INTERLOCAL AGREEMENT REGARDING
RELOCATION OF WATER SYSTEM IMPROVEMENTS
(CR 176 Realignment and Rehabilitation Project)

THE STATE OF TEXAS	§	
	§	KNOW ALL BY THESE PRESENTS:
COUNTY OF WILLIAMSON	§	

THIS INTERLOCAL AGREEMENT REGARDING RELOCATION OF WATER SYSTEM IMPROVEMENTS ("*Agreement*") is entered into between Brushy Creek Municipal Utility District, a conservation and reclamation district of the State of Texas (the "*District*") and Williamson County, a political subdivision of the State of Texas (the "*County*"). In this Agreement, the District and the County are sometimes individually referred to as a "*Party*" and collectively referred to as the "*Parties*".

RECITALS

WHEREAS, V.T.C.A., Government Code, Chapter 791, the Texas Interlocal Cooperation Act, provides that any one or more public agencies may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

WHEREAS, the County is in the process of designing and constructing a widening and rehabilitation of CR 176 from FM 2243 to Parkside Parkway (the "*Roadway Improvements,*" as more particularly identified in **Exhibit "A"** attached hereto); and

WHEREAS, the Roadway Improvements include the widening of the right-of-way of CR 176 into the area in which the District holds a 40-wide water transmission line easement and in which is located a 24-inch raw water transmission line that is owned and operated by the District for the provision of potable water service to its retail customers; and

WHEREAS, in connection with the construction of the Roadway Improvements, the Parties desires to provide for the acquisition of a new replacement water line easement by the District for future relocation of the District's existing waterline improvements; for installation of new ductile iron replacement pipe within steel casing, with casing spacers, on a parallel alignment to the District's existing raw water transmission line in areas where the County's initial roadway improvements would otherwise cross the waterline improvements; and for future relocation of the existing waterline improvements into the replacement water line easement at such time as the County constructs additional roadway improvements;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

I.
DEFINITIONS

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

1.01 "Agreement" means this Interlocal Agreement Regarding Relocation of Water System Improvements.

1.02 "Bid Documents" means the plans and specifications, together with all contract documents and bid instructions, relating to construction of the Waterline Improvements.

1.03 "County" means Williamson County, Texas.

1.04 "District Waterline Costs" means all costs and expenses incurred by the District relating to or arising out of the Project. By way of example and without limitation, the District Waterline Costs shall include all out-of-pocket costs and expenses incurred by the District relating to the acquisition of the Replacement Easement, the design, permitting, construction and inspection of the Waterline Improvements, the review of plans and specifications for the Project by the District's professional engineering consultant(s), attendance at Project meetings with the County by the District's consultants and legal fees incurred by the District related to the negotiation of this Agreement and the Project.

1.05 "Effective Date" means the last date of execution of this Agreement by the Parties; provided both of the Parties must execute this Agreement for it to be effective.

1.06 "Relocation and Encasement Area" means the area(s) where the County shall relocate and install new ductile iron replacement pipe within steel casing, with casing spacers, on a parallel alignment to the District's the Existing Waterline Improvements in areas where the County's initial roadway improvements will cross the Existing Waterline Improvements as part of the Phase One Roadway Improvements, as more particularly described on **Exhibit "B"** attached hereto. The District will be provided a minimum 2 days notification prior to shutdown of the line. To the extent the location or route of the Phase One Roadway Improvements is modified by the County, then the Encasement Area shall automatically adjust to include any and all areas where the Phase One Roadway Improvements cross the Existing Waterline Improvements.

1.07 "Engineering Services Agreement" means the contract for engineering services entered into by the District with a professional engineering consultant relating to the Project.

1.08 "Existing Easement" means that certain 40-foot wide easement held by the District within the Project Area authorizing the construction, ownership and operation of the Existing Waterline Improvements, recorded as Document No. 04-1178-CC2 of the Official Public Records of Williamson County, Texas.

1.09 "Existing Waterline Improvements" means all existing water transmission line improvements and related facilities, equipment and appurtenances owned and operated by the District within the Project Area, a portion of which will be abandoned in place at such time as the County proceeds with the Phase Two Roadway Improvements in accordance with the terms and conditions of this Agreement. Further, that portion of the Existing Waterline Improvements in the Relocation and Encasement Area will be abandoned in place in connection with the replacement ductile iron line improvements to be installed as part of the Phase One Roadway Improvements.

1.10 "Party" or "Parties" means the District and/or the County, individually or collectively, as applicable.

1.11 "Phase One Roadway Improvements" means the initial Roadway Improvements to be constructed by the County generally depicted in **Exhibit "C"** attached hereto. The Phase One Roadway Improvements shall not overlap any portion of the Existing Waterline Improvements except in the Encasement Area. .

1.12 "Phase Two Roadway Improvements" means the expansion of CR 176 after completion of construction of the Phase One Roadway Improvements. A description of the proposed Phase Two Roadway Improvements is attached hereto as **Exhibit "D"**, but the Parties acknowledge and agree that the County may revise the final alignment and width of the Phase Two Roadway Improvements prior to construction thereof. The Waterline Improvements shall be undertaken as part of the Phase Two Roadway Improvements.

1.13 "Project" means, collectively, the Roadway Improvements and the Waterline Improvements, all as set forth in this Agreement.

1.14 "Project Area" means the area in which the Project will be undertaken, as said Project Area is more particularly identified in **Exhibit "A"** attached hereto.

