

RESOLUTION NO. 183-02

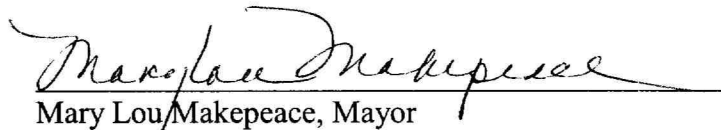
A RESOLUTION AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE AN AGREEMENT ENTITLED POWERS-STATE HIGHWAY 83 AGREEMENT AMONG THE COLORADO DEPARTMENT OF TRANSPORTATION, THE CITY OF COLORADO SPRINGS AND JOVENCHI I, L.L.C.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:


Section 1. The City Manager or the City Manager's Designee is hereby authorized to execute an agreement entitled Powers-State Highway 83 Agreement as presented to the City Council to be entered into among the City of Colorado Springs ("City"), Colorado Department of Transportation ("CDOT"), and Jovenchi I, L.L.C. relating to the conveyance of property from Jovenchi to the City and CDOT and relating to the construction by CDOT for the extension of Powers Boulevard and an interchange at Powers Boulevard and imposing certain other conditions.

Section 2. The City Manager or the City Manager's Designee is authorized to execute any documents or take any other action appropriate to carry out the provisions of the Powers-State Highway 83 Agreement.

DATED at Colorado Springs, Colorado this 22 day of October, 2002.

  
Mary Lou/Makepeace, Mayor

ATTEST:

  
Kathryn M. Young, City Clerk

# STATE OF COLORADO

## DEPARTMENT OF TRANSPORTATION

Executive Director  
4201 E. Arkansas Ave. #262  
Denver, CO 80222  
(303) 757-9201  
(303) 757-9656 Fax



February 20, 2002

The Honorable  
Mary Lou Makepeace, Mayor  
City of Colorado Springs  
P. O. Box 1575  
30 S. Nevada  
Colorado Springs, CO 80901

Dear Mayor Makepeace:

CDOT is disappointed but willing to work with the City of Colorado Springs should the City have meaningful and timely solutions to the following dilemma. We currently have \$31 million for the completion of Powers Boulevard from Briargate Parkway to State Highway 83. This amount will be inadequate based on the requirements to acquire significant and unanticipated rights of way for this particular segment. With rights of way presently being unavailable and economic condition reducing CDOT's budget, we simply will not have the funds to complete this portion of Powers Boulevard.

We recognize the importance of Powers Boulevard to the regional transportation network. In the spirit of cooperation, and in an attempt to make progress with our road "swap" agreement, and anticipating that other solutions will not be available, CDOT is proposing to progress with a project extending from Briargate Parkway to Old Ranch Road. It is our feeling this will provide a useable roadway segment for the Colorado Springs community and the Pikes Peak region.

I have directed my staff to continue work on other segments of Powers Boulevard including the Woodmen/Powers interchange and to finalize environmental clearances for Powers Boulevard north to SH 83. We will continue the development of our Environmental Assessment (EA) from Woodmen Road south.

I look forward to continued cooperation between our two agencies as we progress with this important corridor. If you or your staff have additional questions or concerns, please do not hesitate to call me or my staff in Pueblo or Colorado Springs.

Sincerely,

  
THOMAS E. NORTON  
Executive Director

Cc: Loren Kramer, Acting City Manager

**David Zelenok, Transportation Manager**  
**Fred Van Antwerp, PPACG Executive Director**  
**Terry Harris, El Paso County Administrator**  
**John Unbewust, Chief Engineer, CDOT**  
**Robert Torres, Region Director, CDOT**  
**Dan Stuart, Transportation Commissioner, CDOT**

**POWERS – STATE HIGHWAY 83  
AGREEMENT**

October 10, 2002



## **POWERS – STATE HIGHWAY 83 AGREEMENT**

This POWERS–STATE HIGHWAY 83 AGREEMENT, is made this 10<sup>th</sup> day of October, 2002, by and between the State of Colorado, for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION (“CDOT” or “State”), the CITY OF COLORADO SPRINGS, a home rule city and Colorado municipal corporation (“The City”) and the JOVENCHI I, L.L.C. (“Jovenchi”).

### **RECITALS**

1. The purpose of this Agreement is to set forth the agreement of the parties (CDOT, City and Jovenchi) concerning the conveyance of property from Jovenchi for the extension of Powers Boulevard across the Jovenchi property and CDOT’s construction of Powers Boulevard and related facilities as described in more detail below.

2. CDOT and the City have previously entered into an Inter-Governmental Agreement dated June 29, 1999 providing, among other things, for the transfer of various properties between them and the designation of Powers Boulevard as a state highway - limited access freeway.

3. CDOT’s proposed action is to construct Powers Boulevard and portions of a proposed relocated State Highway 83 across the Jovenchi property, which is geometrically shown and attached hereto as Exhibit A. CDOT, as its proposed action, also intends to relocate and reconstruct a portion of existing State Highway 83, construct a portion of the future Powers Boulevard/State Highway 83 at grade intersection and construct a portion of the joint access roads (2) from the Property and the existing CDOT maintenance facility to the proposed relocated State Highway 83, all as generally depicted on the right-of-way plans and design documents attached hereto as Exhibits A, B, C and D.

4. The Powers, Briargate to State Highway 83 Project is anticipated to be constructed under four (4) separate construction contracts. Construction contract (1) of Phase I of the Project shall involve the right-of-way extension for Powers Boulevard (terminating at Station 751+00) for grading, intersections and structures purposes (Pine and Kettle Creeks), resulting in the need to acquire slope, permanent drainage and other easements and facilities related thereto. Phase I, as it

relates to the "Property", is attached hereto as Exhibit D. Phase I will also include construction contracts (2) and (3), which will be limited to asphalt and concrete pavements south of the Kettle Creek structure and will not require any additional rights-of-way. Phase II of the Project, construction contract (4), will include the extension of Powers Boulevard north from Kettle Creek, the construction of a portion of the future Powers Boulevard/State Highway 83 interchange, the proposed relocation and construction of a portion of State Highway 83 and the construction of the joint access road from the proposed relocated State Highway 83 to the Property, as generally depicted and attached hereto as Exhibits B and C.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

## **I. JOVENCHI OBLIGATIONS**

### **A. Property Conveyances.**

1. Concurrently with the execution of this Agreement, Jovenchi shall convey merchantable title to Parcel 407<sup>REV</sup>, AC 407<sup>REV</sup> and AC 407A<sup>REV</sup> (13.43 acres) at no cost to the City by special warranty deed. These parcels shall hereinafter be referred to as the "Phase I Donated Parcels". If the City determines that title to Parcel 407<sup>REV</sup> is either not merchantable or otherwise unacceptable to the City, the City may terminate this Agreement. Jovenchi shall also convey possession to Parcels 407A<sup>REV</sup>, 407B, PE 407<sup>REV</sup>, SE 407<sup>REV</sup>, and SE 407A<sup>REV</sup> (6.07 total acres), referred to as the "Phase I Compensated Parcels," to CDOT pursuant to an Agreement for Possession and Use. It is agreed that the valuation date of the Phase I Compensated Parcels shall be the date of this Agreement. The Phase I Donated Parcels and the Phase I Compensated Parcels are depicted on Exhibit D and legally described in Exhibit E and attached hereto. Title to the Phase I Compensated Parcels shall be transferred to CDOT once the just compensation for them is determined by either an agreement of the parties (Jovenchi and CDOT) or pursuant to a Rule and Order entered at the conclusion of an eminent domain proceeding, all as described in more detail under Section II below. If transfer of the Phase I Compensated Parcels occurs by agreement of the parties (Jovenchi and CDOT), such transfer shall be by special warranty deed and title shall be merchantable in the transferor. If CDOT determines that title to the Phase I Compensated Parcels are either not merchantable or otherwise unacceptable to CDOT, CDOT may refuse to accept such conveyance and may commence eminent domain proceedings.

