

STATE OF TEXAS

§

AMENDED AND RESTATED

CALDWELL COUNTY

§

DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (this "**Agreement**") is made and entered into as of the 17 day of January, 2023 (the "Effective Date"), by and between the **CITY OF SAN MARCOS, TEXAS**, a Texas home-rule municipal corporation (the "**City**") and **FRANKLIN MOUNTAIN SAN MARCOS I, LP**, a Texas limited partnership ("**Owner**"). The **City** and **Owner** are sometimes hereinafter referred to individually as "**Party**", and collectively as the "**Parties**". The Parties agree as follows:

PURPOSES AND CONSIDERATIONS

WHEREAS, Owner currently owns approximately 2,017 acres, more or less, ("the Property") partially located in the municipal boundaries of the City and partially located within the Extraterritorial Jurisdiction ("ETJ") of the City, Caldwell County, Texas, and more particularly described by metes and bounds in **Exhibit "A"**, which is attached hereto and incorporated herein for all purposes; and

WHEREAS, prior to the execution of this Agreement, approximately 888 acres of the Property were included in the CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AND ETJ DEVELOPMENT AGREEMENT, dated March 19, 2019 (the "*Smart Terminal Development Agreement*") and approximately 660 acres of the Property were included in the COTTON CENTER DEVELOPMENT AGREEMENT, dated December 20, 2016 (the "*Cotton Center Development Agreement*") (the Smart Terminal Development Agreement and the Cotton Center Development Agreement are collectively referred to herein as the "*Previous Development Agreements*"); and

WHEREAS, subsequent to the adoption of the Previous Development Agreements, the Owner acquired the land, or portions thereof, and assumed the rights and obligations relating to said land, or portions thereof, included in the Previous Development Agreements; and

WHEREAS, Owner desires to: amend and restate the Previous Development Agreements to, among other things, apply regulatory provisions from the Smart Terminal Development Agreement; remove references to the Katerra Tract and the economic development agreement; combine the 660 acres from the Cotton Center Development Agreement, the 888 acres from the Smart Terminal Development Agreement, and approximately 469 acres not previously been included in a development agreement with the City in this Agreement;

WHEREAS, in conjunction with the adoption of this Agreement, the Owner desires to concurrently remove the aforementioned 660 acres from the Cotton Center Development Agreement; and

WHEREAS, Owner desires to develop the Property as Heavy Industrial and commercial,

with the modifications in this Agreement, pursuant to the City's Development Code, as that code exists on the effective date of this Agreement, subject to the modifications set forth herein, and generally in accordance with the Conceptual Land Use Plan, as more particularly described in **Exhibit "B"** attached hereto (The Project); and

WHEREAS, the City is authorized to make and enter into this Agreement with Owner in accordance with SUBCHAPTER G, CHAPTER 212, LOCAL GOVERNMENT CODE and Chapter 2, Article 4, Division 3 of the San Marcos Development Code, to accomplish the following purposes:

- A. Extend the City's planning authority in accordance with the Conceptual Land Use Plan and the development regulations contained herein under which certain uses and development of the Property is authorized; and
- B. Authorize enforcement by the City of municipal land use and development regulations, as required and/or authorized by San Marcos Development Code ("SMDC"), as applicable, to the extent the same are consistent with the development regulations contained herein and in the same manner the applicable regulations are enforced within the City's municipal boundaries; and
- C. Provide the terms of annexation of the Property;
- D. Provide for an estimated 2,017 acres of commercial / industrial development; and
- E. Pursuant to Section 2.4.3.1 of the SMDC, to prescribe land uses, environmental standards, development standards, and public facilities standards governing the Property during the term of this Agreement.

NOW THEREFORE, the City and Owner in consideration of the premises, the mutual covenants and agreements of the Parties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, agree as follows:

SECTION 1: GENERAL TERMS AND CONDITIONS

1.01 Conceptual Land Use Plan

- A. The City hereby approves the general use and development of the Property in accordance with the Conceptual Land Use Plan, which is incorporated herein as **Exhibit "B"**. The Conceptual Land Use Plan shall constitute the land use plan under Section 2.4.3.3 of the San Marcos Development Code ("SMDC"). The Conceptual Land Use Plan may be amended from time to time in accordance with the processes and procedures outlined in Section 2.4.3.7.C of the SMDC or as stated in Sections 1.05 and 7.04 below. Development applications for the Property shall be consistent with the Conceptual Land Use Plan.

1.02 Proposed Schedule of Development and Phasing

- A. Phasing is anticipated as depicted in **Exhibit “C”** Conceptual Phasing Plan.

1.03 Base Zoning District(s)

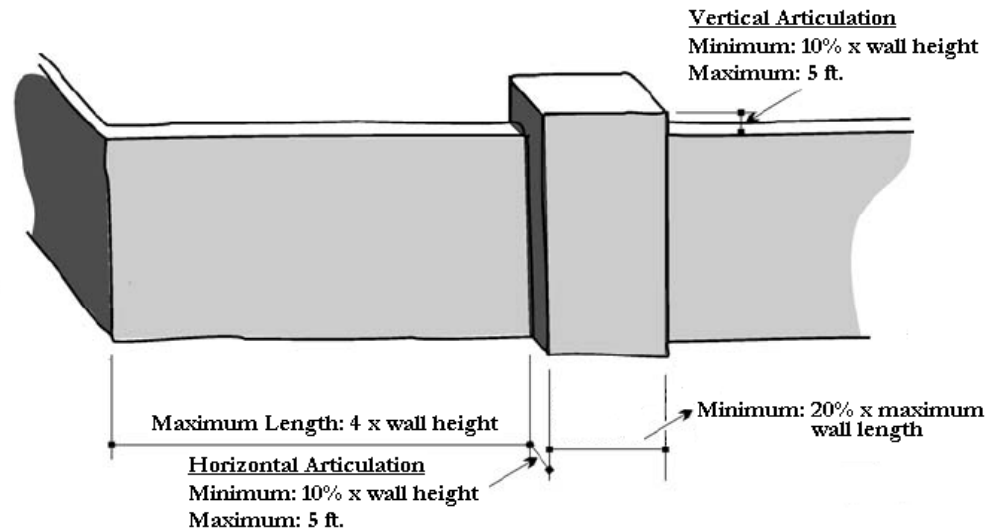
- A. The Project will be developed using Heavy Industrial or Heavy Commercial as the base zoning district(s).

1.04 Development Standards:

- A. All City of San Marcos codes and ordinances in effect on the Effective Date of this Agreement shall govern throughout the term of this Project, except as noted within this Agreement. In the event of a conflict between this Agreement and the SMDC or the City's Codes and Ordinances, this Agreement shall control.
- B. Pursuant to the City's authority under section 2.4.5.1 of the City's Development Code and under Section 212.172 of the Texas Local Government Code, the City hereby agrees to the following waivers and modifications to the following requirements of such Development Code with respect to the Property or any portion of the Property, as applicable:
1. Section 3.6.2.1, Table 3.1 which requires a maximum 5,000 ft block perimeter and maximum 400 ft dead end street length in EC, HC, HI and LI zoning districts is modified to allow 10,000 ft. maximum block perimeters which shall include Thoroughfare Plan Roads as illustrated in **Exhibit “E”**.
 2. Section 4.3.5.3, which limits the blank wall area of a building based on the associated zoning district, shall be modified as follows:
 - i. Horizontal Articulation. Blank walls visible from and within 300 feet of a public right-of-way or a residentially zoned property shall not extend for a distance greater than four (4) times the wall's height without having an off-set of ten percent (10%) of the wall's height (maximum of five (5) feet); the new plane shall extend for a distance equal to a minimum of twenty percent (20%) of the maximum length of the first plane. Walls not visible from or within 300 feet of a public right-of-way or a residentially zoned property and loading dock doors are exempt from the horizontal articulation requirement.
 - ii. Vertical Articulation. Walls visible from and within 300 feet of a public right-of-way or a residentially zoned property shall not extend for a distance greater than four (4) times the height of the wall without changing height by a minimum of ten percent (10%) of the wall's height (maximum of five (5) feet). Walls

not visible from or within 300 feet of a public right-of-way or residentially zoned properties and loading dock doors are exempt from the vertical articulation requirement.

- iii. The following Figure 1. Is intended to assist in calculating Horizontal and Vertical Articulation. Each elevation submitted to the City for permit review shall clearly indicate the information necessary to determine compliance with this section and Figure 1.



- 3. Section 7.2.6.2(E), which does not permit chain link fencing, is modified to allow the use of black vinyl coated chain link fencing.
- 4. Section 7.1.4.3, which requires landscaped islands and trees within parking areas, is modified in part to waive the requirement for landscaping in parking areas designated for trailers (as defined under Chapter 8 (Definition No. 249) of the City's Development Code), provided that, for each tree which is not planted as a result of this waiver, a replacement tree shall be planted elsewhere on the site in addition to the minimum number of trees already required to be planted.
 - i. At the time of site development permitting, the applicant will provide an exhibit showing where and how many landscape islands and trees would have been required and will clearly identify where replacement trees are located.
- 5. Section 3.6.4.2.B, which requires pedestrian access from building entrances to public sidewalks, is waived in part such that access will only be required for non-industrial uses.

6. Section 6.1.2.2 and 6.1.2.3, which allow up to four feet of cut and fill by right and eight feet approved administratively are modified as follows:
 - i. Up to fifteen feet of cut or fill is allowed by right within the limits designated on **Exhibit "G"**.
 - ii. Up to twenty feet of cut or fill is allowed by right within the limits designated on **"Exhibit "G"**.
 - iii. Up to four feet of cut or fill is allowed by right within the anticipated floodplain reclamation limits with administrative approval of Floodplain Study.
 - iv. Cut or fill over twenty feet will require approval of the City Council.
 - v. The areas indicated in green on **Exhibit "G"** shall comply with City Codes and be subject to a detailed floodplain analysis.
7. Section 5.1.3.2.B, which limits the height of outdoor storage to twelve feet, is modified in areas to be utilized for intermodal container transloading and/or storage operations to allow up to 80 feet in height when items being stored are 200 feet from a public right of way.