1.15 "Replacement Easement" means the twenty foot (20') wide easement to be acquired by the District at the County's sole cost and expense in the Project Area for the Waterline Improvements.

1.16 "Roadway Improvements" means the acquisition of additional right-of-way and construction of the roadway improvements to be undertaken by the County within the Project Area. The Roadway Improvements will consist of the Phase One Roadway Improvements and the Phase Two Roadway Improvements.

1.17 "Waterline Contractor" means the contractor(s) that enter into a contract with the District or County for construction of the Waterline Improvements.

1.18 "Waterline Design Work" means the engineering consulting and design services to be undertaken by the District or County, as determined by the Parties, related to the Waterline Improvements at the County's sole expense.

1.19 "Waterline Improvements" means the design and construction of a 24-inch water transmission line in the Replacement Easement, together with related facilities, equipment and appurtenances to replace the Existing Waterline Improvements in the Project Area. If, during the course of the design and/or construction of the Roadway Improvements, it becomes apparent that the proposed Roadway Improvements would conflict with the design, operation, maintenance or repair of District facilities in addition those identified in this Agreement, then any such water system improvements that must be relocated will be deemed Waterline Improvements for purposes of this Agreement, and shall be relocated by the District at the County's sole cost and expense.

II.
STATEMENT OF INTENT

2.01 General. The purpose of this Agreement is to provide for: (i) the County to install and encase new ductile iron water transmission line to replace a segment of the Existing Waterline Improvements in the Relocation and Encasement Area as part of the Phase One Roadway Improvements at the County's sole cost and expense; (ii) for the District to acquire the Replacement Easement at the County's sole cost and expense; (iii) to provide for design and construction, at the sole cost and expense of the County, of the Waterline Improvements in the Replacement Easement in connection with construction of the Phase Two Roadway Improvements by the County; and (iv) for the District to abandon easement rights and the Existing Waterline Improvements within the Project Area upon completion of construction, commencement of operation, and acceptance of the Waterline Improvements by the District.

III.
EASEMENT MATTERS

3.01 Replacement Easement.

(a) The District agrees to secure the Replacement Easement at the County's sole cost and expense. The form of the Replacement Easement shall be determined in the District's sole discretion.

(b) In recognition that the Existing Easement is 40 feet in width and the Replacement Easement will be 20-feet in width, the County agrees to reimburse a pro rata share of the District's original costs to purchase the Existing Easement. Specifically, the County agrees to provide payment to the District in the amount of $18,412 within thirty (30) days after execution of this Agreement by the Parties.

(c) The District agrees to retain the firm of Sheets & Crossfield for purposes of managing the acquisition of the Replacement Easement, and providing all legal services related thereto. The District further agrees to request Sheets & Crossfield, and other consultants that may provide services relating to the acquisition of the Replacement Easements(such as surveyors and appraisers) to send their bills directly to the County for payment. The County shall timely pay in full all such invoices directly to the vendors, and shall reimburse costs and expenses incurred by the District, if any, in connection with acquisition of the Replacement Easement in the same time and manner as other District Waterline Costs (i.e., within 30 days after receipt of a written invoice).

(d) In the event of termination of the District's contract with Sheets & Crossfield (or other consultants) for any reason, then the County shall reimburse all costs and expenses incurred by the District related to the acquisition of Replacement Easement in the same manner, and according to the same procedures, as other District Waterline Costs.

(e) The Parties agree that it shall be their mutual intent and expectation that the Replacement Easement shall be secured within 180 days after the Effective Date, and the Parties shall fully cooperate and use their best efforts to secure the Replacement Easement within this period.

3.02 Release of Existing Easement.

(a) At such time as the District receives the Replacement Easement and the Waterline Improvements are completed, are operational, and have been accepted by the District, the District agrees to release the Existing Easement to the extent any of such easement encumbers the Project Area for Existing Waterline Improvements that are being abandoned in place. It is specifically agreed, however, that the District shall not release any easement rights required for operation of facilities that are not being relocated under this Agreement. The District agrees to execute and record in the Official Records of Williamson County a form of instrument releasing the Existing Easement in accordance with the terms and conditions of this Agreement upon request by the County after completion of construction and acceptance of the Waterline Improvements.

(b) Until the Existing Easement is released in accordance with the terms of this Agreement, it shall remain in full force and effect for all purposes. The County specifically acknowledges and agrees that the Existing Easement precedes the County's acquisition of right-of-way for the Roadway Improvements, and that the County has elected to proceed with construction of the Phase One Roadway Improvements without prior relocation of the Existing Waterline Improvements into the Replacement Easement. The County assumes sole responsibility for any and all claims, costs or damages, including any damages to the Phase One Roadway Improvements, that may arise out of the District's exercise of rights under the Existing Easement prior to release thereof.

IV.
DESIGN OF PROJECT

4.01 Design of Roadway Improvements. The County shall be solely responsible for all engineering services relating to the Roadway Improvements. The Roadway Improvements shall be designed and constructed such that no portion of the Roadway Improvements will be constructed above the Existing Waterline Improvements except: (i) in the Relocation and Encasement Area with respect to the Phase One Roadway Improvements; and (ii) any storm water conveyance facilities to be installed above the Existing Waterline Improvements as part of the Phase One Roadway Improvements shall be designed and constructed to include a concrete cap between the stormwater facilities and the District's Existing Waterline Improvements.

