

**AMENDED AND RESTATED PARK DEVELOPMENT AND DISBURSEMENT
AGREEMENT**

This AMENDED AND RESTATED PARK DEVELOPMENT AND DISBURSEMENT AGREEMENT (this "Agreement") entered into as of December 4, 2012 (the "Effective Date"), is by and between CH-B Trinity Falls, LP, a Texas limited partnership ("Owner"), and the City of McKinney, Texas ("City").

WHEREAS, Owner is the owner of the property located along the East Fork of the Trinity River in Collin County, Texas, and generally depicted by the drawing attached as **Exhibit A** (the "Property"), which Property was previously owned by the BB Owen Trust (the "Trust");

WHEREAS, Owner and City are parties to that certain 2012 Development Agreement dated December 4, 2012 (the "Development Agreement") covering the Property as part of the "Trinity Falls" development;

WHEREAS, unless otherwise defined in this Agreement, defined terms used in this Agreement shall have the meanings given to such terms in the Development Agreement;

WHEREAS, Owner has agreed to develop an area containing not less than 220 acres located along the East Fork of the Trinity River as a park and open space (the "Park") open and available to the residents of the City and the general public in accordance with the terms of the Development Agreement;

WHEREAS, Owner, with input from the Trust, will design the Park to be open and available to the residents of the City and the general public and has agreed to name the Park in honor of BB Owen;

WHEREAS, City has received a donation from the Trust (the "Park Funds") to be used, subject to the terms of this Agreement, to reimburse Owner for the costs of design, engineering, and construction of the Park, which donation totaled \$10,000,000.00; and

WHEREAS, the City will disburse the Park Funds subject to and in accordance with the terms of this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, Owner and City agree as follows:

1. **Park Development.** The Park will be developed in phases by reference to the "Park Areas" that are shown on the attached **Exhibit B** and the "Planning Units" that are shown on the attached **Exhibit C**. All improvements will be designed and constructed to applicable City standards and be of similar quality to Bonnie Wenk Park and Towne Lake Park based on plans and specifications approved by the City and, upon completion, all improvements shall receive a certificate of occupancy or its equivalent from the City evidencing completion in accordance with applicable City standards. The plans and specifications for each phase of development will be accompanied by Owner's estimate of the costs. Prior to the design of Park Area 3, Owner shall prepare a concept plan covering Park Areas 3-7 to be utilized as a guide for review of such Areas. Each Park Area shall be completed within two (2) years after construction is commenced. The Park will be open to the general public and each Park Area will include one or more of the following improvements as each of the Park Areas is developed:

- a. Parking facilities;
- b. Viewpoints or overlooks;
- c. Natural and interpretive trails;
- d. Ponds or lakes with fishing piers and boating/canoeing capability;
- e. Water features including waterfalls and cascades;
- f. Open air pavilions and picnic tables;
- g. Playgrounds;
- h. A 12-foot wide hard surface (concrete) primary hike and bike trails; with secondary hike and bike trails of decomposed granite or similar materials;
- i. Passive open-play fields;
- j. Connectivity to trail systems within the Property;
- k. Amphitheater; and
- l. Frisbee golf facility.

1.1 Park Area 1. Commence construction within Park Area 1 not later than 30 days after the completion and acceptance of the first phase of residential development within Planning Unit 1 of the following improvements: (1) nature trails and interpretive trails; (2) 12 foot wide hard surface (concrete) primary hike and bike trails; and (3) connectivity to trails systems within the Property.

1.2 Park Area 2. Commence construction within Park Area 2 not later than 30 days after the completion and acceptance of the adjacent/contiguous sections of the north half of Trinity Falls Parkway of the following improvements: (1) nature trails and interpretive trails; (2) 12 foot wide hard surface (concrete) primary hike and bike trails; and (3) connectivity to trails systems within the Property; and (4) optional playground equipment.

1.3 Park Area 3. Commence construction within Park Area 3 not later than 30 days after the issuance of the 400th building permit for a Dwelling Unit in Planning Unit 2 of the following improvements: (1) nature trails and interpretive trails; (2) 12 foot wide hard surface (concrete) primary hike and bike trails; and (3) connectivity to trails systems within the Property; (4) parking facilities; (5) viewpoints or overlooks; (6) ponds or lakes with fishing piers and boating/canoeing capability; (7) water features including optional water falls/cascades; (8) open air pavilions; (9) picnic tables; (10) passive open play fields; (11) optional amphitheater (may be deferred to Area 4); (12) frisbee golf facility; (13) restroom facilities; and (14) playground equipment. Owner may request to substitute any component in within this Area, which substitution shall be subject to the approval of the City in its sole discretion.

