

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.**

AN ORDINANCE

AUTHORIZING THE ISSUANCE OF A PERMIT TO HEB GROCERY COMPANY LP FOR THE INSTALLATION OF AN OVERHEAD PEDESTRIAN BRIDGE CROSSING EAST CESAR E. CHAVEZ BOULEVARD BETWEEN DWYER AVENUE AND SOUNTH MAIN AVENUE IN COUNCIL DISTRICT 1 FOR A FEE OF \$5,050.00; AND WAIVING SECTIONS OF CHAPTER 37 OF THE CITY CODE TO ALLOW AN INITIAL 50 YEAR TERM.

* * * * *

WHEREAS, HEB Grocery Company LP is requesting a permit for the installation and maintenance of an overhead pedestrian bridge crossing East Cesar E. Chavez Boulevard to allow employees and partners to directly and safely cross the street mid-block between their facilities; and

WHEREAS, HEB Grocery Company LP owns abutting property to the proposed permit area or has permission from the owner; and

WHEREAS, the issuance of the permit will not interfere with City of San Antonio use of the right of way; **NOW THEREFORE**,

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver to HEB Grocery Company LP on behalf of the City a permit in substantially the same form of **Attachment II**, which is incorporated by reference for all purposes as if fully set forth. The general area subject to the license is shown in **Attachment I**. The City Manager or her designee, severally, should take all other actions reasonably necessary or convenient to effectuate this transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. The restriction of Chapter 37, Section 3 (b), of the city code related to a ten year term for permits is waived.

SECTION 3. HEB Grocery Company LP shall pay \$5050.00 to the City of San Antonio. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 223000000254 and General Ledger 4202410.

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SECTION 4. The disposition of surplus property must be coordinated through the city's Finance Department to assure the removal of these assets into the City's financial records and to record the proper accounting transactions.

SECTION 5. 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 6. This Ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this _____ day of February, 2018.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Andrew Segovia, City Attorney

Attachment I



Attachment II

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's Permit Number.

State of Texas §

County of Bexar §

Public Street or Alley Encroachment Permit

This Permit is issued under Sec. 37-3 of the City Code of San Antonio, Texas. Permittee may construct, maintain, repair, replace, and reconstruct the Permitted Encroachment on the Affected Right of Way subject to this permit and Sec. 37-23 of the City Code of San Antonio, Texas.

This permit does not relieve Permittee of any building code requirements, zoning restrictions, other city-imposed requirements, or other applicable land use restrictions. If the Permitted Encroachment entails excavation or entails intrusion into space near overhead or underground utilities, Permittee must follow all rules imposed by public utilities whose facilities may potentially be affected. If excavation is involved, Permittee must obtain a permit from the City's Right-of-Way Division.

Delegated Authority: City Code of San Antonio, Texas § 37-3

Name of Permittee: HEB Grocery Company, LP

Address of Permittee: 646 South Flores Street, San Antonio, Texas
78204

Permitted Encroachment Description ("Permitted Encroachment"): An elevated pedestrian bridge over East Cesar E. Chavez Boulevard Public Right of Way between Dwyer Avenue and South Main Avenue, adjacent to New City Blocks 927 & 929, more fully described and as depicted in **Exhibit B**, which is incorporated by reference for all purposes as if fully set forth.

Description of Affected Public Right of Way: A 0.04 acre portion of the East Cesar E. Chavez Boulevard Public Right of Way located between Dwyer Avenue and South Main Avenue, adjacent to New City Blocks 927 & 929 as shown in **Exhibit A**.

Fee: \$5,000.00

Term: 50 years subject to renewal under Section 1.7

Start Date: February 1, 2018

Right of Way Purposes: For purposes of this agreement, "Right of Way Purposes" shall mean all purposes as allowed or provided for under local, state or federal rules and regulations related to municipal control of streets, alleys or highways.

1.1 The City agrees to permit the Permitted Encroachment within the Affected Right Of Way in the location documented as Description of Affected Right of Way.

