

**TEXAS DEPARTMENT OF TRANSPORTATION**  
**TECHNICAL PROVISIONS**  
**FOR**  
**SH 99 GRAND PARKWAY SEGMENTS H, I-1 AND I-2**

**ATTACHMENT 5-7**

**OVERPASS AGREEMENT INDUSTRY TRACK  
(ECONORAIL) AGREEMENT**

**APRIL 30, 2015**



# Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

August 11, 2003

Chambers Co. - DOT No. 762 816L, RRMP5.93

TxDOT Contract No. 123XXX4014

CSJ 3510-10-003

**Project NH 2003 (506)**

SH 99 (Grand Parkway) at Cedar Crossing

Industry Spur Track east of Plumwood

Mr. Charles lupe

President

Cedar Crossing CCLP

11811 North Freeway, Suite 300

Houston, Texas 77060-3238

Dear Mr. lupe:

Attached is a copy of the executed Railroad original Overpass agreement for the above project. As of this date, we have not received an estimate for flagging for this project. As soon as one becomes available to you, please forward a copy to this office. The Houston District Office estimates 20 days of flagging for this project. Also, please let us know the name and telephone number of the person we need to contact for flagging schedule of trains.

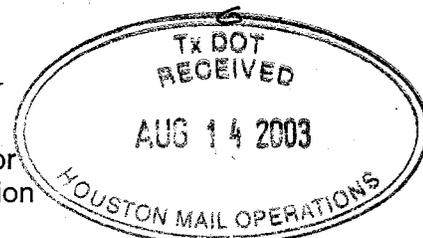
The Railroad shall perform the flagging to be done by the Railroad as required by the project only after receipt of a **written Work Order** from the State. Payment will not be made for flagging done by the Railroad that is performed at the project site prior to the issuance of a "Work Order" by the State.

This was to let to contract **August 5, 2003**. A written Work Order will be issued to you by the Houston District Office. Materials should be assembled and work should begin at this location only after a **written Work Order** has been issued. If you have any questions regarding the scheduling of this project, please contact the Houston District Area Engineer, Texas Department of Transportation, Houston, Texas, telephone number (713) 802-5000.

Your cooperation in this matter is appreciated. If you have any questions, please contact Sher Neely at telephone number (512) 416-3208.

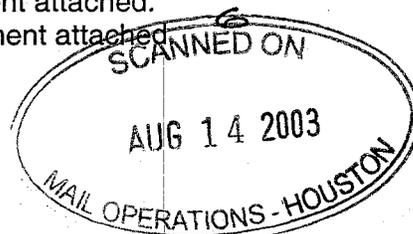
Sincerely,

Darin K. Kosmak  
Railroad Section Director  
Traffic Operations Division



**Attachments**

- cc: Steve Calles, Houston District, TxDOT – Copy of agreement attached.
- Norma Lopez, Finance Division, TxDOT - Copy of agreement attached.
- Bill Reed, Finance Division, TxDOT - Copy of letter.
- Rosemary Zamora, Construction Division, TxDOT



DOD

CONTRACT NO 123xxx4014

Chambers County  
CSJ 3510-10-003  
Project NH (-) 2003/506  
SH 99(Grand Parkway) at  
Fisher Road east of Plumwood  
DOT No. 762 816L, RRMP5.93

STATE OF TEXAS §

COUNTY OF TRAVIS §

TEXAS DEPARTMENT OF TRANSPORTATION

OVERPASS AGREEMENT

THIS AGREEMENT, made and entered into on the date hereinafter shown as being fully executed, by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State" and/or "Department," and Cedar Crossing ~~LLC~~ <sup>LP 8/1/03</sup> ~~LLC~~ <sup>CST</sup>, hereinafter called the "Industry", acting by and through its duly authorized contracting officers.

WITNESSETH

WHEREAS, the State proposes to extend State Highway 99 (Grand Parkway) onto Fisher Road and across the tracks of the Industry at DOT No. 762 816L, Railroad Milepost 5.93 (Highway Station 3420+13.38) east of Plumwood, Chambers County, Texas, by constructing an overpass structure over the Industry's tracks, as shown on the print marked Exhibit "A", attached hereto and made a part hereof; and,

WHEREAS, as part of this project it will be necessary to widen Fisher Road, to be renamed State Highway 99, construct turnarounds, and install box culverts for drainage within the Industry right of way and along the tracks, as shown on the attached Exhibit "A"; and,

WHEREAS, upon completion of the project the Industry shall remove the grade crossing surface, warning devices and all other appearances as shown on the attached Exhibit "A"; and,

WHEREAS, said work is to be performed at no expense to the Industry, unless as provided herein.

AGREEMENT

NOW THEREFORE, in consideration of the premises and of 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. LICENSE & PERMISSION.

a. The Industry hereby gives to the State and/or its' Contractor license and permission for the construction, maintenance, and use of the aforesaid overpass structure, turnaround roads, box culverts, and highway across its property and over its tracks at the intersection of the railroad and highway, as shown on the attached Exhibit "A". The license, given hereby, shall not prevent the Industry from operating its trains or multiplying or changing its tracks across the land over which license has been given or under the overpass(es) contemplated hereby, as shown on the attached Exhibit "A".

b. The Industry hereby grants additional license and permission to the State and/or its Contractor to install and maintain drainage structures, to include drainage inlets and storm water system lines and manholes on Industry right of way as shown on the attached Exhibit "A".

c. The license given subject to the rights of utility companies to maintain and operate pole and wire lines thereon and thereover, and the State will make its own arrangements with the utility companies for any necessary relocation or alteration of said pole and wire lines.

d. No legal right which the Industry now has to reconstruct, maintain, and operate its existing track and appurtenances or to construct, maintain, and operate an additional track or tracks and appurtenances upon and across said property shall in anyway be affected by the giving of this license.

e. It is agreed that should the property or any portion thereof which is licensed hereunder cease to be used for public road purposes, this license, as to the portion so abandoned, shall immediately cease and terminate.

