

**INTERLOCAL AGREEMENT BETWEEN
HAYS COUNTY AND THE CITY OF KYLE
RELATED TO THE CENTER STREET UNION PACIFIC RAIL SIDING 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 _____ August 2021, 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 relocate the Center Street Union Pacific Rail Siding from Kohlers Crossing to approximately 2,000 feet north of Burleson Street; and

WHEREAS, the Center Street Union Pacific Rail Siding Project lies within the city limits of Kyle; and

WHEREAS, the County and the City desire to cooperate in the expeditious relocation of Center Street Union Pacific Rail Siding from Kohlers Crossing to approximately 2,000 feet north of Burleson Street (the “**Project**”).

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**

1.01 General. The purpose of this Agreement is to provide for the City’s participation in the design and construction of the Project (Participation). The Project includes the planning and construction of the relocation of Union Pacific siding track from Kohlers Crossing to approximately 2,000 feet north of Burleson Street, including track centers with power switches and bridges, at the approximate location shown on Exhibit A.

II. COUNTY OBLIGATIONS

2.01 Design and Environmental Clearance Costs. The County shall be responsible for contracting with Union Pacific Railroad (UPRR) regarding the engineering and design costs for the Project. The County shall also be responsible for costs related to the environmental clearance for the Project. The Project engineering, design and environmental clearance costs for which the County is responsible are estimated to be \$975,000.00. The County is also responsible for funding the preliminary design, environmental clearance and 30% construction plans for the Center Street Union Pacific Rail Siding Project companion project, the Kohlers Crossing Railroad Overpass Project, estimated to be \$800,000.00. The County anticipates the Kohlers Crossing Railroad Overpass Project could be funded via a future grant process. The County's participation is shown on Exhibit B.

2.02 Right-of-way Acquisition and Utility Relocation Costs. The County shall assist in the acquisition of right-of-way in cooperation with UPRR as requested and necessary and shall advance fund the right-of-way (ROW) acquisition costs. ROW costs expended after the execution of an Advance Funding Agreement by the County and the Texas Department of Transportation will be eligible for reimbursement through CAMPO 2018 project call grant funding (CAMPO funding) and Transportation Development Credits (TDCs) awarded to the project. ROW costs are currently estimated at \$2,416,926.00. The County shall assist in the utility relocation in cooperation with UPRR as requested and necessary and shall advance fund the utility relocation costs. Utility relocation costs are not eligible for reimbursement through the CAMPO grant funding or Transportation Development Credits. City shall be responsible for the utility relocation costs for the Project, currently estimated at \$166,500.00 and be solely responsible for the relocation of any City utilities.

2.03 Construction Costs. The estimated Project Construction Cost is \$13,068,401.00. The County will fund these costs in anticipation of reimbursement of CAMPO funding and TDCs. and which will be funded through the Texas Department of Transportation (TxDOT) as laid out in the Advance Funding Agreement between TxDOT and the County.

2.04 Construction Plans. The County and the City will mutually approve the plans and specifications related to the Project. Any changes or modifications to the plans will be submitted to the City for review and approval prior to commencing construction.

2.05 Inspection. This section is applicable in the event the County is responsible for the construction of the Project. The City may inspect all aspects of the Project during construction. Upon receipt of notification from the City that the City's inspectors determine the construction by the County is not in accordance with the approved project plans, the County shall cease construction until the deficiency can be identified, and a corrective plan of construction implemented with the agreement of the City.

2.06 Permits. This section is applicable in the event the County is responsible for the construction of the Project. The County shall be responsible for obtaining permits, if any, required for the construction of the Project.

2.07 Insurance, Bonds and Warranties. This section is applicable in the event the County is responsible for the construction of the Project. The County shall require the contractor for the Project to name the City as an additional insured on any policies related to the Project. The County shall require the contractor to provide performance bonds in favor of the City for the Project in amounts satisfactory to the City.

III. CITY OBLIGATIONS

3.01 Right-of-way Acquisition, Utility Relocation and Direct Costs. The City shall be responsible for ROW costs for the project that are not reimbursed, either through CAMPO funding or TDCs. The City shall be responsible for the utility relocation costs associated the project, currently estimated at \$166,500.00. Additionally, the City shall be responsible for TxDOT's Direct costs, estimated to be \$327,940.00. The City's total funding responsibilities for costs covered in this Interlocal Agreement shall not exceed the City's original commitment of \$1,230,000.00 as stated in the City's original CAMPO 2018 project call application. The City's cost responsibilities, including an estimated amount available to be funded by the City for Project expenses either not eligible for reimbursement by CAMPO grant funding or TDCs or exceed those funding sources, is shown on Exhibit B.

3.02 Terms of Reimbursement. The City will initiate reimbursement to the County beginning in Fiscal Year 2022. The first reimbursement will be paid to the County within 30 days after receipt of invoice and be paid on a quarterly basis. The amount payable by the City will be determined based on funds expended by the County during the previous quarter for expenses as described in Section 3.01; however, the total TxDOT Direct costs will be included in the first invoice to the City. Total payment to the County will be accomplished by the end of Fiscal Year 2026.

