



STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

KIRK T. STEUDLE
DIRECTOR

November 9, 2009

Ms. Rhonda A. Moore
Engineer Public Improvements
Norfolk Southern Corp.
1200 Peachtree Street, N.E.
Atlanta, Georgia 30309

Dear Ms. Moore:

RE: MDOT Contract Number: 09-5627
Control Section: 82073
Job Number: 107927A

Enclosed is a fully executed copy of the above noted agreement.

Sincerely,

A handwritten signature in black ink that reads "Vanessa Skym".

Vanessa Skym
Contract Processing
Design Support Area

Enclosure

cc: S. Rapp, Design Division
Metro
Project Accounting, Financial Operations Division

DIR

Contract Number	09-5627
Control Section	EBSL 82073
Structure Number	R01 of 82073
Job Number	107927A
Federal Project	EBSL-0982(180)
Federal Item	HH-6159

THIS AGREEMENT, entered into this date of NOV 09 2009, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the DEPARTMENT, and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation admitted to do business under the laws of the State of Michigan and other states, hereinafter referred to as the RAILROAD,

WITNESSETH:

WHEREAS, the County of Wayne, Michigan, constructed in 1928 the existing grade separation carrying Fort Street over the RAILROAD located in the City of Detroit, Wayne County, Michigan; and

WHEREAS, an agreement dated May 11, 1928, between the Wabash Railway Company (RAILROAD last successor in interest), the County of Wayne, the City of Detroit, The Pennsylvania Railroad Company, and the Michigan Central Railroad Company, covering the construction and subsequent maintenance of the grade separation specifies the County of Wayne, at its own expense, will maintain, repair, and renew the grade separation structure; and

WHEREAS, in the year 2001, the DEPARTMENT assumed jurisdictional authority of the portion of Fort Street containing the grade separation, and designated Fort Street as State Trunkline Highway M-85; and

WHEREAS, the DEPARTMENT is now the last successor in interest of the County of Wayne and City of Detroit in respect to the aforementioned agreement dated May 11, 1928; and

WHEREAS, the DEPARTMENT now proposes to remove the existing structure and replace it with a new one; and

WHEREAS, the portions of the agreement dated May 11, 1928, addressing the granting by the RAILROAD to the DEPARTMENT of a two hundred four (204) foot wide highway right-of-way across the rights-of-way of the railroads, shall remain in full force and effect; and,

WHEREAS, the parties hereto have reached an understanding with each other with respect to the preparation and approval of plans and specifications, replacement of the grade separation, and

the construction of temporary and incidental works made necessary by such construction, all herein from time to time hereinafter referred to as the PROJECT, the maintenance, repair, replacement and renewal thereof, and the payment of the cost thereof, and desire to set forth their understanding in the form of a written agreement.

NOW, THEREFORE, in consideration of the premises and the performance of the mutual undertakings of the parties hereto, it is hereby agreed:

1. In accordance with the plans, the standard specifications of the DEPARTMENT, and the special provisions and other specifications hereinafter mentioned, the DEPARTMENT will undertake the construction of the PROJECT, pursuant to all of the terms and conditions of this AGREEMENT. For the purposes of the construction work, the DEPARTMENT and its contractors may enter upon and occupy the property of the RAILROAD, subject to the conditions hereinafter stated; provided that, immediately upon completion of the PROJECT, the property of the RAILROAD shall be restored to a condition deemed by the Chief Engineer of the RAILROAD to be suitable for railroad purposes.

2. The general plans for the PROJECT and the estimated cost of the work to be performed by the RAILROAD on a force account basis are shown on the following exhibits which are attached hereto and made a part of this AGREEMENT.

Exhibit A - General Plan of Site (1 sheet), showing present location of the tracks of the RAILROAD and of the highway overpass structure, and the existing 204 foot wide Fort Street right-of-way across the right-of-way of the RAILROAD as granted to the DEPARTMENT by the railroad companies in the May 11, 1928, agreement.

Exhibit B - General Plan of Structure (5 sheets), showing the general plan, elevation, and deck section of the highway overpass structure, RAILROAD clearances and rights-of-way.

Exhibit C - RAILROAD estimate of cost (8 sheets), dated September 2, 2009, of the work to be performed by the RAILROAD in conjunction with said PROJECT on a force account basis, as provided in Section 8 herein, including preliminary engineering, construction engineering and inspection, and poleline relocation.

3. The DEPARTMENT will prepare, at no expense to the RAILROAD, all designs, detailed plans and specifications for the PROJECT. The designs, detailed plans and specifications shall be subject to the approval of the RAILROAD insofar as they affect the facilities of the RAILROAD before awarding of construction contracts. All of the work shall be designed, detailed and constructed in accordance with the current specifications and standards of the DEPARTMENT.

4. The RAILROAD has prepared and furnished to the DEPARTMENT an estimate of the cost of work to be performed by it on a force account basis, as specified in Section 8 hereof. The DEPARTMENT will reimburse the RAILROAD, as part of the preliminary engineering, for the cost of the preparation of said estimate and for the expense incurred in reviewing the project agreement, plans, and special provisions.

5. The DEPARTMENT will advertise its portion of the work of construction of the PROJECT in accordance with its regulations, considering bids therefor only from contractors prequalified by it for such work, will award the contracts therefor, and will exercise complete supervision and control over the construction. While work is being performed adjacent to, under, or over its tracks, the RAILROAD may place a competent engineer or inspector on the work, together with necessary assistants, at PROJECT expense, to protect its interests. Said engineer or inspector of the RAILROAD, acting through the DEPARTMENT'S engineer, shall have the right to reject any or all work affecting the RAILROAD'S interests which is not executed pursuant to, and in conformity with, the aforesaid plans and specifications.

6. The DEPARTMENT will require its contractor to comply with the Special Provision for Protection of Railway Interest, which is hereby approved by the RAILROAD and the DEPARTMENT, and which is attached hereto and made a part hereof.

The RAILROAD agrees to furnish to the contractor, and the DEPARTMENT shall require the contractor to use, such switchtenders, flagmen, telegraph operators, conductors, pilots, watchmen or other protective services or devices, other than engineering personnel, as in the opinion of the RAILROAD are required to insure safety and continuity of railroad traffic during the contractor's operations.

The RAILROAD agrees to bill the contractor the actual cost for such protective services and devices including the actual rate of pay, plus the amount paid for overtime, insurance, railroad retirement, vacation allowance, holidays, health and welfare, transportation, deadhead and turn around time, accounting and billing.

The DEPARTMENT agrees to reimburse the contractor for said cost of protective services and devices as set forth in this AGREEMENT and the attached Special Provision for Protection of Railway Interest.

It is expressly understood that no provisions of this AGREEMENT or approval by the RAILROAD as to construction operations shall relieve the contractor of any responsibility or liability whatsoever.

7. The DEPARTMENT will undertake and perform through contractors:

- A. The removal of the existing bridge.
- B. The construction of the replacement grade separation.

- C. Placement of a City of Detroit water main beneath the RAILROAD in the vicinity of the grade separation. Any agreements, licenses, etc. covering these facilities shall be separate from this AGREEMENT and will be between the City of Detroit and the RAILROAD.
- D. Wrapping (for safety) and/or temporarily taking out-of-service, removing, and replacing the overhead City of Detroit Public Lighting Department street light wirelines passing over the RAILROAD – to facilitate bridge construction. If temporarily removed, the lines will be replaced in their current overhead locations. Should the City of Detroit Public Lighting Department in the future desire to relocate these wirelines beneath the RAILROAD, any agreements, licenses, etc. covering these facilities shall be separate from this AGREEMENT and will be between the City of Detroit and the RAILROAD.
- E. All work incidental to the foregoing, except the work to be performed by the RAILROAD as stated in Section 8.

8. The RAILROAD will, at PROJECT expense, on a force account basis, using either its own forces and equipment or a subcontractor, perform the work as listed below. The DEPARTMENT will provide formal authorization to the RAILROAD to proceed with its work following execution of this AGREEMENT and obligation of federal funds for the PROJECT by the Federal Highway Administration (FHWA). The use of a subcontractor by the RAILROAD will require prior approval by the DEPARTMENT and the FHWA. All contracts with subcontractors, including amendments, shall be submitted to the DEPARTMENT for review. All subcontracts in excess of one hundred thousand dollars (\$100,000) require formal approval by the DEPARTMENT prior to execution. Any such approval by the DEPARTMENT or the FHWA shall in no way be construed as a warranty of the subcontractor's qualifications, professional standing, ability to perform the work being contracted, or financial integrity. Consent to sublet by the RAILROAD any portion of the PROJECT work shall not be construed to relieve the RAILROAD of any responsibility or obligation under, or for the fulfillment of this AGREEMENT.

The RAILROAD will furnish all materials, labor and equipment to perform the following items:

- A. Perform such preliminary engineering, construction engineering, inspection, and relocation or burial of RAILROAD poleline as may be necessitated by the PROJECT. The RAILROAD will invoice the DEPARTMENT for these items.
- B. Provision of switchtenders, flagmen, watchmen and other protective services and devices to promote safety and insure continuity of train operations as may be necessary in connection with the work performed. The RAILROAD will invoice the contractor for the daily flagging services performed.

9. Any work necessitated by the PROJECT but not specifically provided for in this agreement which shall involve temporary or permanent changes to any facilities of the RAILROAD shall be performed, at PROJECT expense, by one of the parties hereto as may be mutually agreed upon from time to time during the progress of the work and in conformity with the rules and regulations of the FHWA as then in effect. The RAILROAD will be permitted to work outside its regular working hours, at premium rates, to perform its force account work when such working hours have been approved by the DEPARTMENT'S regional field engineer, provided the arrangement for such work is required to maintain continuity of train movements or to maintain construction schedules and is in the public interest.

10. All work performed or caused to be performed, and materials and equipment furnished or caused to be furnished by the RAILROAD pursuant to this agreement, will be performed on a force account basis, billed by the RAILROAD and reimbursed by the DEPARTMENT, as defined and as provided in the Federal-Aid Policy Guide (FAPG), Part 140, Subpart I, dated December 9, 1991, and amendments thereto, incorporated herein by reference as if the same were repeated in full herein. The DEPARTMENT will pay from PROJECT funds such amounts as are approved for payment by the FHWA in accordance with its regulations.

During the course of the PROJECT, changes, extra work, and/or adjustments to the contract, as well as extensions of time, may be requested by either party to the contract and/or become necessary. If acceptable to the DEPARTMENT, the DEPARTMENT will prepare a Form 1100RR (or similar) document to modify the contract and authorize the RAILROAD to perform the modified work. The RAILROAD hereby consents and agrees to accomplish the modified work in conformance with the requirements of the document and this AGREEMENT. The RAILROAD need not sign the document if the modified work has been previously requested in writing by the RAILROAD, a copy of the RAILROAD'S request is attached to the document, and the RAILROAD'S request has not been changed in any way by the DEPARTMENT. If the contract modification is requested by the DEPARTMENT, or if the DEPARTMENT alters modified work proposed by the RAILROAD, the RAILROAD will be offered the opportunity to sign the document indicating its agreement to carry out the modifications as written.

The RAILROAD will credit to the PROJECT the value of materials recovered from temporary or permanent use on the PROJECT in accordance with the provisions of the Federal-Aid Policy Guide, Part 140, Subpart I, dated December 9, 1991, and amendments thereto.

The RAILROAD shall afford the DEPARTMENT and the FHWA a reasonable opportunity to inspect materials recovered prior to disposal by sale or scrap.

The DEPARTMENT will reimburse the RAILROAD upon completion of authorized work and receipt of progress and final billings therefor, the costs and expenses incurred by it, withholding (if applicable) until after final audit, a retainage as set forth in paragraph 9 of the State of Michigan Administrative Board Resolution of May 1, 1979, as amended, entitled, "Department of Transportation Construction and Maintenance Contracts" attached hereto as Appendix "C". The retainage provision may be waived for those railroad companies the DEPARTMENT has determined

to have had recent, acceptable history of both contract compliance and audit experience with the DEPARTMENT, and where there are no other circumstances indicating a need to maintain the retainage to reasonably protect the public interest. The RAILROAD will bear the full cost of any items for which they are responsible and which is determined to be not properly a part of the PROJECT. The RAILROAD certifies that it is aware of the applicable laws, regulations and terms of the AGREEMENT that apply to reporting of costs incurred and any such costs reported represent only those items which are properly chargeable.

