

**CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

SUBJECT: Houston and Commerce Underpass (Houston and Commerce at IH-37)
Enhancements Project – Multiple Use Agreement with Texas Department of
Transportation

DATE: March 31, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the Interim City Manager or his designee to enter into a "Multiple Use Agreement for Aesthetic Improvements on IH 37 at Commerce Street and IH 37 at Houston Street" between the City of San Antonio and the Texas Department of Transportation (TxDOT), for construction/reconstruction, maintenance, and operation of additional aesthetic improvements in connection with the Houston and Commerce Underpass (Houston and Commerce at IH-37) Enhancements Project located in Districts 1 and 2.

Staff recommends approval of this Ordinance.

BACKGROUND INFORMATION

This Ordinance authorizes the execution of a "Multiple Use Agreement for Aesthetic Improvements on IH 37 at Commerce Street and IH 37 at Houston Street" between the TxDOT and the City of San Antonio which provides for the construction/reconstruction, maintenance, and operation of additional aesthetic improvements, including public pedestrian walkways, pedestrian crosswalks, landscaping, irrigation systems, LED lighting systems, art and other aesthetic improvements on the highway right-of-way of IH 37 and E. Commerce Street and IH 37 and E. Houston Street.

Ordinance No. 89888, passed and approved June 3, 1999, authorized the execution of a Multiple Use Agreement between the City of San Antonio and TxDOT to obtain authorization to use IH 37 right-of-way for the construction of sidewalk improvements, landscaping, and street lighting in the St. Paul Square area and along East Commerce Street from Bowie on the west to the Southern Pacific Railroad on the east through a \$1.5 million grant, funded by the U.S. Department of Commerce Economic Development Administration (EDA).

In March of 2002, TxDOT contacted the city to develop a partnership to improve both East Houston Street and East Commerce Street underpass intersections at IH 37. TxDOT has recently completed construction plans for this project that includes related construction and installation of aesthetic materials to be provided by the City of San Antonio, Bexar County and St. Paul Square Association, Inc. This agreement will make possible the implementation of aesthetic

improvements to the underpass areas at E. Commerce St and IH 37 and at E. Houston St and IH 37, which have also been called for by the District 2 Arena District Master Plan.

The Historic Design and Review Commission, which oversees design changes within the St Paul Historic District, have approved these improvements.

POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council policy to collaborate with other governmental agencies in the development and construction of City infrastructure. Additionally, the Houston and Commerce Underpass (Houston and Commerce at IH-37) Enhancements Project is consistent with city policy to leverage funds through challenge matches with private entities to support infrastructure improvements.

FISCAL IMPACT

There is no financial impact of this ordinance.

COORDINATION

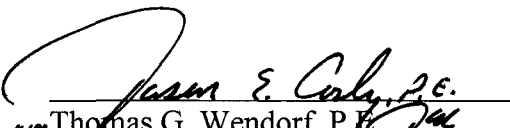
This request for ordinance has been coordinated with the Office of Management and Budget, the Finance Department, the City Attorney's Office, the Parks and Recreation Department, the Texas Department of Transportation, Bexar County, and the St Paul Square Association, Inc.

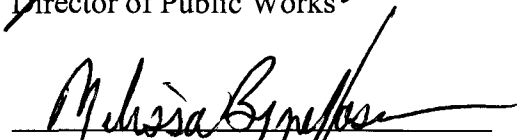
SUPPLEMENTARY COMMENTS

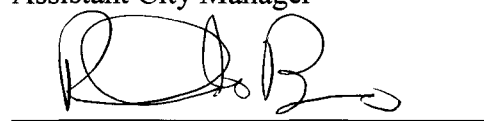
A Discretionary Contract Disclosure Form is not required.

