

EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made and entered into by and between the Capital Metropolitan Transportation Authority, Austin, Texas (“Authority”), and Randy Clarke (“Clarke”), to be effective as of December 15, 2020, (the “Effective Date”).

In consideration for the mutual promises and obligations recited in this Agreement, the Authority and Clarke do hereby agree as follows:

1. CLARKE'S POSITION

A. Employment. The Authority through its Board of Directors (“Board”) hereby employs Clarke as the General Manager and President & Chief Executive Officer (“President & CEO”) of the Authority. Clarke hereby accepts such employment and the position of President & CEO, acknowledging that he will be an at-will employee of the Authority; and he undertakes to devote full time and attention to the performance of assigned duties. During the Term of this Agreement, Clarke will not accept any employment with, or any compensation, stipends, honoraria or other emoluments of any kind from any other person, corporation, firm or entity, without the express consent and approval of the Board.

B. Responsibilities. As President & CEO, Clarke is charged with general management responsibilities, in accordance with direction from the Board or its Chairman, and Authority policies and rules, for, among other things:

- (i) conducting and supervising the general operations and administrative functions of the Authority;
- (ii) providing leadership for Authority staff;
- (iii) directing and coordinating the work of all Authority departments;
- (iv) oversight of all staff; contractors and agents of the Authority;
- (v) ensuring compliance by employees, vendors and agents of the Authority with policies and procedures of the Authority;
- (vi) hiring, supervising and firing of employees, subject to and in accordance with policies set by the Board; provided, that the Board may from time to time in its discretion modify the reporting relationship of or with respect to the VP, Internal Audit;
- (vii) reporting to the Board at its regular and special meetings and as otherwise requested;
- (viii) contracting on behalf of, and committing expenditures of the Authority, to the extent permitted by law and Authority policy, and consistent with established budgets and such other limitations as may from time to time be set by the Board;
- (ix) representing the Authority before the public; government departments, officials and committees; business and community leaders and representatives; and others, as necessary

and appropriate to further the interests and service of the Authority;

(x) achieving stated goals of, and accomplishing desired results for, the Authority; and

(xi) serving the Authority in such additional other capacities as requested from time to time by the Board, including without limitation, serving as the Executive Director of the Austin Transit Partnership Local Government Corporation (“ATP”) for as long as so requested by the Board, performing such duties and tasks as required for the general management and oversight of the ATP, including but not limited to duties as listed above in Sections 1B(i-x) but for ATP, and performing such other duties and tasks related to ATP as the Board may from time to time assign; and

(xii) performing such other duties and tasks as the Board may from time to time assign.

C. Performance. Clarke agrees to perform his duties and responsibilities in good faith, to maintain his office in a location designated by the Board. He agrees to devote his full time, energies, interests and abilities to the performance of the duties and responsibilities of the General Manager and President & CEO of the Authority and shall not engage in any activities that conflict or interfere with the performance of this Agreement. Clarke shall not engage in any other business activities during this employment relationship (excluding reasonable day-to-day personal business) without the prior written permission of the Board and shall not engage in any activities that conflict or interfere with the performance of his duties under this Agreement. He shall, at all times, avoid any actual conflicts of interest, including but not limited to financial, business or other economic-based conflicts.

D. Right of Board. The Board and Clarke may agree to revise or alter Clarke's position or title, or the duties assigned to him.

E. Contract Year. For purposes of this Agreement, “Contract Year” means and refers to the 12-month contract period from December 15 to the following December 14.

F. Performance Period. For the purposes of this Agreement, “Performance Period” means the Authority’s fiscal year of October 1 to September 30 that occurs during the Term.

G. Performance Review. The Board shall review the performance of Clarke for each Performance Period based on his achievement of the Performance Standards established for such Performance Period.

H. Performance Standards. The Board and Clarke shall mutually agree on and establish performance goals and objectives for each Performance Period (“Performance Standards”). Clarke and the Board may mutually agree to adjust the established Performance Standards during the applicable Performance Period. Clarke acknowledges and agrees that during any Performance Period he is serving as Executive Director of ATP, the Performance Standards shall include performance goals and objectives related to his performance in such capacity. The Board shall solicit and reasonably consider feedback from the ATP Board of Directors on Clarke’s performance goals and objectives related to his service as Executive Director of ATP.

