



## CITY COUNCIL ACTION REPORT

April 4, 2013

TO: Brian Kischnick, City Manager

FROM: Mark Miller, Director of Economic and Community Development  
Steven J. Vandette, City Engineer

SUBJECT: Approval of Construction Agreement with Grand Trunk Western Railroad Company (CN) for the Troy Multi-Modal Transit Facility

### History

#### CN Construction Agreement

Engineering and Legal departments have been negotiating the terms of a Construction Agreement with Grand Trunk Western Railroad Company (also known as CN) for the past two months. The need for this agreement arose when CN imposed the crash wall requirement in February. It grants the City of Troy the right to construct the crash wall and all other necessary components of the Transit Center, including the bridge, west elevator/bridge support tower, and train platform that are located within the Railroad Company's right of way.

Since February, CN permitted construction activity to continue, as it had since last November under a Right of Entry Agreement issued to Tooles/Clark, but a deadline of April 8<sup>th</sup> was set for completing the construction agreement or CN would stop all work within their right of way.

Two other agreements required by CN in February, an Easement and License agreement, are being finalized and will be presented for approval at a later date. These documents are similar to utility easements, which are required by the City prior to final occupancy of a new development and typically done near the end of construction.

#### CN Easement Agreement

The Easement Agreement will grant the City of Troy a permanent non-exclusive easement for the platform and west elevator/bridge support tower, which are wholly located within the Railroad Company's right of way on the Birmingham side of the tracks. The east elevator/bridge support tower does not require an easement as it is located on Troy property and not within the Railroad Company's right of way.

#### CN License Agreement

The License Agreement will grant the City of Troy the right to operate and maintain a pedestrian bridge above the Railroad Company's tracks. The bridge connects the Transit Center building on the Troy side with the train platform on the Birmingham side.

#### AMTRAK Lease Agreement

Engineering and Legal departments have been negotiating the Lease Agreement with AMTRAK for more than a year, principally concerning the percentage of Operation and Maintenance (O&M) costs to be covered by AMTRAK. AMTRAK proposed using the same agreement as for the Dearborn station and initially agreed to cover 100% of O&M costs, same as for Dearborn. Their position subsequently changed several times until just recently when AMTRAK agreed once again to 100% for the facility, but not for common areas that may be used by others such as SMART bus riders or the general public. Additionally, starting October 1<sup>st</sup> under the federal Passenger Rail Investment and Improvement Act (PRIIA) MDOT will assume responsibility for

operation and maintenance costs for stations on the Wolverine route, including the Troy Transit Center. This has resulted in adding MDOT to the lease agreement negotiations and thus more time is needed to complete this agreement. We are working toward bringing this agreement to Council for approval in May.

The attorney representing AMTRAK has conducted an initial review of the lease agreement, and she indicated that there are a few remaining issues that need to be resolved. As of the submission of this letter, these issues have not been specifically identified by AMTRAK. The City Attorney's Office remains hopeful that the outstanding legal issues are minor and once specifically identified by AMTRAK, they can be easily resolved.

**Financial**

There is no cost for the CN Construction and Easement agreements. The CN License Agreement for the bridge has a \$1,000 one time cost, which is paid for with funds provided by the MDOT Capital Contract. There is no cost for the AMTRAK Lease agreement.

**Recommendation**

The Construction Agreement with Grand Trunk Western Railroad Company (CN) has been negotiated, reviewed and approved by our legal department. It is recommended that the Agreement be approved.

**City Attorney's Review as to Form and Legality**

\_\_\_\_\_  
Lori Grigg Bluhm, City Attorney

\_\_\_\_\_  
Date

## CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS AGREEMENT dated as of the \_\_\_\_ day of April, 2013 between the **GRAND TRUNK WESTERN RAILWAY COMPANY**, hereinafter referred to as "CN", and **CITY OF TROY**, hereinafter referred to as "CITY," and shall be referred to as the "Construction Agreement." CN and **CITY** are hereinafter referred to as the "Party" or collectively as the "Parties".

### **RECITALS**

- A. CITY is planning on constructing a Multi-Modal Transit Facility at Troy, Mi ("MMTF") as shown on Exhibit "A" attached and incorporated herein, which shall include, among other things, a new station building located on the east side of CN's track, a new passenger boarding platform along the west side of CN main track #1, a pedestrian bridge over CN tracks to connect the new station building with the new platform and a new stair/elevator at the end of the pedestrian bridge within the west portion of CN right of way hereinafter referred to as "Improvements".
- B. CITY will construct or have constructed on its behalf the MMTF at no cost to CN.
- C. CN and CITY are agreeable to construct and install these improvements at no cost or expense to CN in accordance with the terms and conditions of this Construction Agreement.
- D. CITY shall coordinate all phases of the MMTF project including but not limited to engineering, oversight, permits, administration, maintaining records, accounting, and billing.

**NOW, THEREFORE**, for and in consideration of the forgoing Recitals, which are by this reference hereby incorporated into this Agreement, the mutual terms, covenants, conditions and provisions contained in this Agreement and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

### **1 DEFINITIONS**

- 1.1 Chief Engineers. – The person(s) designated by each Party hereto to represent that Party in the capacity of Chief Engineer Design & Construction for the MMTF which may be changed only by delivery of written notice to the other Party.
- 1.2 Construction Limits. – Construction limits are depicted on the corresponding Exhibit A, and are described in Exhibit B both of which are incorporated herein by reference.

- 1.3 Contractor(s). - Contractor(s) engaged by City or CN to perform portions of the Work, as hereinbelow defined in Section 1.10, with respect to the MMTF.
- 1.4 Cost(s). -. All actual costs and expenses, internal and external, direct and incidental, incurred by a Party in performing the Work with respect to the MMTF, including, but not limited to: (i) all materials, supplies, tools and equipment or equipment costs of a Party utilized in performing the Work; (ii) costs of labor, supervision, overhead and indirect expenses utilized in performing the Work, together with labor additives as established by each Party and adjusted from time to time;(iii) design costs incurred prior to commencement of construction; (iv) all sums payable by said Party to Contractor(s), including transportation companies other than the Parties hereto and other consultants retained by said Party in connection with the MMTF (including attorneys and engineering consultants); (v) insurance premiums; (vi) out of pocket expenses, travel and lodging expenses, telephone, facsimile, and mailing expenses; and (vii) all other costs and expenses particularly described by this Construction Agreement as MMTF Cost(s); and (viii) taxes imposed on goods and services.
- 1.5 Designated Engineers. - The persons designated by each Party in connection with the MMTF.
- 1.6 Non-MMTF Improvement. – A construction component if any, located outside of Construction Limits which may be included as part of the plans to be installed by a Party consistent with the Work.
- 1.7 Project. - The improvements, as depicted on Exhibit A and as described in Exhibit B to this Construction Agreement, which shall be undertaken pursuant to this Construction Agreement.
- 1.8 Sole Construction. – The construction of an improvement related to the MMTF, located inside or outside of the Construction Limits, if any may be required, that is not depicted and/or itemized on any Exhibits to this Construction Agreement. Such construction is to be performed and funded solely by Party(ies) to this Construction Agreement and the cost of such Sole Construction shall be included in the MMTF Cost(s).
- 1.9 Sole Cost(s). – If either party elects to do work within or outside the Construction Limits that is not depicted and/or itemized on any Exhibits to this Construction Agreement and is in no way associated with the MMTF Project, any and all costs and expenses associated with such work shall be funded solely by that party, and shall not be subject to the provisions of Section 4.1, 4.2, and /or 4.3.

- 1.10 **Work.** - All tasks, duties, obligations, services, requirements and activities of whatever kind or nature, express or implied, direct or incidental, to be performed, and all items tangible and intangible, to be provided by a Party within the Construction Limits, including but not limited to preliminary engineering design and review, construction, construction monitoring and inspection, and the furnishing of materials, supplies and equipment associated with the MMTF Project.

## **2. SCOPE AND ALLOCATION OF WORK**

- 2.1 **CITY.** The Work in connection with the MMTF Project as specified in the plans prepared by CITY or its Contractor and more specifically described in Exhibit A, and as depicted in Exhibit B to facilitate the construction of the MMTF at no expense to CN, CITY will perform the Work on CN property, CN will provide the flagmen necessary for construction of the MMTF at the sole cost of CITY which may be paid by CITY'S contractor.

- 2.2 **WORK.** CITY and or its Contractor shall provide the material necessary for construction of the MMTF and deliver this material to the site. CITY or its Contractor will perform all utility relocation necessary to accommodate the Improvements. CITY shall be responsible for maintenance, repair, replacement and inspection of the Improvements upon completion of construction all of which shall be included within the scope of this agreement.

2.3 If at any time prior to completion of the MMTF, a change in the planned Improvements is requested by either Party in writing and pursuant to the notice provisions herein, the other Party has ten (10) business days to accept or reject the change in writing. If accepted, the change becomes part of the Improvements and subject to the Agreement. If rejected, the requesting Party may accept the rejection or the change becomes a matter of dispute and will be settled in accordance with Section 14 of this Agreement.

## **3. PROJECT PLANS AND SPECIFICATIONS**

- 3.1 The CITY shall prepare, or cause to be prepared, all plans, specifications and drawings necessary or appropriate to the Work to be performed by the responsible Party or its Contractor(s) pursuant to Supplements to this Construction Agreement. Those plans, specifications and drawings prepared by or on behalf of the CITY shall be subject to the review and written approval of CN, provided such approval shall not be unreasonably withheld. CN agrees to complete its review of the plans within thirty (30) days of receipt thereof. Approved plans, specifications and drawings, whether in original or amended form (as approved in writing, are referred to as the "Plans". Plans submitted to and approved by the Parties will be

set forth in the Supplements governing each specific project and attached to this Construction Agreement.

- 3.2 In the event that the CITY determines that the Work or materials to be provided pursuant to a Supplement or this Construction Agreement will entail a material deviation from the Plans (a "Material Change"), the CITY shall promptly provide written notice thereof and shall pursue approval of an Amended Plan pursuant to the same process for original approvals as set forth in Paragraph 3.1.
- 3.4 By its review and written approval of Plans, the approving Party signifies only that such Plans and improvements constructed in accordance with the Plans satisfy the approving Party's requirements. Each Party expressly disclaims all other representations and warranties not included with such plans, including, but not limited to, the integrity, suitability or fitness for the purposes of the other Party or any other persons of such Plans or improvements constructed in accordance with the Plans. Any improvements constructed in accordance with the Plans shall be in compliance with any laws, rules ordinances or regulations of any federal, state or local government or agency having jurisdiction the MMTF.

