



July 7, 2021

The Honorable Mayor and City Council
City of Montgomery
101 Old Plantersville Road
Montgomery, Texas 77316

Re: Monument Sign and Site Light Pole Encroachment Agreement
Wendy's (Haza Foods) – Development No. 1808
City of Montgomery

Dear Mayor and Council:

It is our understanding that the developer of the proposed Wendy's has requested an encroachment agreement for a proposed monument sign and site light poles to be placed within an existing City utility easement. Per the construction plans, the encroachments are proposed to be in close proximity, but not in conflict, with existing public water and sanitary sewer lines.

We recommend the City enter into an encroachment agreement with the developer, Haza Foods, Inc., to allow the construction of the proposed improvements within the City's utility easement. This agreement will release the City from all responsibility for damages incurred to the improvements as a result of required maintenance and repairs to the public utilities.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Chris Roznovsky". The signature is fluid and cursive.

Chris Roznovsky, PE
Engineer for the City

CVR/kmv

Z:\00574 (City of Montgomery)_900 General Consultation\Correspondence\Letters\2021.07.06 MEMO to Council RE Wendy's Encroachment Agreement.docx

Enclosures: Encroachment Request
Signed Encroachment Agreement

Cc (via email): Mr. Richard Tramm – City of Montgomery, City Administrator
Ms. Susan Hensley – City of Montgomery, City Secretary
Mr. Dave McCorquodale – City of Montgomery, Director of Planning & Development
Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney



June 3, 2021

City of Montgomery
101 Old Plantersville Rd.
Montgomery, TX 77356

Re: Request for Encroachment Agreement

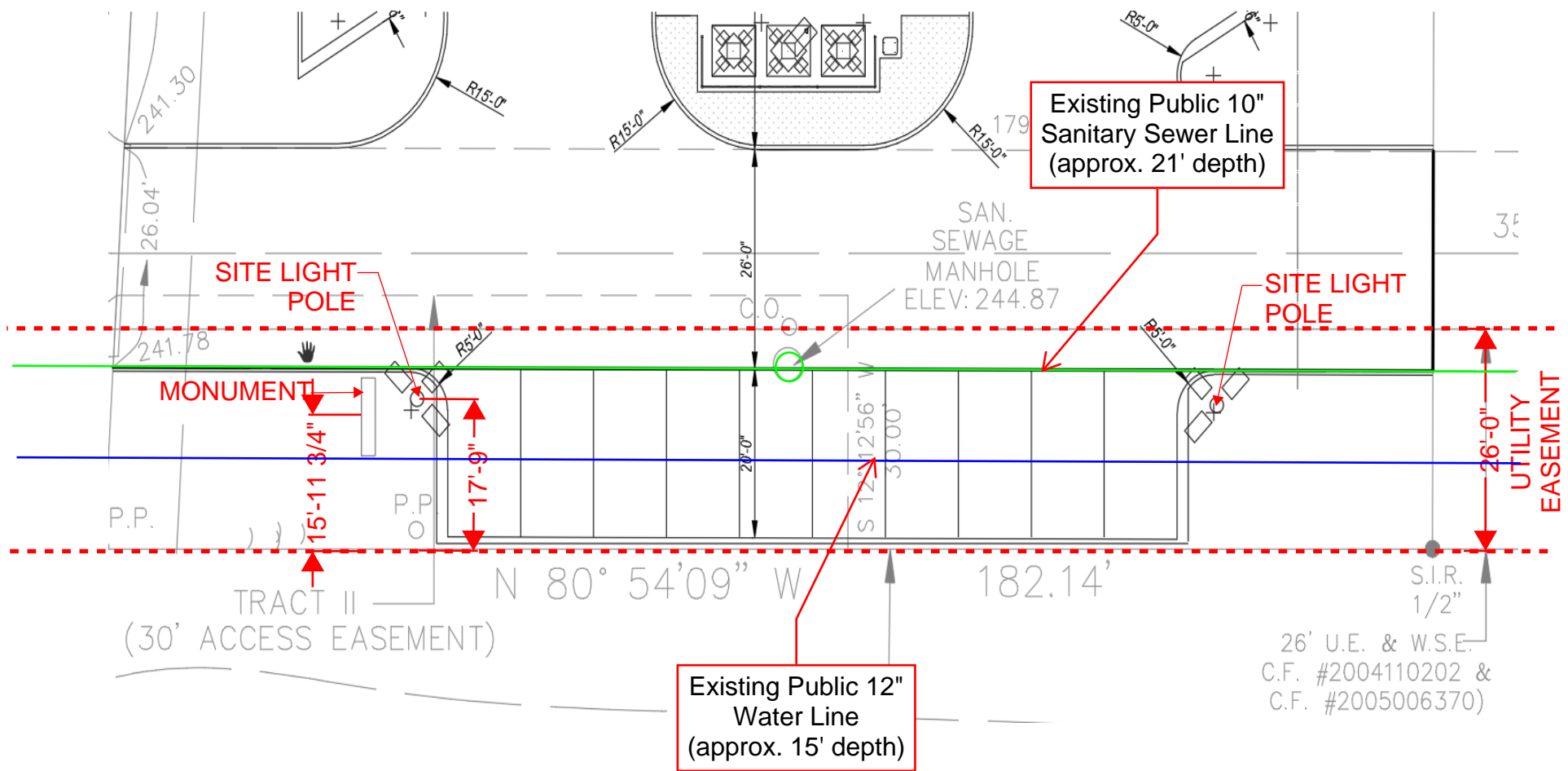
To Whom This May Concern:

We are in the process of building a new construction Wendy's restaurant located at 19990 Eva St. Montgomery, TX. The proposed site design includes (2) site light poles and (1) monument sign that are located within the utilities easement. We would like to request encroachment approval to place the previously listed items within the utilities easement. I've attached a diagram for your review. Please feel free to reach out with any questions.

Sincerely,

Lauren Smith
Anchor CM
lauren@anchorcm.net
(713) 449-9447

PARTIAL SITE PLAN



SITE LIGHT POLE DETAILS

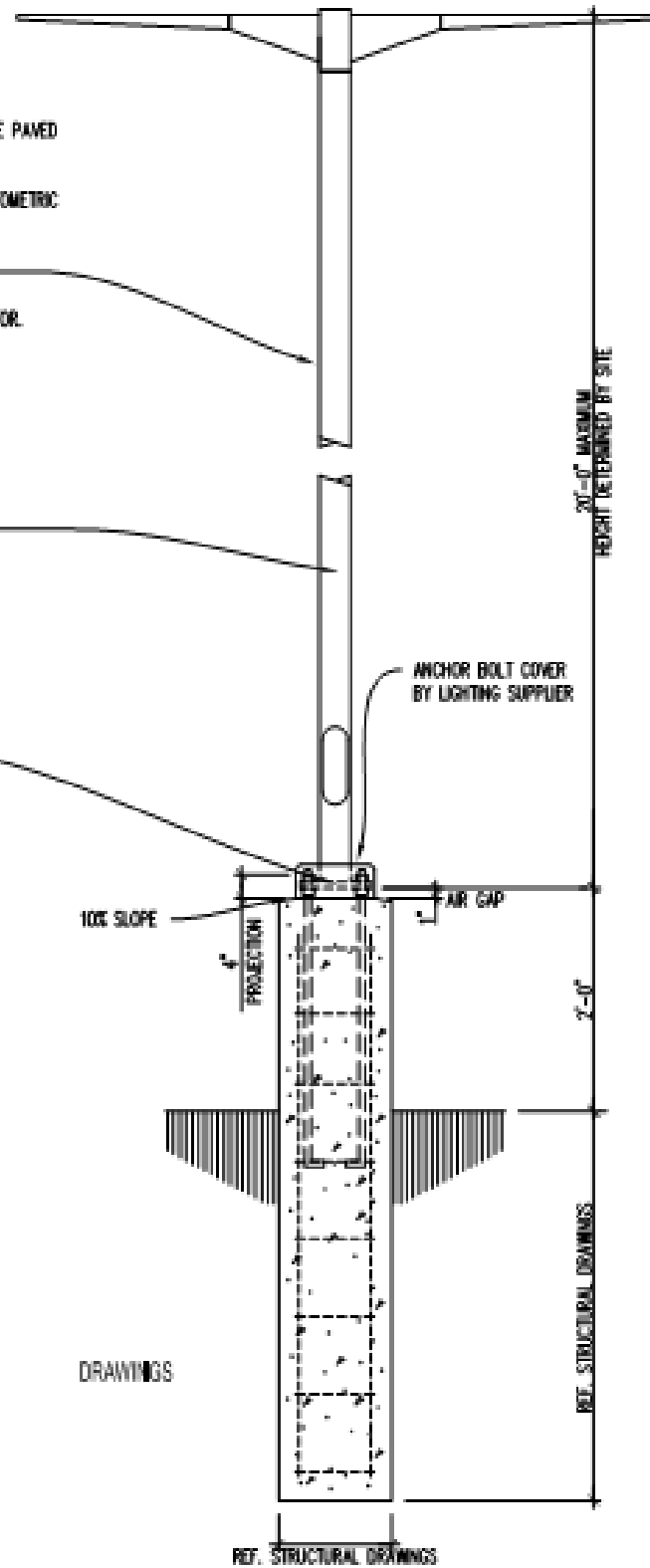
EXTERIOR PARKING LOT LIGHTING NOTES

