

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF KYLE, TEXAS AND
HAYS COUNTY, TEXAS FOR THE IMPROVEMENT OF PARK
FACILITIES AT SITES OWNED BY THE CITY OF KYLE, TEXAS**

This Agreement is made and entered into by Hays County, a political subdivision of the State of Texas ("County") and the City of Kyle, Texas ("City") under the authority of Chapter 791, of the Texas Government Code.

For and in consideration of the mutual agreements herein exchanged, County and City hereby contract as follows:

I. Purpose and Legal Authority.

- 1.1 The purpose of this Agreement is to provide for the design, bidding, and construction of various park improvements on multiple properties used for park and/or conservation purposes owned by the City. The Properties are all located within the corporate limits or the Extra Territorial Jurisdiction of the City of Kyle in Hays County. Improvements for each of the Projects are described in Exhibits "A" and "B" attached hereto and incorporated herein by reference and collectively referred in this Agreement as "the Projects", and individually known as Project #1: Sportsplex Park Improvements, Project #2: Plum Creek Trail Improvements, Project #3: Gregg-Clarke Park Improvements. As more specifically provided herein, the County is providing Bond Funds and the City will provide Matching Funds for improvement of the Projects. City and County, as units of local government, are authorized by §791.011 of the Texas Government Code to contract with each other to perform certain governmental functions and services. As defined in §791.003 of the Texas Government Code, such governmental functions and services include parks and recreation.
- 1.2 The County's obligations under this Agreement include the funding of some of the improvements upon the Projects, which will enhance their utility as a public parks and/or trail and conservation areas, from the proceeds of bonds issued with the approval of the voters of Hays County, Texas at an election held on November 3, 2020 (the "Bond Funds"), authorizing

the issuance of general obligation bonds in the amount of \$75,000,000.00 for parks, trails, recreation, and related projects.

1.3 All of the duties and obligations of the County and the City under this Agreement shall be performed from lawfully available current revenues.

1.4 This Agreement has been approved by the Hays County Commissioner's Court and the Kyle City Council as required by §791.011 of the Texas Government Code.

II. Term of Agreement.

2.1 This Agreement is made for a term beginning on the 19th day of July 2022 and shall remain in effect until the Projects have been completed, or until terminated by either Party under the terms of this Agreement.

III. City's Duties - General

3.1 City staff shall prepare bid documents and construction contract(s) (whether one or more, the "Construction Contract"), and shall award competitively bid contract(s) for construction and improvement of the Projects.

3.2 In consideration of County's obligations under this Agreement, City shall:

- a. Provide \$10,000,000.00 USD, which shall represent funds that match County's contribution of funds under this Agreement ("Matching Funds"). Said Matching Funds, approved by the voters of Kyle, Texas on the November 3, 2020 ballot for improvement of the parks and open space projects described herein, are further described in Section 4.4 of this Agreement.
- b. in any Construction Contract executed for improvement of the Projects, require payment and performance bonds, insurance, and all other terms and conditions that the City normally includes in a public park construction contract and in accordance with all applicable federal and state laws and city ordinances;
- c. in any Construction Contract executed for improvement of the Projects, provide that, regardless of the sources of funds to be paid to the Contractor, the funds that are paid

to Contractor from the proceeds of the County's bond sale, which shall be paid in lump sum to City and which are authorized by the voters of Hays County, Texas, shall not exceed County's total contribution of Bond Funds for the particular Project on which Contractor is working, as cited in Exhibit "A".

IV. City's Duties - Construction Phase of the Project.

- 4.1 The City shall monitor any Contractor's compliance with all terms and conditions of the Construction Contract. City staff shall notify Contractor, in writing of any deficiencies or defaults.
- 4.2 The City shall inspect the work done by any Contractor to verify the delivery of materials and completion of work as represented in each payment draw.
- 4.3 City staff shall review and approve payment draw requests and supporting documentation.
- 4.4 City hereby represents that County's grant of funds cited in Section 3.2(c) shall be matched by an equivalent amount of funding generated from the \$10,000,000 in general obligation bonds for the planning, designing, constructing, improving and equipping of, and acquisition of real property for, parks approved at the November 3, 2020 municipal bond election, and such other sources determined appropriate by the City (the "Matching Funds").

V. County's Rights and Duties.

- 5.1 County shall appoint a Program Manager to process and monitor the distribution of funds to City. Distribution of funds shall be performed in a series of draws, utilizing the Draw Request form attached hereto as Exhibit "C" and incorporated herein, for all purposes. Draw Requests shall be fulfilled after administrative approval of the request by the County's Program Manager and staff, with consideration given to the match provided by the City, as well as the intended uses of funding identified in the Draw Request.
- 5.2 County, or its designated Program Manager, shall, upon ten (10) days' written notice to City, have a right to inspect all receipts, invoices, proofs of purchase, and records of expenditures related to the Projects.

