

# **INTERLOCAL AGREEMENT FOR DESIGN AND CONSTRUCTION OF CHAPARRAL ROAD**

This agreement (“Agreement”) is made by and between the City of Killeen, Texas, a municipal corporation situated in Bell County, Texas (“COK”), the City of Harker Heights, Texas, a municipal corporation situated in Bell County, Texas (“COHH”), and Bell County, Texas (“County”), collectively referred to in this Agreement as the “Parties.” This agreement is authorized by Chapter 791 of the Texas Government Code, the “Interlocal Cooperation Act.”

## **RECITALS**

**WHEREAS**, Chaparral Road (the “Road”) is a roadway within the jurisdiction of the County, COK, and COHH and is approximately 6.64 miles long extending from SH 195 to FM 3481. 5.68 miles are located within the County jurisdiction. 0.92 miles are located within the jurisdiction of the COK. 0.04 miles are located within the jurisdiction of the COHH; and

**WHEREAS**, The City of Killeen, Texas, the City of Harker Heights, Texas and Bell County have previously executed a Memorandum of Understanding (“MOU”) regarding the design and construction of Chaparral Road. This agreement supersedes the MOU; and

**WHEREAS**, the County, COK, and COHH, desire to work together to facilitate the construction of a five-lane minor arterial roadway along the entirety of the Road (the “Project”) in accordance with the general terms and conditions outlined below.

**NOW THEREFORE**, the COK, COHH, County, agree as follows:

**Section 1.** Purpose. The purpose of this AGREEMENT is to establish the scope of the Project and responsibilities of each of the parties as it relates to the Project. It is understood that the overall scope of the project may change depending on the availability of funding.

**Section 2.** General Scope of the Project. Upon completion of the Project, the general alignment of the Road will be as depicted in Exhibit “A” attached hereto and made part hereof this AGREEMENT. The priority of the alignments shown shall be as follows: Alignment #1, Alignment #2, Alignment #3. The Project limits are bounded by State Highway 195 on the west end and Farm-to-Market Road 3481 on the east end. As currently proposed the Project will include:

- a. The design and construction of 6.64 miles of five lane minor arterial roadway with adjacent sidewalks as deemed appropriate.
- b. Necessary ROW acquisition to soften the 90 degree bends located along the existing alignment.
- c. Necessary ROW acquisition to establish a minimum of 90’ wide ROW along the entirety of the final alignment.
- d. Necessary relocation of existing utilities.

The typical preliminary section of the Road is depicted in Exhibit “B” attached hereto and made part hereof this AGREEMENT. As part of the design phase, the consultant will develop an approved typical section for ultimate build-out of the Road and current capacity needs. The final road section shall be approved by all parties.

**Section 3. The Project Phasing.**

Estimated project timeline is attached in Exhibit “D” attached hereto and made part hereof this AGREEMENT.

- a. Professional services will be performed in two steps for the Project.
  - i. Preliminary Design – establish required ROW, road dieting design, utility relocations, firm cost estimate, conduct topographical and property surveys, explore environmental concerns.
  - ii. Final Design – prepare final construction plans and specifications, finalize cost estimates, obtain any necessary permitting, prepare bid documents.
- b. Construction can be performed all at once or in multiple phases. Current federal funding indicates the Project is likely to be completed in two or more phases. Recommended phasing is as follows:
  - i. Phase 1 – limits from SH 195 to East Trimmier Rd
  - ii. Phase2 – limits from East Trimmier Road to FM 3481.

