

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
THE CITY OF AUSTIN AND CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
(MCKALLA RAIL STATION - CITY PROJECT ELEMENTS)**

This Interlocal Cooperation Agreement (this “**Agreement**”) is made and entered into by and between the City of Austin, Texas, a Texas home-rule City and municipal corporation (the “**City**”) and Capital Metropolitan Transportation Authority (“**Capital Metro**”), a political subdivision of the State of Texas organized under Chapter 451 of the Texas Transportation Code, upon the premises and for the consideration stated herein. The City and Capital Metro are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS the City and Capital Metro recognize that transit investments are key to realizing the Austin Strategic Mobility Plan’s goal that 16 percent of Austinites use transit to get to work by the year 2040; and

WHEREAS, in connection with the Austin Strategic Mobility Plan, the City and Capital Metro are working collaboratively to implement Project Connect, a transit expansion plan that aims to expand transit capacity and offer more choices that link people, neighborhoods, opportunities, and employers;

WHEREAS, as part of Project Connect, Capital Metro will design and construct the McKalla Rail Station on Capital Metro’s regional rail system commonly known as the MetroRail Red Line that runs between Leander, Texas and the City of Austin Convention Center;

WHEREAS, the City has planned and identified the following improvements to infrastructure that sits within or adjacent to the McKalla Rail Station site (collectively, the “**City Project Elements**” or “**CPEs**”): (1) upsizing approximately 365 linear feet of an 8-inch wastewater main to 15-inch wastewater main and associated appurtenances, as shown on the attached Exhibit A (“**Austin Water CPE 1**”); (2) upsizing approximately 850 linear feet of 21-inch wastewater main to 42-inch wastewater main, and associated appurtenances, as shown on the attached Exhibit B (“**Austin Water CPE 2**” and, with Austin Water CPE 1, the “**Austin Water CPEs**”); and (3) expanding the 8-foot wide sidewalk initially proposed by Capital Metro to 13-feet in width to serve as a shared use path connecting to regional Red Line Trail, as shown on the attached Exhibit C (the “**Urban Trail CPE**”); and

WHEREAS, to avoid the time and costs involved with each party designing and constructing separate projects within the same area, and to avoid having to install and reconstruct recently completed work, the Parties agree that Capital Metro will integrate the CPEs into the design and construction of the McKalla Rail Station and that the City will reimburse Capital Metro accordingly; and

WHEREAS, the Parties intend to conform to this Agreement in all respects with the Interlocal Cooperation Act, Texas. Government Code Section 791.001, et seq.;

NOW, THEREFORE, the Parties agree as follows:

1. **Term and Termination.**

- a. The Effective Date of this Agreement shall be the date of the last party to sign this Agreement. This Agreement shall commence on the Effective Date and terminate upon completion of the obligations of the parties, unless terminated early in accordance with this Agreement.
- b. Any Party may terminate the Agreement early by providing the other Party at least sixty (60) days' written notice.

2. **Party Representatives.**

- a. The Interim President & Chief Executive Officer (the "**CEO**") of Capital Metro will act on behalf of Capital Metro with respect to the CPEs, coordinate with the City, receive, and transmit information and instructions, and will have complete authority to interpret and define Capital Metro's policies and decisions with respect to the CPEs. Capital Metro will designate a Capital Metro Project Manager and may designate other representatives to act on behalf of Capital Metro with respect to the CPEs.
- b. The City's Austin Water Department Director (the "**City's Water Director**") will act on behalf of the City with respect to the Austin Water CPEs, coordinate with Capital Metro, receive, and transmit information and instructions, and will have complete authority to interpret and define the City's policies and decisions with respect to the Austin Water CPEs. The City's Water Director may authorize and designate one or more City Austin Water Project Manager(s) and may authorize and designate other representatives to act on behalf of the City with respect to the Austin Water CPEs. The Austin Water Project Manager shall be responsible for initial approval of design changes to the Austin Water CPEs. Upon execution of this Agreement, the City's Water Director shall provide the Parties notification of a clear path of who (with contact information) to escalate typical issues that relate to the Austin Water CPEs.
- c. The City's Public Works Department Director (the "**City's Public Works Director**") will act on behalf of the City with respect to the Urban Trail CPE, coordinate with Capital Metro, receive, and transmit information and instructions, and will have complete authority to interpret and define the City's policies and decisions with respect to accessibility improvements, pedestrian infrastructure, and the Urban Trail CPE. The City's Public Works Director may designate a City Urban Trails Project Manager and may designate other representatives to act on behalf of the City with respect to the Urban Trail CPEs. The City's Public Works Director may designate Public Works Project Managers for the Urban Trail CPE and the Austin Water CPEs. The Public Works Project Managers will manage the status, scope, schedule, and budget information of such for the City. Additionally, the City's Public Works Director may designate Public Works Inspectors for the inspection of City

infrastructure against City approved plans.

