

CAUSE NO. D-1-GN-23-008105

DIRTY MARTIN’S,	§	IN THE DISTRICT COURT
GONZALO BARRIENTOS,	§	
MARGARET GOMEZ, ORA HOUSTON, and	§	
SUSANA ALMANZA	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
MAYOR KIRK WATSON,	§	
COUNCIL MEMBERS NATASHA HARPER-	§	
MADISON, VANESSA FUENTES,	§	
JOSE VELASQUEZ, JOSE “CHITO” VELA,	§	TRAVIS COUNTY
RYAN ALTER, MACKENZIE KELLY,	§	
LESLIE POOL, PAIGE ELLIS,	§	
ZOHAIB “ZO” QADRI, ALISON ALTER, And	§	
AUSTIN TRANSIT PARTERNSHIP BOARD	§	
MEMBERS	§	
VERONICA CASTRO de BARRERRA,	§	
JOHN LANGMORE, JUAN GARZA,	§	
JEFFREY TRAVILLION,	§	
ALL IN THEIR OFFICIAL CAPACITIES,	§	
<i>Defendants.</i>	§	455th JUDICIAL DISTRICT

**PLAINTIFFS’ 1ST AMENDED PETITION FOR INJUNCTIVE
RELIEF/RESPONSE**

Plaintiffs are City of Austin property-tax taxpayers who bring suit against the Defendant Austin Officials and Defendant Austin Transit Partnership Officials in their official capacities and ask the Court to stop their *ultra vires* and illegal assessment, collection, and expenditure of property taxes, and unauthorized issuance of debt for Project Connect in violation of the Project Connect “Contract With The Voters”.

A. NATURE OF THE CASE AND DISCOVERY CONTROL PLAN

1. a. In November, 2020, Austin voters approved a “Contract With The Voters” with the City of Austin for a multi-billion-dollar rapid-transit project called Project Connect in exchange for the biggest Austin property tax rate increase—almost 21%—in Austin’s history. The Texas Tax Code requires voter approval of such a tax rate increase (over 3.5%) and restricts expenditure of the tax increase—for as long as the tax increase is collected—to be used exclusively for the purpose voters were promised the taxes would be used for. Taken together, the documentation available to voters during the 2020 election laid out specific descriptions, costs, and timelines for what taxpayers were “buying” with their property tax increase. This lawsuit is brought because Austin taxpayers were presented an illegal proposition, and they are not getting anything close to the benefit of the bargain they made in the Project Connect “Contract With the Voters.”

***“THE DAYS OF OVERPROMISING ARE OVER.”*¹**

b. That announcement, in March 2023, was an admission by Greg Canally, Executive Director of Austin Transit Partnership (ATP), that voters were misled in November, 2020 when they approved the city tax increase. On June 6,

¹ *Austin Monitor*, March 21, 2023, quoting Greg Canally, Executive Director of ATP.

2023, the Austin City Council and ATP² drastically amended The Voter Contract without even seeking voter authorization or reducing the Project Connect Tax. They unilaterally adopted a Replacement Plan, that in the context of consumer-protection law would be called a “bait and switch” because it is so inferior to what voters “bought.” For the reasons explained below, the Defendant Officials no longer have statutorily required voter authorization to assess, collect, or spend the Project Connect Tax increase nor do they have authority to issue bonds to be paid from that tax.

c. Discovery will be conducted under Texas Civil Procedure Rule 190.3, Level 2.

B. CLAIM FOR RELIEF

2. Plaintiffs seek only equitable nonmonetary relief. TRCP 47(c)(2).

C. PARTIES

3. a. **Plaintiffs are:**

(1). Dirty Martin’s which is the assumed name of Plaintiff Dirty Martin’s Place, Inc. Dirty Martin’s is a taxpayer of Austin and the owner of property

² Capital Metropolitan Transportation Authority (CMTA or “CapMetro”) is also a party to the revised Joint Powers Agreement. But since CapMetro has no role in setting the property tax rate or ultimate control over spending or bond decisions, it is not a party to this litigation. CapMetro does jointly appoint 3 members of the ATP Board and one voting and one non-voting Board member.

described in TCAD Property ID No. 396340 in central Austin. This Plaintiff may be served via its attorney of record in this case.

(2). Gonzalo Barrientos is a resident and taxpayer of Austin and the owner of property on the City's tax appraisal roll described as Property ID. No 307309 in south central Austin. The information required by Tex. Civ. Prac. & Rem. Code Sec. 30.014 is DL 020 and SocSec 295. This Plaintiff may be served via his attorney of record in this case.

(3) Margaret Gomez is a resident and taxpayer of Austin and the owner of property on the City's tax appraisal roll described as Property ID. No 776295 in east Austin. The information required by Tex. Civ. Prac. & Rem. Code Sec. 30.014 is DL 634 and SocSec 322. This Plaintiff may be served via her attorney of record in this case.

(4). Ora Houston is a resident and taxpayer of Austin and owner of property on the City's tax appraisal roll described as Property ID. No 203984 in east Austin. The information required by Tex. Civ. Prac. & Rem. Code Sec. 30.014 is DL 525 and SocSec 909. This Plaintiff may be served via her attorney of record in this case.

(5). Susana Almanza is a resident and taxpayer of Austin and owner of property on the City's tax appraisal roll described as Property ID. No 288208 in

east Austin. The information required by Tex. Civ. Prac. & Rem. Code Sec. 30.014 is DL 524 and SocSec 723. This Plaintiff may be served via her attorney of record in this case.

b. **“City Defendants” are sued in their official capacity as Members of the Austin City Council; “ATP Defendants” are sued in their official capacity as Members of the Board of Austin Transit Partnership Local Government Corporation:**

(1). Austin Mayor Kirk Watson has been served at the Mayor’s office located at 301 W. 2nd Street, Austin, Texas 78701. He is sued in his official capacity as both a Member of the Austin City Council and as a Board Member of ATP.

(2). Council Member, District 1, Natasha Harper-Madison has been served at the City Council District 1 office located at 301 W. 2nd Street, Austin, Texas 78701.

(3). Council Member, District 2, Vanessa Fuentes has been served at the City Council District 2 office located at 301 W. 2nd Street, Austin, Texas 78701.

(4). Council Member, District 3, Jose Velasquez has been served at the City Council District 3 office located at 301 W. 2nd Street, Austin, Texas 78701.

(5). Council Member, District 4, Chito Vela has been served at the City Council District 4 office located at 301 W. 2nd Street, Austin, Texas 78701.

(6). Council Member, District 5, Ryan Alter has been served at the City Council District 5 office located at 301 W. 2nd Street, Austin, Texas 78701.

(7). Council Member, District 6, Mackenzie Kelly has been served at the City Council District 6 office located at 301 W. 2nd Street, Austin, Texas 78701.³

(8). Council Member, District 7, Leslie Pool has been served at the City Council District 7 office located at 301 W. 2nd Street, Austin, Texas 78701.

(9). Council Member, District 8, Paige Ellis has been served at the City Council District 8 office located at 301 W. 2nd Street, Austin, Texas 78701.

(10). Council Member, District 9, Zahaib “Zo” Qadri has been served at the City Council District 9 office located at 301 W. 2nd Street, Austin, Texas 78701.

(11). Council Member, District 10, Alison Alter has been served at the City Council District 10 office located at 301 W. 2nd Street, Austin, Texas 78701.

(12) ATP Board Chair, Veronica Castro de Barrera has been served at her office at Austin Transit Partnership, located at 203 Colorado Street, Street, Austin, Texas 78701.

(13) ATP Board Member John Langmore has been served at his office at Austin Transit Partnership, located at 203 Colorado Street, Street, Austin, Texas

³ While Council-Member Kelly voted against the 2023 tax increase, she is necessarily a defendant for future injunctive relief.

78701.

(14) ATP Board Member Juan Garza has been served at his office at Austin Transit Partnership, located at 203 Colorado Street, Street, Austin, Texas 78701.

(15) ATP Board Member Jeffrey Travillion has been served at his office at Austin Transit Partnership, located at 203 Colorado Street, Street, Austin, Texas 78701.

D. JURISDICTION

4. This Court has jurisdiction to issue the requested writ of injunction under Article 5, § 8 of the Texas Constitution and Tex. Gov't Code §§ 24.007 and 24.008 and Tex. Civ. Prac. & Rem. Code Chapter 65. Venue is required in the Travis County District Court under Tex. Civ. Prac. & Rem. Code § 65.023 and § 15.002, because the City of Austin is where the events giving rise to the claims occurred. The Court also has jurisdiction because Plaintiffs have taxpayer standing to bring their *ultra vires* claims for injunctive relief against the illegal expenditure of property taxes on Project Connect by the Defendant officials.

E. FACTS

THE TEXAS TAX CODE REQUIRES VOTER APPROVAL OF THE PROJECT CONNECT TAX INCREASE.

