



**COMMISSIONERS COURT
COMMUNICATION**

COURT ORDER NUMBER _____

PAGE 1 OF 13

DATE: 10/1/2024

**SUBJECT: CONSIDERATION OF A PUBLIC PROPERTY RIGHT-OF-WAY
ENCROACHMENT AGREEMENT WITH THE CITY OF FORT WORTH
FOR A PROPERTY LINE OVERHAND FOR THE PLAZA PARKING
GARAGE EXPANSION PROJECT**

***** CONSENT AGENDA *****

COMMISSIONERS COURT ACTION REQUESTED

It is requested the Commissioners Court consider a Public Property Right-Of-Way Encroachment Agreement with the City of Fort Worth for a property line overhang for the Plaza Parking Garage Expansion project, located at 601 West Weatherford Street in Fort Worth.

BACKGROUND

On October 11, 2022, the Commissioners Court, through Court Order #139375, approved a Professional Services Contract for Architectural and Engineering Services with Bennett Partners for the expansion of the Plaza Parking Garage.

The exterior precast concrete panels being installed as part of the Plaza Parking Garage Expansion will overhang the property line ¾" on the South side and 3" on the West side. This encroachment is due to the differences in accuracy from the original 2013 Land Survey to the 2023 Topographical Survey.

The City of Fort Worth requires an Encroachment Agreement for new construction that will overhang the existing property line.

The Criminal District Attorney's Office has reviewed this contract as to form.

FISCAL IMPACT

No fiscal impact for this item.

SUBMITTED BY	Facilities Management	PREPARED BY:	Milissa Warner
		APPROVED BY:	Michael Amador



COMMISSIONERS COURT
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SUBMITTED BY	Facilities Management	PREPARED BY:	Milissa Warner
		APPROVED BY:	Michael Amador

Date Received: _____

Record Number: PN24-00110

Time Received: _____

City Secretary No.: _____

**PUBLIC PROPERTY RIGHT-OF-WAY ENCROACHMENT LICENSE
AGREEMENT**

TIER II

THIS AGREEMENT is made and entered into by and between **THE CITY OF FORT WORTH**, a home rule municipal corporation of Tarrant County, Texas ("**City**"), acting by and through its duly authorized City Manager, Assistant City Manager, or Director of the Development Services Department, and Tarrant County of Texas, a political subdivision of the State of Texas Government ("**Licensee**"), acting by and through its duly authorized Contracting Officer.

RECITALS

WHEREAS, Licensee is the owner of the real property located at 601 W. Weatherford Street, Fort Worth, Texas 76102 ("**Property**"), recorded as Lots 1, 2, 4, and the east half of Lot 3, and Lot 3-A, Block 60, Fort Worth Original Town Addition, Fort Worth, Texas, in Deed Records of, D202118716, in Tarrant County, Texas, and;

WHEREAS, the City owns a right-of-way easement (the "**Public Property**") adjacent to the Property, recorded in the plat records of Tarrant County as plat number FS-88-134; and

WHEREAS, Licensee desires to construct, place, and maintain certain improvements which will encroach in, on, above, or below the Public Property; and

WHEREAS, to accommodate the needs of the Licensee, the City will allow the encroachment under the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, the City and Licensee agree as follows:

AGREEMENT

1.

The City, in consideration of the covenants and agreements hereinafter contained to be kept and performed by Licensee and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby grants permission to Licensee to encroach in, on, above, or below and occupy a portion of the City's Public Property as described in and at the location shown on **Exhibit "A,"** but only to the extent shown thereon, for the purpose of constructing, installing, and maintaining landscaped façades, and door swings (the "**Encroachment**"). Upon completion of the Encroachment, Licensee agrees to be responsible for maintaining the Encroachment within the Public Property. Licensee shall

not expand or otherwise cause the Encroachment to further infringe in or on the Public Property beyond what is specifically described in **Exhibit "A."**

2.