11. The RAILROAD shall:

- A. Establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this AGREEMENT, said records to be hereinafter referred to as the RECORDS. Separate accounts shall be established and maintained for all costs incurred under this AGREEMENT.
- B. The RAILROAD shall maintain the RECORDS for at least three (3) years from the date of final payment of federal aid made by the DEPARTMENT under this AGREEMENT. In the event of a dispute with regard to the allowable expenses or any other issue under this AGREEMENT, the RAILROAD shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
- C. The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
- D. If any part of the work is subcontracted, the RAILROAD shall assure compliance with subsections (A), (B), and (C) above for all subcontracted work.

IT IS FURTHER AGREED THAT:

Final settlement of costs shall be made upon completion of all PROJECT work and final audit by the DEPARTMENT. In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this AGREEMENT, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the RAILROAD, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the RAILROAD at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the RAILROAD shall:
(a) respond in writing to the responsible Bureau of the DEPARTMENT indicating whether or not it concurs with the audit report, b) clearly explain the nature and basis for any disagreement as to a

disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the RESPONSE. The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the RAILROAD may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the AGREEMENT. The RAILROAD agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the RAILROAD, the RAILROAD shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the RAILROAD fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the RAILROAD agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the RAILROAD under this AGREEMENT, or any other agreement. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The RAILROAD expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the RAILROAD in a timely filed RESPONSE.

12. The DEPARTMENT shall require its contractor to take out a Railroad Protective Liability Insurance Policy in the name of the RAILROAD before work is commenced and to keep it in effect until work is completed and accepted; said policy to conform to the regulations prescribed therefore in the FAPG, Part 646, Subpart A, dated December 9, 1991, and amendments thereto.

The policy shall have limits of liability in the amount of five million dollars (\$5,000,000) combined single limit per occurrence for bodily injury, death and property damage with an aggregate limit of ten million dollars (\$10,000,000) applying separately to each annual period. The policy of insurance specified in this section shall be with a company authorized to do business in the State of Michigan.

13. Nothing in this AGREEMENT shall be construed to render the DEPARTMENT liable for acts of negligence of the RAILROAD, the contractor, or any of their employees, agents, contractors or subcontractors.

14. This is a project for the replacement of the existing structure and is the responsibility of the DEPARTMENT as per the existing agreement dated May 11, 1928. Therefore, the RAILROAD shall not be assigned any liability as to the cost of the PROJECT.

15. If, at any time, without fault of the parties hereto, the work which is hereunder agreed to be done shall cease and not be resumed within sixty (60) days, or such extended period as is mutually agreed upon, the parties hereto, if not then agreed, will agree upon and will perform such work as is reasonably necessary to place the right-of-way, tracks and other facilities of the RAILROAD in a satisfactory, permanent operating condition. The DEPARTMENT shall assume and pay the cost of such work, provided that the aforesaid sixty (60) day limitation shall not apply to the temporary suspension of work under order of any governmental agency or court, in which event the work shall be resumed and completed as soon as possible in accordance with the terms of this AGREEMENT.

16. In the event delays or difficulties occur before the commencement of physical operations hereunder which, in the opinion of the DEPARTMENT, render it impracticable to proceed with the construction of the PROJECT, the DEPARTMENT may serve written notice thereof upon the RAILROAD and this AGREEMENT shall thereupon terminate forthwith, provided however, that the RAILROAD shall be reimbursed for costs and expenses incurred pursuant to Section 4 of this AGREEMENT.

17. When the construction of said PROJECT has been completed, the RAILROAD, at its sole cost and expense, will maintain, repair, replace and renew its tracks, ties, ballast, and other railroad facilities, and will repair or replace, or cause to be repaired or replaced, any portion of the highway overpass structure, the roadway surfacing, the roadway retaining walls, slopes, and the drainage facilities, which may be damaged or destroyed by accident, or otherwise, resulting solely from railroad traffic. The DEPARTMENT, without cost to the RAILROAD and in accordance with this AGREEMENT, will maintain, repair, replace and renew, or cause same to be done as and when circumstances may require, the highway overpass structure, the roadway surfacing, the roadway retaining walls, slopes, and the highway drainage facilities and also, at its sole cost and expense, will repair or replace, or cause to be repaired or replaced, any portion of the tracks, ties, ballast, and other facilities of the RAILROAD which may be damaged or destroyed by accident, or otherwise, resulting solely from highway traffic.

18. If at any time in the future, the tracks of the RAILROAD are absolutely discontinued, abandoned, and removed by the RAILROAD, or if at any time in the future, the highway is absolutely discontinued and abandoned, or if, for any other reason, no further need exists for the grade separation, the DEPARTMENT or the governing body having jurisdiction at that time of the portion of the highway including the PROJECT, may, at its sole cost and expense, remove the grade separation structure not including underground drainage facilities. However, it is agreed that such removal shall not be undertaken without full approval by and consent of the RAILROAD insofar as its respective interests are involved. Until the structure is removed, it shall be maintained in accordance with Section 17 of this AGREEMENT.

19. Either the DEPARTMENT or the RAILROAD may now, or at any time hereafter, and from time to time, at its sole cost and expense, construct or provide additional facilities and betterments to this PROJECT, together with the necessary construction and expenditures to adapt the same to the new physical conditions occasioned by such additional facilities and betterments. It is agreed that such construction shall not be undertaken by either the DEPARTMENT or the RAILROAD without full approval by and consent of the other party insofar as its respective interests are involved.

20. It is anticipated that the PROJECT is to be financed in part from funds appropriated by the Federal Government and expended under federal laws and regulations, which laws and regulations are hereby incorporated in and made a part of this AGREEMENT.

21. Any approvals, reviews and inspections of any nature by the DEPARTMENT, shall not be construed as a warranty or assumption of liability on the part of the DEPARTMENT. It is expressly understood and agreed that any such approvals are for the sole and exclusive purposes of the DEPARTMENT, which is acting in a governmental function incidental to this AGREEMENT.

Any such approvals, reviews and inspections by the DEPARTMENT will not relieve the RAILROAD of its obligations hereunder, nor are such approvals, reviews and inspections by the DEPARTMENT to be construed as a warranty as to the propriety of the RAILROAD'S performance but are undertaken for the sole use and information of the DEPARTMENT.

22. In connection with the performance of the work under this AGREEMENT, the RAILROAD (hereinafter in Appendix "A" referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix "A", dated March, 1998, attached hereto and made a part hereof and will require a similar covenant on the part of any contractor or subcontractor employed in the performance of this AGREEMENT.

23. During the performance of this AGREEMENT, the RAILROAD for itself, its assigns, and successors in interest (hereinafter in Appendix "B" referred to as the "contractor") agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", dated March, 1992, as amended, attached hereto and made a part hereof and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this AGREEMENT.

24. The resolution of the State Administrative Board, dated May 1, 1979, as amended, entitled "Department of Transportation Construction and Maintenance Contracts", as set forth in Appendix "C", is attached hereto and made a part hereof.

25. It is specifically understood and agreed that this AGREEMENT shall become and be binding on the parties hereto, their successors and assigns, in full force and effect upon signing thereof by duly authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their proper and duly authorized representatives.

NORFOLK SOUTHERN RAILWAY COMPANY

By JWHall
Title: General Manager

MICHIGAN DEPARTMENT OF TRANSPORTATION

By Paul Van der Auwera
Department Director MDOT



2/13/09

**DIRECTOR
AGENDA**
10/1/09

MICHIGAN
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
**PROTECTION OF RAILWAY INTEREST
NORFOLK SOUTHERN**

DES:SMR

1 of 16

REV. 06-09-09, 10-16-98
C&T:APPR:MLL:JKG 10-22-98

a. Authority of Railroad Engineer and Project Engineer

The authorized representative of the Norfolk Southern Railway Company (the "Railroad"), hereinafter referred to as Railroad Engineer, shall have final authority in all matters affecting the safe maintenance of Railroad traffic including the adequacy of the foundations and structures supporting the Railroad tracks.

The authorized representative of the Michigan Department of Transportation (the "Department"), hereinafter referred to as the Resident Engineer, shall have authority over all matters as prescribed herein and in the Project Specifications.

b. Notice of Starting Work

1. The Contractor shall not commence any work on Railroad rights-of-way until the Contractor has complied with the following conditions.

A. Given the Railroad written notice, with copy to the Resident Engineer who has been designated to be in charge of the work, at least ten days in advance of the date the Contractor proposes to begin work on Railroad rights-of-way:

Railroad:

Office of Chief Engineer
Bridges & Structures
Norfolk Southern Corporation
1200 Peachtree Street, N.E.
Atlanta, Georgia 30309

Resident Engineer:

Mr. Roger Teale
MDOT Resident Engineer
1400 Howard Street
Detroit, MI 48216

B. Obtained written authorization from the Railroad to begin work on Railroad rights-of-way, such authorization to include an outline of specific conditions with which the Contractor must comply.

- C. Obtained written approval from the Railroad of Railroad Protective Insurance coverage as required by Section m., Insurance, herein.
 - D. Furnished a schedule for all work within Railroad rights-of-way as required by paragraph q.2.A.
2. The Railroad's written authorization to proceed with the work shall include the names, addresses and telephone numbers of the Railroad's representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility of each representative shall be specified.

c. Interference with Railroad Operations

1. The Contractor shall so arrange and conduct the work so that there will be no interference with Railroad operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railroad Company or to poles, wires, and other facilities of tenants on the rights-of-way of the Railroad Company. Whenever work is liable to affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad Engineer for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor which requires flagging service or inspection service (watchman) shall be deferred by the Contractor until the flagging protection required by the Railroad is available at the job site.
2. Whenever work within Railroad rights-of-way is of such a nature that impediment to Railroad operations such as use of run around tracks or necessity for reduced speed is unavoidable, the Contractor shall schedule and conduct its operations so that such impediment is reduced to the absolute minimum.
3. Should conditions arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of the Railroad, the Contractor shall make such provisions. If in the judgment of the Railroad Engineer, or in his absence, the Resident Engineer, such provision is insufficient, either may require or provide such provisions as are deemed necessary. In any event, such unusual provisions shall be at the Contractor's expense and without cost to the Railroad or the Michigan Department of Transportation, hereinafter referred to as the Department.

d. Track Clearances

1. The minimum track clearances to be maintained by the Contractor during construction are shown on the Project plans. However, before undertaking any work within Railroad right-of-way, or before placing any obstruction over any track, the Contractor shall:
 - A. Notify in writing the Railroad's representative at least 10 working days in advance of the proposed work.
 - B. Receive assurance from the Railroad's representative that arrangements have been made for flagging service as may be necessary.
 - C. Receive permission from the Railroad's representative to proceed with the work.
 - D. Ascertain that the Resident Engineer has received copies of notice to the Railroad and of the Railroad's response thereto.

e. Construction Procedures

1. General:

Construction work and operations by the Contractor on Railroad property shall be:

- A. Subject to the inspection and approval of the Railroad.
 - B. In accord with the Railroad's written outline of specific conditions.
 - C. In accord with the Railroad's general rules, regulations and requirements including those relating to safety, fall protection and personal protective equipment.
 - D. In accord with these Special Provisions.
2. Excavation:

The subgrade of an operated track shall be maintained with edge of berm at least 10 ft from centerline of track and not more than 2 ft below top of rail.

Contractor will not be required to make existing section meet this specification if substandard, in which case existing section will be maintained.

3. Excavation for Structures:

The Contractor will be required to take special precaution and care in connection with excavating and shoring pits, and in driving piles or sheeting, for footings adjacent to tracks to provide adequate lateral support for the tracks and the loads which they carry, without disturbance of track alignment and surface, and to avoid obstructing track clearances with working equipment, tools or other material. The procedure for doing such work, including need of and plans for shoring, shall first be approved by the Resident Engineer and the Railroad Engineer, but such approval shall not relieve the Contractor from liability.

