

INFRASTRUCTURE AND PROPERTY CONVEYANCE AGREEMENT – BRICK AND MORTAR DISTRICT

This Infrastructure and Property Conveyance Agreement – Brick and Mortar District (this "**Agreement**") is made and entered into to be effective as of _____, 2022 ("**Effective Date**") by and between the CITY OF KYLE, TEXAS, a Texas home rule municipal corporation (the "**City**"), PLUM CREEK DEVELOPMENT PARTNERS, LTD., a Texas limited partnership ("**PCDP**"), and MOUNTAIN PLUM, LTD., a Texas limited partnership ("**MP**;" MP and PCDP are referred to collectively herein as "**Owner**"). The City and the Owner are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." The Parties agree as follows.

Article I. Purposes; Consideration.

1.01. The Owner is developing a mixed-use community consisting of residential, office, and commercial uses on certain land located in Hays County, Texas, and being depicted in **Exhibit A** attached hereto and incorporated herein for all purposes, to be known as Brick and Mortar District (the "**Property**").

1.02. The Owner and the City desire to coordinate the conveyance of the right-of-way, design, construction, and installation of roadway, trail, parking, and streetscape improvements and associated infrastructure improvements, being more particularly described in **Exhibit B** and depicted in **Exhibit B-1** (the "**Transportation Improvements**") upon certain real property owned by PCDP, as generally depicted on **Exhibit C** attached hereto (the "**TI Land**") as provided herein to create efficiencies in the installation of public infrastructure within the Brick and Mortar District.

1.03. The City intends to construct (or cause to be constructed) the Transportation Improvements, subject to the issuance of the Bonds (defined herein), as provided in this Agreement.

1.04. The Property is located within Reinvestment Zone Number Two, City of Kyle, Texas, which is a tax increment reinvestment zone created pursuant to the authority of Chapter 311, Texas Tax Code, as amended, by Ordinance No. 1022 adopted by the City Council of the City on December 18, 2018 as amended (the "**TIRZ**").

1.05. To finance the costs to construct the Transportation Improvements, it is the City's intent to issue certificates of obligation pursuant to Subchapter C, Texas Local Government Code or tax increment financing bonds in the amount of eight million dollars (\$8,000,000) (the "**Bonds**"), and that the City would receive reimbursement for the cost to design and construct Transportation Improvements from the TIRZ.

1.06. The City, PCDP, and MP are parties to that certain Letter Agreement confirming Allocation of Land to Satisfy Land Dedication of Plum Creek Land to the City of Kyle, Texas dated March 12, 2021 ("**Original Letter Agreement**", as amended by that certain First Amendment to Letter Agreement of even date herewith ("**First Amendment**") and, together with the Original Letter Agreement, the "**Letter Agreement**"), in which the Parties address the terms and conditions for conveyance of, *inter alia*, the parcels referred to therein as the Office Building Parcel and the Hotel/Convention Center Parcel, as further set forth in the Letter Agreement.

1.07. To facilitate fulfilling the purpose of the TIRZ, the Parties further desire to provide for the conveyance of the Restaurant Parcel (as hereinafter defined) and the Soccer Parcel (as hereinafter defined) pursuant to this Agreement, as well as to provide for the conveyance of the Office Building Parcel and the Hotel/Convention Center Parcel pursuant to the Letter Agreement. The Parties further wish to address the waiver of impact fee credits addressed in other agreements between the Parties, as herein provided.

1.08. The consideration for this Agreement is the covenants, conditions, and undertakings between the Parties, and the benefits that will accrue to the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. It is expressly acknowledged that this Agreement is subject to the issuance of the Bonds and the receipt of the proceeds thereof.

Article II. Sequence of Events

2.01. Contemplated Sequence of Events. The sequence of events contemplated by this Agreement is as follows:

- (a) Approval of this Agreement by the City and Owner and entry into the Consulting Agreement (as hereinafter defined).
- (b) Approval of an agreement between the City and the TIRZ providing for reimbursement of the cost of the Transportation Improvements from the TIRZ fund on or before _____ (the “**TIRZ Agreement**”).
- (c) Owner will cause the TI Land to be surveyed on or before _____, 2022.
- (d) Preparation of documents to effectuate the conveyance of the TI Land to the City.
- (e) Provision of the Meeting Notice by the City (as hereinafter defined).
- (f) Conveyance of the TI Land to the City upon the terms set forth herein on or before the Meeting Date (as hereinafter defined).
- (g) City Council authorization of the Bonds on or before _____, 2022 and deposit of the proceeds from the Bonds (the “**Bond Proceeds**”) into Transportation Improvements Account.
- (h) Execution and delivery of Property Conveyance Escrow Agreement (as hereinafter defined), and deposit of executed deed for the Restaurant Parcel, Office Building Parcel, and Hotel/Convention Center Parcel as provided therein, and conveyance of the Soccer Parcel to the City upon the terms set forth herein on or before the Soccer Conveyance Date (as hereinafter defined).
- (i) Design, Bid, and Construction of the Transportation Improvements. The parties will endeavor to (i) complete the design phase within nine (9) months following

the date the City Council authorizes the Bonds, (ii) complete the bid phase within three (3) months following completion of the design phase, and (iii) complete the construction phase within twelve (12) months following completion of the bid phase, subject to feedback from contractors received during the bid phase.

- (j) Conveyance of the Restaurant Parcel, Office Building Parcel and Hotel/Convention Center Parcel pursuant to the Property Conveyance Escrow Agreement upon the Commencement of Construction of the Transportation Improvements (hereinafter defined) on or before the TI Commencement Deadline (as defined in the Property Conveyance Escrow Agreement).

