

ORDINANCE NO. 23-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF DENTON A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF DENTON (“CITY”) AND TEXAS WOMAN’S UNIVERSITY (“TWU”) FOR FUNDING THE CITY’S MSE WALLS AESTHETICS PACKAGE PROJECT, PROVIDING FINANCIAL ASSISTANCE THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION (“TXDOT”) IH-35 CORRIDOR AESTHETICS PROJECT; CSJ 0195-03-087, IN AN AMOUNT NOT TO EXCEED EIGHT HUNDRED SIXTY-SEVEN THOUSAND, ONE HUNDRED SIXTY-TWO AND 84/100 (\$867,162.84) DOLLARS; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE AND DELIVER THE AGREEMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Intergovernmental Cooperation Act, Chapter 791.035, V.T.C.A., Texas Government Code, provides authorization for any local government to contract with an institution of higher education or university, as defined by Section 61.003 Texas Education Code, to perform governmental functions and services in which the contracting parties are mutually interested under the terms of the Act; and

**WHEREAS**, it is the desire of the aforesaid parties to comply with and further the policies and purpose of the Interlocal Cooperation Act;

**WHEREAS**, the City of Denton, Texas (“City”) and Texas Woman’s University (“TWU”) desire to enter into an Interlocal Agreement (“ILA”) regarding the State Control-Section Job (CSJ) Number (0195-03-087) project described as construction of landscaping and scenic enhancements consisting of wall aesthetics at IH-35 from North of Texas Blvd. to North of US 77 in the city of Denton; and

**WHEREAS**, the TWU desires to solely participate and only be responsible for the MSE wall enhancements cost located at IH-35 and University Drive (US 380) as shown in the plans prepared by Kimley-Horn, Inc.; and

**WHEREAS**, the City has presented TWU the cost estimate reflecting their portion of the total federal funding participation in the amount of \$867,162.84; and

**WHEREAS**, the TWU will be responsible for any cost overruns in excess of the amounts specified in the ILA; and

**WHEREAS**, the City Council of the City of Denton believes it to be in the best interest of the citizens of Denton to enter into the Interlocal Agreement between the City of Denton and TWU for the construction of the MSE Walls aesthetic enhancements.

**NOW, THEREFORE,**

**THE COUNCIL OF THE CITY DENTON HEREBY ORDAINS:**

**SECTION 1.** The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference as true and as if fully set forth in the body of this ordinance.

**SECTION 2.** The City Council hereby approves and authorizes the City Manager to execute the Interlocal Agreement with the TWU for the construction of the aesthetic enhancements to the TxDOT MSE walls as shown on the plan set prepared by Kimley-Horn, Inc. for the construction of the City’s MSE Walls Aesthetics Package Project which is attached hereto as “Exhibit A” in the city of Denton.

**SECTION 3.** In compliance with the Interlocal Agreement, the City Manager, or designee, is authorized to expend funds in the amount of Eight Hundred Sixty-Seven Thousand, One Hundred Sixty-Two and 84/100 Dollars (\$867,162.84) for the construction of the aesthetic enhancements to the TxDOT MSE walls at IH-35 and University Drive (US 380) in the city of Denton.

**SECTION 4.** The City Manager is further authorized to carry out all duties and agreements to be performed by the City under the ILA, including but not limited to, the expenditure of funds.

**SECTION 5.** The City Manager, or designee, is the City’s designated, authorized official, with the power to authorize, accept, reject, alter or terminate the ILA on behalf of the City and act on behalf of the City of Denton in all matters related to the ILA and any subsequent agreements that may result.

