

**AMENDMENT ONE
TO THE
INTERLOCAL AGREEMENT
BY AND BETWEEN
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AND

FOR BUILD CENTRAL TEXAS**

This Amendment One to the Interlocal Agreement for Build Central Texas (“**Amendment One**”) is made by and between Capital Metropolitan Transportation Authority, a transportation authority organized under Chapter 451 of the Texas Transportation Code (“**Capital Metro**”) and _____, a _____ (the “**Suburban Community**”). Capital Metro and _____ are referred to in this Amendment One individually as a “Party” and collectively as the “Parties”.

RECITALS

1. Capital Metro and Suburban Community are parties to that certain Interlocal Agreement for Build Central Texas, dated effective _____ (the “**Agreement**”), under which the parties set forth the terms and conditions for Suburban Community’s participation in the Build Central Texas Program – Suburban Communities Program (“**BCT Program**”).
2. The Parties wish to revise and expand on the process for administering and participating in the BCT Program each fiscal year (September 30 through October 1) (a “**Fiscal Year**”).
3. In addition, the Parties wish to set forth the process, guidelines and responsibilities for each Party related to a transit supportive infrastructure fund created by Capital Metro to fund certain transit supportive infrastructure projects proposed by the Suburban Community.

AGREEMENT

1. **BCT Program Funding, Guidelines and Procedures.** Article II of the Agreement is deleted and replaced in its entirety with the following:

“II. BCT Program Funding, Guidelines and Procedures

- A. Funding for Suburban Community in the BCT Program will be allocated annually in an amount equal to the difference between the sales tax contributions attributed to Suburban Community and the Total Cost of Service attributed to Suburban Community for the prior fiscal year (the “**BCT Allocation**”). For the purposes of this Agreement, Total Cost of Service shall be defined as operations and maintenance costs for transit service provided to Suburban Community plus capital depreciation (the “**Total Cost of Service**”).
- B. For Fiscal Year 2022, the BCT Allocation is shown on the attached Appendix A. The Parties agree that \$800,000 of the Fiscal Year 2022 BCT Allocation will be set aside for future expenses related to the Project Connect Green Line project, as shown on the attached

Appendix A.

- C. For future fiscal years, Capital Metro staff will notify Suburban Community of the BCT Allocation for Suburban Community by March 31 of the applicable fiscal year, and the terms and conditions of this Agreement will apply (the “**BCT Allocation Notification**”). The City may elect to allocate portions of the BCT Allocation towards the Project Connect Green Line project in future fiscal years. A report showing a detailed calculation of the Total Cost of Service in a form substantially similar to that set forth in Exhibit will accompany the BCT Allocation reported to Suburban City each year.
- D. Capital Metro shall provide audited annual financial statements to Suburban Community upon request. All cost information and service metrics are available monthly on the Capital Metro website dashboard. Any additional data valuable to Suburban Community will be reasonably provided upon request. Suburban Community may audit documentation related to the Total Cost of Service and the BCT Allocation to ensure compliance with the terms of this Agreement. Capital Metro shall make available to Suburban Community’s designated auditor during regular business hours and upon reasonable notice, applicable records related to the calculation of the Total Cost of Service and the BCT Allocation. If the event that such audit demonstrates that the Total Cost of Service or BCT Allocation was calculated incorrectly and resulted in an underpayment of the BCT Allocation, the correct amount shall be paid by Capital Metro within thirty (30) days of notification by Suburban Community. In the event that such audit demonstrates that the Total Cost of Service or BCT Allocation was calculated incorrectly and resulted in an overpayment of the BCT Allocation, the overpayment amount will be refunded to Capital Metro within thirty (30) days of the determination. Suburban Community must exercise its right to audit a particular Total Cost of Service and/or BCT Allocation within twelve (12) months of their corresponding BCT Allocation Notification.
- E. Once Capital Metro staff notifies Suburban Community of a BCT Allocation under this Agreement, Suburban Community shall submit to Capital Metro a proposed project list for the applicable fiscal year in accordance with the Suburban Communities Program Procedures and Guidelines attached to this Agreement as **Appendix B** (the “**BCT Guidelines and Procedures**”). The project list may include a proposal to rollover a BCT Allocation for use in a later fiscal year. If a project list for any fiscal year is not submitted to Capital Metro by the end of the fiscal year in which funds are allocated, then such fiscal year funds are forfeited. Suburban Community may, during the applicable fiscal year, submit for Capital Metro’s approval, a revised project list to allocate unattached funds to prior-approved projects.
- F. For projects approved for Fiscal Year 2022, Capital Metro shall make payments to Suburban Community as follows:
- a. a check for fifty percent (50%) of the BCT Allocation will be available by June 1, 2022.
 - b. For projects funded with less than Five Hundred Thousand Dollars (\$500,000) of the applicable BCT Allocation, payment for outstanding project costs will be made out of the remaining fifty percent (50%) of the BCT Allocation by check upon submission of an invoice from Suburban Community evidencing completion or substantial completion of the project, together with satisfactory