2. TERM OF AGREEMENT

A. Term. The term of this Agreement (the “Term”) begins effective as of the Effective Date and expires on December 14, 2025 (“Expiration Date”) or such earlier date as provided in Section 4 at which time Clarke's employment shall terminate.

B. Renewal. The Board may renew or not renew this Agreement by a majority vote of the qualified and appointed members of the Board at a Board meeting noticed and conducted in accordance with the Texas Open Meeting Act and Authority bylaws, policies, rules, and procedures.

C. Notice of non-renewal. The Authority agrees to provide Clarke with at least ninety (90) days’ notice of intent not to renew.

D. Termination. This Agreement, including Clarke's employment pursuant to it, is subject to earlier termination in accordance with the provisions of Section 4 of this Agreement.

3. COMPENSATION

A. Base Salary. Clarke's Base Salary for all services provided pursuant to this Agreement during the Term is as follows:

(i) Initial Base Salary. The annual rate of Base Salary in effect as of the Effective Date shall be three hundred twenty-seven thousand, four hundred eleven Dollars (\$327,411).

(ii) Adjustments to Base Salary. From time to time, subject to Board approval, Clarke shall be eligible to receive increases in Base Salary based on the Board's Performance Review of the Performance Standards, and upon budget and other fiscal and practical constraints.

(iii) Timing. Clarke's Base Salary shall be adjusted retroactively to become effective upon the first pay period following the beginning of the fiscal year in which the Base Salary adjustment is approved by the Board.

B. Benefits. Clarke shall be entitled generally to all benefits provided to employees of the Authority and specifically to the following benefits during his employment under this Agreement:

(i) 401(k) Plan. The Authority shall contribute Twenty-Five Thousand Dollars (\$25,000) to the Authority’s 401(k) Plan for each full year Clarke is employed and a prorated amount for any partial year of employment (the “Contribution”). The Contribution shall be made in equal monthly installments allocated to Clarke’s plan account.

In the event that all or part of the Contribution cannot be made to the 401(k) Plan because it would violate applicable law, any plan limits, or cause the 401(k) Plan to cease to be qualified under the applicable provisions of the Internal Revenue Code, the portion of the Contribution amount that cannot be made to the 401(k) Plan shall be

contributed to one or more deferred compensation vehicles upon terms mutually agreed upon by Clarke and the Board.

(ii) Vacation; compensatory time. Clarke shall be granted 25 days of vacation upon hire without a waiting period for use and shall accrue 7.69 hours of vacation time per pay period immediately. Clarke shall not be entitled to compensatory time for hours worked outside of normal business hours. Clarke shall account for and report vacation days taken in accordance with the policies and procedures of the Authority. Upon termination of employment with the Authority, Clarke shall be entitled to be paid in cash the current value of vacation days accrued but not taken.

(iii) Holidays. Clarke shall be entitled to such holidays as are established by the Authority for all employees.

(iv) Sick pay. Clarke shall accrue paid sick leave at the rate of eight (8) hours per month. Clarke shall account for and report all paid sick days taken in accordance with the policies and procedures of the Authority, upon termination of employment with the Authority, Clarke shall be paid for any unused sick pay, in the same manner as and according to the same rules and limitations as are applicable to other employees of the Authority.

(v) Insurance. To the extent that he is eligible, Clarke shall be entitled to participate on the same basis as other employees of the Authority and be provided coverage under the Authority's medical and dental insurance plan, life insurance plan, and group disability plan, as they may be modified from time to time by the Board in its discretion.

(vi) Professional dues. The Authority may, in the sole discretion of the Board, budget and pay for memberships, dues and expenses of Clarke in professional organizations or in clubs to be used primarily for non-personal, job-affiliated meetings and business entertainment. The payment of such expenses is a general benefit to the Authority, serves its interests, and is not considered to be compensation to Clarke.

(vii) Continuing education, professional meetings, business travel. Clarke is eligible for reimbursement of reasonable and necessary business expenses, including documented travel and subsistence consistent with the Authority's Business Travel Policy and Procedures, for attendance at short courses, institutes and seminars necessary and appropriate to Clarke's training, or attendance at appropriate business- or industry-group meetings or other appropriate business travel. Clarke shall submit all travel expenses to the Vice President, Internal Audit for review and verification prior to receiving reimbursement.

