

AN ORDINANCE 2009-05-14-0392

**AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF
SAN ANTONIO AND THE TEXAS DEPARTMENT OF
TRANSPORTATION FOR THE INSTALLATION AND
MAINTENANCE OF A MURAL ON THE IH 410 SOUTH
FRONTAGE ROAD TURN-AROUND, SOUTH OF FM 2536,
LOCATED IN COUNCIL DISTRICT 4.**

* * * * *

WHEREAS, Councilman Philip Cortez and the District 4 staff, have been working in partnership with the Texas Department of Transportation ("TxDOT") and City Year, to install two panel murals on the Loop 410 access road at Old Pearsall Rd., in close proximity to Christa McAuliffe Jr. High School; and

WHEREAS, the concept for the Loop 410 murals was proposed by City Year as a Legacy Project for City Year Volunteers that have been part of their program for the past year; and

WHEREAS, the students have focused on working with youth that are part of the After School Challenge program at Christa McAuliffe Jr. High School; and

WHEREAS, in developing this concept, two mural workshops, sponsored by the City's Department of Cultural Affairs ("DCA"), were conducted in March of this year to develop ideas for the icons that would be included in the murals; and

WHEREAS, the first workshop was held on a Saturday and involved students, parents, teachers and community representatives; and

WHEREAS, a second workshop was then held with the After School Program students, at which time the students submitted their original artwork and conceptual designs; and

WHEREAS, these conceptual designs were reviewed and developed into the final mural designs by Juan Hernandez of the DCA, a muralist with over 20 years of experience; and

WHEREAS, the final designs were submitted to the District 4 Council Office for approval and then forwarded to the TxDOT for review by their Design Engineer; and

WHEREAS, in addition to the partnership with City Year and the coordination of the mural designs with DCA, the District 4 Office has also coordinated with the City's Housing & Neighborhood Services Department ("HNSD"), which will provide paint and supplies for the installation of the murals; and

WHEREAS, over 100 volunteers have committed to install the murals on Saturday, May 17, 2009, in cooperation with City Year and Council District 4, and with the assistance of HNSD's Graffiti Abatement Program; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Department of Housing and Neighborhood Services or his designee is authorized to execute an agreement between the City of San Antonio and the Texas Department of Transportation for the installation and maintenance of a mural on the IH 410 South frontage road turn-around, south of FM 2536, located in Council District 4. A copy of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This Ordinance shall become effective immediately upon passage by eight (8) affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

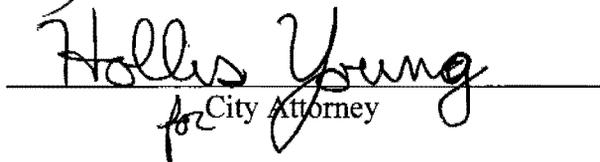
PASSED AND APPROVED this 14th day of May, 2009.

ATTEST:


City Clerk


M A Y O R
PHIL HARDBERGER

APPROVED AS TO FORM:


for City Attorney

Agenda Item:	30						
Date:	05/14/2009						
Time:	07:57:53 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an agreement between the City of San Antonio and the Texas Department of Transportation for the installation and maintenance of a mural on the IH 410 South frontage road turn-around, south of FM 2536, located in Council District 4. [T.C. Broadnax, Assistant City Manager; David D. Garza, Director, Housing and Neighborhood Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2	x					
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x			x	
Lourdes Galvan	District 5	x					
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				x
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9	x					
John G. Clamp	District 10		x				

ARTICLE 2. Project Funding.

The City will provide for and/or fund the cost of installation of the Facility in the areas as shown on Exhibit "A". Installation of the Facility shall not begin until the scope of work, traffic control plan, list of materials (i.e. products and colors), specifications, schedule of work, and the project layout are reviewed and approved by the State.

The City will provide for or fund the long-term maintenance activities for the Facility at no cost to the State.

ARTICLE 3. Responsibility of the Parties.

A. The City agrees to:

1. Provide the public art installation for the Facility in accordance with the State's standard traffic control plan sheets; the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges; and the State's pre-approved list of materials and manufacturers; and
2. Perform and/or provide, to the satisfaction of the State, long-term maintenance of the Facility to include but not be limited to the following activities:
 - (a) Maintain the public art area in a clean and presentable condition for the traveling public; and
 - (b) Maintain the public art area reasonably free of objectionable weeds, grass growth, and graffiti that would adversely impact the aesthetics of the Facility; and
 - (c) Maintain all other features constructed as part of the Facility.
3. Furnish, erect and maintain any barricades, signs and traffic handling devices, in accordance with the latest Texas Manual of Uniform Traffic Control Devices (MUTCD) and to the satisfaction of the State, as may be required to protect the safety of the public; and
4. Conduct periodic inspections as deemed necessary.