4. Blasting:

A. The Contractor shall obtain advance approval of the Railroad Engineer and the Resident Engineer for use of explosives on or adjacent to Railroad property. The request for permission to use explosives shall include a detailed blasting plan. If permission for use of explosives is granted, the Contractor will be required to comply with the following:

- (1) Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of the Contractor and a licensed blaster.
- (2) Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way radios.
- (3) No blasting shall be done without the presence of an authorized representative of the Railroad. At least 72 hours advance notice of authorization to proceed (see paragraph b.2 above) will be required to arrange for the presence of an authorized Railroad representative and such flagging as the Railroad may require.
- (4) Have at the job site adequate equipment, labor and materials and allow sufficient time to clean up debris resulting from the

blasting without delay to trains, as well as correcting, at the Contractor's expense, any track misalignment or other damage to Railroad property resulting from the blasting as directed by the Railroad's authorized representative. If the Contractor's actions result in delay of trains, the Contractor shall bear the entire cost thereof.

B. The Railroad representative will:

- (1) Determine the approximate location of trains and advise the Contractor the approximate amount of time available for the blasting operation and clean-up.
- (2) Have the authority to order discontinuance of blasting if, in his opinion, blasting is too hazardous or is not in accord with these Special Provisions.

5. Maintenance of Railroad Facilities:

- A. The Contractor will be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from its operations and provide and maintain any erosion control measures as required. The Contractor will promptly repair eroded areas within Railroad right-of-way and to repair any other damage to the property of the Railroad or its tenants.
- B. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.

6. Storage of Materials and Equipment:

Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the rights-of-way of the Railroad company without first having obtained permission from the Railroad Engineer, and such permission will be with the understanding that the Railroad Company will not be liable for damage to such material and equipment from any cause and that the Railroad Engineer may move or require the Contractor to move, at the Contractor's expense, such material and equipment.

All grading or construction machinery that is left parked near the track unattended by a watchman shall be effectively immobilized so that it cannot be moved by unauthorized persons. The Contractor shall protect, defend,

indemnify and save Railroad, and any associated, controlled or affiliated corporation, harmless from and against all losses, costs, expenses, claim or liability for loss of or damage to property or the loss of life or personal injury, arising out of or incident to the Contractor's failure to immobilize grading or construction machinery.

7. Cleanup:

Upon completion of the work, the Contractor shall remove from within the limits of the Railroad rights-of-way, all machinery, equipment, surplus materials, false work, rubbish or temporary buildings of the Contractor, and leave said rights-of-way in a neat condition satisfactory to the Chief Engineer of the Railroad or his authorized representative.

f. Damages

1. The Contractor shall assume all liability for any and all damages to its work, employees, servants, equipment and materials caused by Railroad traffic.
2. Any cost incurred by the Railroad for repairing damages to its property or to property of its tenants, caused by or resulting from the operations of the Contractor, shall be paid directly to the Railroad by the Contractor.

g. Haul Across Railroad

1. Where the plans show or imply that materials of any nature must be hauled across the Railroad, unless the plans clearly show that the Department has included arrangements for such haul in its agreement with the Railroad, the Contractor will be required to make all necessary arrangements with the Railroad regarding means of transporting such materials across the Railroad. The Contractor will be required to bear all costs incidental to such crossings (including utility protection and/or relocation) whether services are performed by the Contractor's own forces or by Railroad personnel.
2. No crossing may be established for use of the Contractor for transporting materials or equipment across the tracks of the Railroad Company unless specific authority for its installation, maintenance, necessary watching and flagging thereof and removal, all at the expense of the Contractor, is first obtained from the Railroad Engineer and a private crossing agreement has been executed between the Contractor and the Railroad.

h. Work for the Benefit of the Contractor

1. All temporary or permanent changes in wire lines or other facilities which are considered necessary to the project are shown on the plans; included in the force account provisions in the agreement between the Department and the Railroad or will be covered by appropriate revisions to same which will be initiated and approved by the Department and/or the Railroad.
2. Should the Contractor desire any changes in addition to the above, the Contractor shall make separate arrangements with the Railroad for same to be accomplished at the Contractor's expense.

i. Cooperation and Delays

1. It shall be the Contractor's responsibility to arrange a schedule with the Railroad for accomplishing stage construction involving work by the Railroad or tenants of the Railroad. In arranging said schedule the Contractor shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefor.
2. No charge or claims of the Contractor against either the Department or the Railroad Company will be allowed for hindrance or delay on account of railway traffic; any work done by the Railroad Company or other delay incident to or necessary for safe maintenance of railway traffic or for any delays due to compliance with these Special Provisions.

j. Trainman's Walkways

Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending to a line not less than 10 ft from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while the Railroad's protective service is provided shall be removed before the close of each work day. If there is any excavation near the walkway, a handrail, with 10 ft minimum clearance from centerline of track, shall be placed.

k. Guidelines for Personnel on Railroad Right-of-Way

1. All persons shall wear hard hats. Appropriate eye and hearing protection must be used. Working in shorts is prohibited. Shirts must cover shoulders, back and abdomen. Working in tennis or jogging shoes, sandals, boots with

high heels, cowboy and other slip-on type boots is prohibited. Hard-sole, lace-up footwear, zippered boots or boots cinched up with straps which fit snugly about the ankle are adequate. Safety boots are strongly recommended.

2. No one is allowed within 25 ft of the centerline of track without specific authorization from the flagman.
3. All persons working near the track while a train is passing are to look out for dragging bands, chains and protruding or shifted cargo.
4. No one is allowed to cross tracks without specific authorization from the flagman.
5. All welders and cutting torches working within 25 ft of track must stop when a train is passing.
6. No steel tape or chain will be allowed to cross or touch rails without permission.

I. Guidelines for Equipment on Railroad Right-of-Way

1. No crane or boom equipment will be allowed to set up to work or park within boom distance plus 15 ft of centerline of track without specific permission from railroad official and flagman.
2. No crane or boom equipment will be allowed to foul track or lift a load over the track without flag protection and track time.
3. All employees will stay with their machines when crane or boom equipment is pointed toward track.
4. All cranes and boom equipment under load will stop work while train is passing (including pile driving).
5. Swinging loads must be secured to prevent movement while train is passing.
6. No loads will be suspended above a moving train.
7. No equipment will be allowed within 25 ft of centerline of track without specific authorization of the flagman.

8. Trucks, tractors or any equipment will not touch ballast line without specific permission from Railroad official and flagman.
9. No equipment or load movement within 25 ft or above a standing train or railroad equipment without specific authorization of the flagman.
10. All operating equipment within 25 ft of track must halt operations when a train is passing. All other operating equipment may be halted by the flagman if the flagman views the operation to be dangerous to the passing train.
11. All equipment, loads and cables are prohibited from touching rails.
12. While clearing and grubbing, no vegetation will be removed from Railroad embankment with heavy equipment without specific permission from the Railroad Engineer and flagman.
13. No equipment or materials will be parked or stored on Railroad property unless specific authorization is granted from the Railroad Engineer.
14. All unattended equipment that is left parked on Railroad property shall be effectively immobilized so that it cannot be moved by unauthorized persons.
15. All cranes and boom equipment will be turned away from track after each workday or whenever unattended by an operator.

m. Insurance

1. In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the Contractor will be required to carry insurance of the following kinds and amounts:
 - A. Commercial General Liability Insurance having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period. Said policy shall include "explosion, collapse, and underground hazard" ("XCU") coverage, shall be endorsed to name Railroad specified in Section m.1.B.(3) below as an additional insured, and shall include a severability of interests provision.
 - B. Railroad Protective Liability Insurance having a combined single limit of not less than \$5,000,000 each occurrence and \$10,000,000 in the

aggregate applying separately to each annual period. Said policy shall provide coverage for all loss, damage or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the job site.

The standards for the Railroad Protective Liability Insurance are as follows:

- (1) The insurer must be rated A- or better by A. M. Best Company, Inc.
- (2) The policy must be written using one of the following combinations of Insurance Services Office ("ISO") Railroad Protective Liability Insurance Form Numbers:

CG 00 35 01 96 and CG 28 31 10 93; or
CG 00 35 07 98 and CG 28 31 07 98.
- (3) The named insured shall read:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191
Attn: Scott W. Dickerson, Director Risk Management
- (4) The description of operations must appear on the Declarations, must match the project description in the proposal, and must include the appropriate Department project and contract identification numbers.
- (5) The job location must appear on the Declarations and must include the city, state, and appropriate highway name/number.
- (6) The name and address of the Prime Contractor must appear on the Declarations.
- (7) The name and address of the Department must be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party."
- (8) Other endorsements/forms that will be accepted are:

- a. Broad Form Nuclear Exclusion - Form IL 00 21
 - b. 30 Day Advance Notice of Non-Renewal or Cancellation
 - c. Required State Cancellation Endorsement
 - d. Quick Reference or Index Form CL/IL 240.
- (9) Endorsements/forms that are NOT acceptable are:
- a. Any Pollution Exclusion Endorsement except CG 28 31
 - b. Any Punitive or Exemplary Damages Exclusion
 - c. Known Injury or Damage Exclusion Form CG 00 59
 - d. Any Common Policy Conditions form
 - e. Any other endorsement/form not specifically authorized in Section m.B.(8) above.
2. If any part of the work is sublet, similar insurance and evidence thereof as specified in Section m.1.A above, shall be provided by or on behalf of the subcontractor to cover its operations on Railroad right-of-way.
3. Prior to entry on Railroad right-of-way, the original Railroad Protective Liability Insurance Policy shall be submitted by the Prime Contractor to the Railroad, and a copy to the Resident Engineer, at the addresses below. In addition, certificates of insurance evidencing the Prime Contractor's and any subcontractors' Commercial General Liability Insurance shall be issued to the Railroad and the Resident Engineer at the addresses shown below. The certificates of insurance shall state that the insurance coverage will not be suspended, voided, canceled, or reduced in coverage or limits without thirty (30) days advance written notice to Railroad and the Department. No work will be permitted by the Railroad on its right-of-way until it has reviewed and approved the evidence of insurance required herein.

Resident Engineer:

Mr. Roger Teale
MDOT Resident Engineer
1400 Howard Street

Railroad:

Mr. Scott W. Dickerson
Risk Manager
Norfolk Southern Corporation

Detroit, MI 48216

Three Commercial Place
Norfolk, VA 23510-2191

Questions regarding Norfolk Southern insurance requirements may be directed to Scott Dickerson at 757-629-2364.

n. Signal and Electrical Changes

The Department shall be responsible for all of the cost associated with any signal and electrical changes which may be needed due the project. The Department will pay the Railroad directly for performance of authorized work.

o. Failure to Comply

In the event the Contractor violates or fails to comply with any of the requirements of these Special Provisions:

1. The Railroad Engineer may require that the Contractor vacate Railroad property.
2. The Department may withhold all monies due the Contractor on monthly statements.

Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Resident Engineer.

p. Payment for Cost of Compliance

No separate payment will be made for any extra cost incurred on account of compliance with the preceding sections of this Special Provision. All such costs mentioned above shall be included in prices bid for other items of the work as specified in the payment items.

q. Flagging Services

1. When required:

Under the terms of the agreement between the Department and the Railroad, the Railroad has sole authority to determine the need for flagging required to protect its operations. In general, the requirements of such services will be whenever the Contractor's personnel or equipment are, or are likely to be, working on the Railroad's right-of-way, or across, over, adjacent to, or under

a track, or when such work has disturbed or is likely to disturb a railroad structure or the railroad roadbed or surface and alignment of any track to such extent that the movement of trains must be controlled by flagging. Normally, the Railroad will assign one flagman to a project; but in some cases, more than one may be necessary, such as yard limits where three (3) flagmen may be required. However, if the Contractor works within distances that violate instructions given by the Railroad's authorized representative or performs work that has not been scheduled with the Railroad's authorized representative, a flagman or flagmen may be required full time until the project has been completed.

