

MEMORANDUM OF UNDERSTANDING

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This Memorandum of Understanding (“**MOU**”) is entered into as of 13 NOV, 2024 between 3423 CRESTVIEW, LLC, a Texas limited liability company (“**Owner**”), and CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY, a rapid transit authority organized under Chapter 451 of the Texas Transportation Code (“**CapMetro**”), collectively referred to as the “**Parties**”.

INTRODUCTION

Owner owns those certain parcels of land more particularly described in Exhibit A (the “**Property**”). The Property is adjacent to CapMetro’s “Crestview” rail line and in the vicinity of one or more train and/or bus station facilities which CapMetro desires to construct in the future.

CapMetro has requested Owner’s agreement to grant certain easements in connection with CapMetro’s planned future improvements in and near the Property, and Owner is willing to do so on the terms and conditions set forth in this MOU.

ARTICLE I.
CAPMETRO FACILITIES

Section 1.01 CapMetro Facilities.

a. CapMetro desires to be able to construct, maintain, repair and use a transit stop in an area approximately one hundred thirty-six and seven tenths (136.7) feet long and twelve (12) feet wide located along the portion of the Property’s boundary adjacent to North Lamar Boulevard (the “**North Lamar Station**”). Additionally, CapMetro desires to be able to install, maintain, repair, and use an associated Bikeshare docking station in an area sixty (60) feet long and ten (10) feet wide located adjacent to the transit stop along the edge of the Owner’s property parallel to the Red Line rail tracks, and at least twenty-five (25) feet from the current track centerline (the “**Bikeshare Docking Station**”). A general conceptual drawing showing the planned improvements for the North Lamar Station and Bikeshare Docking Station (collectively, the “**CapMetro Facilities**”) is included in Exhibit B attached hereto. The Parties shall additionally agree to enter into a development agreement (the “**Development Agreement**”) providing for, among other things, the granting of an easement to CapMetro, the financial obligations and other commitments of the Parties, and an agreed-upon term to be submitted to the CapMetro Board of Directors for approval.

b. The North Lamar Station may include shelters intended to provide shade and/or rain protection for waiting passengers in accordance with the following: CapMetro may install no more than two (2) standard shelters that are no larger than five (5) feet by twelve (12) feet in size, and which contain a transparent backing on the rear-facing side opposite the right of way; specifically, CapMetro will not use mesh backing or similar material which prevents people in the right of way from seeing through to the structures on the Owner's property beyond the bus shelters. In addition, the shelters shall be located no less than twenty (20) feet apart. CapMetro's plans and specifications for the shelters shall be set forth in the Approved Facilities Plans (defined below). CapMetro agrees, at its expense, to maintain the shelters in good condition and repair at all times (including regularly scheduled maintenance on intervals approved by Owner and with standards to be set forth in the Development Agreement). In the event of material damage to or destruction of such shelters, CapMetro shall promptly restore or replace such damaged or destroyed shelter at its expense with an identical shelter at its expense.

c. Notwithstanding subparagraph b above, in lieu of permitting CapMetro to install standard shelters, Owner may elect to install customized shelters in accordance with the following: The shelters shall be located no less than twenty (20) feet apart. If Owner elects to utilize customized shelters, Owner at its expense shall have plans and specifications for the customized shelters prepared and submit such plans and specifications to CapMetro for review and approval, so that CapMetro can ensure compliance with minimum design, safety, and accessibility criteria. Following CapMetro's approval of the plans and specifications for the customized shelter, CapMetro shall install the customized shelters in accordance with the approved plans and specifications at the time of constructing the North Lamar Station. CapMetro shall be responsible for the cost of fabrication, installation and construction of the customized shelters, provided that following completion of construction of North Lamar Station, Owner shall reimburse CapMetro for the amount by which the cost of the custom shelters exceeds the estimated cost of the standard shelters described in paragraph b above as agreed to by Owner and CapMetro ("Excess Cost"). CapMetro agrees, at its expense, to maintain the customized shelters in good condition and repair at all times (including regularly scheduled maintenance on intervals approved by Owner and with standards to be set forth in the Development Agreement). However, in the event of material damage to or destruction of such shelters, CapMetro shall promptly restore or replace such damaged or destroyed shelter at its expense with an identical shelter, and in such event Owner shall be responsible for the Excess Cost of restoration or replacement.

