

**CONSTRUCTION AND MAINTENANCE AGREEMENT
FOR
SH 107 DRAINAGE OUTFALL IMPROVEMENTS
(CITY OF MISSION)**

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the “State”, and the City of Mission, acting by and through its duly authorized officers, hereinafter called the “Local Government”.

WITNESSETH

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with the local governments; and

WHEREAS, the Texas Transportation Commission passed Minute Order 116522 authorizing the State to undertake and complete a highway improvement generally described as the reconstruction and widening of SH 107 from SH 495 to FM 1924 to include drainage outfall improvements; and

WHEREAS, the State is proposing to construct drainage outfall improvements for SH 107 that encompasses State’s right of way and Local Government’s right of way; and

WHEREAS, the Governing Body of the Local Government have approved entering into this Agreement by resolution or ordinance dated _____, which are attached hereto and made a part hereof as Attachment “A”, for construction and maintenance of drainage outfall improvements associated with siphons as shown in Attachment “C”, hereinafter called the “Project”;

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:

AGREEMENT

Article 1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until terminated as hereinafter provided.

Article 2. Work Responsibilities

The State and the Local Government shall perform and execute all responsibilities as described in Attachment “B”.

Article 3. Right of Access

The Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

Article 4. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

Article 5. Termination

This agreement may be terminated in the following manner:

- ◆ by mutual written agreement and consent of both parties;
- ◆ by the State upon the failure of the Local Government to fulfill their obligations set forth herein;
- ◆ by the Local Government upon the failure of the State to fulfill its obligations set forth herein;

The termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the State and the Local Government under this agreement. If the potential termination of this agreement is due to the failure of the Local Government to fulfill their contractual obligations as set forth herein, the State will notify the Local Government that possible breach of contract has occurred. The Local Government will make every effort to remedy the breach as outlined by the State within a period mutually agreed upon by both parties. In the event the Local Government does not remedy the breach, the State may terminate this agreement or suspend performance thereunder, and the parties shall conclude their activities relating to the Project.

If the termination is due to the failure of the State to fulfill its contractual obligations, the Local Government will notify the State that possible breach of contract has occurred. The State will make every effort to remedy the breach as outlined by the Local Government within a period mutually agreed upon by both parties. In the event the State does not remedy the breach, the Local Government may terminate this agreement or suspend performance thereunder, and the parties shall conclude their activities relating to the Project.

Article 6. Notices

All notices to each party by the others required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being

permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

<u>City of Mission</u> Mike R. Perez City Manager 1201 E. 8th St. Mission, TX 78572	<u>Texas Dept. of Transportation</u> Pedro R. Alvarez, P.E. Pharr District Engineer 600 W. Interstate 2 Pharr, Texas 78577
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All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Any party may request in writing that such notices be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 7. Compliance with Laws

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

Article 8. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

Article 9. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

Article 10. Amendments

By mutual written consent of the parties, this contract may be amended prior to its expiration.

Article 11. Insurance

If this agreement authorizes the Local Government or their contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

Article 12. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the entity they each represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this agreement.

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 _____
Pedro R. Alvarez, P.E.
Pharr District Engineer

Date _____

THE CITY OF MISSION (LOCAL GOVERNMENT)

