



Brighton City Council Meeting

200 N First St • City Hall Council Chambers • Brighton, Michigan 48116
(810) 227-1911 • www.brightoncity.org

January 9, 2024 – 6:30 p.m.

AGENDA

1. Call to order
2. Pledge of Allegiance
3. Roll call
4. Consider approval of the agenda
5. Consider approval of consent agenda items

Consent Agenda Items

- a. Approval of Minutes: [regular meeting of December 7, 2023](#)
- b. Approval of Minutes: [special meeting of December 11, 2023](#)
- c. Approval of Minutes: [special joint meeting of December 11, 2023](#)
- d. Approval to set a joint Special City Council and Planning Commission meeting for February 12, 2024, beginning at 7:00 p.m.
- e. Approval to set the Special City Council Annual Retreat for February 24, 2024, beginning at 9:00 a.m. at the Police Department located at 440 S. 3rd Street

Correspondence

6. Call to the public
7. Staff updates
8. Updates from Councilmember liaisons to various boards and commissions
9. Proclamation: Rosa Parks Transit Equity Day

Discussion

10. I-96 interchange bridge wording and gateway signage

New Business

11. [Consider approval of Resolution# 2024-01 to accept preliminary proposal from DA Building, LLC for purchase and development of vacant city owned property](#)
12. [Consider approval of a METRO Act Unilateral Form Right-of-Way Telecommunications Permit for Livingston Count Fiber Network](#)
13. [Consider approval of a design and construction engineering proposal from Tetra Tech Engineering Services for the Pine Creek booster station in an amount not to exceed \\$97,000](#)
14. [Consider approval of Resolution #2024-02 to allow the City of Brighton to enter into contract #23-5508 with the Michigan Department of Transportation to receive funds for the 2023 sidewalk gap improvement program](#)
15. Consider Entering into Closed Session to Receive a Written Attorney-Client Privileged Communication pursuant to section MCL 15.268(1)(h) of the Open Meetings Act
16. Consider entering into closed session to consider the purchase or lease of real property pursuant to MCL 15.268 (1)(d) of the Open Meetings Act

Other Business

17. Call to the public

18. Adjournment



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MINUTES OF THE REGULAR MEETING OF THE BRIGHTON CITY COUNCIL HELD ON DECEMBER 7, 2023

1. Call to order

Mayor Tobbe called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

3. Roll call

Present were Mayor Tobbe, Mayor Pro Tem Bohn, Councilmembers: Albert, Gardner, Gipson, Pettengill, and Schmenk.

Staff Present: City Manager Gretchen Gomolka, City Clerk Tara Brown, DPS Director Marcel Goch, Superintendent Josh Bradley, Superintendent Brad Shrader, Chief Brent Pirochta, and Attorney Sarah Gabis.

4. Consider approval of the agenda

Motion by Councilmember Gardner, seconded by Councilmember Gipson to move item 16 from new business to the consent agenda as item g. **The motion carried, 7-0.**

Motion by Councilmember Gardner, seconded by Councilmember Gipson to approve the amended agenda. **The motion carried, 7-0.**

5. Consider approval of consent agenda items

Motion by Councilmember Gardner, seconded by Councilmember Gipson to approve the amended consent agenda. **The motion carried, 7-0.**

Consent Agenda Items

- a. **Approval of Minutes: regular biennial election meeting of November 13, 2023**
- b. **Approval of Minutes: special meeting of November 16, 2023**
- c. **Approval of Minutes: regular meeting of November 16, 2023**
- d. **Approval of the agreement with Brighton Area Schools to collect their non-principal residence operating property taxes on the city's summer 2024 tax bills**
- e. **Approval of the agreement with Livingston Educational Services Agency to collect operating property taxes on the city's summer 2024 tax bills**
- f. **Approval of Traffic Control Order #182**
- g. **Consider approval to award the bid to Adams Well Drilling for plugging and abandonment of the two wells at the Pierce Street Water Plant in an amount not to exceed \$13,340**

Correspondence

6. Call to the public

Mayor Tobbe opened the call to the public at 6:34 p.m.

Susan Bakhaus spoke regarding a call to the public at a recent Planning Commission meeting.

Caleb Jenkins introduced himself and spoke regarding his application to the Planning Commission.

Hearing and seeing no additional comment, the call to the public was closed at 6:38 p.m.

Mayor Pro Tem Bohn addressed a comment made at the call to public regarding the Planning Commission meeting.

7. Staff updates

Chief Pirochta relayed the Shop with a Cop event on December 2, 2023. Each of the sixty-eight children were able to shop with a police officer, play in bounce houses, and have breakfast.

Director Goch stated the Streetscape project is wrapping up with contractors placing landscaping and final touches in place. The fire pit should be operational within a few weeks.

City Manager Gomolka thanked all who were able to make it out to Ladies Night Out. Several businesses are collaborating to utilize a token system as rewards for purchases.

8. Updates from Councilmember liaisons to various boards and commissions

Councilmember Garder appreciated attending the City of Brighton staff Christmas Party. Mrs. Gardner also questioned the hash marks in certain areas along Main Street.

Councilmember Gipson thanked Foguth Financial for offering storage space at their building for the holiday lights.

Mayor Tobbe thanked merchants and staff for a great 2023! Collaborative work and dedication were reflected in many aspects to get through the Streetscape Project.

DISCUSSION

9. MDOT project bridge and signage aesthetics

Motion by Councilmember Albert, seconded by Councilmember Gipson to approve the I-96 brick tones coloring in Rustic Ashlar Beige. **The motion carried, 7-0.**

City Council will discuss specific wording on the bridge at a future meeting.

New Business

10. Consider scheduling special meetings for December 11, 2023

Motion by Councilmember Gipson, seconded by Councilmember Gardner to set a City Council special meeting for December 11, 2023, beginning at 6:30 p.m. and a joint special meeting with City Council and the Downtown Development Authority beginning at 7:30 p.m. **The motion carried, 7-0.**

11. Consider approval of the purchase of a multi-hog vehicle and attachments from Brown Equipment Company in the amount of \$170,890

Motion by Councilmember Pettengill, seconded by Councilmember Gipson to approve the purchase of a multi-hog vehicle and attachments from Brown Equipment Company in the amount of \$170,890. **The motion carried, 7-0.**

12. Consider approval of Resolution #2023-20, City Council 2024 Meeting Schedule

Motion by Councilmember Albert, seconded by Councilmember Gipson to approve Resolution #2023-20, City Council 2024 Meeting Schedule. **The motion carried by roll call vote, 7-0.**

13. Consider approval of Resolution #2023-21, Reconfiguration and Consolidation of Precincts

Motion by Councilmember Gardner, seconded by Councilmember Pettengill to approve Resolution #2023-21, Reconfiguration and Consolidation of Precincts. **The motion carried by roll call vote, 7-0.**

14. Consider approval of Resolution #2023-22, Veritas Vineyard LLC, d/b/a Grand River Brewer located at 201 W. Main Street, Brighton MI 48116

Motion by Councilmember Gipson, seconded by Councilmember Albert to approve resolution #2023-22, Veritas Vineyard LLC, d/b/a Grand River Brewer located at 201 W. Main Street, Brighton MI 48116. **The motion carried by roll call vote, 7-0.**

15. Consider appointment to various boards and commissions – Board of Review and Election Commission

Motion by Councilmember Albert, seconded by Councilmember Gardner to reappoint Susan Gloster to the Board of Review and Michelle Petrak to the Election Commission and appoint Dianne Hamm to the Election Commission. **The motion carried, 7-0.**

~~16. Consider approval to award the bid to Adams Well Drilling for plugging and abandonment of the two wells at the Pierce Street Water Plant in an amount not to exceed \$13,340 (moved to the consent agenda)~~

17. Consider entering into closed session to consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, being Rohrkemper v 1023 Holdings, LLC et al, because an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body pursuant to MCL 15.268(1)(e) of the Open Meetings Act

Motion by Councilmember Gipson, seconded by Councilmember Gardner to enter into closed session at 8:04 p.m. to consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, being Rohrkemper v 1023 Holdings, LLC et al, because an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body pursuant to MCL 15.268(1)(e) of the Open Meetings Act. **The motion carried by roll call vote, 7-0.**

Motion by Mayor Pro Tem Bohn, seconded by Councilmember Gardner to come out of closed session at 8:17 p.m. **The motion carried, 7-0.**

Motion by Councilmember Gipson, seconded by Councilmember Schmenk to execute and file the consent judgment as presented in closed session. **The motion carried by roll call vote, 7-0.**

Other Business

18. Call to the public

Mayor Tobbe opened the call to the public at 8:19 p.m.

Susan Bakhaus spoke again regarding a recent Planning Commission meeting.

Hearing and seeing no additional comment, the call to the public was closed at 8:21 p.m.

19. Adjournment

Motion by Councilmember Gipson, seconded by Councilmember Gardner to adjourn the meeting at 8:21 p.m. **The motion carried (7-0).**



Brighton City Council Special Meeting

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MINUTES OF THE SPECIAL MEETING OF THE BRIGHTON CITY COUNCIL HELD ON DECEMBER 11, 2023

1. Call to order

Mayor Tobbe called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

3. Roll call

Present were Mayor Tobbe, Mayor Pro Tem Bohn, Councilmembers: Albert, Gardner, Gipson, Pettengill, and Schmenk.

Staff Present: City Manager Gretchen Gomolka, City Clerk Tara Brown, Finance Director Elizabeth Gaines, Community Development Manager Mike Caruso, Chief Brent Pirochta, and Attorney Sarah Gabis.

4. Consider approval of the agenda

Motion by Councilmember Gardner, seconded by Councilmember Gipson to approve the agenda as presented. **The motion carried, 7-0.**

5. Call to the public

Mayor Tobbe opened the call to the public at 6:31 p.m. Hearing and seeing no comment, the call to the public was closed.

6. Consider approval of Resolution #2023-23, Veritas Vineyard LLC, d/b/a Grand River Brewer located at 201 W. Main St, Brighton MI, 48116

Motion by Councilmember Gipson, seconded by Councilmember Pettengill to approve of Resolution #2023-23, Veritas Vineyard LLC, d/b/a Grand River Brewer located at 201 W. Main St, Brighton, MI 48116. **The motion carried by roll call vote, 7-0.**

7. Consider entering into closed session to consider the purchase or lease of real property pursuant to MCL 15.268 (1)(d) of the Open Meetings Act

Motion by Councilmember Gardner, seconded by Councilmember Gipson to enter into closed session at 6:33 p.m. to consider the purchase or lease of real property pursuant to MCL 15.268 (1)(d) of the Open Meetings Act. **The motion carried by roll call vote, 7-0.**

Motion by Mayor Pro Tem Bohn, seconded by Councilmember Gardner to come out of closed session at 7:24 p.m. **The motion carried, 7-0.**

8. Call to the public

Mayor Tobbe opened the call to the public at 7:27 p.m. Hearing and seeing no comment, the call to the public was closed.

9. Adjournment

Motion by Councilmember Gipson, seconded by Councilmember Gardner to adjourn the meeting at 7:27 p.m. **The motion carried (7-0).**



Brighton City Council Special Meeting

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MINUTES OF THE SPECIAL JOINT MEETING OF THE BRIGHTON CITY COUNCIL AND DOWNTOWN DEVELOPMENT AUTHORITY HELD ON DECEMBER 11, 2023

1. Call to order

Mayor Tobbe called the meeting to order at 7:32 p.m.

2. Roll call

Present from City Council were Mayor Tobbe, Mayor Pro Tem Bohn, Councilmembers: Albert, Gardner, Gipson, Pettengill, and Schmenk.

Staff Present: City Manager Gretchen Gomolka, City Clerk Tara Brown, Finance Director Elizabeth Gaines, Community Development Manager Mike Caruso, Chief Brent Pirochta, and Attorney Sarah Gabis.

3. Consider approval of the agenda

Motion by Councilmember Gipson, seconded by Councilmember Pettengill to approve the agenda as presented. **The motion carried, 7-0.**

4. Call to the public

Mayor Tobbe opened the call to the public at 7:34 p.m. Hearing and seeing no comment, the call to the public was closed.

5. Consider entering into closed session to consider the purchase or lease of real property pursuant to MCL 15.268 (1)(d) of the Open Meetings Act

Motion by Councilmember Gardner, seconded by Councilmember Albert to enter into closed session at 7:34 p.m. to consider the purchase or lease of real property pursuant to MCL 15.268 (1)(d) of the Open Meetings Act. **The motion carried by roll call vote, 7-0.**

Motion by Mayor Pro Tem Bohn, seconded by Councilmember Gipson to come out of closed session at 8:41 p.m. **The motion carried, 7-0.**

6. Consider possible action resulting from closed session

Motion by Councilmember Gipson, seconded by Councilmember Gardner to approve the development partnership agreement and directed Mayor Tobbe to execute the same. **The motion carried, 7-0.**

7. Call to the public

Mayor Tobbe opened the call to the public at 8:43 p.m.

Susan Bakhaus asked that the previous motion from closed session be repeated.

Hearing and seeing no further comment, the call to the public was closed at 8:43 p.m.