5. The facts stated in Paragraphs 1 are incorporated here as well. Tex. Tax

Code section 26.07 requires voter approval of a tax increase as large as the Project Connect Tax, and voters must be shown, on the ballot, a description of the purpose of the increase as part of that voter-approval process. The 234-word November, 2020 Project Connect ballot proposition said:

Approving the ad valorem tax rate of \$0.5335 per \$ 100 valuation in the City of Austin for the current year, a rate that is \$0.0875 higher per \$100 valuation than the voter-approval tax rate of the City of Austin, for the purpose of providing funds for a citywide traffic-easing rapid transit system known as Project Connect, to address traffic congestion, expand service for essential workers, reduce climate change emissions, decrease traffic fatalities, create jobs, and provide access to schools, health care, jobs and the airport; to include neighborhood supportive affordable housing investments along transit corridors and a fixed rail and bus rapid transit system, including associated road, sidewalk, bike, and street lighting improvements, park and ride hubs, on-demand neighborhood circulator shuttles, and improved access for seniors and persons with disabilities; to be operated by the Capital Metropolitan Transportation Authority, expending its funds to build, operate and maintain the fixed rail and bus rapid transit system; the additional revenue raised by the tax rate is to be dedicated by the City to an independent board to oversee and finance the acquisition, construction, equipping, and operations and maintenance of the rapid transit system by providing funds for loans and grants to develop or expand transportation within the City, and to finance the transit-supportive anti-displacement strategies related to Project Connect. Last year, the ad valorem tax rate in the City of Austin was \$0.4431per \$100 valuation.

Despite its vague and misleading language, this ballot language is one part of the “Contract with the Voters” along with the City Council Resolution No. 20200807-003, and the City-produced brochure titled “2020 Mobility Elections.”

6. Voters gave their approval of the tax increase conditioned on the City of Austin delivering what was promised. As of July, 2023, the City has paid ATP \$464,231,077.07 collected from the Project Connect Tax.

THE 2020 PROJECT CONNECT TAX INCREASE WAS AN INCREASE SOLELY IN THE CITY’S “MAINTENANCE AND OPERATIONS” (M&O) TAX AND DID NOT AUTHORIZE BONDS.

7. Instead of proposing a rapid-transit bond election (as Austin voters had previously rejected), for which a Debt-Service tax would have been imposed, the City chose to ask voters to increase the M&O tax. This is legally significant because the Tax Code restricts expenditure of the M&O tax to “any lawful purpose *other than debt service* for which a taxing unit may spend property tax revenues.” Tex. Tax Code section 26.012(16). M&O tax not only cannot be spent for debt service, but it also cannot be spent for “construction” or other “capital expenditures.” See Tex. Att’y Gen. Op. GA-0775 at 2 (2010) (prohibiting expenditure of M&O property tax cannot be spent on construction or capital expenditures); Tex. Att’y Gen. Op. KP-0154 at 2 (2017) (likewise admonishing that taxing units “do not have authority to increase the maintenance and operations tax rate to create a surplus to pay debt service with maintenance and operations tax revenue.”); and Tex. Att’y Gen. Op. KP-0444 at 4 (2023) (noting in particular that the Tax Code “does not authorize a municipality to ‘ earmark’ use of a voter-approved increase in its maintenance and

operation property tax revenue for debt service....”; also holding that Austin’s “contract with the voters” pledging in perpetuity to transfer the Project Connect tax to ATP violates Tex. Const. art. XI, section 5, and must be “subject to annual appropriation.” If the Project Connect tax transfer to ATP can be stopped at any time by the Austin City Council, then ATP lacks any dedicated and stable source of revenue to use for debt service.

THE 2020 PROJECT CONNECT VOTER-APPROVED PLAN

8. In an August 7, 2020 “Project Connect Integrated Financial Model” (available to the public a few months before the election), described a “full-system” Project Connect future. It described the “Light Rail” portion as:

The program consists of two proposed light rail lines, the Orange and Blue totaling about thirty-six miles of light rail transit. The Orange line is a north-south line that **runs from Stassney Lane on the south to the North Lamar Transit Center on the north** passing through south Congress Avenue, Downtown and the University of Texas areas. The Blue Line is an approximately eight mile line **from the Airport to Downtown Austin** that connects the growing area of east Riverside Drive and Montopolis to Downtown Austin. These projects include dedicated transitways, mostly at the street level, and approximately forty stations. (emphasis added)

The “Downtown Transit Tunnel” was described as follows, and an artist rendition was available online:

The Downtown Transit Tunnel **will separate the proposed light rail service from street traffic, allowing for faster and safer travel**

through downtown. The Orange and Blue Lines will connect with underground stations at Republic Square and other downtown locations. **These stations would feature such amenities as retail, restaurants, along with a transit store and service center.**



The Green Line, a 27-mile, \$295.1 million commuter rail line, was proposed to travel from downtown Austin to eastern Travis County into Bastrop County. The Model report said:

The **full system costs** of Project Connect was identified initially as **\$9.8 billion. The costs for the currently proposed initial investment in Project Connect are \$7.1 billion ... to be completed by 2033.** (emphasis added)

9. Shortly before the November 2020 election, together with the Ballot Proposition A, the Austin City Council adopted a “Contract With The Voters” (Resolution No. 20200807-003) for Project Connect with attachments, a very specific map of rail lines and rapid bus routes of the “System Plan” “Initial

Investment” and an “Initial Investment Sequence Plan” promising construction within 13 years.

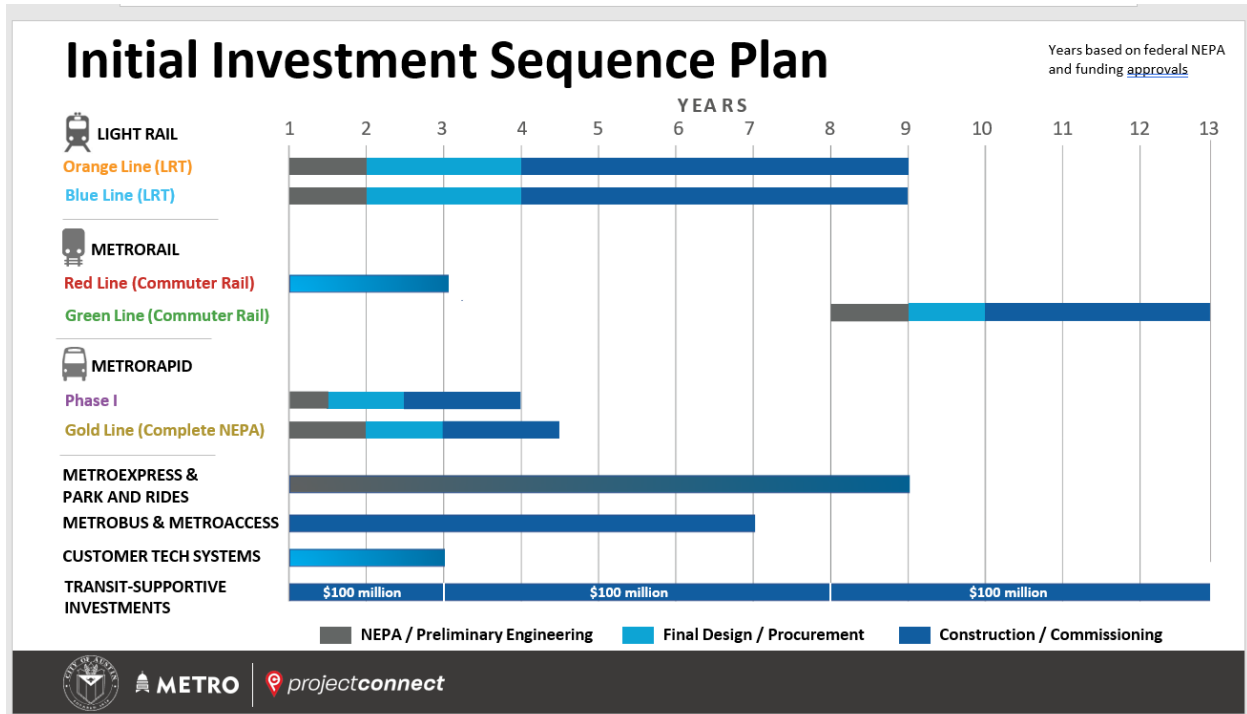
10. The “Contract with the Voters” with the attached map (shown below) was advertised as just the “*Initial* Investment.” Light rail (excluding the Green Line commuter-rail) was promised to be 20.2 miles with 26 stations and have an a 20-block underground transit center, all for a cost of \$5.8 billion with an expected ridership of 81,700 daily.

11. In addition to the Contract With The Voters (the ballot and Council Resolution) the City published a voter-guide for the ballot proposition, promising the tax increase would be turned over to an *independent* local government corporation, ATP, and that:

Federal funding is anticipated to provide approximately 45% of the program’s estimated \$7.1 billion capital cost. If approved by voters, the property tax revenue would provide funding for the rest of the capital cost plus operations and maintenance of the transit system once built. The initial investment also includes \$300 million for transit-supportive anti-displacement housing strategies.



12. The “Contract with the Voters” timeline promised completion in 13 years:



13. The City’s voter-information brochure was explicit about what the tax increase would pay for, especially regarding new rail lines and the underground tunnel station.

