

CAUSE NO.

DIRTY MARTIN’S, § **IN THE DISTRICT COURT**
GONZALO BARRIENTOS, §
MARGARET GOMEZ, ORA HOUSTON, and §
SUSANA ALMANZA §
Plaintiffs, §

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, § **455TH, DISTRICT COURT**
JOHN LANGMORE, JUAN GARZA, §
JEFFREY TRAVILLION, §
ALL IN THEIR OFFICIAL CAPACITIES, §
Defendants. § **_____ JUDICIAL DISTRICT**

PLAINTIFFS’ ORIGINAL PETITION FOR INJUNCTIVE RELIEF

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 are not getting anything close to the benefit of the bargain they made for 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, 2023, the Austin City Council and ATP² drastically amended The Voter Contract

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

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.

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 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 may be 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 may be served at the City Council District 1 office located at 301 W. 2nd Street, Austin, Texas 78701.

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

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

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

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

(7). Council Member, District 6, Mackenzie Kelly may be 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 may be served at the City Council District 7 office located at 301 W. 2nd Street, Austin, Texas 78701.

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

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

(11). Council Member, District 10, Alison Alter may be 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 may be served at her office at Austin Transit Partnership, located at 203 Colorado Street, Street, Austin, Texas 78701.

(13) ATP Board Member John Langmore may be served at his office at Austin Transit Partnership, located at 203 Colorado Street, Street, Austin, Texas 78701.

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

(15) ATP Board Member Jeffrey Travillion may be 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 \$0.4431 per \$100 valuation.

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 choose 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, it 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)

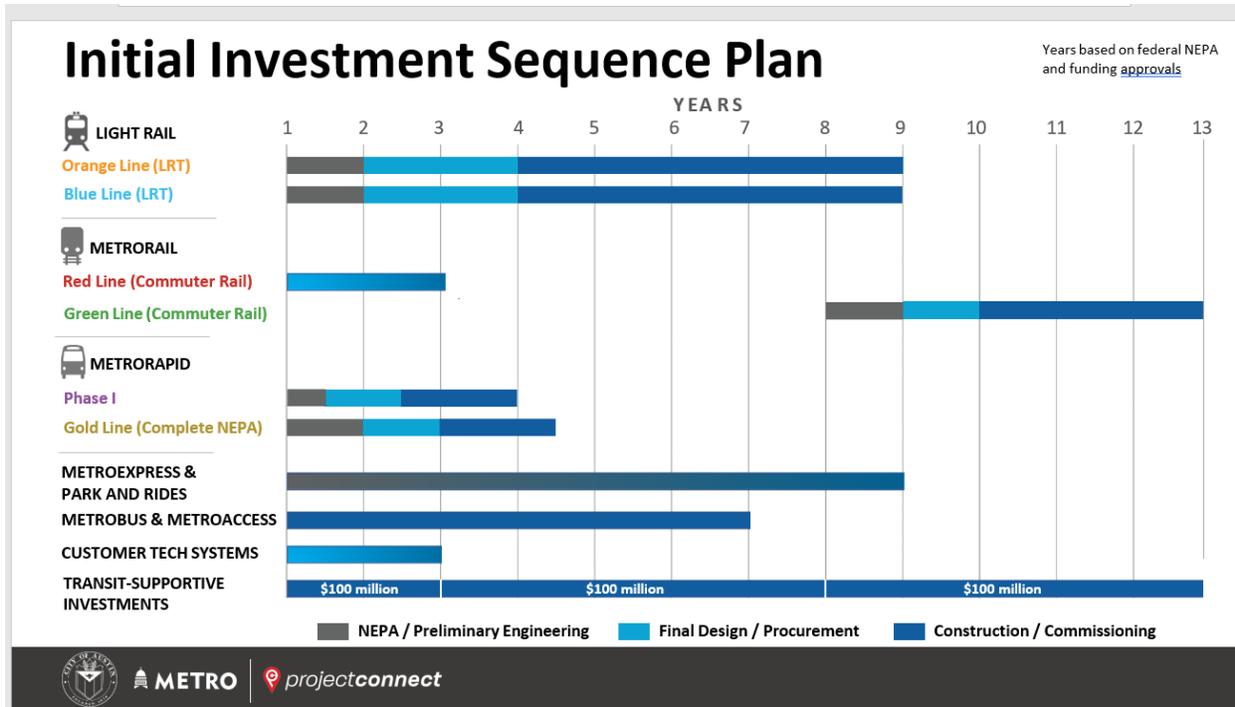
9. Shortly before the November 2020 election, together with the Ballot Proposition A, the Austin City Council adopted a “Contract With The Voters” (Resolution No. 20200807-003) for Project Connect with attachments, a very specific map of rail lines and rapid bus routes of the “System Plan” “Initial Investment”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