2. CDOT is currently working on finalizing the "Roadway Design" of its proposed action to relocate a portion of SH 83, therefore the parties (Jovenchi and CDOT) recognize and agree, that the parcels involved in Phase II may change slightly in location and area, based on the final design of Phase II of the Project. Within 45 days following written notice from CDOT that it is necessary to acquire property for the rights-of-way clearances necessary for the advertisement and construction of Phase II, construction contract (4), Jovenchi shall convey merchantable title to Parcels No. 501, AC 501, 502, AC 502 and AC 502A (approximately 21.24 acres) at no cost to the City by special warranty deed. Jovenchi shall also convey merchantable title for any and all future rights-of-way (to be determined at a later date and not shown on any attached exhibits) necessary for the construction of the "Joint Access Road" as generally depicted on Exhibit C, at no cost to the City by special warranty deed. These parcels shall hereinafter be referred to as the "Phase II Donated Parcels". Jovenchi shall also convey possession to Parcels SE 501, PE 502 and PE 502A, referred to as the "Phase II Compensated Parcels" pursuant to an agreement for possession and use. Jovenchi shall also lease, at no cost to the City or CDOT, any necessary or unforeseen temporary easements necessary to facilitate construction. It is agreed that the valuation date of the "Phase II Compensated Parcels" shall be the date of an agreement for possession and use for "Phase II Compensated Parcels". The "Phase II Donated Parcels" and "Phase II Compensated Parcels" are generally depicted on the attached as exhibits B and C. Title to the "Phase II Compensated Parcels" shall be transferred to CDOT once the just compensation to be paid for them is determined by either an agreement of the parties (Jovenchi and CDOT) or pursuant to a Rule and Order entered at the conclusion of an eminent domain proceeding, all as described in more detail under Section II below. If transfer of the "Phase II Compensated Parcels" occurs by agreement of the parties (Jovenchi and CDOT), such transfer shall be by special warranty deed and title shall be merchantable in the transferor. If CDOT determines that title to the "Phase II Compensated Parcels" are either not merchantable or otherwise unacceptable to CDOT, CDOT may refuse to accept such conveyance and may commence eminent domain proceedings.

3. Jovenchi's satisfaction of its obligations in this Agreement will satisfy all of Jovenchi's obligations, if any, relating to any requirement, now or in the future, to contribute toward any off-site traffic-related infrastructure relating to the development of the Property. Consequently, the City will not impose any conditions for any such off-site contributions (whether assessments,

fees, dedications of right-of-way, or otherwise) on any future zoning, subdivision, or other development request for the Property, except as provided with respect to the access road in Section II (A)(2)(b) or II (B) described below. Except as set forth in this Section II (A)(3), Jovenchi shall meet all requirements imposed by the Code of the City of Colorado Springs 2001 as amended in the development of the Property. This Section II (A)(3) shall not be construed as a limitation upon the authority of the City Council of the City to adopt any traffic-related fees or traffic-related infrastructure fees, or any other fees or voter approved taxes, so long as these fees apply to the City generally.

## **II. CDOT AND CITY OBLIGATIONS**

### **A. Construction.**

1. CDOT shall construct the Project as generally depicted on Exhibit C, subject to the provisions of Section III. 7.

2. CDOT's obligations with respect to construction of the joint access road shall be limited to the following:

- (a) Construction of acceleration/deceleration lanes on State Highway 83, as depicted in Exhibit C.
- (b) Construction of the joint access road, including curb, gutter, pavement and other necessary infrastructure from the proposed relocated State Highway 83 as generally depicted in Exhibit C, which will be dedicated as public right-of-way.
- (c) Installation of underground conduit, concrete footings, base plates, anchor bolts and CDOT's payment of its prorata share (based on traffic projections) for traffic signal installation (if and when installed).

**B. Access.**

Upon finalization of the design for the Powers Blvd./State Highway 83 intersection (including the joint access road), CDOT will execute an access permit to be issued for the joint access road off Highway 83 for the benefit of both Jovenchi and CDOT, as described and shown on Exhibit F hereto. The parties acknowledge that this access permit, and the joint access road as constructed by CDOT are sufficient to accommodate the ingress and egress traffic projections for the Property as described and shown on Exhibit F. If any future development requests for the Property, result in traffic projections that exceed those described in Exhibit F, then Jovenchi may be required, at its expense, to install additional turn lanes, modify acceleration and deceleration lanes as necessary to accommodate the additional traffic per CDOT's generally applicable standards and provide the rights-of-way necessary for these improvements.

**C. Compensation.**

CDOT shall pay just compensation to Jovenchi for the Phase I Compensated Parcels and Phase II Compensated Parcels. Just compensation shall be determined pursuant to the Uniform Relocation and Land Acquisition Policies Act, State and Federal statutes and regulations promulgated thereunder, and all applicable eminent domain law and procedures. The parties agree that the valuation date for the Phase I Compensated Parcels shall be the date of this Agreement, and for the Phase II Compensated Parcels as provided in Section I (A)(2).

**D.** Any right-of-way(s) vacated as a result of the Project shall be disposed of in accordance with applicable laws.

**III. Miscellaneous**

1. **Assignment:** This Agreement is binding on the parties hereto, their successors and assigns, and will be a covenant running with the Jovenchi property.

2. **Defaults, Failure of Conditions:** If CDOT or the City are in default on their respective obligations hereunder, or if CDOT's obligations cannot be performed by virtue of the circumstances described in Section III (10) or if the circumstances described in Sections III (11)

and/or (12) below result in a material alteration of access as described in Exhibit F, Jovenchi will suffer material damages which will be difficult, if not impossible, to accurately determine. Consequently, in any such event if resulting from default by the City of its obligations hereunder, or if resulting from CDOT in its obligations hereunder, the City or CDOT as the case may be will pay Jovenchi as liquidated damages an amount equal to: The Fair Market Value of the Phase I and Phase II Donated Parcels, plus interest at eight percent (8%) from the date of contribution; and damages, if any, to the remainder of the Property will be determined in accordance with Title 38 of the Colorado revised Statutes.

This Agreement does not create joint and several liability to Jovenchi for either the City or CDOT for default in any obligations or actions of the other party under this Agreement. Neither the City nor CDOT shall be liable to Jovenchi for default of any obligation or action of the other party under this Agreement. If Jovenchi is in default of its obligations hereunder, CDOT and the City will have all rights and remedies in law or equity, including specific performance.

3. Law: This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado.

4. Appropriations and Availability of Funds: In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City's obligations under this Agreement are expressly subject to appropriation of funds by the City Council and the availability of those funds under Constitutional and Charter limitations.

5. Entire Agreement: This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

6. No Third Party Beneficiary: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement,

shall be strictly reserved to the parties hereto and permitted assigns, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity pursuant to such Agreement. It is the express intention of the Parties hereto that any person or entity, other than the parties to this Agreement and permitted assigns, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

7. **Legal Authority:** The parties warrant that they possess the legal authority to enter into this Agreement and that they have taken all actions required by their procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize the undersigned signatories to execute this Agreement and bind the parties to the Agreement. The persons executing this Agreement on behalf of the parties warrants that such person has full authorization to execute this Agreement.

8. **Force Majeure:** No party shall be liable to the other for delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damage, if and only if, and only to the extent that, such failure or delay is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God; acts of the public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

9. **Recordation:** A copy of this Agreement shall be recorded and indexed in the office of the clerk and recorder of El Paso County.

10. **Termination Due to Loss of Funding:** The parties hereto expressly recognize that Jovenchi is to be paid, reimbursed, or otherwise compensated with funds provided to the State, and therefore, Jovenchi expressly understands and agrees that all its rights, demands, and claims to compensation arising under this Agreement are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate this Agreement without liability, except as provided in Paragraph III (2) above.