2. Scheduling and Notification:

- A. Not later than the time that approval is initially requested to begin to work on Railroad right-of-way, the Contractor shall furnish to the Railroad and the Resident Engineer a schedule for all work required to complete the portion of the project within Railroad right-of-way and arrange for a job site meeting between the Contractor, the Resident Engineer, and the Railroad's authorized representative. Flagman or flagmen may not be provided until the job site meeting has been conducted and the Contractor's work scheduled.
- B. The Contractor will be required to give the Railroad representative at least 10 working days of advance written notice of intent to begin work within Railroad right-of-way in accordance with this Special Provision. It should be noted that if a Railroad flagman is needed, it may take up to 30 days to obtain flagging initially from the Railroad. Once begun, when such work is then suspended at any time, or for any reason, the Contractor will be required to give the Railroad representative at least three working days of advance notice before resuming work on Railroad right-of-way. Such notices shall include sufficient details of the proposed work to enable the Railroad representative to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Resident Engineer a copy; if notice is given verbally, it shall be confirmed in writing with copy to the Resident Engineer. If flagging is required, no work shall be undertaken until the flagman or flagmen is present at the job site. It may take up to 30 days to obtain flagging initially from the Railroad. When flagging begins, the flagman is usually assigned by the Railroad to work at the project site on a continual basis until no longer needed and cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may take up to 30 days to again obtain from the Railroad. Due to

Railroad labor agreements, it is necessary to give five working days notice before flagging service may be discontinued and responsibility for payment stopped. Contractor shall inform the Railroad in writing when flagging is no longer needed and retain a copy of this written notification.

- C. If, after the flagman is assigned to the project site, an emergency arises that requires the flagman's presence elsewhere, then the Contractor shall delay work on Railroad right-of-way until such time as the flagman is again available. Any additional costs resulting from such delay shall be borne by the Contractor and not the Department or Railroad.
- D. The Contractor shall provide written notification to the Railroad (at the address below) when the Contractor has completed all work on Railroad property and to request a final inspection and flagging bill. All written correspondence should be addressed to:

Office of Chief Engineer
Bridges and Structures
Norfolk Southern Corporation
1200 Peachtree Street, N.E.
Atlanta, Georgia 30309
Attention: T. D. Wyatt
System Engineer Public Improvements

3. Verification:

- A. The Contractor and Resident Engineer will review and sign the Railroad flagman's time sheet, (Form 11123), attesting that the flagman was present during the time recorded. Flagmen may be removed by Railroad if form is not signed. If flagman is removed, the Contractor will not be allowed to re-enter the Railroad right-of-way until the issue is resolved. Any complaints concerning flagman or flagmen must be resolved in a timely manner. If the need for flagman or flagmen is questioned, please contact Railroad's Engineer Grade Separation Structures at (404) 529-1641. All verbal complaints must be confirmed in writing by the Contractor within five working days with copy to the Resident Engineer. All written correspondence should be addressed to:

Office of Chief Engineer
 Bridges & Structures
 Norfolk Southern Corporation
 1200 Peachtree Street, N.E.
 Atlanta, Georgia 30309

Attention: T. D. Wyatt
 System Engineer Public Improvements

- B. The Railroad flagman assigned to the project will be responsible for notifying the Resident Engineer upon arrival at the job site on the first day (or as soon thereafter as possible) that flagging services begin and on the last day that he performs such services for each separate period that services are provided. The Resident Engineer will document such notification in the project records. When requested, the Resident Engineer will also sign the flagman's diary showing daily time spent and activity at the project site.

4. Measurement and Payment:

The completed work as measured for **Railroad Inspection and Flagging** will be paid for at the pre-established contract unit price for the following contract item (pay item):

Pay Item	Pay Unit
Railroad Inspection and Flagging - NS	Dollar

The Railroad will bill the Contractor for inspection and flagging. The Contractor shall promptly pay to the Railroad the full amount of the Railroad's bill for inspection and flagging. The charge to the Contractor by the Railroad will be the actual cost based on the rate of pay for the Railroad's employees who are available for flagging service at the time the service is required. Work by a flagman in excess of 8 hours per day or 40 hours per week but not more than 12 hours a day will result in overtime pay at 1.5 times the appropriate rate. Work by a flagman in excess of 12 hours per day will result in overtime pay at 2 times the appropriate rate. If work is performed on a holiday, the flagging rate is 2.5 times the normal rate. Railroad work involved in preparing and handling bills will also be charged to the Contractor.

The Contractor shall submit (after paying the Railroad) a copy of the Railroad's bill and proof-of-payment to the Department's Engineer for

reimbursement. Costs incurred for inspection and flagging due to the failure of the Contractor to properly notify the Railroad 10 working days in advance of beginning work which may require a flagger as stated in Subsection 2.B above, shall be the responsibility of the Contractor. Before final payment is made by the Department to the Contractor for the project, satisfactory evidence shall be submitted indicating all bills for inspection and flagging services and devices furnished by the Railroad have been paid. This pay item covers only inspection and flagging services provided by the Railroad. All other costs incurred by the Contractor in complying with Railroad requirements will not be specific pay items, but shall be included in prices bid for other items of the work.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

STATE OF MICHIGAN

ADMINISTRATIVE BOARD RESOLUTION

OF

MAY 1, 1979

(As amended on December 2, 1980, April 7, 1981,
August 18, 1981, May 15, 1984, April 7, 1987,
December 15, 1987, January 5, 1988, May 2, 1989 and September 17, 1996)

**DEPARTMENT OF TRANSPORTATION
CONSTRUCTION AND MAINTENANCE CONTRACTS**

WHEREAS, pursuant to the provisions of Section 2, Act 17, Public Acts of 1925, as amended, all contracts entered into by the Michigan State Transportation Commission or the Michigan Department of Transportation, hereinafter referred to as the "Commission" and the "Department" respectively, require approval of the State Administrative Board, hereinafter referred to as the "Board", except, the Commission or the Department, without the approval of the Board, is authorized to contract for an amount not exceeding \$20,000.00 for each contract, for toilet vault cleaning, use of licensed sanitary landfills, pickup and disposal of refuse, pavement surfacing and patching, rental of equipment for emergency repairs and maintenance operations, curb replacement, maintenance of office equipment, installation of utility services and installation of traffic control devices and without such approval, may authorize Boards of County Road Commissioners, Township Boards, and Municipalities, under contracts for the maintenance of trunkline highways, to subcontract in amounts not to exceed \$20,000.00 for each subcontract;

WHEREAS, modification of highway construction and maintenance contracts is sometimes necessary;

WHEREAS, extra work is defined as any work which is determined to be essential to the satisfactory completion of the contract but which neither appears therein as a specific item of work nor is included in the price bid for other items in the contract;

WHEREAS, it is sometimes necessary in order to avoid delays and increased costs for the Department to authorize extra work by modification of the contract without obtaining specific prior approval of the Board for such modifications;

THEREFORE, BE IT RESOLVED by the State Administrative Board of the State of Michigan as follows:

1. Pursuant to applicable Public Acts, the Department, without obtaining the approval of this Board, in connection with any construction or maintenance contract, may contract for extra work or labor, or both, not exceeding \$48,000.00

per contract for contracts having a value of \$800,000.00 or less and not exceeding 6% per contract for contracts having a value over \$800,000.00 under a contract with a private agency authorized by law, and for an amount not exceeding \$800,000.00 under a contract with Boards of County Road Commissioners, Township Boards, and Municipalities of this State, except that each job for extra or additional work or labor, or both, in excess of \$100,000.00 shall require approval of the State Administrative Board.

2. All agreements by the Department to pay for extra work on either a negotiated price or force account basis in excess of the amounts shown in paragraph 1 must be approved by the Board.
3. No extra work which may cause an increase in the contract price in excess of the amount shown in paragraph 1 shall be authorized by the Department prior to Board approval, unless and until the Attorney General has approved the authorization as being in compliance with all legal requirements. Provided, however, that extra work costing not more than \$25,000.00 may be authorized by the Department without prior approval of the Attorney General, if necessary to avoid construction delays or increased costs.
4. Department authorizations for extra work, requiring Board approval, given prior to Board approval shall be presented to the Board for subsequent approval or disapproval as quickly as possible, but in no case more than 60 days after the extra work has been authorized by the Department.
5. The Department shall not pay nor agree to pay any disputed claim for extra compensation for work already commenced or completed without approval of the Board.
6. No payments for extra work requiring Board approval shall be made until such Board approval has been obtained.
7. The Department is authorized to balance budgets for extra work recommendations or authorizations previously approved by the Board, by decreasing, in any amount, or increasing, not in excess of 15 percent, the original estimated amount without additional approval by this Board.
8. No payments for increased contract quantities shall be made by the Department unless and until the Board has given prior approval for such payments, except that payments for overruns may be made without Board approval if such payments do not exceed the following per cent of the original contract price: 10 percent on contracts of \$50,000.00 or more; 15 percent on contracts of \$25,000.00 to \$49,999.99; and 25 percent on contracts of less than \$25,000.00.

9. "The Department shall deduct from payments, and retain 2.5 percent of the total amount earned by a contractor. When the project reaches 90 percent completion, the amount of retainage may be reduced. Local units of government, performing as contractors to the Department, may be excluded from these retainage provisions.

In respect to contracts between the Department and Railroad companies, the 2.5 percent shall be retained until after final audit. The retainage provision may be waived for those Railroad companies the Department has determined to have had recent, acceptable history of both contract compliance and audit experience with the Department, and where there are no other circumstances indicating a need to maintain the retainage to reasonably protect the public interest."

10. The Department shall assess damages against any contractor who fails to have the job open to traffic or completed by the dates specified in the contract unless the contractor has been excused for such failure by the Department. The Department may, without approval of the Board, extend the time for opening to traffic or completion of the contract because of delays from unforeseen causes beyond the control and without the fault or negligence of the contractor, including and restricted to: acts of God; acts of public enemy; acts of Government, acts of the State or any political subdivision thereof; fires; floods; epidemics; strikes; or extraordinary delays in delivery of materials.

No excusal or waiver of damages, except as above provided, shall be final and binding upon the State unless and until approved by the Board, except excusals and waivers granted by the Department prior to the effective date of this Resolution pursuant to applicable specifications and other contract provisions.

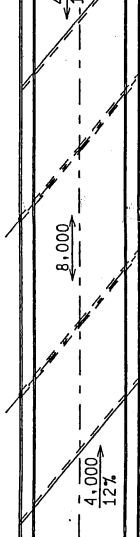
11. The foregoing requirements established by the Board shall be made as express part of all construction and maintenance contracts entered into by the Commission, and the Department's standard and supplemental specifications shall be amended to reflect such requirements.
12. Policy Resolution A, approved by the Board on July 17, 1956, and the Resolutions of October 17, 1967, and May 6, 1975 as amended May 4, 1976, are hereby repealed, except that all rights, causes of action, claims, proceedings and suits existing on the effective date of this Policy Resolution shall continue unaffected.
13. Upon approval by the State Administrative Board, this Resolution shall be effective as of September 17, 1996.

EXISTING STRUCTURE

THE EXISTING BRIDGE IS A SEVEN-SPAN STRUCTURE WITH BEAMS ENCASED IN CONCRETE, CONSTRUCTED IN 1928. THE OVERALL LENGTH OF 308'-6" MEASURED ALONG THE M-85 CLEAR ROADWAY WIDTH AND OUT TO OUT DECK WIDTH ARE 104'-0", RESPECTIVELY. AN ASPHALT WEARING COURSE PRESENT. THE ORIGINAL BRIDGE RAILINGS WERE ROUND S AND WERE REPLACED WITH SOLID CONC BLOCKS.

