DEVELOPMENT MANAGEMENT AGREEMENT

This **DEVELOPMENT MANAGEMENT AGREEMENT** ("Agreement") is made by and between the **City of Coppell**, a Texas home rule municipality ("City"), and **Victory Retail Coppell**, **LLC**, a Texas limited liability corporation ("Company"), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, City of Coppell is currently constructing roadway improvements on South Beltline between Denton Tap and IH 635 within the corporate limits of the City (the "Land"); and

WHEREAS, Company and City have mutually determined that it would promote their respective interests if the City completed traffic signalization for S. Beltline Road and Hackberry Road intersection; and

WHEREAS, the Company is developing approximately 16.77 acres of unimproved real property which require the construction of a new traffic signalization and require a traffic control signal on the southern portion of the development at the intersection of Hackberry Road and Beltline Road to include right turn deceleration lanes and driveways as set forth in Exhibit A; and

WHEREAS, City has agreed to complete the required traffic signalization, in accordance with the terms and conditions set forth herein; and

WHEREAS, the City currently employed a contractor to make roadway and intersection improvement on a portion of S. Beltline Road and Hackberry Road intersection; and, said contractor has agreed to construct the traffic signalization to reconstruct and improve the intersection of Hackberry Road and Beltline Road.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article I Term

The term of this Agreement shall begin on the last date of execution hereof by both City and Company ("Effective Date") and continue until the Expiration Date, unless sooner terminated as provided herein.

Article II Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"City" shall mean the City of Coppell, Texas acting by and through its City Manager, or Page | 1 Development Management Agreement

designee.

"City Engineer" shall be Project Manager, which will be responsible to execute and approve the work of the contractor.

"Commencement of Construction" shall mean that date which is the later of (a) ten (10) business days business days after the City notifies Company (defined below) and execution of the Construction Contract.

"Company" shall mean Victory Retail Coppell, LLC, a Texas limited liability corporation, and its permitted successors and assigns.

"Completion of Construction" shall mean that the infrastructure improvements have been constructed and paid for by City as part of the Construction Cost and accepted.

"Effective Date" shall mean the last date of execution hereof by each Party.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination of a Party's existence as an on-going business, insolvency, or appointment of a receiver for any significant part of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Expiration Date" shall mean the date that all Parties have fully satisfied their respective obligations herein.

"Force Majeure" means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorism, riot, civil commotion, insurrection, criminal acts by unrelated third parties, government or de facto governmental action or delays (unless caused by acts or omissions of the Party), adverse weather, fires, explosions, floods, strikes, slowdowns or work stoppages, provided, however, that Force Majeure shall not include a Party's inability to pay its obligations hereunder.

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company.

"Infrastructure Improvements" shall mean the construction of the lights and control device for the intersection of Hackberry and Beltline.

"Land" shall mean the real property owned by City and described in Exhibit "A" attached hereto and incorporated herein by this reference.

"Material Breach" shall mean a breach of a material term or condition of this Agreement

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including specifically the following: (i) failure to construct the Project substantially in accordance with the Grading Plans; (ii) failure to timely cause Commencement of Construction or Completion of Construction of the Project, subject, however, to Force Majeure events; and (iii) failure of City to timely pay any or all of the Construction Cost to Company for the Company Project in accordance with the terms of this Agreement.

"Party" or "Parties" shall mean City and/or Company, individually or jointly, as applicable.

"Project" shall mean the developments of the Land as generally depicted and described on Exhibit "A".

"Traffic Control Signalization or Signal" shall mean a traffic control device signal as defined in the Texas Manual on Uniform Traffic Control Devices.

"Traffic Signal Cost" shall mean the total costs and expenses incurred by City for the completion of the Traffic Signal device, including without limitation, all costs of staking, topographic and other surveying costs, equipment rentals, and other related costs and expenses, subject to construction of sequential traffic control signal for east and west bound traffic on Hackberry Road and the north and south bound traffic on Beltline Road at the intersection thereof, including all hardware signals.

Article III Project

- **Project Payment**. For adequate consideration, pay the receipt and sufficiency of 3.1 which are hereby acknowledged, Company agrees to pay to the City and agrees to accept onehundred percent (100%) of the design of the cost of the Traffic Signalization and twenty-five percent (25%) of the Cost for the installation of the Traffic Signalization at said intersection and one-hundred percent (100%) of the installation of the right turn deceleration lanes and driveway approaches and any incidentals associated with the right turn lanes and driveways, as shown in exhibit B and payable no later than thirty (30) business days after Completion of Construction, acceptance and invoice by the City, upon and subject to the terms, provisions and conditions hereinafter set forth in this Agreement.
- Plans. City shall, at Company's expense reimbursed pursuant to Section 3.1 above, 3.2 cause the construction plans to be prepared in accordance with state law and local ordinances.
- Construction of Project. Commencement and Completion of Construction of 3.3 Project. City agrees, subject to events of Force Majeure, to commence implementation and with the redesigned and reconstructed installation intersection or before 1, 2023 and, subject to weather delays constituting Force Majeure, to cause Completion of Construction of the Traffic Signalization.

