INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE CITY OF SAN MARCOS AND CALDWELL COUNTY FOR REGULATION OF DEVELOPMENT WITHIN THE HERCULES TRACT LOCATED IN CALDWELL COUNTY, INCLUDING LAND WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF SAN MARCOS AND LAND IN UNINCORPORATED CALDWELL COUNTY OUTSIDE THE EXTRATERRITORIAL JURISDICTION

This Interlocal Cooperative Agreement (**"Agreement"**) is entered into by and as of the date signed by all Parties below (the "**Effective Date**") by and between the City of San Marcos, Texas (**"City"**) and Caldwell County, Texas (**"County"**), collectively referred to as the **"Parties,"** pursuant to Chapter 791 of the Texas Government Code, as amended, commonly known as the Interlocal Cooperation Act.

WHEREAS, the Parties are currently parties to that certain Interlocal Cooperative Agreement between the County and the City for Subdivision Regulation within the Extraterritorial Jurisdiction of the City of San Marcos having an effective date of November 3, 2014 (the **"1445 Agreement"**) establishing agreed standards, procedures and approval processes for platting the and development of property located within the City's extraterritorial jurisdiction (**"ETJ"**) in Caldwell County; and

WHEREAS, Project Hercules (**"Company"**) proposes to develop certain real property consisting of approximately 611 acres, specifically described and depicted in Exhibit A, attached hereto and made a part hereof (the **"Project Site"**). The Project Site consists of (i) approximately 375 acres located within the City's ETJ, described in Exhibit A-1 (the **"Land"**), and (ii) approximately 236 acres located in unincorporated Caldwell County outside the City's ETJ, described in Exhibit A-2 (the **"Option Land"**); and

WHEREAS, due to the unique nature of the proposed use of the Project Site, the desire of the Parties to support consistent environmentally sensitive development and the mutual economic benefits to the City and County, the Parties seek to establish a project-specific framework under a separate interlocal agreement that supplements or modifies the 1445 Agreement as to the Land and, as to the Option Land, establishes a separate interlocal framework under Chapter 791 of the Texas Government Code, for the coordinated review and administration of development applications, public infrastructure improvements, transportation planning, and related governmental approvals associated with the Company's development of the Project Site;

WHEREAS, the Project Site proposed development involves a unique type of facility and associated infrastructure that may not have been specifically contemplated within the City's standard Land Development Code requirements. Accordingly, certain site-specific engineering and infrastructure considerations warrant evaluation to determine whether alternative design approaches may be appropriate. In considering these alternatives, the City recognizes the need to balance the unique design, construction, and operational requirements of a facility of this nature with its responsibility to protect public safety, maintain adequate drainage and flood protection, preserve infrastructure integrity, and minimize impacts to surrounding properties and the natural environment. The Development Standards establish the conditions under which alternative

engineering design approaches may be considered for the Project Site, subject to appropriate technical justification, demonstrated performance, and approval by the City Engineer;

WHEREAS, to the fullest extent authorized by applicable law, the County desires to assign and delegate to the City, the County's authority to perform review, processing, permitting, approval of development applications and inspection functions for the Project Site that the County is itself authorized to perform, acting as the County's contractor under Chapter 791 of the Texas Government Code, while preserving the County's statutory authority and responsibilities; and

WHEREAS, concurrently with this Agreement, the County and the Company (or the Developer, as applicable) will enter into a development agreement substantially in the form of the Caldwell County Development Agreement template (the **"Hercules County Development Agreement"**), under which the County will permit development of the Project Site in accordance with the Caldwell County Development Ordinance with variances granted in exchange for alternate standards, and under which specified City of San Marcos development standards are adopted by the County as alternate County standards for the Project Site or are agreed to by the owner as covenants running with the land; and

WHEREAS, Section 791.011 of the Texas Government Code authorizes the Parties to contract to provide a governmental function or service that each Party is authorized to perform individually, including planning, engineering, fire protection, and streets, roads, and drainage, and Section 242.001(e) of the Texas Local Government Code provides that, outside the City's ETJ, the City may not regulate subdivisions or approve the filing of plats except as provided by Chapter 791; and

WHEREAS, the Parties seek to promote an efficient, transparent, and coordinated development review process that protects public health, safety, welfare, and environmental resources and complies with all applicable laws by entering into this project specific Interlocal Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

I. PURPOSE AND SCOPE

1.1. Purpose. The purpose of this Agreement is to establish a coordinated development review process for the Project Site; to designate the City as the primary reviewing and approving entity for Project development to the fullest extent authorized by law, acting (a) as to the Land, under the City's own authority under the Chapter 380 Agreement, Subchapter G of Chapter 212 of the Texas Local Government Code, and the 1445 Agreement, and (b) as to County functions for the entire Project Site, including all of the Option Land, as the County's contractor under Chapter 791 of the Texas Government Code; to clarify the respective responsibilities of the Parties; and to facilitate timely review consistent with the standards applicable under the agreements governing the Project Site.

