

**THIRD AMENDMENT TO CARMEL DEVELOPMENT AGREEMENT**

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

THIS THIRD AMENDMENT TO CARMEL DEVELOPMENT AGREEMENT (this “*Amendment*”) is entered into effective as of \_\_\_\_\_, 2022 (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*”), and further amended by that certain Second Amendment to Development Agreement, dated February 12, 2019 (the “*Second Amendment*”; the Original Agreement, as amended by the First Amendment and the Second 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. **Melber Lane West of Wilbarger Creek.** Section 2.2.4.a. of the Agreement is hereby deleted in its entirety and replaced with the following:

a. Developer agrees to dedicate 100 feet of right of way and construct, to City street standards, or fund, the full cross section of Melber Lane through the boundaries of the project, as depicted in Second Substitute 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. Developer’s construction and funding of Melber Lane west of Wilbarger Creek, concurrently with or prior to construction of the last 198 lots located within the proposed In City MUD (Exhibit A), will be as follows:

(i) Developer will construct the portion of Melber Lane located within the Carmel West Phase 3, Section 2 final plat (City Application/Case #FP1904-04), including the 791 square yard portion thereof located within the 211.71 acre tract of land owned by the City, as more particularly described in the instrument recorded under Document

No. 2015165200, Official Public Records of Travis County, Texas (the "City Tract"), as depicted on Second Substitute Exhibit J and Exhibit J-1, at Developer's sole cost and expense. In connection therewith, the City hereby: (A) consents to such construction on the City Tract; (B) grants and conveys to Developer and its contractors a right of entry onto the City Tract for such purpose; and (C) agrees to approve and/or enter into such applications, consents and/or joinders to the Carmel West Phase 3, Section 2 final plat as may be necessary to effect the agreement of the parties set forth herein.

(ii) Developer will pay to the City the sum of \$3,997,650 in lieu of fiscal surety for the public improvements comprising the portion of Melber Lane located within the Carmel West Phase 3, Section 3 final plat (City Application/Case #FP1910-02) and the proposed ETJ MUD (Exhibit B). With respect to such \$3,997,650 payment, the City and Developer agree as follows: (A) such \$3,997,650 payment is equal to the estimated cost of design, permitting and construction of: (1) the 5,298 square yard portion of Melber Lane located within the Carmel West Phase 3, Section 3 final plat that is above-grade, (2) the 331 square yard portion of Melber Lane located within the ETJ MUD (Exhibit B) that is above-grade (*i.e.*, the bridge portion of the roadway), and (3) the 594 square yard portion of Melber Lane located within the Carmel West Phase 3, Section 3 final plat that is at-grade (*i.e.*, the portion of the roadway other than the bridge), all as depicted on Second Substitute Exhibit J and Exhibit J-1; (B) such \$3,997,650 payment is Developer's only obligation hereunder with respect to the portion of Melber Lane within the Carmel West Phase 3, Section 3 final plat and the ETJ MUD (Exhibit B); and (C) within thirty (30) days after Developer's delivery of the \$3,997,650 payment to the City, the City will release to Developer the \$4,397,415 of fiscal surety posted by Developer in connection with recordation of the final plat for Carmel West Phase 3, Section 3 final plat (City Application/Case #FP1910-02).

3. Subdivision Development East of Wilbarger Creek. Section 2.3.2. of the Agreement is hereby deleted in its entirety and replaced with the following:

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 Second Substitute 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. 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 Consent Agreement. The subdivision development shall be constructed and completed 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 Second Substitute 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 (Second Substitute Exhibit K); the City agrees to eliminate the parkland development fee, as outlined in Substitute 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 Second Substitute Exhibit G. All land proposed for dedication as parkland within the proposed ETJ MUD (Exhibit B) shall be dedicated to the City by the Developer after each portion of such land is platted as a parkland lot pursuant to a recorded a final plat, except for the approximately 33.526 acres of land, outlined in Exhibit L, adjacent to City land that has been dedicated to the City by Special Warranty Deed recorded under Document No. 2017099899, Official Public Records of Travis County, Texas, and the approximately 44.0 acres adjacent to existing City land, as shown on Exhibit L-1 that has been dedicated to the City by Special Warranty Deed recorded under Document No. 2017099889, Official Public Records of Travis County, Texas. 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.

4. Additional Parkland Dedication. The Agreement is hereby amended and modified to incorporate Section 2.4 as follows:

Section 2.4 Additional Parkland Dedication. In addition to the parkland to be dedicated by Developer to the City pursuant to Section 2.3 of the Agreement, the land proposed for dedication within the proposed ETJ MUD (Exhibit B) and in the approximate locations and acreage amounts as described and depicted in the Additional Parkland Dedication Exhibit, attached hereto as Exhibit L-2, shall be dedicated to the City by the Developer as each portion thereof is final platted by the Developer as a parkland lot within a phase of the subdivision development within the ETJ MUD (Exhibit B).