By _____

Date _____

Mike Perez
City Manager

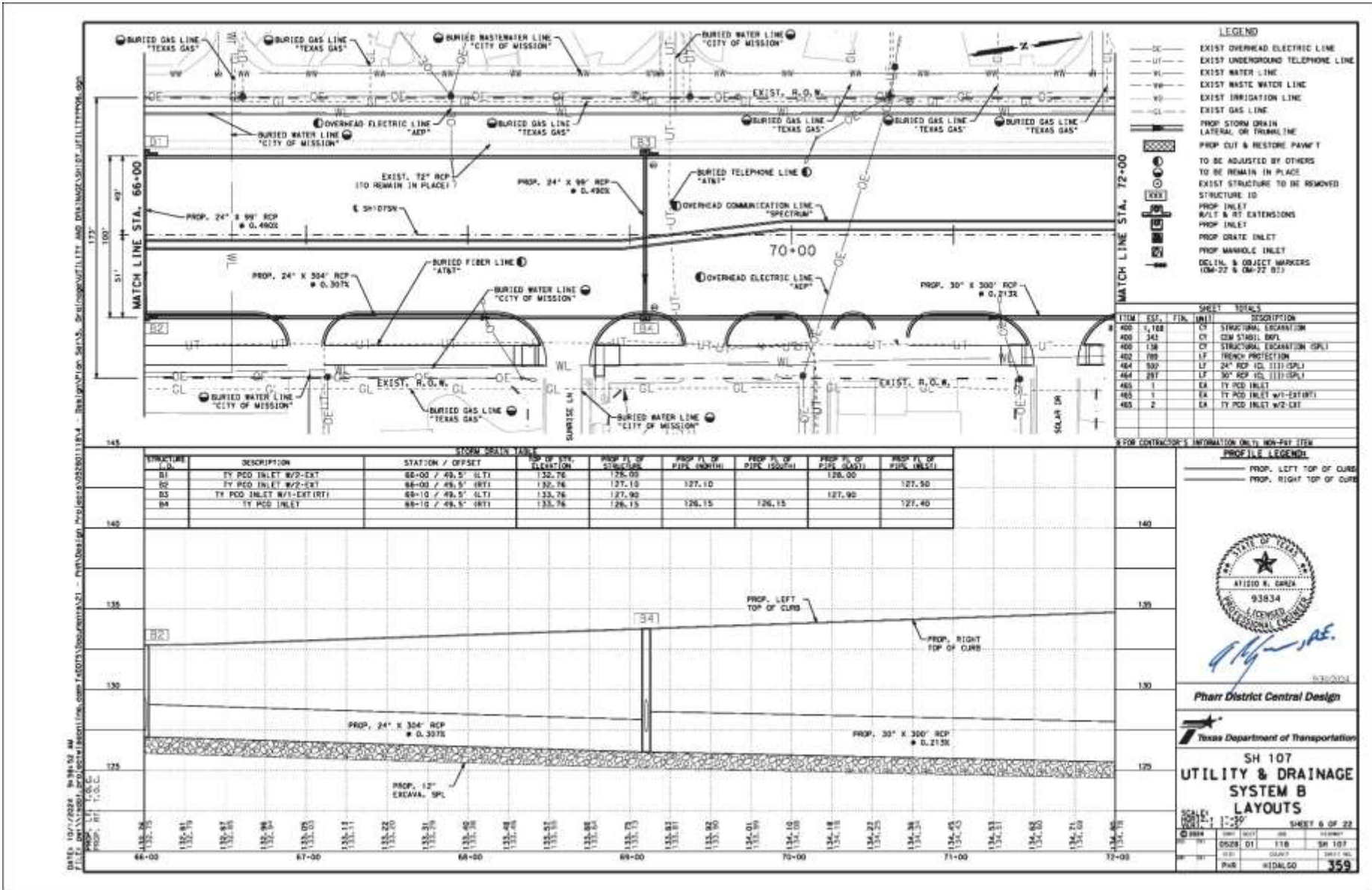
ATTACHMENT “A”
Resolutions or Ordinances

ATTACHMENT “B”