1.05 Application Procedures

- A. Development of the Property shall be governed by the following:
 1. All procedures outlined in the SMDC and City of San Marcos Code of Ordinances, as they exist on the effective date of this Agreement, shall apply, unless otherwise provided in this Agreement.
 2. Plat Approval: The Parties agree that the approved land uses in each final plat of portions of the Property shall be consistent with the Conceptual Land Use Plan and **Exhibit "B"** attached hereto.
 3. Due to the significant investment undertaken by Owner in developing the Property, the City agrees that all water and wastewater impact fees to be charged by the City during the development of the Property will be the fees in effect as of March 19, 2019.
 4. Prior to or concurrent with the submittal of the first plat application for development on the Property or any portion thereof, a traffic impact analysis ("TIA") will be required in accordance with Sections 3.5.2.7 and 3.5.2.8 and other applicable provisions of Chapters 2 and 3 of Subpart B of the San Marcos Code of Ordinances.

5. Parkland Dedication: Parkland dedication is not required for commercial or industrial development.

1.06 Special Standards

- A. The following is a list of special standards applicable to development of the Property as required by Section 2.4.3.2.E.7 of the SMDC.
 1. Owner agrees to install internal road signage to encourage truck traffic to utilize preferred traffic patterns for such vehicles in or around the Property in accordance with the then current version of the Texas Manual on Uniform Traffic Control Devices (TMUTCD) as of the date of the roadway project's design and construction.

1.07 Public Facilities Schedule & Financing

- A. An Out of City Utility Connection / Extension application will not be required for the development of this Property provided that the terms of this Agreement are met.
- B. The Owner shall be responsible for the payment of all costs associated with the extension and improvements of the infrastructure required to properly serve development of the Property. When the Owner of the Property plats all or any portion of the Property, Owner shall, at its sole cost, install all public improvements and dedicate all public facilities and any associated easements, including offsite easements, required in relation to such plat or plats in accordance with applicable City of San Marcos ordinances, standards, and engineering specifications in effect at the time of the Effective Date of this Agreement, except for the changes (if any) to such ordinances, standards, and specifications that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code. To the extent the City determines that public facilities or infrastructure are required beyond what are necessary to serve an area of the Property being platted or beyond what is roughly proportional for the development of such platted area, the City may request an oversize agreement under Section 3.5.2.11 of the City's Development Code for the City's participation in the costs of oversizing any facilities or infrastructure.
- C. Provisions for providing Water Service to the Property
 1. The Property is currently located in the three different water CCNs: the City of San Marcos Water CCN, Martindale Water Supply Corporation Water CCN, and Maxwell Special Utility District CCN. The Parties agree that the Owner will undertake due diligence regarding CCN boundaries, existing water infrastructure, and capacity to serve within each CCN that exists on the Property.

2. Owner agrees to work diligently with each CCN holder as it relates to water service to the Property

D. Provisions for providing Wastewater Service to the Property

1. The Property is not currently within a CCN for wastewater service. The owner agrees to provide a letter of consent to “opt in” to the City’s wastewater CCN within 90 days of the effective date of this Agreement. The request shall be in writing and a copy of the request shall be provided to the City.
2. Upon annexation and addition of land to the City’s wastewater CCN the City agrees to provide wastewater service to the Property.
3. The City confirms that, as originally allocated in the Cotton Center Development Agreement, Owner shall be entitled to use of 2,108 LUEs of Wastewater Service on the Property.
4. Owner agrees to dedicate necessary right-of-way and install infrastructure (purple pipe) on the Property for the future use of reclaimed / reuse water on the Property.

E. Provisions for providing Electric Service to the Property

1. Bluebonnet Electric is the electric service provider and has the necessary CCN to serve the Property. The property is not within the City’s electric service area, however the San Marcos Utility Roadway Lighting Standards will apply.

F. Owner agrees to donate two, three-acre parcels for future fire stations, the locations of which are generally described in **Exhibit “E”** provided that the subject property is not located within a floodplain and has access to a public street in a manner which is acceptable for typical fire operations.

1. Dedication of the westernmost parcel shall occur within a year of the Effective Date of the Agreement.
2. Dedication of the easternmost parcel shall occur within 180 days of the approval of the final plat containing the site.

E. Parkland Obligation

1. Owner agrees to convey and eight-acre parcel located within the Property to the City to be used as a public park which will be privately maintained.

1.08 Annexation

- A. The parties recognize that approximately 734.6 acres of the Property included in the Smart Terminal Development Agreement have been formally annexed into the municipal boundaries of the City.
- B. Upon approval of this Agreement, the Owner agrees to the full purpose annexation of the portion of the Property not located in the City or within a Municipal Utility District. Concurrent with annexation of the Property, the applicant shall initiate a zoning change to establish zoning districts which are consistent with the terms and conditions of this agreement. Owner has submitted applications for annexation and zoning of the 573 acres (with an additional approximately 57 acres of right-of-way included in the annexation application), not located within the City or a MUD. City agrees to consider the annexation and zoning ordinances concurrently and at the same meeting.
- C. The parties confirm that a portion of the Property is located within a Municipal Utility District (MUD) and that said portion of the Property may be annexed for full purpose during the term of this agreement following the amendment of the existing Consent Agreement or mutual negotiation of a new consent agreement for said portion of the Property. An amended or new consent agreement will address, but not be limited to: the Owner confirming no bonds will be issued by the MUD, confirmation that the City will not assume any debt of a MUD as a result of annexation, and that the MUD may undertake certain operation and/or maintenance functions and, in support of such functions, may levy an operations and maintenance tax in the MUD.
 - 1. The parties understand that Cotton Center Municipal Utility District No. 1, as of the Effective Date of this Agreement, is constrained in its ability to undertake any action, including the division of the existing district, as contemplated by the Consent Agreement, or to exclude areas from the existing MUD. Once the MUD has the ability to establish a quorum and formally undertake action, the Owner will coordinate with the City with regard to the consent agreement and annexation of the portion of the Property located within the MUD. The parties understand that a new District may be formed over the portion of the Property located in a MUD as a result of the division of Cotton Center Municipal Utility District No. 1 or that the Property located in a MUD may be excluded from the boundaries of Cotton Center Municipal Utility District No. 1.
 - 2. Owner and all subsequent owners of property within the portion of the MUD located on the Property voluntarily consent to annexation by the City upon the terms and conditions set forth in this Agreement. Notice to all subsequent owners of the property shall be evidenced by the Memorandum of Agreement attached as **Exhibit "F"** which will be recorded in the deed records of Caldwell County within 30

days of the bond election of the Municipal Utility District or any subsequent Sub-Districts. Additionally, a note covering the foregoing will be added to all final subdivision plats

1.09 Interim Agricultural Uses.

- A. The Parties agree and acknowledge that the Property, or portions thereof, is currently used for agricultural purposes and subject to a property tax exemption under Chapter 23 of the Texas Tax Code. It is the intent of the Owner to continue use of such portions of the Property for agricultural or wildlife preservation purposes until such time as the Property is developed. As portions of the Property are developed and taken out of agricultural use or wildlife preservation use, the Owner intends to continue use of the remaining, undeveloped portions of the Property for agricultural or wildlife preservation purposes. The City agrees that the Owner shall be permitted to continue such agricultural use or wildlife preservation uses even upon and after annexation and that the City will not oppose continuation of the property tax exemption.

1.10 No Waiver of Platting Requirements.

- A. Subject to possible oversize participation by the City under applicable ordinances, nothing in this Article 3 shall be construed as a waiver of any platting requirements to construct all public improvements, including water and wastewater facilities, and to acquire and dedicate to the City such improvements and any associated easements or land, all at the sole expense of the owner of any portion of the Property for which plat approval is requested, as required by the City's Development Code, Chapter 86 of the San Marcos City Code or any other ordinance applicable to the construction of public improvements in relation to platting, subject to applicable limitations under state or federal law. For example, and for the avoidance of doubt, if a future purchaser of any portion of the Property seeks to plat such portion before the date the Owner is required to construct the Wastewater Impact Fee Project improvements, yet the improvements are necessary for the plat to qualify for approval by the City's Planning and Zoning Commission, the plat would be subject to denial unless such future purchaser either completes the extent of the necessary improvements prior to final plat approval or submits to the City, with its final plat request, a subdivision improvement agreement, together with financial security guaranteeing the completion of the improvements.

SECTION 2: ENVIRONMENTAL STANDARDS

2.01 Enhanced Water Quality Safeguards.

Development of the Property shall adhere to the supplemental water quality standards under this section. Measures shall be implemented by the Owner applying applicable best management practices ("BMP's") to ensure that, after full development of the Property, at least 70 percent of increased total suspended solids are removed from stormwater and a

water quality volume produced by a 1.25-inch rainfall is captured. The water quality volume will provide stream protection to preserve the natural character of downstream waterways. Appropriate stormwater treatment measures include: the use of decentralized, low impact development features (e.g., rain gardens, pervious pavement, biofiltration, etc.), stormwater detention facilities and extended detention basins. The City's Stormwater Technical Manual in effect on the Effective Date of this Agreement shall govern or guide, as applicable, BMP selection and design, except for the changes to such manual (if any) that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code.

2.02 Water Quality Zone Reclamation.

Reclamation of water quality zones shall incorporate natural channel design techniques and address aesthetics by implementing a natural channel shape that includes varying cross section widths, depths, and side slopes and native vegetation. Trees shall be planted at the top of channel banks. Either or both the natural channel design techniques adopted and accepted by the City of Austin and the Natural Design Protocol developed by the San Antonio River Authority, or similar techniques shall be used as guidance. The design of channels shall strive to attain natural channel function.

2.03 Impervious Cover.

Impervious cover on the Property, after full development, shall not exceed 70 percent of the entire gross acreage of the Property. The total impervious cover for an individual lot within the Property shall not exceed 90 percent of the gross area of the lot. The responsibility for tracking, limiting, and administering the 70 percent limitation rests solely on the Owner and shall be demonstrated to the City at the Site Permit stage of development. Acreage counted toward 30% pervious areas to include utility corridors (including ARWA and LCRA corridors), floodplains, and detention and stormwater quality facilities.

2.04 Enhanced Drainage Requirements.

On-site stormwater controls will be designed to reduce overall post-development peak rates of discharge so that they are at least 10 percent less than existing pre-development peak rates for the 2, 10, 25 and 100-year storm events at each point of discharge from the Property. Pre and post development peak rates of discharge will be calculated based upon Atlas 14 precipitation data and drainage impacts will be mitigated under applicable City ordinances in effect on the Effective Date of this Agreement, except for the changes (if any) to such ordinances, standards and specifications that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code. In addition, the Owner will work in good faith with the City to convey stormwater run-off from up-gradient areas consistent with the City's Stormwater Technical Manual in effect on the Effective Date of this Agreement, except for the changes (if any) to such ordinances, standards and specifications that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code.