#### 4. **COST OF JOINT PROJECT AND REIMBURSEMENT PROCEDURES**

- 4.1 All costs associated with the design, procurement, construction, installation and cutover of the Improvements, including but not limited to the costs for the provision of appropriate flagmen, and costs for any and all materials, if any, whether provided by CITY or its Contractor or CN or its Contractor, shall be the responsibility of CITY.
- 4.2 CN is not expecting to incur any cost during construction and installation of the Improvements other than the providing of flagmen. Should CN incur any costs, CN shall provide invoices on a monthly basis for payment by CITY to cover the labor and material expenses incurred by CN during the previous month. All payments to be made by CITY to CN under the terms, conditions or provisions of this Agreement shall be made within thirty (30) days of CITY' receipt of any demand or invoice from CN evidencing the amount of the indebtedness due. Any disputed amount of an invoice shall not delay payment on any invoice.
- 4.3 If CN incurs any costs and expenses, CN shall include overhead, administrative costs and fringe benefits for the respective personnel. Should CN outsource any of the work for the construction of these Improvements, CN will be able to apply an administrative cost on top of the invoice from the third-party and bill the invoice plus the administrative costs to CITY.

- 4.4 Upon reasonable request and during normal business hours, CITY shall be allowed to review the underlying records and documentation on which the monthly invoices are based.
- 4.5 If CITY, in good faith, disputes an invoice issued by CN pursuant to the Agreement, CITY shall serve notice of its dispute with full detail and documentation underlying CITY' claim to CN within thirty (30) days of the date of the disputed invoice. The Parties shall then work to resolve the dispute for sixty (60) days after service of the Notice of Dispute. If after that the dispute remains unresolved, either Party may initiate appropriate legal action.
- 4.6 This Construction Agreement shall continue in full force and effect for the entire duration and existence of the Improvements on or over CN's property.
- 4.7 All invoices and payments shall be delivered to the Parties in accordance with Section 13 of this Construction Agreement.
- 4.8 If CITY fails to pay invoices as required by the Agreement (and has not submitted a good faith Notice of Dispute as required by the Agreement) or is in default under the terms of the Agreement then CN shall be entitled to any and all remedies at law and/or equity, including, but not limited to, specific performance of the Agreement. No payments shall be withheld in whole or in part on account of a billing dispute. Disputes shall be resolved in accordance with the provisions of Section 14 of this Agreement. In addition to what any and all other remedies at law and/or in equity provide, if CITY fails to pay invoices as required by the Agreement (and has not submitted a good faith Notice of Dispute as required by the Agreement) or is in default under the terms of the Agreement, CN may:

- (1) Stop the construction of the Improvements and terminate the Agreement, but do what is necessary to put them in a safe condition with such efforts to be completely at the cost of CITY.

## **5 CONDUCT OF WORK**

- 5.1 Designated Engineers. In accordance with Section 1.5, the Parties shall each designate an engineering representative ("Designated Engineer"), who shall be responsible for each Party's general oversight and coordination of all Work performed by or arranged to be performed by the CITY, in accordance with this Construction Agreement. Construction on immediately adjoining trackage of CN hereto will require ongoing communication and coordination between the respective Designated Engineers. In the event of conflict or dispute between the Designated Engineers as to matters affecting the property or operations of any Party outside of Construction Limits, the determination of the affected Party's

Designated Engineer shall govern, except to the extent expressly provided otherwise by this Construction Agreement. Each Party's Designated Engineer will also coordinate any service disruptions if any, resulting from the Work on the MMTF Project within the departments of that Party in accordance with Section 5.2 of this Construction Agreement.

- 5.2 Work Schedule. Upon approval of Plans as provided in Section 3.1 of this Construction Agreement, the Parties may proceed with the Work pursuant to a schedule mutually determined and agreed to by the Parties Designated Engineer and provided that the CITY'S Designated Engineer shall communicate with CN's Designated Engineer non-binding schedule plans from time to time. After notification by the CITY'S Designated Engineer, the CN's Designated Engineer shall promptly review all planned traffic outages with their respective Transportation Officer(s) and such other applicable officers, including those of any tenant of such Party(ies), and shall obtain their input prior to the implementation of such outages. The Parties recognize that tracks within Construction Limits may be removed from service during certain phases of the Work, and that track occupancy authorities may be required for the Work to be performed on and/or near the tracks of CN, provided that no such track outages may occur absent reasonable advance written notice to CN. CN agrees to work with CITY to adjust its train operations and those of its tenant(s) and to provide track occupancy authorities in a manner which will best permit continued conduct of business by CN and its tenants while at the same time enabling efficient construction, inspections and testing of the Work pertaining to the MMTF Project.
- 5.3 Provision of Labor and Materials. All labor, materials, supplies, tools and equipment needed for the MMTF Project shall be furnished in accordance with Exhibits A and B of the Construction Agreement.
- 5.4 Right of Entry. Insofar as it has the right to do so, CN hereby grants to CITY's Contractor(s) a nonexclusive right and permission to enter upon CN's property, to the extent necessary for the performance of Work upon the terms included in the attached Exhibit C, and such temporary construction easements as may be designated on the Plans. All contractors or agents for CITY that shall perform maintenance, construction, repair, or inspection of the Improvements pursuant to this Agreement shall be required to enter into CN's standard right of entry agreement prior to any access to CN's property on which the Improvements sit.
- 5.5 Workmanship and Material Standards – All materials of every description furnished by the Parties in accordance with Exhibits A and B of this Construction Agreement and all workmanship shall be of a grade specified in Plans, and such material shall be of an acceptable quality for the

purpose intended. Materials furnished and Work performed by the Parties, in connection with the MMTF Project shall at all times be subject to the inspection by the other Party's Designated Engineer. If any material furnished is found by the Parties Designated Engineer as failing to comply with Plans within sixty (60) days of the installation of same, the Parties shall immediately remove said material from the MMTF Project at its own expense, and replace it with material in compliance with the Plans. If any portion of the Work performed is found by the Parties Designated Engineer as defective or improperly done within sixty (60) days, as set forth in the Plans, such defective or improper Work shall be taken down or removed and rebuilt or the defects otherwise remedied by the Parties at the sole cost and expense of the Party that performed the defective Work.

5.6 Equipment Standards – All equipment provided by the Parties and/or their respective Contractor(s), hereto to perform the Work and to complete the MMTF shall be in good operating condition and shall conform to any and all applicable standards prescribed by American Railway Engineering and Maintenance-of-Way Association ("AREMA") and the Federal Railroad Administration ("FRA") for such type of equipment. The Parties in providing such equipment shall be responsible for the maintenance and in the case of equipment rented from outside vendors, repair, of any and all equipment used by the Parties and/or their respective Contractor(s) in performing the Work pertaining to the MMTF. In the event that the Designated Engineer of one Party determines that the equipment used by the other Party and/or its Contractor(s) being used to perform the Work does not comply with these requirements, written notice of same shall be made to the other Parties Designated Engineer and use of such equipment shall be discontinued until any required repairs to or substitutions of such equipment are made.

5.7 Safety and Operating Rules – Each Party shall use due diligence in the prosecution of the Work pertaining to the MMTF Project to effectively guard against all accidents on or damages to the properties of the other Party by reason of its performance of the Work on the MMTF. Each Party's employees and/or Contractor(s) shall comply with all applicable Operating, Safety and Roadway Worker rules when performing the Work. The Designated Engineers of each Party shall ensure that all employees and/or Contractor(s) of such Party or their respective licensees or invitees on their respective properties are advised of all applicable safety rules of the Parties. Each Party shall require its employees and/or Contractor(s) to comply with all applicable safety requirements contained in the laws, regulations and/or ordinances of any federal, state or local governmental authority having jurisdiction over the MMTF area or the Work. For the entire period that the Work on the MMTF is in progress, CN hereby agrees to instruct all train and engine movements of its respective company and/or its tenant(s), by bulletin or other means, of any known operating

limitations and/or speed restrictions for movement through Construction Limits as appropriate.

5.8 THIS SECTION IS RESERVED

5.9 Liens – City shall not create or permit to be created or to remain undischarged, any lien, encumbrance or charges arising out of the MMTF Project and/or Work involving materials and/or supplies furnished and/or delivered by one of the parties and/or its Contractor(s) hereto, or any mortgage, conditional sale, security agreement or chattel mortgage, or otherwise by or for which the same might be or might become a lien or encumbrance or charge upon the property or premises of any other Party hereto or upon the MMTF. If any lien or notice of any lien on account of the alleged debt of a Party hereto or any notice of contract by one of the parties Contractor(s) hereto, shall be filed against the MMTF or a Party's property or premises, the Party creating or allowing the lien shall, within ten (10) days after demand from the other Party hereto cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If the Party creating or allowing the lien fails to cause such lien or notice of lien to be discharged within the aforesaid time, then in addition to any other right or remedy by the other Party, such other Party may arrange to discharge such lien by deposit, bonding proceeding or payment of the amount of the judgment in favor of the lien or with interest, costs and allowances. Any amount paid by the other Party not creating or allowing the lien as well as all costs and expenses, including attorneys' fees, incurred by that Party in connection with the discharge of such lien shall constitute a sum payable by the other Party creating or allowing the lien and shall be paid by that Party to the other Party upon demand. Nothing herein shall obligate any Party to this Construction Agreement to pay or discharge any lien created by another Party.

5.10 Flagging and Protective Services. If flagging services are to be provided, CN shall provide such services. CITY shall pay CN for the flagging services at a rate of one thousand dollars (\$1000.00) for an eight hour day during regularly assigned hours. Overtime rates shall be at the rate of one hundred fifty dollars (\$150.00) per hour at the sole cost of City.

5.11 Removal of Materials. From time to time during its performance of the Work, the CITY Party may undertake, or shall cause its Contractor(s) to undertake, or shall cause another party to undertake, as a part of the MMTF Project the removal and disposal of all salvage materials, included but not limited to, waste, rubble, other equipment, related materials, tools and supplies, explosives, chemical and other debris. CN shall not be responsible for the cost of removal of such surplus materials, nor shall CN be entitled to the proceeds, if any, from such salvage.

5.12 Completion of Project. The MMTF Project shall be deemed completed upon final inspection and acceptance of Work by the Chief Engineers of each of the Parties participating in that project or his/her representative and shall be confirmed by a certification letter executed by each Party's Chief Engineers designating the date of completion of the MMTF ("Completion Date").

5.13 Environmental Matters

5.13.1 Compliance - In connection with the MMTF, the Parties shall comply with all applicable federal, state and local laws, ordinances, rules, and regulations and all lawful orders of any constituted authority including, without limitation, the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.) and the Toxic Substances Control Act (15 USC § 2601 et seq.) and all other laws pertaining to the generation, handling, transportation, treatment, storage and proper disposal of municipal, solid, and hazardous materials, substances and wastes, pollutants and contaminants. During the construction of the MMTF and for a period of three (3) years after completion of the Work pertaining to the MMTF or such longer period as otherwise required by applicable law or any regulatory agency or court of competent jurisdiction, the Parties shall establish and maintain and furnish each other with appropriate records, receipts and documents, papers and any other data or information covering or pertaining to the generation, handling, transportation, treatment, storage and disposal of any municipal, solid or hazardous materials, substances and wastes, pollutants and contaminants in connection with the Work performed hereunder.

5.14 Permits. CITY shall, at its sole cost and expense, procure all permits and/or approvals required by any federal, state, or local governments or governmental agency(ies) for the Work and/or completion of the Project.

