

Contract No. _____
Structure No. AML38.48
DOT Crossing Inventory No. _____
Railroad Mile Post 38.47

THIS AGREEMENT, entered into this date of _____, by and between the CITY OF ANN ARBOR, hereinafter referred to as the CITY, the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the DEPARTMENT, the NATIONAL RAILROAD PASSENGER CORPORATION, a corporation admitted to do business under the laws of the State of Michigan, hereinafter referred to as AMTRAK, for the purposes of fixing the terms of the construction and maintenance of the Barton-Bandemer Tunnel Connection, hereinafter referred to as THE NON-MOTORIZED UNDERPASS STRUCTURE in the City of Ann Arbor, Washtenaw County, Michigan.

WITNESSETH:

WHEREAS, AMTRAK, pursuant to the Dispatch, Maintenance, Management and Service Outcomes Agreement (“DMMSOA”), is responsible for passenger operations, maintenance, and permitting of the tracks that operate over THE NON-MOTORIZED UNDERPASS STRUCTURE, is an affected railroad and consequently is a party to this AGREEMENT; and

WHEREAS, the CITY and AMTRAK previously entered into a Construction Phase Agreement dated June 12, 2024, hereinafter referred to as the CONSTRUCTION AGREEMENT, with respect to THE NON-MOTORIZED UNDERPASS STRUCTURE on railroad property owned by the DEPARTMENT; and

WHEREAS, the CITY awarded the CONTRACT for the construction of a new concrete sub-grade box culvert to carry non-motorized traffic under the DEPARTMENT owned railroad right-of-way at railroad mile post 38.47 in the City of Ann Arbor, Washtenaw County, Michigan, including drainage facilities where required, electrical lighting conduit and wiring for trail illumination in and around the underpass, and temporary and incidental works made necessary, in accordance with the terms and conditions of this AGREEMENT, hereinafter referred to as the PROJECT; and

WHEREAS, this AGREEMENT satisfies the requirements of Michigan Compiled Law 462.319.

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

1. The CITY will construct the PROJECT in accordance with the CONSTRUCTION AGREEMENT, the CONTRACT, and plans set forth in Exhibits A and B, attached hereto and made part hereof, the standard specifications of the CITY, and the Special Provisions and Coordination Clauses. For the purposes of the construction work, the CITY and its contractor(s) will have right-of-entry after a separate AMTRAK right-of-entry permit to be executed provided

that, immediately upon completion of the PROJECT, the railroad property will be restored by the CITY or its contractor(s) at its sole cost and expense to a condition deemed suitable by AMTRAK's Deputy Division Engineer or their designee for railroad purposes.

2. The general plans for the PROJECT are shown in Exhibits A and B, as described below:

Exhibit A - General Plan of Site (1 sheet), showing present topography adjacent to and including the tracks of DEPARTMENT, location of THE NON-MOTORIZED UNDERPASS STRUCTURE, proposed profile on the centerline of the pathway, and right-of-way of the DEPARTMENT's railroad corridor.

Exhibit B - General Plan of Structure (4 sheets), showing the general plan, elevation, THE NON-MOTORIZED UNDERPASS STRUCTURE cross section, and AMTRAK's clearances and cover requirements.

3. The CITY hereby adopts the plan and profile fixing the horizontal and vertical alignment of the proposed structure, as set forth in Exhibits A and B.

4. The CITY will advertise its portion of the construction of the PROJECT in accordance with its regulations, considering bids only from contractors qualified by it for such work, will award the contracts for such work, and will exercise complete supervision and control over the construction.

5. The CITY will require its contractor(s) to comply with the standard specifications of the CITY, and the Special Provisions and Coordination Clauses and to bear all costs of protecting railroad traffic made necessary or occasioned by the PROJECT, as set forth in said Special Provisions and Coordination Clause.

6. The CITY will undertake, and perform through contractors, the PROJECT, except for the work to be performed by AMTRAK as set forth in Section 7.

7. AMTRAK will, at contractor or CITY expense, in accordance with Sections 4 and 5 above, using either their own forces and equipment or a subcontractor, perform the work listed below. Consent to sublet by AMTRAK any portion of the PROJECT work will not be construed to relieve the CITY of any responsibility or obligation under or for the fulfillment of this AGREEMENT.

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

A. AMTRAK reviewed design plans for construction activities on the DEPARTMENT's property under the terms of Permit to Enter, 22-17, between WCPRC and AMTRAK, effective April 7, 2022. AMTRAK requires prepayment by WCPRC for design review services and will invoice WCPRC for the costs of design review services rendered, which costs will be applied to the prepayment amount.

B. AMTRAK reviewed construction activities on the DEPARTMENT's property under the terms of Permit to Enter, MDOT 22-17-2-AM-38.44, between Davis

Construction Inc. and AMTRAK, effective March 10, 2025, and a Construction Phase Agreement, between the CITY and AMTRAK, effective June 12, 2024.

