

**INTERLOCAL COOPERATION AGREEMENT
THE CITY OF AUSTIN AND CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
(METRORAIL DOWNTOWN STATION IMPROVEMENTS)**

This Interlocal Cooperation Agreement (“Agreement”) is made by and among the City of Austin (“City”), a Texas home-rule city and municipal corporation, and Capital Metropolitan Transportation Authority (“Capital Metro”), a transportation authority and political subdivision for the state of Texas organized under Chapter 451 of the Texas Transportation Code (individually referred to as a “Party” and collectively referred to as the “Parties”), upon the premises and for the consideration stated herein.

Capital Metro operates a commuter rail system commonly known as MetroRail that currently runs between Leander, Texas and Downtown Austin;

The existing commuter rail station for MetroRail is located adjacent to the Austin Convention Center on Fourth Street between Neches Street and Trinity Street;

The existing commuter rail station was located, designed, and constructed in 2008 as a temporary solution due to schedule, resources, and public process constraints;

Capital Metro proposes to remove the existing commuter rail station and construct a permanent, larger, safer and improved, multi-modal downtown transit station with a goal of completing the construction in 2018;

The Texas Department of Transportation (“TxDOT”) has recognized the importance of building a permanent rail station serving Downtown Austin and expanding the rail station to increase the frequency of service to Downtown Austin, by providing a Fifty Million Dollar grant to Capital Metro, of which Twenty-Two Million Dollars has been earmarked for the design and construction of a permanent downtown rail station, and the remaining Twenty-Eight Million Dollars has been earmarked for the purchase of four rail vehicles to expand capacity and increase the frequency of service of the MetroRail, including service to Downtown Austin;

The City of Austin has had tremendous population growth in recent years and an increased demand on public transportation;

The growing population and increased public transportation needs require a permanent, larger, safer and improved rail station to accommodate increased capacity and frequency of rail service;

The rail project is consistent with and supports the findings of the City’s recent Mobility Talks Public Engagement initiative, the Imagine Austin Plan, and the City’s Vision Zero plan;

The Parties acknowledge that the construction of a permanent rail station serves the interest of the citizens of the City of Austin by increasing multi-modal access to public transportation, reducing congestion, and increasing public safety;

Recognizing the importance of the construction of a permanent rail station in Downtown Austin and the need to meet Capital Metro's scheduled deadline for completion of the Project (as hereinafter defined) by the end of 2018, the Parties agree to expedite delivery and execution of the construction of the new rail station, including among other things, changes to track work, traffic patterns, utilities, and right-of-way, that are necessary or useful to complete the construction of the new rail station and set out the roles and responsibilities of each party with regard to the planning, permitting, construction activities, and operating and maintenance responsibilities;

The Parties intend to comply in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001, et seq.

The Parties therefore hereby agree as follows:

1. TERM.

- (a) The term of this Agreement is from the date of the last Party to sign ("Effective Date") and shall terminate when the Downtown Station (as defined in Section 2) ceases to be used for transit purposes, or when earlier terminated in accordance with the terms of this Agreement
- (b) This Agreement may be terminated by the written agreement of both Parties. In the event that either Party is in default of its material obligations under this Agreement and fails to remedy such default within sixty (60) days after receipt of written notice, this Agreement may be terminated at the option of the Party not in default upon expiration of the sixty (60) day period. Termination or cancellation of this Agreement will not affect the rights and obligations of the Parties accrued prior to termination.
- (c) It is the intent and understanding of the Parties that the obligations of each Party under this Agreement shall remain effective only so long as and provided that each Party has fully appropriated funds for performing such obligations for the Party's current fiscal year. If for any fiscal year that any Party's funds are not appropriated for such Party's performance of its obligations under this Agreement, this Agreement shall become void and such Party shall promptly give notice to the other Parties of the non-appropriation of funds.

2. PROJECT SCOPE. The project primarily consists of, among other things, the construction of the new rail station, a public plaza and appurtenant project elements

(collectively, the “Project”), which require reconstruction of the existing bridge located at Waller Creek and Fourth Street, track work, changes to traffic patterns, and changes to the existing right-of-way within the Project Boundary, as more particularly described in Exhibit “A” to this Agreement, as are necessary or useful to support the construction, operation and maintenance of the new rail station. Nothing herein contained shall preclude the extension of rail service further west in the future.

- (a) Downtown Station. The new rail station (hereafter, “Downtown Station,”) shall include a maximum of three (3) main tracks and three (3) boarding platforms located in Fourth Street right-of-way between Neches Street and Red River Street. A maximum capacity of six (6) train positions may be constructed at the station. Capital Metro will initially construct five (5) train positions and will retain the right to construct a sixth (6th) train position in the future if the Lance Armstrong Bikeway ceases to function as a bikeway or is relocated.
- (b) Public Plaza. The Public Plaza, which shall be located between Trinity Street and Neches Street, has as its primary function the facilitation of pedestrian access to the Downtown Station and to connections from the Downtown Station to other nearby modes of transportation. The Public Plaza will also support transit-related functions and be available for non-transit functions to the extent such functions do not unreasonably interfere with the primary function of the Public Plaza.
- (c) Appurtenant Project Elements. Construction, operation and maintenance of the Downtown Station and Public Plaza require, among other things, other related activities, including those listed in Sections 2(c)(i)-(viii) below. These related activities of the Project are hereafter referred to as “Appurtenant Project Elements,” and include, without limitation, the following:
 - i. Track work and railroad safety measures along Fourth Street, between IH-35 and Red River Street.
 - ii. Elimination of the intersection at Fourth Street and Neches Street, and replacement with a cul-de-sac condition at Neches Street.
 - iii. Maintaining of the Lance Armstrong Bikeway (“LAB”) path on Fourth Street, between Trinity Street and IH-35, to integrate with a pedestrian-friendly environment.
 - iv. Demolition and reconstruction of the Fourth Street vehicular bridge over Waller Creek in accordance with Exhibit “C” to this Agreement. The reconstruction will accommodate for existing Austin Energy infrastructure, and allow space to add future conduit for network crossing the bridge as part of the reconstruction.
 - v. Relocation of Capital Metro bus stops from Fourth Street to Trinity Street,

between 2nd Street and Fifth Street, and/or Fifth Street, between Trinity Street and Neches Street.

- vi. Removal of parking on Trinity Street as necessary to accommodate necessary bus stops.
- vii. Removal of public parking spaces on Fourth Street and in the Neches cul-de-sac.
- vi. Integration of the Project elements at the intersections of Fourth Street and the cross streets of Sabine Street, Red River Street, Neches Street, Trinity Street, and IH-35 southbound frontage road.
- vii. City will use its best efforts to complete construction of the pedestrian bridge between the Convention Center and Hilton on or before July 30, 2017.
- viii. The storm drain improvements, in accordance with Exhibit "D", and more fully described in Section 8 of this Agreement.