**Section 4. Development and Financing of the Project.**

- a. Professional Services
  - i. Preliminary Engineering
    - a. COK will provide project management services as in-kind services for the Project (valued at \$10,000.00).
    - b. COK will contract for the professional services necessary.Parties agree that the Project is to be financed proportionately and will reimburse COK for expenses incurred proportionately according to the table in Exhibit “C” attached hereto.
  - ii. Final Design
    - a. COK will provide project management services as in-kind services for the Project (valued at \$90,000.00).
    - b. COK will contract for the professional services necessary.
    - c. Parties agree that the Project is to be financed proportionately and will reimburse COK for expenses incurred according to the table in Exhibit “C”.
- b. ROW Acquisition
  - i. Parties agree that the Right-of-way (ROW) and Easement acquisition will be financed proportionately and will reimburse COK for the ROW and Easement acquisition expenses incurred according to Exhibit “C”.
  - ii. The County agrees to provide in-kind assistance to the COK as may be needed for the acquisition and relocation of acquiring necessary ROW for the Project.

The County's in-kind assistance includes, and is limited to, dedication of any County-owned ROW necessary for the Project.

c. Construction

i. Utility Relocation

- a. Engineer will determine the utilities in need of relocation through the plans and specifications referenced above.
- b. Parties agree that any franchise utility relocation cost will be financed proportionately and will reimburse COK for the relocation expenses incurred according to Exhibit "C"
- c. COK will relocate city owned utilities at its own cost.
- d. Harker Heights will relocate city owned utilities at its own cost.

ii. Roadway Construction

- a. Parties will seek funding for Road Construction through the Killeen-Temple Metropolitan Planning Organization (KTMPO) (anticipating up to 80% of the construction cost).
- b. COK will provide project management and construction inspection services for the Project as an in-kind contribution (valued at \$400,000.00). For the portions of the Project that are within the COHH limits, the COHH shall have oversight of the construction and acceptance of the improvements that will be coordinated with COK project manager.
- c. Upon reasonable advance notice, Parties shall make any property available to Killeen to facilitate the performance of Killeen's obligations hereunder. Parties agree to grant a Temporary Construction Easement to COK for the ROW necessary to construct the Project. The purpose for the easement is for the construction of the Project and for providing pedestrian and vehicular ingress and egress thereto by Killeen, its employees and contractors, as necessary for said construction. The Temporary Construction Easement shall terminate one year after the completion of construction.
- d. Parties agree that the Project is to be financed proportionately and will reimburse COK for expenses incurred according to the table in Exhibit "C".

iii. The Project Costs

- a. All costs are estimated at this time according to the table in Exhibit "C".
- b. Costs are estimated using the centerline miles and are assumed to be distributed proportionately based on the ownership percentages established by the frontage length adjacent to the Project. Following the alignment study and development of the final design schematic the centerline miles and frontage lengths will be recalculated and communicated in writing to each of the parties to this agreement.
- c. Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

- d. Cost overruns or underruns will proportionately be distributed adjusting the overall cost of the Project based on the ownership percentages for each party and location of the construction where the overruns and underruns occurred. COHH's responsibility will only be assessed in the location of their existing city limits and ETJ.

**Section 5. Maintenance upon Completion.** Upon completion of the Project, Bell County agrees to seek voluntary annexation of those portions of Chaparral Road that are adjacent to COK and the COHH. COK and COHH agree to annex such as may be within their authority to do so. The COK will accept responsibility and ownership of the bridge across Trimmer Creek within the Project.

**Section 6. Additional Agreements.** The Parties additionally agree to execute and deliver any additional documents and instruments such as Interlocal Agreements, contracts, or easements necessary or appropriate to legally affirm the obligation to pay the entity's proportionate share of the Project costs, to allow access to the Project site for purposes of the Project, to otherwise accomplish the terms of this Agreement, or to correct any defect, error or omission that may be discovered in this Agreement or any documents executed incidental to it.

**Section 7. Joint Obligations.** The Parties agree:

- a. To meet upon request of either Party throughout the course of the Project to review the status, discuss any concerns that might arise, and coordinate any decisions materially affecting this Agreement.
- b. Not to unreasonably interfere with or delay the Project.
- c. Not to unreasonably withhold, condition or delay any requested approval or consent made by a Party hereto.
- d. To cooperate in defending any legal action instituted by a third party challenging (i) the validity of one or more provisions of this Agreement; (ii) the state and local legislation authorizing the Parties to enter into this Agreement; or (iii) any discretionary action and approvals of either Party regarding permits or other entitlements issued pursuant to this Agreement.