Article III. Parcel Conveyances

3.01. TI Land. The City will provide to Owner at least thirty (30) days' prior written notice (the "**Meeting Notice**") of the date that the City Council is scheduled to vote on the issuance of the Bonds (the "**Meeting Date**"). Following receipt of the Meeting Notice but prior to the Meeting Date, PCDP shall convey the TI Land to the City as public right of way, to construct the Transportation Improvements thereon, upon the terms, provisions, and conditions hereinafter set forth. The deed conveying the TI Land to the City will provide that if Bonds are not issued and Bond Proceeds are not deposited into the Transportation Improvements Account on or before _____, 2022 (the "**Deposit Deadline**"), the ownership of the TI Land shall revert back to PCDP. In addition, if Bonds are not issued and Bond Proceeds are not deposited into the Transportation Improvements Account on or before the Deposit Deadline, Owner shall have no obligation to execute the Property Conveyance Escrow Agreement (as hereinafter defined) and shall have no obligation to convey the Soccer Parcel and/or the Restaurant Parcel to the City, and the conveyance of the Office Building Parcel and the Hotel/Convention Center Parcel shall be governed by the terms, provisions, and conditions of the Letter Agreement. The conveyance of the TI Land to the City shall be made on as AS-IS, WHERE-IS basis, subject to all matters of record, provided that prior to conveyance, PCDP will discharge (or otherwise cause to be deleted) all monetary liens for contractual indebtedness that belong to or were caused by PCDP affecting the TI Land.

3.02. Restaurant Parcel, Office Building Parcel, and Hotel Convention Center Parcel.

(a) Simultaneously with the Soccer Field Conveyance (as hereinafter defined), PCDP shall execute and deliver to Corridor Title Co. a Conveyance Escrow Agreement in the form attached hereto as **Exhibit G** (the "**Property Conveyance Escrow Agreement**"), together with executed deeds for the conveyance to the City of (i) the Office Building Parcel pursuant to the terms, provisions, and conditions of the Letter Agreement, (ii) the Hotel Convention Center Parcel pursuant to the terms, provisions, and conditions of the Letter Agreement, and (iii) that certain real property more particularly depicted on **Exhibit D** attached hereto (the "**Restaurant Parcel**") for the construction of a restaurant containing not more than 6,000 square feet of indoor space, with related surface improvements (the "**Restaurant Improvements**") upon the terms, provisions and conditions hereinafter set forth. The conveyance of the Restaurant Parcel to the City (the "**Restaurant Conveyance**") shall be made on as AS-IS, WHERE-IS basis, subject to all matters of record; provided that prior to conveyance, PCDP will discharge (or otherwise cause to be deleted) all monetary liens for contractual indebtedness. PCDP and the City shall work together in good faith to

resolve any title issues which would prevent the Restaurant Improvements from being constructed and operated on the Restaurant Parcel as contemplated by this Agreement.

(b) The Restaurant Parcel is currently encumbered by the Declaration of Covenants, Conditions and Restrictions for Plum Creek Uptown District recorded under Book 3339, Page 197 of the Official Public Records of Hays County, Texas, as amended by that First Amendment to Declaration of Covenants, Conditions and Restrictions for Plum Creek Uptown District recorded under Document No. 2015-15017103 in the Official Public Records of Hays County, Texas, and as supplemented by that certain Supplemental Declaration of Covenants, Conditions and Restrictions for Plum Creek Uptown District recorded under No. 2015-15017102, Book 5233, Page 109 of the Official Public Records of Hays County, Texas (collectively, referred to herein as the “**Uptown POA Restrictions**”). The City and Owner hereby agree that if the Uptown POA Restrictions are amended to withdraw the Restaurant Parcel from the Uptown POA Restrictions (hereinafter to be referred to as the “**Restaurant Restriction Withdrawal**”) prior to the Restaurant Conveyance, then the City shall take ownership of the Restaurant Parcel subject to the Plum Creek Mixed-Use Master Declaration recorded in the Official Public Records of Hays County, Texas (hereinafter to be referred to as “**Recorded**” or “**Record**” or “**Recording**”, as applicable) as Instrument #17035892 (together with all governing instruments relating thereto, and as the same may be amended from time to time, the “**Master Declaration**”) by the Recording of (i) a Notice of Addition of Land (the “**Notice of Addition of Land**”), (ii) a Notice of Annexation (the “**Notice of Annexation**”), and (iii) a Development Tract Declaration (the “**Development Tract Declaration**”, which collectively along with the Notice of Addition of Land and the Notice of Annexation shall be known as the “**Annexation Instruments**”). The Master Declaration shall be amended to include, without limitation, the following requirement: during the Development Period, until such time that the Restaurant Parcel is used for restaurant, retail, or other commercial purposes by an Operating Entity (as defined below), the City (as defined herein) shall not be a member of the Plum Creek Mixed-Use Property Owner’s Association (the “**Mixed-Use Association**”) and Declarant shall exercise its rights to delay the levy of Assessments to the Mixed-Use Association. The Development Tract Declaration shall include, without limitation, (i) a requirement that the Restaurant Parcel initially be opened and operated for at least one (1) business day as a full-service restaurant, and after satisfying such requirement, the City or Operating Entity shall be permitted to change the use of the Restaurant Parcel to another retail use acceptable to Owner and commonly found in first-class shopping centers, provided that in no event shall the Restaurant Parcel be used as a convenience store, fuel station, automobile repair operation or other noxious use to be further set forth in the Development Tract Declaration (the “**Restaurant Restriction**”); (ii) a requirement that at such time that the City either leases or conveys the Restaurant Parcel to a third-party (the “**Operating Entity**”) to construct and operate on the Restaurant Parcel a full-service restaurant, retail business, or other commercial use, the Operating Entity shall automatically be considered a member of the Mixed-Use Association and shall be required to pay Assessments to the Mixed-Use Association as required under the Master Declaration and the Annexation Instruments; (iii) a requirement that prior to the construction of any improvements on the Restaurant Parcel, any design and construction plans such improvements must be approved by (a) the Plum Creek Reviewer (as such term is defined in the Master Declaration and the Annexation Instruments) during the Development Period (as such term is defined in the Master Declaration and the Annexation Instruments) and thereafter the ACC designated by the Mixed-Use Association, (b) the City, and (c) a design review professional mutually agreed to by the City and the Plum Creek Reviewer; (iv) a requirement that the Restaurant