1.2. Project-Specific Application. This Agreement applies only to the Project Site. As to the Land, this Agreement supplements and, to the extent of any conflict, supersedes the 1445 Agreement, and the Parties certify that this Agreement complies with Chapter 242 of the Texas

Local Government Code and shall adopt it by order, ordinance, or resolution as required by Section 242.001(c). The 1445 Agreement does not apply to the Option Land unless and until the Option Land is included in the City's ETJ. Prior to the Option Land being included in the City's ETJ, it will be subject to the Hercules County Development Agreement, so that the Option Land remains subject to a County development agreement adopting the alternate County standards.

II. CONCURRENT OBLIGATIONS

2.1. Chapter 380 Economic Development Incentive and 212 Development Agreement. Concurrent with its approval of this Agreement, the City will approve an agreement for economic development and associated land development under Chapters 212 and 380 of the Texas Local Government Code (**"Chapter 380 Agreement"**) covering the Land only. The Chapter 380 Agreement will: **a)** provide certain incentives to the Company to locate its business on the Land; **b)** establish the Company's contractual obligations to obtain review and approval of plans, improvements, and development activities on the Land consistent with this Agreement; and **c)** provide for the annexation and zoning of the Land after completion of construction as defined therein. The City's offer of the Chapter 380 Agreement shall be accompanied by the written disclosure required by Section 212.172(b-1) and Section 43.005 of the Texas Local Government Code. The Chapter 380 Agreement will be amended to include the Option Land subject to the Chapter 380 Economic Development Incentive and 212 Development Agreement whereby the City, the Developer, and the Company intend that, concurrently with the Effective Date of the Owned Land being released from the City Development Agreement, on the terms of the City Development Agreement Release, and the Option Land be released from the County Development Agreement, on the terms of the County Development Agreement Release, so that this Agreement, together with the Interlocal Agreement and the New Development Agreement, will govern the development, annexation, and zoning of the 611 acre Project Site consistent with Chapter 380 Economic Incentive and 212 Development Agreement Section 6.03 (b) Annexation Petition, and Section **Error! Reference source not found.** Zoning of the Project Site.

2.2. Release of Project Site from Development Agreements. Concurrently with its approval of this Agreement: **a)** the City will enter into an agreement to amend that certain First Amended and Restated Development Agreement between the City and Franklin Mountain San Marcos 1, LP (**"Developer**) (the **"City Development Agreement"**) that releases the Project Site from the such agreement and that amends the concept plan and any standards as necessary to support development of the Project Site consistent with this Agreement; and **b)** the County will enter into an agreement to amend that certain Development Agreement between the County and Earthship Corporation (**"County Development Agreement"**) that (i) as to the Land, releases the Land from such agreement or conforms such agreement to this Agreement, and (ii) as to the Option Land, amends (and does not release) such agreement, or is replaced by the Hercules County Development Agreement, so that the Option Land remains subject to a County development agreement adopting the alternate County standards described in Section 2.4.

2.3. Relationship Between Agreements. This Agreement, the Chapter 380 Agreement, the Hercules County Development Agreement, and applicable development agreements (collectively with any tax abatement or economic development agreement for the Project Site, the "Related Agreements") are intended to work together to provide a coordinated review and approval process. As to the Land, the Company's obligation to obtain City approval under the Chapter 380

Agreement is separate from, and in addition to, any approvals required from the County or another governmental authority, and County review or approval does not substitute for any City approval required under the Chapter 380 Agreement, except as provided in this Agreement. City review and approval performed under this Agreement shall satisfy the corresponding County review requirements identified in the Hercules County Development Agreement. In the event of conflict: (a) as to the Land, the Chapter 380 Agreement controls as to City standards, the Hercules County Development Agreement controls as to County standards and County-retained functions, and this Agreement controls as to administration; and (b) as to the Option Land, the Hercules County Development Agreement controls as to all standards, and this Agreement controls as to administration, until such time it is annexed into the City's ETJ. Applicable state and federal law prevails in all cases.