8. Adjournment

Motion by Mayor Pro Tem Bohn, seconded by Councilmember Pettengill to adjourn the meeting at 8:44 p.m. **The motion carried (7-0).**



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

JANUARY 9, 2024

SUBJECT: **CONSIDER APPROVAL OF RESOLUTION 2024-01 TO ACCEPT A PRELIMINARY PROPOSAL FROM DA BUILDING, LLC FOR PURCHASE AND DEVELOPMENT OF VACANT CITY OWNED REAL PROPERTY**

BACKGROUND

- In 2015 parcel 4718-24-400-028, located behind the MJR movie theater was foreclosed upon by Livingston County after 5 years of non-payment of property taxes and a special assessment.
- The parcel was sent to tax foreclosure auction by the county, where it failed to sell, and therefore, ownership defaulted to the City of Brighton.
- Since that time, the parcel, now city-owned, has not been able to generate tax revenue.
- Over the years the city has posted requests for proposals to develop this parcel that proved fruitless.
- At its March 3, 2022 meeting, City Council authorized the reposting of the RFP, for which we have received one proposal which is up for consideration this evening.

ADMINISTRATIVE SUMMARY

- In 2023 the city obtained a valuation of \$1.429 million for the property.
- DA Building, LLC has made a purchase offer equal to the current valuation and proposes construct residential housing in the form of market rate apartments and for sale condominium townhouses. The purchase offer and development proposal are attached.
- Housing is in short supply within the city and demand is high, additionally, development of this parcel will begin generating tax revenue once again.

RECOMMENDATION

It is the recommendation of staff that City Council approve the attached resolution to accept the preliminary proposal from DA Building, LLC and to negotiate the execution of the Standard Purchase Agreement with conditions.

Prepared by: Gretchen Gomolka, City Manager

Reviewed by: City Attorney (Required for all agreements, ordinances, etc.)

Acceptable Form and Ready to Execute

Other _____

Attachments: Resolution 2024-01
 Proposal and sketches
 Standard purchase agreement

**CITY OF BRIGHTON
ACCEPTANCE OF PROPOSAL FOR
PURCHASE AND DEVELOPMENT OF VACANT CITY OWNED REAL PROPERTY
RESOLUTION NO. 2024-01**

A RESOLUTION TO ACCEPT WITH CONDITIONS THE PROPOSAL FROM D.A. BUILDERS, LLC TO PURCHASE AND DEVELOP CITY OWNED PROPERTY ON CHALLIS ROAD

At a regular meeting of the City Council of the City of Brighton, Livingston County, Michigan, held in Council Chambers on the 9th day of January 2024, at 6:30 p.m.

PRESENT:

ABSENT:

The following preamble and resolution were offered by Council Member: _____ and supported by Council Member _____:

WHEREAS, the City of Brighton, County of Livingston, State of Michigan (the "City") is the owner of vacant real property located on Challis Road, Brighton, County of Livingston, State of Michigan, parcel #4718-24-400-028 ("Property"); and

WHEREAS, on March 3, 2022, the City Council authorized publication of a Request for Proposal for the Purchase and Development of Vacant City Owned Real Property; and

WHEREAS, the City of Brighton received a preliminary proposal from DA Building, LLC for residential development on the Property; and

WHEREAS, the City of Brighton finds that there is a public need for the development of market rate housing in the City of Brighton and such residential development is necessary to address the public need and is in the best interest of the public health, safety and welfare; and

WHEREAS, the Property is well suited for such residential development; and

WHEREAS, the preliminary proposal submitted by DA Building, LLC provides for the development of such housing and will assist the City in increasing future revenues to the City and achieving necessary goals and objectives in providing for the health, safety and welfare of the City; and

WHEREAS, a Standard Purchase Agreement for the Property with conditions was received by the City from DA Building, LLC on December 18, 2023; and

WHEREAS, the City finds that it is in the best interest of the health, safety and welfare of the City to accept the preliminary proposal from DA Building, LLC and to negotiate the execution of the Standard Purchase Agreement with conditions.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Council hereby accepts DA Building LLC's preliminary proposal.

2. The City Council hereby directs staff and the City Attorney to negotiate acceptance of the Standard Purchase Agreement with terms and conditions that are acceptable to the City Attorney, including compliance with the City's Ordinances; and

3. The City Council hereby directs staff and the City Attorney to take any actions as are necessary with regard to the review and processing of DA Building, LLC's proposed residential development in accordance with the City's Ordinances.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

Tara Brown, City Clerk

I hereby certify that the attached is a true and complete copy of a resolution adopted by the City Council of the City of Brighton, County of Livingston, State of Michigan, at a regular meeting held on the 9th day of January 2024, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976 and that minutes of the meeting were kept and will be or have been made available as required by said Act.

Tara Brown, City Clerk

RFP CHALLIS ROAD SITE CITY OF BRIGHTON

DA Building has interest in the 22 acres off of Challis Road. We are proposing to do 3 buildings that consist of approximately 175 units in each building. This would cover about 9 acres of the site. These units would be market rate apartments. We would have amenities for the apartments that consist of a pool, club house, some greenspace and onsite parking. These would be more of an upscale apartment building. They are planned so they can be done in three phases. The other 5.5 acres we are proposing to do 90 townhouses. These would be for sale condo at market rate. We believe that the market can support both of these types of products and that Brighton has a demand for them.

ROW

ASSUMED BUFFER / ROW

PHASE 4

PHASE 3

PHASE 2

PHASE 2

+/- 5.5 ACRES
90 TOWNS



175 UNITS

175 UNITS

175 UNITS

+/- 9 ACRES

ASSUMED BUFFER / ROW

ASSUMED BUFFER / ROW

18-24-400-021

18-24-400-022

18-24-400-023

18-24-400-024

18-24-400-032

-033

18-24-400-014

18-24-400-013

18-24-400-041

18-24-400-61-81

Solomon
REAL ESTATE

tah architecture
tah architecture, llc

DA BUILDING
RESIDENTIAL | COMMERCIAL

CHALLIS RD SITE | BRIGHTON, MI

175 UNITS
MULTIFAMILY
TYPE #B OR
TYPE 3A

PHASE II
PHASE I

MULTIFAMILY
175 UNITS
TYPE #B OR #A





LIVINGSTON COUNTY ASSOCIATION OF REALTORS® STANDARD PURCHASE AGREEMENT

PURCHASER (legal name) DA BUILDING LLC Marital Status

PURCHASER (legal name) Marital Status

PURCHASER'S Current Address 29665 WK SMITH DR SUITE A , NEW HUDSON, MI 48165

SELLING OFFICE Solomon Real Estate Phone (248) 921-2896 Office ID 411976

SELLING AGENT Megan Farkas Phone (248) 921-2896 License# 378703

LISTING OFFICE Phone Office ID

LISTING AGENT Phone License#

1. THE PURCHASER hereby offers and agrees to purchase, subject to easements and restrictive covenants of record, the following property in the

CITY VILLAGE TOWNSHIP of BRIGHTON, County of LIVINGSTON

Michigan described as follows: SEC 24 T2N R5E COMM SE COR OF SEC TH S89* 18' 25" W 681.55 FT ALG S/L OF SEC 88* 51' 18" W 365.9 also known as CHALLIS ROAD Tax ID# 18-24-400-028 together with all fixtures and appurtenances in or on the premises (unless specifically excluded herein) including, if any, lighting fixtures, shades, blinds, drapery/curtain and drapery/curtain hardware and rods, attached mirrors and all bathroom mirrors, attached generators, attached humidifier, ventilating fixtures, screens, storm doors and windows, garage door openers and transmitters, water softener (rental units excepted) and water treatment systems, built in appliances, heating unit including wood stove and fireplace gas logs, mail box, awnings, all TV antennae, landscaping, flagpole, all hardwired audio/security systems and related equipment, central vacuum and attachments, as well as the following personal property for which a bill of sale shall be given.

Included:

Excluded:

and to pay therefore the sum of One Million Four Hundred Twenty Nine Thousand Dollars DOLLARS (\$1,429,000.00).

Unless otherwise noted, Seller shall deliver a warranty deed conveying marketable title to Purchaser at closing.

2. THIS OFFER IS MADE SUBJECT TO FINANCING TERMS AND SATISFACTORY COMPLETION OF THE FOLLOWING CONDITIONS AS MARKED

- a) CASH SALE: Payment of purchase money to be made by wire transfer or equivalent funds.
b) CASH SALE WITH NEW MORTGAGE: This Purchase Agreement is contingent upon Purchaser being able to secure a Conventional FHA 203K VA Rural Development Seller Financed/Other (See attached LCAR Financing Addendum) mortgage in the amount of \$ OR % of sale price for a term of years and pay \$ OR % of sale price down, plus mortgage costs, prepaid items and adjustments in cash.

Purchaser's Initials DA Seller's Initials Page 1 of 6

Purchaser further agrees to apply for such mortgage within _____ calendar days from acceptance of this Purchase Agreement at Purchaser's own expense and shall comply with all requirements of said lending institution in a timely manner. If a loan approval from the lending institution cannot be obtained at no fault of the Purchaser within _____ days from the date of acceptance of this Purchase Agreement, this Purchase Agreement may be declared null and void by the Seller and Deposit shall be returned to Purchaser. Receipt of loan approval from the Purchaser's lending institution within time limit will eliminate this contingency.

3. EARNEST MONEY DEPOSIT The Broker is hereby authorized to present this offer and the Deposit of \$0.00 _____:

CASH CHECK # _____ OTHER _____.

To be held by Selling Broker OR _____, which Deposit shall be applied to the purchase price at closing.

If held by Selling Broker, Broker shall comply with the Michigan Occupational Code and related rules.

If the sale is not consummated, any release of the Purchaser's Deposit will require a mutual release of the Purchase Agreement signed by all parties.

4. OCCUPANCY The property is Owner occupied Tenant occupied Vacant.

(Check one box below)

To be given at closing.

Seller shall deliver and Purchaser shall accept possession of said property subject to rights of present tenants, if any. If Seller occupies property, it shall be vacated and keys surrendered _____ calendar days after closing per the terms of an occupancy disbursement form. From the day after closing through the day of vacating the property as agreed, Seller shall pay as indicated _____ per day. The Escrow Agent shall retain from the amount due to Seller at closing the amount equal to _____ days of said occupancy charge, paying to Purchaser the amount due and returning to Seller the unused portion as determined by date property is vacated and keys surrendered. The parties acknowledge that the Brokers and/or Escrow Agent have no obligation implied or otherwise for seeing that the property is vacated on the date specified or for the condition of the property, and may be acting only as an Escrow Agent holding the occupancy deposit. From the date of closing, Purchaser will maintain hazard insurance on the property and Seller will maintain insurance for liability and Seller's personal property. Purchaser is not responsible for damage or injury to Seller or Seller's personal property. Seller will not be required to pay for losses covered by Purchaser's hazard insurance policy. However, Seller will pay the deductible on Purchaser's hazard insurance for any claims made while Seller is in possession which are attributable to Seller's acts or omissions.

See attached LCAR Occupancy Addendum

5. PROPERTY INSPECTION(S) Purchaser shall have the option to inspect and examine the property at Purchaser's expense. This contingency expires on or before 30 days after acceptance of this Purchase Agreement. In the event Purchaser neither expressly waives this contingency nor provides notice pursuant to subparagraphs (a) or (b) below, this contingency shall be deemed waived. Purchaser's examination may include, but is not limited to, inspections and tests relating to building structure, mechanical systems, environmental items, water, septic, pest or any other matter Purchaser may deem necessary for Purchaser's intended use. Purchaser shall restore the property to its prior condition after examination. If Purchaser is not satisfied with the results of any examination for any reason during the inspection period, Purchaser will notify Seller in writing that Purchaser:

(a) Declares this Purchase Agreement null and void and Deposit will be returned to Purchaser

OR

(b) Purchaser proposes an amendment to this Purchase Agreement. Purchaser and Seller have _____ days to mutually agree upon an amendment, or this Purchase Agreement may be declared null and void by either party and the Deposit will be returned to the Purchaser.

PURCHASER ACKNOWLEDGES THAT BROKER/AGENT HAS RECOMMENDED PURCHASER OBTAIN AN INSPECTION OF THE PROPERTY.

Purchaser does not choose to inspect or examine the property and accepts the property AS IS.

Purchaser's Initials DA Seller's Initials _____ Page 2 of 6

6. TITLE INSURANCE Seller shall provide Purchaser at Seller's expense an owner's policy of title insurance from a title company of Seller's choice in the amount of the purchase price. Said policy to be: (Check one box below)

With Standard Exceptions

Without Standard Exceptions (if chosen owner's policy is unavailable then a With Standard Exceptions Policy shall be issued)

Expanded Coverage (if chosen owner's policy is not available then a Without Standard Exceptions Policy shall be issued)

(Check one box below)

Seller Purchaser to pay cost of survey if required to obtain chosen owner's policy.

Seller will apply for a commitment for title insurance within 7 calendar days after the date of acceptance of this Purchase Agreement. Upon receipt of the commitment, Purchaser shall have 7 calendar days to provide Seller with written notice of any objections. Seller will then have 30 days after receiving written notice to remedy the claimed defects. If the Seller is unable or unwilling to remedy the defects within 30 days, this Purchase Agreement shall terminate and the Deposit shall be returned to Purchaser or the Purchaser may waive the defect and complete this transaction.

When applicable, Purchaser may obtain a loan policy from a title company of Purchaser's choice.

7. DEFAULT Failure to perform any obligation of this Purchase Agreement by Seller or Purchaser shall constitute default. If Purchaser defaults, Seller may, at Seller's option, terminate the Purchase Agreement and pursue all available legal and equitable remedies or seek forfeiture of the Deposit as liquidated damages. If Seller defaults, Purchaser may pursue all available legal and equitable remedies and may also terminate the Purchase Agreement and seek a refund of the Deposit.

