

A U S T I N C I T Y C O U N C I L
AGENDA

Thursday, August 31, 2006

 + [Back](#) [Print](#)**Public Works**
RECOMMENDATION FOR COUNCIL ACTION**ITEM No. 13**

Subject: Authorize negotiation and execution of an Interlocal Agreement with the CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY for development and funding of the extensions of Rundberg Lane and Saunders Lane and the dedication of Helen Milton Smith Way. The total estimated project cost is \$8,240,000.

Amount and Source of Funding: Funding in the amount of \$7,400,000 is available in the Fiscal Year 2005-2006 Amended Capital Budget of the Public Works Department; funding in the amount of \$840,000 is available in the Fiscal Year 2005-2006 Capital Budget of the Austin Water Utility. (Related to item #14)

Fiscal Note: Fiscal notes are attached.

**Additional Backup
Material**

(click to open)

☐ **INTERLOCAL
AGREEMENT**☐ **MAP**☐ **ADDITIONAL
INFORMATION**☐ **AWU FISCAL NOTE**☐ **PWD Fiscal Note**

For More Information: Keri R. Burchard-Juarez, PE, 974-7298;
Lauraine Rizer, 974-7078; Samileh Mozafari, PE, 974-7010; Laura
Bohl, 974-7064.

1 INTERLOCAL COOPERATION AGREEMENT
2 CITY OF AUSTIN AND CAPITAL METRO
3 RUNDBERG LANE AND SAUNDERS LANE IMPROVEMENTS
4
5

6 STATE OF TEXAS
7

8 COUNTY OF TRAVIS
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10 This Agreement is made and entered into by and between the City of Austin,
11 Texas (the "City"), a home rule municipal corporation, and the Capital Metropolitan
12 Transportation Authority ("Capital Metro"), a transportation authority and political
13 subdivision for the State of Texas under the provisions of the Texas Transportation Code,
14 Chapter 451, each individually referred to as a "Party" or collectively referred to as the
15 "Parties", upon the premises and for the consideration stated herein.
16

17
18 WHEREAS, the Parties now desire to cooperate in the development and funding
19 of certain improvements to Rundberg Lane beginning approximately at Metric Blvd. and
20 approximately ending at Burnet Rd. (the "Rundberg Lane Project"), and Saunders Lane
21 beginning approximately at Rundberg Lane and ending approximately at 9603 Old
22 McNeil Rd. (the "Saunders Lane Project"), both in the City of Austin, Texas (hereinafter
23 collectively referred to as the "Project"); and
24

25 WHEREAS, the Parties intend to conform this Agreement in all respects with the
26 Interlocal Cooperation Act, Texas Government Code Section 791.001, et seq.;
27

28 NOW, THEREFORE, the Parties agree as follows:
29

30 I. Project Management.
31

32 (a) The Director of the City's Public Works Department (the "Director") will
33 act on behalf of the City with respect to the Project, coordinate with
34 Capital Metro, receive and transmit information and instructions, and will
35 have complete authority to interpret and define the City's policies and
36 decisions with respect to the Project. The Director will designate a
37 Project Manager and may designate other representatives to transmit
38 instructions and act on behalf of the City with respect to the Project.
39

40 (b) The Capital Metro President/CEO (the "President/CEO") will act on
41 behalf of the Capital Metro with respect to the Project, coordinate with the
42 City, receive and transmit information and instructions, and will have
43 complete authority to interpret and define Capital Metro's policies and
44 decisions with respect to the Project. The President/CEO may designate a
45 Capital Metro Project Manager and may designate other representatives to

46 transmit instructions and act on behalf of Capital Metro with respect to the
47 Project.
48

49 2. Project Development.
50

51 (a) The Parties will coordinate and cooperate in the development and
52 completion of the (i) engineering design, plans and specifications, (ii)
53 surveying, (iii) right-of-way acquisition, (iv) construction, and (v) any
54 required permitting and environmental assessments and clearances
55 associated with the Project. Additionally, the Parties agree to manage and
56 fund the Project as set forth in attached Schedule 1.
57