VI. Conditions Precedent.

- 6.1 This Agreement shall become effective and binding on the City and the County upon approval by the Hays County Commissioners Court and the Kyle City Council.
- 6.2 **Public Dedication of Park Improvements.** The City hereby presents evidence to the County that a) the Properties associated with all Projects are or will be burdened with a public dedication, or its equivalent, that runs with the land and grants a right of access to the public, with reasonable limitations on the time, place, and manner of the public's use ("Public Dedication").

VII. Amendments.

- 7.1 This Agreement can be amended only by written approval of the Hays County Commissioners Court and the Kyle City Council.

VIII. Representations.

- 8.1 City and County each make the following representations to each other as inducements to enter into this Agreement:
- a. That it has the legal authority to enter into this Agreement for the purposes stated herein and to perform the obligations it has undertaken hereunder;
 - b. That the meetings at which this Agreement and any amendments were approved were held in accordance with the Texas Open Meetings Act, Chapter 551, Texas Government Code;
 - c. That it has been represented by legal counsel and has had legal counsel available to it for consultation prior to entering into this Agreement;
 - d. That the officer who signed this Agreement has the legal authority to sign documents on its behalf;
 - e. That before this Agreement was approved, its governing body had already identified and its staff had already segregated sufficient lawfully available current funds for performance of all of its obligations under this Agreement even if such performance

extends beyond the fiscal year in which this Agreement was approved and executed.

IX. Severability.

- 9.1 If any clause, sentence, paragraph or article of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion. To this extent, the provisions of this Agreement are declared to be severable.

X. Entire Agreement.

- 10.1 This Agreement contains the entire agreement between the parties respecting the subject matter hereof, and supersedes all prior understandings and agreements between the parties regarding such matters. This Agreement may not be modified or amended except by written agreement duly executed by City and County and approved in the manner provided in Section VII above.

XI. Interpretation

- 11.1 The parties acknowledge and confirm that this Agreement has been entered into pursuant to the authority granted under the Interlocal Cooperation Act, which is codified as Chapter 791 of the Texas Government Code. All terms and provisions hereof are to be construed and interpreted consistently with that Act. This Agreement shall not be more strictly construed against either City or County.

XII. Applicable Law and Venue

- 12.1 This Agreement shall be construed in accordance with the laws of the State of Texas. All obligations hereunder are performable in Hays County, Texas, and venue for any action arising hereunder shall be in Hays County, Texas.

XIII. Miscellaneous

- 13.1 If County determines that funds provided under this Agreement were not used for the purposes indicated and approved in the City's Draw Request(s), the County shall have a right to terminate this Agreement and seek reimbursement of the misspent funds. Termination shall be achieved

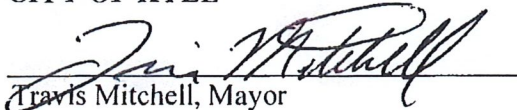
after the County provides thirty (30) days' written notice to the City, offering the City an opportunity to cure its default status. If the City is able to cure its default status during the thirty (30) day term after notice, then the County shall withdraw its termination notice. Otherwise, termination shall become effective at the conclusion of the thirty (30) day term.

13.2 The Parties agree that the funds paid by County under this Agreement shall not be utilized to fund in-house City operations or labor, shall not be utilized to pay for soft costs associated with any of the Projects named in this Agreement, and shall not be utilized to fund equipment that is anticipated to depreciate fully within twenty (20) years. County funds shall be utilized to secure real property interests and/or to implement capital improvements associated with the Projects identified herein.

13.3 The City agrees that any entrance signage, building signage, or advertising associated with the Projects identified herein shall include reference to Hays County as a contributor to the Projects. This section shall not pertain to directional signage or other signage posted to facilitate the functions of the Project. The County hereby gives permission to the City to utilize the Hays County Seal as a means of fulfilling its obligations under this Section. On or about the Effective Date of this Agreement, the County shall provide the City with electronic files of its Seal for fulfillment of this Section.

EXECUTED and **EFFECTIVE** on the last date signed by the duly authorized officials, below.