**6. INSURANCE**

To the extent that CITY may engage Contractor(s) to perform the Work on the MMTF, CITY shall ensure that each such Contractor acquires and maintains insurance as required by a right of entry agreement. The right of entry agreement referred to herein is attached as Exhibit C

**7. OWNERSHIP AND MAINTENANCE**

Upon completion, the Parties shall own, maintain, repair, renew, upgrade, use and operate the Improvements pertaining to the MMTF in accordance with the terms of the Easement Agreement and License Agreement referred to above in Section 4.6.

## 8. INDEMNIFICATION

8.1 To the extent permitted by applicable law, and except where expressly provided otherwise in this Construction Agreement, each Party and its Contractor(s), if any, shall indemnify, defend and hold the other Party and/or their affiliates harmless from and against all Construction Liability Loss and/or Damage to the extent arising from (i) the breach of any term of condition of this Construction Agreement, (ii) the violation of any applicable law, rule, regulation or ordinance, or (iii) the negligence, recklessness or intentional wrongful misconduct of such Party(ies), their Contractor(s), and/or their respective agents, employees, invitees, Contractor(s), or their Contractor(s)'s agents, employees or invitees in the performance of activities in connection with the Work or activities incidental thereto, or from their presence on or about the Parties' premises as a result of the Project.

8.2 Reserved.

8.3 For purposes of this Construction Agreement and as between the Parties hereto only, "Construction Liability" shall be defined as all liability hereto for Loss and/or Damage arising or occurring as a direct and proximate result of circumstances occurring on or within the Construction Limits during the course and scope of performance and as a direct and proximate result of the Work contemplated by this Construction Agreement or Loss and/or Damage arising as a result of circumstances occurring immediately incident to the performance of the Work as a direct and proximate result of the Work being performed hereunder. Construction Liability shall not include any Loss and/or Damage which may arise after the exchange of the certified letters provided for in Section 5.12 herein and as a result of the condition of the building, platform, elevator/stairs and pedestrian bridge, latent or otherwise, even if alleged to have arisen as a result of Work performed under this Construction Agreement.

8.4 Notice of Incidents. Each Party shall notify the other promptly in writing of any Loss and/or Damage arising out of or in connection with the performance of the Work and/or the MMTF.

8.5 Loss and/or Damage. For purposes of this Section 8, the term "Loss and/or Damage" shall mean claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind for any injury to or death to any person(s) (including, but not limited to the employees of the Parties, their affiliates or their Contractor(s), if any), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of the Parties, their affiliates or their Contractor(s), if any, and environmental damages and any related remediation brought or recovered against the Parties and their affiliates).

8.6 Survival. With respect to any incidents arising or accruing prior to termination or expiration or termination of this Construction Agreement, the provisions of this Section 8 shall survive the termination or expiration of this Construction Agreement.

8.7 No Waiver of Governmental Immunity. All of the privileges and immunities from liability, and exemptions from laws, ordinances, and rules which apply to the activities of any governmental agency when performing its functions, shall apply to the same degree and extent to the performance of such functions and duties under the provisions of this Construction Agreement. Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, volunteers or any other person acting on behalf of the City and, in particular governmental immunity afforded or available pursuant to the Michigan Governmental Immunity Act, MCL 691.1401, et seq.

## 9. INDEPENDENT AGENT AND/OR LICENSEE

Except as otherwise provided by this Construction Agreement, the CITY shall not exercise any control whatsoever over the employment, discharge, compensation of, or services rendered by CN or its Contractor(s), if any, or the construction practices, procedures, and professional judgment employed by CN or its Contractor(s) to complete any Non-Joint Improvement. Notwithstanding the foregoing, this Section 9 shall in no way affect the absolute authority of the CITY to prohibit any employee of CN or its Contractor(s), if any, or anyone from entering the property of any Party hereto within Construction Limits while the Work is in progress, or to require the removal of any person from the property of CN hereto within Construction Limits while the Work is in progress, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the MMTF exist.

## 10. COMPLETE UNDERSTANDING

10.1 This Construction Agreement (including the exhibits attached hereto) embodies the entire understanding of the Parties concerning the Work to be performed for the MMTF Project and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding the Work on the MMTF. The terms of this Construction Agreement may not be waived or modified except in a writing signed by authorized representatives of all relevant Parties.

10.2 This Construction Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages otherwise against any of the Parties hereto.

**11. WAIVER**

If any Party fails to enforce its respective rights under this Construction Agreement, or fails to insist upon the performance of another Party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Construction Agreement.

**12. ASSIGNMENT**

Any Party may assign this Construction Agreement in whole and all rights and obligations under this Construction Agreement to a successor in interest, parent company, affiliate, or future affiliate, provided that, upon such assignment, the assignee assumes all of the assignor's obligations under this Construction Agreement, pursuant to a written instrument acceptable to the other Parties. The Parties may subcontract all or part of the Work in its sole and absolute discretion.

**13. NOTICES**

All notices shall be considered as having been properly given upon mailing such notice by certified, U.S. mail, or by overnight courier service, postage prepaid, addressed to the respective Party at their addresses below. Notices shall be deemed given when actually received by the respective Party. Notices to Parties shall be addressed to:

If to CN:                      Grand Trunk Western Railway Company  
   Mr. Paul Ladue  
   Region Director - Contracts and Administration  
   17641 S. Ashland Avenue  
   Homewood, Illinois 60430  
   Phone: (708) 332-5475  
   Facsimile: (312) 332-3673  
   E-mail: Paul.Ladue@cn.ca

If to CITY:                   CITY Of Troy  
                                  City Manager  
                                  500 W. Big Beaver Rd.  
                                  Troy, MI 48084  
                                  Phone: 248-524-3330  
                                  facsimile: 248-524-0851

With a copy to:            City of Troy  
                                  City Attorney  
                                  500 W. Big Beaver Rd.  
                                  Troy, MI 48084  
                                  Phone: 248-524-3320  
                                  Facsimile: 248-524-3259

#### **14. DISPUTE RESOLUTION**

14.1 In the event a dispute arises concerning this Construction Agreement, the parties may attempt to informally resolve the dispute. If at any time a dispute, question or controversy shall arise between the Parties hereto in connection with this Construction Agreement which the Parties cannot resolve informally, either Party shall have the right to require a meeting of designated representatives with authority to settle the matter within 30 days of written notice of a desire to meet; if it cannot be resolved within 30 days of the meeting of the Parties, then any or all parties have the ability to file a lawsuit. Either party may request arbitration, but arbitration is not mandatory. Unless other procedures are agreed to by the Parties, arbitration between the Parties pursuant to this Section 14 shall be governed by the rules and procedures set forth in this Section 14.

14.2 If the Parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one Party of its desire for arbitration to the other Party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any Party (the notifying Party) may notify the other Party (the noticed Party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed Party shall appoint an arbitrator and notify the notifying Party in writing of such appointment. Should the noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association, which shall designate said appointment from the CPR Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the Parties, upon application by either Party after ten (10) days' written notice to the other Party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen

fail to agree upon an additional arbitrator, the same shall, upon application of a Party, be appointed by the American Arbitration Association in the same manner hereto before stated above.

- 14.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both Parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either Party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.
- 14.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all Parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of America having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Lease shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.
- 14.5 Each Party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.
- 14.6 The Parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

## 15. **SEVERABILITY**

The Parties agree that if any part, term or provision of this Construction Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the

remainder of the Construction Agreement remaining valid and enforceable to the extent reasonably practical.

**16. CHOICE OF LAW AND VENUE**

This Construction Agreement shall be construed under the laws of the State of Michigan, exclusive of its choice of law rules. Venue for any action arising under this Construction Agreement shall be in the Judicial Sixth Circuit for the County of Oakland in the State of Michigan.

**17. NO INDEPENDENT CONTRACTOR OR POTENTIAL INDEPENDENT CONTRACTOR RELATIONSHIP**

The Parties, Michigan, its political subdivisions, and the federal government shall not be considered independent contractors or potential independent contractors of each other with respect to any such funds or property.

**18. FORCE MAJEURE**

18.1 If the performance of any part of this Construction Agreement by either Party or their respective Contractor(s)/Consultant(s) is prevented, hindered or delayed by reason of a Force Majeure Event the affected Party shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event, and this Construction Agreement shall be deemed suspended so long as, and to the extent, that any such cause prevents or delays its performance. The obligation of a Party to pay the other Party any monies due and owing under this Construction Agreement may not be avoided or delayed by any claim of Force Majeure Event.

a. Force Majeure means any change in local, state or federal statutes, rules or regulations, orders or acts of any governmental body, fire, storm, flood, war, rebellion, acts or threats of terrorism, riots, strikes, acts of God, vandalism, breakage or failure of machinery or equipment, inability to obtain materials or equipment or the authority to use the same, all for reasons beyond the control of any Party hereto, which as the effect of preventing or impeding that party from timely or properly performing its obligations under this Construction Agreement.

18.2 The Party claiming to be affected thereby shall give written notice to the other Party within a reasonable time after the happening thereof of the nature and extent of any Force Majeure Event claimed to exist and the terms and conditions of Section 18.1 shall not become operative unless such notice has been given.

**IN WITNESS WHEREOF**, the Parties have caused their duly authorized representatives to execute and deliver this Construction Agreement.

**GRAND TRUNK WESTERN RAILWAY COMPANY**

**By:** \_\_\_\_\_  
Paul E. Ladue  
Region Director Contracts & Administration

**Date:** \_\_\_\_\_

**CITY OF TROY**

**By:** \_\_\_\_\_  
**Printed:** Dane Slater  
**Title:** Mayor  
**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Printed:** M. Aileen Bittner  
**Title:** Clerk  
**Date:** \_\_\_\_\_

**EXHIBIT A**  
**OVERVIEW OF PROJECT**

## 1 Introduction

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**Overview** - The Michigan Department of Transportation (MDOT) and the City of Troy, Michigan propose to build a new Multi-Modal Transit Facility to replace the existing railroad station in adjacent Birmingham, Michigan. This project is funded through the American Recovery and Reinvestment Act (ARRA). Amtrak will operate this unmanned (i.e. no ticket office) facility. The facility will include a small station with waiting area and toilet facilities; vertical circulation and enclosed bridge to get passengers over the tracks; a rail platform with warming shelters; entry plaza; bus drop-off and bus shelters. Parking will be provided at the adjacent city lot that will be partially modified to address the new station. Improvements to Doyle Street will be made to accommodate bus traffic. Minimal landscaping will be provided. No improvements to the Canadian National Railway tracks, rail roadbed nor signals will be part of this project. The Birmingham station will be removed as part of this project.

**History** – The City of Troy, Oakland County, Michigan is located approximately fifteen miles north of downtown Detroit. Troy is a planned stop on the federally designated Chicago-Detroit high-speed intercity passenger rail corridor. The proposed Troy Multi-Modal Transportation Facility (MMTF) will replace the Birmingham Amtrak station, which is located approximately 0.2 miles to the north. The MMTF is served by the Amtrak *Wolverine*, which provides three round trips daily between Pontiac, MI and Chicago, IL.

