



**AMENDED AGENDA**  
City Council Meeting  
City of Middleton, Idaho

Date: Wednesday May 5, 2021

Time: 5:30 p.m.

Location: **City Hall Council Chambers – 1103 W Main Street**

Call-to-order, roll call, Pledge of Allegiance, Invocation: Dorothy Grooms

**Action Item:**

- A. Approve Amended Agenda

**Information Item:**

1. Research report on how other jurisdictions handle bonding for infrastructure items not completed during platting process. (Request by Council President Kiser) – Roberta Stewart

**Action Items:**

1. Consent Agenda (items of routine administrative business)
  - a. Consider approving minutes for City Council April 21, 2021 regular meeting.
  - b. Consider approving minutes for Joint Agency Information Workshop April 23, 2021 meeting.
  - c. Consider approving payable thru April 29, 2021 in the amount of \$109,650.22.
  - d. Consider approving May 7, 2021 payroll in the amount of \$80,607.83.
  - e. Consider approving FCO of Preliminary Plat - Piccadilly Square Subdivision.
2. Consider unappointing Yorgason Law as the cities legal counsel. – Mayor Rule
3. Consider appointing Hamilton, Michaelson & Hilty, LLP as legal counsel. – Mayor Rule
4. Consider approving purchase and installation of a bailer weighing mechanism to weigh the alfalfa produced on the 6 different zones in the Re-use Farm from Agri-Services in amount not to exceed \$9,911.54. – Bruce Bayne
5. Consider approving Resolution 457-21: Transferring asset of baseball backstop at Middleton Place Park to Greater Middleton Parks and Recreation District – Becky Crofts.
6. Consider approving proposed enlarged Area of Impact and similar changes to numerous Comprehensive Plan Maps in preparation for negotiations with Canyon County. – Roberta Stewart
7. **Public Hearing:** Applications from Hayden Homes Idaho LLC for annexation/rezone, development agreement and preliminary plat with respect to the Bridger Creek Subdivision located at 0 Emmett Road, Tax Parcel No., R38211012. The proposed zoning for the preliminary plat is residential R-3. The preliminary plat consists of 44 buildable lots and 6 common lots. – Roberta Stewart.
8. **Public Hearing:** An application from Dan and Kerri LaFever for annexation, rezone, and development agreement with respect to a 5.27 acre parcel located at 23897 Fox Avenue (tax parcel no. R17932011). Applicant is requesting a rezone to residential R-3. – Roberta Stewart.

9. Consider approving a Contribution Agreement with City of Middleton and Providence Properties, LLC for the Waterford Subdivision Intersection Improvements, and Bridge Improvements. – Roberta Stewart.

**Public Comments, Mayor and Council Comments, Adjourn**

Posted by: \_\_\_\_\_  
Jennica Reynolds, Deputy Clerk

Date: May 3, 2021, 5:00 p.m.

Please contact the City Clerk at (208) 585-3133 if you have special needs or require assistance.



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**MIDDLETON CITY COUNCIL**  
**APRIL 21, 2021**

The Middleton City Council meeting on April 21, 2021 was called-to-order at 5:41 p.m. by Mayor Rule.

**Roll Call:** Mayor Rule, Council President Kiser, Council Members Huggins, Garner and O'Meara were all present.

Pledge of Allegiance, Invocation: Cash Palmer

**Action Items**

**A. Approve Amended Agenda**

**Motion:** Motion by Council President Kiser to approve the Amended Agenda as posted April 20, 2021 at 4:00 p.m. Motion seconded by Council Member Garner and approved unanimously.

**Information Items**

**1. Staff Introduction: Part-Time Police Clerk – Heather Mather.**

Mayor Rule introduced asked the Police Chief to introduce Heather Mather as the newest part-time Police Clerk. She then spoke briefly about her past experience in the corporate world and excitement to be working with the City and Middleton Police Department.

**2. Presentation by Don Miller – Idaho Wildlife and Water Quality Group LLC for Mason Creek water quality project.**

Mayor Rule said Don had called earlier and said he needed to reschedule.

**Action Items**

- 1. Consent Agenda (items of routine administrative business)**
  - a. Consider approving minutes for Council's April 7, 2021 regular meeting.**
  - b. Consider approving April 23, 2021 payroll in the amount of \$110,710.65.**
  - c. Consider approving accounts payable thru April 13, 2021 in the amount of \$204,887.72.**

Mayor Rule called the items.

**Motion:** Motion by Council President Kiser approve Consent Agenda Items a, b and c. Motion seconded by Council Member O'Meara and approved unanimously.

**2. Consider approving Proclamation of City of Middleton declaring April 2021 as National Child Abuse Prevention Month. – Kim Duegan (Advocates Against Family Violence)**

**3. Consider approving Proclamation of City of Middleton declaring April 2021 as Sexual Assault Awareness Month. – Kim Duegan (Advocates Against Family Violence)**



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Mayor Rule read both proclamations then introduced Kim Duegan who shared information about child abuse crimes, domestic violence crimes and sexual abuse crimes. With Covid there has been a large increase in all these crimes, especially to children. She appreciates the City approving both proclamations.

**Motion:** Motion by Council President Kiser to approve a Proclamation of City of Middleton declaring April 2021 as National Child Abuse Prevention Month. Motion seconded by Council Member Garner and approved unanimously.

**Motion:** Motion by Council President Kiser to approve a Proclamation of City of Middleton declaring April 2021 as Sexual Assault Awareness Month. Motion seconded by Council Member Huggins and approved unanimously.

**4. Consider approving Special Event Permit for Middleton Chamber of Commerce July 4th Parade and Park events held on Saturday, July 3, 2021. – Tamara Zimmerman**

Mayor Rule called item. He said Middleton is excited to have an Independence Day celebration again. City Administrator, Becky Crofts said the parade route is the same as it has been. They will have to get approval from ITD to close down portions of Main Street. The chamber is also requesting the special event permit fee be waived.

**Motion:** Motion by Council President Kiser to approve and waive the fee for a Special Event Permit for Middleton Chamber of Commerce July 4th Parade and Park events held on Saturday, July 3, 2021. Motion seconded by Council Member O'Meara and approved unanimously.

**5. Consider approving and waiving fees for a Special Event Permit for May Day Market at Piccadilly Park May 1, 2021 – Nikki Macredes**

Mayor Rule called the item and introduced Nikki Macredes who spoke to the council. She explained that she started out just wanting a couple friends to join her at the park to sell their items. It turned into an 'Event' very quickly. She is not charging vendors a fee to participate and didn't know she needed a permit. She has been sending the vendors down to City Hall to acquire the \$35.00 Piccadilly Park Vendors Permit. She would appreciate the council waiving the \$160.00 Special Event Permit.

**Motion:** Motion by Council President Kiser to approve and waiving fees for a Special Event Permit for May Day Market at Piccadilly Park May 1, 2021. Motion seconded by Council Member Garner and approved unanimously.

**6. Consider approving Mayor's appointee Kip Crofts to Planning and Zoning Commission Board. – Mayor Rule**

Mayor Rule called the item and explained his desire to appoint Kip Crofts to Planning and Zoning Commission Board. He interviewed multiple candidates and narrowed it down to two individuals. He would like council to approve Kip Crofts.

**Motion:** Motion by Council President Kiser to approve Mayor's appointee Kip Crofts to Planning and Zoning Commission Board. Motion seconded by Council Member Huggins and approved unanimously.

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Mayor Rule asked for public comment prior to going into executive session.

**Public Comment:**

*Elaine Mathiasen:* She was the Library Director under 3 previous mayors. She is concerned that the Trolley Station is not available for use by the Library for Library programs and would hope the Mayor and Council will consider allowing this use.

Mayor thanked her for her 17 years of service to the Library.

**Executive Session:**

1. **Executive Session pursuant to Idaho Code and possible decision(s) to follow: 74-206(1)(f) Potential or pending litigation**

**Motion:** Motion by Council President Kiser to go into Executive Session pursuant to Idaho Code and possible decision(s) to follow: 74-206(1)(f) Potential or pending litigation. Motion seconded by Council Member Huggins and approved unanimously by Roll Call Vote.

Mayor Rule and Council went into executive session at 6:19 p.m.

Executive Session ended at 6:58 p.m. No decisions were made. Information was exchanged.

**Mayor Comments, Council Comments:** None

**Adjourn:** Mayor Rule adjourned the city council meeting at 6:59 p.m.

ATTEST:

\_\_\_\_\_  
Steven J. Rule, Mayor

\_\_\_\_\_  
Jennica, Deputy Clerk  
Minutes Approved: May 5, 2021

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**JOINT AGENCY WORKSHOP  
MIDDLETON URBAN RENEWAL AGENCY  
MIDDLETON CITY COUNCIL  
MIDDLETON PLANNING & ZONING COMMISSION  
APRIL 23, 2021**

Date: Friday, April 23, 2021

Time: 11:30 a.m.

Location: **City Hall Council Chambers – 1103 W Main Street**

**Informational Workshop:**

1. Joint Agency Informational Workshop to discuss Urban Renewal – Alan Dornfest, Idaho State Tax Commission.

Present as follows:

City Staff: Becky Crofts, Wendy Miles, Rachel Speer, Roberta Stewart, Jennica Reynolds  
Middleton Urban Renewal Agency: Rob Kiser, Carrie Huggins, Brett Bishop, Meghan Conrad (Elam & Burke), Cheyenne House (Elam & Burke), Jennica Reynolds (Secretary/Treasurer)  
Middleton City Council: Rob Kiser, Carrie Huggins, Tim O'Meara  
Middleton Planning & Zoning Commission: Jackie Hutchison, Kip Crofts  
Canyon County: Brian Stender, Steve Onofri  
Idaho State Tax Commission: Alan Dornfest, Archi Keeton, KathyInn Ireland.

**Information was exchanged, no decisions or action was taken.**

ATTEST:

\_\_\_\_\_  
Becky Crofts, City Administrator

\_\_\_\_\_  
Jennica, Deputy Clerk  
Minutes Approved: May 5, 2021



# Middleton City Council

## Findings of Facts, Conclusions of Law, and Decision & Order

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### **In the Matter of the Request of Debbie Hundoble/Hundoble Family Trust for Preliminary Plat on 1.77 acres of land in the R-3 Zone located at 0 Cemetery Road (Tax Parcel #R1791101):**

#### **A. Findings of Fact:**

1. Hearing Facts: (See Staff Report for the hearing date of April 7, 2021, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.)
2. Process Facts: (See Staff Report for the hearing date of April 7, 2021, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.)
3. Application and Property Facts: (See Staff Report for the hearing date of April 7, 2021, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.)
4. Required Findings per Middleton City Code 1-14-2(E)(7): (See Staff Report for the hearing date of April 7, 2021, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.)