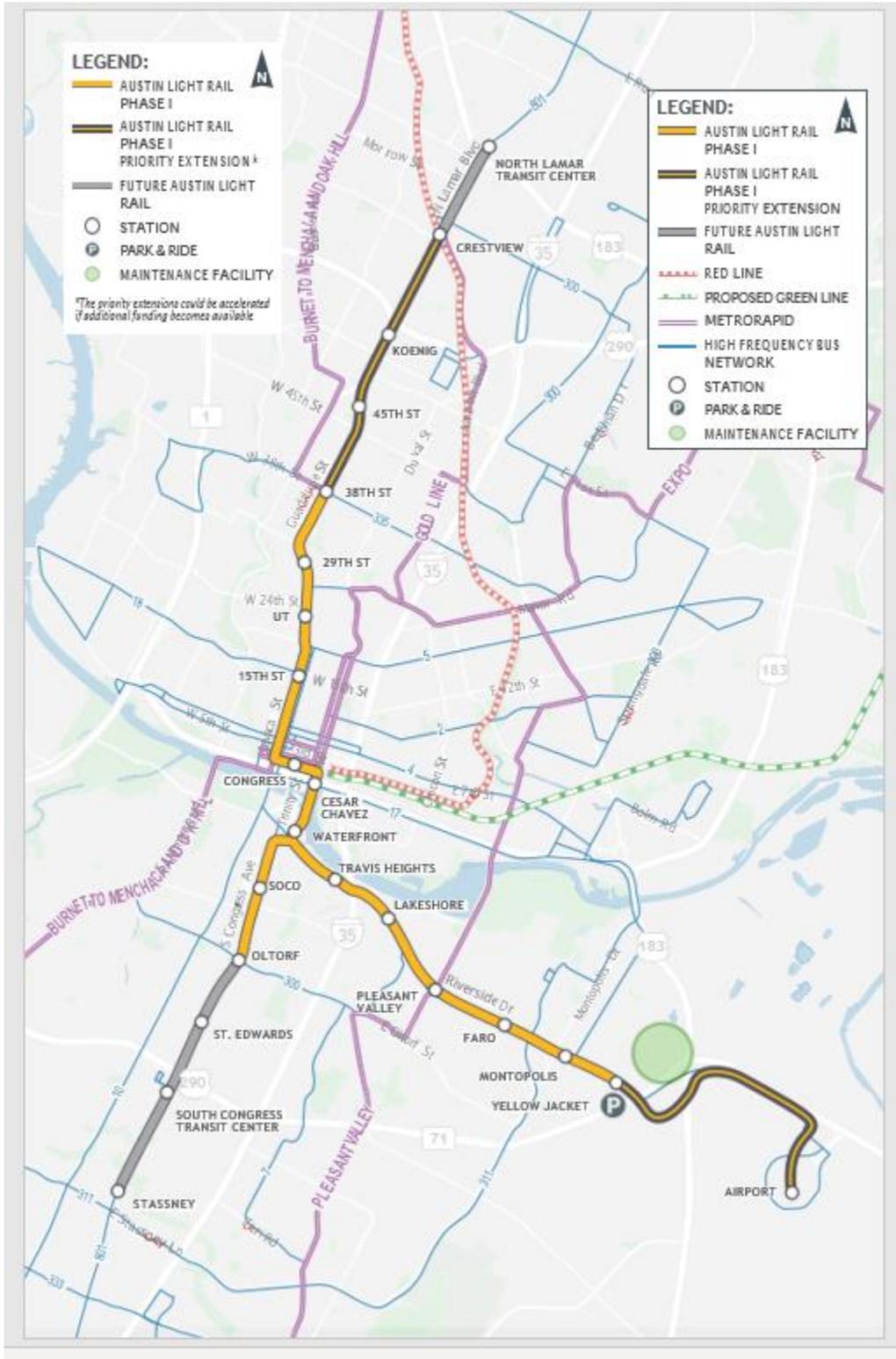
14. In summary, this 2020 Voter-Approved Project Connect plan promised voters their tax increase would fund 27 miles of rail (20.2 miles of light rail) with a capital cost per rider of \$71,000 with an elaborate underground terminal in downtown Austin, an 8-mile “Green Line” commuter rail from downtown 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”