2.05 Maximum Permissible Sound Levels.

Noise level maximums and measurements will be regulated and undertaken pursuant to Section 7.4.2.1, unless otherwise provided in this Agreement. In addition, the Owner agrees to conduct a study to determine the establishment of a Quiet Zone, if requested by the City to do so. Notwithstanding, locomotives may sound their horns in accordance with local, State and Federal requirements.

2.06 Smoke and Noxious Odors or Emissions.

All activities on the Property shall be conducted so as to comply with sections 7.4.2.2, 7.4.2.5 and 7.4.2.3 of the Development Code and any stricter standards under applicable state or federal laws. No emissions containing hazardous wastes or materials as defined by the Resource Conservation and Recovery Act, Federal Toxic Substances Control Act or the Federal Insecticide, Fungicide, and Rodenticide Act, or subsequent amendments of said Acts will be allowed from any source. The Owner specifically agrees that manufacturing of finished products producing the release of volatile organic compounds, or toxic or poisonous emissions at levels unsafe for human inhalation will not be allowed on the Property. Any odors not regularly emitted from the Property shall be reported to the Planning and Development Services Department and Public Safety staff in an effort to inform staff of unexpected correspondence with community members.

2.07 Compatibility with Airport Operations.

No development shall be permitted on the Property that interferes with the safe flight, take off or landing of aircraft at the San Marcos Municipal Airport in accordance with Federal Aviation Administration rules and standards. Until an ordinance is approved by the San Marcos City Council creating overlay zoning district standards designed to mitigate adverse impacts on airport activities, all building plans shall be subject to review by the City for a determination of adverse impacts on the airport's activities. The determination of adverse impacts under this section assumes the condition of the airport following the addition of one or more runways as part of the expansion proposed in the City's Airport Master Plan. In addition, each final plat of any portion of the Property shall include the dedication to the City of an aviation easement granting a right of overflight in the airspace above the platted portion of the Property, the right to create such noise or other effects as may result from the lawful operation of aircraft in such airspace, and the right to remove any obstructions to such easement.

2.08 Pollutants.

In addition to compliance with applicable ordinances and applicable state and federal laws, all development on the Property will adhere to standards of the Texas Commission on Environmental Quality ("TCEQ") multi-sector general permit, and the Environmental Protection Agency's ("EPA") spill prevention, control and countermeasure rules applicable to petroleum storage and runoff. Activities on the Property shall be conducted to meet or exceed such TCEQ and EPA standards in effect as of November 1, 2016. If any activity on the Property is subject to the rules or regulations of the TCEQ or EPA, no

variances from or waivers of TCEQ or EPA rules or regulations shall be permitted.

SECTION 3: LAND USES

Development of the Property is subject to the Permitted Uses and Prohibited Uses listed in **Exhibit "D"** attached hereto and made apart hereof for all purposes. Notwithstanding any restrictions, rights or privileges under applicable laws or the City's Development Code and other ordinances, the Permitted Uses shall be allowed on the Property and the Prohibited Uses are expressly prohibited on the Property.

SECTION 4: COMPLIANCE WITH LAWS

In performing its obligations under this Agreement, the Owner(s) shall comply with all applicable laws, regulations and ordinances.

SECTION 5: CONTINGENCY

Contingent Upon Annexation and Zoning. This Agreement and any annexation contemplated herein, including the land described in Section 1.07(B), are specifically contingent on the City zoning, as contemplated in Section 1.08, and annexing all or portions of the Property as contemplated herein.

SECTION 6: MISCELLANEOUS PROVISIONS

6.01 Term

- A. The term of this Agreement will commence on the Effective Date and continue for forty-five (45) years thereafter ("Initial Term"), unless sooner terminated under this Agreement. After the Initial Term, the Agreement may be extended for a fifteen (15) year period by Owner, with City's approval, by delivering written notice of such election to the City on or before the expiration of the then-current term. Following expiration of the second 15-year term, the Agreement may be extended for up to three successive five (5) year periods by Owner, with City's approval, by delivering written notice of such election to the City on or before the expiration of the then-current term.

6.02 Enforcement and Default and Remedies for Default

- A. The Parties agree that the City shall be entitled to enforce the San Marcos Development Code as it exists on the effective date of this Agreement, as modified by this Agreement. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period,

the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. The City may issue Stop Work Orders for violations arising under this Agreement or the City of San Marcos Code of Ordinances, as applicable.

- B. If either Party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this Agreement by specific performance or writ of mandamus, or to terminate this Agreement or other enforcement remedies the City may possess under its municipal regulatory authority.
- C. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of ten (10) business days after receipt by such party of notice of default from the other party. Upon the passage of ten (10) working days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

6.03 Authority, Applicable Rules and Right to Continue Development

- A. This Agreement is entered under the statutory authority of Sections 42.042, 43.0672 and 212.172 of the Texas Local Government Code and pursuant to Chapter 2, Article 4, Division 3 of the SMDC. The Parties intend that this Agreement authorize certain land uses and development on the Land; provide for the uniform review and approval of plats and development plans for the Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the Land to the City.
- B. Execution of this agreement, under Section 212.172 of the Texas Local Government Code, constitutes a permit under Chapter 245 of the Texas Local Government Code. In addition, the City acknowledges and agrees that (1) the uses and development contemplated in and authorized by this Agreement were planned for the Property more than ninety (90) days prior to the effective date of this Agreement and, therefore, more than ninety (90) days prior to the effective date of annexation of the Property, and (2) the Owner has filed a completed application for the initial authorization with the City prior to the institution of any annexation proceedings related to the Property. As a result of the foregoing sentence, Section 43.002 of the Texas Local Government Code applies to the uses and development of the Property contemplated in and authorized by this Agreement.
- C. In consideration of Owner's agreements hereunder, the City agrees that, during the term of this Agreement, it will not impose or attempt to impose:

(a) any moratorium on building or development within the Property, or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plans, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within the Property. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all or any part of the Property will apply to the Property if such moratorium, restriction or other limitation conflicts with this Agreement or would have the effect of increasing Owner's obligations or decreasing Owner's rights and benefits under this Agreement. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City and ETJ due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency or a moratorium authorized by Subchapter E, Chapter 212 of the Texas Local Government Code.

6.04 Exhibits/Amendment

- A. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and *vice-versa*. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.
- B. Owner may make minor changes to the Conceptual Land Use Plan and other attachments to this agreement with approval from the Director of Planning & Development Services and may make major changes with approval by City Council. Minor change shall consist of but are not limited to:
 - 1. A change that does not materially affect a change of lot or unit density contemplated by this Agreement by more than 10%
 - 2. Changes to the phasing plan resulting from availability of infrastructure to serve the Property.

3. Changes to accommodate tree preservation of the protection of KARST features.
- C. Owner may appeal the Planning and Development Services Director's determination of a minor change to the City Manager within 10 days of the date of notification of the decision.
 - D. Major changes shall consist of but are not limited to:
 1. The addition of land area;
 2. Density beyond what is permitted in SMDC, except as allowed by this Agreement;
 3. Changes in roadway alignments more than what is necessary to meet Code;
 4. Change in the base zoning.

6.05 Recordation

- A. Pursuant to the requirements of Section 212.172(f), Texas Local Government Code, this Agreement shall be recorded in the official public records of Hays County, Texas. The terms of this Agreement shall be binding upon: (a) the Parties; (b) the Parties' successors and assigns; (c) the Property; and (d) future owners of all or any portion of the Property.
- B. Owners agree that all restrictive covenants for the Property shall not be inconsistent with the requirements herein. Owners further agree to memorialize the terms of this Agreement through inclusion in the plat notes. The Agreement shall be recorded in the Hays County land records to place subsequent purchasers on notice at Owners' expense and Owners shall provide a copy of all such restrictive covenants to the City prior to filing.

6.06 Assignment and Binding Effect Upon Successors

- A. Owner hereunder, may assign this Agreement, and the rights and obligations of Owner to a subsequent purchaser of all or a portion of the undeveloped property within the Property or to an affiliate of the Owner provided that the assignee assumes all of the obligations hereunder, without any consent of the City being required. Any assignment must be in writing, specifically describe the property in question, set forth the assigned rights and obligations and be executed by the proposed assignee. A copy of the assignment document must be delivered to the City and recorded in the real property records as may be required by applicable law. Upon any such assignment, the assignor will be released of any further obligations under this Agreement as to the property sold and obligations assigned.

- B. The provisions of this Agreement shall run with the land, will be binding upon, and inure to the benefit of the Parties, future owners of the Property, and their respective successors and assigns. This Agreement will not, however, be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Property.

6.07 Miscellaneous

- A. **Force Majeure** The term "force majeure" as used herein shall mean and refer to Acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, devil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within the control of the party claiming such inability.
 - 1. If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- B. **Governing Law, Jurisdiction and Venue** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in Hays County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.
- C. **Severability** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible. The Parties agree to reasonably cooperate to effectuate the intent of this Agreement.

- D. **Parties** If any of the ownership entities fail or refuse to sign this Agreement or choose to opt out of this Agreement, those entities and their property shall be excluded. The Conceptual Land Plan will be amended to reflect the change and will automatically become part of this Agreement. Further, the county deed records will be amended by the Owner to reflect the change and evidence of the recordation will be provided to the City.
- E. **Notices** All notices, demands and requests required hereunder shall be in writing and shall be deemed to have been properly delivered and received (i) as of the date of delivery to the addresses set forth below if personally delivered or delivered by facsimile machine, with confirmation of delivery (in the event a facsimile is sent after 5:00 p.m. local San Marcos, Texas time, it shall be deemed to have been received on the next day), or email (as indicated below); (ii) three (3) business days after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (iii) one (1) business day after deposit with Federal Express or comparable overnight delivery system for overnight delivery with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

If to City: City of San Marcos
 Attn: City Manager
 630 East Hopkins Street
 San Marcos, Texas 78666

With a copy to: City of San Marcos
 Attn: City Attorney
 630 East Hopkins Street
 San Marcos, Texas 78666

If to the Owner: Franklin Mountain San Marcos I, LP,
 Attn: Ryan Burkhardt
 16830 Addison Road
 Addison, Texas 75001

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section.

GOVERNMENTAL FUNCTION; IMMUNITY

The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

EXECUTED to be effective as of the Effective Date first stated above.

CITY OF SAN MARCOS, TEXAS

By: _____
Stephanie Reyes, Interim City Manager

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the ____ day of _____
2023, by Stephanie Reyes, City Manager of the City of San Marcos, in such capacity, on
behalf of said entity.

[seal]

GOVERNMENTAL FUNCTION; IMMUNITY

The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

EXECUTED to be effective as of the Effective Date first stated above.