5. City Disannexation of Land Within ETJ MUD. The Agreement is hereby amended and modified to incorporate Section 2.5 as follows:

Section 2.5 City Disannexation of Land Within ETJ MUD. Developer may cause metes and bounds descriptions and sketches of the portions of the proposed ETJ MUD (Exhibit B) that are described and depicted on the Disannexation & Exclusion Exhibit, attached hereto as Exhibit N, to be prepared by a licensed Texas surveyor and submitted to the City. Upon submission to the City, the City may consider the disannexation of such portions of the proposed ETJ MUD (“Proposed Disannexation Territory”) (Exhibit B) consistent with the requirements of the City’s Home Rule Charter. It is understood and agreed by the Parties that the disannexation of land from the jurisdictional limits of the City is a legislative act, that the City is prohibited from contracting away such legislative authority and that the City does not make any guarantees, promises, or other commitments regarding the disannexation.

6. ETJ MUD Exclusion of City Parkland. The Agreement is hereby amended and modified to incorporate Section 2.6 as follows:

Section 2.6 ETJ MUD Exclusion of City Parkland. Should the City disannex the Proposed Disannexation Territory then: (a) within ninety (90) days after the City’s disannexation, pursuant to Section 2.5 of this Agreement, Developer shall exercise commercially reasonable efforts to cause the exclusion of the portions of the parkland within the proposed ETJ MUD (Exhibit B) dedicated, or to be dedicated, to the City pursuant to Section 2.3 of this Agreement, as described and depicted on the Disannexation & Exclusion Exhibit, attached hereto as Exhibit N, from the boundaries of the proposed ETJ MUD (Exhibit B) to enable the City to annex such acreage; and (b) within ninety (90) days after the City’s approval of the preliminary plan for the ETJ MUD (Exhibit B), Developer shall exercise commercially reasonable efforts to cause the exclusion of the portions of the parkland within the proposed ETJ MUD (Exhibit B) dedicated, or to be

dedicated, to the City pursuant to Section 2.4 of this Agreement, as described and depicted in the Additional Parkland Dedication Exhibit, attached hereto as Exhibit L-2, from the boundaries of the proposed ETJ MUD (Exhibit B) to enable the City to annex such acreage.

7. Exhibits. Substitute Exhibits F, G, J, K, L and L-1 to the Second Amendment are hereby deleted in their entirety and replaced with the Second Substitute Exhibits F, G, J, K, L and L-1 attached hereto and incorporated herein for all purposes. Further, Exhibits J-1, L-2 and N attached hereto are incorporated into the Agreement for all purposes.

8. 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**  
**THIRD AMENDMENT TO CARMEL DEVELOPMENT AGREEMENT**

**CITY:**

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

By: \_\_\_\_\_  
Victor Gonzales, Mayor

ATTEST:

By: \_\_\_\_\_  
Karen Thompson, City Secretary

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, by Victor Gonzales, Mayor of the City of Pflugerville, a Texas home-rule municipality, on behalf of said city.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

