

RESOLUTION NO. 1681-19-02-12-0599

A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE CARMEL DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PFLUGERVILLE, TEXAS AND CE DEVELOPMENT, INC AUTHORIZING ADDITIONAL REVISIONS TO THE ORIGINAL AGREEMENT REGARDING INTERNAL AND BOUNDARY ROADWAY IMPROVEMENTS AND ANNEXATION

WHEREAS, on October, 13, 2015, the City of Pflugerville entered into a development agreement (the "Carmel Development Agreement") with 130 Cactus Investment L.P., a Texas limited partnership; ARP Autumn Ridge Partners, L.P., a Texas limited partnership; SBJV Investments Ltd, a Texas limited partnership; and CE Development, Inc., a Texas corporations, governing the development of approximately 791.89 acres of property; and

WHEREAS, the First Amendment to the Carmel Development Agreement was entered in on June 8, 2017, to require that all subdivision development be reviewed and approved through the City in accordance with the Unified Development Code, as amended from time to time; and

WHEREAS, the City of Pflugerville and CE Development, Inc. now desire to further amend the Carmel Development Agreement as more particularly set forth in **Exhibit "A"**.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

Section 1. That the foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes and findings of fact.

Section 2. That the City Council of the City of Pflugerville, Texas, hereby approves of the content of the Second Amendment to the Carmel Development Agreement, as set forth in **Exhibit "A"** attached hereto and incorporated herein, and, further, hereby authorizes the City Manager to execute the Second Amendment to the Carmel Development Agreement on behalf of the City of Pflugerville, Texas.

PASSED AND APPROVED on the 12th day of February, 2019.



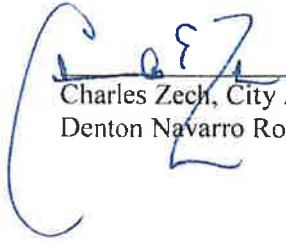
Omar Peña, Mayor Pro Tem

ATTEST:



Karen Thompson, City Secretary

APPROVED AS TO FORM:



Charles Zech, City Attorney
Denton Navarro Rocha Bernal & Zech, PC

SECOND AMENDMENT TO CARMEL DEVELOPMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS SECOND AMENDMENT TO CARMEL DEVELOPMENT AGREEMENT (this "Amendment") is entered into effective as of February 12, 2019 (the "Effective Date") by and among the CITY OF PFLUGERVILLE, TEXAS, a home rule city located in Travis County, Texas (the "City"), and CE DEVELOPMENT, INC., a Texas corporation ("Developer"). The City and Developer are sometimes referred to in this Amendment as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, the City and Developer are parties to that certain Development Agreement dated effective October 13, 2015 (the "Original Agreement"), as amended by that certain First Amendment to Development Agreement, dated June 8, 2017 the "First Amendment"; the Original Agreement, as amended by the First Amendment is referred to herein as the "Agreement";

WHEREAS, the Parties now desire to further amend the Agreement as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties amend the Agreement as follows:

AGREEMENT

1. **Defined Terms.** Capitalized terms not defined in this Amendment have the meanings ascribed thereto in the Agreement.

2. **Internal and Boundary Roadway Improvements.** Section 2.2.4 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.2.4 **Internal and Boundary Roadway Improvements.** As provided for within the City's Master Transportation Plan (MTP), Developer agrees to participate in the required right-of-way dedication needed for all boundary streets depicted in Exhibit E as required by the City's Master Transportation Plan or the CAMPO long range transportation plan, whichever is greater, for all collector and arterial roadways internal or adjacent to the project. Further, Developer agrees to perform the following projects in the order of priority listed below:

a. Developer agrees to dedicate 100 feet of right of way and construct, to City street standards, the full cross section of Melber Lane through the boundaries of the project as depicted in Exhibit J including streetlights, a six (6) foot sidewalk on the west side of the roadway, and a ten (10) foot trail along the east side of the roadway. Construction of Melber Lane east of Wilbarger Creek will be required to be constructed concurrently with or prior to any lots that are adjacent to Melber Lane or when any access is proposed to Melber Lane within the proposed ETJ MUD (Exhibit B), whichever comes first. Construction of Melber Lane west of Wilbarger Creek will be required to be constructed

concurrently with or prior to the last 200 lots located within the proposed In City MUD (Exhibit A).

b. Developer agrees to dedicate 60 feet of right of way over and across the In City MUD to facilitate the extension of Melber Lane from the southern terminus of the bridge located to the south of the project to Cameron Road, as depicted in Exhibit J.

c. Developer agrees to pay the City the amount of \$1,200 per lot proposed to be final platted within the entirety of the area outlined in Exhibit F as follows: (i) Developer will receive a credit in the amount of \$18,474.60 for costs incurred in connection with the design of the Melber Lane extension pursuant to the Original Agreement; (ii) Developer will receive a credit for previous payments made to the City in the amount of \$384,985.94 with respect to lots platted or to be platted within the In City MUD; (iii) Developer will pay the difference between the credits provided in (i) and (ii) above and \$1,200 per lot proposed within the In City MUD prior to December 31, 2018; (iv) Developer will pay the amount of \$1,200 per lot proposed to be final platted within the ETJ MUD as to each lot within a final plat as a condition of recordation of such plat in the Official Public Records of Travis County, Texas; and (v) Developer will pay the difference between the amounts paid pursuant to (iv) above and \$1,200 per lot proposed within the ETJ MUD prior to the later to occur of (A) twelve (12) months after the date on which the preliminary plan for the ETJ MUD is formally approved by the City, or (B) December 31, 2019. This amount includes Developer's proportionate responsibility for all TIA identified mitigation improvements, as outlined in 2.2.3.