3. PROJECT DESIGN, COORDINATION, AND PERMITTING.

- (a) Project Design (Capital Metro). Except as expressly stated in this Agreement, Capital Metro shall be responsible for all costs, including costs for surveying, and for the management of the design of the Project, including the development of the engineering, design, and specifications for the Downtown Station, Public Plaza, and the Appurtenant Project Elements not assumed by City in Section 3(c).
 - i. Capital Metro will design and plan the Project in a manner consistent with the City's "Project Great Streets" program, or with the City's approval of the substitution of amenities or features that are substantially consistent with the Project Great Streets program, which approval shall be made in a timely manner and which shall not be unreasonably withheld, conditioned or delayed, so as to not interfere with any Capital Metro's construction schedule.
 - ii. Capital Metro will construct all improvements related to the station operations and rail road tracks within the current Right-of-Way ("ROW") owned by the City. The ROW is within an area subject to a Joint Development Agreement ("JDA") between the City and the Waller Creek Conservancy ("Conservancy"). Under the JDA, the City has sole discretion over the design and construction of improvements within the ROW. Accordingly, Capital Metro will coordinate and design the project in a manner consistent with the design plan and architectural design standards for the Waller Creek District to the extent permitted by the project budget and project constraints. Capital Metro will coordinate with the Waller Creek Design Guidelines Team on architectural elements. The City's Project Manager for the Waller Creek District shall participate as a member of the City's design review team and represent the interests of the Waller

Creek Local Government Corporation and District. Plan review and approval will be completed in accordance with Section 3(d) of this Agreement.

- iv. The Project plans for the Appurtenant Project Elements shall comply with the City's design and construction standards and traffic safety standards in effect on the Effective Date of this Agreement, applicable Texas Accessibility Standards, and the applicable provisions of the Americans with Disabilities Act.
 - v. All utility infrastructure that will be conveyed to the City for ownership, operation, and maintenance shall be designed and constructed in accordance with the City's criteria manuals, standards, and specifications. The City's review of such shall be made expedited and plan approval shall not be unreasonably withheld, conditioned or delayed.
 - vi. The Project plans and specifications shall be subject to the City's Project Core Team review. The City's Core Team (as hereinafter defined) shall return written comments to Capital Metro within fifteen (15) business days of Capital Metro's submittals.
 - vii. All sets of plans, as-built drawings, and specifications required to be provided to the City in this Section and elsewhere in this Agreement shall be delivered to the City as complete sets of print and electronic drawings. The electronic drawings shall be in a program format agreed upon by the Parties.
- (b) Project Design (City). The City shall be responsible for all costs and for the management, design, permitting and implementation of the following Appurtenant Project Elements:
- i. Partial Closure of Fourth Street. Closure of Fourth Street is dependent upon the conversion of Fifth Street to a two-way traffic pattern. The City Manager will initiate the process to seek conversion of Fifth Street and use his best efforts to expedite the process. Automobile traffic will be prohibited along Fourth Street between Trinity Street and Red River Street except for emergency response, maintenance, and special event vehicles ("Partial Closure of Fourth Street"). The City will retain the right to utilize Fourth Street after closure except that portion within the Capital Metro station as provided in this Agreement.
 - ii. Conversion of Fifth Street. The City Manager will initiate the process to seek conversion of Fifth Street to two-way traffic to improve downtown traffic flow and will use his/her best efforts to expedite the process. City will be responsible for all costs and expenses of the conversion of Fifth Street from a one-way traffic pattern to a two-way traffic pattern ("Conversion of Fifth Street").
- (c) Project Coordination. Capital Metro and City shall jointly coordinate their

respective activities to further the design integration of their respective projects.

- (d) Permitting. The City shall, in order to expedite all permit reviews and inspections for the Project so as to not interfere with Capital Metro's construction schedule, using its best efforts, but in no event later than fifteen (15) business days of submittal of required documentation:
- i. Review, permit, inspect, and approve the construction of the surface improvements of the Project in accordance with the issuance of a site development permit.
 - ii. Review, permit, inspect, and approve the construction of all elements of the Project other than the surface improvements, in accordance with the issuance of a general permit.
 - iii. Review and issue permits and conduct required inspections for the Project.
 - iv. Review permit to ensure compliance with Waller Creek District standards.
 - v. Not condition approval of the Project on completion of City's future "Downtown District Traffic Congestion Plan".
 - vi. Assign a single point of contact from the City's Development Services Department for the site development permit, to provide preliminary reviews to expedite the permitting process.
 - vii. Assign a single point of contact from the City's Development Services Department for the general permit, to provide preliminary reviews to expedite the permitting process.
 - viii. Assign a single point of contact, appointed by the Director of Public Works, to facilitate coordination of all City reviews and approvals. Capital Metro shall direct all inquiries to City departments and personnel through the single point of contact. In order to expedite review by City departments, City shall:
 1. Assign an experienced plan reviewer from the City's Planning and Development Review Department as a dedicated plan reviewer for the Project, to provide preliminary reviews to expedite the permitting process.
 2. Assign an experienced traffic control reviewer from the City's Transportation Department, Right-of-Way Management Department as a dedicated traffic control reviewer for the Project, to provide preliminary reviews to expedite the ROW and traffic control permitting process.

3. Assign an experienced Capital Improvement Program inspector and a ROW inspector to the Project who will provide reviews during the design phase, review and guidance of the design documents for issuance of a permit(s), and both inspection and approval of construction.
4. Assign an experienced Network Engineer and Project Manager from Austin Energy to the Project who will provide reviews and coordination during the design phase, review and guidance of the design documents for issuance of a permit(s), and coordination, inspection, and approval of construction.

4. CONSTRUCTION AND INSTALLATION.

- (a) Downtown Station. Capital Metro shall be responsible for all costs and for the letting, procurement, and management of the construction and installation of the Downtown Station, including platforms, track work and related railroad infrastructure, the associated platform canopy structures, benches, litter containers, digital message signs (“DMS”), ticketing equipment, attendant kiosk, passenger amenities, transit related signage, lighting, safety/security equipment and other elements required for the proper operation of the Downtown Station. Capital Metro shall pay, in full, all persons who perform labor or furnish materials on the Downtown Station, at Capital Metro’s instance or request. If any liens are filed thereon, Capital Metro agrees to with all reasonable deliberate speed remove the same at Capital Metro’s own cost and expense, without regard to the legal enforceability of such liens, or post a bond in accordance with the bond requirements of Texas Property Code, Section 53.172.
- (b) Public Plaza. Capital Metro shall be responsible for all costs and for the letting, procurement, and management of the construction and installation of the Public Plaza located in Fourth Street between Neches Street and Trinity Street. Capital Metro and the City will jointly determine the programming, details, and features of the Public Plaza, allowed within the constraints of the Project budget and schedule. Capital Metro’s construction of the Public Plaza will be limited to basic hardscape, basic landscape and irrigation, lighting and support utilities, benches, litter containers, signage and other miscellaneous site furnishings, within the Project budget and per the approved design. The design, including selection of materials and configuration of the plaza, requires review and approval from the City’s Public Works Department, which approval shall not be unreasonably withheld, conditioned or delayed. A “signature” architectural-statement canopy over the Public Plaza will not be designed or constructed at this phase of the Project, and may be reconsidered by either Party at a future time if funding becomes available.
- (c) Construction Activities. Capital Metro and the City agree to coordinate construction activities related to the Project with adjacent City property, and to the extent possible, without unreasonably interfering with Convention Center operations.