Parcel and all improvements thereon be maintained in a safe, first class manner; and (v) a requirement providing Owner and its assignees the right of self-help in the event the City or Operating Entity fails to perform or comply with any term, condition, or obligation of the Master Declaration or the Annexation Instruments; provided that prior to the conveyance or lease of the Restaurant Parcel to an Operating Entity in accordance with this Agreement, any remedies for the City's failure to comply with any term, condition, or obligation of the Master Declaration or the Annexation Instruments will be limited to the right to exercise self-help and to seek injunctive relief.

(c) In the event that the Restaurant Restriction Withdrawal does not occur within thirty (30) days prior to the Restaurant Conveyance, the City shall take ownership of the Restaurant Parcel subject to the Uptown POA Restrictions, as well as to a Supplementary Declaration to Uptown POA Restrictions (the "***Supplemental Declaration***"), which shall include the Restaurant Restriction and other terms and provisions to be negotiated in good faith by the Parties and Recorded prior to the Restaurant Conveyance, as well as an instrument (the "***Agreement Regarding Declaration***") requiring the Parties and their successors and assigns to continue to work in good faith to effect the Restaurant Restriction Withdrawal and requiring that concurrent with the completion of the Restaurant Restriction Withdrawal, the Restaurant Parcel shall be made subject to the Master Declaration and the Development Tract Declaration by the Recording of the Annexation Instruments against the Restaurant Parcel, which such documents shall also reflect the terms set forth in Section 3.02(b), above. The terms set forth in Section 3.02(b) and (c) shall also be included in the deed or separate instrument to be Recorded at the time of the Restaurant Conveyance.

3.03. Soccer Parcel.

(a) On or before the date (the "***Soccer Conveyance Date***") which is thirty (30) days following receipt of the Deposit Notice (as hereinafter defined), MP shall convey the real property more particularly depicted on **Exhibit E** attached hereto (the "***Soccer Parcel***") to the City for the construction of public soccer fields (the "***Soccer Field Improvements***"), upon the terms, provisions and conditions hereinafter set forth. The conveyance of the Soccer Parcel to the City (the "***Soccer Field Conveyance***") shall be made on as AS-IS, WHERE-IS basis, subject to all matters of record; provided that prior to conveyance, MP will discharge (or otherwise cause to be deleted) all monetary liens for contractual indebtedness that belong to or were caused by MP affecting the Soccer Parcel. MP and the City shall work together in good faith to resolve any title issues which would prevent the Soccer Field Improvements from being constructed and operated on the Soccer Parcel as contemplated by this Agreement.

(b) The City and Owner hereby agree that Owner and the City shall record a Site-Specific Declaration (the "***Soccer Field Site Specific Declaration***") against the Soccer Parcel prior to the Soccer Field Conveyance in a form substantially similar to that set forth in **Exhibit F**.

3.04. Extension of City Deadlines. The TI Commencement Deadline (as defined in the Property Conveyance Escrow Agreement) and the period of time during which Owner shall refrain from drawing on the Impact Fee Credit (as hereinafter defined) as provided in Section 5.01(b) below shall be extended on a day-for-day basis for (i) each day beyond the Soccer Conveyance Date that MP fails to convey the Soccer Parcel to the City, and/or PCDP fails to deliver the Property Conveyance Escrow

Agreement and the executed deeds for the Restaurant Parcel, the Office Building Parcel, and the Hotel/Convention Center Parcel (collectively, the “**Deeds**”) as required by this Agreement, except to the extent such failure is caused by any act or omission of the City in contravention of this Agreement and/or the Letter Agreement, and (ii) each day that PCPD fails to timely fulfill one or more of its obligations under the Consulting Agreement following ten (10) days’ written notice from the City of such failure, except to the extent such failure is caused by an act or omission of the City in contravention of this Agreement and/or the Consulting Agreement (each, an “**Owner Delay**”). In addition, the City may elect to suspend expenditure of Bond proceeds during the pendency of an Owner Delay. The remedies set forth in this section is in addition to any other remedy available under this Agreement.

Article IV. Transportation Improvements.

4.01. Bond Issuance.

(a) To finance the costs to construct the Transportation Improvements, it is the City’s intent to issue the Bonds on or before _____, and that the City would receive reimbursement for the cost of the Transportation Improvements from the TIRZ. In the event that the TIRZ Agreement is not executed and/or the Bonds are not issued on or before _____ or the City does not receive the proceeds thereof, the Parties shall meet to determine whether the construction of the Transportation Improvements as contemplated under this Agreement is feasible. If it is not, the parties may consider amendments to this Agreement or may terminate this Agreement, and any agreements entered in connection with this Agreement. In the event that the TIRZ Agreement is not executed and/or the Bonds are not issued and/or the City does not receive the proceeds thereof on or before _____, this Agreement shall automatically terminate.

(b) Before the City approves the issuance of Bonds, the following conditions must be met, in the following order: (a) the City must have entered into the TIRZ Agreement; and (b) the Owner must convey the TI Land to the City.

(c) The proceeds of the sale of the Bonds shall be deposited into a separate account to be held by the City to pay the costs of the design and construction of the Transportation Improvements as provided herein (the “**Transportation Improvements Account**”). The City shall give Owner notice of the deposit of the proceeds from the sale of the Bonds into the Transportation Improvements Account (the “**Deposit Notice**”).