B. The State agrees to:

1. Cooperate with the City to determine requirements for barricades, signs and traffic handling devices to be used by the City during maintenance of the Facility; and
2. Conduct periodic inspections as deemed necessary.

C. The City and State further agree that nothing contained in this Agreement will be construed to:

1. Give either party the power to direct and control the day-to-day activities of the other; or
2. Constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or
3. Allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

ARTICLE 4. Use of Contractor or Group.

The City shall have the right to engage any responsible Contractor or Group to perform or provide any portion of the City's Facility activities specified in this Agreement. However, notwithstanding this provision, the City will continue to remain responsible to the State to ensure performance of all its duties and responsibilities specified in this Agreement. The City shall ensure that any Contractor or Group complies with all provisions of this agreement, and federal, state, and local laws and regulations as may be applicable.

In the event the City engages a Contractor to perform Facility installation and/or maintenance activities under this Agreement, the City shall ensure that said Contractor shall indemnify the State for any and all damages and claims for damages by said Contractor, its employees, agents, or representatives, including any claims resulting from bodily injury or death to others, or, for loss of or damage to property of others, arising out of, incident to, or in any manner connected to Facility maintenance activities, and, for any or all liability arising from the negligent acts of said Contractor, its employees, agents, or representatives.

In the event the City engages and approves a responsible Group to perform Facility installation and/or maintenance activities under this Agreement, the City shall require and ensure that said Group's authorized representative obtain, review, and execute the "Acknowledgment Of Conditions For Public Art Installation and Maintenance," attached and incorporated herein as **Exhibit "B,"** and thereafter maintain the record in its files.

ARTICLE 5. Indemnification.

The City and the State each acknowledge responsibility for the acts, deeds, errors and omissions of its own employees. The parties agree that the Texas Tort Claims Act pertaining to governmental liability for tortious conduct and/or property damage shall apply to this Agreement.

ARTICLE 6. Termination.

This Agreement may be terminated under any of the following conditions:

- A. By mutual written agreement and consent of both parties; or
- B. By either party upon giving the other party thirty (30) days prior written notice; or
- C. By the State, in the event the State determines that the Facility is not in the best interest of the traveling public.

If the City terminates this Agreement, as provided herein, the City will be responsible for repair or removal of the Facility. In the event that the City does not provide the repair or removal services, the State may remove or repair the Facility and request reimbursement from the City for any reasonable costs incurred by the State to restore the State's right of way to its original condition.

ARTICLE 7. Amendments.

Changes in time frame, character, or obligations herein shall be enacted by written amendment. Both parties must execute all amendments to this Agreement.

ARTICLE 8. Successors and Assigns.

Subject to the provisions of Article 4, the City shall not assign or otherwise transfer its rights and obligations under this Agreement except with prior written consent of the State, and any prohibited assignment or transfer shall be null and void.

ARTICLE 9. Remedies.

This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 10. 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 Facility activities by City employees, and to save the State harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so.

Where Facility activities are performed through a Contractor, the Contractor shall submit to the City proof of insurance using the State's "Certificate of Insurance, Form 1560," as currently revised and attached as Exhibit "C." The limits of the insurance policy shall remain in effect for the duration of the pertinent Facility activities under this Agreement. The State shall be named as an Additional Insured with a Waiver of Subrogation in favor of the State. The City shall forward completed original insurance certificates to the State.

ARTICLE 11. Notices.

All notices to either party by the other required under this contract shall be personally delivered or mailed to such party at the following respective address:

STATE :

Texas Department of Transportation
Attn: Director of Maintenance
P.O. Box 29928
San Antonio, Texas 78229

Physical Address is:
4615 N.W. Loop 410

CITY:

City of San Antonio
Attn: Director of
Neighborhood Housing
Services Dept.
1400 S. Flores
San Antonio, Texas 78204

ARTICLE 12. Gratuities.