1.2 The City and the Permittee agree that the above-described Permit is granted subject to the following conditions, terms and reservations:

- a) The Permittee is responsible for paying for the Permitted Encroachment stated herein;
- b) The Permittee is responsible for the maintenance and replacement of the Permitted Encroachment;
- c) In the event the City disturbs the Permitted Encroachment while maintaining, improving or adjusting the City's right of way, the City shall not be responsible for repair or replacing the Permitted Encroachment installed by the Permittee;
- d) Unless approved in writing by the City acting through the Director of the Transportation and Capital Improvements Department, the Permitted Encroachment within the Affected Right of Way may not be altered from what is approved. The Permitted Encroachment must also be maintained in good condition;
- e) Permittee is responsible for acquiring any additional permission necessary from parties who hold an interest in or own property within the Affected Right of Way;
- f) All Chapter 35 of the City Code of San Antonio (Unified Development Code) requirements and approvals (including Office of Historic Preservation and/or Historic and Design Review Commission) must be met or obtained related to clearance, design, permits and installation;
- g) The Permitted Encroachment shall have a minimum clearance of 17.5 feet above the travel lanes on Cesar Chavez;
- h) The Permitted Encroachment shall not block a driver's view of any traffic signals or signs (including a perspective from a semi-truck height);
- i) Permittee understands and agrees that the City does not warrant that environmental impacts will not be encountered when disturbing the land. The City shall not bear any financial burden related to environmental impacts (if any) encountered during the disturbance of the land. If environmental impacts are

encountered, it is the Permittee's responsibility to notify the City and the appropriate regulatory agencies of the issue;

- j) San Antonio Water System (SAWS) has a water main located along the southerly right of way of East Cesar Chavez Boulevard at the proposed bridge location. Permittee should provide SAWS developer engineering group with plans and specification so SAWS staff can determine if the Permitted Encroachment will not interfere with SAWS ability to operate and maintain the water line.
- k) Permittee shall notify City of any change of address within 5 business days of such change.

1.3 This Permit is made subordinate to the right of the City to use the Affected Right of Way for Right of Way Purposes. It is understood and agreed that should the City deem that the use of the Affected Right of Way by Permittee either (a) interferes with the ability of the City or public to use the Affected Right of Way for Right of Way Purposes, or (b) creates a public safety risk, then the City acting through the Director of the Transportation and Capital Improvements Department may revoke or suspend this permit and Permittee shall remove any or all Permitted Encroachments from the Affected Right of Way at the Permittee's expense; provided, however, that should the risk or interference not require immediate removal to ensure the public's safety the City shall consider proposals from Permittee regarding ways to mitigate or eliminate any such interference or risk before causing the removal of the Permitted Encroachment if such proposals are submitted in writing within fifteen (15) business days following notice of the City's intent to revoke or suspend. The Permittee shall have a right of cancellation upon giving the City 30 days' written notice of the Permittee's intention to cancel this permit. Upon cancellation, this permit shall become null and void, and the Permittee, or anyone claiming any rights under this instrument, shall remove any Permitted Encroachment from the Affected Right of Way at the Permittee's expense. All work shall be done at the Permittee's sole cost and to the satisfaction of the City. The determination by the Director of Transportation and Capital Improvements or his designee as to what constitutes a conflict with the Permitted Encroachment, a public safety risk, or interference with the City's ability to use the Affected Right of Way, shall be final and binding upon the parties.

1.4 This Permit is subject to all generally applicable conditions and restrictions of Chapter 37 of the City Code of the City of San Antonio related to permits issued under section 37-3 (Permits for Encroachment onto public streets, alleys, or drainage easements).

1.5 This Permit is subject to all state and federal laws, the provisions of the Charter of the City, as it now exists or as it may hereafter be adopted or amended, and the ordinances of the City now in effect or which may hereafter be passed, adopted, or amended.

1.6 The Permittee must apply for and receive any necessary permits or permission from pertinent City boards or departments.