General Requirements for Design and Construction. 3.4

Compliance of Plans. The Project shall be designed and constructed in (a) Page | 3 Development Management Agreement

accordance with plans. City shall comply with all local and state laws and regulations regarding the execution of the Plans for Traffic Signalization.

- **(b)** Compliance of Laws. Company shall comply with all local and state laws and regulations regarding the construction of the Project. Upon Completion of Construction of the Project, City shall provide Company with a final cost summary of all costs associated with the construction of the Infrastructure Improvements, and provide proof that all amounts owing to contractors and subcontractors have been paid in full as evidenced by the customary affidavits executed by the General Contractor.
- (c) Uniform Traffic Control Standards. Except as otherwise provided in this Agreement, the design by City and construction by City of the Project, respectively, shall be in accordance with Uniform Manual of Traffic Control, as amended, and as modified by City, and to the extent applicable are hereby incorporated by reference, and shall be compatible with the City's traffic signalization operating system.
- **3.5 Insurance**. Prior to the issuance of a notice to proceed to commence any work on the Land and, thereafter, throughout the term of this Agreement, City shall cause its General Contractor to purchase and maintain in full force and effect, the insurance required pursuant to Company's standard form of Construction Contract.
 - (a) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City and Company as additional insureds as to all applicable coverage, with the exception of Workers Compensation Insurance; (2) provide for at least ten (10) days prior written notice to City for cancellation, or non-renewal; (3) provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
 - **(b)** A certificate of insurance evidencing the required insurance shall be submitted to the City prior to Commencement of Construction.
- **3.6 License**. City shall be responsible for the acquisition of such easements and right-of-way that have not been previously dedicated as are necessary for the completion of the Infrastructure Improvements. Company hereby grants to City a temporary license to occupy and use the Land and such off-site areas for purposes of completing the Infrastructure Improvements.

Article IV Termination

- **4.1 Manner of Termination**. This Agreement may be terminated upon any one or more of the following events:
 - (a) upon mutual written agreement of the parties;
 - (b) upon the Expiration Date;

- (c) by either Party, if the other Party has committed a Material Breach of this Agreement and such Material Breach is not cured within sixty (60) days after written notice thereof; provided that if the Material Breach cannot reasonably be cured within a sixty (60) day period and the defaulting Party has diligently pursued such remedies as shall be reasonably necessary to cure the default, then the non-defaulting Party shall extend the period in which the default must be cured for an additional sixty (60) days; and
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency.
- **4.2 City Remedies.** In the event this Agreement is terminated by City pursuant to Section 4.1(c) or (d), City may seek specific performance, and/or actual damages incurred as a result of such uncured default by Company. In addition, in the event this Agreement is terminated by City pursuant to Section 4.1(c) or (d), City shall pay to Company all amounts of the Construction Cost incurred by Company prior to the date of such termination, subject, however, to a right to withhold a reasonable estimate of the costs to cure such Material Breach, until such Material Breach has been cured, at which time, City shall pay Company for any amounts of such withholding which were not incurred by City to cure the Material Breach.
- **4.3 Company Remedies.** In the event this Agreement is terminated by Company pursuant to Section 4.1(c), Company may seek specific performance or actual damages incurred as a result of such uncured default by City.

Article V Miscellaneous

- **5.1 Binding Agreement; Assignment**. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties. This Agreement may not be assigned by Company without the prior written consent of City's City Manager.
- **5.2 Limitation on Liability**. Company and City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions.
- **5.3 No Joint Venture**. This Agreement is not intended to, and shall not be deemed to create, a partnership or joint venture between the Parties.
- **5.4 Authorization**. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.
- **5.5 Notice**. Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or (ii) on the day actually received if sent by courier, email or otherwise hand delivered.

If intended for City, to:

Attn: City Manager City of Coppell, Texas P.O. Box 9478 Coppell, Texas 75019

Email: mland@coppelltx.gov

Public Works Department City of Coppell 265 E. Parkway Coppell, Texas 75019 Email: mgarza@coppelltx.gov

With a copy to:

Robert E. Hager Nichols, Jackson, Dillard, Hager & Smith, L.L.P. 1800 Ross Tower 500 North Akard Dallas, Texas 75201 Email: rhager@njdhs.com

If intended for Company, to:

Victory Retail Coppell, LLC Attn: Tony Ramji 2911 Turtle Creek Blvd. Suite 700 Dallas, Texas 75219 Email: legalnotices@vg-re.com

Any Party shall have the right to change its address for notice by sending notice of change of address to each other Party, in the manner described above.