3. Subdivision Project. Section 2.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.3 Subdivision Project.

2.3.1 Subdivision Development West of Wilbarger Creek. The City and Developer agree that Developer shall petition annexation of the land described in Exhibit A within 30-days of execution of this Development Agreement and such land will be developed as a residential subdivision and zoned consistent with the conceptual land use plan attached hereto as Exhibit F. Application for zoning of the property will be initiated by the Developer concurrently with the annexation petition or within 30 days of annexation of the property by the City. The subdivision development shall be reviewed and approved by the City in accordance with all applicable provisions of the Unified Development Code ("UDC") as amended from time to time, with the following exceptions: the City agrees that all parkland dedication requirements shall be satisfied by dedication of parkland in the approximate location and acreage amounts as described in the City Land Plan (Exhibit K); the City agrees to eliminate the parkland development fee, as outlined in Exhibit M, in order to provide a credit towards the additional land dedicated to the City, including floodplain, above the parkland requirement, and provide credit towards construction of approximately 3.0 to 3.2 miles of trails by the Developer throughout the development as provided for within the City's Trails Master Plan and as shown in Exhibit G. All land proposed for dedication within the proposed In City MUD (Exhibit A) shall be dedicated to the City by the Developer prior to submitting a final plat for any property located within the proposed IN City MUD (Exhibit A) in addition to approximately 34.2 acres of land, outlined in Exhibit I, adjacent to City land that will be dedicated to the City prior to approval of the first preliminary plan for the In City MUD and the approximately 44.0

acres adjacent to existing City land, as shown on Exhibit L-1 that will be dedicated prior to December 31, 2016. Developer acknowledges that credit for any improvements constructed by the Developer utilizing the parkland development fee will be constructed within land dedicated to the City and the Developer will not receive credit for any park improvements constructed on private land.

2.3.2 Subdivision Development East of Wilbarger Creek. City and Developer agree that the land described in Exhibit B shall be developed as a residential subdivision consistent with the Master Land Plan attached hereto as Exhibit F, as the same may be amended by the Parties pursuant to the terms of a Consent Agreement, to creation of an out-of-city MUD (ETJ MUD), which City agrees to adopt with specific terms as may be negotiated therein between the parties. The City agrees that it will not annex any portion of the Exhibit B described land area without the consent of Developer during the terms of this Agreement. If Developer seeks municipal water service from City, Developer may seek annexation by petition and develop the property as an In-City MUD pursuant to the MUD Consent Agreement. The subdivision development shall be reviewed and approved by the City in accordance with all applicable zoning provisions of the UDC as amended from time to time and in accordance with the development designations as provided for in Exhibit F, with the following exceptions: the City agrees that all parkland dedication requirements shall be satisfied by dedication of parkland in the approximate location and acreage amounts as described in the City Land Plan (Exhibit K); the City agrees to eliminate the parkland development fee, as outlined in Exhibit M, in order to provide a credit towards the additional land dedicated to the City, including floodplain, above the parkland requirement, and provide credit towards construction of approximately 3.0 to 3.2 miles of trails by the Developer throughout the development as provided for within the City's Trails Master Plan and as shown in Exhibit G. All land proposed for dedication within the proposed In City MUD (Exhibit A) shall be dedicated to the City by the Developer prior to submitting a final plat for any property located within the proposed IN City MUD (Exhibit A) in addition to approximately 34.2 acres of land, outlined in Exhibit L, adjacent to City land that will be dedicated to the City prior to approval of the first preliminary plan for the In City MUD and the approximately 44.0 acres adjacent to existing City land, as shown on Exhibit L-1 that will be dedicated prior to December 31, 2016. Developer acknowledges that credit for any improvements constructed by the Developer utilizing the parkland development fee will be constructed within land dedicated to the City and the Developer will not receive credit for any park improvements constructed on private land.

2.3.3 Subdivision Development Subject to UDC. The City and Developer agree that subdivision development shall be reviewed and approved by the City in accordance with all applicable provisions of the Unified Development Code, as amended from time to time, with the following exceptions: the City agrees that architectural standards for single family residential homes shall be constructed in accordance with Exhibit B to the First Amendment.

4. MUDs. Section 3.15 of the Agreement is hereby modified and amended to replace the references to "MUD 22" and "MUD 23" to read "MUD 23" and "MUD 24", respectively, to be consistent with the actual names of the municipal utility districts created on the land described in Exhibits A and B to the Agreement.

5. Exhibits. Exhibit A to the Original Agreement is hereby modified and amended to: (i) delete the illustration therein and replaced it with the illustration attached hereto as Supplemental Exhibit A; and (ii) add the metes and bounds description of the 14.09 acre tract of land annexed into MUD 23

attached hereto as Supplemental Exhibit A-1. Further, Exhibit B to the Original Agreement is hereby modified and amended to delete the illustration therein and replace it with the illustration attached hereto as Supplemental Exhibit B. Lastly, Exhibits F, G, J, K, L, L-1 and M to the Original Agreement are hereby deleted in their entirety and replaced with Substitute Exhibits F, G, J, K, L, L-1 and M attached hereto and incorporated herein for all purposes.