4.02 Design of Waterline Improvements. Prior to commencement of design and construction of the Phase Two Roadway Improvements, the Parties shall mutually agree upon whether the Waterline Improvements shall be designed by the County or the District. Under

either alternative, the County shall be responsible for all costs and expenses relating to the preparation of the design and permitting of the Waterline Improvements, and the design must be approved by the District prior to commencement of construction.

4.03 Design of Encasement. The plans and specifications for installation of new ductile iron replacement pipe within steel casing, with casing spacers, to replace a portion of the District's Existing Waterline Improvements as part of the Phase One Roadway Improvements and installation of any concrete cap above the Existing Waterline Improvements shall be subject to the District's review and approval prior to commencement of construction by the County of the Phase One Roadway Improvements. The County shall reimburse any costs or expenses incurred by the District in connection with review of the plans and specifications by the District's engineering consultants. Payment shall be made in full within 30 days after receipt of a written invoice for payment from the District.

V.
CONSTRUCTION OF PROJECT

5.01 Construction of Project.

(a) The Parties mutually acknowledge and agree that the County shall construct all physical improvements that constitute the Roadway Improvements.

(b) Except as otherwise agreed upon by the Parties, the County will construct the Waterline Improvements as part of the Phase Two Roadway Improvements at the County's sole cost and expense.

5.02 Approval of Bid Documents.

(a) The Parties agree that the Bid Documents for the Project shall include the following requirements relating to the construction of the Waterline Improvements:

(i) The design of the Waterline Improvements within the Bid Documents shall be in the form prepared by the District;

(ii) The District's Existing Waterline Improvements shall remain operational at all times until the Waterline Improvements are completed, operational, and accepted by the District;

(b) Except with respect to the plans and specifications for the encasement of the Existing Waterline Improvements in the Encasement Area, the District shall not have any right of approval with respect to the design and construction of the Roadway Improvements, and the County agrees that the District shall not have any duty, obligation or responsibility with respect the design or construction of the Roadway Improvements.

5.03 Inspection of Waterline Improvements. The District shall retain a full-time construction inspector to inspect construction of the Waterline Improvements. All costs associated therewith shall be reimbursed by the County as District Waterline Costs.

5.04 Ownership. After acceptance, the District shall hold an 100% undivided ownership interest in the Waterline Improvements, and shall be responsible for operation, maintenance and repair thereof.

5.05 Continuation of Service. The construction of the Project shall be undertaken so as to minimize any disruption of water service to existing customers of the District and will not result in the permanent loss of water service to any customers.

5.06 Damages. The County shall be responsible for any and all damages and personal injury arising out of the Project whether caused by the County's contractor(s) in connection with construction of the Roadway Improvements or by subsequent roadway repair, maintenance and operation activities. In the event that the District incurs any costs associated with the repair of the Existing Waterline Improvements arising out of or related to the Project, or the County's subsequent repair, operation or maintenance of Roadway Improvements, the County shall reimburse all such costs and expenses within thirty (30) days after receipt of a written invoice for payment from the District.

VI.
DISPUTES

6.01 Material Breach; Notice and Opportunity to Cure.

(a) In the event that one Party believes that another Party has materially breached one of the provisions of this Agreement, the non-defaulting Party will make written demand to cure and give the defaulting Party up to 30 days to cure such material breach or, if the curative action cannot reasonably be completed within 30 days, the defaulting Party will commence the curative action within 30 days and thereafter diligently pursue the curative action to completion. Notwithstanding the foregoing, any matters specified in the default notice which may be cured solely by the payment of money must be cured within 10 days after receipt of the notice. This applicable time period must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting party due to such breach.

(b) Any non-defaulting Party will mitigate direct or consequential damage arising from any breach or default to the extent reasonably possible under the circumstances.

(c) The Parties agree that they will negotiate in good faith to resolve any disputes and may engage in non-binding mediation, arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas.

6.02 <u>Equitable Relief</u>. In recognition that failure in the performance of the Parties' respective obligations could not be adequately compensated in money damages alone, the Parties agrees that after providing notice and an opportunity to cure in accordance with Section 7.01 above, the Parties shall have the right to request any court, agency or other governmental authority of appropriate jurisdiction to grant any and all remedies which are appropriate to assure conformance to the provisions of this Agreement. The defaulting Party shall be liable to the other for all costs actually incurred in pursuing such remedies, including reasonable attorney's fees, and for any penalties or fines as a result of the failure to comply with the terms including, without

limitation, the right to obtain a writ of mandamus or an injunction requiring the governing body of the defaulting party to levy and collect rates and charges or other revenues sufficient to pay the amounts owed under this Agreement.

6.03 Agreement's Remedies Not Exclusive. The provisions of this Agreement providing remedies in the event of a Party's breach are not intended to be exclusive remedies. The Parties retain, except to the extent released or waived by the express terms of this Agreement, all rights at law and in equity to enforce the terms of this Agreement.

VII.
GENERAL PROVISIONS

7.01 Reimbursement of District Waterline Costs. The County shall timely reimburse all District Waterline Costs incurred by the District in accordance with this section. The District shall send invoices to the County from time to time identifying all District Waterline Costs for which reimbursement is requested. The County shall pay each invoice in full within 30 days after delivery of the invoice. Each invoice submitted by the District for reimbursement will clearly describe the work done for which reimbursement is sought, and will not seek reimbursement or payment for any costs or expenses other than District Waterline Costs. Upon request of the County, the District agrees to make available documentation in reasonable detail evidencing any District Waterline Costs for which reimbursement is sought.