FRANKLIN MOUNTAIN SAN MARCOS I,
LP

By: _____
RYAN BURKHARDT, President

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____
2023, by Ryan Burkhardt, in his capacity as President for Franklin Mountain San Marcos
I, LP.

Notary Public, State of Texas

Exhibit A
Metes and Bounds

DESCRIPTION OF TRACT ONE - 1213.119 ACRES

BEING a 1213.119 acre tract of land situated in the William Pettus Survey, Abstract No.21, City of San Marcos, Caldwell County, Texas;

and containing the following tracts of land described in instruments to Franklin Mountain San Marcos I, LP and recorded in the Official Public Records of Caldwell County:

- all of that certain 70.046 acre Tract 1 in Document No. 2021-007604;
- all of that certain 765.723 Tract 2 in Document No. 2021-007604;
- all of that certain 213.68 acre Tract 3 in Document No. 2021-007604;
- and all of that certain 0.956 acre tract in Document No. 2021-002523;

also containing the remaining portion of that certain 250 acre tract described in instrument to James A, Neumann, recorded in Volume 350, Page 279 of the Probate Records of Caldwell County; further described in Volume 200, Page 335 of the Deed Records of Caldwell County, Texas; said 250 acre remainder being all of that certain 132.794 acre tract shown on the Land Title Survey by Cross Texas Land Services, Inc., dated 4-12-2022, and a portion of the occupied limits of Quail Run (County Road);

also containing a portion of the street right-of-way of F.M. Highway No. 1984 (80 feet wide);

also containing all of that certain 15.658 acre Parcel 21N - Part 1 described in instrument to Hays County, Texas, recorded in Document No. 2018-005995 of the Official Public Records of Caldwell County, and a portion that certain 15.658 acre Parcel 21N - Part 1 described in instrument to Hays County, Texas, recorded in Document No. 2018-005995; both parcels being a portion of the proposed street right-of-way of F.M. Highway 110;

and Save and Except that certain 2.952 acre tract described in instrument to Blue Bonnet Electric Cooperative, recorded in Volume 447, Page 141 of the Caldwell County Official Public Records;

and being more particularly described as follows:

BEGINNING at a point situated on the southerly boundary of the M.K.T. Railroad (100 feet wide) marking the northwest corner of the said 765.723 acre tract of the herein described tract;

THENCE, along the northerly and northeasterly boundary of said 765.723 acre tract the following seven (7) courses and distances:

1. South 87°57'24" East, 4852.25 feet along the said southerly boundary to a point for corner;
2. South 41°49'02" East, 705.95 feet to a point for corner;
3. North 48°37'37" East, 740.60 feet to a point for corner;
4. South 87°57'24" East, 1686.33 feet to a point for corner;
5. South 02°11'42" West, 64.07 feet to a point for corner;
6. South 72°32'13" East, 941.38 feet to a point for corner;
7. South 42°18'08" East, 539.12 feet crossing aforesaid F.M. Highway 1984 to a point for corner;

THENCE, South 48°59'16" West, 595.72 feet along the southeasterly right-of-way line of said F.M. Highway 1984 to a point marking the north corner of the aforesaid 213.68 acre tract, and an interior corner of the herein described tract;

THENCE, along the boundary of the said 213.68 acre tract the following four (4) courses and distances:

1. South 40°58'18" East, 2944.59 feet to a point for corner;
2. North 49°22'55" East, 486.66 feet to a point for corner;
3. South 13°50'38" East, 655.20 feet to a point for corner;
4. South 16°08'31" East, 819.56 feet to a point for corner;

THENCE, along the boundary of the aforesaid 132.794 acre tract and C.R. Quail Run the following sixteen (16) course and distances:

1. South 26°21'25" East, 668.49 feet to a point for corner;
2. South 39°32'46" East, 241.14 feet to a point for corner;
3. South 43°45'54" West, 190.62 feet to a point for corner;
4. South 22°49'51" East, 255.49 feet to a point for corner;
5. South 27°15'25" East, 102.46 feet to a point for corner;
6. South 50°20'25" East, 99.62 feet to a point for corner;
7. South 56°28'34" East, 234.92 feet to a point for corner;

8. South 36°29'58" East, 285.03 feet to a point for corner;
9. South 00°34'47" West, 227.61 feet to a point for corner;
10. South 12°19'27" East, 294.27 feet to a point for corner;
11. South 48°55'04" West, 31.89 feet to a point for corner;
12. South 40°55'43" East, 11.09 feet to a point for corner;
13. South 48°58'13" West, 2129.34 feet to a point for corner;
14. North 41°14'58" West, 2286.65 feet to a point for corner;
15. North 48°05'54" East, 108.46 feet to a point for corner;
16. North 47°16'26" East, 769.78 feet to a point for corner;

THENCE, North 41°11'02" West, 4259.52 feet along the southeasterly boundary of said 213.68 acre tract to a point for corner;

THENCE, South 48°59'16" West, 3304.01 feet along the southeasterly right-of-way line of aforesaid F.M. Highway No. 1984 to a point for corner on the City Limits and Extra Territorial Jurisdiction (ETJ) line of the City of San Marcos (City Limits line is based on shape files from City of San Marcos GIS page – 11/03/2022);

THENCE, crossing the aforesaid 765.723 acre tract, and with the said City Limits and Extra Territorial Jurisdiction (ETJ) line the following six (6) course and distances:

1. North 65°37'30" West, 345.33 feet to a point for corner;
2. North 61°52'30" West, 345.51 feet to a point for corner;
3. North 58°07'30" West, 345.51 feet to a point for corner;
4. North 54°22'30" West, 345.51 feet to a point for corner;
5. North 50°37'30" West, 345.51 feet to a point for corner;
6. North 42°18'22" West, 152.82 feet to a point for corner;

THENCE, South 34°18'54" West, 2612.17 feet along the boundary of the said 765.723 acre tract to a point for corner on the southerly right-of-way line of aforesaid State Highway No. 80;

THENCE, North 78°17'24" West, 316.99 feet along the southerly right-of-way line of said State Highway 80 to a point for corner;

THENCE, North 34°00'11" East, 1579.31 feet to a crossing said right-of-way, and along the interior boundary of the said 765.723 acre tract to a point for corner;

THENCE, along the interior boundary of said 765.723 acre tract the following two (2) courses and distances:

1. North 72°12'16" West, 918.54 feet to a point for corner;
2. South 25°45'46" West, 1606.73 feet to a point for corner on the southerly right-of-way line of said State Highway No. 80

THENCE, along the said southerly right-of-way line of State Highway No. 80 the following seven (7) courses and distances:

1. North 78°17'24" West, 217.46 feet to a point for corner;
2. South 11°42'36" West, 45.00 feet to a point for corner;
3. North 78°17'24" West, 565.50 feet to a point for corner;
4. North 11°42'36" East, 45.00 feet to a point for corner;
5. North 78°17'24" West, 234.68 feet to a point for corner;
6. South 11°42'36" West, 10.00 feet to a point for corner;
7. North 78°17'24" West, 995.48 feet to a point for corner;

THENCE, crossing said right-of-way line, and along the westerly boundary of aforesaid 70.046 acre, 15.658 acre, and 765.723 acre tracts the following five (5) course and distances:

1. North 17°44'12" East, 842.33 feet to a point for corner;
2. North 17°53'43" East, 1475.20 feet to a point for corner;
3. North 17°43'25" East, 1747.03 feet to a point for corner;
4. North 17°40'50" East, 491.92 feet to a point for corner;
5. North 17°40'50" East, 1248.31 feet to the **POINT OF BEGINNING**, and containing 1216.071 acres of land in Caldwell County, Texas.

Subtracting from the above, the aforesaid 2.952 acre Save and Except tract to Blue Bonnet Electric Cooperative being more fully described as follows:

BEGINNING, at a point on the southeasterly right-of-way line of aforesaid F.M. Highway No. 1984, marking the north corner of the aforesaid 213.68 acre tract;

THENCE, South 48°59'16" East, 310.53 feet along the said southeasterly right-of-way line to the **POINT OF BEGINNING** and north corner of the herein described tract;

THENCE, along the boundary of the said 2.952 acre tract the following five (5) courses and distances:

1. South 63°59'23" East, 139.39 feet to a point for corner;
2. South 77°13'15" East, 212.92 feet to a point for corner;
3. South 49°00'47" West, 530.10 feet to a point for corner;
4. North 40°59'54" West, 299.90 feet to a point for corner;
5. North 48°59'16" East, 349.83 feet to along the said southeasterly right-of-way line to the **POINT OF BEGINNING**, and containing 2.952 acres of land;

For a total of 1213.119 acres of land in Caldwell County, Texas.

The basis of bearing of this description is from the Land Title Surveys by Cross Texas Land Services, Inn. According to said surveys the basis of bearing is the Texas State Plane Coordinate System, South Central Zone (NAD'83). This description was generated on 11/3/2022 at 2:54 PM, based on geometry in the drawing file K:\SNA_Survey\SAN MARCOS INDUSTRIAL\064421519-FRANKLIN MOUNTAIN\Dwg\Exhibits\Zoning and Annexation\GRID Boundary Base.dwg, in the office of Kimley-Horn and Associates in San Antonio, Texas.