58 (b) The Parties covenant and agree to begin performance of its designated
59 share of the Project as soon as practicable, and shall thereafter diligently
60 proceed with and endeavor to complete its work using due diligence and
61 good faith efforts.
62

63 3. Project Costs.
64

65 The respective Responsible Parties shall be each solely responsible for all direct
66 costs and related costs and fees necessary to complete its designated portion of the
67 Project, as set forth in Schedule 1.
68

69 4. Engineering and Surveying.
70

71 (a) Capital Metro has contracted with Martinez, Wright & Mendez, Inc., (the
72 "Engineer") for the engineering services required for the Project. The
73 plans and specifications for the Project will be in accordance with the
74 design and construction standards of the City. Capital Metro has also
75 contracted with Loomis Austin and Weston Solutions for limited
76 surveying and environmental services, respectively, for the Project.
77

78 (b) Capital Metro will coordinate with the City in the development of the
79 engineering and surveying for the Project and will submit the engineering
80 plans and specifications and the survey information and work product to
81 the City at appropriate intervals for its review and approval. In order to
82 facilitate the orderly administration of the Project, Capital Metro will
83 assign and through the execution of this Agreement hereby assigns the
84 right to manage the Engineer's bidding and construction phase services to
85 the City and will obtain the Engineer's written concurrence to such limited
86 assignment. The City agrees to manage the Engineer's services in
87 accordance with the established project management procedures and
88 processes of the City.
89

- 90 (c) Capital Metro will provide an appropriate number of copies of the
91 approved engineering plans and specifications and surveying information
92 and work product to the City.
93
94 (d) Capital Metro will be responsible for funding any required modifications
95 to the engineering work product and plans and specifications and
96 surveying information and work product for the Project, during the
97 development and construction of the Project, subject to the availability of
98 funding.
99
100 (e) Capital Metro will ensure that its Engineer and, as applicable, its
101 surveying consultant, provides professional liability insurance in
102 accordance with the standard requirements of the City for such projects,
103 during the term of the design and construction of the Project.
104
105 (f) Capital Metro will provide, and the City will review and approve, the
106 engineering work product and plans and specifications and surveying
107 information and work product, including but not limited to right-of-way
108 plans and field notes, required for the construction of the Project.
109
110 (g) If engineering testimony is required in connection with any condemnation
111 hearings or trials, Capital Metro will amend its contract with the Engineer
112 to provide for such services.
113

114 5. Bidding.
115

- 116 (a) Upon development of final plans and specifications, the Engineer will
117 coordinate with the City to incorporate the approved plans and
118 specifications into the City's standard bidding documents for the Project.
119
120 (b) Bid items for the Project will include within the bid those costs, itemized
121 by line item number, attributable to the Rundberg Lane and Saunders Lane
122 components of the Project.
123
124 (c) The City will solicit bids for the construction of the Project based on the
125 plans and specifications and in accordance with applicable state and local
126 bidding laws, practices, and procedures.
127
128

129 The City will notify Capital Metro of the lowest responsible bid and the
130 amount of the bid components for Rundberg Lane and Saunders Lane and,
131 upon written approval of Capital Metro's President/CEO, the City will
132 enter into a firm unit-price contract with the successful bidder for the
133 entire Project.
134
135

136 6. Right of Way Acquisition.

137

138 (a) Capital Metro and the City will cooperate in the acquisition of the real
139 property interests required for the construction, operation, and
140 maintenance of the Project (the "Right-of-Way"), as set forth below in
141 attached Schedule 1.

142

143 (b) The City will perform the necessary services to acquire the Right-of-Way
144 for the Project, including but not limited to obtaining appraisals to
145 determine the fair market value of the Right-of-Way and any associated
146 damages to the remaining property, negotiating with landowners, and
147 filing and prosecuting any necessary condemnation actions.