7.02 Authority. This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code*.

7.03 Term. This Agreement shall remain in effect until the Waterline Improvements are completed and accepted by the District.

7.04 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

7.05 Assignment. Except as otherwise provided herein, the assignment of this Agreement by any Party is prohibited without the prior written consent of the other Party. All of the respective covenants, undertakings, and obligations of each of the Parties will bind that Party and will apply to and bind any successors or assigns of that Party.

7.06 Payments from Current Revenues. Any payments required to be made by a Party under this Agreement will be paid from current revenues or other funds lawfully available to the Party for such purpose.

7.07 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

7.08 Governmental Immunity. The Parties mutually acknowledge and agree that this Agreement constitutes a contract for goods and services.

7.09 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.

7.10 Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

7.11 Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

7.12 Notices. Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

DISTRICT:	Brushy Creek Municipal Utility District 16318 Great Oaks Drive Round Rock, Texas 78681 Attn: General Manager Telephone: (512) 255-7871
COUNTY:	Williamson County 710 Main Street, Suite 101 Attn: County Judge Telephone: (512) _____

7.13 Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

7.14 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

ATTEST:

Asst. Secretary
Michael Tucker

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT:

By: Donna Parker
Printed Name: Donna Parker
Title: Vice-President, Board of Directors

Date: August 22, 2019

ATTEST:

County Clerk

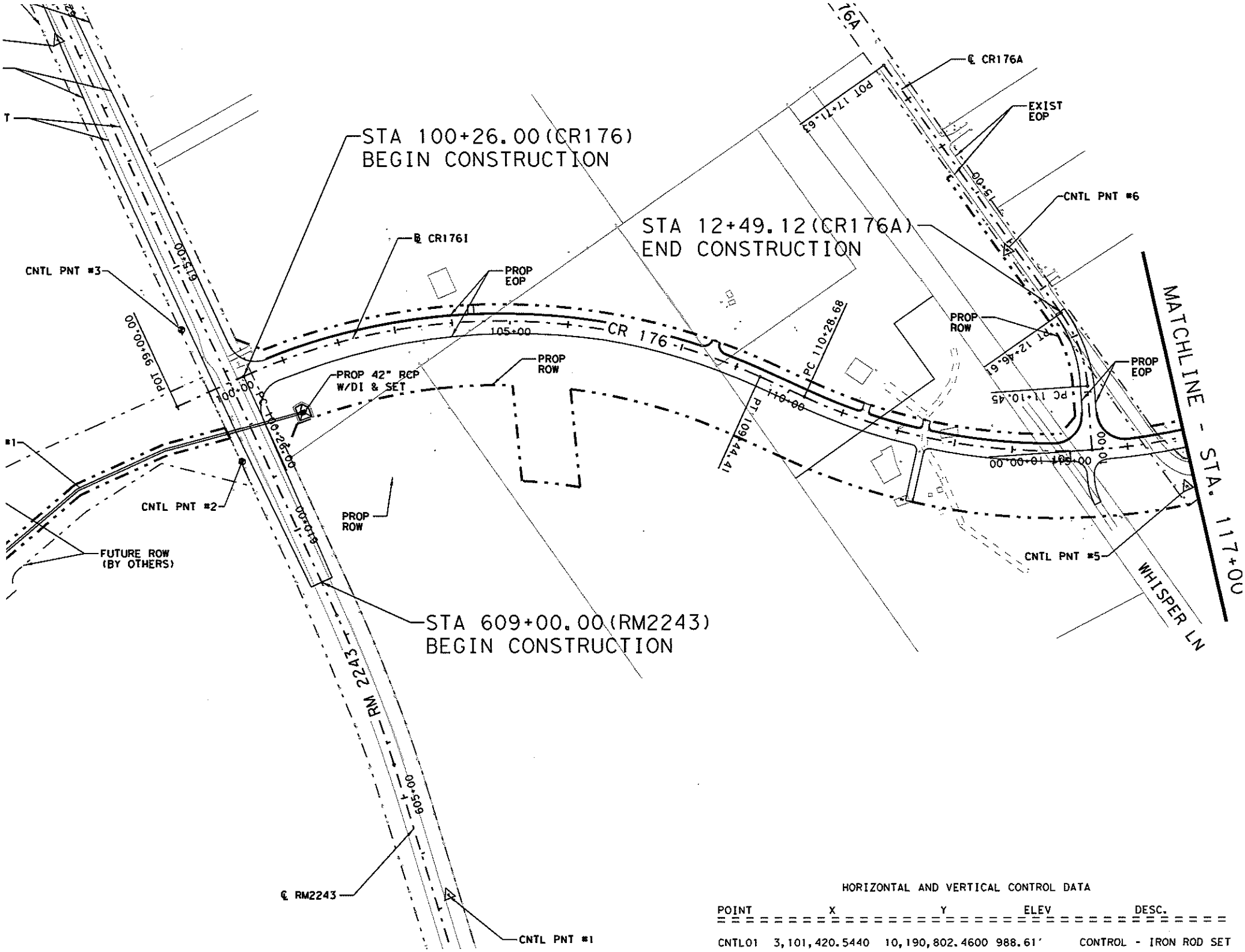
WILLIAMSON COUNTY:

By:
Printed Name:
Title: County Judge

Date:

EXHIBIT "A"