CITY OF KYLE


Travis Mitchell, Mayor

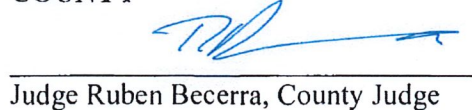
7/19/2022
Date

ATTEST:


City Secretary

7/19/2022
Date

COUNTY


Judge Ruben Becerra, County Judge

20 July 2022
Date


County Clerk

7-20-2022
Date



Exhibit A
The Projects

PROJECT#1: SPORTSPLEX PARK IMPROVEMENTS

Hays County's total contribution to the Sportsplex Park Improvements shall not exceed \$7,000,000.00, excluding any funds granted by Hays County previous to this Agreement, unless City is able to complete one of the other Projects under this Agreement for less than the budgeted amount of Bond Funds for that Project, in which case, if approved by the County's Program Manager and the Hays County Auditor, the remaining funds from that Project may be applied to cost overruns associated with any other Project named herein. The following is a sample breakdown of the improvements and amenities to be purchased from Bond Funds for the Sportsplex Park Improvements.

Park Elements:

1 Mile of Multi-Purpose Trail

Picnic Areas

Covered Pavilion

Outdoor Public Restrooms

Inclusive Playground

Skateboard Park

Competition Soccer Field Complex

Sand Volleyball Courts

Basketball Courts

Outdoor Amphitheatre

Fitness/Strength Equipment

Recreation/Practice Fields

Landscaping including trees/revegetation

Parking

Environmental Interpretation

TOTAL-+-+-+ \$7,000,000 (Bonds Funds and Matching Funds)

NOTE: All work to be designed and constructed to meet City of Kyle codes & standards.

PROJECT #2: PLUM CREEK TRAIL IMPROVEMENTS

Hays County's total contribution to the Plum Creek Trail Improvements shall not exceed \$2,000,000.00, excluding any funds granted by Hays County previous to this Agreement, unless City is able to complete one of the other Projects under this Agreement for less than the budgeted amount of Bond Funds for that Project, in which case, if approved by the County's Program Manager and the Hays County Auditor, the remaining funds from that Project may be applied to cost overruns associated with any other Project named herein. The following is a breakdown of the improvements and amenities to be purchased from Bond Funds for the Plum Creek Trail Improvements.

Park Elements**7 Miles of Multi-Purpose Concrete Trail****Shaded "rest stops" along the trail****Outdoor Public Restrooms****Interactive Kiosks****Trail Machinery****Parking Access****Interpretive Signage****Exercise Equipment****Emergency Call Stations****TOTAL-+-+--+ \$2,000,000.00 (Bonds Funds and Matching Funds)*****NOTE: All work to be designed and constructed to meet City of Kyle codes & standards.***

PROJECT #3: GREGG-CLARKE PARK IMPROVEMENTS

Hays County's total contribution to the Gregg-Clarke Park Improvements shall not exceed \$1,000,000.00, excluding any funds granted by Hays County previous to this Agreement, unless City is able to complete one of the other Projects under this Agreement for less than the budgeted amount of Bond Funds for that Project, in which case, if approved by the County's Program Manager and the Hays County Auditor, the remaining funds from that Project may be applied to cost overruns associated with any other Project named herein. The following is a breakdown of the improvements and amenities to be purchased from Bond Funds for the Gregg-Clarke Park Improvements.

Park Elements:

Bathrooms

Concessions

Interior Park Road

Landscaping and Irrigating

Leveling & Grading

Spectator Improvements

Skateboard Park

Ash Pavilion

Playground Improvements

Lighting Improvements

Sod Repair

Basketball/Tennis Court Repair

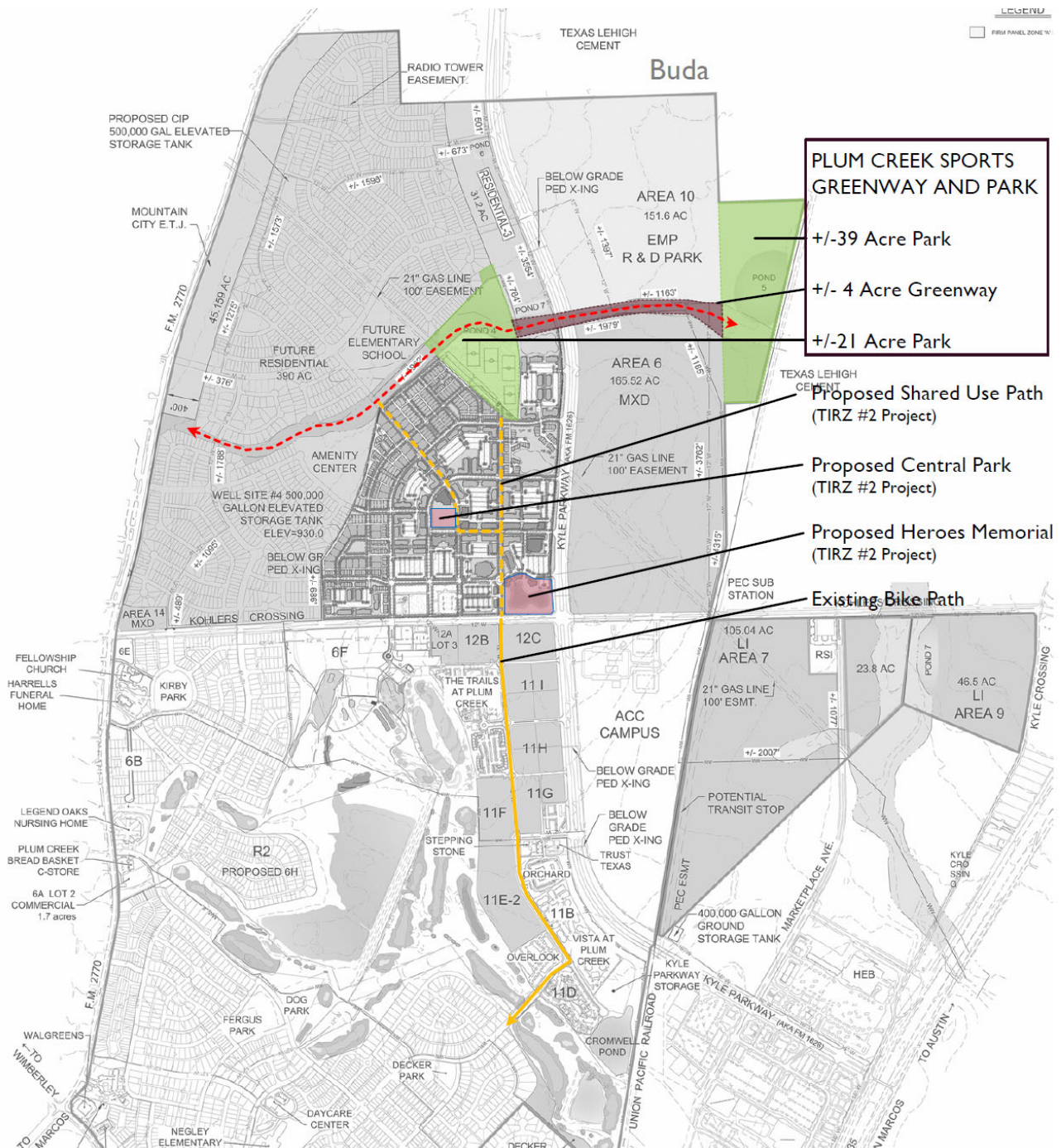
TOTAL -+-+-+---+---+ \$1,000,000.00 (Bonds Funds and Matching Funds)

NOTE: All work to be designed and constructed to meet City of Kyle codes & standards.