POWERS STATE HIGHWAY 83 AGREEMENT  
October 10, 2002

11. Amendment: This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by all parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

12. Project Changes: During the design of the Project, changes to the proposed alignment and/or locations of access may be required to meet AASHTO Standards or Environmental Assessment/Clearances.

13. Council Approval: The City's obligations hereunder are contingent upon approval of this Agreement by City Council.

14. Costs: Each party to this Agreement agrees to bear its own costs.



POWERS - STATE HIGHWAY 83 AGREEMENT  
October 10, 2002

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

Title: \_\_\_\_\_

Colorado Department of Transportation

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

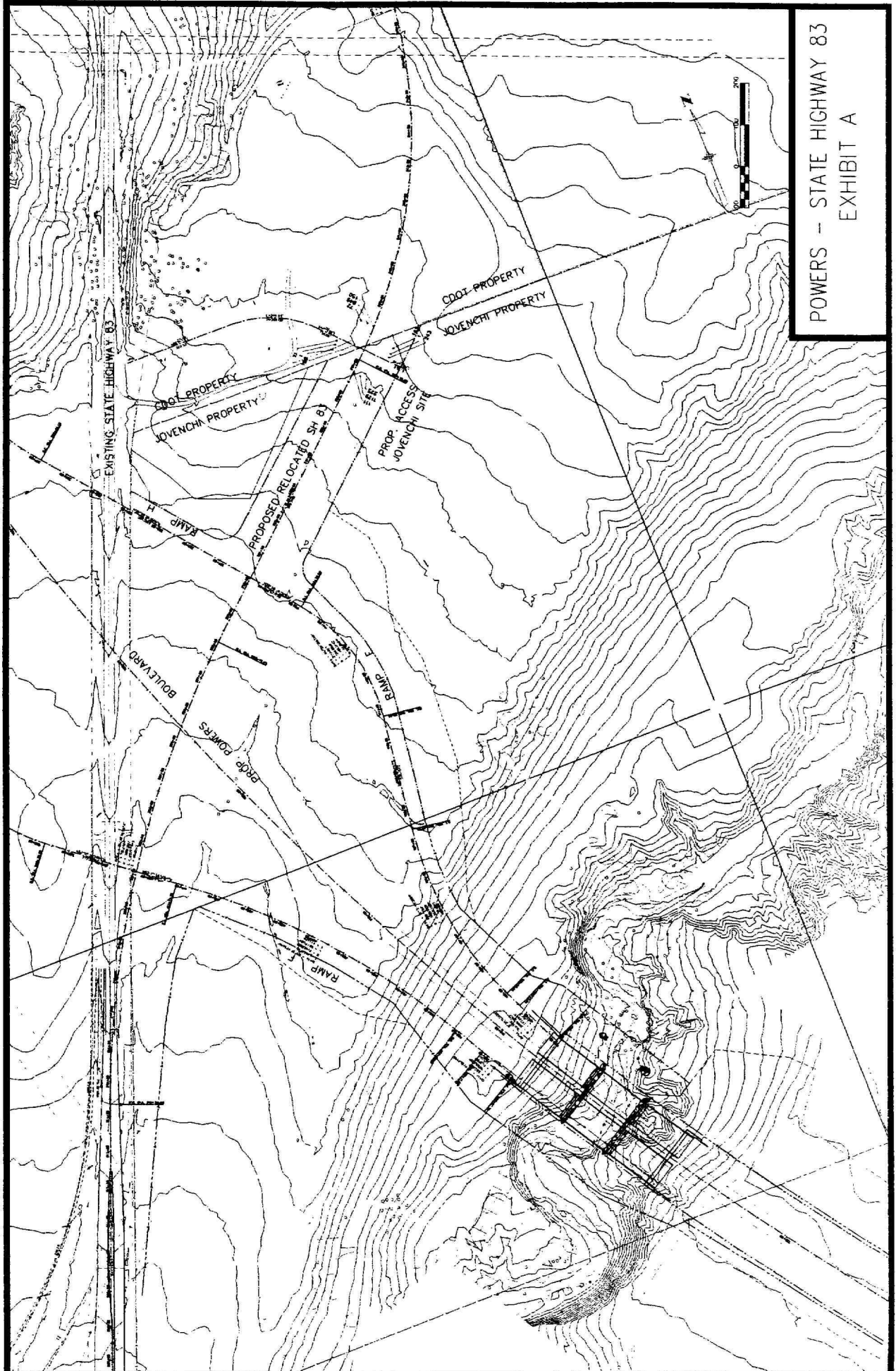
Title: \_\_\_\_\_

City of Colorado Springs

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

Title: \_\_\_\_\_

Jovenchi I, L.L.C.



POWERS - STATE HIGHWAY 83  
EXHIBIT A

**COLORADO DEPARTMENT OF TRANSPORTATION**

Region 2  
 1635 E. Ave. B  
 Aurora, CO 80017  
 Phone: (719) 546-5454 Fax: (719) 546-5414

