



# Travis County Commissioners Court Agenda Request

**Meeting Date:** July 17, 2012

**Prepared By:** Miguel Villarreal, P.E. **Phone #:** 854-7586

**Division Director/Manager:** Steve Sun, P.E.

**Department Head:** Steven M. Manilla, P.E., County Executive-TNR

**Sponsoring Court Member:** Commissioner Huber, Precinct Three

7/2  
Rev. 7/3

A handwritten signature in black ink, appearing to read "Steve Sun".

**AGENDA LANGUAGE:** Consider and take appropriate action on a request to approve the acceptance and improvement of 2406 LF of Fort Smith Trail, in Precinct Three.

## **BACKGROUND/SUMMARY OF REQUEST:**

In May 2006, the Commissioners Court approved TNR's recommended revisions to Chapter 84, Unaccepted Roadway Specifications, to include placing a higher priority on projects that home owners cost-share with the County. The Apache Shores Property Owners Association (the "Association"), entered into a Participation Agreement with the County executed on August 2, 2011, and have been working with TNR staff to complete the design necessary to construct improvements needed to enable the County's acceptance of a portion of Fort Smith Trail. The Participation Agreement provides sole discretion to seek County funds, when they become available, for the construction of the project under the County's Unaccepted Substandard Roadway program.

The limits of the road improvements include two (2) lanes of Fort Smith Trail beginning at its intersection with Debba Drive and continuing in a loop to its ending point at the intersection with Debba Drive. Roadside drainage ditch, culvert, and road paving improvements are also included in the project scope. Using in-house engineering resources, the design of the improvements have been completed.

Fort Smith Trail is one of many substandard roads located within the boundaries of the Association. The Association has been spending significant amount of efforts and funds to maintain this road. Property owners along Fort Smith Trail submitted a petition to include this road in the County's substandard road program. On August 2, 2011, the County and the Association entered into a Participation Agreement to improve the road and to accept it into the County maintained road system.

The roadways that are eligible for this program are typically ones that should have been constructed by the developers who benefitted from the sale of the property for which these roads provide access. The roads were not constructed properly or were

not accepted by the County for on-going maintenance for a variety of reasons. The condition of the roads varies widely from good to poor. Residents living on roadways that are in poor condition are most concerned about access for school transportation and emergency services. Residents on roadways in good condition are more concerned about on-going deterioration and long term maintenance. Residents of the neighborhoods served by these roads typically turn to County government for assistance but the substandard roads program has limited funding.

Public-private partnership agreements were introduced, on a large scale, in the 2005 bond referendum. They were established to fund partnerships with developers in order to get significant sections of arterial roadways constructed in a timely manner. Making these types of agreements available to neighborhood associations provide a means for getting their roads accepted while providing impetus for them to work with TNR staff to complete the project.

### **STAFF RECOMMENDATIONS:**

TNR's recommendation is to immediately accept this portion of Fort Smith Trail. This will enable TNR Public Works to coordinate with TNR Road and Bridge to include this road to the TNR annual paving contract for paving improvements and to schedule the use of in-house crews for drainage improvements. The estimated cost of the remedial work is \$350,000. TNR Road and Bridge will be reimbursed for its labor and materials from funds allocated to this program by the Court and from the Association contribution.

TNR has determined that this project meets the basic eligibility requirements established in Chapter 84. TNR recommends acceptance of a portion of Fort Smith trail.

### **ISSUES AND OPPORTUNITIES:**

Inefficiencies are introduced into these projects when all residents are not supportive of either the project or the project design requirements. Most notably, program participants are completely responsible for dedicating all required right-of-way and removing all private properties, such as fences, walls, and buildings that encroach into the dedicated right-of-way.

Travis County Chapter 82 establishes the standard for new street and drainage construction. Many substandard roads were constructed or partially constructed prior to Travis County's adoption of roadway standards. Bringing them up to today's standards would be cost prohibitive, in most cases, and could drastically alter the character of some neighborhoods. As such, the standards in Chapter 84 are lower than those of Chapter 82. There are approximately 350 unaccepted roadways in the unincorporated areas of Travis County (totaling nearly 100 miles). Since there is not adequate funding to meet the needs of everyone, it is necessary to prioritize.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

Funding for this project will come from the Substandard Road Program Funds. The total funds to be provided for this project is \$275,000. Per terms of the Participation Agreement, the Association provided \$75,000 in cash to help pay for the costs of improving 2406 LF of Fort Smith Trail.

If the project is completed under the estimated project costs, the Association will be reimbursed its pro-rata share of the savings based upon its financial contribution. The Association's pro-rata share of any savings will be 21.43%.

**ATTACHMENTS/EXHIBITS:**

- Fort Smith Trail Exhibit
- Fort Smith Trail Acceptance/ Dedication spreadsheet
- Fort Smith Trail Participation Agreement

**REQUIRED AUTHORIZATIONS:**

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Don Ward	Road Maintenance & Fleet, Director	TNR	854-9383
Jessica Rio		PBO	

**CC:**

Carolyn Draper	Administrative	TNR	
Tawana Gardner	Financial	TNR	
Donna Williams-Jones	Financial	TNR	
Darla Vasterling	Development Services	TNR	

: :  
**3101 - Public Works/CIP -**

**ACCEPTANCE OF DEDICATION OF STREETS AND DRAINAGE**



SUBDIVISION/STREET Fort Smith Trail  
 Mapsco No. (Subdivision Apache Shores Section 7)

Pct.# 3

CONTAINS 1 STREET AS LISTED BELOW:

#	STREET NAME	FROM - TO	TYPE OF WIDTH OF CURB &					
			L.F.	MILES	ROW	PVMNT	PVMNT	GUTTER
1	Fort Smith Trail	Debba Drive intersection and continuing in a loop to its ending point at the intersection with Debba Drive intersection, the cul-de-sac at 14200, 14202 and 14204 Fort Smith Trail is not included in this acceptance (see exhibit)	2406	0.46	50'	HMAC	20'	No
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								


N/A ADDITIONAL LOTS SOLD FOR DEVELOPMENT


CONSTRUCTION OF STREETS AND DRAINAGE EXCEEDS MINIMUM COUNTY STANDARD FOR STREETS NUMBERED 1

IT IS RECOMMENDED THAT MAINTENANCE OF STREETS NUMBERED 1 TOTAL **0.46** MILES BE ACCEPTED BY THE TRAVIS COUNTY COMMISSIONERS' COURT IN PRECINCT 3.