**Section 8. Term.** The term of this Agreement will commence on the execution date hereof and shall terminate upon the earliest to occur of: (a) thirty days following written notice by any party hereto prior to expenditure of funds or provision of in-kind services; (b) termination pursuant to Section 9 of this Agreement or (c) the completion of the Project; or (d) after 20 years if no work, including design, has begun on said Project.

**Section 9. Relationship of Parties.** The parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either party be an agent, representative, trustee or fiduciary of the other. No party shall have any authority to bind the

other to any agreement. This Agreement is not assignable or transferable by either party without all other parties' written consent.

**Section 10. Default and Remedies.**

- a. Each of the following constitutes a material breach of this Agreement and an Event of Default: (i) failing to fully and timely perform any covenant under this Agreement; and (ii) making any representation found to be materially false, misleading, or erroneous in connection with the Project.
- b. If any party should commit an Event of Default, the party alleging such default shall give the other party not less than ten (10) days' notice specifying the nature of the alleged breach and, when appropriate, the manner in which the alleged breach may be satisfactorily cured. Notwithstanding the preceding sentence, if the nature of the alleged failure is such that the giving of ten (10) days' written notice is impractical due to a threat of harm to life or property, then the party alleging the failure shall give the other party such notice as may be reasonable under the circumstances.
- c. In the event of an Event of Default that is not timely cured, the non-defaulting Party may (but shall not be obligated to), without prejudice to any other available right or remedy: (i) terminate this Agreement; (ii) seek recovery of any damage suffered; (iii) cure the default and receive reimbursement from the defaulting Party for all reasonable expenses incurred in doing so; (iv) discontinue payment or performance under this Agreement until the default is cured; (v) exercise any other remedy granted by this Agreement or by applicable law; or (vi) any combination of the foregoing.
- d. Each party waives all special, incidental, consequential or punitive damages.
- e. It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.
- f. If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which that party may be entitled.

**Section 11. Notice.** All notices under this Agreement shall be in writing, and (a) delivered personally to the person to whom the notice is to be given, (b) given by certified or registered mail, return receipt requested, or (c) given by e-mail or facsimile transmission. Notice given by mail shall be effective three (3) days (exclusive of Saturdays, Sundays and postal holidays) after the same is deposited in the United States Postal Service, properly post-paid and certified and addressed to the party to be notified. Notice given by e-mail or facsimile transmission shall only be deemed received if the transmission thereof is confirmed and such notice is followed by written notice as provided in subparts (a) or (b) within three (3) business days following the e-mail or facsimile notice. Notice given in any other manner shall be effective only if and when actually delivered to the party to be notified or at such party's address for

purposes of notice as set forth herein. A change in the notice address of any party may be affected by serving written notice of such change and of such new address upon the other party in the manner provided herein. Initially, notices shall be addressed as follows:

a. To HH:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. To COK:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. To County:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 12. Miscellaneous.**

a. Assignment of Contract. Parties may not assign this Agreement or any rights under the Agreement without the prior written consent of the other party, and any attempted or purported assignment in the absence of such consent shall be void. However, nothing herein shall be construed to prevent Killeen from subcontracting as provided herein.

b. Binding Effect. Subject to the provisions regarding assignment, this Agreement shall be binding on the Parties and their respective representatives, successors and permitted assigns.

c. No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement. Nothing herein shall be construed to waive or limit any defense or immunity available to either Party in response to any third-party claim.

d. Governing Law; Venue. The Parties agree that this Agreement has been made in Texas and that it shall be governed by and construed pursuant to the laws of the State of Texas, without regard to choice of law rules of any other jurisdiction. Venue for any action to construe or enforce this Agreement shall be in Bell County, Texas.