148

149

150

151 (c) The City will inform Capital Metro of the progress of negotiations for the
152 acquisition of the Capital Metro Right-of-Way, including any hearing
153 dates for any necessary condemnation proceedings.

154

155 7. Construction.

156

157 The City will administer the construction contract awarded for the Project and
158 will provide for the inspection, testing and acceptance of the completed work.
159 The City shall be responsible for the final inspection of the Project and any testing
160 of the construction of the Project.

161

162 8. Financial Obligations.

163

164 (a) The Parties agree to timely pay their respective costs, fees, and
165 reimbursements as provided in attached Schedule 1.

166

167 (b) The City Project Manager and the Capital Metro Project Manager agree to
168 utilize their best efforts to promptly provide each other progress reports
169 and invoices for the Project.

170

171 (c) The City will require its contractor to submit invoices which separate the
172 costs of the Rundberg Lane portion of the Project and the Saunders Lane
173 portion of the Project incurred in the applicable billing period.

174

175 (d) The City's Project Manager will meet with the Capital Metro's Project
176 Manager to review the contractor's progress reports and invoices for the
177 Project.

178

179 (e) Capital Metro agrees to and shall pay the City the amount of its obligation
180 under this Agreement for applicable Right-of-Way and construction costs

181 within thirty days of the receipt of an invoice from the City itemizing such
182 costs.

183
184 (f) In the event that it is necessary for either Party to secure additional
185 funding for the completion of the Project, such Party shall use best efforts
186 to secure such financing. When any required additional funding has been
187 secured and written notice of the available funding has been delivered, the
188 funding amounts recited in this Agreement will be considered
189 appropriately adjusted without the necessity of the formal amendment of
190 this Agreement.

191
192 (g) In the event that the amount available for any category of funding
193 described in this Agreement exceeds the required funding obligations, the
194 funding party may use such excess funding to fund any other category of
195 funding described in this Agreement.

196
197 (h) Capital Metro's funding obligations under this Agreement will not exceed
198 the total amount of \$1,600,000.00, including amounts already paid,
199 without the further budgeting of available funds for such purposes.

200
201 (i) The City's funding obligations under this Agreement will not exceed the
202 total amount of \$5,800,000.00, including amounts already paid, without
203 the further budgeting of available funds for such purposes.

204
205 9. Management Duties of Capital Metro.

206
207 Capital Metro hereby covenants and agrees to provide to the City:

- 208
209 a. The engineering and surveying work product described above;
210
211 b. written copies of all agreements for engineering and surveying
212 services affecting the Project;
213
214 c. executed amendments for additional engineering services, jointly
215 approved by the City and Capital Metro, related to the Project;
216
217 d. a copy of any additional engineering services request related to the
218 Project within two (2) working days of its receipt by Capital Metro, by
219 delivery to the City's Project Manager for review and approval;
220
221 e. a written recommendation for the disposition of any construction
222 change order proposal for the Saunder's Lane portion of the Project
223 within three (3) working days of its receipt by Capital Metro's Project
224 Manager; and
225

226 f. an appropriate representative at any meetings requested by the City's
227 Project Manager.
228

229 10. Management Duties of the City.

230 The City hereby covenants and agrees to provide to Capital Metro:

231
232 a. written notice of the schedule for the advertisement for bids, award
233 of contract, and construction of the Project;

234
235 written copies of all construction contracts affecting the Project;
236

237 g. a monthly itemized statement of all disbursements made and debts
238 incurred during the preceding month relating to the Saunder's Lane
239 portion of the Project, including copies of invoices, statements,
240 vouchers, or any other evidence of payment of debt;

241
242 h. executed change orders, jointly approved by the City's and Capital
243 Metro's Project Managers, related to the Saunder's Lane portion of the
244 Project;

245
246 i. a copy of any change order request related to the Saunder's Lane
247 portion of the Project within two (2) working days of its receipt by the
248 City, by delivery to Capital Metro's Project Manager for review and
249 approval;