## 2. PLANS, ESTIMATES, CONSTRUCTION, and MAINTENANCE.

a. In order to provide for the safety of rail traffic, the Industry may provide, at State's expense, flaggers during the period of performance of work in or incident to the proposed overpass construction. The State shall give the Industry at least ten (10) days written notice prior to commencement of any flagging work hereunder.

b. The Industry shall perform the flagging to be done by the Industry, as required by the project, only after receipt of a written Work Order from the State to proceed with same. Payment will not be made for flagging done by the Industry which is performed at the project site, prior to the issuance of a "Work Order" by the State. The providing of this service shall not relieve the State and/or its Contractor of any responsibility or liability.

c. The Industry shall commence all other force account work including removing the grade crossing and all related equipment when all construction is completed on the overpass within thirty (30) days, after receipt of written notice from the State, that the work may proceed and shall proceed diligently to the conclusion of its obligations herein. Assembly of materials should be made sufficiently in advance of the work to assure prompt delivery to the jobsite.

d. The State agrees to prepare plans and specifications, subject to approval by the Industry, for the proposed overpass. Said plans and specifications, after having been approved in writing by the State and the Industry, are hereby adopted as plans and specifications covering the construction of said overpass structure and, when so approved, shall be marked "Exhibit B", and, by reference, made a part hereof. No changes on the Exhibit "B" are to be made without the written approval of such changes by the State and the Industry.

e. The State shall furnish material for and perform the work to be done by it hereunder in accordance with the approved plans and specifications. The State shall construct the overpass structure, drainage facilities, and build its roadway, sidewalks, and pavement across the Industry's right of way, as shown on the plans and in accordance with approved specifications. Upon completion of the construction activities, the State shall maintain or arrange for the maintenance of these facilities.

f. The Industry, unless otherwise provided, shall make such changes or alterations in the tracks, communication and signal pole and wire lines, pipe sewer and drainage, or other facilities or buildings located upon the Industry's right of way, which may be displaced or required by the construction of the project, as may be necessary to maintain continuous service and conform them to said construction and restore them to former condition for service either prior to, during, or following

construction of said work. The Industry shall prepare a written cost estimate, subject to approval by the State, for the adjustment of such facilities, attached hereto and to be identified as Attachment "1". The Railroad should also include the costs associated with flagging and engineering in the approved estimate. Only work shown in the estimates will be reimbursed by the State.

g. The State assumes the entire responsibility for the construction, maintenance, and use of said highway upon the Industry's property at the location herein described and nothing contained herein shall ever be construed to place upon the Industry any manner of liability for injury to or death of persons, or for damage to or loss of property arising from or in any manner connected with the construction, maintenance, or use of the portion of said highway located upon the Industry's said property.

h. The Industry, under terms of this agreement, gives the State and/or its Contractor permission to enter the Industry right of way to perform routine maintenance and/or emergency work as required. This permission is granted solely for the work performed under this agreement.

### 3. INSURANCE.

The contract or contracts to be let by the State for the construction of the work to be undertaken by it hereunder shall provide:

a. Comprehensive General Liability Insurance Policy. The State's Contractor shall furnish evidence to the State that, with respect to the operations the Contractor performs, the Contractor carries a Standard Comprehensive General Liability Insurance Policy providing limits of not less than two million dollars (\$2,000,000) for bodily injury and property damage per occurrence, and not less than two million dollars (\$2,000,000) aggregate for all occurrences.

If any part of the work is sublet, similar insurance shall be provided by or on behalf of the subcontractors to cover their operations.

b. Contractors' Protective Liability Insurance. The State's Contractor shall furnish evidence to the State that, with respect to the operations performed for the Contractor by subcontractors, the Contractor carries on his own behalf a Contractors' Protective Liability Insurance Policy providing for a limit of not less than two million dollars (\$2,000,000) for bodily injury and property damage per occurrence, and not less than two million dollars (\$2,000,000) aggregate for all occurrences.

c. Railroad Protective Liability Insurance (which includes Bodily Injury, Property Damage, and Physical Damage Insurance). The State's Contractor shall furnish an original policy to the State for and on behalf of the Railroad which, with respect to the operations the Contractor or any subcontractors perform, provides the Standard Railroad Protective Liability Insurance Policy with a limit of not less than two million dollars (\$2,000,000) for bodily injury, property damage and physical damage to property, and not less than six million dollars (\$6,000,000) aggregate for all occurrences.

d. General. The insurance specified in paragraphs a. and b. shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by formal acceptance by the State.

The insurance specified in paragraph c. above shall be carried until all work performed on the Railroad right of way has been completed and the temporary grade crossing, if any, is no longer used by the Contractor.

#### 4. PAYMENT.

a. No payment will be due the Industry unless a Work Order for work to begin is issued. This Work Order will normally be issued shortly after the contract letting.

b. Reimbursement to the Industry will be made for work performed and materials furnished, including but not limited to, insurance premiums and coverage at the rate and amount set forth in the approved cost estimate attached, in accordance with the provisions of the Federal-Aid Policy Guide, Subchapter B, Part 140, Subpart I, issued by the Federal Highway Administration on December 9, 1991, and amendments thereto except as modified by the provisions herein. Work performed and materials furnished by the Industry will be reimbursed by the State based on actual costs incurred by the Industry as they relate to the development of the project and approved in the cost estimate.

c. The cost of preliminary engineering is ineligible for reimbursement with Federal funds due to being incurred prior to date of program approval and will therefore be reimbursed with State funds if incurred after the State's request for preparation of estimates.

d. The Industry may submit monthly bills of at least \$500.00, prepared in satisfactory form for flagging and engineering work performed. Payment will be made within thirty (30) days for as much as 95% of the costs detailed on the bills.

e. The Industry will submit a complete and final bill, including all eligible costs, when the project is completed, and the State will pay to the Industry as much as 95% of the costs detailed on the bill. The State shall make payment within thirty (30) days of receipt of the bill. After audit of the Industry's documentation for the final bill, the State will make payment of the eligible balance due the Industry.

#### 5. TERMINATION.

a. The State reserves the right to cancel this agreement for any reason and at any time prior to the issuance of a Work Order by the State to the Industry to proceed with any part of the work outlined herein. The State will not be responsible for any expense incident to any cost incurred in the event of the cancellation of this contract, unless a "Work Order" was issued by the State and the Industry incurred expenses pursuant to that "Work Order."

b. All provisions concerning the State, which are stipulated herein, shall automatically cease and terminate and be assigned to the State upon official completion of the project and payment of the final bill.