Prior to commencement of construction of the Project, Capital Metro and the City shall develop a construction coordination and access plan that includes coordinated use of the proposed lay down yard for the Project to reduce or eliminate any delays to any construction schedule. Any traffic changes caused by construction activities must be approved by City, which approval shall not be unreasonably withheld, conditioned or delayed.

- i. Construction of improvements shall not adversely impact parkland events, activities and programs that are scheduled as of the Effective Date of this Agreement, including the ongoing activities at Dickinson Museum, O'Henry Museum, AFD facility, and other regular programming. The City will coordinate the scheduling of any new park events with Capital Metro forty five (45) days in advance.
 - iii. Construction of improvements abutting Brush Square must be done in a fashion that does not adversely impact parkland. Limits of construction cannot extend into parkland on a temporary or permanent basis without triggering a hearing pursuant to Chapter 26 of the Texas Parks and Wildlife Code and a finding of no feasible and prudent alternative with change from park use.
 - iii. Capital Metro may relocate the existing rail station or install a temporary rail facility in a mutually agreed location, in advance of the City's commencement of construction of the Hilton pedestrian bridge. Use of existing station may be restored upon completion of bridge construction, and the temporary station location may also be used during the construction of the new rail station.
- (d) Appurtenant Project Elements (Capital Metro Obligations). Capital Metro shall be responsible for all costs and for the letting, procurement, and management of the construction and installation of all Appurtenant Project Elements, except as stated in the following Section 4(e).
- i. Prior to commencing construction of any and each of the items described at item 2(c)(i); 2(c)(ii) and 2(c)(iv), (individually, "Appurtenant Construction Project," and together, the "Appurtenant Construction Projects") Capital Metro shall provide to the City documentation of all payment and performance bonds required by Texas Government Code Chapter 2253 naming the City as a co-obligee.
 - ii. Upon commencing construction of each Appurtenant Construction Projects, Capital Metro shall provide to the City an affidavit of Commencement of Construction in recordable form.
 - iii. Capital Metro shall provide the following sets of the plans and specifications for

each Appurtenant Construction Project: 30%, 60%, 90%, and 100% construction documents at each stage for the City's review and comment.

- iv. Capital Metro shall notify the City of Substantial Completion for each Appurtenant Construction Project. "Substantial Completion," means that the construction of the Appurtenant Construction Project has been substantially completed in accordance with the applicable plans and specifications with the exception of only minor punch-list items.
- v. Capital Metro and the City shall schedule and perform within fifteen (15) business days after notification of Substantial Completion a joint punch-list inspection and identify items to be corrected or completed before the City's receipt of the respective Appurtenant Construction Project.
- vi. Except for the storm drain improvements, which are addressed in Section 8 of this Agreement, Capital Metro, for each Appurtenant Construction Project, will issue a statement certifying that the Appurtenant Construction Projects have been constructed substantially in accordance with the construction plans and specifications submitted to and approved by the City and that installation of all components is completed.
- vii. Capital Metro shall pay, in full, all persons who perform labor or furnish materials on the Appurtenant Construction Projects, at Capital Metro's instance or request. If any such liens are filed thereon, Capital Metro agrees to use its best efforts to remove the same at Capital Metro's own cost and expense, in a timely manner, without regard to the legal enforceability of such liens, or post a bond in accordance with the bond requirements of Texas Property Code, Section 53.172.
- viii. Before the City acknowledges full completion of each Appurtenant Construction Project, Capital Metro shall submit to the City written documentation that the construction has been completed in conformance with the permitted construction plans and specifications and shall provide to the City as-built drawings of the completed construction.
- ix. City shall acknowledge in writing the full completion of each Appurtenant Construction Project within fifteen (15) business days after it has received the documentation specified in the preceding paragraph, provided all punch list items have been completed or corrected and inspected.
- x. The City's written acknowledgement of the full completion of each Appurtenant Construction Project shall constitute the City's acceptance of such Appurtenant Construction Project. The City's acceptance of City infrastructure shall be deemed as conveyance of such infrastructure to the City for operation,

maintenance, and replacement without need for a separate bill of sale. The City shall be named a party to the warranty of all constructed or relocated infrastructure.

- (e) Appurtenant Project Elements (City Obligations). The City shall be responsible for all costs and for the letting, procurement, and management of the construction and installation of the Partial Closure of Fourth Street and the Conversion of Fifth Street. The City shall use its best efforts to initiate and expedite the process to seek Closure of Fourth Street to allow Capital Metro to timely commence construction of the Downtown Station, currently scheduled for August, 2017.

5. OPERATIONS & MAINTENANCE OF DOWNTOWN STATION.

Capital Metro shall operate and maintain the Downtown Station, including the platforms, benches, litter containers, DMS, ticketing equipment, attendant kiosk, passenger amenities, transit related signage, lighting, safety/security equipment and other elements required for the proper operation of the Downtown Station, and shall maintain in good repair all such elements of the Downtown Station in accordance with Capital Metro maintenance standards, which standards shall be approved by the City for the Downtown Station. Capital Metro shall develop a detailed operations and maintenance plan, and shall provide a copy of such plan to the City Manager, or his/her designee, and the Director of Public Works for approval. This provision does not apply to the plan for train operation, which Capital Metro shall submit to the City for review, but not approval.

6. OPERATIONS AND MAINTENANCE OF PUBLIC PLAZA AND EVENT PLANNING.

- (a) The Public Plaza will be regarded primarily as an access way for transit passengers to the Station and a support space of transit-related functions, and will be available for secondary (non-transit) functions as will be reasonable and practicable.
 - i. The “Transit Passenger Area” (“TPA”) will be that portion of the Public Plaza that is directly adjacent to (and west of) the platforms and used expressly for transit functions such as ticketing, passenger queuing, and other station-related functions. The TPA will be located within the easement boundaries and will be operated, managed, and maintained by Capital Metro. The general location of the TPA is shown on Exhibit “B” to this Agreement and will be described by metes and bounds in the easement to be granted pursuant to Section 7 of this Agreement.
 - ii. Those portions of the Public Plaza located outside of the easement boundaries shall be maintained and operated by the City and reasonably available for secondary (non-transit) functions.

- iii. Those portions of the ROW located outside of the easement boundaries shall be maintained and operated by the City.
- iv. The City and Capital Metro agree to jointly develop a program for the primary and secondary uses of the Public Plaza, including any proposed special event functions and venue events, and to develop an Operations and Maintenance Plan to define roles, responsibilities, and governance for allowable functions of the Public Plaza, in order to ensure that access and connections (whether current or future) to the Downtown Station are not impeded.
- v. City shall provide management of and special event planning for the Public Plaza, in coordination and with approval of Capital Metro, and shall address concerns from third parties in regards to event planning.
- vi. City and Capital Metro shall coordinate the scheduling of events at the Public Plaza and Station activities annually by September 30, including identification of black-out dates and times in which either party may not hold events in the Plaza.
- vii. Any public restrooms that are constructed in the Public Plaza shall be designed, constructed, maintained, and operated by the City.
- viii. The City shall manage the Lance Armstrong Bikeway in a manner consistent with a pedestrian environment between Trinity Street and Red River Street, through signage, public awareness campaigns, maximum allowable bicycle speeds, and police enforcement.
- ix. The City may close the Public Plaza when needed for future capital improvements, maintenance of City utilities, or scheduled special events. Except in the event of an emergency in which case notice will be provided to Capital Metro as soon as practical, the City shall notify Capital Metro at least forty-five (45) days in advance when feasible to allow Capital Metro to adjust service as appropriate.
- x. City will maintain a ten (10) foot wide pedestrian access to the station when the station is in operation to allow for unimpeded access to the Downtown Station.

