



DOWNTOWN C-PASS PROGRAM AGREEMENT (Employers)

The Capital Crossroads Special Improvement District of Columbus (the **Capital Crossroads SID**) and you, as the **Employer**, agree to the terms and conditions of this Downtown C-Pass Program Agreement (the **Agreement**) as of the date of your acceptance of this Agreement.

BACKGROUND

The Capital Crossroads SID has developed a transit pass program for certain employers and residents in downtown Columbus in partnership with the Central Ohio Transit Authority (**COTA**) and the Mid-Ohio Regional Planning Commission (**MORPC**), which is powered by Gohio Commute. Under the transit pass program (the **Downtown C-Pass Program**), COTA will provide access to all of its transit services to eligible people. Capital Crossroads SID will serve as the program administrator for the Downtown C-Pass Program, and MORPC will manage a secure website and database for the Downtown C-Pass Program. By entering into this Agreement, the Employer agrees to receive the benefit of the Downtown C-Pass Program and in return to comply with each of the terms and conditions of this Agreement.

AGREEMENT

Section 1. Definitions.

In addition to the terms defined elsewhere in the body of this Agreement, capitalized terms used in this Agreement where the rules of grammar would not otherwise require capitalization are defined in the attached **Exhibit A**.

Section 2. Term.

The Downtown C-Pass Program's term shall commence at the beginning of January 1, 2021 and shall end, unless terminated earlier as described below, at the close of December 31, 2025 (the **Term**). This Agreement shall be effective from its date through and including December 31, 2025. The Term of the Downtown C-Pass Program may be terminated earlier than the close of December 31, 2025 if the Downtown C-Pass Program is terminated under the terms and conditions

of the Master Downtown C-Pass Program Agreement. Unless the Employer is required to execute and deliver a copy of the terms and conditions contained in **Exhibit B** to this Agreement in order to participate in the Downtown C-Pass Program, the term of this Agreement may be terminated earlier than the close of December 31, 2025 if the Employer at any time terminates this Agreement by delivering written notice to the Capital Crossroads SID. The Employer acknowledges that special assessments will be assessed and due from all properties subject to the Transit Pass Plan through 2025 whether or not the owners or tenants of those properties participate in the Downtown C-Pass Program.

Section 3. Eligibility.

Subject to the terms and conditions of this Agreement, (1) officers, directors, partners, members, and employees of the Employer who work for the Employer and are assigned to a location within Downtown Columbus and the Transit Services Plan Area shall be eligible for participation in the Downtown C-Pass Program.

Employee eligibility shall be determined on a month-to-month basis. Employees shall not allow any other person to access COTA's transit services using Employees' credentials. Individual Employees shall be ineligible for the Downtown C-Pass Program if, in the reasonable opinion of COTA and the Capital Crossroads SID, they fail to comply with the terms and conditions of this Agreement, misuse their credentials, or behave disruptively or inappropriately while accessing COTA transit services. All of the Employer's Employees shall be ineligible for the Downtown C-Pass Program if, in the reasonable opinion of COTA and the Capital Crossroads SID, the Employer fails to comply with the terms and conditions of this Agreement, or the Employer's Employees misuse their credentials, or behave disruptively or inappropriately while accessing COTA transit services.

Section 4. Access to Transit Services.

During the Term of the Downtown C-Pass Program, but subject to the Employer's compliance with the terms and conditions of this Agreement, and under the terms and conditions of the Master Downtown C-Pass Program Agreement, COTA shall provide the Employer's eligible Employees who present valid credentials to COTA access to all of its transit services.

Section 5. Credentials.

In order to be granted access to COTA's transit services, each Employee must present valid credentials to COTA. Acceptable credentials include any credentials which COTA deems acceptable in its sole discretion and which allow COTA to validate Employees' participation in the Downtown C-Pass Program while accessing COTA transit services. Acceptable credentials include, but are not limited to:

- (a) Smart phone application (downloaded by Employee);
- (b) Property-issued magnetic stripe card that meets COTA specifications;
- (c) C-pass photo ID issued by COTA;
- (d) Other credentials deemed acceptable in the sole discretion of COTA.