**SECTION 6.** This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_; the ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	Aye	Nay	Abstain	Absent
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____

Brandon Chase McGee, At Large Place 5: \_\_\_\_\_

Chris Watts, At Large Place 6: \_\_\_\_\_

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_

# EXHIBIT A

(Interlocal Agreement)

**DENTON COUNTY**           :  
   :  
**STATE OF TEXAS**        :'

**INTERLOCAL COOPERATION AGREEMENT  
BY AND  
BETWEEN THE CITY OF DENTON, TEXAS AND  
TEXAS WOMAN’S UNIVERSITY, FOR  
MSE WALL AESTHETICS AND MEDALLIANS**

**THIS AGREEMENT** is made and entered into by and between the **CITY OF DENTON**, a Texas home rule municipal corporation (hereinafter “CITY”) and **TEXAS WOMAN’S UNIVERSITY, a higher education agency of the State of Texas (hereinafter "TWU")**, Texas, each acting by, through, and under the authority of their respective governing bodies and officials; and

**WHEREAS**, CITY and TWU have the authority to perform the services set forth in this Agreement individually and who mutually desire to enter into an interlocal agreement, as provided for in Chapter 791.032 of the Texas Government Code; and

**WHEREAS**, The Texas Department of Transportation (“TxDOT”) is in the process of redesigning and reconstructing their overpasses and underpasses along a section of the Interstate-35 (IH-35) corridor named the Gateway Character Zone. The City of Denton is one of two cities identified in this zone to receive baseline and accent aesthetic treatments to the proposed improvements.

**WHEREAS**, TWU wishes to participate in including MSE wall aesthetics and two medallions to be incorporated into the widening of IH-35 by TxDOT at University Drive (“US-380”); and

**WHEREAS**, The City of Denton will be executing a Advanced Funding Agreement (“AFA”) with TxDOT to provide funding for MSE wall aesthetics and medallions; and

**WHEREAS**, the CITY has no objections to the proposed wall aesthetics or medallion designs; and

**WHEREAS**, TWU has agreed to fund the design costs for the Project in the amount of \$25,765.00 and estimated construction costs of approximately \$841,397.84, subject to appropriation, for MSE wall aesthetics and two medallions at the intersection of IH-35 and US-380; and

**WHEREAS**, CITY and TWU desire to pool their resources, avoid unnecessary or duplicative expense, and take advantage of maximizing economies of scale, resulting in cost savings; and

**NOW THEREFORE**, CITY and TWU, for and in consideration of the mutual covenants set forth in this Interlocal Agreement do hereby AGREE as follows:

**ARTICLE I  
ADOPTION OF PREAMBLE**

All of the matters stated in the preamble of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein.

**ARTICLE II  
SCOPE OF AGREEMENT**

- A. CITY has retained, and shall continue to retain, the services of Kimley Horn and Associates, Inc. for professional engineering services for TxDOT IH-35 aesthetics package, including the MSE wall aesthetics and medallions at the intersection of IH-35 and US-380 as shown on Exhibit A attached hereto and made a part hereof. TWU shall be solely obligated to pay the sum of \$25,765.00 for such additional engineering services.
- B. Upon the CITY finalizing the TxDOT IH-35 aesthetics package design and obtaining a construction cost estimate from TxDOT to include the aesthetics package the CITY shall inform TWU of the estimated cost to the CITY for construction-related expenses, as specified in Exhibit B, attached hereto and incorporated by reference. Within ten (10) days of approval by both parties, TWU shall deposit the agreed upon amount (“Agreed Upon Costs”) with the CITY. To ensure total costs are ultimately collected, CITY and TWU desire to implement a “true-up” process. In compliance with Section E below, to the extent that the overall costs of the Project are greater than the Agreed Upon Costs, CITY will recalculate the total cost overruns, and, to the extent the total costs actually paid by the CITY exceed the Agreed Upon Costs, TWU will refund the difference to the CITY. If the CITY’s total costs are less than the Agreed Upon Costs, CITY will refund the difference to TWU.
- C. The Funds provided by TWU shall be available to the CITY to pay for the related design and construction costs of the Project.
- D. TWU shall have the explicit right to review and provide comments on the Project submitted by Kimley Horn and Associates, Inc.
- E. TWU and CITY agree and acknowledge that on occasion the construction projects referenced herein may have construction cost overruns. For purpose of this Agreement, the term “construction cost overruns” shall mean those costs which may be incurred by the CITY in the construction of the Project and which are over and above the amount of the Funds TWU has deposited with the CITY. In such event, the CITY shall give TWU prompt written notice of such construction cost overruns and the basis for such, and seek the approval of TWU in writing for the payment of such construction cost overruns. In the event of any disagreement between the CITY and TWU about such construction cost overruns, the CITY and TWU shall jointly review such cost overruns and endeavor to

mutually resolve such disagreement promptly.