7. CITY OF AUSTIN RIGHT-OF-WAY.

City staff shall, at the City's discretion, bring to the City Council of the City of Austin, hereafter "City Council", a Request for Council Action for the waiver of fees, as further detailed in Section 9 of this Agreement, for the easements or licenses requested by Capital Metro and approved by the Director of Public Works for the for staging, construction, installation, operation and maintenance of the Downtown Station, Public

Plaza, and Appurtenant Project Elements that require Council action after the City staff has determined the actual, appraised dollar value of each easement or license for City Council approval, provided that:

- (a) The proposed easement or license adequately further or promote the City's legal responsibilities and policy objectives with respect to the management of right-of-way, parkland, convention center programming, or other use of property under the City's jurisdictional control.
- (b) The actual appraised dollar value for the grant of any such easement or license shall be considered a City contribution to the Project.
- (c) City staff shall expedite required action to determine the actual, appraised value of each easement or license to be granted and submit necessary Requests for Council Action with all reasonable deliberate speed so as to not interfere with Capital Metro's construction schedule.
- (d) Any easement or license granted under this Agreement shall not be permanent, but will terminate with: (i) an uncured event of default by Capital Metro, or (ii) the termination of the Agreement.
- (e) Any easement or license granted under this Agreement shall not conflict with proposed or existing City infrastructure or access to proposed or existing City infrastructure.
- (f) City and Capital Metro shall maintain at all times a ten foot (10') wide pedestrian path on Fourth Street right-of-way (between Trinity Street and Red River Street) for unimpeded access to the Downtown Station.
- (g) City shall be responsible for addressing any access, driveway, and parking issues arising with respect to properties within and adjacent to the Project Area resulting from the Project. Capital Metro shall be obligated to affirmatively cooperate with the City in the resolution of any access, driveway, and parking issues within and adjacent to the Project Area.
- (h) All interest and title to City-owned right-of-way, including the Waller Creek Bridge, shall remain with the City, except to the extent that such interest is subject to an easement or license as described in the preceding Section 7(a) and elsewhere in this Agreement.
- (i) City will consider Capital Metro's request to perform limited construction activities during special events (e.g. SXSW) in the project vicinity on a case-by-case basis.
- (j) City to consider requests for concrete delivery, placement, pouring, and finishing

from the hours of 7:00 p.m. to 6:00 a.m. on a case-by-case basis, and submit requests to City Council for approval as it may be required by ordinance.

8. UTILITIES, USE OF AVAILABLE INFRASTRUCTURE, AND USE OF FACILITIES.

- (a) Subject to City Council approval as it may be required, the City shall provide Capital Metro and utility providers access and authority to relocate utilities as required by the Project. The abandonment, construction, installation, and relocation of utilities under this Section shall be in accordance with City approved construction plans, and if necessary, utility relocation agreements to be executed by and between the Parties. The City acknowledges that time is of the essence in the construction of the Project, and the City agrees to expedite the processing of utility relocation agreements. The Parties agree to negotiate in good faith any such utility relocation agreements. To the extent that City Council approval is required for any utility relocation agreement, the City shall use its best efforts to initiate all appropriate Requests for Council Action so as to not interfere with any Capital Metro construction schedules.
- (b) Any easements or licenses required to complete a utility relocation shall be subject to the preceding Section 7. Capital Metro shall be responsible for the abandonment and relocation of existing infrastructure required by the Project; provided however, the provisions of this Section 8 do not require relocation of utilities that are not directly related to or required for the Project, except the storm drain improvements, as defined in subsection (c) below. If any easements or licenses required to complete a utility relocation require Council action, then the provisions of the preceding Section 7 shall apply and the City shall use its best efforts to initiate all appropriate Requests for Council Action so as to not interfere with any Capital Metro construction schedule. All provisions in this Agreement associated with easements, warranties, design and construction, and as-builts shall apply to betterments in the same manner as relocated and new utility infrastructure.
- (c) Except for the storm drain improvements described in the following Section 8(e), The City shall be solely responsible to replace, relocate, or upgrade any underground utilities systems that may pass through the Project area that are not related to or not required for the Project (including Austin Energy ductbanks) unless the need for replacement is caused by the willful or negligent acts or omissions of Capital Metro. Capital Metro shall be solely responsible for relocation or protection of all utilities located in or that pass through the Project area. The City shall complete said utility upgrades within a timeline that will not impede or delay the completion of Capital Metro's Downtown Station project. Capital Metro agrees that the City may oversize underground utilities that are to be designed and constructed by Capital Metro for the Project, but for which such oversizing is beyond the needs for or the requirements of the Project. The City shall pay its

proportionate share, in accordance with City ordinances, for any oversizing requested by the City. Any utility upgrades shall be in accordance with utility upgrade agreements to be executed by and between the Parties. The City shall be responsible for the design of such utility upgrades, at its sole cost, unless the need for such upgrades is necessitated solely by the Project. Capital Metro shall be responsible for the construction of such utility upgrades. The City will reimburse Capital Metro the City's proportionate share within thirty (30) days of the City's final acceptance of the oversized infrastructure.

- (d) Capital Metro understands and agrees that City has extensive utilities and infrastructure within the boundaries of the project area, and utilities and infrastructure outside the boundaries that may be affected by the Project. City shall be able to maintain, replace, operate, renovate, and upgrade its infrastructure once the Project is complete without permission from Capital Metro. Capital Metro will be responsible for any personnel that may be required and replacement of any rail lines or rail equipment that are removed in order for the City to complete work; provided however, the City shall restore all compacted subgrade to the original specifications as part of City's work, at the City's sole cost. With the exception of the rail and track panels, the City shall be responsible for any above grade improvements, including rail platforms, that are disturbed during City construction projects. The allocation of costs and responsibilities shall be included in an Interlocal Agreement to be executed in connection with any such infrastructure project. Except in the event of an emergency, the City shall provide Capital Metro with sixty (60) days' prior notice of its plans to maintain, replace, operate, renovate, and upgrade its infrastructure.
- (e) The City and Capital Metro shall enter into a cost sharing agreement for the design, construction and inspection of storm drain improvements that will benefit both entities and their customers. The storm drain improvements will be constructed as part of the Project and will be designed in accordance with the current City of Austin Drainage Criteria Manual. Capital Metro shall design, permit, bid and construct this work as part of the Project, as it is integral to storm water conveyance within the new Downtown Station. The terms of the agreement shall materially conform to the terms specified in Section 4 of this Agreement. The current proposed alignment for storm drain improvements is shown and more particularly described in Exhibit D. The storm drain improvements are anticipated to cost less than four million dollars (\$4,000,000) for both hard and soft costs. The hard costs are inclusive of all items associated with installation of the storm drain pipe including any utility relocations and site restoration not otherwise required as part of the Capital Metro Downtown Station project. The City has agreed to contribute up to fifty (50) percent of the actual costs with a maximum not to exceed three million dollars (\$3,000,000). The cost estimate, alignment and conduit sizes for the storm drain improvements are preliminary and will be refined and modified during detail design. Capital Metro may choose another alignment

for the storm drain improvements after obtaining concurrence from the City but will be solely responsible for costs exceeding six million dollars (\$6,000,000). The City and Capital Metro agree to share all design information for both the Project and the storm drain improvements to ensure that the storm drain improvements design is completed in a timely manner.