Commented [PS1]: My understanding is that this is something the City can choose not to allocate, so this sentence is subject to Council approval.

documentation for payment, and otherwise in accordance with the BCT Guidelines and Procedures.

- c. For projects funded with Five Hundred Thousand Dollars (\$500,000) or more of the applicable BCT Allocation, payment for outstanding project costs will be made out of the remaining fifty percent (50%) of the BCT Allocation by check upon submission of an invoice from Suburban Community evidencing completion or substantial completion of the project, together with satisfactory documentation for payment, in accordance with an established project milestone schedule agreed upon by the Parties prior to commencement of the project and otherwise in accordance with the BCT Guidelines and Procedures.
- G. For projects approved for Fiscal Year 2023 and subsequent fiscal years, Capital Metro shall make payments to Suburban Community as follows:
- a. For projects funded with less than Five Hundred Thousand Dollars (\$500,000) of the applicable BCT Allocation, fifty percent (50%) of the budgeted costs for each such project shall be mailed to Suburban Community upon submittal of an invoice on Suburban Community letterhead. Payment for the remaining project costs will be made to Suburban Community by check upon submission of an invoice from Suburban Community evidencing completion or substantial completion of the project, together with satisfactory documentation for payment, and otherwise in accordance with the BCT Guidelines and Procedures.
 - b. For projects funded with Five Hundred Thousand Dollars (\$500,000) or more of the applicable BCT Allocation, twenty percent (20%) of the budgeted costs for each such project shall be mailed to Suburban Community upon submittal of an invoice on Suburban Community letterhead, provided that such payment will not exceed One Million Dollars (\$1,000,000). Payment for the remaining project costs will be paid by check upon submission of an invoice from Suburban Community evidencing completion or substantial completion of the project, together with satisfactory documentation for payment, in accordance with an established project milestone schedule agreed upon by the Parties prior to commencement of the project and otherwise in accordance with the BCT Guidelines and Procedures.
- H. Capital Metro shall provide Suburban Community requested technical or project assistance in pursuing federal grant funds to complement the funding available under the Program that supports transit supportive infrastructure and joint Suburban Community and Capital Metro goals.
2. **BCT Guidelines and Procedures.** The BCT Guidelines and Procedures attached to the Agreement as Exhibit A are deleted and replaced in their entirety by the revised BCT Guidelines and Procedures attached to this Amendment One as **Appendix A**. Suburban Community will comply with the BCT Guidelines and Procedures, which set out the rules and regulations governing participation in the BCT Program and payments to be made to Suburban Community under this Agreement. Capital Metro reserves the right, in its sole discretion to make amendments to the BCT Program Guidelines and Procedures from time to time, provided that such amendments shall not reduce the funding for prior-approved projects, shorten the deadlines for Suburban Community to submit proposed projects to Capital Metro (unless Capital Metro provides the City with sixty days' written notice of the

amendments), change the Total Service Cost, cause the BCT Allocation to become unavailable, or change a material term of this Agreement.