(d) The City shall pay from the Transportation Improvement Account the costs to design, permit, install, and construct the Transportation Improvements, including without limitation, the hard construction costs; all advertising and other costs associated with public bidding and award of construction contracts; the cost of payment, performance, and maintenance bonds for the Transportation Improvements; surveying costs; the costs of subdivision construction permits and associated submission and inspection fees; reasonable contingency; soils and material testing costs; the fees of the project engineer, a third party construction supervisor, other professional fees related to the design and construction of the Transportation Improvements, and any other necessary and reasonable out-of-pocket costs required in connection with the design, permitting, construction, inspection and completion of the Transportation Improvements (collectively, the “**Transportation**

Improvements Costs”). The Transportation Improvements Costs shall be paid in accordance with the terms, provisions and conditions of the Consulting Agreement.

4.02. Design and Construction of the Transportation Improvements.

(a) Simultaneously with the execution of this Agreement, PCDP and the City shall enter into a consulting agreement in the form attached hereto as **Exhibit H** pursuant to which PCDP will facilitate the design and construction process for the Transportation Improvements (the “*Consulting Agreement*”).

(b) Intentionally deleted.

(c) As the design of the Transportation Improvements progresses and is completed, the Parties will prepare detailed descriptions of the Transportation Improvements to be used to further define the costs of the Transportation Improvements that will be funded by the Bonds and reimbursed. The Transportation Improvements will only include those improvements and related costs that may be funded by the Bonds. The detailed descriptions approved by the City Engineer and the project engineer will serve as the basis for the separate description and itemization of the bid documents and the payment requests for the Transportation Improvements, so that the costs of the Transportation Improvements can be separately accounted for and payments for said improvements made from the appropriate sources of funds as provided in this Agreement.

(d) The project engineer will include an estimate of the Transportation Improvements at ____ percent design plans. In the event an estimate demonstrates that the cost to construct the Transportation Improvements exceeds the balance of the Bonds, the Parties shall reasonably cooperate to modify the scope of the Transportation Improvements so that the cost to construct the Transportation Improvements does not exceed the balance of the Bonds. In no event shall the City be required to enter into a TI Construction Contract (as hereinafter defined) that exceeds the balance of the Bond proceeds. The TI Construction Contract shall be in the form of an agreement where the Transportation Improvements will be delivered at a not-to-exceed amount.

Article V. Impact Fee Waiver

5.01 Impact Fee Waiver.

(a) Reference is hereby made to that certain Agreement among the City, PCDP and MP, together with Plum Creek Partners, originally dated April 15, 1997, as the same has been amended by Addendum Number One dated March 20, 2003, Addendum Number Two dated September 7, 2004, Addendum Number Three dated August 5, 2014, and Addendum Number Four dated October 17, 2017 (“*Addendum 4*”), and as further modified by those certain two (2) Letter Agreements dated March 12, 2021 between the City, PCDP, the Plum Creek Uptown District Property Owners’ Association, Inc. and MP (the original agreement and all such addendums and letter agreements are collectively referred to herein as the “*Development Agreement*”). Pursuant to the Development Agreement, Owner is currently owed prepaid Impact Fees due for Water and Wastewater Facilities costs constructed in Phase 1 (all such foregoing terms as defined in Addendum 4) in the amount of \$1,886,000.00 (the “*Impact Fee Credits*”). Owner intends to waive the Impact Fee Credits upon the terms, provisions and conditions set forth in this Article V.

(b) Notwithstanding any provision in the Development Agreement to the contrary, at such time as Commencement of Construction of the Transportation Improvements (defined below) occurs, Owner shall waive the Impact Fee Credits, such that the City shall have no further obligation to reimburse Owner for the Impact Fee Credits. Owner hereby agrees that under no circumstances will Owner draw upon the Impact Fee Credits prior to the date that is the earlier of (i) eighteen (18) months following the Effective Date or (ii) the date Commencement of Construction of the Transportation Improvements occurs. For the avoidance of doubt, Owner and City hereby acknowledge and agree that Owner shall not waive its rights to the Impact Fee Credits as previously contemplated by Section 6(d) or 6(e) of Addendum 4, and instead the waiver of the Impact Fee Credits shall be governed by the terms of this Agreement. As used herein, “**Commence Construction of the Transportation Improvements**” means (i) execution of the TI Construction Contract (defined below) and (ii) the City’s issuance of a written notice to proceed within no longer than ten (10) days following the date of such notice with the entire scope of work under the TI Construction Contract. As used herein, the “**TI Construction Contract**” means a payment and performance bonded construction contract executed by the City and the applicable contractor selected pursuant to the Consulting Agreement, on a guaranteed maximum price basis for the construction of the hard costs and contingency portions of the Transportation Improvements, in an amount equal to the full amount of such portions of the Transportation Improvements Costs (subject to any scope modifications as provided in Section 4.02(d) above).

Article VI. Assignment of Commitments and Obligations

6.01. Owner’s rights and obligations under this Agreement may be assigned by Owner with the consent of the City, which shall not be unreasonably withheld, delayed, or conditioned. Any assignment of Owner’s rights under this Agreement shall be required to be expressly made by written agreement executed by Owner, and the conveyance of all or any portion of the Property without such express assignment shall not be deemed or construed to include an assignment of any of Owner’s rights under this Agreement.

Article VII. Default and Related Provisions

7.01. Default. Except as otherwise provided herein, no party shall be deemed to be in default hereunder until the passage of fourteen (14) business days after receipt by such party of notice of default from the other party. Upon the passage of fourteen (14) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is such that it cannot reasonably be cured within such fourteen (14) business day period, the defaulting party shall have such longer period of time as may be reasonably necessary to cure the default in question so long as such party has commenced to cure such default within such fourteen (14) business day period and diligently and continuously pursues the completion of such cure thereafter, provided that such default is cured within ninety (90) days after the original notice of default. If the default cannot be cured despite the defaulting party’s ongoing diligent and good faith efforts in accordance with the foregoing, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable legal remedy not inconsistent with this Agreement. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other

authorized remedy.