ATTACHMENTS

1. Project Map
2. Multiple Use Agreement

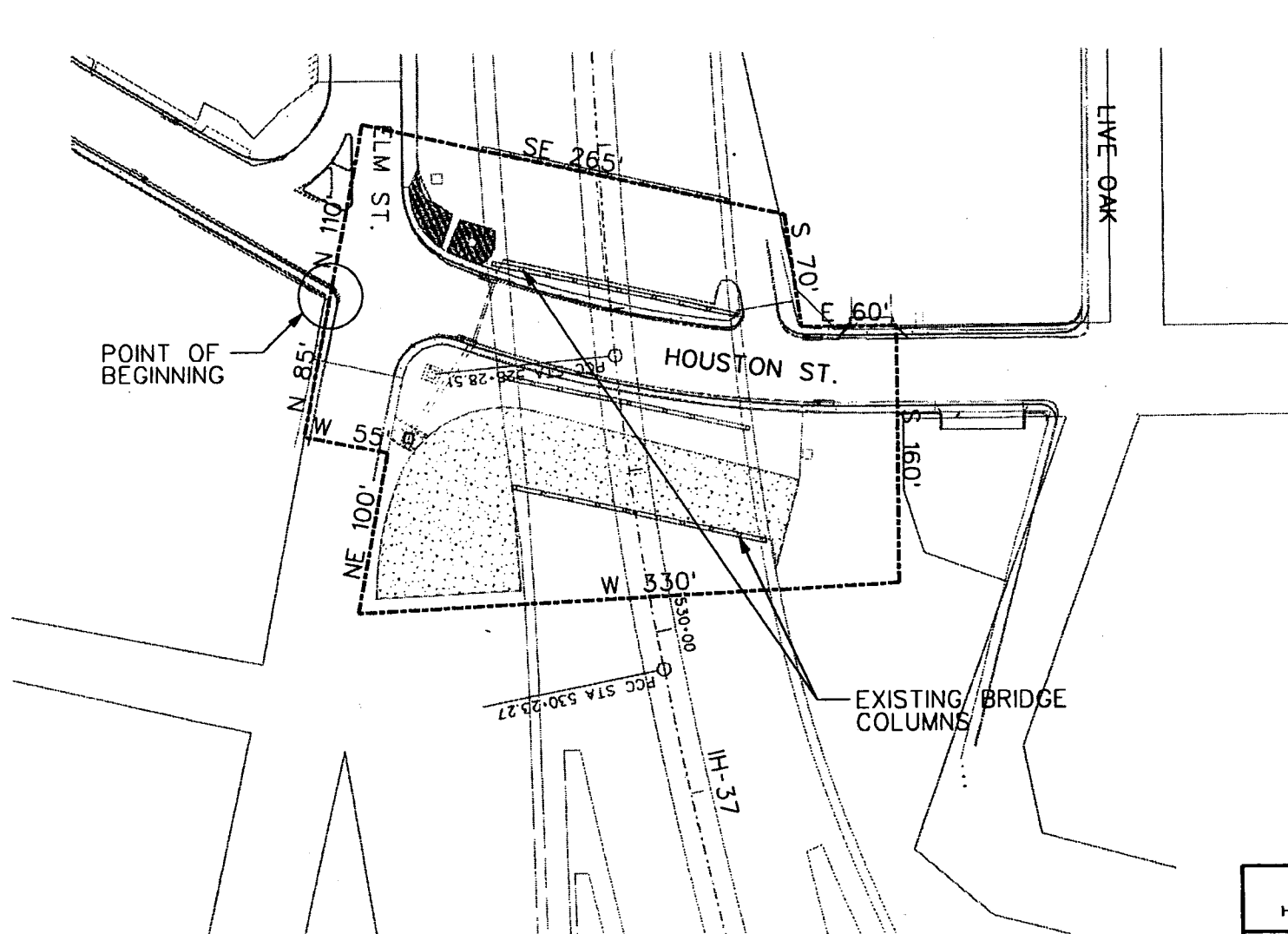

for Thomas G. Wendorf, P.E.
Director of Public Works


Melissa Byrne Vossmeier
Assistant City Manager


J. Rolando Bono
Interim City Manager

Revised on: 8/24/83

Design Engineer: J. L. STILES



SCALE: 1" = 60'

**METES AND BOUNDS
FOR
HOUSTON STREET BOUNDARY**

DATE	BY	REVISION	DESCRIPTION	DATE	BY	REVISION	DESCRIPTION
08/23/83	JLS	1	INITIAL				
08/23/83	JLS	2	REVISED				
08/23/83	JLS	3	REVISED				
08/23/83	JLS	4	REVISED				
08/23/83	JLS	5	REVISED				
08/23/83	JLS	6	REVISED				
08/23/83	JLS	7	REVISED				
08/23/83	JLS	8	REVISED				
08/23/83	JLS	9	REVISED				
08/23/83	JLS	10	REVISED				

MULTIPLE USE AGREEMENT
FOR
AESTHETIC IMPROVEMENTS ON
IH 37 @ COMMERCE STREET
&
IH 37 @ E. HOUSTON STREET

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as the "State", party of the first part, and the City of San Antonio, hereinafter called, the City, party of the second part, is to become effective when fully executed by both parties.