2.4. Hercules County Development Agreement. The County shall enter into the Hercules County Development Agreement concurrently with this Agreement. The Hercules County Development Agreement shall: **a)** adopt as alternate County standards, in exchange for variances from the Caldwell County Development Ordinance, those City of San Marcos development standards that the County is authorized to adopt, including drainage, detention, water quality, impervious cover, grading, street and access design, public facilities, and plat design standards; **b)** record as the owner's covenants running with the land, and not as County regulations, any standards governing the use of property or the bulk, height, number, or size of buildings, architectural standards, and building-code compliance; **c)** provide that design packages for the Project are reviewed and approved in accordance with this Agreement; and **d)** identify the County Ordinance requirements waived or deemed satisfied by City review. The City is an intended beneficiary of the owner covenants in the Hercules County Development Agreement to the extent provided therein and may execute a limited joinder accepting those rights and acknowledging its obligations under this Agreement.

III. DEVELOPMENT REVIEW, PERMITTING, AND APPLICABLE STANDARDS

3.1. City as Primary Reviewing and Approving Entity. The Parties agree that the City shall serve as the primary entity responsible for reviewing and approving development applications, plans, and improvements associated with the Project Site, to the fullest extent authorized by applicable law and the agreements governing the Project Site. As to the Land, the City acts under its own authority. As to County functions for the entire Project Site, the City acts as the County's contractor under Section 3.6. This responsibility includes coordinating and conducting applicable reviews and approvals of subdivision and platting, site development, building plans, fire safety, transportation, drainage, environmental protections, public infrastructure, and related development requirements. As to the Option Land, City review of building plans shall include, but not be limited to, verifying compliance with the owner's building-code covenants in the Hercules County Development Agreement, and City fire-safety review shall be performed under Section 3.6(c). The City shall coordinate its review and applicable decisions with the Count to facilitate a consistent development review and approval process. The City's Fire Marshal's Office will lead the review of fire safety code and fire protection requirements, including applicable fire code compliance, fire access, fire lanes, fire protection systems, and related life safety standards, subject to Section 3.6(c).

3.2. Applicable Standards. Development of the Project Site shall be governed by the development standards attached hereto as Exhibit B and made a part hereof (**"Development Standards"**), which apply (a) as to the Land, as City standards under the Chapter 380 Agreement, which shall require the Company or any contracted parties such as the Developer acting on the Company's behalf to comply with them; and (b) as to the Option Land, only as alternate County standards or owner covenants under the Hercules County Development Agreement. City ordinances do not apply to the Option Land of their own force, until such time it is annexed into the City's ETJ.

3.3. Deviations and Variances. Authority to grant any modification, exception, waiver, variance, or alternative to an applicable standard rests with the Party that owns that standard, as follows: **a)** City standards on the Land. Variances from Development Standards applicable to the Land under the Chapter 380 Agreement may be granted only by the City, by the City Council under Section 212.172(b)(4) of the Texas Local Government Code and Chapter 2, Article 4, Division 5 of the San Marcos Development Code, or administratively within the limits stated in the Chapter 380 Agreement, without County consent except as to County-retained functions; **b)** Alternate County standards. Variances from Development Standards adopted as alternate County standards in the Hercules County Development Agreement may be granted only by the County, by the Commissioners Court or by the County official designated in the Hercules County Development Agreement within any delegated limit, after receipt of the City's written technical requirements; **c)** Owner covenants on the Option Land. Modifications of owner covenants require the written consent of the County and, the City; **d)** County Ordinance and County-retained functions. Variances from the Caldwell County Development Ordinance, floodplain requirements, and County road standards may be granted only by the County under its procedures; and **e)** no Party may grant any variance from TCEQ, EPA, or other state or federal requirements. Except as provided in subsection (a), no deviation shall be effective without the other Party's prior written approval. Each variance shall be documented in writing, provided to the Company, and maintained in the records of the granting Party.

3.4. County Coordination. To the extent of their enumerated individual responsibilities, the Parties shall follow the development standards and procedures as set forth in the Development Standards.

3.5. Separate Approvals and Authority. The County retains its statutory authority and responsibilities under applicable law, including floodplain administration, County roads, and approval of plats outside the area for which plat authority is allocated to the City under the 1445 Agreement. Nothing in this Agreement transfers or expands either Party's statutory authority. Where City approval is required under applicable law or an enforceable agreement, County acceptance or approval shall not substitute for that approval. Where County approval is required by law, City review under this Agreement constitutes a recommendation and the approval is issued by or on behalf of the County as provided in Section 3.6. Likewise, City approval of a Company responsibility shall not constitute acceptance or approval of a Developer responsibility, or vice versa.