8. CLOSING COSTS Unless otherwise provided in this Purchase Agreement, it is agreed that Seller shall pay all state and county transfer taxes and costs required to convey marketable title. Unless otherwise provided in this Purchase Agreement, Purchaser shall pay the cost of recording the deed and/or security interest, all mortgage closing costs required by lender, and any purchaser closing fee charged by the title insurance company/agency that issues the loan policy in a lender financed sale. Seller and Purchaser shall split equally any closing fees charged by the title insurance company/agency in a cash or seller financed sale. Any transfer or status letter fees charged by the homeowners or condominium association shall be split equally between Purchaser and Seller.

At closing, Seller agrees to contribute up to \$ 0.00 _____ or _____ % of the purchase price toward Purchaser's closing costs, prepaid items, property tax prorations, escrows, insurance and/or any other fees allowable by lender.

9. PRORATED ITEMS Seller shall be responsible for all real estate taxes for years prior to the year in which the closing occurs and the Purchaser shall be responsible for all real estate taxes for years after the year in which the closing occurs. Taxes for the year in which the closing occurs shall be prorated such that Seller is responsible for that portion of the taxes through and including the date of closing. For purposes of this paragraph, taxes shall be deemed paid in advance based on due date of July 1 for summer taxes (covering the period July 1 through the following June 30) and December 1 for winter taxes (covering the period December 1 through the following November 30).

Purchaser shall assume the balance of all assessments which have been assessed or levied against the property by any public agency, taxing unit, homeowner's association, or condominium association. Any rent, homeowner's association dues, condominium dues, or assessment installment payments not otherwise included in the tax bills shall be prorated and adjusted to the date of closing.

In lieu of the tax proration method set forth in paragraph 9 above, see attached Specific Contingencies/Terms Addendum.

10. FEES OR CONSIDERATIONS Purchaser and Seller hereby acknowledge that Broker(s) may accept a fee or consideration with regard to listing agreement, buyer broker contract, placement of a home warranty, or any other ancillary products or services arising from this transaction.

Purchaser's Initials DA Seller's Initials _____ page 3 of 6

0c07037

11. CONDITION Until possession is delivered, Seller agrees to keep the property in substantially the same condition as of the date of this Purchase Agreement and agrees to maintain heating, well, septic, plumbing, electrical system, landscape irrigation system and other equipment in normal working order; to keep the roof watertight and maintain the grounds. Seller agrees to keep all utility services operating until possession is delivered. Upon vacating the property, Seller agrees to remove all debris and leave the property in "broom clean" condition. In the event the property herein has been winterized, it shall be the obligation and expense of Seller to de-winterize the property prior to closing. Purchaser has a right to a walk-through inspection of the property within 72 hours prior to closing. This walk-through will provide Purchaser with an opportunity to confirm that this paragraph has been complied with and should not be deemed an opportunity to renegotiate the terms and conditions of this Purchase Agreement.

12. HEIRS, SUCCESSORS AND ASSIGNS This Purchase Agreement binds Seller, Seller's personal representatives, heirs, and anyone succeeding to Seller's interest in the property. Purchaser shall not assign this Purchase Agreement without Seller's prior written consent.

13. RELEASE Purchaser and Seller acknowledge that the Broker(s), their respective agents, employees and representatives have made no representations concerning the condition of the property covered by this Purchase Agreement or marketability of title. Purchaser and Seller release, indemnify and hold harmless the Brokers, their respective agents, employees and representatives, with respect to all claims arising out of or related to this Purchase Agreement, addenda and/or counter-offers. This release also includes, but is not limited to, all claims arising from any purported representations as to the physical and environmental condition of the property or marketability of title and special assessments covered by this Purchase Agreement. Purchaser and Seller acknowledge that Broker(s), their respective agents, employees and representatives are not acting as appraisers, builders, accountants, environmentalists, engineers, surveyors, inspectors, tax advisors or attorneys.

14. LIMITATION Purchaser and Seller agree any and all claims and/or lawsuits which they may have against the Brokers, their respective agents, employees and representatives relating to their services must be filed no more than 6 months after the date of closing of the transaction described in this Purchase Agreement. Purchaser and Seller waive any statute of limitations to the contrary.

15. ELECTRONIC SIGNATURES/COMMUNICATION Purchaser and Seller acknowledge and agree that this Purchase Agreement, any amendment or modification of this Purchase Agreement and/or any written notice or communication in connection with this Purchase Agreement may be delivered to Seller in care of Listing Broker and Purchaser in the care of the Selling Broker via electronic mail or by facsimile. Any such communication shall be deemed delivered at the time it is sent or transmitted. The parties agree that the electronic signatures and initials shall be deemed to be valid and binding upon the parties as if the original signatures or initials were present in the documents in the handwriting of each party. Seller represents and warrants an electronic email address has been provided to the Listing Broker from which Seller may receive electronic mail. Purchaser represents and warrants an electronic email address has been provided to Selling Broker from which Purchaser may receive email.

STIPULATION FOR ELECTRONIC STORAGE OF INSTRUMENTS AND DOCUMENTS The undersigned Seller hereby stipulates and acknowledges that all documents relating to this Agreement and all records and correspondence relating thereto, whether now existing or created hereafter, may be stored as electronic images and the originals of the electronically stored documents may be destroyed. The electronic images shall be deemed to serve as the original documents thereafter.

16. COUNTERPARTS This Purchase Agreement may be signed in any number of counterparts with the same effect as if the signature of each counterpart were upon the same instrument.

17. GENERAL PROVISIONS

- a. **This is a legally binding contract and all parties acknowledge that they have been advised to have an attorney review the transaction on their behalf.**
- b. Principal Residence Exemption(PRE):

The Seller represents the PRE **IS IN EFFECT** for this property and taxes will be prorated accordingly **OR**

IS NOT IN EFFECT for this property and taxes will be prorated accordingly.

Purchaser's Initials DA Seller's Initials _____ Page 4 of 6

18. ADDITIONAL TERMS/CONDITIONS (Check if applicable)

- Agency Disclosure Form attached.
- Seller's Disclosure Form received.
- Lead-Based Paint Disclosure received and is a part of this Agreement.
- Fuel in tank(s) Is included in the sale price Is not included in the sale price and fuel shall be prorated at time of Possession.
- Escrow Agent shall retain \$300.00 from Seller at closing for water/sewer charges to date of occupancy, if applicable. When the final bill is paid any unused portion will be returned to Seller.
- Contingency on sale and closing of Purchaser's property (no offer pending) (See attached LCAR Contingent on Sale and Closing of Purchaser's Property Addendum).
- Contingency on closing of sale on Purchaser's property (sale pending) (See attached LCAR Contingent on Sale and Closing of Purchaser's Property Addendum).
- This is a back-up offer (See attached Specific Contingencies/Terms Addendum).
- Appraisal – This Purchase Agreement is subject to the property appraising at purchase price or higher. Said appraisal to be paid for by Purchaser. If property does not appraise at purchase price or higher, Purchaser shall have the option to declare this Purchase Agreement null and void and Deposit shall be returned to Purchaser.
- Subject property abuts a private road which has not been accepted as a public road and is not required to be maintained by the County Road Commission or other public or municipal body.
- Offer is void if not accepted by **Date** _____ **Time** _____ Eastern Time.
- Closing of this purchase to be on or before _____ at Listing Broker's office or location of Seller's choice.
- Home Warranty Excluded Included To be paid for by _____.
- Attorney package of the closing documents required at least 3 days prior to closing.
- FHA or VA Financing Addendum required (See attached addendum).
- Arbitration Addendum attached
- Other addendum(s) attached _____.

19. LAND DIVISION ACT (For unplatted land only) Seller and Purchaser agree that the following statements shall be included in the deed at the time of delivery:

- (a) The grantor grants to the grantee the right to make _____ (insert "All", "Zero" or a specific number, as appropriate) division(s) under section 108 of the Land Division Act, MCL 560.108.
- (b) This property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

CAUTION: If the space contained in subparagraph (a) above is left blank on the deed, the deed will NOT grant Purchaser the right to any divisions.

20. OTHER TERMS/CONDITIONS

Closing on the Property is subject to the express conditions precedent of: (1) re-zoning and all municipal approvals for Purchaser's anticipated multi-family use; and (2) release and waiver of restrictions contained in the Construction Operation and Reciprocal Easement Agreement, as amended, and that encumbers the Property. Each of the foregoing will be deemed satisfied or waived in the sole and absolute discretion of the Purchaser. BUYER HAS THE RIGHT TO TERMINATE AGREEMENT IF THEY CANNOT OBTAIN APPROVALS NEEDED TO PROCEED. CLOSING TO TAKE PLACE 14 DAYS AFTER APPROVALS ARE DONE.

Purchaser's Initials DA Seller's Initials _____ Page 5 of 6



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

NOVEMBER 2, 2023

SUBJECT: **CONSIDER APPROVAL OF A METRO ACT UNILATERAL FORM RIGHT-OF-WAY TELECOMMUNICATIONS PERMIT FOR LIVINGSTON COUNTY FIBER NETWORK**

BACKGROUND

- Livingston County has partnered with Livingston County Fiber Network to build a county-wide fiber infrastructure network that will create opportunities for greater expansion of internet and communication solutions for county residents.
- Additionally, this network will allow for greater connectivity between local units of government and the county.
- The county will be utilizing American Rescue Plan Act (ARPA) funds to finance the project. Expansion of broadband networks was one of the core uses that ARPA was designated for when it was established by the federal government.

ADMINISTRATIVE SUMMARY

- The State of Michigan's Metropolitan Extension Telecommunication Rights-of-way Oversight (METRO) Authority was established to assist telecommunication providers to cut through red tape and obtain permits without having to pay excessive fees or endure unnecessary delays.
- The applicant must follow all METRO Act rules including restoration of property.
- The applicant has completed the attached state approved METRO Unilateral Form Right-of-way Telecommunications Permit for consideration of City Council
- The applicant has also provided sketches of its construction phase 3, that will be within the city limits, as well as a certificate naming the City of Brighton as an additional insured entity on its insurance policy.

RECOMMENDATION

It is the recommendation of staff that City Council approve the attached METRO Act Unilateral Form authorizing a right-of-way telecommunications permit to Livingston County Fiber Network and authorize the City Manager to execute.

Prepared by: Gretchen Gomolka, City Manager

Reviewed by: City Attorney (Required for all agreements, ordinances, etc.)

Acceptable Form and Ready to Execute

Other _____

Attachments: Unilateral Form Right-Of-Way Telecommunications Permit
 Construction Phase 3 Sketches
 Insurance Certificate

METRO Act
Unilateral Form
Revised 12/06/02

**RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT**

This permit issued this 16th day of November, 2023 by The City of Brighton.

1 Definitions

- 1.1 Date of Issuance shall mean the date set forth above.
- 1.2 Manager shall mean Municipality's [Mayor/Manager/Supervisor/Village President] or his or her designee.
- 1.3 METRO Act shall mean the Metropolitan Extension Telecommunications Right-of-Way oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.4 Municipality shall mean **The City of Brighton**, a Michigan municipal corporation.
- 1.5 Permit shall mean this document.
- 1.6 Permittee shall mean Livingston County Fiber Network organized under the laws of the State of Michigan whose address is **300 E. Grand Ave., Ste 101, Howell Michigan 48843.**
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public Right-of-Way does not include a federal, state, or private right-of-way.
- 1.8 Telecommunications Facilities or Facilities shall mean the Permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communications device.
- 1.9 Term shall have the meaning set forth in Part 7.

2 Grant

- 2.1 Municipality hereby issues a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way identified on Exhibit A to construct, install, and maintain Telecommunication Facilities on the terms set forth herein.
- 2.1.1 Exhibit A may be modified by Manager upon written request by Permittee.
- 2.1.2 Any decision of Manager on a request by Permittee for a modification may be appealed by Permittee to Municipality's legislative body.
- 2.2 Overlashing. Permittee shall not allow the wires or any other facilities of a third party to be overlashed to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.
- 2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities, and other providers.

3 Contacts, Maps and Plans

- 3.1 Permittee Contacts. The names, addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:
- 3.1.1 The address, e-mail address, phone number and contact person (title or name) at Permittee's local office (in or near Municipality) is **Kristopher Tobbe, 304 E grand River Ave., Howell, MI 48843, (517) 540-8811,KTobbe@livgov.com**.
- 3.1.2 If Permittee's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is _____.
- 3.1.3 The name, title, address, e-mail address and telephone numbers of Permittee's engineering contact person(s) with responsibility for the

design, plans and construction of the Telecommunication Facilities is Enrique Pinava, 3100 Lexington Glen, Monclova, OH 43542, epinava@eX2thechology.com

3.1.4 The address, phone number and contact person (title or department) at Permittee's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is **Kristopher Tobbe, 304 E grand River Ave., Howell, MI 48843, (517) 540-8811,KTobbe@livgov.com.**

3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.

3.1.6 Permittee shall immediately notify Municipality in writing as set forth in Part 12 of any inaccuracies or changes in the preceding information.

3.2 Route Maps. Within ninety (90) days after the substantial completion of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).

3.3 As-Built Records. Permittee, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Permittee shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 Use of Public Right-of-Way

4.1 No Burden on Public Right-of-Way. Permittee, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality will attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

- 4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3 Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Permittee shall pay the costs Municipality incurred for such repair.
- 4.4 Marking. Permittee shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Permittee's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.
- 4.5 Tree Trimming. Permittee may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Permittee shall dispose of all trimmed materials. Permittee shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all

trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.

- 4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Permittee shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.
- 4.7 Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").
- 4.7.1 The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.
- 4.8 Compliance with Laws. Permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.
- 4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way,

Permittee shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality, applying reasonable engineering standards, shall specify.