1. REFER TO SITE LIGHTING SUPPLIERS
2. PARKING LOT TO HAVE AN AVERAGE OF 4 - 6 FOOTCANDLES IN THE PAVED AREA UNLESS LOCAL CODES REQUIRE LESS
3. CONSULT WITH THE PARKING LOT LIGHT SUPPLIERS TO HAVE A PHOTOMETRIC SITE PLAN PREPARED
4. LIGHT POLE: 24'-0" HIGH, 4" DIAMETER

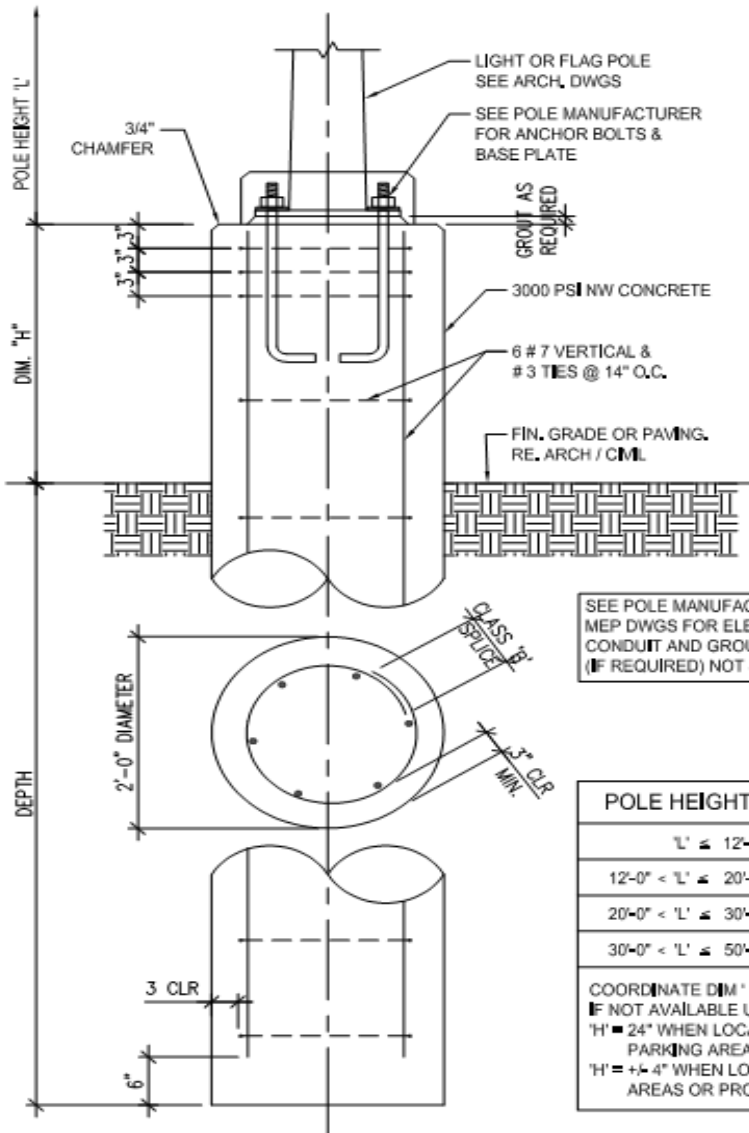
LIGHT POLE TO BE FURNISHED AND INSTALLED BY ELECTRICAL CONTRACTOR.
POLE AND LUMINAIRE TO BE FURNISHED BY THE SAME MANUFACTURER

POLE HEIGHT = 24'-0"
POLE DIAMETER = 4"
POLE TYPE = STEEL SQUARE
POLE FINISH = BRONZE
BOLT SIZE = 1/2" BOLT CIRCLE
ANCHOR BOLTS = 1"x3/8" W/
DOUBLE NUT AND WASHERS