- **5.6 Entire Agreement**. This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement among the Parties that in any manner relates to the subject matter of this Agreement, except as provided or referred to in this Agreement or as provided in any Exhibits attached hereto.
- **5.7 Governing Law.** This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
- **5.8 Amendment.** This Agreement may only be amended by a written agreement executed by both Parties.
- **5.9 Legal Construction**. In the event 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 other provisions, and it is the intention of the Parties that in lieu of each provision that is found to be illegal, invalid, or

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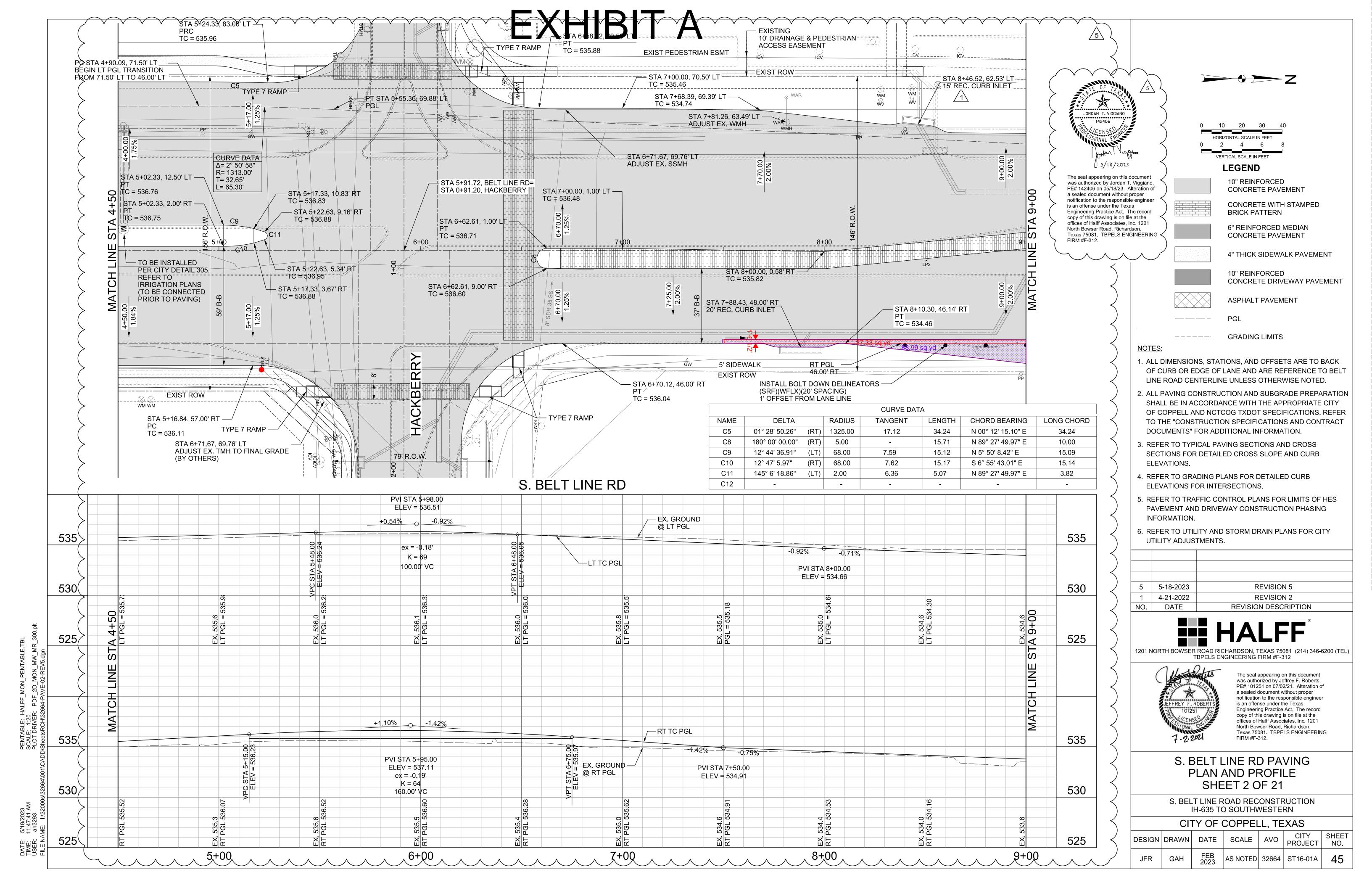
unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

