

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT FOR VAN ZANDT ADDITION ("Agreement") is made and entered into this 4th day of August, 2020, by and between the City of Saginaw, Texas (the "City"), and Havener HH, LP ("Developer").

WITNESSETH

WHEREAS, Van Zandt Addition ("Project") is a development encompassing approximately 7.548 acres in Saginaw and shown by the Replat shown as Exhibit "1"; and

WHEREAS, the City and Developer wish to address issues related to the Project and to provide for the Developer's share of construction and related costs of Old Decatur Road along the Projects frontage adjacent to the Project; and

WHEREAS, the City and Developer acknowledge and agree that the Developer's share of the Old Decatur Road improvements is roughly proportionate to the proposed cost, as approved by a professional engineer who holds a license under Chapter 1001 of the Texas Occupations Code, in accordance with Texas and Federal Law; and

WHEREAS, the City and Developer acknowledge and agree that the Developer's participation in the cost of the Old Decatur Road improvements, as detailed herein, is 100% of the total cost for construction of two (2) lanes of Old Decatur Road related to the Project as estimated by the City Engineer and attached as Exhibit 3; and

WHEREAS, the City and Developer agree that the Developer will escrow funds with the City in the amount of Two Hundred Eighteen Thousand Five Hundred Dollars (\$218,500.00) to be used for the purpose of the construction of the Developer's share of Old Decatur Road improvements and related costs; and

WHEREAS, the City and Developer acknowledge that the foregoing issues should be addressed through a development agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Developer covenant and agree as follows:

1. Project Subject to City Ordinances. The Project, or any portion thereof, at all times shall be developed and constructed in accordance with all applicable City ordinances and agreements related to the Project, and shall be subject to said ordinances and agreements, as such now exist or may hereafter be amended and/or approved by the City. Unless otherwise expressly stipulated in this Agreement, nothing herein shall relieve Developer from its responsibilities for the construction of public improvements under applicable development ordinances of the City.

2. Developer Obligations.

- A. Developer agrees to escrow non-reimbursable funds upon the initial application for each Building Permit in the amount of Fifty-Four Thousand Six Hundred Twenty-Five Dollars (\$54,625.00) for each of the following lots: Lots 2R4-A, 2R4-B, 2R4-C and 2R4-D, Block A, Van Zandt Addition. This obligation associated with each lot shall run with the land and is transferred with subsequent ownership of that lot.
- B. City acknowledges and agrees that the funds escrowed by the Developer, or the Developer's successors or assigns, are to be used solely for the purpose of funding the Developer's roughly proportionate share of Old Decatur Road construction and related costs.

3. Captions and Headings. The captions and headings of the sections of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement, nor shall they be employed to interpret or aid in the construction of this Agreement.

4. Applicable Laws and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Tarrant County, Texas. Venue for any action arising under this Agreement shall lie in Tarrant County, Texas.

5. Notices. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, by personal delivery, or by overnight courier to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City: The City of Saginaw, Texas
333 West Mcleroy Blvd.
Saginaw, Texas 76179
Attn: City Manager's Office

If to Developer: Havener HH, LP
P.O. Box 121969
Fort Worth, TX 76121
Attn: Gary Havener

6. Attorneys' Fees. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal). Nothing herein shall constitute a waiver of any claim or defense that could be asserted in any litigation related to this Agreement.

7. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

8. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

9. Filing in Tarrant County Deed Records. This Agreement or a memorandum thereof shall be filed in the deed records of Tarrant County, Texas. Upon any sale or other transfer of any ownership rights in any unplatted portion of the Property, Developer shall notify the City in writing of such sale or transfer within thirty (30) days of such sale or transfer, provided, however, no notice shall be required for the sale of a lot where the applicable escrow payment has already been made to the City.

10. Authority. The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Developer to same.

11. Mediation. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

12. Default. No party shall be in default of provisions under this Agreement until notice of the alleged failure of such party to perform has been given as provided herein (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such party has been given ten (10) days after the written notice in the case of the default of a payment obligation, and in all other cases a reasonable time, to cure the alleged failure (such reasonable time determined based upon the nature of the alleged failure, but in no event less than ten (10) days after written notice of the alleged failure has been given). Each of the City and Developer agree that no party will be liable for any punitive, speculative, consequential or special damages under this Agreement.