All construction, installation, maintenance, and operation of the Encroachment and the use or occupancy of the Public Property shall comply with and be performed in strict compliance with this Agreement and with the charter, ordinances, codes, and policies of the City. Prior to the construction or installation of the Encroachment, Licensee shall submit all plans and specifications to the Director of the Development Services Department or duly authorized representative. Licensee shall not commence construction or installation of the Encroachment nor make any use of the Public Property until after the execution of this Agreement.

3.

Licensee, at no expense to the City, shall make proper provisions for the relocation and installation of any existing or future utilities affected by such Encroachment and the use and occupancy of the Public Property, including the securing the approval and consent of the appropriate utility companies and agencies of the State of Texas and its political subdivisions. In the event that any installation, reinstallation, relocation, or repair of any existing or future utility or improvements owned by or constructed by or on behalf of the public or at public expense is made more costly by virtue of the construction, maintenance, or existence of the Encroachment and use of Public Property, Licensee shall pay to City an additional amount equal to such additional cost as determined by the Director of Transportation and Public Works, the Director of the Water Department, the Director of the Development Services Department, or their duly authorized representative.

4.

Licensee agrees that City may enter and utilize the Public Property at any time for any public purpose, including installing, repairing, replacing, or maintaining improvements to its public facilities or utilities necessary for the health, safety, and welfare of the public. The City shall have no responsibility or liability for any damages related to the Encroachment resulting from the City's use of the Public Property; however, the City shall make reasonable efforts to minimize such damage.

5.

Upon termination of this Agreement, Licensee shall, at the option of and at no expense to the City, remove the Encroachment and restore the Public Property to a condition acceptable to the Director of Transportation and Public Works, the Director of the Water Department, the Director of the Development Services Department or their duly authorized representative. Any such removal of the Encroachment shall be in accordance with then-existing City regulations and policies. It is understood and agreed to by Licensee that if this Agreement terminates and Licensee fails to remove the Encroachment and

restore the Public Property, Licensee hereby gives City permission to remove the Encroachment and any supporting structures from the Public Property, to restore the Public Property, and to assess a lien on the Property for the costs expended by the City in taking such actions.

6.

The term of this Agreement shall be for **thirty (30) years**, commencing on the date this Agreement is executed by City.

7.

It is further understood and agreed between the parties hereto that the Public Property to be used and encroached upon is held by City as trustee for the public; that City exercises such powers over the Public Property as have been delegated to it by the Constitution of the State of Texas or by the Texas Legislature; and that City cannot contract away its duty and its legislative power to control the Public Property for the use and benefit of the public. It is accordingly agreed that if the governing body of City may at any time during the term hereof determine in its sole discretion to use or cause or permit the Public Property to be used for any other public purpose, including but not being limited to underground, surface, or overhead communication, drainage, sanitary sewerage, transmission of natural gas or electricity, or any other public purpose, whether presently contemplated or not, that the parties agree to negotiate in good faith in order to accommodate both the Encroachment and the public purpose.

8.

Licensee agrees to deposit with the City when this Agreement is executed a sufficient sum of money to be used to pay necessary fees to record this Agreement in the real property records of the county in which the Encroachment is located. After being recorded, the original shall be returned to the City Secretary of the City of Fort Worth.

9.

Both Licensee and City agree to comply fully with all applicable federal, state, and local laws, statutes, ordinances, codes, and regulations in connection with the construction, operation, and maintenance of the Encroachment and use of the Public Property.

10.

Licensee agrees to pay promptly when due all fees provided for by this Agreement or by any federal, state, or local statute, law, or regulation.

11.

Licensee covenants and agrees that it shall operate hereunder as an independent contractor as to all rights and privileges granted hereunder and not as an officer, agent, servant, or employee of City, and Licensee shall have exclusive control of and the exclusive right to control the details of its operations, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. The doctrine of respondeat superior shall not apply as between City and Licensee, its officers, agents, servants, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Licensee.

12.