DESCRIPTON OF PROJECT AREA AND ROADWAY IMPROVEMENTS



HORIZONTAL AND VERTICAL CONTROL DATA

POINT	X	Y	ELEV	DESC.
CNTL01	3,101,420.5440	10,190,802.4600	988.61'	CONTROL - IRON ROD SET

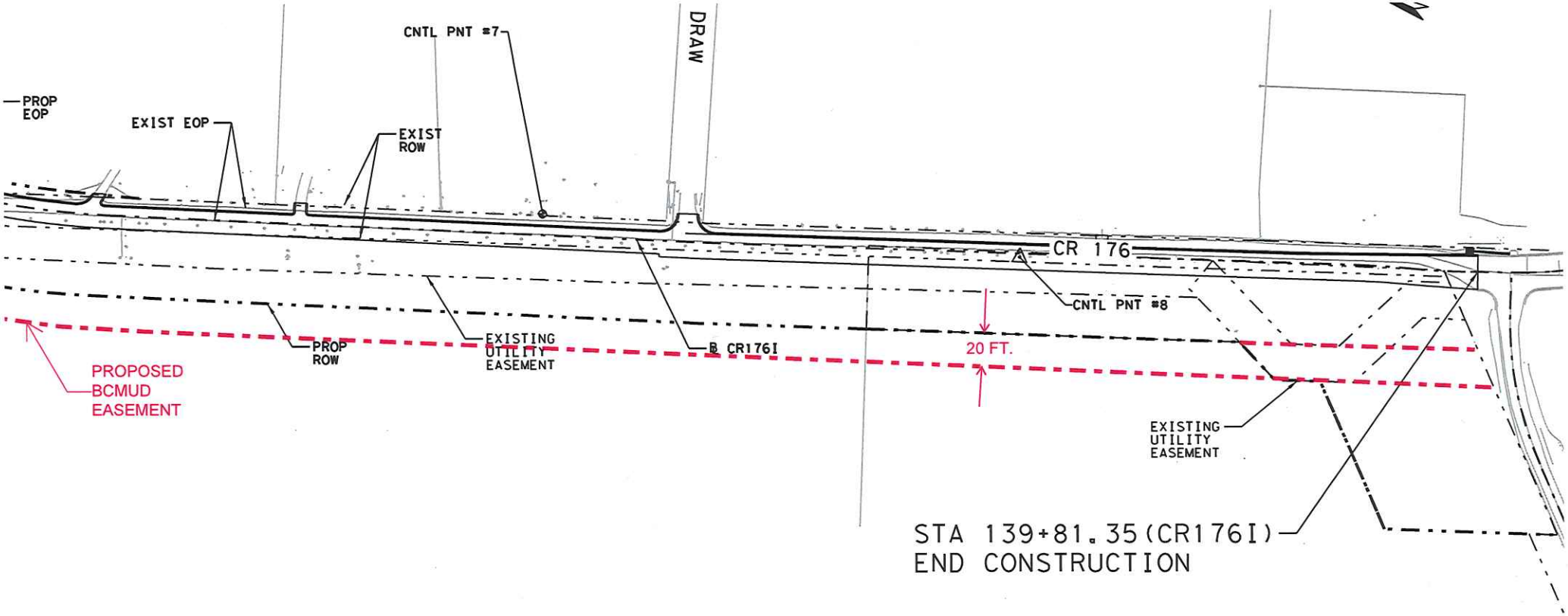

CNTL PNT #7
DRAW
PROP EOP
EXIST EOP
EXIST ROW
CR 176
CNTL PNT #8
PROP ROW
EXISTING UTILITY EASEMENT
℄ CR176I
20 FT.
PROPOSED BCMUD EASEMENT
EXISTING UTILITY EASEMENT
STA 139+81.35(CR176I)
END CONSTRUCTION

EXHIBIT "B"