7.02. Intentionally Deleted.

7.03. Attorneys Fees. In the event of any litigation between the Parties, the prevailing Party in such litigation shall be entitled to obtain recovery from the non-prevailing Party of its attorneys' fees and costs related to such action, including appeals and post judgment awards

7.04. Waiver. Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that Party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

7.05 Force Majeure. Whenever a period of time is herein prescribed for action to be taken by a Party, such Party shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any periods in which such Party is reasonably and actually delayed by reason of fire, earthquake, explosion, flood, hurricane, the elements, governmental regulation of the sale of materials or supplies or the transportation thereof, global financial crisis, war, invasion, insurrection, rebellion, riots, strikes or lockouts, or inability to obtain necessary materials, goods, equipment, services, utilities or labor.

Article VIII. Notices

Any notice to be given hereunder by any Party to another Party shall be in writing and may be effected by sending said notices by registered or certified mail, return receipt requested, or by nationally recognized delivery service to the address set forth below. Notice shall be deemed given and received two (2) business days after deposited with the United States Postal Service, or one (1) business days after deposited with such delivery service.

Any notice mailed to the City shall be addressed:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

with required copy to:

The Knight Law Firm, LLP
223 W. Anderson Lane, Suite A105
Austin, Texas 78752

Any notice mailed to MP and/or PCDP shall be addressed:

Mountain Plum, Ltd. and Plum Creek Development Partners, Ltd.
4040 Broadway, Suite 501
San Antonio, Texas 78209
Attn: Richard B. Negley and Laura Negley Gill

with required copies to:

Momark Development
31 Navasota Street, Suite 240
Austin, Texas 78702
Attn: Megan Shannon

and

Golden Steves & Gordon, LLP
200 East Basse Rd, Suite 200
San Antonio, Texas 78209
Attn: Stephen L. Golden

Either Party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

Article IX. Miscellaneous Provisions

9.01. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

9.02. The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of Brick and Mortar District. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

9.03. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Owner.

9.04. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are

declared to be severable.

9.05. The Effective Date of this Agreement is the defined date set forth in the first paragraph.

9.06. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas. Venue shall lie exclusively in Hays, Texas.

9.07. Statutory Verifications.

(a) To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Owner represents that neither the Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

(b) To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Owner represents that Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

(c) The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

(d) The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business

relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

[signature pages follow]

EXECUTED in multiple originals to be effective as of the Effective Date.

CITY:

CITY OF KYLE, TEXAS

a Texas home-rule municipal corporation

Attest:

By: _____

Name: Jennifer Holm

Title: City Secretary

By: _____

Name: Travis Mitchell

Title: Mayor

PCDP:

Plum Creek Development Partners, Ltd.,
a Texas limited partnership

By: PCDP General Partner, LLC, a Texas limited liability company, its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

By: MountainCityLand, LLC,
a Texas limited liability company, its manager

By: _____
Laura Negley Gill, Manager

MP:

Mountain Plum, Ltd.,
a Texas limited partnership

By: MP General, LLC,
a Texas limited liability company,
its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

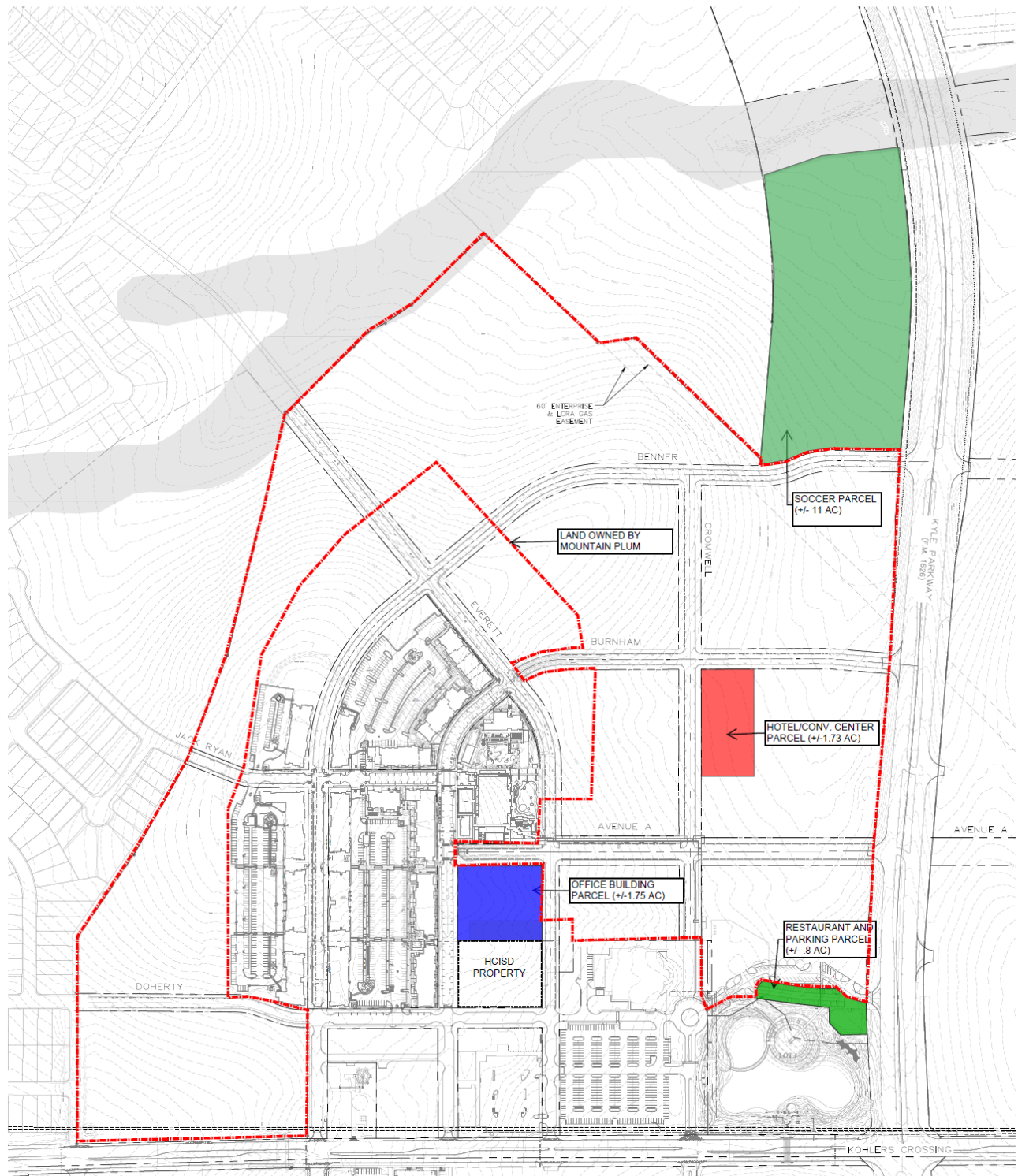
By: MountainCityLand, LLC,
a Texas limited liability company,
its manager