- F. This Agreement shall not be construed so as to supersede the laws of the United States or the State of Texas that accord the State of Texas, Agency, and all departments, agencies, and instrumentalities of the State of Texas exemptions from the payment(s) of all taxes of whatever kind. More specifically, to the extent permitted by applicable law, TWU shall not directly or indirectly be liable for taxes of any kind. TWU shall provide all applicable tax exemption certificates upon CITY's request.
- G. Independent Contractor: With respect to this Agreement and any goods and services provided hereunder, the CITY is and shall be deemed to be an independent contractor and not an agent or employee of the TWU and vice-versa.

### **ARTICLE III LIABILITY**

To the extent provided by law, and without waiving any immunity or limitation to liability, CITY agrees to and shall release, defend, and hold harmless TWU, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, which arise out of CITY's participation in the aesthetics package.

To the extent provided by law, and without waiving any immunity or limitation to liability, TWU agrees to and shall release, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, which arise out of CITY's participation in the aesthetics package.

It is understood and agreed between the parties that each party hereto shall be responsible for its own acts of negligence. Where injury or property damage results from the joint or concurrent negligence of both parties, liability, if any, shall be shared by each party on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses available to them, including governmental immunity. Neither party shall be responsible to the other for any negligent act or omission. These provisions are solely for the benefit of the parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defense available by law

**ARTICLE IV  
ADDRESSES AND NOTICE**

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be by personal delivery, sent by registered mail or certified mail, return receipt requested, postage prepaid, or by facsimile transmission actually received, to:

CITY:           City of Denton  
                  Attn: Rebecca Diviney, Director  
                  Capital Improvement Projects/City Engineer  
                  215 East McKinney Street  
                  Denton, Texas 76205

Copy To:  
                  City of Denton  
                  Attn: Sara Hensley  
                  City Manager's Office  
                  215 East McKinney Street  
                  Denton, Texas 76205

TWU:           Texas Woman's University  
                  Rob Ramirez  
                  1200 Frame Street  
                  Denton, Texas 76204  
                  RRamirez9@twu.edu

Copy To:  
                  Texas Woman's University  
                  Jason Thomlinson  
                  304 Administration Dr.  
                  Denton, Texas 76204

Notices shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipt.

**ARTICLE V  
MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed. The parties further agree that the provisions of this section will not be waived unless as herein set forth.

**ARTICLE VI  
SEVERABILITY**

The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word has not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

**ARTICLE VII  
GOVERNING AND VENUE**

This Agreement shall be construed under and governed by, and in accordance with the laws of the State of Texas, and all obligations of the parties hereto, created by this Agreement are performable in Denton County, Texas. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas.

**ARTICLE VIII  
ENTIRE AGREEMENT**

This Agreement and Exhibits A and B attached hereto constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification, cancellation, or alteration of the terms of this Agreement shall be binding on any party hereto unless the same is in writing, dated subsequent to the date hereof, and is duly executed by the parties hereto.

**ARTICLE IX  
WAIVER OF TERMS AND CONDITIONS**

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

**ARTICLE X  
BINDING AUTHORITY**

This Agreement is entered into by the duly authorized officials of each respective governmental entity.

**ARTICLE XI  
CAPTIONS**

The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

*[ Signatures to appear on following page.]*

EXECUTED in duplicate originals this, the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF DENTON**

By: \_\_\_\_\_  
CITY MANAGER, SARA HENSLEY

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DEPARTMENT

\_\_\_\_\_  
DATE

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

EXECUTED in triplicate originals this, the 17th day of November, 2023.