#### **B. Conclusions of Law:**

1. That the City of Middleton shall exercise the powers conferred upon it by the "Local Land Use Planning Act of 1975," codified at Chapter 65, Title 67, Idaho Code (I.C. §67-6503).
2. That due consideration has been given to the comment(s) received from the governmental subdivisions providing services in the City of Middleton planning jurisdiction.
3. That due consideration has been given to the recommendation of the Middleton Planning and Zoning Commission, which recommendation was rendered at the March 8<sup>th</sup> public hearing on the matter.
4. That notice of the application and public hearing were given according to law.
5. That City Council's public hearing was conducted according to law, and the City has kept a record of the application and related documents.
6. That codes and standards applicable to the application are the Idaho Standards for Public Works Construction, the Middleton Supplement to the Idaho Standards for Public Works Construction, and Middleton City Code 1-14, 1-15, 1-16, 5-1, 5-3, and 5-4.
7. That public facilities and services required by the proposed development will not

impose expense upon the public if the attached conditions of approval are imposed.

8. That this approval and recommendation are subject to the Conditions of Approval set forth in the attached Staff Report for the hearing date of April 7, 2021, which Report is incorporated herein by reference. The City Council further finds that the requirements set forth in the conditions of approval are reasonable, and the Applicant shall comply with the requirements as a condition of approval of the application.

**C. Decision and Order:**

Pursuant to the City Council's authority as provided in Middleton City Code 1-5-5, and based upon the above Findings of Facts and Conclusions of Law, it is hereby ordered that:

the Piccadilly Square Preliminary Plat is approved subject to the Conditions of Approval set forth in the Staff Report for the April 7, 2021 Public Hearing attached hereto as Exhibit "A" and incorporated herein by this reference.

WRITTEN ORDER AND DECISION APPROVED ON: May \_\_\_\_, 2021.

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Steven J. Rule, Mayor  
Middleton City Council

Attest:

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Roberta Stewart  
Planning and Zoning Department



# STAFF REPORT

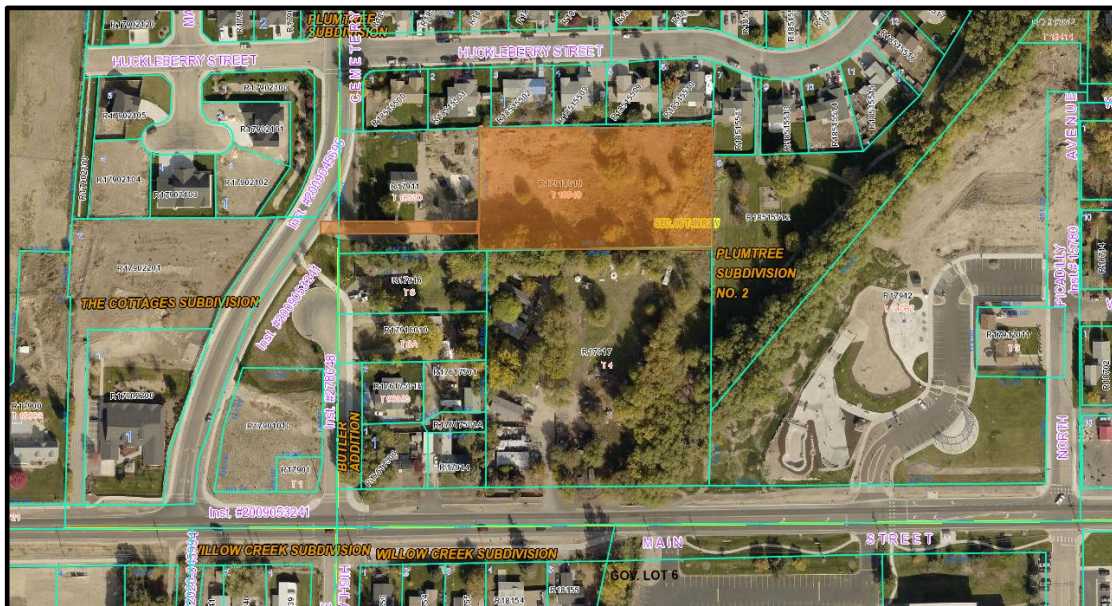
## Middleton Planning and Zoning Department

### Piccadilly Square Subdivision

#### Snapshot Summary

Acreage	1.77 acres
Current Zoning	R-3
Proposed Zoning	to remain the same
Current Land Use	Residential
Proposed Land Use	to remain the same
Lots	5 lots ranging in size from 9,200 sf to 15,000 sf. No common lots
Density	2.75 units per acre (w/easement area)
Open Space	0% - Variance approved
Amenities	None

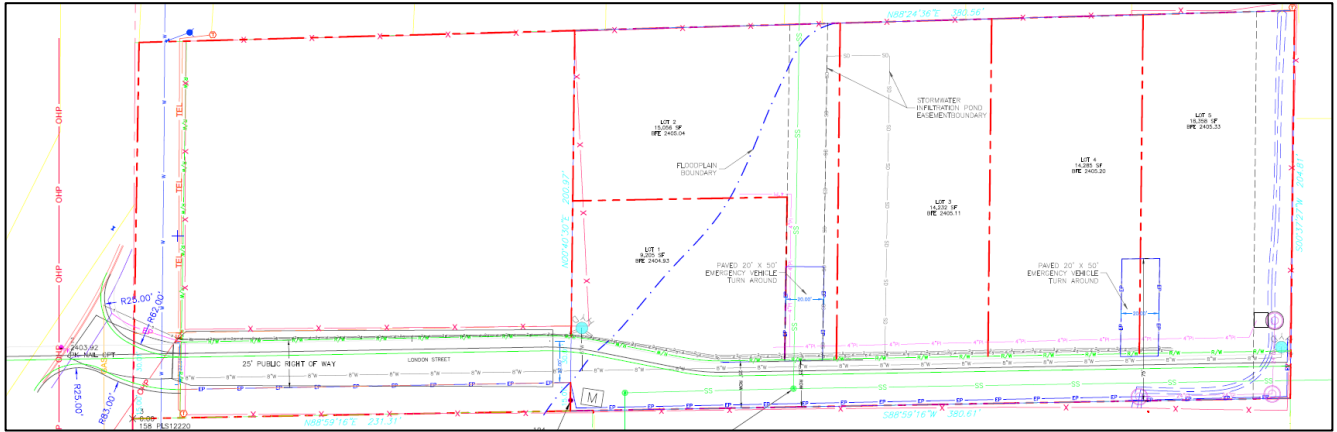
- A. **City Council Hearing Date:** April 7, 2021
- B. **Project Description:** Residential subdivision with five lots on 1.77 acres of vacant land located at 0 Cemetery Road (Tax Parcel #R1791101).



- C. **Project History:** The project property was the subject of a Rezone application in Spring of 2020. Applicant requested that the property be rezoned from R-3 to Multi-Family (M-F). City Council denied the application in July 2020 and declared that the property should remain R-3 zoning.



- D. Application Requests:** Applicant currently has two applications pending. The first application is a Preliminary Plat application to re-plat a single lot in the Hawthorn Subdivision. See proposed preliminary plat below:



The second application is a floodplain application that is an administrative application being handled by Middleton's Floodplain Administrator.

Applicant had also submitted an application for special use permit requesting to be exempt from the 5% Open Space requirement of MCC 5-4-10-10. The Planning & Zoning Commission approved that application on March 8, 2021.

- E. Current Zoning & Property Condition:** The property is currently zoned R-3, which allows 3 residential units per gross acre. The project parcel is a single lot in the Hawthorn Subdivision, and it is surrounded by the Hawthorn subdivision on the west and south sides. The Plumtree Subdivision is immediately to the north and east of the project, and it is also zoned R-3.

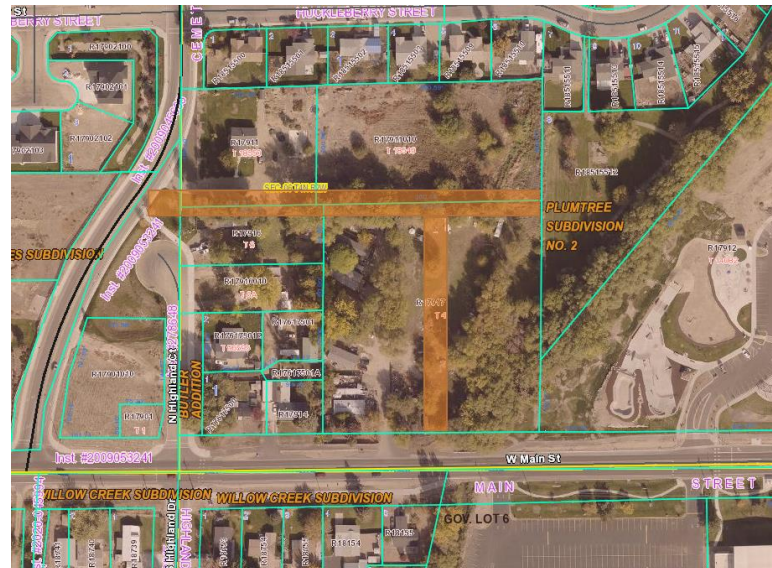
The Project site is effectively an infill project. It is vacant land that has been difficult to improve because it does not front a public street. Instead, access to the property is via a 30' wide access easement across another lot in the Hawthorn Subdivision.

- F. City Services:** City water is located on the east side of Cemetery Road, making water service very accessible to the project. City Sewer is already located down the center of the project site.

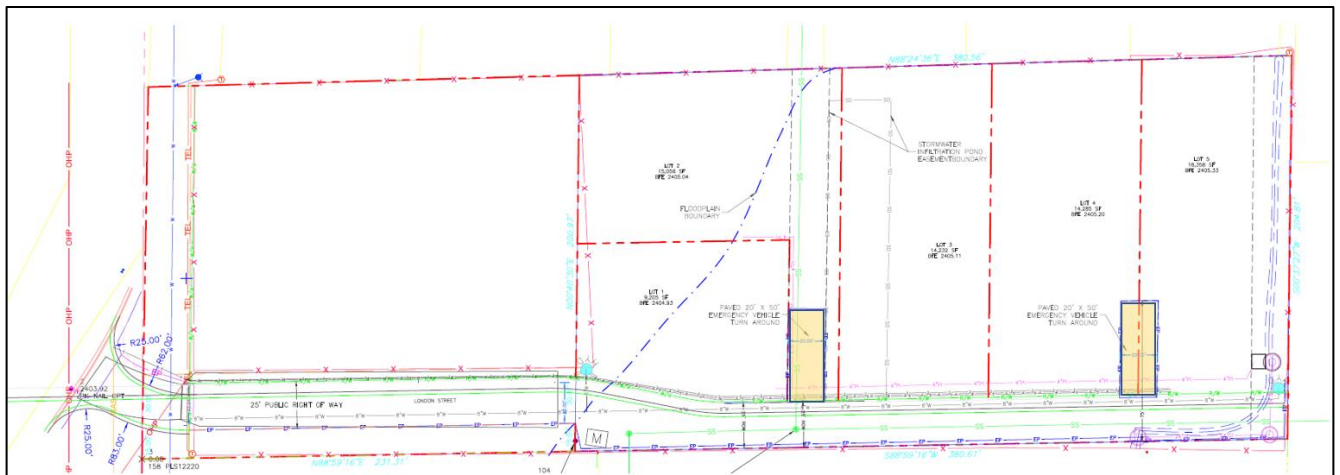
**G. Traffic, Access & Streets:**

Access to the Project site is via a 30' wide cross-access easement that runs from Cemetery Road across another Hawthorn Subdivision lot to the Project parcel. The easement is ample size to fit a 25' wide local half-road that Middleton requires for access and circulation. Applicant's proposed preliminary plat appropriately shows the local  $\frac{1}{2}$  road. Applicant will also dedicate the 25' right of way to the City, making it a public road. The other half of the 50' local road may be completed in the future if the

property to the south is redeveloped for commercial use or other high density use. In other words, the local road in Piccadilly Square will help provide future north/south access for any future development to the south. See concept below.