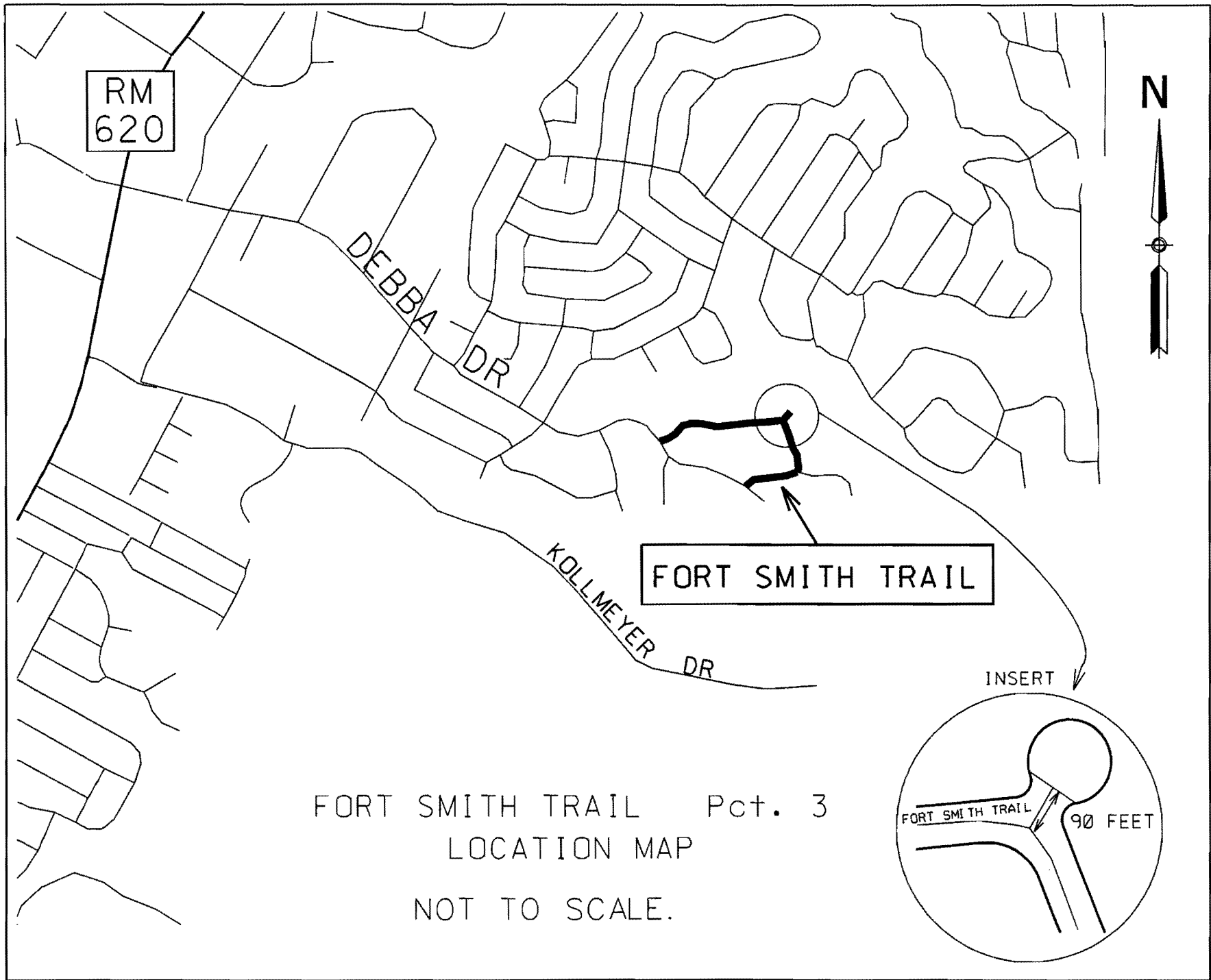
19-Jun-12  
DATE

- DP = DOUBLE PENETRATION
- HMAC = HOT MIX ASPHALT
- C = CONCRETE
- U/P = UNPAVED, PIT RUN
- UPS = UNPAVED, SELECT

  
 Steve Manilla, P.E., County Executive  
 TRANSPORTATION AND NATURAL RESOURCES

  
 Don Ward, P.E., Director of Road Maintenance and Fleet  
 TRANSPORTATION AND NATURAL RESOURCES

APPROVED BY COMMISSIONERS' COURT DATE



FORT SMITH TRAIL Pct. 3  
LOCATION MAP  
NOT TO SCALE.

**FORT SMITH TRAIL  
PARTICIPATION AGREEMENT**

This agreement ("**Agreement**") is entered into between Travis County, Texas (the "**County**"), and the Apache Shores Property Owners Association (the "**Association**"). The County and Association are sometimes hereinafter individually referred to as a "**Party**" and collectively referred to as the "**Parties**." Each of the Parties confirms that it has the authority and ability to enter into this Agreement, and to perform its obligations under this Agreement, without the further approval or consent of any other person or entity.