**TEXAS WOMAN'S UNIVERSITY**

By: \_\_\_\_\_

SIGNATURE

Carine M. Feyten, PhD

PRINTED NAME

Chancellor and President

TITLE

Office of the Chancellor and President

DEPARTMENT

November 17, 2023

DATE

ATTEST:

\_\_\_\_\_  
TWU APPROVED AS TO LEGAL FORM:

TWU OGC

Digitally signed by TWU  
OGC  
Date: 2023.11.17  
09:58:09 -06'00'

# Exhibit A

**NOTES:**

1. CONTRACTOR TO COORDINATE WITH LICENSED FABRICATOR OR APPROVED EQUAL FOR FABRICATION
2. CONTRACTOR SHALL SUBMIT SHOP DRAWINGS BY A LICENSED ENGINEER (TEXAS) FOR REVIEW TO THE PROJECT ENGINEER
3. THESE DRAWINGS ARE A PICTORIAL REPRESENTATION OF MEDALLION AND ALUMINUM ONLY.
4. ALL DIMENSIONS AND HEIGHTS MUST BE VERIFIED WITH WALL SHEETS PRIOR TO ANY FINAL DESIGN, FABRICATION OR INSTALLATION WORK.
5. CAD FILES FOR ALL GRAPHIC IMAGES WILL BE PROVIDED BY THE CITY OF DENTON
6. CONTINUOUS FLEXIBLE LINEAR LIGHT FIXTURE TO BE INTEGRATED & PROVIDED BY SIGN PROVIDER/MANUFACTURER



ALUMINUM MEDALLION TYPE B: 3D RENDERING  
N.T.S. **2**



PAINT - FEDERAL STANDARD 27875  
 4" DEEP FRAME

PAINT - TWU MAROON  
 PMS: 202C CMYK: 9-100-64-48  
 RGB: 133-9-42 HEX: 850928  
 CONTRACTOR TO MATCH FEDERAL STANDARD  
 2" THICK BASE

