



Travis County Commissioners Court Agenda Request

Meeting Date: October 29, 2013

Prepared By: Steve Sun **Phone #:** (512) 854-4660

Division Director/Manager: Steve Sun, P.E., Assistant Public Works Director

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

Sponsoring Court Member: Commissioner Davis, Precinct One
Commissioner Todd, Precinct Two

AGENDA LANGUAGE: Consider and take appropriate action regarding the following Capital Improvements Program Projects:

- A) Approve use of funds and direct staff to complete negotiations for the Second Amendment to the Braker Lane II Participation Agreement in Precinct One;
- B) Approve use of funds and direct staff to complete negotiations for the First Amendments to the Parmer Lane Participation Agreement and City of Austin Interlocal Agreement, in Precinct One; and
- C) Approve use of funds for the Wells Branch Parkway Project in Precinct Two.

BACKGROUND/SUMMARY OF REQUEST:

A) Braker Lane II project is a Tier 2 public-private partnership project approved by voters in the 2005 Bond Referendum. This project will construct a new 4-lane arterial roadway including bike lanes and sidewalks from FM 973 to Taylor Lane. A Participation Agreement was entered into by the developer (Club Deal 120 Whisper Valley L.P.) and the county in 2007. The total project cost was estimated to be \$13 million and the county's maximum participation amount was set at \$6.5 million; 50% of total project cost. The recession that began in 2008 made it extremely difficult to obtain traditional financing. The developer sought and was approved by the City of Austin to create a Planned Unit Development and a Public Improvement District that allowed him to sell bonds to finance his share of the project cost. The project was initially bid in December 2012. The low bid came in significantly over the budget. A value engineering analysis was performed which reduced costs by approximately \$500 thousand. The project was rebid in August 2013. The low bid still came in substantially higher than the budgeted amount. The developer has functioned as the project manager overseeing design and construction and has explained, in the attached letter, the major factors contributing to the higher costs. The developer can award the first phase of construction based upon the August bid results but the award must be made on or about November 8, 2013 otherwise the low bidder can withdraw.

The developer desires to move forward with the first phase of the project for which original funding is available. However, to complete the original project an amendment to the Participation Agreement is needed to revise the phasing and project budget. The proposed revision will include an interim 2-lane roadway that will provide emergency access in the event the project's primary access at FM 973 is blocked by flooding, accidents, and/or roadwork. It will also include a revised not-to-exceed amount for completion of the project. The fund source for the increase is shown on the attached fund report.

B) Parmer Lane project is a public-private partnership project approved by voters in the 2005 Bond Referendum. This project will construct a new 4-lane arterial from US Hwy 290 to SH 130. Phases IA, IB, and IIA of this project were completed under the initial Participation Agreement. The original developers are no longer parties to the agreement in part because of the downturn in the economy. In 2012, the county entered into a Participation Agreement with the current developer (Heart of Manor L.P. and Texas WH200 L.P.) to complete the Phase IIB, the last phase of this project. The maximum budget was set at \$6,300,000.00 in the new agreement. This project was bid on October 8, 2013 after including several alternative bid items intended to provide lower cost options for various elements of the project, The low bid came in at \$7,600,696.61. The developer is the project manager overseeing design and construction and has provided, in the attached letter, an explanation for the higher cost. The developer has requested to increase the maximum construction budget. The construction cost is shared among the developer, the City of Austin, and the county. TNR has not yet received confirmation from the city indicating that they will increase their cost share amount. The project cannot be awarded or re-bid until the funding gap is closed. The developer can award the construction contract based upon the results of the October bidding but the award must be done on or about January 8, 2014 or the low bidder can withdraw. The fund source for the increase is shown on the attached fund report.

C) Wells Branch Parkway Improvements were approved for funding in the 2005 and 2011 Bond Referendums. Use of the 2005 funds were contingent upon successfully negotiating a Participation Agreement with a developer, which did not occur. These funds were therefore reallocated to the sole Tier 2 project on the ballot. The 2011 bond funds were approved to once again partner with a developer to complete the 2005 project. A Participation Agreement must be executed by Dec 31, 2014 or these funds will be allocated to other projects. In 1999, a Partnership Agreement was entered into between the county and a developer. The developer agreed to donate all right-of-way and easement plus contribute \$500,000.00 towards completing one-third of the project. Capital Metro also contributed approximately \$1.2 million from its Build Central Texas funds. A preliminary construction cost estimate, prepared by TNR's engineer, indicates the project is significantly underfunded. The major factors for this include: improvements needed to bring existing stormwater management

infrastructures up to current standards, enhanced pavement structure required for high shrink-swell clay, and increasing construction costs resulting from an improved economy. The source of funds needed to complete the improvements to Wells Branch Parkway, from Immanuel Road to Cameron Road, is shown in the attached fund report.