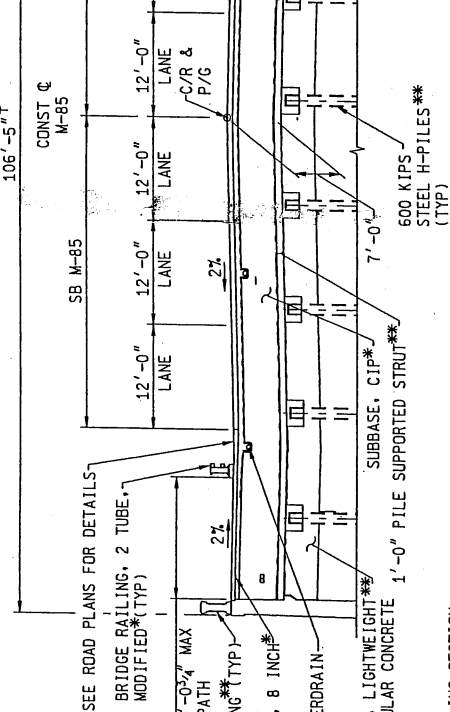
2028 ESTIMATED TRAFFIC DISTRIBUTION

0000 AVERAGE DAILY TRAFFIC
 % COMMERCIAL
 DIRECTIONAL TRAFFIC
 TOTAL TRAFFIC
 40 MPH DESIGN SPEED



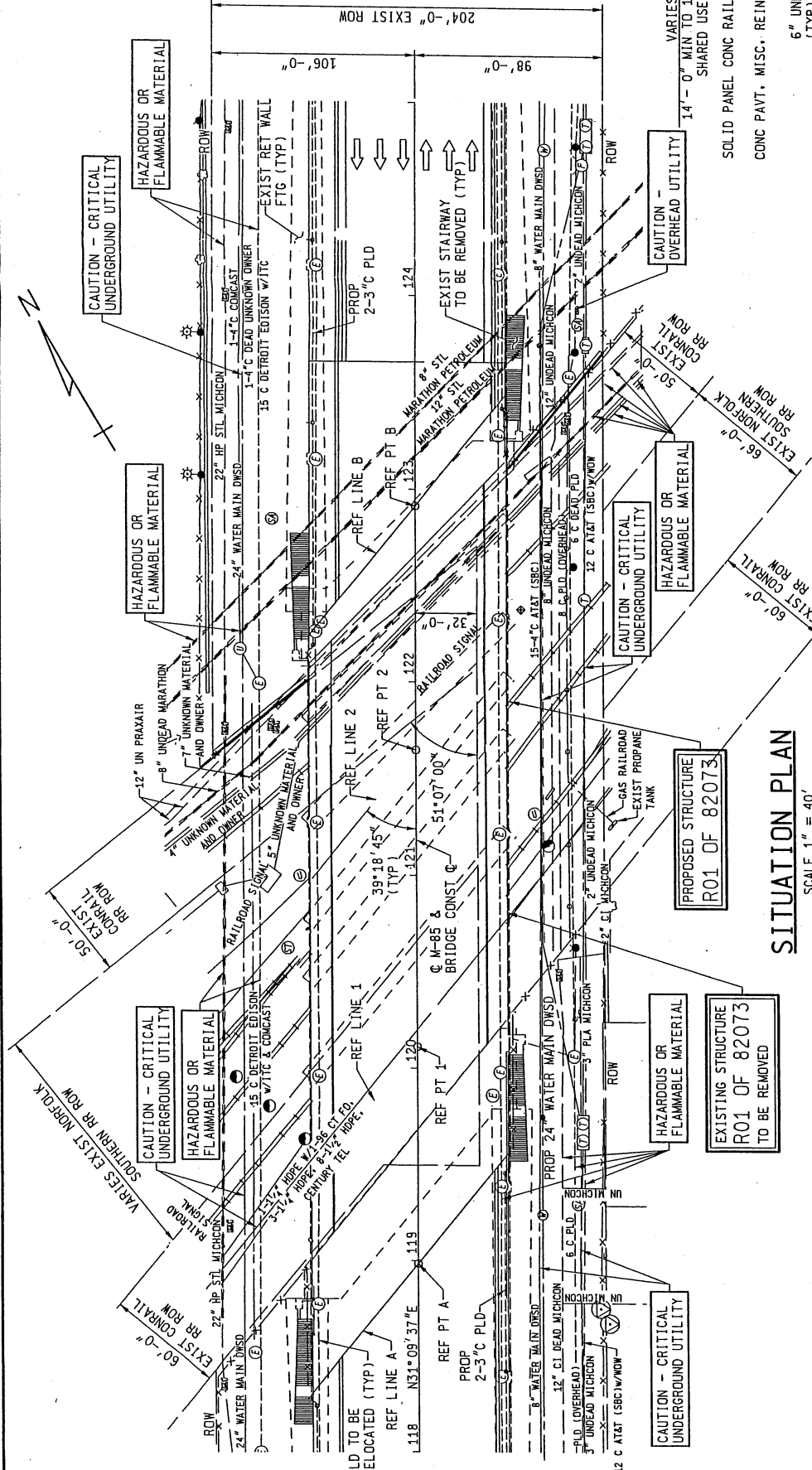
TYPICAL APPROACH SECTION

NOT TO SCALE.
 SOUTH APPROACH IS SHOWN.
 VIEWED LOOKING UP STATION.



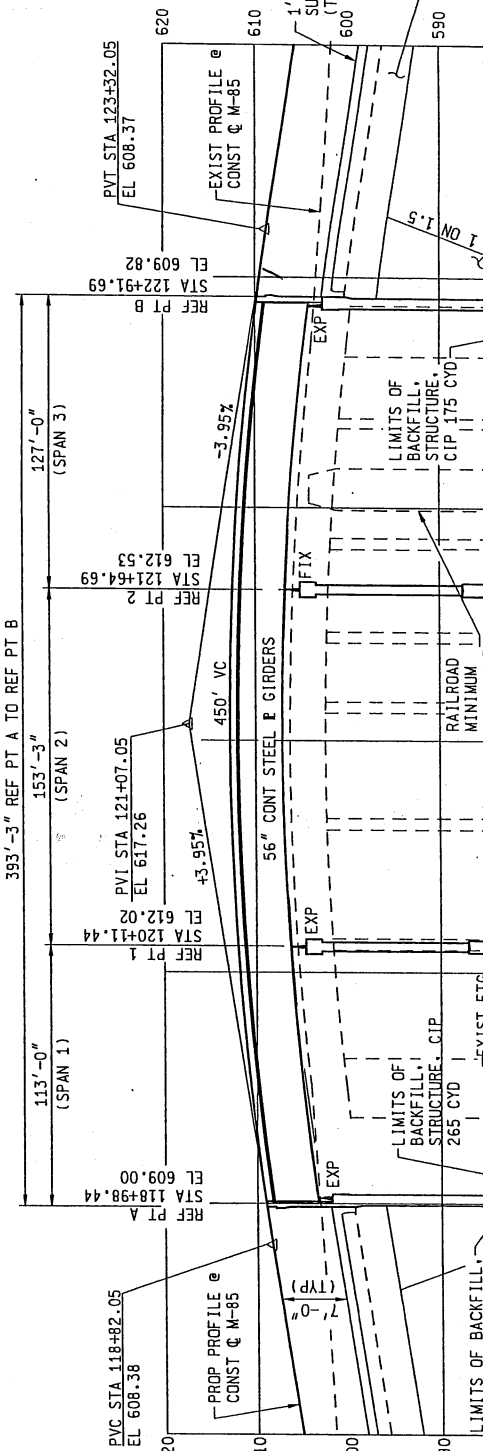
NOTES:

- THE WORK COVERED BY THESE PLANS IS AND CONSTRUCTION OF THE PROPOSED BRIDGE IN THE ROAD PLANS THAT ARE A PART OF THESE PLANS.
- THE CONTRACTOR SHALL LOCATE ALL UTILITIES AND SHALL CONDUCT HIS OPERATIONS TO UTILITIES NOT REQUIRING RELOCATION WITH MODIFICATIONS INDICATED ON THE PLANS. THE CONTRACTOR SHALL BE GRADED BY THE CONTRACTOR AS DIRECTED BY THE ENGINEER. GRADE IS TO BE DETOURED.
- M-85 TRAFFIC IS TO BE DETOURED.

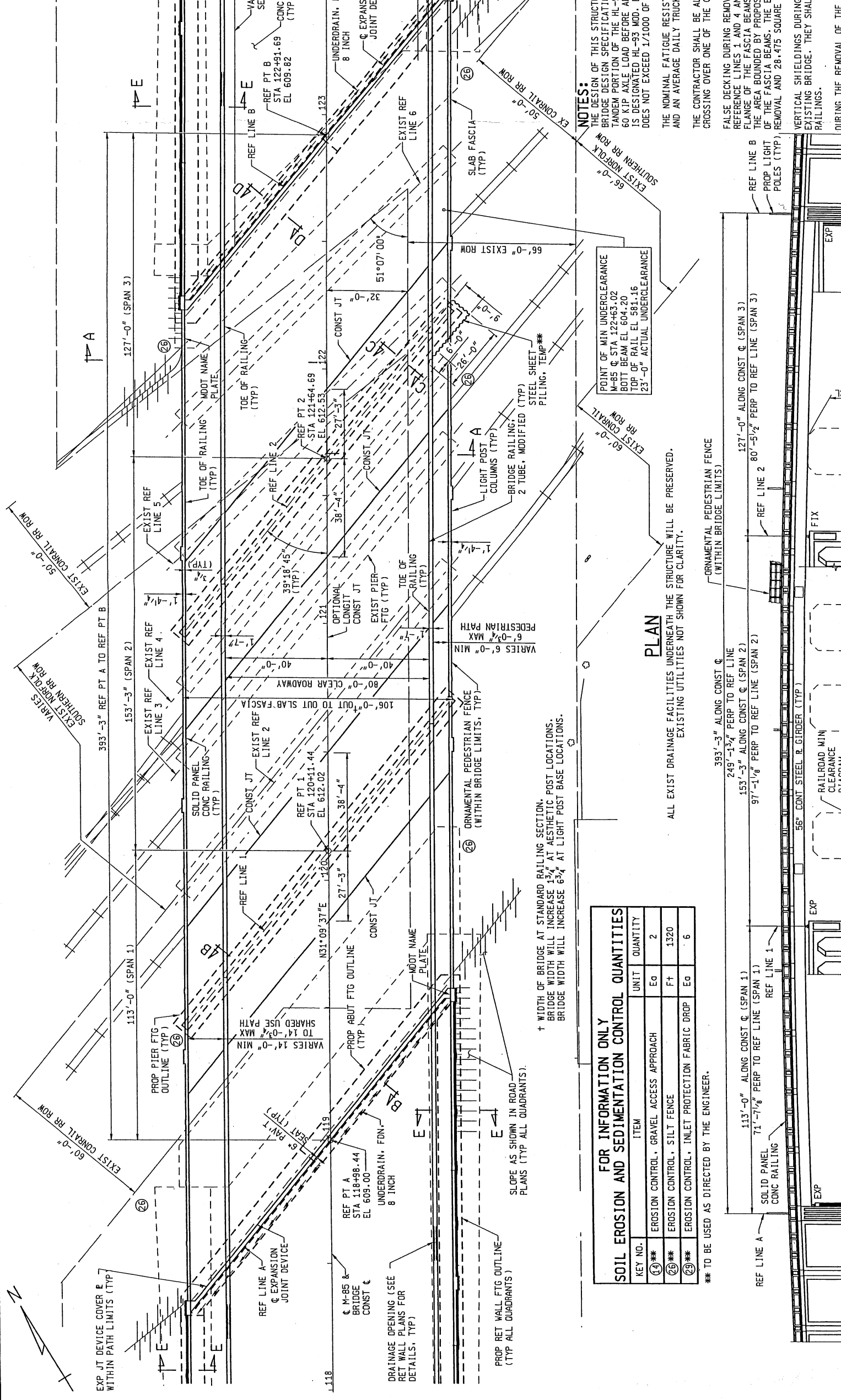


SITUATION PLAN

SCALE 1" = 40'



† WIDTH OF VIADUCT AT STANDARD RAILING SECTION.
 VIADUCT WIDTH WILL INCREASE 2" AT AESTHETIC POST LOCATIONS.
 VIADUCT WIDTH WILL INCREASE 4 1/4" AT LIGHT POST BASE LOCATIONS.