ENCASEMENT AREAS

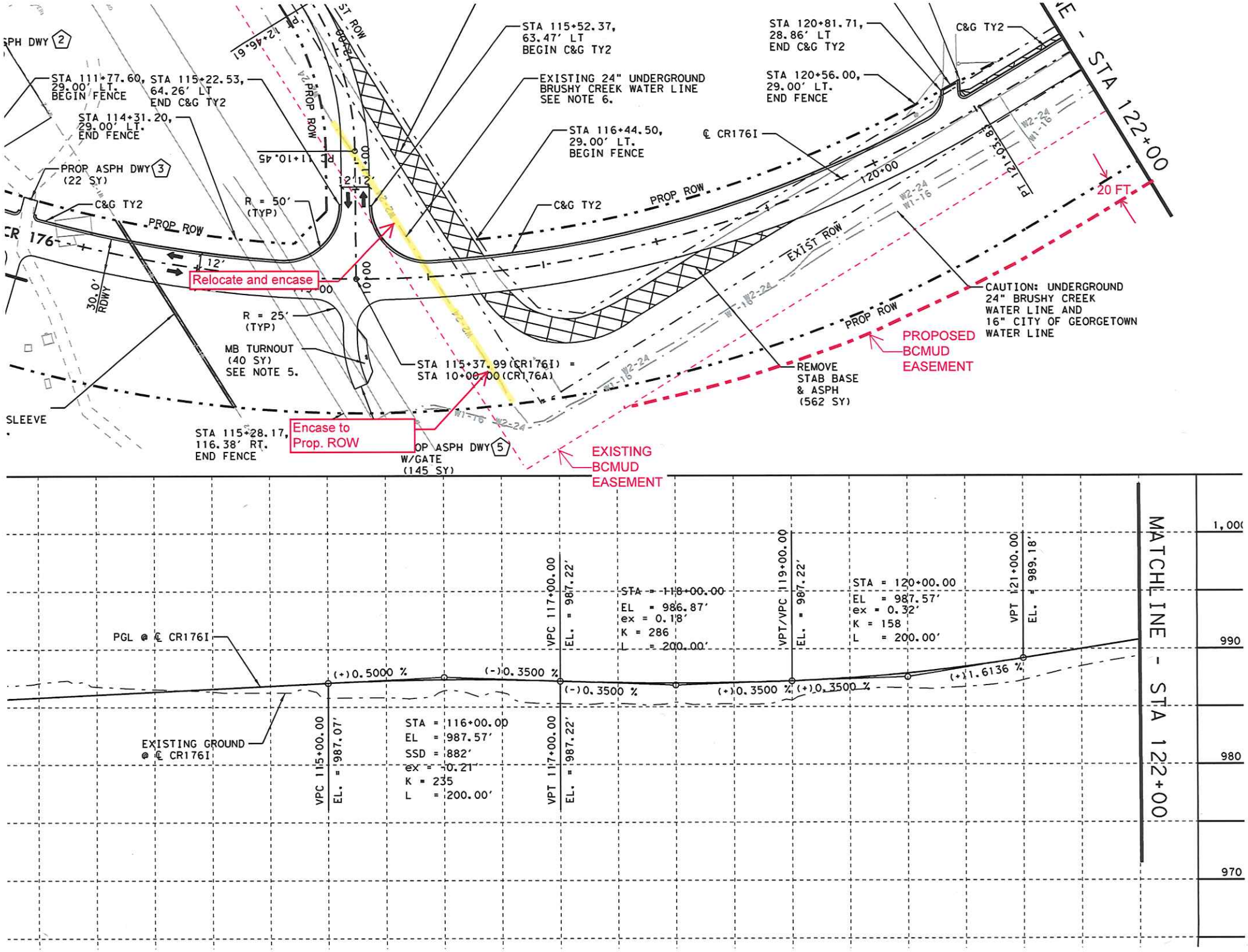
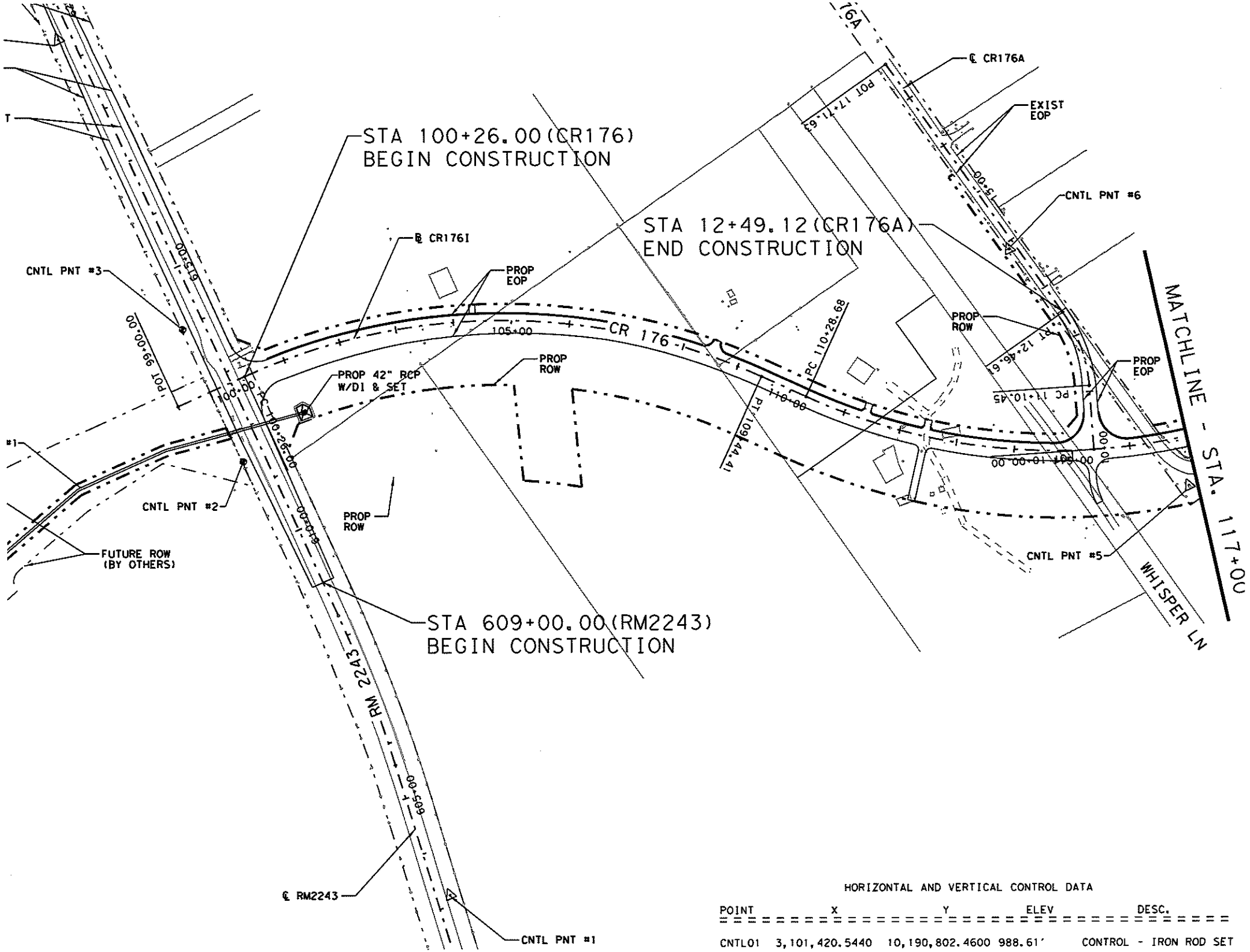