This document was prepared under 22 Texas Administrative Code § 138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

< NEXT PAGE >

DESCRIPTION OF TRACT TWO - 660.503 ACRES

LEGAL DESCRIPTION: Being 660.503 acres of land out of the William Pettus Survey, Abstract No. 21 and the Thomas Maxwell Survey No. 17, Abstract No. 188 in Caldwell County, Texas and being a combination of all of that certain 339.31 acre tract, that certain 224.83 acre tract described Do. #2018003486 of the Official Public Records of said Caldwell County, Texas and that certain 91.99 acre tract and that certain 4.56 acre tract described in Doc. #2018003681 of said Official Public Records; Said 660.503 acre tract being more particularly described as follows and as surveyed under the supervision of Cross Texas Land Services Inc in July and August 2021:

BEGINNING at a 1/2" iron rod with cap found in the record common line of said Abstract No. 21 and said Abstract No. 17 and the south line of Valley Way Drive, the northeast line of said 339.31 acre tract for the northwest corner of said 91.99 acre tract and a corner hereof;

THENCE along the record common line of said Valley Way Drive and said 91.99 acre tract, the following 4 courses:

1. South 87°59'53" East a distance of 870.58 feet to a 1/2" iron rod with cap set;
2. North 82°56'52" East a distance of 455.03 feet to a 1/2" iron rod with cap set;
3. North 81°46'28" East a distance of 127.64 feet to a 1/2" iron rod with cap set;
4. South 40°59'08" East a distance of 2790.22 feet to a 1/2" iron rod with cap set for a corner of that certain 139.76 acre tract described in Volume 269, Page 127 of the Deed Records of said Caldwell County, Texas, the east corner of said 91.99 acre tract and the northeast corner hereof;

THENCE along the northwest line of said 139.76 acre tract, the following 3 courses:

1. South 48°39'23" West a distance of 1363.19 feet along the southeast line of said 91.99 acre tract to a 1/2" iron rod with cap set for the south corner of said 91.99 acre tract, the east corner of that certain 87.92 acre tract described in Doc. #113576 of said Official Public Records, the north corner of said 4.56 acre tract and a corner hereof;
2. South 40°59'41" East a distance of 322.58 feet along the northeast line of said 4.56 acre tract to a 1/2" iron rod with cap set for the east corner of said 4.56 acre tract and a corner hereof;
3. South 48°42'03" West a distance of 616.58 feet along the southeast line of said 4.56 acre tract to a 1/2" iron rod with cap set in the northeast line of said 87.92 acre tract for the south corner of said 4.56 acre tract and a corner hereof;

THENCE along the northeast and northwest line of said 87.92 acre tract, the following 3 courses:

1. North 41°02'15" West a distance of 322.10 feet along the southwest line of said 4.56 acre tract to a 1/2" iron rod with cap set for the west corner of said 4.56 acre tract and a corner hereof;
2. North 48°39'23" East a distance of 616.82 feet along the northwest line of said 4.56 acre tract to a 1/2" iron rod with cap set for the north corner of said 4.56 acre tract, the south corner of said 91.99 acre tract and a corner hereof;
3. North 40°59'41" West a distance of 1677.44 feet along the southwest line of said 91.99 acre tract to a 1/2" iron rod with cap set in the southeast corner of said 224.83 acre tract for the north corner of said 87.92 acre tract and a corner hereof and from which a 1/2" iron rod with cap found for the east corner of said 224.83 acre tract bears North 48°27'12" East a distance of 243.38 feet;

THENCE South 48°39'07" West a distance of 3678.18 feet along the common line of said 87.92 acre tract and said 224.83 acre tract and the common line of that certain 98.88 acre tract described in Doc. #113576 of said Official Public Records to a 1/2" iron rod with cap set for the west corner of said 98.88 acre tract, the north corner of that certain 575.65 acre tract described in Volume 523, Page 710 of said Official Public Records and a corner hereof and from which a 6" pine fence corner post found bears South 55°45'17" West a distance of 10.87 feet;

THENCE South 48°55'00" West a distance of 3305.89 feet along the common line of said 575.65 acre tract and said 224.83 acre tract to a 1/2" iron rod with cap found in the northeast line of that certain 133.45 acre tract described in Volume 350, Page 279 of the Probate Records of said Caldwell County, Texas for the south corner of said 224.83 acre tract and the south corner hereof and from which a 3" pipe post found bears North 57°51'27" West a distance of 23.19 feet;

THENCE along the common line of said 133.45 acre tract and said 224.83 acre tract and along the common line of said 133.45 acre tract and said 339.31 acre tract, the following 10 courses:

1. North 12°23'40" West a distance of 294.27 feet to a calculated point;
2. North 00°34'47" East a distance of 227.61 feet to a calculated point;
3. North 36°29'58" West a distance of 285.03 feet to a calculated point;
4. North 56°28'34" West a distance of 234.92 feet to a calculated point;
5. North 50°20'25" West a distance of 99.62 feet to a calculated point;
6. North 27°15'25" West a distance of 102.46 feet to a calculated point;
7. North 22°46'36" West a distance of 255.53 feet to a 1/2" iron rod with cap found;
8. North 43°45'54" East a distance of 190.62 feet to a 1/2" iron rod found;
9. North 39°18'29" West a distance of 241.18 feet to a 1/2" iron rod found;
10. North 26°27'55" West a distance of 667.85 feet to a 1/2" iron rod found for the north corner of said 133.45 acre tract, the east corner of that certain 216.403 acre

tract described in Volume 178, Page 184 of said Deed Records and a corner hereof and from which a 6" pine post found bears South 49°24'55" West a distance of 1998.10 feet;

THENCE along the common line of said 216.403 and said 339.31 acre tract, the following 2 courses:

1. North 16°07'35" West a distance of 819.98 feet to a calculated point;
2. North 13°50'38" West a distance of 655.20 feet to a calculated point for a corner of said 216.403 acre tract, a corner of that certain 21.73 acre tract described in Volume 467, Page 636 of said Official Public Records and a corner hereof and from which a 3" pipe fence corner post found South 59°06'06" West a distance of 19.15 feet;

THENCE North 10°06'52" West a distance of 165.71 feet along the common line of said 21.73 acre tract and said 339.31 acre tract to a calculated point for the south corner of that certain 49.82 acre tract described in Doc. #2013-6822 of said Official Public Records, a corner of said 21.73 acre tract, a corner of said 339.31 acre tract and a corner hereof and from which a 3" pipe fence corner post found bears North 53°53'12" East a distance of 50.76 feet;

THENCE along the common line of said 49.82 acre tract and said 339.31 acre tract, the following 4 courses:

1. North 48°42'37" East a distance of 1781.22 feet to a 3" pipe fence corner post found;
2. North 41°06'09" West a distance of 662.17 feet to a 3" pipe fence corner post found;
3. North 48°45'40" East a distance of 1261.05 feet to a 3" pipe fence corner post found;
4. North 42°05'23" West a distance of 275.14 feet to a calculated point in the south line of the M.K. T. Railroad for the northeast corner of said 49.82 acre tract, the northwest corner of said 339.31 acre tract and the northwest corner hereof and from which a 3" pipe fence corner post found bears North 42°05'23" West a distance of 0.79 feet;

THENCE South 87°55'21" East a distance of 3774.91 feet along the common line of said M.K.T. Rail road and said 339.31 acre tract being 50 feet south of and parallel to the centerline of said Railroad to a calculated point in the west line of said View Way Drive for the northeast corner of said 339.31 acre tract and a corner hereof and from which a bent 1/2" iron rod found bears North 41°08'31" West a distance of 0.49 feet;

THENCE South 41°08'31" East a distance of 61.93 feet along the common line of said View Way Drive and said 339.31 acre tract to the **POINT OF BEGINNING** containing 660.503 acres more or less, and as shown on a certified plat herewith.

DESCRIPTION OF TRACT THREE – 143.444 ACRES

LEGAL DESCRIPTION: Being 143.444 acres of land out of the William Pettus Survey, Abstract No. 21 and the Thomas Maxwell Survey No. 17, Abstract No. 188 in Caldwell County, Texas and being a portion of that certain 139.76 acre tract described Volume 269, Page 127 of the Deed Records of said Caldwell County, Texas; Said 143.444 acre tract being more particularly described as follows and as surveyed under the supervision of Cross Texas Land Services Inc in May 2021:

BEGINNING at a concrete highway monument found in the northwest line of State Highway No. 142 for the south corner of that certain 50.00 acre tract described in Doc. #2017-002125 of the Official Public Records of said Caldwell County, Texas and the east corner hereof;

THENCE South 52°13'01" West a distance of 2548.90 feet along the northwest line of said Highway to a ½" iron rod found for the east corner of that certain 26.267 acre tract described in Volume 332, Page 664 of said Deed Records and the south corner hereof;

THENCE North 41°21'24" West a distance of 1602.96 feet along the northeast line of said 26.267 acre tract and the northeast line of that certain 111.57 acre tract described in Volume 504, Page 634 of said Deed Records to a calculated point for the north corner of said 111.57 acre tract and a corner hereof and from which a ½" iron rod found bears North 43°51'55" East a distance of 59.71 feet;

THENCE South 48°38'36" West a distance of 827.63 feet along the northwest line of said 111.27 acre tract to a ½" iron rod found for the east corner of a 21' x 330' strip described in Volume 229, Page 224 of said Deed Records for a corner hereof;

THENCE North 40°43'35" West a distance of 320.43 feet along the northeast line of said strip to a ½" iron rod with cap found for the south corner of that certain 660.503 acre tract described in Doc. #2021-008765 of said Official Public Records, a corner of that certain 87.92 acre tract described in Doc. #113576 of said Official Public Records and a corner hereof;

THENCE along the southeast line of said 660.503 acre tract, the following 3 courses:

1. North 48°42'03" East a distance of 616.58 feet to a ½" iron rod with cap found;
2. North 40°59'41" West a distance of 322.58 feet to a ½" iron rod with cap found for the east corner of said 87.92 acre tract;
3. North 48°39'23" East a distance of 1363.19 feet to a ½" iron rod with cap found in the southwest line of County Road known as Valley Way Drive for the east corner of said 660.503 acre tract and a corner hereof;

THENCE North 48°39'23" East a distance of 167.94 feet crossing said County Road to a 12" pine fence corner post found for the south corner of that certain 49.99 acre tract described in Volume 306, Page 298 of said Official Public Records;

THENCE North 48°19'16" East a distance of 1218.32 feet along the common line of said County Road and said 49.99 acre tract to a calculated point for the north corner hereof and from which a 6" pine fence corner post found bears North 48°19'16" East a distance of 929.02 feet and another found for the west corner of said 50.00 acre tract bears South 41°21'24" East a distance of 49.08 feet;

THENCE South 41°21'24" East a distance of 2410.70 feet crossing said County Road and along the southwest line of said 50.00 acre tract to the **POINT OF BEGINNING** containing 143.444 acres more or less, and as shown hereon.

Note: Bearings, distances and acreage shown hereon are NAD 83, Texas South Central Zone and are derived from GPS techniques. Iron Rod set are 1/2 inch rod with plastic caps marked "CTLS".