FOR PROPER INSTALLATION OF SITE LIGHTING
ALWAYS USE DOUBLE NUTS AND WASHERS.
THIS ASSEMBLY WILL PREVENT MOISTURE BUILD-UP
IN THE POLE BY ALLOWING AIR TO CIRCULATE
THROUGH THE INSIDE OF POLE. BASES MOUNTED
DIRECTLY TO CONCRETE CAN CAUSE A
MOISTURE BUILD-UP, AND DETERIORATION
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LIGHT POLE DETAIL



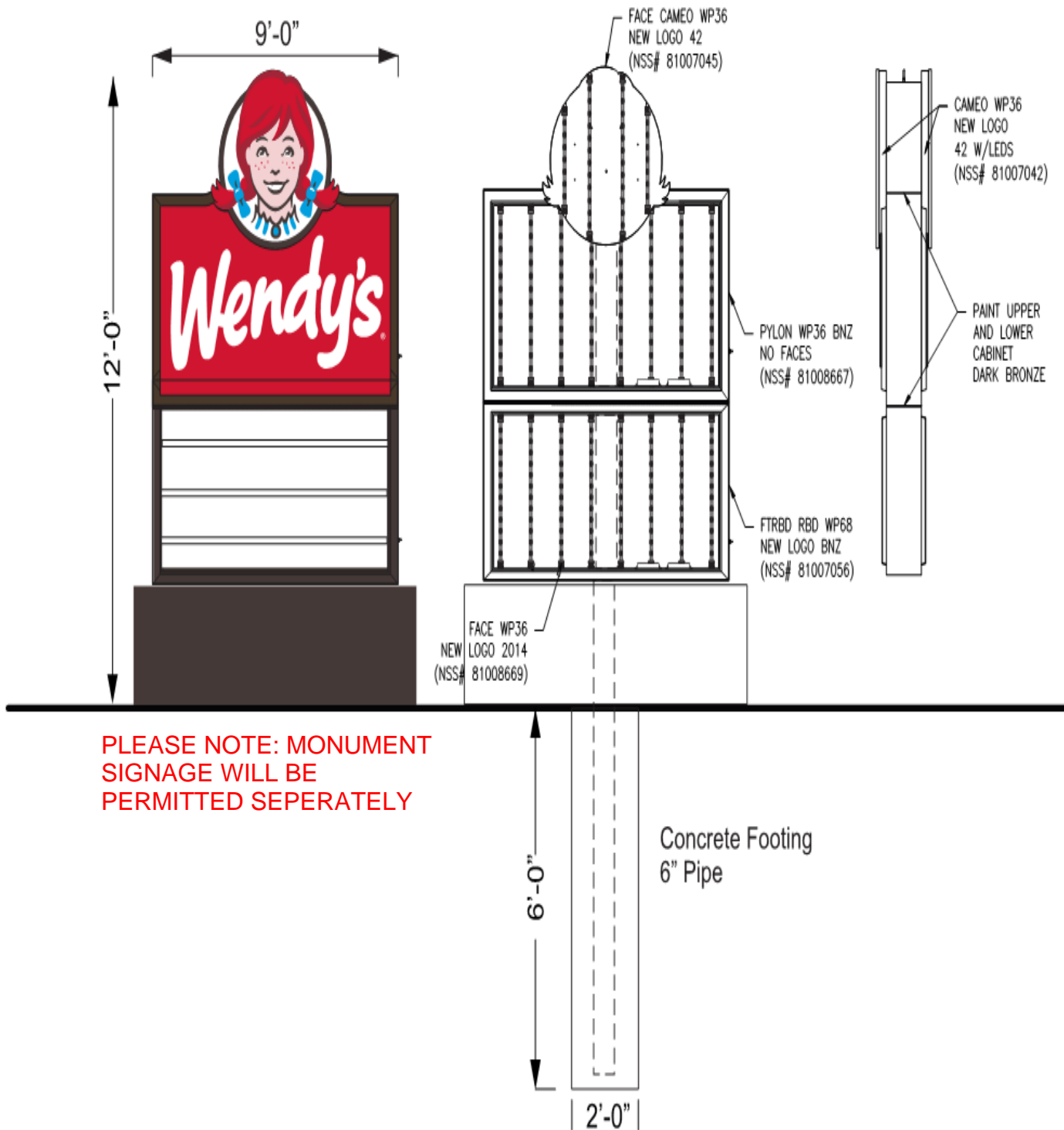
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MEP DWGS FOR ELECTRICAL
CONDUIT AND GROUNDING WIRES
(IF REQUIRED) NOT SHOWN.