3. **Responsibilities of the Parties.**

a. Capital Metro will:

- i. As applicable, develop, design, procure, construct, and manage each CPE, including (i) engineering design, drawings, plans and specifications, bid and contract documents necessary for the construction of a CPE, (ii) surveying and geotechnical engineering (iii) construction, (iv) inspection, testing, and any required permitting and environmental assessments and clearances (v) contract administration and project management; (vi) coordinating with the City to allow the City to inspect the construction of CPE; (vii) coordinating with the City to obtain the City's acceptance of the completed CPE work (the "**Work**").
- ii. design, drawings, plans and specifications of the CPEs must comply with all applicable federal, state, and local laws, rules, and regulations. The plans and specifications for each CPE must comply with the City's design and construction standards applicable to a CPE, City Design Standards (includes City Code Austin Design Criteria Manuals and Standard Details and Specifications), Capital Metro Transit Design Guide, and/or Capital Metro Design Criteria Manuals unless otherwise agreed by the Parties. If there are any conflicts between the City's and Capital Metro's design standards, etc., for the design, construction, and installation of infrastructure that will be owned by the City, City Design Standards shall prevail.
- iii. participate in the Austin Utility Location and Coordination Committee ("**AULCC**") process for the Austin Water CPEs and adhering to clearance requirements from other infrastructure.
- iv. oversee the solicitation of bids for the construction of the CPEs based on the approved plans and specifications if applicable.
- v. be responsible for procuring all engineering design and other professional services required for design and construction phases of the CPEs. Capital Metro will select and contract for professional services with the most highly qualified engineering consultant in accordance with the requirements of Chapter 2254 of the Texas Government Code. The City's responsibility for the cost of engineering the City's Project Elements will be included in the costs described below in Section 6.
- vi. require that its design engineer or other applicable engineering or design consultant to take any appropriate remedial action necessary to correct any design errors, omissions, or other deficiencies in the drawings, plans or specification identified by the City or by Capital Metro. Capital Metro will ensure that its professional services agreements with its design engineer and other professionals contain terms sufficient to obligate the consultant to revise any drawings, plans or specifications in order to correct design errors, omissions or deficiencies identified by Capital Metro. Capital Metro will provide as-builts and other project close-out and inspection information for the CPEs (including test results for mandrel, manhole coating, and TV inspection; a final cost and quantity

of materials; and a construction summary that includes the service locations by station numbers).

- vii. provide the City with an accounting of payments for CPEs and will make its records available at reasonable times to the City's auditors.
- viii. timely pay contractor-submitted invoices for the CPEs based on Work completed in accordance with the approved plans and specifications in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code.
- ix. obtain the written approval of the City for all change orders affecting the design and construction of the City Project Elements prior to the Capital Metro issuing the approved change order to the contractor, such approval not to be unreasonably withheld or delayed by the City.
- x. provide the following services and deliverables:
 - 1. One (1) electronic set of construction plans and specifications for the CPEs at intervals to be agreed to by the Parties' Project Managers for review and approval;
 - 2. Written responses to the City's initial plan review comments within fourteen (14) business days of receipt from Capital Metro;
 - 3. Written notice to the City of the schedule for design, advertisement for bids (if applicable), award of contract, and construction of the CPEs;
 - 4. Written notice to the City of the bid tabs for the CPEs;
 - 5. Written copy to the City of all contracts affecting the CPEs;
 - 6. A monthly itemized statement to the City of disbursements made and debts incurred during the preceding month relating to the City's portion of the CPEs, including copies of invoices, statements, vouchers, or any other evidence of payment of;
 - 7. Executed change orders to the City, jointly approved by both Parties, related to the CPEs;
 - 8. Sufficient notice, documentation and opportunity for the City to review and jointly approve the construction contractor's application for final payment;
 - 9. A copy to the City's Project Manager of any change order request related to the