NEW RAIL SYSTEM

The planned light rail system includes 27 miles of service and 31 stations, along with the following lines:

- **Orange Line** (Initial Investment from North Lamar and U.S. 183 to Stassney Lane): To connect North and South Austin
- **Blue Line** (from North Lamar and U.S. 183 to downtown and the Austin Bergstrom International Airport): To offer service to the airport
- **Green Line** (from downtown to East Austin’s Colony Park): New commuter rail service

TRANSIT TUNNEL UNDER DOWNTOWN

Light rail is proposed to travel underground downtown. The City expects operating rail service

beneath the streets to increase the system's travel time reliability and to be safer than operating at street level. [Excerpt "*2020 Mobility Elections*", page 5 (highlighting added)]

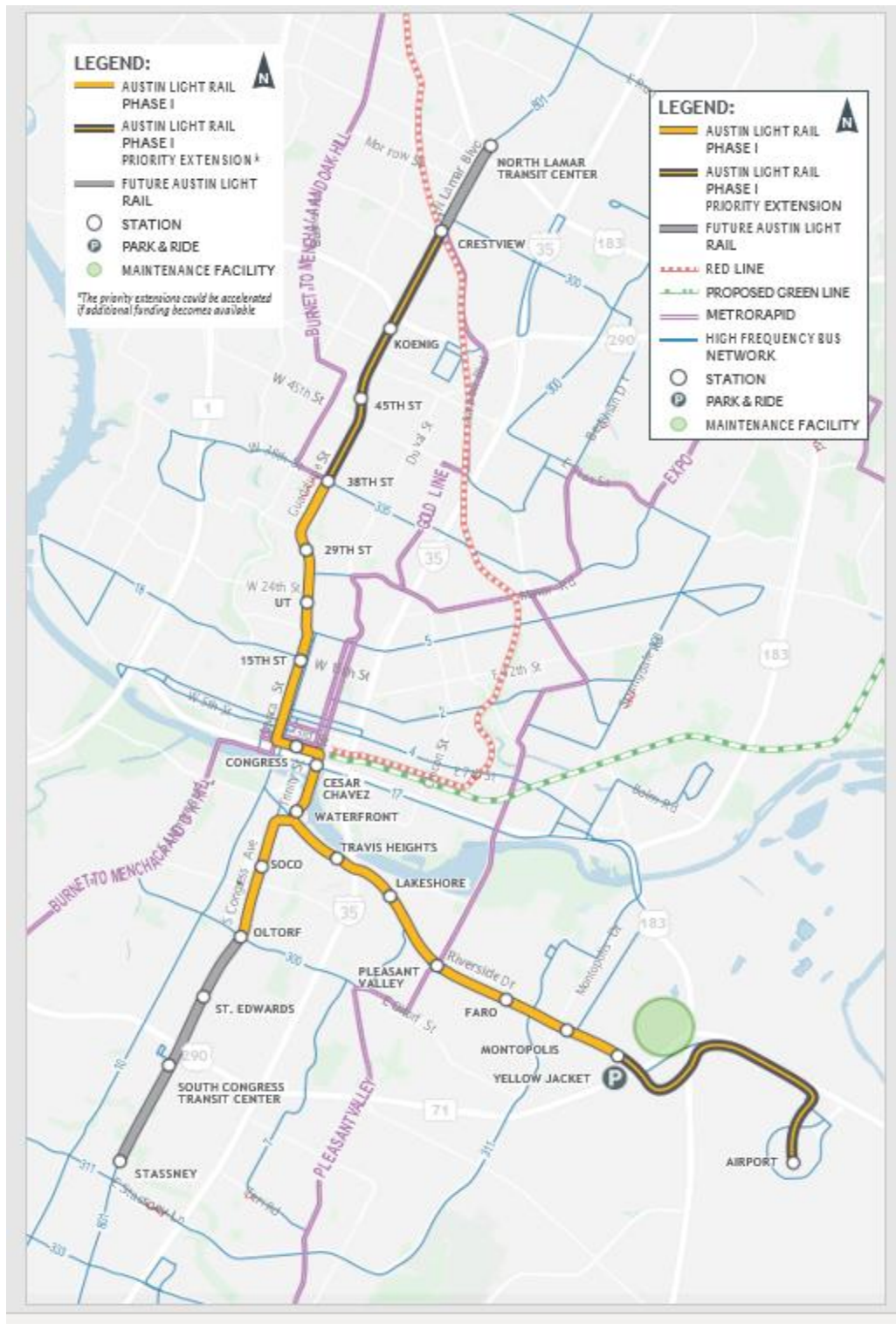
14. In summary, voters were told that "Project Connect" was a plan that, in exchange for their tax increase, voters would get 27 miles of rail (20.2 miles of light rail) with a capital cost per rider of \$71,000 with an elaborate underground terminal in downtown Austin, an 8-mile "Green Line" commuter rail from downtown to Colony Park (East Austin), a system that would connect to the airport, where the combined bus/rail maintenance facility would be located in a non-residential area; all to be completed within 13 years.

THE 2023 PROJECT CONNECT "REPLACEMENT PLAN"

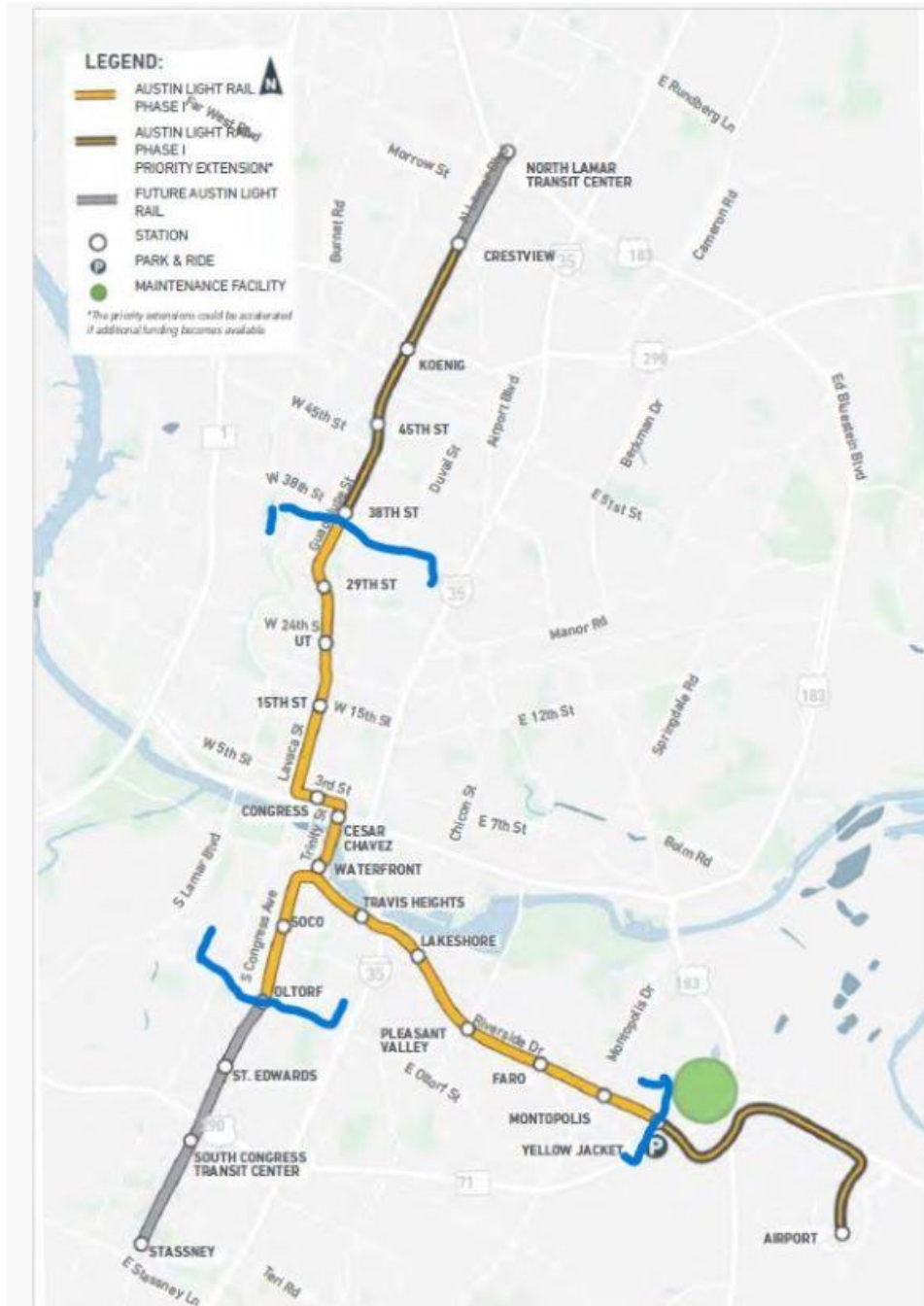
A DRASTICALLY DIMINISHED & RE-ROUTED LIGHT RAIL PLAN

15. Project Connect officials have now had to admit that what voters were promised in 2020 would cost \$7.1 Billion would actually cost over \$11.6 Billion, a 63% increase. Without asking voters to amend "The Contract" and without reducing the tax increase, the Defendants truncated what were the Orange and Blue rail lines and moved the Green Line to a "proposed" (unfunded) status, thus, reducing the light-rail miles by more than half, to 9.8 miles, yet with a drastically increased, and thus severely less cost-efficient, capital cost per rider of \$166,000 versus \$46,512 (when the \$2 Billion underground station cost is removed). In sharp contrast, here is

the June 6, 2023 Replacement Project Connect *system* map:



16. The following map (which was attached to the June 6th Replacement plan) highlights what's left of just the *light rail component* (with hand-drawn blue brackets showing the *funded* portion from the current Project Connect Tax):



17. The following chart summarizes the effect of the inferior 2023

Replacement Plan:

Project Connect Comparison of 2020 Voter-Approved vs. 2023 Replacement

Feature	2020 Voter- Approved	2023 Replacement	Number Change	Percent Change
Miles of Light Rail	20.2	9.8	-10.4	-51%
Light Rail Stations	26	15	-11	-42%
20 Block Underground \$2Bn Transit Center	Yes	No		-100%
Green Line (Commuter Rail)	6.8 miles	0 miles	-6.8	-100%
Average Daily Riders *	81,700	29,200	-52,500	-64%
Capital Cost *	\$3.8 billion	\$4.85 billion	+\$1.05 billion	+28%
Cost per Mile *	\$188 million	\$495 million	+\$307 million	+163%
Capital Cost per Rider *	\$46,512	\$166,000	+\$119,488	+257%
FTA No-Funding Risk	Medium	Higher		-

* Light rail only (without the \$2 Billion Underground Transit Station) [Corrected]

18. None of the Project Connect advocates have publicly admitted that the dramatic 257% increase in cost per rider—a key criteria in the competitive process for federal funding—reduces the odds of Project Connect receiving a 50% federal match, if any, and makes the Replacement plan one of the most expensive light rail

projects in the U.S. (only San Francisco and Hawaii being more expensive per rider). Nor is there any recognition of the effect on whether federal evaluators—or Austin voters for that matter—can trust the figures presented by ATP, the City, or CapMetro.