The preliminary plat also contains two “private lanes”, which are permitted by the Middleton City Code so long as the lanes are not used to access more than 3 residential lots. (See private lanes highlighted in yellow below.) The two private lanes will also serve as turn-arounds for fire truck access in the event of a fire. Applicant is required to grant cross-access easements for the two private lanes to ensure there is public access to the drive lanes. The Homeowners Association will be responsible for maintaining and repairing the two private drives.



Finally, applicant has been required to improve the existing approach off of Cemetery Road, and the improvements are shown on the preliminary plat above.

City Engineer has approved all of the road improvements discussed above.



- H. Sidewalks, Pathway & Open Space:** There will be a 5' wide attached sidewalk that will span along the north side of the public street. There are no additional pathways planned for the small project.

Applicant requested an exemption from the 5% Open Space requirement of MCC 5-4-10-10 because the project is a small infill project with a difficult layout and because of the close proximity to Piccadilly Park. The Planning & Zoning Commission approved that variance request at the March 8, 2021 Public Hearing.

- I. Stormdrain and Pressurized Irrigation:** Stormdrain facilities and pressurized irrigation are provided outside the dedicated right of way. The HOA will be solely responsible for maintaining both.

- J. Middleton Rural Fire District:** The subject property is in the Middleton Rural Fire District. The District has reviewed and approved the preliminary plat submitted. See Fire District comments in the City Council Packet.

- K. Comprehensive Plan & Land Use Map:** Applicant's project complies with the Comprehensive Plan Land Use Map because the project parcel is designated "Residential" on the Land Use Map, which matches the residential use planned for the site.

Additionally, Applicant's project complies with the *Goals, Objectives, and Strategies* of the *2019 Middleton Comprehensive Plan* as follows:

- a. *Goals 3 and 23:* The project provides safe vehicle and pedestrian facilities in light of the street improvements and sidewalks shown on the preliminary plat.
- b. *Goal 4:* The project will establish a good quality of life with development that pays through impact fees and property taxes for the public services it receives when infrastructure is installed. Additionally, quality lots for residential use increase the quality of life and general welfare of the City.
- c. *Goals 11:* The housing type matches the residents' lifestyle in the area the project is located.

- L. Comments Received from Surrounding Landowners:** None.

- M. Comments from Agencies:** 1/29/2021 comments from the Middleton Rural Fire District. (Copies of the comments can be found in the City Council Packet.)

- N. Comments from City Engineer, Planning Staff & Floodplain Administrator:** Copies of City Engineer comments dated 2/17/2021 and March 22, 2021, Planning Staff comments dated 2/18/2021, and Floodplain Administrator's comments dated 3/1/2021 are in the City Council packet.

**O. Applicant Information:** Application was received and accepted on January 19, 2021. The Applicant/Owner is Debbie Hundoble (Hundoble Family Trust), P.O. Box 609, Middleton ID 83644 (208) 488-0615.

<b>P. Notices &amp; Neighborhood Meeting:</b>	<b>Dates:</b>
Newspaper Notification	03/21/2021
Radius notification mailed to Adjacent landowners within 300'	03/17/2021
Circulation to Agencies	03/18/2021
Sign Posting property	03/19/2021
Neighborhood Meeting	01/04/2021 and 01/05/2021

**Q. Applicable Codes and Standards:**

Idaho State Statute Title 67, Chapter 65  
Idaho Standards for Public Works Construction and Middleton Supplement thereto  
Middleton City Code 1-14, 1-15, 1-16, 5-1, 5-3, and 5-4.

**R. Conclusions and Recommended Conditions of Approval:**

The Planning & Zoning Commission recommended approval of the Piccadilly Square preliminary plat with the following recommended conditions of approval:

1. City of Middleton municipal domestic water, fire flow and sanitary sewer services are to be extended to serve the subdivision.
2. All City Engineer review comments are to be completed and approved.
3. All Planning Staff review comments are to be completed and approved.
4. All Floodplain Administrator review comments are to be completed and approved.
5. All requirements of the Middleton Rural Fire District are to be completed and approved.
6. Applicant to construct, at its own cost, the half road that is shown as a public right of way on the preliminary plat.

Prepared by Middleton City Planner, Robert Stewart

Dated: March 29, 2021



## **AGREEMENT FOR CITY ATTORNEY / CIVIL LEGAL SERVICES**

THIS AGREEMENT FOR CITY ATTORNEY / CIVIL LEGAL SERVICES (hereinafter “Agreement”) is made and entered into this 5<sup>th</sup> day of May, 2021, by and between the CITY OF MIDDLETON, IDAHO, an Idaho municipal corporation of 1103 West Main Street, Middleton, Idaho 83644 (hereinafter “City”), and HAMILTON, MICHAELSON & HILTY, LLP, an Idaho limited liability partnership of 1303 12<sup>th</sup> Avenue Road, Nampa, Idaho 83686 (hereinafter “HMH”).

### **RECITALS**

WHEREAS, the City has a statutory and practical obligation to identify and appoint an official City Attorney to perform general, civil legal services on its behalf; and

WHEREAS, HMH is a law firm composed of licensed, practicing attorneys in the state of Idaho and has significant experience in providing general, civil legal services for municipalities; and

WHEREAS, City has appointed HMH to serve as its City Attorney;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the City and HMH covenant and agree, as follows:

1. INCORPORATION OF RECITALS. The parties agree that the foregoing Recitals are contractual and binding and are incorporated herein as if set forth in full.

2. DEFINITIONS. In addition to other definitions set forth in this Agreement, for all purposes of this Agreement the following terms are defined and interpreted as herein provided for, unless the clear context of the presentation of the same requires otherwise:

(A) “Additional Legal Services” include the following categories of legal work:

i. Legal work performed by HMH in those cases where litigation has been filed (or is imminent) and one or more HMH attorney is “of record” in the case.

ii. Legal work performed by non-HMH attorneys where highly specialized attorneys are required. This may occur in connection with bonding and municipal financing, environmental matters including water rights, labor disputes or similar areas of law. When this occurs, HMH will facilitate the selection of appropriate outside counsel with the approval of the City, monitor the matter, and keep the Mayor and City Council advised as the case progresses. Unless HMH attorneys are assigned as co-counsel in litigation, HMH will not charge City for time expended in monitoring matters handled by outside counsel as Additional Legal Services.

iii. Legal work on unusual, non-routine legal tasks that involve significant attorney time and are not reasonably characterized as "routine legal services" or "general counsel" work. HMH must prepare and submit for City approval a scope of work and budget setting forth or estimating a reasonable fee outside the general retainer for Retainer Legal Services in an amount not to exceed \$175 per hour. Examples of such work might be rewriting a substantial portion of the City Code or representing the City as a party in a contested matter that is not traditionally understood as litigation (e.g. contested cases, employee grievances, fact-finding, mediation, arbitration, etc.).

(B) “Retainer Legal Services” shall include all reasonably necessary legal services required for the effective representation of City and applies to all services except those specifically identified in the definition of “Additional Legal Services.”

(C) “City Attorney” means Mark Hilty.

(D) “Fiscal Year” means and refers to City’s fiscal year, now beginning October 1 and ending September 30 of each calendar year, as provided by State law and this definition shall be considered automatically amended in the event of an amendment of the provisions of Idaho law relative to the establishment of the fiscal year for City.

3. SERVICES PROVIDED BY HMH. Pursuant to the terms of this Agreement, HMH is hereby appointed by the City to perform all Retainer Legal Services for the City and such other Additional Legal Services approved by the City.

4. PAYMENT FOR SERVICES. City agrees to pay HMH for services rendered pursuant to the terms of this Agreement, as follows:

(A) As compensation for Retainer Legal Services, excluding all out-of-pocket expenses incurred by HMH in performing the Retainer Legal Services, City shall pay HMH the sum of FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,250) per month commencing May 6, 2021 and continuing through September 30, 2022. The month of May 2021 shall be prorated for 26 days in the amount of \$4403. Subsequent retainer amounts shall be established on a fiscal year basis through the annual budget process for each year this Agreement continues. Although the parties acknowledge that the Retainer Legal Services are provided on a flat-fee basis, HMH agrees to record and maintain accurate time records of all Retainer Legal Services provided by its attorneys (itemized by date and the attorney performing the services), and to provide the same to the City on a monthly basis.

(B) Compensation for Additional Legal Services performed by HMH at the request of the City shall be paid at the attorney rate of \$175 per hour and the paralegal rate of \$75 per hour.

i. City shall reimburse HMH for actual out-of-pocket expenses but not ordinary office overhead or supplies, mileage, copying or postage, incurred by HMH in the performance of legal services.

ii. HMH shall provide the City with a monthly, itemized invoice of all Additional Legal Services performed, including all out-of-pocket expenses.

5. TERM. The term of this Agreement shall commence on May 6, 2021 and shall continue at the will and pleasure of the Mayor and City Council until September 30, 2022.

6. REPRESENTATIONS AND WARRANTIES OF HMH. HMH represents and warrants to City as follows:

(A) AUTHORITY. HMH has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement.

(B) NO PROHIBITION TO PERFORMANCE. There are no judgments, liens, actions, or proceedings existing or pending against HMH which would materially affect HMH's ability to enter into or perform under this Agreement.

(C) ENTITY STATUS. HMH is a limited liability partnership, duly organized, validly existing, and in good standing under the laws of the State of Idaho and has all necessary powers to enter into this Agreement.

(D) MARK HILTY DESIGNATED PRIMARY ATTORNEY. HMH acknowledges that Mark Hilty is designated as the attorney partner with primary responsibility for providing legal services to the City pursuant to this Agreement. City acknowledges that Mark Hilty will be assisted by other firm attorneys on various tasks.

(E) PERFORMANCE OF SERVICES. HMH agrees to perform all of the services and work set forth in this Agreement in a timely, efficient, and professional manner, in accordance with the terms of this Agreement and in compliance with existing

laws, ordinances, rules, or regulations of any applicable regulatory authority or governmental body.

(F) NON-EXCLUSIVE AGREEMENT. HMH acknowledges that this Agreement shall not be interpreted to limit the City's authority to retain the services of outside legal counsel to perform any legal services, whether as a result of the City's need for special expertise or otherwise.