Licensee agrees and acknowledges that this Agreement is solely for the purpose of permitting Licensee to construct, maintain, and locate the Encroachment over or within the Public Property and is not a conveyance of any right, title, or interest in or to the Public Property, nor is it meant to convey any right to use or occupy property in which a third-party may have an interest. Licensee agrees that it will obtain all necessary permissions before occupying such property.

13.

The parties agree that the duties and obligations contained in **Section 5** shall survive the termination of this Agreement.

14.

Licensee covenants and agrees that it will not assign all or any of its rights, privileges, or duties under this Agreement without the written approval of the City, and any attempted assignment without such written approval shall be void. In the event Licensee conveys the Property, Licensee may assign all of its rights and obligations under this Agreement to the new owner of the Property, and Licensee shall be deemed released from its duties and obligations hereunder upon City's approval in writing of such assignment, which approval shall not be unreasonably conditioned or withheld. Foreclosure by a secured lender of Licensee or assignment to a secured lender by Licensee in the event of default or otherwise shall not require City approval provided that said lender notifies City in writing within **sixty (60) days** of such foreclosure or assignment and assumes all of Licensee's rights and obligations hereunder. However, no change of ownership due to foreclosure or assignment to any secured lender of Licensee shall be effective as to City unless and until written notice of such foreclosure or assignment is provided to City.

15.

Any cause of action for breach of this Agreement shall be brought in the applicable Federal Court with jurisdiction to hear the matter. This Agreement shall be governed by the applicable federal and state laws.

16.

This Agreement shall be binding upon the parties hereto and their successors and assigns.

17.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

18.

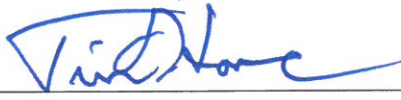
THIS AGREEMENT SHALL BE EXPRESSLY SUBJECT TO THE PARTIES' SOVEREIGN IMMUNITY, TITLE 5 OF THE TEXAS CIVIL PRACTICES AND REMEDIES CODE AND ALL APPLICABLE FEDERAL AND STATE LAW. THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT THE PARTIES HAVE BY OPERATION OF LAW. NOTHING IN THIS AGREEMENT IS INTENDED TO BENEFIT ANY THIRD PARTY.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

City:
CITY OF FORT WORTH

Licensee:
Tarrant County of Texas
a political subdivision of the State of Texas

By: _____
D.J. Harrell, Director of the
Development Services Department
Date: _____

By:  _____
Name: Tim O'Hare
Title: Tarrant County Judge
Date: 10/11/2024

ATTEST:

Approved As To Form and Legality

Jannette Goodall,
City Secretary

Hye Won Kim
Assistant City Attorney

Date: _____

Date: _____

Contract Compliance Manager:

By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

Rebecca Owen
Development Services

Date: _____

APPROVED AS TO FORM:

James Marwin Nichols

Criminal District Attorney's Office*

*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.

*****THIS PAGE FOR CITY OF FORT WORTH OFFICE USE ONLY*****

STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **D.J. Harrell**, 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 expressed, as the act and deed of the **City of Fort Worth**, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2024.