By: _____
Laura Negley Gill, Manager

Exhibit A

Property

[attached]



Plum Creek North
Brick & Mortar Base Map
Kyle, Texas
April 25, 2022



Exhibit B

Description of Transportation Improvements

The Transportation Improvements consist of the design, construction, and installation the following roadway, trail, and streetscape improvements and associated infrastructure improvements:

- (i) Avenue “A” Street Extension and associated utilities from Burnham to 1626, including raised paver table road section between Burnham & Everett, and a raised paver table intersection at Cromwell & Avenue “A”;
- (ii) Cromwell Road Extension and associated utilities from Avenue “A” to existing roundabout;
- (iii) Heroes Park Drive Extension and associated utilities from Cromwell to 1626;
- (iv) Cultural Trail & Streetscape;
- (v) Avenue “A” Streetscape (Lights/Landscape only) from Burnham to Cromwell (southside), consistent with the attached street section diagram;
- (vi) Cromwell Street Streetscape (Lights/Landscape only) from Avenue “A” to existing roundabout (westside), consistent with the attached street section diagram;
- (vii) Enhanced Safety at Kohler’s Crossing/Cromwell intersection (Pedestrian Crossing/Streetlight); and
- (viii) PEC direct costs applicable to new roadway construction;
- (ix) Restaurant Pad Parking and Streetscape.

Exhibit B-1

General Depiction of Transportation Improvements

[attached]

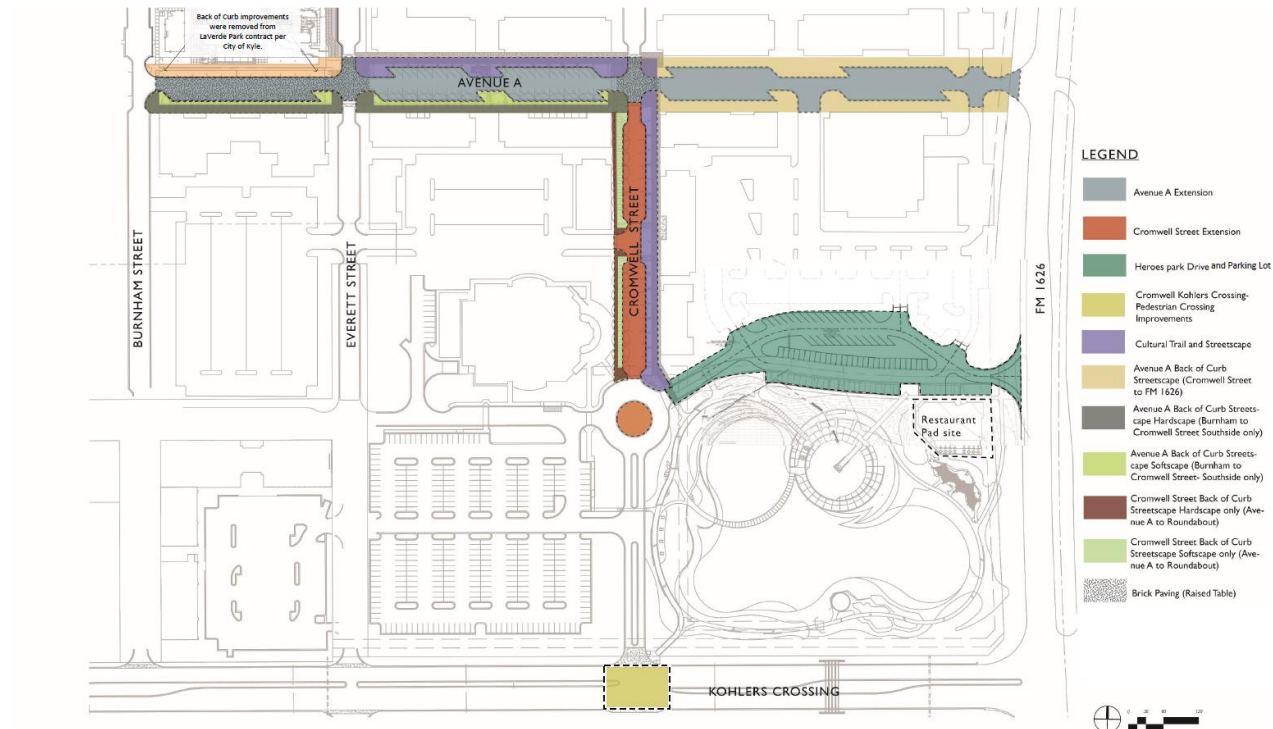


Exhibit C

TI Land

[attached]

