

CSJ #0909-36-145 Fed.# STP 2014(090)TE
Waco District (#9)
Code Chart 64 #22300
Project: Killeen Fort Hood Regional Trail,
Segment 3
Federal Highway Administration
CFDA #20.205
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For A TRANSPORTATION ENHANCEMENT (TE) PROJECT**

This Advance Funding Agreement for a Transportation Enhancement Project (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the “State”, and the City of Killeen, acting by and through its duly authorized officials called the “Local Government.”

WITNESSETH

WHEREAS, the Local Government prepared and submitted to the State a nomination form for consideration under the Transportation Enhancement Program for the project which is briefly described as Killeen Fort Hood Regional Trail, Segment 3, called the “Project”; and

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and

WHEREAS, Title 23 U.S.C. Section 134 requires that Metropolitan Planning Organizations and the States’ Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and

WHEREAS, the Texas Transportation Commission (the “Commission”) passed Minute Order Number 113642 dated July 25, 2013 awarding funding for projects in the 2012 Program Call of the Transportation Enhancement Program, including the Project; and

WHEREAS, the rules and procedures for the selection and administration of the Transportation Enhancement Program are established in 43 TAC Sections 11.200 et seq.; and

WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated November 13, 2012, which is attached hereto and made a part hereof as Attachment A;

NOW THEREFORE, the State and the Local Government agree as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

2. Termination of the Agreement

- A.** The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of the State under this Agreement and may be terminated by any of the following conditions:
1. By mutual written consent and agreement of all parties;
 2. By any party with 90 days written notice; or
 3. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.
- B.** If the potential termination of the Agreement is due to the failure of the Local Government to fulfill its contractual obligations, the State will notify the Local Government that possible breach of contract has occurred. The Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
- C.** If the Local Government withdraws from the Project after this Agreement is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system.
- D.** A project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:
1. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §11.200 et seq.
 2. The implementation of the Project would involve significant deviation from the activities as proposed in the nomination form.
 3. The Local Government withdraws from participation in the Project.
 4. This is a construction project and construction has not been let by August 31, 2016.
 5. This is not a construction project and project activities have not been completed by _____, 20__.
 6. The State determines that federal funding may be lost due to the Project not being implemented and completed.
 7. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.
 8. The Local Government fails to attend progress meetings at least twice yearly, as scheduled by the State.

3. Amendments

This Agreement may be amended due to changes in the work, the amount of funding required to complete the Project or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

4. Scope of Work, Use of Project, and Project Location

The scope of work for the Project, which is shown in Attachment B, the Project Location Map, described in the nomination form and as approved by the Texas Transportation Commission, consists of: Constructing 1.35 mile concrete trail (varying in width from 12' to 14') along the South Nolan Creek northwest bank between Watercrest Road and West Elms Road. This work will include multiple low water crossings and neighborhood spur connections that will allow for safer access along and across the creek.

Any project changes proposed must be submitted in writing by the Local Government to the State. Changes may also require an amendment to the Agreement and the approval of the Federal Highway Administration (FHWA), the State, or the Commission. Any changes undertaken without written approval and Agreement amendment may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

5. Right of Way and Real Property Acquisition

- A.** Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property. If the Local Government is the owner of any part of the Project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- B.** The Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.
- C.** The Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- D.** The State will not reimburse the Local Government for any real property acquired before execution of this agreement and before federal spending authority is approved.

- E.** The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- F.** The Local Government agrees to make a determination of property values for each real property parcel to be purchased with federal funds by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage, and recommended compensation. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values.
- G.** Condemnation shall not be used to acquire real property for this enhancement Project.
- H.** Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers for expenses incurred in order to assure good title. Any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement the Project will be the responsibility of the Local Government and current property owner, at no cost to the State.
- I.** If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of time commensurate with the federal investment, but not less than ten years after project completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. This Agreement must be approved by the State prior to its execution. A copy of the executed Agreement shall be provided to the State.
- J.** The Local Government agrees to execute individually or produce a legal document as necessary to provide for the Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.
- K.** Local governments receiving federal funds must retain an inventory of funded items and monitor projects in accordance with 23 CFR 710 and 49 CFR 18, and with the procedures provided in the State's Local Government Project Procedures manual. The Local Government agrees to monitor the Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate.