3. Transit Supported Infrastructure Fund

- A. By action of the Capital Metro Board of Directors on March 28, 2022, Capital Metro approved a Transit Supportive Infrastructure Fund to fund transit supportive infrastructure projects for Suburban Communities with the amount shown on the attached Appendix A being apportioned for use by Suburban Community (“**Transit Infrastructure Fund Allocation**”). Unless otherwise provided in this Section 3, the projects funded with Transit Infrastructure Fund Allocation (the “**Suburban Community Infrastructure Projects**”) will be subject to the BCT Guidelines and Procedures, with references to the BCT Program and BCT projects deemed to mean the Transit Supportive Infrastructure Fund and the Transit Infrastructure Fund Allocation.
- B. Suburban Community will submit to Capital Metro for approval a list of proposed Suburban Community Infrastructure Projects by ~~May 31~~ June 30, 2022. The project list may include a proposal to use Transit Infrastructure Funds beyond Fiscal Year 2022. If the project list is not submitted to Capital Metro by September 30, 2022 then the Transit Infrastructure Funds are forfeited. Suburban Community may submit for Capital Metro’s approval, a revised project list to allocate unattached funds to prior-approved projects. Capital Metro will review and approve Suburban Community Infrastructure Projects in accordance with the BCT Guidelines and Procedures.
- C. Capital Metro shall make payments to Suburban Community for approved Suburban Community Infrastructure Projects as follows:
 - a. For Suburban Community Infrastructure Projects funded with less than Five Hundred Thousand Dollars (\$500,000) of the Suburban Community Transit Infrastructure Funds, fifty percent (50%) of the budgeted costs for the Suburban Community Infrastructure Funds shall be mailed to Suburban Community on or after June 1, 2022, upon submittal of an invoice on Suburban Community letterhead. Payment for the remaining costs for such Suburban Community Infrastructure Projects will be made to Suburban Community by check upon submission of an invoice from Suburban Community evidencing completion or substantial completion of the project, together with satisfactory documentation for payment, and otherwise in accordance with the BCT Guidelines and Procedures.
 - b. For Suburban Community Infrastructure Projects funded with Five Hundred Thousand Dollars (\$500,000) or more of the Suburban Community Transit Infrastructure Funds, twenty percent (20%) of the budgeted costs for each such project shall be mailed to Suburban Community on or after June 1, 2022, upon submittal of an invoice on Suburban Community letterhead, provided that such payment will not exceed One Million Dollars (\$1,000,000). Payment for the remaining costs will be made to Suburban Community by check upon submission of an invoice from Suburban Community evidencing completion or substantial completion of the applicable Suburban Community Infrastructure Project, together with satisfactory documentation for payment, in accordance with an established project milestone schedule agreed upon by the Parties prior to commencement of the applicable Suburban Community Infrastructure Project and otherwise in accordance with the BCT Guidelines and Procedures.
- D. Capital Metro shall pay all invoices in accordance with the Texas Prompt Payment Act,

Chapter 2251, Texas Government Code. Capital Metro shall have the right to audit project documentation to ensure compliance with the terms of this Agreement and the BCT Guidelines and Procedures.

4. **Invoicing and Payment.** Capital Metro shall pay all invoices in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. Capital Metro shall have the right to audit project documentation to ensure compliance with the terms of this Agreement and the BCT Guidelines and Procedures.
5. **Term and Termination.** Article III of the Agreement is deleted and replaced in its entirety with the following:

“III. Term and Termination

- A. The initial term of this Agreement is from the date of the last Party to sign (“**Effective Date**”) through September 30, 2032, unless terminated earlier in accordance with this Agreement. After the initial term, the Agreement will automatically renew annually on the anniversary of the Effective Date unless either Party provides written notice ninety (90) days in advance of the end date of its intent not to renew. Notwithstanding anything to the contrary, the Parties may mutually agree to terminate this Agreement at any time.
- B. If, at any time during the term of the Agreement, Suburban Community is no longer included in Capital Metro’s service area, this Agreement will automatically terminate and be null and void as of the date on which Suburban Community is removed from Capital Metro’s service area. As of such date, neither party will have any obligations under this Agreement, including any obligation by Capital Metro to make any payments to Suburban Community under this Agreement.
- C. Notwithstanding anything contained herein to the contrary, in the event of termination of the Agreement, the funding for any projects approved prior to the termination of the Agreement shall remain available and payable to Suburban Community under the terms set forth in this Agreement, and the obligation to pay the BCT Allocation to Suburban Community for such approved projects shall survive termination of this Agreement.
- D. If Capital Metro becomes subject to a legislative change, revocation of statutory authority, or lack of funds which would render Capital Metro’s performance under this Agreement impossible or unnecessary, this Agreement will be terminated or cancelled and be deemed null and void. In the event of such termination or cancellation, Capital Metro will not be liable to Suburban Community for any damages, which are caused or associated with such termination, or cancellation. In such event, Capital Metro shall cooperate with Suburban Community to determine whether there is an alternative source of funding for the BCT Allocation or an alternative structure that can be used to achieve the purposes of this Agreement.”

