

INTERLOCAL AGREEMENT BETWEEN
HAYS COUNTY AND THE CITY OF KYLE
RELATED TO THE PROPOSED KOHLERS CROSSING OVERPASS PROJECT

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF HAYS §

This Interlocal Agreement (the “**Agreement**”) is entered into as of this _____ day of _____, 2022, by and between Hays County, a political subdivision of the State of Texas (the “**County**”) and the City of Kyle, a Texas home-rule municipality (the “**City**”) (collectively, the “**Parties**”). In this Agreement, the City and the County are sometimes individually referred to as “**a Party**” and collectively referred to as “**the Parties**”.

RECITALS

WHEREAS, V.T.C.A., Government Code, Chapter 791, cited as the Texas Interlocal Cooperation Act, provides that any one or more public agencies may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

WHEREAS, the County desires to pursue development of a roadway overpass at the Union Pacific Railroad (the “**UPRR**”) and Kohlers Crossing (the “**Project**”); and

WHEREAS, the City desires to aesthetically enhance the roadway overpass and expand the width of the shared use sidewalk from 8’ to 12’ on the south side of the proposed structure;

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

I.
PURPOSE

1.02 General. The purpose of this Agreement is to provide an understanding between the Parties that facilitates the design of the shared use sidewalk and the application of roadway overpass aesthetics. The location of the UPRR and Kohlers Crossing is shown in Exhibit A.

II. COUNTY OBLIGATIONS

2.01 Design Costs. The County shall be responsible for contracting with HDR, Inc. for the preliminary engineering and environmental clearance costs for the Project. The County shall execute a Supplemental Agreement with HDR, Inc. for the costs related to expansion of the shared use sidewalk from 8' to 12' on the south side of the roadway overpass and application of aesthetics. The City shall be responsible for the costs associated with the Supplemental Agreement. Design costs for any additional changes requested by the City not related to the expansion of the width of the shared use sidewalk from 8' to 12' on the south side of the roadway overpass and application of aesthetics shall be addressed in an Amendment to this Interlocal Agreement, as appropriate.

2.02 Aesthetic Treatment Design Requirements. The City requires that the following be incorporated into the design of the aesthetics application as noted above:

- Street Lights must meet City of Kyle Ordinance No. 1153 to meet the Subdivision Lighting Plan Section of the Ordinance to match Burleson Street and Philomena Road existing street lighting.
- Steel plates will be provided as possible on barrier structures. Steel plates will be one inch (1") thick, ten feet (10') wide flat steel plates five foot two inches (5'2") tall with three inch (3") maximum spacing between each plate.
- Four (4) obelisks will be provided on bridge structure similar to obelisks provided at the I-35 at Yarrington Road bridge structure.

Any changes from the above aesthetics must be approved in writing by the City of Kyle, City Engineer.

III. CITY OBLIGATIONS

3.01 Design Cost Reimbursements. The City shall be responsible for the additional design costs associated with the changes required to expand the proposed 8' sidewalk to 12' on the south side and for the added enhancements, estimated to be \$165,000.00. The County shall provide the City with an invoice for the additional design costs upon execution of the County's Supplemental Agreement with HDR, Inc. The City shall provide funds to the County within thirty (30) calendar days upon receipt of the invoice. Reimbursement by the City shall be dependent on the appropriation of funding each fiscal year by the Kyle City Council. If budgetary constraints cause the Kyle City Council to prioritize other budgetary needs, then the City's reimbursement responsibility shall be added to the next fiscal year's reimbursement responsibilities. The term of this agreement shall continue until the City's reimbursement responsibility has been satisfied.

It is the intent to include the construction costs related to the sidewalk expansion and aesthetic treatments in a future grant application. If construction funding for the aesthetics treatments is determined to be ineligible for grant funding, an amendment to this Interlocal Agreement will be required to address the City's responsibility for those construction costs.