1. The Local Government agrees to the review of their Project accounts and site visits by the State during the development of the Project at any time.
 2. Upon Project completion, the State will continue to perform periodic visits to confirm the Project's continued use and upkeep.
- L. Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all real property has been acquired.

6. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work, unless specified in the Transportation Enhancement Nomination form and approved by the State. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction begins.

7. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of the Project.
- B. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation. These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the nomination form and approved by the State.
- C. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- D. Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all environmental problems have been remediated. Additionally, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

8. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of the Project subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

9. Architectural and Engineering Services

Architectural and engineering services will be provided by the Local Government. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and the Local Government will be seeking reimbursement for these services; and with Texas Government Code 2254, Subchapter A, in all cases. Professional services contracts for federally funded projects must conform to federal requirements.

- A. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's *Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites* and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with the State's applicable *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the two American Association of State Highway and Transportation Officials' (AASHTO) publications, "*A Policy on Geometric Design of Highways and Streets*" and "*Guide for the Development of Bicycle Facilities*," as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. The use of other systems of specifications shall be approved by the State in writing in advance.
- B. When architectural and engineering services are provided by or through the Local Government, the Local Government shall submit any plans it has completed to the State for review and approval. The Local Government may also submit the plans to the State for review anytime prior to completion. The Local Government shall make the necessary revisions determined by the State. The Local Government will not let the construction contract until all required plans have received State approval.
- C. When architectural and engineering services are provided by or through the State, then the following applies:
The State is responsible for the delivery and performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the Project purposes. The State will cooperate fully with the Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

10. Construction Responsibilities

- A. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.

- B. All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Government.
- C. All contract change order review and approval procedures must be approved by the State prior to start of construction.
- D. Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- E. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Part 635, Subpart B.
- F. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by the State and the Local Government prior to authorizing the contractor to perform the work. Prior to completion of the Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

11. Project Maintenance

- A. Upon completion of the Project, the Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period of time commensurate with the federal investment or State rules, whichever is greater. Should the Local Government at any time after Project completion decide it can no longer maintain and operate the Project for its intended purpose, the Local Government shall return the federal funds in accordance with CFR federal recapture requirements. Should the Local Government consider conveying the property, the State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from the Local Government of their intended action must be submitted to the State for an FHWA review a minimum of sixty (60) days prior to any action being taken by the Local Government. The Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from the Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.
- B. Any manufacturer warranties extended to the Local Government as a result of the Project shall remain in the name of the Local Government. The State shall not be responsible for honoring any warranties under this Agreement.
- C. Should the Local Government derive any income from the development and operation of the Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to the

State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures established under OMB-133 and with the property management standards established in Title 49 CFR §18.32.

- D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of the Project.

12. Local Project Sources and Uses of Funds

- A. A Project Budget Estimate is provided in Attachment C, showing the total estimated development cost of the Project. This estimate shows the itemized cost of real property, utilities, environmental assessments and remediation, construction, and any other substantial items of cost. To be eligible for reimbursement, costs must have been included in the itemized budget section of the nomination form approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- B. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training *in Local Government Procedures Qualification for the Texas Department of Transportation* before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C. A Source of Funds estimate based on the budget provided in the project nomination form is included as Attachment C. Attachment C shows the percentage and estimated dollar amounts to be contributed to the Project by state and local sources, as well as the maximum amount in federal Transportation Enhancement funds assigned by the Commission to the project. The parties agree that the Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the Transportation Improvement Program, FPAA, or other federal document.
- D. The Local Government will be responsible for all non-federal participation costs associated with the Project, including any overruns in excess of the Project cost estimate and any operating or maintenance expenses.
- E. The State will be responsible for securing the federal share of funding required for the development and construction of the Project, in an amount not to exceed eighty percent (80%) of the actual cost of the work up to the amount of funds approved for the Project by the Texas

Transportation Commission. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to Project selection by the Texas Transportation Commission and approval by the State to proceed are not eligible for reimbursement.