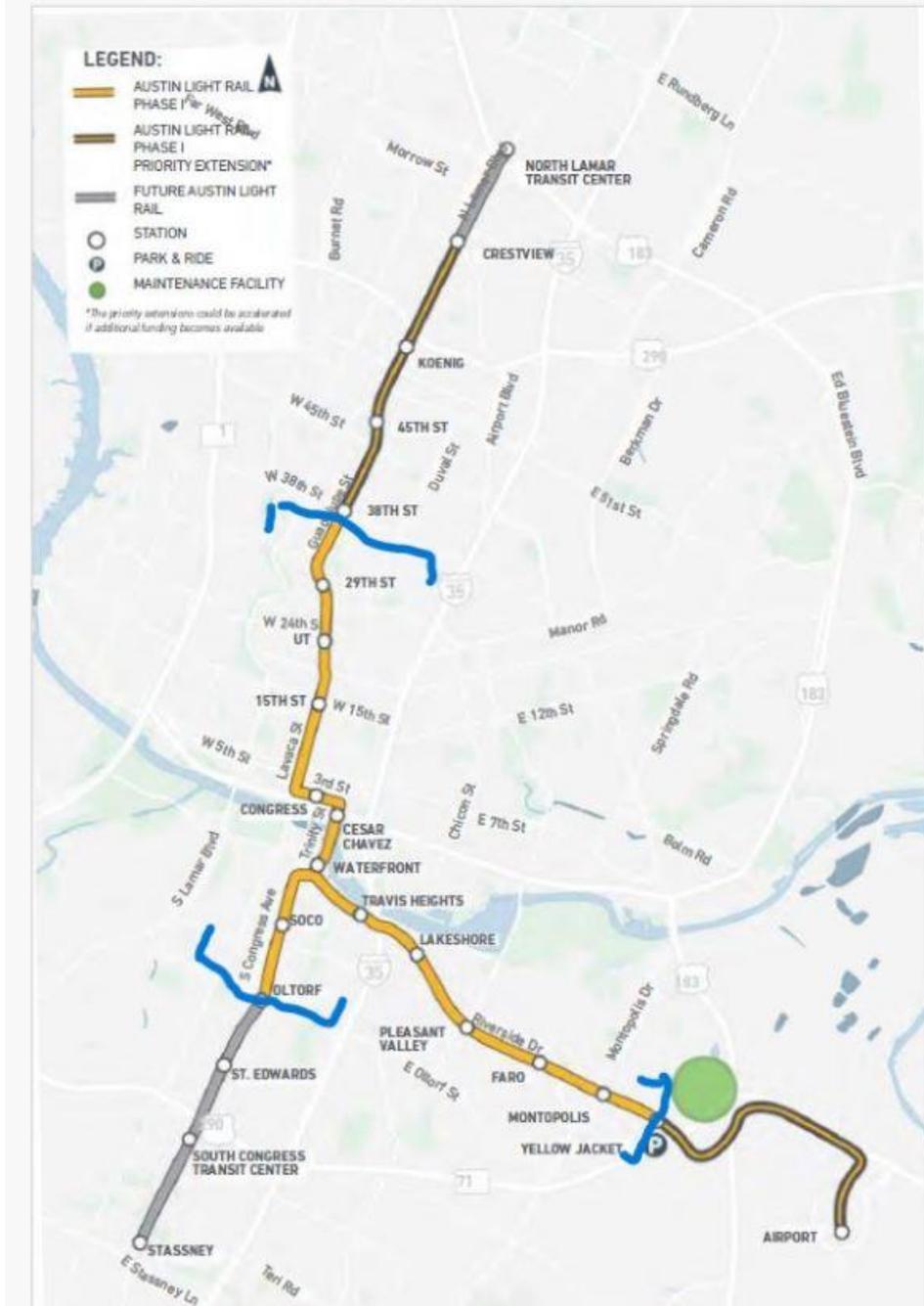
A DRASTICALLY DIMINISHED & RE-ROUTED LIGHT RAIL PLAN

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 increase, and thus severely less cost-efficient, capital cost per rider of \$166,000 versus \$71,000 (including the \$2 Billion underground station) or \$46,512 (when the 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 *	\$287,000	\$495,000	-\$208,000	+72%
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)

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, ignoring the traffic and safety impact, the rail line goes down 3rd Street (at street level) from Lavaca to Trinity Street.

Now, there is a new bridge across Lady Bird Lake that voters never approved.

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.