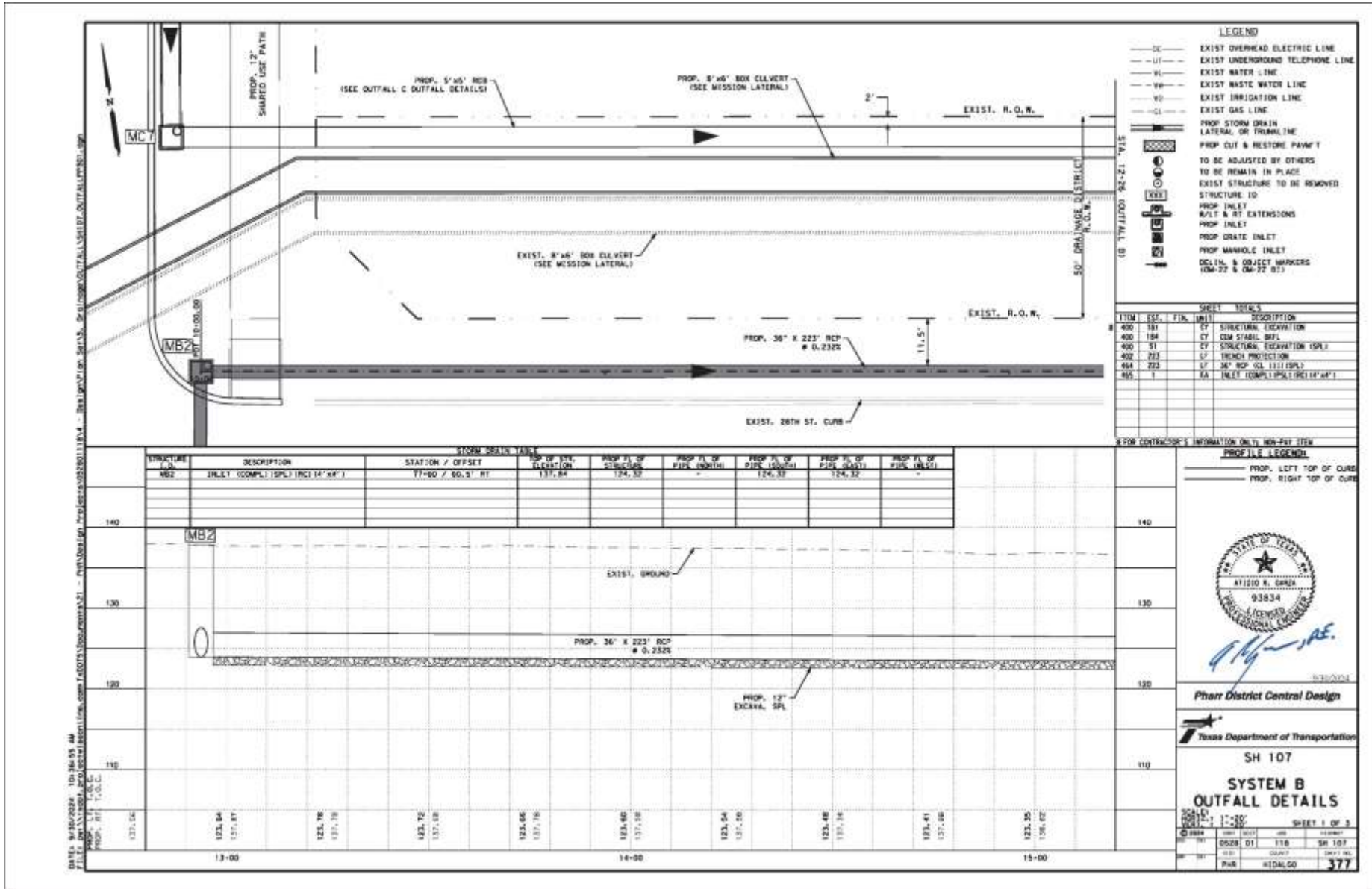
Work Responsibilities

- 1.) The Local Government hereby authorizes the State to construct SH 107 drainage outfall improvements, within and across the Local Government’s right-of-way, as shown in Attachment “C.”
- 2.) The State will, at no cost to the Local Government, provide the following drainage outfall improvements:
 - (a) Construct a drainage outfall consisting of 36” Reinforced Concrete Pipe (RCP) and reinforced concrete manholes from Station 10+28 to Station 15+16 within the Local Government’s right-of-way along 28th St.
 - (b) Install a conflict manhole @ STA. 121+59, just north of Turista Rd. and where the Local Government’s existing sanitary sewer line is conflicting with the State’s proposed drainage trunk system. The State will require that the Local Government place a safety casing around their sanitary sewer line before construction of said manhole.
- 3.) After construction, the Local Government will retain ownership of all necessary drainage improvements beyond the State’s right-of-way and maintain the drainage structures/improvements within the Local Government’s right-of-way, at no cost to the State.
- 4.) After construction, the State will retain ownership of necessary drainage improvements within the State’s right-of-way and maintain the drainage structures/improvements within State right-of-way, at no cost to the Local Government.
- 5.) Local Government will, at no cost to the State, ensure or restrict tap ins that will diminish the outfall’s capacity to drain SH 107.
- 6.) Local Government hereto may make necessary emergency repairs as needed.