IV. DISPUTES

4.01 Material Breach; Notice and Opportunity to Cure.

(a) In the event that one Party believes that another Party has materially breached one of the provisions of this Agreement, the non-defaulting Party will make written demand to cure and give the defaulting Party up to 30 days to cure such material breach or, if the curative action cannot reasonably be completed within 30 days, the defaulting Party will commence the curative action within 30 days and thereafter diligently pursue the curative action to completion. Notwithstanding the foregoing, any matters specified in the default notice which may be cured solely by the payment of money must be cured within 10 days after receipt of the notice. This applicable time period must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting party due to such breach.

(b) Any non-defaulting Party will mitigate direct or consequential damage arising from any breach or default to the extent reasonably possible under the circumstances.

(c) The Parties agree that they will negotiate in good faith to resolve any disputes and may engage in non-binding mediation, arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas.

4.02 Equitable Relief. In recognition that failure in the performance of the Parties' respective obligations could not be adequately compensated in money damages alone, the Parties agrees that after providing notice and an opportunity to cure in accordance with Section 4.01 above, the Parties shall have the right to request any court, agency or other governmental authority of appropriate jurisdiction to grant any and all remedies which are appropriate to assure conformance to the provisions of this Agreement. The defaulting Party shall be liable to the other for all costs actually incurred in pursuing such remedies, including reasonable attorney's fees, and for any penalties or fines as a result of the failure to comply with the terms including, without limitation, the right to obtain a writ of mandamus or an injunction requiring the governing body of the defaulting party to levy and collect rates and charges or other revenues sufficient to pay the amounts owed under this Agreement.

4.03 Agreement's Remedies Not Exclusive. The provisions of this Agreement providing remedies in the event of a Party's breach are not intended to be exclusive remedies. The Parties retain, except to the extent released or waived by the express terms of this Agreement, all rights at law and in equity to enforce the terms of this Agreement.

V. GENERAL PROVISIONS

5.01 Authority. This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code*.

5.02 Term. This Agreement shall commence upon execution of this Agreement and shall end upon final reimbursement of design costs by the City.

5.03 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

5.04 Default and Remedies. If City fails to pay for Services under this Agreement and continues such failure for thirty (30) days after the County provides written notice to cure, City shall be deemed to be in default under this Agreement. In the event that the County defaults under this Agreement, and such default is not cured, City may, in addition to any other remedy at law or in equity, immediately terminate this Agreement or seek specific performance of this Agreement.

5.05 Payments from Current Revenues. Any payments required to be made by a Party under this Agreement will be paid from current revenues or other funds lawfully available to the Party for such purpose.

5.06 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

5.07 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter and only relates to those portions of the Project shown in the map attached hereto as Exhibit "A."

5.08 Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

5.9 Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Hays County, Texas.

5.10 Notices. Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

CITY: 100 W. Center St.
Kyle, Texas 78640
Attn: Travis Mitchell, Mayor
Telephone: 512-262-1010
Email: mayormitchell@cityofkyle.com

COUNTY: Hays County Dept. of Transportation
2171 Yarrington Road
San Marcos, Texas 78666
Attn: Jerry Borcharding, P.E.
Telephone: (512) 393-7385

Facsimile: (512) 393-7393

WITH COPY TO: Office of General Counsel
111 E. San Antonio Street, Suite 202
San Marcos, TX 78666

5.11 Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

5.12 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

5.13 Effective Date. This Agreement is executed to be effective on the date the last Party signs this Agreement.

5.15 No Joint Venture. The County Project is a sole project of the County and is not a joint venture or other partnership with the City.

(SIGNATURES ON FOLLOWING PAGE)

HAYS COUNTY

By: _____
Ruben Becerra, County Judge

Date: _____

ATTEST:

By: _____
County Clerk

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2022, by County Judge Ruben Becerra of Hays County, Texas, on behalf of said County.