3.03 Permission to Construct. The City agrees to allow the County to construct the Project within the City's boundaries in the event the County is responsible for construction of the Project.

3.04 Acquisitions and Relocations. The City agrees to be solely responsible for the relocation of any City utilities within the right-of-way or otherwise affected by the Project. This obligation is in addition to the City Participation as stated above.

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 agree 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 the acceptance of the project.

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 make reimbursement payments 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.

5.09 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: City of Kyle
100 W. Center Street
Kyle, Texas 78640
Attn: City Manager
Telephone:
Facsimile:

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 **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 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: _____

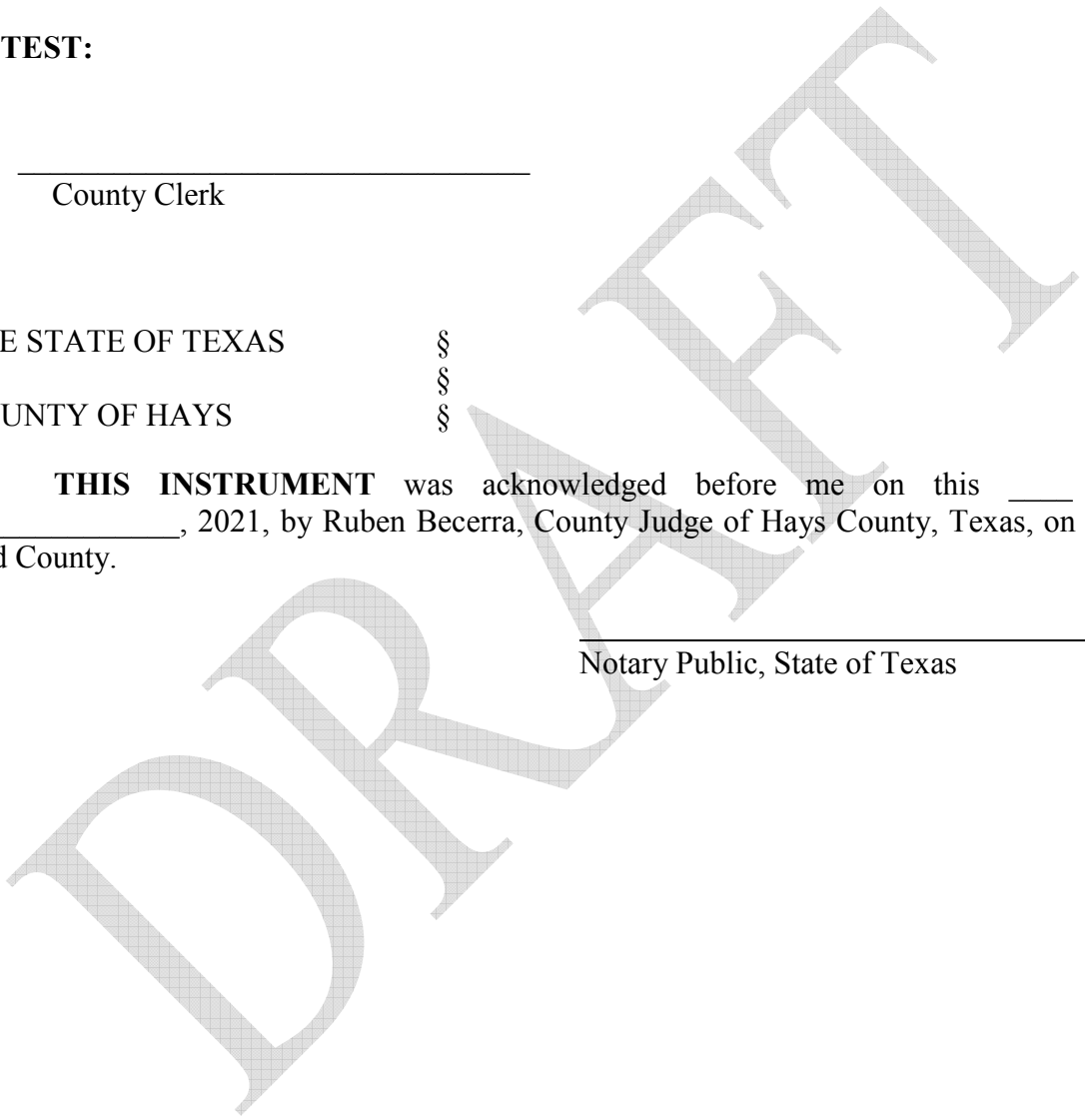
ATTEST:

By: _____
County Clerk

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2021, by Ruben Becerra, County Judge 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