Under the Master Downtown C-Pass Program Agreement, COTA shall provide new photo identification cards at a cost of \$10.00 per card. The Capital Crossroads SID shall pay the cost of the first identification cards issued to each of the Employer's eligible Employees as part of the costs of the Downtown C-Pass Program. The Employer or Employee shall pay all costs of all additional or replacement identification cards.

Section 6. Eligible Employees Database.

Under the Master Downtown C-Pass Program Agreement, MORPC shall provide a secure website and database (the **Database**) through which accurate records of eligible Employees shall be maintained. During the Term of the Downtown C-Pass Program, the Employer shall:

- (a) Maintain records of eligible participating Employees of the Employer in the Database accurate as of the last day of the most recent month;
- (b) Add newly eligible participating Employees to the Database;
- (c) Remove formerly eligible participating Employees from the Database;
- (d) Certify once each calendar month during the Term of the Downtown C-pass that the Employees shown in the Database are eligible for the program;
- (e) Allow the Capital Crossroads SID, MORPC, and COTA to audit the data uploaded into the Database; and
- (f) Permit Capital Crossroads SID to e-mail employees in the Database periodically about the Downtown C-pass program.

Confidentiality Statement: None of the Capital Crossroads SID, MORPC, or COTA shall use or share Employee information uploaded to the Database except as is necessary to enable Employees to participate in the Downtown C-Pass Program and to measure the Downtown C-Pass Program's performance and impact.

Under the Master Downtown C-Pass Program Agreement, MORPC shall provide notice or allow COTA to receive notice of all eligible Employees within the Database in order to activate and deactivate the Employees' credentials.

Section 7. Payment for Downtown C-Pass Program Services.

If the Employer occupies a building located within Downtown Columbus that has been assessed under the Transit Pass Plan submitted to the Council of the City of Columbus, Ohio and approved by the Council on May 18, 2020 by its Resolution 0067X-2020 (the **Transit Pass Plan**), the special assessment payments shall constitute payment in full for its participation in the Downtown C-Pass Program services.

If the Employer does not occupy a building located within Downtown Columbus that has been assessed under the Transit Pass Plan but is nevertheless eligible for participation in the Downtown C-Pass Program, the Employer shall execute a separate agreement with Capital Crossroads SID.

The Capital Crossroads SID shall pay COTA all costs of the Downtown C-Pass Program Services under the Master Downtown C-Pass Program Agreement.

Section 8. Additional Employer Obligations.

During the Term of the Downtown C-Pass Program, the Employer shall:

- (a) Assign a Downtown C-Pass account manager to:
 - i. Administer the benefit to Employees;
 - ii. Be responsible for maintaining the Database on behalf of the Employer as described in Section 6;
 - iii. Inform participating eligible Employees that they alone may use their credentials to access the Downtown C-Pass Program and that allowing others to use their credentials to access the Downtown C-Pass Program will result in revoked credentials and ineligibility for the Downtown C-Pass Program;
 - iv. Complete surveys regarding the Downtown C-Pass Program during its term; and
 - v. Carry out the Employer's other obligations under this Agreement.
- (b) Immediately deactivate or revoke credentials for formerly eligible Employees who become ineligible;
- (c) Maintain accurate rosters of participating eligible Employees;
- (d) Allow the Capital Crossroads SID and COTA to deactivate any and all credentials of the Employer if, in their reasonable opinion, the Downtown C-Pass Program is being misused or participating eligible Employees are disruptive or behaving inappropriately while accessing COTA transit services;
- (e) Provide records that would allow the Capital Crossroads SID, COTA, and MORPC to verify eligibility of employees for the Downtown C-Pass Program;
- (f) Promote the Downtown C-Pass Program internally;
- (g) Consider including information on the Downtown C-Pass Program in on-boarding materials to newly eligible Employees;
- (h) Consider soliciting an internal commuting champion who can be a point person within the Employer for alternative commuting options; and

- (i) Distribute surveys to eligible Employees (both participating in the Downtown C-Pass Program and not participating) during the Term of the Downtown C-Pass Program and request the completion of surveys.

Section 9. Federal Tax Matters.