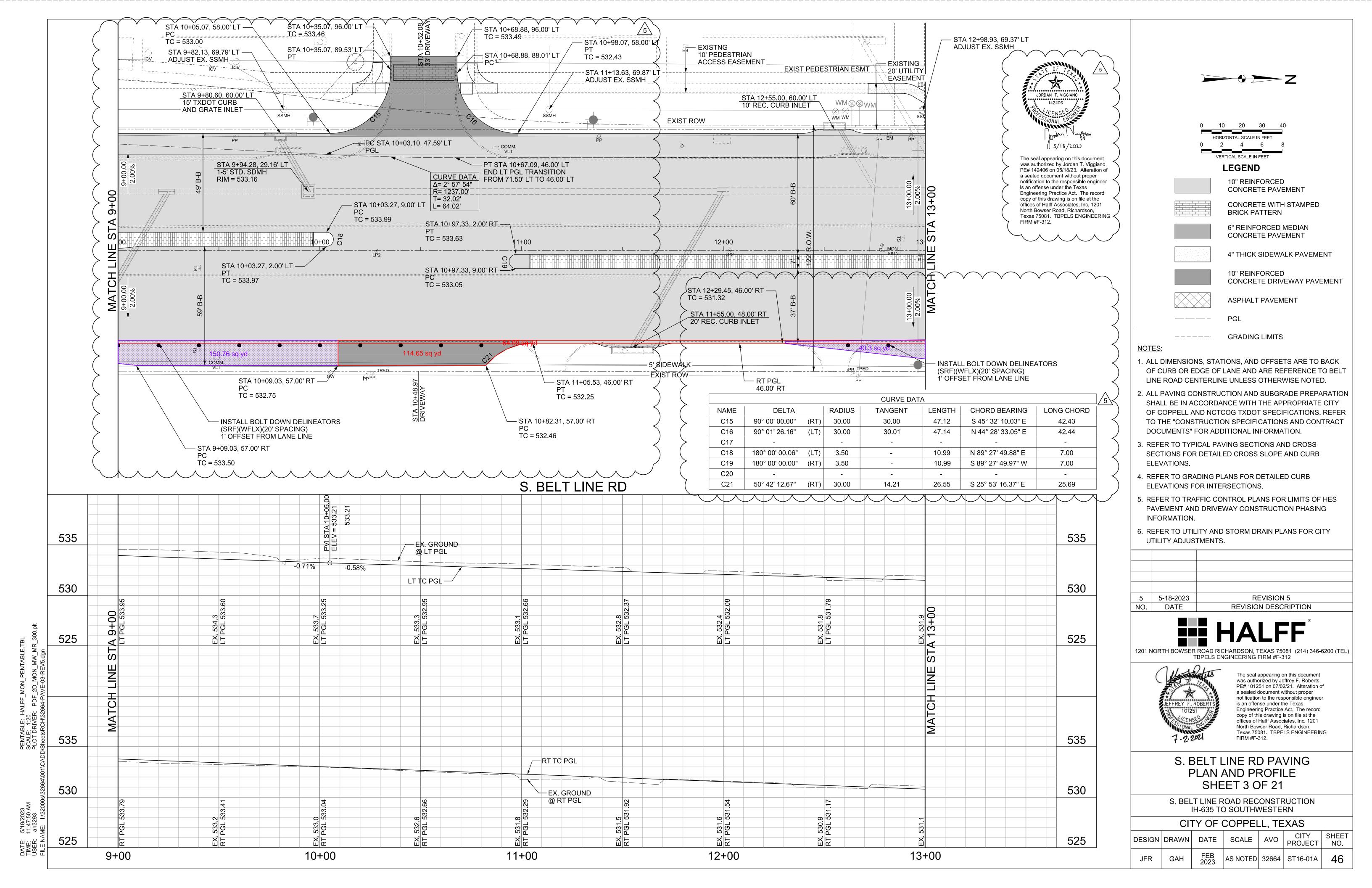
- **5.10 Recitals.** The recitals to this Agreement are incorporated herein.
- **5.11** Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.
- **5.12 Exhibits**. The exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- **5.13 Survival of Covenants.** The covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, under this Agreement shall survive termination to the extent set forth herein.
- **5.14** Covenants and Representations. Company represents, warrants and covenants that it has the authority to: (i) enter into this Agreement and to execute and deliver this Agreement and (ii) perform and comply with all of the terms, covenants and conditions to be performed and complied with by Company hereunder. City represents warrants and covenants that it has the authority to: (i) enter into this Agreement and to execute and deliver this Agreement; (ii) perform and comply with all of the terms, covenants and conditions to be performed and complied with by City hereunder; and (iii) if the City Engineer approves the Contract Award, City has sufficient funds reasonably available to pay the Construction Cost.
- **5.15 Time for Performance**. Time is of the essence in the performance of each Party's obligations hereunder.
- **5.16 Force Majeure**. Whenever a period of time is herein prescribed for action to be taken by City or Company (other than payment of money), City or Company shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to Force Majeure.