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

**DEVELOPER:**

**CE DEVELOPMENT, INC.,**  
a Texas corporation

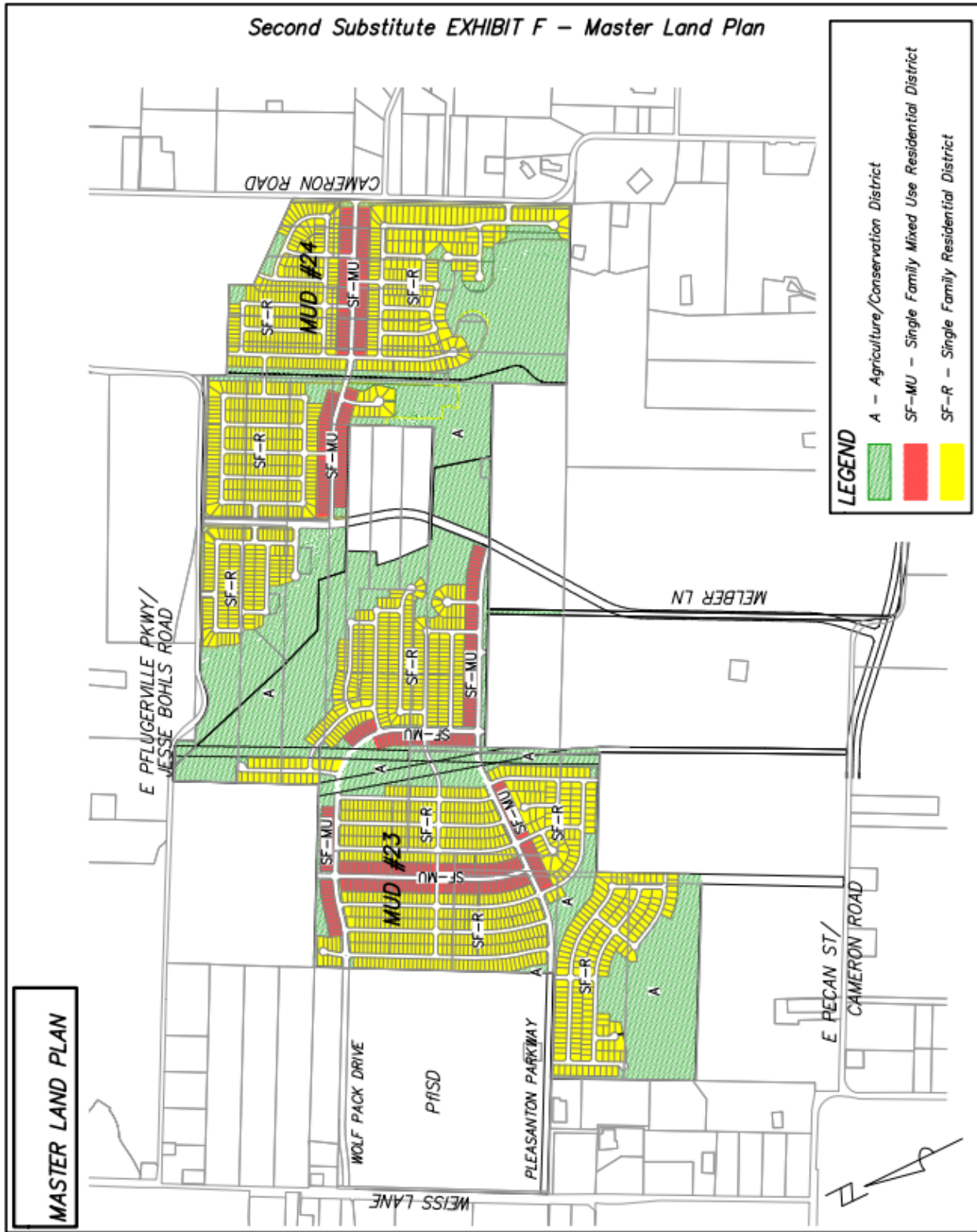
By: \_\_\_\_\_  
John S. Lloyd, President

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2022, by