PAINT - FEDERAL STANDARD 27875  
 + 2" THICK FROM FACE OF BASE

11/10/2023

DENTON, TX

TXDOT I-35 WALLS AESTHETIC PACKAGE

DENTON, TX

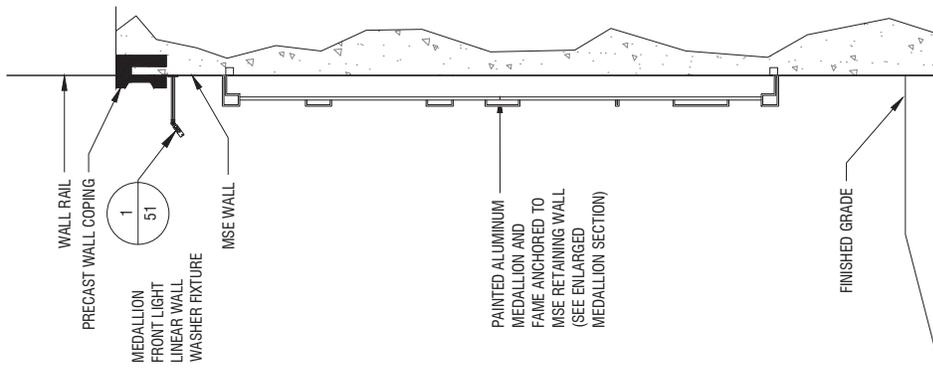
RETAINING WALL DETAILS

ALUMINUM MEDALLION DETAILS

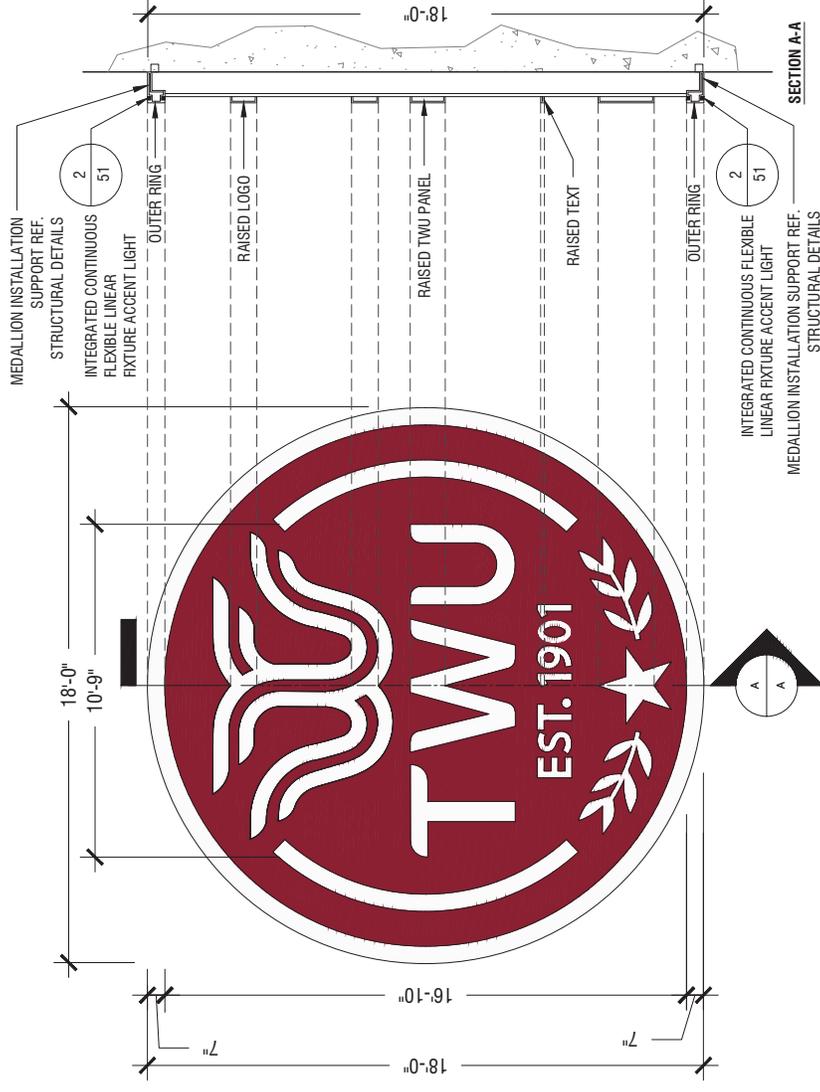
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IM	6	IH-35
GRAPHICS	N/A	IB-35
KB	STATE	COUNTY
NA	TEXAS	DAL
CONTROL	SECTION	JOB
JC	0195	03 087

ALUMINUM MEDALLION TYPE B: DEPTHS  
Scale: 1/8" = 1"

**1**



TYPICAL MEDALLION WALL SECTION  
 SCALE: 1/4"=1'



ALUMINUM MEDALLION TYPE B & SECTION  
 SCALE: 1/4"=1'

11/10/2023

Kimley-Horn & Associates, Inc.  
 600 Warren Parkway  
 Frisco, Texas 75034 (972) 352-3286

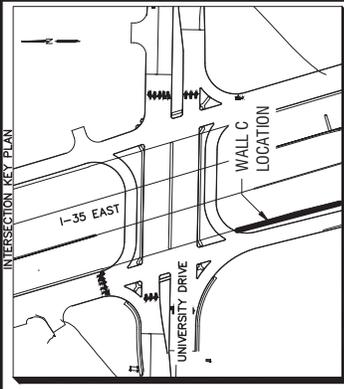
DENTON  
 Texas Department of Transportation @2023

TXDOT I-35 WALLS AESTHETIC PACKAGE  
 DENTON, TX  
 RETAINING WALL DETAILS  
 ALUMINUM MEDALLION DETAILS

DESIGN	FED. AID PROJECT NO.	HIGHWAY NO.
IM	6	IH-35
GRAPHICS	N/A	11-35
KB	STATE	COUNTY
CHECK	TEXAS	DENTON
NA	CONTROL	SECTION
CHECK	0195	03
JC		087

