ii. Capital Contribution: During summer 2024, CapMetro replaced and updated 76 legacy B-Cycle stations with new PBSC Bikeshare Program stations for an amount not to exceed \$4,000,000.00. CapMetro does not anticipate contributing additional capital funds during the term of this Agreement.
4. A Party may contribute additional funds, including in-kind contributions, to the Bikeshare Program at any time ("**Additional Contributions**") if approved by either Parties' Council or Board as necessary. Additional Contributions may be used toward capital or operations and maintenance funding of the Program. Payment of Additional Contributions by one Party will not obligate the other Party to match the contribution.
5. Financial contributions made under this Agreement may be used only for the CapMetro Bikeshare Program and related expenses.

6. Capital contributions by either Party will be held by CapMetro in a dedicated fund for the acquisition of capital assets including but not limited to bicycles and e-bikes, bikeshare stations, and docks (“**Capital Fund**”).

D. Assets.

1. The City maintains ownership of the Bikeshare Program assets, equipment, and inventory, including but not limited to bicycles and e-bikes, bikeshare stations, kiosks, and docks (“**City Assets**”).
2. CapMetro maintains ownership of the following items related to the Bikeshare Program: the “CapMetro Bikeshare” branding; any software and/or application integration with a CapMetro system; CapMetro facilities, maintenance equipment and inventories, and other items purchased by CapMetro for the Program that are not otherwise owned by the City (the “**CapMetro Assets**”).
3. CapMetro procured a vendor for the provision of a public bicycle sharing system and sought input from the City as permitted by CapMetro’s Acquisition Policy and applicable federal, state, and local procurement laws. CapMetro will directly oversee the contract for the public bicycle share provider, PBSC Urban Solutions, Inc, including but not limited to the bicycles and e-bikes, bikeshare stations, software and hardware, and any associated license agreements. The City shall maintain ownership of the e-bikes, bikeshare stations, and hardware and CapMetro shall maintain ownership of the software and app integration.
4. Any and all advertising agreements and revenue related to the CapMetro Bikeshare Program will be received, retained and utilized by CapMetro for operations and maintenance of the system. Such revenue generated and attributed to operations and maintenance detailed herein are not to be construed as contributions by the City.
5. All City Assets will be disposed of by CapMetro when such assets have reached the end of their life. Funding derived from the Sale of City Assets will be allocated by CapMetro to the Program and credited towards the City’s Capital Contribution. CapMetro will work with the City, when applicable, to ensure that the Sale of City Assets by CapMetro conform to all applicable laws and ordinances, including compliance with the City’s zero waste goal and recycling program. CapMetro will provide the City with a report within thirty (30) days of when such assets have been disposed of. Any media and marketing pertaining to the Sale of City Assets will be in accordance with Section J. of this Agreement.

E. Financial Requirements, Management and Records.

1. The Parties will provide mutual access to inspect and audit the business records of the Program.
2. The Parties will provide mutual access to all planning and operational documents for the Program.

F. CapMetro Bikeshare Pass Fees.

1. The CapMetro Board of Directors has the sole authority for setting CapMetro Bikeshare pass fees and fee structures and may adjust such fees at any time in accordance with

CapMetro policies and applicable federal and state laws and regulations including but not limited to FTA Circular 4702.1B.

2. CapMetro Bikeshare fees collected through the CapMetro mobile application and the CapMetro Bikeshare app will be credited offset ongoing Bikeshare operations and maintenance costs. Such credits will be calculated after deducting mobile application processing and credit card fees. Such fees collected and attributed to operations and maintenance detailed herein are not to be construed as contributions by the City.

G. Planning.

1. The City is responsible for right-of-way planning and approvals related to the Program.
2. CapMetro is responsible for service area planning, system development and deployment planning, station alignment/location planning, program expansion timeline, and station design related to the Program, in consultation with the City.
3. The Parties will coordinate to further develop the concept of mobility hubs using coordinated bicycle and bus stops as the foundation to encourage more mobility options including but not limited to scooters or any other micro-mobility devices, subject to CapMetro's Service Standards and Guidelines and applicable federal, state, and local laws and regulations.