3.6. City Permitting and Inspection on Behalf of the County. a) The County authorizes and engages the City, and the City agrees, to review applications, issue permits, and conduct inspections on behalf of the County for development activity on the Project Site that is subject to

the Hercules County Development Agreement, including site preparation, comprehensive site, public improvement, and building permit packages described in Exhibit B. **b)** This authority is limited to determining compliance with the standards that the County has adopted or incorporated by reference in the Hercules County Development Agreement and the County requirements identified therein. Each permit issued under this Section shall state that it is issued by the City on behalf of the County under this Agreement. The County shall not issue separate County permits for matters reviewed by the City under this Section, but retains the right to suspend or revoke any such permit for noncompliance under its own procedures. **c)** The City and County have adopted the 2021 International Fire Code (IFC), the City's Fire Marshal shall administer and enforce that code for the Project Site on the County's behalf under Section 233.061(b), and inspections may be performed the City . **d)** As to the Land, this Section supplements, and does not limit, the City's authority under the Chapter 380 Agreement. **e)** Final plat approval for any portion of the Option Land shall be by order of the Commissioners Court under Section 232.002(a) of the Texas Local Government Code, on the City's recommendation.

3.7. Compensation; Current Revenues. The City shall collect the review, permit, and inspection fees from Project Hercules provided in Exhibit B and the Hercules County Development Agreement can separately collect fees for functions it performs under this Agreement, and such fees shall constitute fair compensation to each governmental entity for those functions. Any County fees for those functions are waived or credited as provided in the Hercules County Development Agreement. Each Party paying for the performance of governmental functions or services under this Agreement shall make those payments from current revenues available to the paying Party by Project Hercules.

3.8 State and Federal Permits; City Operating Regulations. The Parties acknowledge that emissions from the Business will exclusively be subject to all applicable state and federal air quality and emissions standards. The Company agrees to and shall maintain compliance with the permits and authorizations issued to the Project by the Texas Commission on Environmental Quality, the United States Environmental Protection Agency, and other state and federal agencies, subject to the continuing legal nonconforming status of the Project Site after annexation in accordance with the San Marcos Development Code.

IV. PHASED DEVELOPMENT AND SUBMITTALS

4.1. Phased Development. To facilitate the Company's construction schedule, the Parties agree that phased submissions may be accommodated where appropriate, provided that applicable standards are maintained and environmental protection, public safety, drainage, water quality, and infrastructure requirements are not compromised.

4.2. Phasing Details. Phased submissions must provide sufficient information for the City to evaluate the overall development and its cumulative impacts, including infrastructure capacity, drainage, environmental conditions, transportation, and public safety.

4.3. Administrative Approval. The City may administratively accommodate phased or deferred submissions where permitted by the Chapter 380 Agreement (as to the Land), the Hercules County Development Agreement, or this ILA. Any such accommodation shall identify the deferred materials and the applicable submission deadline or development milestone.

4.4. No Waivers. Except as specifically allowed in this Agreement or the Chapter 380 Agreement, phased or deferred submissions shall not waive or reduce applicable requirements, eliminate required approvals, or authorize construction or land disturbance before the approvals and protective measures required for the applicable activity are in place.

V. ANNEXATION AND ZONING

5.1 Annexation and Zoning. Upon the owner's request under Section 43.0671 of the Texas Local Government Code and as set forth in the Chapter 380 Agreement, the City will consider annexation and zoning of the Land. The City may not annex the Option Land unless it is first included in the City's ETJ, and any annexation provision affecting the Option Land is conditioned on that inclusion. The Option Land is subject to the Chapter 380 Economic Development Incentive and 212 Development Agreement whereby the City, the Developer, and the Company intend that, concurrently with the Effective Date of the Owned Land being released from the existing City development agreement, on the terms of the City development agreement release, and the Option Land be released from the existing County development agreement, on the terms of the County development agreement release, so that this Agreement, together with the Interlocal Agreement and the New Development Agreement, will replace those existing development agreements and govern the development, annexation, and zoning of the 611 acre Project Site consistent with Chapter 380 Economic Incentive and 212 Development Agreement Section 6.03 (b) Annexation Petition, and Section **Error! Reference source not found.** Zoning of the Project Site.

VI. TRANSPORTATION AND INFRASTRUCTURE COORDINATION

6.1. Roads. Except as provided by the Chapter 380 Agreement or this ILA, the Parties shall coordinate applicable roadway alignments, connections, and improvements with the City's Transportation Master Plan and Caldwell County's Thoroughfare Master Plan and no final alignments proposed for the Project Site are subject to mutual written approval of the Parties. Facility M from the County's Thoroughfare Master Plan will not be required.

6.2. Other Infrastructure. Except as otherwise provided in the Development Standards and Hercules County Development Agreement, applicable public infrastructure, drainage, floodplain, and wastewater improvements shall be reviewed and approved by the governmental entity or regulatory agency having jurisdiction. The City shall coordinate applicable reviews and approvals within its jurisdiction and authority.