6. Miscellaneous.

a. Entire Agreement. This Amendment, together with the Agreement, sets forth the entire understanding of the Parties and supersedes all prior agreements or understanding, whether written or oral, with respect to the subject matter hereof. No amendments or modifications hereto will be valid unless made in writing and signed by all parties. The Amendment shall supersede any conflicting provision of the Agreement and, to the extent that the Agreement does not conflict with this Amendment, the same shall remain in full force and effect.

b. Memorandum of Agreement. City and Developer acknowledge and agree that either party may record a memorandum of agreement providing notice of the existence of the Agreement, as amended by this Amendment, and the respective obligations of the Parties concerning covenants and conditions affecting subdivision, land usage, and site development, in the Real Property Records of Travis County, Texas.

c. Binding Effect. The Agreement, as amended by this Amendment, will extend to and be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

d. Execution. To facilitate execution, this instrument may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties be contained in any one counterpart hereof. Additionally, the Parties hereby covenant and agree that, for purposes of facilitating the execution of this instrument: (i) the signature pages taken from separate individually executed counterparts of this instrument may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or PDF signature will be deemed to be an original signature for all purposes. All executed counterparts of this instrument will be deemed to be originals, but all such counterparts, when taken together, constitute one and the same Amendment.

e. Governing Law. The Agreement, as amended by this Amendment, will be governed by and construed in accordance with the laws of the State of Texas with venue in Travis County, Texas.

f. Representations and Warranties by Developer. If Developer is a corporation or a limited liability company, or limited partnership, Developer warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Amendment to the Agreement, and the individual executing this Amendment on behalf of Developer has been duly authorized to act for and bind Developer. Developer acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

g. Payment of Debt or Delinquency to the Local or State Government. Developer agrees that any payments owing to Developer under any agreement with the City may be applied directly toward any debt or delinquency that Developer owes the State of Texas, Travis County, Williamson County, the City or any other political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

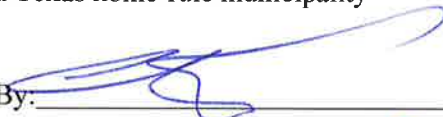
h. Child Support Certification. Developer hereby certifies that none of the officers of the corporation or partners of the partnership are delinquent in their court ordered child support obligations (if any) and shall acknowledge that any agreement with the City may be terminated and payment may be withheld if this certification is inaccurate.

[COUNTERPART SIGNATURE PAGES FOLLOW]

**COUNTERPART SIGNATURE PAGE TO
SECOND AMENDMENT TO CARMEL DEVELOPMENT AGREEMENT**

CITY:

CITY OF PFLUGERVILLE, TEXAS,
a Texas home-rule municipality

By: 
Victor Gonzales, Mayor *Pro Tem*
Omar Peña

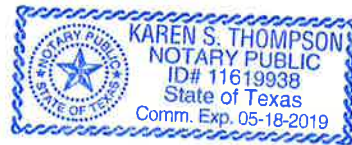
ATTEST:

By: 
Karen Thompson, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 12 day of February, 2019, by ~~Victor Gonzales, Mayor~~ of the City of Pflugerville, a Texas home-rule municipality, on behalf of said city.
Omar Peña, Mayor Pro Tem


NOTARY PUBLIC, State of Texas



**COUNTERPART SIGNATURE PAGE TO
SECOND AMENDMENT TO CARMEL DEVELOPMENT AGREEMENT**

DEVELOPER:

CE DEVELOPMENT, INC.,
a Texas corporation

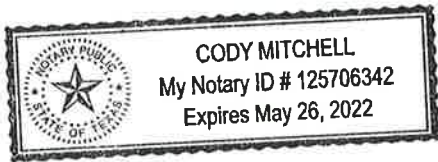
By: 
John S. Lloyd, President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 11 day of February, 2019, by John S. Lloyd, President of CE Development, Inc., a Texas corporation, on behalf of said corporation.



NOTARY PUBLIC, State of Texas



Supplemental Exhibit A – MUD 23 (Proposed In City MUD) Property Description



Supplemental Exhibit A-1 – Metes and Bounds Description of 14.09 Acre Tract

14.09 Acres

THAT PART OF THE JOHN LIESSE SURVEY 18, ABSTRACT No. 406, TRAVIS COUNTY, TEXAS, BEING A PART OF THAT 15.623 ACRE TRACT, THAT 15.967 ACRE TRACT AND THAT 19.9285 ACRE TRACT CONVEYED TO TEXAS GULF BANK, N.A., AS TRUSTEE OF THE MANAGEMENT TRUST FOR THE BENEFIT OF HOLLY JEAN PFLUGER, BY DEED RECORDED IN DOCUMENT No. 2015193607 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, DESCRIBED AS FOLLOWS:

Begin at a 1/2" iron rod with Pape-Dawson cap found at the Southeast Corner of that 7.94 Acre Tract conveyed to CE Development, Inc., by deed recorded in Document No. 2015162829 of the Official Public Records of Travis County, Texas, and the Southwest Corner of said 15.623 Acre Tract at Texas State Plane Central Zone NAD 83 grid coordinates N. 10127969.37 feet and E. 3173081.25 feet (from which point the Southwest Corner of said John Liesse Survey bears approximately S.75°57'40"W. 2450 feet)

Thence N.27°31'45"E., along the West Line of said 15.623 Acre Tract and the East Line of said 7.94 Acre Tract (at 170.43 feet pass the Northeast Corner of said 7.94 Acre Tract and the Southeast Corner of that 62.00 Acre Tract conveyed to CE Development, Inc., by deed recorded in Document No. 2015146187 of the Official Public Records of Travis County, Texas) in all a distance of 326.09 feet to a 1/2" iron rod found at the Northwest Corner of said 15.623 Acre Tract and the Southwest Corner of said 15.967 Acre Tract;

Thence N.27°31'45"E., along the West Line of said 15.967 Acre Tract and the East Line of said 62.00 Acre Tract a distance of 368.80 feet to a 1/2" iron rod found at the Northwest Corner of said 15.967 Acre Tract and the Southerly Southwest Corner of said 16.925 Acre Tract;