Notary Public in and for the State of Texas

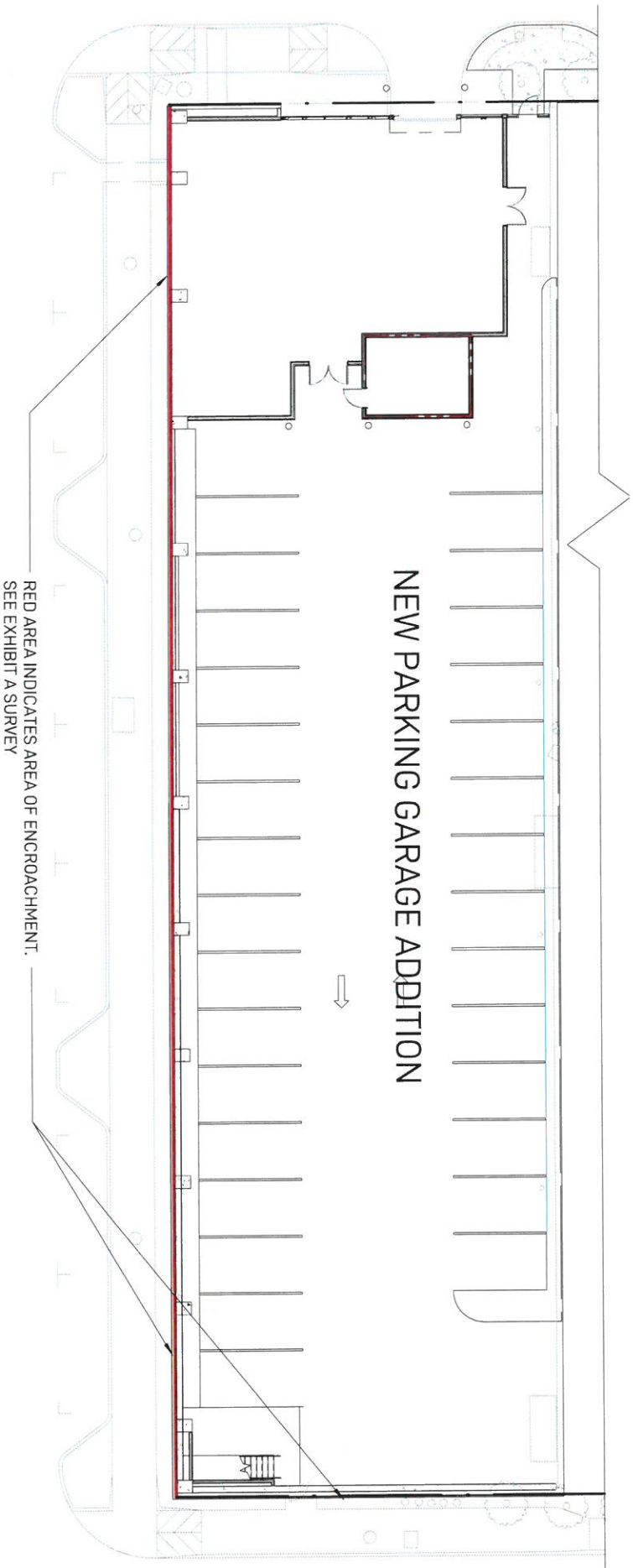
After recording return to:
Development Services Department
Development Coordination Office
200 Texas Street
Fort Worth, Texas 76102

STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of _____, on this day personally appeared Tim O'Hare, Tarrant County Judge known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed, as the act and deed of Tarrant County of Texas, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2024.