8. Any work necessitated by the PROJECT but not specifically provided for in this AGREEMENT that involves temporary or permanent changes to any facilities of the DEPARTMENT will 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 federal rules and regulations then in effect. AMTRAK will be permitted to work outside its regular working hours, at premium rates, to perform any such authorized force account work when such working hours have been approved by the CITY's engineer, provided the arrangement for such work is required to maintain construction schedules and is in the public interest.

9. All work performed or caused to be performed and materials and equipment furnished or caused to be furnished by AMTRAK pursuant to this AGREEMENT, with the exception of daily flagging services, as described in Section 7 above, will be performed on a force account basis, billed by AMTRAK, and reimbursed by the CITY, as provided in the Federal-Aid Policy Guide (FAPG), Part 140, Subpart I, dated December 9, 1991, and amendments thereto, incorporated herein by reference. The CITY will pay from PROJECT funds such amounts as are approved for payment in accordance with federal regulations. During the course of the PROJECT, changes, extra work, and/or adjustments to the PROJECT may become necessary and may be requested by either party. If acceptable to the CITY, the CITY will prepare a written request to modify the PROJECT and authorize AMTRAK to perform the modified work. The CITY will receive consent from AMTRAK to accomplish the modified work in conformance with the requirements of this AGREEMENT. The DEPARTMENT will be offered the opportunity to review, approve, and sign the document indicating the modifications to be performed by AMTRAK prior to work beginning.

10. The CITY will require its contractor(s) to take out a Railroad Protective Liability Insurance Policy in the names of the DEPARTMENT, the State of Michigan, the Michigan State Transportation Commission, and AMTRAK before work is commenced and to keep it in effect until work is completed and accepted, in accordance with the FAPG, Part 646, Subpart A, dated December 9, 1991, and amendments thereto.

The policy will have limits of liability in the amount of Ten Million Dollars (\$10,000,000.00) combined single limit per occurrence for bodily injury, death, and property damage with an aggregate limit of Ten Million Dollars (\$10,000,000.00) applying separately to each annual period. The policy of insurance specified in this section will be with a company authorized to do business in the State of Michigan.

11. This AGREEMENT grants a long-term occupancy for non-motorized pathway and transportation purposes from the DEPARTMENT to the CITY for the PROJECT, as set forth in Exhibits A and B and Exhibit C, attached hereto and made part hereof, as described below.

Exhibit C – Transverse Transportation, Electrical, and Drainage Occupancy (1 sheet), showing the PROJECT area, the DEPARTMENT's right-of-way, and proposed transverse

occupancy permit area for THE NON-MOTORIZED UNDERPASS STRUCTURE to carry non-motorized pathway traffic, electrical conduits/wiring, and drainage features.

12. In the event of a sale, abandonment, or other disposition of the property that the PROJECT occupies, the DEPARTMENT agrees to grant to the CITY an easement for the property occupied by the PROJECT as shown in Exhibit C. In no way should the easement infringe on any other permitted facilities in and around the CITY's facility. The cost of the easement will be based on then-current fair-market value, which will be determined solely by the DEPARTMENT prior to the execution of any document of conveyance of the DEPARTMENT's property.

13. Nothing in this AGREEMENT will be construed to grant any rights whatsoever to any public or private utilities, except such consent as is specifically given herein, nor to impair any existing rights granted in accordance with the constitution or laws of the State of Michigan.

14. The CITY or its contractor(s) will, at its own expense, acquire the necessary right-of-way, except that now owned by the DEPARTMENT, and will assume payment of all abuttal damages, if any, to property, business, or persons, other than to the property of the DEPARTMENT, arising in any manner from the PROJECT.

15. Nothing in this AGREEMENT will be construed to render the DEPARTMENT and AMTRAK liable for acts of negligence of the CITY, the CITY's contractor, or any of their employees, agents, contractors, or subcontractors.

16. It is expressly understood that the DEPARTMENT and AMTRAK will not have vehicular access to the PROJECT site from the abutting property except using property owned or controlled by CITY or other public highways and existing railroad access roads.

17. This PROJECT is for the construction of THE NON-MOTORIZED PATHWAY UNDERPASS STRUCTURE consisting of a sub-grade box culvert and non-motorized pathway only which does not eliminate an at-grade crossing. This PROJECT provides a grade-separated crossing for pedestrians and non-motorized travel. The DEPARTMENT and AMTRAK will not have any liability and/or cost relating to the PROJECT.

18. If at any time, without fault of the parties, the PROJECT work to be undertaken by the CITY should cease and not be resumed within sixty (60) days or any extended period as is mutually agreed upon, the parties, if not then agreed, will agree upon and will perform any work as is reasonably necessary to place the right-of-way, tracks, and other facilities of the DEPARTMENT's railroad corridor in a satisfactory, permanent operating condition, and the CITY will assume and pay the cost thereof; provided that the aforesaid sixty (60) day limitation will not apply to the temporary suspension of work under order of any governmental agency or court, in which event the work will be resumed and completed as soon as possible in accordance with the terms of this AGREEMENT.