- F.** Following execution of this Agreement, but prior to the performance of any review work by the State, the Local Government will pay an amount sufficient to cover the estimated cost for the State's review. The Local Government shall advance to the State one percent (1%) of the State's administrative and associated cost for review of the plans, specifications, and estimate. The Local Government must also advance to the State zero percent (0%) of the Project's estimated preliminary engineering cost, if the State is administering the architectural or engineering contract. The estimated amount of this advance for this Project's preliminary engineering is \$ 4,852, in cash. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government must advance to the State two percent (2%) of the State's administrative and associated costs for letting and construction. The Local Government shall also remit its remaining financial share for the Project's estimated construction and construction engineering costs, if the State is letting the Project. The amount to be advanced for this Project's Construction is estimated to be \$ 9,703, in cash.
- G.** In the event the State determines that additional funding is required by the Local Government at any time during the Project, the State will notify the Local Government in writing. The Local Government is responsible for twenty-five percent (25%) of the authorized Project cost and one hundred percent (100%) of any overruns above the federally authorized amount. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- H.** Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government will remit a warrant made payable to the "Texas Department of Transportation Trust Fund." The warrant will be deposited by the State in an escrow account to be managed by the State. Until the final Project accounting, funds in the escrow account may only be applied by the State to the Project.
- I.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.
- J.** In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended federal funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- K.** If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the

total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.

- L. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a contract or subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a contract or subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- M. The State will not pay interest on any funds provided by the Local Government.
- N. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- O. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

13. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
City Manager	Director of Contract Services Office
City of Killeen	Texas Department of Transportation
P.O. Box 1329	125 E. 11 th Street
Killeen, Texas 76540	Austin, Texas 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

14. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall

not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

15. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

16. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government.

17. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft® Word or similar format. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate, including types of activities and month in which the activity will be completed, in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

18. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

19. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

20. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

21. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

22. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the Agreement period and for four (4) years from the date of completion of work defined under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

23. Civil Rights Compliance

The Local Government shall comply with the regulations of the U. S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

24. Disadvantaged Business Enterprise Program Requirements

- A.** The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B.** The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C.** The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D.** The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E.** The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

25. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

26. Lobbying Certification

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by Title 31 U.S.C. §1352 for making or entering into this transaction. Any person who fails to file the

required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

27. Insurance

- A. Should this Agreement authorize the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.
- B. For projects including buildings, the Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a "Loss Payee" should the building be destroyed.

28. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 - 1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.sam.gov/portal/public/SAM/>;
 - 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
 - 3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

29. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if

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applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>.

- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

30. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

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ATTACHMENT A RESOLUTION OF LOCAL GOVERNMENT

REG 11-13-12
ITEM # CA-4
CCM/R 12-091R

CITY COUNCIL MEMORANDUM

AGENDA ITEM

**CONSIDER AUTHORIZING THE CITY MANAGER
TO SUBMIT A TRANSPORTATION ENHANCEMENT
PROGRAM APPLICATION TO THE TEXAS
DEPARTMENT OF TRANSPORTATION (TxDOT) TO
CONSTRUCT A HIKE AND BIKE TRAIL**

**ORIGINATING
DEPARTMENT**

PUBLIC WORKS

BACKGROUND

In cooperation with the Federal Highway Administration, the Texas Highway Commission issued a call for project nominations for the statewide Transportation Enhancement Program (TE) on August 30, 2012. The call began on September 14, 2012 and will close on November 16, 2012. Under the program, 80% of eligible project construction costs can be reimbursed with the nominating entity providing at least 20% of the project's construction costs. Cost-reimbursement programs require sponsors to pay for project costs up front with the funding agency providing reimbursement for costs throughout various stages of the project. Projects are funded through a statewide competitive process with funds limited to those authorized in the Enhancement program.

In the two previous project calls, the City of Killeen has secured funding for two (2) Hike and Bike Trails. These projects have been extremely successful and a tremendous benefit to the residents of Killeen. In addition to providing an alternative to motorized travel, they serve the community's need for additional recreation and fitness venues.

DISCUSSION/CONCLUSION

After consulting the City of Killeen Master Trail Plan and the KTMPO Regional Thoroughfare Plan, staff has identified a 1.35-mile trail project (from Watercrest Road to West Elm Road) as an eligible project (**See Exhibit 1**). The proposed segment is part of the City of Killeen's Comprehensive Plan, which consists of a 9.2 mile regional trail. This regional trail would connect the Andy K. Wells Trail in northeast Killeen (downtown) with the Central Texas A&M campus in south Killeen via Ft. Hood (**See Exhibit 2**). The proposed regional trail would connect densely populated residential areas of Killeen and Ft. Hood with commercial, educational, employment, and public transportation opportunities throughout Killeen and the larger Central Texas region. The proposed 1.35 mile project will increase transportation choices and access to transportation and will have a positive impact on community life. It is anticipated that the proposed trail would ultimately connect with the larger trail network identified in the Killeen-Temple Metropolitan Planning Organization's Regional Thoroughfare Plan.