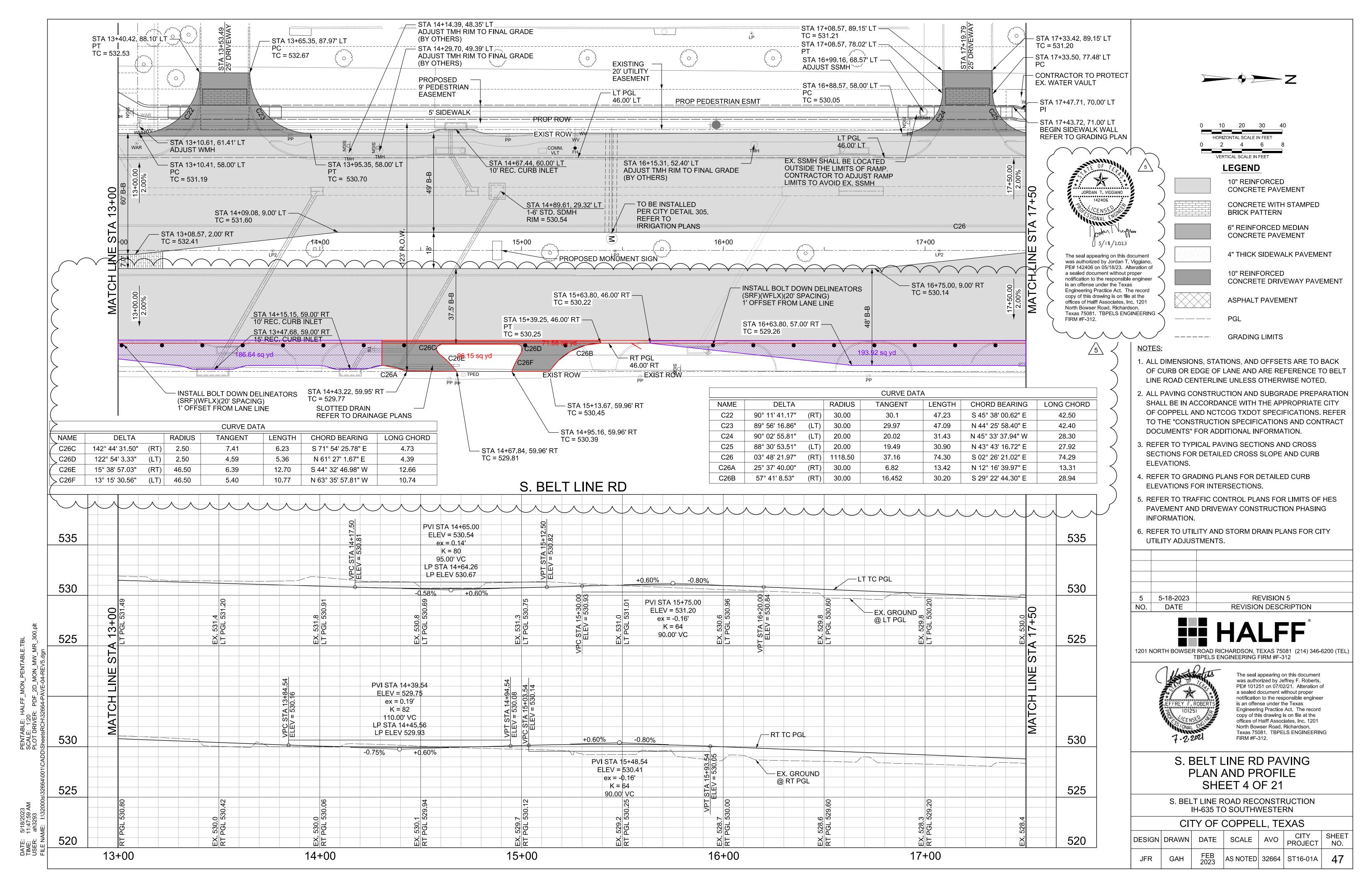
EXECUTED in duplicate originals this the _	day of,, 2023.
	CITY OF COPPELL, TEXAS
	By: Mike Land, City Manager
	ATTEST:
	Ashley Owens, City Secretary