STAFF RECOMMENDATIONS:

A) Braker Lane: TNR recommends completing the project because it will serve as a major east-west arterial in an area expected to grow quickly as the economy continues to improve. The Whisper Valley Development alone, which will straddle this roadway, is planned to add several thousand roof tops.

B) Parmer Lane: TNR recommends completing the project for which approximately \$2.2 million has already been spent to build the road, including approximately \$600 thousand for a new railroad crossing. This section of Parmer Lane is also needed to complete the connection to a county 2011 bond project (Wildhorse Connector).

C) Wells Branch Parkway: TNR recommends completing the project because Wells Branch Parkway is a major east-west arterial road running from Cameron Road to Loop 1. It will also serve as the main entrance to the Northeast Metro Park and provide access for a new Pflugerville ISD school site. It will intersect with the 2011 Bond project (4-lanes of Cameron Road) which will help improve the overall network capacity for this region.

TNR has identified potential existing fund sources and no new funds will be required.

ISSUES AND OPPORTUNITIES:

In each case, if funding is approved and verified, a budget adjustment is required to go forward. The issue of who pays for overruns on the two public-private partnerships requires further discussion with the County Attorney's Office. It also requires a response from the City of Austin and revisions to the Interlocal Agreement for Parmer Lane. The public-private-partnerships also require amendments to their Participation Agreements. TNR believes that the proposed fund sources are acceptable for the specified purposes but PBO, the County Attorney's Office, and the Bond Council have been asked to verify this; they may not have adequate time to do so by October 29, 2013. In that case, TNR requests that if the Court decides to approve the recommended budget changes, it does so contingent upon receiving such verification. Once verified, TNR will enter the appropriate budget amendments in SAP. Bids have been received for the two Public Private projects and they could be awarded if these issues are resolved. Braker Lane Phase 1 may be able to move to construction immediately since its initial phase of construction remains unchanged. It must however, do so on or about November 8, 2013. Parmer Lane

can also be readied for award quickly. It would require the city's agreement to increase their cost share and a possible amendment to their Interlocal Agreement with the county; in addition to revisions to the Participation Agreement, the correction of various omissions of standard purchasing provisions, and requirements included in county bid documents.

FISCAL IMPACT AND SOURCE OF FUNDING:

See attached Fund Report

ATTACHMENTS/EXHIBITS:

Fund Report
 Braker Lane Developer Letter Explaining Higher Costs
 Parmer Lane Developer Letter Explaining Higher Costs

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429
Tom Nuckols	Assistant County Attorney	CAO	(512) 854-9415
Leslie Browder	County Executive	PBO	(512) 854-9106
Nicki Riley	County Auditor	CAO	(512) 854-3227
Allan Miller	County Auditor's Office		(512) 854-9726

CC:

Steve Sun	TNR Public Works	TNR	(512) 854-3227
Isabelle Lopez	TNR Financial	TNR	(512) 854-7675
Donna Williams-Jones	TNR Financial Services	TNR	(512) 854-7677
Marvin Brice	Purchasing	TNR	(512) 854-9700
Cyd Grimes	Purchasing		(512) 854-9700

: :
3101 - Public Works/CIP -



Club Deal 120 Whisper Valley, Limited Partnership

9285 Huntington Square, North Richland Hills, Texas 76182 ♦ TEL: (817) 788-1000 ♦ FAX: (817) 788-1670

October 8, 2013

VIA EMAIL AND
FIRST CLASS MAIL

Mr. Steve Manilla, P.E.
County Executive, TNR
P.O. Box 1748
Austin, Texas 78767

RE: Braker Lane Participation Agreement and Project Cost Increase

Dear Mr. Manilla:

I am writing you in reference to our conversation of September 12th regarding the increased cost estimates to construct the Braker Lane Project (FM 973 to Taylor Lane) and our proposal to modify the scope of the Project so as to bring the costs back into the original Project budget.