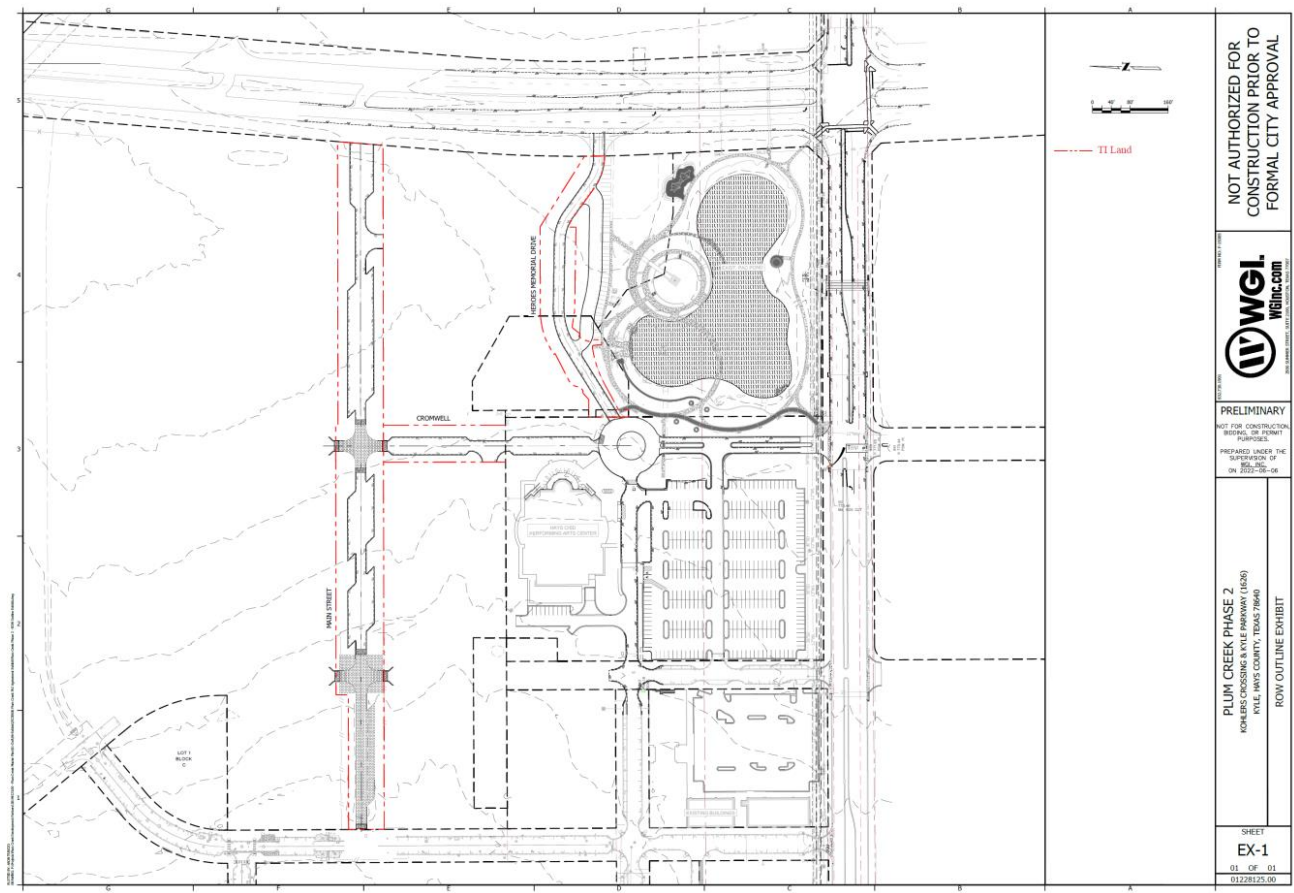


Exhibit D

Restaurant Parcel

[attached]

RESTAURANT PARCEL
Approximately 35,268 SF

0 30' 60' 120'