John S. Lloyd, President of CE Development, Inc., a Texas corporation, on behalf of said corporation.

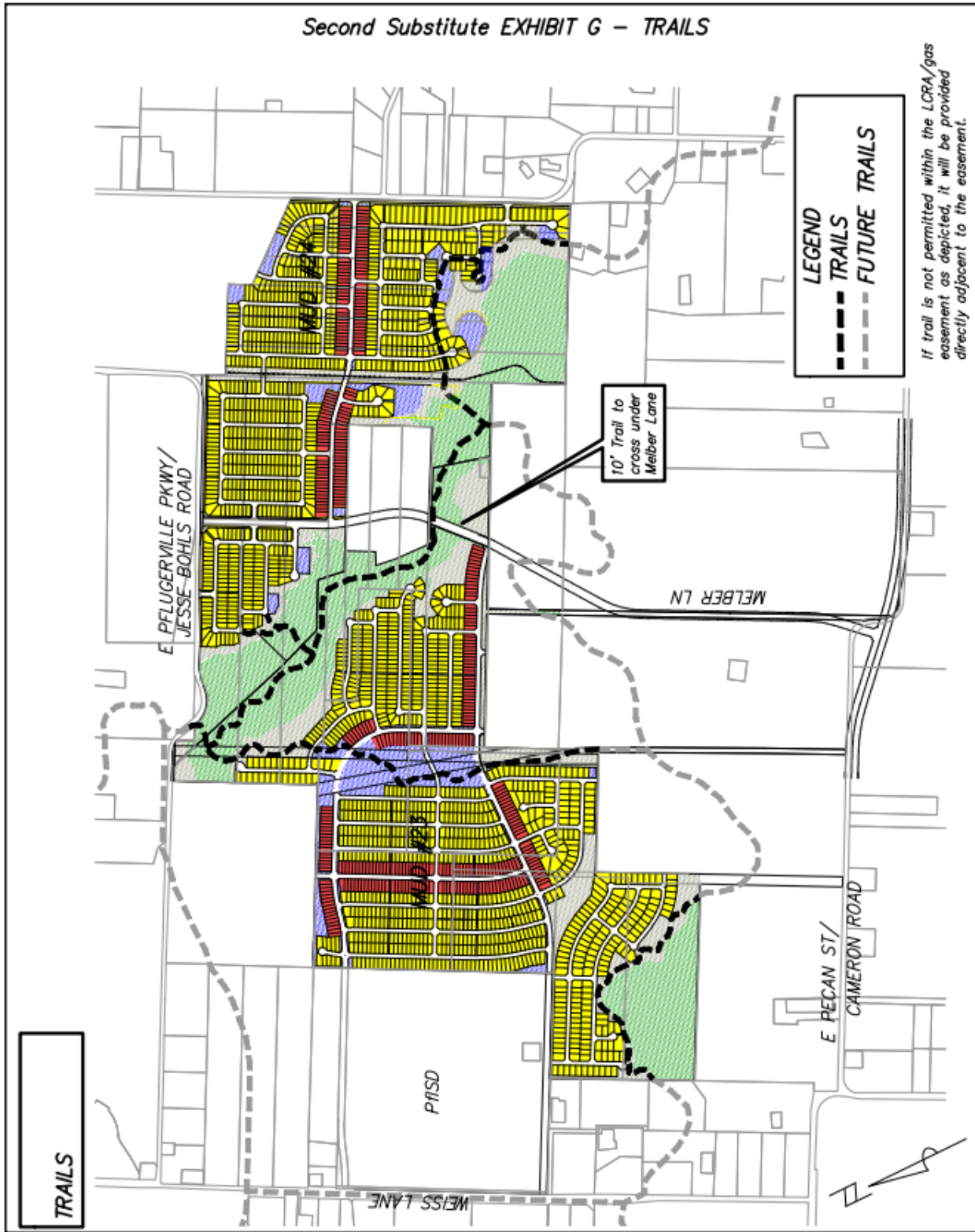
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NOTARY PUBLIC, State of Texas