To the fullest extent permissible under Section 132(f) of the Internal Revenue Code and the Treasury Regulations thereunder (as determined by Employer's independent tax counsel or advisor), Employer shall treat the access to COTA's transit services described under the terms of this Agreement and provided by Employer to eligible Employees as a Qualified Transportation Fringe Benefit. Employer is solely responsible for any tax obligations or tax reporting requirements that may arise as a result of providing its eligible Employees access to COTA's transit services and participating in the Downtown C-Pass Program.

Section 10. Employer's Representations and Warranties.

The Employer represents and warrants:

- (a) As of the date of this Agreement, it employs eligible Employees at buildings located within Downtown Columbus.
- (b) The representative confirming the Employer's consent to this Agreement by indicating his or her acceptance through electronic means has full authority bind the Employer to the terms and conditions of this Agreement.
- (c) The Employer is duly authorized to agree to, deliver, and perform this Agreement, and upon its acceptance of this Agreement, this Agreement shall be a valid and binding agreement enforceable against the Employer.
- (d) The Employer is duly authorized to conduct its business within the State.
- (e) There are no actions, suits, or proceedings pending, or to its knowledge threatened, against or affect it that, if adversely determined, would individually or in the aggregate materially impair its ability to perform any of its obligations under this Agreement, or materially adversely affects its financial condition (each an **Action**), and during the term of this Agreement, the Employer shall promptly notify the other Parties of any Action commenced or to its knowledge threatened against it.
- (f) It is not in default under this Agreement, and no condition exists, the continuance in existence of which, would constitute a default under this Agreement.

Section 11. Indemnification and Release.

- (a) If the Employer is not a Public Entity, the Employer shall indemnify, hold harmless, and hereby releases the Capital Crossroads SID, COTA, and MORPC, (including

any member, officer, director, or employee of the Capital Crossroads SID, COTA, and MORPC) (collectively, the **Indemnified Parties**) against any liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, reasonably attorneys' fees and expenses) (**Indemnified Costs**) imposed upon, incurred by, or asserted against an Indemnified Party arising or resulting from or under this Agreement, including, without limitation, as a result of a breach of the Database and any release of confidential information resulting from a breach, all except as may arise or result from the Indemnified Party's gross negligence or purposeful act.

- (b) If the Employer is a Public Entity, the Employer hereby releases the Indemnified Parties (but does not indemnify, hold harmless, or obligate itself in any way to pay any Indemnified Costs to the Indemnified Parties) from Indemnified Costs imposed upon, incurred by, or asserted against an Indemnified Party arising or resulting from or under this Agreement, including, without limitation, as a result of a breach of the Database and any release of confidential information resulting from a breach, all except as may arise or result from the Indemnified Party's gross negligence or purposeful act.

Section 12. Miscellaneous.

- (a) Notices. All notices, certificates, requests, or other communications required to be given under this Agreement shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. The Parties, by notice given under this Agreement to the others, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.
- (b) Extent of Agreements. All terms and conditions and all obligations of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law.
- (c) Binding Effect. This Agreement shall inure to the benefit of, and shall be binding in accordance with its terms upon, the Parties.
- (d) Third Party Beneficiaries. COTA and MORPC are hereby each acknowledged to be, and designated as, express third party beneficiaries of each of the Employer's representations, warranties, obligations, and duties under this Agreement. No other persons or entities, however, shall have any express or implied third party beneficiary rights in or to this Agreement.
- (e) Assignment. This Agreement shall not be assigned by any of the Parties. Any attempt to assign this Agreement shall be void.

- (f) Modifications. This Agreement shall not be modified or terminated except by a unanimous written agreement signed by each of the Parties. Any attempt to modify or terminate this Agreement except by a unanimous written agreement signed by each of the Parties shall be void.
- (g) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be regarded as an original and all of which together shall constitute one and the same instrument.
- (h) Severability. If any term of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, that determination shall not affect any other term of this Agreement, each of which shall be construed and enforced as if the invalid term was not contained in this Agreement giving full force and effect to the meaning and intent of this Agreement. Any invalidity or unenforceability shall not affect any valid or enforceable application of the same term, and that term shall be deemed to be effective to the full extent permitted by law.
- (i) Governing Law. This Agreement is made under the laws of the State and shall be governed by and construed in accordance with the laws of the State.
- (j) Jurisdiction. Any and all disputes relating to this Agreement shall be resolved in a court of competent jurisdiction located in Franklin County, Ohio. Each of the parties hereby waives all objections to the personal jurisdiction of courts located within Franklin County, Ohio.