Thence N.27°31'45"E. along a West Line of said 16.925 Acre Tract and the East Line of said 62.00 Acre Tract a distance of 109.72 feet to a 1/2" iron rod with Texas Land Surveyors cap found at the Northeast Corner of said 62.00 Acre Tract and an interior corner of said 16.925 Acre Tract;

Thence N.62°45'53"W. along the North Line of said 62.00 Acre Tract and the South Line of said 16.925 Acre Tract a distance of 1326.26 feet to a 1/2" iron rod with Pape-Dawson cap found at the Westerly Southwest Corner of said 16.925 Acre Tract and an interior corner of said 62.00 Acre Tract;

Thence N.27°14'07"E. along the West Line of said 16.925 Acre Tract and an East Line of said 62.00 Acre Tract a distance of 161.08 feet to a 1/2" iron rod with Pape-Dawson cap found at the Southwest Corner of that 16.747 Acre Tract conveyed to CE Development, Inc., by deed recorded in Document No. 2015162822 of the Official Public Records of Travis County, Texas, and the Northwest Corner of said 16.925 Acre Tract;

Thence S.62°45'53"E. along the North Line of said 16.925 Acre Tract and the South Line of said 16.747 Acre Tract a distance of 1766.66 feet to a 1/2" iron rod set;

14.09 Acres

Thence S.27°49'55"W. across said 16.925 Acre Tract (at 270.81 feet pass the South Line of said 16.925 Acre Tract and the North Line of said 15.967 Acre Tract) in all a distance of 364.90 feet to a 1/2" Iron rod set;

Thence N.65°33'54"W. across said 15.967 Acre Tract a distance of 161.01 feet to a 1/2" iron rod set in the West Line of that Wastewater Easement to City of Pflugerville by deed recorded in Document No. 2016151275 of the Official Public Records of Travis County, Texas;

Thence along the West Line of said Wastewater Easement and across said 15.967 Acre Tract and said 15.623 Acre Tract the following two courses:

1. S.08°00'23"W. a distance of 237.44 feet to a 1/2" iron rod set;
2. S.02°00'28"W. (at 47.15 feet pass the South Line of said 15.967 Acre Tract and the North Line of said 15.623 Acre Tract) in all a distance of 417.93 feet to a 1/2" iron rod set in the South Line of said 15.623 Acre Tract and the North Line of that 85.00 Acre Tract conveyed to CE Development, Inc., by deed recorded in Document No. 2015162822 of the Official Public Records of Travis County, Texas;

Thence N.61°46'03"W. along the South Line of said 15.623 Acre Tract and the North Line of said 85.00 Acre Tract a distance of 536.32 feet to the said Point of Beginning.

Containing 14.09 acres, more or less.

John K. Weigand Feb. 6, 2013

J. Kenneth Weigand
Registered Professional Land Surveyor No. 5741
State of Texas

RJ Surveying & Associates, Inc.
2900 Jazz Street
Round Rock, Texas 78664
F-10015400



All iron rods set have RJ Surveying caps
Bearings are Texas State Plane Central Zone NAD 83

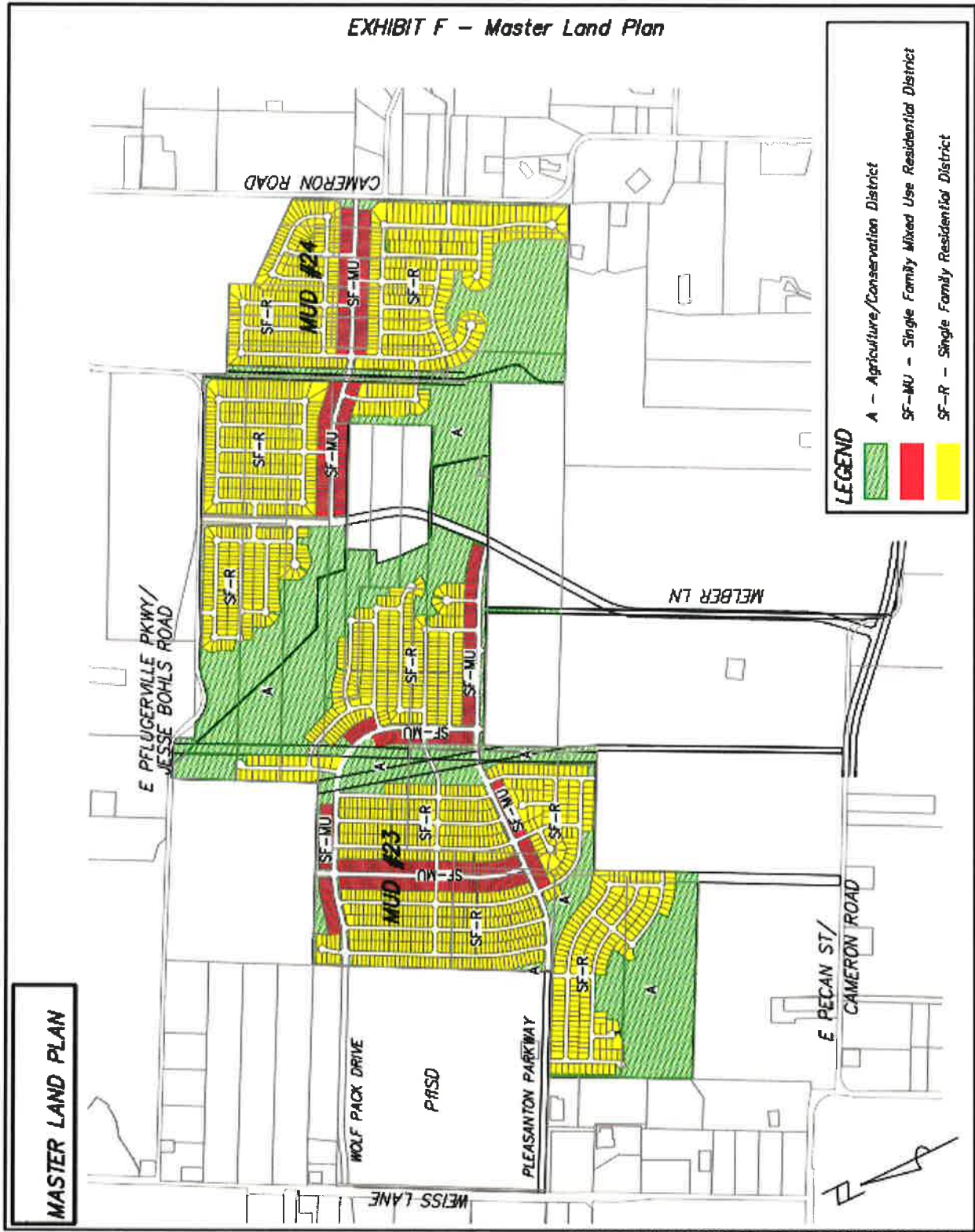
Supplemental Exhibit B – MUD 24 (Proposed ETJ MUD) Property Description