ASPH DWY 2
STA 111+77.60, 29.00' LT. BEGIN FENCE
STA 115+22.53, 64.26' LT END C&G TY2
STA 114+31.20, 29.00' LT. END FENCE
PROP ASPH DWY 3 (22 SY)
C&G TY2
PROP ROW
CR 176
30.0' ROWY
R = 50' (TYP)
R = 25' (TYP)
MB TURNOUT (40 SY) SEE NOTE 5.
SLEEVE
STA 115+28.17, 116.38' RT. END FENCE
Relocate and encase
Encase to Prop. ROW
PROP ASPH DWY 5 W/GATE (145 SY)
STA 115+52.37, 63.47' LT BEGIN C&G TY2
EXISTING 24" UNDERGROUND BRUSHY CREEK WATER LINE SEE NOTE 6.
STA 116+44.50, 29.00' LT. BEGIN FENCE
C&G TY2
STA 115+37.99 (CR176I) = STA 10+00.00 (CR176A)
STA 120+81.71, 28.86' LT END C&G TY2
STA 120+56.00, 29.00' LT. END FENCE
C&G TY2
℄ CR176I
EXIST ROW
PROP ROW
20 FT
CAUTION: UNDERGROUND 24" BRUSHY CREEK WATER LINE AND 16" CITY OF GEORGETOWN WATER LINE
PROPOSED BCMUD EASEMENT
REMOVE STAB BASE & ASPH (562 SY)
EXISTING BCMUD EASEMENT
MATCH LINE - STA 122+00
PGL @ ℄ CR176I
EXISTING GROUND @ ℄ CR176I
(+)0.5000 %
(-)0.3500 %
(-)0.3500 %
(+)0.3500 %
(+)0.3500 %
(+)1.6136 %
VPC 115+00.00 EL. = 987.07'
STA = 116+00.00 EL = 987.57' SSD = 882' ex = -0.21' K = 235 L = 200.00'
VPC 117+00.00 EL. = 987.22'
VPT 117+00.00 EL. = 987.22'
STA = 118+00.00 EL = 986.87' ex = 0.18' K = 286 L = 200.00'
VPT/VPC 119+00.00 EL. = 987.22'
STA = 120+00.00 EL = 987.57' ex = 0.32' K = 158 L = 200.00'
VPT 121+00.00 EL. = 989.18'
1,000
990
980
970

EXHIBIT "C"