7. INSURANCE. For purposes of this Agreement, HMH shall carry the following types of insurance in at least the per occurrence limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
Workman's Compensation	Statutory limits
Employer's Liability	\$1,000,000.00
General Liability (bodily injury and/or property damage)	\$1,000,000.00
Professional Liability	\$1,000,000.00

8. EXTENSION OF TERM OF AGREEMENT. This parties may mutually agree to renew or extend the term of this Agreement. Unless services are terminated, this Agreement shall be automatically extended on a month-to-month basis after any scheduled termination date.

9. TERMINATION. This Agreement may be terminated upon mutual agreement of the parties. City shall also have the right to remove HMH's appointment as City's attorneys in the manner as set forth in Idaho Code § 50-206 and terminate this Agreement, with or without cause, at any time, which termination shall be effective upon service of written notice to HMH in the manner set forth herein. In the event of a termination, City shall remain responsible to pay HMH for all services provided through the date of termination pursuant to the terms of this Agreement.



10. GENERAL PROVISIONS.

(A) ATTORNEY FEES. If any action or proceeding is initiated to enforce or construe any provision of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from any party or parties against whom a judgment is entered, all reasonable attorney fees and costs incurred by the prevailing party in connection with such action or proceeding in addition to such other relief to which such prevailing party is entitled.

(B) BINDING EFFECT. This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.

(C) CHOICE OF LAW. This Agreement will be interpreted in accordance with the laws and statutes of the State of Idaho.

(D) NOTICES. Any notice under this Agreement shall be in writing and shall be treated as duly delivered if the same is personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, and properly addressed as follows:

Notice to City:

Becky Crofts, City Administrator  
City of Middleton, Idaho  
1103 West Main Street  
Middleton, Idaho 83644

Notice to HMH:

Mark Hilty  
Hamilton, Michaelson & Hilty, LLP  
1303 – 12<sup>th</sup> Avenue Road  
Nampa, Idaho 83686

(E) PARAGRAPH HEADINGS. The paragraph headings of this Agreement are for clarity in reading and not intended to limit or expand the contents of the respective paragraphs.

(F) PARTIAL INVALIDITY. Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision of this Agreement is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement

(G) FURTHER ASSURANCES. The parties each for themselves do further covenant to the others to execute any and all other documents necessary to effect the transfers contemplated by this Agreement.

(H) TIME. Time is declared to be of the essence to this Agreement.

(I) WAIVER. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referenced in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

(J) NO ASSIGNMENT BY HMH. HMH shall not sell, assign, or transfer all or any portion of its interest in this Agreement at any time.

(K) HANDWRITTEN PROVISIONS. Handwritten provisions inserted in this Agreement, and initialed by the parties in ink, shall control all typewritten provisions in conflict therewith.

(L) ENTIRE AGREEMENT. This Agreement supersedes all prior agreements between the parties with respect to its subject matter, and constitutes (along with the other documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter.

(M) EXECUTION AND COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement but all of which shall be considered one instrument.

(N) AMENDMENTS. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by further agreement, in writing, duly executed by the parties.

[End of text.]

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

THE CITY OF MIDDLETON

\_\_\_\_\_  
By: Steven Rule, Mayor

Attest:

\_\_\_\_\_  
City Clerk

HAMILTON, MICHAELSON & HILTY, LLP

\_\_\_\_\_  
By: MARK HILTY, Partner



**MAIN OFFICE**300 Agri-Service Way  
Kimberly, ID 83341(208) 734-7772  
1-800-388-3599  
Fax: (208) 734-7798**Together, we drive agriculture FORWARD**

www.agri-service.com

**Marsing, ID**5596 Buntrock Road  
Marsing, ID 83639(208) 896-4000  
1-855-893-4045  
Fax: (208) 896-4006**Fruitland, ID**6355 Highway 95  
Fruitland, ID 83619(208) 454-0705  
1-800-972-3191  
Fax: (208) 454-8598**Ship To:** IN STORE PICKUP**Invoice To:** Jonathan R. Roedel  
202 East Ash Street  
Caldwell ID 83605

Branch 10 - MARSING			
Date 04/29/2021	Time 15:12:36 (O)		Page 1
Account No. ROEDE004	Phone No.	Estimate No. 001833	
Ship Via		Purchase Order	
		Salesperson DVF	

ESTIMATE EXPIRY DATE: 05/14/2021

**SERVICE ESTIMATE - NOT AN INVOICE**

Our techs are both 3G & 4G certified welders.  
 From prep\* to welding\* to finish work\*  
 they'll have you back in one piece!  
 labor per fruitland

Stock #: M030419 BIG BALER

MS #: FHB05345

Make: MF Model: 2290

Is to have the following work done

Install scales

ADDITIONAL DESCRIPTION:

Install scale kit

Part#	Description	Qty	Price	Amount
700706232	WEIGH BAR PIVOT	3	785.00	2355.00
700113880	PIVOT PIN-90MM	1	196.00	196.00
70920449	ROLL PIN-0	1	1.14	1.14
700113883B	LATCH/WEIG	1	140.90	140.90
700113877	LATCH BEAR	1	177.93	177.93
700706233	WEIGH BAR LATCH	1	542.00	542.00
SN1599	HEX BOLT-3/4IN-	3	3.85	11.55
700113764B	CLAMP	1	72.14	72.14
700113881	MOUNT, LEFT HAN	1	133.00	133.00
700113868	WEIGHT KIT MOUN	1	236.00	236.00
700100054	SPACER/ROL	2	90.79	181.58
7702038	BOLT	2	1.81	3.62
700706456	HARNESS,WI	1	776.00	776.00
8702193	CAPSCREW-1/4"-2	4	.29	1.16
700722232	SCALE BOX	1	3892.00	3892.00
700113876	SPACER	2	21.06	42.12
7701758	HEX CAP SCREW-5	1	3.23	3.23
70926957	RING,RETAI	1	1.85	1.85
355565X1	NUT-5/16-1	1	.44	.44
AG562196	FLAT WASHER-#8	4	.20	.80

**MAIN OFFICE**  
 300 Agri-Service Way  
 Kimberly, ID 83341  
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Ship To: IN STORE PICKUP

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Branch 10 - MARSING		
Date 04/29/2021	Time 15:12:36 (O)	Page 2
Account No. ROEDE004	Phone No.	Estimate No. 001833
Ship Via		Purchase Order
		Salesperson DVF

ESTIMATE EXPIRY DATE: 05/14/2021

**SERVICE ESTIMATE - NOT AN INVOICE**

Part#	Description	Qty	Price	Amount
CH3B-4501	LOCK WASHER	4	.26	1.04
SN668	LOCKWASHER-5/8"	1	.44	.44
70925617	CLAMP-4091	1	2.16	2.16
7703499	BOLT	1	.50	.50
Y705046	WASHER, LOC	2	.19	.38
SN669	HEX NUT-5/8"-11	1	1.47	1.47
SN3723	LOCKWASHER-5/16	1	.81	.81
704494	NUT/HN #8-	4	1.05	4.20
SN1507	HEX HEAD BOLT-1	2	2.09	4.18
Y704718	LOCKNUT-3/	1	2.61	2.61
700113882	SPACER	1	189.11	189.11
700113875	PIVOT BEARING-5	1	85.30	85.30
70928654	LINE CLAMP	12	1.80	21.60
Y705582	WASHER	1	1.01	1.01
355566X1	HEX NUT-3/	4	.28	1.12
353691X1	CAPSCREW-3	2	.87	1.74
Y704718	LOCKNUT-3/	2	2.61	5.22
AG550191	LOCK WASHER-3/8	4	.71	2.84
Y705525	WASHER	1	.67	.67
71432183	WASHER-M12 - 1/	4	.94	3.76
Y52266	BUSHING-1.	2	2.84	5.68
704031	NUT/1/2-13	6	.81	4.86
FRT	FREIGHT	1	100.00	100.00
BOLTS	GR#5, NUT&BOLT	2	3.51	7.02
DISC	PARTS DISCOUNTS	1-	904.64	904.64-

MISCELLANEOUS CHARGES:	Description	Price	Amount
	SHOP SUPPLIES		

Parts:	8311.54
Labor:	1540.00
Miscellaneous:	60.00
<b>TOTAL:</b>	<b>9911.54</b>

Authorization: \_\_\_\_\_





RESOLUTION 457-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDDLETON, IDAHO, RELATING TO SURPLUS PROPERTY; DECLARING A BASEBALL BACKSTOP SURPLUS PROPERTY, AUTHORIZING AND DIRECTING THE DISPOSAL OF SURPLUS PROPERTY; PROVIDING FOR RELATED MATTERS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Middleton, Idaho (the “City”) has acquired certain personal property for the purpose of carrying out services in the public interest; and

WHEREAS, the backstop located at Middleton Place Park of the City is no longer needed by the City; and

WHEREAS, the City Council has deemed it unnecessary to maintain ownership of the backstop and the Greater Middleton Park and Recreation District can use the backstop; and

WHEREAS, the City Council desires to dispose of the backstop located at Middleton Place Park.

NOW THEREFORE, BE IT RESOLVED by the City Council of Middleton, Idaho, as follows:

Section 1: The City Council finds and declares that the City no longer has a use for the backstop located at Middleton Place Park.

Section 2: The City Council has determined the value of the backstop to be approximately five thousand dollars (\$5,000.00).

Section 3: The City Clerk is hereby to convey the backstop to the Greater Middleton Park and Recreation District (“GMPRD”) with the understanding that the GMPRD will be responsible for the costs of removing and relocating the backstop fences and diamond dust and rehabilitating the Middleton Place Park by removing the diamond dust and replacing it with topsoil.

Section 4: This Resolution shall take effect and be in force immediately upon its passage and approval.

ADOPTED BY THE COUNCIL OF THE CITY OF MIDDLETON, IDAHO, THIS \_\_\_\_ day of May, 2021.