- 4.10 Relocation. If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality, applying reasonable engineering standards, shall specify. The work shall be completed within a reasonable time period.
- 4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality will attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.12 Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 174 of the Public Acts of 2013, as amended, MCL § 460.721 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.13 Underground Relocation. If Permittee has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expense.
- 4.14 Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.

5 Indemnification

- 5.1 Indemnity. Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively “claim” for this Part 5) (including, without limitation, attorneys’ fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Permittee’s use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.
- 5.2 Notice, Cooperation. Municipality will notify Permittee promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality will cooperate with Permittee in every reasonable way to facilitate the defense of any such claim. Municipality will consult with Permittee respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3 Settlement. Municipality will not settle any claim subject to indemnification under this Part 5 without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any claim against Municipality for which Permittee is responsible hereunder.

6 Insurance

- 6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality’s acceptance of such self-insurance shall not be unreasonably withheld.
- 6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).
- 6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars

(\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.

6.1.3 Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).

6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.

6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.

6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.

6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers'

compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).

- 6.6 Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:

7.1.1 5 Years [five years or less] from the Date of Issuance; or

7.1.2 When the Telecommunication Facilities has not been used to provide telecommunications services for a period of one hundred and eighty (180) days by Permittee or a successor or an assignee of Permittee; or

7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or

7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or

7.1.5 Unless Manager grants a written extension, one year from the Date of Issuance if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Date of Issuance if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

8.1 Municipal Requirement. Municipality may require Permittee to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended [MCL § 484.3115(3)].

9 Fees

9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

10.1 Removal; Underground. As soon as practicable after the Term, Permittee or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

10.2 Removal; Above Ground. As soon as practicable after the Term, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Permittee as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Permittee may assign or transfer its rights under this Permit, or the persons or entities controlling Permittee may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Permittee's business, or by other means, subject to the following:

- 11.1 No such transfer or assignment or change in the control of Permittee shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Date of Issuance until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.
- 11.2 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,
- 11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and
- 11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.
- 11.3 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

- 12.1 Notices. All notices under this Permit shall be given as follows:
- 12.1.1 If to Municipality, to Tara Brown, 200 N. First Street, Brighton, MI, 48116 with a copy to Kristopher Tobbe, 304 E Grand River Ave., Howell, MI 48843, (517) 540-8811, KTobbe@livgov.com.
- 12.1.2 If to Permittee, to Kristopher Tobbe, 304 E Grand River Ave., Howell, MI 48843, (517) 540-8811, KTobbe@livgov.com, with a copy to Enrique Pinava, 3100 Lexington Glen, Monclova, OH 43542, epinava@eX2thechology.com
- 12.2 Change of Address. Permittee and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

- 13.1 No Cable, OVS. This Permit does not authorize Permittee to provide commercial cable type services to the public, such as “cable service” or the services of an “open video system operator” (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).
- 13.2 Effectiveness. This Permit shall become effective when Permittee has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acknowledgement of receipt, below.
- 13.3 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].
- 13.4 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Permittee and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.
- 13.5 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

City of Brighton

By: _____
Its: **City Manager**
Date: **November 16, 2023**

Acknowledgement of Receipt: Permittee acknowledges receipt of this Permit granted by Municipality.

Livingston County Fiber Network

By: **Kristopher Tobbe**
Its: **Chief Information Officer**
Date: _____

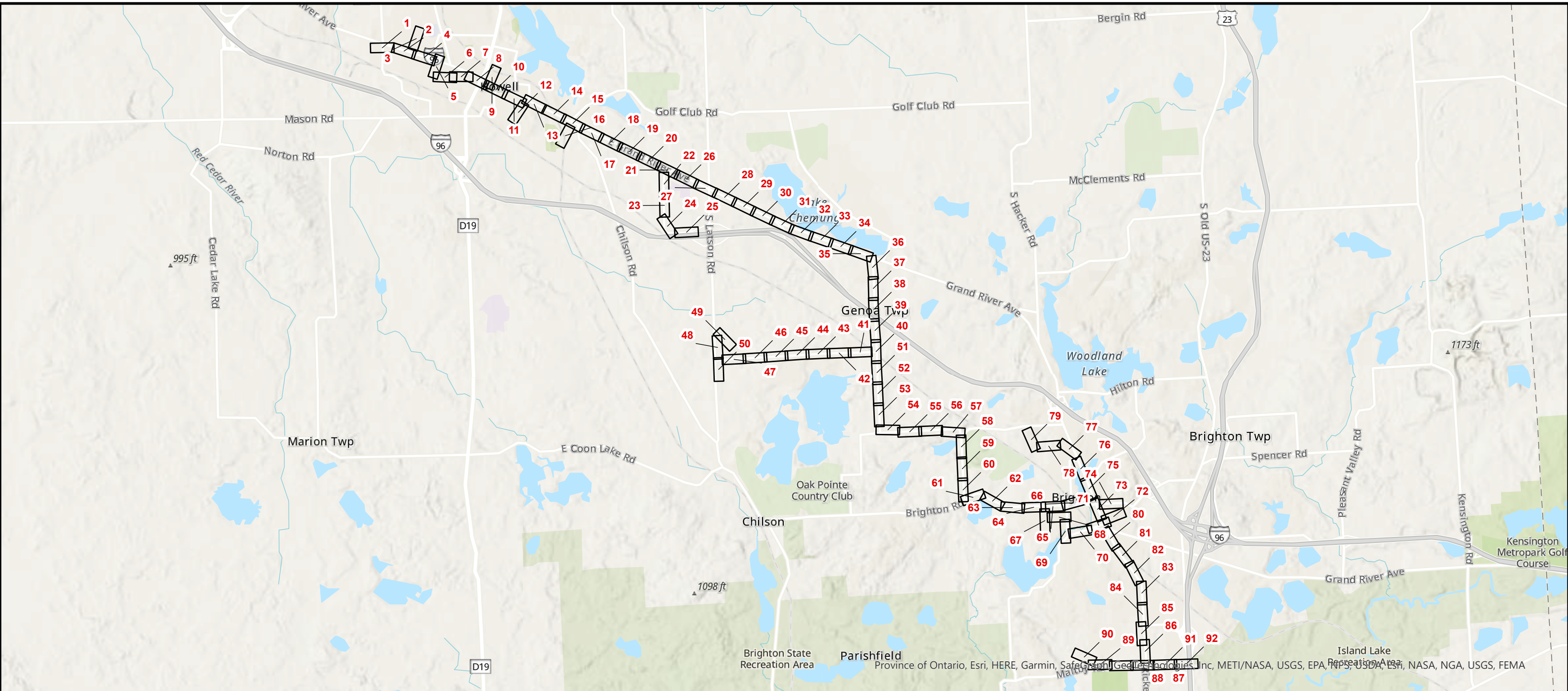
Exhibit A

Public Right-of-Way to be Used by Telecommunication Facilities

Exhibit B










Bond

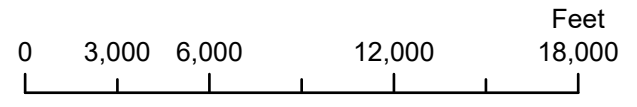
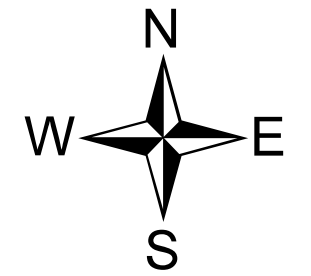
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Livingston Co., MI

Construction Phase 3

-  Central Office
 -  Cabinet
 -  Handhole
 -  Duct w/ Count & Length
 -  Stationing Points @ 100'
 -  Dimensions
 -  ROW
 -  Road Centerline
 -  Edge of Pavement
- All Duct is (2) 4x18/14 mm HDPE



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General Notes

1. In the event that discrepancies between the documents and the site conditions are discovered before the bids are submitted, the Contractor shall immediately report them to the Engineering Consultant in writing.
2. All work shall be performed in accordance with specifications of the Authorities having jurisdiction in the work zone. Contractor shall have copies of the approved Permit at the jobsite at all times.
3. Safety precautions shall be followed at all times to prevent accidents to the Contractor's personnel and to the Owner's staff and agents.
4. Contractor shall be responsible for, and replace, repair, make good, and pay for damages caused by their actions.
5. Contractor shall be responsible for protection of tools and material and shall assume full responsibility for loss, at no expense to the Owner.
6. All construction crews need to have their vehicles clearly labeled with their company name. All vehicles shall be legally parked or contained with a barricaded work zone at all times.
7. CONTRACTOR shall avoid boring through or otherwise installing facilities through existing sewer pipes and manholes. Any damages to sewer facilities shall be remedied to the satisfaction of the Permitting entity immediately.
8. CONTRACTOR shall correct any settlement of patching, panel replacements, or earth backfill associated with any operation related to the installation of CONTRACTOR facilities.
9. CONTRACTOR shall be responsible for arranging and managing all utility locates and the removal of all utility locate flags from the site upon completion of work.
10. CONTRACTOR agrees to and understands the following requirements along with any other state, federal, or local laws, ordinances, codes, or regulations that may be applicable.
11. Potholing:
 - i. All holes in pavements, sidewalks, driveways or other similar hard surfacing shall be neatly cut core holes not greater than 12" in diameter or square
 - ii. Upon completion of locating subsurface facilities, the subsurface void shall be backfilled with flowable fill or a material acceptable to the Permitting entity. All subsurface backfill shall be cohesive, self-compacting materials capable of bonding to or expanding to create a reasonably impermeable connection with surrounding materials and provide suitable support to avoid settlement, water migration, or pavement deflection. Fill to the bottom of pavement or within 12" of the top of the surrounding ground in turf/soft-surfaced areas. Backfilling operations shall correct any voids due to sloughing of surrounding materials.
 - iii. The finished surface shall be patched or removed and replaced as outline below within 48 hours for core hole patching, 72 hours for arterial and collector roadways and within 5 days on local and residential roadways.
 - iv. All grout used for core hole filling shall be a commercially available, non-shrink construction grout
 - v. All concrete used for panel replacements shall be an approved, plant produced concrete mix
 - vi. All concrete panel replacement joints or asphalt patches larger than a core hole shall be sealed along the perimeter using a bituminous tar sealant acceptable to the Permitting entity.
13. Concrete Roadways, Parking Lanes, Driveways, and Parking Lots
 - i. Single core hole >4' away from a joint - patch hole within 48 hours using grout struck off 0-1/4" below top of pavement
 - ii. Replace 1/2 panel (width or length) for any panels having:
 - Core holes within 4' of a joint.
 - Multiple core holes in the same half of the panel regardless of location to the joint
14. Core holes that are expanded to allow for adjacent investigations
 - iii. Replace the full panel using an approved, plant produced concrete mix for any panels having core holes in 3 or 4 quadrants of the panel

15. Asphalt-surfaced or full depth Asphalt Roadways, Parking Lanes, Driveways, and Parking Lots
 - ii. patch hole within 48 hours using a grout struck off 0-1/4" below top of pavement or a combination of grout topped with a 1 1/2"-2" asphalt hot mix or cold mix patch.
16. Sidewalks
 - i. Replace full panel for any panels disturbed by subsurface investigation work.
17. Grassed/Soft Surfaced Area
 - i. Cap the subsurface backfill with 12" of compacted topsoil covered with seed and erosion control blanket or sod the area as directed by the Permitting entity.

Paved Road Break Notes for Livingston County Road Commission Roads:

1. The pavement break must be a minimum of 30' long and extend to the full width of the lane.
2. The pavement restoration shall consist of a minimum of 3" HMA, 7" 21AA limestone, and 6" CL II sand per current MDOT specifications for construction.
3. Final pavement restoration should be completed within 48 hours of the pavement break.
4. Tthe utility company/contractor shall maintain the temporary patch.
5. The open cut of the road must be performed before October 15, and restored within 48 hours. If it cannot be performed before October 15, the applicant and/or contractor must wait until after May 1 of the succeeding year to start the work covered in this permit.



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SUBMITTALS		
DATE	DESCRIPTION	REV
10/5/23	PERMITS	0

LIVINGSTON
COUNTY FIBER
DESIGN

PROJECT NO.
22-304

SHEET TITLE
GENERAL
NOTES

ENGINEER STAMP

SHEET NUMBER

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GENERAL SAFETY REQUIREMENTS

1. Workers shall not be under the influence of intoxicants, drugs, or any substance which may impair sense of alertness.
2. Scuffling, horseplay, practical jokes, and all conduct of a similar nature is prohibited.
3. Indecent or abusive language is prohibited.
4. Good housekeeping is of the utmost importance in the prevention of accidents and fires. Workers shall keep their work areas and vehicles in a neat and orderly condition. Clean-up shall be conducted on a daily basis.
5. Leaving waste or garbage in and around work area is prohibited. Each contractor shall provide its own refuse containers at the work site, which shall be dumped on a daily basis.
6. Established right of way, property and building access routes shall be used. Care shall be taken to avoid any damage to or disruption of private or public property.
7. Objects which constitute a slipping or tripping hazard shall not be left in walking areas.
8. Workers shall not wear or use anything which impairs vision or hearing. Personal radios and headphones are prohibited.
9. All power line wires shall be considered dangerous, and of high voltage, unless informed to the contrary by proper authority.
10. If equipment is left with the engine running, it must be in neutral gear with brakes set; and if equipped with blade, pan, or bucket, all equipment must be lowered to the ground.
11. All machinery and equipment left on an unattended right-of-way shall be left inoperable and secured against movement with prior written approval from the property construction site owner.
12. Workers shall not create and leave any condition at the work site that would interfere with water drainage.
13. Safeguards and safety signs shall be kept in place and in good condition.
14. Hard hats and safety shoes/composite toed boots are required upon entering any work site. Tennis shoes are not permitted. Other appropriate safety equipment (glasses, goggles, gloves, face shields) must be worn when regulations apply. When working in substations, Fire Resistant (FR) Clothing shall be worn at all times.
15. Prior to starting work, each crew shall have a list of emergency numbers and addresses (hospital, police, fire department, etc.) on site to contact, when necessary.
16. Each crew shall possess and maintain an OSHA approved First-aid kit (36 unit minimum), with mandatory snake bite kit.
17. The CONTRACTOR shall immediately report any spills of HAZMAT materials, such as but not limited to (gasoline, diesel, hydraulic fluid, etc.), to the Engineer and all appropriate authorities. HAZMAT clean-up equipment and kits are required to be on hand at all times on every construction site.
18. The CONTRACTOR shall have and maintain up to date Material Safety Data Sheets "MSDS" on every construction site.
19. The CONTRACTOR must adhere to all pertinent OSHA safety regulations and requirements as well as any other city, county, state, utility or national regulations that apply at all times. It is the CONTRACTORS responsibility to investigate and become certified where applicable. The CONTRACTOR shall contact each jurisdictional agency for safety requirements/certifications. Any near miss incident or accidents shall be immediately reported to the Engineer and all appropriate authorities.
20. The CONTRACTOR shall provide and maintain proper fire extinguishing equipment at every construction site. The equipment shall be made available in all OSP operations. The CONTRACTOR shall follow all city, county, state, utility, national and all other pertinent governing fire safety action and prevention codes and regulations.