CPEs within two (2) business days of Capital Metro receiving them from the Contractor;

10. Copies of construction contractor pay requests and change order requests related to the City portion of the CPEs within five (5) business days of receiving the approved Pay Applications and Change Order documents from the City;
 11. Coordination of utility relocations for the CPEs and funding to pay the costs of utility relocations required for the CPEs and that are not legally the responsibility of the utility owner;
 12. As applicable, acceptance upon satisfactory completion of construction and any applicable warranty or construction performance period; and
 13. A copy to the City of the as-built record drawings of the CPEs for the City's records.
- xi. In compliance with the City of Austin, Austin Transit Partnership, and Capital Metro Tri-Party Joint Powers Agreement for the Project Connect Program of projects, including Metro Rapid Projects, any entity implementing the Project Connect Plan, Capital Metro will ensure that, with respect to the Work, the following requirements are met:
1. Completion of OSHA 10-hour training for workers;
 2. Completion of OSHA 30-hour training for supervisors;
 3. Receipt of personal protective equipment free-of-charge for works in accordance with federal laws and regulations;
 4. Coverage by workers' compensation insurance;
 5. On-site monitoring independent of construction companies and their affiliates that are:
 6. Independent of construction companies or their affiliates;
 7. Not fiscally sponsored by construction companies or industry trade groups; and
 8. Accredited by a community organization that represents the interest of workers.

b. The City will provide:

1. Review of submitted plans and specifications for the CPEs by providing any comments within ten (10) business days of receipt of the initial submittal for completeness check, twenty-one (21) business days of receipt of the initial formal submittal for design review, fourteen (14) business days of receipt of any resubmittals of the initial submittal, and work in good faith to resolve any outstanding issues in a timely manner;
2. Review of any applicable permit applications required and work in good faith to resolve any outstanding issues;
3. Review of any change order proposal by returning the change order request to Capital Metro within seven (7) business days of its receipt by the City's Project Manager, with a written recommendation for its disposition;
4. At the option and expense of the City, inspection and any testing on the CPEs beyond the inspection and testing provided by Capital Metro or its contractors, in coordination with Capital Metro's inspectors and the Parties' Project Managers. Any additional testing required by the City must be scheduled to avoid delaying the construction of the CPEs to the maximum extent practical. The City will designate inspectors to make inspections, including any final inspection of the CPEs; the City's inspectors will communicate any issues to the parties' Project Managers, Capital Metro's Project Manager will then communicate those issues to its construction contractor. Capital Metro shall ensure that issues raised by the City's inspectors are resolved to the City's satisfaction based on the applicable plans and specifications for the CPEs;
5. Reporting of any deficiencies observed in the construction of the CPEs immediately to Capital Metro's Project Manager with an additional written report within two (2) business days;
6. Reviews and joint approvals of the construction contractor's application for partial and final payments by completing, executing, and returning pay requests related to the CPEs within five (5) business days of receiving them from the Capital Metro;
7. Attendance at meetings at the request of Capital Metro's Project Manager;
8. Approval of the construction of CPE upon satisfactory completion of construction; and
9. As applicable, acceptance of the CPEs upon satisfactory completion of any applicable warranty or construction performance period.

c. The Parties will participate in joint review meetings, as necessary, with representatives from all affected City and Capital Metro departments to avoid and resolve conflicts in review

comments. The Parties will provide a designated review team to expedite the review process for their respective portions of the CPEs. Capital Metro agrees that it is the responsibility of its design engineers and consultants to design to the applicable design standards and only participate in joint meetings when design standards cannot be met. In such meetings, Capital Metro agrees that it is the responsibility of its design engineers and consultants to provide suggested solutions to the identified conflicts for discussion and that the City, through a designee of City's Water Director or Public Works Director, will participate to provide advice and guidance as required to achieve a timely resolution of any conflict.