The existing Birmingham station inadequately serves Amtrak users because of limited parking and shelter for waiting passengers, a lack of direct access from Troy's nearby airport, and no opportunity for intermodal connectivity with buses, taxis or shuttles. The existing station consists of a platform with a semi-enclosed shelter adjacent to the tracks, and has only four (4) parking spaces dedicated for users of the station, which is not sufficient for the current ridership.

To address these issues, the City of Troy and the Michigan Department of Transportation (MDOT) plan to build a new multi-modal transportation facility on City-owned property. The Troy MMTF is located along a much-used roadway between a popular retail development and the tracks, and will be a highly visible facility. The Troy MMTF is easily accessible from both Coolidge Highway to the east and Maple Road to the north. The Troy MMTF provides easy access to the many international corporations, over 6,000 businesses, and daytime population of over 125,000 people located within the 34 square mile City of Troy. The Troy MMTF is one mile south of the City's business core along Big Beaver Road, and is located 0.5 miles west of the Oakland-Troy Airport. The Troy MMTF will provide services for high-speed intercity

passenger rail; regional and intercity bus systems, local shuttles; and auto, taxi, limousine, and airport connectors.

**Function** - Intercity Passenger Rail Stations consist of platform areas, where passengers walk to and from trains and where passengers wait to board trains; waiting and ticketing facilities; and transition plazas that facilitate movement of passengers between platform areas and parking areas or other modes of transportation. The design of stations must coordinate with the design of bus, kiss-n-ride, park-n-ride, pedestrian, and bike access. Although each station is unique in its design and site constraints, there are specific design parameters that must be followed in order to achieve the best functional outcome.

In particular, the Troy MMTF includes a 136 space parking lot, waiting facility with restrooms, platform with heated shelters, and enclosed pedestrian bridge over the tracks connecting the waiting facility and the platform area. The Troy MMTF will serve as a hub for the Suburban Mobility Authority for Regional Transportation (SMART), with all 18 of their Troy and Birmingham bus routes being coordinated through the facility.

**Station Design Criteria** -This document shall supply the project stakeholders with background information on design decisions that will be applied to the construction of the Troy Multimodal Transit Facility. Multiple resources are available for the design of new passenger rail stations. These resources guide the design process, however they do not preclude the need for good engineering judgment where design guidelines are conflicting or not detailed enough for project-specific applications. This report will document the recommendations for each design element, detail the alternatives considered for each design element and explain why the recommendation was made.

## **Project Participants**

### **Stakeholders**

- City of Troy, Michigan
- Michigan Department of transportation (MDOT)
- Federal Rail Administration (FRA)
- Amtrak
- Canadian National Railway
- Southeast Michigan Council of Governments (SEMCOG)
- Suburban Mobility Authority for Regional Transportation (SMART)

### **Design Team**

- Hubbell, Roth & Clark, Inc – Civil, Structural, Traffic & Electrical Engineering
- Neumann/Smith Architecture – Architect of Record

- **Quandel Consultants, LLC – Rail Track and Rail Station Consultant**
- **Grissim Metz Andriese Associates – Landscape Architecture**
- **HH Engineering, Ltd – Structural Engineering**
- **EAM Engineers, Inc - Mechanical & Plumbing Design**
- **Schleede Hampton Associates, Inc - Geotechnical Engineering**
- **Somat Engineering, Inc – Environmental Consultant/Due Care Plan**

**Construction Manager**

- **Tooles/Clark**

## 2 Design Standards

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The design of platforms and stations will adhere to the most recent federal, state, and local codes and standards. Recommended practices and procedures can be found in the following documents:

- 2010 Americans with Disabilities Act (ADA)
- 2004 Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG)
- Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles
- American Association of State Highway and Transportation Officials (AASHTO) - Standard Specifications for Highway Bridges
- AASHTO - Standard Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signals
- American Railway Engineering and Maintenance Association (AREMA)
- American Society of Civil Engineers (ASCE/SEI 7-10)
- American Institute of Steel Construction (AISC)
- American Welding Society (AWS)
- American Concrete Institute (ACI)
- American Society for the Testing of Materials (ASTM)
- Amtrak Engineering Standard Design Practice (SDP)
- FHWA - Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)
- 2009 Michigan Building Code
- 2009 Michigan Plumbing Code
- 2009 Michigan Mechanical Code
- 2008 Electrical Code Rules – Part 8, Incorporating the 2008 Edition of the National Electric Code
- 2009 Michigan Uniform Energy Code
- 2006 International Fire Code (As adopted by the Troy Fire Department)
- Michigan Department of Transportation (MDOT) - Standard Specifications for Construction
- MDOT Guidelines for Plan Preparation, Road Sample Plans
- MDOT Road and Bridge Standard Plans
- MDOT Road Design Manual
- MDOT Drainage Manual
- National Bureau of Standards
- National Electric Safety Code (NESC)
- American National Standards Institute (ANSI)
- National Fire Protection Association (NFPA) including NFPA 130 and 101
- National Railroad Passenger Corporation (Amtrak) Design Standards

- **Local jurisdictional codes, requirements and ordinances, as applicable**
- **Passenger Station Requirements on Canadian National (CN)**

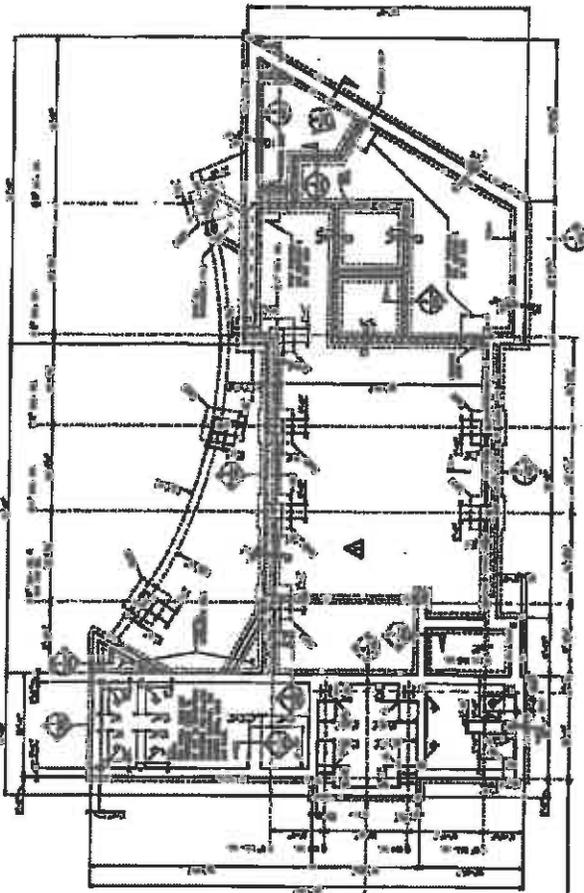
**Individual sections of these criteria may also define additional code requirements.**

**EXHIBIT B**

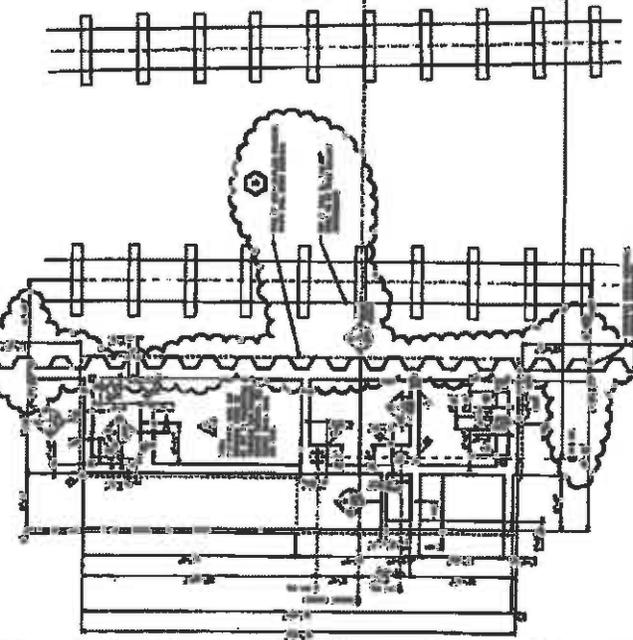
**DETAILED ENGINEERING PLANS**



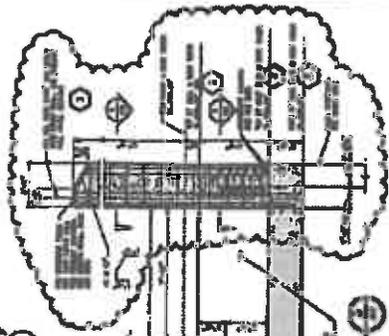




EAST STATION - FORESTER'S CLUB



EAST STATION - FORESTER'S CLUB

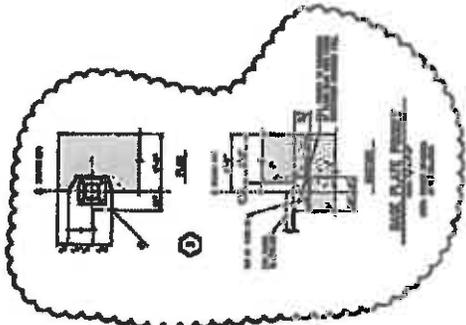
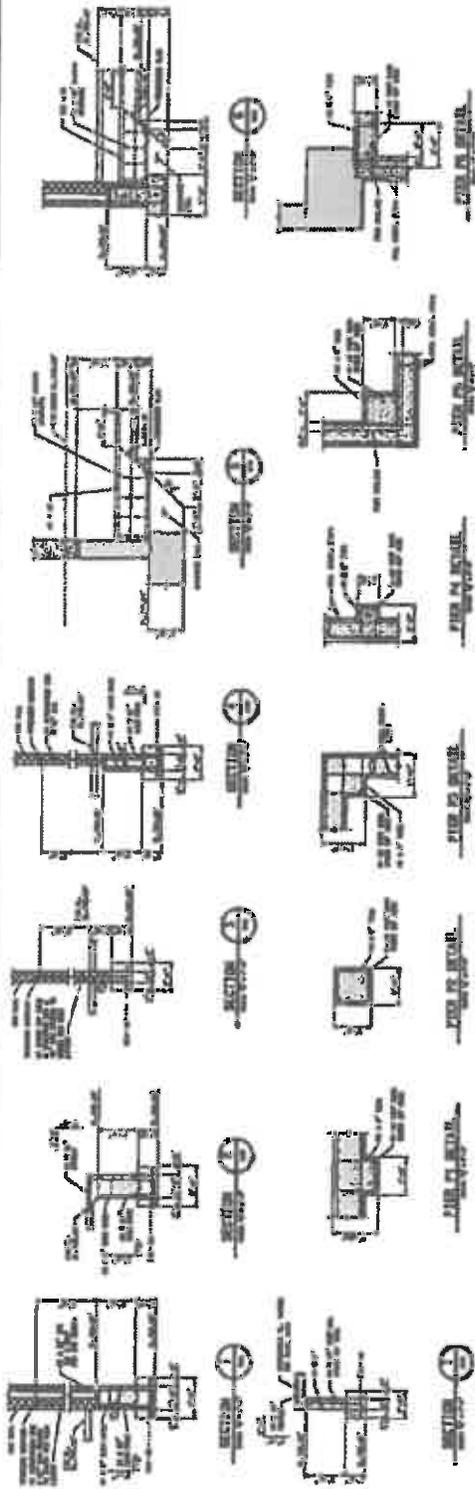