Second Substitute Exhibit F – Master Land Plan





Second Substitute Exhibit G – Trails



Second Substitute Exhibit J – Melber Lane

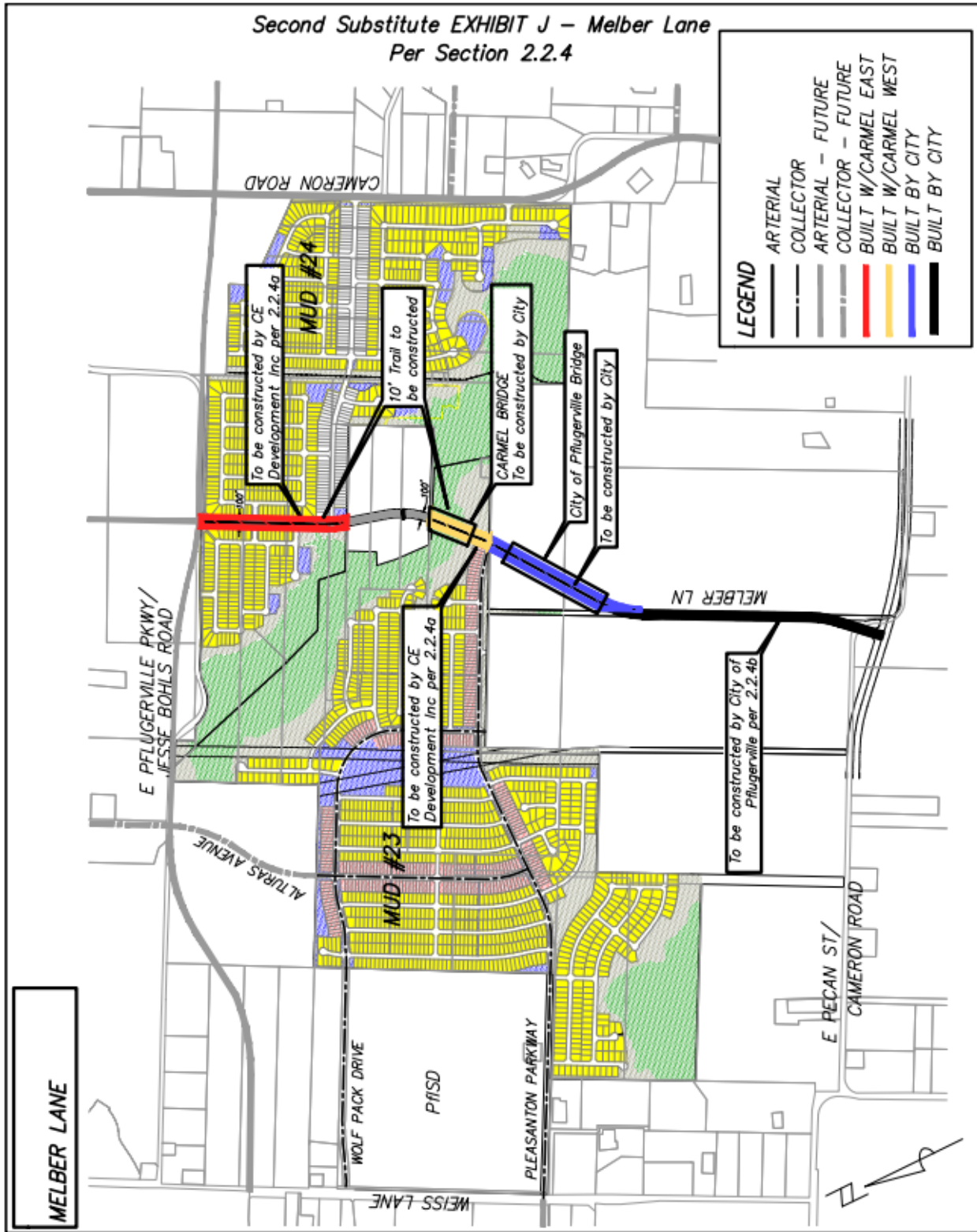
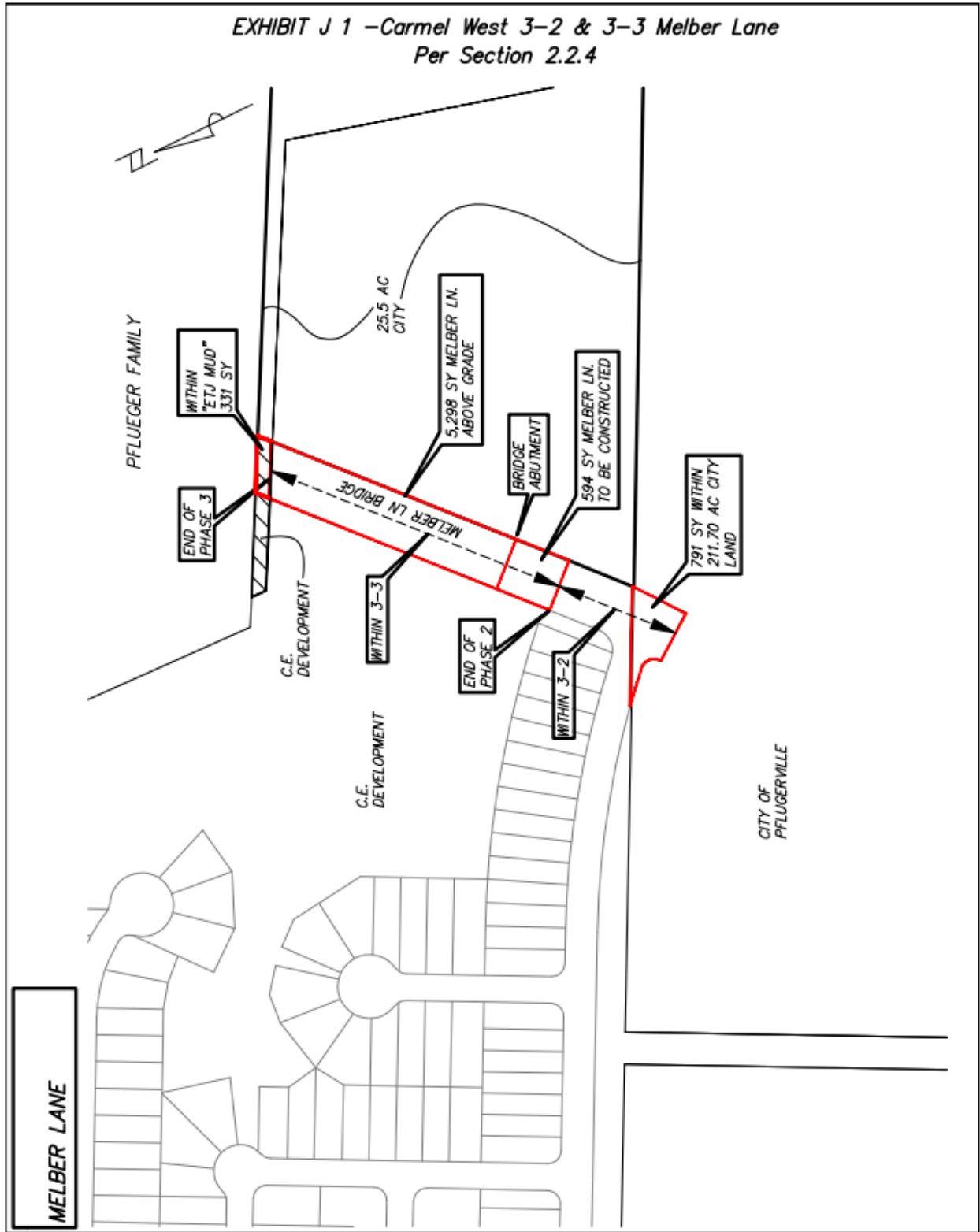
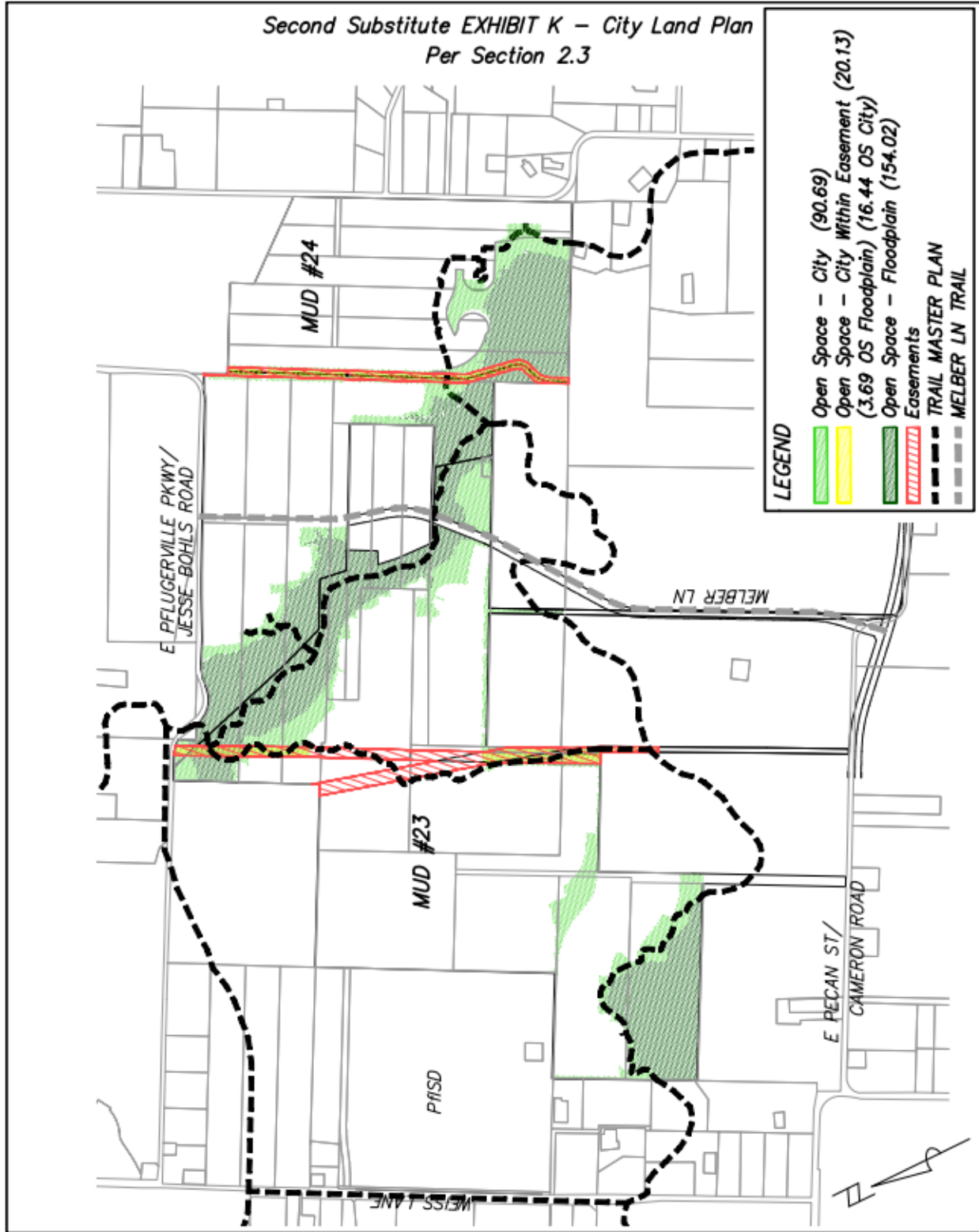