Section 1.02 Plans. At such time as CapMetro is ready to construct the CapMetro Facilities, CapMetro shall have plans and specifications for the CapMetro Facilities and the adjacent area within the right of way prepared at its expense and submit such plans and specifications to Owner for review and approval. If Owner objects to the proposed plans and specifications, CapMetro shall have such plans and specifications revised and resubmitted to Owner for review and approval. Such process shall be repeated until Owner has approved the plans and specifications for the CapMetro Facilities and the adjacent area within the right of way. The plans approved by Owner are referred to as the "**Approved Facilities Plans**". The Parties shall reasonably cooperate in good faith to obtain Owner's approval of the Approved Facilities Plans. Following Owner's approval of the Approved Facilities Plans, CapMetro shall be responsible for obtaining all governmental permits and approvals necessary for constructing the

CapMetro Facilities in accordance with the Approved Facilities Plans and shall generally keep Owner apprised of CapMetro's efforts to obtain the necessary permits and approvals. In the event the City of Austin expands the right of way along N. Lamar by condemnation (or voluntary conveyance in lieu of condemnation) of a portion of the Property, Owner and CapMetro shall update the Approved Facilities Plans to relocate the transit stop according to the updated curbline to maintain a 12-foot wide area along the property's entire North Lamar Blvd frontage (presently 136.7 feet as shown in Exhibit B). CapMetro shall not make any changes or modifications to the Approved Facilities Plans without Owner's prior written approval.

Section 1.03 Easement. Upon CapMetro's obtainment of the permits and approvals for construction of the CapMetro Facilities in accordance with the Approved Facilities Plans, Owner agrees to grant an easement(s) to CapMetro for the CapMetro Facilities. The terms and conditions of such easement(s) will be reasonably negotiated and agreed to in the Development Agreement by Owner and CapMetro. Upon CapMetro Board approval and final execution and delivery of the easement(s) by the Parties, CapMetro shall cause the CapMetro Facilities easement(s) to be recorded in the Official Public Records of Travis County, Texas, at its expense. Notwithstanding anything herein to the contrary, in no event shall the CapMetro Facilities be located more than twelve feet from the portion of the Property's boundary line adjacent to North Lamar Boulevard, and Owner shall have no obligation to grant or agree to any easement for the CapMetro Facilities outside of such area.

ARTICLE II. OWNER REDEVELOPMENT

Section 2.01 Owner Redevelopment Notice. If, prior to granting the easement for the CapMetro Facilities, Owner determines that it will proceed with the development or redevelopment of the Property, the Owner will provide written notice to CapMetro of such determination (an "**Owner Redevelopment Notice**"). If CapMetro has not previously obtained Owner's approval of the Approved Facilities Plans, CapMetro may elect to initiate such process following receipt of the Owner Redevelopment Notice so as to generally coordinate the permitting and approval process for the CapMetro Facilities with Owner's pursuit of an Approved Site Plan for the Owner's Project as described below.

Section 2.02 Owner's Project; Reserved Area. Following delivery of an Owner Redevelopment Notice, Owner may have plans and specifications prepared for its development of the Property ("**Owner's Project**") and thereafter pursue the permits and approvals necessary for the development of Owner's Project. In such case, if Owner has not previously granted the easement(s) for the CapMetro Facilities to CapMetro, then the plans for Owner's Project shall include an area reserved for the CapMetro Facilities (the "**Reserved Areas**"), as follows:

a. The Reserved Area for the North Lamar Station shall be an area one hundred thirty-six and seven tenths (136.7) feet long and twelve (12) feet wide located along the portion of the Property's boundary which is adjacent to North Lamar Boulevard, as determined by Owner and set forth in the site plan approved for Owner's Project by the City of Austin ("**Approved Site Plan**"). The Reserved Area for the associated Bikeshare Docking Station shall be an area sixty (60) feet long and ten (10) feet wide, positioned three (3) feet from the rerouted

shared use path and along the edge of the Property parallel to the Red Line rail tracks, and at least twenty-five (25) feet from the current track centerline. The locations of the Reserved Areas for the CapMetro Facilities set forth in the Approved Site Plan shall be the sole, final and definitive locations of the easement(s) for the CapMetro Facilities as contemplated under this MOU and the Development Agreement.

b. Owner's Project shall not include any buildings or vertical improvements within the Reserved Areas. However, the Reserved Areas may include landscaping and irrigation; fencing; and removable streetscape and park improvements such as benches, planters, picnic tables, trash cans, etc. Owner reserves the right to install underground utilities, drainage and water quality facilities within the Reserved Areas and the right to grant easements in connection therewith, provided that such utilities, drainage and water quality facilities and easements shall be located so as not to unreasonably interfere (as determined by Owner) with the future construction of the CapMetro Facilities within the Reserved Areas. For clarity, Owner's designation of the Reserved Areas shall not be construed to grant any easement or other rights to CapMetro, and Owner's obligation to grant such easements shall remain subject to all of the terms and conditions of Article I above (except that the Reserved Areas shall be the definitive locations of such easements).