PLAN SCHEDULE

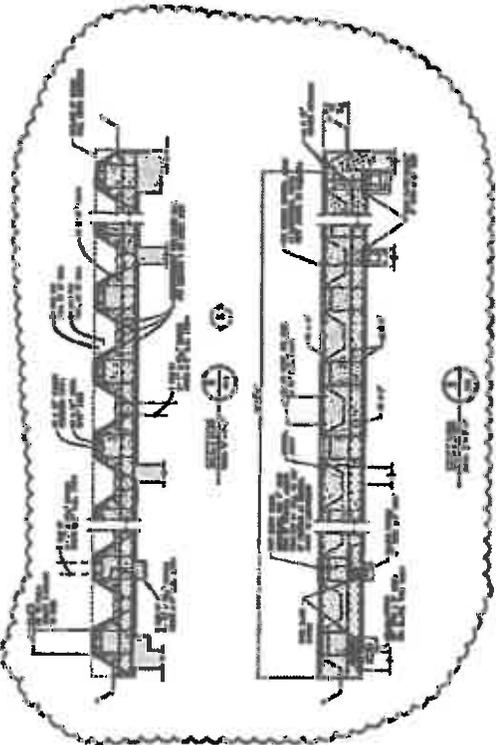
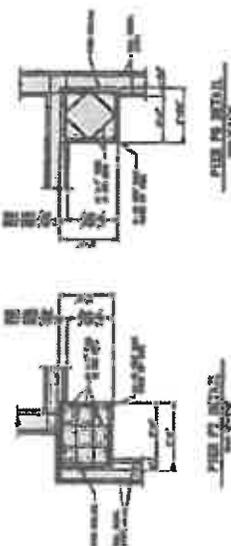
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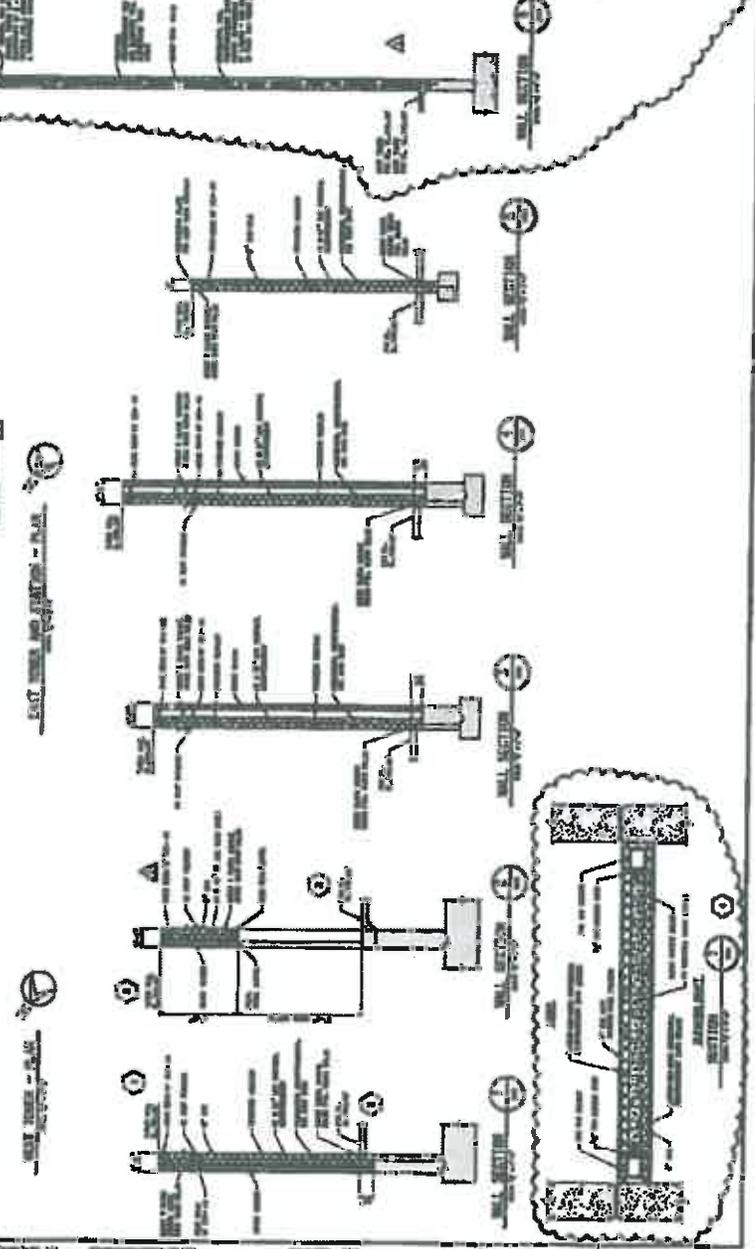
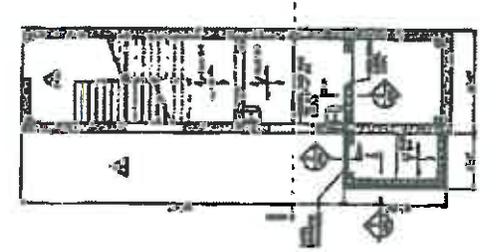
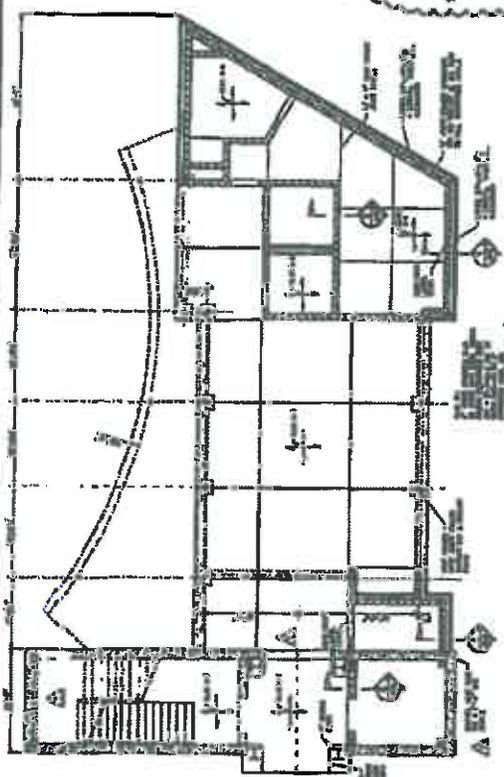
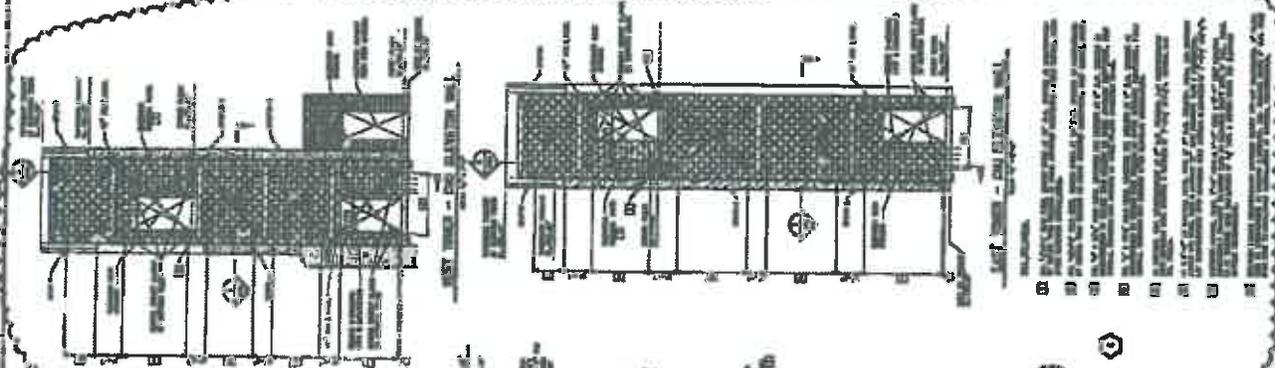
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67	67" = 16 1/2" SECTION	11/15/11	JL	ML
68	68" = 16 3/4" SECTION	11/15/11	JL	ML
69	69" = 17" SECTION	11/15/11	JL	ML
70	70" = 17 1/4" SECTION	11/15/11	JL	ML
71	71" = 17 1/2" SECTION	11/15/11	JL	ML
72	72" = 17 3/4" SECTION	11/15/11	JL	ML
73	73" = 18" SECTION	11/15/11	JL	ML
74	74" = 18 1/4" SECTION	11/15/11	JL	ML
75	75" = 18 1/2" SECTION	11/15/11	JL	ML
76	76" = 18 3/4" SECTION	11/15/11	JL	ML
77	77" = 19" SECTION	11/15/11	JL	ML
78	78" = 19 1/4" SECTION	11/15/11	JL	ML
79	79" = 19 1/2" SECTION	11/15/11	JL	ML
80	80" = 19 3/4" SECTION	11/15/11	JL	ML
81	81" = 20" SECTION	11/15/11	JL	ML
82	82" = 20 1/4" SECTION	11/15/11	JL	ML
83	83" = 20 1/2" SECTION	11/15/11	JL	ML
84	84" = 20 3/4" SECTION	11/15/11	JL	ML
85	85" = 21" SECTION	11/15/11	JL	ML
86	86" = 21 1/4" SECTION	11/15/11	JL	ML
87	87" = 21 1/2" SECTION	11/15/11	JL	ML
88	88" = 21 3/4" SECTION	11/15/11	JL	ML
89	89" = 22" SECTION	11/15/11	JL	ML
90	90" = 22 1/4" SECTION	11/15/11	JL	ML
91	91" = 22 1/2" SECTION	11/15/11	JL	ML
92	92" = 22 3/4" SECTION	11/15/11	JL	ML
93	93" = 23" SECTION	11/15/11	JL	ML
94	94" = 23 1/4" SECTION	11/15/11	JL	ML
95	95" = 23 1/2			



A









H.C. [unclear]

[unclear]



[unclear]

[unclear]



PLAN



MAIN BEARING PLATE - 1/2"



BASE PLATE BRACKET - 1/2"



BASE PLATE BRACKET - 1/2"



BASE PLATE BRACKET - 1/2"



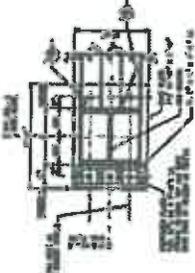
BASE PLATE BRACKET - 1/2"



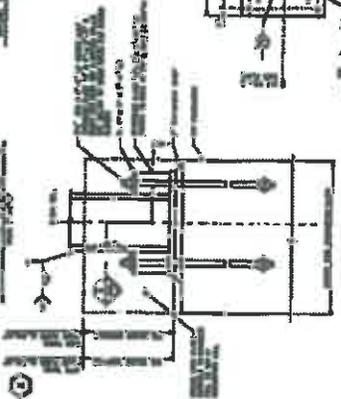
BASE PLATE BRACKET - 1/2"