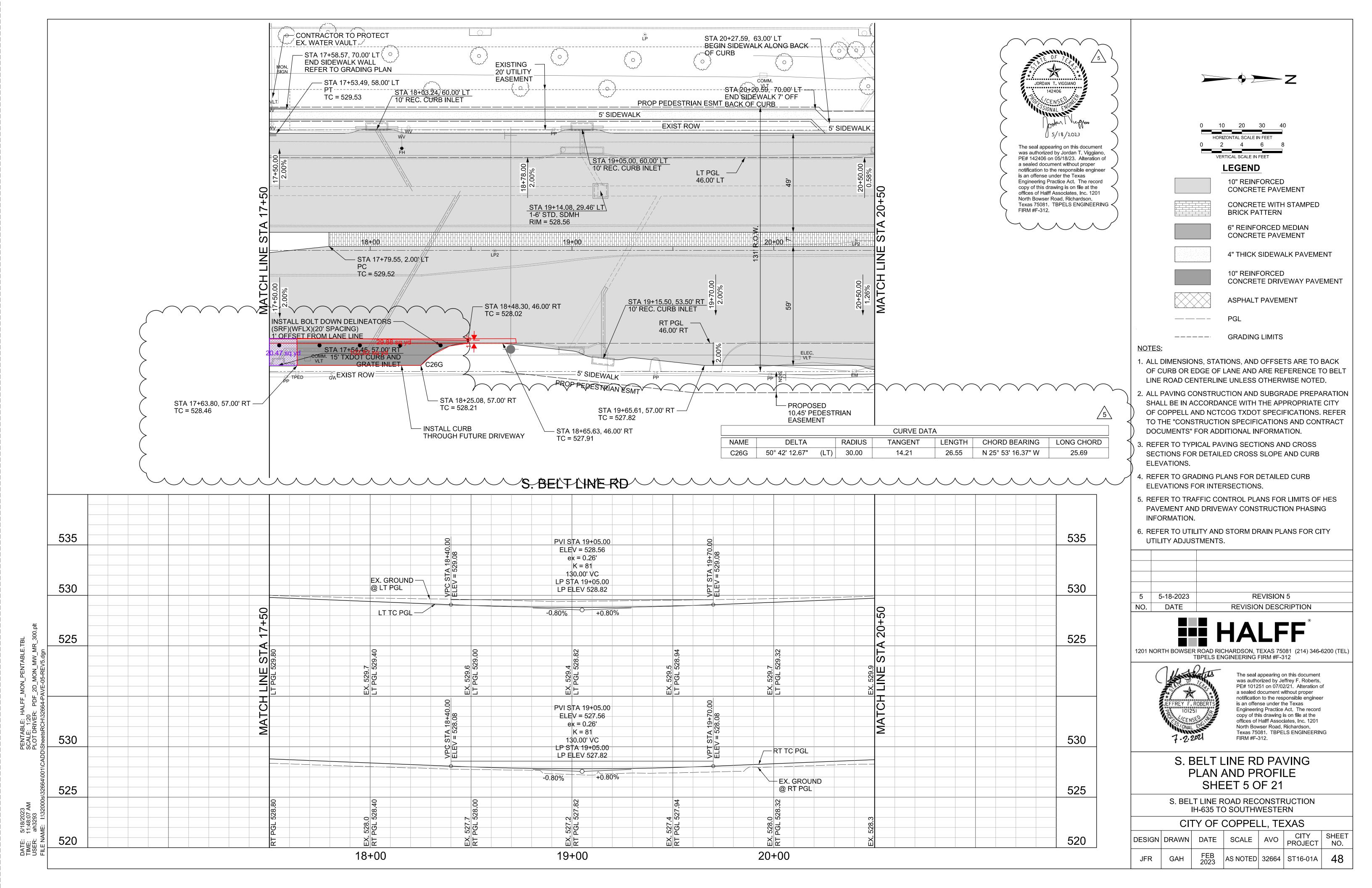
EXECUTED this day of	, 2023.
VICTORY RETAIL COPPELL, LLC,	
By: Victory Real Estate Group, LLC, its manage	er
By:	_
Tony Ramji, Manager	

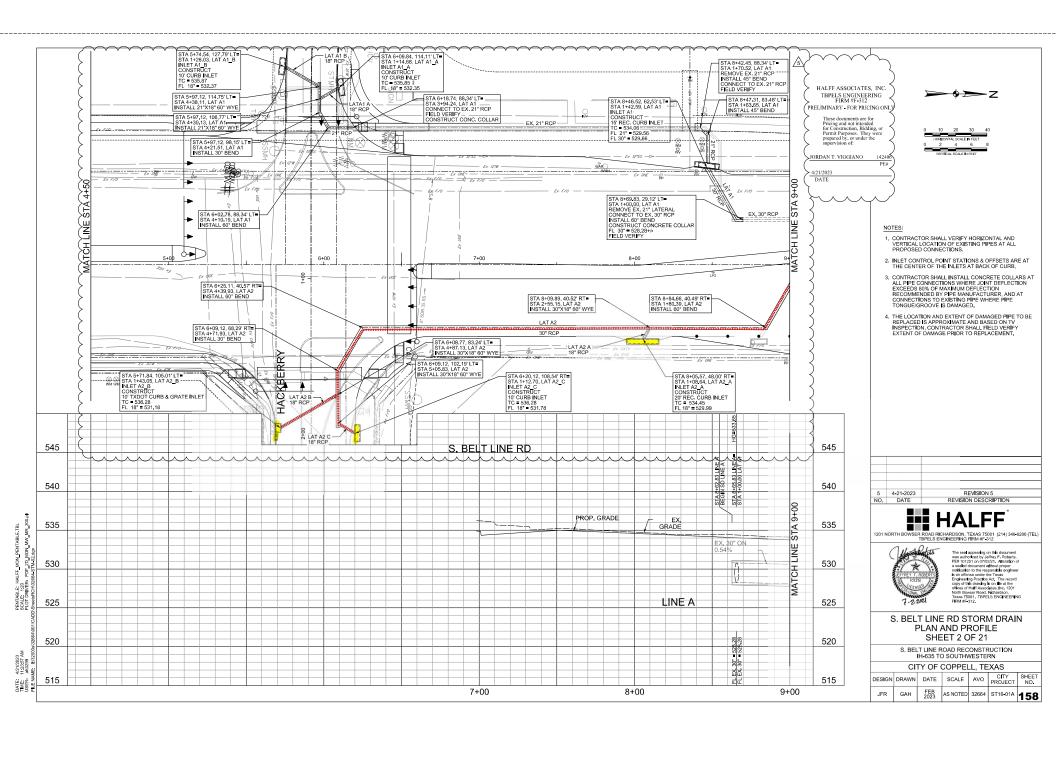
EXHIBIT "A"