**RIGHT OF WAY/SURVEY PLANS UNIT: 2153**

**Sheet Revisions**

No.	Description

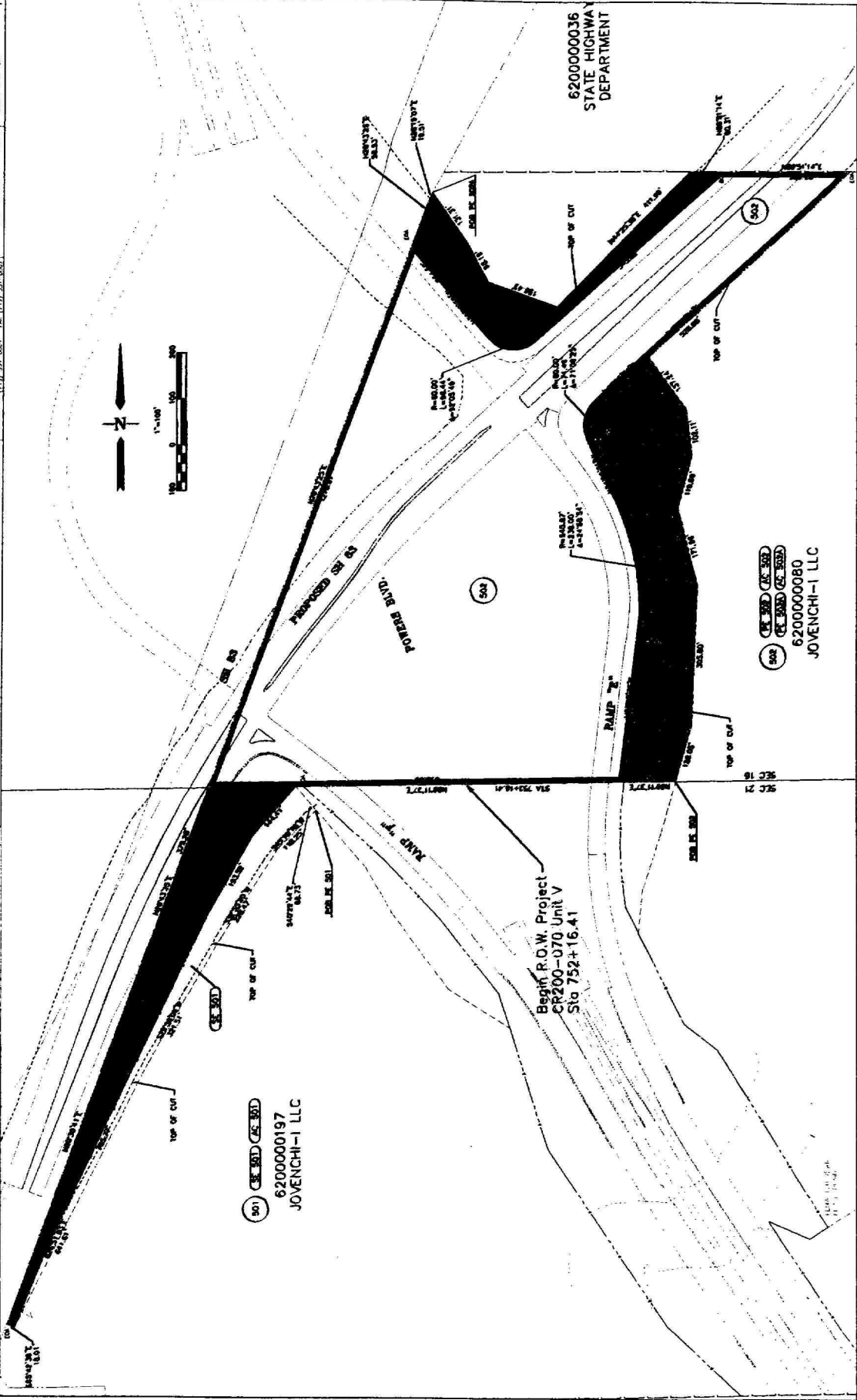
**EXHIBIT B**

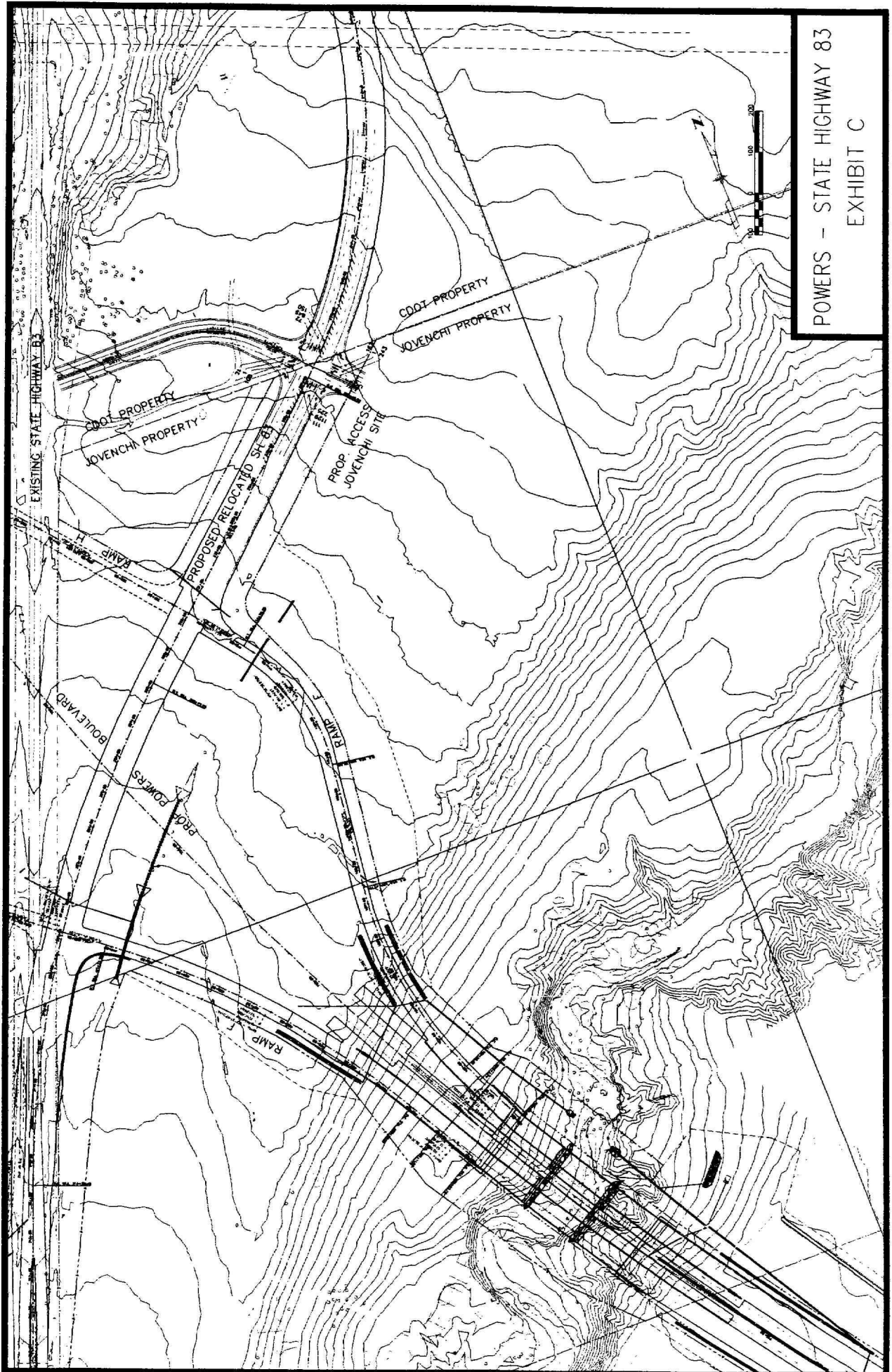
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 LAST AMENDING DATE: 03/27/05  
 FILE NAME: 05000000036  
 PROJECT NO.: CR 200-070  
 UNIT NO.: UNIT V  
 PROJECT CODE: STA 752+16.41 TO SH83  
 SHEET NUMBER: 12275

**RIGHT OF WAY**

**UNIT V EXHIBIT "B"**  
 PROJ. NO. CR 200-070 UNIT V  
 POWERS BLVD - STA 752+16.41 TO SH83  
 PROJECT CODE: 12275  
 SHEET NUMBER:





POWERS - STATE HIGHWAY 83  
EXHIBIT C

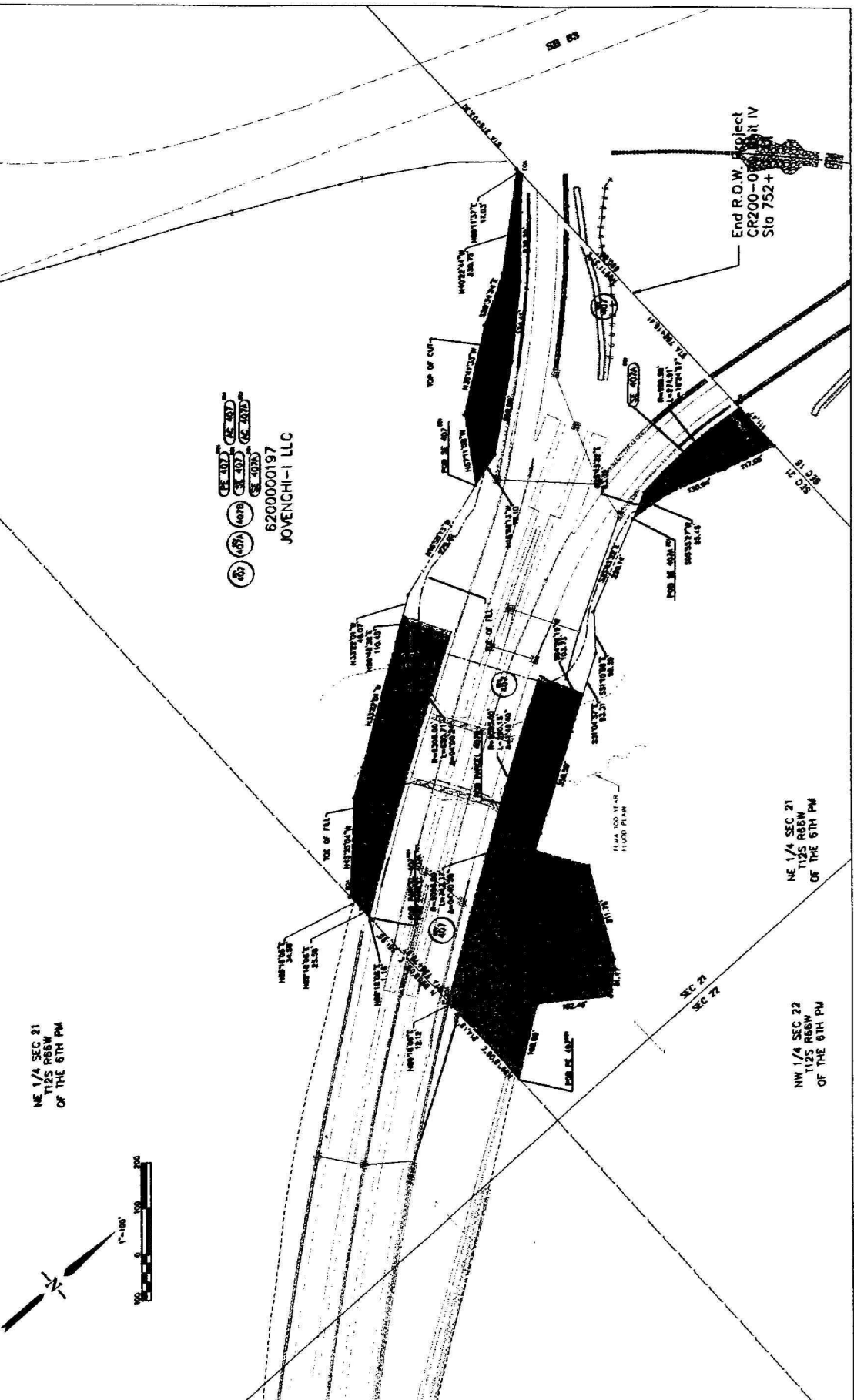
**COLORADO DEPARTMENT OF TRANSPORTATION**  
 Division of  
 505 Lins Avenue  
 Pueblo, CO 81007  
 Phone: (719) 546-5454 FAX: (719) 546-5414