BASE PLATE BRACKET - 1/2"



BASE PLATE BRACKET - 1/2"



BASE PLATE BRACKET - 1/2"



WELL BEARING PLATE - 1/2"



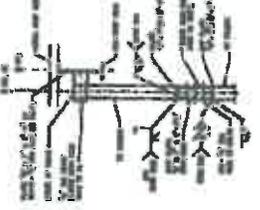
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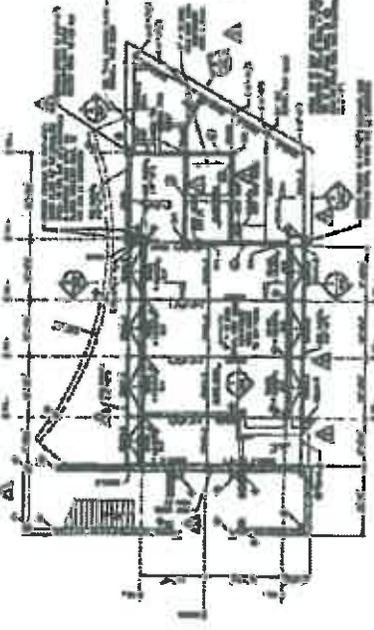
BASE PLATE BRACKET - 1/2"



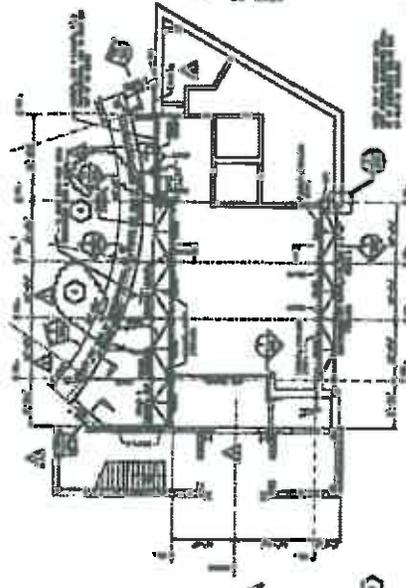
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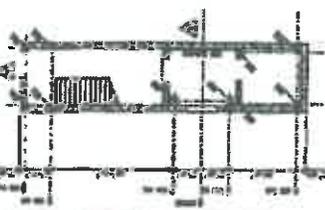
BASE PLATE BRACKET - 1/2"



SECTION - WEST END - 1/2"



SECTION - EAST END - 1/2"



WEST END - 1/2"

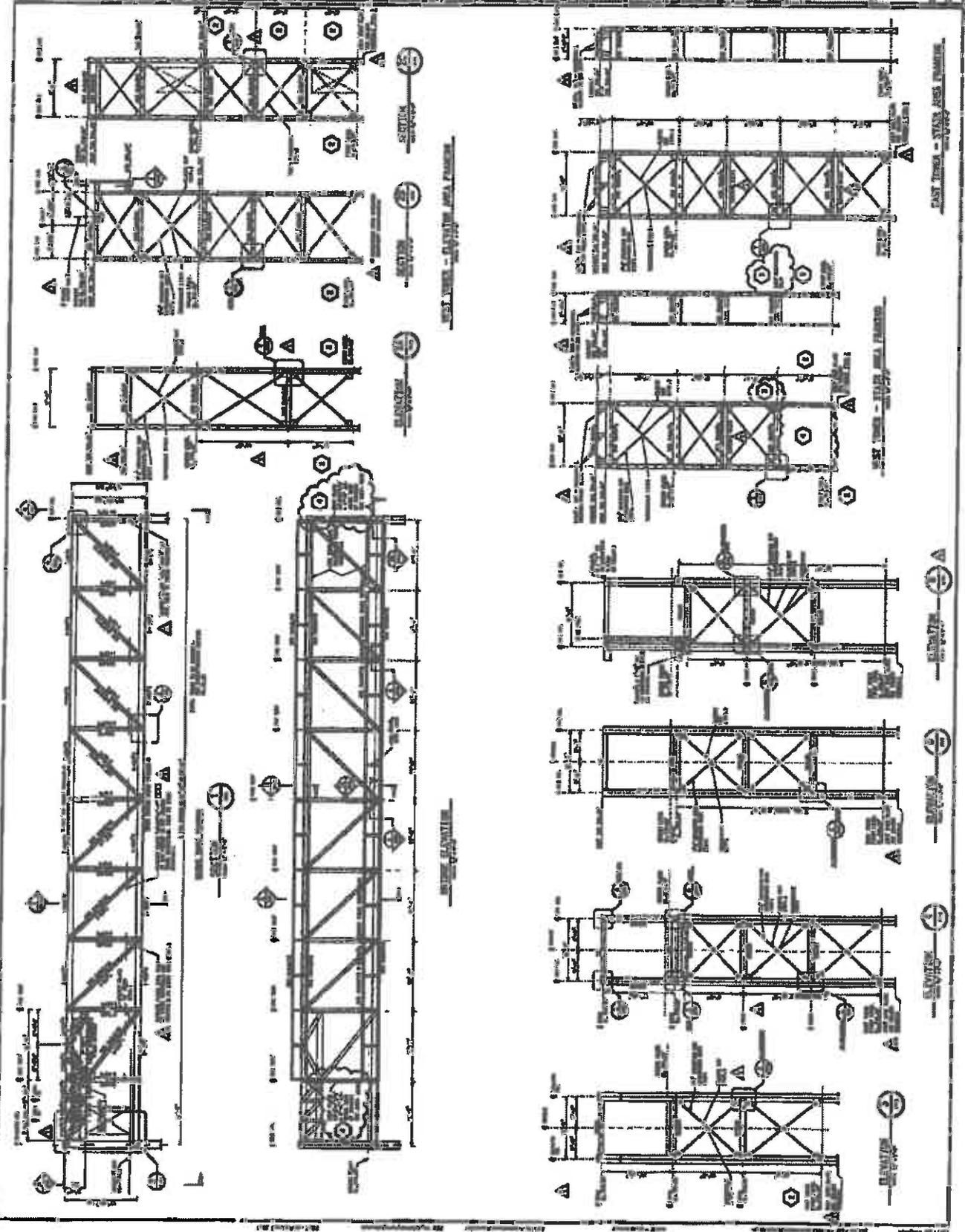


EAST END - 1/2"

[unclear]

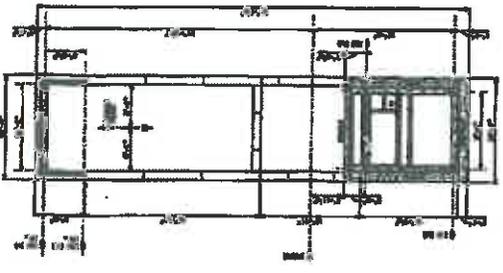
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1	CONCRETE			
2	STEEL			
3	BRICK			
4	CEMENT			
5	SAND			
6	GRAVEL			
7	ROOFING			
8	GLASS			
9	PAINT			
10	WATER			
11	ELECTRICITY			
12	PLUMBING			
13	MECHANICAL			
14	LABOR			
15	OVERHEAD			
16	TOTAL			



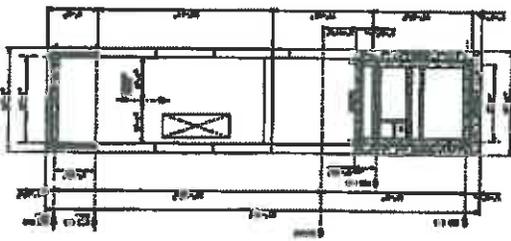




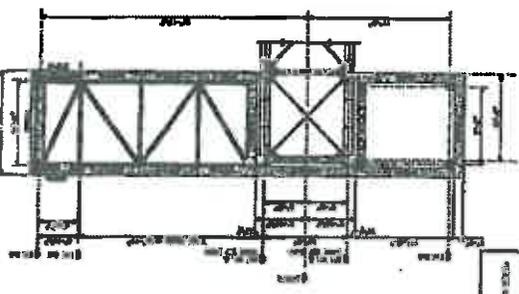




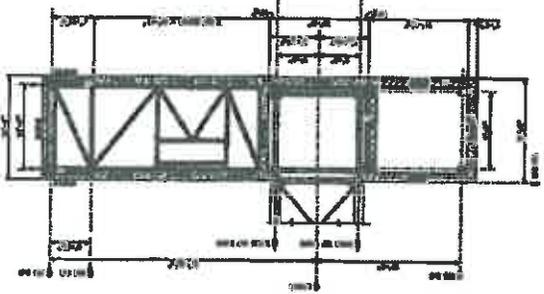
EST. STAIRWELL  
BEARING WALL PLAN



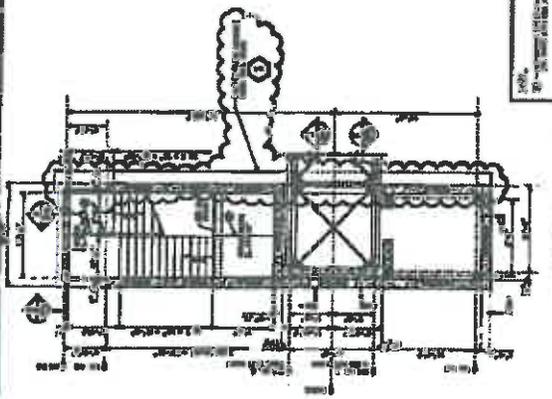
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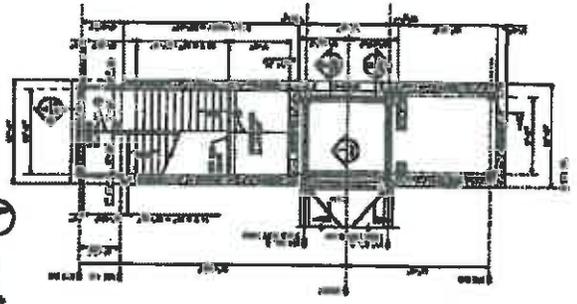
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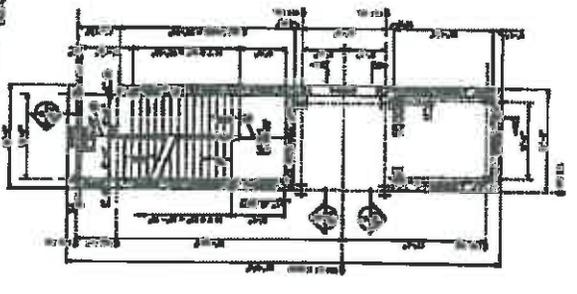
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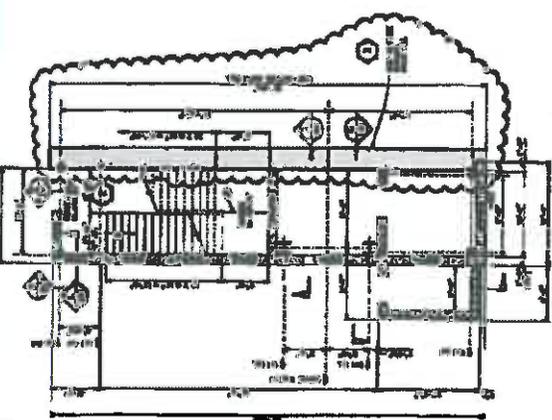
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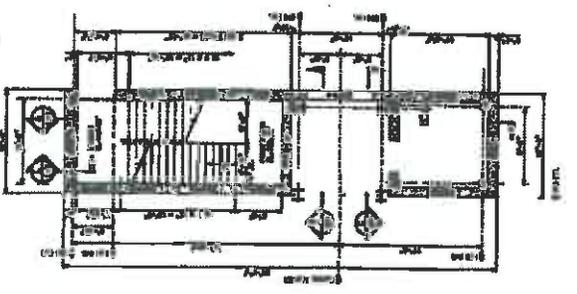
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BEARING WALL PLAN