Recitals

WHEREAS, the Association has presented to the County a petition (attached hereto and incorporated herein for all purposes as Exhibit A) from property owners indicating their desire to have approximately two thousand three hundred feet (2,300') of Fort Smith Trail as shown on Exhibit B (the "**Project**") accepted into the County maintained roadway transportation system;

WHEREAS, the Association desires to enter into this Agreement because the County Commissioners Court approved funding for completing unaccepted substandard road projects in its capital budget;

WHEREAS, the County intends to perform certain roadway improvements to Fort Smith Trail to ensure it meets the requirements of Travis County Code Chapter 84, Unaccepted Substandard Roadway Specifications;

WHEREAS, the County has determined that the Project meets the basic eligibility requirements set forth in Travis County Code Section 84.007 regarding the acceptance of substandard roads;

WHEREAS, the County and the Association desire to cooperate in and share the costs of developing and constructing the Project as permitted in Travis County Code Section 84.008(d) and provided in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits set forth in this Agreement, the Parties agree as follows:

Section 1. The Fort Smith Trail Project.

(a) The Project consists of reconstructing the existing roadway to meet all requirements of Travis County Chapter 84 Unaccepted Substandard Roadway Specifications and includes the following features ("**Project Design Features**");

- (i) Two (2) lanes of Fort Smith Trail beginning at its intersection with Debba Drive and continuing in a loop of approximately 2,300' to its ending point at the intersection with Debba Drive, plus converting an existing cul-de-sac at 14202 Fort Smith Trail to a stub-out street not to exceed 150' in length, as shown in Exhibit B, which is attached hereto and incorporated herein for all purposes:
  - (A) right-of-way width depending on design requirements, but no less than fifty feet (50'), plus slope, sight, and drainage easements;
  - (B) road consisting of one (1) asphalt pavement section no less than twenty feet (20') wide from edge of pavement to edge of pavement, and the section including:
    - (1) two (2) nine feet (9') wide travel lanes; and
    - (2) minimum one-foot (1') wide paved shoulders along each edge;
- (ii) Pavement structure with a design life of twenty (20) years based on geotechnical engineering produced by the County.
- (iii) Design speed of no less than twenty (20) miles per hour.
- (iv) Temporary and permanent erosion and sedimentation controls.
- (v) Stormwater drainage system including but not limited to bar ditches, swales, channels, storm drain, and driveway and cross culverts necessary to convey the 25-year storm event without overtopping the roadway;
- (vi) Guardrails and traffic control devices and markings, both during construction and permanent, as required by TXDOT's Manual of Uniform Traffic Control Devices and sound engineering principles and practices.
- (vii) All necessary relocations or adjustments of utilities or other infrastructure, subject to payment or reimbursement by any person legally obligated to bear the cost of such relocations or adjustments.
- (viii) Compliance with any applicable County policies, procedures, and requirements for acceptance of the Project for maintenance.

Notwithstanding the foregoing, the Association and the County Executive of the Transportation and Natural Resources Department may agree in writing to minor modifications of the Project Design Features depending on (i) unanticipated cost requirements, (ii) availability of County funds, (iii) Project design efficiencies, and/or (iv) other new information.

Section 2. Project Management.

- (a) The County shall be responsible for managing development of the Project.
- (b) The County Project Manager will use best management practices to help ensure timely and satisfactory completion of the Project, including performing construction administration services, assuring the project scope is accurately defined and adhered to; identifying and planning for all obstacles to the completion of the Project; planning and conducting design and preconstruction conferences; monitoring and reporting on the design and construction schedules and budgets; monitoring and reporting on the design and construction quality; providing prior notice of major items of work during construction, otherwise coordinating among the Parties and other persons and entities involved in the Project on an ongoing basis; and generally ensuring that the Project is satisfactorily completed on time and within budget (collectively, "**Project Manager Services**").
- (c) Upon request, the Association shall assist the County with initiating utility relocations or adjustments required to complete the Project. The County may use the funds provided by the Association as provided in Section 5, below, to pay for the costs of utility relocations or adjustments if the utility owner is not legally obligated to bear the cost of such relocations or adjustments.

Section 3. Project Engineering Services.

- (a) The County shall be responsible for completing the project design and construction documents. Upon request, the Association shall provide engineering reports or site condition information that are available to the Association for the County's use at its discretion in the performance of all necessary engineering, including design, surveying, geotechnical investigations, utility relocation coordination, and other engineering services for the Project.
- (b) Engineering services and deliverables required to complete the Project with the required Project Design Features include, but are not limited to:
  - (i) completed specific work product documents for review;
  - (ii) final bid-ready plan sets and project manual with specifications ("**Final Plans and Specifications**");
  - (iii) geotechnical investigations;
  - (iv) engineer's opinion of construction costs and project schedule;
  - (v) record drawings (as-builts) for the final project within thirty (30) working days after completion of the construction of the Project;
  - (vi) all required permits to start and complete the Project;
  - (vii) required tracts' schematic, and parcel drawings and right-of-way strip map for right of way and easement acquisitions;
  - (viii) utility location and relocation planning and coordination;



- (ix) survey services with electronic and soft copy of survey on NAD 83 or as determined by the County;
  - (x) engineering and drainage study report;
  - (xi) design calculations;
  - (xii) electronic copy of above deliverables, where applicable (all drawings and e-files must be in a format compatible with County CADD applications and text documents must be in Microsoft Word format);
  - (xiii) complete project file within thirty (30) working days after completion of the construction of the Project; and
  - (xiv) any other service or any other deliverable necessary to complete the Project with the required Project Design Features, taking into consideration the customary requirements for projects of a similar nature as the Project or special requirements based on any unique aspects of the Project (collectively, "**Engineering Services and Deliverables**").
- (c) All Engineering Services and Deliverables shall meet customary professional standards applicable to the service or deliverable or the Project, based on the Project's nature and location and participants, and are subject to approval by the County based on compliance with this Agreement, cost effectiveness, sound engineering principles and practices, and applicable legal requirements. All Engineering Services and Deliverables are the property of the County.

**Section 4. Designated Representatives.**

- (a) The County and Association each designate the individual specified below ("**Designated Representative**") to represent them and to act on their behalf with respect to the subject matter of this Agreement. Each Designated Representative will have authority to determine and interpret the policies and exercise the discretion of the Party it represents, and a Party may rely on the decisions and representations made by the other Party's Designated Representative with respect to the subject matter of this Agreement, except as provided by Section 11(d) below. Each Designated Representative may further designate other representatives to transmit instructions and receive information on the Designated Representative's behalf.