**RIGHT OF WAY SURVEY PLANS UNIT: 2153**

**EXHIBIT D**

**RIGHT OF WAY**  
**UNIT IV EXHIBIT "D"**  
**PROJ. NO. CR 200-070 UNIT IV**  
**POWERS BLVD - BRIARGATE PKWY TO SH83**  
**PROJECT CODE: 12225** **SHEET NUMBER: 1**

**Computer File Information**  
 DRAWING DATE: 8/26/02  
 DRAWING TITLE: UNIT IV EXHIBIT "D"  
 DRAWING NUMBER: 12225-001  
 PROJECT NUMBER: 200-070  
 PROJECT CODE: 12225  
 SHEET NUMBER: 1



6200000197  
 JOVENCHI-I LLC

End R.O.W. Project  
 CR200-070 Unit IV  
 Sta 752+

**EXHIBIT E**  
**RIGHT-OF WAY DESCRIPTIONS**

**COLORADO DEPARTMENT OF TRANSPORTATION  
REAL PROPERTY  
TO BE ACQUIRED  
FROM**

**SLOPE EASEMENT NO. SE-407A<sup>REV.</sup>  
STA. 747+56 ± to STA. 750+72±  
(POWERS BOULEVARD)**

**JOVENCHI-I LLC  
7710 N. Union Blvd  
Colorado Springs, CO 80920**

**FOR**

**PROJECT NUMBER CR 200-070 UNIT IV  
EL PASO COUNTY  
12275**

**POWERS BOULEVARD  
PROJECT CODE**

PROJECT NUMBER: CR 200-070 UNIT IV  
PROJECT CODE: 12275  
SLOPE EASEMENT NUMBER SE-407A<sup>REV.</sup>  
DATE: September 17, 2002

DESCRIPTION

A Slope Easement No. SE-407A<sup>REV.</sup> of the Colorado Department of Transportation, Project No CR 200-070 UNIT IV, containing 0.50 acres, more or less, in a portion of the Northeast Quarter of Section 21, Township 12 South, Range 66 West, of the 6<sup>th</sup> Principal Meridian, El Paso County, Colorado, said slope easement being more particularly described as follows:

Commencing at a point whence the Northeast Corner of Section 21 bears North 68° 14' 38" East a distance of 926.80 feet, said point being the POINT OF BEGINNING;

1. Thence North 25° 43' 22" West a distance of 63.32 feet;
2. Thence along a non-tangent curve to the right with a radius of 959.50 feet, a delta angle of 16° 24' 57", a curve length of 274.91 feet, with a long chord which bears North 00° 15' 05" West a distance of 273.97 feet to the North line of Section 21;
3. Thence North 89° 11' 37" East a distance of 111.47 feet along the North line of Section 21;
4. Thence South 16° 01' 53" West a distance of 117.66 feet;
5. Thence South 17° 59' 05" West a distance of 130.94 feet;
6. Thence South 05° 55' 27" West a distance of 95.45 feet to the POINT OF BEGINNING.

Containing 0.50 acres, more or less, for the purpose of grading and maintenance of slopes.

NOTE: For the purpose of this description the bearings are based on a line between the Southeast corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 ¼ " Al. Cap Stamped "LS 10956") and the East Quarter corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 ¼" AL. Cap Stamped "LS 10956") which bears North 00° 35' 24" West a distance of 2,640.56 feet).



The foregoing description has been prepared by the undersigned or under my direct supervision.

\_\_\_\_\_  
Carl W. Bodensteiner, PE & PLS 6965  
For and on Behalf of URS Corporation  
9960 Federal Drive #300  
Colorado Springs, CO 80921



**COLORADO DEPARTMENT OF TRANSPORTATION  
REAL PROPERTY  
TO BE ACQUIRED  
FROM**

**PARCEL NO. 407<sup>REV.</sup>  
STA. 736+05 ± to STA. 754+42 ±  
(POWER BOULEVARD)**

**JOVENCHI-I LLC  
7710 N. Union Blvd  
Colorado Springs, CO 80920**

**FOR**

**PROJECT NUMBER CR 200-070 UNIT IV  
EL PASO COUNTY**

**POWERS BOULEVARD  
PROJECT CODE 12275**

PROJECT NUMBER CR 200-070 UNIT IV  
PROJECT CODE 12275  
PARCEL NO. 407<sup>REV.</sup>  
DATE: September 17, 2002

DESCRIPTION

A Tract or Parcel No. 407<sup>REV.</sup> of the Colorado Department of Transportation, Project No. CR 200-070 UNIT IV, containing 13.43 acres, more or less, located in a portion of the Northeast Quarter of Section 21, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian, El Paso County, Colorado being more particularly described as follows:

Commencing at a point whence the Northeast Corner of Section 21 bears North 23° 33' 42" East a distance of 1,475.68 feet, said point being the POINT OF BEGINNING;

1. Thence along a curve to the right with a radius of 9,305.00 feet, a delta angle of 04° 00' 24", a curve length of 650.71 feet, with a long chord which bears North 32° 11' 34" West a distance of 650.57 feet;
2. Thence South 59° 48' 38" West a distance of 110.45 feet;
3. Thence North 33° 22' 01" West a distance of 48.07 feet;
4. Thence North 16° 58' 13" West a distance of 357.12 feet;
5. Thence North 37° 31' 32" West a distance of 208.60 feet;
6. Thence North 42° 24' 20" West a distance of 174.41 feet;
7. Thence North 47° 19' 05" West a distance of 235.22 feet;
8. Thence North 89° 11' 37" East a distance of 690.85 feet along the North line of said Section 21;
9. Thence along a non-tangent curve to the left with a radius of 959.50 feet, a delta angle of 16° 24' 57", a curve length of 274.91 feet, with a long chord which bears South 00° 15' 05" East a distance of 273.97 feet;
10. Thence South 25° 43' 22" East a distance of 283.46 feet;
11. Thence South 51° 10' 56" East a distance of 92.39 feet;
12. Thence South 31° 04' 57" East a distance of 93.31 feet;
13. Thence South 64° 26' 19" West a distance of 103.73 feet;

14. Thence along a non-tangent curve to the left with a radius of 9,095.00 feet, a delta angle of  $04^{\circ} 40' 59''$  a curve length of 743.37 feet, with a long chord which bears South  $32^{\circ} 44' 05''$  East a distance of 743.16 feet to the South line of said Tract;
15. Thence South  $89^{\circ} 18' 05''$  West a distance of 253.11 feet along the South line of said Tract to the POINT OF BEGINNING.