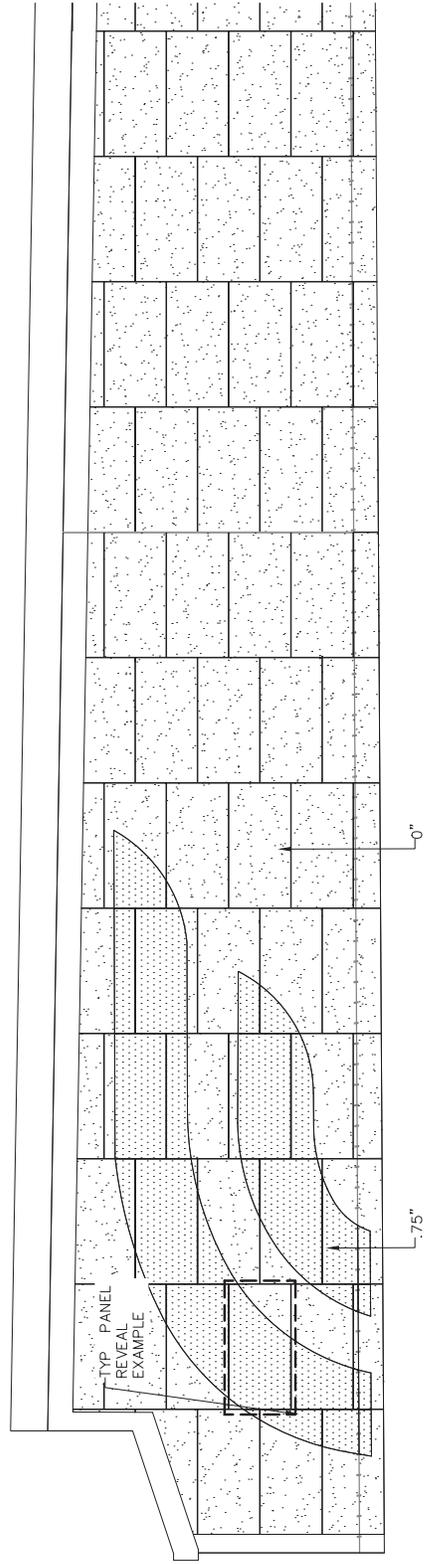




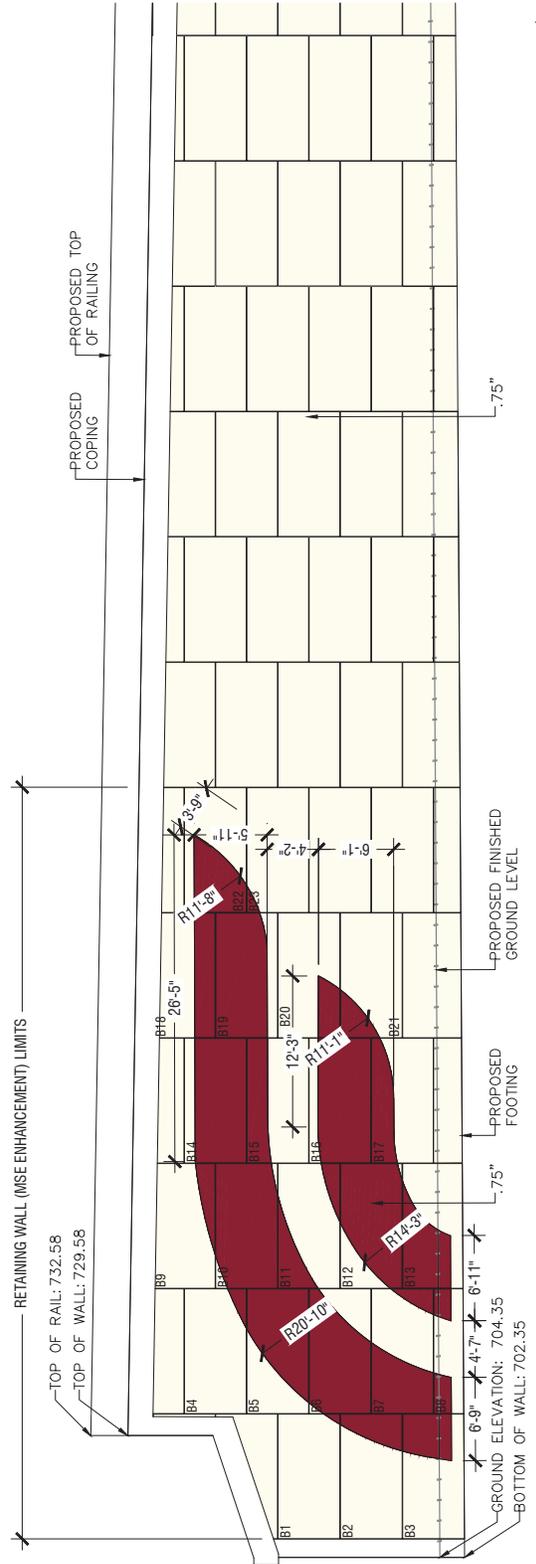


PANEL RELIEF ELEVATIONS - THIS SHEET

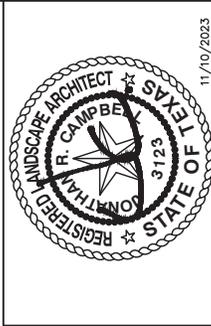
FORM LINER - FEDERAL STANDARD 27886 SMOOTH FINISH	+ 0"
FORM LINER - FEDERAL STANDARD 30109 SMOOTH FINISH	+ .75"



MSE WALL C PANEL REVEAL ELEVATION  
Scale: 1"=10' | 2



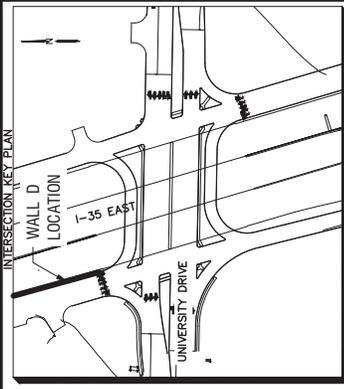