250
251 j. upon completion of bidding, the City will furnish Capital Metro a copy
252 of the combined plans and specifications for Capital Metro's records;
253 and

254
255 a copy of all acquisition documents for the Capital Metro Right-of-Way,
256 including, but not limited to offer letters, appraisals, real estate purchase
257 contracts, deeds, easement agreements, leases, licenses and right of entry
258 agreements.
259

260 11. Bond and Guarantee.
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262 All construction contracts affecting the Project will include a payment and
263 performance bond acceptable to and in favor of and benefiting the City, for the
264 full amount of the contract and a warranty by the contractor executed in favor of
265 and benefiting the City for a period of one year from the date of acceptance of the
266 Project.
267

268 12. Liability.
269

270 To the extent allowed by Texas law, Capital Metro and the City agree that each
271 entity is responsible for its own proportionate share of any liability for its

negligent acts or omissions. In addition, the construction contractor will be required to provide workers compensation insurance and general liability insurance in accordance with the standard requirements of the City.

13. Miscellaneous.

(a) Force Majeure. In the event that the performance by Capital Metro or the City of any of its obligations or undertakings hereunder is 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 will be excused from such performance for such period of time as it reasonably necessary after such occurrence to remedy the effects hereto.

(b) Notice. Any notice given hereunder by either party to the other will 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: Keri Juarez, Project Manager
City of Austin
Public Works Department
505 Barton Springs Road
Austin, Texas 78702

WITH COPY TO: Gordon Bowman
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767

CAPITAL METRO: John Hodges, Manager, Facilities
Capital Metro
2910 East 5th Street
Austin, Texas 78702

WITH A COPY TO: Dale Norton, Program Project Manager
Capital Metro
2910 East 5th Street
Austin, Texas 78702

(c.) 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 will each be deemed to include the others.

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(d) Entire Agreement. This Agreement contains the complete and entire Agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties respecting the joint construction of the Projects. 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 hereto.

(e) Effective Date. This Agreement takes effect upon full execution by Capital Metro and the City.

(f) Other Instruments. The parties hereto 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.

(g) 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 will not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof will be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

(h) Current Funds and No Federal Funds. As required by the Interlocal Cooperation Act, the party or parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying party. Capital Metro agrees that no federal funds will be used to fund the acquisition of right-of-way or the construction of the Project.(i)Severability. The provisions of this Agreement are severable and, in the event that any portion of this Agreement is found to be invalid or unconstitutional for any reason, the remainder of this Agreement will not be affected and this Agreement will be construed as if it had never contained such invalid or unconstitutional provision.

(j) Term. The term of this Agreement will be for one year from the date of execution and, thereafter, this Agreement will automatically renew for additional one year terms, subject to the availability of funding, until the Project is complete and the Parties have fully discharged their respective obligations hereunder.

14. Helen Milton Smith Way

(a) In connection with the development of its North Operations Center, Capital Metro has constructed a section of proposed public street, commonly known as "Helen Milton Smith Way", which is depicted on