Containing 13.43 acres, more or less, to be acquired.

NOTE: For the purpose of this description the bearings are based on a line between the Southeast corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 1/4" AL. Cap Stamped "LS 10956") and the East Quarter corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 1/4" AL. Cap Stamped "LS 10956") which bears North  $00^{\circ} 35' 24''$  West a distance of 2,640.56 feet.

The foregoing description has been prepared by the undersigned or under my direct supervision.

Carl W. Bodensteiner, PE & PLS #6965  
For and on Behalf of URS Corporation  
9960 Federal Drive #300  
Colorado Springs, CO 80921



COLORADO DEPARTMENT OF TRANSPORTATION  
REAL PROPERTY  
TO BE ACQUIRED  
FROM

PARCEL NO. 407A<sup>REV.</sup>  
STA. 737+47 ± to STA. 743+90 ±  
(POWER BOULEVARD)

JOVENCHI-I LLC  
7710 N. Union Blvd  
Colorado Springs, CO 80920

FOR

PROJECT NUMBER CR 200-070 UNIT IV  
EL PASO COUNTY

POWERS BOULEVARD  
PROJECT CODE 12275

PROJECT NUMBER CR 200-070 UNIT IV  
PROJECT CODE 12275  
PARCEL NO. 407A<sup>REV.</sup>  
DATE: September 17, 2002

DESCRIPTION

A Tract or Parcel No. 407A<sup>REV.</sup> of the Colorado Department of Transportation, Project No. CR 200-070 UNIT IV, containing 1.33 acres, more or less, located in a portion of the Northeast Quarter of Section 21, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian, El Paso County, Colorado being more particularly described as follows:

Commencing at a point whence the Northeast Corner of Section 21 bears North 23° 33' 42" East a distance of 1,475.68 feet, said point being the POINT OF BEGINNING;

1. Thence South 89° 18' 05" West a distance of 60.16 feet along the South line of said parcel;
2. Thence North 45° 35' 04" West a distance of 218.86 feet;
3. Thence North 33° 22' 01" West a distance of 410.19 feet;
4. Thence North 59° 48' 38" East a distance of 110.45 feet;
5. Thence along a non-tangent curve to the right with a radius of 9,305.00 feet, a delta angle of 04° 00' 24", a curve length of 650.71 feet, with a long chord which bears South 32° 11' 34" East a distance of 650.57 feet to a point on the South line of said parcel, said point being the POINT OF BEGINNING.

Containing 1.33 acres, more or less, to be acquired.

NOTE: For the purpose of this description the bearings are based on a line between the Southeast corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 ¼ " Al. Cap Stamped "LS 10956") and the East Quarter corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 ¼" AL. Cap Stamped "LS 10956") which bears North 00° 35' 24" West a distance of 2,640.56 feet.

The foregoing description has been prepared by the undersigned or under my direct supervision.

Carl W. Bodensteiner, PE & PLS  
For and on Behalf of URS Corporation  
9960 Federal Drive #300  
Colorado Springs, CO 8092



**COLORADO DEPARTMENT OF TRANSPORTATION  
REAL PROPERTY  
TO BE ACQUIRED  
FROM**

**PARCEL NO. 407B  
STA. 739+82 ± to STA. 743+57 ±  
(POWER BOULEVARD)**

**JOVENCHI-I LLC  
7710 N. Union Blvd  
Colorado Springs, CO 80920**

**FOR**

**PROJECT NUMBER CR 200-070 UNIT IV  
EL PASO COUNTY**

**POWERS BOULEVARD  
PROJECT CODE 12275**



PROJECT NUMBER CR 200-070 UNIT IV

PROJECT CODE 12275

PARCEL NO. 407B

DATE: September 17, 2002

DESCRIPTION

A Tract or Parcel No. 407B of the Colorado Department of Transportation, Project No. CR 200-070 UNIT IV, containing 0.81 acres, more or less, located in a portion of the Northeast Quarter of Section 21, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian, El Paso County, Colorado being more particularly described as follows:

Commencing at a point whence the Northeast Corner of Section 21 bears North 31° 09' 29" East a distance of 1,136.24 feet, said point being the POINT OF BEGINNING;

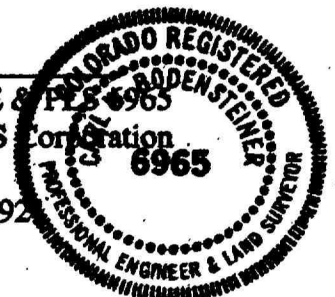
1. Thence along a curve to the right with a radius of 9,095.00 feet, a delta angle of 01° 49' 40", a curve length of 290.15 feet, with a long chord which bears North 31° 18' 26" West a distance of 290.14 feet;
2. Thence North 64° 26' 19" East a distance of 103.73 feet;
3. Thence South 31° 04' 57" East a distance of 358.59 feet;
4. Thence South 57° 26' 25" West a distance of 46.24 feet;
5. Thence North 66° 08' 40" West a distance of 97.29 feet said point being the POINT OF BEGINNING.

Containing 0.81 acres, more or less, to be acquired.

NOTE: For the purpose of this description the bearings are based on a line between the Southeast corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 1/4" AL. Cap Stamped "LS 10956") and the East Quarter corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 1/4" AL. Cap Stamped "LS 10956") which bears North 00° 35' 24" West a distance of 2,640.56 feet.

The foregoing description has been prepared by the undersigned or under my direct supervision.

Carl W. Bodensteiner, PE & PLS 6965  
For and on Behalf of URS Corporation  
9960 Federal Drive #300  
Colorado Springs, CO 80921



**COLORADO DEPARTMENT OF TRANSPORTATION  
REAL PROPERTY  
TO BE ACQUIRED  
FROM**

**PERMANENT EASEMENT NO. PE-407<sup>REV.</sup>  
STA. 734+73 ± to STA. 740+64 ±  
(POWERS BOULEVARD)**

**JOVENCHI-I LLC  
7710 N. Union Blvd  
Colorado Springs, CO 80920**

**FOR**

**PROJECT NUMBER CR 200-070 UNIT IV  
EL PASO COUNTY  
12275**

**POWERS BOULEVARD  
PROJECT CODE**

PROJECT NUMBER: CR 200-070 UNIT IV  
PROJECT CODE: 12275  
PERMANENT EASEMENT NUMBER PE-407<sup>REV.</sup>  
DATE: September 17, 2002

DESCRIPTION

A Permanent Easement No. PE-407<sup>REV.</sup> of the Colorado Department of Transportation, Project No. CR 200-070 UNIT IV, containing 2.64 acres, more or less, in the Northeast Quarter of Section 22, Township 12 South, Range 66 West, of the 6<sup>th</sup> Principal Meridian, El Paso County, Colorado, said permanent easement being more particularly described as follows:

Commencing at a point whence the Northeast Corner of Section 21 bears North 04° 41' 36" East a distance of 1,351.34 feet, said point being the POINT OF BEGINNING;

1. Thence South 89° 18' 05" West a distance of 226.24 feet along the South line of said Tract;
2. Thence along a non-tangent curve to the left with a radius of 9,095.00 feet, a delta angle of 02° 51' 19", a curve length of 453.22 feet, with a long chord which bears North 33° 38' 55" West a distance of 453.17 feet;
3. Thence South 66° 08' 40" East a distance of 97.29 feet;
4. Thence North 57° 26' 25" East a distance of 167.26 feet;
5. Thence South 62° 55' 16" East a distance of 211.75 feet;
6. Thence South 44° 35' 54" East a distance of 81.47 feet;
7. Thence South 35° 33' 59" West a distance of 162.46 feet;
8. Thence South 34° 44' 35" East a distance of 168.68 feet to the POINT OF BEGINNING.