RETAINING WALL (MSE ENHANCEMENT) LIMITS  
Scale: 1"=10' | 1



11/10/2023  
**Kimley-Horn**  
 600 Warren Parkway  
 Frisco, Texas 75034 (972) 352-3836  
**DENTON**  
 Texas Department of Transportation @2023

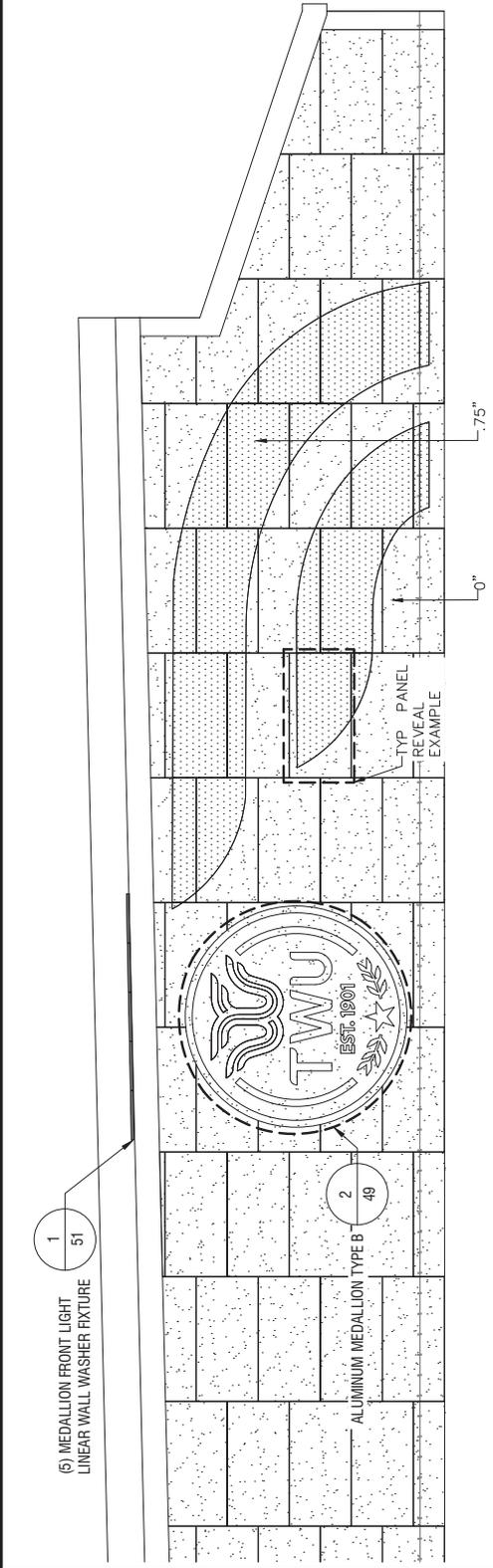
TXDOT I-35 WALLS AESTHETIC PACKAGE  
 DENTON, TX  
 RETAINING WALL DETAILS  
 INTERSECTION OF I-35 & UNIVERSITY DRIVE