The original Braker Lane Participation Agreement contemplated that construction would occur in four phases, originally with two segments of a two lane roadway extending from FM 973 to Taylor Lane, followed by two additional segments, so as to have a divided four lane roadway from FM 973 to Taylor Lane.

The parties originally executed the Participation Agreement in November 2007, agreeing to split the cost of construction - then estimated by the County using its numbers to be \$13 million. The Partnership's consultants reviewed the estimated construction cost at that time and agreed that it was reasonable for the project. We subsequently learned that the County intended for engineering, inspections, project management fees to be included in the Project budget which was not our understanding. At our meeting last week, we discussed the other reasons for the increase in costs for the Project, and as a result of our discussions we desire to propose to the County a revised scope of work as follows:

Re-scope the Project as follows:

- Construct a four lane improved roadway segment from FM 973 to its intersection with Village One, per the attached exhibit ("Phase 1"). Bids have been received for Phase 1.

- Construct a two lane interim roadway (2 – 12' lanes with 4' shoulders and no curb and gutter, sidewalk and drainage system) from Phase 1 to Taylor Lane (“Phase 2”) per the attached exhibit.
- Extend the four lane improved roadway segment (Phase 1) as the Project budget allows (“Phase 3”)

The re-scoped project would include the TxDOT improvements and improved structural standards that have recently been discussed and agreed upon. These additions have increased the Project budget by approximately One Million Dollars, so the revised Project budget would be Fourteen Million Dollars, which the parties would bear on an equal basis.

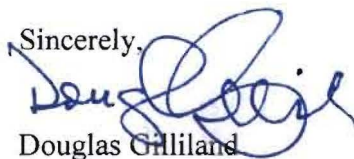
We envision the revised Project budget would include all costs of engineering, project management, inspections and testing for Phases 1 and 2.

At the completion of the re-scoped Project, we would enter into good faith discussions and negotiations towards improving the two-lane interim road to a four lane improved roadway as originally envisioned on a shared cost basis. Such negotiations would be subject to the County and the Developer having secured funding for their proportionate share of such costs. It is anticipated at this time that the additional cost to complete the 4-Lane road from the point of completion near Village 1 to Taylor Lane after spending the \$14,000,000 budget is \$4,517,026.03. This total would amount to a sharing of \$2,258,513.02 for each party.

As far as timing, given most of the engineering work has been completed for the re-scoped Project, we believe we can still construct Phases 1 and 2 by the original June 30, 2016 date contemplated in the Developer Participation Agreement.

We recognize the importance of this Project to the County and hope that by re-scoping it in the manner set forth herein, we can be near the original Project budget and timeline.

In closing, I hope this letter accurately captures the concepts discussed at our meeting of last week, and I look forward to continuing our discussions. In addition, we are happy to provide any additional information you need in connection with the Commissioners Court’s consideration of these matters, assuming you concur with these concepts for re-scoping the Project and amending the Project budget.

Sincerely,


Douglas Gilliland
Manager of Club Deal 120 Whisper Valley, L.P.

cc: Tom Nuckols
Via Email and First Class Mail



October 21, 2013

Mr. Steve Manilla; P.E.
Executive Director, Travis County TNR
P. O. Box 1748
Austin, TX 78767

RE: Parmer Lane Phase 2B Development Agreement
Tabulation of Construction Bids
Engineer's Recommendation of Award
Explanation of Project Cost Increases

Dear Mr. Manilla

You have asked me to address why there are cost overruns in the Parmer Lane Phase 2B now that the project has been bid out under our Invitation For Bid process.

Our Parmer Lane Development Agreement (PLDA) provided for a Project Construction Cost Estimate of \$6,300,000. By Letter dated October 16, 2013 Murfee Engineering recommended an award with selected alternates to Joe Bland Construction in the amount of \$7,600,696.61. This amount exceeds the PLDA project cost by \$1,300,696.61. The reasons for this increase in cost are as follows:

Enhanced Subgrade and Pavement Design:

As detailed geotechnical study data was developed in the design of the Parmer Lane Project, member participants Travis County and the City of Austin requested the Developer consider a more substantial, and costly subgrade and pavement design. Several bid alternates were specified reflecting these specifications and by agreement, the parties requested the design engineer to specify the more substantial subgrade and pavement design bid alternates. While the enhanced subgrade and pavement design added substantially to project cost, constructing the road in this manner will ultimately reduce future long term maintenance costs of the Parmer Lane Project which provides substantial public benefit.

