

INTERLOCAL COOPERATION AGREEMENT

BETWEEN

THE CITY OF AUSTIN AND CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(BROADMOOR PATH)

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** ("CapMetro"), a political subdivision of the State of Texas organized and existing under Chapter 451 of the Texas Transportation Code, upon the premises and for the consideration stated herein. The City and CapMetro are referred to in this Agreement individually as a "Party" and collectively as the "Parties".

- A. **WHEREAS**, CapMetro maintains 162 miles of railroad right-of-way ("Railroad ROW") including the track, track support structures and the real property in the counties of Bastrop, Burnet, Lee, Llano, Travis and Williamson, Texas (collectively, the "Giddings-Llano Line").
- B. **WHEREAS**, the City intends to create an at-grade pedestrian and bike path crossing over the Giddings-Llano Line within the portion of the Railroad ROW located at milepost 66.82, in Austin, Texas as described in Exhibit "A" attached hereto (the "Crossing Area") and connecting to the City's regional Red Line Trail (the "Crossing").
- C. **WHEREAS**, the Crossing requires the design of a new at-grade crossing with constant warning systems, Positive Train Control integration and civil work services including but not limited to a (6' x 6') aluminum crossing house that must fit within the Railroad ROW, highway-rail grade crossing constant warning system with crossing gate mechanisms, double-sided railroad crossbucks, electronic crossing bells and associated components, crossing devices to be integrated with existing Positive Train Control Systems, and an exit "swing" gate on each side for pedestrian exits (the "Design").
- D. **WHEREAS**, the City has requested CapMetro's services for the Design of the Crossing, and the City will reimburse CapMetro as further set forth herein.
- E. **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 this Agreement early by providing the other Party at least sixty (60) days' written notice.

2. Party Representatives.

- a. The Executive Vice President, Chief Strategic Planning and Development Officer will act on behalf of CapMetro with respect to the Design, coordinate with the City, receive and transmit information and instructions, and will have complete authority to interpret and define CapMetro's policies and decisions with respect to the Design. CapMetro will designate a CapMetro Project Manager and may designate other representatives to act on behalf of CapMetro with respect to the Design.
- b. The City's Public Works Department Director (the "City's Public Works Director") will act on behalf of the City with respect to the Design, coordinate with CapMetro, 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 Design. 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 Design. The City's Public Works Director may designate Public Works Project Managers for the Design. 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 infrastructure against City approved plans.

3. Responsibilities of the Parties.

- a. CapMetro will:
 - i. As applicable, develop, procure, and manage the Design, including (i) engineering design, drawings, plans and specifications, bid and contract documents necessary for the Design, (ii) surveying and geotechnical engineering, (iii) coordinating with the City to allow the City to review the design, and (vii) coordinating with the City to obtain the City's acceptance of the completed design (the "Work"). It is agreed that CapMetro shall have absolute approval authority over the final design of the Crossing;
 - ii. Oversee the solicitation of a contract (via a request for qualifications) for the engineering design;
 - iii. Ensure design, drawings, plans and specifications comply with all applicable federal, state, and local laws, rules, and regulations. The plans and specifications must comply with the CapMetro Transit Design Guide and/or CapMetro Design Criteria Manuals;
 - iv. Be responsible for procuring all engineering design and other professional services required for design. CapMetro 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 Design will be included in the costs described below in Section 6;
 - v. Provide the City with an accounting of payments for the Improvements and will make its records available at reasonable times to the City's auditors.