CITY OF MIDDLETON

\_\_\_\_\_  
Steven J. Rule, Mayor

ATTEST:

\_\_\_\_\_  
Jennica Reynolds, Deputy City Clerk





City of Middleton  
Area of City Impact Map

Goodson Rd

Galloway Rd

Purple Sage Rd

Purple Sage Rd

Can-Ada Rd

Lincoln Rd

Boise River

Boise River

DRAFT

84

**EXPLANATION**

- Middleton City Future Impact Area Boundary
- Middleton City Existing Impact Area Boundary
- Middleton City Boundary
- Star City Boundary
- Caldwell City Boundary

0 0.25 0.5 Miles

Revision Date: 2018-12-20



# City of Middleton 2018 Land Use Map

DELETE

**EXPLANATION**

**Land Uses**

Vacant Commercial	Commercial	Agricultural
Vacant Industrial	Industrial	Church
Vacant Public	Multi-Family	Private School
Vacant Residential	Public	
Vacant Mixed-Use	Residential	
Vacant Transit	Mixed-Use	

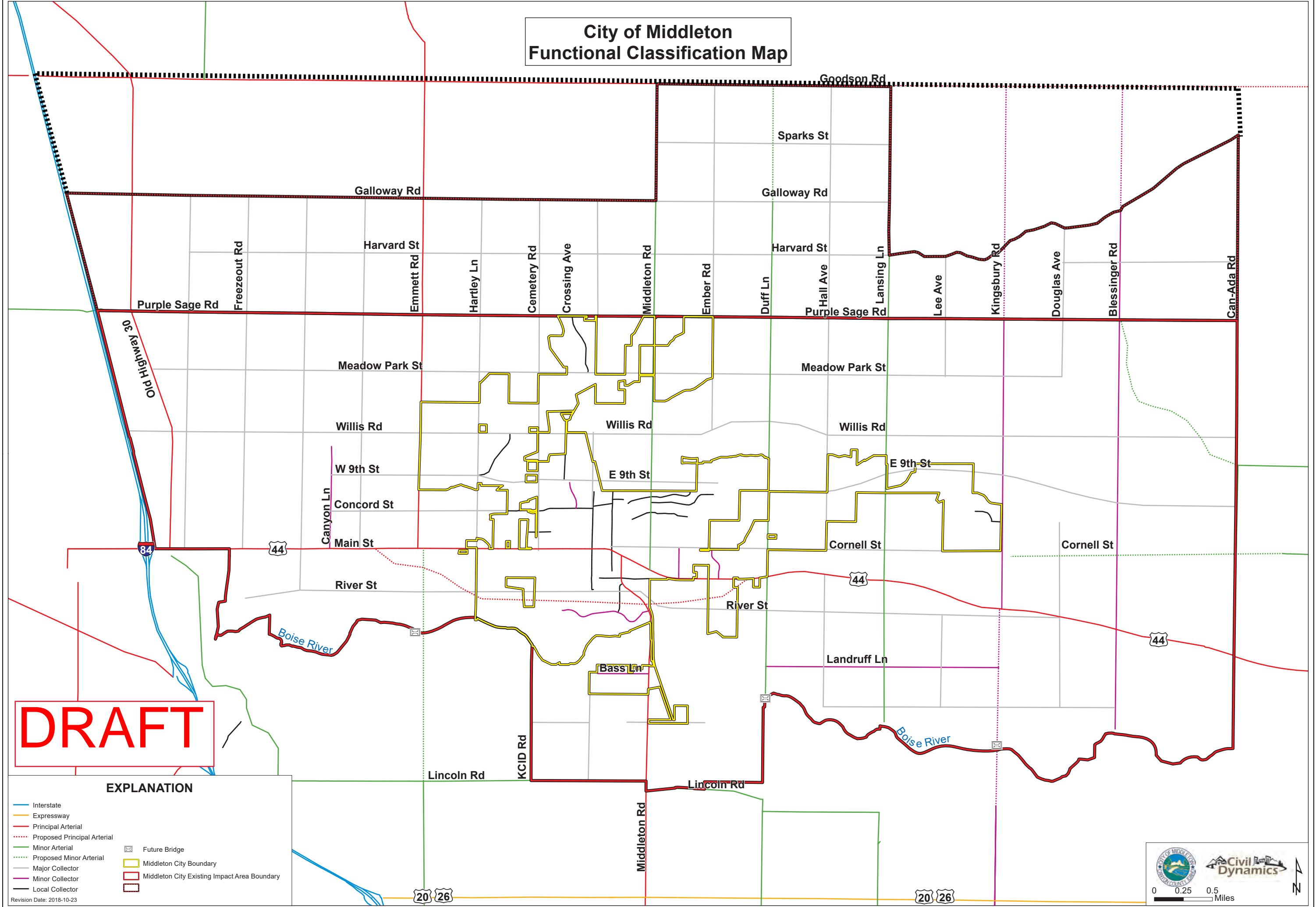
**Boundaries**

Middleton City Boundary	Star City Boundary
Middleton City Existing Impact Area Boundary	Caldwell City Impact Area
Middleton City Proposed Impact Area Boundary	Nampa City Impact Area

Revision Date: 2018-12-20



City of Middleton  
Functional Classification Map



DRAFT

EXPLANATION

- Interstate
- Expressway
- Principal Arterial
- Proposed Principal Arterial
- Minor Arterial
- Proposed Minor Arterial
- Major Collector
- Minor Collector
- Local Collector
- Future Bridge
- Middleton City Boundary
- Middleton City Existing Impact Area Boundary

Revision Date: 2018-10-23

0 0.25 0.5 Miles

Civil Dynamics



# City of Middleton Future Acquisitions Map

DRAFT

## EXPLANATION

### Facilities

- Future School
- Future Park

### Roads and Trails

- Future Condition 6' Bike Lane and 8' Pedestrian Detached Trail
- Concept ITD State Hwy 44 Alternate Route
- Transit Route
- CHD4 Arterial
- City Bus Route
- Greenbelt
- Future Pedestrian/Bicycle
- Future Transit Stop

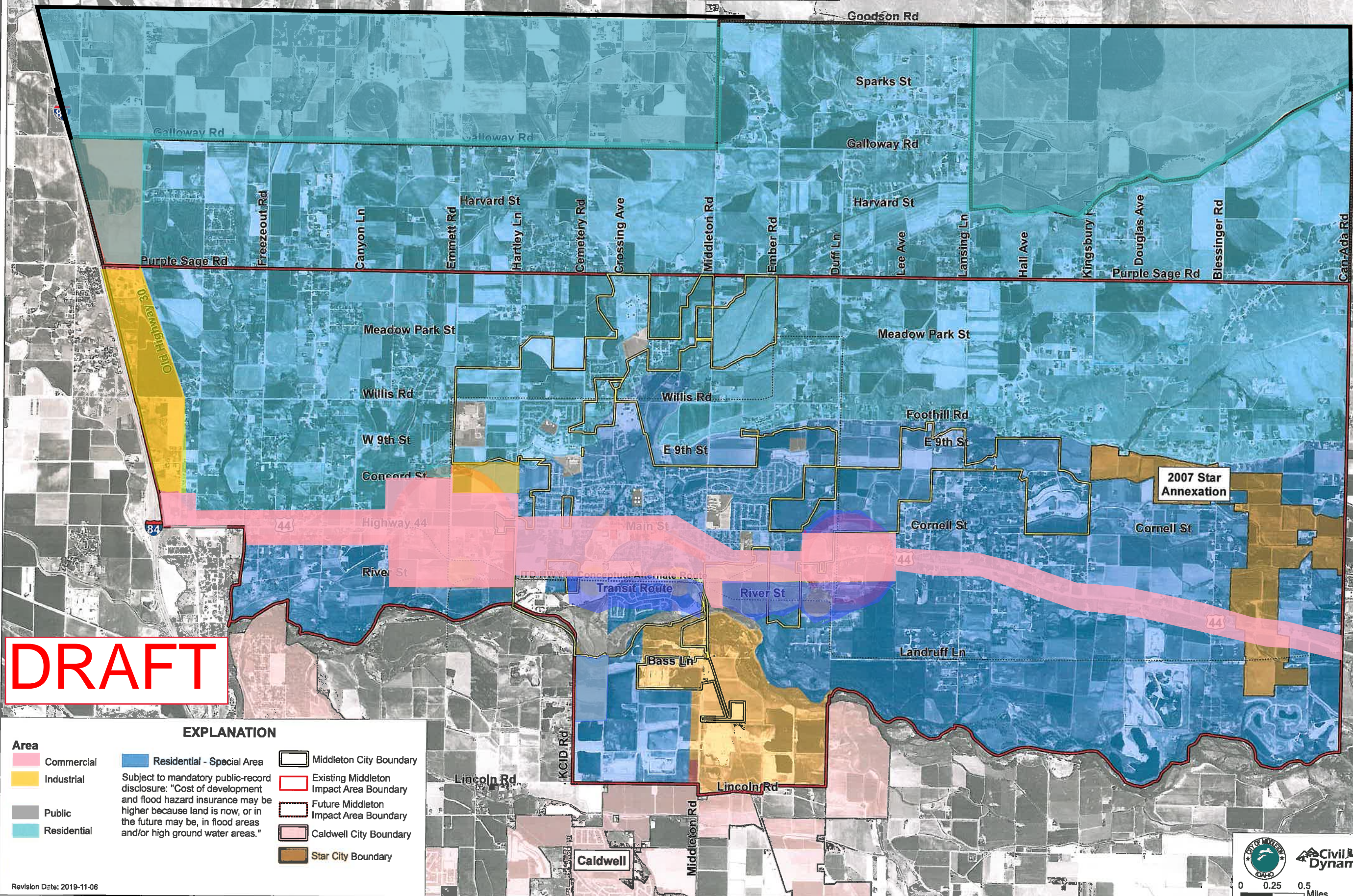
### Symbols

- Future Roundabout 100% Designed
- Future Roundabout 30% Designed
- Future Roundabout
- Future Bridge
- Middleton City Boundary
- Middleton City Existing Impact Area Boundary
- Middleton City Future Impact Area Boundary
- Star City Boundary
- Nampa City Impact Area Boundary
- Caldwell City Impact Area Boundary