VII. MAINTENANCE AND ONGOING RESPONSIBILITY

7.1. County Roads. The County shall retain responsibility for County roads and other infrastructure under its jurisdiction until the Project Site is annexed.

7.4. Records. The Parties shall coordinate the transfer of applicable inspection records, completion documentation, outstanding corrective actions, and maintenance responsibilities as appropriate.

VIII. COORDINATION, COMPLIANCE AND ENFORCEMENT

8.1. Review and Inspection. Either party may conduct or arrange inspections and review applicable records to verify compliance with this Agreement, approved plans, permits, and enforceable agreements, consistent with applicable law. Inspections of matters subject to the Hercules County Development Agreement performed by the City are performed on behalf of the County under Section 3.6.

8.2. Cooperation. The Parties shall cooperate in good faith with each other in coordinating applicable submissions, review schedules, infrastructure matters, and development milestones.

8.3 Emergency Response. The Parties recognize that, prior to annexation of the Project Site, Caldwell Emergency Services District #2 (ESD #2) shall be the primary first responder for fire-related emergencies. The City agrees to maintain a mutual aid agreement with ESD #2 throughout the term of this Agreement and provide supplemental emergency fire services to the Project Site prior to annexation, should ESD #2 call the City for aid.

IX. TERM AND DEFAULT

9.1. Term. The term of this Agreement shall commence on the date of the last signature below and shall continue (a) until the Project Site is annexed into the City; or (ii) thirty (30) years after the effective date, unless renewed by written agreement of the Parties. This Agreement is contingent upon both the City and the County concurrently approving amendments to their respective development agreements as provided herein, the County's approval of the Hercules County Development Agreement, and the City's approval of the Chapter 380 Agreement. If all such agreements are not approved, but this Agreement is approved in a sequence ahead of each governing body's consideration of such agreements, approval of this Agreement by either party will be of no force or effect. Permits and approvals issued under this Agreement survive its expiration or termination.

9.2. Default. A party must notify the other party in writing of any alleged default by such other party under this Agreement. If the Parties are unable to resolve the alleged default within 30 days after the date of receiving such notice, the Parties shall follow the procedures for dispute resolution below. If the dispute is not resolved under such procedures, either party may pursue remedied=s available at law or in equity.

9.3. Cross-Default and Cross-Reference. a) The Parties acknowledge that the Hercules County Development Agreement, the Chapter 380 Agreement, and any agreement under Section 212.172 of the Texas Local Government Code shall each provide that a material default by the Company or Developer under any of them, or under the owner covenants in the Hercules County Development Agreement, that remains uncured after notice and the applicable cure period, constitutes a default under each Related Agreement under which the Company or Developer receives a grant, loan, tax abatement, or other incentive. **b)** Upon such an uncured default, the County may suspend County approvals under the Hercules County Development Agreement and may direct the City to suspend review and issuance of permits under Section 3.6, and the City may exercise its remedies under the Chapter 380 Agreement as to the Land. **c)** A default by a Party under this Agreement shall not constitute a default by the Company or Developer under any

Related Agreement, and expiration or termination of this Agreement shall not terminate the Company's or Developer's obligations under the Hercules County Development Agreement; review functions shall then revert to the County under the Hercules County Development Agreement. **d)** Nothing in this Section authorizes the County to enforce the Chapter 380 Agreement or the City to enforce County regulations; each Party enforces only the obligations owed to it or for its benefit.

X. NOTICES

10.1. Delivery of Notice. Except as provided in the Development Standards involving the ongoing coordination between the representatives of the Parties, notices under this Agreement shall be provided in writing by email, certified mail return receipt requested, or hand delivery to:

To City:

City Manager
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Email: *citymanagerinfo@sanmarcostx.gov*

To County:

XI. MISCELLANEOUS

11.1. Retained Authority. Nothing in this Agreement transfers or expands either Party's statutory authority or jurisdiction beyond that authorized by applicable law. Except as provided in this Agreement, the Parties each retain their respective legally assigned statutory responsibilities and decision-making authority.

11.2. No Third-Party Beneficiaries. Nothing in this Agreement makes the Company or Developer or any other person or entity a party to this Agreement or independently imposes contractual obligations on third parties. The Company's and Developer's obligations with respect to the Project Site arise under the Chapter 380 Agreement and the Hercules County Development Agreement.

11.3. Conflicts. If any provision of this Agreement conflicts with applicable law, the provision shall be construed to preserve the Parties' lawful intent to the extent possible. Any necessary amendment shall be made in writing and executed by both Parties.

11.4. Amendments. This Agreement may be amended only by a written instrument executed by both Parties and subject to any additional authorization required by applicable law.