e. Severability. The provisions of this Agreement are severable. If a court or government agency of competent jurisdiction finds that any provision of this Agreement is unenforceable, the unenforceable provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the unenforceable provision as is legally possible, and the Agreement as so-modified shall be enforced to the greatest extent permitted by law, except when such construction would operate as an undue hardship on a Party, or constitute a substantial deviation from the general intent and purpose of such parties as reflected in this Agreement.

f. Interpretation. Each Party has carefully read this entire Agreement, understands the meaning and effect of each and every provision contained herein, and acknowledges that it has relied on its own judgment in entering into this Agreement. Each Party executes this Agreement only after first having obtained, or having had the opportunity to obtain, competent legal advice. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders. The singular form shall include the plural when the context requires. Headings used throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, restrict, modify, amplify, or aid in the interpretation or construction of the meaning of the provisions of this Agreement. The terms "hereof," "hereunder" and "herein" shall refer to this Agreement as a whole, inclusive of all exhibits, except as otherwise expressly provided. This Agreement represents the result of extensive discussion between the parties, and thus should not be construed strictly for or against either party.

g. Amendment. The Parties agree that they may amend this Agreement only by a written agreement duly executed by persons authorized to execute agreements on behalf of the Parties.

h. Multiple Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, or the acknowledgment of such Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the Parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter

attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

i. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties. This Agreement supersedes and cancels all previous written and oral agreements, Memorandum of Understanding (MOU), and communications between the Parties relating to the subject matter of this Agreement.

Executed and effective this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**CITY OF KILLEEN**

BY: \_\_\_\_\_  
City Manager  
Kent Cagle

ATTEST:

\_\_\_\_\_  
City Secretary

**CITY OF HARKER HEIGHTS**

BY: \_\_\_\_\_  
City Manager  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary  
\_\_\_\_\_