Revision Date: 2019-11-06

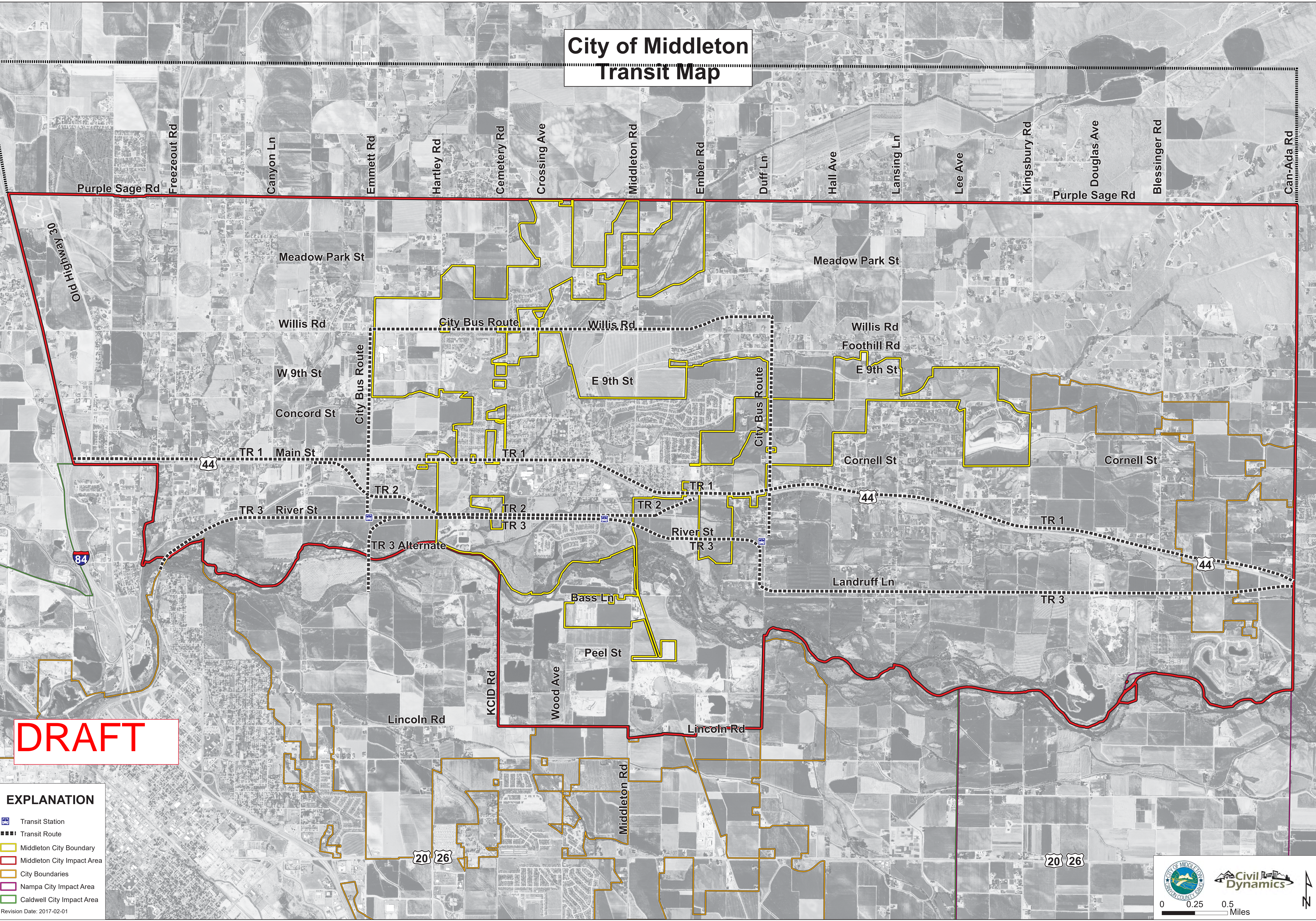


# City of Middleton Future Land Use Map





# City of Middleton Transit Map



**DRAFT**

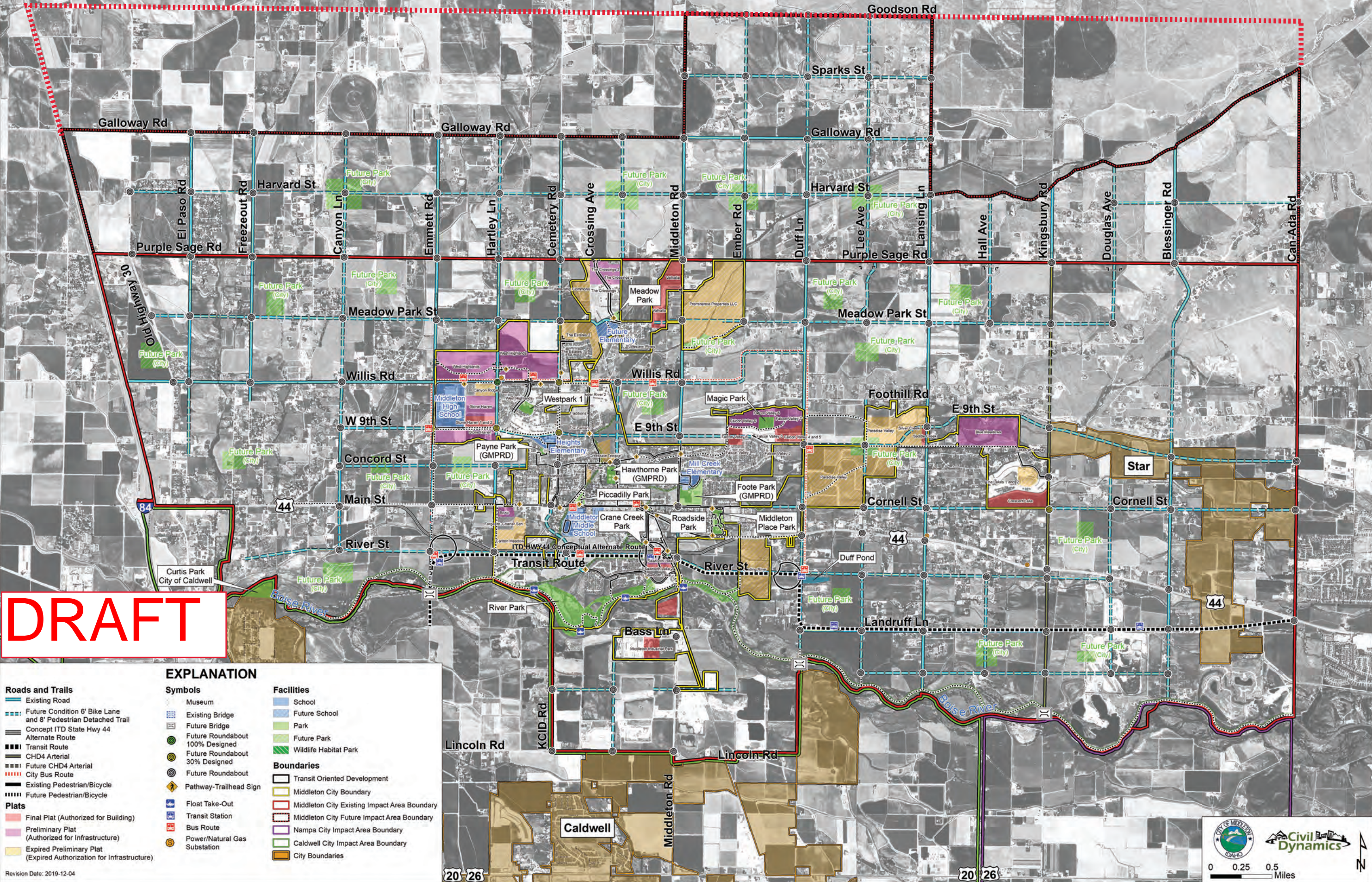
## EXPLANATION

- Transit Station
- Transit Route
- Middleton City Boundary
- Middleton City Impact Area
- City Boundaries
- Nampa City Impact Area
- Caldwell City Impact Area

Revision Date: 2017-02-01



City of Middleton  
Transportation, Schools and Recreation Map



DRAFT

EXPLANATION		
<b>Roads and Trails</b>	<b>Symbols</b>	<b>Facilities</b>
Existing Road	Museum	School
Future Condition 6' Bike Lane and 8' Pedestrian Detached Trail	Existing Bridge	Future School
Concept ITD State Hwy 44 Alternate Route	Future Bridge	Park
Transit Route	Future Roundabout 100% Designed	Future Park
CHD4 Arterial	Future Roundabout 30% Designed	Wildlife Habitat Park
Future CHD4 Arterial	Future Roundabout	
City Bus Route	Pathway-Trailhead Sign	<b>Boundaries</b>
Existing Pedestrian/Bicycle	Float Take-Out	Transit Oriented Development
Future Pedestrian/Bicycle	Transit Station	Middleton City Boundary
	Bus Route	Middleton City Existing Impact Area Boundary
	Power/Natural Gas Substation	Middleton City Future Impact Area Boundary
		Nampa City Impact Area Boundary
		Caldwell City Impact Area Boundary
		City Boundaries
<b>Plats</b>		
Final Plat (Authorized for Building)		
Preliminary Plat (Authorized for Infrastructure)		
Expired Preliminary Plat (Expired Authorization for Infrastructure)		

Revision Date: 2019-12-04





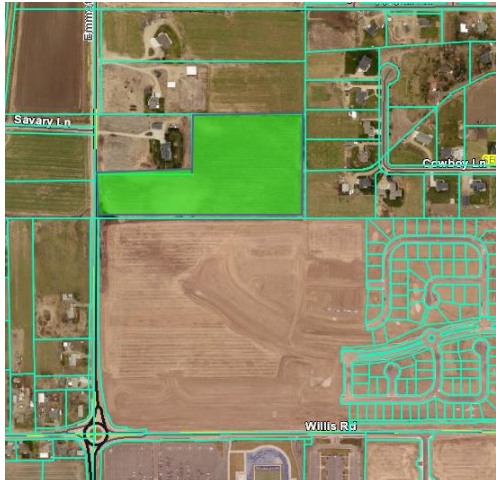


# STAFF REVIEW AND REPORT

## Middleton City Council

### Bridger Creek Subdivision

#### Snapshot Summary

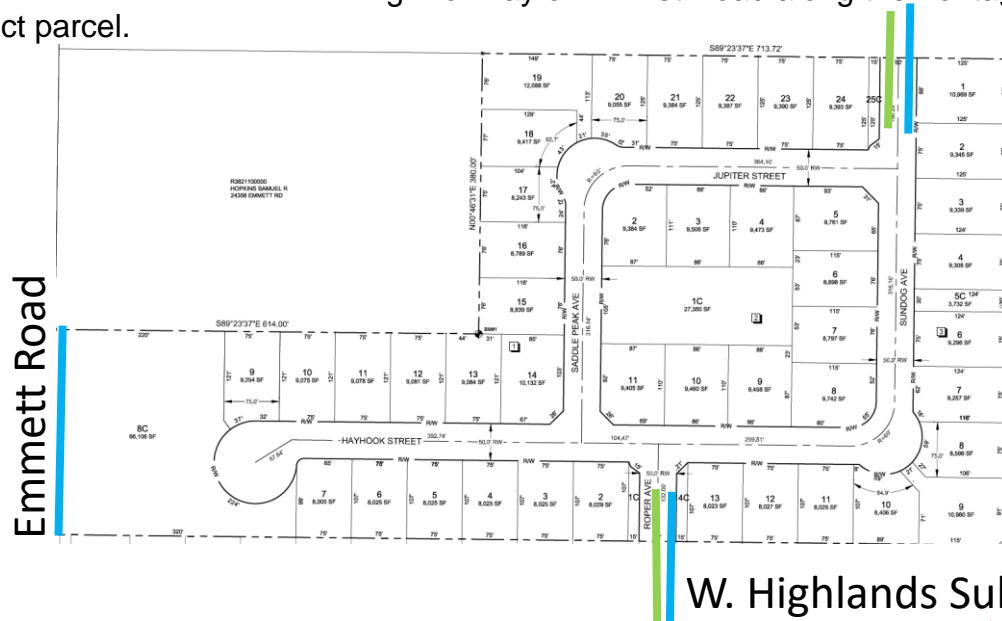
	DESCRIPTION	DETAILS
	Acreage	14.71 acres
	Current Zoning	County Zoning R-1
	Proposed Zoning	R-3
	Current Land Use	Residential
	Proposed Land Use	Residential
	Lots	44 residential lots and 6 common lots for total of 50 lots.
	Density	2.99 units per acre
	Open Space	16%
	Amenities	27,350 s.f. open grassy area Block 2, Lot 1C.

- A. City Council Hearing Date:** May 5, 2021
- B. Project Description:** Residential subdivision with 44 buildable lots and 6 common lots on 14.71 acres of vacant land located at 0 Emmett Road (Tax Parcel #R38211012).
- C. Application Requests:** Applicant has three applications before City Council. The first application is for annexation and rezone. Applicant is requesting a rezone from County R-1 to City of Middleton R-3 zoning. The second application is for Development Agreement, and the third application is for Preliminary Plat involving 44 residential building lots and 6 common lots.