1.4 Park Area 4. Commence construction within Park Area 4 not later than 30 days after the issuance of the 675th building permit for a Dwelling Unit in Planning Unit 3 of

the following improvements: (1) nature trails and interpretive trails; (2) 12 foot wide hard surface (concrete) primary hike and bike trails; and (3) connectivity to trails systems within the Property; (4) parking facilities; (5) ponds or lakes with fishing piers and boating/canoeing capability; (6) water features including optional water falls/cascades; (7) open air pavilions; (8) picnic tables; (9) passive open play fields; (10) amphitheater (if not already constructed in Park Area 3); (11) extension of the frisbee golf; (12) restroom facilities; and (13) playground equipment. Owner may request to substitute any component in within this Area, which substitution shall be subject to the approval of the City in its sole discretion.

1.5 Park Area 5. Commence construction within Park Area 5 not later than 30 days after the issuance of the 1,000th building permit for a Dwelling Unit in Planning unit 3 of the following improvements: (1) nature trails and interpretive trails; (2) 12 foot wide hard surface (concrete) primary hike and bike trails; and (3) connectivity to trails systems within the Property; (4) viewpoints or overlooks; (5) picnic tables; (6) extension of the frisbee golf; and (7) playground equipment. Owner may request to substitute any component in within this Area, which substitution shall be subject to the approval of the City in its sole discretion.

1.6 Park Area 6. Commence construction of portions of Park Area 6 not later than 30 days after the earlier of completion and acceptance of (i) adjacent/contiguous development phases or (ii) adjacent/contiguous sections of the north half of Trinity Falls Parkway of the following improvements: (1) nature trails and interpretive trails; (2) 12 foot wide hard surface (concrete) primary hike and bike trails; and (3) connectivity to trails systems within the Property; and (4) optional playground equipment.

1.7 Park Area 7. Commence construction within Park Area 7 not later than 30 days after the issuance of the 250th building permit for a Dwelling Unit in Planning Unit 4 of the following improvements: (1) nature trails and interpretive trails; (2) 12 foot wide hard surface (concrete) primary hike and bike trails; and (3) connectivity to trails systems within the Property; (4) ponds or lakes with fishing piers and boating/canoeing capability; (5) water features including water falls/cascades; (6) picnic tables; (7) passive open play fields; and (8) playground equipment. Owner may request to substitute any component in within this Area, which substitution shall be subject to the approval of the City in its sole discretion.

2. Naming of Park; Open to Public. Owner hereby agrees that the official name of the Park shall incorporate in perpetuity the words “BB Owen”, and the Park shall be open to the public at times consistent with the City’s Park Rules and Regulations, subject to maintenance and safety requirements. At a minimum, Owner shall construct an entry monument to the Park containing the Park name at a location clearly visible from the future adjacent roadways. Additional signage containing the Park name shall be designed and constructed for each of the Park Areas.

3. Park Funds. The City has received the Park Funds; therefore, this Agreement shall not terminate, nor be terminable, prior to the expiration of the Term. The City shall hold and disburse the Park Funds in accordance with this Agreement. The City shall invest the Park

Funds in qualified municipal investments, provided that such investments will enable the City to obtain delivery and payment of the Park Funds on notice of not more than 10 business days. All interest and other income earned on the Park Funds shall be reported on the City's federal taxpayer identification number, and none of the Park Funds shall be invested or used except in accordance with this Agreement.

4. Park Fund Disbursements.

4.1 Upon receipt of a Draw Request (herein so called) relative to costs of design, engineering, or construction of the Park incurred by or on behalf of Owner, accompanied by receipts or invoices related to such costs and an affidavit from Owner (and any engineer's certificate, if applicable) to the effect that such costs have been incurred in accordance with the provisions of this Agreement, shall make prompt disbursements (but in no event later than 30 days after receipt of the Draw Request) from the Park Funds, from time to time. In no event shall reimbursements from the Park Fund for the cost of floodplain reclamation on land within the Park exceed \$2,250,000, and no development or infrastructure cost for roadways or utilities required by the Development Agreement shall be reimbursed from Park Funds.