6. RECORDS & AUDITS. The Industry shall retain adequate cost accounting records for auditing purposes for a period of three (3) years after payment of the final bill.

7. EXISTING AGREEMENTS. It is agreed that all existing agreements between the Industry and the State concerning licenses, permits, leases or easements at this location shall remain in full force and effect.

8. RESPONSIBLE FOR ITS OWN ACTIONS. The parties hereto acknowledge that they are not an agent, servant, or employee of the other party and is responsible for their own acts and deeds and for those of its agents and employees during performance of contract work.

9. PROTECTION OF FIBER OPTIC CABLE SYSTEMS. Fiber optic cable systems may be buried on the Industry's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The State and/or its Contractor shall telephone (800) CALLDIG to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the State. If it is, the State and/or its Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

10. LIMITED ACCESS. The State hereby agrees that during the performance of the proposed improvements it will keep its employees, material, and machinery within the defined area of the premises unless otherwise specified on the attached Exhibit "A". There shall be no crossings of the Industry's tracks except at existing, open, and public crossings.

11. INDUSTRY RETAINS TITLE. Upon execution by both parties, this agreement will be in effect and continue thereafter for so long as the Industry premises shall be used for the purposes set forth herein; provided, however, if the State shall abandon the use of the Industry premises, or any part thereof, for such purposes, this license and permission and the rights and privileges granted hereby as to the portion or portions so abandoned shall expire and terminate at the time each such portion shall be so abandoned; whereupon the Industry shall have the same complete title to the Industry premises so abandoned as though these presents had never been executed and the right to enter thereon and exclude therefrom the State, its successors, and assigns.

12. TRANSFER. The State shall not assign the Agreement, in whole or in part, or any rights herein granted, without the written consent of the Industry, and it is agreed that any transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Industry, shall terminate this Agreement.

13. AGREEMENT NOT A WAIVER. This permission is granted solely for the purposes of the State, at its sole cost and expense, for the proposed drainage improvements as shown on the attached Exhibit "A" and is expressly subject and subordinate to the present and future rights of the Industry, its successors, assignees, lessees, grantees and licensees, to maintain, use, operate, and renew on, beneath, or above the surface of the Industry premises any telephone, telegraph, power, communication, or signal lines, poles and/or appurtenances, fiber optic communications, tracks, roadways, pipelines, structures, improvements or facilities of similar or different character, as now located, and to construct, install, establish, and thereafter maintain, use, operate, and to renew on, beneath, or above the surface of the Industry premises, any or all said things, provided the same do not materially interfere with the State's use of the Industry premises as hereinabove provided.

14. NOTIFICATION. The State agrees to notify the Industry in writing when all work on the Industry's right of way is complete. The Industry will notify the State when the grade crossing and all related equipment has been removed.

15. CONDITIONS. In accordance with the Federal Aid-Policy Guide, Subchapter G, Part 646, Subpart B, issued by the Federal Highway Administration on December 9, 1991, the Industry will not be required to participate in the cost of the project.

IN WITNESS WHEREOF, the State and the Industry have executed duplicate counterparts of this agreement on the dates indicated below.

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission 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 Carlos A. Lopez, P.E. Date 8/1/03  
Carlos A. Lopez, P.E., Director, Traffic Operations Division

**CEDAR CROSSING L.P., a Texas limited partnership**

Cedar Crossing Management, L.L.C., its general partner

By: [Signature]  
Charles S. Iupe  
Manager  
Date: 7-9-03

Notices:

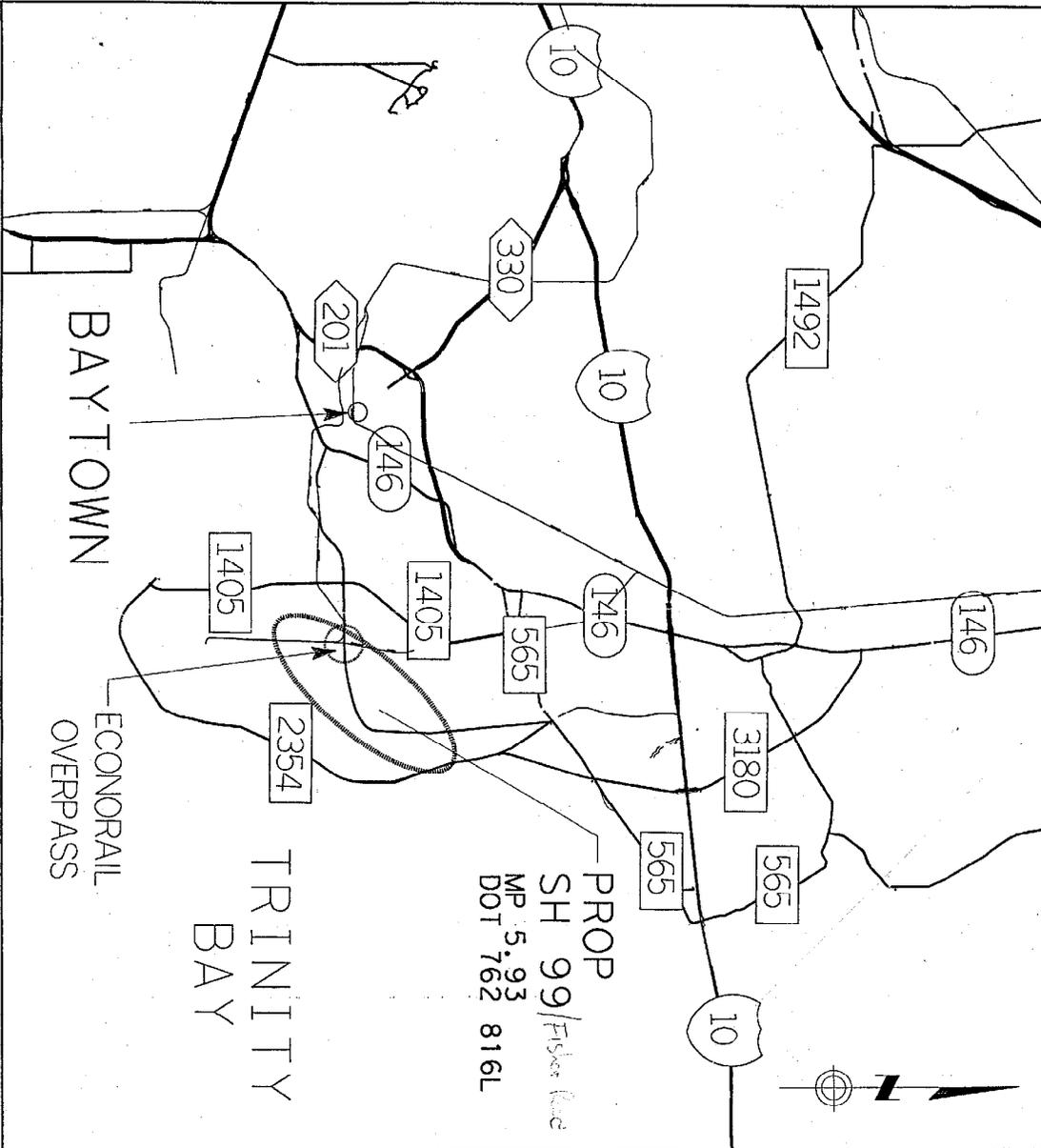
For the purposes of this agreement, all notices, correspondence, billings, and other documentation shall be mailed to the following addresses:

For the State of Texas

Railroad Section Director  
Texas Department of Transportation  
Traffic Operations Division (TRF-RR)  
125 E. 11<sup>th</sup> Street  
Austin, TX 78701-2483

For the Cedar Crossing, L.P.

Charles Iupe, President  
Cedar Crossing, L.P.  
11811 North Freeway, Suite 300  
Houston, TX 77060-3238



PROP  
SH 99/Fisher Road  
MP 5.93  
DOT 762 816L

BAYTOWN

ECONORAIL  
OVERPASS

TRINITY  
BAY

© 2002 TRISTAR

**SH 99**  
**VICINITY MAP**  
**MP 5.93**  
**DOT 762 816L**

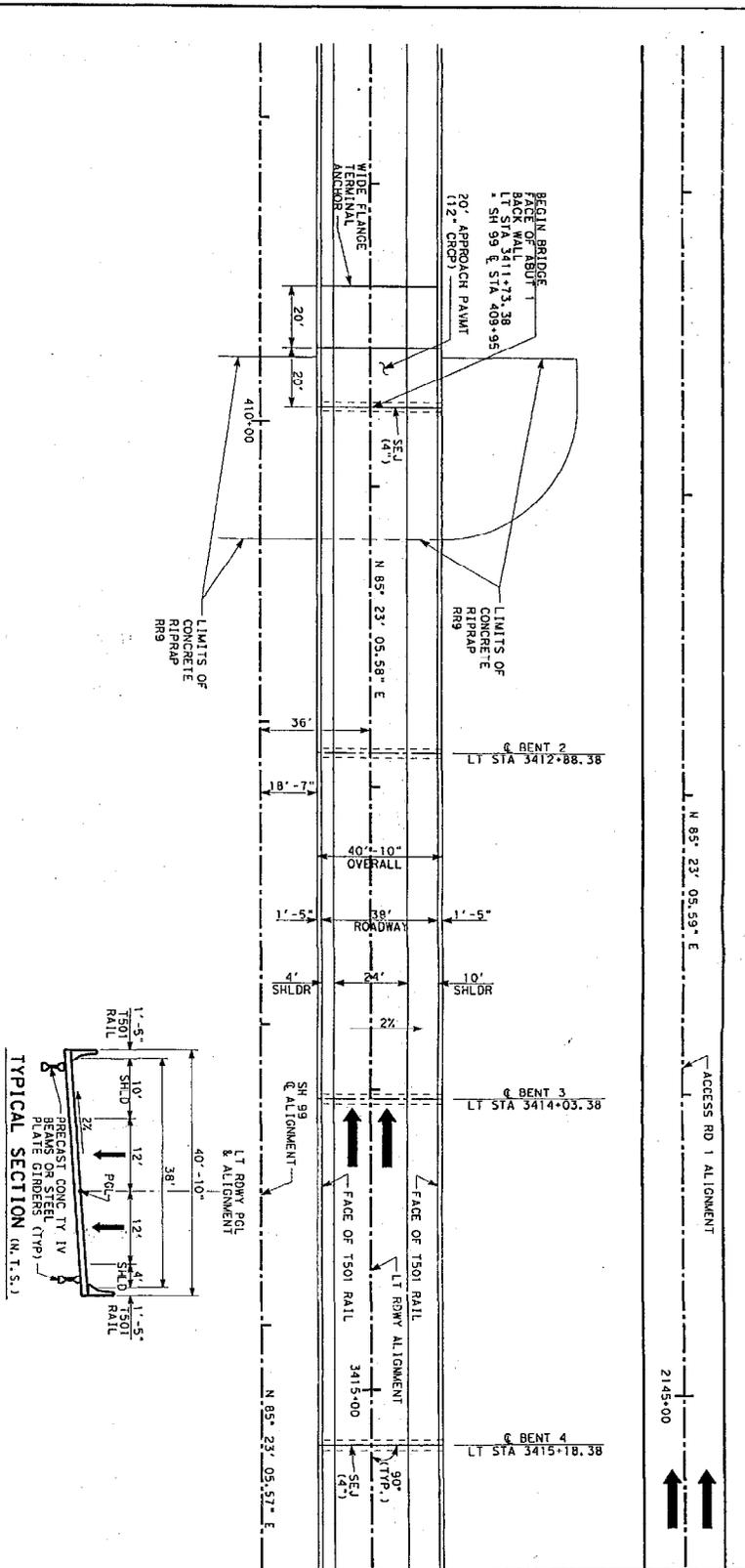
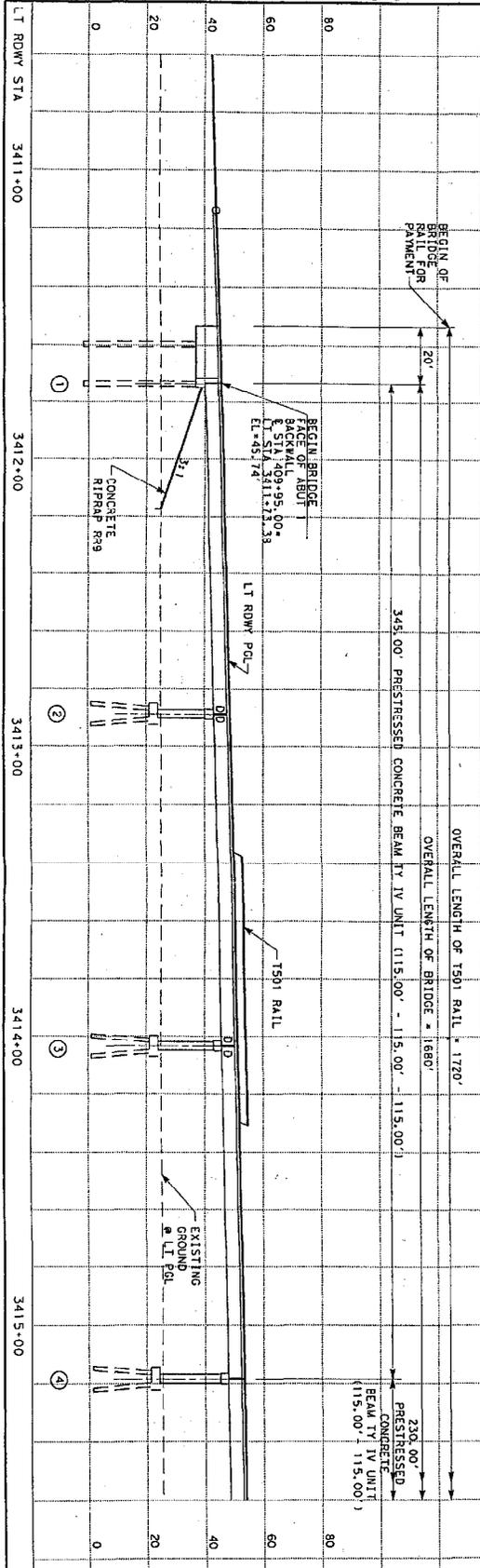
NOT TO SCALE