County: Steven M. Manilla, P.E. (or successor), County Executive,  
Transportation and Natural Resources Department

Association: Doug Saile, Vice President – Roads Committee Chair  
Apache Shores Property Owners Association

- (b) The Association will require its agents to report regularly to, and to cooperate and coordinate with, the County's Designated Representatives. Each Party will require its Designated Representative and agents to cooperate and coordinate with one another, including but not limited to meeting with and/or reporting information to one another regarding any aspect of the Project, either at regular

intervals or at other times determined by the County, and reviewing and commenting in a timely manner on work products associated with the Project.

Section 5. Financial Obligations.

- (a) To fulfill the Project requirements and help the County in meeting payment obligations, the Association agrees to provide to the County cash and engineering services at the not-to-exceed amounts of \$75,000 in cash to be used by the County at its discretion to complete the Project. The Association shall tender the not-to-exceed cash contribution amount to the County within thirty (30) days after receiving a written request from the County.
- (b) Unless the Association's contribution is needed sooner by the County for costs identified in Section 6(b) of the Agreement, the Association shall provide its not-to-exceed cash contribution amount to the County within 30 days of receiving written notification of the County's determination of an acceptable bid for the County Project.
- (c) The County shall place the Association's funds into an account established for the Project and manage the disbursement of the funds in accordance with County accounting standards.
- (d) The County shall return to the Association any unused Association funds within thirty days of completing a final accounting of the Project costs. The amount of unused funds, if any, to be returned to the Association will be based upon the Association's pro rata share of construction costs as determined by the computation shown on Exhibit C, which is attached hereto and incorporated herein for all purposes.
- (e) If the Project is not initiated by the County, the Association's funds contributed for this Project less any amounts used by the County pursuant to Section 6(b) of the Agreement will be returned to the Association with interest accrued in accordance with the County's established practice.

Section 6. Real Property Interests.

- (a) The Project shall be constructed in public rights-of-way and/or easements ("**Real Property Interests**") conveyed to the County or to another public entity acceptable to the County with a right of entry or license to allow construction of the Project.
- (b) Any additional right-of-way or easements required for drainage, slope stability, or to provide minimum sight distances shall be dedicated by the property owners to satisfy design conditions. The Association shall convey to the County by separate instruments the Real Property Interests that are owned or controlled by the Association. Upon request, the Association shall assist the County with

acquiring the Real Property Interests from the owners of property not owned or controlled by the Association. The County may use the funds provided by the Association to pay closing costs, costs of document preparation, surveying, title insurance premiums, and title curative work. The Association shall provide its funds for these costs within thirty (30) days of receiving a written request from the County.

- (c) The Association must require the property owners adjacent to the cul-de-sac (14200, 14202 and 14204 of Fort Smith Trail) to request for "Rejection of Dedication of Right-of-Way" for the portions of the dedicated right-of-way that will not be needed for the stub-out street but are within the existing cul-de-sac right-of-way. County will only be responsible for the maintenance of the stub-out street right-of-way but not the entire cul-de-sac right-of-way after the "Rejection of Dedication of Right-of-Way" is approved by the County and the stub-out street is accepted by the County for maintenance.
- (d) The Association shall cause the Real Property Interests owned or controlled by the Association to be conveyed free of all liens, encumbrances, and title defects unacceptable to the County in its reasonable discretion, by deeds or other separate instruments acceptable to the County in its reasonable discretion.
- (e) If the County is unable to acquire the Real Property Interests not owned or controlled by the Association, or complete the 6(c) "Rejection of Dedication of Right-of-Way" process by August 1, 2012, the County may terminate this Agreement by written notice to the Association. The County shall have no obligation to pay or reimburse the Association for any amount of its funds used under this Agreement if the Agreement is terminated.

**Section 7. Construction Contract Procurement.**

- (a) The County shall solicit bids for a contract to construct the Project using the standard competitive bidding requirements of the County or, at its sole discretion, perform the work with County forces.
- (b) If the bid determined by the County to be the lowest responsive and responsible bid exceeds \$350,000 for construction of the Project, the County may reject all bids as excessive and solicit bids a second time (the "**Agreed Limit**"). If bids are rejected as excessive, the County shall modify the Final Plans and Specifications employing value engineering principles in a manner designed to secure a lower bid, while still meeting applicable standards without impairing the functionality of the Project or violating sound engineering principles or practices or applicable legal requirements. Based on the modified Final Plans and Specifications, the County shall repeat the bid solicitation in an effort to secure a lower acceptable bid. If the second bid solicitation fails to produce an acceptable bid not exceeding the Agreed Limit, either the Parties may mutually agree to repeat the bid solicitation and value engineering process until an acceptable bid is received, or

reduce the scope of the Project, or the Association and County may choose to pay one hundred percent (100%) of the amount by which the lowest responsive and responsible bid exceeds the Agreed Limit in the agreed upon cost share proportions. If Association does not give written notice within thirty (30) days after receipt of bids exceeding the Agreed Limit, and the Parties have not mutually agreed to re-bid after further value engineering, or mutually agreed to reduce the Project scope or increase their respective funding amounts, either of the Parties may elect to terminate this Agreement without further recourse. Any deadline in this Agreement affected by a value-engineering and rebidding process shall be extended by the amount of time required for that process.

- (c) If County forces complete the work the Parties agree to pay their pro-rata share of the County's cost of construction, as determined by the computation shown in Exhibit C.

Section 8. Construction of the Project.