4. **Bond and Guarantee.** All construction contracts affecting the CPEs shall include a payment and performance bond in the amounts required by Chapter 2253 of the Texas Government Code for the acceptable to and in favor of and benefiting the City and Capital Metro for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting the City and Capital Metro for a period of one (1) year from the date of acceptance of the CPEs. The City and Capital Metro will be named as co-obligees on the bonds.
5. **Maintenance Responsibilities.** Unless otherwise agreed to by the Parties, upon City's acceptance of the Austin Water CPE improvements and the Urban Trail CPE improvements the City will own and maintain those improvements.
6. **Financial Obligations.**
 - a. The City shall reimburse Capital Metro, in accordance with this section, up to \$750,337 for costs incurred by Capital Metro for the CPEs set out on the attached Exhibit D. For Austin Water CPE 1, the City will reimburse Capital Metro up to \$34,493 for Capital Metro's actual soft costs (includes preliminary engineering reports, surveying, geotechnical studies, engineering design, contractor mobilization, traffic control, safety fencing, and business access signage) and up to \$166,230 for Capital Metro's actual hard costs (includes construction and materials), provided the City's obligation does not exceed \$200,773. For Austin Water CPE 2, the City will reimburse Capital Metro up to \$42,524 for Capital Metro's actual soft costs (includes preliminary engineering reports, surveying, geotechnical studies, engineering design, and project management) and up to 42% of Capital Metro's actual hard costs (includes construction and materials), provided the City's obligation does not exceed \$326,014. For the Urban Trail CPE, the City will reimburse Capital Metro up to 28% of Capital Metro's actual soft costs (includes preliminary engineering reports, surveying, geotechnical studies, engineering design, and project management) and up to 34% of Capital Metro's actual hard costs (includes construction and materials), provided the City's obligation does not exceed \$223,600.
 - b. The funding limits set out in Section 6.a. above are based on engineering estimates for CPE costs at the time of the execution of this agreement. Any additional City reimbursement funding will require the approval of Austin City Council and a written amendment of this Agreement executed by both parties.

- c. Capital Metro will submit (but not more frequently than monthly) to the City a written request for reimbursement for its reimbursable costs for each CPE. Each reimbursement request shall designate the services or improvements (or portion thereof) to which the reimbursement pertains and shall, if applicable, include the applicable contractor invoices and other supporting documentation for such improvements. With respect to the Work, the City will verify and determine the total eligible cost amount for each CPE and Capital Metro will certify the amount paid by Capital Metro for the CPE improvements were in accordance with the total eligible cost amount for CPE. If City determines that the amount payable to Capital Metro is the same as the amount submitted by Capital Metro, the City will reimburse Capital Metro within thirty (30) calendar days after the receipt of the reimbursement request. If the City determines that the amount owing to Capital Metro is less than the amount submitted by Capital Metro, the City will: (i) work diligently and in good faith to notify Capital Metro of the discrepancy within ten (10) business days of Capital Metro's submittal to the City; (ii) provide Capital Metro with all supporting documentation upon which the discrepancy is based; and (iii) work diligently and in good faith to resolve the discrepancy within the ensuing fifteen (15) business days.

 - d. For any approved change orders for the Work that cause the actual costs of design and construction of specific elements of CPE to exceed Capital Metro's funding, Capital Metro will notify the City that Capital Metro's funding will be exceeded and the City will make its funds available to Capital Metro within ninety (90) calendar days of receipt of an acceptable invoice by the City, subject to Section 3.a. of this Agreement. Such invoice must be accompanied by the change order request from the construction contractor, which has been recommended for approval by the Parties' Project Manager.
7. **Default.** A Party shall be in default under the Agreement if it fails to fully, timely and faithfully perform any of its material obligations which are expressly stated in the Agreement. In the event of default, the non-defaulting party may pursue all available legal and equitable remedies, subject to the dispute resolution procedure set forth in Section 8 of this Agreement.
8. **Dispute Resolution.** Initial disputes and unresolved questions or issues of Parties must initially be presented by submission in writing in accordance with the Notice provisions above. If satisfactory resolution cannot be achieved between the representatives of the Parties within a reasonable time, and should mediation be acceptable to all Parties in resolving a dispute arising under this Agreement, the Parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in the TEX. CIV. PRAC. AND REM. CODE, Section 154.023. Unless all Parties (or if the dispute is between two Parties, both Parties) are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in TEX. CIV. PRAC. AND REM. CODE, Section 154.073, unless the involved Parties agree, in writing, to waive the confidentiality.
9. **Liability.** To the extent allowed by Texas law, the City and Capital Metro agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions. In addition, the design consultant and construction contractor shall be required to provide

workers compensation insurance, auto liability and general liability insurance in the standard amounts required by the City. The City and Capital Metro will be included as additional insureds on the general liability and auto insurance policies and a waiver of subrogation will be provided on the auto liability, general liability and worker's compensation coverages.