TECH. NO. 3510  
PROJECT NO. 003  
JOB SH 99

STATE	DIST.	COUNTY
TEXAS	BMT	CHAMBERS
CONTRACT	SECTION	SIGNAL NO.
3510	10	003

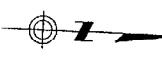


The seal appearing on this document was authorized by King Yuen, P.E. 86432 on 11-4-2002. Alteration of a sealed document without proper notification to the responsible engineer is an offense under the Texas Engineering Practice Act.



MATCH LINE LT RDWY STA 3415+60

- NOTES:
- DESIGNED ACCORDING TO AASHTO 1996 STANDARD AND CURRENT INTERIM SPECIFICATIONS (HS20 LOADING)
  - BEAM END CONDITIONS:
  - D: DENOTES SLOTTED HOLE AT THE END OF BEAMS AND BEARING SYSTEM FOR STEEL PLATE GIRDER.
    - F: DENOTES FIXED BEARING SYSTEM.
    - BLANK: DENOTES NO HOLE AT BEAM END.
  - ADT (2003) = 16,300 VPD
    - ADT (2023) = 45,800 VPD
    - FREEMAN CLASSIFICATION = RURAL
    - DESIGN SPEED = 70 MPH



Alteration of a sealed document without proper notification to the responsible engineer is an offense under the Texas Engineering Practice Act.