Notary Public in and for the
State of _____



N CHERRY STREET

RED AREA INDICATES AREA OF ENCROACHMENT.
SEE EXHIBIT A SURVEY

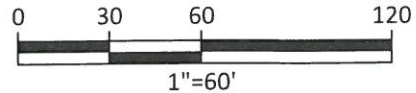
NEW PARKING GARAGE ADDITION



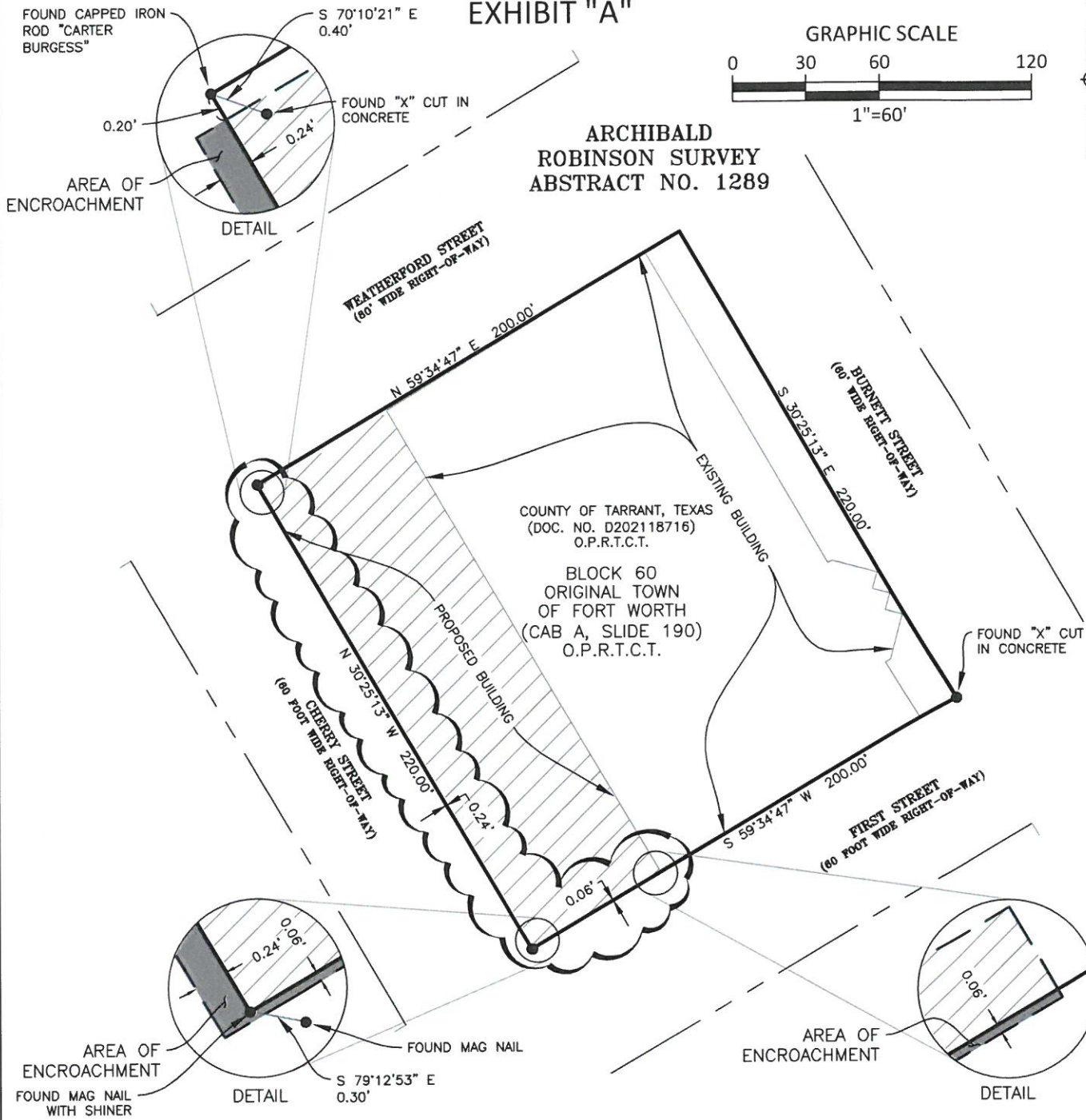
Enlarged Site Plan - Encroachment Exhibit
TC PLAZA PARKING GARAGE EXPANSION

EXHIBIT "A"

GRAPHIC SCALE



ARCHIBALD ROBINSON SURVEY ABSTRACT NO. 1289



COUNTY OF TARRANT, TEXAS
(DOC. NO. D202118716)
O.P.R.T.C.T.

BLOCK 60
ORIGINAL TOWN
OF FORT WORTH
(CAB A, SLIDE 190)
O.P.R.T.C.T.

GENERAL NOTES:

1. Basis of bearing is the North American Datum of 1983(2011) Epoch 2010.00 based on the Texas Coordinate System of 1983, North Central Zone (TXNC-4202). Distances shown hereon are U.S. Survey feet displayed in surface values. Grid adjustment factor is 0.999880014.
2. This survey is issued without the benefit of a current Commitment for Title Insurance and could be subject to restrictions and/or additional easements not shown hereon.
3. The clouded area depicted indicates the area affected by encroachment.