1.7 This Permit shall be for an initial term of 50 years. The Permit shall automatically renew for two (2) additional twenty-five (25) year renewal terms so long at the time of the renewal Permittees is conducting meaningful business activities and has at least 2,000 employee positions with primary office locations within 2,000 linear feet of the Permitted Encroachment. Thus, the timeline of the Permit shall be as follows:

Initial Term: February 1, 2018 – January 31, 2068
Eligible for Renewal (1st): February 1, 2068 – January 31, 2093
Eligible for Renewal (2nd): February 1, 2093 – January 31, 2118

Miscellaneous Provisions

2.1 The phrases, clauses, sentences, paragraphs or sections of this Permit to use agreement are severable and, if any phrase, clause, sentence paragraph, or section hereof should be declared invalid by the final decree or judgment of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Permit.

2.2 The rights under this permit may be transferred or assigned to a new owner of property that is adjoining the permitted encroachment area, or to an eligible property owners association, provided such transferee would qualify under the city code as if applying for the original permit. Permittee must provide City of San Antonio written notice prior to any transfer.

2.3 Any notice required to be given pursuant to the terms and provisions of this Permit shall be in writing and shall be mailed by certified, return receipt requested, addressed as set forth below, or at such other address as may be specified by written notice.

If to: **CITY OF SAN ANTONIO:**
City Hall, P.O. Box 839966
(Attention: Director, Transportation and
Capital Improvements Department)
San Antonio, Texas 78283

If to: **PERMITTEE:**
HEB Grocery Company, L.P.
646 South Flores Street
San Antonio, Texas 78204

2.4 The City and Permittee agree that this Permit shall be construed in accordance with the laws of the State of Texas.

2.5 Venue for any dispute arising out of this Permit shall lie in a court of competent jurisdiction in Bexar County, Texas.

[SIGNATURES ON FOLLOWING PAGES]

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In Witness Whereof, the parties have caused their representatives to set their hands.

CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____

Steve Hodges, Real Estate Manager
Transportation and Capital Improvements
Department

Date: _____

Approved as to Form:

City Attorney

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of _____, 2018 by Steve Hodges of the City of San Antonio in the capacity therein stated and on behalf of that entity.

Date: _____

Notary Public State of Texas

My Commission Expires: _____

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02/15/18
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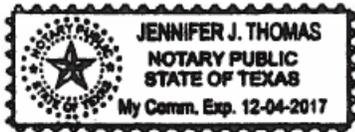
HEB GROCERY COMPANY, LP,
a Texas limited partnership

By: Todd A. Piland
Name: Todd A. Piland
Title: Executive Vice President
Date: 1-24-18

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 24 day of January, 2018 by Todd A. Piland, the Executive Vice President of HEB Grocery Company LP, a Texas limited partnership, in such capacity on behalf of said limited partnership.

Date: 1-24-18



Jennifer J. Thomas
Notary Public State of Texas

My Commission Expires: _____

Exhibit A



0.0400 Acres
(1742 Sq. Ft.)
2223-10662ex1.dwg

FN NO. 2223-10662-1
November 02, 2017
JOB NO. 2223-10662

FIELD NOTE DESCRIPTION

Being 0.0400 acres situated in E. Cesar Chavez Blvd. (86' Public R.O.W.), San Antonio, Bexar County, Texas; said 0.0400 acres being more particularly described by Metes and Bounds as follows with all bearings being referenced to the North American Datum 1983, Texas Coordinate System, South Central Zone:

Commencing, at a found 1/2-inch iron rod on the Northeasterly right-of-way line of E. Cesar Chavez Blvd. and being the most Southerly corner of Lot 1, Block 1, N.C.B. 927, Arsenal Unit 5 as recorded in Volume 9661, Page 104 of the Deed and Plat Records of Bexar County, Texas; said point also being the West curve return at the intersection of E. Cesar Chavez Blvd. and Dwyer Ave. (60' Public R.O.W.);

Thence, along the arc of a curve to the right, having a chord of N 40° 28' 49" W, 40.71 feet, a radius of 757.13 feet and a central angle of 03° 04' 52", a distance of 40.72 feet, along the Southwesterly line of said Lot 1 and the Northeasterly R.O.W. line of E. Cesar Chavez Blvd., to the most Easterly corner and **Point of Beginning** for the herein described tract of land;