19. In the event delays or difficulties occur before the commencement of physical operations hereunder that, in the opinion of the CITY, render it impracticable to proceed with the construction of the PROJECT, the CITY may provide written notice to the DEPARTMENT, and this AGREEMENT will thereupon terminate forthwith, provided, however, that AMTRAK will be

reimbursed for costs and expenses incurred for any authorized force account work performed pursuant to Section 7 of this AGREEMENT.

20. The CITY, at its sole cost and expense, will maintain, repair, and/or replace, or cause the same to be done, any of the work that was constructed as part of the PROJECT, at the DEPARTMENT's sole discretion except that the fencing and gate extending from the underpass structure wingwall to the M-14 freeway overpass pier will be maintained by the DEPARTMENT for structural integrity and function while the CITY will maintain the fencing, gate and wingwall, at its discretion, for aesthetic appearance. In addition, the CITY, 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 DEPARTMENT's property that may be damaged or destroyed as a result of this PROJECT, at the DEPARTMENT's sole discretion.

21. If at any time in the future, the PROJECT work is absolutely discontinued and abandoned, or if, for any other reason, no further need exists, the CITY will remove the PROJECT work and restore the PROJECT site to its original condition at its sole cost and expense. Until all the PROJECT work is removed, it will be maintained in accordance with the terms of this AGREEMENT.

22. If the CITY fails to take any corrective action resulting from the DEPARTMENT's or AMTRAK's inspection findings in a timely manner, or if an emergency situation is presented which, in the DEPARTMENT's judgment, requires immediate repairs to the facilities, the DEPARTMENT may undertake such corrective measures or repairs as the DEPARTMENT deems necessary or desirable, at the CITY's sole cost and expense.

23. Any approvals, reviews, and/or inspections of any nature by the DEPARTMENT will not be construed as warranties or assumptions 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/or inspections by the DEPARTMENT will not relieve the CITY of its obligations hereunder, nor are such approvals, reviews and/or inspections by the DEPARTMENT to be construed as warranties as to the propriety of the CITY's performance but are undertaken for the sole use and information of the DEPARTMENT.

24. It is specifically understood and agreed that this AGREEMENT will 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.

25. The CITY agrees that the DEPARTMENT and AMTRAK have no responsibility and no liability whatsoever associated with or for this AGREEMENT, PROJECT construction, PROJECT costs or future maintenance responsibilities and is consenting to the AGREEMENT. Notwithstanding anything to the contrary herein, nothing in this AGREEMENT will modify, add to, diminish, or eliminate the rights, responsibilities, remedies, liabilities, duties, or benefits set forth in the terms and conditions of any agreement between AMTRAK and the DEPARTMENT;

between AMTRAK and the CITY including but not limited to the CONSTRUCTION AGREEMENT; or between AMTRAK and any other party (collectively, “Other Agreements”). In the event of any dispute or conflict between the terms and conditions of such Other Agreements, and the terms and conditions of this AGREEMENT, then the terms and conditions of such Other Agreement will govern and control the resolution of such dispute or conflict. For the avoidance of doubt, in the event any approval or consent is required pursuant to any such Other Agreement.

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

NATIONAL RAILROAD PASSENGER CORPORATION

By: _____
Title: _____

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: _____
Department Director

CITY OF ANN ARBOR

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to content:

By: _____
Milton Dohoney Jr., City Administrator

By: _____
Jordan Roberts, Public Service Area Administrator

Approved as to form:

By: _____
Atleen Kaur, City Attorney

Exhibit A

General Plan of Site

TIMBER BRIDGE COORDINATES			
REF PT	NORTH	EAST	ELEV
A	292997.27	13290745.39	783.08
B	282992.03	13290763.64	782.57

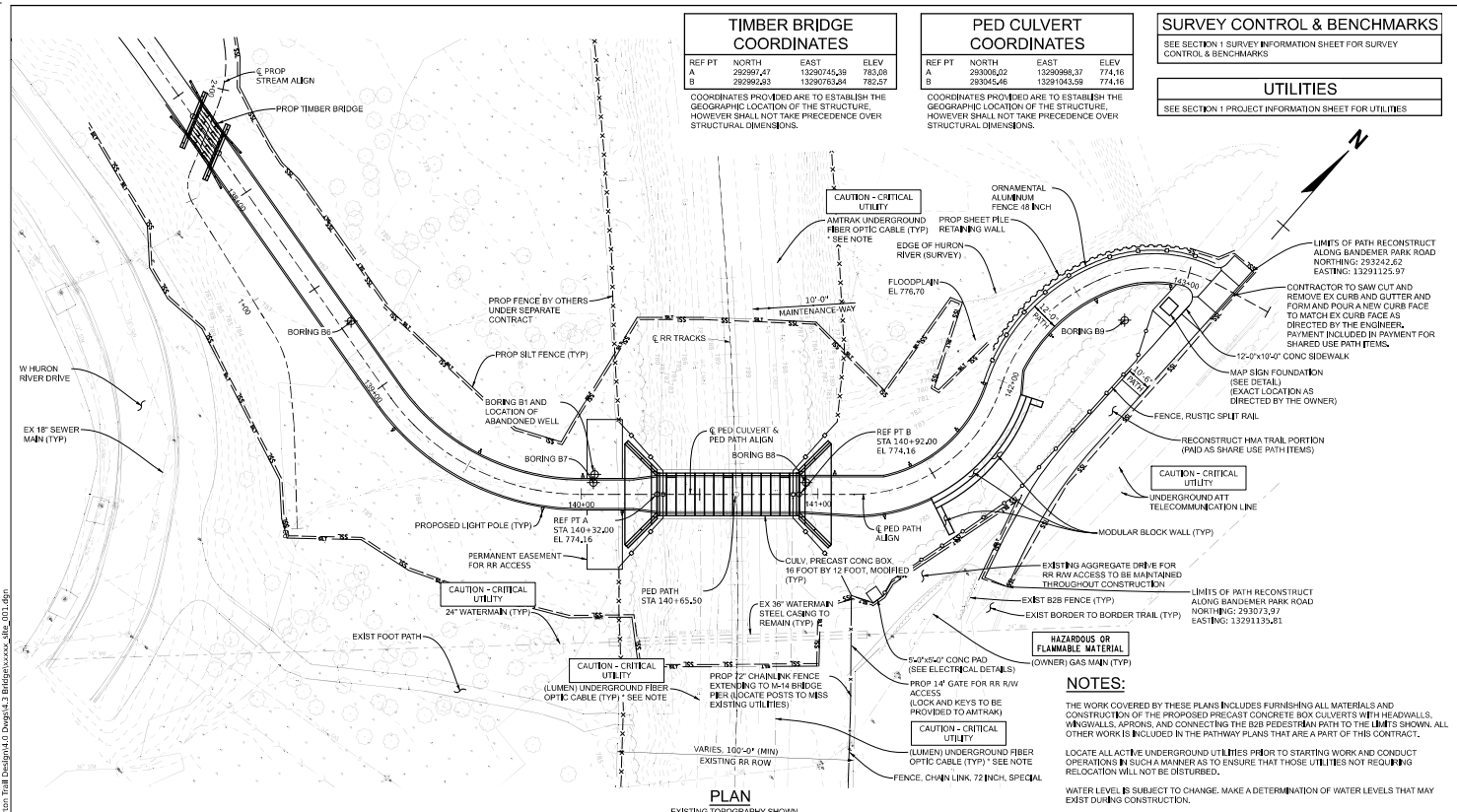
COORDINATES PROVIDED ARE TO ESTABLISH THE GEOGRAPHIC LOCATION OF THE STRUCTURE. HOWEVER SHALL NOT TAKE PRECEDENCE OVER STRUCTURAL DIMENSIONS.

PED CULVERT COORDINATES			
REF PT	NORTH	EAST	ELEV
A	293000.22	13290698.37	774.16
B	283345.46	13291043.59	774.16

COORDINATES PROVIDED ARE TO ESTABLISH THE GEOGRAPHIC LOCATION OF THE STRUCTURE. HOWEVER SHALL NOT TAKE PRECEDENCE OVER STRUCTURAL DIMENSIONS.