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The cost to design the project and perform the environmental assessment is the responsibility of the City. The **Nomination Budget** for the trail project is as follows:

Project Components	Funded By	Cost	City Participation
Engineering Fees	100% City	\$270,000	\$270,000
Environmental Assessment	100% City	\$46,000	\$46,000
Construction Costs	25% City 75% Grant	\$1,940,664	\$485,166
Total Project Cost		\$2,256,664	\$704,133

FISCAL IMPACT

In the 2002 bond election, voters approved funds for a west side park. If awarded the grant, the City will issue General Obligation bonds designated from the 2002 bond election to meet the fiscal commitment.

RECOMMENDATION

Recommend that the City Council authorize the City Manager to submit a Transportation Enhancement Program application to the Texas Department of Transportation for the Andy K. Wells Trail Extension Project.


“The City of Killeen supports funding this project as shown in the nomination budget (including the 25% local match for construction costs) and commits to the project’s development, implementation, construction, maintenance, management, and financing. The City of Killeen is willing and able to enter into an agreement with TxDOT by resolution or ordinance should the project receive funding.”

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:

That the above-stated recommendation is hereby approved and authorized.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas this 13th day of November, 2012, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, § 551.001 *et seq.*

APPROVED

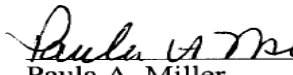


Daniel Corbin
 MAYOR

APPROVED AS TO FORM:


 Kathryn H. Davis
 CITY ATTORNEY

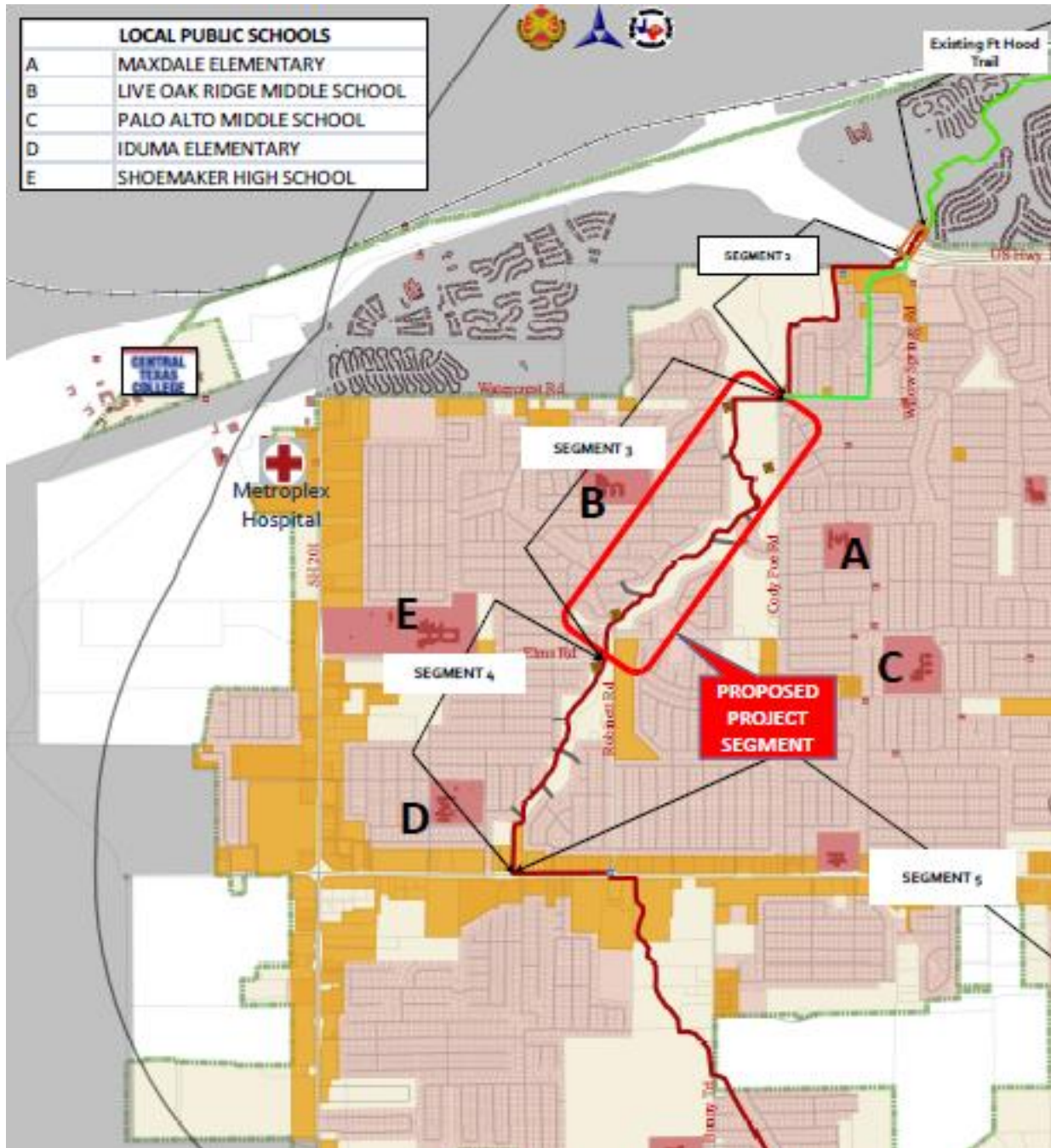
ATTEST:


 Paula A. Miller
 CITY SECRETARY



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ATTACHMENT B PROJECT LOCATION MAP



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ATTACHMENT C
PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS
Off System - TE Project Budget Estimate

LG Performs PE Work or Hires Consultant / Local Let Project to Construction Contract

Description of Project Cost to be incurred:	Total Estimated Cost = Authorized Amount	Federal Participation (75% or <) Max TE \$1,455,498		State Participation = 0		Local Participation (25% or greater)		
		%	Cost	%	Cost	%	Cost	
Locals will retain their local match for those services administered/contracted themselves.								
Planning, research, surveying, education for non-construction related projects	\$0	0%	\$0	0%	\$0	100%	\$0	
Utilities	\$0	0%	\$0	0%	\$0	100%	\$0	
Environmental Cost	\$0	0%	\$0	0%	\$0	100%	\$0	
Right of Way – by LG	\$0	0%	\$0	0%	\$0	100%	\$0	
Subtotal by Local Gov't	\$0	0%	\$0	0%	\$0	100%	\$0	
TxDOT Administrative cost incurred - PE:	Based on 1% of estimated Total Project Costs in Nomination's budget						*Due within 30 days	
TxDOT - PE Phase – Direct State Cost reviews, clearances, admin., coordination, etc.	\$19,407	75%	\$14,555			25%	*\$4,852	
TxDOT Administrative cost incurred - CE:	Based on 2% of estimated Total Project Costs in Nomination's budget						**Due 60 days prior	
TxDOT - Construction Phase – Direct State Costs-oversight, inspection, site visits, etc.	\$38,813	75%	\$29,110	0%	\$0	25%	**\$9,703	
Direct Project Construction COST	Locals retain their local participation below to apply to project cost directly							
Construction Contract – work bid items, letting fees, clearances, permits, etc. ,CE	\$1,882,444	75%	\$1,411,833	0%	\$0	25%	\$470,611	
Other Associated Construction Cost	\$0	0%	\$0	0%	\$0	0%	\$0	
Subtotal Construction	\$1,940,664	75%	\$1,455,498	0%	\$0	25%	\$485,166	
TOTAL	\$1,940,664	75%	\$1,455,498	0%	\$0	25%	\$485,166	

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The Estimated Total Participation by the Local Government is \$485,166, plus 100% of overruns. Payment of the Local's share of TxDOT's ADM PE Cost to be incurred is \$4,852, due within 30 days from execution of the AFA contract. Payment of the Local's share of TxDOT's ADM Cost for Construction to be incurred is \$9,703, due 60 days prior to the Construction contract being advertised for bids. This is an estimate. The eligible percent of required local match as stated in the nomination is 25% or greater. The final amount of Local Government participation will be based on actual costs and values. The Maximum TE federal funds available for the project are \$1,455,498.