REGION	FEDERAL AID PROJECT NO.	HIGHWAY NO.
IM	6	IH-35
GRAPHICS	N/A	SHEET
CHECK	STATE	DISTRICT
NA	TEXAS	DAL
CONTROL	SECTION	JOB
CHECK	0195	03
JC		087

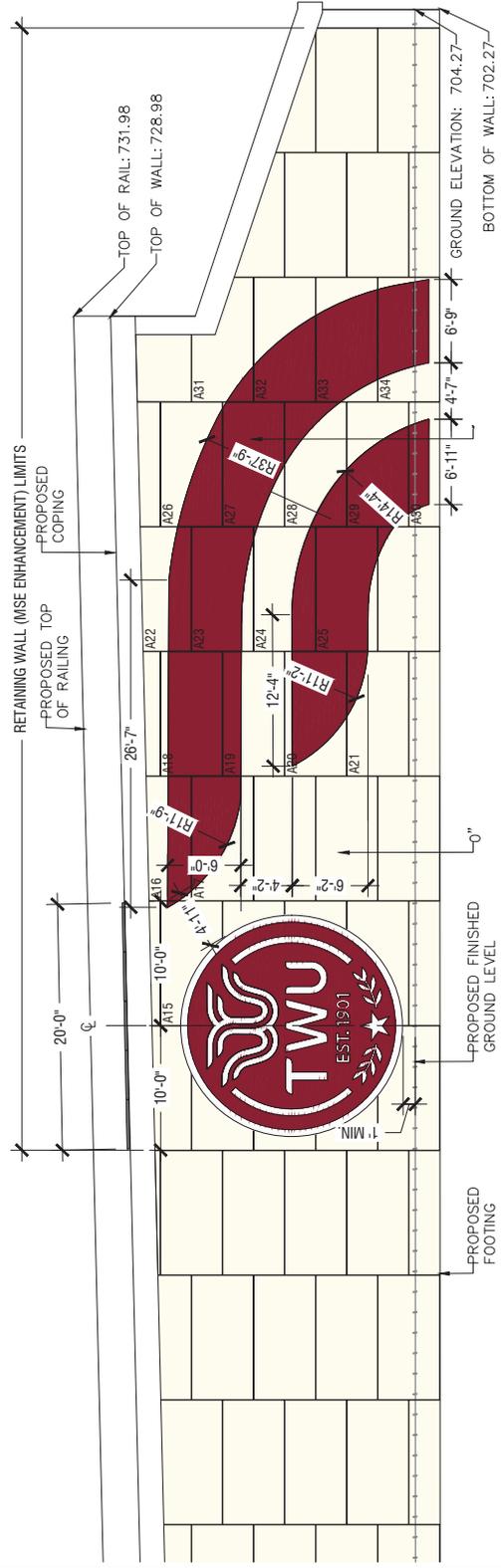


PANEL RELIEF ELEVATIONS - THIS SHEET

FORM LINER - FEDERAL STANDARD 27886 SMOOTH FINISH	+ 0"
FORM LINER - FEDERAL STANDARD 30109 SMOOTH FINISH	+ .75"



MSE WALL D PANEL REVEAL ELEVATION  
Scale: 1"=10'



MSE WALL D DIMENSION ELEVATION  
Scale: 1"=10'

11/10/2023

**Kimley-Horn**  
600 Warren Parkway  
Frisco, Texas 75034 (972) 352-3366

**DENTON**  
Texas Department of Transportation @ 2023

TXDOT I-35 WALLS AESTHETIC PACKAGE  
DENTON, TX

RETAINING WALL DETAILS  
INTERSECTION OF I-35 & UNIVERSITY DRIVE

DESIGN	FED. PROJ. NO.	FEDERAL AID PROJECT NO.	HIGHWAY NO.
IM	6	N/A	IH-35
GRAPHICS	STATE	DISTRICT	COUNTY
KB	TEXAS	DAL	DENTON
CHECK	NA	CONTROL	SECTION
NA	0195	03	087
CHECK	JC		