11.5. Disputes. In the event of disputes regarding this Agreement, the Parties shall first pursue good faith informal negotiations to resolve the dispute. If informal negotiations are unsuccessful, the Parties s a mutually agreed mediator to attempt in good faith to resolve the dispute before either party may pursue litigation.

11.6. Severability. If any part of this Agreement is deemed unenforceable by a court of law, the remaining parts of this Agreement shall remain in effect unless rendered impracticable due to the invalid provision. In such event, the Parties shall in good faith to amend this Agreement consistent with applicable law before the Agreement may be terminated.

11.7. Immunity Limitations on Liability. In entering into this Agreement, neither party waives its immunity from suit or liability or any limitations on damages as may be afforded the party under applicable laws.

11.8. Law and Venue. This Agreement shall be interpreted under the laws of the State of Texas. In the event of a dispute resulting in litigation between the Parties, venue shall be in the state courts having jurisdiction in Caldwell County, Texas.

[ADD SIGNATURE BLOCKS]

EXHIBIT A

[Attach location map, survey drawing, and legal description of the entire Project Site (approximately 611 acres)]

EXHIBIT A-1

[Attach legal description and survey drawing of the Land (approximately 375 acres located within the City's ETJ)]

EXHIBIT A-2

[Attach legal description and survey drawing of the Option Land (approximately 236 acres located in unincorporated Caldwell County outside the City's ETJ)]

EXHIBIT B

Development Standards and Permitting Process

I. Applicable Development Standards

A. Development of the Project Site shall be governed by the following:

1. The San Marcos Development Code (SMDC) and City of San Marcos Code of Ordinances, as they exist on March 19, 2019, unless otherwise provided in this Agreement. In the event of a conflict between this Agreement and the SMDC or City's Codes and Ordinances, this Agreement shall control.

2. All applicable County, State, and Federal Laws to the extent those requirements apply by law or are made applicable through an enforceable agreement or other lawful instrument.

3. The 2021 International Building Code and Fire Code currently in effect as of the effective date of this agreement shall apply to the Project Site.

4. Pursuant to the City and County's authority, the City and County hereby agree to the following waivers and modifications to the following requirements of the applicable Development Code with respect to the Project Site or any portion of the Project Site, as applicable:

(a) **Blocks, Lots, and Access.**

(i) Section 3.6.2.1, Block Perimeter and Section 3.6.2.2 Dead End Streets shall not be required.

(ii) Section 3.6.4.2(B), which requires pedestrian access from building entrances to public sidewalks, is waived. The site shall meet the Americans with Disabilities Act and standards for providing accessible routes unless meeting an exception.

(iii) Notwithstanding Section 3.6.4.2(E) of the San Marcos Development Code, the dimensional requirements applicable to driveway width and radius shall not apply to the Project Site. Driveways shall be designed to provide safe and adequate access, with the width, radius, and configuration determined by the Company based on operational needs and the vehicles anticipated to use the driveway. All required International Fire Code requirements shall be met.

(iv) Section 3.6.4.2(F), which requires cross-access between abutting lots, shall not apply.

(v) The Developer shall be required to install off-site perimeter roads directly adjacent to the property boundary in accordance with the Company Chapter 380 Economic Development Incentive Agreement.

(b) **Blank Wall Area.** Section 4.3.5.3, which limits the blank wall area of a building based on the associated zoning district, shall not apply.

(c) **Maximum Height.** The maximum height on the Project Site shall be ninety (90) feet. The City will have administrative authority to approve a ten percent modification to the maximum height. The Project Site shall comply with Federal Aviation Administration (FAA) requirements.

(d) **Fencing.**

(i) 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. Furthermore, in areas that are not visible to the general public, it is permissible to utilize standard galvanized chain link fence.

(ii) Section 7.2.6.2(F) and 7.2.6.2(G). Fence height to be allowed to be ten (10) feet.

(e) **Setbacks.** The Primary Street, Secondary Street, side, and rear Principal Building setbacks on the Project Site shall be twenty (20) feet. The Primary Street, Secondary Street, side, and rear Accessory Structure (i.e. Guard booth) setbacks on the Project Site shall be five (5) feet.

(f) **Screening.**

(i) Section 7.2.5.1, which specifies service areas must be screened on 3 sides by a wall that matches the color and material of the building facade and is a minimum 6 feet in height and screened on the 4th side by a solid gate at a minimum of 6 feet in height, shall not apply.

(ii) Section 7.2.5.2, which specifies requirement for roof and ground mounted equipment screening, shall not apply.

(g) **Landscaping.**

(i) 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 truck and trailer storage and parking, 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 or may be mitigated through a fee-in-lieu of planting in the amount of $100 per caliper inch. Funds shall be provided to the City to be dedicated to tree planting, tree care, and other tree preservation activities within the City in addition to the minimum number of trees already required to be planted.