4.2 All construction contracts shall contain a retainage provision of at least 10% of the contract price. Upon a distribution from the Park Funds to pay a Draw Request, the City shall notify Owner of the remaining balance of the Park Funds, including any accrued interest and other income earned on the Park Funds. Costs incurred by Owner for design, engineering, or construction of the Park improvements in excess of the total amount of Park Funds shall be Owner's responsibility. Consultant Fees (herein so called) for professional, third-party expenses incurred incident to the design, engineering and construction of the Park improvements, the parties' attorneys' fees for preparation of this Agreement, as well as City's reasonable administrative costs for processing disbursements and managing the Park Funds under this Agreement, shall also be reimbursable under this Agreement by way of Owner's delivery of a Draw Request to the City, accompanied by receipts or invoices related to such costs and an affidavit from Owner to the effect that such costs have been incurred in accordance with the provisions of this Agreement.

5. Remedies.

5.1 Owner's failure to cause completion of construction and installation of the Park improvements as required by this Agreement shall constitute an event of default, which, if not cured within 180 days after written notice from City (or such later date if the default is reasonably incapable of being cured within such period and Owner commences actions to cure the default within such 180 days and diligently pursues the same to completion), shall entitle the City to either: (1) proceed with the completion of such construction and installation in accordance with this Agreement, and the costs of such completion shall be reimbursed to the City from the Park Funds, or (2) suspend disbursements from the Park Fund until either (i) the City and Owner enter into a mutually acceptable amendment of this Agreement, or (ii) Owner cures such event of

default. City's suspension of disbursements under this Section 5.1 shall not relieve Owner of its obligations to timely complete any Park Area described above. The foregoing notwithstanding, in no event shall the City use the Park Funds for any purpose other than the costs of design, engineering and construction of the Park facilities.

5.2 The City's failure to promptly pay Park Funds to Owner in accordance with this Agreement shall constitute an event of default by City under this Agreement for which Owner shall be entitled to pursue an action against City for specific performance, for which City waives its governmental immunity from suit for the limited purpose of allowing Owner, its successors or assigns, to bring such action.

6. **Maintenance.** Owner's ongoing maintenance obligations for the Park are set forth in the Development Agreement. Owner shall not be entitled to any reimbursement for maintenance costs from the Park Funds.

7. **Term.** This Agreement shall have a term (the "Term") ending upon the earlier of (a) fifteen (15) years from the Effective Date or (2) 30 days after disbursement of all Park Funds. Upon the expiration of the Term, all of the then-remaining Park Funds, if any, shall be released to and used by the City solely for application to the Park, whether for construction, installation, replacement or upgrading of Park improvements. Termination of this Agreement shall not relieve Owner of its obligations under the Development Agreement relative to the Park.

8. **Indemnification.** Owner shall indemnify and hold harmless the City from any claims and suits of third parties (including the City's attorney's fees), including a suit by the Trust, the trustees of the Trust, any beneficiary under the Will of BB Owen, Owner's grantors, Owner's successors, affiliates, assigns and grantees (including any municipal utility district or homeowners' association), arising out of the receipt and disbursement of Park Funds by the City under this Agreement or claims arising out of any use or disbursement of Trust funds.

9. **Additional Provisions.**

9.1 This Agreement shall be binding upon and inure to the benefit of Owner and the City, and their respective successors and assigns, whether so expressed or not. Owner has the right to assign this Agreement, and/or Owner's rights and/or obligations hereunder, in whole or in part, from time to time. In the event of an assignment, Owner shall be released from its obligations hereunder, as the same relate to the construction obligations so assigned, provided Owner has obtained (1) consent of City, which consent shall not be unreasonably withheld, conditioned or delayed, and (2) a written agreement from such assignee to assume such assigned obligations; provided, however, in the event of an assignment to an affiliate of Owner, a homeowners' or property owners' association (or derivative thereof), or the District (as defined in the Development Agreement), then Owner shall be released from its obligations hereunder, as the same relate to the construction obligations so assigned, without the consent of City so long as Owner has obtained a written agreement from such assignee to assume such assigned obligations.

9.2 The rights and remedies of the parties hereunder are cumulative and not exhaustive of any rights or remedies to which they would otherwise be entitled. No modification or waiver of any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

9.3 Notices and other communications provided for herein shall be in writing and shall be delivered or mailed and addressed as hereinafter provided. All notices and other communications (other than instructions for disbursement of the Park Funds) required or permitted to be delivered under this Agreement shall be deemed received on the earlier of (1) actual receipt, or (2) when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the authorized representative of the receiving party or parties at the address stated above. A party may change its address for notice by written notice to the other parties pursuant to the terms hereof.

9.4 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

9.5 THIS AGREEMENT IS PERFORMABLE IN COLLIN COUNTY, TEXAS AND SHALL BE DEEMED TO BE MADE UNDER THE LAWS OF THE STATE OF TEXAS AND SHALL FOR ALL PURPOSES BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH SAID LAWS EXCEPT AS FEDERAL LAW MAY APPLY.