Exhibit B
Conceptual Land Use Plan

EXHIBIT B: CONCEPTUAL LAND USE PLAN

- NOTES:
- 1. THE TOTAL PROJECT AREA IS ±2,000 ACRES
 - 2. THE AREA OF FEMA-MAPPED FLOOD PLAIN WITHIN THE PROJECT IS ±325 ACRES

LEGEND

++++

RAILROADS

CITY LIMITS

EXTRATERRITORIAL JURISDICTION (ETJ)

~~~~~

RIVERS AND STREAMS

~~~~~

WATER BODIES

~~~~~

FLOODPLAIN

HEAVY COMMERCIAL

GREEN BELT/DRAINAGE

HEAVY INDUSTRIAL

Kimley»Horn

© 2022 KIMLEY-HORN AND ASSOCIATES, INC.

13455 NOEL ROAD, TWO GALLERIA OFFICE

TOWER, SUITE 700

DALLAS, TEXAS 75240

PHONE: 972-770-1300

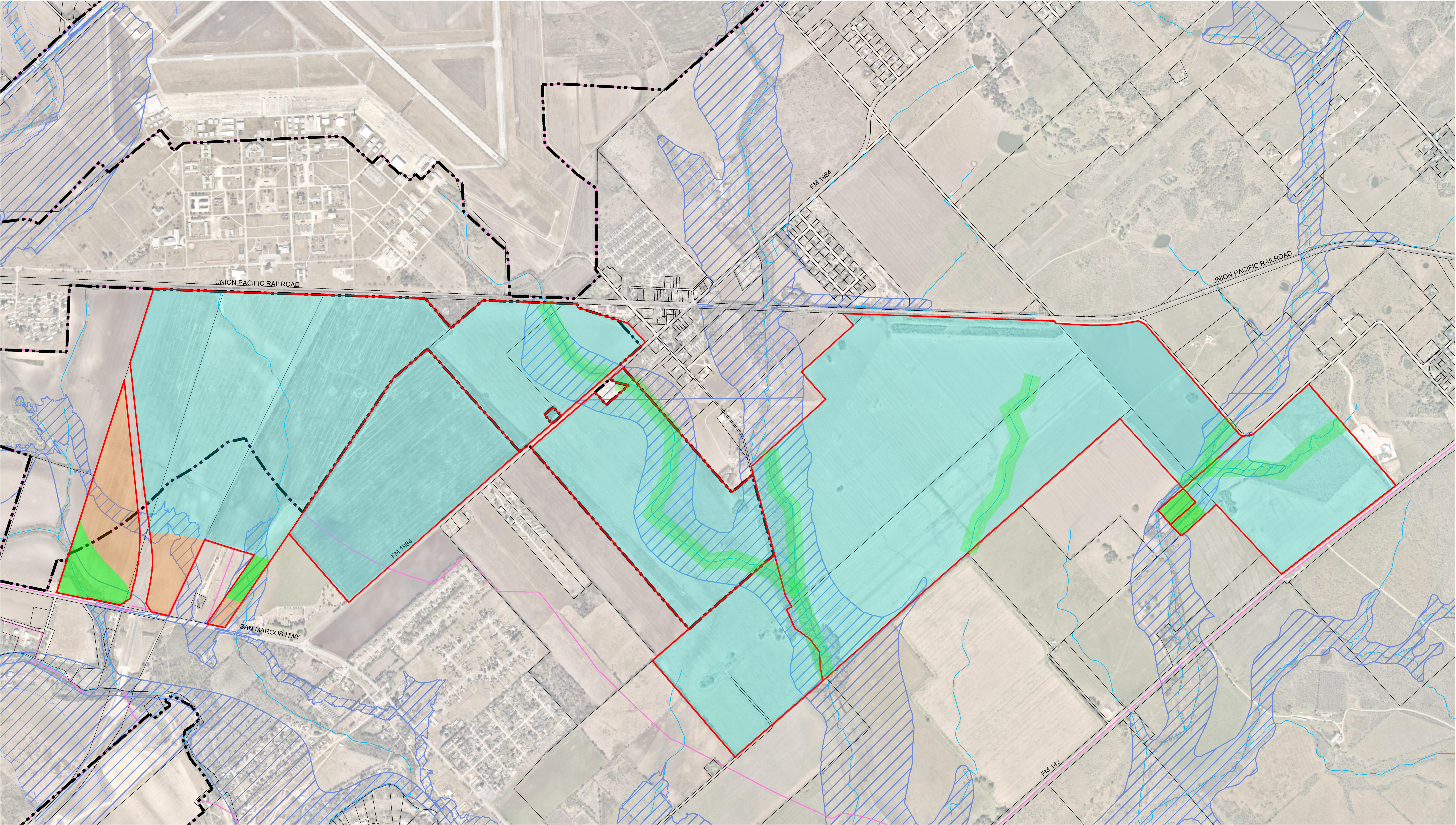
TEXAS REGISTERED ENGINEERING FIRM F-828

NORTH

GRAPHIC SCALE IN FEET

0 300 600 1200

1 inch equals 600 feet





**Exhibit C**  
**Conceptual Phasing Plan**



EXHIBIT C:  
CONCEPTUAL  
PHASING PLAN

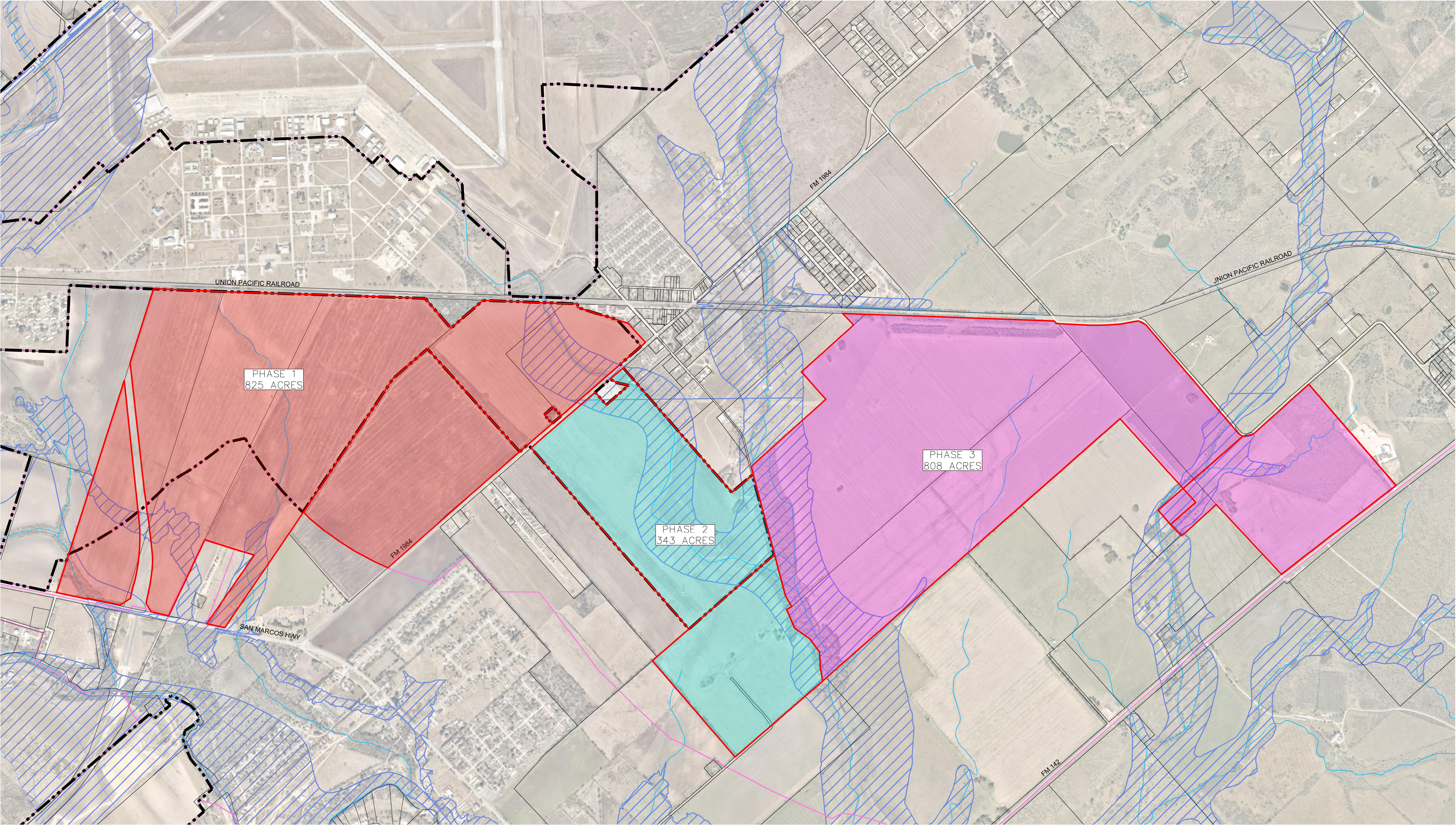
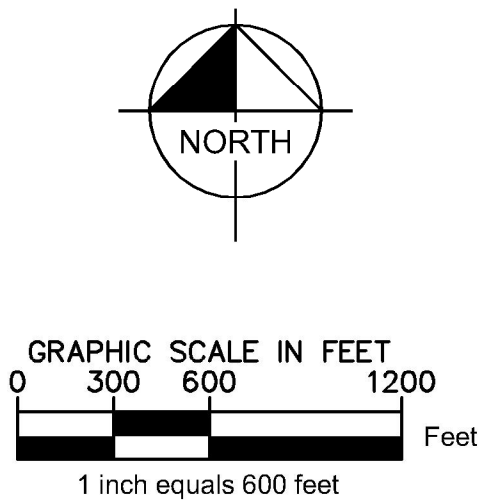
- NOTES:
- 1. THE TOTAL PROJECT AREA IS ±1,980 ACRES
  - 2. THE AREA OF FEMA-MAPPED FLOOD PLAIN WITHIN THE PROJECT IS ±325 ACRES

LEGEND

|                                       |                      |         |
|---------------------------------------|----------------------|---------|
| ++++ RAILROADS                        | — RIVERS AND STREAMS | PHASE 1 |
| - - - - CITY LIMITS                   | ■ WATER BODIES       | PHASE 2 |
| ■ EXTRATERRITORIAL JURISDICTION (ETJ) | ▨ FLOODPLAIN         | PHASE 3 |

**Kimley»Horn**

© 2022 KIMLEY-HORN AND ASSOCIATES, INC.  
13455 NOEL ROAD, TWO GALLERIA OFFICE  
TOWER, SUITE 700  
DALLAS, TEXAS 75240  
PHONE: 972-770-1300  
TEXAS REGISTERED ENGINEERING FIRM F-828





## **Exhibit D**

### **Land Use Matrix**

*Permitted Uses.* The following uses (the “Permitted Uses”) are allowed on the Property. Except where otherwise indicated, such uses shall have the meaning as defined or described in Subpart B of the San Marcos Code of Ordinances and any associated technical manuals when defined therein.

1. Office (Health Services)
2. Offices (Medical Office)
3. Offices (Professional)
4. Call Service Center
5. Communication Equipment (Installation and/or Repair — no outdoor sales or storage)
6. Medical Supplies and Equipment
7. Cabinet Shop (manufacturing)
8. Retail Store (misc.) w drive thru
9. Retail Store (misc.) w/o drive thru (under 100,000 sq./ft. building)
10. Security Systems Installation Company
11. Upholstery Shop (non-auto)
12. Woodworking Shop (ornamental)
13. Electrical Substation
14. Governmental Building or Use (municipal, state or federal)
15. Philanthropic Organization
16. Auction Sales (non-vehicle)
17. Bio-Medical Facilities
18. Caterer
19. Extermination Service
20. Furniture Manufacture
21. Urban Farm
22. Maintenance/Janitorial Service
23. Metal Fabrication Shop
24. Moving Storage Company
25. Warehouse/Office and Storage
26. Welding Shop
27. Manufacturing
28. Airport Support and Related Services
29. Distribution Center
30. Electronic Assembly/High Tech Manufacturing
31. Engine Repair/Motor Manufacturing Re-Manufacturing and/or Repair
32. Food Processing (no outside public consumption)
33. Laboratory Equipment Manufacturing
34. Machine Shop
35. Manufacturing Processes not Listed
36. Micro-Brewery (onsite mfg. and sales)

37. Plastic Products Molding/Reshaping
38. Research Lab (non-hazardous)
39. Sign Manufacturing
40. Stone/Clay/Glass Manufacturing
41. Hotel or Motel
42. Vehicle Repair (Train maintenance)
43. Building Material Sales
44. Day Care Services
45. Data Center\*
46. Distribution and processing of construction materials
47. Railroad freight or classification yard
48. Railroad roundhouse or RR car repair shop
49. Railroad tracks; team, spur, loading or storage
50. Terminal, truck, freight or rail