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SUBMITTALS		
DATE	DESCRIPTION	REV
10/5/23	PERMITS	0

LIVINGSTON
COUNTY FIBER
DESIGN

PROJECT NO.
22-304

SHEET TITLE
**GENERAL
NOTES**

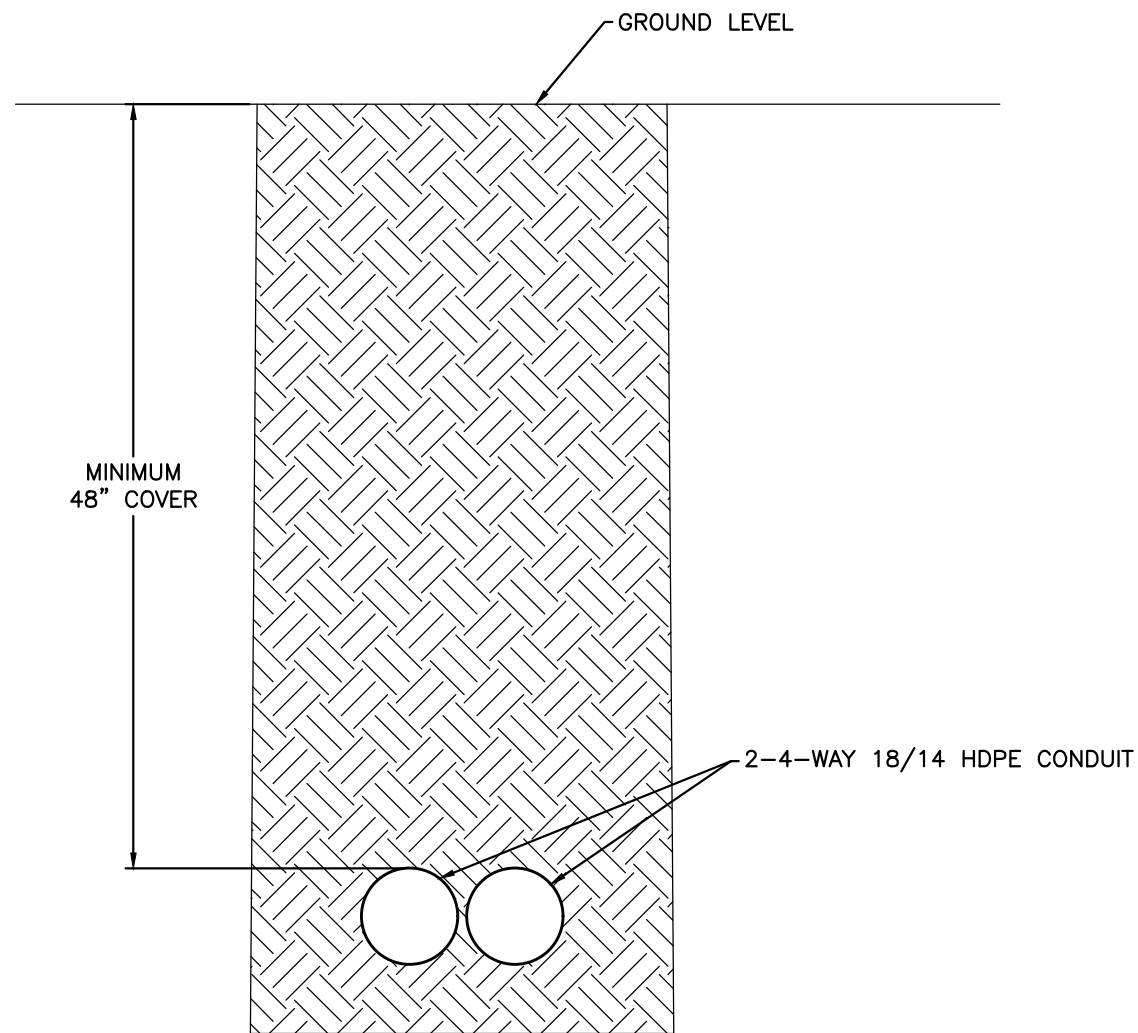
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NOTES:

1. ALL ROADWAY WORK SHALL FOLLOW MAINTENANCE OF TRAFFIC REQUIREMENT, PER THE CURRENT MMUTCD.
2. DIRECTIONAL DRILLING SHALL BE UTILIZED AS DESIRED BY CONTRACTOR TO MINIMIZE IMPACT TO TREES AND HORTICULTURAL ELEMENTS.



TYPICAL MAINLINE BORE DETAIL

NTS



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LIVINGSTON COUNTY FIBER DESIGN

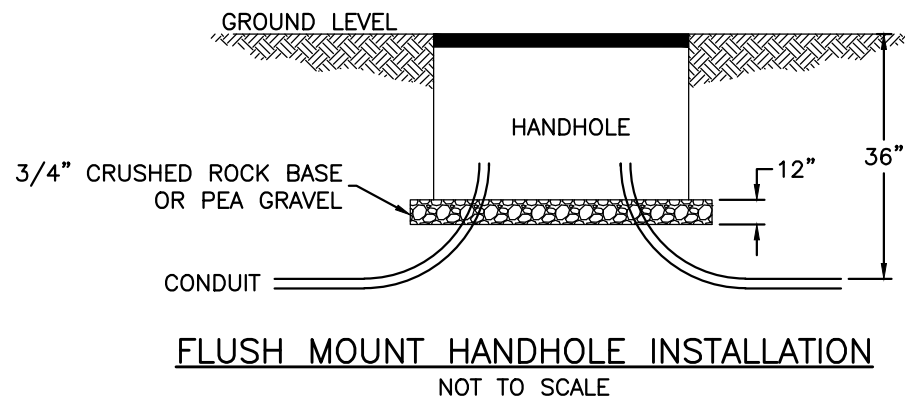
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TYPICAL BORE DETAILS

ENGINEER STAMP

SHEET NUMBER

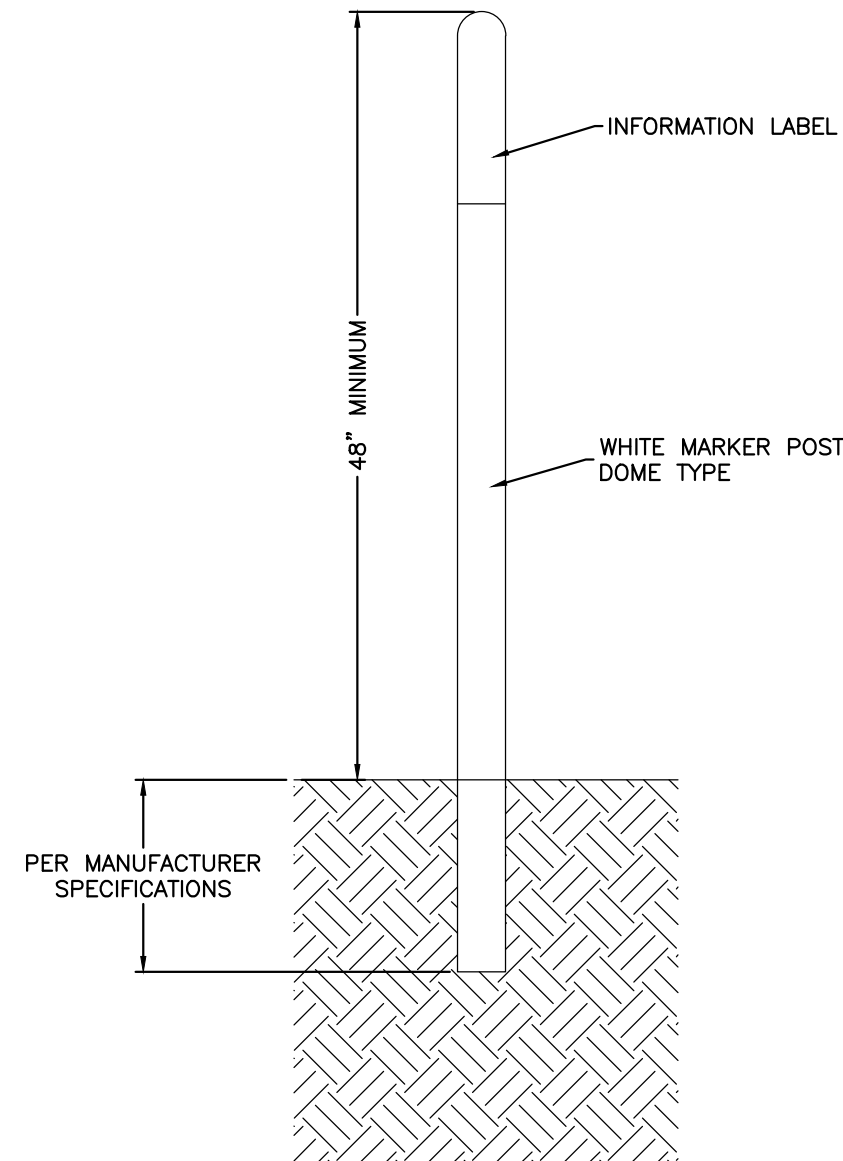
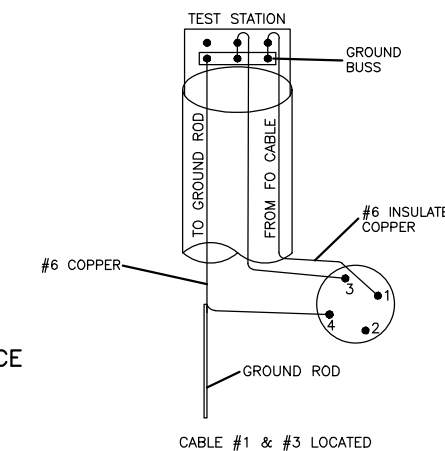
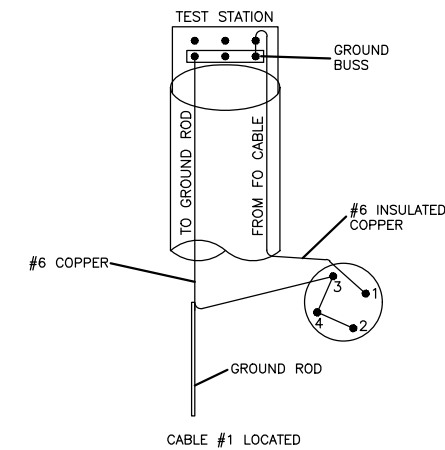
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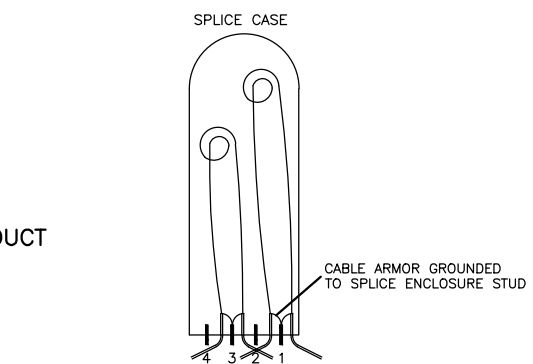
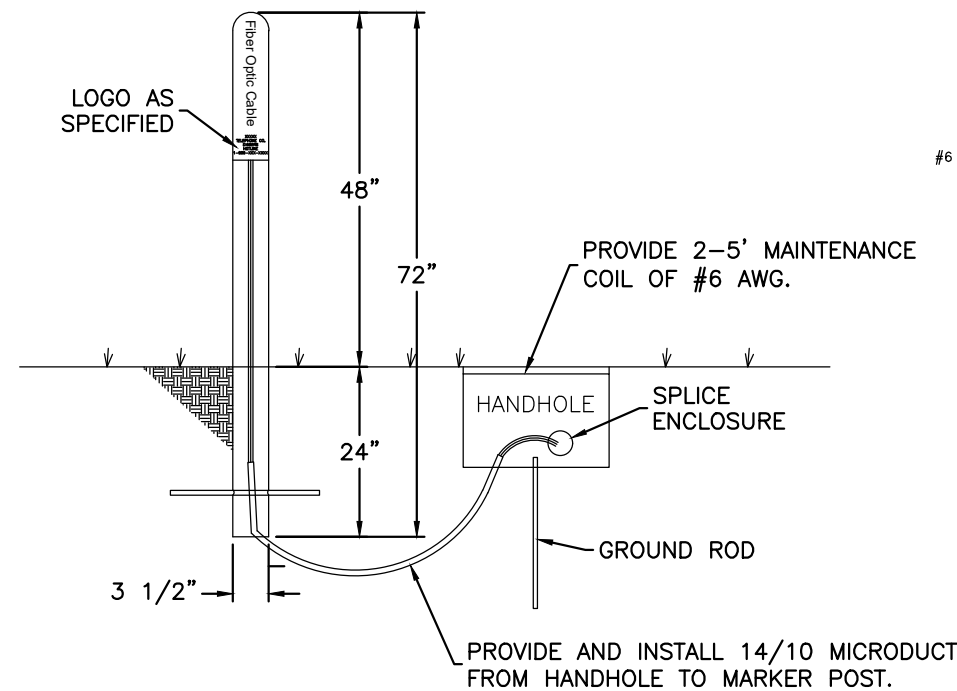
CONDUIT THAT SWEEPS INTO THE HANDHOLE MUST ENTER THE HANDHOLE FLUSH AND LEVEL TO AVOID FIBER MICRO BENDING. WHEN ENTERING A SHALLOW BOX, THE CHANGE IN THE ELEVATION OF THE CONDUIT RUN SHOULD BE KEPT AS SHORT AS POSSIBLE IN ORDER TO MAINTAIN MAXIMUM DEPTH.