10. **General Provisions.**

- a. Current Revenues. Each Party's monetary obligations are for the performance of governmental functions or services and are payable only from the current revenues appropriated and available for the performance of those functions or services.
- b. Good Faith. The Parties agree to work together at all times in good faith, meet regularly, and keep each other informed as to activities of the other Parties, and maintain at all times formal representatives to serve as points of contact for communications.
- c. Alteration. This Agreement may not be altered, amended, or modified except with written agreement from all of the Parties.
- d. Cost for Preparation. Each Party will be responsible for all costs and expenses associated with the preparation and adoption of this Agreement and future actions related thereto.
- e. Amendments. The City's Assistant City Manager and Capital Metro's President/CEO or their designee will have the authority to negotiate and execute amendments to this Agreement without further action by the Austin City Council and Capital Metro Board of Directors to the extent necessary to implement and further the clear intent of the respective governing bodies, but not in such a way as would constitute a substantive modification of the Agreement's terms and conditions or otherwise violate Chapter 791 of the Texas Government Code. Any amendments that would constitute a substantive modification to the Agreement must be approved by each Party's governing body.
- f. Counterparts. This Agreement may be executed in multiple counterparts which, taken together, will collectively constitute a single agreement. The City shall retain all counterparts and file them with the City Clerk of the City of Austin. In making proof of such Agreement, any Party may obtain certified copies of all counterparts from the City Clerk. It will not be necessary to provide original counterparts.
- g. Texas Public Information Act. It will be the responsibility of each Party to comply with provisions of Chapter 552, Texas Government Code, ("Texas Public Information Act") and the Attorney General Opinions issued under that statute. Neither Party is authorized to receive requests or take any other action under the Texas Public Information Act on behalf of the other Party. Responses to requests for confidential information shall be handled in accordance with the provisions of the Texas Public Information Act. The provisions of this section survive the termination or expiration of this Agreement.
- h. Government Immunity. By execution of this Agreement, neither Party waives or relinquishes any immunity rights available to it by law except as otherwise stipulated by applicable laws.

- i. Venue and Applicable Law. This Agreement will be performed and enforced in Travis County, Texas, and will be construed in accordance with the laws of the State of Texas and the United States of America. Venue with respect to all disputes resides with the county or district courts of Travis County, Texas. All rules, regulations, and other requirements imposed by local, state, or federal law apply to the performance of the Parties under this Agreement.

- i. Force Majeure. In the event that the performance by the City or Capital Metro of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil corruption, sovereign conduct, or the act of conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence -to remedy the effects hereto.

- j. Notice. Formal notices, demands and communications between the parties will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, or sent by electronic mail transmission (including PDF) with confirmation or acknowledgment of receipt by the designated recipient (which confirmation or acknowledgment may be indicated by a response to the electronic mail transmission), to the addresses of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

CITY: Director
Austin Water Department
625 E. 10th Street
Austin, Texas 78701

Richard Mendoza, Director
Austin Public Works Department
505 Barton Springs Road, Floor 8, Suite 800
Austin, TX 78704

WITH COPY TO: City Attorney
City of Austin Law Department 301 W. 2nd Street
Austin, Texas 78701

CAPITAL METRO: Dottie Watkins
Interim President & CEO
Capital Metropolitan Transportation Authority
700 Lavaca, Ste 1400
Austin, Texas 78701

WITH A COPY TO: Chief Counsel
Capital Metropolitan Transportation Authority
700 Lavaca, Ste 1400
Austin, Texas 78701

Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused), in the case of certified mail two (2) business days following deposit of such instrument in the United States Mail or, in the case of electronic mail, the date when actually received and acknowledged by the intended recipient.