EST. STAIRWELL  
BEARING WALL PLAN



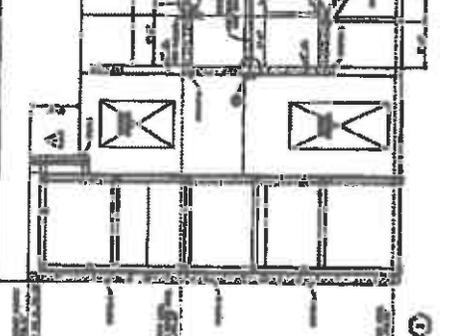
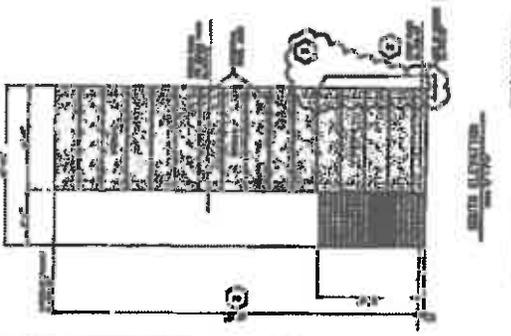
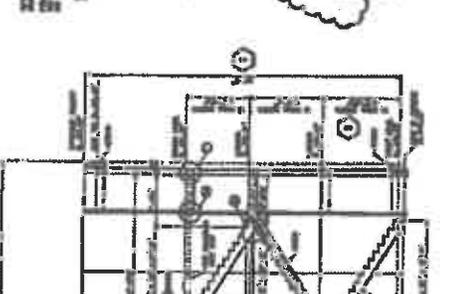
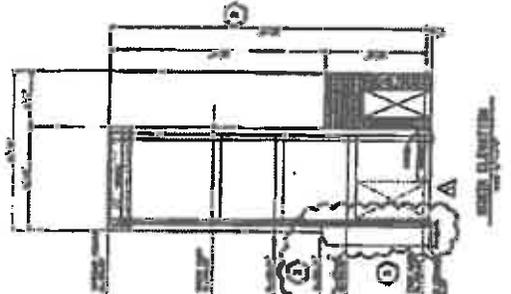
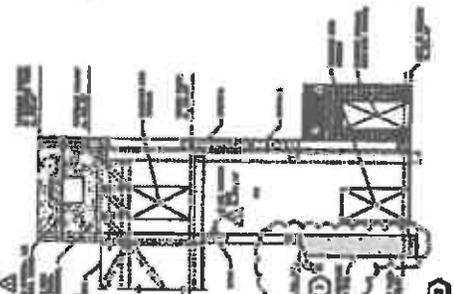
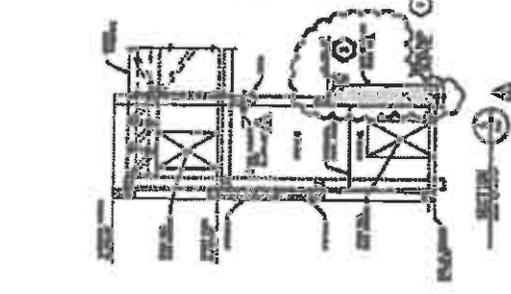
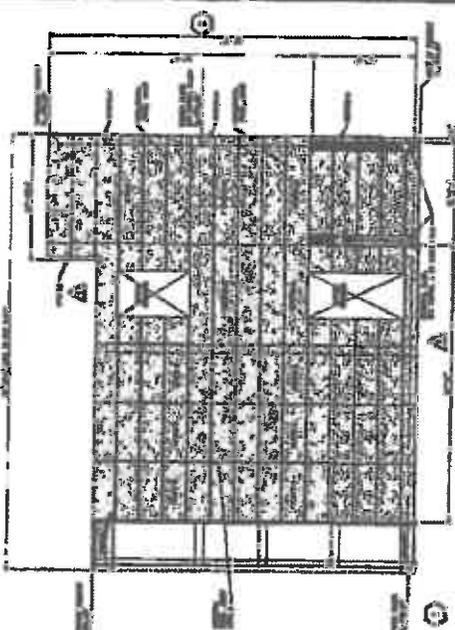
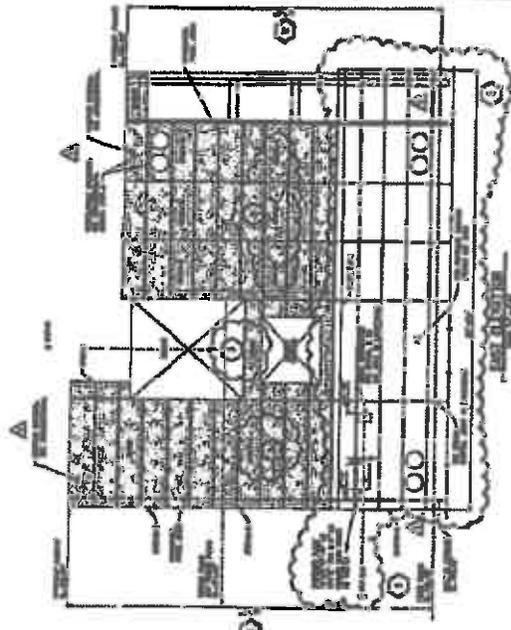
EST. STAIRWELL  
BEARING WALL PLAN



EST. STAIRWELL  
BEARING WALL PLAN

SEE PLAN FOR LOCATION OF THIS SECTION

- SEE PLAN FOR LOCATION OF THIS SECTION
- SEE PLAN FOR LOCATION OF THIS SECTION
- SEE PLAN FOR LOCATION OF THIS SECTION



SECTION A-A

SECTION A-A

SECTION A-A

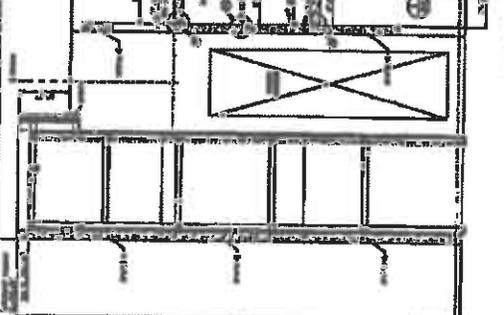
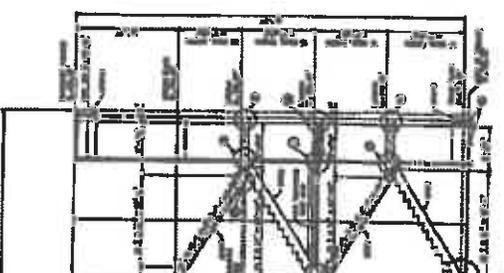
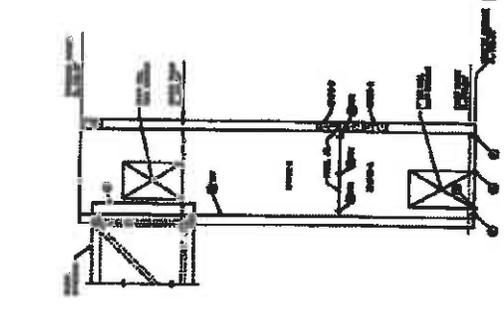
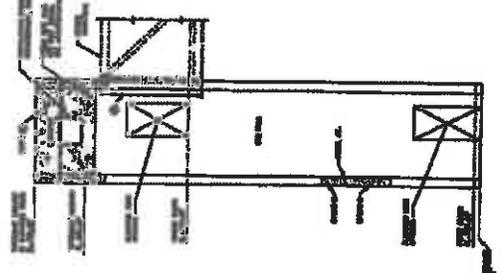
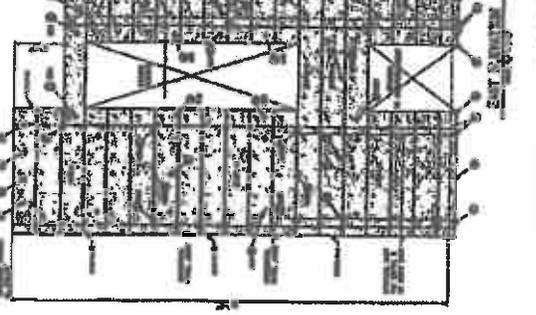
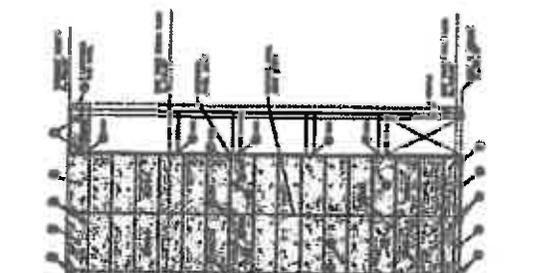
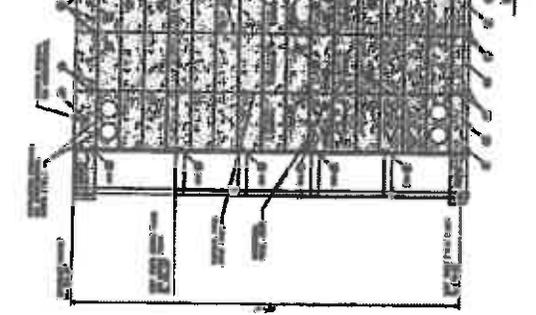
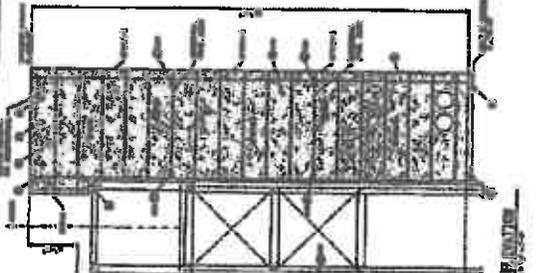
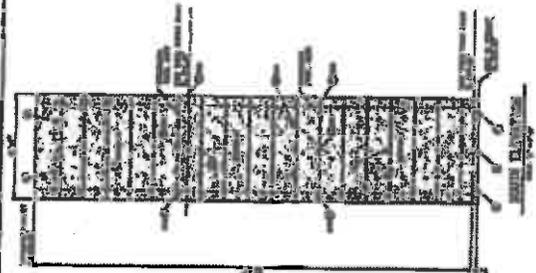