Notary Public, State of Texas

CITY OF KYLE, TEXAS

By: _____

Date: _____

ATTEST:

By: _____

_____, _____ City Secretary

THE STATE OF TEXAS §

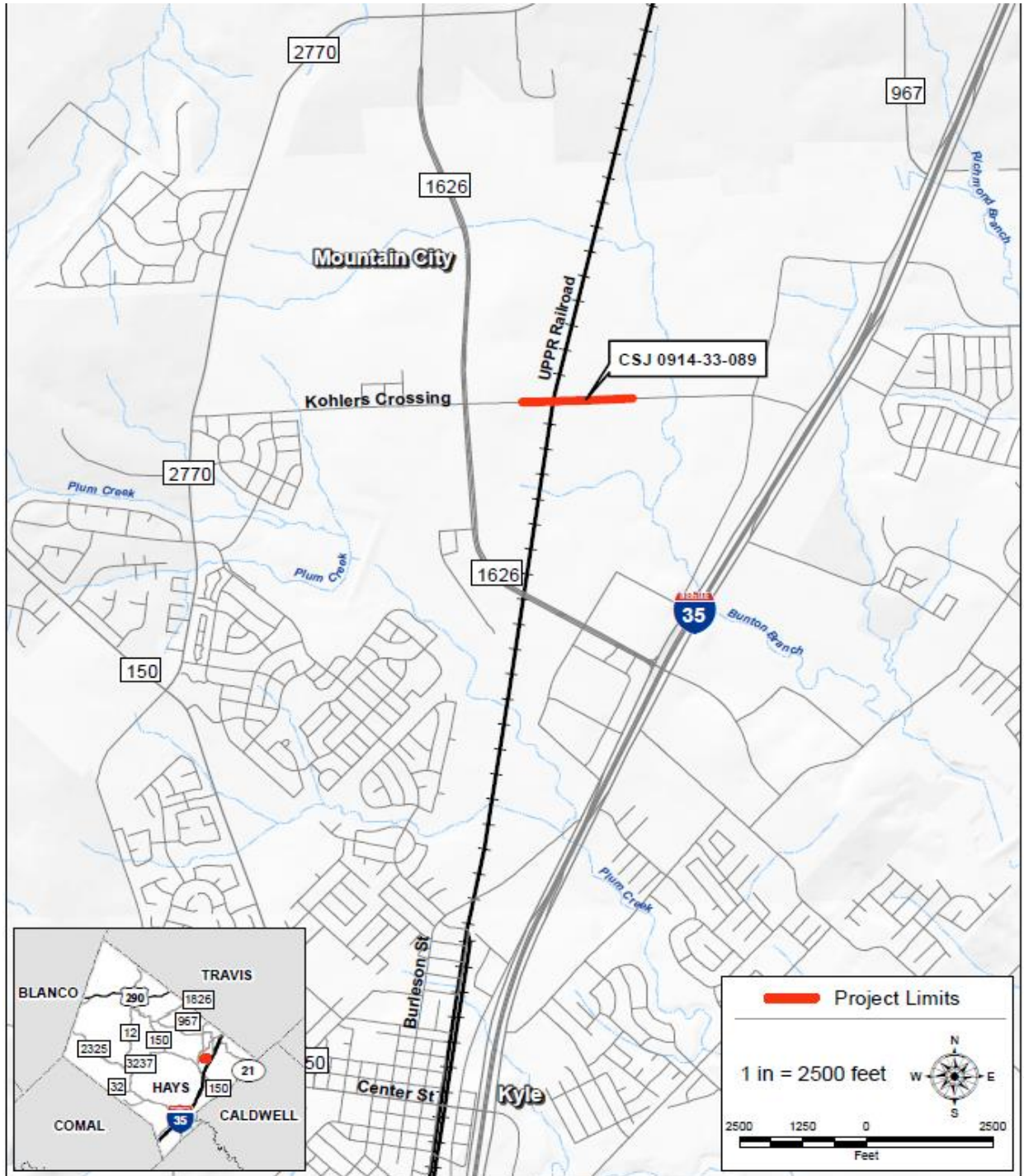
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COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2022, by Travis Mitchell, Mayor of the City of Kyle, a Texas home-rule city, on behalf of said city.

Notary Public, State of Texas

EXHIBIT A



KOHLERS CROSSING RAILROAD BRIDGE

CSJ 0914-33-089

HAYS COUNTY, TX

2/10/2021