WITNESSETH

WHEREAS, on the _____ day of _____, 20____, the governing body for the City, entered into Resolution/ Ordinance No. _____ hereinafter identified by reference, authorizing the City's participation in this Agreement with the State; and

WHEREAS, the City previously entered into a Multiple Use Agreement with the State, dated June 11, 1999, for the construction, maintenance and operation of public pedestrian walkways, pedestrian crosswalks, landscaping, irrigation systems, lighting, and other improvements on the highway right-of-way located on IH 37 right of way @ Commerce Street; and

WHEREAS, the City now desires to construct/reconstruct, maintain, and operate additional aesthetic improvements on IH 37 @ Commerce Street and IH 37 @ E. Houston Street, including public pedestrian walkways, pedestrian crosswalks, landscaping, irrigation systems, lighting, art and other aesthetic improvements hereinafter referred to as the Facility, on the highway right-of-way of IH 37 @ Commerce Street and IH 37 @ E. Houston Street, shown graphically by the site plan in Exhibit "A" and being more specifically described by metes and bounds in Exhibit "B", which are attached and made a part thereof; and

WHEREAS, the State has indicated its willingness to approve the establishment of the Facility and other uses conditioned that the City will enter into Agreement with the State for the purpose of determining the respective responsibilities of the City and the State with reference to the Facility provided the uses of the Facility are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the State.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

1. DESIGN AND CONSTRUCTION

Aesthetic Improvements Funded thru the State's Construction Landscape Program

The State will prepare or provide for the construction plans (Project No. CL 73-8-139) for aesthetic improvements in the area as shown on Exhibit "A". These aesthetic improvements will be constructed by the State thru funding from the Construction Landscape Program.

Aesthetic Improvements Provided by the City

The City shall provide certain art/aesthetic materials at no cost to the State for installation by the State's contractor at the Facility. Such art/aesthetic materials must be approved by the State before installation at the Facility.

2. INSPECTION

Ingress and egress shall be allowed at all times to such Facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations are necessary and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

3. PARKING REGULATIONS

Parking under IH 37 @ E. Houston Street shall comply with terms and provisions of the previous Agreement between the City and the State, dated November 20, 1975, which pertained to the construction, maintenance and operation of a public off-street parking facility on IH 37 right of way from Nolan Street to E. Houston Street.

4. PROHIBITIONS/SIGNS

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

5. MAINTENANCE

State Maintenance Responsibilities

The State will maintain the pavement structure and surface, curbs, traffic signs, pavement markings, guardrail/concrete rail, drainage systems, bridge components, and all other highway components on the IH 37 main lanes and IH 37 exit/entrance ramps from the main

lanes of IH 37 up to, but not including, the pedestrian crosswalks across the exit/entrance ramps at Commerce street and E. Houston Street.

The State will maintain the structural integrity of the IH 37 bridge structure and all associated bridge components, including retaining walls, bridge embankment riprap, but excluding any illumination system or aesthetic lighting system attached to the bridge structure.

The State will maintain IH 37 route marker signs along Commerce Street and E. Houston Street.

City Maintenance Responsibilities

The City shall maintain and operate all items and all appurtenances of the Facility located within the area shown on Exhibit "A" that are not specifically described under State Maintenance Responsibilities above. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State.

City maintenance responsibilities shall include the following items associated with the Commerce Street and E. Houston Street corridor under IH 37: pavement, curbs, sidewalks, landscape pavers, bollards, illumination and/or aesthetic lighting systems, water drip plates, false columns, finials/sculptures and other art work, traffic and pedestrian signals if specified in other appropriate agreements between the State and the City, street traffic signs, pavement markings, pedestrian curb ramps and crosswalks, landscape plantings (including landscape plantings previously constructed thru the 1997 Governor's Community Achievement Award), irrigation systems, guardrail/concrete rail along the City streets, pedestrian handrail, storm sewer drainage systems, and all other appurtenances within the area described in Exhibit "A".

Further, such responsibility shall include irrigating and caring for landscaped areas, picking up trash, mowing and otherwise keeping the Facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. The City agrees to keep the Facility and any portion of the bridge structures (including concrete columns, bent caps, retaining walls, riprap and steel components) free from all advertising matter, graffiti, or insignia except such identification lettering as may be approved by the State. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the Facility subject the highway to hazardous or unreasonably objectionable discharge of any kind.