- (f) Capital Metro shall be solely responsible for all costs related to the design, construction, management, installation and inspection of any new, replacement, or relocated utility infrastructure required solely for the Project.
- (g) City shall coordinate with and allow Capital Metro access to modify traffic signalization and control, in order to integrate railroad signalization as required per TxDOT safety requirements. Capital Metro will coordinate with TxDOT and the City for signal improvements at the southbound IH-35 frontage road.
- (h) City shall allow Capital Metro use of City facilities, if feasible and agreeable to the Parties, and subject to any required easement or license, for the location of a new electrical house, transformer, electrical equipment to serve the Station's power requirements, and main signals and communications structure. City and Capital Metro will work together using best efforts to jointly identify a location for these facilities. The Parties understand that the location of such equipment is necessary for the long term operation of the Downtown Station, acknowledge that the facility may not be in existence for the term of the Agreement, and agree to work together to identify alternative locations for such equipment if and when such facility is no longer available.

9. CONTRIBUTIONS TOWARDS THE PROJECT.

- (a) Prior to the request for waiver of fees being submitted to the City Council for approval, Capital Metro shall prepare a ledger to document the value of the Project, and the requested amounts of fees to be waived by the City. The City will assist Capital Metro in estimating the dollar amount of the requested fee and cost waivers.
- (b) City staff shall initiate Request for Council Action for Council approval of the following consideration from Capital Metro to the City for its fulfillment of Capital Metro's obligations under this Agreement:
 - i. Any betterments associated with utility relocations made under Section 8 of this Agreement.
 - ii. Construction of the new bridge at Waller Creek, sidewalk improvements, landscaping, Great Streets amenities, traffic signals, etc.

- iii. Capital Metro's financial contributions towards the cost of traffic studies.
 - iv. The financial investment of Capital Metro in completing the Public Plaza; and,
 - v. Capital Metro's support of the City's Lance Armstrong Bikeway and Hike n' Bike Trails through no cost licenses and easements.
 - vi. The project's benefit to the City as a major transportation improvement project.
 - vii. The improved value of the ROW.
- (c) The City's exchange of consideration for the items specified in the preceding Section 9(b) may include the City's expedited review of requests for permitting, the loss of the grid from the Fourth Street Partial Closure, and waiver of permit and inspection fees to the extent approved by Council.
- (d) The City shall initiate all Requests for Council Action using its best efforts so as to not interfere with Capital Metro's construction schedules. The City shall not be obligated to initiate any Request for Council Action under this Section or any other Section of this Agreement that would require the City to act in a manner contrary to any applicable law, rule, regulation, City Code, Ordinance, or Resolution.

10. COORDINATION WITH OTHER PROJECTS.

- (a) Capital Metro agrees to coordinate the designs of the Downtown Station with other concurrent City and private development projects in and near the vicinity of the Project Boundary.
- (b) The City and the Conservancy are parties to a Joint Development Agreement that defines the roles and responsibilities of each party with respect to development within the Waller Creek District. Design and construction within the ROW is within the sole discretion of the City and it is the City's desire that all elements constructed within the Waller Creek District ROW are coordinated with the planning, design, architectural guidelines, and future operations of the Waller Creek Project. Capital Metro, for the duration of this Agreement, will coordinate with the Conservancy on issues related to the design, construction, operation, and management of their planned improvements within the ROW and within the District so that they do not conflict or limit the design and plans for the Waller Creek District, to the extent allowed within the constraints of the Capital Metro budget, schedule, or necessary operational needs of the transit services supported by the project.

- (c) Capital Metro agrees to coordinate with the Waller Creek Tunnel Operations and Maintenance Program to ensure the designs, construction, operation, and maintenance activity do not conflict with the operation and maintenance activities for the Waller Creek Tunnel.

11. COMMUNICATION.

(a) Executive Team.

- i. The Assistant City Manager of Infrastructure Services (“City Sponsor”), or his/her designee, will act as the City’s primary representative and project liaison between the City and Capital Metro and will have complete authority to interpret and define the City’s policies and decisions with respect to the Project.
- ii. The Deputy Chief Executive Officer and Chief Operating Officer of Capital Metro (“Capital Metro’s Sponsor”) or his/her designee, will act as Capital Metro’s primary representative, and project liaison between the City and Capital Metro, and will have complete authority to interpret and define Capital Metro’s policies and decisions with respect to the Project.
- iii. The City’s Director of Public Works (the “City’s Director”), or his/her designee, will act on behalf of the City in regards to day-to-day correspondence, manage and coordinate inter-departmental staff, coordinate with Capital Metro as needed, and receive and transmit information and instructions with respect to the Project.
- iv. The Vice-President of Capital Projects of Capital Metro (“Capital Metro’s VP”), or his/her designee, will act on behalf of Capital Metro in regards to day-to-day correspondence, management and coordination of inter-departmental staff, coordination with the City as needed, and receipt and transmission of information and instructions with respect to the Project.

(b) Project Team.

- i. City and Capital Metro will establish a “Project Core Team” comprised of respective departmental lead staffs to coordinate and develop the project during the design and construction phases.
- ii. Capital Metro will assign a Project Manager to advise, assist and coordinate with the City on the Project.
- iii. The City Public Works Department will assign a Project Manager to advise and assist the Capital Metro Project Manager regarding matters of design and construction in the right-of-way, and coordinate the project requirements

among various City departments.

- iv. An Austin Traffic District Engineer will be part of the Project Team to address traffic related issues during the design and construction phases of the Project, and to facilitate the City's Partial Closure of Fourth Street and the Conversion of Fifth Street projects.
- (c) Dispute Resolution. If a disagreement between the Parties arises regarding the Project or any other requirement or provision of this Agreement, and the disagreement is not resolved by Capital Metro's VP and the City's Director, it shall be referred as soon as possible to the City Sponsor and the Capital Metro's Sponsor for resolution.
- i. General. Should any dispute arise between the Parties to this Agreement, then the City and Capital Metro agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either Party may make a written request for a meeting between representatives of each Party within ten (10) days after receipt of the request or such later period as agreed by the Parties. Each Party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of such a meeting and any subsequent meeting with respect to such a dispute shall be to attempt in good faith to negotiate a resolution of the dispute. If, within twenty (20) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, the Parties will, upon written notice of one Party to the other Party, given within ten (10) days following the expiration of such twenty (20) day period (a "Request for Mediation"), proceed directly to non-binding mediation as described below.
 - ii. Mediation. If the efforts to resolve such dispute through negotiation fail within the period set forth in the foregoing section, or the City and Capital Metro each waive the negotiation process, the Parties may select, within twenty (20) days after the date of the Request for Mediation or mutual waiver of negotiation, as applicable, a mediator trained in mediation skills to assist with resolution of the dispute. The Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the Parties fail to agree on a mediator within twenty (20) days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The mediation shall take place in Austin, Texas. The Parties agree to participate in mediation in good faith for up to thirty (30) days from the date of the first mediation session. The Parties shall share the costs of the mediator equally. In the absence of a separate

written agreement of the Parties to the contrary, the results of this mediation shall not be binding on either of the Parties.