EXHIBIT A

Definitions for Downtown C-Pass Program Agreement

In addition to terms defined within the body of the Downtown C-Pass Program Agreement (the **Agreement**):

1. **Additional Employer Participants** means: (1) MORPC; (2) Smart Columbus; (3) any property owner that owns property in the Base Services Plan Area and employs Employees at any portion of the Base Services Plan Area and employs additional Employees at locations outside of the Base Services Plan Area but within Downtown Columbus, and wishes to purchase additional credentials for those Employees employed at locations both inside and outside of the Base Services Plan Area but within Downtown Columbus; or (4) any property owner that owns or leases property within the Base Services Plan Area that will not be assessed as part of the Participating SID Properties but nevertheless elects to make Employer Per Capita Payments or Employer Per Building Payments, as applicable, in exchange for the right for Employees employed at those properties to access all COTA transit services.

2. **Agreement** means this Downtown C-Pass Program Agreement, as of the date of your acceptance of this Agreement, between the Capital Crossroads SID and the Employer, as it may be validly amended and in effect at any time.

3. **Base Services Plan** means the Base Services Plan submitted to the Council to provide base services for the Capital Crossroads SID in calendar years 2022-2025 and approved by the Council on May 18, 2020 by its Resolution 0067X-2020.

4. **Base Services Plan Area** means the geographic area shown on Exhibit B to the Base Services Plan.

5. **COTA** means the Central Ohio Transit Authority, a transit authority under the laws of the State, and any successor to it under the laws of the State.

6. **Database** means the secure website and database provided by MORPC for administration of the Downtown C-Pass Program.

7. **Downtown Columbus** means the geographic area of the City zoned as part of the Downtown District.

8. **Downtown C-Pass Program** means the program for the provision of access to COTA transit services described in this Agreement.

9. **Employee** has the meaning assigned to it in Section 3 of the Agreement.

10. **Employer** means you as the Employer who leases commercial space in the Transit Services Plan Area under this Agreement, and any of its permitted successors and assigns.

11. **Employer Per Building Payments** means payments made by the Additional Employer Participants in amounts equal to \$0.06 per square foot of building space for buildings outside the Transit Services Plan Area but within Downtown Columbus for which a Participant elects to make such payments under an Employer Agreement. Payments will be reduced by 50% in 2021 only.

12. **Employer Per Capita Payments** means payments made by the Additional Employer Participants and Franklin County Participants in amounts initially equal to \$40.50 per year per Employee, which amount may be increased by the percentage increase of COTA fares (based on the percentage increase of a one-way standard fare). Payments will be reduced by 50% in 2021 only.

13. **Master Downtown C-Pass Program Agreement** means the Master Downtown C-Pass Program Agreement dated as of [DATE] between the Capital Crossroads SID, COTA, and MORPC, as it may be validly amended and in effect at any time.

14. **MORPC** means the Mid-Ohio Regional Planning Commission, a regional planning commission under the laws of the State, and any successors to it under the laws of the State.

15. **Notice Address** means:

As to the Capital Crossroads SID: Capital Crossroads Special Improvement
District of Columbus
23 North Fourth Street
Columbus, Ohio 43215
Attention: Marc Conte

As to the Employer: The address provided through the secure
member portal at DowntownCpass.com

16. **Parties** means, collectively, the Capital Crossroads SID and the Employer.

17. **Party** means any one of the Parties.

18. **Public Entity** means the State, any “state agency,” as that term is defined in Section 1.60 of the Ohio Revised Code, any “subdivision,” as that term is defined in Section 5705.01(A) of the Ohio Revised Code, and any “taxing unit,” as that term is defined in Section 5705.01(H) of the Ohio Revised Code.

19. **State** means the State of Ohio.

20. **Term** means the period commencing on and including January 1, 2021 and concluding on and including December 31, 2025, unless earlier terminated under this Agreement.

21. ***Transit Services Plan*** means the Transit Services Plan submitted to the Council and approved by the Council on May 18, 2020 by its Resolution 0067X-2020, as it may be validly amended and in effect at any time.

22. ***Transit Services Plan Area*** means the geographic area shown on Exhibit B to the Transit Services Plan.