Texas Transportation Commission policy mandates that employees of the State shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the State under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received advanced written approval of the Texas Department of Transportation Executive Director. Any person doing business with or who may reasonably speaking do business with the State under this Agreement may not make any offer of benefits, gifts or favors to State employees, except as mentioned here above. Failure on the part of the City to adhere to this policy may result in the termination of this Agreement.

IN TESTIMONY WHEREOF, the State and the City have executed duplicate counterparts to effectuate this Agreement.

THE CITY OF SAN ANTONIO

THE STATE OF TEXAS

By: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to form:

City Attorney

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.

By:

Mario Medina, P.E.
District Engineer
San Antonio District

Date: _____

List of Exhibits:

- "A" - Scope of work, traffic control plan, and the project layout for the Facility**
- "B" - Acknowledgment of Conditions for Public Art Installation and Maintenance**
- "C" - Certificate of Insurance, Form 1560**

C:\MuralAgreementIH410SouthofFM2536.doc
Revised 5/4/09

EXHIBIT "A"

Exhibit "A" includes the following documents:

1. Map of Proposed Mural Site on concrete riprap of IH 410 east of FM 2536 (Old Pearsall Rd.).
2. Traffic Control Plan TCP (1-1)-98. The plan view for TCP (1-1a), "Work Area Near Shoulder" shall apply to this work activity.
3. Color drawing of proposed mural.

EXHIBIT "B"
ACKNOWLEDGEMENT OF CONDITIONS FOR
PUBLIC ART INSTALLATION AND MAINTENANCE

The City of San Antonio, hereinafter called the "City", and _____, hereinafter called the "Group" recognize the need and desirability of landscaped highways and are entering into this Agreement to permit the Group to contribute toward the effort of maintaining landscaping on State controlled right of way.

The Group, both jointly and severally, acknowledges the hazardous nature of the work, and agrees to the following terms and conditions:

- Participants in the Group agree to obey and abide by all laws and regulations relating to safety and such other terms and conditions as may be required by the City for special conditions on a particular adopted section.
- When participants are 15 years of age or younger, the Group shall furnish adequate supervision by one or more adults.
- The Group shall conduct at least two (2) safety meetings per year. Participants must attend a safety meeting conducted by the Group before participating in landscape maintenance on the right of way.
- The Group shall not subcontract or assign its responsibilities to any other group, organization or enterprise without the express written authorization of the City.
- Individuals shall wear safety vests while working on the right of way.
- The Group shall neither possess nor consume alcoholic beverages while working on the right of way.
- The Group shall maintain a first-aid kit and adequate drinking water while working on the right of way.

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.

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.

COMMERCIAL GENERAL LIABILITY INSURANCE:

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

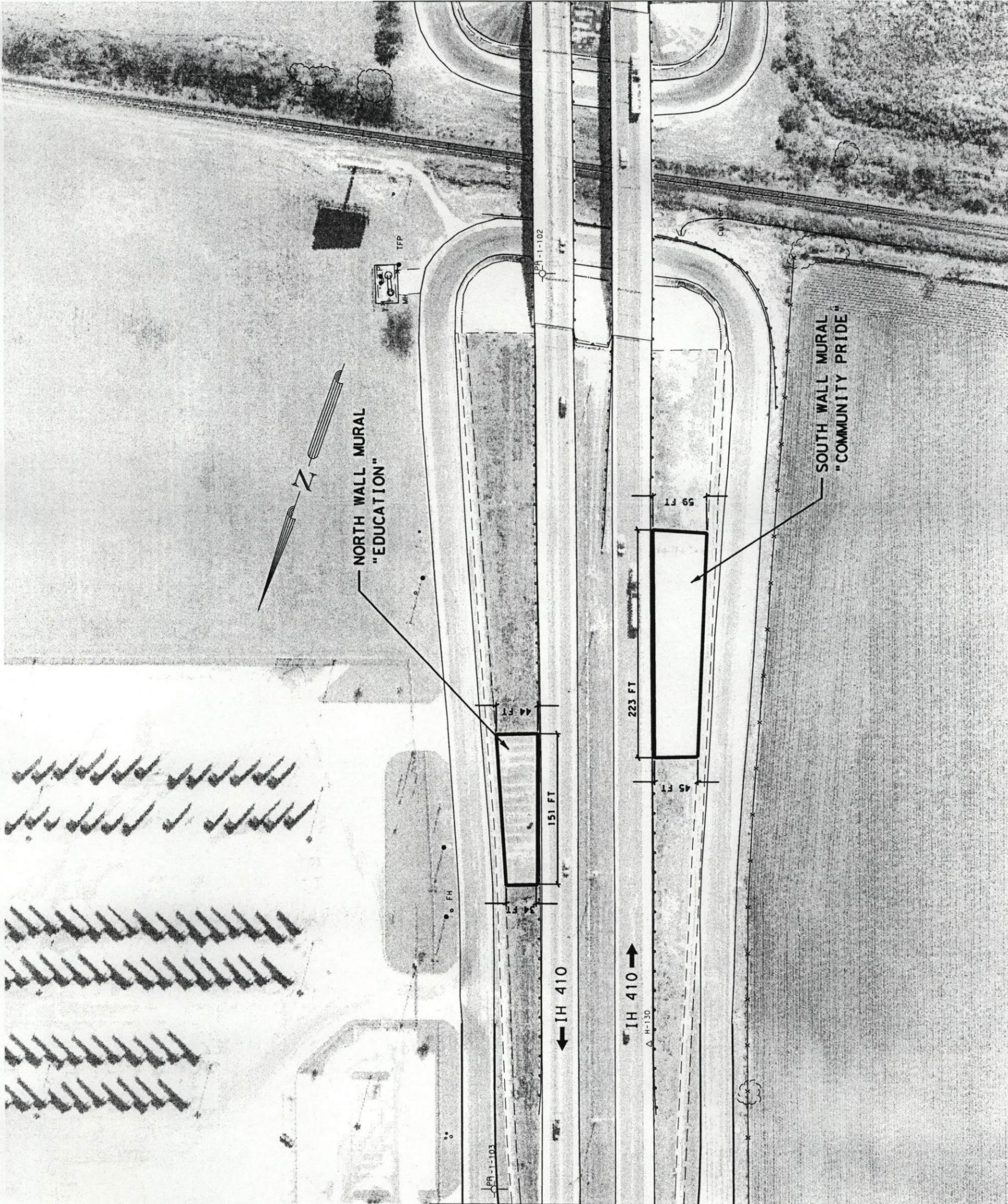
Bodily Injury	\$500,000 each occurrence
Property Damage	\$100,000 each occurrence
	\$100,000 for aggregate

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

BUSINESS AUTOMOBILE POLICY:

The coverage amount for a Business Automobile Policy 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.



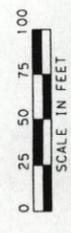
APPROXIMATELY 5150 FT TO IH 35

APPROXIMATELY 3580 FT TO OLD PEARSALE ROAD

COUNCILMAN PHILIP CORTEZ
CITY COUNCIL DISTRICT 4

CITY YEAR CORP

CHRISTA MCAULIFFE
MIDDLE SCHOOL
2009 MURAL PROJECT



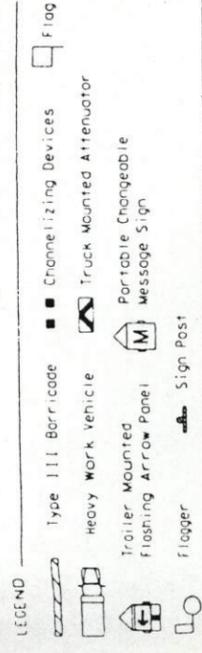
SCALE: 1" = 100'-0"



**IH 410
MURAL**

EXHIBIT "A"

STATE	DIST.	COUNTY
TEXAS	SAT	ATASCOSA
CONT.	SECT.	JOB
0521	05	IH 410



Posted Speed	Formula	Minimum Desirable Taper Lengths * * * Offset/Offset/Offset	Suggested Maximum Spacing of Device On a Taper	Minimum Sign Spacing On a Taper
30	WS ²	10' / 11' / 12'	60' - 75'	120'
35	L = 60	150' / 165' / 180'	60' - 75'	120'
40		205' / 225' / 245'	70' - 90'	160'
45		265' / 295' / 320'	80' - 100'	240'
50		450' / 495' / 540'	90' - 110'	320'
55	L=WS	500' / 550' / 600'	100' - 125'	400'
60		550' / 605' / 660'	110' - 140'	500'
65		600' / 660' / 720'	120' - 150'	600'
70		650' / 715' / 780'	130' - 165'	700'
		700' / 770' / 840'	140' - 175'	800'

* Conventional Roads Only
 ** Taper lengths have been rounded off.
 L = Length of Taper (ft.) W = Width of Offset (ft.) S = Posted Speed (MPH)