§

COUNTY OF HAYS

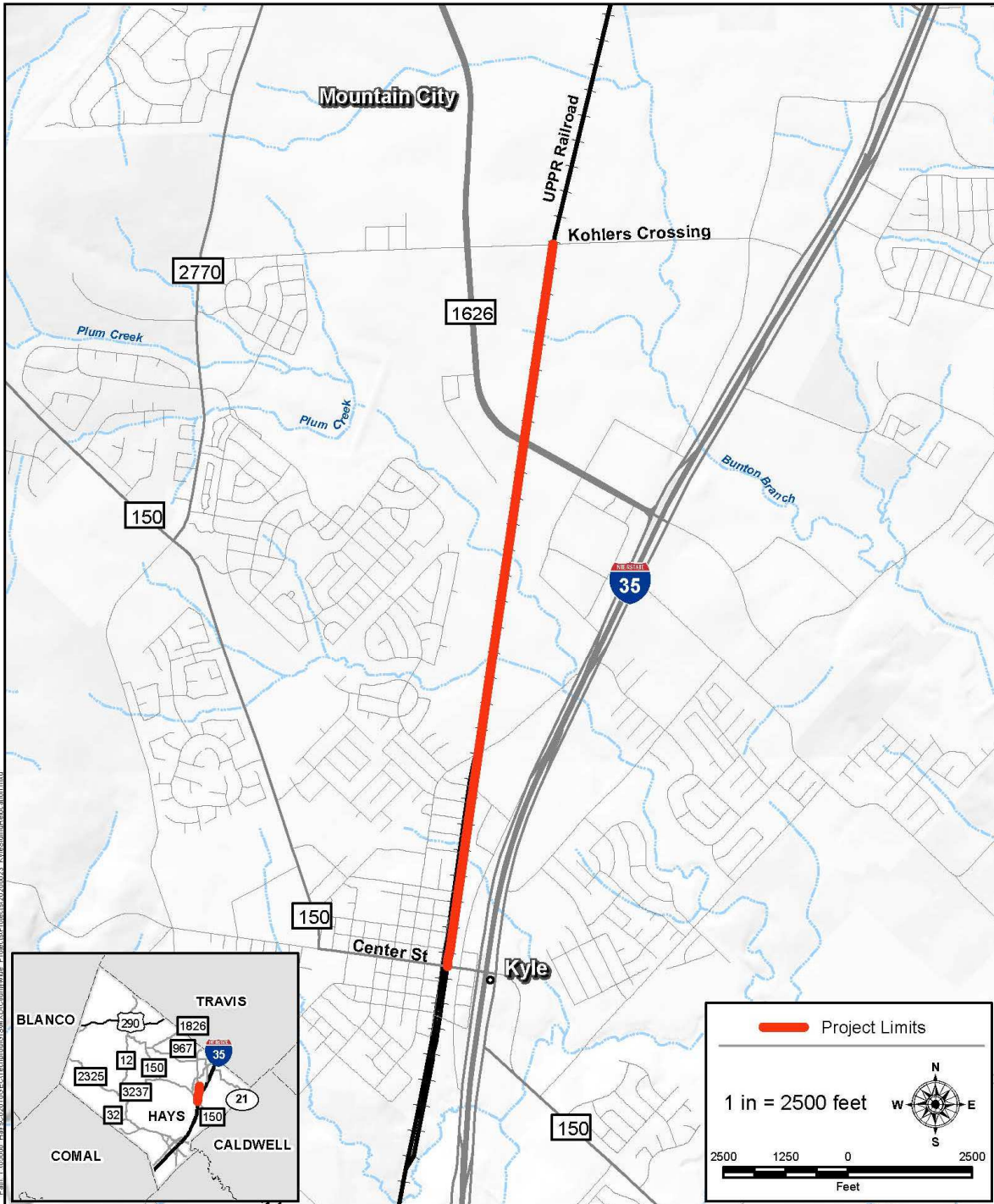
§

§

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2021, by _____, Mayor, of the City of Kyle, a Texas home-rule city, on behalf of said city.

Notary Public, State of Texas

EXHIBIT A
PROJECT LOCATION



KYLE SIDING RELOCATION
HAYS COUNTY, TX

EXHIBIT B

<u>CENTER STREET UNION PACIFIC RAIL SIDING PROJECT</u> <u>CITY OF KYLE PARTICIPATION</u>	
Description	Total Estimated Cost
City Utility Relocation	\$166,500.00
TxDOT Direct Costs	\$327,940.00
Available Amount for City Reimbursement to County (ROW, Utility Relocation, Construction, additional CAMPO applications, County costs in excess of \$1.5M, etc.)	\$735,560.00
TOTAL MAXIMUM CITY PARTICIPATION	\$1,230,000.00

<u>CENTER STREET UNION PACIFIC RAIL SIDING PROJECT</u> <u>HAYS COUNTY PARTICIPATION</u>	
Description	Total Estimated Cost
Preliminary Engineering	\$675,000.00
Environmental	\$300,000.00
Preliminary Engineering (Kohlers Crossing)	\$800,000.00
TOTAL HAYS COUNTY PARTICIPATION	\$1,775,000.00

Note: Above project costs are estimates. Final project costs will be determined.