19. The Defendants have also abandoned any “Initial Investment Sequence Plan” leaving taxpayers, affected property owners, federal officials, etc. guessing how long it will take, beyond 2033, to expect Project Connect to be completed. The truth is, the 2020 Project Connect Bait was never feasible or legal.

20. Defendants have finally admitted that they are not complying with their 2020 Voter Contract, but instead of presenting a new ballot proposition to the voters, they unilaterally adopted an inferior and harmful Replacement Plan:

WHAT’S GONE

- [] Gone are 10.4 miles (over 51%) of the 2020 promised light rail miles [truncated in to “priority extensions” and “future”].
- [] Gone is the Green Line, which was a full part of the 2020 Plan but is now relegated to “proposed” status [dotted green line].
- [] Gone is the underground transit station.
- [] Gone is the light-rail line to the airport.
- [] Gone are 11 rail stations.
- [] Gone are 52,500 riders/day, over 64% of the 2020 ridership.
- [] Gone is *any* Sequence Plan showing how long the Replacement Plan will take to build.

WHAT’S NEW & UNAUTHORIZED

Now, the rail/bus Maintenance Yard (the green circle on the map, shown for the first

time) is placed in the Montopolis neighborhood *west* of Hwy 183 instead of across from the airport in non-residential areas.

Now, most of Austin receives no rail service whatsoever but still must incur more than a 20% annual tax increase to pay for limited service elsewhere.

UNAUTHORIZED RELOCATION OF THE BUS/RAIL MAINTENANCE YARD

21. The bus/rail Maintenance Yard would be an un-welcome feature close to any residential neighborhood. But not until March 27, 2023—years after the election—were residents of the Montopolis neighborhood informed that the Maintenance Yard would be located in their neighborhood. That meeting was attended by some of the Plaintiffs in this case, and they expressed their outrage to the ATP representatives who were there promoting the Replacement Plan. To many people, the notion that such a negative facility would be located in an East Austin neighborhood is a repeat of Austin’s Historic Sin continuing since adoption of the infamous “1928 Master Plan” to segregate Black and Brown families to East Austin. This location was not approved by, or even disclosed to, voters in the 2020 Project Connect election.

22. No maps produced for the 2020 Project Connect election showed the Maintenance Facility location(s). A “Maintenance Facility Site Methodology” report, dated September 18, 2020 before the election evaluated 7 “Parcel Groups”

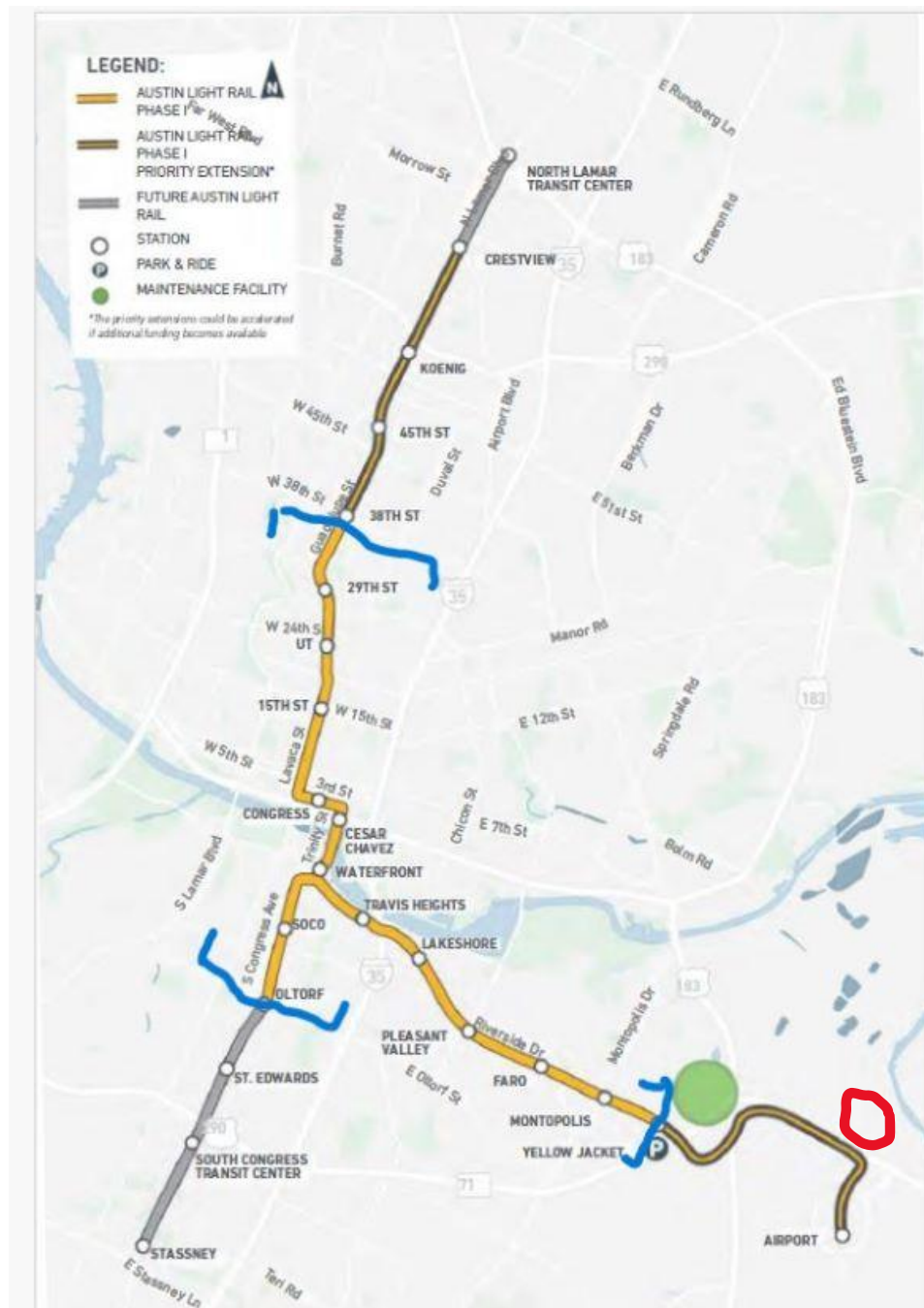
for location of the combined bus/rail Maintenance Facility. There was written discussion of locating a facility at the north end of the Orange Line, but the City did not disclose to voters in 2020 that the Orange Line extension crossing the Red Line would require an expensive grade separation for one of the lines *that was not, and still is not, funded*. There was also discussion of putting a facility at the South end of the Orange Line.

23. The large green dot on the 2023 Replacement Map shows the location the Defendants approved on June 6, 2023 for the Maintenance Facility. This site was one evaluated in the September 2020 “Methodology” study; it ranked 5th out of 7 on market-value cost (\$39.6 million) and 4th on the “qualitative” rank. The report described this site as follows:

Properties consist of vacant land and warehouses. It is adjacent to housing which would likely be viewed as an incompatible use by the adjacent neighborhood.

24. The hand-drawn red circle on the map below shows the approximate location of the top-ranked location for the Maintenance Facility, ranking 3rd on market-value cost (\$11.2 million) and top-ranking for “qualitative” rank. The description of this top-ranked site said: “Largely vacant parcels. Consisting of some owned by the City, and Del Valle ISD. Would require the line to cross the highway.” This site and the second-ranked site are on the *east* side of Hwy. 183 and *north* side

of Hwy. 71 directly across from the airport, away from homes.



The selection of Montopolis/Del Valle neighborhood for the Maintenance Facility is another part of the 2023 Replacement Plan that has never had voter-approval.

25. Had the Replacement Plan been on the ballot in 2020, it would likely have failed overwhelmingly; probably the reason they have not done so. Even excluding the elaborate underground transit station, the Construction Cost alone still increased over a billion dollars, from \$3.8 billion to \$4.85 billion for *fewer* rail miles. The Capital Cost per Rider skyrocketed from \$46,512 to \$166,000, a 257% increase ... a dramatic decrease in cost efficiency between the 2020 Voter-Approved Plan and the 2023 Replacement.