6. FEES

Fees for use of the Facility are not permitted.

7. TERMINATION UPON NOTICE

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon 30 days prior written notice, and upon the exercise of any such right by either party, all obligations herein to make improvements to said Facility shall immediately cease and terminate.

8. MODIFICATION/TERMINATION OF AGREEMENT

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the Facility is impeding maintenance, damaging any highway components, impairing safety or that the Facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such Facility is not in the public interest, this Agreement may be: (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the Facility or (2) terminated and the use of the area as proposed herein discontinued.

9. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS

All structures located or constructed within the area covered by this Agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials is prohibited. Operations deemed to be a potential fire hazard shall be subject to regulation by the State.

10. RESTORATION OF AREA

The City shall provide written notification to the State that such Facility will be discontinued for the purpose defined herein. The City shall, within thirty (30) days from the date of said notification, clear the area of all items that were constructed, operated, and maintained as part of the Facility under this Agreement and restore the area to a condition satisfactory to the State.

11. PREVIOUS AGREEMENTS

In the event the terms of this Agreement are in conflict with the provisions of any other existing agreement and/or contracts between the City and the State addressing this Facility, this Agreement shall take precedence over the other agreements and/or contracts. This Agreement will supercede all terms and provisions of the previous Multiple Use Agreement between the City and the State, dated June 11, 1999, which pertained to the construction, maintenance and operation of public pedestrian walkways, pedestrian crosswalks, landscaping, irrigation systems, lighting, and other improvements on IH 37 right of way @ Commerce Street.

12. INDEMNIFICATION

The City acknowledges that it is not an agent, servant, or employee of the State, and that it is responsible for its own acts and deeds and for those of its agents or employees during the performance of contract work.

Neither party hereto intends to waive, relinquish, limit or condition its right to avoid any such liability by claiming its governmental immunity.

When notified by the State to do so, the other party hereto shall within thirty (30) days from receipt of the State's written notification pay the State for the full cost of repairing any damages to highway components which may result from the maintenance or operation of the Facility, and shall promptly reimburse the State for costs of repair work made necessary by reason of such damages.

Nothing in this Agreement shall be construed as creating any liability in favor of any third party against the State and the City. Additionally, this Agreement shall not ever be construed as relieving any third party from any liability against the State and the City, but the City shall become fully subrogated to the State and shall be entitled to maintain any action over and against the third party which may be liable for having caused the City to pay or disburse any sum of money hereunder.

13. INSURANCE

The City shall provide necessary safeguards to protect the public on State-maintained highways including adequate insurance for payment of any damages which might result during the maintenance and operation of the Facility occupying such airspace or thereafter, and to save the State harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so. Prior to beginning work on the State's right-of-way, the City's contractor shall submit to the State a completed insurance form (TxDOT Form No. 1560) and shall maintain the required coverages during maintenance and operation of the Facility.

14. USE OF RIGHT-OF-WAY

It is understood that the State by execution of this Agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or reconstruction of the highway system for which it was required, nor shall use of the land under such Agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

15. ADDITIONAL CONSENT REQUIRED

The State asserts only that it has sufficient title for highway purposes. The City shall be responsible for obtaining such additional consent or agreement as may be necessary due to this Agreement. This includes, but is not limited to, public utilities within the right of way.

16. FHWA ADDITIONAL REQUIREMENTS

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, Section 713, shall be attached to and become a part of this Agreement.

17. CIVIL RIGHTS ASSURANCES

The City, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the City shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the Agreement and reenter and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

18. AMENDMENTS

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

19. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

20. NOTICES

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

STATE

Texas Department of Transportation
San Antonio District
P.O. Box 29928
San Antonio, Texas 78229-0928

CITY

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

IN WITNESS WHEREOF, the parties have hereunto affixed their signature, the City of San Antonio on the ____ day of _____, 20____, and the State on the ____ day of _____, 20____.

CITY OF SAN ANTONIO

The undersigned for the City of San Antonio hereby represents that he/she is an officer of the organization for which he/she has executed this Agreement and that he/she has full and complete authority to enter into this Agreement on behalf of said City of San Antonio.

By: _____

Title: _____ City Manager

ATTEST:

City Clerk

Approved as to Form:

City Attorney

STATE OF TEXAS

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission under the authority of Minute Order 100002.