FOR INFORMATION ONLY

SOIL EROSION AND SEDIMENTATION CONTROL QUANTITIES

KEY NO.	ITEM	UNIT	QUANTITY
14**	EROSION CONTROL, GRAVEL ACCESS APPROACH	Eg	2
25**	EROSION CONTROL, SILT FENCE	Ft	1320
29**	EROSION CONTROL, INLET PROTECTION FABRIC DROP	Eg	6

** TO BE USED AS DIRECTED BY THE ENGINEER.

† WIDTH OF BRIDGE AT STANDARD RAILING SECTION.
BRIDGE WIDTH WILL INCREASE 1 3/4" AT AESTHETIC POST LOCATIONS.
BRIDGE WIDTH WILL INCREASE 6 3/4" AT LIGHT POST BASE LOCATIONS.

PLAN

ALL EXIST DRAINAGE FACILITIES UNDERNEATH THE STRUCTURE WILL BE PRESERVED.
EXISTING UTILITIES NOT SHOWN FOR CLARITY.

NOTES:

THE DESIGN OF THIS STRUCTURE SHALL BE IN ACCORDANCE WITH THE BRIDGE DESIGN SPECIFICATIONS AND TANDER PORTION OF THE H-1-60 KIP AXLE LOAD BEFORE ANY IS DESIGNATED HL-93 MOD. 1 DOES NOT EXCEED 1/1000 OF THE NOMINAL FATIGUE RESISTANCE AND AN AVERAGE DAILY TRUCK CROSSING OVER ONE OF THE C

FALSE DECKING DURING REMOVAL OF EXISTING BRIDGE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF THE RAILINGS. VERTICAL SHIELDINGS DURING REMOVAL OF THE EXISTING BRIDGE. THEY SHALL BE REMOVED DURING THE REMOVAL OF THE RAILINGS.

POINT OF MIN UNDERCLEARANCE
M-85 @ STA 122+63.02
BOTTOM BEAM EL 604.20
TOP OF RAIL EL 581.15
23'-0" ACTUAL UNDERCLEARANCE

ORNAMENTAL PEDESTRIAN FENCE (WITHIN BRIDGE LIMITS)

127'-0" ALONG CONST C (SPAN 3)
80'-5 1/2" PERP TO REF LINE (SPAN 3)
REF LINE B
PROP LIGHT POLES (TYP)

153'-3" ALONG CONST C (SPAN 2)
97'-1 1/2" PERP TO REF LINE (SPAN 2)
REF LINE 2

113'-0" ALONG CONST C (SPAN 1)
71'-7 1/8" PERP TO REF LINE (SPAN 1)
REF LINE 1

56" CONT STEEL R GIRDER (TYP)

RAILROAD MIN CLEARANCE DIAGRAM

FIX

EXP

PROP RET WALL FTG OUTLINE (TYP ALL QUADRANTS)

SLOPE AS SHOWN IN ROAD PLANS (TYP ALL QUADRANTS)

DRAINAGE OPENING (SEE RET WALL PLANS FOR DETAILS, TYP)

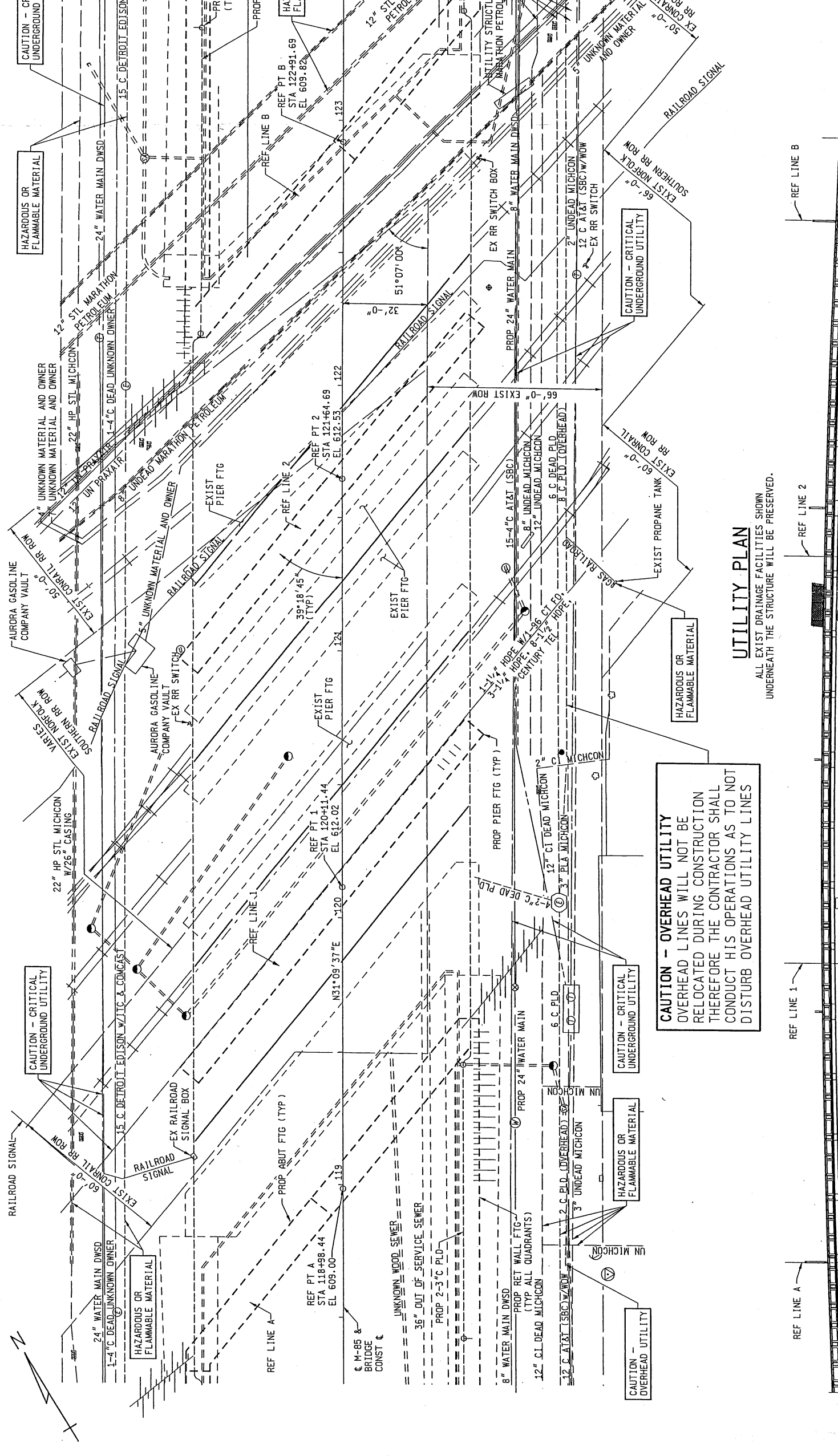
REF PT A STA 118+98.44 EL 609.00 UNDERDRAIN, FDN, 8 INCH

REF LINE A @ EXPANSION JOINT DEVICE

VARIES 14'-0" MIN TO 14'-3" MAX SHARED USE PATH

PROP PIER FTG OUTLINE (TYP)

EXP JT DEVICE COVER B WITHIN PATH LIMITS (TYP)



CAUTION - OVERHEAD UTILITY
 OVERHEAD LINES WILL NOT BE RELOCATED DURING CONSTRUCTION THEREFORE THE CONTRACTOR SHALL CONDUCT HIS OPERATIONS AS TO NOT DISTURB OVERHEAD UTILITY LINES

UTILITY PLAN

ALL EXIST DRAINAGE FACILITIES SHOWN UNDERNEATH THE STRUCTURE WILL BE PRESERVED.

HAZARDOUS OR FLAMMABLE MATERIAL

CAUTION - CRITICAL UNDERGROUND UTILITY

CAUTION - CRITICAL UNDERGROUND UTILITY

HAZARDOUS OR FLAMMABLE MATERIAL

CAUTION - OVERHEAD UTILITY

REF LINE B

REF LINE 2

REF LINE 1

REF LINE A

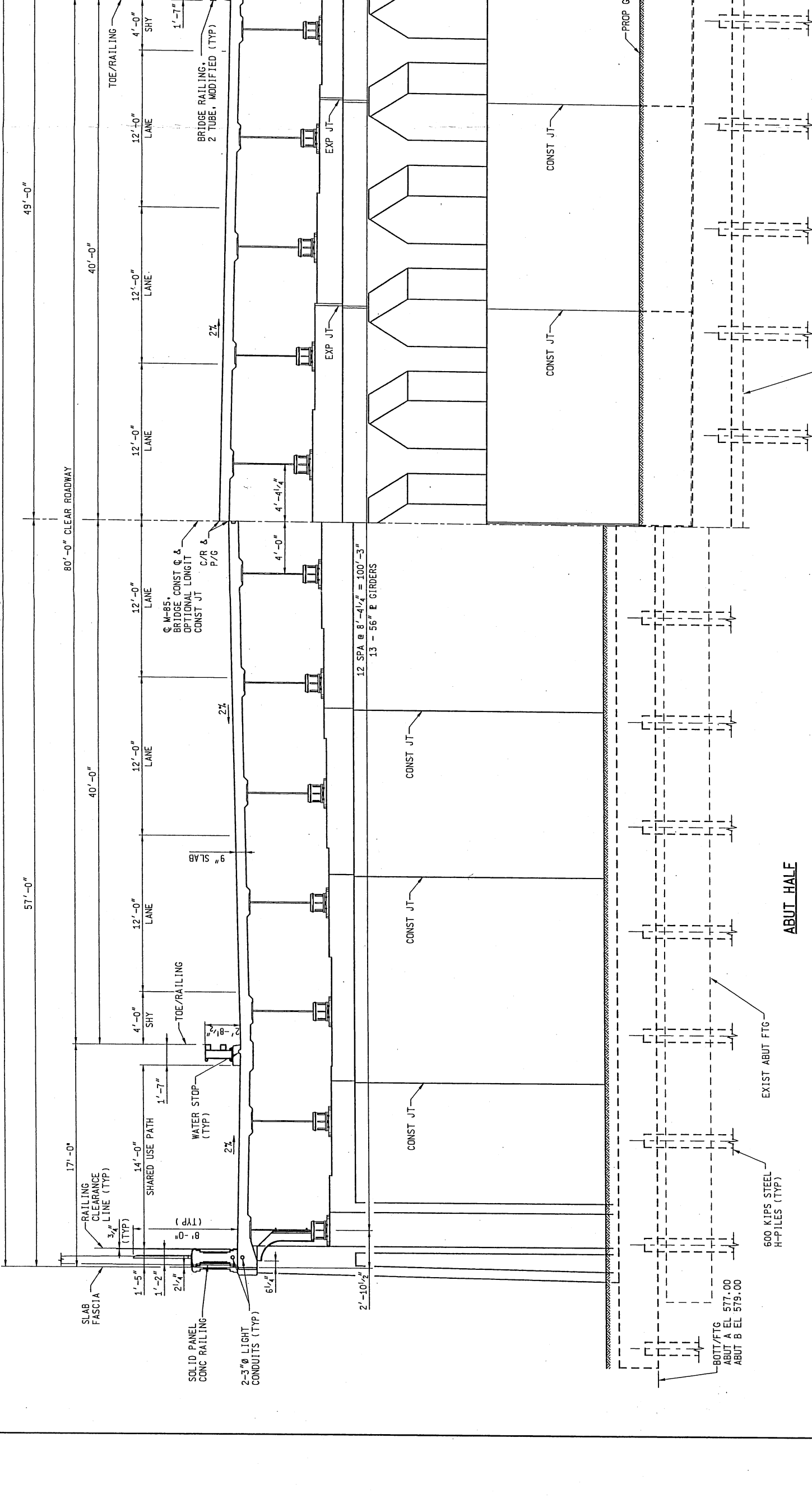
EXIST PIER FTG TO REMAIN (TYP. EXCEPT AS NOTED)