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L' ≤ 12'-0"	6'-0"
12'-0" < L' ≤ 20'-0"	8'-0"
20'-0" < L' ≤ 30'-0"	10'-0"
30'-0" < L' ≤ 50'-0"	14'-0"

COORDINATE DIM 'H' WITH ARCH/CIVIL.
IF NOT AVAILABLE USE THE FOLLOWING:
'H' = 24" WHEN LOCATED IN
PARKING AREAS,
'H' = +4" WHEN LOCATED IN GRASSY
AREAS OR PROTECTED FROM CARS.

SITE LIGHT POLE FOUNDATION DETAIL

MONUMENT SIGNAGE DETAILS



PLEASE NOTE: MONUMENT SIGNAGE WILL BE PERMITTED SEPERATELY

NOTES:

CABINET:

12-1/2" EXTRUSION #1400 WITH "2-1/2" RETAINER" EXTRUSION #8184, EXTRUSION #8185

FACES:

.118" THEROMFORMED MUSTANG ACRYLIC 1/2" EMBOSSED, 1-3/4" PAN.

ELECTRICAL DETAILS:

GE 7100K LED'S
(2) 60W UNIVERSAL POWER SUPPLIES
TOTAL LOAD: 6.2 A @ 120/60HZ

CONSENT TO ENCROACHMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THIS CONSENT TO ENCROACHMENT AGREEMENT (this "**Agreement**") is made and entered into as of the 1st day of July, 2021, by and between **CITY OF MONTGOMERY, TEXAS**, a municipal corporation principally situated in Montgomery County, Texas, a political subdivision of the State of Texas (the "**City**"), and **HAZA FOODS, LLC.**, a Texas limited liability company (the "**Owner**"). The City and Owner are individually referred to herein as "**Party**" and collectively referred to herein as, the "**Parties.**"

RECITALS

WHEREAS, the City is the owner of an existing twenty-six foot (26.0') wide Utility Easement and Sanitary Sewer Easement (the "**Easement Tract**") over the property recorded under Clerk's file No. 2004110202 and 2005006370 respectively in the Real Property Records of Montgomery County, Texas;

WHEREAS, the City has constructed a twelve inch (12.0") in diameter water line and a ten inch (10.0") in diameter sanitary sewer line within the Easement Tract (these lines, together with any and all other current and future pipelines, water lines and all related connections and appurtenances thereto on, over, under, across, within, and through the Easement Tract are collectively referred to herein as the "**City Facilities**");

WHEREAS, the City has the perpetual right, without limitation, to utilize the Easement Tract from time to time to gain access to and lay, maintain, operate, replace, change the size of, repair, modify, and remove the City Facilities;

WHEREAS, the Owner has requested that the City give its consent to install two (2) site light poles and one (1) monument sign, as described and depicted on that certain Site Light Pole Details attached hereto as **Exhibit "A,"** and Monument Signage Details attached hereto as **Exhibit "B,"** (collectively, the "**Encroachment**"); and

WHEREAS, the City is willing to consent to the foregoing, subject to the terms and conditions contained herein.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Except for the right to encroach expressly set forth herein, the City shall retain its full rights to utilize the Easement Tract and all of its remedies associated therewith.

2. The consent herein granted shall be limited to the installation of two (2) light poles and one (1) monument sign within the Easement Tract at locations approved in writing by the City Administrator prior to installation. The consent granted shall not apply to any other structures, encroachments, or improvements contemplated, allowed, owned or operated by the City.

3. IN CONSIDERATION OF THE CONSENT HEREIN GRANTED BY THE CITY TO THE OWNER AND IN CONSIDERATION OF THE USE OF A PORTION OF THE EASEMENT TRACT, THE OWNER HEREBY AGREES, TO THE EXTENT PERMITTED BY THE LAWS AND THE CONSTITUTION OF THE STATE OF TEXAS, FOR ITSELF, ITS SUCCESSORS, ASSIGNS AND GRANTEEES TO RELEASE AND HOLD THE CITY, ITS OFFICERS, DIRECTORS, CONSULTANTS, ATTORNEYS, AND AGENTS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNITEES"), HARMLESS FROM ALL LIABILITY FOR ANY DAMAGES OF ANY KIND OR NATURE TO THE ENCROACHMENT, SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, LIABILITY ARISING FROM THE FAULT, SOLE, JOINT OR CONTRIBUTORY NEGLIGENCE, GROSS NEGLIGENCE, ACT OR OMISSION OF AN INDEMNITEE, ARISING OUT OF, RESULTING FROM, OR IN ANY WAY CONNECTED WITH THE EXISTENCE OF THE ENCROACHMENT WITHIN THE EASEMENT TRACT OR THE LOCATION OF, SETTLING OF, OR ANY REPAIRS, MODIFICATIONS OR ADDITIONS TO, OR THE MALFUNCTIONING OR REPLACEMENT OF, THE CITY FACILITIES LOCATED WITHIN THE EASEMENT TRACT.