SURVEY CONTROL & BENCHMARKS	
SEE SECTION 1 SURVEY INFORMATION SHEET FOR SURVEY CONTROL & BENCHMARKS	

UTILITIES	
SEE SECTION 1 PROJECT INFORMATION SHEET FOR UTILITIES	

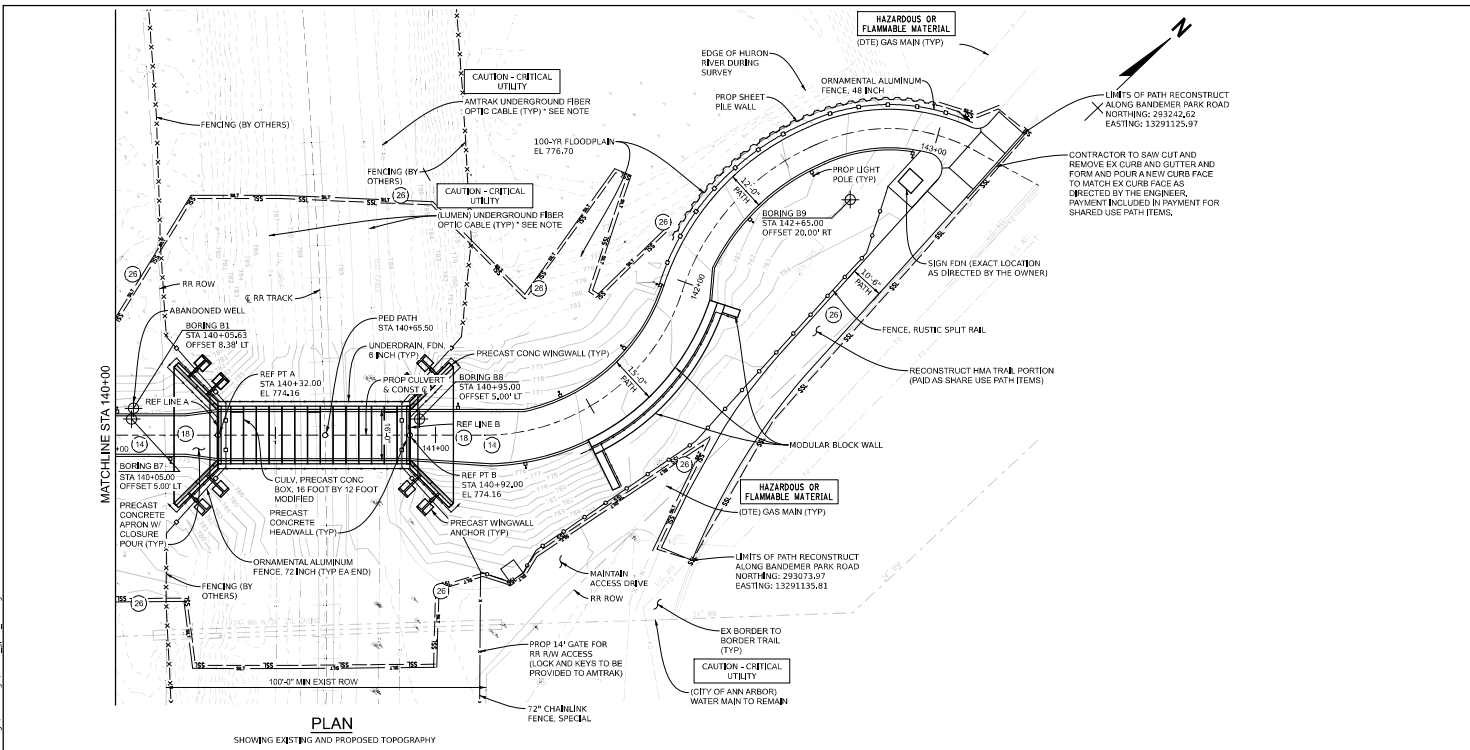


LEGEND	
---	SILT
---	SILT FENCE