LEGEND

- FOUND MONUMENTS (AS-NOTED)
- PROPERTY LINE
- - - ROAD RIGHT-OF-WAY LINE
- - - PROPOSED BUILDING LINE
- ▨ AREA OF ENCROACHMENT
- OFFICIAL PUBLIC RECORDS OF TARRANT COUNTY TEXAS
- O.P.R.T.C.T.

2601 MEACHAM BLVD, SUITE 600
FORT WORTH, TX 76137-2720
TEL (817) 847-1422
TBPELS SURVEYING FIRM #10029607

ENCROACHMENT AGREEMENT
BLOCK 60, ORIGINAL TOWN OF FORT WORTH
SITUATED IN THE
ARCHIBALD ROBINSON SURVEY No.1289
CITY OF FORT WORTH, TARRANT COUNTY, TEXAS

PROJECT NO: 5267.004
DATE ISSUED: 4/26/2024
PAGE: 1 OF 1

A:\52000s\52670004\SURV\CADD\Sheets\IV-EX-01-52670-004-83S.dwg
April 26, 2024, 11:31:29 AM, ah5482

Date Received: _____

Record Number: PN24-00110

Time Received: _____

City Secretary No.: _____

**PUBLIC PROPERTY RIGHT-OF-WAY ENCROACHMENT LICENSE
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10.

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11.

Licensee covenants and agrees that it shall operate hereunder as an independent contractor as to all rights and privileges granted hereunder and not as an officer, agent, servant, or employee of City, and Licensee shall have exclusive control of and the exclusive right to control the details of its operations, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. The doctrine of respondeat superior shall not apply as between City and Licensee, its officers, agents, servants, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Licensee.

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13.

The parties agree that the duties and obligations contained in **Section 5** shall survive the termination of this Agreement.

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18.

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[SIGNATURES APPEAR ON FOLLOWING PAGE]

City:
CITY OF FORT WORTH

Licensee:
Tarrant County of Texas
a political subdivision of the State of Texas

By: _____
D.J. Harrell, Director of the
Development Services Department

By: _____
Name: Tim O'Hare
Title: Tarrant County Judge

Date: _____

Date: _____

ATTEST:

Approved As To Form and Legality

Jannette Goodall,
City Secretary

Hye Won Kim
Assistant City Attorney

Date: _____

Date: _____

Contract Compliance Manager:

By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

Rebecca Owen
Development Services

Date: _____

APPROVED AS TO FORM:

James Marwin Nichols

Criminal District Attorney's Office*

*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.

*****THIS PAGE FOR CITY OF FORT WORTH OFFICE USE ONLY*****

STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **D.J. Harrell**, 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 expressed, as the act and deed of the **City of Fort Worth**, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2024.