- vi. Timely pay contractor-submitted invoices for the Design in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code; and
 - vii. Obtain the written approval of the City for all change orders affecting the Design.
- b. The City will provide:
- i. Review of submitted plans and specifications 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;
 - ii. Review of any applicable permit applications required and work in good faith to resolve any outstanding issues;
 - iii. Reporting of any deficiencies observed in the design immediately to CapMetro's Project Manager with an additional written report within two (2) business days; and
 - iv. Attendance of City personnel and applicable City contractors at meetings at the request of CapMetro's Project Manager, including monthly meetings related to the Safety and Security Certification process, as applicable.
- c. The Parties will participate in joint review meetings, as necessary, with representatives from all affected City and CapMetro 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 Design. CapMetro 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, CapMetro 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 Public Works Director, will participate to provide advice and guidance as required to achieve a timely resolution of any conflict.
4. **Bond and Guarantee. NOT USED.** This Agreement pertains to the design of the Crossing only. Any requirements related to performance and payment bonds (to be obtained from the construction contractor in accordance with Chapter 2253 of the Government Code) will be addressed in a future agreement between the Parties regarding the construction.
5. **Maintenance Responsibilities. NOT USED.** This Agreement provides for the design only. Maintenance responsibilities of the structure to be built will be provided for in a future agreement between the Parties regarding the construction.

6. **Ownership of Design Professional's Instruments of Service and Intellectual Property Rights.** Both Parties shall co-own the design, and all Instruments of Service as that term is defined in CapMetro's agreement with its design consultant or "Contractor." CapMetro shall ensure the transfer and assignment to the City of all Instruments of Service.

7. **Financial Obligations.**

- a. The City shall be responsible for the entire cost of designing, constructing and maintaining the Crossing, including but not limited to costs associated with engineering services, permits, application fees, and RWIC charges, except as provided in subsection (b) below.
- b. CapMetro shall be responsible for the cost of maintaining the railroad tracks and the area within a two (2)-foot distance of the railroad tracks within the Crossing Area.
- c. The City shall reimburse CapMetro, in accordance with this section, up to \$671,000 for costs incurred by CapMetro for the Design set out on the attached **Exhibit B**.
- d. The funding limits set out in Section 6.a. above are based on engineering estimates for Design 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.
- e. CapMetro will submit (not more frequently than monthly) to the City a written request for reimbursement for its reimbursable costs for the Design. Each reimbursement request shall designate the services to which the reimbursement pertains and shall, if applicable, include the applicable contractor invoices and other supporting documentation for such improvements. If City determines that the amount payable to CapMetro is the same as the amount submitted by CapMetro, the City will reimburse CapMetro within thirty (30) calendar days after the receipt of the reimbursement request. If the City determines that the amount owing to CapMetro is less than the amount submitted by CapMetro, the City will: (i) work diligently and in good faith to notify CapMetro of the discrepancy within ten (10) business days of Capital Metro's submittal to the City; (ii) provide CapMetro 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.

8. **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, and such failure continues 60 days after the non-defaulting party has given notice and an opportunity to cure to the party alleged to be in default, unless the Parties agree to a different resolution before the end of the 60-day period. 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.

9. **Dispute Resolution. NOT USED/Intentionally Omitted.**

10. **Liability.** To the extent allowed by Texas law, the City and CapMetro 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 worker's compensation insurance, auto liability, and general liability insurance in the standard amounts required by the City. The City and CapMetro 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.

11. **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 CapMetro'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 CapMetro 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.
- j. **Force Majeure.** In the event that the performance by the City or CapMetro 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 or 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.
- k. **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:

Mailing Address:

Richard Mendoza, Director (or successor)
Austin Transportation and Public Works Department
PO Box 1088
Austin, TX 78767

Physical Address:

Richard Mendoza, Director (or successor)
Austin Transportation and Public Works Department
5202 East Ben White Suite 550
Austin, TX 78741

WITH COPY TO:

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

CAPMETRO:

Executive Vice President, Chief Strategic Planning and Development Officer
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

WITH A COPY TO:

Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

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.

- l. **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.
- m. **Headings.** The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- n. **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.
- o. **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.

- p. **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.

- q. **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: _____

Mike Rogers, Assistant City Manager

Date: _____

Approved as to form:

Veronica Ocanas
Assistant City Attorney

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

By: _____

Name, Title

Date: _____

Approved as to form:

Ayeola Williams
Deputy Counsel