- (a) Before the applicable date in subsection (c) for beginning construction of the Project, the Association will:
  - (i) cause to be conveyed or dedicated all the Real Property interests owned or controlled by the Association, and
  - (ii) deposit with the County the Association's cash cost share amount.
- (b) Before the applicable date in subsection (c) for beginning construction of the Project, the County will:
  - (i) present to the County Commissioners Court for approval the construction contract and a recommendation to accept the project on to the County maintained roadway system, and
  - (ii) encumber the funds required to pay for the construction of the project
- (c) Subject to force majeure events and satisfaction of all conditions in this Agreement, construction shall commence on or before December 1, 2012 (the "**Construction Start Date**"), unless otherwise agreed in writing by the Association and the County Executive of Transportation and Natural Resources Department. If the County does not have sufficient funds for its obligation, the County's obligation is suspended until the County has sufficient funds. Subject to force majeure events and satisfaction of all conditions in this Agreement, the County shall cause the Project to be complete by July 1, 2013. The roads referred to in this agreement shall become the obligation of the County to maintain upon the awarding of a construction contract as contemplated herein. If the County's obligation is suspended pursuant to this subsection (c) after the construction contract has been awarded, the County shall have no obligation to refund any Association funds. If the obligation is suspended before the construction contract has been awarded, Association funds may be kept in

escrow for one year, and shall be refunded to the Association at the end of said one-year period if the County's obligation is still suspended, and may be utilized as contemplated herein if the suspension ends within said one-year period. If the Project is temporarily suspended but ultimately completed by the County, and if savings are realized when the Project is ultimately completed, the County shall refund to the Association the Association's pro-rata share of the savings.

- (d) Any modifications that would materially change the Final Plans and Specifications or the amount of the Construction Contract will be subject to the County's approval. If the County determines that, based on cost effectiveness, sound engineering principles and practices, or applicable legal requirements, it is not possible to complete the Project as described in Section 1 without modifications to the approved Final Plans and Specifications or the amount of the Construction Contract, the County will cause to be prepared any required changes to the Final Plans and Specifications and any required change orders to the Construction Contract.
- (e) The Association and the County Executive of the Transportation and Natural Resources Department may agree in writing to an increase or decrease in the scope of the Project to account for any cost savings or cost increases or other factors beyond the Parties' control, and both parties shall not unreasonably withhold, condition or delay any required consent to such increases or decreases provided they do not exceed ten percent (10%) of said budget.

**Section 9. County Inspection.**

The County shall observe and inspect all work done and materials furnished at times and places and using procedures determined by the County.

**Section 10. Liability.**

The construction contractor shall be required to provide workers compensation insurance and general liability insurance in the form and amounts acceptable to the County in its sole discretion.

**Section 11. Miscellaneous.**

- (a) Any notice given hereunder by any Party to another must be in writing and may be effected by personal delivery or by certified mail, return receipt requested, when mailed to the appropriate Party's Designated Representative, at the addresses specified with copies as noted below:

County: Steven M. Manilla, P.E. (or successor)  
County Executive, TNR  
P.O. Box 1748  
Austin, Texas 78767

David Escamilla (or successor)  
Travis County Attorney  
P.O. Box 1748  
Austin, Texas 78767  
Attn: File No. 291.61

Association: Doug Saile, Vice President – Roads Committee Chair  
Apache Shores Property Owners Association  
14919 General Williamson Drive  
Austin, Texas 78734

The Parties may change their respective addresses for purposes of notice by giving at least five days written notice of the new address to the other Party. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period will be extended to the next business day.

- (b) As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number will each be deemed to include the others.
- (c) This Agreement contains the complete and entire Agreement between the Parties respecting the Project, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties. This Agreement may not be modified, discharged, or changed except by a further written agreement, duly executed by the Parties.
- (d) No official, representative, agent, or employee of the County has any authority to modify this Agreement except pursuant to such express authority as may be granted by the Commissioners Court of the County.
- (e) The Parties agree to execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (f) If performance by any Party of any obligation under this Agreement is interrupted or delayed by reason of unforeseeable event beyond its control, whether such event is an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct other than acts of the County under this Agreement, or the act or conduct of any person or persons not a party or privy hereto, then such Party will be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.
- (g) Before attempting to terminate this Agreement for default, the Party alleging the default shall notify the other Party in writing of the nature of and the means of curing the default. No Party may terminate this Agreement without providing the defaulting Party a reasonable amount of time to cure the default. The Parties

acknowledge that in the event of default on any obligation under this Agreement, remedies at law will be inadequate and that, in addition to any other remedy at law or in equity, each Party will be entitled to seek specific performance of this Agreement.

- (h) This Agreement will be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate court of Travis County, Texas.
- (i) Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective will not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof will be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (j) Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.
- (k) This Agreement is effective upon execution by the Parties. This Agreement may be executed simultaneously in one or several counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. The terms of this Agreement will become binding upon each Party from and after the time that it executes a copy hereof. In like manner, from and after the time it executes a consent or other document authorized or required by the terms of this Agreement, such consent or other document will be binding upon such Party.
- (l) When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or someone appointed by a court having jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code unless both parties agree, in writing, to waive the confidentiality.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity.

**COUNTY:**

Samuel T. Biscoe  
Samuel T. Biscoe  
County Judge

Date: 8-2-11

**ASSOCIATION:**

By: Doug Saile  
Doug Saile

Title: Vice President - Roads Committee Chair, Apache Shores Property Owners Association

Date: 7/25/11



**EXHIBIT "A"**

**PETITION TO THE TRAVIS COUNTY COMMISSIONERS COURT  
FOR THE INCLUSION OF FORT SMITH TRAIL  
IN THE TRAVIS COUNTY  
UNACCEPTED SUBSTANDARD ROAD PROGRAM**

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

**TO THE COMMISSIONERS COURT OF TRAVIS COUNTY**

**WE, THE UNDERSIGNED PROPERTY OWNERS, who own the majority of the linear feet of the property abutting the right-of-way of Fort Smith Trail an existing road or street, which has been dedicated to the public by Apache Shores section 7 plat dated May 14, 1973, hereby petition the Commissioners Court for the inclusion of the Road in the Travis County Unaccepted Substandard Road Program.**