13. Roughly Proportionate Determination under Texas Law and Federal Law.

Developer has been represented by legal counsel in the negotiation of this Agreement and has been advised regarding Developer's rights under Texas and federal law. Developer has carefully reviewed the development exactions (both construction and payment obligations) mandated by the City associated with the Project and has been afforded the opportunity to consult with the City and Developer's own professional consultants in order ascertain whether Developer objects to same. In executing this Agreement, Developer hereby and in good faith agrees that the development exactions associated with the Project are roughly proportionate to the impact of the Project except as expressly set forth in this Agreement. In addition, if the terms of this Agreement are fulfilled, Developer knows of no development exaction associated with the Project that would give rise to a claim relating to rough proportionality (procedural or substantive) arising out of 1) the Texas Constitution, §212.904, and Chapter 395 of the Texas Local Government Code and/or 2) the federal constitution, as mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny; and Developer further agrees that there exists an essential nexus between said development exactions and the Project.

14. Exhibits. The following exhibits are attached hereto and incorporated into this Agreement for all purposes:

- Exhibit 1 Proposed Replat Lots 2R4-A, 2R4-B, 2R4-C and 2R4-D, Block A, Van Zandt Addition.
- Exhibit 2 Map depicting Old Decatur Road North – Overall Preliminary Layout
- Exhibit 3 Opinion of Probable Cost Old Decatur Road Adjacent to Van Zandt Addition

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date first above written.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

THE CITY OF SAGINAW, TEXAS

By: _____

Todd Flippo
Mayor, City of Saginaw

STATE OF TEXAS §

§

COUNTY OF TARRANT §

This instrument was acknowledged before me on this the 4th day of August, 2020 by Todd Flippo, Mayor of the City of Saginaw, Texas, on behalf of the City of Saginaw, Texas.

Notary Public, State of Texas

DEVELOPER:

Havener, HH, LP

By: Havener HH, LP its authorized agent

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

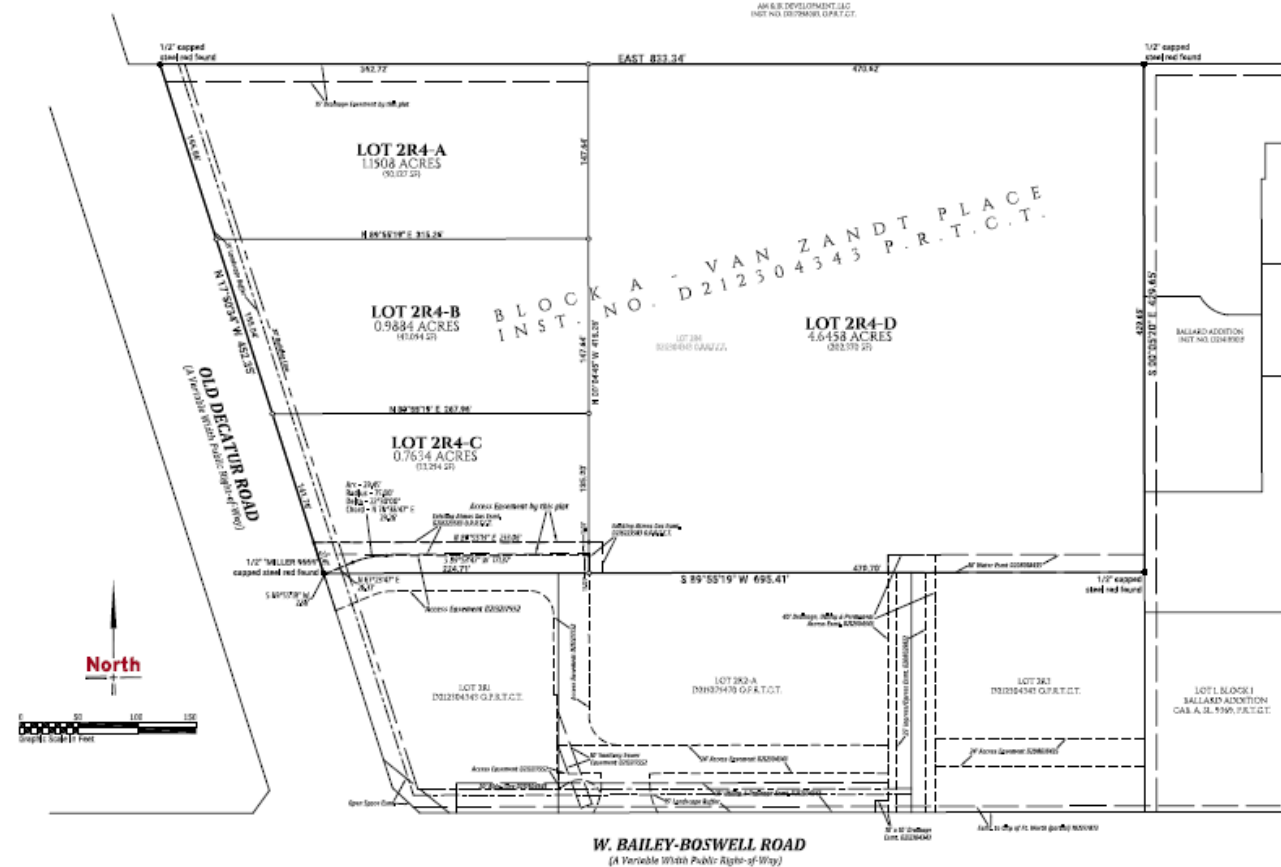
§

COUNTY OF TARRANT §

This instrument was acknowledged before me on this the ____ day of _____, 2020 by _____, the _____ of Havener HH, LP, LLC, as authorized agent of Havener HH, LP, on behalf of said entities.

Notary Public, State of Texas

EXHIBIT 1



STATE OF TEXAS
COUNTY OF TARRANT
OWNER'S ACKNOWLEDGMENT AND DEDICATION

I, the undersigned, owner of the land shown on this plat within the area described as Lot 2R4, Block A, Van Zandt Place Addition, an addition to the City of Saginaw, Texas, according to the plat thereof recorded in Document No. D212304343, Plat Records, Tarrant County, Texas, and designated herein as Lots 2R4-A, 2R4-B, and 2R4-C, Block A, Van Zandt Place Addition, an addition to the City of Saginaw, Texas, and whose name is subscribed herein, hereby dedicate to the use of the public forever all streets, alleys, parks, water courses, drains, easements, rights of way and public places thereon for the purpose and consideration therein expressed.

Dary W. Hawener
President of Hawener Management Corp., its General Partner of Hawener HL
Hawener HL, LP

Date:

BEFORE ME, the undersigned authority, on this day personally appeared Dary W. Hawener, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein stated.

Given under my hand and seal of office this ____ day of _____, 20__.

NOTARY PUBLIC

Tarrant County, Texas

ON ____ THE DAY OF _____, 20__, THIS PLAT WAS APPROVED BY:

City Manager _____

Director of Planning and Economic Development _____

City Secretary _____

STATE OF TEXAS
COUNTY OF TARRANT
CERTIFICATE OF SURVEYOR

I, the undersigned, a registered public land surveyor in the State of Texas, hereby certify that this plat is true and correct and was prepared from an actual survey of the property made under my supervision on the ground.



Jason B. Rawlings, RPLS No. 558

Date:



AMENDED PLAT
LOT 2R4-A, LOT 2R4-B, LOT 2R4-C, AND LOT 2R4-D, BLOCK A
VAN ZANDT PLACE

AN ADDITION TO THE CITY OF SAGINAW, TARRANT COUNTY, TEXAS
BEING A REPLAT OF LOT 24, BLOCK A, VAN ZANDT PLACE ADDITION TO THE CITY OF SAGINAW, TEXAS
ACCORDING TO THE PLAT RECORDED AS DOCUMENT NO. D212304343, PLAT RECORDS, TARRANT COUNTY, TEXAS

CONSISTING OF THREE COMMERCIAL LOTS AND BEING 7.548 ACRES OUT OF THE
BENJAMIN THOMAS SURVEY, ABSTRACT NO. 1497
PREPARED IN AUGUST 2019



PUBLIC UTILITIES:
NO BUILDING PERMIT SHALL BE CONSIDERED FORFEITURE BY THE CITY OF SAGINAW ON THIS DATE UNTIL ALL PROVISIONS FOR PUBLIC UTILITIES AS REQUIRED BY THE CITY'S SUBDIVISION ORDINANCES ARE APPROVED BY THE CITY ENGINEER.