(viii) Other. All provisions of Authority personnel policies, rules and regulations relating to health and life insurance, sick leave, holidays, termination benefits, car usage or mileage reimbursement and other fringe benefits and working conditions, as they now exist or may be amended, modified, changed, or deleted from time to time, shall apply to Clarke as they would to other employees of the Authority, insofar as those provisions, regulations and rules are not inconsistent with this Agreement.

(ix) Property of the Authority. Unless otherwise agreed in writing by the Board, any and all property of any kind provided to Clarke by the Authority shall be and remain the sole property of the Authority.

C. Potential Performance Bonus. During the Term of this Agreement, Clarke, as General Manager and President & CEO of the Authority, shall be eligible for performance achievement bonuses. Clarke and the Authority will establish Performance Standards for the Performance Period as contemplated in Section 1 of this Agreement, and following the end of the Performance Period the Board may authorize payment to Clarke of a performance bonus of up to ten percent (10%) of the Performance Period's Base Salary. Such bonus, if any, shall be paid within 2 ½ months following the end of the calendar year which includes the end of the applicable Performance Period.

D. Restrictive Bonus Plan for Retention. On or about the end of the first calendar quarter of 2021 or as soon thereafter as is practicable, subject to Clarke's continued employment, the Authority will offer Clarke an arrangement (referred to amongst the parties as a "restrictive bonus plan"). The terms and conditions of the restrictive bonus plan will be set by the Authority, but will require the Authority to pay an annual bonus to Clarke in the amount of \$50,000 as the premium for the life insurance underlying the proposed restrictive bonus plan and an additional \$33,000.00 bonus (which amount is intended to defray taxes due on the \$50,000 bonus) for a fixed period and which will include a vesting schedule pursuant to which Clarke will vest in the benefits under the restrictive bonus plan, subject to his continued employment, at the rate of 50% following the third year anniversary of the Effective Date and in an additional 25% on each of the fourth and fifth year anniversaries of the Effective Date. In no event shall Clarke have any rights or entitlements under the restrictive bonus plan until definitive agreements are executed by the Authority. This provision shall be null-and-void if Clarke is not insurable at standard rates with respect to the life insurance underlying the proposed restrictive bonus plan.

4. TERMINATION OR SUSPENSION OF EMPLOYMENT

Notwithstanding the stated Term of this Agreement, Clarke is and remains an at-will employee of the Authority and may be terminated at any time prior to the expiration of the stated Term. This Agreement, and Clarke's employment, may be terminated prior to the Expiration Date of this Agreement upon the occurrence of any of the following:

A. Resignation. Clarke agrees that if he voluntarily terminates his employment earlier than the Expiration Date of this Agreement by resignation:

(i) He will give the Authority at least one hundred eighty (180) days advance written notice of such resignation, stating the reasons for it. The notice shall be delivered to the Board Chair (or in the Chair's absence, to the Vice-Chair). The timing of any public statement or press release with regard to the resignation shall be determined by the Board.

(ii) During the notice period from the time of the giving of notice until the effective date of the resignation, Clarke shall perform such duties as may be assigned by the Board and

its Chairman, including any duties related to ATP and shall be entitled to Base Salary payments and other benefits during the notice period, unless otherwise agreed by the Board and Clarke.

(iii) The Authority is not obligated to continue Clarke's employment during the notice period and may at the sole option of the Board elect to terminate Clarke's employment at any time during the notice period. In such event, Clarke will receive a dollar amount approximately equivalent to the amount of Base Salary and benefits (as calculated by the Authority in its sole discretion) he would have been paid if he had remained employed through the notice period (less applicable deductions and withholdings). This amount shall be paid in a lump sum within sixty (60) days following termination.

(iv) Unless otherwise agreed by the Board, Clarke shall not be eligible to earn any bonuses of any kind for the Contract Year during which he voluntarily terminates this Agreement.

B. Inability to Perform.

(i) If Clarke is unable to perform his assigned duties due to his Incapacity (as defined below), then the Authority at its sole option may elect to terminate Clarke's employment. In the event of Clarke's termination by the Authority due to Incapacity, subject to the provisions of Section 4(c)(v) below, the Authority will pay Clarke an amount equal to three (3) months of Base Salary less the amount of any payments he has already received pursuant to Authority's disability insurance coverage within sixty (60) days following termination.