More Costly Retaining Walls:

In 2011, the Lower Colorado River Authority, a public authority, installed a 325 KV Power Transmission Line adjacent to the proposed Parmer Lane extension pathway without sufficient and due consideration of the future construction of Parmer Lane. This transmission tower, which is more substantial because it handles a turn in the transmission lines, has oversized concrete piling footers. This created a situation that was beyond the Developer's control. As detailed design of the Parmer Lane project took place under the PLDA, it was determined that the embankment cuts near the electric transmission tower would require engineered, poured in place concrete retaining walls (that are more expensive than the retaining walls used elsewhere in this Parmer Lane project) to maintain the integrity of the transmission tower.

Sustainable Roadway Right of Way Re-vegetation:

The PLDA provided for an optional design for storm water management, avoiding the use of traditional structural water quality and detention ponds and their cost, instead, using right of way re-vegetation that would employ native plant species to create sustainable planting areas acting as bio swales to attenuate and treat storm water runoff, which is an innovative concept being pursued by both Travis County and the City of Austin. While more costly than using only grass, the Sustainable Roadway Design which is included in this project, will have lower long term maintenance costs than would have been required for conventional water quality and detention ponds, and will provide a more esthetic roadway which is a goal of the partners in this project and a benefit to the public.

Full Development of the WildHorse Connector/Parmer Lane Intersection:

As detailed project design took place under the PLDA, the Developer and project participants Travis County and the City of Austin agreed that the recommendations of the Traffic Impact Analysis for full build out conditions of the areas connecting to Parmer Lane and the WildHorse Connector would be built as a part of this project to avoid a partial demolition and retrofit of the intersection in the future. This full build out intersection added to this project costs but will provide for reduced construction costs in the future.

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All Concrete Sidewalks and Bike and Pedestrian Pathways

As detailed project design took place under the PLDA, the Developer and project participants Travis County and the City of Austin agreed that better safety and better American Disability Act compliance would be accomplished by utilizing all concrete sidewalks and bike and pedestrian paths, versus gravel pathways contemplated in the PLDA. This has added substantially to the original project cost estimate in the PLDA but will result in better safety and lower long term maintenance costs.

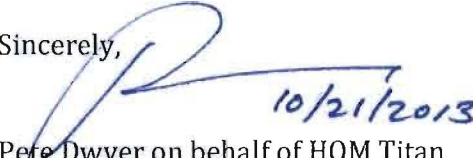
General Cost Increases Due to Market Conditions and a Rising Economy

Finally, for reasons beyond the control of either the Developer or Travis County or the City of Austin, prices have been increasing beyond what they were when the PLDA was written. This condition has impacted this project with a higher cost than originally estimated, through no fault of any of the parties.

Conclusion:

As detailed design of the Parmer Lane Phase 2B took place under the PLDA, project enhancements were integrated and designed into the final plans and specifications that went to bid. Each of these enhancements and changes to the original project design contemplated in the PLDA signed in March of 2012, were vetted by the Developer, Travis County and the City of Austin and agreed to be beneficial to the public. In the true sense that this Parmer Lane Phase 2B is a three way Public Private Partnership, these costs should be divided evenly between the three partners.

We ask this for your consideration.

Sincerely,

10/21/2013
Pete Dwyer on behalf of HOM Titan
CC Mr. Bill Peruzzi; Mr. David Armbrust



Legend

- Proposed Wells Branch Pkwy. Project
- Existing Wells Branch Pkwy.
- Municipal Jurisdiction limits

2 0 550 1,100 2,200 3,300 Feet

Texas State Plane Central Zone 4203

Disclaimer: Map for general reference only, provided "as is" with no warranties of any kind. Please contact the Travis County GIS Coordinator for questions or corrections at (512) 854-7641.