364 attached Exhibit "B" (the "Street") in the area of the Project. The Street is
365 located within that certain tract of real property more particularly
366 described in attached Exhibit "C" (the "Property"). The area of the Street
367 and the Property are hereinafter collectively referred to as the "Right-of-
368 Way".
369
370 (b) Pursuant to Section 451.065 of the Texas Transportation Code and Section
371 791.001, et seq., of the Texas Government Code and subject to the terms
372 and conditions of this Agreement and the City's approval of the
373 construction of the Street, Capital Metro agrees to dedicate and the City
374 agrees to accept the Right-of-Way for public right-of-way purposes,
375 together with all rights attendant thereto, as trustee for the public only and
376 without the transfer of any other legal right, title or interest. The form of
377 the dedication will include the terms and conditions set forth herein and
378 will be approved by the respective parties' legal counsel.
379
380 (c) "Public right-of-way purposes" include, but are not necessarily limited to
381 the right to construct, maintain, repair, replace, relocate, reconstruct and
382 remove travel lanes, medians, access, curbs, sidewalks, drainage facilities,
383 utilities, driveways, bike lanes, bus pads, bus stops, and landscaping, and
384 the right to allow driveway access in compliance with City requirements.
385
386 (d) The dedication will include a general warranty of title, under which
387 Capital Metro agrees to forever warrant and defend the dedication for
388 public right-of-way purposes and all rights appurtenant thereto unto the
389 City and the City's successors and assigns, against every person
390 whomsoever lawfully claiming or to claim the same or any part thereof
391 (the "General Warranty").
392
393 (e) Capital Metro will retain all other legal title and title obligations, including
394 but not limited to the causes of action between Capital Metro and (i) 9325,
395 INC., and AVM/HOU, LTD, in Cause No. 2537 in the Probate Court No.
396 1 of Travis County, Texas, and (ii) Rischel Enterprises, Inc., and Rishel
397 Group, Ltd., under Cause No. 2560 in the Probate Court No. 1 of Travis
398 County, Texas, and (ii) any claim or cause of action for damages
399 associated with the acquisition of the Property (the "Title Conditions").
400
401 (f) In addition, Capital Metro will indemnify and hold the City harmless from
402 any and all claims, suits or cause of action of whatsoever sort which may
403 be asserted against the City arising out of or in connection with the Title
404 Conditions. As provided by Articles III, Section 52, XI, Section 7, of the
405 Texas Constitution., if the Warranty and Indemnity obligations will
406 establish a debt, which cannot be satisfied out of current revenues for the
407 year or out of a fund in Capital Metro's immediate control, then Capital
408 Metro will establish a sinking fund of at least two percent of the

409 anticipated debt and, as necessary, provide for levying and collecting a
410 sufficient tax to pay the interest thereon.
411

412
413 Executed to be effective as of the ____ day of _____, 2006.
414
415

416
417 CITY OF AUSTIN, TEXAS
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419 By: _____
420

421 Name: _____
422

423 Title: _____
424

Authorized Representative

425 Date: _____
426

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428 Approved as to Form:
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430 _____
431 Assistant City Attorney
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435
436 CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
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438 By: _____
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440 Name: _____
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442 Title: _____
443

444 Date: _____
445

446 Approved as to Form:
447

448 _____
449 Attorney for Capital Metro
450

SCHEDULE 1
(Project Schedule)

A. PROFESSIONAL SERVICES FUNDING

Capital Metro will fund the following professional services:

- Engineering design, bidding and construction administration services under an existing contract with Martinez, Wright & Mendez
- Surveying under an existing contract with Loomis Austin
- Environmental services under an existing contract with Weston Solutions

B. RIGHT-OF-WAY ACQUISITION & FUNDING

Parcel 1 (Sigmar Corporation):

- Responsibility for acquisition and funding: City

Parcel 3 (Burnet McNeil Investments, LLC):

- Responsibility for acquisition: City
- Responsibility for funding the acquisition: Capital Metro

Parcels 4, 5, and 6 (Met Phase 1 95, Ltd.):

- Responsibility for acquisition: City
- Responsibility for funding the acquisition of Parcel 5: City
- Responsibility for funding the acquisition of the portions of parcels 4 and 6 required for Saunders Lane ROW only: Capital Metro
- Responsibility for funding the acquisition of the balance of parcels 4 and 6: City

(Capital Metro and the City agree to apportion the costs of the acquisition of the Right-of-Way for Parcels 4 and 6, based upon the prorata square footage of the parcels which are required for the right-of-way of Saunders Lane and the intersection of Saunders Lane and Rundberg Lane, as determined by the Engineer.)

Parcel 8 (Met Parking, Ltd):

- Responsibility for acquisition and funding: City

Parcel 7 (Hobbs):

- Responsibility for acquisition and funding: Capital Metro

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SAUNDERS LANE PROJECT:

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- Responsibility for costs of construction: Capital MetroThe costs of constructing the Saunders Lane portion of the Project include any change orders approved by the City's Project Manager and the Capital Metro Project Manager, such approval not to be unreasonably withheld, delayed or denied. Capital Metro acknowledges and agrees that the City has no available funding for the construction of the Saunders Lane portion of the Project.

