AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Tri Party Agreement; Escrow Funds and Development

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Agreement re Escrow Funds and DIA for Slate River between County and Cypress Foothills LP

Fiscal Impact:

Submitted by: Laura Seymour for David Baumgarten **Submitter's Email Address:** lseymour@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, restricted deposit was received in July business. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 11/17/2017

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 11/16/17

Reveiwed by: Discharge Date: 11/16/2017 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 11/17/2017

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 5

Agenda Date: 11/21/2017

Revised April 2015

November ___, 2017

Gunnison County
c/o Gunnison County Attorney
200 East Virginia Avenue
Gunnison, Colorado 81230

Cypress Foothills, LP
c/o Cameron Aderhold
8343 Douglas Avenue, Suite 200
Dallas, Texas 75225

Re: Tri Party Agreement (this "**Agreement**") concerning the Escrow Funds and the Development Improvements Agreement for Slate River Development ("**Development Agreement**") dated August 1, 2017, between the Board of County Commissioners of the County of Gunnison, Colorado (the "**County**") and Cypress Foothills, LP, a Texas limited partnership (the "**Borrower**"), providing for the development of public improvements on a 44.5-acre parcel of land (the "**Property**").

Dear Ladies and Gentlemen:

In accordance with the terms of the Development Agreement, Borrower has delivered, and the County acknowledges receipt of, the sum of $4,710,946.80 (the "**Escrow Funds**") to be held in escrow in order to secure Borrower's performance and the construction of certain improvements as set forth in the Development Agreement (the "**Public Improvements**"). Pursuant to the terms of the Development Agreement, the County will release and disburse from time to time portions of the Escrow Funds to Borrower as the Public Improvements are completed. Borrower hereby irrevocably directs and instructs the County to make any such disbursement to Borrower in accordance with the following instructions:

<u>Payment of Escrow Funds via Check</u>:
Cypress Foothills, LP
c/o LegacyTexas Bank
Dan Strother
7031 Snider Plaza
Dallas, Texas 75205

Payment of Escrow Funds via Wire:

Bank Name: LegacyTexas Bank

ABA Routing Number: _____

Name on Account: _____

Account Number: _____

Legacy Texas Bank ("**Legacy**") is making a development loan (the "**Loan**") to Borrower in accordance with that certain Development Loan Agreement ("**Loan Agreement**") dated October ___, 2017 which is secured by certain liens against the Property. In connection with the Loan, Borrower has additionally granted Legacy a security interest in the Escrow Funds and all disbursements of such Escrow Funds and Borrower's rights under the Development Agreement. The County acknowledges and confirms the Bank's security interest, and agrees that, upon receipt of notice by Legacy that a default has occurred and is continuing under the Loan, the County shall (i) recognize Legacy's (or its successor-in-interest's) security interest in Borrower's rights under the Development Agreement (but without assuming any of Borrower's liabilities) and (ii) accept and abide by Legacy's instructions with respect to further disbursements of the balance of the Escrow Funds when and if such disbursements are to be made under the Development Agreement.

Borrower hereby irrevocably authorizes Legacy and the County to communicate and share information regarding the Development Agreement and the Property. The County shall exercise good faith efforts to promptly notify Legacy of any default by Borrower under the Development Agreement. All notices and other communications under this Agreement will be in writing and will be mailed by registered or certified mail, postage prepaid, sent by electronic mail, delivered personally by hand, or delivered by nationally recognized overnight delivery service addressed to each party at the address set forth on the signature page hereto or with respect to any party, to such other address as a party may have delivered to the other parties for purposes of notice.

This Agreement may be executed in multiple counterparts, all of which executed counterparts shall together constitute a single document binding upon all parties. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

Each party to this Agreement consents to the use of electronic and/or digital signatures by one, or both parties. This Agreement requiring a signature hereunder may be signed electronically or digitally in a manner specified solely by Legacy. The parties agree not to deny the legal effect or enforceability of this Agreement solely because (i) same is entirely in electronic or digital form, including any use of electronically or digitally generated signatures, (ii) an electronic or digital record was used in the formation of this Agreement or this Agreement was subsequently converted to an electronic or digital record by one, or both parties. The parties agree not to object to the admissibility of this Agreement in the form of an electronic or digital record, or a paper copy of an electronic or digital document, or a paper copy of a document bearing an electronic or digital signature, on the grounds that the record or signature is not in its original form or is not the original of this Agreement or this Agreement does not comply with Chapter 26 of the Texas Business and Commerce Code.

Except as otherwise expressly set forth herein, the Development Agreement remains in full force and effect.

This Agreement shall be effective only when executed by Legacy, Borrower, and the County.

[Signature Page Follows]

Very truly yours,

LEGACYTEXAS BANK

By: _____

Name: _____

Title: _____

Address for Notice for Legacy:

LEGACYTEXAS BANK
7031 Snider Plaza
Dallas, Texas 75205
Attn: Dan Strother
(972) 461-4761
Dan.Strother@legacytexas.com

ACCEPTED:

COUNTY:

BOARD OF GUNNISON COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO

By: _____

Name: _____

Title: _____

Address for Notice for County:

Board of Gunnison County Commissioners
of the County of Gunnison, Colorado
c/o Gunnison County Attorney
200 East Virginia Avenue
Gunnison, CO 81230

BORROWER:

CYPRESS FOOTHILLS, LP,
a Texas limited partnership

By: CYPRESS FOOTHILLS GP, LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name: _____
Title: _____

Address for Notice for Borrower:

CYPRESS FOOTHILLS, LP
8343 Douglas Avenue, Suite 200
Dallas, Texas 75225
Attn: _____

_____

_____