on 11-4-2002

The seal appearing on this document was authorized by King Yun P.E. 86432

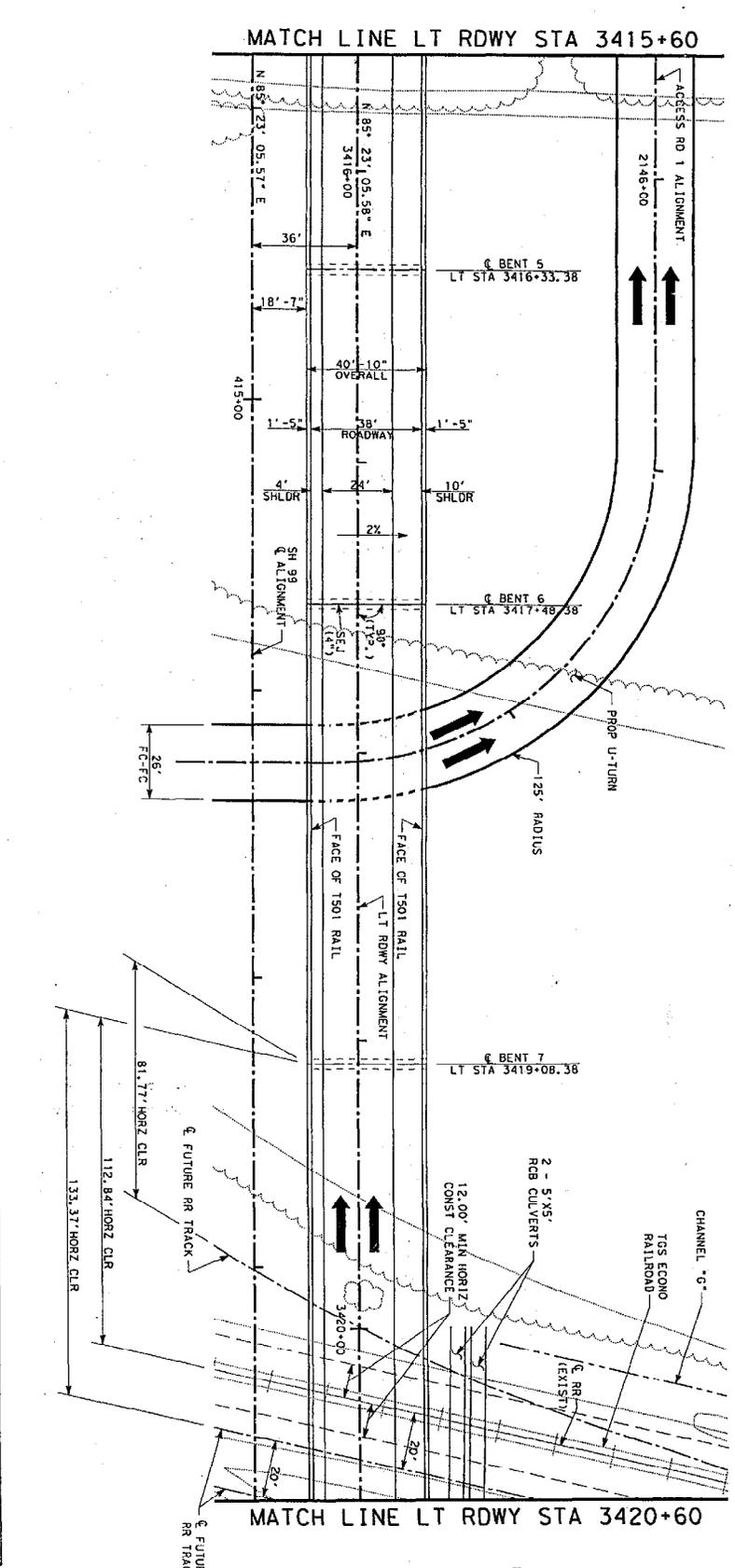
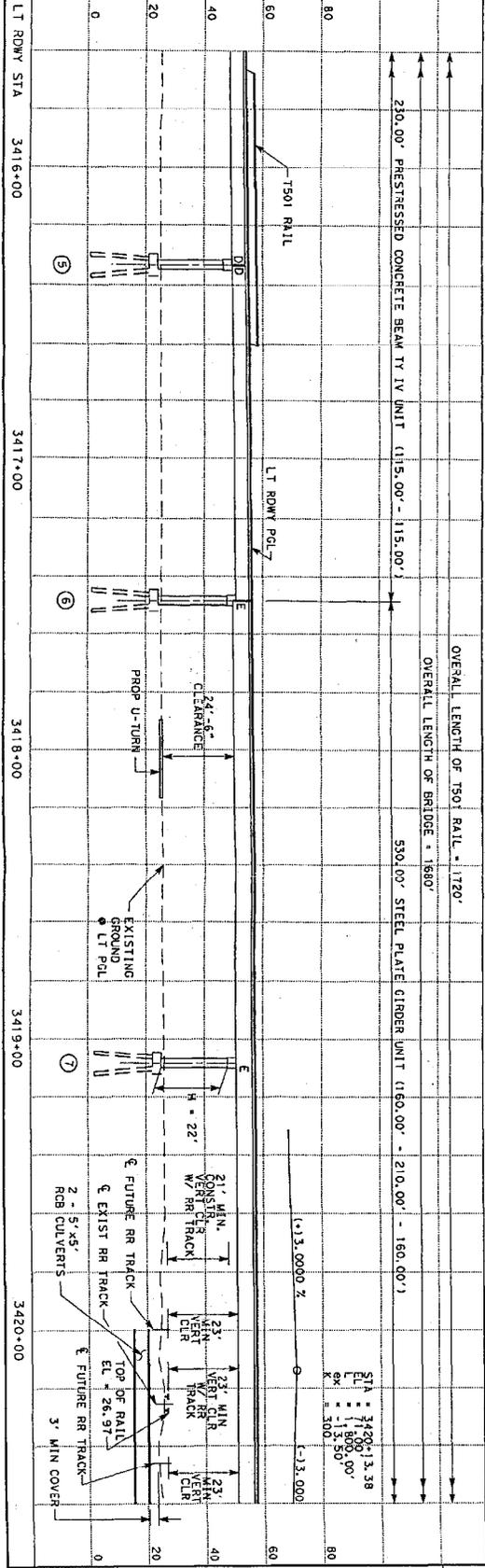


EXHIBIT "A"

SH 99  
 LT ROADWAY  
 @ TGS ECONO  
 RAILROAD OVERPASS  
 MP 5.93  
 DOT 762 816L

NBI # 12-035-0-3510-10-XXX  
 SCALE: 1"=40' HORIZ  
 1"=40' VERT

STATE	DISTRICT	COUNTY	SHEET NO.
TEXAS	BMT	CHAMBERS	10
PROJECT NO.	JOB	ISSUE NO.	
3510	003	SH 99	



DATE	BY	CHECKED	SCALE
11-01-2002	CHAMBERS	CHAMBERS	1"=40' HORIZ 1"=40' VERT

**EXHIBIT "A"**  
 SH 99  
 LT ROADWAY  
 TGS ECONO  
 RAILROAD OVERPASS  
 MP 5.93  
 DOT 762 816L

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The seal appearing on this document was countersigned by King Tuen, P.E. 86432

on 11-01-2002

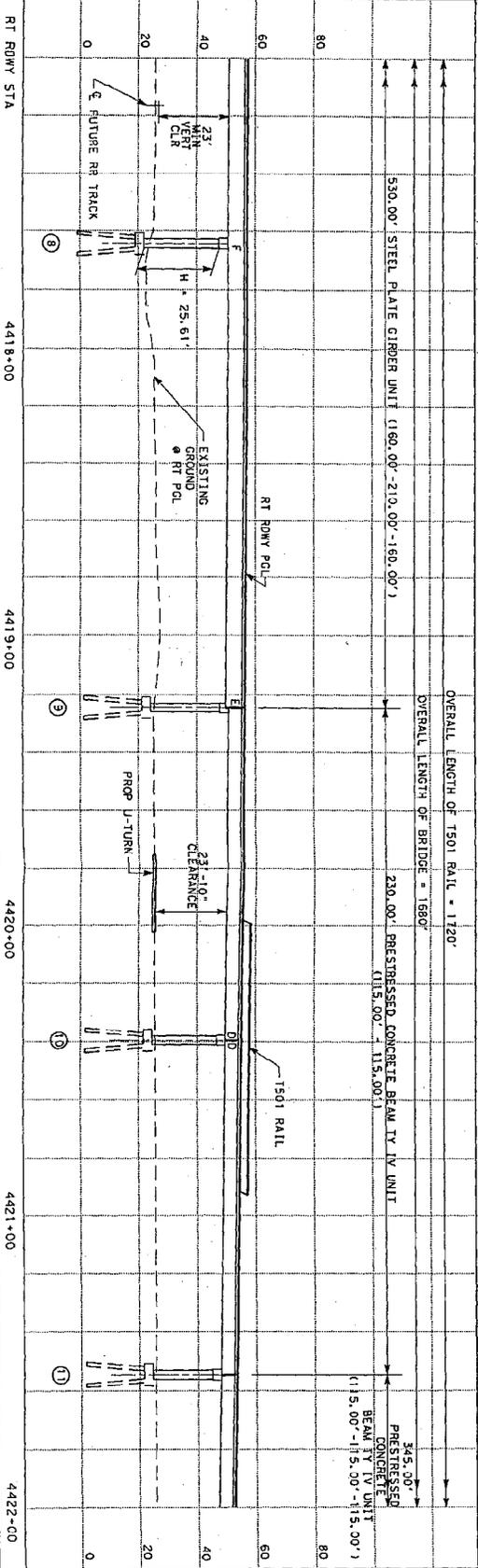
NOTES:  
 1. SEE SHEET 1 OF 4 FOR NOTES.  
 2. SEE SHEET 1 OF 4 FOR TYPICAL SECTION.