(ii) Upon Clarke's death, this Agreement shall automatically terminate with no further obligation of the Board or the Authority to him.

(iii) For the purposes of this Agreement, "Incapacity" shall mean the inability to perform the essential duties and responsibilities under this Agreement as a result of a physical or mental condition, or emotional illness, with or without reasonable accommodation.

C. Termination at the Option of the Authority.

(i) The Authority may terminate this Agreement, and Clarke's employment, at any time by a majority vote of the Board at a Board meeting noticed and conducted in accordance with the Texas Open Meetings Act.

(ii) All benefits, rights, duties or entitlements, unless specifically extended beyond the termination date, shall cease to the extent permitted by law, on the Board-approved termination date, except as otherwise provided by this Agreement.

(iii) Prior to any final termination action pursuant to this provision, Clarke shall have the opportunity to address the Board concerning such termination action.

(iv) If the Authority elects to terminate this Agreement and Clarke's employment pursuant to this provision, then the Authority shall provide the following severance benefits to Clarke, subject to the provisions of Section 4(C)(v) below:

a. During the first four (4) Contract Years, the Authority shall pay to Clarke a lump sum severance payment (less applicable withholding and deductions) equal to twelve (12) months of Clarke's then current annual Base Salary. Such lump sum payment shall be made no later than the 60th day after the date of termination of employment.

b. During the final Contract Year, the Authority shall pay to Clarke a lump sum severance payment (less applicable withholding and deductions) equal to the lesser of (A) six (6) months of Clarke's then current annual Base Salary or (B) the Base Salary Clarke would be paid through the Expiration Date if he remained employed. Such lump sum payment shall be made no later than the 60th day after the date of termination of employment.

c. Subject to Clarke's timely and proper election to continue healthcare coverage under COBRA pursuant to the Authority's applicable group health plans, the Authority shall pay a proportionate amount of Clarke's COBRA premiums equal to the portion of the premiums the Authority paid for Clarke's active employee coverage prior to his termination for the number of months of Base Salary being paid as severance pursuant to Section 4(C)(iv) (a) or (b), as applicable. The obligation to provide this severance benefit shall end as of the date Clarke becomes entitled to substantially comparable benefits from another employer.

(v) Notwithstanding any provision herein to the contrary, in order to be eligible to receive the severance benefits under Section 4(B)(i) or 4(C)(iv) above, as applicable, Clarke must execute and return to the Authority a general written release and waiver of claims, in such form as determined by the Authority, within the time required by the Authority (but in no event later than sixty (60) days) after the date of Clarke's termination of employment under this Section 4(C), and Clarke must not revoke such waiver of claims within 7 days after its execution.

(vi) There shall be no severance payment due in the event the Term of the Agreement ends upon the Expiration Date without earlier termination.

D. Termination for Cause.

(i) The Authority may terminate this Agreement, and Clarke's employment, at any time for Cause, by a majority vote of the Board at a Board meeting noticed and conducted in accordance with the Texas Open Meetings Act.

(ii) Clarke shall be provided a written notice of such proposed termination, and the grounds therefor, at least ten (10) business days prior to the proposed effective date of such termination; and Clarke shall have the opportunity to address the Board prior to such termination action.

(iii) Upon such action by the Board, Clarke's employment, and this Agreement, shall be terminated immediately.

(iv) For purposes of this Agreement, “for Cause” means a good-faith basis (other than the fact merely of having been accused or charged) for determining that Clarke has:

a. habitually neglected or willfully breached material duties that he is required to perform pursuant to this Agreement;

b. materially violated rules, policies, practices or procedures of the Authority or ATP (“Rules”); including but not limited to fiscal or personnel Rules, or Rules prohibiting discrimination in the work place, including but not limited to prohibition of harassment, on grounds of race, gender, sexual orientation, age or any other legally-prohibited basis, and that violation(s) are a basis for the termination of a supervisory employee of the Authority;

c. refused to follow a lawful directive of the Board, or a directive of the Chairman of the Board that is ratified by the Board;

d. committed any public or private dishonest or unlawful acts such as but not limited to: fraud, misappropriation, or embezzlement of funds; has been convicted of any felony offense, any jail misdemeanor, or any misdemeanor offense involving moral turpitude; or committed any other criminal offense involving performance of his duties under this Agreement; or

e. engaged in acts which would constitute grounds for dismissal of any employee of the Authority or ATP under any law, policies, rules or regulations in existence as of the time of the acts.