TYPICAL USAGE:

MOBILE	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY
✓	✓		

GENERAL NOTES:

1. Unless otherwise stated in the plans, flags attached to signs are REQUIRED.
2. All traffic control devices illustrated are REQUIRED, except those denoted with the triangle symbol may be omitted when stated elsewhere in the plans.
3. On high speed facilities advance warning signs should be installed approximately 3X from the work area or from the beginning of a lane or shoulder taper. On low speed facilities the advance warning signs should be placed based on the "X" minimum distance.
4. Inactive work vehicles or other equipment should be parked near the right-of-way line and not parked on the paved shoulder.

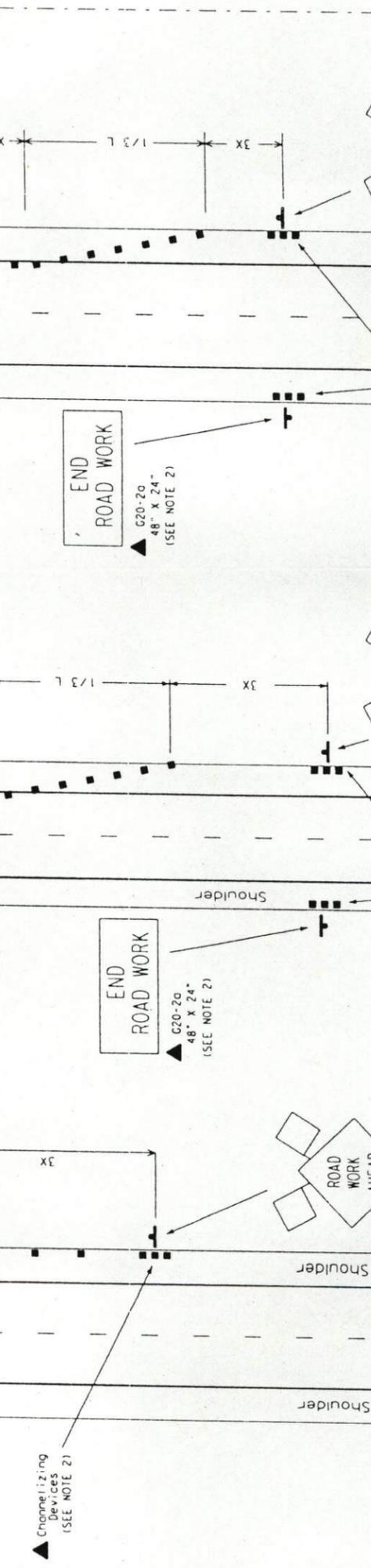
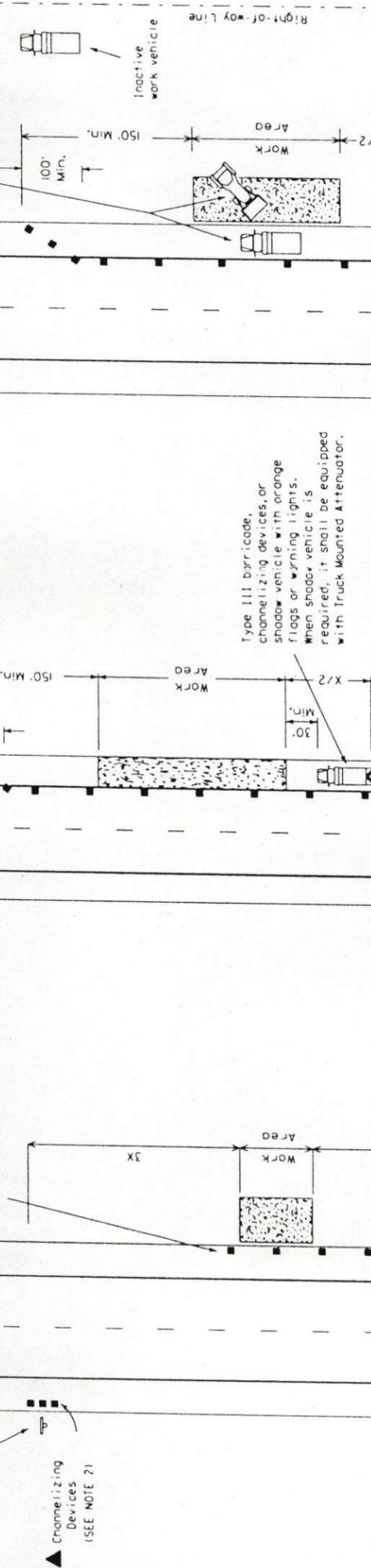
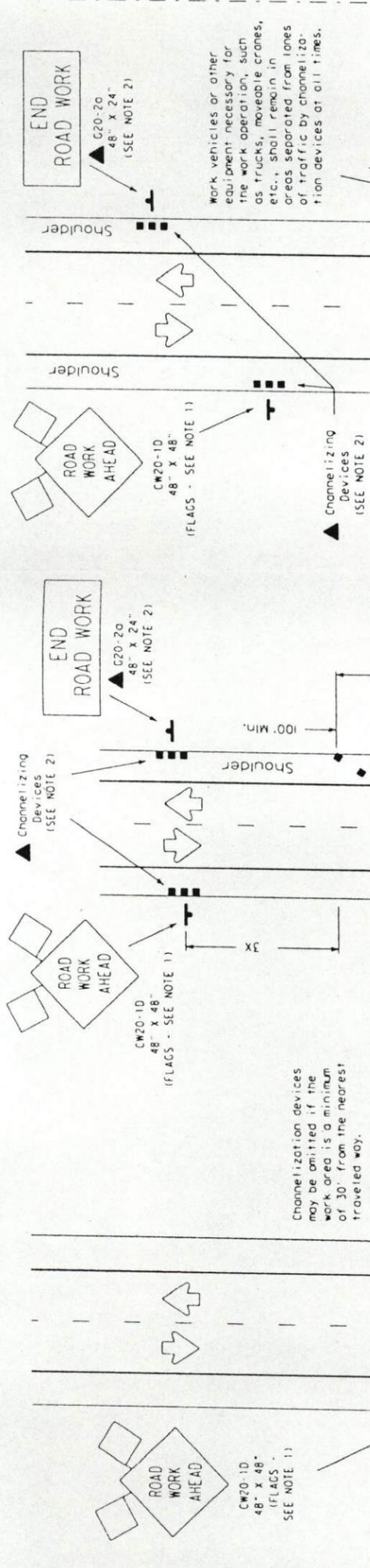
Only pre-qualified products shall be used. A list of compliant products and their sources may be obtained by writing or faxing:
 Standards Engineer
 Traffic Operations Division - TE
 Texas Department of Transportation
 125 East 11th Street
 Austin, Texas 78701-2483
 Phone (512) 416-3335
 Fax (512) 416-3161
 E-mail TRF-STANDARD@mailgw.dot.state.tx.us