12. MISCELLANEOUS.

- (a) Merger. This writing constitutes the entire Agreement between the City and Capital Metro. No other terms and conditions are applicable, unless amended and agreed to by both parties. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the Parties.
- (b) 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 commotion, 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.
- (c) Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY:

City of Austin Transportation
505 Barton Springs Road, Suite 800
Austin, Texas 78704

WITH COPY TO:

City of Austin Law Department
301 W. 2nd Street
Austin, Texas 78701

CAPITAL METRO:

Elaine Timbes
Deputy Chief Executive Officer and Chief Operating Officer
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

WITH A COPY TO:

Kerri L. Butcher
Chief Counsel
Capital Metropolitan Transportation Authority

2910 East Fifth Street
Austin, Texas 78702

- (d) 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.
- (e) 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.
- (f) Responsibility for Liability. To the extent allowed by Texas law, the parties agree that each party is responsible to the exclusion of any such responsibility of the other party for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act. Prior to performing any work on the Project, Capital Metro will cause its contractors to name the City as an additional insured on a commercial general liability (“CGL”) insurance policy and on a commercial auto liability (“Auto Liability”) insurance policy applicable to the Project and all work appurtenant thereto providing, on an occurrence basis, Auto liability insurance covering all owned, non-owned or hired automobiles to be used on or for the Project with limits on such CGL and Auto Liability policies of not less than Five Hundred Thousand and No/Dollars (\$500,000.00) combine single limit bodily injury and property damage. Capital Metro shall also name or cause its contractors to provide Workers’ Compensation coverage with limits of no less than Five Hundred Thousand and No/Dollars (\$500,000.00) with appropriate waiver of subrogation in favor of the City. Prior to Capital Metro’s contractor performing any activity for the Project, Capital Metro shall provide the City a certificate of insurance evidencing the aforementioned insurance coverages. Notwithstanding the foregoing, in lieu of commercial insurance coverage Capital Metro may satisfy the insurance requirement by providing evidence of risk coverage by the Texas Municipal League Intergovernmental Risk Pool.
- (g) Administrative Approvals. The City’s City Manager and the Capital Metro President/CEO will have the authority to negotiate and execute amendments to this Agreement without further City Council action or action from the Capital Metro Board of Directors, but only to the extent necessary to implement and further the clear intent of the respective City Council and Capital Metro Board of

Directors' approval, and not in such a way as would constitute a substantive modification of the terms and conditions hereof 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 the governing bodies of the Parties.

- (h) 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.
- (i) Recitals. The parties agree that the recitals set forth above in this Agreement are true and correct, and the representations, covenants and recitations set forth therein are made a part hereof for all purposes.
- (j) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- (k) Venue. The venue of any suit brought for any breach of this Agreement is fixed in any court of competent jurisdiction of Travis County, Texas.
- (l) Time of the Essence. Time is of the essence in the performance of this Agreement and all time limits shall be strictly construed and rigidly enforced. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time or by a particular date that ends or occurs on a non-business day (i.e., Saturday, Sunday or a holiday recognized by the U.S. federal government or the State of Texas), then such period or date will be extended until the immediately following business day.
- (m) Authority. Each party certifies that this Agreement has been authorized by its governing body in accordance with Chapter 791 of the Texas Government Code.
- (n) No Third Party Beneficiaries. The Parties agree that the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, and is made solely and specifically for their benefit. No other person shall have any rights, interest or claims under this Agreement.
- (o) Waiver. Any waiver of any breach of this Agreement shall not be effective unless set forth in a writing signed by an officer of the waiving party.

13. EXHIBITS

This Agreement incorporates by reference the following:

- Exhibit "A" - Downtown Station Project Boundary & Elements

- Exhibit "B" - Preliminary Easement Boundary
- Exhibit "C" - Fourth Street Bridge Reconstruction
- Exhibit "D" – Storm drain Improvements

CITY OF AUSTIN, TEXAS

By: _____
Robert Goode
Assistant City Manager

Date: _____

Approved as to form:

(Insert Asst. CA name here)
Assistant City Attorney

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Linda Watson, President/CEO

Date: _____

Approved as to form:

Legal

Exhibit "A" Downtown Station Project Boundary & Elements

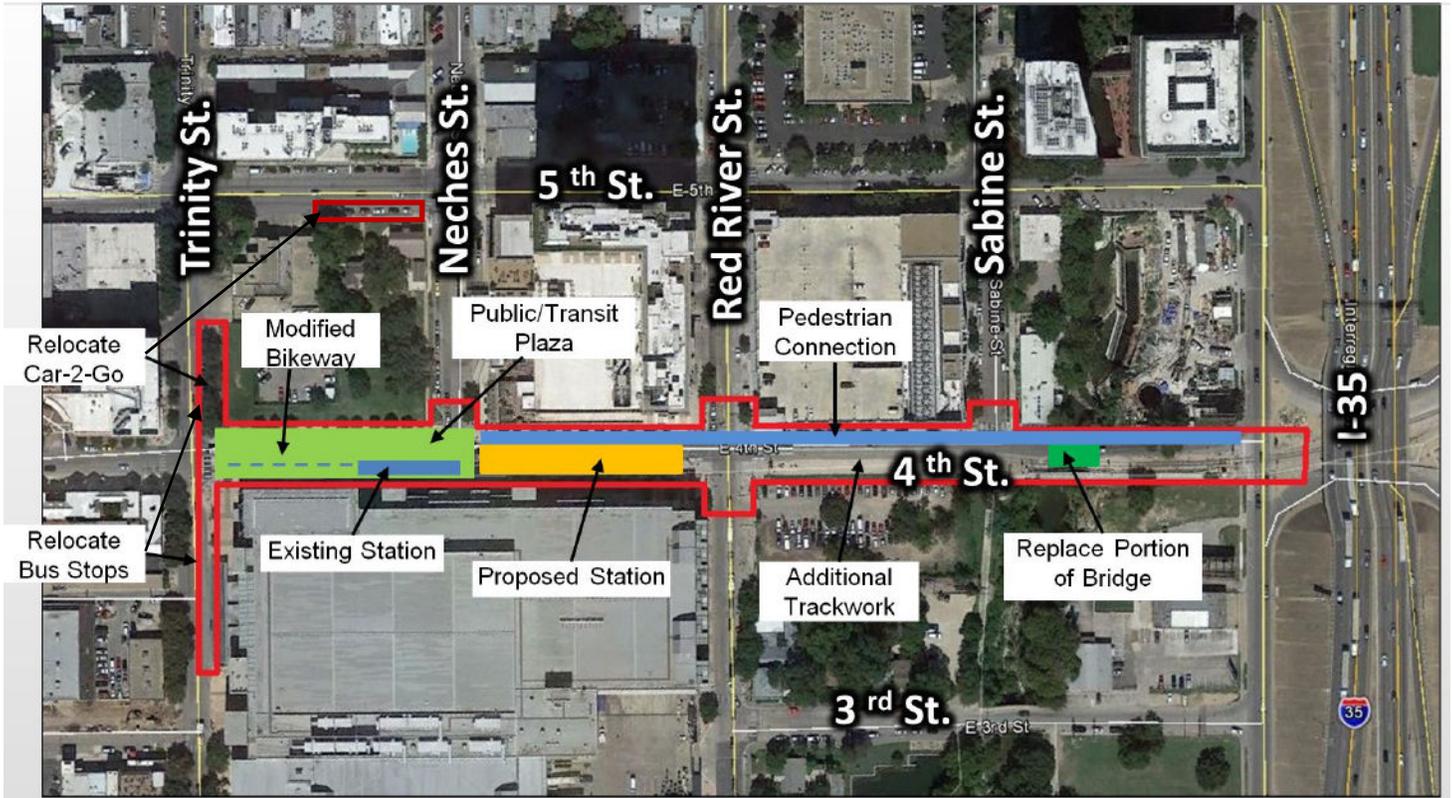
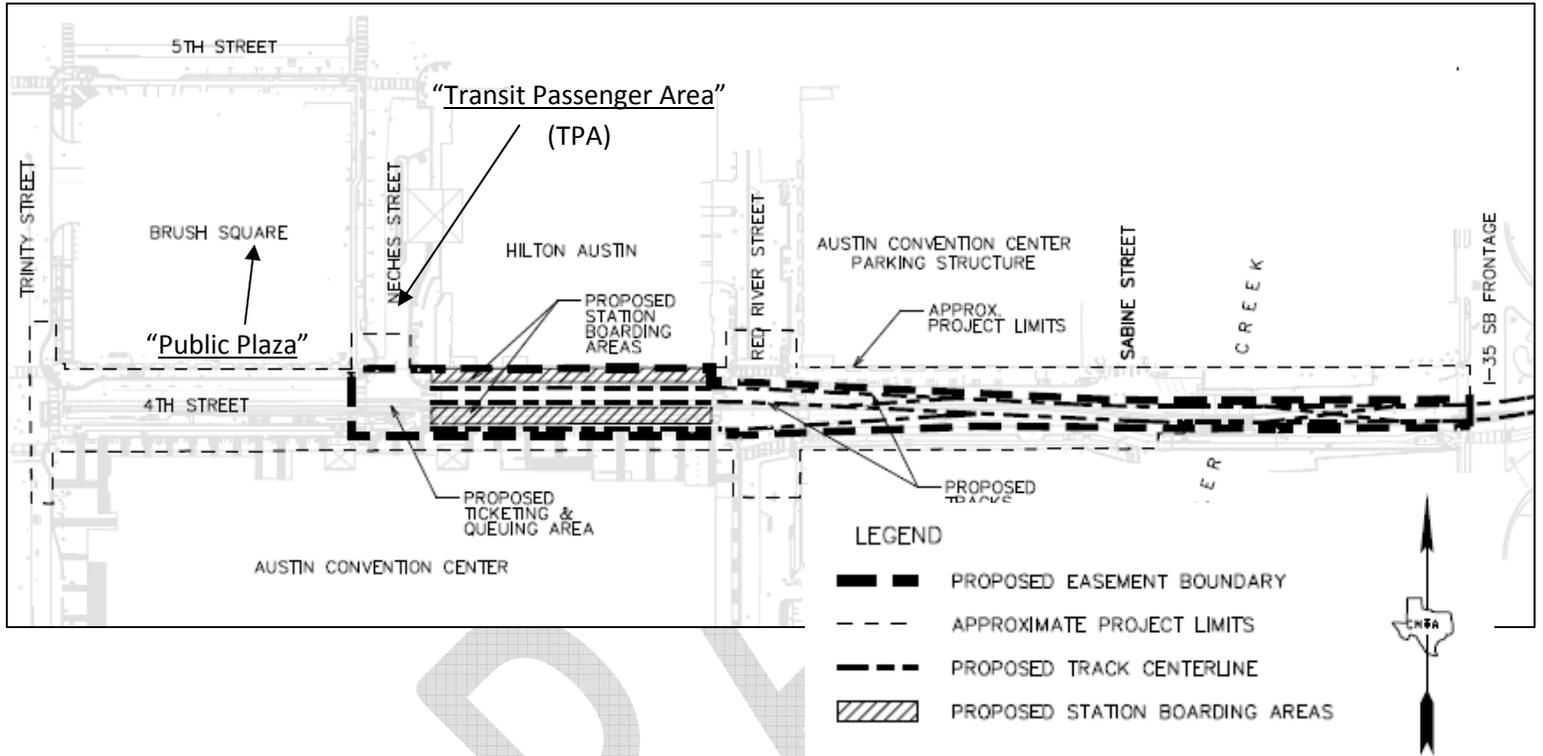


Exhibit "B"

Preliminary Easement

(NOTE TO COA – THIS EXHIBIT IS PRELIMINARY AND WILL BE UPDATED BASED ON FORTHCOMING DISCUSSIONS BETWEEN COA AND CMTA)



DRY

Exhibit "C" Fourth Street Bridge Reconstruction (Conceptual Diagram)