Thence, S 25° 28' 01" W, 96.12 feet, crossing E. Cesar Chavez Blvd., to a point for the most Southerly corner of the herein described tract; being on the Southwesterly R.O.W. of E. Cesar Chavez Blvd and the Northeasterly line of Lot 6, Block 3, N.C.B. 929, Subdivision Plat and Replat of Arsenal as recorded in Volume 9687, Page 80 of the Deed and Plat Records of Bexar County, Texas;

Thence, along the arc of a curve to the right, having a chord of N 41° 45' 30" W, 19.52 feet, a radius of 843.14 feet and a central angle of 01° 19' 36", a distance of 19.52 feet, along said Northeasterly line of Lot 6 to a point for the most Westerly corner of the herein described tract of land;

Thence, N 25° 28' 01" E, 97.45 feet, crossing E. Cesar Chavez Blvd., to a point on the Southwesterly line of said Lot 1 and the Northeasterly R.O.W. line of E. Cesar Chavez Blvd., for the most Northerly corner of the herein described tract of land;

Thence, along the Northeasterly R.O.W. Line of E. Cesar Chavez Blvd. and the Southwesterly line of said Lot 1 as follows:

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- Along the arc of a curve to the right, having a chord of S 38° 00' 03" E, 4.54 feet, a radius of 843.14 feet and a central angle of 00° 18' 30", a distance of 4.54 feet to a found 1/2-inch iron rod for corner at a point of reverse curvature;
- Along the arc of a curve to the left, having a chord of S 38° 21' 07" E, 15.53 feet, a radius of 757.13 feet and a central angle of 01° 10' 32", a distance of 40.72 feet, to the **Point of Beginning**, containing 0.0400 acres (1742 square feet) of land, more or less.

Note: Sketch of even date to accompany this Field Note Description.



Hal B. Lane III
Registered Professional Land Surveyor
Texas Registration Number 4690
Stantec Consulting Services, Inc.
70 NE Loop 410, Suite 1100
San Antonio, Texas 78216
210/525-9090
TBPLS Firm No.: 10194228

4/5/17 DATE



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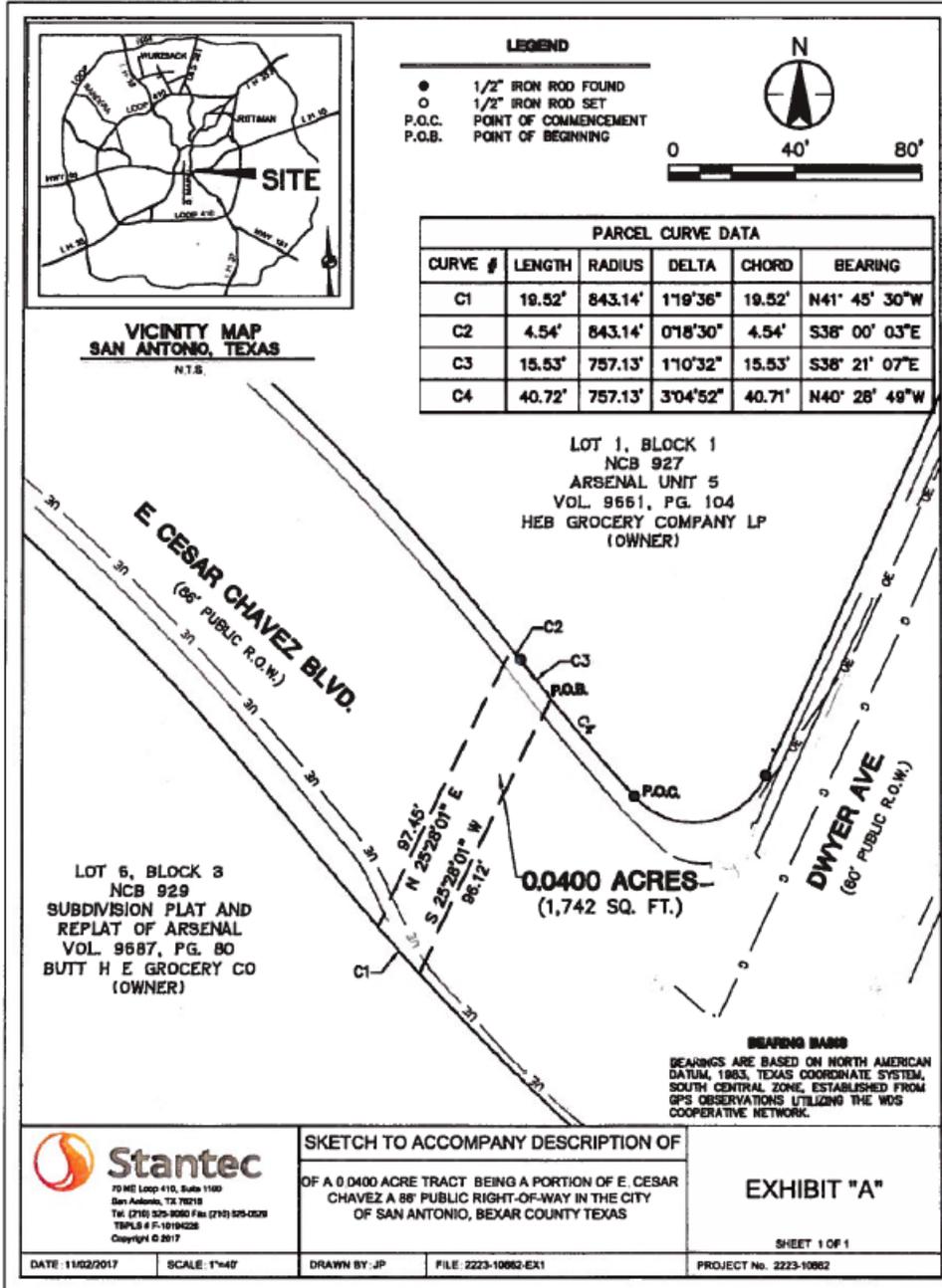