NOTES:

1. EXCAVATE THE EARTH APPROXIMATELY 12" DEEPER THAN THE DEPTH OF BOX. FILL ADDITIONAL DEPTH WITH CRUSHED ROCK OR PEA GRAVEL.
2. EXTEND CRUSHED ROCK OR PEA GRAVEL BASE BEYOND BOTTOM OUTSIDE EDGES OF VAULT.
3. WITH COVER ON BOX, FILL AND COMPACT SOIL.
4. SEE PLANS FOR HANDHOLE SIZE.
5. ASPHALT DRIVEWAY OR PARKING LOT LOCATIONS REQUIRE A MINIMUM LOAD OF 22.5K ON HANDHOLE. (NOT RECOMMENDED FOR ROADWAYS)
6. SIDEWALK (NON-TRAFFIC) LOCATIONS REQUIRE A MINIMUM LOAD OF 10K ON HANDHOLE



FIBER OPTIC RUNNING LINE STANDARD LOCATION MARKER



DRAWING ILLUSTRATES CABLE #1 IS USED FOR LOCATING AND THE SECOND CABLE IS NOT. IF THE SECOND CABLE IS TO BE LOCATED THEN THE GROUNDED WIRE SHOULD BE ISOLATED AT THE SPlice ENCLOSURE STUD AND RUN TO THE TEST STATION THE SAME AS CABLE #1.



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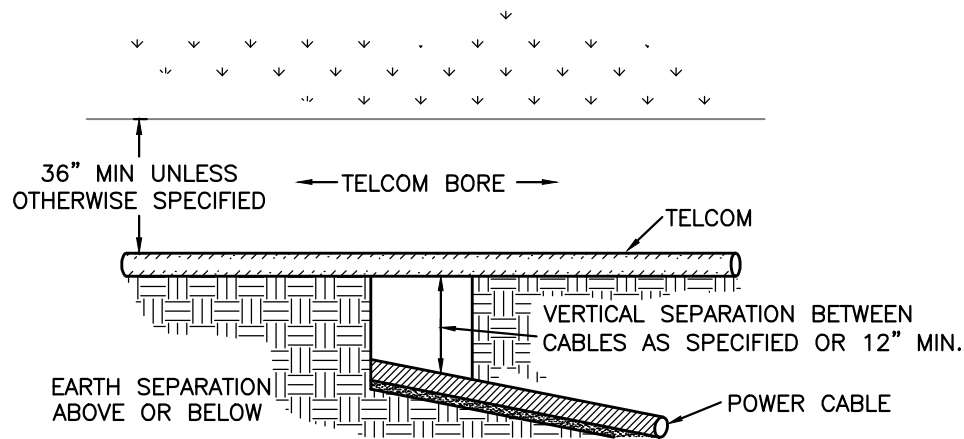
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PROJECT NO.
22-304

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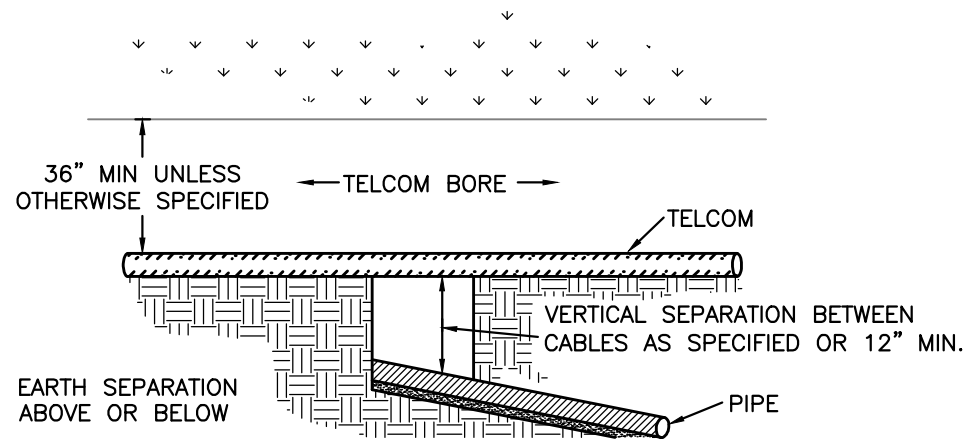
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SHEET NUMBER



TELCOM AND POWER FACILITIES MUST BE SEPARATED EITHER HORIZONTALLY BY 24" OR VERTICALLY BY 12"

1. LOCAL, STATE OR FEDERAL CODES MAY ALTER SPECIFICATIONS.
2. FOR CROSSINGS IDENTIFIED AS HAZARDOUS OR WITH EASEMENT REQUIREMENTS, CROSSINGS SHOULD BE IN ACCORDANCE WITH EXISTING SAFETY PROCEDURES, CODES AND OWNERS SPECIFICATIONS



UTILITY CROSSINGS:
12" MIN. WHEN CROSSING PIPES.
24" WHEN PARALLEL TO PIPES.

MINIMUM RECOMMENDED SEPARATION BETWEEN TELCOM CONDUIT/DUCT AND OUTSIDE SURFACE OF FOREIGN STRUCTURES.

TELCOM AND FOREIGN FACILITIES SEPARATION

NOT TO SCALE

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SUBMITTALS		
DATE	DESCRIPTION	REV
10/5/23	PERMITS	0

LIVINGSTON COUNTY FIBER DESIGN

PROJECT NO.
22-304

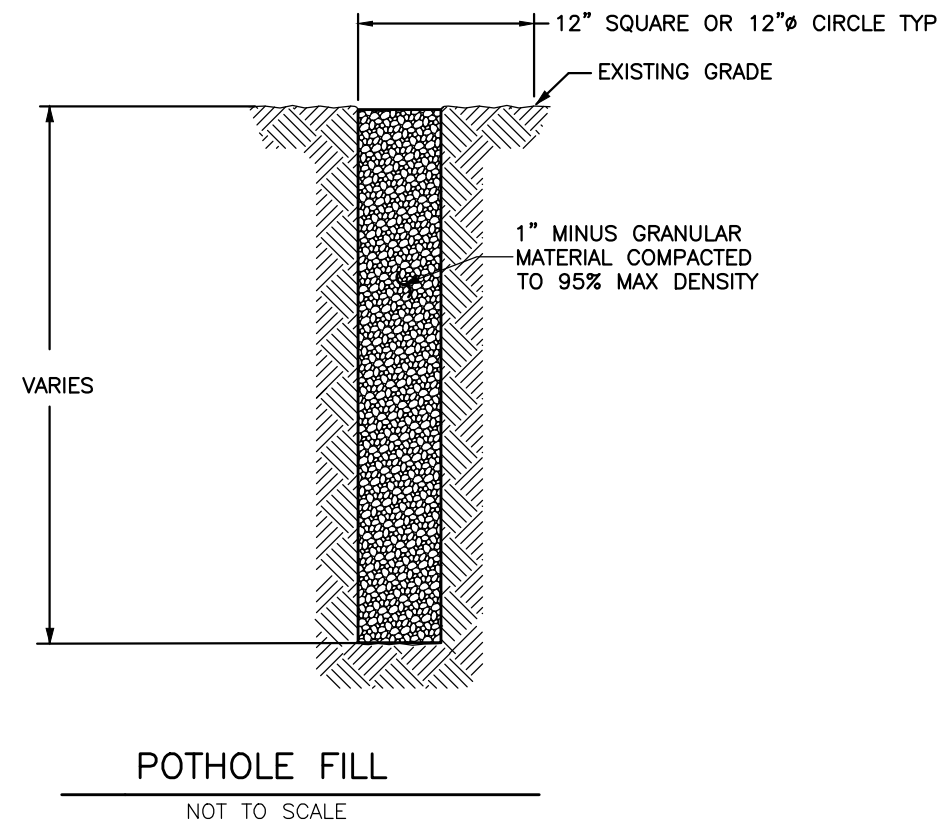
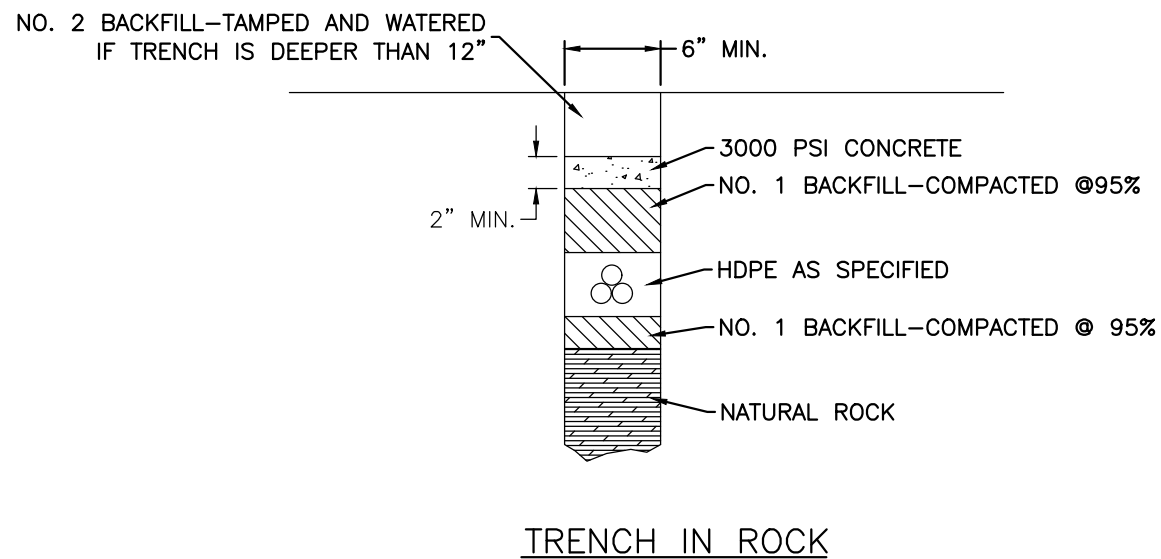
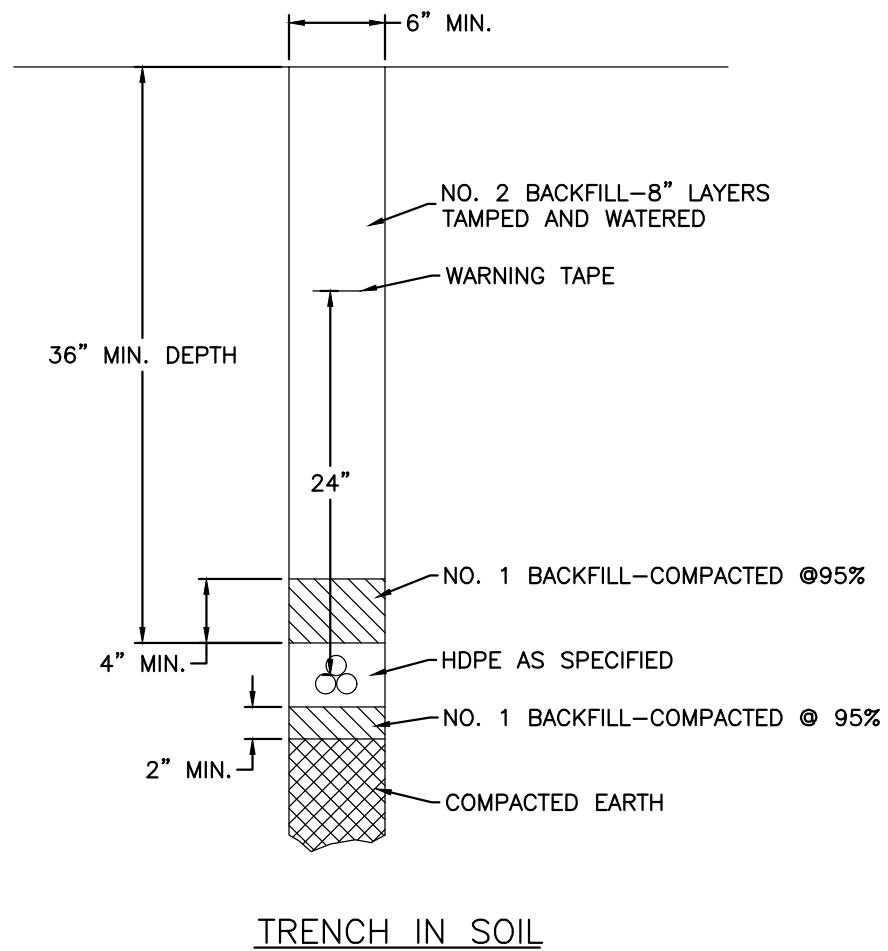
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FACILITIES SEPARATION