(v) If Clarke is terminated for Cause, the Authority shall have no further obligation to Clarke for the provision of any salary, deferred compensation, bonus, or any other benefits or compensation, effective as of the effective date of the termination for Cause, except as may be required by applicable law.

E. Suspension. The Board may suspend Clarke with full pay and benefits by a resolution adopted by a majority of the Board at a public meeting of the Board noticed and conducted under the Texas Open Meetings Act, such resolution to set forth the reasons for the suspension. Clarke shall have the right to appear before the Board at or prior to such meeting.

F. Limit to termination compensation. Unless otherwise agreed in writing, to the extent permitted by law, any obligation of the Authority to compensate Clarke or provide benefits of any kind after the effective date of any termination shall be reduced and offset by any compensation and the value of any benefits of any kind provided to Clarke by any third party during a period commensurate with the equivalent severance period stated above, whether or not arising as a result of or related to the termination.

5. INDEMNIFICATION

A. The Authority, to the extent permitted under Texas law, and considering statutory limitations and immunities recognized in Texas law, waivers under the Texas Tort Claims Act and other laws, and limitations or immunities recognized under any other applicable law, shall defend and indemnify Clarke for liability incurred by him as a result of actions taken by him in the course and scope of the performance of his duties under this Agreement, with the exception of liability arising from his gross negligence, gross misconduct, or illegal conduct.

B. This obligation to defend and indemnify is expressly conditioned on:

(i) Clarke's prompt notification of the Authority Board and Chief Counsel upon service of any county, state or federal complaint naming him as a defendant; provided, that Clarke shall notify the Authority of any such claims or actions asserted or threatened to be asserted against him which he has reason to believe will or likely will result in a formal proceeding being initiated, whether or not a judicial or other formal complaint yet has been filed and served;

(ii) Clarke permitting the Authority at its option to arrange for and conduct the defense of such claims or actions; and

(iii) granting the Authority the right and authority to compromise and settle such claims or actions on terms acceptable to the Authority.

C. The Authority may at its election purchase and maintain insurance on behalf of Clarke against all or any part of the liability covered by this provision.

D. If a claim or action occurs asserted to trigger the Authority's obligations under this Section 5, Clarke may request that the Authority itself defend the claim or action; or if he himself conducts such defense, that the Authority periodically reimburse him for expenses of defense reasonably incurred by him or that the Authority make interim advance payments to his legal counsel of reasonably incurred expenses of defense. The Authority may agree to do so on such conditions as it may reasonably determine to be appropriate. Any payments made by the Authority prior to finality of a judgment on the claim or action are subject to recoupment by the Authority should the acts or omissions of Clarke made the basis for the claim or action be, or reasonably be determined at any time by the Authority to be, of a kind and character that are outside the course and scope of Clarke's duties under this Agreement, or for which the Authority otherwise may not defend or indemnify Clarke under Texas or other applicable law.

E. The Authority's obligation to defend and indemnify under this Section shall survive termination of Clarke's employment.

6. EXPENSE REIMBURSEMENT

A. Reimbursement. The Authority shall reimburse Clarke, to the extent permitted under Texas law and then-applicable Authority policies, rules and regulations, for reasonable travel and other business expenses necessarily incurred in the performance of duties required under this Agreement.

B. Compliance; documentation. Clarke agrees to comply with the Authority's policies and procedures regarding expense reimbursement as they may exist from time to time, and to furnish such documentation or explanation as may be required thereunder or otherwise reasonably requested.

C. Subject to audit. All payments or reimbursements for expenses provided by the Authority under this Agreement shall be subject to audit and confirmation by the Authority as to name, amount and eligibility under the provisions of this Agreement and then-applicable personnel and travel/expenses rules and policies of the Authority.