  
\_\_\_\_\_

**It is understood and agreed that:**

- 1) the Travis County Unaccepted Substandard Road Program is not a road construction program, but is instead a program to improve existing unaccepted substandard roads to Travis County standards for acceptance for maintenance**
- 2) The Owner of property along the Road will be required to dedicate any and all additional right-of-way and easements needed to accommodate the Road improvement at no cost to the County and free and clear of any and all liens, conditions, or restrictions.**
- 3) The Owners must sign all easement and/or right-of-way dedication documents and return the documents to Travis County Transportation and Natural Resources ("TNR") within ninety days of receiving the documents from TNR or the Road will be withdrawn from consideration for the then current year's Program.**
- 4) The Road must connect to an existing road or highway maintained by a public entity.**

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**STATE OF TEXAS**

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**TO THE COMMISSIONERS COURT OF TRAVIS COUNTY**

**WE, THE UNDERSIGNED PROPERTY OWNERS, who own the majority of the linear feet of the property abutting the right-of-way of Fort Smith Trail an existing road or street, which has been dedicated to the public by Apache Shores section 7 plat dated May 14, 1973, hereby petition the Commissioners Court for the inclusion of the Road in the Travis County Unaccepted Substandard Road Program.**

*William Ray Meade*

*14302 Fort Smith Trl.*

**It is understood and agreed that:**

- 1) the Travis County Unaccepted Substandard Road Program is not a road construction program, but is instead a program to improve existing unaccepted substandard roads to Travis County standards for acceptance for maintenance**
- 2) The Owner of property along the Road will be required to dedicate any and all additional right-of-way and easements needed to accommodate the Road improvement at no cost to the County and free and clear of any and all liens, conditions, or restrictions.**
- 3) The Owners must sign all easement and/or right-of-way dedication documents and return the documents to Travis County Transportation and Natural Resources ("TNR") within ninety days of receiving the documents from TNR or the Road will be withdrawn from consideration for the then current year's Program.**
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UNACCEPTED SUBSTANDARD ROAD PROGRAM**

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

**TO THE COMMISSIONERS COURT OF TRAVIS COUNTY**

**WE, THE UNDERSIGNED PROPERTY OWNERS, who own the majority of the linear feet of the property abutting the right-of-way of Fort Smith Trail an existing road or street, which has been dedicated to the public by Apache Shores section 7 plat dated May 14, 1973, hereby petition the Commissioners Court for the inclusion of the Road in the Travis County Unaccepted Substandard Road Program.**

*David Whitwell 14200 Fort Smith Trail*

**It is understood and agreed that:**

- 1) the Travis County Unaccepted Substandard Road Program is not a road construction program, but is instead a program to improve existing unaccepted substandard roads to Travis County standards for acceptance for maintenance
- 2) The Owner of property along the Road will be required to dedicate any and all additional right-of-way and easements needed to accommodate the Road improvement at no cost to the County and free and clear of any and all liens, conditions, or restrictions.
- 3) The Owners must sign all easement and/or right-of-way dedication documents and return the documents to Travis County Transportation and Natural Resources ("TNR") within ninety days of receiving the documents from TNR or the Road will be withdrawn from consideration for the then current year's Program.
- 4) The Road must connect to an existing road or highway maintained by a public entity.

- 5) No person or entity may own or control (financially or legally) 35% or more of the linear feet or roadway frontage or 35% or more of the lots or 35% abutting the unaccepted substandard roadway unless such owner pays a proportionate share of the costs of completing the required improvements. The amount to be paid shall be determined on a case-by-case basis.
- 6) The number of developed lots abutting the roadway must exceed 25% of the total lots adjacent to the roadway. An exception may be made for subdivision arterial and collector streets on a case-by-case basis.
- 7) Dead-end streets shall terminate in a cul-de-sac with a minimum ROW radius of 40 feet on a hammerhead turnaround.
- 8) As required by TNR, the property owners must either remove or relocate any private improvements from the right-of-way or easements at the property owner's expense. Furthermore, the property owner must agree to allow the County in its discretion to demolish and remove those private improvements that the property owner does not remove or relocate. Private improvements include, but are not limited to fences, decorative walls, sheds, basketball goals, masonry mailboxes, and other improvements, which would interfere with construction activities or present a safety concern. Mitigating a significant private improvement that is impractical to move, such as large walls and fixed buildings, could require the property owner(s) to dedicate additional right-of-way, eliminate a portion of the project from acceptance, enter into a license agreement, or terminate the project.
- 9) The Owners may cost participate in the improvement of the Road by direct payment to the County, by road assessments as set forth in Section 82.402 of the Travis County Policies and Procedures Manual, or otherwise by agreement of the Commissioners Court.
- 10) Property owners must submit with their petition a statement from all of their utility service providers indicating whether or not they have utility lines located within 25' (unless otherwise specified by TNR) left and right of the centerline of the existing roadway or in drainage easements. The statement should include the utility service provider's assessment of the location of their service lines (horizontally and vertically); their procedures and requirements for relocating or protecting their lines (including time requirements); and, the extent of their responsibility for performing and paying for the relocation or protection work.
- 11) The Road will be prioritized within the Program on the basis of:
  - 1) The percent of the cost voluntarily borne by the property owners;
  - 2) The number of eligibility criteria met;
  - 3) The cost per resident;
  - 4) Whether the Road links the publicly maintained roadway system;
  - 5) When the petition was received.

If applicable, the Owners propose to cost participate by (\_\_\_) direct payment to the County (\_\_\_) by road assessment as set forth in Section 82.402 of the Travis

**County Policies and Procedures Manual, or (\_\_\_) otherwise by agreement of the Commissioners Court.**

**SUBMITTED TO THE COMMISSIONERS COURT BY THE BELOW NAMED OWNERS OF LAND ABUTING THE ROAD AND EXECUTED ON THE DATES INDICATED BELOW WITH AN ADDITIONAL NOTATION INDICATING IF THE ROADWAY PROVIDES THE SOLE MEANS OF ACCESS TO THEIR RESIDENCE.**

County Policies and Procedures Manual, or ( ) otherwise by agreement of the Commissioners Court.