PHASE ONE ROADWAY IMPROVEMENTS



HORIZONTAL AND VERTICAL CONTROL DATA

POINT	X	Y	ELEV	DESC.
CNTL01	3,101,420.5440	10,190,802.4600	988.61'	CONTROL - IRON ROD SET

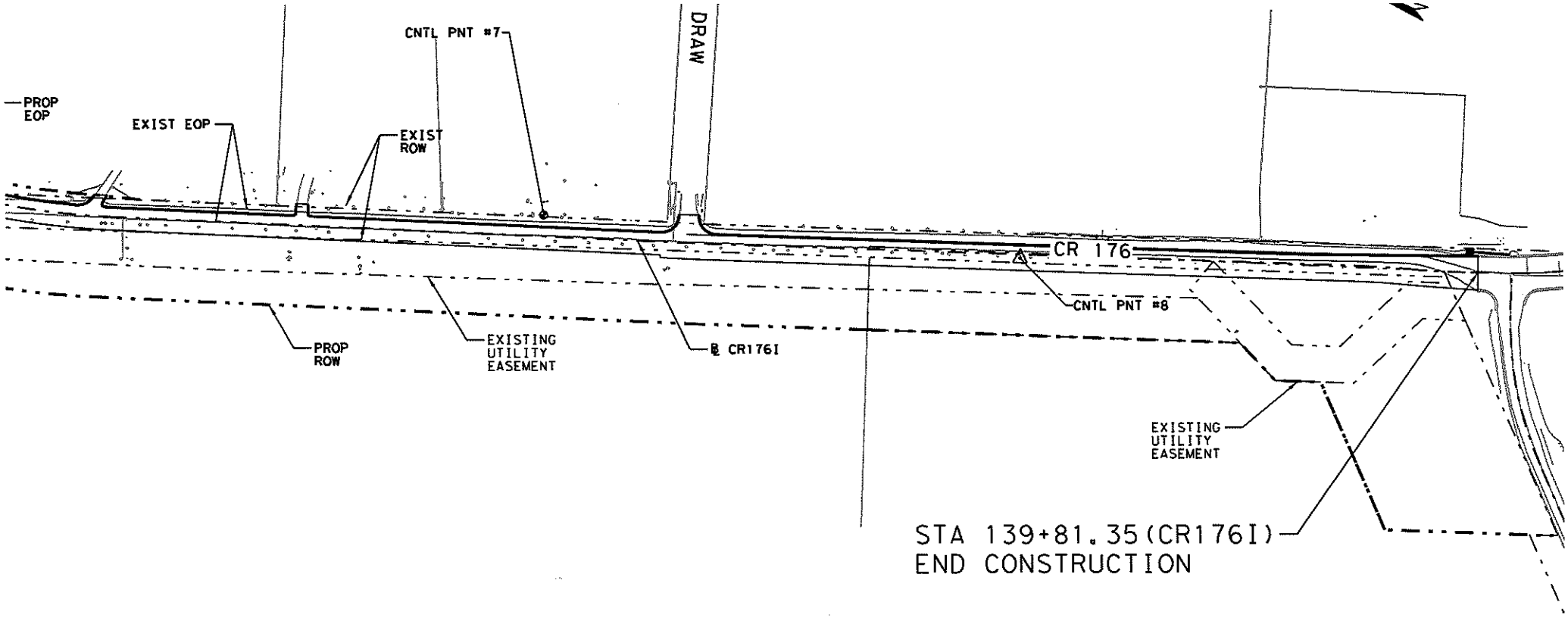
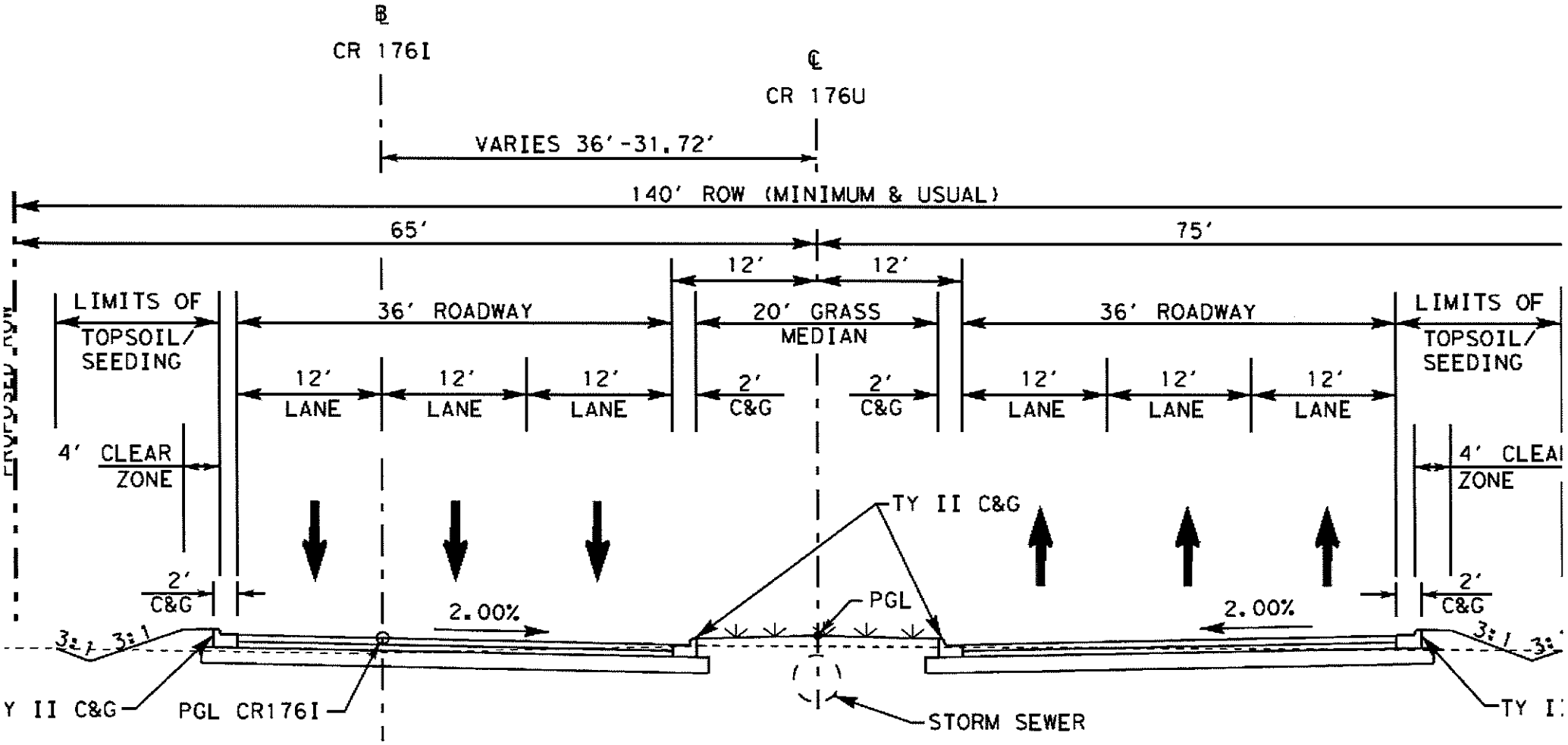

PROP EOP
EXIST EOP
EXIST ROW
CNTL PNT #7
DRAW
CR 176
CNTL PNT #8
PROP ROW
EXISTING UTILITY EASEMENT
℄ CR176I
EXISTING UTILITY EASEMENT
STA 139+81.35(CR176I)
END CONSTRUCTION

EXHIBIT "D"

PHASE TWO ROADWAY IMPROVEMENTS



CR 176 ULTIMATE

PROPOSED TYPICAL SECTION

N.T.S.