**COUNTY OF BELL, TEXAS**

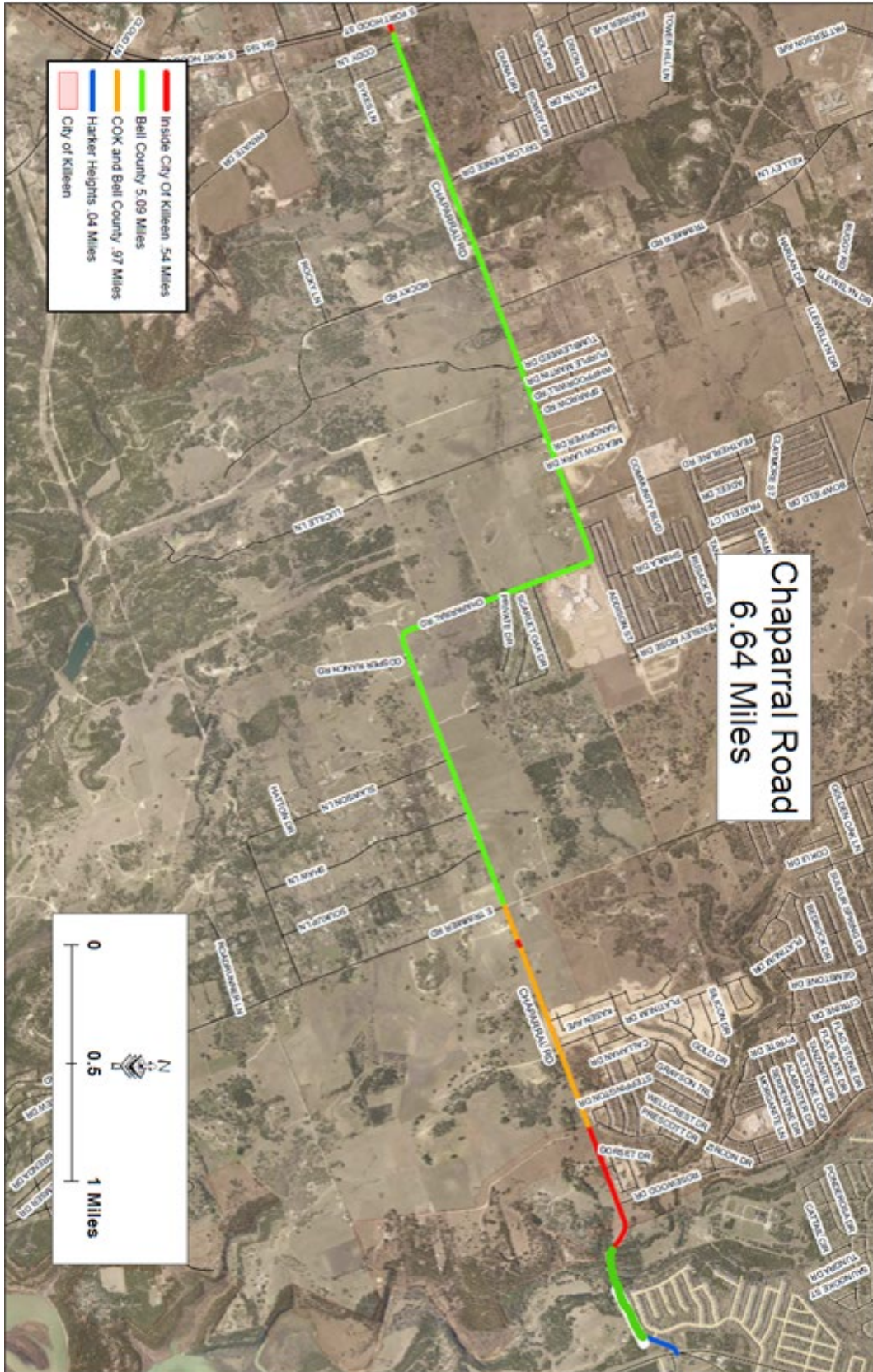
BY: \_\_\_\_\_  
County Judge  
\_\_\_\_\_

ATTEST:

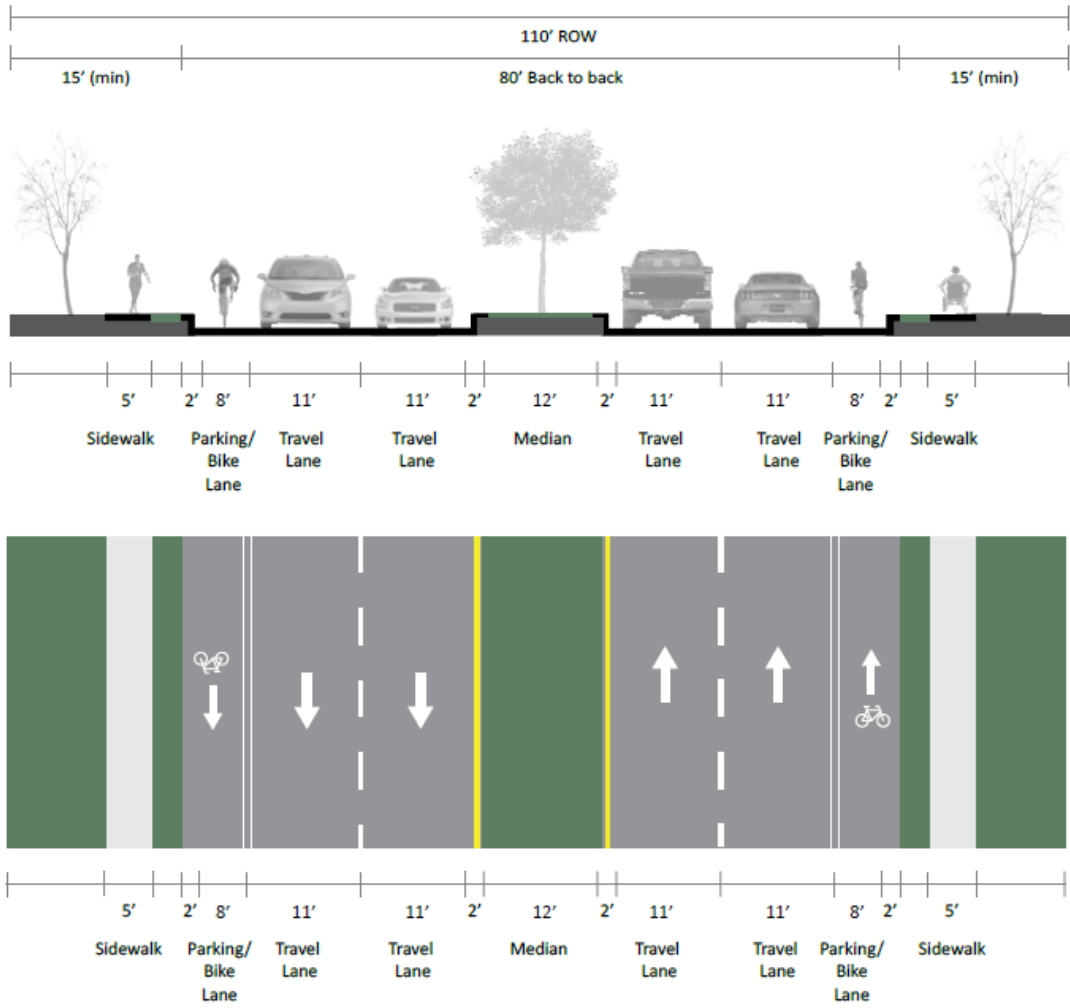
\_\_\_\_\_  
County Clerk  
\_\_\_\_\_



# EXHIBIT 'A'



# EXHIBIT 'B'



*Schematic not to scale*

\*This represents a preliminary road section that will be analyzed during the final design of the project.

## EXHIBIT 'C'

<b>Estimated Financial Participation by Entity Based on Frontage Lengths</b>							
<b>Entity</b>	<b>Frontage (mi)</b>	<b>Frontage (%)</b>	<b>Design</b>	<b>Design Percentage</b>	<b>Right-of-way &amp; Construction</b>	<b>Total Funding</b>	<b>Total Funding %</b>
<b>KTMPO</b>					<b>\$17,224,578</b>	<b>\$17,224,578</b>	<b>72%</b>
<b>Bell County</b>	<b>7.99</b>	<b>60</b>	<b>\$1,203,313</b>	<b>60</b>	<b>\$2,873,164</b>	<b>*\$3,000,000</b>	<b>13%</b>
<b>Killeen</b>	<b>4.85</b>	<b>37</b>	<b>\$730,422</b>	<b>37</b>	<b>\$1,744,036</b>	<b>\$3,550,935</b>	<b>15%</b>
<b>Harker Heights</b>	<b>.44</b>	<b>3</b>	<b>\$66,265</b>	<b>3</b>	<b>\$158,222</b>	<b>\$224,487</b>	<b>1%</b>
<b>Total</b>	<b>13.28</b>	<b>100</b>	<b>\$2,000,000</b>	<b>100</b>	<b>\$22,000,000</b>	<b>\$24,000,000</b>	<b>100%</b>

Funding contributions do not include in-kind service contributions.

\*Bell County's total contribution to the project will not exceed \$3,000,000.

Harker Height's contribution will only be used in the Phase of the project that includes their City Limits and ETJ.

**EXHIBIT 'D'**

<b>Estimated project Timeline</b>		
	<b>Duration</b>	<b>Anticipated Timeline</b>
<b>Preliminary Design</b>	12 months	February 2022-January 2023
<b>Final Design</b>	18 months	February 2023-August 2024
<b>Construction Phases</b>	24-36 months	Dependent on Funding