Containing 2.64 acres, more or less, for the purpose of the construction and maintenance of drainage structure and associated improvements.

NOTE: For the purpose of this description the bearings are based on a line between the Southeast corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 ¼ " Al. Cap Stamped "LS 10956") and the East Quarter corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 ¼ " AL. Cap Stamped "LS 10956") which bears North 00° 35' 24" West a distance of 2,640.56 feet).

The foregoing description has been prepared by the undersigned or under my direct supervision.

\_\_\_\_\_  
Carl W. Bodensteiner, PE & PLS  
For and on Behalf of URS Corporation  
9960 Federal Drive #300  
Colorado Springs, CO 80921



**COLORADO DEPARTMENT OF TRANSPORTATION  
REAL PROPERTY  
TO BE ACQUIRED  
FROM**

**SLOPE EASEMENT NO. SE-407<sup>REV.</sup>  
STA. 747+04 ± to STA. 753+10 ±  
(POWERS BOULEVARD)**

**JOVENCHI-I LLC  
7710 N. Union Blvd  
Colorado Springs, CO 80920**

**FOR**

**PROJECT NUMBER CR 200-070 UNIT IV  
EL PASO COUNTY  
12275**

**POWERS BOULEVARD  
PROJECT CODE**

PROJECT NUMBER: CR 200-070 UNIT IV  
PROJECT CODE: 12275  
SLOPE EASEMENT NUMBER SE-407<sup>REV.</sup>  
DATE: September 17, 2002

DESCRIPTION

A Slope Easement No. SE-407<sup>REV.</sup> of the Colorado Department of Transportation, Project No. CR 200-070 UNIT IV, containing 0.79 acres, more or less, in a portion of the Northeast Quarter of Section 21, Township 12 South, Range 66 West, of the 6<sup>th</sup> Principal Meridian, El Paso County, Colorado, said slope easement being more particularly described as follows:

Commencing at a point whence the Northeast Corner of Section 21 bears North 64° 12' 59" East a distance of 1,265.87 feet, said point being the POINT OF BEGINNING;

1. Thence North 57° 11' 08" West a distance of 156.41 feet;
2. Thence North 35° 41' 33" West a distance of 200.97 feet;
3. Thence North 29° 34' 24" West a distance of 120.02 feet;
4. Thence North 40° 22' 44" West a distance of 230.75 feet;
5. Thence North 89° 11' 37" East a distance of 17.03 feet;
6. Thence South 47° 19' 05" East a distance of 235.22 feet;
7. Thence South 42° 24' 20" East a distance of 174.41 feet;
8. Thence South 37° 31' 32" East a distance of 208.60 feet;
9. Thence South 16° 58' 13" East a distance of 78.10 feet to the POINT OF BEGINNING.

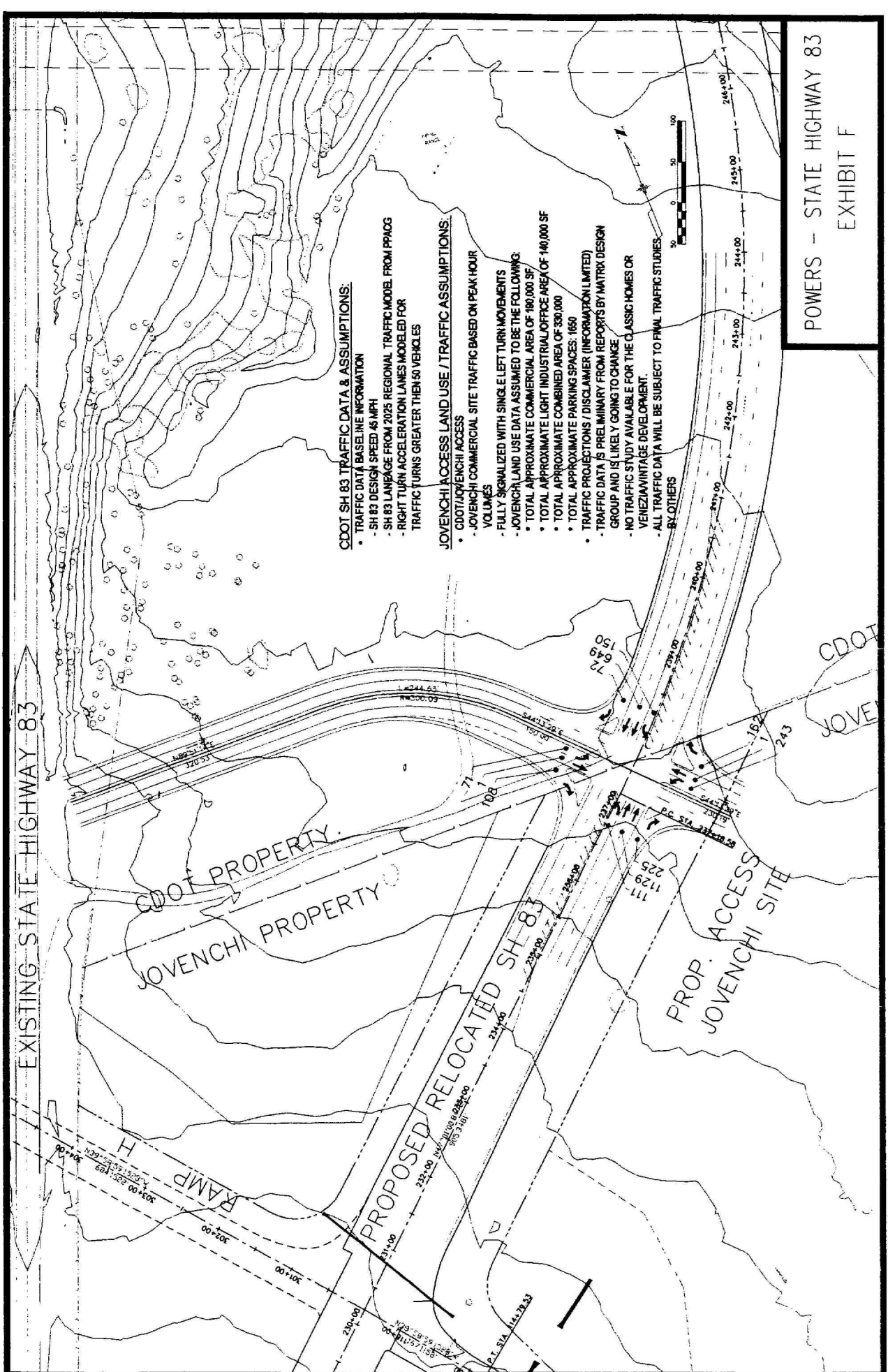
Containing 0.79 acres, more or less, for the purpose of grading and maintenance of slopes.

NOTE: For the purpose of this description the bearings are based on a line between the Southeast corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 ¼ " Al. Cap Stamped "LS 10956") and the East Quarter corner of Section 36, Township 12 South, Range 66 West of the 6<sup>th</sup> Principal Meridian (3 ¼" AL. Cap Stamped "LS 10956") which bears North 00° 35' 24" West a distance of 2,640.56 feet).

The foregoing description has been prepared by the undersigned or under my direct supervision.