EXIST NORFOLK SOUTHERN RAILROAD TRACKS

EXIST NORFOLK SOUTHERN RAILROAD TRACKS

EXIST NORFOLK SOUTHERN RAILROAD TRACKS

106'-0" OUT TO OUT SLAB FASCIA



ABUT HALF

600 KIPS STEEL
H-PILES (TYP)

80TT/FTG
ABUT A EL. 577.00
ABUT B EL. 579.00

EXIST ABUT FTG

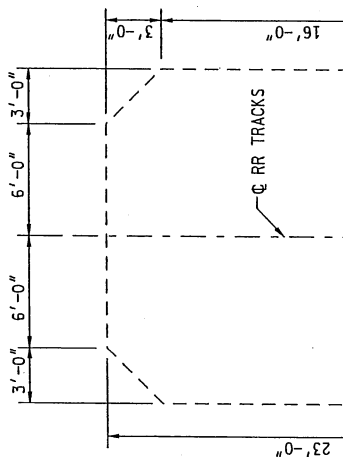
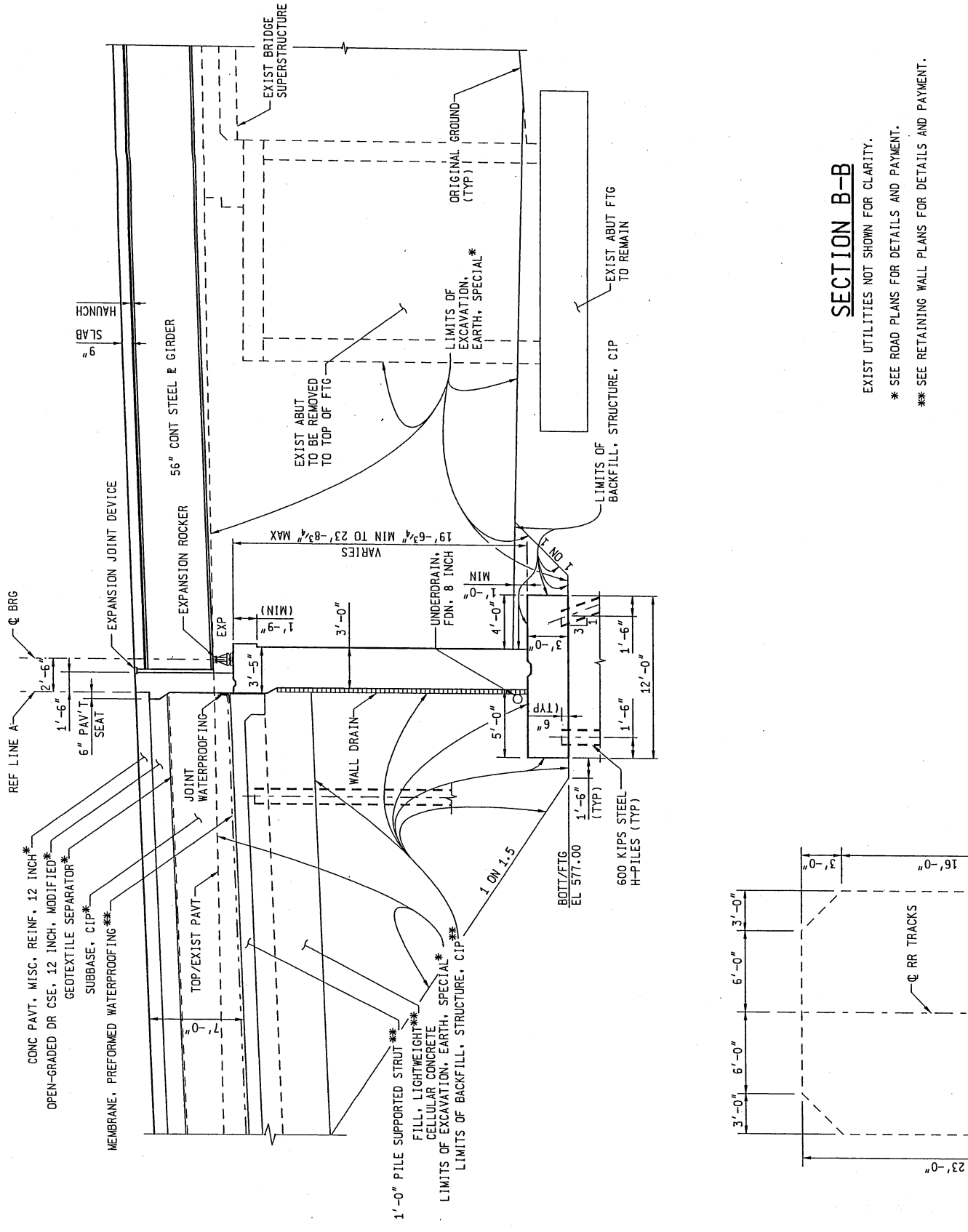
CONST. JT.

CONST. JT.

CONST. JT.

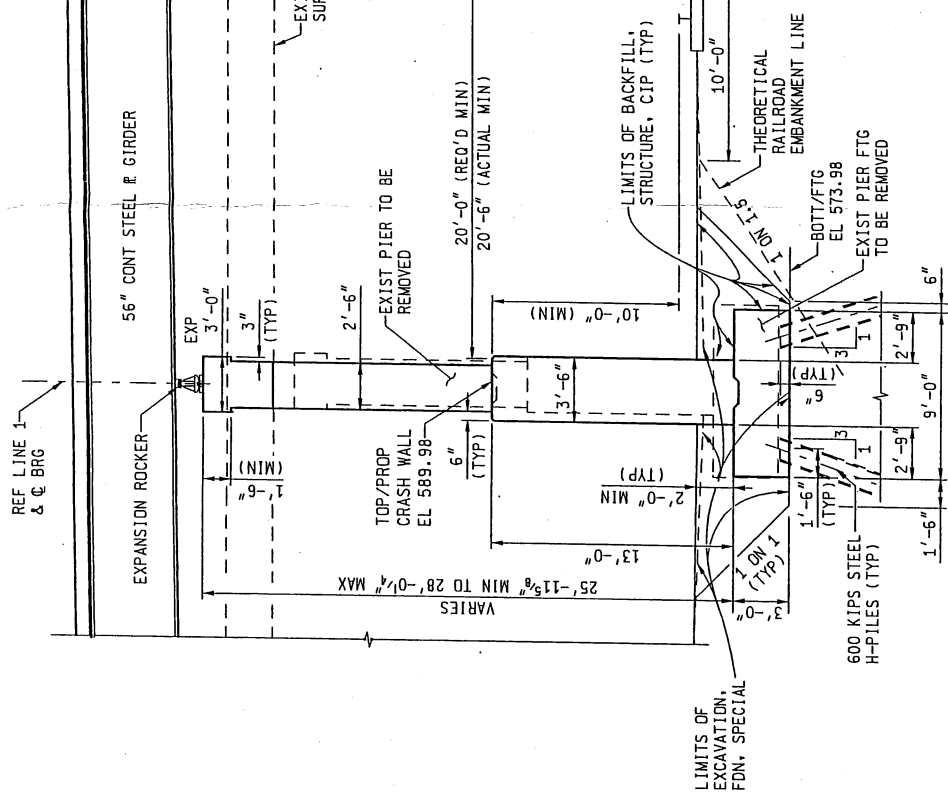
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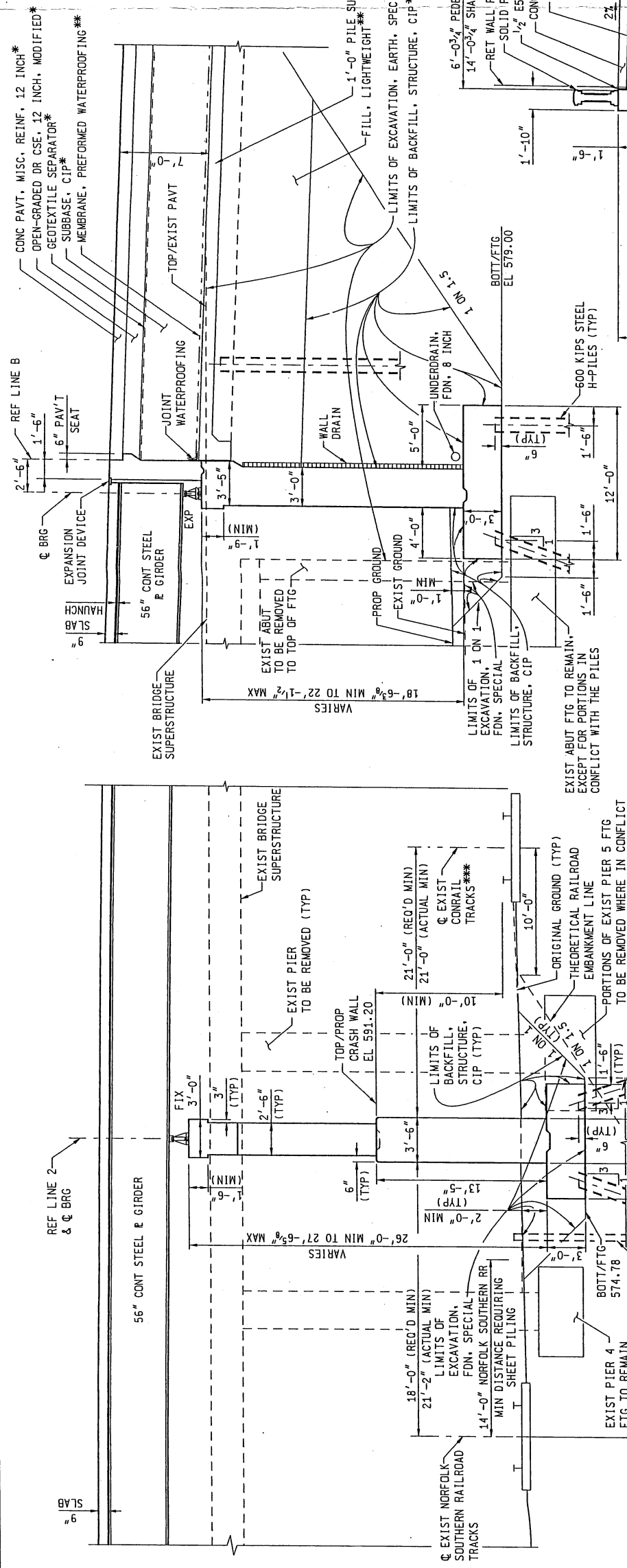
CONST. JT.



SECTION B-B

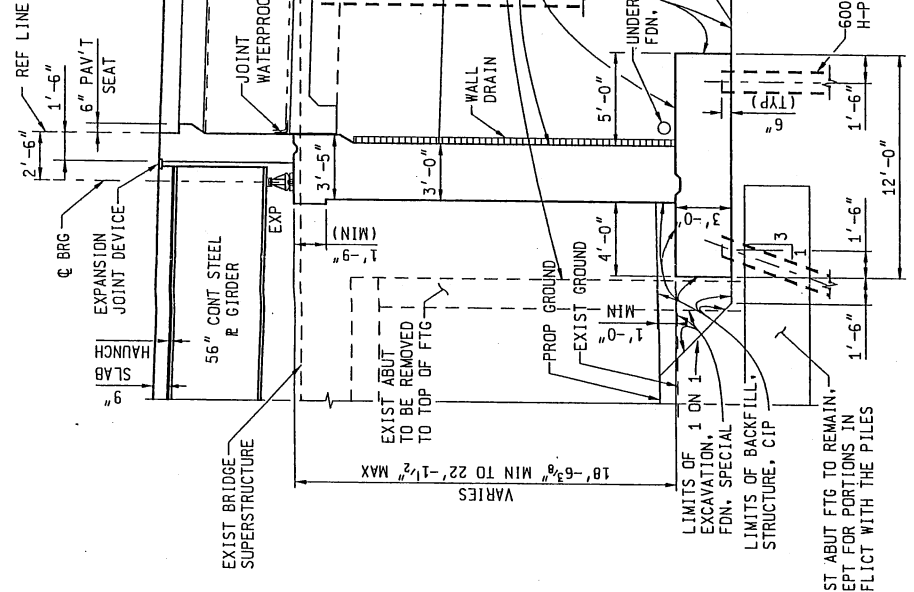
EXIST UTILITIES NOT SHOWN FOR CLARITY.
 * SEE ROAD PLANS FOR DETAILS AND PAYMENT.
 ** SEE RETAINING WALL PLANS FOR DETAILS AND PAYMENT.