9.6 This Agreement may be executed in any number of counterparts, circulated among the parties by telecopy, each of which shall be an original.

9.7 The parties hereto agree that this Agreement is a valid and binding obligation of the parties hereto and all successors, transferees and assigns.

9.8 The parties hereto agree that this Agreement shall not be filed in any Public Records maintained by the County Clerk of Collin County, Texas.

IN WITNESS WHEREOF, the parties hereto, by their representatives duly authorized, have executed this Agreement as of the Effective Date.

ATTEST:

CITY OF MCKINNEY, TEXAS

By: _____

By: _____

Name: Sandy Hart, TRMC, MMC

Name: Jason Gray

Title: City Secretary

Title: City Manager

APPROVED AS TO FORM

Mark Houser
City Attorney

CH-B TRINITY FALLS, LP
a Texas limited partnership

By: CH-B Trinity Falls GP, LLC,
its general partner,
a Delaware limited liability company

By: _____

Leisha Ehlert, Vice President

Date: _____

Exhibit A
 Drawing of the Property (the "Park")

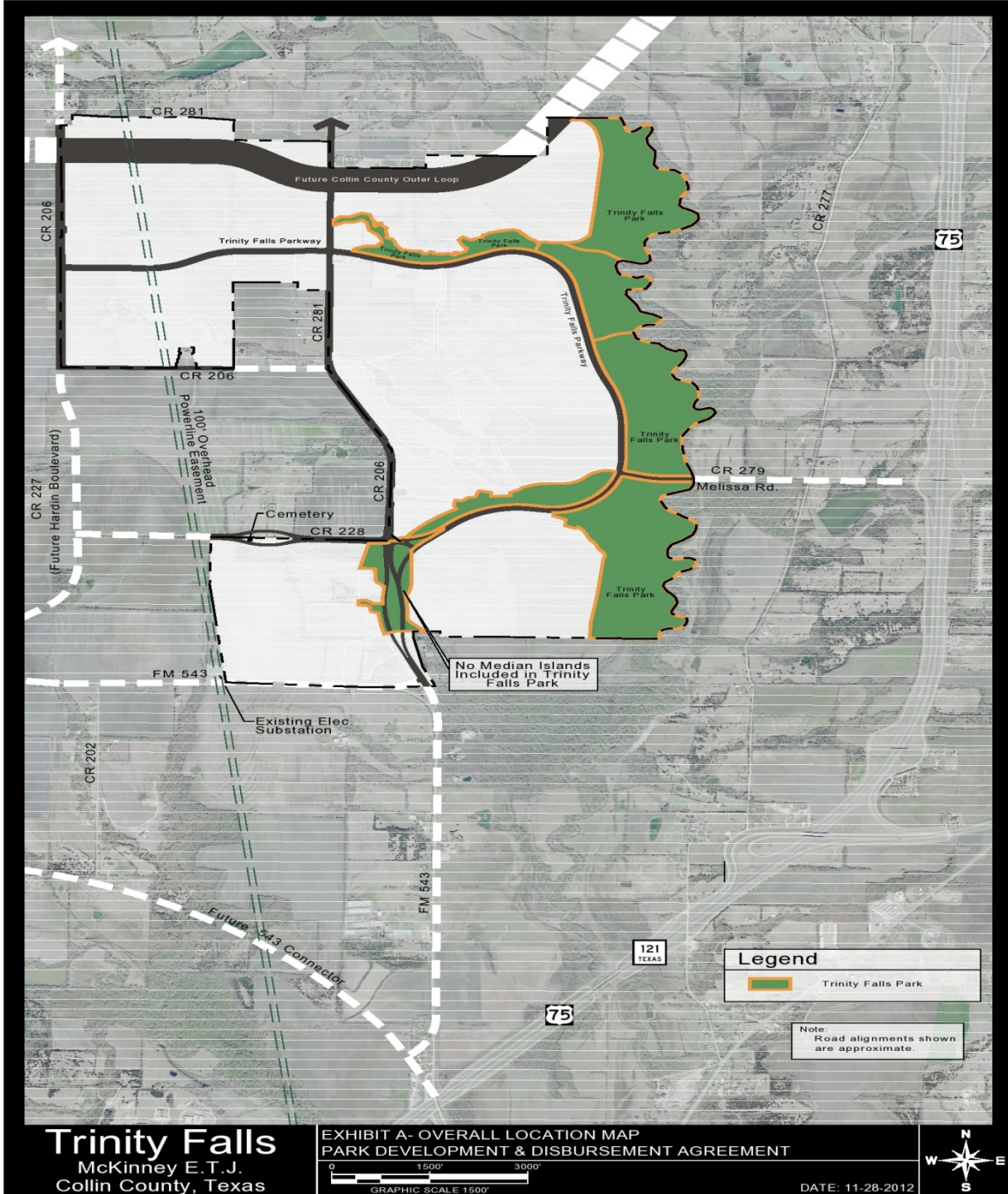


Exhibit B Park Areas

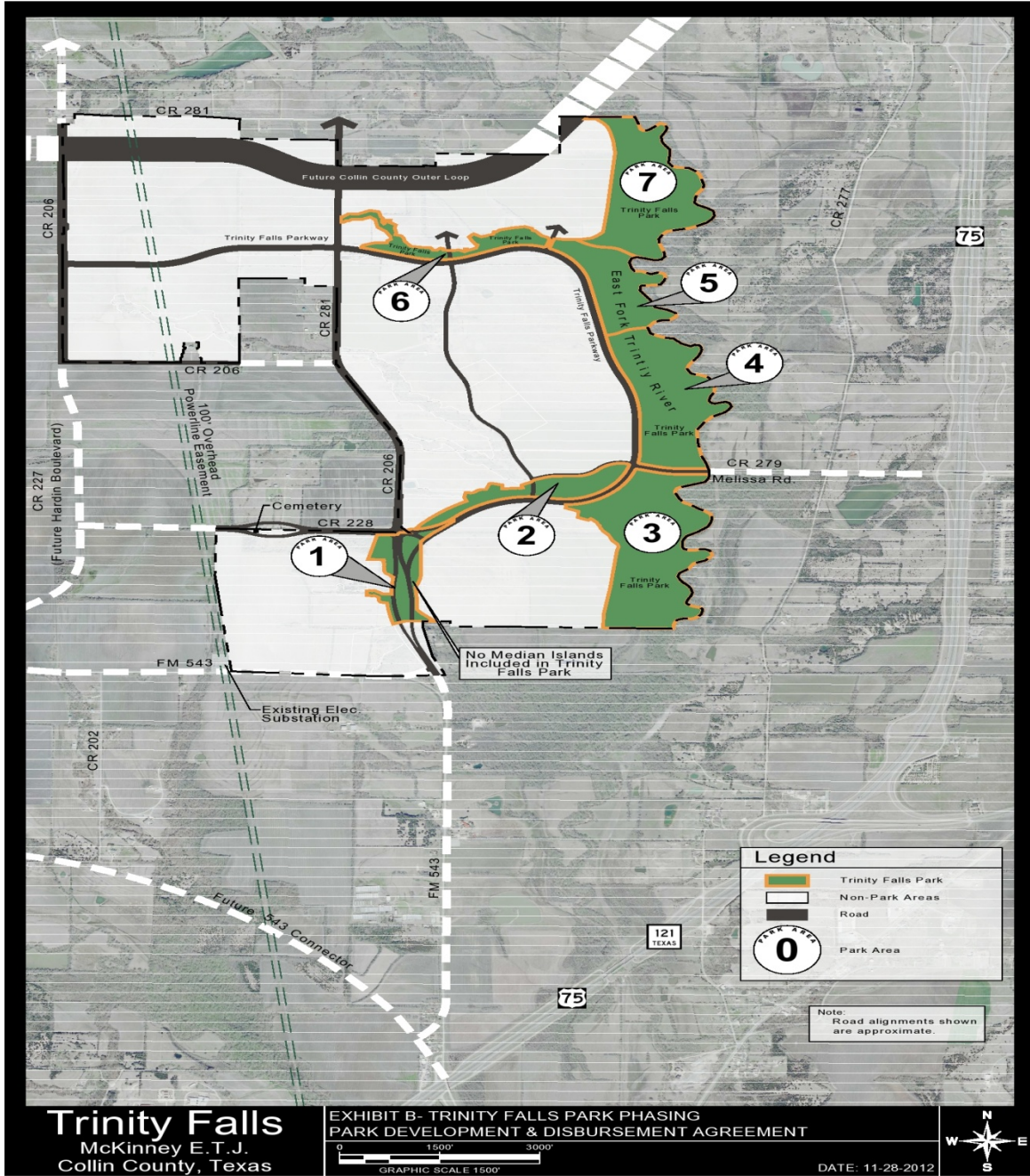


Exhibit C Planning Units