H. Management and Daily Operations.

1. The City will provide a case manager to facilitate efficient, streamlined permitting. While CapMetro and its contractors are responsible for traffic control plans, work orders and installation and design of approved traffic devices for protection of stations within the ROW (delineator posts, parking/curb stops), and any necessary inspection for the bikeshare station; the assigned City Case Manager will assist CapMetro and its contractors in the efficient delivery of said traffic control plans, work orders, and inspections.
2. The City will coordinate with CapMetro to protect station access during special events (i.e., Austin City Limits, South By Southwest, etc.) and right-of-way closures due to construction. In addition, CapMetro will attend planning meetings and properly staff operation needs for City coordinated special events.
3. CapMetro will employ only orderly and competent workers, skilled in the performance of the services which they will perform and will increase staffing levels in accordance with system expansion to meet stated goals, to the extent practicable and consistent with the agency's operational standards and guidelines.
4. The Parties will develop service level objectives ("SLOs") for monitoring the quality and effectiveness of the CapMetro Bikeshare Program. The SLO areas should include, at a minimum, targets to protect the longevity of bike and station assets (i.e., battery replacement, tire replacement, in-active device idle time, station repairs, etc.), as well as performance measures related to system operations and assets (i.e. average station downtime, average available bikes per station, etc.). In addition, SLOs should report on station rebalancing efforts, expansion milestone expectations, and expenditure reports. CapMetro is required to submit a quarterly SLO report to the City, outlining SLO targets

met and milestone updates. SLOs will be published in the annual report of the CapMetro Bikeshare Program.

I. Data Sharing.

1. The City of Austin (City) will utilize the Mobility Data Specification (MDS) Provider Application Program Interface (API) for data sharing, as outlined at: <https://github.com/openmobilityfoundation/mobility-data-specification/tree/dev/provider><https://github.com/openmobilityfoundation/mobility-data-specification/tree/dev/provider>.

J. Media and Marketing.

1. CapMetro is the primary public media spokesperson regarding CapMetro Bikeshare but will closely coordinate with the City. The Parties will establish a process to notify and consult with CapMetro Bikeshare Program stakeholders prior to either Party making public statements or conducting media interviews in an official capacity.
2. CapMetro is responsible for social media for the CapMetro Bikeshare Program and will coordinate with the City.
3. CapMetro is responsible for public outreach and promotional campaigns for the CapMetro Bikeshare Program. Public outreach and promotional campaigns will be coordinated with the City.
4. CapMetro will advertise on CapMetro Bikeshare assets. Any and all proceeds and/or revenue derived from advertising activities will be retained by CapMetro to support ongoing costs of operations and maintenance of the Program. CapMetro will provide a report to show ad revenue generated and the off-set cost to operations and maintenance of the Program with the SLO quarterly report. Such costs attributed to operations and maintenance detailed herein are not to be construed as contributions by the City.
5. The City will coordinate with CapMetro to implement public feedback through the Austin 3-1-1 system and will coordinate with CapMetro to address Customer Service Request(s) submitted to Austin 3-1-1.

K. Reporting. The Parties will collaborate to develop a CapMetro Bikeshare Monthly and Annual Report and Work Plan. This report will be due no later than November 1st of each Year. In addition, the Parties will have access to CapMetro Bikeshare's data platform.

L. City Pass Bank. The City pass bank will remain in place with no change to the structure of the Program. The City will offer City of Austin and Austin Energy employees CapMetro Bikeshare passes at no cost to the employee from the City pass bank.

M. CapMetro Pass Program. CapMetro will offer CapMetro employees and its service providers, if permissible, CapMetro Bikeshare passes at no cost.

N. Term and Termination. The initial term of this Agreement (“**Initial Term**”) will commence on the last signature date of this Agreement (“**Effective Date**”) and expiring on September 30, 2027. Sixty (60) days prior to the expiration of the Initial Term, either Party shall have the right and option to renew this Agreement in a writing signed by the Parties for up to seven (7) option periods of

twelve (12) month duration each at the financial contributions agreed to between the Parties as a result of the Contribution Meeting or otherwise, and approved by the Parties' respective governing bodies, beginning October 1, 2027 (the "**Renewal Option**"). In the event CapMetro exercises any Renewal Option, the total term of this Agreement shall not extend beyond September 30, 2034. A Fiscal Year is defined as a one-year period that begins on October 1 and ends on September 30 of the following year. Either Party may terminate this Agreement, in whole or part, without cause, upon ninety (90) days' prior written notice.

O. Invoicing.

The Parties will process invoices in accordance with the Texas Prompt Payment Act ("**Prompt Payment Act**"), Chapter 2251, Texas Government Code. Interest charges will be paid in accordance with the Prompt Payment Act.

CapMetro shall submit invoices to the City on a monthly basis for Capital Contributions and on a quarterly basis for O&M Contributions by sending an e-mail invoice to TPWAccountsPayable@austintexas.gov or:

City of Austin – TPW Finance
Accounts Payable
5202 E. Ben White, Suite 450
Austin, TX 78741

Invoices submitted by CapMetro for City O&M Contributions should include relevant financial documentation related to all Bikeshare program revenues and expenses for the specified timeframe to reflect the terms per section C.1.i.1.