By: _____
Director of Maintenance Division

APPROVAL RECOMMENDED:

District Engineer

Director of Design Division

List of Attached Exhibits:

Exhibit A - Site Plan

Exhibit B - Metes and Bounds Description

Exhibit C - Approved Construction Plans- (Project No. CL 73-8-139)

Exhibit D - Certificate of Insurance (TxDOT Form 1560)

Exhibit E - Attachment A (FHWA Additional Requirements)

METES AND BOUNDS
FOR
COMMERCE STREET BOUNDARY

BEGINNING: At the intersection of the east right-of-way line of Chestnut Street and the north right-of-way line of Commerce Street;

THENCE: In a southeasterly direction a distance of approximately 170 feet across Commerce Street;

THENCE: In a southerly direction a distance of approximately 95 feet;

THENCE: In a northwesterly direction a distance of approximately 135 feet;

THENCE: In a westerly direction a distance of approximately 95 feet parallel to the south right-of-way line of Commerce Street;

THENCE: In a southwesterly direction a distance of approximately 45 feet;

THENCE: In a westerly direction a distance of approximately 225 feet parallel to the south right-of-way line of Commerce Street;

THENCE: In a northeasterly direction a distance of approximately 45 feet;

THENCE: In a westerly direction a distance of approximately 255 feet parallel to the south right-of-way line of Commerce Street;

THENCE: In a northerly direction a distance of approximately 90 feet crossing Commerce Street to the IH 37 southbound exit ramp;

THENCE: In a northwesterly direction a distance of approximately 25 feet crossing the southbound exit ramp turn lane;

THENCE: In a northerly direction a distance of approximately 75 feet to the fence of the southbound exit ramp;

THENCE: In a northwesterly direction a distance of approximately 365 feet along the fence of the southbound exit ramp;

THENCE: In an easterly direction a distance of approximately 90 feet to the curb of the southbound exit ramp;

THENCE: In a southeasterly direction a distance of 355 feet along the southbound exit ramp curb;

EXHIBIT "B"

THENCE: In an easterly direction a distance of approximately 480 feet parallel to the north right-of-way line of Commerce Street;

THENCE: In a northeasterly direction a distance of approximately 275 feet perpendicular to the northbound entrance ramp;

THENCE: In a southerly direction a distance of approximately 145 feet parallel to the northbound entrance ramp;

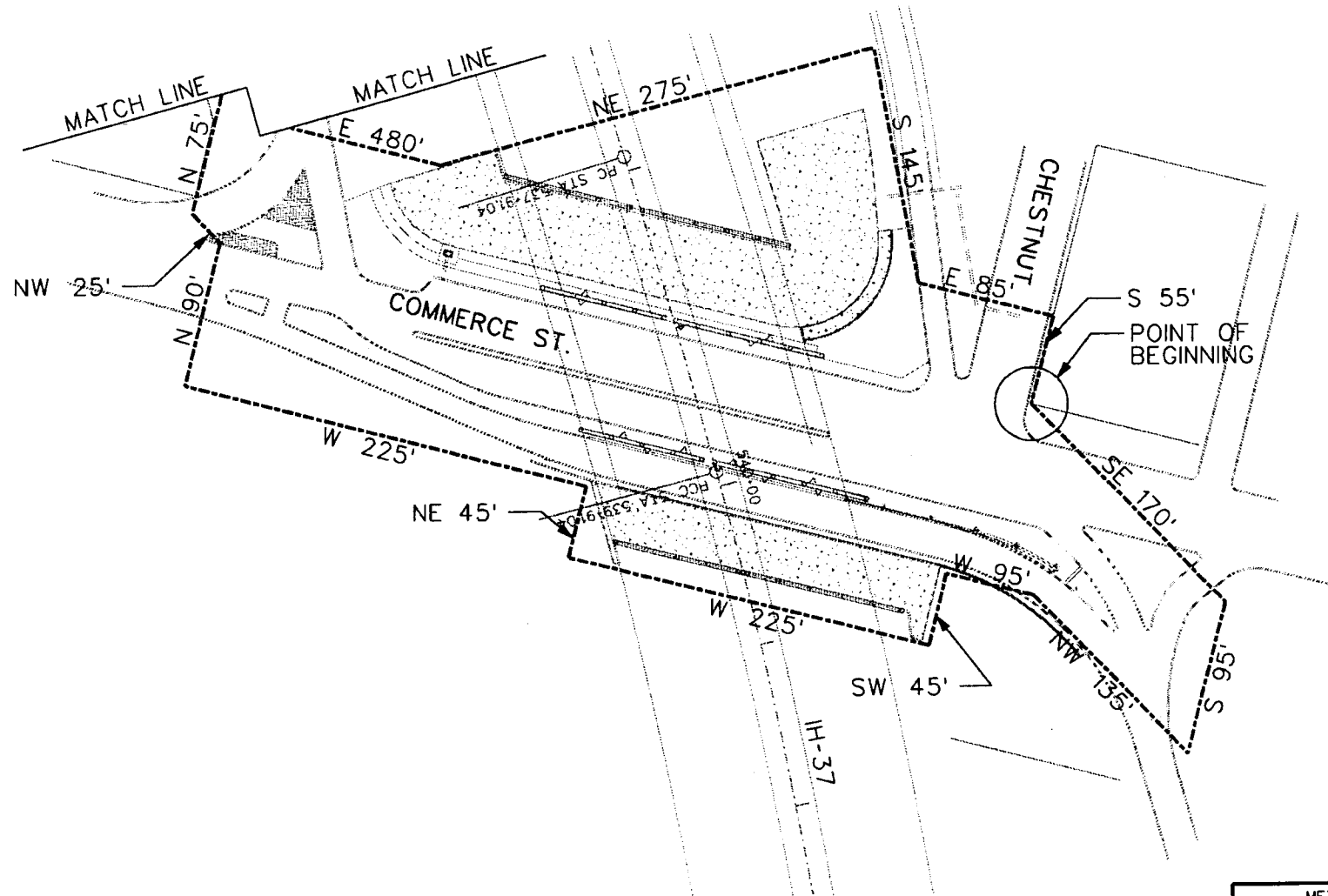
THENCE: In an easterly direction a distance of approximately 85 feet parallel to the north right-of-way line of Commerce Street;