ARTICLE III. MISCELLANEOUS

Section 3.01 Term. The term of the Development Agreement will commence on the Effective Date and continue for a period of twenty-five (25) years. Upon expiration of the term of the Development Agreement, neither Party shall have any further obligations or responsibilities hereunder.

Section 3.02 Assignment. This MOU, and the rights and obligations of Owner, in whole or in part, may be assigned by Owner to a subsequent owner, or developer, or lender, with respect to all or a portion of the Property. CapMetro's consent shall not be required for any such assignment, provided that Owner shall provide CapMetro written notice of the sale of the Property and assignment of this MOU to a new Owner. CapMetro rights hereunder are personal to CapMetro, and CapMetro shall not assign this MOU to any other person or entity without the Owner's prior written approval.

Section 3.03 No Recording. Neither this MOU nor any memorandum hereof shall be recorded by either Party without the prior written consent of the other Party.

Section 3.04 Notice. Any notice given under this MOU must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the Party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the Party to be notified and with all charges prepaid; or (iii) by personally delivering it to the Party, or any agent of the Party listed in this MOU. Notice by United States mail will be effective on the earlier of the date of receipt or two (2) business days after the date of mailing. Notice given in any other

manner will be effective only when received. For purposes of notice, the addresses of the Parties will, until changed as provided below, be as follows:

CapMetro: Capital Metropolitan Transportation Authority
2910 East 5th Street
Austin, Texas 78702

Owner: 3423 Crestview, LLC
4811 E. 7th St.
Austin, Texas 78702

The Parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to the other Party.

Section 3.05 Zoning and NPA Approval. Owner is currently pursuing a change to the zoning and neighborhood plan applicable to the Property as set forth in City of Austin zoning case C14-2022-0035 (“**Zoning Case**”) and neighborhood plan amendment case NPA-2022-0017.01 (“**NPA Case**”). Notwithstanding any other provision of this MOU to the contrary, the agreements and obligations of Owner reflected herein are conditioned upon final approval (*i.e.*, third reading) of both the Zoning Case and the NPA Case by the Austin City Council, with no subsequent appeal, and in a form and on terms and conditions acceptable to Owner in its sole discretion. If both the Zoning Case and NPA Case are not approved by the Austin City Council, or if either the Zoning Case or NPA Case is withdrawn, then the terms and conditions set forth in this MOU shall not be applicable and shall be automatically terminated. If this MOU is deemed inapplicable and terminated pursuant to the preceding sentence (or upon expiration of the term as described in Section 3.01 above), this MOU shall be of no further force and effect. In such event, Owner, at its option, may elect to execute and record an affidavit in the Official Public Records of Travis County, Texas, certifying the facts supporting and evidencing the termination of this MOU, which affidavit shall be deemed sufficient to evidence the termination of this MOU for all purposes and which may be relied upon by third parties.

[Remainder of page intentionally left blank; Signatures follow.]

The Parties have executed this MOU to be effective as of the date first written above.

OWNER:

3423 CRESTVIEW, LLC
a Texas limited liability company

By: 

Name: BENJAMIN BARLIN

Title: COO

CAPMETRO:

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

By: 

Name: Kenneth Cartwright

Title: VP, Facility Management & Capital Construction

EXHIBIT A

The Property

Tract One:

Being a 0.243 acre tract of land, more or less, out of the GEORGE W. SPEARS LEAGUE in Travis County, Texas and being more particularly described by metes and bounds in Deed recorded in Volume 12065, Page 49, Real Property Records, Travis County, Texas.

Tract Two:

Being a 0.265 acre tract of land, more or less, out of the GEORGE W. SPEARS LEAGUE in Travis County, Texas and being more particularly described by metes and bounds in Deed recorded in Volume 12065, Page 49, Real Property Records, Travis County, Texas.

Tract Three:

Lot 1, WALKER SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 85, Page(s) 198B of the Plat Records of Travis County, Texas.

EXHIBIT B

CapMetro Facilities including Bikeshare Docking Station

Drawings are meant for illustrative purposes only and are not drawn precisely to scale.