Notary Public in and for the State of Texas

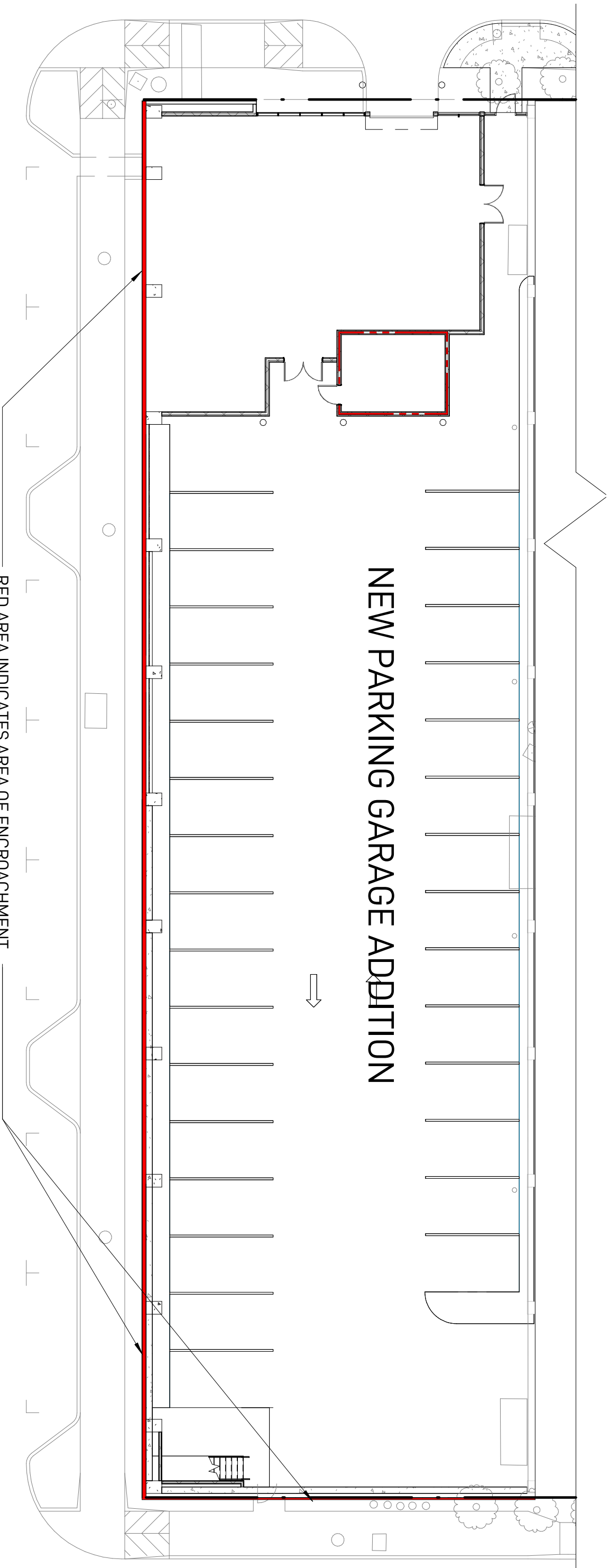
After recording return to:
Development Services Department
Development Coordination Office
200 Texas Street
Fort Worth, Texas 76102

STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of _____, on this day personally appeared Tim O'Hare, Tarrant County Judge known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed, as the act and deed of Tarrant County of Texas, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2024.