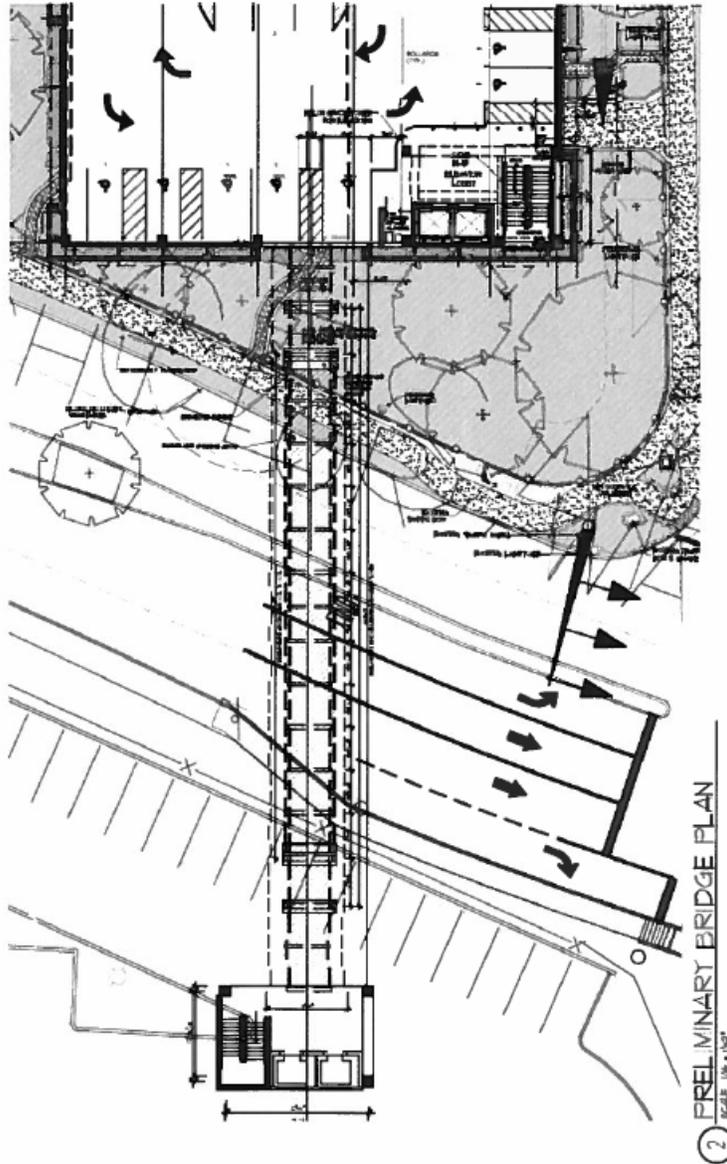
Exhibit B

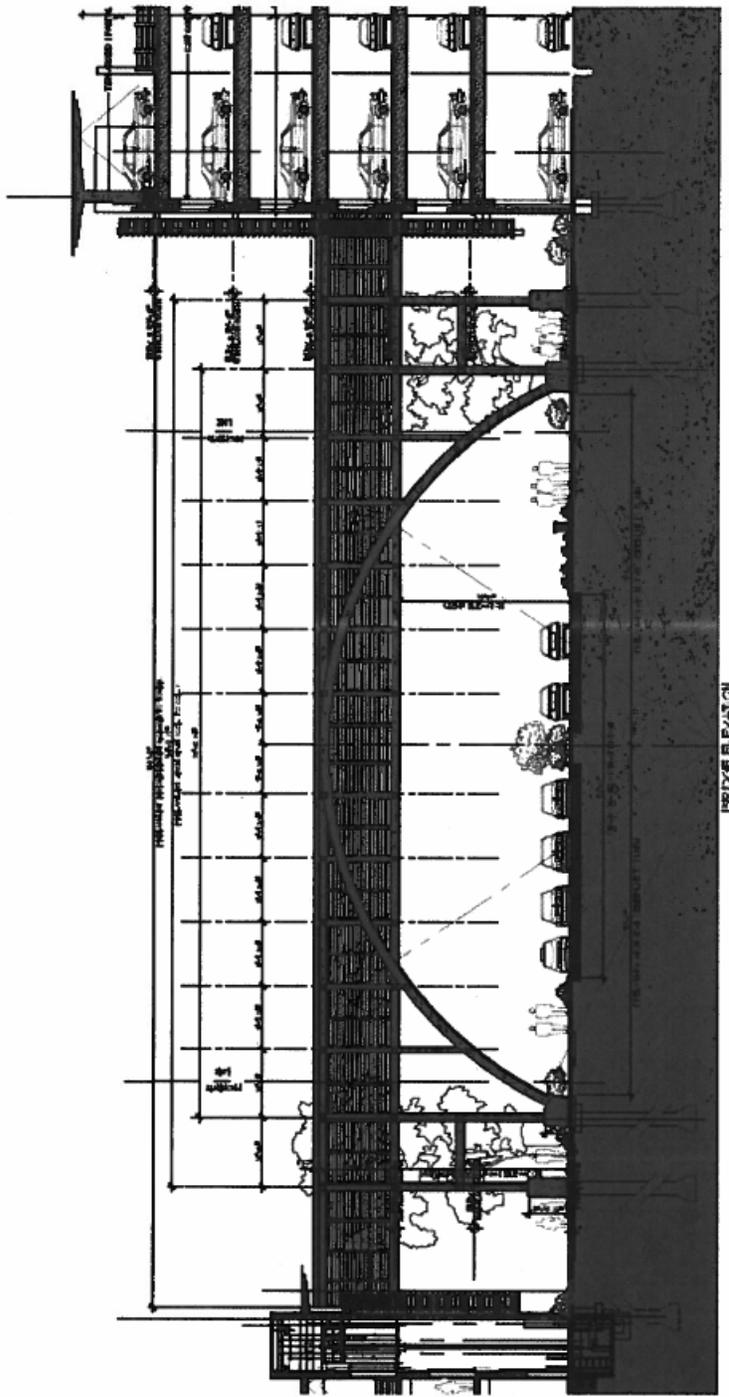


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There are no footings allowed within the street ROW. The bridge will be aerial within the ROW. The footings must be on private property on either side of Cesar Chavez.