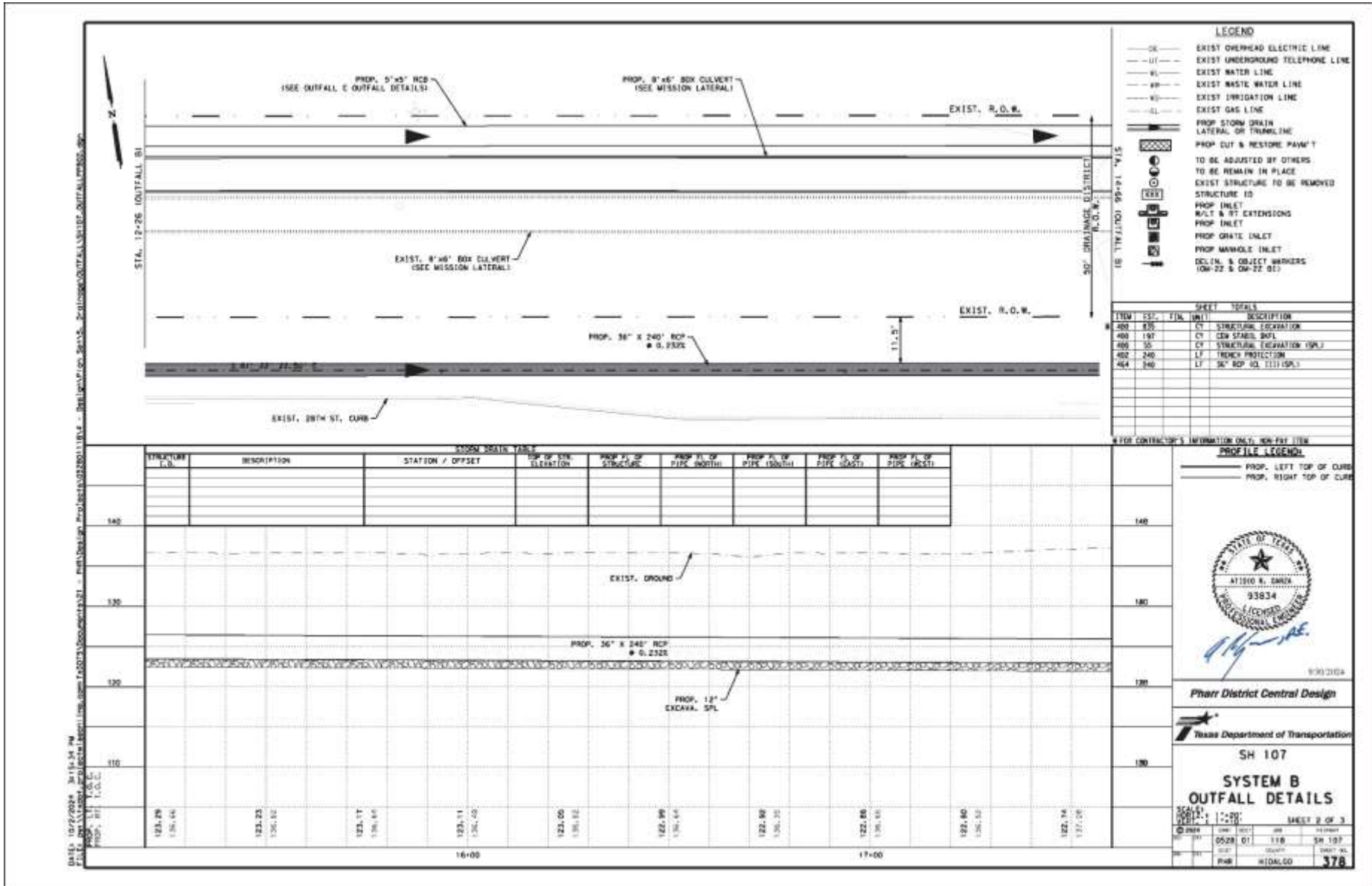
ATTACHMENT "C"