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David Howard 2/18/11

Barry McCracken 16114 Fort Smith

Shane McKinnon 116  
118  
14104 Washoe

\* BRIAN GREEN 14402 DERBYA D.N.

\* DERBYA ADDRESS, BUT DRIVEWAY ACCESS ON FORT SMITH.

Paul Jure 14312 FT. SMITH TR

TANIS JURE " " "  
Alison Blake 14204 Ft. Smith trail

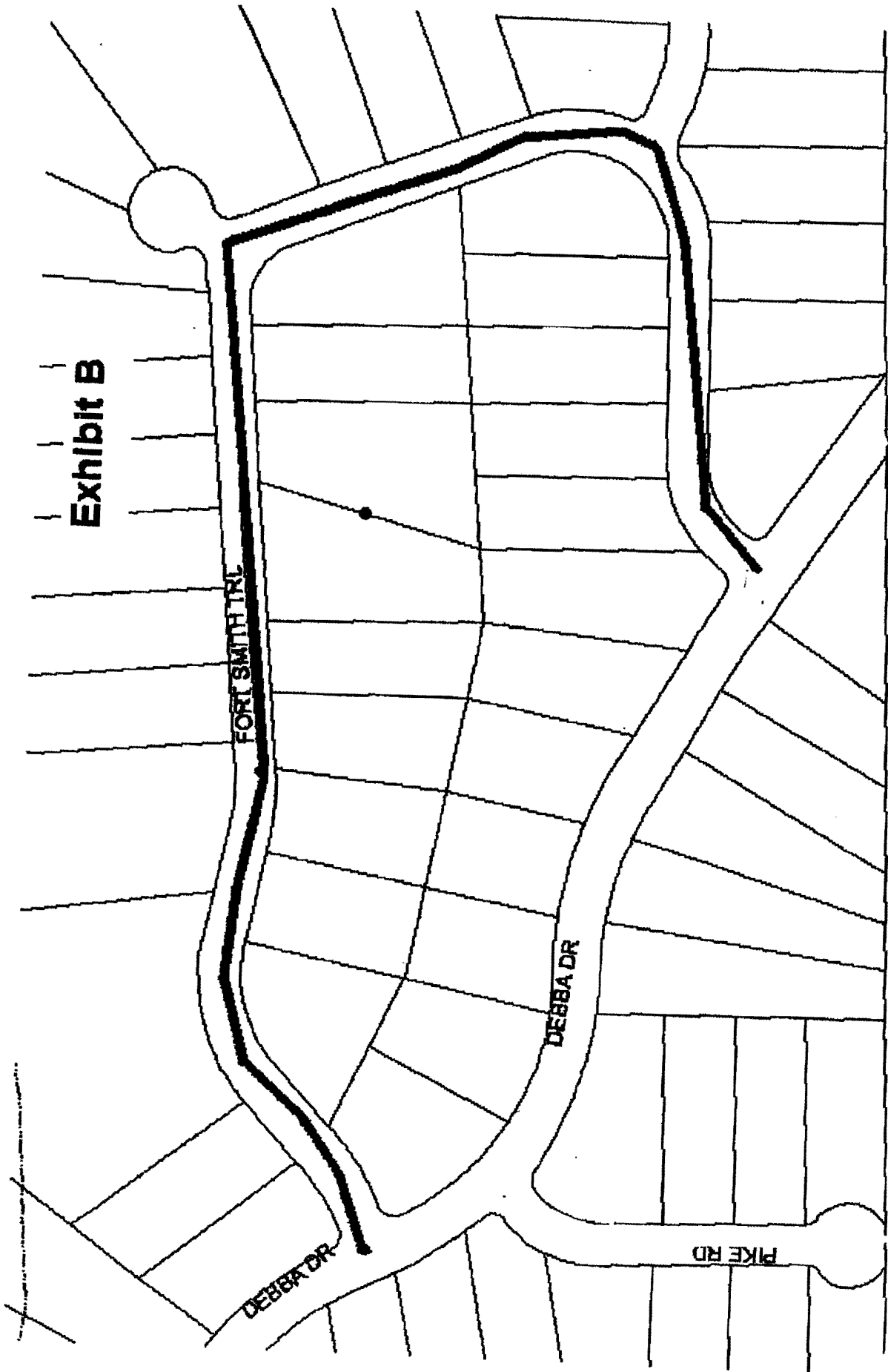
Scott Kulam 14314 FT. SMITH TR

David Zweranany 14206 Fort Smith Trail

Jon J. [unclear] 14104 Fort Smith Trail



**Exhibit B**





## **EXHIBIT C**

### **Computation of Apache Shores Property Owners Association's pro rata cost**

The calculation of the Association's Not-to-Exceed Cost is based on the County's estimate of the total construction cost for the Fort Smith Trail project (\$350,000) and the Association's pro rata financial share of the project (21.43%):