REFUSING TO CONSIDER ALTERNATIVES

26. Faced with the impossibility of building the 2020 light-rail Plan, the Defendants refused to seriously consider dropping light rail and substituting a Bus Rapid Transit (BRT) plan at least for the foreseeable future to prove that ridership is actually there. An example to consider is what VIA is doing in San Antonio. A comparison between the Project Connect 2023 Replacement and the VIA “Advanced Rapid Transit” project shows that:

- [] instead of \$4.85 Billion, VIA will cost \$320 *Million*;
- [] instead of only 9.8 miles with 15 stations, VIA has 12 miles and 19 stations;
- [] while the 2023 Replacement would have an estimated 29,200 riders/day at a cost of \$166,000 per rider; VIA would have 13,500 riders at a cost of \$23,704. That is over an 85% cost/rider *savings*.

[] and VIA will take just 6 years to build.

What VIA is doing with very nice buses, is to attract ridership then, in years ahead, might make substitution of light-rail on those routes feasible.

MISUSE/MISDIRECTION OF “ANTI-DISPLACEMENT” FUNDS

27. Voters could have only thought that when they approved funds for “transit-supportive anti-displacement strategies related to Project Connect,” those funds would be paid to property owners and renters who would be displaced by the construction of Project Connect. That has not been the case. Neither ATP nor the City of Austin has been able to disclose the name of a single property owner or renter who is receiving assistance because they are being displaced by Project Connect. Yet to date \$21,582,227 of these funds have been spent purchasing apartments for Austin government housing; a purpose, however worthy, that is unrelated to Project Connect “displacement.” Indeed, because of delays in design, not a single person has been displaced or identified to be displaced, although businesses and property owners, such as Plaintiff Dirty Martin’s, are left in limbo. Further fogging the picture, the City of Austin is diverting millions of dollars of voter-dedicated “anti-displacement” funding to non-profit entities whose specific expenditures or identity of those assisted are not publicly disclosed. No one seems to be keeping a reportable public record and tight control over how these “anti-displacement” funds are being

spent.

ATP PLANS TO ISSUE BONDS

28. Despite the conclusion in Tex. Att’y Gen. Op. KP-0444 that the funding source to ATP cannot legally be perpetual or earmarked so ATP is guaranteed those funds in the future, records show that ATP is proceeding to try to issue bonds. The City of Austin is barred from using the Project Connect M&O property tax for debt service. No law gives ATP more authority to issue bonds than the City possesses. Further, the City that created ATP is barred from issuing its own bonds using the Project Connect M&O Tax. Therefore, Plaintiffs seek to prevent ATP officials from issuing bonds to be paid from the Project Connect M&O Tax and from using the tax for any construction that the City itself could not do.

SECRECY & DECEIT CONTINUE TO PLAGUE PROJECT CONNECT

29. While this lawsuit does not seek to enforce the Texas Public Information Act, the refusal of ATP and CapMetro to be transparent about Project Connect further demonstrates their lack of respect for voter control. Ironically, in March, 2023, ATP Executive Director Greg Canally said:

"The days of overpromising are over," said Canally. "In the last 10 months, we've been very clear and transparent about the work that's ahead of us. And we will always be like that. We're going to be transparent about our cost and how we're going to live within our budget. And if there's a day out in the future where if new money comes

in and we want to position ourselves to get those funds to get more done, that'll be a great spot to be in."

But when Mr. Canally was asked to disclose his emails sent to anyone outside ATP since January 1, 2023, he refused and has asked the Attorney General if he could withhold them at his discretion. In what little was disclosed, Mr. Canally provided no emails about the "No-Blank-Checks" Legislation; no emails to the Federal Transit Administration (FTA); and no emails to Project Connect consultants. That blanket absence seems incredulous for the CEO of ATP.

a. Records do show that after the Attorney General issued KP-0444—which held that ATP's Project Connect revenue source must be "subject to annual appropriation" by the City Council and could be stopped altogether—no one from ATP or the City of Austin informed the FTA about this significant Attorney General Opinion. Why? To obtain FTA funding, ATP must demonstrate it has a reliable source of revenue for its required local match.

b. Apparently, secrecy involving the FTA works both ways. In February, 2023, members of the ATP Board were belatedly informed that CapMetro's Metro Rapid routes (for Exposition Center and Pleasant-Valley) were going to be delayed by 12 to 14 months because of permitting problems. Yet, just a few months earlier, in November, 2022, CapMetro told the ATP Board "Exciting

progress has been made on two new Metro Rapid Routes.” Records show that neither the ATP Board Members, nor the public, were informed about the delay because, at a meeting with the FTA on January 6, 2023, attended by ATP Executive Director Canally no less, the FTA itself urged CapMetro not to disclose this delay because it would impact ATP’s federal funding application!

c. CapMetro has refused to disclose correspondence in 2019-2020 between CapMetro and the consultants who created the Project Connect cost estimates presented to voters at the November 2020 election. Such correspondence could reveal deliberate efforts to understate the actual cost of Project Connect to voters.

d. ATP has refused to disclose the name of the owners and property addresses of property adjacent to the new Replacement Plan alignment of the light-rail routes.

e. ATP has refused to disclose details of the plans for the Montopolis/Del Valle Maintenance Yard location and has sought permission from the Attorney General to withhold this information. ATP absurdly claims to the Attorney General that disclosure would jeopardize security against acts of terrorism or reveal trade secrets.

f. In January 2023, CapMetro asked ATP to pay, from Project

Connect funds, \$22 million in cost CapMetro incurred on Project Connect projects *before ATP even came into existence*. The ATP acting-CFO, Diane Siler, sent CapMetro an email on January 20, 2023 saying she preferred that CapMetro “write off that expense.” Since the “Contract with the Voters” requires that ATP (not CapMetro) control the Project Connect Tax, it would not be legal to pay CapMetro for such costs. Whether CapMetro was paid has not yet been determined.

F. CLAIMS FOR INJUNCTIVE RELIEF

COUNT 1: THE NOVEMBER 3, 2020 PROP A (PROJECT CONNECT TAX INCREASE) ELECTION IS VOID BECAUSE THE BALLOT LANGUAGE WAS MISLEADING TO VOTERS UNDER THE *DACUS* STANDARD.

BY FILING THE BOND VALIDATION LAWSUIT, DEFENDANTS HAVE PUT THE VALIDITY OF THE NOVEMBER 2020 ELECTION IN ISSUE FOR THIS CASE.

30. On February 20, 2024, ATP and the City of Austin filed a bond validation lawsuit under Tex. Gov’t Code ch. 1205 in which they seek, *inter alia*, for the Court to declare “that (i) the City is authorized to levy and collect taxes at the increased rate approved by the voters in Proposition A.” This is a reference to Proposition A (Project Connect property tax increase) on the November 3, 2020 ballot which passed approving the 8.75-cent (20.789% increase) in the City’s Maintenance & Operation property tax rate. To raise property tax that much in a

single year requires voter approval under Tex. Tax Code § 26.07. No election contest was filed at the time regarding that election or the ballot wording.

31. Now, with their bond validation lawsuit, ATP and the City have put the validity of the November 2020 election back in issue and this claim against the sufficiency of the ballot language is property before the Court. *See Ex parte Progreso Indep. Sch. Dist.*, 650 S.W.2d 158, 161 (Tex. App.—Corpus Christi—Edinburg 1983, writ ref’d n.r.e.)(holding that after a bond validation lawsuit was filed—and even though no election contest was timely filed challenging the bond election—the governmental body put the election in issue and those matters were properly before the trial court.).

THE NOVEMBER 2020 PROP A BALLOT LANGUAGE MISLED THE VOTERS.

32. The standard on which to judge whether the Project Connect ballot language was misleading was set out in *Dacus v. Parker*, 466 S.W.3d 820, 826 (Tex. 2015):

In an election contest challenging the sufficiency of the ballot description, the issue is whether the ballot “substantially submits the question ... *with such definiteness and certainty that the voters are not misled.*” [citation omitted] An inadequate description may fail to do that in either of two ways. First, it may affirmatively misrepresent the measure's character and purpose or its chief features. Second, it may mislead the voters by omitting certain chief features that reflect its character and purpose. (emphasis added).

Here is the 234-word Project Connect ballot language:

Approving the ad valorem tax rate of \$0.5335 per \$ 100 valuation in the City of Austin *for the current year*, a rate that is \$0.0875 higher per \$100 valuation than the voter-approval tax rate of the City of Austin, for the purpose of *providing funds for a citywide traffic-easing rapid transit system known as Project Connect*, to address traffic congestion, expand service for essential workers, reduce climate change emissions, decrease traffic fatalities, create jobs, and *provide access to* schools, health care, jobs and *the airport*; to include neighborhood supportive affordable housing investments along transit corridors and a fixed rail and bus rapid transit system, including associated road, sidewalk, bike, and street lighting improvements, park and ride hubs, on-demand neighborhood circulator shuttles, and improved access for seniors and persons with disabilities; to be operated by the *Capital Metropolitan Transportation Authority*, *expending its funds to build, operate and maintain the fixed rail* and bus rapid transit system; the additional revenue raised by the tax rate is *to be dedicated by the City to an independent board to oversee and finance the acquisition, construction, equipping, and operations and maintenance of the rapid transit system* by providing funds for loans and grants to develop or expand transportation within the City, and *to finance the transit-supportive anti-displacement strategies* related to Project Connect. Last year, the ad valorem tax rate in the City of Austin was \$0.4431 per \$100 valuation. (emphasis added).