4. The Owner, its successors and assigns shall be responsible for and shall promptly pay to the City, its successors or assigns, the costs of any repairs, replacements, modifications, relocations, removals, improvements or alterations to the City Facilities and the Easement Tract arising from the construction, existence, maintenance or use of the Encroachment, including, without limitation, all costs incurred to restore the surface of the Easement Tract to its existing condition following such activity.

5. THE OWNER HEREBY BINDS ITSELF, ITS SUCCESSORS AND ASSIGNS, TO THE EXTENT PERMITTED BY THE LAWS AND THE CONSTITUTION OF THE STATE OF TEXAS, TO DEFEND, INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS FROM ALL COSTS, DAMAGES, LOSSES, LIABILITIES, JUDGMENTS AND EXPENSES (INCLUDING REASONABLE AND NECESSARY ATTORNEYS' FEES AND COURT COSTS) INCURRED IN CONNECTION WITH CLAIMS FOR INJURY TO OR DEATH OF ANY PERSON, FOR DAMAGE TO THE EASEMENT TRACT, OR FOR ANY AND ALL OTHER TYPES OF DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE CONSTRUCTION, EXISTENCE, MAINTENANCE OR USE OF THE ENCROACHMENT WITHIN OR WITHOUT THE EASEMENT TRACT, OR CLAIMS WHICH RESULT FROM THE SOLE, JOINT, OR CONTRINBUTORY NEGLIGENCE, OR

STRICT LIABILITY IMPOSED UPON THE INDEMNITEES BY THE LAW, OR CLAIMS ARISING FROM INJURIES, DEATHS OR DAMAGES WHICH WOULD NOT HAVE OCCURRED BUT FOR THE PRESENCE OF THE ENCROACHMENT, OR ANY CLAIMS RELATED TO WATER, STORM OR OTHER DAMAGE TO THE ENCROACHMENT.

6. If determined by the City, in its sole discretion, that the use of the Easement Tract by the Owner, its successors and assigns, or the location of the Encroachment within the Easement Tract prevents or hinders the City from installing, improving, altering, modifying, replacing, relocating, removing, repairing or operating any of the City Facilities in accordance with applicable statutes, laws, rules, regulations, engineering, or other technical requirements, then the City, in its sole discretion, may either (a) by written notice to the Owner, require the Owner, its successors, assigns and grantees, at the Owner's sole cost and expense, to immediately alter, modify, lower, raise, change the size of, and/or remove some or all of the Encroachment within the Easement Tract, or (b) alter, modify, lower, raise, change the size of, and/or remove some or all of the Encroachment within the Easement Tract, in which event, the Owner, its successors, assigns and grantees, shall be obligated to reimburse the City for all costs incurred by the City to take such actions immediately upon demand. If the City elects to require the Owner, its successors, assigns and grantees, to take such actions as set forth in (a) above, and the Owner, its successors, assigns and grantees, fail to perform its obligations within the time period prescribed in the written notice from the City, the City may take such actions as are necessary to fulfill the Owner's obligations, and the Owner, its successors, assigns and grantees, shall reimburse the City for all costs incurred by the City to perform such obligations immediately upon demand.

7. The City expressly consents to the Encroachment within the Easement Tract.

8. It is further expressly understood and agreed that the City's consent to the location of the Encroachment within the Easement Tract shall remain in force and effect only so long as the Encroachment shall remain in use, and upon the removal, destruction, or cessation thereof, all rights hereunder shall cease and terminate.

9. No currently existing lienholder as to the Easement Tract or the Encroachment (including, without limitation, any holder of a vendor's lien or right of prior title) shall be a beneficiary of this Agreement unless and until such lienholder delivers a document in recordable form reasonably acceptable to the City wherein such lienholder agrees to be bound by all of the terms and conditions of this Agreement.

10. The consent contemplated by this Agreement shall not inure to the benefit of any person other than the Owner and its respective successors, assigns and grantees.

11. No waiver by the City of any breach or default of any term, condition, or provision of this Agreement shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision of this Agreement shall be implied from any action or non-action of the City, and any such waiver, to be effective, shall be set out in a written instrument signed by the City.