51. All Heavy Industrial Uses authorized by the COSM Zoning Code, not specifically prohibited by Subsection (B)

*Service and Retail Permitted Uses on Parcels west of Loop 110.*

1. Bank or Savings and Loan (w/o drive-thru)
2. Convenience Store w/o Gas Sales
3. Restaurant/Prepared Food Sales
4. Restaurant/Prepared Food Sales with beer/wine off-premises consumption
5. Retail Store (100,000 sq./ft. or more building)
6. Retail Store (over 100,000 sq./ft. or more building) outside sales
7. Retail Store (under 100,000 sq./ft. or more building) outside sales
8. Retail Store (under 100,000 sq./ft. or more building) no outside sales

\*Although not defined or described in Subpart B of the San Marcos Code of Ordinances, a “data center” shall mean a facility of networked computer systems and associated components, such as telecommunications and storage systems, that businesses or other organizations use to organize, process, store and disseminate large amounts of data.

*Prohibited Uses.* The following uses and activities (the “Prohibited Uses”) are expressly prohibited on the Property. When defined by Subpart B of the San Marcos Code of Ordinances and any associated technical manuals, the uses and activities below shall have such meaning.

1. Acid manufacturing
2. Gas manufacturing
3. Vehicle wrecking yard
4. Junk yard, including storage, sorting, bailing or processing of rags
5. Manufacturing or storage of hazardous materials or explosives, except for fuels contained in vehicles, locomotives, or railcars
6. Manufacturing or storage of fertilizer

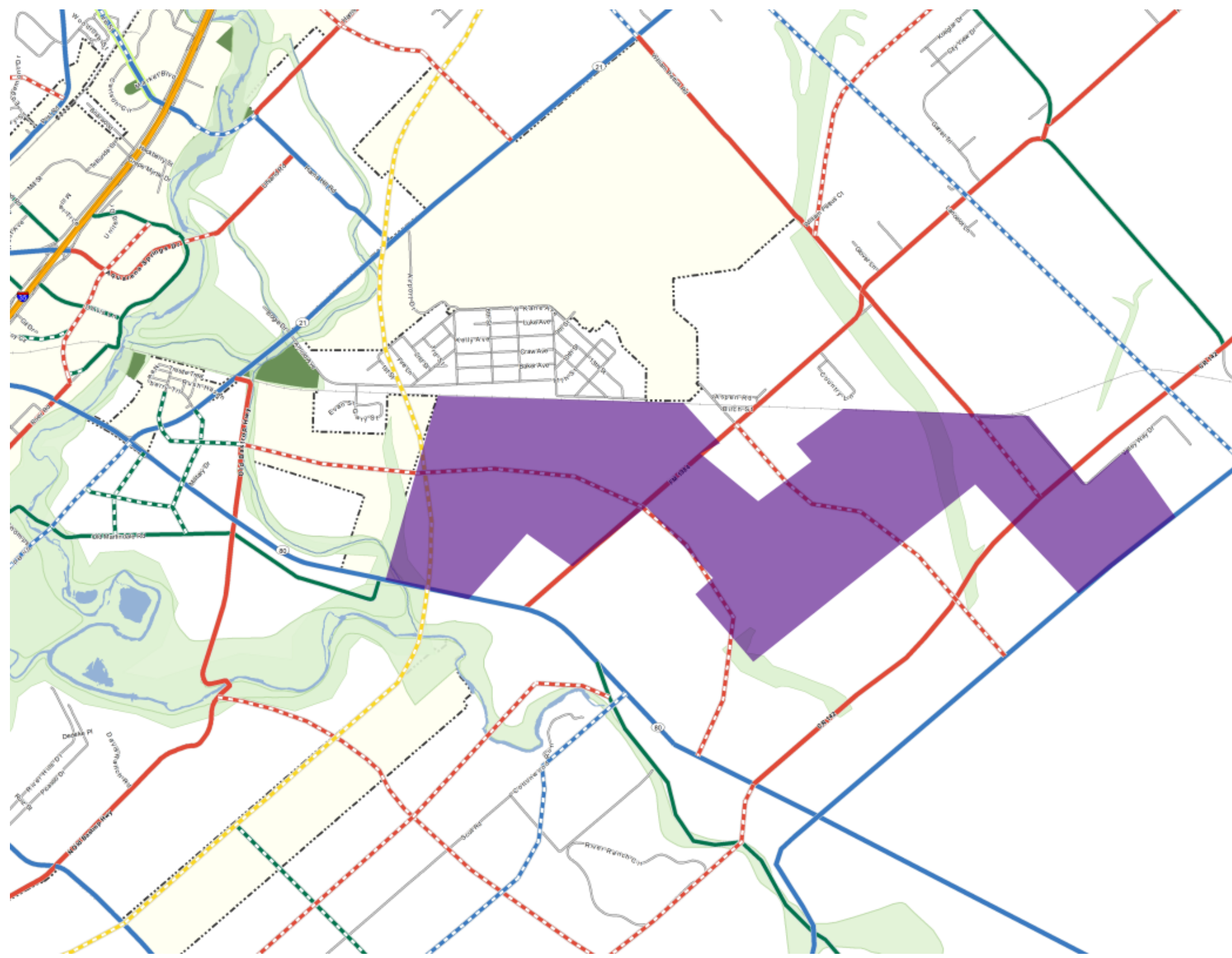
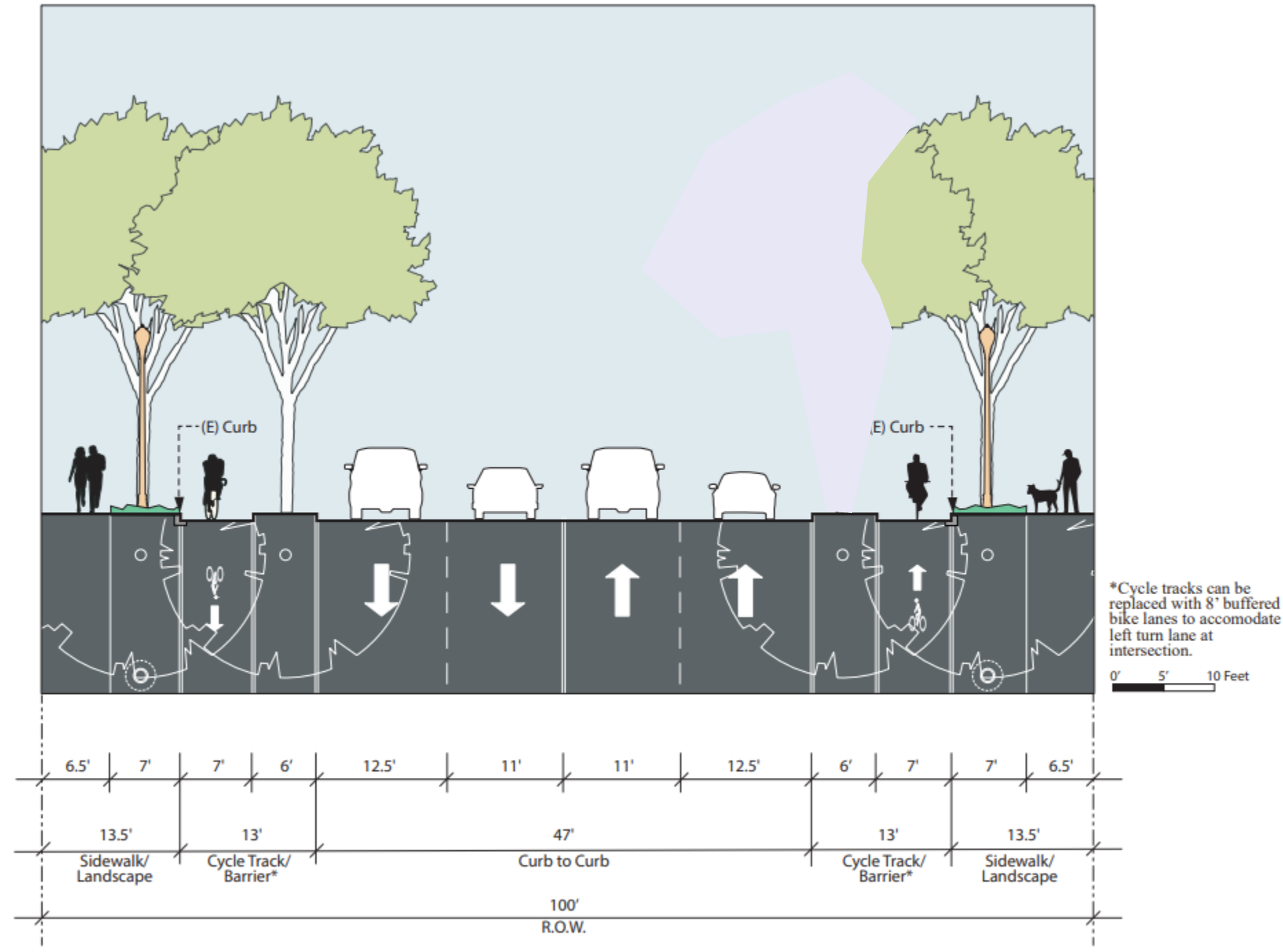
7. Manufacturing of carbon batteries
8. Manufacturing of paint, lacquer, oil, turpentine, varnish, enamel and similar products
9. Manufacturing of rubber, glucose, or dextrin
10. Manufacturing of paper or pulp
11. Manufacturing or distillation of tar
12. Monument or marble works
13. Oil compounding and barreling plant
14. Operation of a business that provides the services of disposal, storage, reduction or incineration of solid or hazardous waste (including garbage, refuse, trash, sewage, offal, dead animals)
15. Extraction or refining of petroleum or its products
16. Distillation of bones
17. Smelting of iron, tin, zinc, copper or other ores
18. Fat rendering
19. Stockyards or slaughter of animals
20. Cemeteries
21. Labor camps
22. Jails or honor farms
23. Refining or retail sale or bulk storage of fuel, liquified petroleum and flammable liquids
24. Manufacturing of cement, lime, and gypsum plaster
25. Rock crushers
26. Sugar refining

**Exhibit E**  
**Thoroughfare Plan Roads**



# EXHIBIT E: CONCEPTUAL THOROUGHFARE PLAN

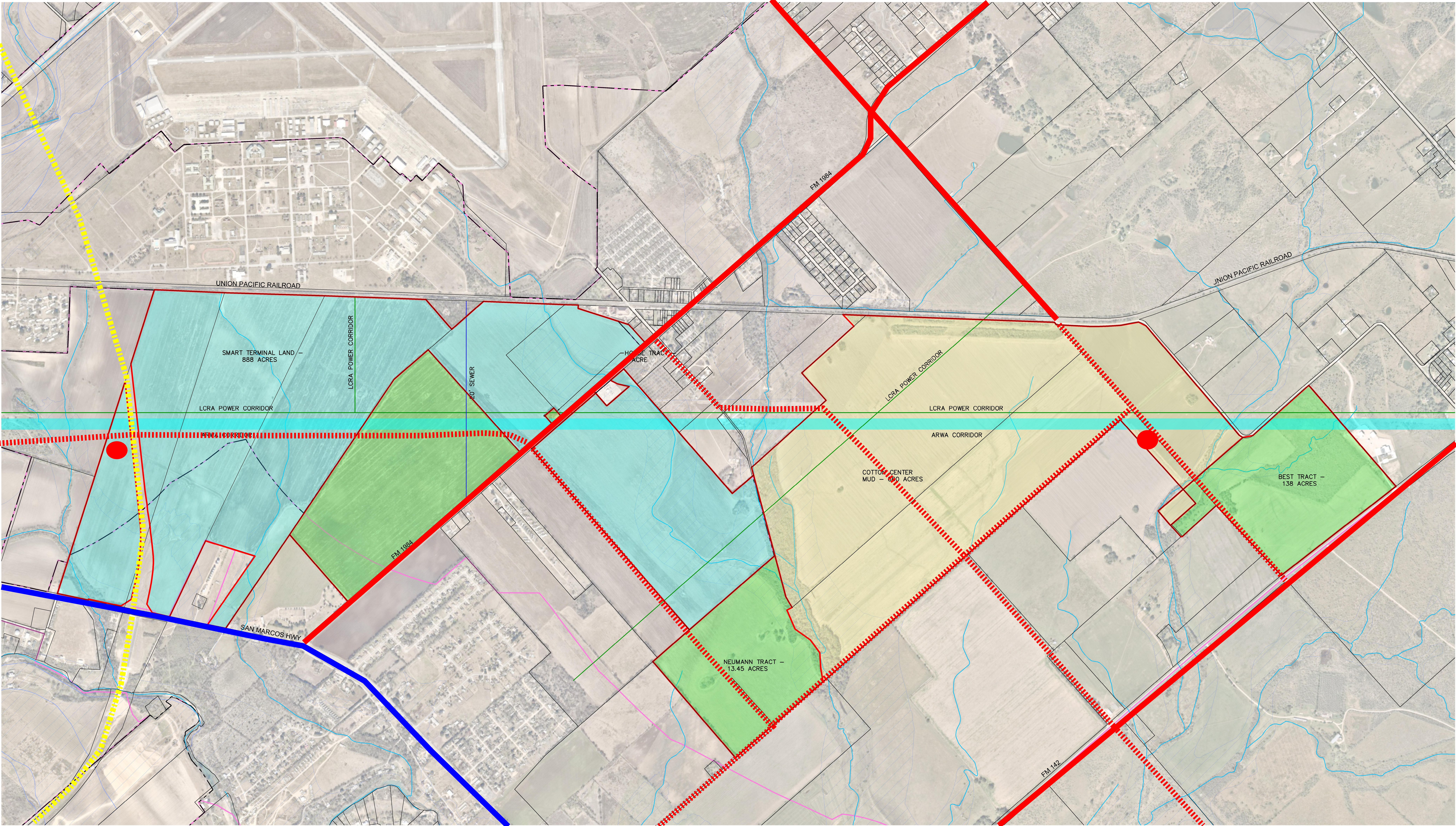
- GENERAL LOCATION OF FUTURE FIRE STATION
- 2018 TWP - BOULEVARD
- 2018 TWP - AVENUE
- 2018 TWP + PROPOSED REALIGNMENTS - AVENUE; ROADWAY CLASSIFICATION AV 100-47



**Kimley»Horn**  
© 2022 KIMLEY-HORN AND ASSOCIATES, INC.  
13455 NOEL ROAD, TWO GALLERIA OFFICE  
TOWER, SUITE 700  
DALLAS, TEXAS 75240  
PHONE: 972-770-1300  
TEXAS REGISTERED ENGINEERING FIRM F-928

## LEGEND

- Railroads
- City Limits
- Extraterritorial Jurisdiction (ETJ)
- Well Locations
- Rivers and Streams
- Waterbodies
- Floodplain
- Site
- 380 Smart AGM1
- Cotton Center MUD AGMT
- No AGMT





**Exhibit F**  
**Memorandum of Agreement**

**Exhibit “F”**

**MEMORANDUM OF AMENDED AND DEVELOPMENT AGREEMENT**

STATE OF TEXAS                               §  
                                                         §  
COUNTY OF CALDWELL                   §