---	SLOPE STAKE LINE

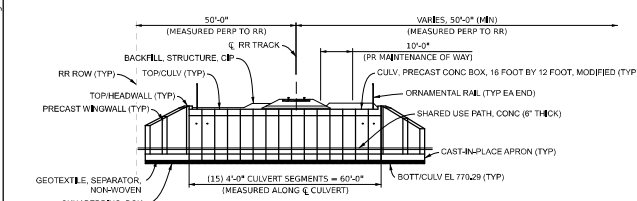
PLAN
EXISTING TOPOGRAPHY SHOWN

Exhibit B

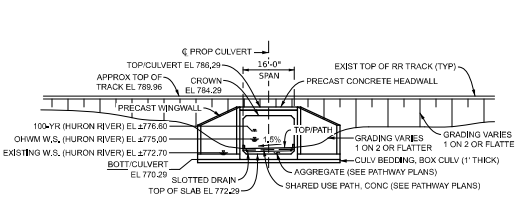
General Plan of Structure



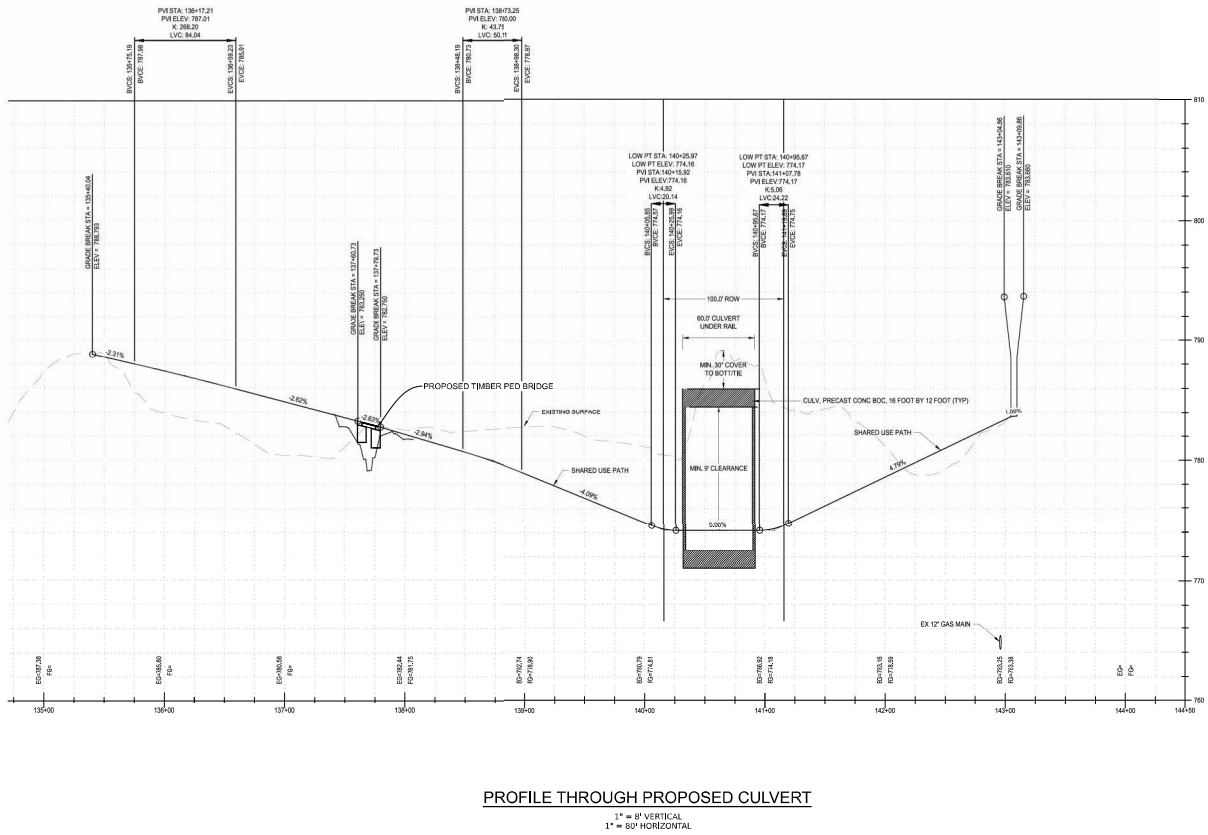
PLAN
SHOWING EXISTING AND PROPOSED TOPOGRAPHY