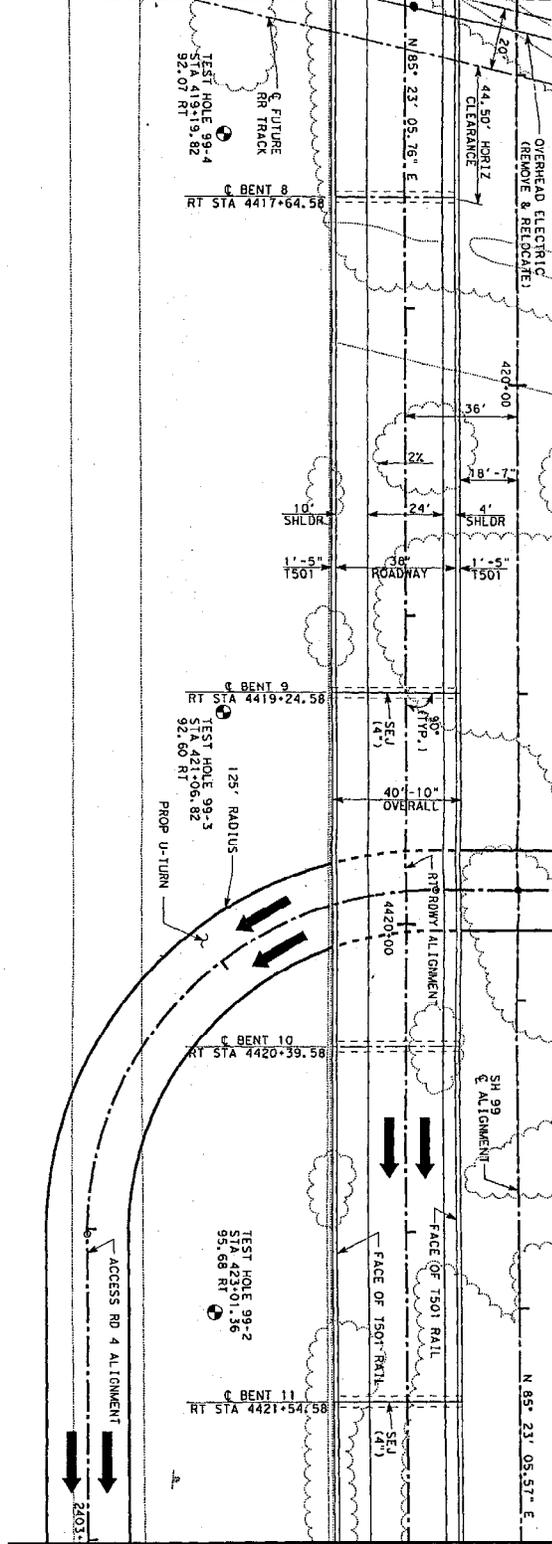








MATCH LINE RT RDWY STA 4417+00



MATCH LINE RT RDWY STA 4422+00

**EXHIBIT "A"**  
 SH 99  
 RT ROADWAY  
 @ TOS ECONO  
 RAILROAD OVERPASS  
 MP 5.93  
 DOT 762 816L

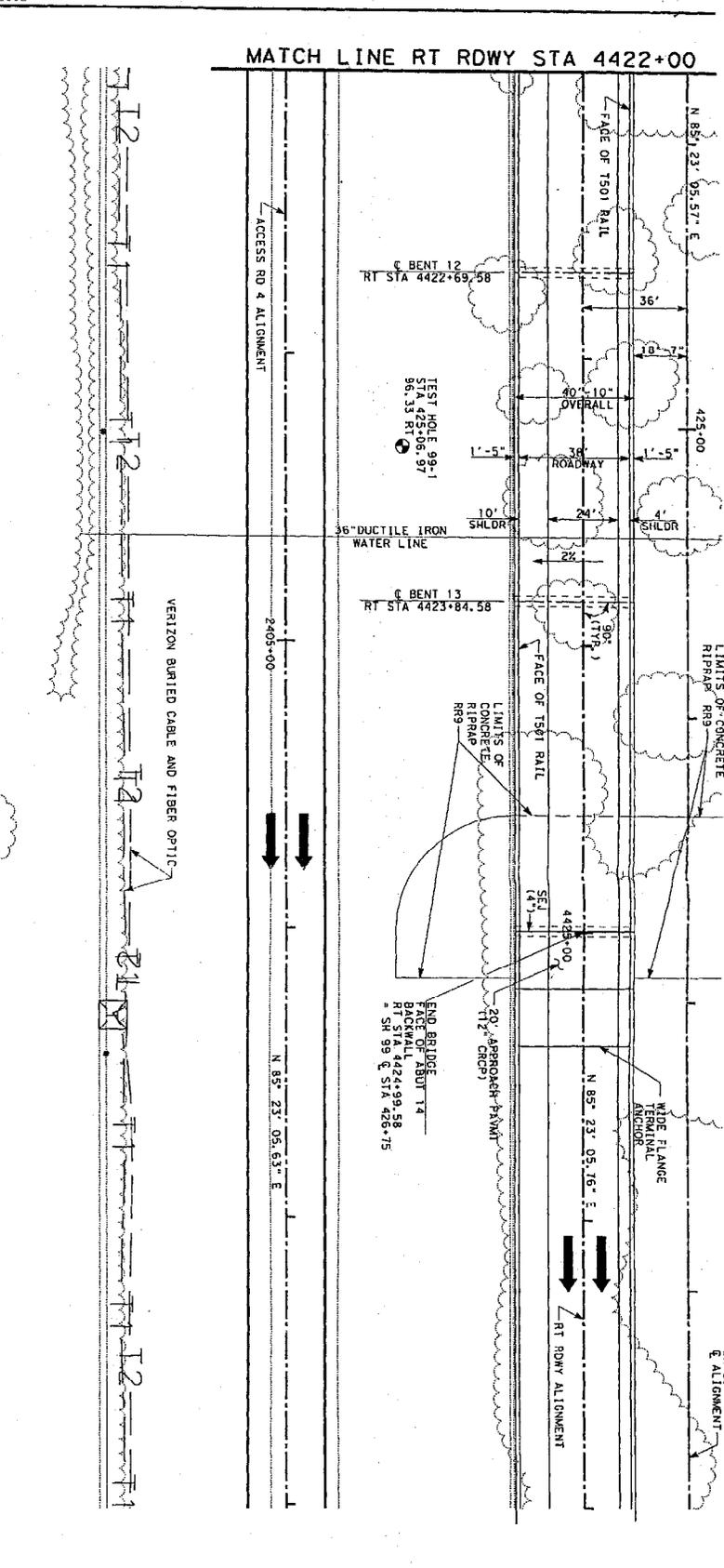
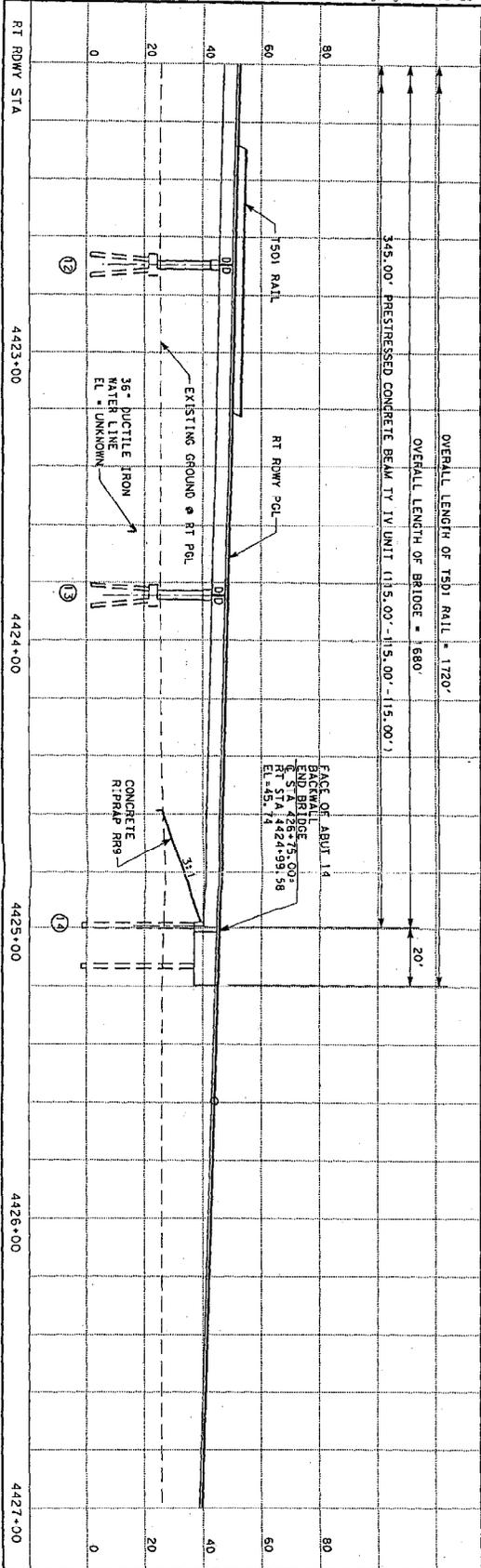
NBI # 12-036-0-3510-10-XXX  
 SCALE: 1"=40' HORZ  
 1"=40' VERT  
 SHEET 3 OF 4

TEXAS DEPARTMENT OF TRANSPORTATION  
 DIV. NO. 6  
 STATE DISTRICT  
 TEXAS BMT CHAMBERS  
 COUNTY  
 PROJECT NUMBER  
 SHEET NO.

on 11-4-2002  
 The seal ordering on this document was authorized by King Yen, P.E. 86432  
 Alteration of a sealed document without proper notification to the responsible engineer is on offense under the Texas Engineering Practices Act.

- NOTES:
- SEE SHEET 1 OF 4 FOR NOTES.
  - SEE SHEET 1 OF 4 FOR TYPICAL SECTION.





STATE	COUNTY
TEXAS	CHANDERS
SECTION	SECTION
3510	003
PROJECT NUMBER	SHEET NUMBER
	6

SH 99  
 RT ROADWAY  
 @ TGS ECONO  
 RAILROAD OVERPASS  
 MP 5.93  
 DOT 762 816L

NBI # 12-036-0-3510-10-XXX  
 SCALE: 1"=40' HORIZ  
 1"=40' VERT  
 SHEET 4 OF 4  
 PROJECT NUMBER

NOTES:  
 1. SEE SHEET 1 OF 4 FOR NOTES.  
 2. TYPICAL SECTION.

EXHIBIT "A"

SH 99  
 RT ROADWAY  
 @ TGS ECONO  
 RAILROAD OVERPASS  
 MP 5.93  
 DOT 762 816L

ATTENTION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE ACT.

on 11-4-2002

THE SEAL COVERING ON THIS DOCUMENT WAS AUTHORIZED BY KING YUEN P. E. 86432

STATE OF TEXAS  
 ENGINEERING BOARD  
 KING YUEN P. E. 86432