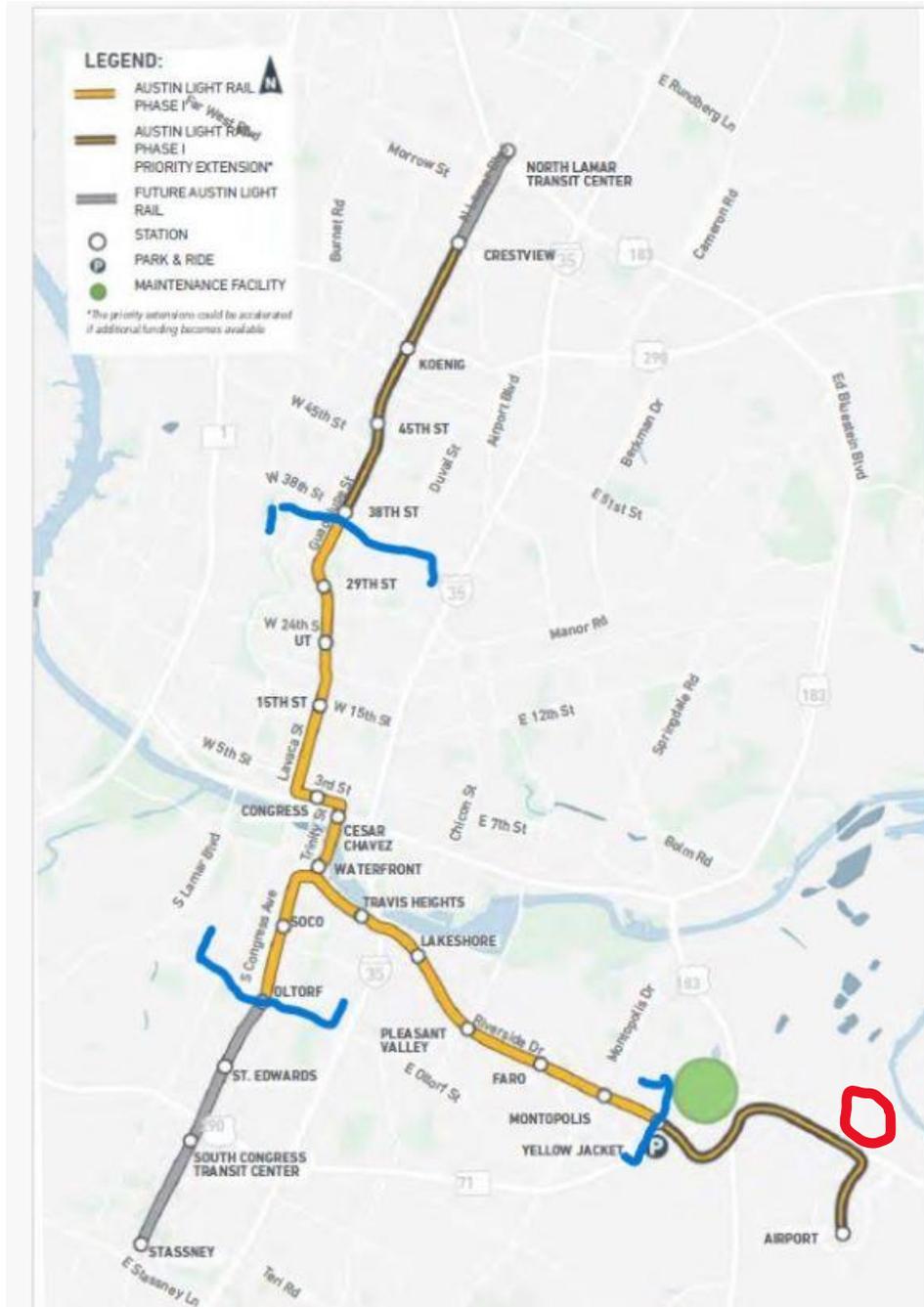
22. No maps produced for the 2020 Project Connect election showed the Maintenance Facility location(s). A “Maintenance Facility Site Methodology” draft report, dated September 18, 2020 before the election evaluated 7 “Parcel Groups”

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 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 CITY DEFENDANTS NO LONGER HAVE VOTER APPROVAL FOR THE PROJECT CONNECT REPLACEMENT PLAN THEY ARE PURSUING.

30. 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.

31. 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. Therefore, Plaintiffs seek an injunction against further assessment and

collection of the Project Connect tax increase.

COUNT 2: NEITHER THE CITY DEFENDANTS NOR THE ATP DEFENDANTS NOW HAVE AUTHORITY TO SPEND PROPERTY TAX FUNDS ON THE PROJECT CONNECT REPLACEMENT PLAN.