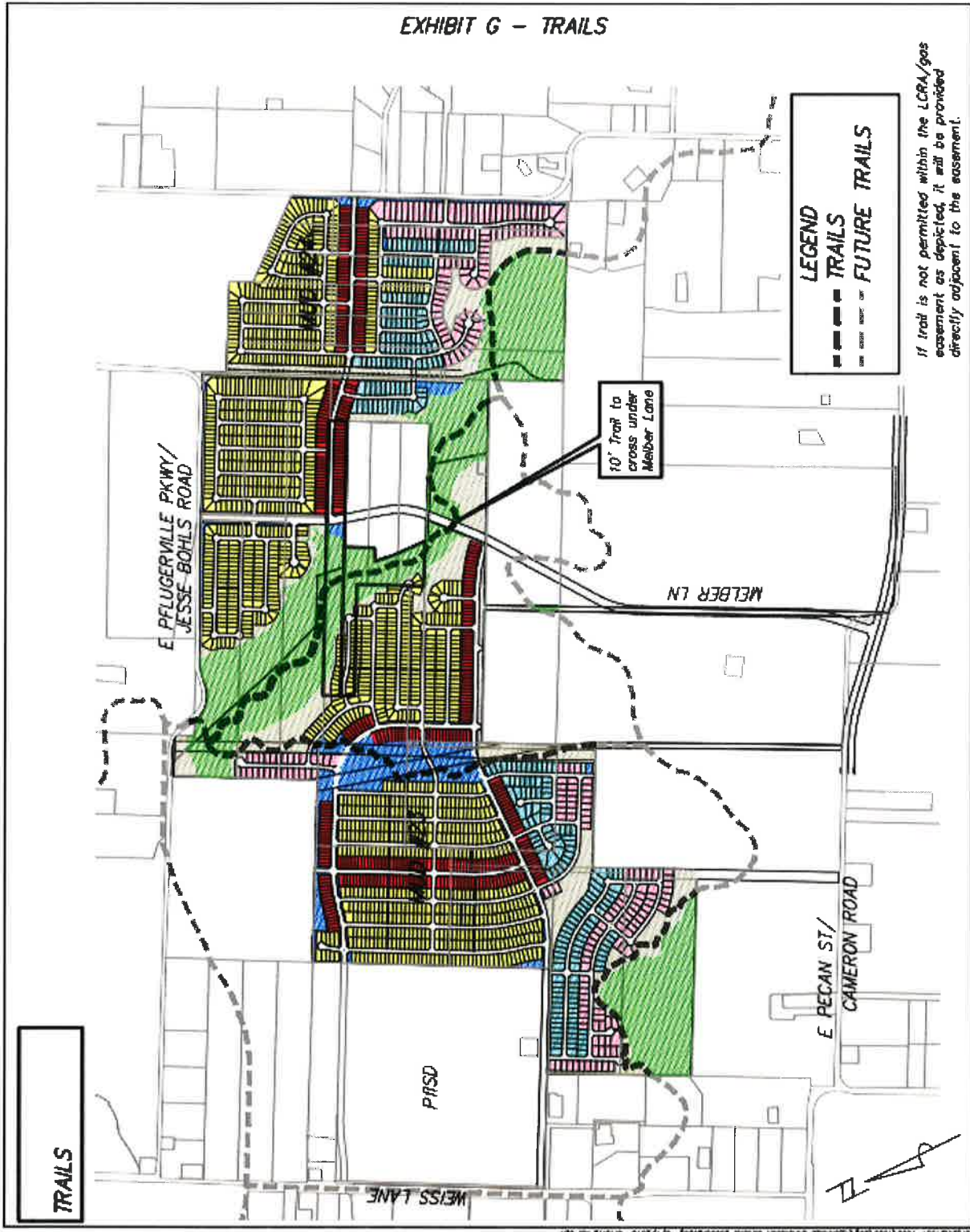
Substitute Exhibit E – Arterial and Collector Roadway Alignments