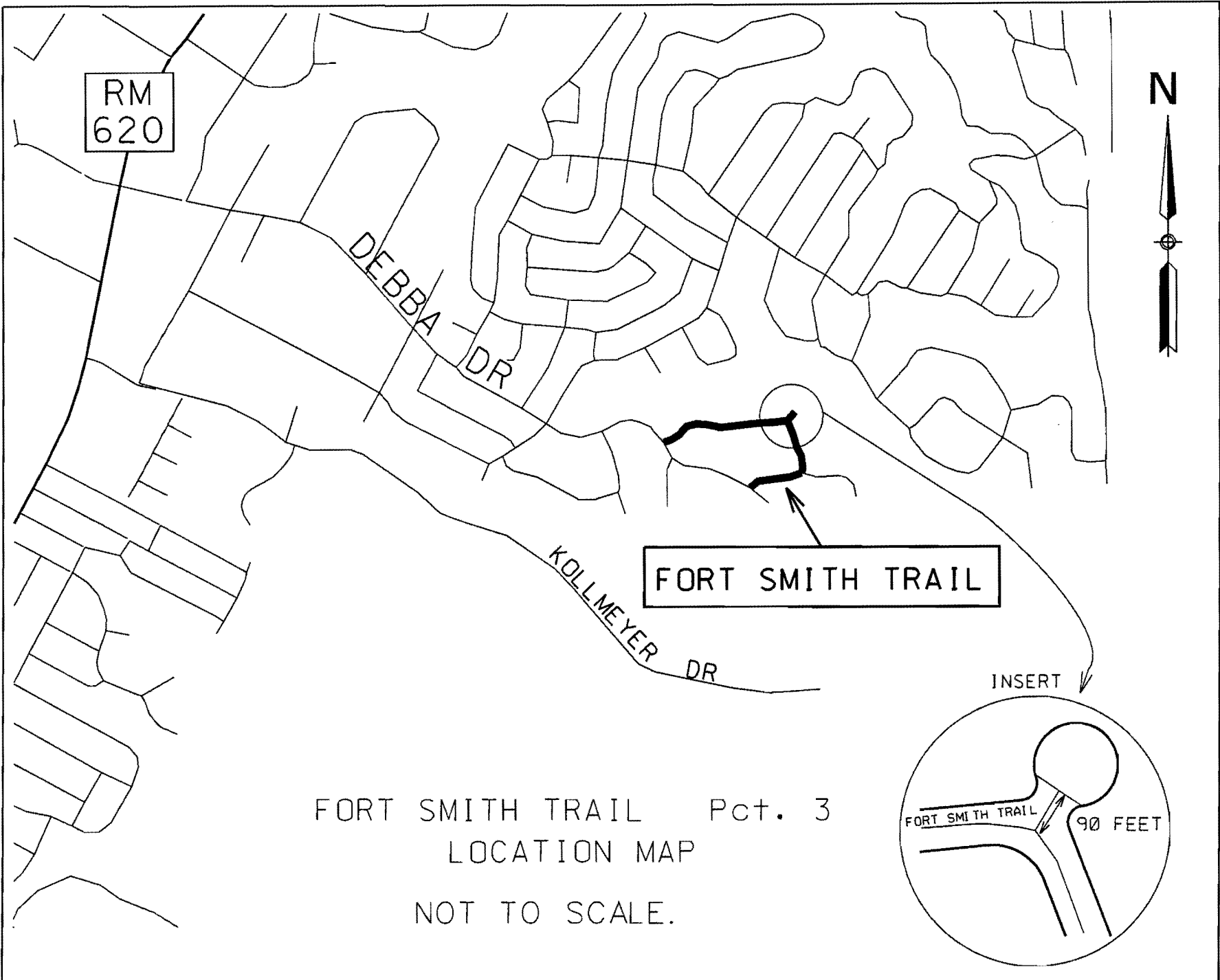
Association's Not-to-Exceed Cost = \$350,000 x (Association's pro rata share of the project 21.43%) = \$75,000

Upon completion of the construction of the Fort Smith Trail project, the actual cost of the project will be determined and used to compute the Association's actual pro rata cost. If the Association's actual pro rata cost is less than \$75,000, the difference shall be released to the Association.

The formula for calculating the Association's actual pro rata cost is as follows:  
Actual cost of the project x Association's pro rata financial share = Association's actual pro rata cost

The formula for calculating the amount of any unused funds, if any, to be returned to the Association is as follows:

Association's Not-to-Exceed Cost minus Association's actual pro rata cost equals amount to be returned.



RM  
620

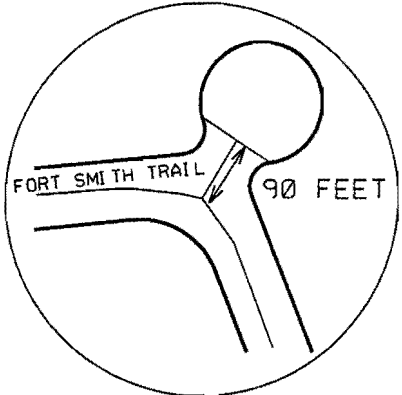
DEBBA  
DR

KOLLMAYER  
DR

FORT SMITH TRAIL



INSERT



FORT SMITH TRAIL Pct. 3  
LOCATION MAP

NOT TO SCALE.

**ACCEPTANCE OF DEDICATION OF STREETS AND DRAINAGE**



SUBDIVISION/STREET Fort Smith Trail  
 Mapsco No. (Subdivision Apache Shores Section 7)

Pct.# 3

CONTAINS 1 STREET AS LISTED BELOW:

#	STREET NAME	FROM - TO	TYPE OF WIDTH OF CURB &					
			L.F.	MILES	ROW	PVMNT	PVMNT	GUTTER
1	Fort Smith Trail	Debba Drive intersection and continuing in a loop to its ending point at the intersection with Debba Drive intersection, the cul-de-sac at 14200, 14202 and 14204 Fort Smith Trail is not included in this acceptance (see exhibit)	2406	0.46	50'	HMAC	20'	No
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

N/A ADDITIONAL LOTS SOLD FOR DEVELOPMENT

CONSTRUCTION OF STREETS AND DRAINAGE EXCEEDS MINIMUM COUNTY STANDARD FOR STREETS NUMBERED 1

IT IS RECOMMENDED THAT MAINTENANCE OF STREETS NUMBERED 1 TOTAL **0.46** MILES BE ACCEPTED BY THE TRAVIS COUNTY COMMISSIONERS' COURT IN PRECINCT **3**.

19-Jun-12  
DATE

\_\_\_\_\_  
Steve Manilla, P.E., County Executive  
TRANSPORTATION AND NATURAL RESOURCES

DP = DOUBLE PENETRATION  
 HMAC = HOT MIX ASPHALT  
 C = CONCRETE  
 UPP = UNPAVED, PIT RUN  
 UPS = UNPAVED, SELECT

\_\_\_\_\_  
Don Ward, P.E., Director of Road Maintenance and Fleet  
TRANSPORTATION AND NATURAL RESOURCES

\_\_\_\_\_  
APPROVED BY COMMISSIONERS' COURT DATE