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RUNDBERG LANE PROJECT:

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- Responsibility for acquisition of right-of-way for Rundberg Lane, including required appraisals, including Parcel 3 (which is being funded by Capital Metro): City
- Responsibility for management for permitting, bidding, construction and close-out of both roads, based on documents prepared by Martinez, Wright and Mendez under contract to Capital Metro: City
- Responsibility for funding the construction, except for the Saunders Lane Project portion: City
- Responsibility for funding and providing all required inspection, testing and other costs required to complete the Project: City
-

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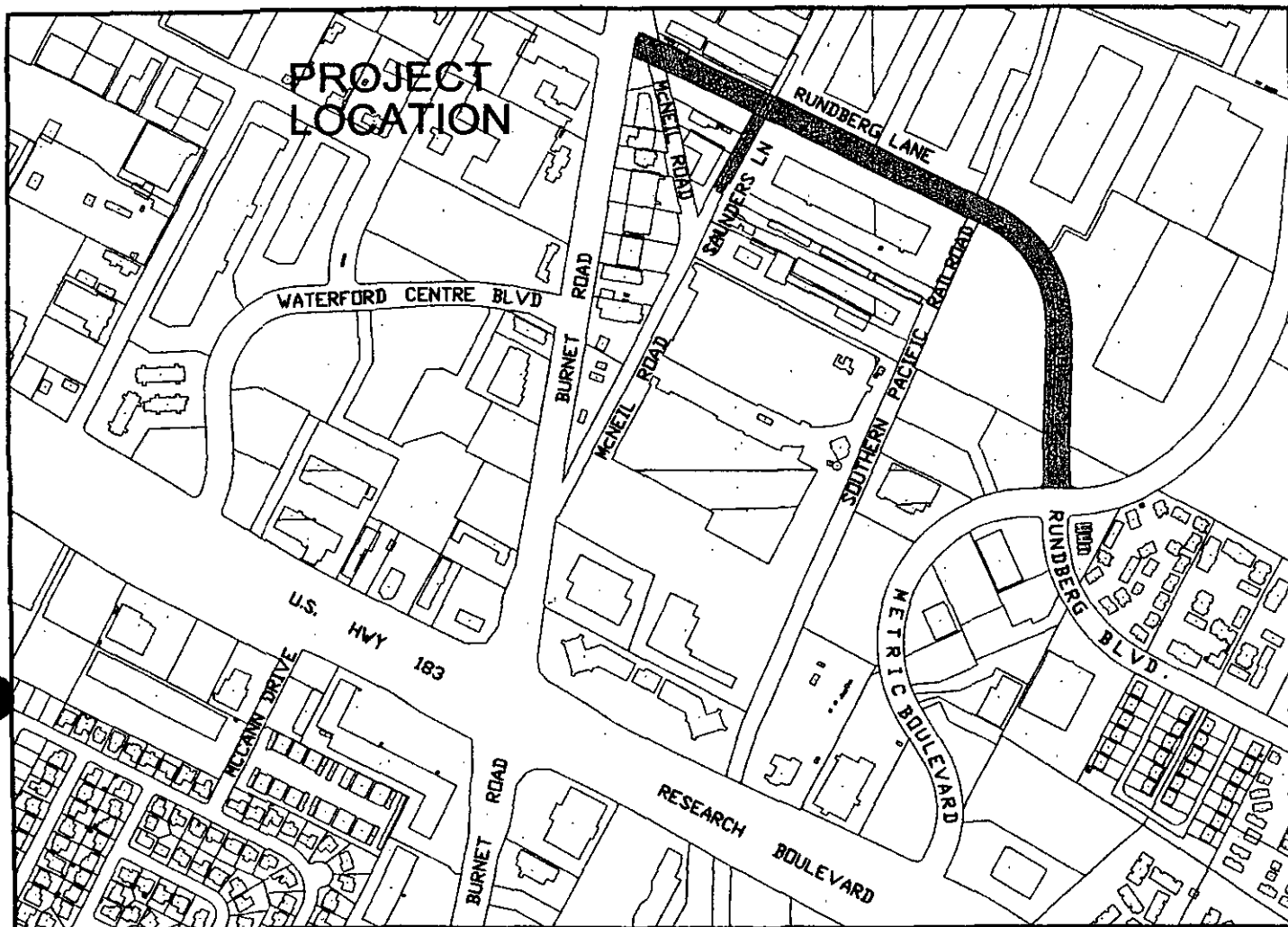
EXHIBIT "A"
(Capital Metro Right-of-Way)