Exhibit J-1 – Melber Lane

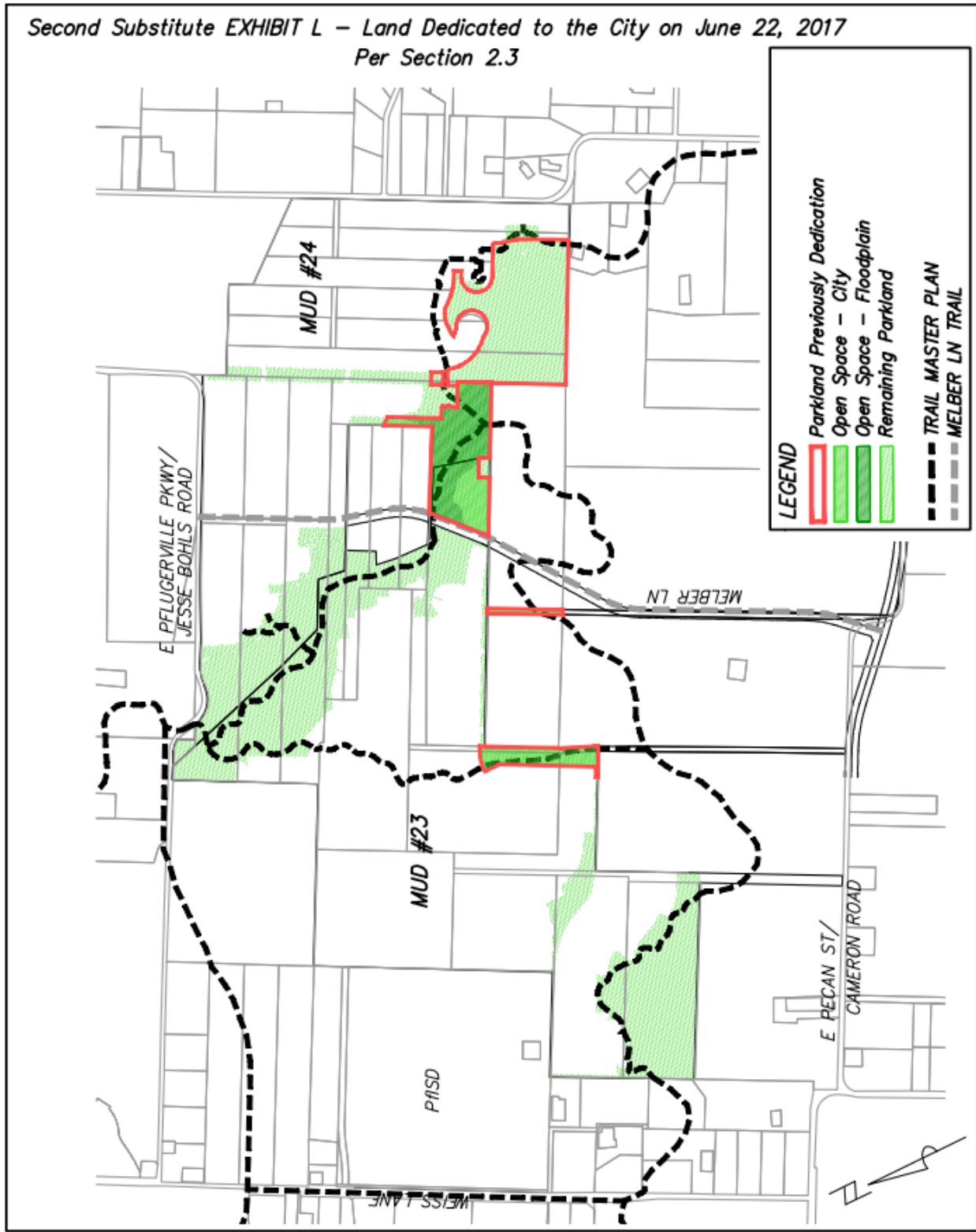


Second Substitute Exhibit K – City Land Plan





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



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