The City shall submit payments on a monthly basis for capital contribution reimbursement and quarterly basis for operations and maintenance expenses in accordance with the Texas Prompt Payment. Checks will be mailed to:

Capital Metropolitan Transportation Authority
P.O. Box 736492
Dallas, TX 75373-6492

For banking information related to making an ACH please contact AR@capmetro.org.

P. Availability of Funding. This Agreement is dependent upon the availability of funding. The Parties' payment obligations are payable only from current funds appropriated and available for the Agreement. A Party will provide the other Party written notice if it fails to appropriate funds to pay the amounts due under this Agreement. A Party will also notify the other Party as soon as practicable if there is a reduction of the appropriated funds necessary for such Party to perform under this Agreement.

Q. General Terms and Conditions

1. **Amendment.** This Agreement may be amended only in writing by an instrument signed by an authorized representative of each of the Parties. The City's Manager and the CapMetro President & CEO will have the authority to negotiate and execute amendments to this Agreement without further action from the City or action from the CapMetro Board of

Directors, but only to the extent necessary to implement and further the clear intent of City Council and CapMetro Board of Directors' approval, and not in such a way as would constitute a substantive modification of the terms and conditions hereof or otherwise violate Chapter 791 of the Texas Government Code. Any amendments that would constitute a substantive modification to the Agreement must be approved by the governing bodies of the Parties.

2. **Further Instruments.** The Parties agree to execute and/or amend such other and further instruments and documents as is or may become necessary or convenient to effectuate the terms of this Agreement and the Program.
3. **Maintenance of Records.** CapMetro and the City 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 latter of: (a) termination of this Agreement, (b) submission of the final invoices, or (c) until resolution of all billing questions.
4. **Disputes.** 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 meetings 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 ("**Request for Mediation**"), proceed directly to non-binding mediation as described below.
5. **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 mediators. Nothing in the 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.
6. **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 IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

7. **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 or insurrection, civil corruption or disturbance, sovereign conduct, strikes, lockouts, or other industrial disputes, fires, explosions, epidemics, pandemics, embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction 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.
8. **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.
9. **Independent Contractor.** This Agreement will not be construed as creating an employer-employee relationship, a partnership, or a joint venture between the Parties.
10. **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).
11. **Applicable Law.** This Agreement will be governed by and construed in accordance with the laws and constitution of the State of Texas.
12. **Venue.** Venue for any action arising under this Agreement will be in Travis County, Texas.
13. **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.

14. **Headings.** The paragraph headings contained in this Agreement are for reference purposes only and do not in any way affect the meaning or interpretation of this Agreement.
15. **Notices.** All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Either Party may change its address for notice by written notice to the other Party.

The City: City of Austin
Austin Transportation and Public Works Department
ATTN: Assistant Director
P.O Box 1088
Austin, Texas 78767-1088

CapMetro: Capital Metropolitan Transportation Authority
Attn: VP, Demand Response and Micro Transit Services
2910 E. 5th Street
Austin, Texas 78702

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

16. **Sovereign Immunity.** 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. **Execution in Counterparts/Electronic Transmission.** This Agreement may be executed in any number of counterparts with the same effect as if all Parties had signed the same document. All counterparts will be construed together and constitute one agreement. A facsimile or other electronic transmission of a Party's signature page binds that Party with the same force and effect as if signed and delivered in original.
18. **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.
19. **Prior Agreements.** This Agreement supersedes any and all prior agreements regarding this subject including the Original Agreement and the first Amended and Restated Agreement.
20. **Further Assurances.** Each Party agrees to perform all other acts and execute and deliver all other documents that may be necessary or appropriate to carry out the intent and purposes of this Agreement.
21. **Contracting Authority.** The Parties' execution of this Agreement is authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

[Signatures Page Follows]

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In Witness Whereof, the Parties have caused this Agreement to be executed by their undersigned, duly authorized representatives to be effective as of the Effective Date.

Capital Metropolitan Transportation Authority

City of Austin

By: _____

By: _____

Dottie Watkins
President & CEO

Richard Mendoza
Director, Transportation and Public Works

Signature Date: _____

Signature Date: _____

Approved as to form for CapMetro:

Sheri Jones
Associate Counsel

Approved as to form for City:

Angela Rodriguez
Assistant City Attorney

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Exhibit "A"
City of Austin Funding Contributions

	Annual City Capital Contribution	Annual City O&M Contribution
FY25	1,200,000	\$250,000
FY26	1,200,000	\$250,000
FY27	1,200,000	\$250,000
TOTAL:	\$ 3,600,000*	\$750,000

* Adjustments to the City's O&M Contribution for FY28 through FY34 will be determined in accordance with Section C(1)(i) of the Agreement.

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