This standard does not modify the requirement that parking lot trees be installed in parking areas designed for employee, customer, or public use.

(ii) Section 7.1.4.2 which requires parking lots to be designed to drain to interior and perimeter landscaping islands, shall not apply.

(iii) Section 7.1.4.3 (D.1), which specifies a landscape median island must be provided between every 6 rows of parking, shall not apply.

(iv) Section 7.1.4.3 (C.4), which specifies no more than 30 parking spaces may be located between terminal islands, shall not apply.

(v) Section 7.2.2.2 specifies transitional yard buffers and Section 7.2.2.4 specifies the installation requirement for protective yard types, A/B/C/D. This is modified to allow Type C protective yard to be used without the requirement of a wall.

(h) **Cut and Fill.** 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 twenty-five (25) feet of cut or fill is allowed by right within the limits designated on Project Site.

(ii) Cut or fill over twenty-five (25) feet but no greater than thirty (30) feet will require administrative approval by the City. Cut and fill greater than thirty (30) feet shall require City Council approval.

(iii) Drainage features (detention ponds, water quality features, channels, and floodplains) are exempt from the requirements of this section.

(iv) The building footprint is exempt from the requirements of this section.

(i) **Impact Fees.** The wastewater impact fees to be charged by the City during the development of the Project Site will be the fees established as part of the Company Chapter 380 Economic Development Incentive Agreement.

(j) **Private Roadways.** Notwithstanding Chapter 3, Articles 7 and 8, including Sections 3.7.1.1 and 3.7.2.1 et seq., all roadways located entirely within the Project Site boundaries shall be considered private roadways and shall not be subject to City public street requirements. All private roadways shall be designed, constructed, operated, and maintained by the Company.

(k) **Parking.** Sections 7.1.1.2, 7.1.1.3, and 7.1.2.1, including Table 7.1, which specify minimum and maximum parking requirements, shall be modified for the Project Site to allow parking to be provided at a ratio of approximately two (2) parking spaces for each employee scheduled during the maximum work shift. The final

number of parking spaces shall be determined by the Company based on anticipated employee staffing, shift changes, visitors, operational requirements, and other Project-specific parking demands.

(l) **Exterior Lighting.**

(i) Notwithstanding the requirements of Chapter 7, Article 5, Lighting and Glare Standards, including Sections 7.5.2.1 through 7.5.2.4 of the San Marcos Development Code, exterior lighting within the developed and operational portions of the Project Site may be designed and provided by the Company at illumination levels reasonably necessary to support safe operation, security, access, parking, loading, truck circulation, employee and visitor circulation, and other operational needs of the Project Site.

(ii) Exterior lighting shall be designed such that light trespass at the Project Site property boundary does not exceed 0.25 foot-candle.

(iii) Full cut-off fixtures are required on all outdoor lighting applications.

(iv) Undeveloped portions of the Project Site, including floodplain, preserved, environmentally sensitive, and other undisturbed areas, shall not be subject to minimum illumination requirements and may remain unlit, except where lighting is reasonably necessary for security, access, safety, inspection, or maintenance.

(v) The exterior illumination levels shown in the table below represent the Company's anticipated average illumination criteria and are approximate design criteria only. Actual illumination levels may vary based on the specific use, location, security requirements, operational requirements, safety considerations, and final lighting design.

Exterior Area / Use	**Anticipated Average Illumination**
Roadways / vehicle and pedestrian circulation	Approx. 14 fc
General exterior operational areas	Approx. 1.0 fc
Parking areas	Approx. 1.0 fc
Property-line light trespass	0.25 fc maximum

(m) **Environmental Regulations.**

(i) Section 3.9.1.1 (B.3), which specifies developments cannot increase the water surface elevation off-site unless contained within a dedicated drainage easement or right-of-way, revised as follows: Due to computational variability, instability, sensitivity, and other factors related to 2D hydraulic modeling, developments that utilize 2D hydraulic

modeling with results that show increases in water surface elevations off-site by no greater than 0.10-feet may be allowed if limited to undeveloped areas, not within public right-of-way, and not adjacent to existing structure. 1D hydraulic modeling shall show no increases in water surface elevations.

(ii) Section 3.9.1.2.2, which specifies side slopes of channels shall be no steeper than four horizontals to one vertical shall be modified to no steeper than three horizonal to one vertical.

(iii) Section 6.2.2.1 A. 2 & 3 - Water Quality Zones, shall only apply to Hemphill and Morrison Creek 100-year floodplain boundaries.