The ballot language violates the *Dacus* standard in the following ways:

(1). Nowhere in the proposition does it disclose that property tax bonds would be issued by the City of Austin or by ATP if the proposition passed. Yet, that is what is occurring. Under Tex. Gov't Code ch. 1251, a city cannot issue bonds to be made from property taxes without getting voter approval. Tex. Gov't Code section 1251.005 requires that the ballot allow for or against votes to include these

words: “The issuance of bonds.” Likewise, Tex. Gov’t Code section 1251.052(a) requires the ballot to not only describe the purposes of the debt obligation but the “total principal amount to be authorized” and that taxes sufficient to pay the principal and interest will be imposed. Neither the word “bonds,” nor any other language informing voters that property tax debt would be issued, appear in the Project Connect Prop A ballot. While the ballot says ATP would receive the tax funds to “oversee and finance” the rapid transit system, that is not sufficient disclosure that bond debt would be incurred, as opposed, for example, applying for federal funding. *See Black’s Law Dictionary* 774 (11th ed. 2019)(defining “finance” as “to raise or provide funds.”).

(2). The ballot falsely says the “citywide traffic-easing rapid transit system known as Project Connect ... to provide access ... to the airport.” But nowhere does the ballot proposition say the City Council or ATP could decide to not connect the system to the airport, as they have now done. The ballot language also did not disclose that the City Council could decide to take the property tax increase and spend it on a rapid transit system that is *not* citywide, as proposed to voters, but is concentrated in the downtown area.

(3). The ballot says the rapid transit system is “to be operated by the Capital Metropolitan Transportation Authority, *expending its funds to build*, operate and

maintain *the fixed rail* and bus rapid transit *system*.” This misled voters to believe that CapMetro sales tax money is to be used for the fixed rail system, but, instead, the Project Connect property tax funds are being used for the fixed rail system.’

(4). The ballot says, “... the additional revenue raised by the tax rate is to be dedicated by the City to an independent board to oversee and finance the acquisition, construction, equipping, and operations and maintenance of the rapid transit system.” But the ballot failed to disclose that the City Council could decide to not appropriate those funds to ATP, as the funding contract between the City and ATP now provides.

(5). The ballot language, “to finance the transit-supportive anti-displacement strategies related to Project Connect” is so vague and confusing it does not meet the *Dacus* standard that the ballot language presents the question “with such definiteness and certainty that the voters are not misled.” What does “transit-supportive anti-displacement strategies” mean? As explained earlier in the petition, Project Connect property taxes are being used to purchase property that has nothing to do with “displacement” of people as a result of Project Connect.

COUNT 1 – REMEDY SOUGHT

33. Because the November 2023 Prop A election was void due to misleading ballot language, the Project Connect Property Tax was never lawfully

authorized. Therefore, Plaintiffs ask the Court to enjoin the City Defendants from imposing or collecting property taxes for Project Connect.

COUNT 2: THE CONTRACT WITH THE VOTERS FOR PROJECT CONNECT IS VOID *AB INITIO*

34. The "Contract With The Voters" doctrine derives from Article I, § 16 of the Texas Constitution, which prohibits laws that impair the obligation of contracts. TEX. CONST. art. I, § 16; *San Saba County. v. McCraw*, 108 S.W.2d 200, 202-04 (Tex. 1937). Generally, the express terms of an order submitting a proposition for a tax or bond election that identify the purposes for which the proceeds are to be used become a contract with the voters. *Id.* (concerning a tax election); *Black v. Strength*, 246 S.W. 79, 80-81 (Tex. 1922) (concerning a bond election). Tex. Att’y Gen. Op. No. GA-0968 at 2 (2012)(noting that, in addition to the bond proposition, “the governing body may issue other preelection orders that limit its discretion to expend funds, in which case the collateral orders become, in effect, a part of the contract with the voters.”). This is exactly what the Austin City Council did as is explained below.

35. The City’s Contract With The Voters consists of both the proposition submitted to and approved by the voters and any resolution, ordinance or other

official action taken by the City Council. *See Taxpayers for Sensible Priorities v. City of Dallas*, 79 S.W.3d 670, 676 (Tex. App.-Dallas 2002, pet. denied).

36. In the instant case, the City’s Contract With The Voters thus includes Ordinance No. 20200812-009. This Ordinance set the wording of Proposition A and an election date of November 3, 2020, for submission to the voters. The stipulated wording of the Proposition stated, in pertinent part, that:

the additional revenue raised by the tax rate is to be dedicated by the City to an independent board to oversee and finance the acquisition, construction, equipping, and operations and maintenance of the rapid transit system by providing funds for loans and grants to develop or expand transportation within the City, and to finance the transit-supportive anti-displacement strategies related to Project Connect. [emphasis added]

37. The City’s Contract With The Voters also incorporates Resolution No. 20200807-003, adopted by the City Council in conjunction with the above-referenced Ordinance. This Resolution reiterates the City’s pledge to commit the “Project Connect Tax Revenue” (the M&O tax rate increase to be submitted to the voters) in perpetuity, as reflected in the wording of the Proposition itself, directing the City Manager:

to include in the Joint Powers Agreement with Austin Transit Partnership, ***a procedure. to transfer the Project Connect Tax Revenue in a proportionate amount on an annual or more frequent basis. The transfer of the Project Connect Tax Revenue will continue until such time as all debt issued and financial obligations incurred***

by Austin Transit Partnership are paid off and funds are no longer required for operations, maintenance, or state of good repair for assets funded by Austin Transit Partnership. [emphasis added]

38. Moreover, as will be addressed below, this Resolution specifically identified the purposes for which the proceeds are to be used by including a detailed and extensive map and schedule for the Project Connect plan, attached to the Resolution as Exhibit A, entitled “Initial Investment, System Plan” and “Initial Investment Sequence Plan.” The promise to the voters of both the Plan and the Schedule was broken within a short period of time after the election.

39. In May 2023, based on the facts of this case, the Texas Attorney General issued Opinion No. KP-0444 regarding the legality of the Project Connect property tax funding. This Opinion concluded that:

[S]ection 26.07 [of the Texas Tax Code] does not authorize a municipality to “earmark” use of a voter-approved increase in its maintenance and operation property tax revenue for debt service.

Tex. Att’y Gen. Op. No. KP-0444 at 3 (2023).

The City of Austin’s purported “contract with the voters’ covenants are prohibited by article XI, section 5 as a pecuniary obligation imposed by contract.

Tex. Att’y Gen. Op. No. KP-0444 at 5 (2023).

A court would likely conclude that an agreement wherein a municipality binds itself to transfer in perpetuity an increase in its maintenance and operations property tax and is not subject to an annual

appropriation and is prohibited by article XI, section 5 as a pecuniary obligation imposed by contract with no right to terminate at the end of each budget period.

Tex. Att’y Gen. Op. No. KP-0444 at 8 (2023).

“The purpose of [article XI, sections 5 and 7] is to protect cities' financial standing and the interests of its other creditors. The drafters intended to require local governments to operate on a cash basis and to limit their ability to pledge future revenues for current debts.” *City of San Antonio v. San Antonio Firefighters’ Association*, 533 S.W.3d 527, 534 (Tex. Civ. App. — San Antonio 2017, pet. denied) (citing *City of Terrell v. Dissaint*, 9 S.W. 593, 595 (Tex. 1888)).

40. The rule generally is that unconstitutional laws are void *ab initio*. See *Ex Parte E.H.*, 602 S.W.3d 486, 494 (Tex. 2020) (holding that action based on an unconstitutional statute is “void *ab initio* and as a legal reality, never existed at all.”). Absent legislative authorization, a local government contract is void *ab initio*. See *San Antonio River Authority v. Austin Bridge & Road, L.P.*, 601 S.W.3d 616, 621 (Tex. 2020). “A contract which is made in violation of a statute is illegal and void and therefore not subject to ratification.” *Mayfield v. Troutman*, 613 S.W.2d 339, 344 (Tex. Civ. App. — Tyler 1981, writ ref’d n.r.e.) (citing *Peniche v. AeroMexico*, 580 S.W.2d 152, 157 (Tex. Civ. App. — Houston [1st Dist.] 1979, no writ); see also, *TCA Bldg. Co. v. Northwestern Resources Co.*, 922 S.W.2d 629, 634

(Tex. App. — Waco 1996 writ denied); *Jack v. State*, 694 S.W.2d 391, 397 (Tex. App. — San Antonio 1985, writ ref'd n.r.e.).

41. Thus, the City's and ATP's efforts to cure the illegalities — through their unilateral amendments without voter approval as the remaining party to the Contract, no less — are a nullity.

COUNT 2 – REMEDY SOUGHT

Because the Contract With The Voters is void, as if it never happened, the City officials have no authority to impose or collect the Project Connect property tax. Therefore, Plaintiffs ask the Court to enjoin the City defendants from further imposition or collection of the property tax for Project Connect.

COUNT 3: LIKE THE 2020 CONTRACT WITH THE VOTERS, THE 2021 FUNDING AGREEMENT BETWEEN THE CITY AND ATP IS A “DEBT” THAT VIOLATES TEX. CONST. ART. XI, SECTION 5 AND 7, AND IS THEREFORE VOID, DESPITE THE AMENDMENT TO PURPORTEDLY MAKE THE CONTRACT “SUBJECT TO ANNUAL APPROPRIATION.”