Applicant had a 4<sup>th</sup> application for variance before the Planning & Zoning Commission. Specifically, applicant requested a variance to allow a 60' turning radius for streets instead of the code required 125' turning radius. This allowed tighter corners on two corners in the subdivision. The P&Z Commission approved that application, and those turning radiuses are shown on the plat before Council.

- D. Current Zoning & Property Condition:** The property is currently located in the County and zoned R-1. The property to the South is within Middleton city limits, and it is zoned R-3. Properties to the west, north and east are located in the County and zoned Agriculture.

- E. City Services:** City water and sewer are located immediately south of the project in the West Highlands project. Sewer and water will be brought up through Roper Avenue to service all lots and will be extended northward to service future subdivisions. Additionally, per Engineering review and comments, Developer will extend a 12" water main in the right-of-way of Emmet Road along the frontage of the project parcel.



- F. Traffic, Access & Streets:**

Access to the subdivision is via Willis Avenue and north through the West Highlands subdivision.



Canyon Highway District #4 and City Engineer have recommended a third stub street into the "Hopkins" property to the north so that if the parcel is ever developed in the future, the parcel will take access through Bridger Creek rather than direct access on to Emmett Road.

However, Planning Staff does not recommend a third access, Code only requires developer to create two accesses. The five acre "Hopkins Property" already has access to Emmett road, and it would be overly burdensome to force Bridger Creek to create additional accesses that may never be needed in the future.

As to frontage improvements, Developer should be required to improve, per City standards, the 50' half portion of Emmet Road. Staff recommends this requirement be made a condition of approval for preliminary plat and/or inserted into the Development Agreement.

Engineering Staff and ITD have reviewed developer's preliminary plat and Traffic Impact Study. Both have recommended that Developer pay the following pro-rata share for traffic impacts and intersection controls: \$18,529 toward intersection of Emmett Road and Hwy 44; \$11,250 for intersection of Willis and Hartley; and \$13,750 for intersection of Emmett and Purple Sage for total pro-rata fee of \$43,529.

Developer's payment of these pro-rata fees should be made a part of the Development Agreement and/or condition of approval for preliminary plat.

- G. Pathway, Sidewalks & Open Space:** 5' wide concrete sidewalks span the local roads throughout the subdivision. An 8' wide asphalt pathway will span along the frontage improvements to Emmett Road. Per MCC 5-4-10-4(B), Developer is required to create a traffic buffer along Emmett Road, which buffer is appropriately shown on the preliminary plat.

Developer has provided 16% open space in the subdivision. This exceeds the 5% minimum required by MCC 5-4-10-10. A half acre lawn area has been provided by developer on a common lot in the center of the subdivision (L1C/B2)
- H. Stormdrain and Pressurized Irrigation:** Stormdrain facilities and pressurized irrigation have been provided and are approved by the City Engineer.
- I. Middleton Rural Fire District:** The subject property is in the Middleton Rural Fire District. The District has reviewed the preliminary plat and approved the preliminary plat subject to compliance with District comments.
- J. Dimensional Standards/Preliminary Plat Application:** The preliminary plat complies with all dimensional standards and codes of the City of Middleton except the lower turning radius standard approved by the P&Z Commission.
- K. Annexation and Rezone:** Applicant is requesting that the entire 14.7 acre project parcel be annexed into the City of Middleton and rezoned to R-3 zoning, which permits three single family homes per gross acres. The parcel is contiguous to City limits, and City services are accessible to the parcel, which are the primary requirements for annexation. Applicant has also complied with all other documentation requirements necessary to complete the annexation and rezone of the property.

- L. Development Agreement:** Every annexation and rezone request should entail a Development Agreement (“DA”). Applicant and City Staff have used the City’s form for the DA currently before Council, except the following five provisions have been inserted:
- a. Project area to be zoned R-3.
  - b. Developer shall, at its own cost, improve the 50’ half-road portion of Emmett Road to City standards and dedicate the same to the City of Middleton.
  - c. Developer shall pay additional pro-rata or proportionate share fees for all traffic impacts and intersection controls in the amount of \$43,529.
  - d. Developer shall build only single family homes, without 2<sup>nd</sup> accessory dwellings.
  - e. Developer may use subdivision property not used for residential purposes for common area, utility lines, storm water management or other “allowed” uses per MCC 5-4-1 Table 1.

- M. Comprehensive Plan & Land Use Map:** Applicant’s project complies with the Comprehensive Plan Land Use Map because the project parcel is designated “Residential” on the Land Use Map, which matches the residential use planned for the site.

Additionally, Applicant’s project complies with the *Goals, Objectives, and Strategies* of the *2019 Middleton Comprehensive Plan* as follows:

- a. *Goals 3 and 23:* The project provides safe vehicle and pedestrian facilities in light of the street improvements and sidewalks shown on the preliminary plat.
- b. *Goal 4:* The project will establish a good quality of life with development that pays through impact fees and property taxes for the public services it receives when infrastructure is installed. Additionally, quality lots for residential use increase the quality of life and general welfare of the City.
- c. *Goals 11:* The housing type matches the residents’ lifestyle in the area the project is located.

- N. Comments Received from Surrounding Landowners:** None.

- O. Comments from Agencies:** As already noted above, planning staff received the following comments from agencies: 3/8/2021 comments from the Middleton Rural Fire District. 4/5/2021 comments from Canyon Highway District No. 4, and 4/2/2021 comments from Black Canyon Irrigation District. (Copies of the comments can be found in the City Council Packet.)

- P. Comments from City Engineer and Planning Staff:** Copies of City Engineer comments dated 3/19/2021 and 4/5/2021 and Planning Staff comments dated 3/16/2021 and 4/5/2021 are in the City Council packet.

**Q. Applicant Information:** Application was received and accepted on February 8, 2021. The Applicant/Owner is Hayden Homes Idaho LLC, 1406 N. Main St. #109, Meridian, ID 83642 (208) 869-9785.

<b>R. Notices &amp; Neighborhood Meeting:</b>	<b>Dates:</b>
Newspaper Notification	04/18/2021
Radius notification mailed to Adjacent landowners within 300'	04/16/2021
Circulation to Agencies	04/16/2021
Sign Posting property	04/16/2021
Neighborhood Meeting	01/21/2021

**S. Applicable Codes and Standards:**

Idaho State Statute Title 67, Chapter 65  
Idaho Standards for Public Works Construction and Middleton Supplement thereto  
Middleton City Code 1-14, 1-15, 1-16, 5-1, 5-3, and 5-4.

**T. Conclusion and Recommended Conditions of Approval:**

If City Council is inclined to approve the applications for annexation/rezone, development agreement, and preliminary plat, Planning Staff recommends that the preliminary plat approval be subject to the following conditions of approval:

1. City of Middleton municipal domestic water, fire flow and sanitary sewer services are to be extended to serve the subdivision.
2. City Engineer review comments are to be completed and approved except comment regarding 125' turning radius.
3. All Planning Staff review comments are to be completed and approved.
4. All requirements of the Middleton Rural Fire District are to be completed and approved.








# STAFF REVIEW AND REPORT

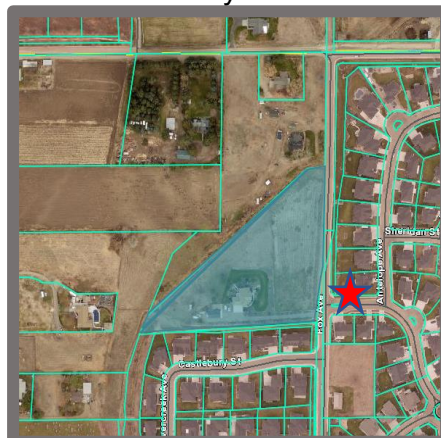
## Middleton City Council

### LaFever Annexation – 23897 Fox Avenue

#### Snapshot Summary

	DESCRIPTION	DETAILS
	Acreage	5.27 acres
	Current Zoning	County Zoning - Agriculture
	Proposed Zoning	R-3
	Current Land Use	Residential
	Proposed Land Use	Residential
	Lots	Single parcel being annexed

- A. **City Council Hearing Date:** May 5, 2021
- B. **Project Description and Application Request:** Request to annex 5.27 acre parcel with single family home into Middleton City limits and rezone to R-3. Parcel is part of the Hawthorn Subdivision. The address is 23897 Fox Avenue, Tax Parcel No. R17932011.
- Once annexed, the parcel has a potential for future development and may be the subject of a preliminary plat with R-3 zoning, which would allow up to 15 single family homes.
- C. **Current Zoning & Property Condition:** The property is currently located in the County and zoned Agriculture. The properties to the south and east are within Middleton City limits and are zoned R-3. Property to the north and west is county property zoned agriculture.
- D. **City Services:** City water and sewer are located at the intersection of Fox Avenue and N. Powder River Dr., which is immediately accessible to the parcel site.



- E. Traffic, Access & Streets:** Access to the parcel is via Fox Avenue. If the parcel owners choose to develop the parcel after annexation, per the Development Agreement accompanying this Annexation, they will need to improve the 30' half-road of Fox Avenue and dedicate that portion of the right of way to the City of Middleton. This improvement will include roadway, curb & gutter, and 5' sidewalk. Additionally, if the parcel owner chooses to develop the parcel, they will be required to move their approach or access further north so it is directly opposite N. Powder River Street, which is the entry to Powder River Subdivision No. 2.



- F. Annexation and Rezone:** Annexation requires primarily two things: (1) the property is contiguous to city limits and (2) sewer and water service are available for immediate hook up. Applicant's parcel meets both of these requirements. Additionally, Applicant has complied with all other documentation and requirements necessary to complete annexation and rezone.
- G. Development Agreement:** Every annexation and rezone request requires a Development Agreement ("DA"). Applicant and City Staff have used the City's form for the DA, and have added the following provisions:
- Applicant will hook up the existing single-family home to Middleton sewer and water prior to finalization of the annexation by the Ada County Treasurer's Office.
  - All existing wells shall be abandoned per Idaho Department of Water Resources regulations prior to finalization of the annexation by the Ada County Treasurer's Office.
  - All septic systems shall be completely removed and the area recompacted per geotechnical study and report prior to finalization of the annexation by the Ada County Treasurer's Office.
  - Zoning for the parcel shall be R-3.
  - If Applicant develops the parcel after annexation, Applicant will do the following:
    - Any land division will occur through the subdivision platting process, even if the development will involve only two lots, and Applicant's subdivision plat will comply with all engineering and agency requirements for final plat.

- ii. Applicant shall improve the western 30' half-road portion of Fox Avenue the entire length of the project and dedicate the same to the City of Middleton.
- iii. Applicant shall move the current access/approach north so that it is directly opposite N. Powder River Drive.
- iv. Applicant shall obtain a new access/approach permit from the City of Middleton

**H. Comments Received from Surrounding Landowners:** None.

**I. Comments from Agencies:** 3/25/2021 comments from Canyon Highway District No. 4 and 3/26/2021 comments from Middleton Mill Ditch Co. CHD4 indicated that they had no concerns with the project. Middleton Mill District sent a list of requirements that will be triggered if applicant chooses to develop the project in the future. See comments in Council's packets.