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TYPICAL TRENCH AND POTHOLE:



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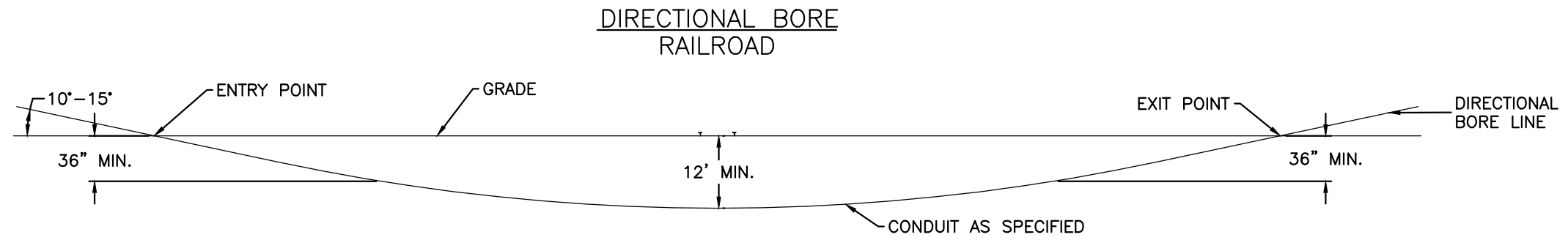
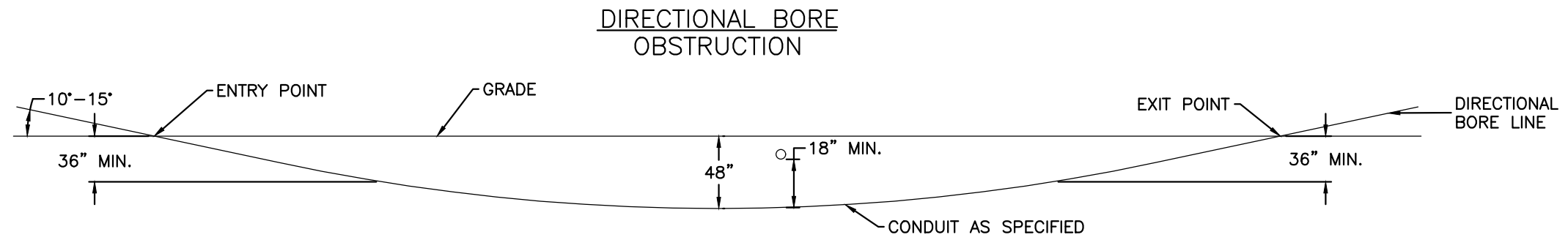
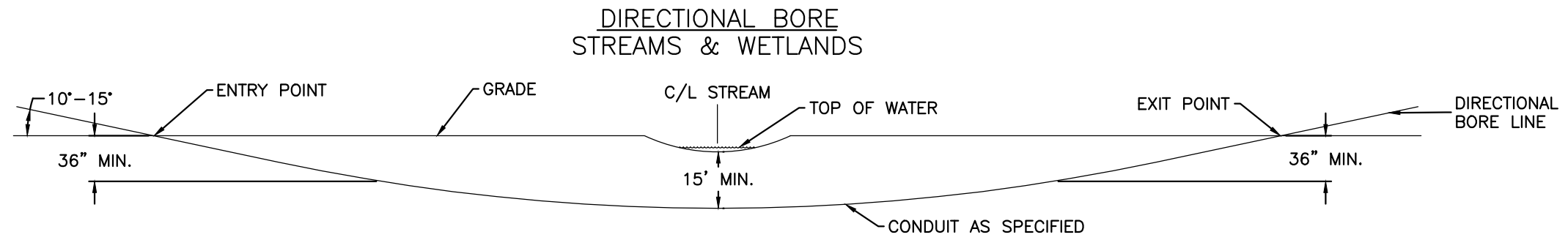
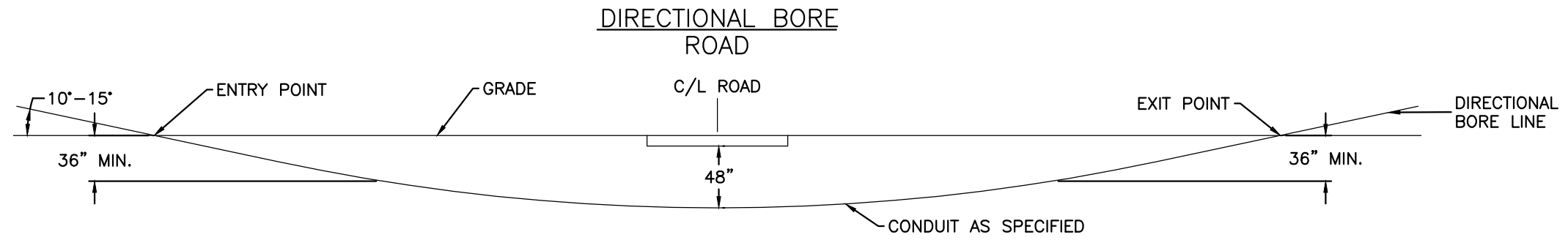
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PROJECT NO.
22-304

SHEET TITLE
TRENCH DETAILS

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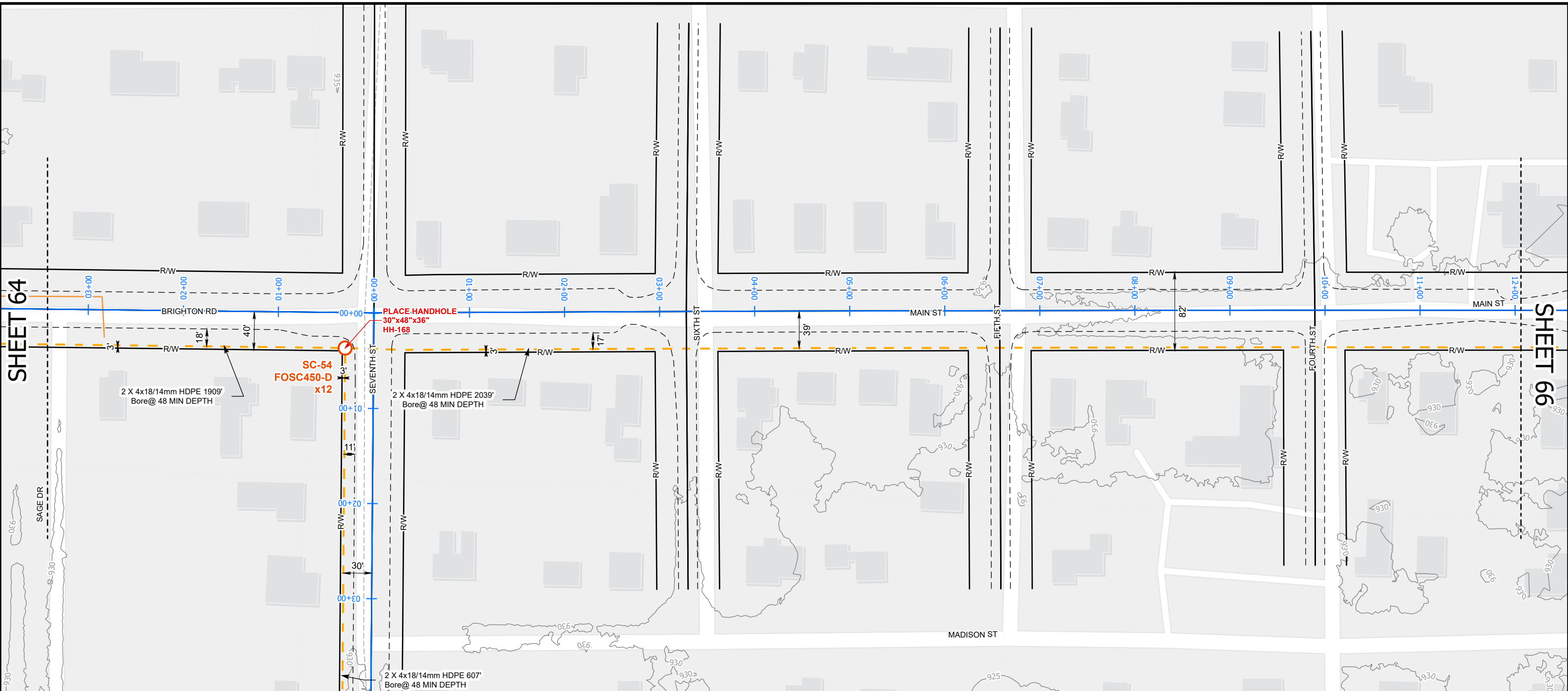
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COUNTY FIBER
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PROJECT NO.
22-304

SHEET TITLE
BORE DETAILS

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SHEET NUMBER



SHEET 64

SHEET 66

Livingston Co., MI

Construction Phase 3

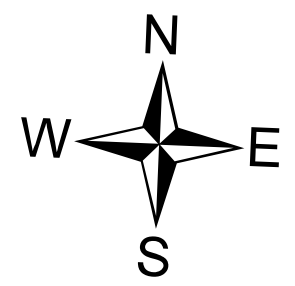
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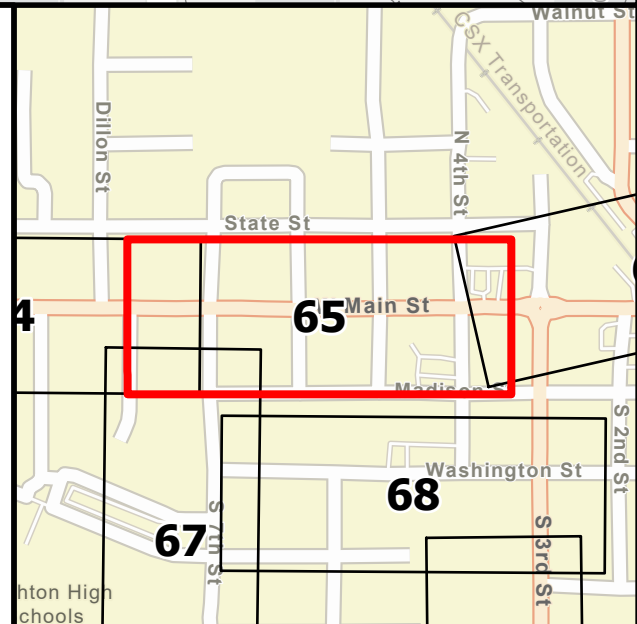
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- Service Location
- Cabinet
- Handhole w/ Size
- MCA
- Reel End
- Drop Fiber
- UG Distribution Fiber
- UG Backbone Fiber
- Duct w/ Count & Length
- Stationing Line @ 100'
- Dimensions
- ROW
- Road Centerline
- Edge of Pavement
- Elevation Contours

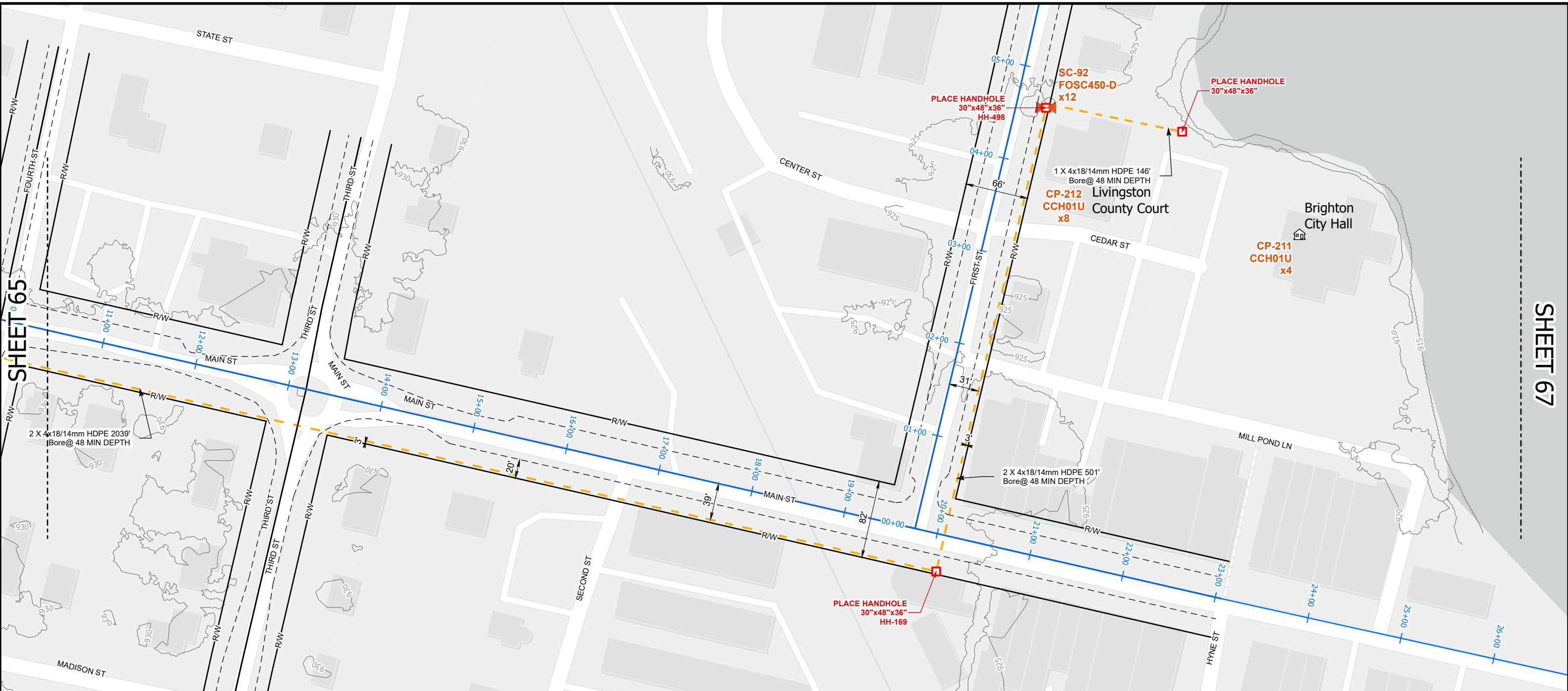
All Duct is (2) 4x18/14 mm HDPE

ROW information and all measurements are estimates based on public access information and will need to be verified on location before installation. It is the Contractor's responsibility to validate ROW upon installation of underground structures.