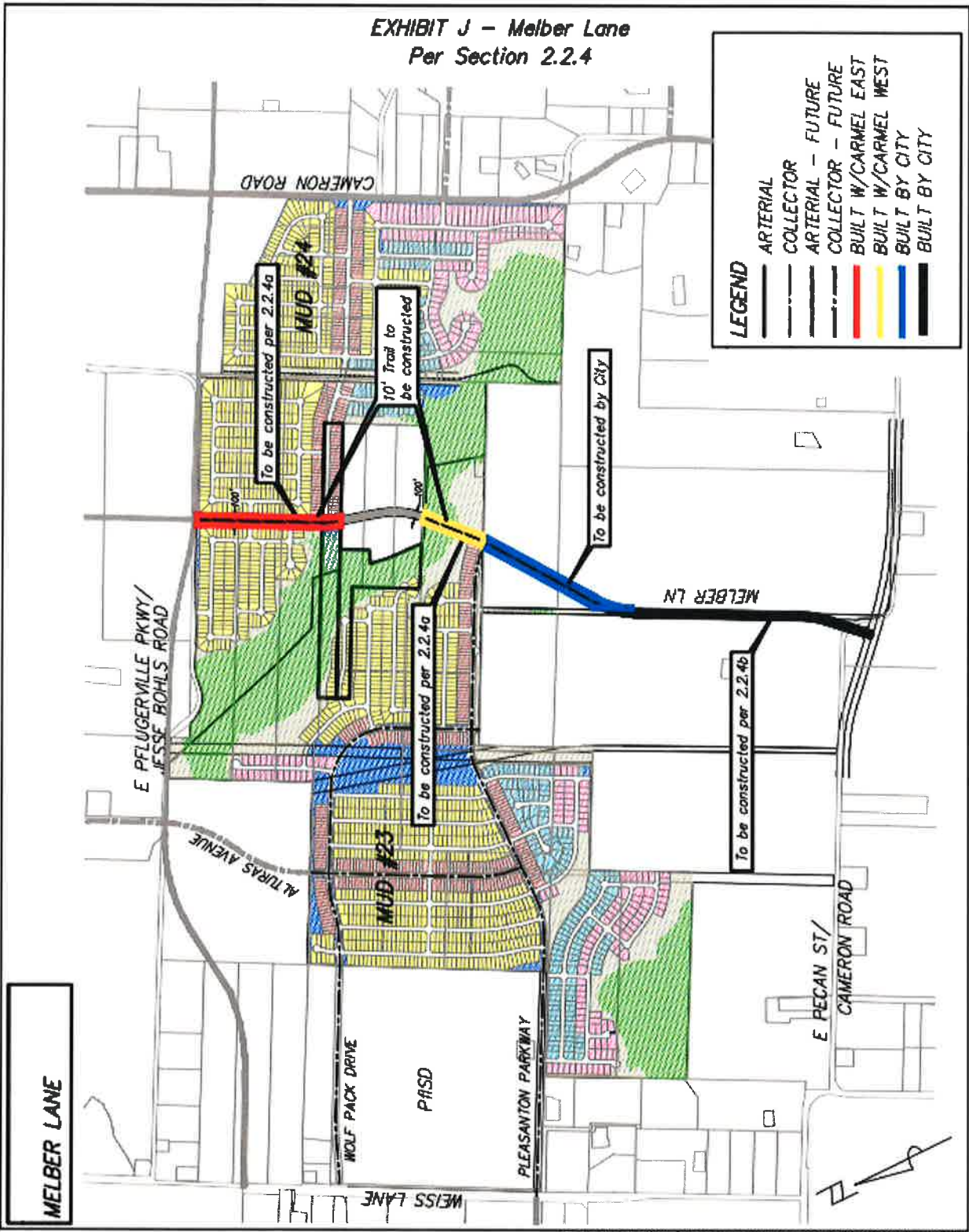
Substitute Exhibit F – Master Land Plan



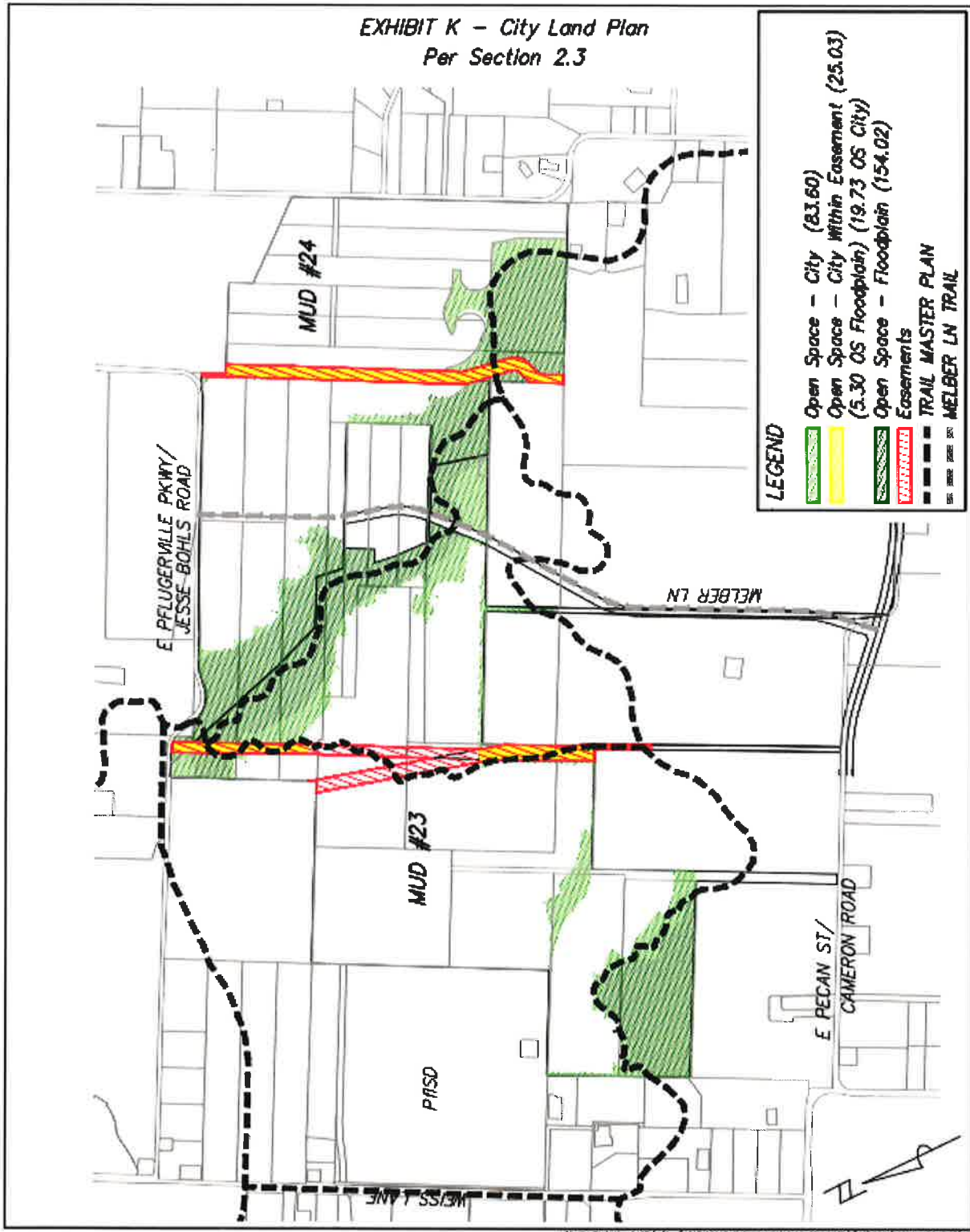
Substitute Exhibit G – Trails



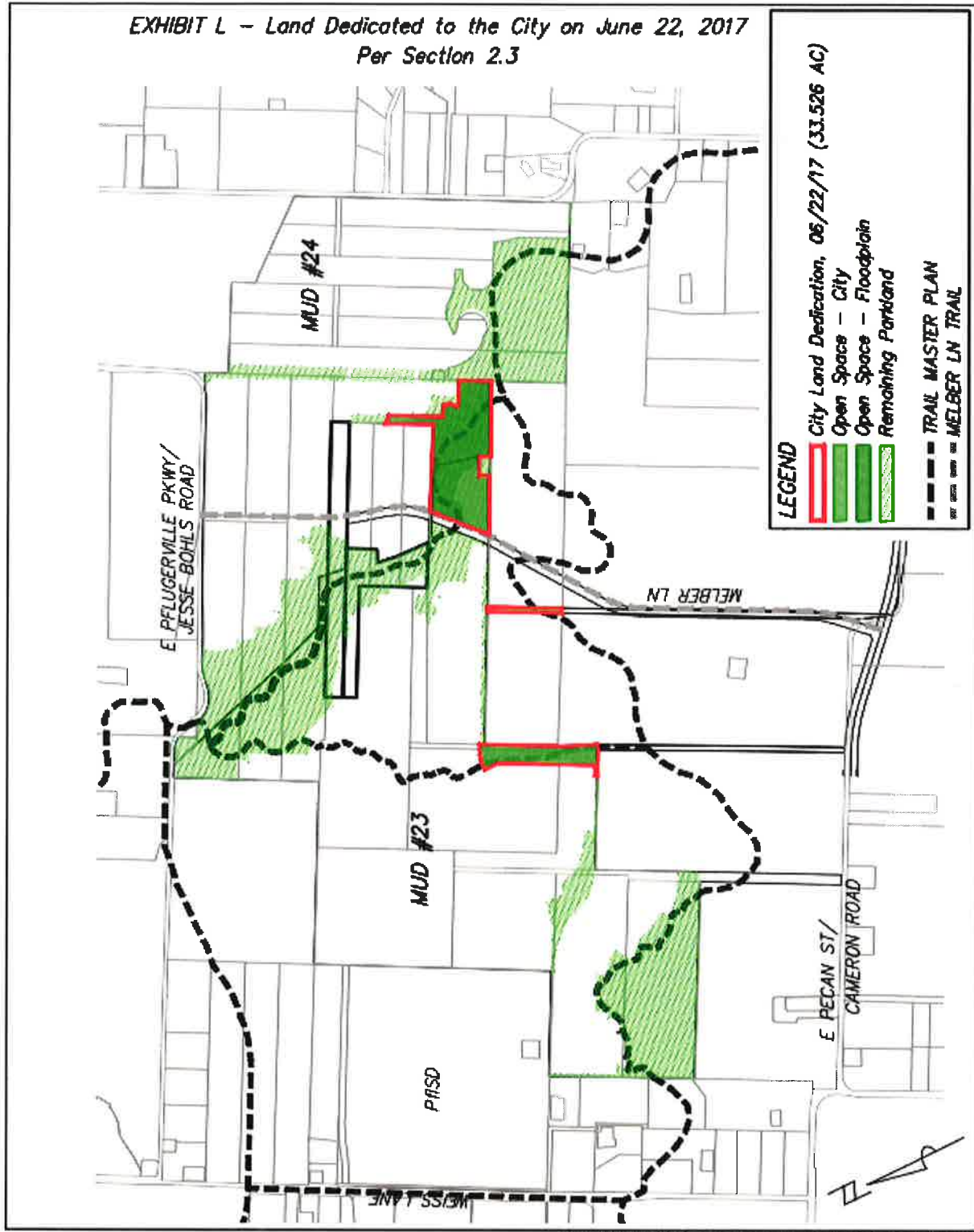
Substitute Exhibit J – Melber Lane



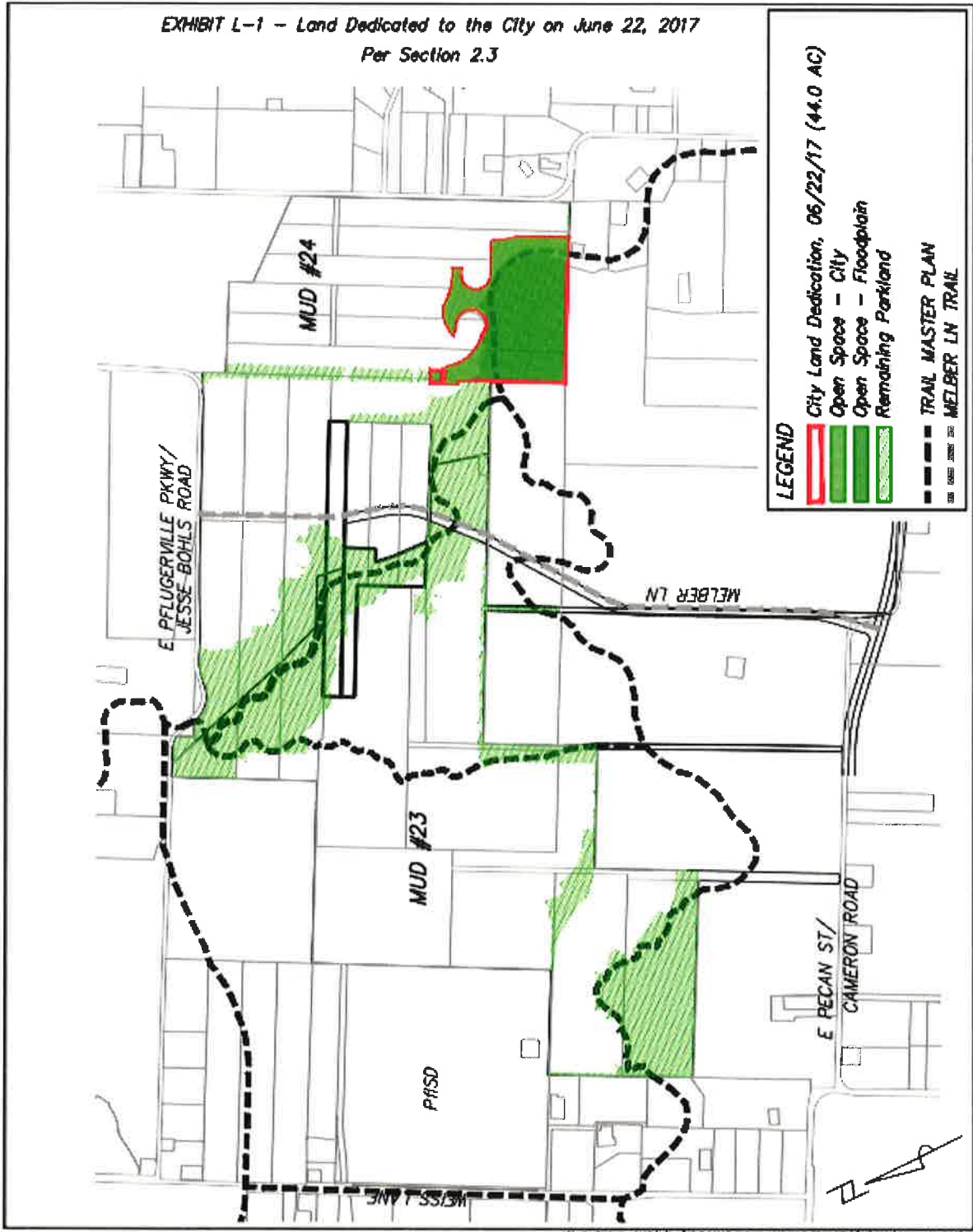
Substitute Exhibit K – City Land Plan



Substitute Exhibit L – Land Dedicated to the City on June 22, 2017



Substitute Exhibit L-1 – Land Dedicated to the City on June 22, 2017



Substitute Exhibit M – Parkland Development Fee Credit Methodology

**Exhibit M – Parkland Development Fee Credit Methodology
Section 2.3**

In conjunction with Approximately 36.18 acres of land dedication beyond the minimum required by the Unified Development Code (UDC), 3.2 miles