THENCE: In a southerly direction a distance of approximately 55 feet along the Chestnut Street right-of-way to the POINT OF BEGINNING.

Prepared by: Pape-Dawson Engineers, Inc.
Job No.: 5220.14
Date: June 2, 2004
Id No.: P:\52\20\14\WORD\FIELD NOTES\040602A1.DOC

Plotted on: SDATES

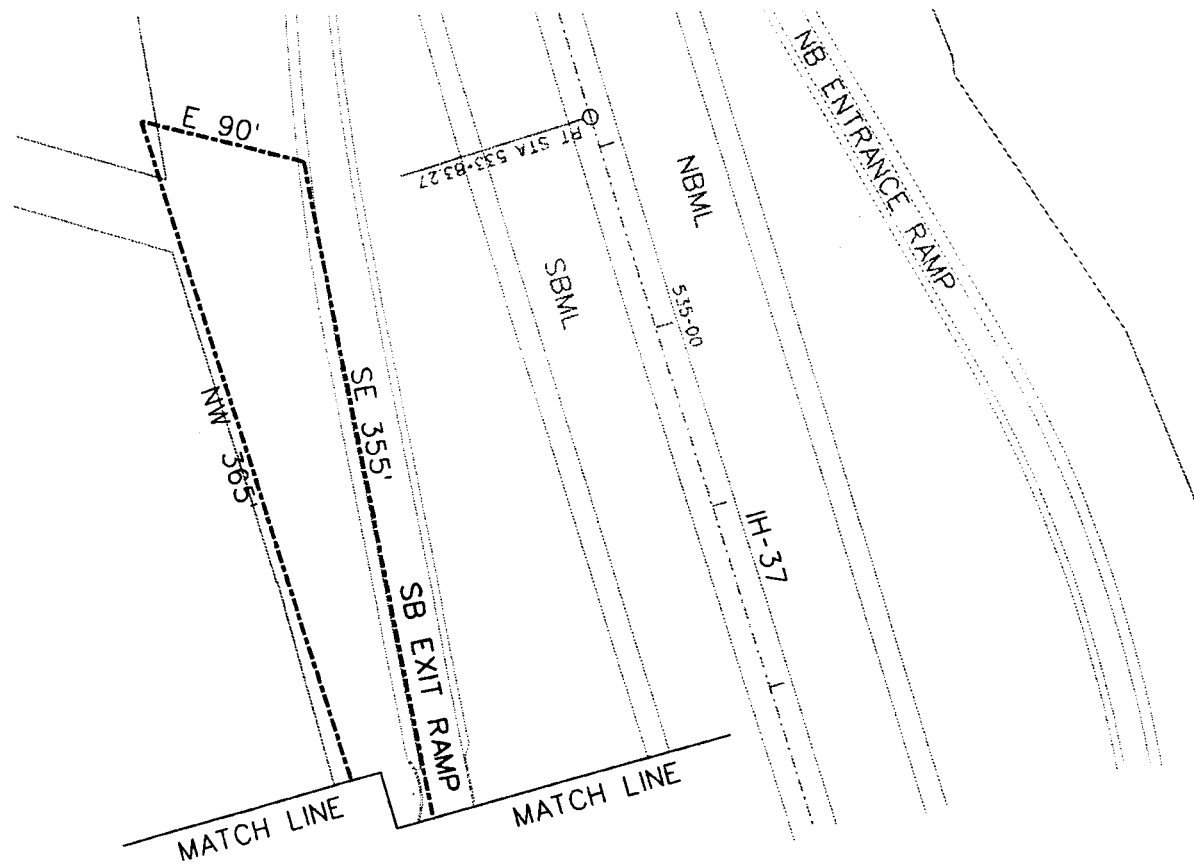
Design: Florence: FILES



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SCALE: 1" = 60'

METES AND BOUNDS
FOR
COMMERCE STREET BOUNDARY
(SHEET 1 OF 2)

DATE	CONTROL	SECTION	JOB	DIST.	STATE	COUNTY	HOWARD	NO.	DATE
08/73	08	130	SAI	TX	BECK	IN	27		

[illegible]

SCALE: 1" = 60'

METES AND BOUNDS
FOR
COMMERCE STREET BOUNDARY
(SHEET 2 OF 2)

Dist			PROJECT NO.	
CX Dist			CL 73-0-130	
Dist	CONTROL SECTION	JOB	INST.	STATE
CX Dist	8673	06	130	SAT TX
				COUNTY
				MICHIGAN NO.
				IN 37

**METES AND BOUNDS
FOR
HOUSTON STREET BOUNDARY**

BEGINNING: At the intersection of the west right-of-way line of Elm Street and the south right-of-way line of East Houston Street;

THENCE: In a northerly direction a distance of approximately 110 feet across East Houston Street;

THENCE: In a southeasterly direction a distance of approximately 265 feet parallel to the IH 37 bridge bents;

THENCE: In a southerly direction a distance of approximately 70 feet along the east right-of-way line of IH 37;

THENCE: In an easterly direction a distance of approximately 60 feet along the north right-of-way line of East Houston Street;