Data Source(s):
 Creeks, TNR, 07; Municipal Jurisdictions, TNR 9/07;
 Roads, TNR 0/07; Co. Boundary, TNR, 9/07;
 www.co.travis.tx.us, September 25, 2007

Wells Branch Parkway Project Map (Boulder Ridge Subdivision to Cameron Road)



Travis County
 Transportation & Natural Resources
 September 26, 2007
 www.co.travis.tx.us/maps

Whisper Valley Study Area

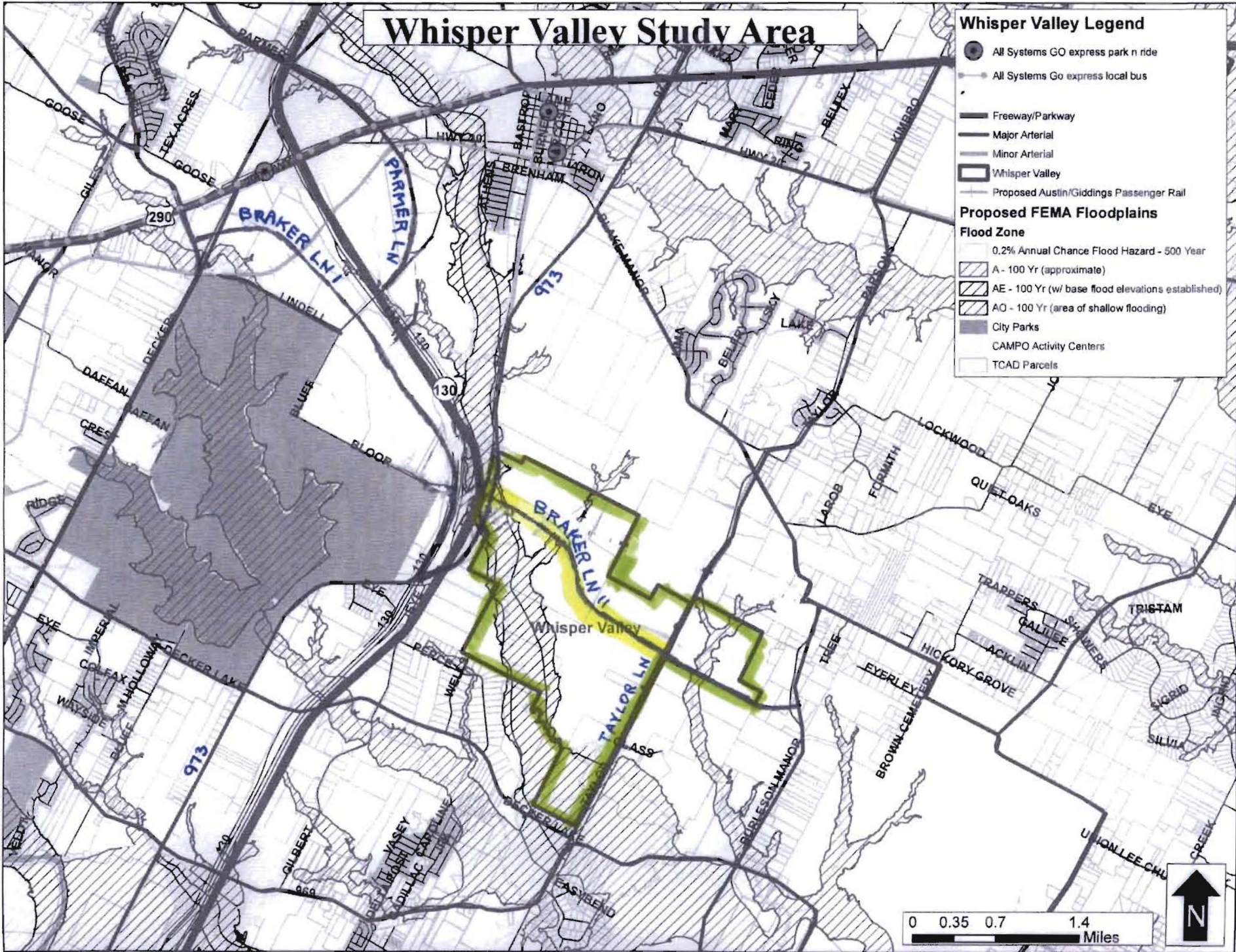
Whisper Valley Legend

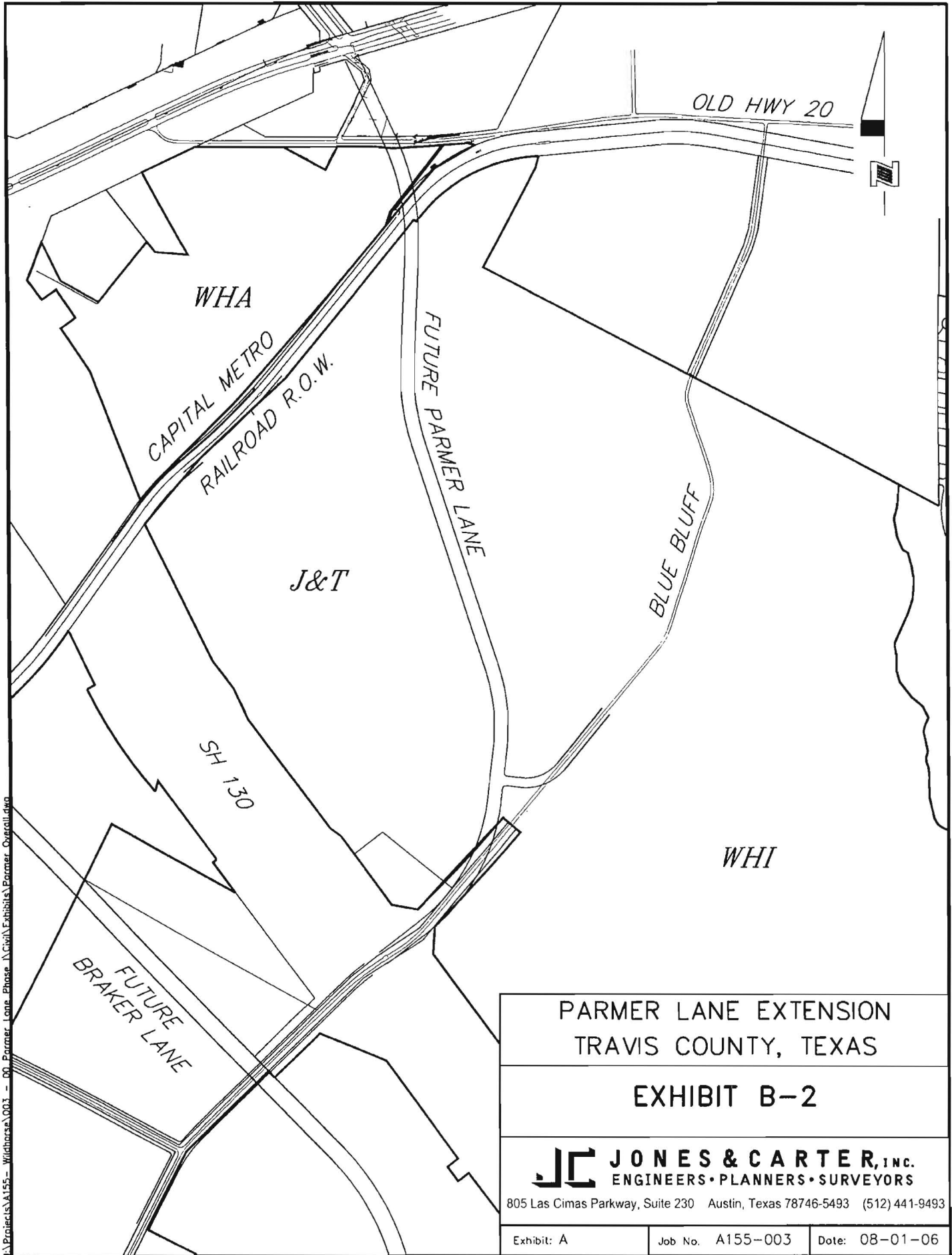
- All Systems GO express park n ride
- All Systems Go express local bus
- Freeway/Parkway
- Major Arterial
- Minor Arterial
- Whisper Valley
- Proposed Austin/Giddings Passenger Rail

Proposed FEMA Floodplains

Flood Zone

- 0.2% Annual Chance Flood Hazard - 500 Year
- A - 100 Yr (approximate)
- AE - 100 Yr (w/ base flood elevations established)
- AO - 100 Yr (area of shallow flooding)
- City Parks
- CAMPO Activity Centers
- TCAD Parcels