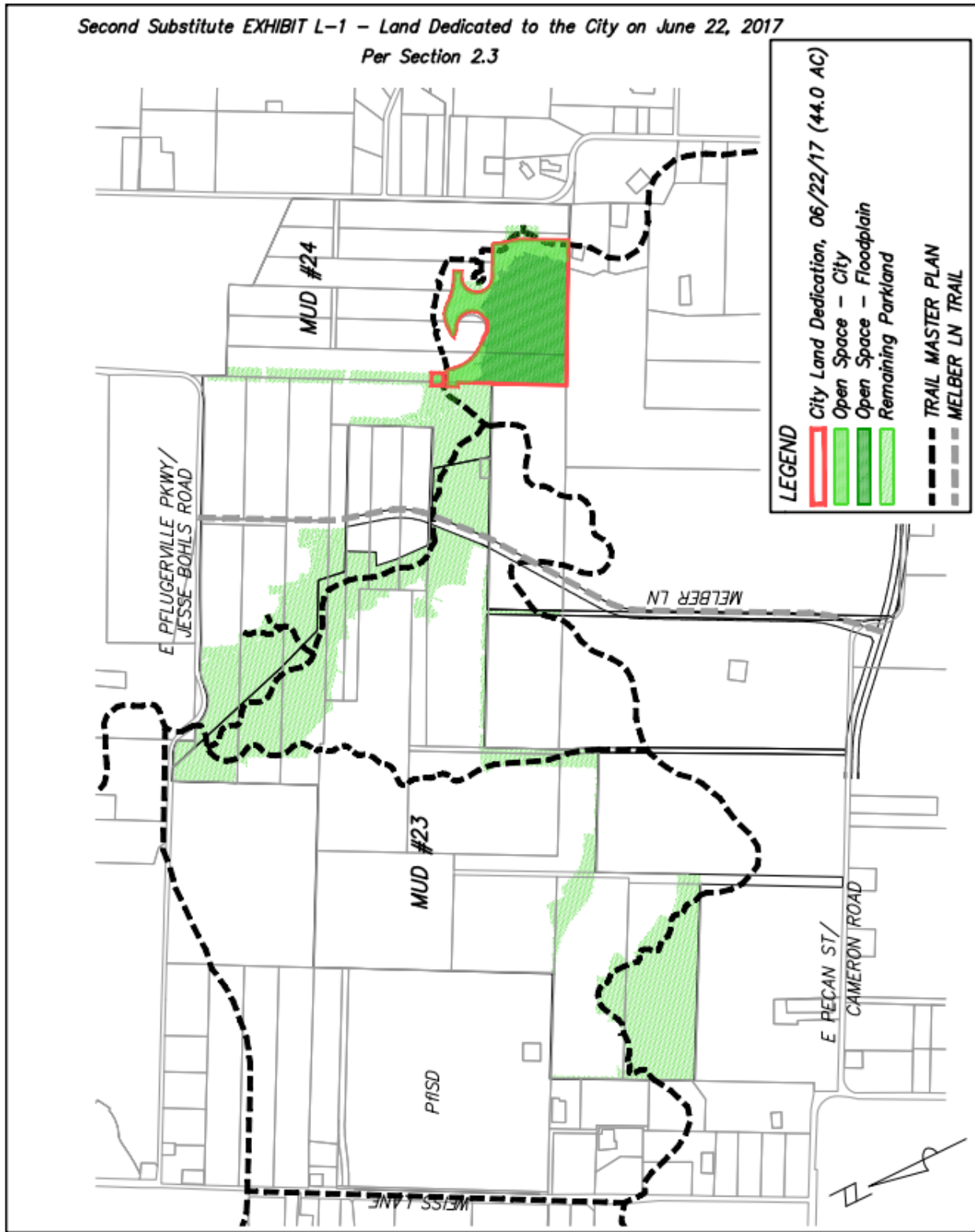


Exhibit L-2 – Additional Parkland Dedication Exhibit

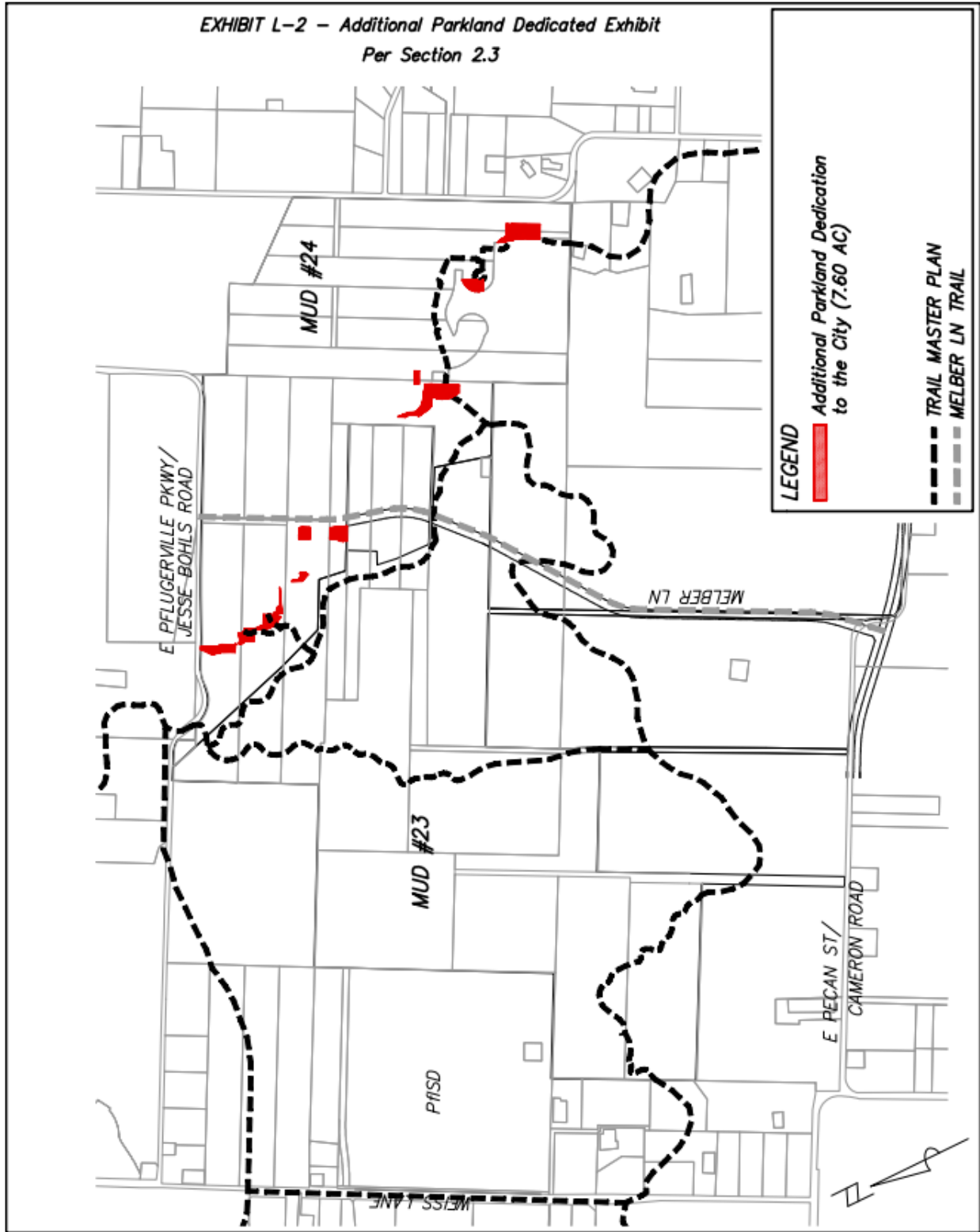


Exhibit N – Disannexation & Exclusion Exhibit