of trail construction within the development and dedication of approximately 154.02 acres of floodplain the City applied credits towards the required parkland development fee utilizing the following methodology:

Required parkland based on 2,344 dwelling units = 46.88 acres

Proposed acceptable Parkland * = 83.06 acres

Difference = 36.18 acres

*Additional land located within existing easements may be dedicated to the City, however, no parkland development fee has been credited toward that land dedication and as not considered in any acreage calculations.

Required Park Development fee = \$745 per lot (project total = 2344 lots * \$745 = \$1,746,280)

Proposed Acceptable Floodplain = 154.02 acres

Credit of \$785,822 towards additional 36.18 acres dedicated over the required amount
(36.18*\$21,780 = \$785,822)

Credit of \$924,120 towards additional 154.02 acres of floodplain dedicated
(154.02 * \$6,000 = \$924,120)

Credit of \$739,200 towards not less than 3.2 miles of trail valued at \$231,000 per mile.
(3.2 *\$231,000 = \$739,200)

Per lot park development fee:

$\$1,746,280 - (\$785,822 + \$924,120 + \$739,200) = \$-702,862 / 2344 \text{ lots} = \$0 / \text{lot}$

Since proposed improvements/credits exceed the required park development fee, a per lot parkland fee will not be required for this development.

Any parkland fees paid prior to the approval of the second amendment of the Development Agreement will not be reimbursed by the City to the Developer.