6. **Entire Agreement.** The terms of this Amendment One are in addition to, and construed together with, the terms of the Agreement. In the event of conflict in any language in the Agreement and this Amendment One, the language in this Amendment One will control.

7. **Capitalized Terms.** Capitalized items used in this Amendment One and not otherwise defined have the meanings assigned to them in the Agreement.

IN WITNESS WHEREOF, this Amendment One has been signed by an authorized representative of each Party, to be effective as of the last signature date below.

**CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY**

Name: _____
Title: _____
Signature Date _____

Name: _____
Title: _____
Signature Date _____

APPENDIX A
BCT ALLOCATION AMOUNT
AND
TRANSIT INFRASTRUCTURE FUND ALLOCATION

APPENDIX B

THE BUILD CENTRAL TEXAS - SUBURBAN COMMUNITIES PROGRAM PROCEDURES AND GUIDELINES

The Build Central Texas – Suburban Communities Program was established by Capital Metro to finance transportation projects that are of mutual benefit to Capital Metro and the respective communities in the Capital Metro service area. The Capital Metro Board of Directors created the Suburban Communities Program to ensure that the suburban cities and portions of counties in the Capital Metro service area (collectively, the “**Suburban Communities**”) benefit from the Build Central Texas Program.

The following procedures and guidelines are provided to assist the Suburban Communities in Capital Metro's service area with developing and administering their annual Build Central Texas Program - Suburban Communities Program project proposals. Capital Metro staff will be available to assist with any questions that may arise regarding the program.

Project Criteria

1. The purpose of a project must be for transit related capital improvements and generally will fall into one of the following categories, unless otherwise agreed to by Capital Metro:
 - a. Transit Capital Improvements:
 - i. Includes sidewalks, sidewalk curb ramps, safety signage, electronic pedestrian signals, walkway lighting and hike and bike facilities, passenger amenities such as shelters, benches, landscaping, bus stop lighting, concrete bus pads, and roadway improvements that improve traffic safety or traffic flows.
 - ii. Must be along a transit route or directly leading to a transit route or transit facility, unless otherwise approved by Capital Metro. A statement from the Suburban Community that the project is along or directly leading to a transit route must be included in the proposed project list when submitted to Capital Metro.
 - b. Street Resurfacing and Improvements:
 - i. Includes asphalt and concrete resurfacing of streets, street reconstruction, and construction of new streets which will serve as transit corridors. Street repair and maintenance should focus on current and future transit routes. Street projects may only include non-transit related roadways when all transit roadways are in an improved condition.
 - ii. Transit street projects are given priority for resurfacing over non-transit streets. Funding may be applied to the repair of non-transit streets provided all of a Suburban Community's transit streets have been resurfaced in the last five years and are in good condition, as determined by Capital Metro staff. Written verification of such resurfacing must be submitted.

c. Mobility Improvements:

- i. Includes planning, review, and implementation of programs and projects which have a benefit to transit service and include the planning for, review of, and implementation of intersection improvements, signal timing changes, widening of roadways, signage, lighting, transit-related bicycle and pedestrian improvements, and other mobility enhancement projects and programs. Transit-related bicycle and pedestrian improvements are defined as those projects which use various transportation methods to providing multi-modal access to homes, business, public facilities and which provide improved access to transit facilities or service.

2. Strong preference is given to projects that are directly on a transit route.
3. Strong preference is given to projects that directly improve transit service, traffic safety, or passenger convenience.
4. Joint funding of projects between Capital Metro, the Suburban Community, and other financing sources is encouraged.