32. The only authority the Defendants had from voters was to spend money on the 2020 Project Connect Plan, which they have now substantially abandoned. The Defendants cannot rely on voter-authorization to build the 2020 Project Connect plan to instead build a drastically different Project Connect plan with features voters might very well have rejected. Therefore, Plaintiffs seek an injunction against expenditure of the Project Connect Tax for significant features that voters have not approved (a) designing, acquiring right-of-way, or constructing the unapproved rail route on 3rd Street or the Trinity Street bridge over Lady Bird Lake; (b) designing, acquiring right-of-way, or constructing the Maintenance Yard at the unapproved Montopolis/Del Valle location. In addition, Plaintiffs seek an injunction against expenditure of the Austin Maintenance & Operation property tax revenue for any purpose the City of Austin itself would be prohibited from spending, including spending for construction or any other purpose that is not maintenance and operation as defined by the Tax Code.

COUNT 3: BECAUSE AUSTIN TRANSIT PARTNERSHIP IS SUBJECT TO THE SAME RESTRICTION AGAINST USING THE PROJECT CONNECT M&O TAX INCREASE FOR DEBT SERVICE—BUT HAS SHOWN THEY INTEND TO DO SO—PLAINTIFFS SEEK AN INJUNCTION AGAINST THE ATP BOARD MEMBERS FROM AUTHORIZING THE

ISSUANCE OF ANY LONG-TERM DEBT OR BONDS TO BE REPAYED FROM THE PROJECT CONNECT TAX TRANSFER RECEIVED FROM THE CITY OF AUSTIN.

33. 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. Austin 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. 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.

34. In addition, section 431.101(b) gives ATP “the powers of a corporation authorized for creation by the [TxDOT] commission under this chapter” which section 431.070(a) says “may issue bonds and notes to carry out its purpose.” But a TxDOT transportation corporation cannot assess a property tax; it uses sales tax or toll fees or the like. There is no law that gives ATP authority to issue bonds dependent on the City’s Project Connect M&O tax as the source for debt repayment.

COUNT 4: In the alternative, if it is found that ATP can issue bonds using the Project Connect M&O tax transferred to it by the City, Plaintiffs assert that the City/ATP contract requiring transfer of the tax revenue to ATP violates Tex. Const. art. XI, section 5 and is therefore void.

35. 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 between the City and ATP “requires” the City to provide that annual transfer despite the contract language saying the transfer is “subject to the annual appropriation process.” In *McNeill v. City of Waco*, 89 Tex. 83, 87, 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.” Therefore, the City has contractually obligated itself to a “debt,” i.e., ATP’s bonds, as defined by

Tex. Const. art. XI, section 5, for which the City has not set aside an “interest and sinking” fund nor does the City otherwise have available the amount of the bonds. Moreover, since the City cannot “lawfully” pledge the M&O property tax comprising the Project Connect Tax, the City has no funds lawfully available to pay the ATP debt. *See also*, Tex. Att’y Gen. Op. KP-0444 at 7 (2023).

36. The ATP Board members lack authority to issue bonds using the Project Connect Tax. Therefore, Plaintiffs seek an injunction against the ATP Board members from authorizing the issuance of any long-term debt or bond to repaid from the Project Connect Tax transfer received from the City of Austin.

G. EQUITABLE RELIEF

37. As expressed in Count 1, 2, 3, and 4 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

38. 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 because they no longer have voter approval for the tax as required by the Texas Tax Code;
2. Grant permanent injunctive relief prohibiting the City Defendants or ATP Defendants from spending the Project Connect Tax on designing, acquiring right-of-way or constructing the 3rd Street rail route or Trinity Street bridge over Lady Bird Lake, or Bus/Rail Maintenance Yard in the Montopolis/Del Valle neighborhood because these elements were never submitted for voter approval;
3. Grant permanent injunctive relief prohibiting the ATP Defendants from spending any Project Connect Tax on construction because maintenance-and-operation property tax funds cannot be spent on anything that is not maintenance-and-operation;
4. Grant permanent injunctive relief prohibiting the ATP Defendants from issuing any long-term debt or bonds to be repaid from the Project Connect Tax because ATP lacks authority to do so since the City of Austin is barred from doing

so;

5. Grant permanent injunctive relief against the City Defendants appropriating or transferring the Project Connect Tax to ATP based on the unconstitutional and void contract between the City and ATP in violation of Tex. Const. art. XI, section 5;

6. Award Plaintiffs costs and grant Plaintiffs all other relief to which they may be entitled.

Respectfully submitted,



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