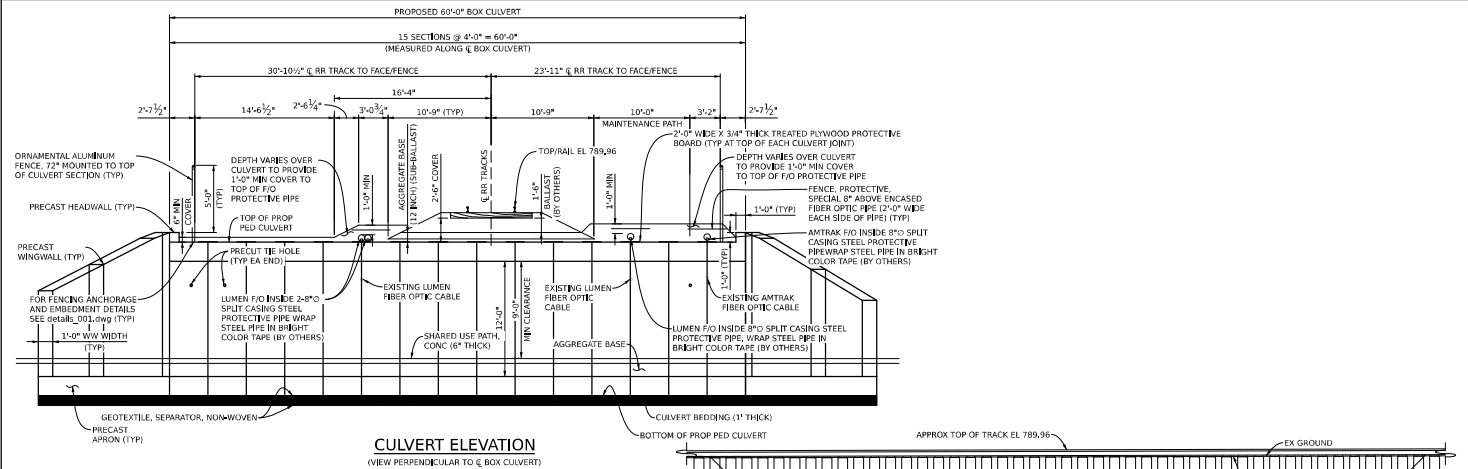


ELEVATION
(LOOKING UPSTATION)
DIMENSIONING IS MEASURED ALONG PROPOSED CULVERT UNLESS OTHERWISE NOTED

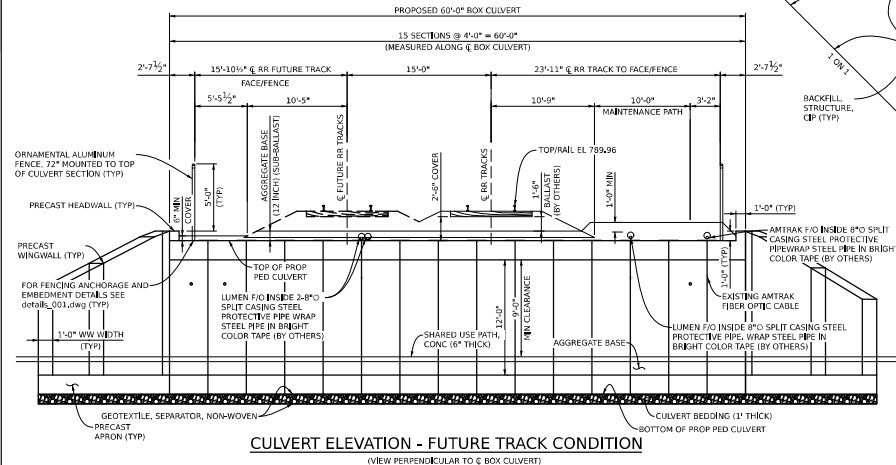


ELEVATION - END VIEW
(LOOKING UPSTATION)

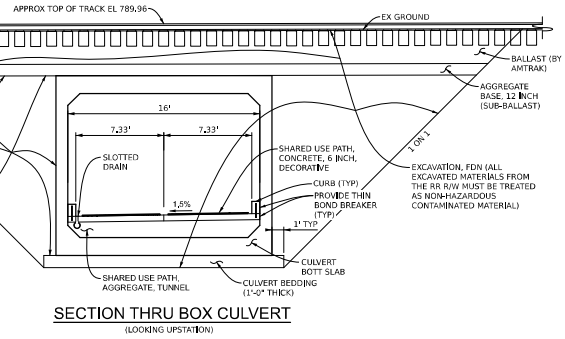




CULVERT ELEVATION
(VIEW PERPENDICULAR TO CL OF BOX CULVERT)



CULVERT ELEVATION - FUTURE TRACK CONDITION
(VIEW PERPENDICULAR TO CL OF BOX CULVERT)



SECTION THRU BOX CULVERT
(LOOKING UPSTATION)

NOTES:
THE DESIGN OF THE PEDESTRIAN CULVERT IS BASED ON THE CURRENT AMERICAN RAILWAY ENGINEERING AND MAINTENANCE-OF-WAY ASSOCIATION SPECIFICATIONS, COOPER'S 180 LOADING, AND 50 PERCENT OF THE SPECIFIED IMPACT, FOR ADDITIONAL DESIGN REQUIREMENTS, SEE SUBSECTION 406.03.A OF THE STANDARD SPECIFICATIONS FOR CONSTRUCTION.