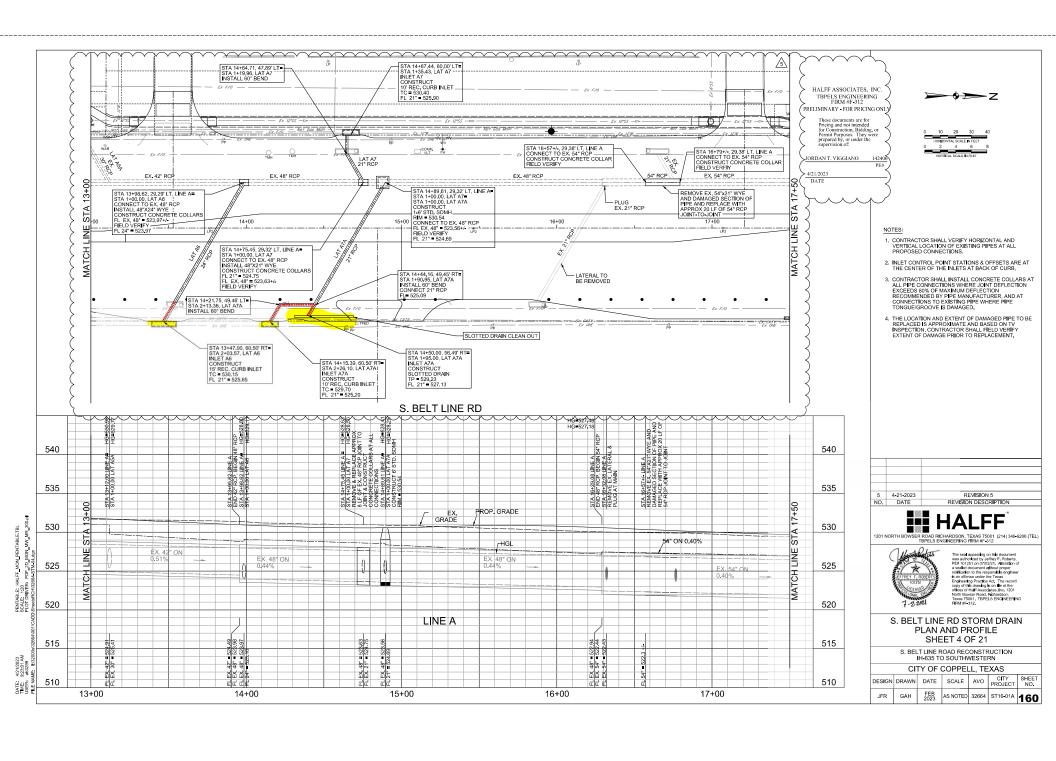


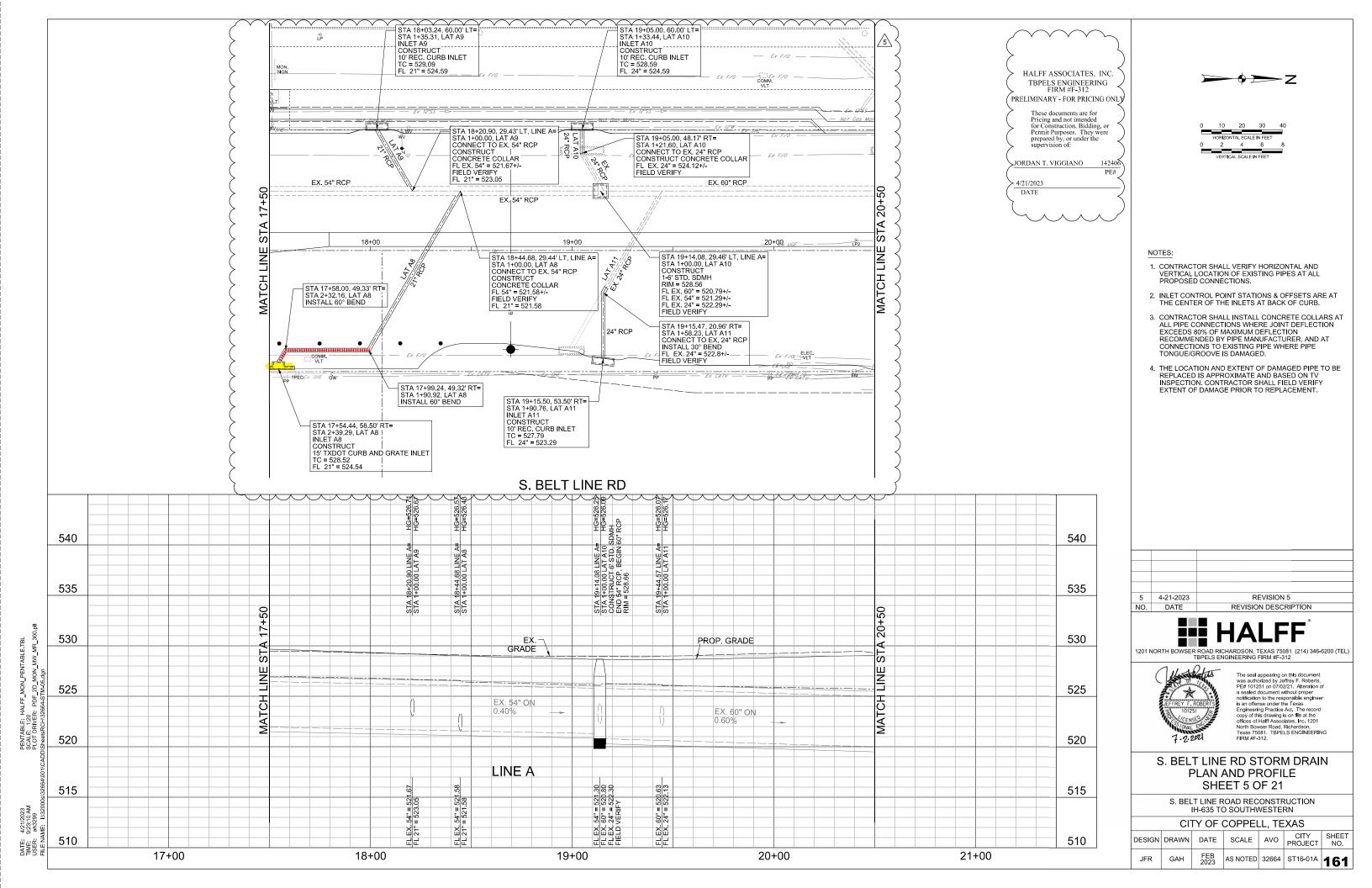












Turn Lane and Driveway Paving for Victory				
Removal			•	
27.33	SY	\$7.69	\$210.17	
64.09	SY	\$7.69	\$492.85	
71.58	SY	\$7.69	\$550.45	
29.88	SY	\$7.69	\$229.78	
Street				
88.99	SY	\$78.10	\$6,950.12	
150.76	SY	\$78.10	\$11,774.36	
40.3	SY	\$78.10	\$3,147.43	
186.64	SY	\$78.10	\$14,576.58	
193.92	SY	\$78.10	\$15,145.15	
20.47	SY	\$78.10	\$1,598.71	
Driveway				
114.65	SY	\$78.10	\$8,954.17	
96.15	SY	\$78.10	\$7,509.32	
102.82	SY	\$78.10	\$8,030.24	
		Storm Drain for Victory		
Remove Cur	b Inlet	•		
4	EA	\$552.11	\$2,208.44	
18" RCP Pipe	е	·		
20	LF	\$135.53	\$2,710.60	
24" RCP Pipe	е			
13	LF	\$130.88	\$1,701.44	
21" RCP Pipe	е			
88	LF	\$100.95	\$8,883.60	
Slotted Drai	n			
1	EA	\$19,069.71	\$19,069.71	
15' TxDOT Curb and Grate Inlet				
2	EA	\$11,200.00	\$22,400.00	
20' Recessed	d Curb Inlet			
1	EA	\$14,000.00	\$14,000.00	
15' Recessed	d Curb Inlet			
1	EA	\$10,200.00	\$10,200.00	
Total Victory Entrances / Strom Drain \$160,343.11				
Traffic Signal Hackberry / S Belt Line				
1	EA	\$576,493.87	\$576,493.87	
			0.25	
Signal Design			\$40,000.00	
			\$160,343.11	
•			•	
25% of Traffic Signal \$144,123.47				

Total All Cost \$344,466.57