Notice is hereby given that the **City of San Marcos, Texas**, a Texas home-rule municipal corporation (the “City”), and **Franklin Mountain San Marcos I, LP**, a Texas limited partnership (“Franklin Mountain”), have entered into an Amended and Restated Development Agreement (“Development Agreement”) with respect to certain property owned by Franklin Mountain. A copy of the Development Agreement has been recorded in the records of Caldwell County under the filing number \_\_\_\_\_. A portion of the property included in the Development Agreement is within the boundaries of a municipal utility district, as more particularly described in the attached Exhibit “A” (the “MUD Property”). The Development Agreement provides, among other things, for the voluntary annexation of land within the MUD Property into the municipal boundaries of the City.

This instrument does not alter, amend or modify the Development Agreement, but is executed for the purpose of confirming and giving notice of the Development Agreement to subsequent owners of land within the MUD Property.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**FRANKLIN MOUNTAIN SAN MARCOS I,  
LP, a Texas limited partnership**

By: Scarborough San Marcos GP LLC. a  
Texas limited liability company, its General  
Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE STATE OF TEXAS       §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_  
by \_\_\_\_\_, \_\_\_\_\_ of Scarborough  
San Marcos GP LLC, a Texas limited liability company, General Partner of Franklin Mountain San  
Marcos I, LP., a Texas limited partnership, on behalf of said limited liability company and limited  
partnership.

(seal)

\_\_\_\_\_  
Notary Public Signature

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**CITY OF SAN MARCOS**, a Texas home-rule  
municipal corporation

By: \_\_\_\_\_  
Name: Stephanie Reyes  
Title: City Manager  
Date: March 8, 2023

THE STATE OF TEXAS

§

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
202\_ by \_\_\_\_\_, \_\_\_\_\_ of the City of San  
Marcos, Texas, a Texas home-rule municipal corporation.

\_\_\_\_\_  
Notary Public Signature

(SEAL)

AFTER RECORDING, RETURN TO:

Amanda Hernandez, Planning

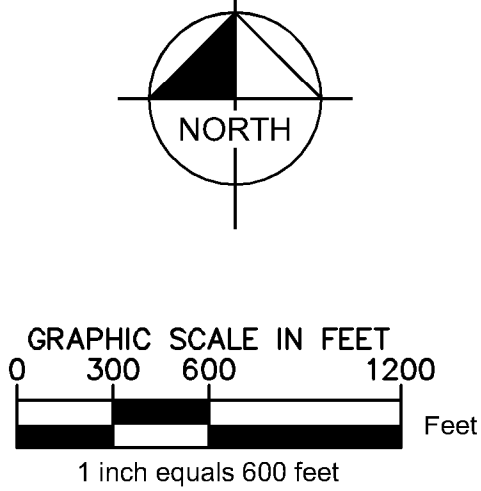
630 E. Hopkins St.

San Marcos, TX 78666

**Exhibit G**  
**Cut and Fill**



# EXHIBIT G: CUT-FILL EXTENTS EXHIBIT



**Kimley»Horn**  
© 2022 KIMLEY-HORN AND ASSOCIATES, INC.  
13455 NOEL ROAD, TWO GALLERIA OFFICE  
TOWER, SUITE 700  
DALLAS, TEXAS 75240  
PHONE: 972-770-1300  
TEXAS REGISTERED ENGINEERING FIRM F-928

### LEGEND

|                                     |                    |                        |
|-------------------------------------|--------------------|------------------------|
| Railroads                           | Rivers and Streams | 380 Smart AGM1         |
| City Limits                         | Waterbodies        | Cotton Center MUD AGMT |
| Extraterritorial Jurisdiction (ETJ) | Floodplain         | No AGMT                |
| Well Locations                      | Site               |                        |

|  |                                                                                                                                                                 |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | CUT-FILL ALLOWED UP TO 20-FEET<br>WITH ADMINISTRATIVE APPROVAL                                                                                                  |
|  | CUT-FILL ALLOWED UP TO 15-FEET<br>WITH ADMINISTRATIVE APPROVAL                                                                                                  |
|  | ANTICIPATED RECLAIMED<br>FLOODPLAIN LIMITS; CUT-FILL<br>ALLOWED UP TO 4-FEET WITH<br>ADMINISTRATIVE APPROVAL AND<br>FLOODPLAIN STUDY APPROVED BY<br>ENGINEERING |