12. The individuals signing this Agreement on behalf of the Owner and the City, respectively, each represent that they have the requisite authority to bind the Owner and the City, respectively.

13. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter, and all prior agreements with respect thereto are merged herein. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and grantees.

14. All exhibits attached to this Agreement are made a part hereof by this reference, and incorporated herein for all purposes.

15. The prevailing Party in any suit, action, or other proceeding instituted in connection with any controversy arising out of this Agreement shall be entitled to recover its reasonable attorneys' fees from the other Party.

16. Notwithstanding anything in this Agreement to the contrary, in the event the Owner, its successors, assigns and grantees, fail to comply with the terms hereof and/or interfere with the rights of the City to maintain and operate the City Facilities, the City, in addition to any and all rights or remedies available to the City at law or in equity, shall be entitled to obtain restraining orders and injunctions (temporary or permanent) prohibiting any such failure and/or interference, and commanding compliance with the provisions of this Agreement without the necessity of proof of inadequacy of legal remedies or irreparable harm, and without the need to post a bond.

17. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one instrument.

18. The rights granted to the Owner in this Agreement relate only to the City's interests in the Easement Tract. The Owner shall be fully and solely responsible for notifying and obtaining consent and approval from all other parties in possession of the portion of the Easement Tract affected by the Encroachment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**CITY OF MONTGOMERY, TEXAS, a
municipal corporation and a political
subdivision of the State of Texas**

By: _____
Sarah Countryman,
Mayor

[CITY SEAL]

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

Before me on this day, personally appeared Sarah Countryman, proved to me to be the mayor of the City of Montgomery, Texas whose name is subscribed to the foregoing instrument and acknowledged to me that the instrument was the act of **CITY OF MONTGOMERY, TEXAS, municipal corporation principally situated in Montgomery County, Texas, political subdivision of the State of Texas**, and that she executed the instrument as the act of said political subdivision for the purposes and consideration expressed therein, by proper authority, and in the capacity stated in the instrument.

Given under my hand and seal of office this ____ day of _____, 2021.

Notary Public in and for the State of Texas

[NOTARY SEAL]

AGREED TO AND ACCEPTED by the Owner on behalf of himself, his successors, assigns and grantees, which acceptance shall constitute affirmative acceptance of all rights, privileges, liabilities and indemnifications contained herein, this 1st day of July, 2021.

HAZA FOODS, LLC.
a Texas limited liability company

By: M. Ali Dhanani
Name: Mohammed Ali Dhanani
Title: Manager

THE STATE OF TEXAS §
 §
COUNTY OF Fort Bend §

Before me on this day, personally appeared **Mohammed Ali Dhanani**, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the instrument was the act of said individual, and that he executed the instrument for the purposes and consideration expressed therein, by proper authority, and in the capacity stated in the instrument.

Given under my hand and seal of office this 1 day of July, 2021.

Bella H Nguyen
Notary Public in and for the State of Texas

After recording return to:
City of Montgomery, Texas
c/o Johnson Petrov LLP
2929 Allen Parkway, Suite 3150
Houston, Texas 77019
Attention: Caleb D. Villarreal
713-489-8977



EXHIBIT "A"

(Site Light Pole Details)