I:\Projects\A155 - Wichita\003 - 00_Parmer_Lane_Phase_1\Civil\Exhibits\Parmer_Overall.dwg

**PARMER LANE EXTENSION
 TRAVIS COUNTY, TEXAS**

EXHIBIT B-2

JC JONES & CARTER, INC.
 ENGINEERS • PLANNERS • SURVEYORS
 805 Las Cimas Parkway, Suite 230 Austin, Texas 78746-5493 (512) 441-9493

Exhibit: A	Job No. A155-003	Date: 08-01-06
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TNR-CIP Project Budget Status/Shortfall

C:\Users\barretc\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\AOBBM8EI\CIP Proj Budget Shortfall Report Agenda Item 102913 DWJ 102313 (final).xlsx]Budget Summary Shortfall

Project	Pct.	Original Approved		Current County Budget Amount	Expenditures Commitments	Remaining Budget	Total Add'l Estimated Funds Required to Complete Project	County Budget Balance/ Shortfall		Potential Fund Sources
		Amount Tier I Project	Amount Applied to Tier II Project							
Howard Lane	1	\$6,735,000	(\$6,032,000)	\$703,000		\$703,000	N/A	\$703,000		N/A
Wells Branch Parkway	2	\$2,780,000	(\$468,000)	\$2,312,000		\$2,312,000	N/A	\$2,312,000		N/A
Braker Lane Phil	1	\$0	\$6,500,000	\$6,500,000	(\$801,136)	\$5,698,864	\$9,258,573	(\$3,559,709)		
Total Braker Lane Phil		\$9,515,000	\$0	\$9,515,000	(\$801,136)	\$8,713,864	\$9,258,573		(\$544,709)	Shortfall after Tier I Fund Adj.- 2005 Unallocated Prop 1 Proceeds
Parmer Lane	1	\$3,705,000		\$3,705,000	(\$2,200,275)	\$1,504,725	\$3,040,279	(\$1,535,554)		2001 and 1997 Pct 1 Road Bond Savings
Wells Branch Parkway Improvements	2	\$9,668,465		\$9,668,465	(\$755,333)	\$8,913,132	\$10,965,000	(\$2,051,868)		2005 Unallocated Prop1 Proceeds
Boulder Ridge South	2	\$0	\$0	\$0	\$0	\$0	\$4,600,000	(\$4,600,000)		2001 and 1997 Pct 2 Road Bond Savings
								(\$11,747,131)		

S:\CAPITAL IMPROVEMENT PROJECTS (CIP)\Reports - Miscellaneous\FY 2014\[Copy of Copy of Copy of Budget Shortfall Report Agenda Item 102913 DWJ 102313 (final).xlsx]Budget Summary Shortfall

Account Information:				
Project	Cost Ctr	Fund	GL	Amount
Braker Ln Phase II-Howard Ln Tier I Allocation	1490190000	4058	580060	\$ 703,000
Braker Ln Phase II - WB Pkwy Tier I Allocation	1490190000	4058	580060	\$ 2,312,000
Braker Ln Phase II - 2005 Bond Prop 1 Unallocated	1490190000	4058	580060	\$ 544,709
				\$ 3,559,709
Parmer Lane - 2001 Pct 1 Road Bond Savings	1490190000	4054	521040	\$ 1,265,872
Parmer Lane - 1997 Pct 1 Road Bond Savings	1490200000	4019	521040	\$ 269,682
				\$ 1,535,554
Wells Branch Pkwy - 2005 Bond Prop 1 Unallocated	1490190000	4061	580060	\$ 2,051,868
Boulder Ridge South-WB Pkwy - 1997 Pct 2 Road Bond Savings	1490200000	4019	521040	\$ 42,460
Boulder Ridge South-WB Pkwy - 2001 Pct 2 Road Bond Savings	1490190000	4054	521010	\$ 979,375
Boulder Ridge South-WB Pkwy - 2001 Pct 2 Road Bond Savings	1490190000	4054	521030	\$ 656,000
Boulder Ridge South-WB Pkwy - 2001 Pct 2 Road Bond Savings	1490190000	4054	521040	\$ 2,648,736
Boulder Ridge South-WB Pkwy - 2001 Pct 2 Road Bond Savings	1490190000	4054	580060	\$ 273,429
				\$ 4,600,000
Overall Total				\$ 11,747,131