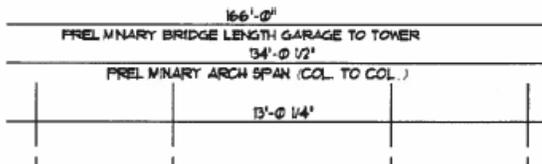
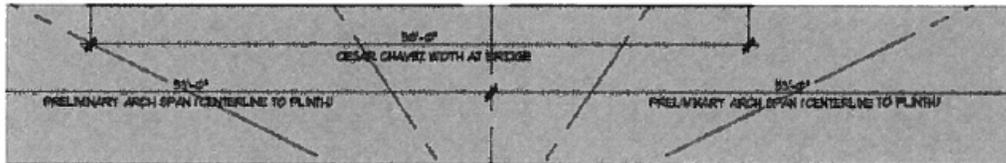
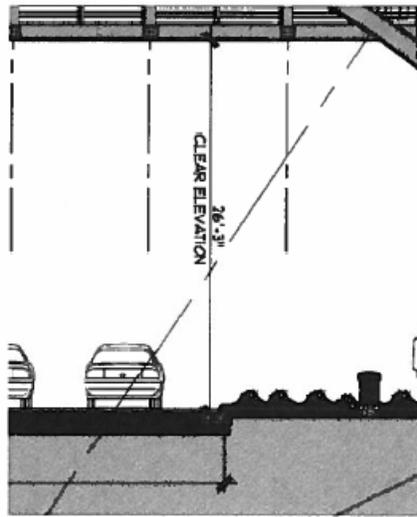