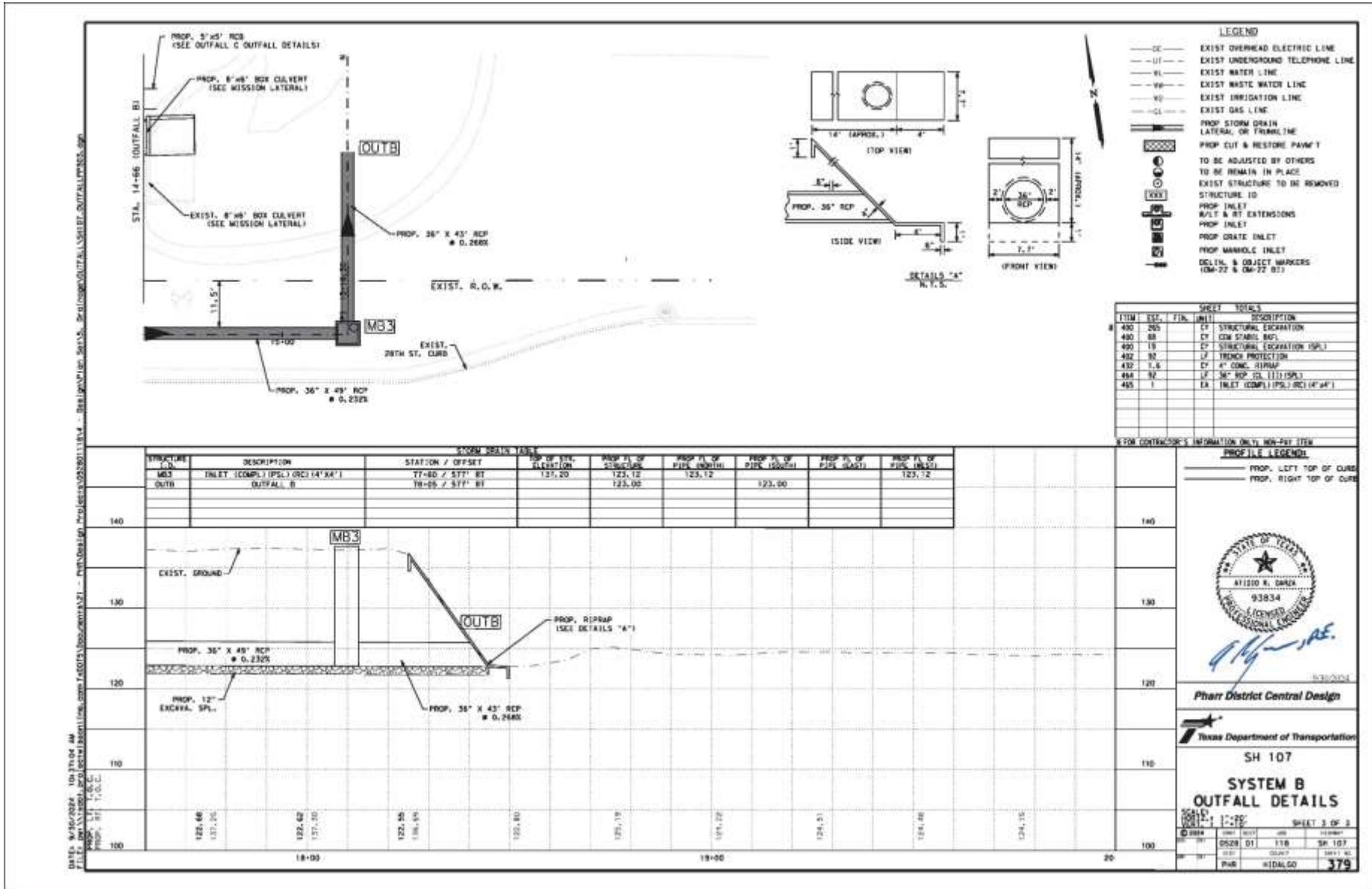
ATTACHMENT “C”



ATTACHMENT “C”



ATTACHMENT “C”



ATTACHMENT “C”