Date: 02/22/2022

Plan subject to change

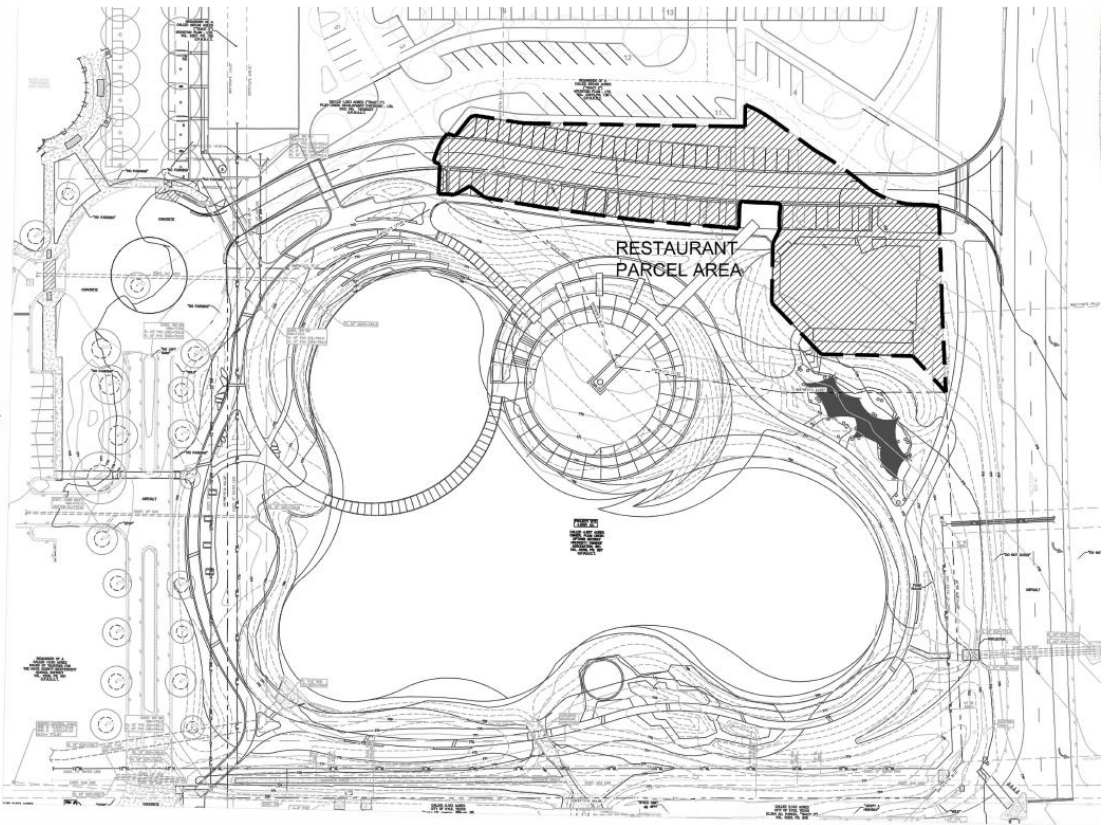


Exhibit E

Soccer Parcel

[attached]

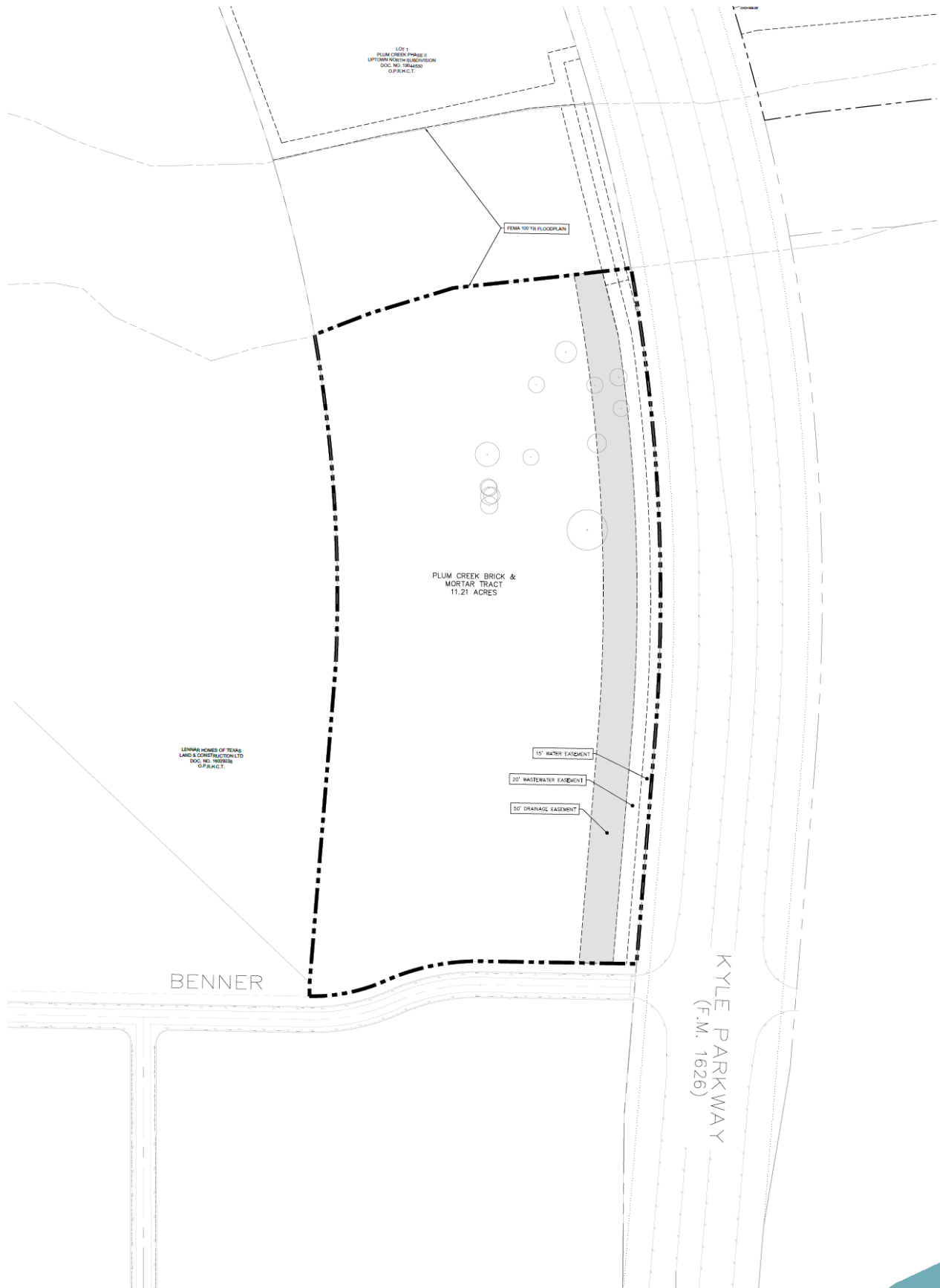


Exhibit F

Soccer Field Site Specific Declaration

[to be attached]

Exhibit G

Property Conveyance Escrow Agreement

[to be attached]

Exhibit H

Consulting Agreement

[to be attached]