42. As explained above in Count 2, the cited Texas Constitution sections are intended to “limit [local governments’] ability to pledge future revenues for current debts.” *City of San Antonio v. San Antonio Firefighters’ Association*, 533 S.W.3d 527, 534 (Tex. Civ. App. — San Antonio 2017, pet. denied). Importantly, whether a pecuniary obligation, such as the ATP Funding Agreement, is a “debt” is

judged *at the time of its execution*, not based on convenient amendments later that might attempt to escape the constitutional limitations. *See City of San Antonio v. San Antonio Firefighters' Ass'n, Local 624*, 533 S.W.3d 527, 534 (Tex. App.—San Antonio 2017, pet. denied)(citing *McNeill v. City of Waco*, 33 S.W. 322, 324 (Tex. 1895), saying that “debt” as used in the constitutional provisions means “any pecuniary obligation imposed by contract, except such as were, *at the date of the contract*, within the lawful and reasonable contemplation of the parties, to be satisfied out of the current revenues for the year, or out of some fund then within the immediate control of the corporation.”). (emphasis added); *see also, Id.* (“[A] contract to pay current expenses, even for ‘ordinary’ ones, in future years without making provision for payment at the time of contracting is unconstitutional.” (citing *City of Terrell v. Dissaint*, 9 S.W. 593, 594 (Tex. 1888)).

43. As the Court said in *City of San Antonio*:

When a city has contracted to pay a sum of money over a period of more than one year and the evidence shows the city did not contemplate paying the whole cost of the contract out of current revenues in the year of the contract or out of a fund established specifically to pay for that contract, then the contract creates a “debt” and is unconstitutional and void unless a tax was levied and a sinking fund established. *Id.*

The City could avoid constitutional infirmity, “if it is conditioned on yearly appropriation of funds or *contains a provision* that allows the city to terminate it at

the end of each budget period.” *Id.* at 535. The 2021 ATP Funding Agreement contains no provision saying it is subject to annual appropriation and it contains no provision allowing the City to terminate the agreement at the end of a budget year. The fact that such a provision was not in the 2021 ATP Funding Agreement is further evidenced by the changes the City and ATP purported to make to the agreement—to add a “subject to annual appropriation” provision—in the June 6, 2023 and February 14, 2024 amendments.

44. Nothing in the 2020 Contract With The Voters or in the 2021 City/ATP Funding Agreement limited the multi-year pledge of future tax revenues to being subject to annual appropriation. The City is obligated to pay from its Maintenance & Operation property tax, in future years, the sum calculated as required by the formula in the Funding Agreement. On its plain face, that is exactly what Project Connect’s funding scheme is: a pledge of future revenues for the debt incurred by the City of Austin to ATP until ATP completes construction and no longer operates the Project Connect light-rail lines. There is no feasible way to pay for construction and operation of Project Connect except with that long-term, if not perpetual, pledge of property tax revenue, but the way the City handled it, it is clearly illegal. The legal way would have been to ask voters to approve a bond issue or a series of them.

In *McNeill v. City of Waco*, 33 S.W. 322, 323–24 (Tex. 1895), the Supreme Court

defined debt as “any pecuniary obligation imposed by contract” except those that are “in good faith intended to be, and lawfully, payable out of either the current revenues for the year of the contract or any other fund within the immediate control of the municipality.”

45. Neither the November 2020 Contract With The Voters nor the 2021 City/ATP Funding Agreement contained a provision to limit the City’s obligation to provide ATP the Project Connect tax funds only on an annual basis. The funding obligation was in perpetuity, at least for the life of Project Connect construction and future operation. *See* 2021 ATP Funding Agreement section 4(A) Term saying:

This agreement shall remain in place from date of execution until the earlier of:

- 1) *The date all debt issued and financial obligations incurred by Austin Transit Partnership are paid off and funds are no longer required for operations, maintenance, or state of good repair for assets funded by ATP; or*
- 2) The dissolution of ATP, in accordance with state law. (emphasis added).

The Funding Agreement at Section 3(B) instructs the Austin City Manager to “provide a budget for council adoption that provides the appropriate share of the City’s M&O tax rate...” “*for the term of this Agreement.*” At page 2 of the Funding Agreement, it says that “ATP’s proportionate share of the operations and

maintenance property tax rate was 20.789%” for FY 2020-21 and the allocation formula adopted by the Funding Agreement “is intended to provide ATP with the same proportion of operations and maintenance property tax revenue *in future years.*” (emphasis added).

46. It cannot be disputed that the Funding Agreement was, and is, a multi-year pecuniary obligation of the City of Austin that, when executed, contained no limitation to make it only subject to annual appropriation. And if it was not already clear from the documentation that the Project Connect Tax and funding requirement was (unconstitutionally) “in perpetuity,” the Chair of ATP not only claimed it is such, but that it was part of the Contract With the Voters at the time of the election:

From: Castro de Barrera, Veronica
To: Elkins, Tony
Subject: Re: Board Agenda for This Month
Date: Friday, May 13, 2022 3:35:05 PM

[...] *This tax is to perpetuity and it is clearly stated so in the ballot language and in the contract with the voters.* [...] (emphasis added).

47. Therefore, as of the date of the 2020 Contract With The Voters and the date of the Funding Agreement, August 17, 2021, the City contractually obligated itself to a “debt,” i.e., for a term at least as long as ATP’s bonds, as defined by Tex. Const. art. XI, section 5 and 7, for which the City had not set aside an “interest and sinking” fund nor did the City otherwise have immediately available the multi-

billion-dollar amount of the Project Connect Debt Obligation. The City knows ATP is going to issue debt that relies on the City transferring to ATP the Project Connect Tax at least for the life of the bonds. The June 6, 2023 contract amendment now says the tax transfer is “subject to the annual appropriation process.” But that amendment is not relevant to analysis of whether the Funding Agreement created a “debt” *at the time of its inception*. Simply put, the City cannot have it both ways, be a secure source of perpetual funding for Project Connect and the ATP bond debt-service while claiming it can stop appropriating the funds in any budget year.

48. The Defendants may argue that the Contract With The Voters included authority for it to be amended. *See* Austin City Council Resolution No. 20200807-003 at 5 (“Further, the City Council by this official action, clarifies that if Project Connect, or the associated Implementation Sequence Plan, require modification, such action may be taken only upon joint concurrence of City Council and the Capital Metro Board.”). But that purported amendment authority is limited to changing the rail routes and construction schedule; nothing gives the Council authority to amend its pecuniary obligation to fund “in perpetuity” the completion and operation of Project Connect. So, to avoid the constitutional infirmity of the ATP Funding Agreement, provisions limiting the agreement to annual appropriation had to be in the agreement *when it was first made*, and, regardless, the City lacked

authority under the Contract With The Voters to amend the financing to make it subject to annual appropriation. Moreover, since the City cannot “lawfully” pledge the M&O property tax comprising the Project Connect Tax, the City has no funds lawfully available funds to pay to ATP for debt service. *See*, Tex. Att’y Gen. Op. KP-0444 at 7 (2023).

COUNT 3 – Relief Requested

Because the Funding Agreement between the City and ATP is an unconstitutional and void debt, as defined by Tex. Const. art. XI, §§ 5 and 7, Plaintiffs seek an injunction against the City Defendants from transferring any of the Project Connect M&O property tax revenue to ATP.

COUNT 4: The City’s Amended Funding Agreement with ATP says the Project Connect Property Tax funds will be used for payment of debt service on bonds ATP will issue. This means that the City Council is spending Maintenance & Operation property tax for debt service in violation of the Texas Tax Code.

49. The City of Austin lacks authority to use or pledge the Project Connect M&O Property Tax Increase for debt service. That tax increase can only be spent for maintenance and operation purposes. Tex. Tax Code § 26.012 defines “maintenance and operation” and “debt service”:

(16) "Maintenance and operations" means any lawful purpose *other than debt service* for which a taxing unit may spend property tax revenues. (emphasis added)

(8) "*Debt service*" means the total amount expended or to be expended by a taxing unit from property tax revenues to pay principal of and interest on debts or other payments required by contract to secure the debts....

By transferring the M&O property taxes to ATP for the purpose of paying principal and interest on debts, the City is illegally spending the M&O tax funds. The City officials cannot get around this restriction on the use of the Project Connect Tax by creating an alter-ego corporation (Austin Transit Partnership (ATP)) and transferring the limited-purpose tax to ATP to use to pay debt service on bonds ATP plans to issue. In other words, the restriction against using the M&O property taxes for debt service cannot be laundered out of those taxes by the City transferring the taxes to ATP.

50. ATP, the City's agent for Project Connect, does not have more authority or fewer restrictions on its use of property tax revenue than the City itself. The Texas Transportation Code section 431.101(a) allows creation of the ATP "to aid and act on behalf of one or more local governments to accomplish any governmental purpose of those local governments." The Legislature could not have intended to allow the City to get around the restriction against use of the City's M&O property

tax for debt service merely by the City transferring the tax revenue to its local government corporation, ATP. One clue that such a side-step is not contemplated in the law is Section 431.104 which permits the City to assume the powers and duties of ATP—even without ATP’s agreement. But then, Section 431.140(b) would require the City to assume “the assets and liabilities of the corporation” which would include any bonds ATP had issued. But it would clearly be unlawful for the City to repay those bonds using the Project Connect M&O property tax revenue.

COUNT 4 – Relief Requested

Plaintiffs seek an injunction against the City Defendants from spending or transferring the Project Connect M&O property tax revenue to ATP to be used to pay principal and interest on bonds issued by ATP.

COUNT 5: THE DEFENDANTS HAVE SO MATERIALLY BREACHED THE CONTRACT WITH THE VOTERS AND NO LONGER HAVE VOTER APPROVAL FOR THE PROJECT CONNECT REPLACEMENT PLAN AS REQUIRED BY TEX. TAX CODE § 26.07, THAT THE CONTRACT IS VOID.