① PRELIMINARY BRIDGE ELEVATION
SCALE: GRAPHIC SCALE

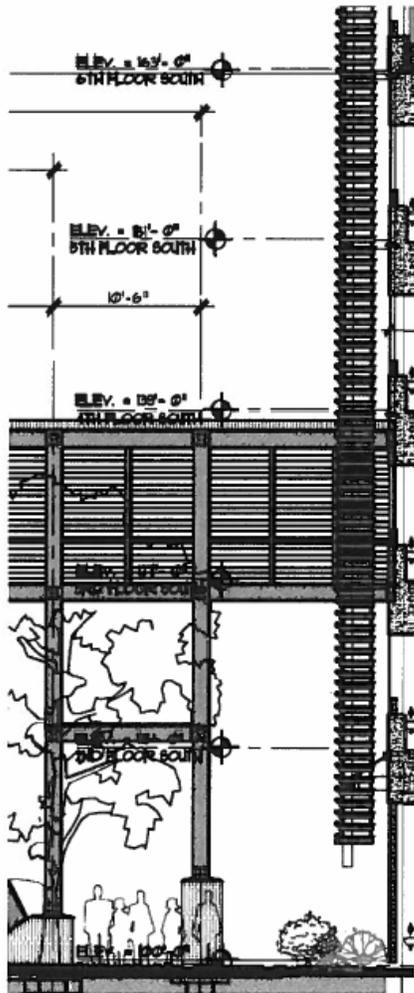
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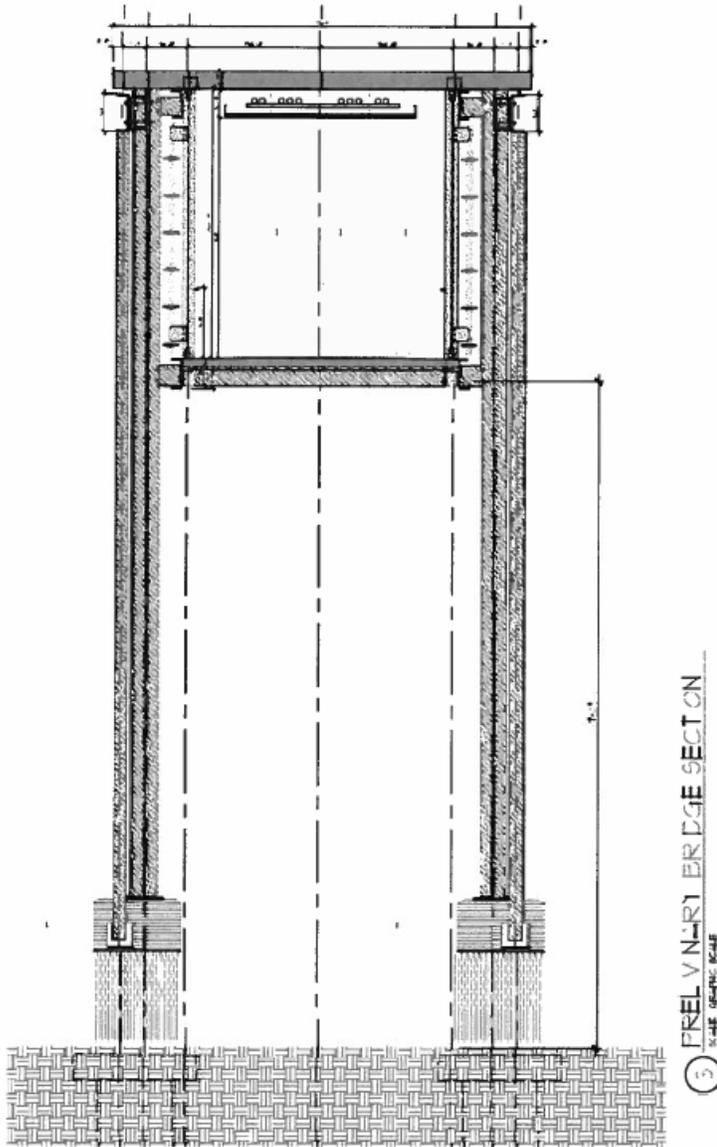