UTILITY EASEMENTS:
ANY PUBLIC UTILITY, INCLUDING THE CITY OF SAGINAW, SHALL HAVE THE RIGHT TO MOVE AND KEEP MOVED ALL OR PART OF ANY BUILDINGS, FENCES, TREES, SHRUBS, OTHER GROUNDS OR IMPROVEMENTS WHICH IN ANY WAY ENDANGER OR INTERFERE WITH THE CONSTRUCTION, MAINTENANCE, OR EFFICIENCY OF ITS RESPECTIVE SYSTEMS ON ANY OF THE EASEMENTS SHOWN ON THE PLAT AND ANY PUBLIC UTILITY, INCLUDING THE CITY OF SAGINAW, SHALL HAVE THE RIGHT AT ALL TIMES OF INGRESS AND EGRESS TO AND FROM AND UPON THE EASEMENTS FOR THE PURPOSE OF CONSTRUCTION, RECONSTRUCTION, INSPECTION, PATROLLING, MAINTAINING AND ADJUDICATING OR REMOVING ALL OR PART OF ITS RESPECTIVE SYSTEMS WITHOUT THE NECESSITY AT ANY TIME OF PRODUCING THE PERMISSION OF ANYONE.

PUBLIC OPEN SPACE EASEMENT RESTRICTION:
NO STRUCTURE, OBJECT, OR PLANT OF ANY TYPE MAY OBSTRUCT VISION FROM A HEIGHT OF THIRTY (30) FEET TO A HEIGHT OF TEN (10) FEET ABOVE THE TOP OF THE CURB, INCLUDING, BUT NOT LIMITED TO BUILDINGS, FENCES, WALKS, STONE, TREES, SHRUBS, CARS, TRUCKS, ETC., IN THE PUBLIC OPEN SPACE EASEMENTS AS SHOWN ON THE PLAT. THESE OPEN SPACE EASEMENTS SHALL REMAIN IN EFFECT UNTIL VACATED BY ORDINANCE ADOPTED BY THE CITY COUNCIL OF SAGINAW AND THE PROPERTY PLATTED.

DRAINAGE EASEMENT RESTRICTION:
NO FLOOD OR CONSTRUCTION, WITHOUT THE WRITTEN APPROVAL OF THE CITY OF SAGINAW, SHALL BE ALLOWED WITHIN A DRAINAGE EASEMENT, AND THEN ONLY AFTER DETAILED ENGINEERING PLANS AND STUDIES SHOW THAT NO FLOODING WILL RESULT THAT NO OBSTRUCTION TO THE NATURAL FLOW OF WATER WILL RESULT AND SUBJECT TO ALL OWNERS OF THE PROPERTY AFFECTED BY SUCH CONSTRUCTION BECOMING A PARTY TO THE REQUIRE, WHERE CONSTRUCTION IS PERMITTED, ALL FINISHED FLOOR ELEVATIONS SHALL BE A MINIMUM OF ONE (1) FOOT ABOVE THE 100-YEAR FLOOD ELEVATION BASED ON LAND USE.

0.1/2" = 1' HORIZONTAL SCALE
0.1/2" = 1' VERTICAL SCALE

OWNER(S): VAN ZANDT
HAWENER HL, LP
PO BOX 121868
FORT WORTH, TEXAS 76121
CONTACT: DARY HAWENER

This plat recorded as Document No. _____ In the Plat Records of Tarrant County, Texas,