51. To raise the property tax rate by as large amount as the Project Connect tax increase did in 2020, and to continue assessing and collecting that tax increase in future years, the Tax Code requires voter permission for a defined purpose for which the tax increase will be used. The 2020 Contract With The Voters for Project

Connect was very specific about what the tax increase would pay for, how much it would cost, and the timeframe in which it would be completed. On June 6, 2023, the Austin City Council, without voter approval, adopted the Project Connect Replacement Plan, no longer funding rail lines that were promised in the 2020 Contract; eliminating the 13-year promised completion plan; adding routes not disclosed in 2020, and locating the Rail/Bus Combined Maintenance Yard in an East Austin Neighborhood contrary to published intent in 2020 for the location of the yard.

52. Because of these *dramatic* changes, Austin has violated the 2020 Project Connect Contract With The Voters and no longer has voter permission to continue assessing and collecting the Project Connect property tax increase (20.789% of its Maintenance & Operation Property Tax) for the 2023 Replacement Plan.

53. Even if the Contract With The Voters was not void *ab initio*, then it has certainly been voided by the City's subsequent, material and substantial breaches of the Contract's two most essential and thus non severable covenants: (1) the promise of dedicated and perpetual funding, and (2) the promise to expend the proceeds in a way resembling the comprehensive plan proposed to the voters. "A city violates its 'contract' with voters if it uses proceeds from taxes approved by the voters in a way

that the voters did not approve.” *Putnam v. City of Irving*, 331 S.W.3d 869, 878 (Tex. Civ. App. — Dallas 2011). See *Taxpayers for Sensible Priorities v. City of Dallas*, 79 S.W.3d 670, 676 (Tex. App. — Dallas 2002, pet. denied).

54. Severability provisions may serve to preserve contracts so long as the invalidated portions of the contract do not constitute the main or essential purpose of the agreement. *City of Brownsville v. Golden Spread Electric Cooperative, Inc.*, 192 S.W.3d 876, 881 (Tex. Civ. App. — Dallas 2006) (citing *Williams v. Williams*, 569 S.W.2d 867, 871 (Tex.1978); *John R. Ray & Sons, Inc. v. Stroman*, 923 S.W.2d 80, 87 (Tex. App.-Houston [14th Dist.] 1996, writ denied).

55. The M&O tax rate increase approved by the voters was conditioned on a transfer of the resulting additional revenue (the “Project Connect Tax Revenue”) to ATP in perpetuity, as a source of permanent funding. This tax rate increase measure provided the statutory vehicle, via Tex. Tax Code section 26.07, to put Proposition A before the voters. Without it, there would have been no proposition at all on the ballot. Aside from the unconstitutionality of this perennial pledge of M&O taxes, the City’s subsequent amendment of its agreements with ATP and CapMetro to instead render this transfer subject to the City Council’s discretion directly violates the most fundamental covenant to which the voters consented.

56. Moreover, once the City and ATP recognized that they could not afford

anything near the comprehensive, citywide Project Connect plan which the voters approved after being told that 2020 Plan was the “Initial Investment”, they unilaterally and without subsequent voter approval scaled back their project to a mere shadow of its former self, cynically termed “Phase One” with no means or expectation of ever providing a “Phase Two” or otherwise completing their end of the bargain.

57. Voters have never been asked to approve, and have not approved, locating the Light Rail Maintenance Facility in the Montopolis residential neighborhood. In fact, as explained above, in November 2020 voters had every reason to believe that location was rejected by the study in September 2020 because of its ranking on costs and features compared to other locations and *because* of its proximity to the homes in Montopolis.

58. While the City could cure both the illegality and the breach of its Contract With The Voters by submitting a new, valid, and performable proposition to the voters for approval, it has stubbornly refused to do so.

COUNT 5 – Relief Requested

Plaintiffs seek an injunction against the City Defendants and ATP Defendants from spending the Project Connect Tax on the Replacement Plan light-rail routes or

designing, acquiring right-of-way, or constructing the Maintenance Yard at the unapproved Montopolis location because that is not the “Project Connect” plan voters approved.

G. EQUITABLE RELIEF

59. As expressed in Counts 1 thru 5 above, Plaintiffs, as Austin property taxpayers, seek a permanent injunction, based on their taxpayer standing, for their cause of action to enjoin the illegal expenditures of property taxes. Plaintiffs ask the Court to enjoin further assessment or collection of the Project Connect Tax and expenditures of that tax for purposes not approved by the voters, including issuance of bonds, as a void *ultra vires* acts. Plaintiffs have a probable right to relief and a probable injury that is imminent and irreparable, because once the illegal tax is imposed or illegal expenditures are made, Plaintiffs lack standing to recover the spent funds. Plaintiffs have no other adequate remedy at law but the relief pled for in this case.

H. CONDITIONS PRECEDENT

60. All conditions precedent to plaintiffs’ claims for relief have been performed or have occurred.

PRAYER

For these reasons, Plaintiffs ask the Court to:

1. Grant permanent injunctive relief prohibiting the City Defendants from continuing to assess or collect the Project Connect Tax or for the ATP Defendants to issue bonded indebtedness as explained in Counts 1 and 2;
2. Grant permanent injunctive relief prohibiting the City Defendants from paying the Project Connect Tax to ATP as explained in Counts 3 and 4;
3. Grant permanent injunctive relief prohibiting the City Defendants and ATP Defendants from spending any Project Connect Tax on the Replacement Plan or the Montopolis Maintenance Facility as explained in Count 5;
4. Grant permanent injunctive relief requiring ATP Defendants to return to the City any unencumbered Project Connect Tax funds on hand and requiring the City Defendants to refund those unspent Project Connect Tax funds to the taxpayers of Austin via credit to reduce the 2024 City of Austin tax rate.
5. Award Plaintiffs costs and grant Plaintiffs all other relief to which they may be entitled.

Respectfully submitted,



Bill Aleshire

Texas Bar No. 24031810
AleshireLAW, P.C.
3605 Shady Valley Dr.
Austin, Texas 78739
Telephone: (512) 320-9155
Facsimile: (512) 320-9156
Bill@AleshireLaw.com

Rick Fine, Attorney at Law
Texas Bar No. 07008400
1313 Spyglass Drive
Austin, Texas 78746-6906
Telephone: (512) 497-2171
rickfinelaw@gmail.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

A true and correct copy of the above filing was provided on March 14, 2024 via e-service to Defendants' counsel as shown below:

WINSTEAD PC

Elliot Clark
SBN 24012428
eclark@winstead.com
Jeff Nydegger
SBN 24077002
jnydegger@winstead.com
Matthew Hines
SBN 24120892
mhines@winstead.com
401 Congress Avenue Suite 2100
Austin, Texas 78701
(512) 370-2800 telephone
(512) 370-2850 fax
ATTORNEYS FOR PETITIONER ATP

NORTON ROSE FULBRIGHT US LLP

Paul Trahan
State Bar No: 24003075
Emily Wolf
State Bar No: 24106595
paul.trahan@nortonrosefulbright.com
emily.wolf@nortonrosefulbright.com
98 San Jacinto Blvd., Suite 1100
Austin, Texas 78701
(512) 474-5201 — Telephone
(512) 536-4598 — Fax
**COUNSEL FOR "PETITIONER" CITY
OF AUSTIN**



Bill Aleshire

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

William Aleshire on behalf of Bill Aleshire

Bar No. 24031810

Bill@AleshireLaw.com

Envelope ID: 85578343

Filing Code Description: Amended Filing

Filing Description: PLAINTIFFS' FIRST AMENDED PETITION FOR INJUNCTIVE RELIEF/RESPONSE

Status as of 3/15/2024 11:40 AM CST

Associated Case Party: CITY OF AUSTIN

Name	BarNumber	Email	TimestampSubmitted	Status
Paul Trahan		paul.trahan@nortonrosefulbright.com	3/14/2024 4:51:51 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elliot Clark		eclark@winstead.com	3/14/2024 4:51:51 PM	SENT
Paul Trahan		paul.trahan@nortonrosefulbright.com	3/14/2024 4:51:51 PM	SENT
Julie Wright		julie.wright@nortonrosefulbright.com	3/14/2024 4:51:51 PM	SENT
Elliot Clark	24012428	eclark@winstead.com	3/14/2024 4:51:51 PM	SENT
Jeffrey Nydegger	24077002	jnydegger@winstead.com	3/14/2024 4:51:51 PM	SENT
Rosemarie Kanusky	790999	rkanusky@mphlegal.com	3/14/2024 4:51:51 PM	SENT
Emily Wolf		emily.wolf@nortonrosefulbright.com	3/14/2024 4:51:51 PM	SENT
Matthew Hines	24120892	matthewphiliphines@gmail.com	3/14/2024 4:51:51 PM	SENT
Matthew Hines		mhines@winstead.com	3/14/2024 4:51:51 PM	SENT
Bill Aleshire		bill@aleshirelaw.com	3/14/2024 4:51:51 PM	SENT
Rick Fine		rickfinelaw@gmail.com	3/14/2024 4:51:51 PM	SENT

Associated Case Party: AUSTIN TRANSIT PARTNERSHIP

Name	BarNumber	Email	TimestampSubmitted	Status
Elliot Clark		eclark@winstead.com	3/14/2024 4:51:51 PM	SENT
Jeff Nydegger		jnydegger@winstead.com	3/14/2024 4:51:51 PM	SENT