HRC  
Housing Rehabilitation Commission



UNIT NO. 101  
10101  
10101

DATE: 10/1/88  
DRAWN BY: J. J. [unclear]  
CHECKED BY: [unclear]



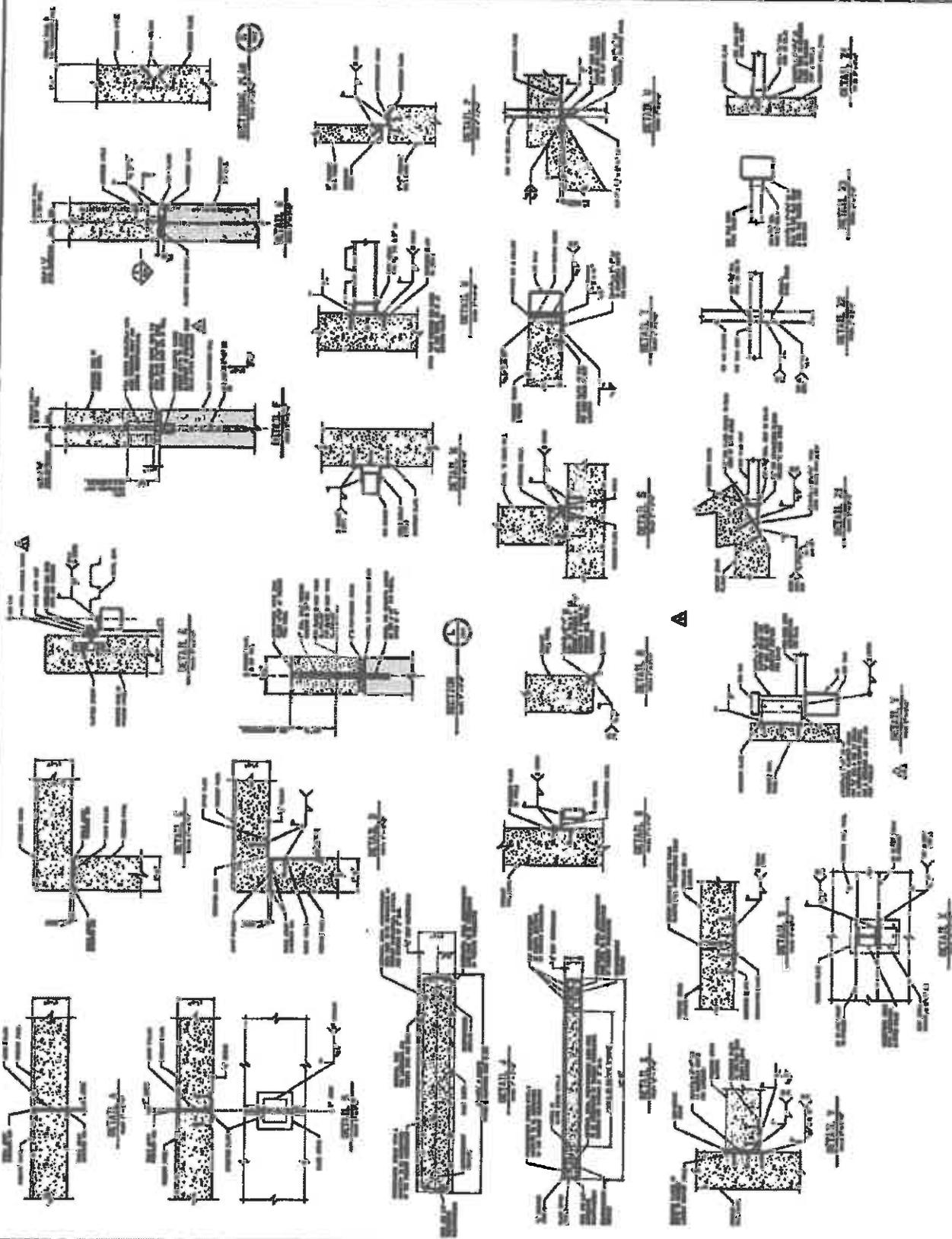
- 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
- 2. ALL WALLS ARE 1/2" THICK UNLESS NOTED OTHERWISE.
- 3. ALL FLOORS ARE 4" CONCRETE ON 2" GYPSUM BOARD UNLESS NOTED OTHERWISE.



UNIT NO. 101



NO.	DATE



**EXHIBIT C**  
**RIGHT OF ENTRY**

## RIGHT OF ENTRY AGREEMENT

The Grand Trunk Western Railroad Company (hereinafter referred to as the Railroad Company) hereby grants to Tooles Contracting Group LLC / Clark Construction Company (hereinafter called the Licensee) license and permission, at the Licensee's sole cost, risk and expense, to enter the Railroad Company's property in the vicinity of MP 17.4 and MP 17.8 Holly Subdivision, for the purpose of constructing an enclosed bridge over the two rail lines with a stair/elevator tower and loading platform on the Birmingham side and a new station, stair and elevator tower on the Troy side and demolition and removal of the existing Birmingham station / platform.

Licensee shall pay to Railroad Company upon execution of this letter agreement the sum of \$ 750 to cover preparation and administration of this agreement/for the privilege granted. The aforesaid sum is not refundable in the event Licensee elects not to enter upon Railroad Company's property or in the event Railroad Company elects to terminate this license for any reason whatsoever.

The Licensee shall not enter the Railroad Company's premises for the purpose as set forth above without having first given the Railroad Company's Engineering Superintendent or his authorized representative at least three (3) days' advance notice of the date the Licensee plans to commence the work.

Railroad Company shall have the right, but not the duty, to require Licensee to furnish detailed plans prior to entry upon the said premises and to view and inspect any activity or work on Railroad Company's property. If in the sole opinion of the authorized representative of the Railroad Company any said activity or work is undesirable for any reason, Railroad Company shall have the right to terminate this agreement and Licensee's license and permission at once. All work to be done shall be approved by Railroad Company's Engineering Superintendent prior to commencing work.

Railroad Company shall have the right, but not the duty, to restrict Licensee's activity on Railroad Company's property in any way that Railroad Company may, in its sole opinion, deem necessary from time to time and shall also have the right, but not the duty, to require Licensee to adopt and take any safety precautions that Railroad Company may, in its sole opinion, deem necessary from time to time. No work shall be performed or equipment located within twenty five feet (25') of the centerline of the nearest railroad track, except as specifically approved by Railroad Company's Engineering Superintendent or his duly authorized representative, and then only when appropriate Railroad Company supervisory personnel and/or flagmen are present.

The Railroad Company may, at the Licensee's sole cost and expense, furnish whatever protective services it considers necessary, including, but not limited to, flagmen, watchmen and inspectors.

As a consideration and as a condition, without which this license would not have been granted, the Licensee agrees to indemnify the Railroad Company in accordance with the terms of "Exhibit A – Indemnity" attached hereto and made a part hereof.

Licensee shall furnish Railroad Company with a policy or policies of insurance acceptable to Railroad Company naming the Railroad Company as an insured party and protecting the Railroad Company against any and all liability for personal injury (including death) or property damage directly or indirectly resulting from the granting or exercise of this license and that said insurance be primary as it relates to this contract. Such insurance shall have a minimum combined single limit of \$5 million per occurrence with an aggregate limit of \$10 million and the insurance policy or policies must be furnished to and approved by Railroad Company prior to entry by Licensee upon Railroad Company's property.

Licensee shall complete all necessary registration procedures with [www.grailsafe.com](http://www.grailsafe.com) prior to entry onto Railroad's property. Licensee employees and agents shall successfully complete training for Railroad safety and Railroad security awareness [www.contractororientation.com](http://www.contractororientation.com) and a mandatory background check prior to entry on Railroad property. Licensee's employees and agents shall qualify for, and make available for inspection to Railroad employees or other authorized personnel at all times while on railroad property, a photo identification issued by [www.grailsafe.com](http://www.grailsafe.com) along with at least one other form of government issued form of identification. Licensee shall bear cost of compliance with all the requirements. Railroad reserves the right to bar any Licensee's employees or agents from Railroad property at anytime for any reason.

Railroad Company's exercise or failure to exercise any rights under this agreement shall not relieve Licensee of any responsibility under this agreement, including, but not limited to, the obligation to indemnify Railroad Company as herein provided.

Cost and expense for work performed by Railroad Company, as referred to in this agreement, shall consist of the actual cost of labor and materials plus Railroad Company's standard additives in effect at the time the work is performed.

This license is revocable at the option and discretion of the Railroad Company upon advance notice to the Licensee and shall not be transferred or assigned. Unless sooner revoked by the Railroad Company, extended by written agreement or relinquished by act of Licensee, this license and permission shall terminate November 30, 2013.

Upon termination of this license, the Licensee shall remove all of its property, leaving the Railroad Company's premises in a neat and safe condition satisfactory to the Railroad Company's Engineering Superintendent or his authorized representative, failing in which the Railroad Company may do so at Licensee's sole cost, risk and expense.

Please indicate your acceptance in the space provided below and return both copies of this letter. A fully executed copy will be transmitted to you for your permanent files.

Sincerely,

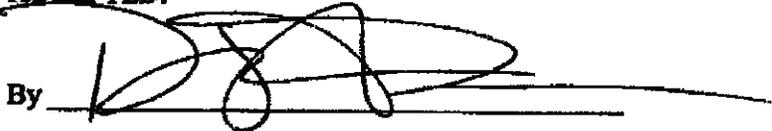
Grand Trunk Western Railroad Company

By 

Title Manager of Public Works

Date 11/1/12

ACCEPTED:

By 

Print Damon V. Toolles

Title President and CEO

Date 10/2/12

## EXHIBIT "A"

### INDEMNITY

Licensee agrees to indemnify and save harmless Railroad Company, its parent, affiliates, and their directors, officers, employees and agents and to assume all liability for death or injury to any persons, including, but not limited to, officers, employees, agents, patrons and licensees of the parties hereto, and for all loss, damage or injury to any property, including, but not limited to, that belonging to the parties hereto, together with all expenses, attorneys' fees and costs incurred or sustained by Railroad Company, whether in defense of any such claims, demands, actions and causes of action or in the enforcement of the indemnification rights hereby conferred, in any manner or degree caused by, attributable to or resulting from the exercise of the rights herein granted, or the failure of the Licensee to conform to conditions of this license, work performed by the Railroad Company for the Licensee under the terms of this license or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of any structure incident thereto, or from any activity conducted on or occurrence originating on the area covered by this agreement, regardless of any negligence of Railroad Company, its officers, employees and agents. Said Licensee agrees also to release, indemnify and save harmless Railroad Company, its officers, employees and agents from all liability to Licensee, its officers, employees, agents or patrons, resulting from railroad operations at or near the area in which the license is to be exercised, whether or not the death, injury or damage resulting therefrom may be due to whole or in part to the negligence of the Railroad Company, its officers, employees or agents. At the election of Railroad Company, the Licensee, upon notice to that effect shall assume or join in the defense of any claim based upon allegations purporting to bring said claim within the coverage of this section.