Job No. 15041 • Plat File 15041 Amending Plat

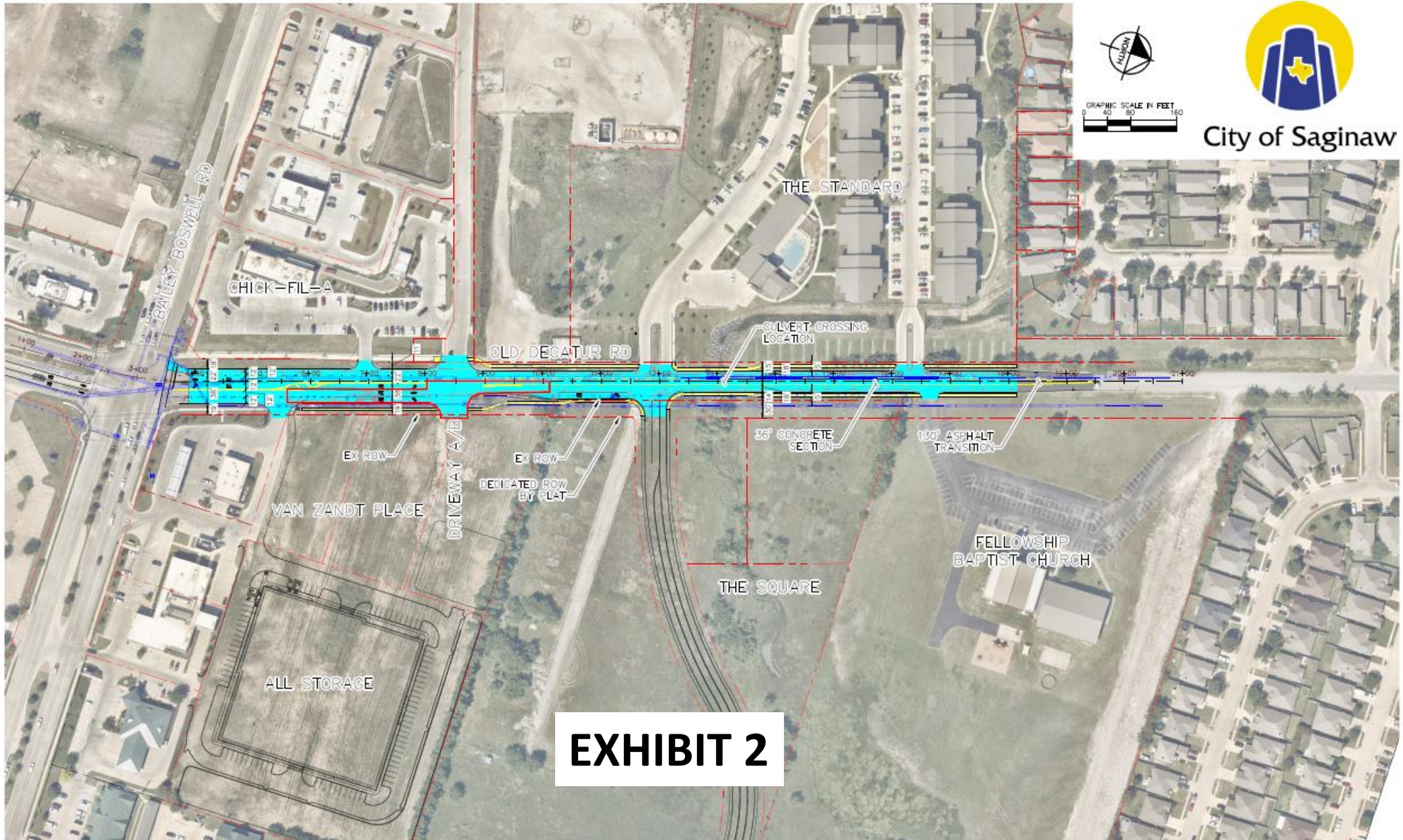


EXHIBIT 2

OLD DECATUR ROAD NORTH - OVERALL PRELIMINARY LAYOUT - JULY 2020

Opinion of Probable Construction Cost**Kimley-Horn and Associates, Inc.**

Client:	City of Saginaw	Date:	7/22/2020
Project:	North Old Decatur Road		

Title: Old Decatur Road along Van Zandt Place - 2 Lanes - 452 Linear Feet

Item No.	Item Description	Unit	Quantity	Unit Price	Cost
1	Mobilization	LS	1	\$ 20,000.00	\$ 20,000.00
2	General Site Prep	LS	1	\$ 10,000.00	\$ 10,000.00
3	Asphalt Pavement Removal	SY	750	\$ 6.00	\$ 4,500.00
4	Concrete Pavement Removal	SY		\$ 15.00	\$ -
5	Earthwork	LS	1	\$ 6,000.00	\$ 6,000.00
6	8-Inch Reinforced Concrete Pavement	SY	1425	\$ 65.00	\$ 92,625.00
7	6-Inch Lime Stabilized Subgrade	SY	1475	\$ 5.00	\$ 7,375.00
8	Lime	TN	35	\$ 180.00	\$ 6,300.00
9	4" Concrete Sidewalk	SF	1910	\$ 6.00	\$ 11,460.00
10	Barrier Free Ramp	EA	2	\$ 2,000.00	\$ 4,000.00
11	Topsoil - 4"	CY	80	\$ 35.00	\$ 2,800.00
12	Block Sod Placement	SY	600	\$ 5.00	\$ 3,000.00
13	Fire Hydrant Assembly	LS	1	\$ 6,000.00	\$ 6,000.00
14	Valve Adjustment and Cathodic Protection Adjustment (FTW 36" Water)	EA	1	\$ 15,000.00	\$ 15,000.00
Subtotal					\$ 190,000.00

Contingency +/- 15% \$ 28,500.00

TOTAL: \$ 218,500.00

- ☒ Conceptual Design
☐ Preliminary Design
☐ Final Design

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

EXHIBIT 3