Carl W. Bodensteiner, PE & PLS  
For and on Behalf of URS Corporation  
9960 Federal Drive #300  
Colorado Springs, CO 80921





EXISTING STATE HIGHWAY 83

CDOT PROPERTY  
JOVENCHI PROPERTY

PROPOSED RELOCATED SH-83

PROP. ACCESS  
JOVENCHI SITE

**CDOT SH 83 TRAFFIC DATA & ASSUMPTIONS:**

- TRAFFIC DATA BASELINE INFORMATION
- SH 83 DESIGN SPEED 45 MPH
- SH 83 LANES FROM 2025 REGIONAL TRAFFIC MODEL FROM PRAGG
- RIGHT TURN ACCELERATION LANES MODELED FOR TRAFFIC TURNS GREATER THEN 50 VEHICLES

**JOVENCHI ACCESS LAND USE / TRAFFIC ASSUMPTIONS:**

- CDOT/JOVENCHI ACCESS
- JOVENCHI COMMERCIAL SITE TRAFFIC BASED ON PEAK HOUR VOLUMES
- FULLY SIGNALIZED WITH SINGLE LEFT TURN MOVEMENTS
- JOVENCHI LAND USE DATA ASSUMED TO BE THE FOLLOWING:
  - TOTAL APPROXIMATE COMMERCIAL AREA OF 100,000 SF
  - TOTAL APPROXIMATE LIGHT INDUSTRIAL/OFFICE AREA OF 140,000 SF
  - TOTAL APPROXIMATE COMBINED AREAS OF 330,000
- TRAFFIC PROJECTIONS / DISCLAIMER (INFORMATION LIMITED)
- TRAFFIC DATA IS PRELIMINARY FROM REPORTS BY MATRIX DESIGN GROUP AND IS LIKELY GOING TO CHANGE
- NO TRAFFIC STUDY AVAILABLE FOR THE CLASSIC HOMES OR VENEZIAN/VINTAGE DEVELOPMENT.
- ALL TRAFFIC DATA WILL BE SUBJECT TO FINAL TRAFFIC STUDIES BY OTHERS







CITY OF COLORADO SPRINGS

183-02

**DATE:** October 9, 2002

**TO:** Lorne C. Kramer, City Manager

**FROM:** David S. Zelenok, Director of Public Works

**RE:** Powers – State Highway 83 Agreement

*Lorne C. Kramer*

*Dave.*

**SUMMARY:** We are pleased to present the attached Powers – State Highway 83 Agreement between the City of Colorado Springs (City), Colorado Department of Transportation (CDOT) and Jovenchi I, LLC (Venezia family). The agreement sets forth the terms for the conveyance of property from the Venezias for the extension of Powers Boulevard and for CDOT's construction of Powers Boulevard.

**PREVIOUS COUNCIL ACTION:** On June 29, 1999, the City entered into an Intergovernmental Agreement whereby CDOT became responsible for extending and improving Powers Boulevard in exchange for the City taking over responsibility for streets formerly designated as state highways, such as Academy Boulevard, Nevada Avenue, portions of Circle Drive and Fillmore Street.

**BACKGROUND:**

1. Council was notified in March 2002, that the City received a letter from Tom Norton, Executive Director of CDOT (attached), dated February 20, 2002, proposing the Powers Boulevard extension be temporarily terminated at Old Ranch Road due to unanticipated right-of-way costs between Old Ranch Road and State Highway 83 (SH 83).
2. City staff determined that the termination of Powers at SH 83 was not acceptable. Subsequently, staff worked diligently with CDOT and the Venezias to come up with a solution.
3. Jim Hauck and John Merritt from Traffic Engineering proposed to CDOT realigning SH 83 at Powers Boulevard. As previously envisioned by CDOT, SH 83 was to remain intact, and Powers would pass over the highway at an oblique angle. Under our proposal, SH 83 would instead intersect Powers in a nearly perpendicular configuration; therefore reducing by five acres the amount of right-of-way required and eliminating the need for a number of bridges. It would also allow the on/off ramps be moved closer together, which, in turn, would enable the Venezias to have a full movement access onto SH 83. Perhaps most importantly, only about half the amount of Preble's Meadow Jumping Mouse habitat is affected, CDOT would likely save construction costs, and 34 acres will be dedicated at no cost to the public.
4. After reviewing and refining the City's proposal, CDOT presented the realigned SH 83 plan to the Venezias.

5. The Venezias found the revised alignment acceptable. Since this alignment will give the Venezias the direct access they want to SH 83, they agreed to provide the right-of-way for the Powers extension and the SH 83 realignment at no cost.

Given the importance and unusual nature of this project, I would like to express a special thanks to all parties involved for their willingness to look for alternative solutions. In addition to the Venezia family and CDOT, the efforts of staff, in particular, Jim Hauck, John Merritt, Tim Mitros and Al Ziegler in resolving these complex engineering and legal issues on such short order were remarkable and noteworthy

**FINANCIAL IMPLICATIONS:** N/A

**BOARD/COMMISSION RECOMMENDATION:** N/A

**STAKEHOLDER PROCESS:** N/A

**ALTERNATIVES:** N/A

**RECOMMENDATION:** Staff recommends City Council approve the attached resolution authorizing execution of the Agreement between the City of Colorado Springs and the Colorado Department of Transportation.

**PROPOSED MOTION:** Move to adopt the attached resolution Agreement as presented.

Staff would like to make a brief presentation.

Attachments

- c. Gary Haynes, City Engineer  
Jim Hauck, Traffic Engineering Division Manager  
Patricia K. Kelly, City Attorney  
Tim Mitros, Senior Civil Engineer  
Dave Nickerson, Deputy City Manager  
M. Allen Ziegler, Jr., Assistant City Attorney

  
CITY OF COLORADO SPRINGS

**DATE:** October 7, 2002  
**TO:** City Council  
**FROM:** City Attorney's Office  
**SUBJECT:** *Supplemental Memorandum-Powers - State Highway 83 Agreement*

This memorandum is a supplement to the Department of Public Work's memorandum relating to this matter. The Powers-State Highway 83 Agreement is to be entered into among the City, CDOT and Jovenchi I LLC. Under this Agreement Jovenchi agrees to convey property for the proposed interchange of Powers Blvd and State Highway 83 and related facilities. Under this Agreement, CDOT pays compensation for certain parcels. Other parcels totaling approximately 34.67 acres are to be conveyed to the City at no cost.

The City agrees to accept these donated parcels in lieu of any off site contributions (whether assessments, fees, dedications of right-of-way or otherwise) on any future zoning, subdivision, or other development of the property except for an access road which is to be provided in accordance to the terms of the Agreement. Jovenchi or its successors are responsible for other obligations arising under the City Code. The Agreement doesn't limit the authority of the City Council to adopt other fees or taxes as long as these are applied to the City generally.

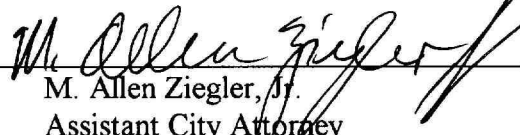
The Agreement provides for liquidated damages. Liquidated damages are defined as the fair market value of the donated parcels plus eight (8) per cent interest from the date of donation of these parcels and damages, if any, to the remainder of the Property. CDOT agrees that if CDOT terminates funding on the project the State will be liable for liquidated damages. The Agreement provides for a full movement access onto the Jovenchi Property. If this access is materially changed by the City or CDOT the party responsible for such material change is liable for liquidated damages. The City and CDOT are each liable for default of their respective obligations under the Agreement. The City is not responsible for default in CDOT's obligations and CDOT is not responsible for default in the City's obligations.

A102/081.wpd

Sincerely,

FOR THE CITY ATTORNEY

By:

  
M. Allen Ziegler, Jr.  
Assistant City Attorney

c: Patricia K. Kelly, City Attorney  
Dave Zelenok, Director, Public Works  
Gary Haynes, Manager, Public Works  
Tim Mitros, Senior Civil Engineer