Project Submittal

1. When Capital Metro staff notifies the Suburban Community of a fiscal year allocation, the Suburban Community shall submit to Capital Metro a proposed project list for that fiscal year (October 1-September 30). The proposed project list must be submitted on or before May 31 of each fiscal year that funds are allocated provided the project list does not exceed the fiscal year allocation. The project list shall define the scope of work for the services to be provided by Suburban Community.
2. Upon request, Suburban Community may be required to submit to Capital Metro additional project details and timelines. Capital Metro has the right to reject any submitted project that does not meet the established Project Criteria. Any project not rejected by Capital Metro shall be deemed approved.
3. The Suburban Community's projects list must include all new projects as well as any previously approved unfinished projects and their status. Capital Metro will review the proposed projects and provide guidance to the respective Suburban Communities as applicable. Proposed projects will be reviewed by Capital Metro Planning and Development Department and Capital Projects staff to ensure that projects do not conflict with other regional projects. When the projects are approved, the Suburban Community will be notified.

Final project proposals should be in letter form and directed to Capital Metro at the following address or via electronic email address:

Capital Metropolitan Transportation Authority
Attn: Finance

2910 East Fifth Street
Austin, Texas 78702
Melanie.Capesius@capmetro.org

Capital Metro will notify the Suburban Community in writing of any changes to the above address.

4. Projects that are not competitively contracted will only be reimbursed for directly related costs. No indirect costs will be covered. It is a requirement under this Agreement that the Suburban Community will so state in their submitted projects list that all projects will be competitively bid noting any exceptions for emergency projects. Direct costs that are covered include the categories of project development, project design, and project construction. A letter or agreement detailing eligible costs will be required for projects that are not competitively contracted before final payment is released. Notwithstanding the foregoing, emergency projects deemed by the Suburban Community to be of grave public necessity and necessary to meet unusual and unforeseen conditions are exempt from the competitive contracting requirement.
5. In order to advance efforts by Capital Metro and the Suburban Community to increase the participation of small businesses in publicly funded projects, Small Business Enterprise (“SBE”) participation is strongly encouraged. Each Suburban Community may set SBE goals on procurements using its own “Small Business Program” or the Suburban Community may follow Capital Metro’s SBE program.
6. If a project list for any fiscal year that funds are allocated is not submitted to Capital Metro by the end of the fiscal year in which funds are allocated, then such fiscal year funds are forfeited; Suburban Community may, during the applicable fiscal year, submit for Capital Metro’s approval, a revised project list to allocate unattached funds to prior-approved projects.
7. For projects with costs of \$500,000 or more, the Suburban Community and Capital Metro, through its Planning and Development Department staff, will develop milestones specific to the project prior to commencement of the project.
8. Requests for modifications to project lists or any substitution of the projects previously approved must be submitted in writing to Capital Metro. Written approval by Capital Metro of proposed changes is required.

Project Administration

Throughout the term of any project, Suburban Community will:

1. Maintain regular communication with Capital Metro.
2. If requested, provide Capital Metro with all requested documentation needed to conduct a project audit. In the event Capital Metro determines that fiscal year funds were not spent on an approved project, then upon demand, the Suburban Community shall reimburse Capital Metro for any funds identified by in such audit as not spent on an approved project.
3. Ensure all pedestrian projects and policies developed through the BCT Program are developed in accordance with the requirements of the Americans with Disabilities Act.
4. Notify Capital Metro or its representative when the project is complete or substantially

completed.

5. Upon request, arrange a site visit to allow Capital Metro or its representative an opportunity to inspect a project.

Invoicing and Payment

1. The Suburban Community is responsible for invoicing Capital Metro based on milestones, as applicable, and/or completion or substantial completion of the project in accordance with the terms of the Agreement. The invoices should be in letter form to Capital Metro and have attached photocopies of any documentation pertaining to the cost of the project such as construction contracts, supply invoices, timesheets, change orders, contractor pay vouchers, etc.
2. The Suburban Community shall provide Capital Metro with any documentation pertaining to any approved project, including pre-construction or construction meeting minutes, copies of pay applications, change orders, progress reports, photographs, payment vouchers, and project close-out documents if requested by Capital Metro.
3. The Suburban Community is responsible for informing Capital Metro in a timely manner of any substantial delays or alterations in the project scope of work.
4. Capital Metro shall pay all invoices from revenue that is currently available to Capital Metro.
5. Payments to Suburban Community are expressly contingent upon Suburban Community's strict compliance with this Agreement, including the BCT Guidelines and Procedures.
6. All interest that may accrue to program funding held by the Suburban Community must be allocated toward program projects. The local Suburban Community administrator will propose the projects to which the funding will be allocated and submit in writing a project modification request to Capital Metro.