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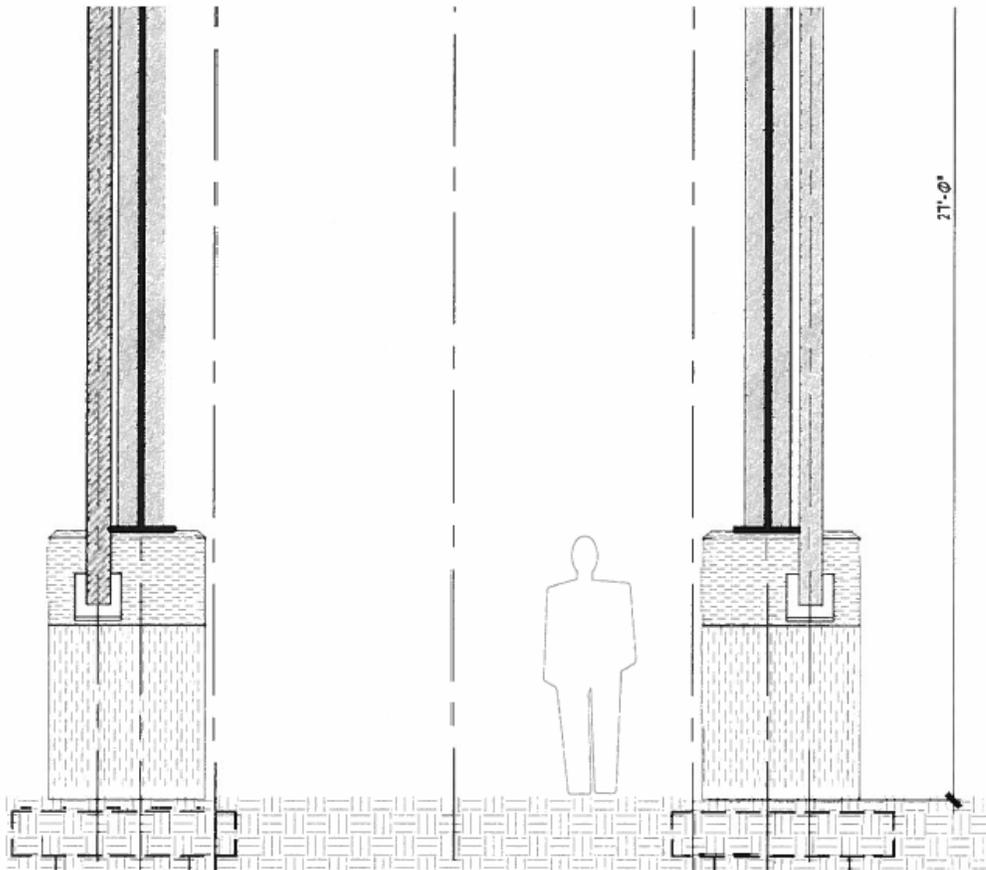
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