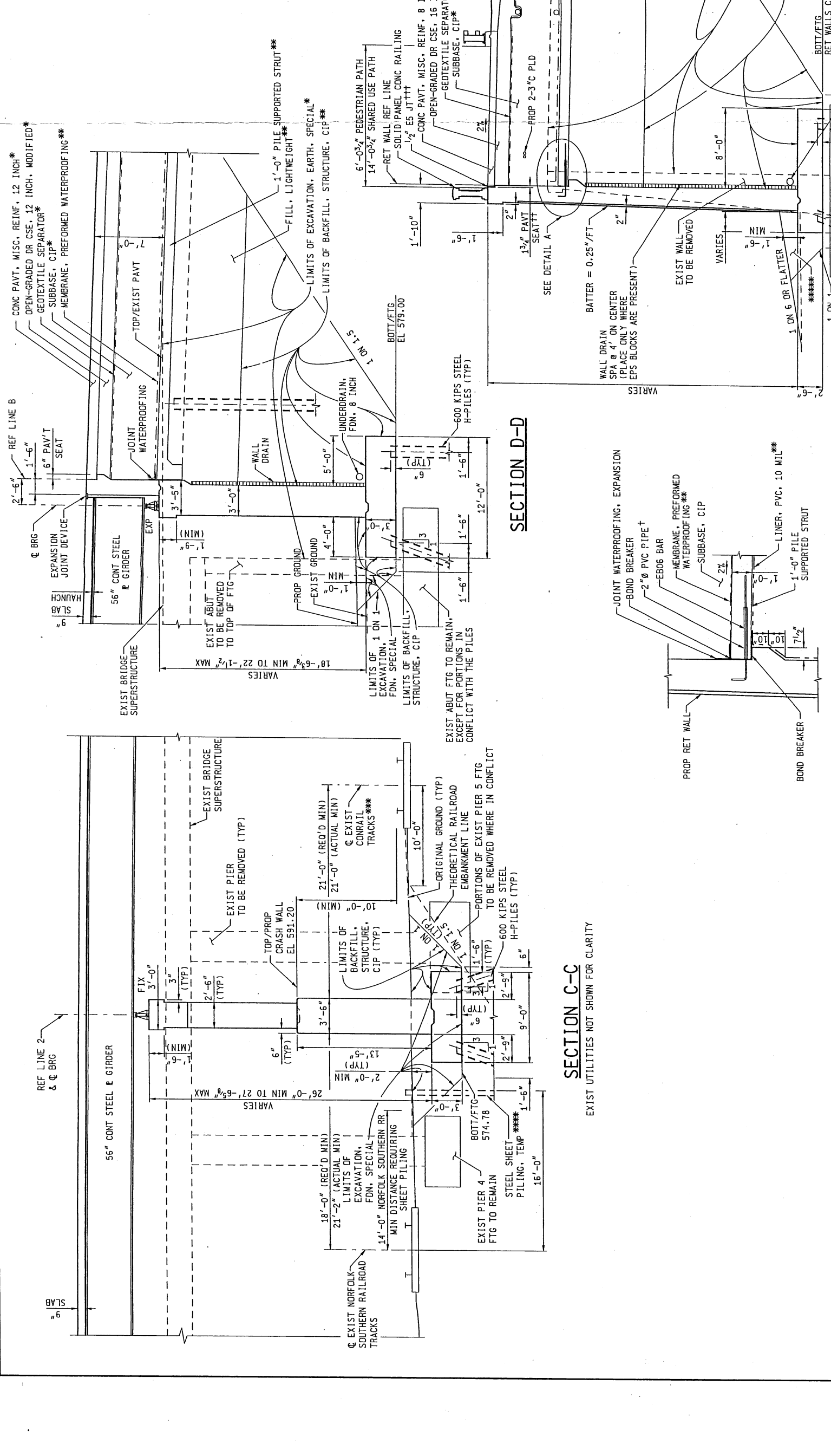


SECTION C-C

EXIST UTILITIES NOT SHOWN FOR CLARITY



SECTION D-D



SECTION E-E

EXIST UTILITIES NOT SHOWN FOR CLARITY

FORCE ACCOUNT ESTIMATE

Work to be Performed By:	Norfolk Southern Railway Company
For the Account of:	Michigan Department of Transportation
Project Description:	Reconstruction of Fort Street Overhead Bridge
Location:	Detroit, Wayne County, Michigan
Project No.:	0
Milepost:	D-5.77
Date:	September 2, 2009
File:	117-22324 (BR0019586)

SUMMARY

ITEM A - Preliminary Engineering	7,000
ITEM B - Construction Engineering	35,000
ITEM C - Accounting	1,100
ITEM D - Flagging Services	0
ITEM E - Communications Changes	15,000
ITEM F - Signal & Electrical Changes	0
ITEM G - Track Work	0
GRAND TOTAL	\$ 58,100

ITEM A - Preliminary Engineering

(Review plans and special provisions,
prepare estimates, etc.)

Labor:	10 Hours @ \$100 / hour=	1,000
Travel Expenses:		0
Services by Contract Engineer		6,000
		<hr/>
NET TOTAL - ITEM A		\$ 7,000

ITEM B - Construction Engineering

(Coordinate Railway construction activities,
review contractor submittals, etc.)

Labor:	15 Hours @ \$100 / hour=	1,500
Travel Expenses:		2,000
Services by Contract Engineer		31,500
	NET TOTAL - ITEM B	\$ 35,000

ITEM C - Administration

Agreement Construction and/or Review (Prepare Billing)		350
Accounting Hours (Labor):	15 Hours @ \$50 / hour=	750
	NET TOTAL - ITEM C	\$ 1,100

ITEM D - Flagging Services

(During construction adjacent to,
over or under track.)

Labor:	#REF!	
	0 days @ 749.00 per day=	0
	(based on working 12 hours/day)	
Travel Expenses, Meals & Lodging:		
	0 days @ \$50/day=	0
	NET TOTAL - ITEM D	\$ -

ITEM E - Communications Changes

Material:	(see attached summary)	7,000
Labor:	(see attached summary)	8,000
Equipment:	(see attached summary)	0
	NET TOTAL - ITEM E	\$ 15,000

ITEM F - Signal & Electrical Changes

Material:	(see attached summary)	0
Labor:	(see attached summary)	0
Equipment:	(see attached summary)	0
	NET TOTAL - ITEM F	\$ -

ITEM G - Track Work

Material:	(see attached summary)	0
Labor:	(see attached summary)	0
Equipment:	(see attached summary)	0

NET TOTAL - ITEM G \$ -

NOTES

1. For all groups of CONTRACT employees, the composite labor surcharge rate used in this estimate (excluding insurance) is 127.23%. Self Insurance - Public Liability Property Damage is estimated at 16.00%. Work will be billed at actual current audited rate in effect at the time the services are performed.
2. For all groups of NON-CONTRACT employees, the composite labor surcharge rate used in this estimate (excluding insurance) is 58.20%. Self Insurance - Public Liability Property Damage is estimated at 16.00%. Work will be billed at actual current audited rate in effect at the time the services are performed.
3. All applicable salvage items due the Department will be made available to it at the jobsite for its disposal.
4. The Force Account Estimate is valid for one (1) year after the date of the estimate (09/02/2009). If the work is not performed within this time frame the Railway may revise the estimate to (1) include work not previously indicated as necessary and (2) reflect changes in cost to perform the force account work.

Subject Detroit, MI - Rebuild Bridge @ Fort St Detroit

Atlanta 4/3/2009
File No. 398-D
AFE No.
Mgr Code
RIN
Dept Code
Function Code

: File

Reference your request of 4/3/2009 concerning the above subject. The estimated cost for Communications Department involvement is as follows.

	Capital	Operating Expense
Contract	\$5,000.00	\$0.00
Contract Additive	\$0.00	\$0.00
Material	\$6,600.00	\$0.00
Material Additive	\$400.00	\$0.00
Preliminary Engineering	\$0.00	\$0.00
Construction Engineering	\$500.00	\$0.00
Engineering Additive	\$200.00	\$0.00
Labor (include overhead)	\$1,300.00	\$0.00
Labor Additive	\$1,000.00	\$0.00
Equipment Rental	\$0.00	\$0.00
Accounting Overhead	\$0.00	\$0.00
Subtotals	\$15,000.00	\$0.00
Grand Total		<u>\$15,000.00</u>

The above estimate is based on existing applicable wage rates and material prices. A delay of twelve (12) months or more in the approval of this project could result in overrun. In the event of such delay, an engineering and estimate review will be necessary.

Remark:

Tony Adair Tel (814) 333-7216
Office of Chief Engineer
Communications Engineering

Copies:



BURS Estimate Summary Sheet

File: 398-D
Date: 4/3/2009
RIN:

Function Code:
Dept Code:

Department: Communications Engineering
Project: Detroit, MI - Rebuild Bridge @ Fort St Detroit

Requested By:
Department:
Company: NS
File:

Notes:

	Capital	Operating Expense
Labor	\$1,300.00	\$0.00
Material	\$6,600.00	\$0.00
Purchased Services	\$5,000.00	\$0.00
Other	\$500.00	\$0.00
Additives	\$1,600.00	\$0.00
Total:	\$15,000.00	\$0.00

Total Communications Cost to Norfolk \$15,000.00

Subject: Detroit, MI - Rebuild Brdige @ Fort St Detroit

Work Sheet Company AFE Basis

		<u>Capital</u>	<u>Operating Expense</u>
Contract		\$5,000.00	\$0.00
Contract Additive		\$0.00	\$0.00
Material		\$6,600.00	\$0.00
Material Additive		\$400.00	\$0.00
Preliminary Engineering (Engineering)		\$0.00	\$0.00
Construction Engineering (Supervisor)		\$500.00	\$0.00
Engineering Additive		\$200.00	\$0.00
Labor		\$1,300.00	\$0.00
Labor Additive		\$1,000.00	\$0.00
Equipment Rental		\$0.00	\$0.00
Employee Expenses		\$0.00	\$0.00
Subtotals		\$15,000.00	\$0.00
Grand Total			\$15,000.00
 Manpower			
Engineer	0 Days @	300 =	\$0.00
Supervisor	2 Days @	250 =	\$500.00
Tel. Mtr.	4 Days @	225 =	\$900.00
Lineman	2 Days @	180 =	\$360.00
Expenses	0 Days @	75 =	\$0.00
Trencher	0 Days @	180 =	\$0.00
Backhoe	0 Days @	200 =	\$0.00
Truck	0 Days @	300 =	\$0.00

Material List

Location: Detroit, MI

File: 398-D

Job: Rebuild Brdige @ Fort St Detroit

Date: 4/3/2009

NORFOLK SOUTHERN - COMMUNICATIONS DEPARTMENT

Engineer: CAW

Qty	Units	Unit Price	Total Price	Description	Product Code
900	EA	\$6.90	\$6,210.00	E-002522DFC 22guage 25 pair cable direct bury	
2	EA	\$36.89	\$73.78	Emerson Pedestal	
2	EA	\$5.32	\$10.64	Emerson Stakes	
2	EA	\$159.79	\$319.58	Emerson NE RGT25VSR2AQLS Terminal block	

Contract List

Location: Detroit, MI

File: 398-D

Job: Rebuild Brdige @ Fort St Detroit

Date: 4/3/2009

NORFOLK SOUTHERN - COMMUNICATIONS DEPARTMENT

Description	Quantity	Unit Price	Total Price
bury conduit and pull tape for 25 pair cable reinstallation	500	\$10.00	\$5,000.00