527
528
529

EXHIBIT "B"
(Street)

530
531
532
533
534

EXHIBIT "C"
(Property)



PROJECT
LOCATION

LOCATION MAP:

N.T.S.

CIP FISCAL NOTE

DATE OF COUNCIL CONSIDERATION:
WHERE ON AGENDA:
DEPARTMENT:

08/31/06
Resolution
Austin Water Utility

DESCRIPTION:

Authorize negotiation and execution of an Interlocal Agreement between the City of Austin and the CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY for development and funding of the extensions of Rundberg Lane and Saunders Lane and the dedication of Helen Milton Smith Way. The total estimated project cost is \$8,240,000.

FINANCIAL INFORMATION:

Parent Project Name:	Water Unfunded Future
Project Authorization:	2005-06 Approved Capital Budget
Funding Source:	Commercial Paper
Number:	3960 227 1019

Current Appropriation	\$ 352,445,739.00
Unencumbered Balance	118,017,710.32 *
Amount of This Action	<u>(840,000.00)</u>
Remaining Balance	<u>\$ 117,177,710.32</u>
Current Available Balance	\$ 128,382,523.52
Less Outstanding Commitments	<u>(10,364,813.20)</u>
Estimated Unencumbered Balance	<u>\$ 118,017,710.32 *</u>

Utility Finance: _____

David Anders, Utilities Finance Manager

Date: 8/16/06

REF. # 3830 227 7795

**CIP BUDGET
FISCAL NOTE**

DATE OF COUNCIL CONSIDERATION:

31-Aug-06

WHERE ON AGENDA:

Resolution

DEPARTMENT:

Public Works Department

Authorize negotiation and execution of an Interlocal Agreement between the City of Austin and the CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY for development and funding of the extensions of Rundberg Lane and Saunders Lane and the dedication of Helen Milton Smith Way. The total estimated project cost is \$8,240,000.

FINANCIAL INFORMATION:

Project Name: Rundberg from Metric to Burnet
Project Authorization: 2005-2006 Amended Capital Budget
Funding Source: Capital Metro Quarter Cent Program
Fund/Agency/Orgn: 8581-257-9118

Total Current Appropriation	\$4,400,000.00
Unencumbered Balance	\$4,330,276.00
Amount of this Action	<u>(\$4,300,000.00)</u>
Estimated Available	<u>\$30,276.00</u>

Project Name: Rundberg from Metric to Burnet (supplemental)
Project Authorization: 2005-2006 Amended Capital Budget
Funding Source: 2000 G. O. Bonds Prop 1.
Fund/Agency/Orgn: 8071-607-9052

Total Current Appropriation	\$1,500,000.00
Unencumbered Balance	\$1,500,000.00
Amount of this Action	<u>(\$1,500,000.00)</u>
Estimated Available	<u>\$0.00</u>

Project Name: Rundberg from Metric to Burnet
Project Authorization: 2005-2006 Amended Capital Budget
Funding Source: Capital Metro Transportation Authority
Fund/Agency/Orgn: 8400-607-NEW

Total Current Appropriation	\$1,600,000.00
Unencumbered Balance	\$1,600,000.00