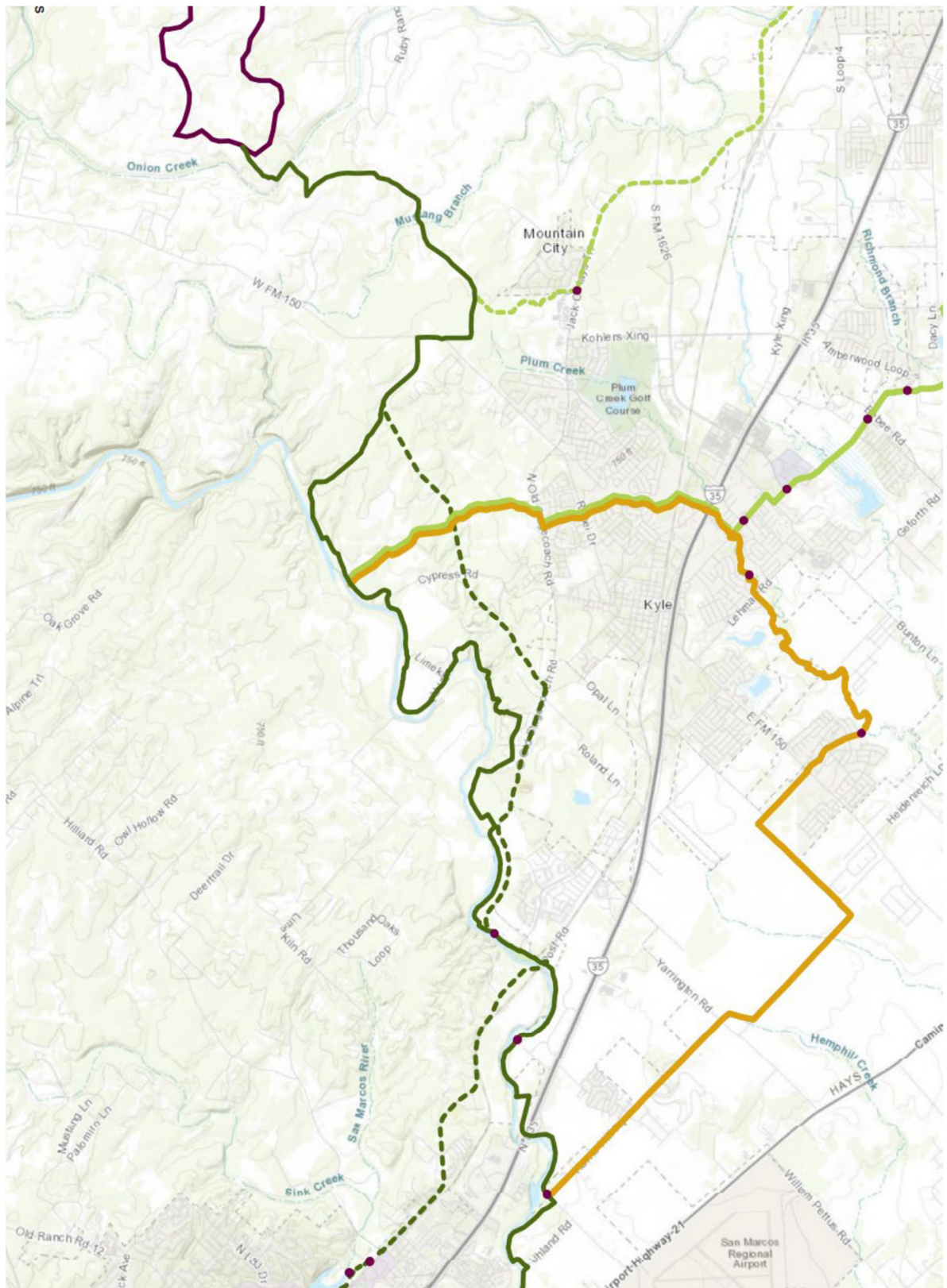
Project Site Plans

Site Plans may be changed during design and construction of the projects. However, if such changes cause any Project to become substantially different than the Project contemplated on the Effective Date, City shall request and receive written approval of County prior to the implementation of those changes. Site Plans for each of the Park Projects that are the subject of this Agreement are as follows.

PROJECT #1: SPORTSPLEX PARK IMPROVEMENTS - SITE MAP



PROJECT #2: PLUM CREEK TRAIL IMPROVEMENTS - SITE MAP



PROJECT #3: GREGG-CLARKE PARK IMPROVEMENTS-SITE MAP



Exhibit C

Draw Request Form

Hays Park Bond 2020 – Funding Draw Request

Project Name: _____ Date of Request: _____

Sponsor Name: _____ Contact Person: _____

Sponsor Address: _____ Federal Tax ID: _____

City, State, Zip: _____ Phone Number: _____

Request Number	Total Funding Amount	Funds for:
	(Round all numbers to the nearest dollar)	<input type="checkbox"/> Land \$ _____
		<input type="checkbox"/> Soft Costs \$ _____
1. Total Project Amount \$ _____		<input type="checkbox"/> Construction \$ _____
2. 10 % Retainage - \$ _____		<input type="checkbox"/> Other \$ _____
3. Project Amt minus 10% retainage = _____ (Line 1 minus Line 2)	Explanation: _____	
4. Subtract total amount of current draw - \$ _____	_____	
5. Available balance = \$ _____ (Line 1 minus Line 2)		
6. Subtract amount of current draw - \$ _____		
7. Balance after payment = \$ _____		
Is this your FINAL Draw? <input type="checkbox"/> YES <input type="checkbox"/> NO (if yes, continue to line 8)		
8. IF this is your FINAL DRAW include 10% retainage + \$ _____ (Line 2)		
9. Total requested amount = \$ _____ (Line 6 plus Line 8)		

NOTE: The final request must be accompanied by documentation suitable to determine project completion (CO, Deed Recordation, etc).

Documentation required for the payment request includes:

1. Contractor/Consultant Payment Request
2. Progress Report w/ updated schedule
3. Documentation for Acquisition, to include deed and closing documents.
4. Documentation for soft costs to include invoices that show an itemization of the work completed.

The Sponsor certifies that this project request is for eligible expended costs in accordance with the HTF Program and that proper documentation has been included to support this request.

Sponsor Signature Title Date

Program Manager Approval

Signature Title Date

Hays County Staff Approval

Signature Title Date