The requirement for shadow vehicles will be listed in the project GENERAL NOTES, Item 502, Barricades, Signs and Traffic Handling.

STANDARD PLANS
 TEXAS DEPARTMENT OF TRANSPORTATION
 Traffic Operations Division

TRAFFIC CONTROL PLAN
EXHIBIT A
 TCP(1-1)-98

DATE	2/23/98	BY	WJL
DATE	2/23/98	BY	WJL
DATE	2/23/98	BY	WJL
DATE	2/23/98	BY	WJL
DATE	2/23/98	BY	WJL
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DATE	2/23/98	BY	WJL



TCP (1-1-a) Work Area Near Shoulder

TCP (1-1-b) Work Area on Shoulder

TCP (1-1-c) Work Vehicles on Shoulder

DISCLAIMER
 The use of this standard is governed by the Texas Engineering Practice Act. No warranty of this standard to other formats or for incorrect results or damages resulting from its use. KDOT assumes no responsibility for the conversion of any kind is made by KDOT for any purpose whatsoever.

DATE	12/31/97	BY	WJL
DATE	12/31/97	BY	WJL
DATE	12/31/97	BY	WJL
DATE	12/31/97	BY	WJL
DATE	12/31/97	BY	WJL
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DATE	12/31/97	BY	WJL
DATE	12/31/97	BY	WJL
DATE	12/31/97	BY	WJL



North wall mural facing Christa McAuliffe Middle School
 'Education Mural'
 (160 feet long x 60 feet tall)

Councilman Philip Cortez
City Council District 4
City Year Corps
Christa McAuliffe Middle School
2009 Mural Project
9300 SW Loop 410,



South wall mural facing away from school
 'Community Pride Mural'
 (160 feet long x 60 feet tall)