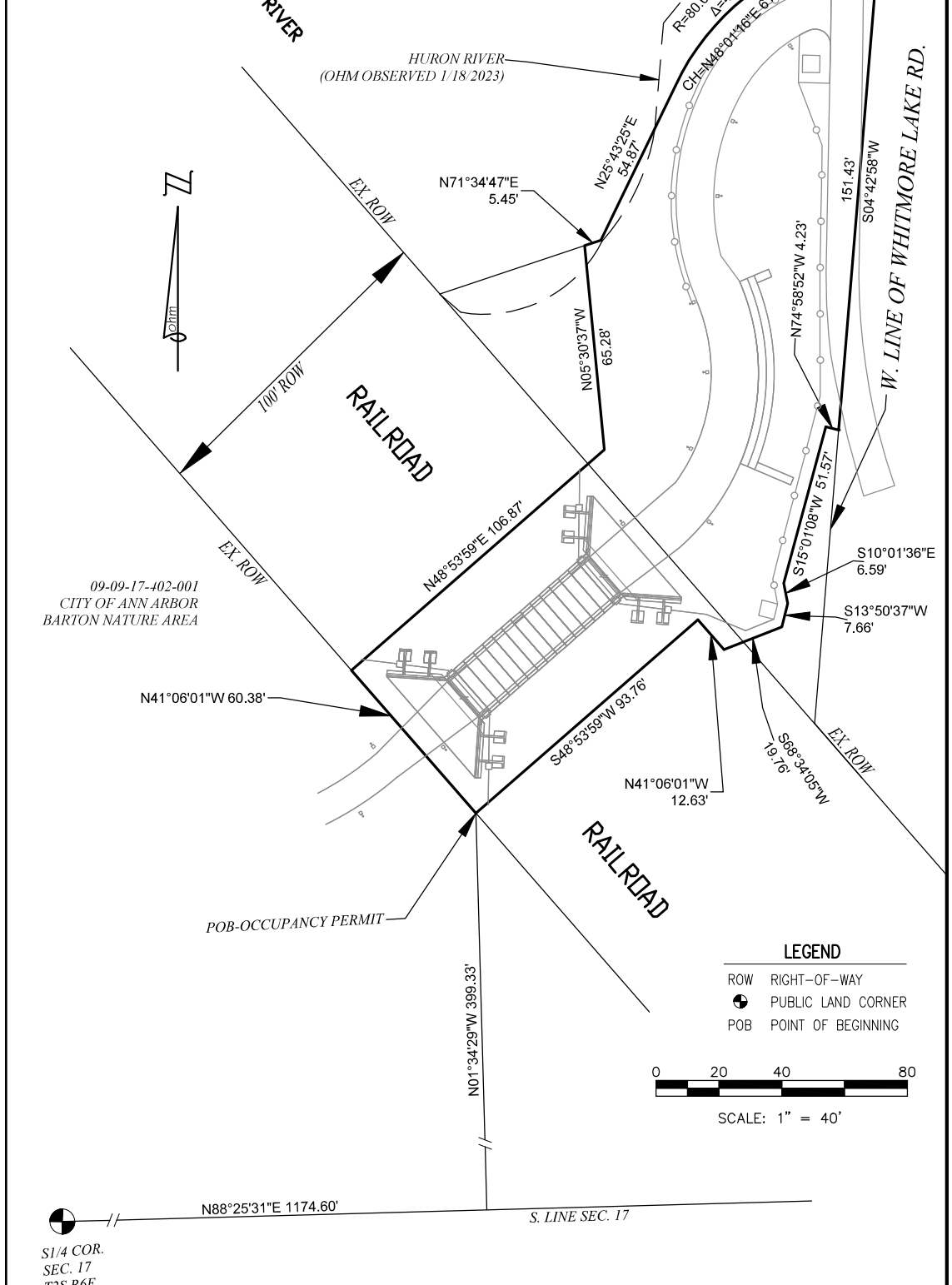
Exhibit C

Occupancy Area

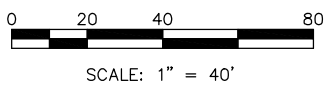
OCCUPANCY PERMIT SKETCH

Exhibit "A"

MICHIGAN DEPT. OF TRANSPORTATION PARCEL
SCHEDULE OF PROPERTY No. 7
VALUATION MAP V-1-B-M/15
QUIT CLAIM DEED, L. 4945, P. 501, W.C.R.



- LEGEND**
- ROW RIGHT-OF-WAY
 - ⊙ PUBLIC LAND CORNER
 - POB POINT OF BEGINNING



<p>OCCUPANCY PERMIT PART OF THE SE 1/4 OF SECTION 17 T.2S., R.6E., ANN ARBOR TOWNSHIP WASHTENAW COUNTY, MICHIGAN</p>		SCALE 1" = 40'
		SHEET 1 OF 2
DATE 2-07-2025	CLIENT TOWNSHIP OF ANN ARBOR	JOB # 0028-24-0110
34000 Plymouth Road Livonia, MI 48150 P (734) 522-6711 F (734) 522-6427 WWW.OHM-ADVISORS.COM		



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OCCUPANCY PERMIT DESCRIPTION

Exhibit "A"

OCCUPANCY PERMIT

A parcel of land being a part of the SE 1/4 of Section 17, Town 2 South, Range 6 East, Ann Arbor Township, Washtenaw County, Michigan, more particularly described as follows:

Commencing at the S 1/4 corner of said Section 17; thence N 88°25'31" E 1174.60 feet along the South line of said Section 17; thence N 01°34'29" W 399.33 feet to the Point of Beginning; thence N 41°06'01" W 60.38 feet along the SE'ly right of way of railroad; thence N 48°53'59" E 106.87 feet; thence N 05°30'37" W 65.28 feet; thence N 71°34'47" E 5.45 feet; thence N 25°43'25" E 54.87 feet; thence 63.23 feet along a curve to the right having a radius of 80.00 feet, delta 45°16'58", chord bears N 48°01'16" E 61.59 feet; thence S 89°26'20" E 18.59 feet; thence S 04°42'58" W 151.43 feet; thence N 74°58'52" W 4.23 feet; thence S 15°01'08" W 51.57 feet; thence S 10°01'36" E 6.59 feet; thence S 13°50'37" W 7.66 feet; thence S 68°34'05" W 19.76 feet; thence N 41°06'01" W 12.63 feet; thence S 48°53'59" W 93.76 feet to the Point of Beginning.

Contains 19,442 square feet or 0.446 acres of land, more or less. Subject to all easements and restrictions of record, if any.

OCCUPANCY PERMIT PART OF THE SE 1/4 OF SECTION 17 T.2S., R.6E., ANN ARBOR TOWNSHIP WASHTENAW COUNTY, MICHIGAN		SCALE 1"=40'
		SHEET 2 OF 2
DATE 02-07-2025	CLIENT TOWNSHIP OF ANN ARBOR	JOB # 0028-24-0110
34000 Plymouth Road Livonia, MI 48150 P (734) 522-6711 F (734) 522-6427 WWW.OHM-ADVISORS.COM		
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