THENCE: In a southerly direction a distance of approximately 160 feet across East Houston Street;

THENCE: In a westerly direction a distance of approximately 330 feet to the back of sidewalk on Elm Street;

THENCE: In a northeasterly direction a distance of approximately 100 feet along the back of sidewalk on Elm Street;

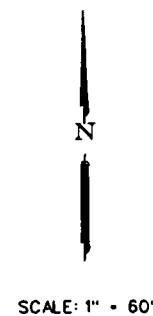
THENCE: In a westerly direction a distance of approximately 55 feet across Elm Street;

THENCE: In a northerly direction a distance of approximately 85 feet along the west right-of-way line of Elm Street to the POINT OF BEGINNING.

Prepared by: Pape-Dawson Engineers, Inc.
Job No.: 5220.14
Date: June 2, 2004
Id No.: P:\52120\14\WORD\FIELD NOTES\040602A2.DOC

Division Director:

FILES



METES AND BOUNDS FOR HOUSTON STREET BOUNDARY									
Date		PROJECT NO.							
City State		CL 75-6-158							
Dist.		CONTRACT SECTION		JOB	DIST	STATE	COUNTY	SECTION NO.	PLAT
City State		0071	NO 130	SAF	TX	BEZAR		IN 37	

Texas Department of Transportation (TxDOT) CERTIFICATE OF INSURANCE

Prior to the beginning of work, the Contractor shall obtain the minimum insurance and endorsements specified. Only the TxDOT certificate of insurance form is acceptable as proof of insurance for department contracts. Agents should complete the form providing all requested information then either fax or mail this form directly to the address listed on the back of this form. Copies of endorsements listed below are not required as attachments to this certificate.