Notary Public in and for the
State of _____



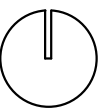
NEW PARKING GARAGE ADDITION

RED AREA INDICATES AREA OF ENCROACHMENT.
SEE EXHIBIT A SURVEY

N CHERRY STREET

22156.00

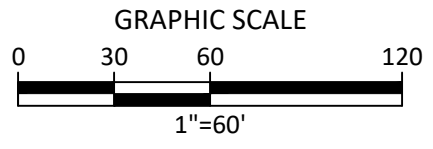
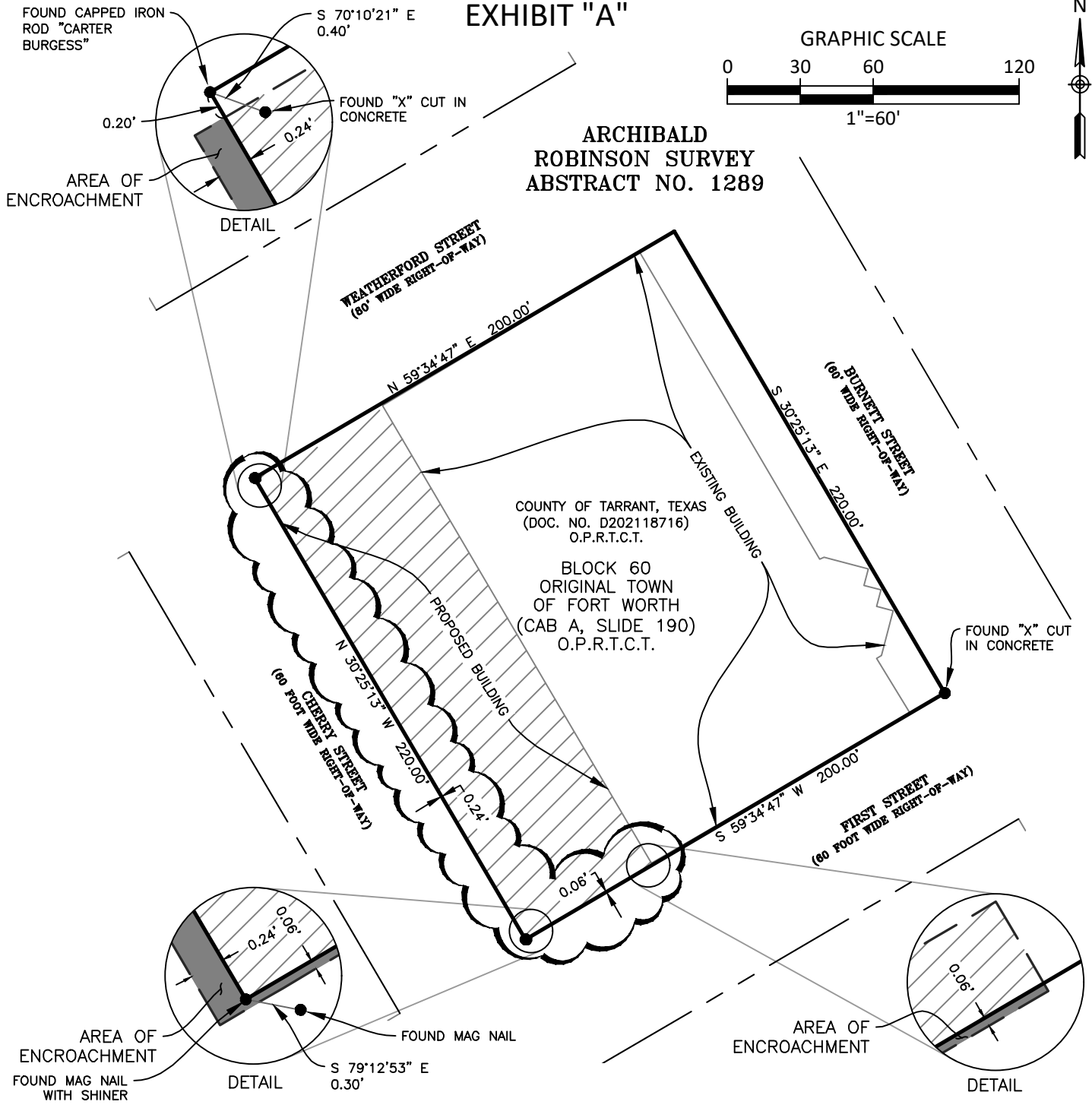
0' 8' 16'



06/06/24

Enlarged Site Plan - Encroachment Exhibit
TC PLAZA PARKING GARAGE EXPANSION

EXHIBIT "A"



LEGEND

- FOUND MONUMENTS (AS-NOTED)
- PROPERTY LINE
- - - ROAD RIGHT-OF-WAY LINE
- - - PROPOSED BUILDING LINE
- ▨ AREA OF ENCROACHMENT
- O.P.R.T.C.T. OFFICIAL PUBLIC RECORDS OF TARRANT COUNTY TEXAS

GENERAL NOTES:

1. Basis of bearing is the North American Datum of 1983(2011) Epoch 2010.00 based on the Texas Coordinate System of 1983, North Central Zone (TXNC-4202). Distances shown hereon are U.S. Survey feet displayed in surface values. Grid adjustment factor is 0.999880014.
2. This survey is issued without the benefit of a current Commitment for Title Insurance and could be subject to restrictions and/or additional easements not shown hereon.
3. The clouded area depicted indicates the area affected by encroachment.

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2601 MEACHAM BLVD. SUITE 600
 FORT WORTH, TX 76137-2720
 TEL (817) 847-1422
 TBPELS SURVEYING FIRM #10029607

ENCROACHMENT AGREEMENT
 BLOCK 60, ORIGINAL TOWN OF FORT WORTH
 SITUATED IN THE
 ARCHIBALD ROBINSON SURVEY No.1289
 CITY OF FORT WORTH, TARRANT COUNTY, TEXAS

PROJECT NO: 5267.004
DATE ISSUED: 4/26/2024
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