(iv) Section 6.2.2.2 A. 2. & 3, shall only apply to Hemphill and Morrison Creek 100-year floodplain boundaries

(v) Section 6.2.3.2, shall only apply to Hemphill and Morrison Creek 100-year floodplain boundaries

(vi) Section 3.3.5.4.1 (c) specifies that the flow line slope of a grass lined channel be a minimum of two (2) percent unless the velocity for the two (2) year storm flow is greater than two (2) feet per second, in which case the channel slope may be a minimum of one (1) percent. A reinforced concrete pilot channel must be used if the channel slope is less than one (1) percent. The pilot channel must be at least four (4) feet wide, two (2) inches deep, and be capable of withstanding vehicular loading. Any grass-lined portion of the channel bottom must have a slope of at least two (2) percent from that portion to the concrete-lined pilot channel. However, no open channel flow line slope may be less than one-half (0.5) percent. This shall be modified as follows:

i. Minimum slope of 0.10% along flowline of channel for (both earthen and concrete).
ii. Pilot channel shall not be required.
iii. Slope in the earthen channel perpendicular to the flowline shall not be required.
iv. The code modifications outlined above referencing design criteria shall apply all drainage facilities (channels, floodplains, detention ponds, water quality features, etc.).

(vii) Section 3.3.5.4.1 (e), which specifies the center line curvature shall have a minimum radius of twice the top width of the one hundred (100) year storm flow, shall not apply with the condition that the superelevation is contained within the channel.

(viii) Appendix C, Section 2 – Aesthetically Enhanced Detention Basins. Section shall not apply to privately maintained detention basins.

(ix) Section 39.049.2 – Compensatory storage specifies that fill within the special flood hazard area shall result in no net loss of natural floodplain storage, or increase in water surface elevations during the base flood. This section shall not apply. Modifications in the floodplain shall not result in an adverse impact to downstream conditions as defined by an increase in water surface elevation of no more than 0.10'. Compensatory storage shall not apply to fill within special flood hazard areas.

(x) Section 3.3.5.3.2 Table 3.26 states minimum roughness coefficient for new or altered channels (grass lined) should be 0.040. This shall be modified to a minimum coefficient of 0.035 for the entire channel section to include banks.

(n) **Tree Credits.** Section 6.4.2.6, which specifies that to receive tree preservation credit the existing tree must be located within the limits of construction (LOC) of the development site, is modified to allow all trees located within the developed lot(s) to be eligible to receive the tree preservation credit.

II. **Applicable Environmental Development Standards**

A. In addition to the requirements outlined in the SMDC and San Marcos Code of Ordinances, the following requirements shall apply:

11. **Enhanced Water Quality Safeguards.** Development of the Project Site shall adhere to the supplemental post construction water quality and technical standards under this section. This section shall only apply the runoff generated within the property boundary; offsite runoff bypassing through the site shall not be subject to water quality requirements. Measures shall be implemented on a site basis or regionally applying applicable best management practices ("BMP's") to ensure that, after full development of the Project Site, at least 75 percent of increased total suspended solids (TSS) are removed from stormwater and a water quality volume produced by a 1.25-inch rainfall is captured and released over 48-hours. Examples of appropriate stormwater treatment measures include: the use of de-centralized, low impact development features (e.g., rain gardens, pervious pavement, biofiltration, etc.), stormwater detention facilities and extended detention basins or other approved BMPs listed in TCEQ's RG-348 and City's Stormwater Technical Manual. The City's Stormwater Technical Manual or TCEQ criteria on BMP design and TSS removal efficiencies in effect on the Effective Date of this Agreement shall govern, 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

12. **Compatibility with Airport Operations.** No development shall be permitted on the Project Site that interferes with the safe flight, take-off or landing of aircraft at the San Marcos Municipal Airport in accordance

with Federal Aviation Administration (FAA) rules and standards. The Project Site shall comply with applicable FAA Standards.

III. Land Uses

A. Permitted and Accessory land uses shall be in accordance with the City of San Marcos and Company Chapter 380 Economic Development Incentive Agreement.

IV. Public Facilities

A. The City shall provide wastewater service prior to Annexation of the Project Site in accordance with Company Chapter 380 Economic Development Incentive Agreement.

B. Prior to annexation, the City of San Marcos Fire Department will provide fire and life safety services by way of multi-agency mutual aid with the area Emergency Services District serving Caldwell County. The City of San Marcos Fire Department will provide direct fire and life safety services once the Project Site is annexed into the City limits.

PERMITTING PROCESS

Project Site permitting. Below supersedes the application submittal processes of the San Marcos Development Code (SMDC) and of the checklists the City has developed for accepting applications.

(i) Sequence of Approvals. The sequence of approvals shall be as indicated in the draft flowchart