SITE LIGHT POLE DETAILS

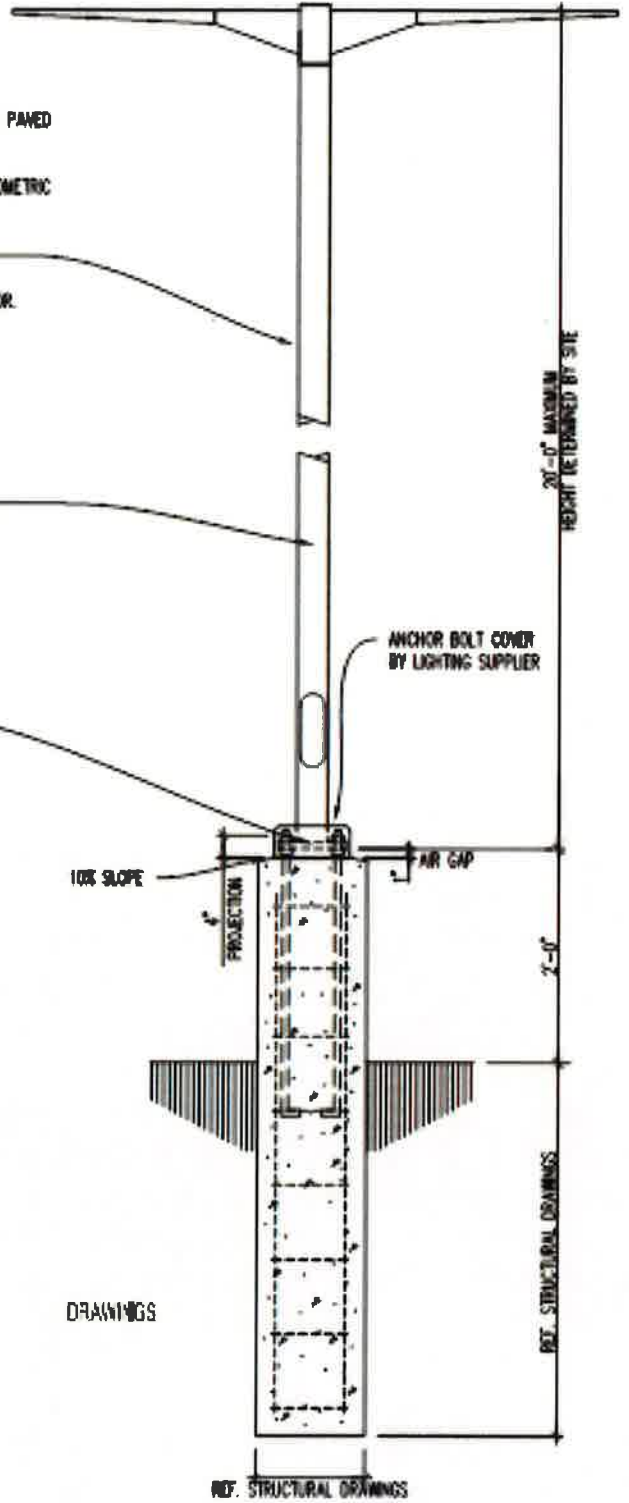
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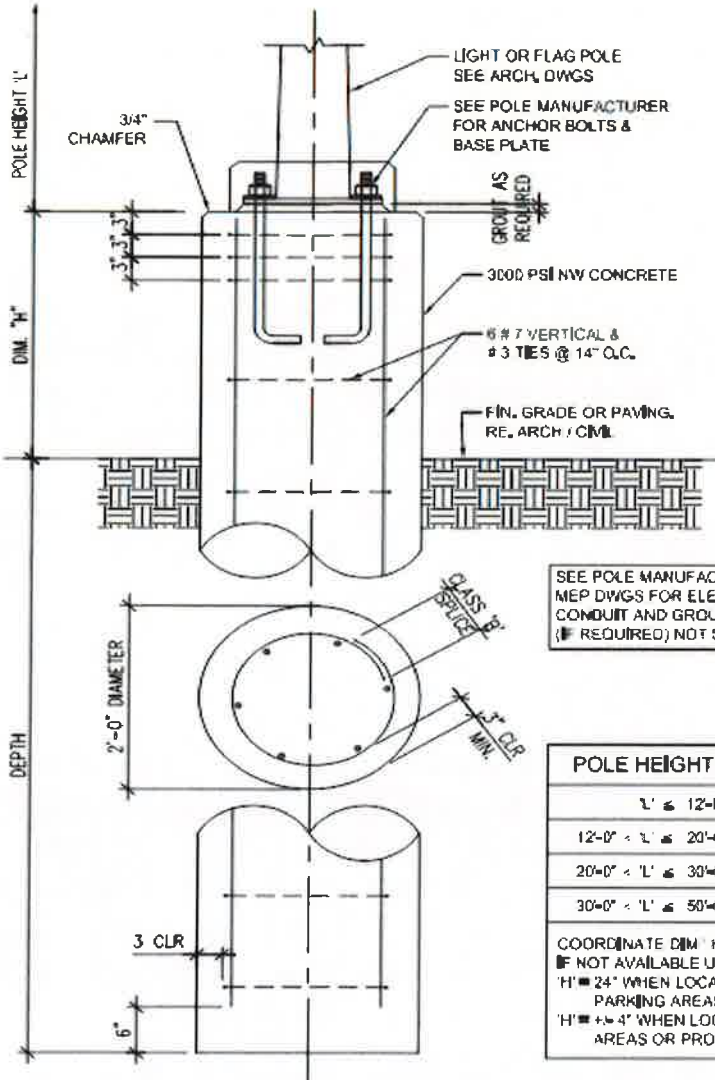
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LIGHT POLE DETAIL



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SITE LIGHT POLE FOUNDATION DETAIL

EXHIBIT "B"

(Monument Signage Details)