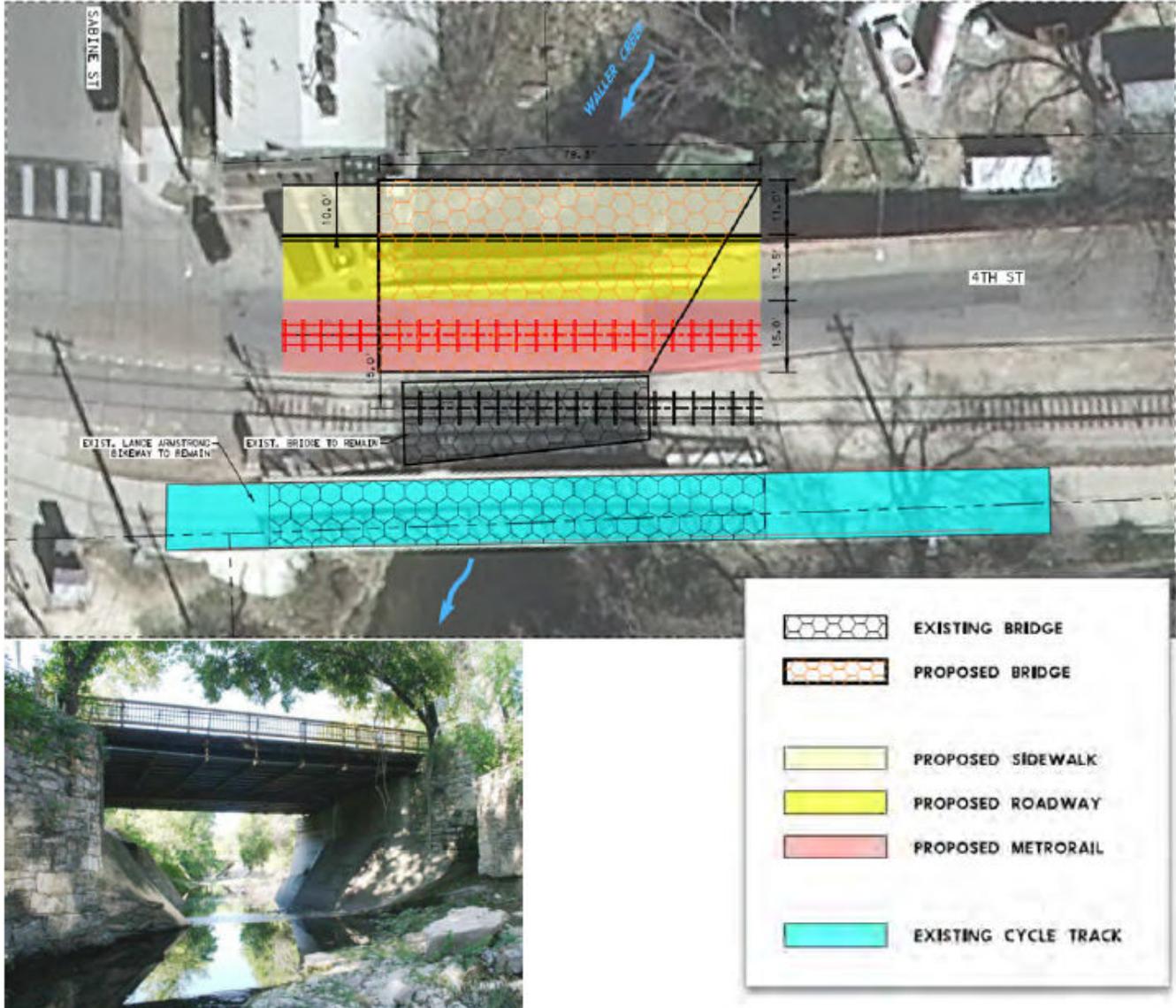
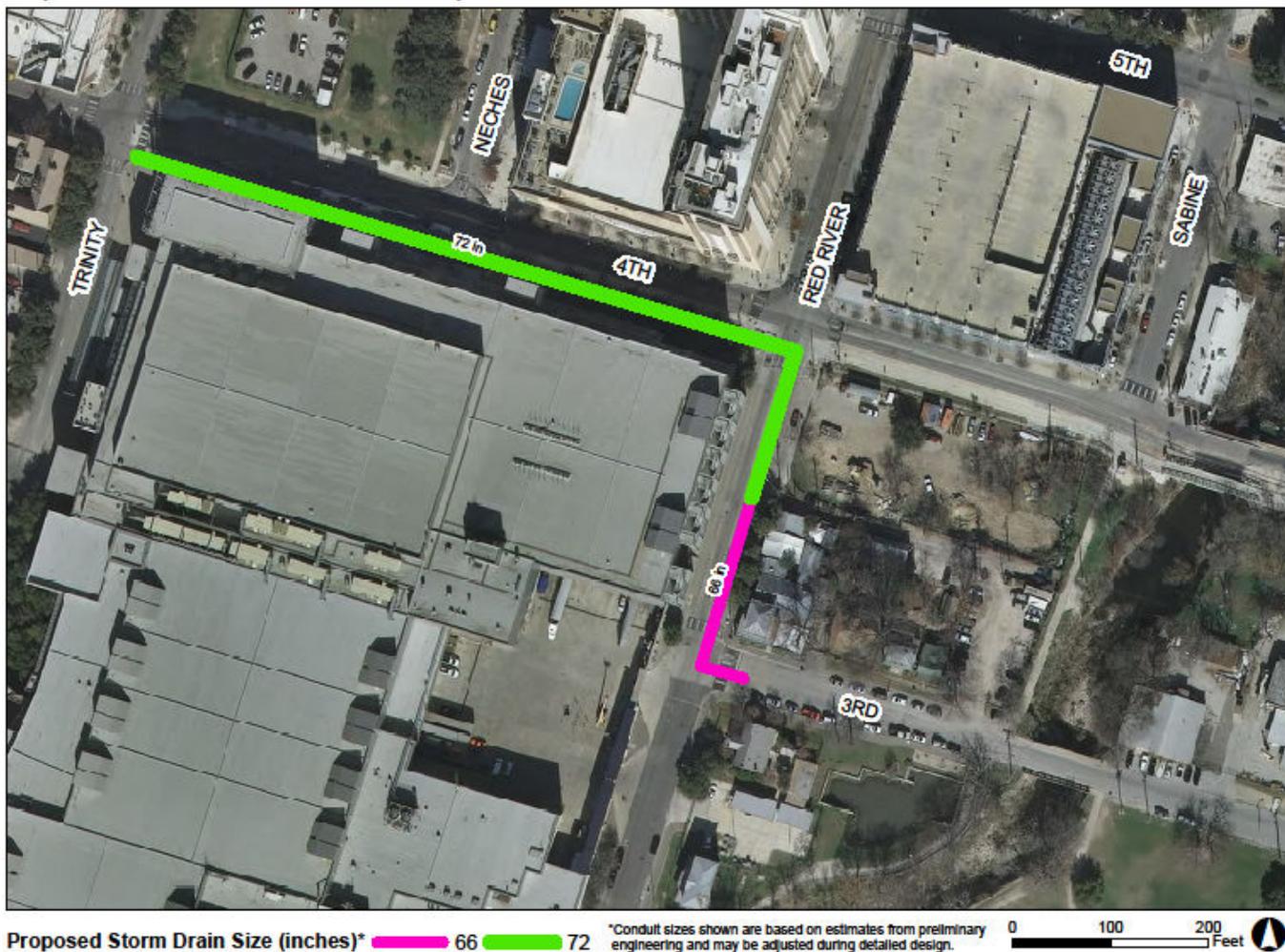


Exhibit "D"

Storm Drain Improvement Project
(Conceptual Diagram)

Capital Metro Downtown Station: Proposed Infrastructure



The proposed storm drain has the following path from downstream to upstream: tie into an existing 66-inch diameter stormdrain pipe on East 3rd Street approximately 35-feet east of the intersection of East 3rd Street and Red River Street, then heading west with a 66-inch diameter stormdrain pipe to the intersection of East 3rd Street and Red River Street, then turning north along Red River Street with a 66-inch diameter stormdrain pipe to the intersection of Red River Street and the alley located between East 3rd and East 4th Street (approximately 155-feet), then continuing north along Red River Street with a 72-inch diameter stormdrain pipe to the intersection of East 4th Street and Red River Street (approximately 155-feet), then turning west along East 4th Street with a 72-inch diameter stormdrain pipe to the East 4th Street and Trinity Street intersection (approximately 715-feet).