Insured: _____
Street/Mailing Address: _____
City/State/Zip: _____
Phone Number: Area Code () _____

WORKERS' COMPENSATION INSURANCE COVERAGE:

Endorsed with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone #:	
Address:			City, State, Zip:	
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability:
Workers' Compensation				Not Less Than: Statutory – Texas

COMPREHENSIVE GENERAL LIABILITY INSURANCE:

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone #:	
Address:			City, State, Zip:	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Comprehensive General Liability Insurance Bodily Injury Property Damage OR Commercial General Liability Insurance				Not Less Than: \$ 500,000 each occurrence \$ 100,000 each occurrence \$ 100,000 for aggregate OR \$ 600,000 combined single limit

COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE:

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone #:	
Address:			City, State, Zip:	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Comprehensive Automobile Liability Insurance OR Texas Business Automobile Policy Bodily Injury Property Damage				Not Less Than: \$ 250,000 each person \$ 500,000 each occurrence \$ 100,000 each occurrence

UMBRELLA POLICY (if applicable):

Carrier Name:			Carrier Phone #:	
Address:			City, State, Zip:	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Umbrella Policy				

Agency Name _____ **Address** _____ **City, State Zip Code** _____

Area Code () _____

Authorized Agent's Phone Number _____

Authorized Agent Original Signature _____

Date _____

This Certificate of Insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by the above insurance policies issued by the named insurance company. Cancellation of the insurance policies shall not be made until THIRTY DAYS AFTER the agent or the insurance company has sent written notice by certified mail to the contractor and the Texas Department of Transportation.

THIS IS TO CERTIFY to the Texas Department of Transportation acting on behalf of the State of Texas that the insurance policies named meet all the requirements stipulated and such policies are in full force and effect. *If this form is sent by facsimile machine (fax), the sender adopts the document received by TxDOT as a duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.*

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

EXHIBIT "D"

Texas Department of Transportation

NOTES TO AGENTS:

Agents must provide all requested information then either fax or mail this form directly to the address listed below.

Pre-printed limits are the minimum required, if higher limits are provided by the policy, enter the higher limit amount and strike-through or cross-out the pre-printed limit.

To avoid work suspension, an updated insurance form must reach the address listed below **one business day** prior to the expiration date. **Insurance must be in force in order to perform any work.**

Binder numbers are not acceptable for policy numbers.

The certificate of insurance, once on file with the department, is adequate for subsequent department contracts provided adequate coverage is still in effect. Do not refer to specific projects/contracts on this form.

The TxDOT certificate of insurance form is the only acceptable proof of insurance for department contracts.

List the contractor's legal company name, including the DBA (doing business as) name as the insured or list both the contractor and staff leasing service as insured when a staff leasing service is providing insurance.

Over-stamping and/or over-typing entries on the certificate of insurance are not acceptable if such entries change the provisions of the certificate in any manner.

This form may be reproduced.

The SIGNATURE of the agent is required. Stamped/typed/printed signatures are not acceptable.

CERTIFICATE OF INSURANCE REQUIREMENTS:

WORKERS' COMPENSATION INSURANCE:

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word STATUTORY, under limits of liability, means that the insurer would pay benefits allowed under the Texas Workers' Compensation Law.

GROUP HEALTH or ACCIDENT INSURANCE is not an acceptable substitute for Workers' Compensation.

COMPREHENSIVE GENERAL LIABILITY INSURANCE or COMMERCIAL GENERAL LIABILITY INSURANCE:

If coverages are specified separately, they must be at least these amounts:

Bodily Injury	\$500,000 each occurrence
Property Damage	\$100,000 each occurrence
	\$100,000 for aggregate

MANUFACTURERS' or CONTRACTOR LIABILITY INSURANCE is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE or TEXAS BUSINESS AUTOMOBILE POLICY:

The coverage amount for a Texas Business Automobile Policy or Comprehensive Automobile Liability may be shown as a minimum of \$600,000 Combined Single Limit by a typed or printed entry and deletion of the specific amounts listed for Bodily Injury and Property Damage.

BASIC AUTOMOBILE LIABILITY INSURANCE is not an acceptable substitute for Comprehensive Automobile Liability Insurance or Texas Business Automobile Policy.

MAIL ALL CERTIFICATES TO :

Texas Department of Transportation
CST – Contract Processing Unit (RA/200 – 1st Fl.)
125 E. 11th Street
Austin TX 78701-2483
512/416-2429 (V), 512/416-2536 (F)

EXHIBIT E
ATTACHMENT A

Inasmuch as this project is on the Federal-Aid highway system, the following are additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, Section 713.

1. Any significant revision in the design or construction of the Facility shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
2. Any change in the authorized use of airspace shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
3. The airspace shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
4. This Agreement will be revocable in the event that the airspace Facility ceases to be used or is abandoned.