**J. Comments from City Engineer:** City engineer reviewed the annexation survey data, exhibit, and legal description and found that the documentation was correct and supported the annexation request. City Engineer comments dated 3/31/2021 are in the City Council packet.

**K. Applicant Information:** Application was received and accepted on February 19, 2021. The Applicant/Owners are Dan and Kerri LaFever – 23897 Fox Avenue, Middleton 83644 (208) 250-2598

<b>L. Notices &amp; Neighborhood Meeting:</b>	<b>Dates:</b>
Newspaper Notification	04/18/2021
Radius notification mailed to Adjacent landowners within 300'	04/16/2021
Circulation to Agencies	04/16/2021
Sign Posting property	04/16/2021
Neighborhood Meeting	01/21/2021

**M. Applicable Codes and Standards:**

Idaho State Statute Title 67, Chapter 65  
 Idaho Standards for Public Works Construction and Middleton Supplement thereto  
 Middleton City Code 1-14, 1-15, 1-16, 5-1, 5-3, and 5-4.



**N. Conclusions and Recommended Conditions of Approval:**

The application for annexation/rezone and application for development agreement are in compliance with Middleton City Code and standards. If the City Council is inclined to approve the applications, Planning Staff recommends that no conditions of approval be tied to the applications. The Development Agreement will take care of any issues that may arise.

Prepared by Middleton City Planner, Robert Stewart

Dated: 4/30/2021

## **CONTRIBUTION AGREEMENT**

This Contribution Agreement ("Agreement") is entered into by and between the City of Middleton, a municipal corporation in the State of Idaho ("City"); and Providence Properties, LLC ("Developer").

### **RECITALS**

WHEREAS, Developer owns approximately 99.02 acres of real property located at 0 Duff Lane on the East side of Duff Lane, South of Foothill Rd. and North of 9<sup>th</sup> Street, Middleton, Canyon County, Idaho, commonly referred to in the Canyon County Assessor's records as Parcel Nos. R33861 and R3386101, and legally described in Exhibit A attached hereto and incorporated herein by this reference (Property); and

WHEREAS, The City adopted Ordinance No. \_\_\_, on \_\_\_\_\_, \_\_\_\_\_ to annex and rezone the Property from Canyon County Rural Residential (RR) to City of Middleton Single-Family Residential (R-3). The Ordinance became effective after it was approved, signed, published and recorded according to law, all of which actions the City performed at the City's expense and with the Developer's cooperation; and

WHEREAS, Developer intends to improve the Property according to the Middleton City Code and the City's public works standards at the time(s) the Property is improved; and

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the recitals above, which are incorporated below, and the mutual covenants, representations, and performances herein bargained for, relied on, and expected, the parties agree as follows:

### **ARTICLE I INTERSECTION IMPROVEMENTS**

Developer agrees to pay an Intersection Mitigation Fee as part of the Subdivision's impact on the City road network. Said fees total \$427,008.00 and shall be paid on the following schedule:

A. Developer agrees to contribute \$133,008.00 of the total Intersection Mitigation Fee towards an eastbound left turn lane at the intersection of Duff Lane and SH 44. Developer agrees to contribute said amount by managing the design, surveying, engineering, approval process and construction of the left turn lane. Developer shall coordinate with City, ITD and Canyon Highway District #4 during the design, management, and construction of the left turn lane.

- a. Developer's \$133,008.00 responsibility includes the following items and costs, which items and costs are hereinafter referred to as "Work":

1. All survey work, including Topographic survey
  2. Geotechnical Study
  3. Site Condition Analysis
  4. Engineering
  5. Application and review fees of all public reviewing bodies
  6. Bidding and contracting
  7. Construction costs (including but not limited to the cost of widening the road section, road closures, traffic control, drainage improvements, utility relocation or augmentation, striping and all required inspections and reporting)
  8. Construction management fee totaling 8% of all items listed above.
- b. Developer agrees to start the surveying and engineering design of the turn lane once the Waterford Phase 1 construction plans are approved by the City.
  - c. During preliminary engineering, Developer will deliver to the city a preliminary cost estimate of the overall Work.
  - d. At the conclusion of the bidding and contracting phase of the project and before construction begins on the Work, Developer will provide to the City an accounting of the costs to be incurred as well as an estimate of the remaining costs. Developer and the City will evaluate the overall cost of the Work and determine if additional monies will be required to complete the Work over and above the \$133,008.00 amount.
  - e. The City is responsible for the acquisition of the right of way, and construction cannot commence until the right of way is secured. Developer is responsible for providing to the City a legal description of the right of way to be acquired.
  - f. Developer agrees to start construction within a reasonable time after the turn lane construction plans are approved by all applicable entities and the City has acquired the right of way, and Developer will work to finish construction of the turn lane with deliberate speed depending on the conditions on the ground.
  - g. At final acceptance of the turn lane, Developer will provide a final accounting of all the items defined in the Work. In the event the full cost of the left turn lane and all related items listed in 3.2.A are more than \$133,008.00, the City will pay Developer the difference between the contribution and total cost. In the event the total cost is less than \$133,008.00, Developer will pay the difference to the City.
  - h. In whatever phase the City acquires the right of way for the left turn lane, the final plat for the subsequent phase will not be approved by the City until the left turn lane is constructed and accepted by all applicable entities.
- B. The remaining \$294,000.00 Intersection Mitigation Fee will be paid to the City of Middleton on a per phase and per lot basis. The fee for each phase is based on the number of buildable lots in each phase. Payment of the fee for each phase of development will be a condition of final plat approval.

**ARTICLE II  
BRIDGE IMPROVEMENTS**

Developer agrees to pay 40% of the design, construction management, and construction costs for the bridge/culvert crossing located on Duff Lane at the Middleton Mill Ditch. The April 14, 2020 Titanium Excavation Budget, attached hereto as Exhibit A, sets forth a \$338,700.00 estimate for the crossing's construction costs. Design work is estimated to be an additional \$20,000.00. Developer may pay its 40% pro-rata portion of the total \$358,700.00 amount one of two ways:

A. Developer may pay, by cashier's check or personal check, to the City 40% of the estimated cost of \$358,700 multiplied by 150%, which is the City's typical bond percentage, for a total amount of \$215,220.00. City will cash the check and hold the money in trust until the bridge is ultimately constructed.

B. Developer shall design and construct the culvert crossing along with its frontage improvements along Duff Lane next to the Waterford project.

- i. City will pay Developer 8% of the overall cost for design and construction management, which amount will be offset against 40% owed.
- ii. Developer is responsible for completing the design of the culvert crossing and getting bids for the project.
- iii. Upon receipt of bids, Developer and the City agree to meet and determine the actual cost of the project. If the project costs more than the current estimate, Developer agrees to pay 40% of the increased amount. If the project costs less than the current estimate, then Developer will only be responsible for 40% of the lesser amount.
- iv. The Parties acknowledge that the Middleton Mill Ditch will have water in it until on or about October 15, 2021. Failure to complete the bridge/culvert crossing will not delay the City's final plat approval assuming all other required frontage improvements are complete and accepted by the City or other appropriate agency.
- v. If Developer desires final plat approval before completion of the project, Developer will submit a surety bond for the bridge construction in an amount 150% of Developer's responsibility for the bridge construction. As soon as the water is out of the ditch, Developer agrees to construct the project.
  1. During the construction project, Developer may submit a "pay application" every 30 days for work completed. The City will pay the amount due within 30 days, less Developer's 40% portion.
- vi. The surety will stay in place until the bridge is completed and accepted by the City.



**ARTICLE III  
FAILURE TO COMPLY WITH AGREEMENT**

3.1 If the Developer fails to comply with any of the terms or conditions in this Agreement, then the portion(s) of this Agreement pertaining to the breach may be modified or terminated by the Middleton City Council. If after a breach, the City Council determines that the terms of this Agreement applicable to the breach should be modified, the term(s) of this Agreement shall be amended and the Developer shall comply with the amended terms.

Any breach waived by the City shall apply solely to the breach waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

3.2 Upon a breach of this Agreement, any of the parties in any court of competent jurisdiction, by action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance of both, or may obtain rescission, disconnection, and damages for repudiation or material failure of performance.

3.3 NOTICE OF FAILED PERFORMANCE. Upon any failure of any party to this Agreement to perform its obligations under this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the satisfaction of the complaining party with thirty (30) days of the receipt of such notice.

**ARTICLE IV  
GENERAL PROVISIONS**

4.1 This Agreement contains the entire agreement of the parties respecting the Property and supersedes all prior discussions and written and verbal agreements between the parties respecting the Property.

4.2 Any notice that a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same registered or certified mail with a return receipt requested, or by Federal Express or other reputable overnight delivery service. Notice shall be given to the parties at the following addresses or such other address and to such other persons as the parties may designate after giving notice. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail if sent by mail pursuant to the forgoing:

Middleton: City Clerk  
City of Middleton  
P.O. Box 487  
Middleton, Idaho 83644

Developer: Providence Properties, LLC  
701 S. Allen St, Suite 104  
Meridian, ID 83642

4.3 If either party shall fail to perform under this Agreement and said failure is cured with the assistance of an attorney for the other party, as a part of curing said failure, the reasonable attorneys' fees incurred by the other party shall be reimbursed to the other party upon demand. In the event a suit or action is filed by either party against the other to interpret or enforce this Agreement, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred therein, including the same with respect to an appeal.

4.4 The Agreement shall be effective after being fully executed. This Agreement shall become valid and binding only upon its approval by the City Council and execution of the Mayor and City Clerk. After its execution, the Agreement shall be recorded in the office of the County Recorded at the expense of the City.

4.5 Each commitment and restriction described in this Agreement shall be a burden on the Property and run with the land and shall be appurtenant to and for the benefit of the Property, adjacent property and other residential land near the Property.

This Agreement shall be binding on the City and Developer, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns. Provided, however, that if all or any portion of the Property is divided, then each owner of a legal lot shall only be responsible for duties and obligations or breaches as to their owners' parcels or lots.

The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

4.6 The Property that is the subject of this Agreement is located in Canyon County, Idaho and the terms of this Agreement shall be construed according to the laws of the State of Idaho in effect at this time this Agreement is executed. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Canyon County, Idaho.

4.7 If any term, provision, commitment or restriction of this Agreement or the application thereof to any party or circumstance shall to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.

4.8 Time is of the essence for performance of each obligation in this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF MIDDLETON**

**ATTEST**

By: \_\_\_\_\_  
Steven J. Rule, Mayor

By: \_\_\_\_\_  
Becky Crofts, City Clerk

State of IDAHO            )  
                                  ss.  
County of Canyon        )

I, a notary public, do hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared before me Steven J. Rule, who, being first duly sworn, declared that he is the Mayor of the City of Middleton, Idaho and signed it as Mayor of the City of Middleton.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**DEVELOPER:**

By: \_\_\_\_\_  
Providence Properties, LLC.

State of Idaho            )  
                                  ss.  
County of \_\_\_\_\_)

I, a notary public, do hereby certify that on this \_\_ day of \_\_\_\_\_, 2021, personally appeared before me Neva Coburn who, being first duly sworn, declared that they signed

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_