- k. Severability. Should any one or more provisions of this Agreement be deemed invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not affect any other provision. Any provision that is held to be void, voidable, or for any reason whatsoever of no force or effect, shall be construed as severable from the remainder of this Agreement and shall not affect the validity of any other provisions of this Agreement, which shall remain in full force and effect.
- l. Headings. The headings in this Agreement are for referenced purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- m. Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
- n. Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the scope and purpose of it. Any other agreement, statement, or promise related to its scope and purpose that is not contained in this Agreement shall not be binding except by subsequent written amendment to this Agreement signed by the Parties. The Recitals contained in this Agreement are incorporated herein for all purposes.
- o. Other Instruments. The Parties covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- p. Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

CITY OF AUSTIN, TEXAS

By: _____
Gina Fiandaca, Assistant City Manager

Date: _____

Approved as to form:

D. Clark Cornwell
Assistant City Attorney

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Dottie Watkins, Interim President & CEO

Date: _____

Approved as to form:

Ayeola Williams
Deputy Counsel

Exhibit A Austin Water CPE 1

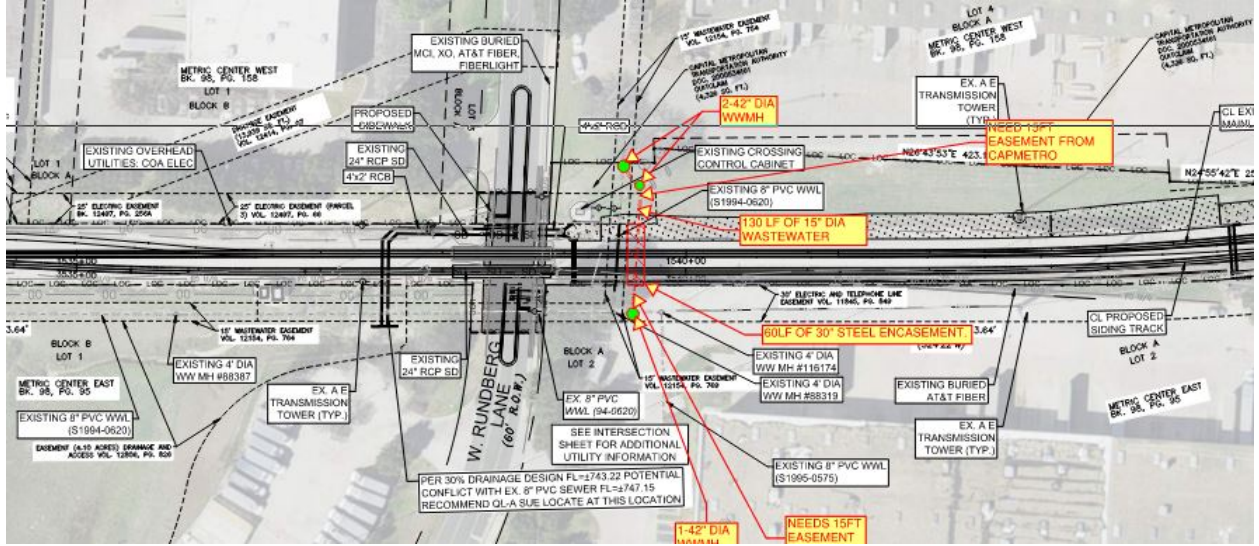


Exhibit B Austin Water CPE 2

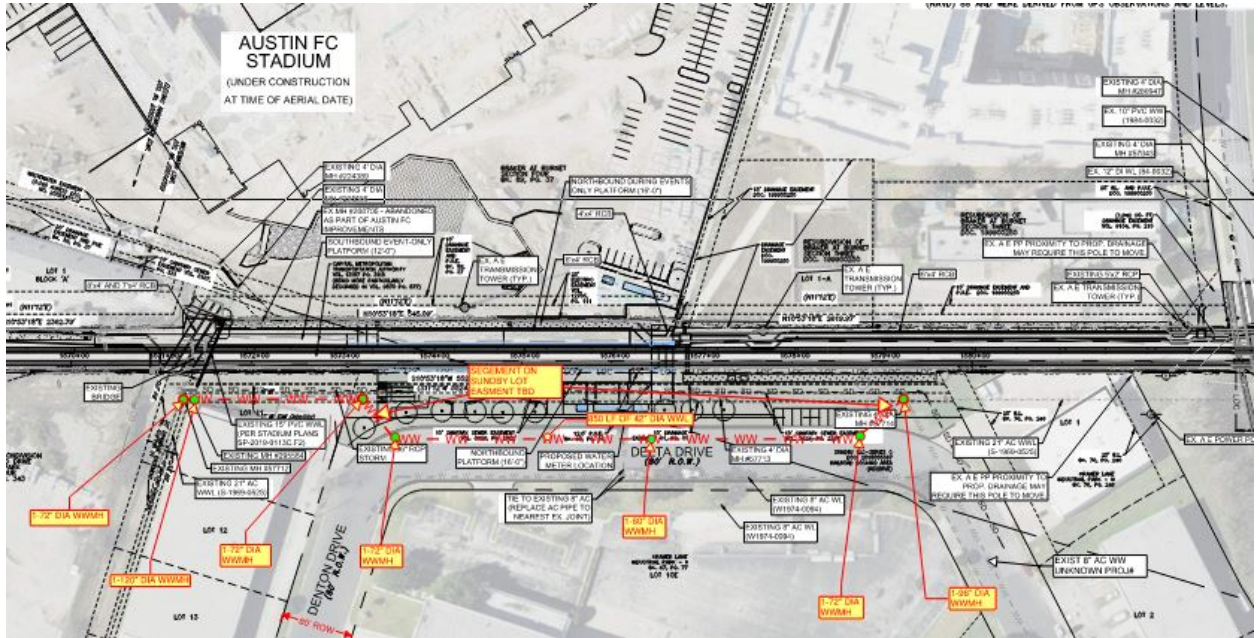
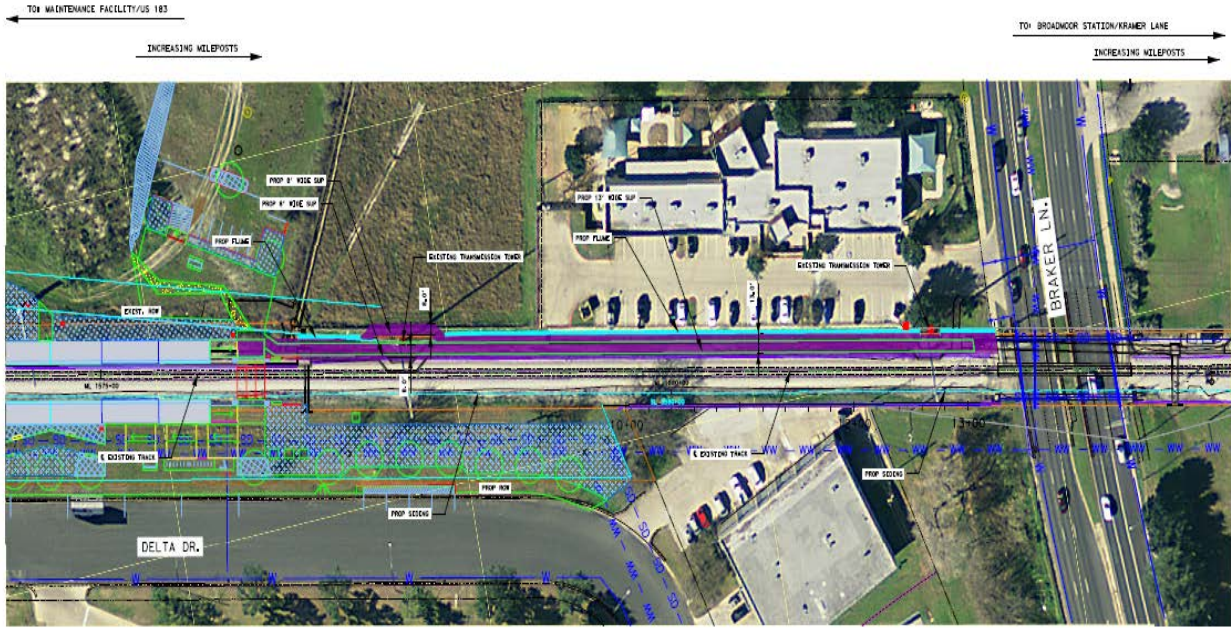


Exhibit C – Urban Trails CPE



**Exhibit D
CPE List**

Project type	Capital Metro	Project Location	Project Scope	City's Cost Share
Austin Water	Capital Metro	Austin Water CPE 1	8-inch Wastewater (WW) Line to 15-inch WW Line	\$ 200,723.00
		Austin Water CPE 2	21-inch Wastewater (WW) Line to 42-inch WW Line	\$326,014.00
TOTAL				\$ 526,737.00
Austin Public Works	Capital Metro	Urban Trails CPE	8 Foot Sidewalk to 13 Foot Share Use Path	\$ 223,600.00
TOTAL				\$ 223,600.00