7. GENERAL PROVISIONS

A. Notice. Any notice which either party is required to give to the other party hereunder shall be deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified with proper postage prepaid, if addressed as follows:

To the Authority:

Capital Metropolitan Transportation Authority
2910 East 5th Street
Austin, Texas 78702
Attn: Board of Directors

With a copy to:

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

To Randy Clarke:

Randy Clarke

or to such other address as either party may designate from time to time, by written notice to the other party given in the manner stated in this subsection.

B. Complete Agreement. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior oral or written agreement, understanding, representation, warranty, promise or document relating to the subject matter of this Agreement, including without limitation the employment agreement between the Authority and Clarke, dated March 7, 2018. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made which are not embodied in this Agreement and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding on either party.

C. Amendment. This Agreement cannot be terminated orally; and may be amended or modified only by a written instrument executed by the parties.

D. Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

E. No waiver. No omission or delay by any party in exercising any right, power, or privilege in this Agreement shall impair the future exercise of any such right, power or privilege, or be construed to be a waiver thereof or of any default or to be an acquiescence therein, and any single or partial exercise of any such right, power or privilege shall not preclude other or further exercises thereof or the exercise of any other right, power, or privilege. No waiver shall be valid unless in writing and signed by the party to be charged with waiver, and then only to the extent therein specified.

F. Severability. Any provisions of this Agreement that are prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

G. Assignment. This Agreement is personal to Clarke, and is not assignable by either party hereto.

H. Choice of law; venue; immunity. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas, without giving effect to its choice of laws principles. Venue for any dispute or claim arising under or related to this Agreement shall be and lie solely and exclusively in the state or county courts of Travis County, Texas, or the federal district courts of the Western District of Texas, Austin Division. Nothing in this Agreement is intended to be or shall be construed as a waiver of the Authority's governmental or other immunity from suit, unless such immunity is expressly waived by statute.

I. Return of Authority property. On the termination of this Agreement for any reason, or whenever otherwise requested by the Board, Clarke shall immediately deliver to the Authority all property in his possession or control belonging to the Authority. He shall be responsible for any damage to such equipment, including any costs of any refurbishment, repair or replacement necessitated by his use of such equipment, normal wear and tear excepted.

J. Survival. The respective rights and obligations of the parties under this Agreement shall survive termination of this Agreement to the extent necessary to carry out the express provisions of this Agreement.

K. Audit. All payments or reimbursements for expenses provided for by this Agreement shall be subject to audit and confirmation by Authority accountants as to the nature, amount and allowability under the provisions of this Agreement and Authority policies, rules, regulations and procedures.

L. Binding. This Agreement shall be binding on and inure to the benefit of Clarke's executors and heirs.

M. Legal review. Clarke represents and warrants that he has been afforded an opportunity to consult with legal counsel regarding the contents of this Agreement prior to its execution.

N. Section 409A. The Agreement and any payments provided hereunder are intended to comply with, or be exempt from, Section 409A of the Internal Revenue Code of 1986, as amended from time to time (including any valid and binding governmental regulations, court decisions and other regulatory and judicial authority issued or rendered thereunder) ("Section 409A"). The Agreement shall in all respects be interpreted, operated, and administered in accordance with this intent. Payments provided under the Agreement that are subject to Section 409A may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption, including to the maximum extent possible, exemptions for separation pay due to an involuntary separation from service and/or short-term deferrals. Any payments provided under the Agreement to be made upon a termination of service that constitute deferred compensation subject to Section 409A shall only be made if such termination of service constitutes a "separation from service" under Section 409A. Each installment payment provided under the Agreement shall be treated as a separate identified payment for purposes of Section 409A. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under the Agreement shall be provided in accordance with the following: (i) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, (ii) any reimbursement of an eligible expense shall be paid to Clarke on or before the last day of the calendar year following the calendar year in which the expense was incurred, and (iii) any right to reimbursements or in-kind benefits under the Agreement shall not be subject to liquidation or exchange for another benefit. The Authority makes no representations or warranties that the payments provided under the Agreement comply with, or are exempt from, Section 409A, and in no event shall the Authority be liable for any portion of any taxes, penalties, interest, or other expenses that may be incurred by Clarke on account of non-compliance with Section 409A.

[Remainder of this page intentionally left blank]

Executed on the dates indicated, and effective as of December 15, 2020, by:

Wade Cooper, Chair
Capital Metropolitan Transportation
Authority Board of Directors

DATE

Randy Clarke

DATE