Grid: 65
Page 65 of 92





SHEET 65

SHEET 67

Livingston Co., MI

Construction Phase 3

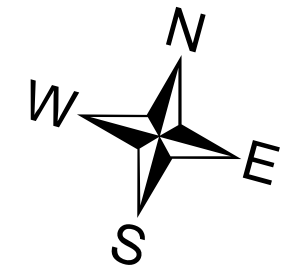
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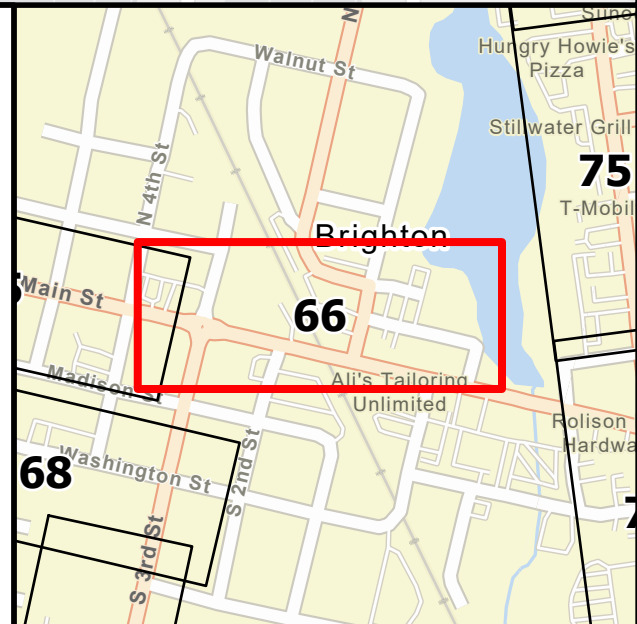
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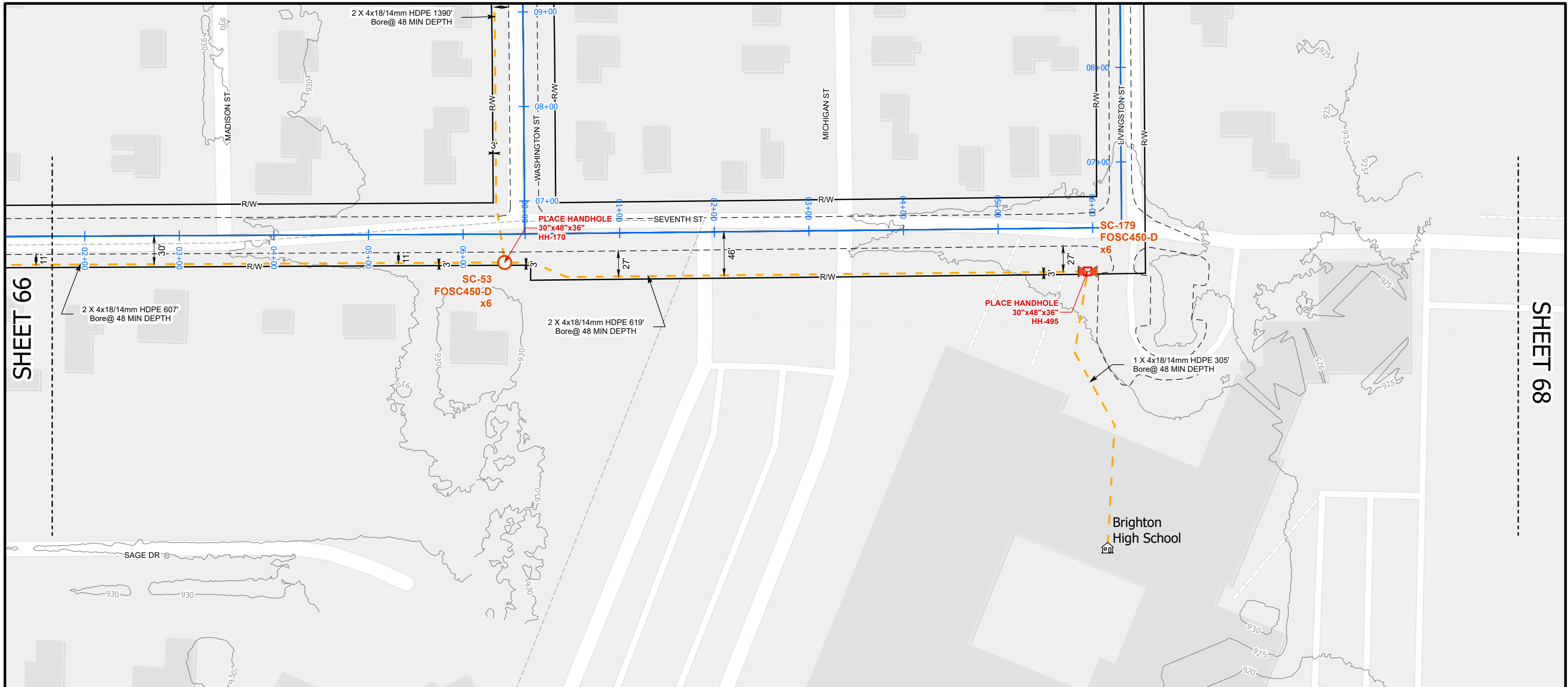
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Grid: 66
Page 66 of 92





SHEET 66

SHEET 68

Livingston Co., MI

Construction Phase 3

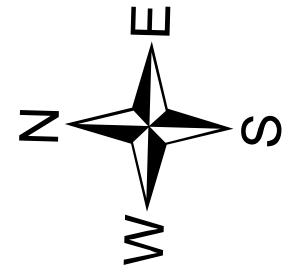
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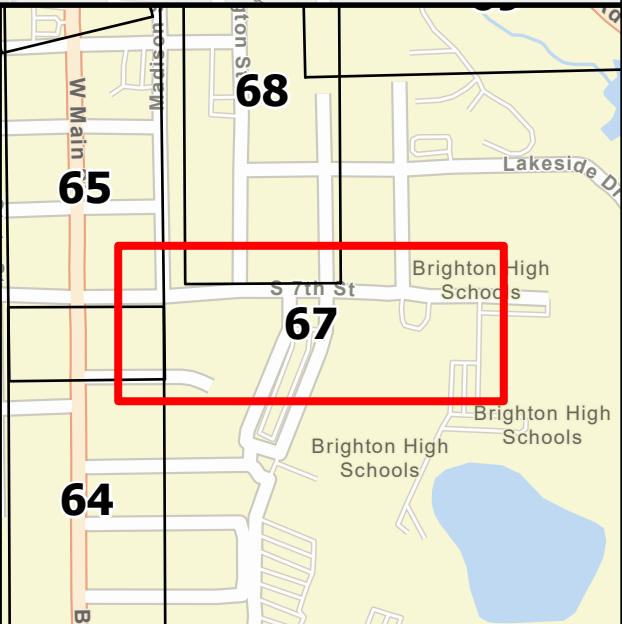
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- Reel End
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- UG Backbone Fiber
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- Dimensions
- ROW
- Road Centerline
- Edge of Pavement
- Elevation Contours

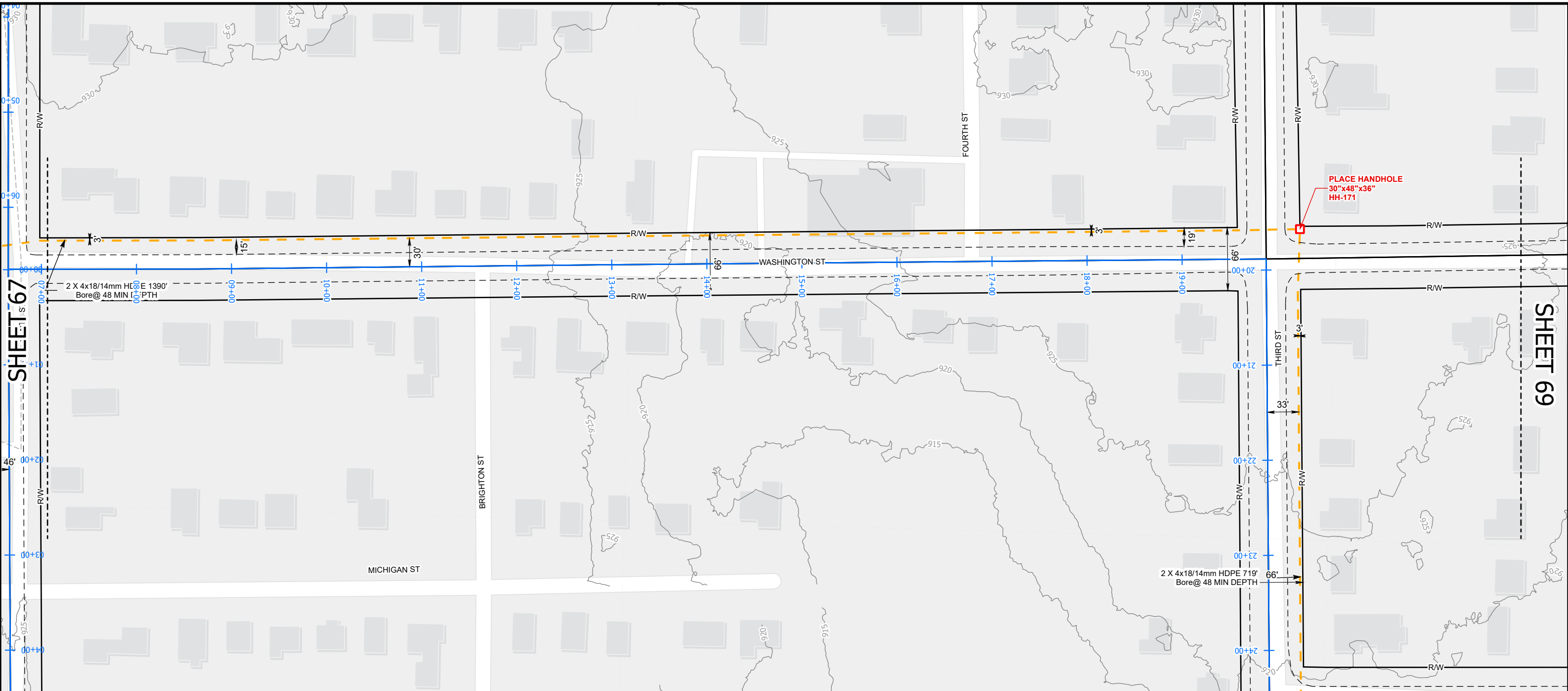
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Grid: 67
Page 67 of 92





SHEET 67

SHEET 69

Livingston Co., MI

Construction Phase 3

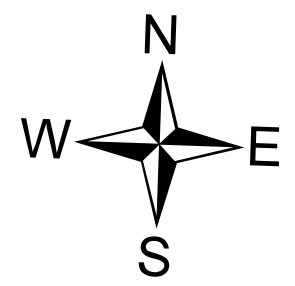
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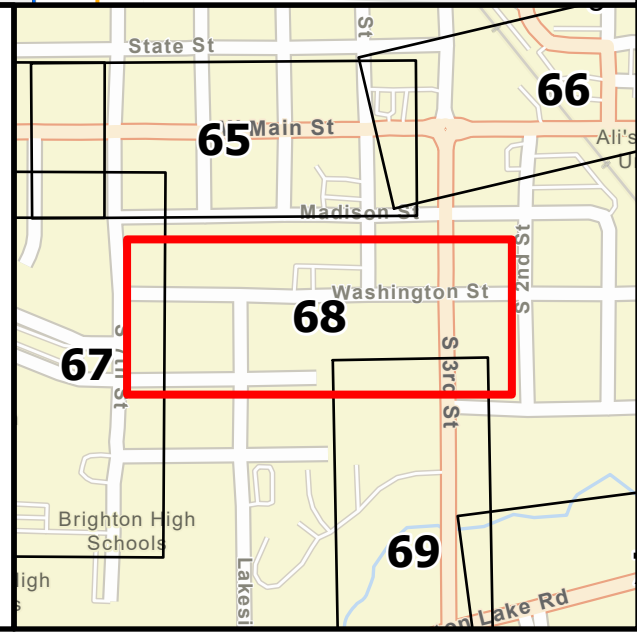
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- UG Backbone Fiber
- Duct w/ Count & Length
- Stationing Line @ 100'
- Dimensions
- R/W
- Road Centerline
- Edge of Pavement
- Elevation Contours

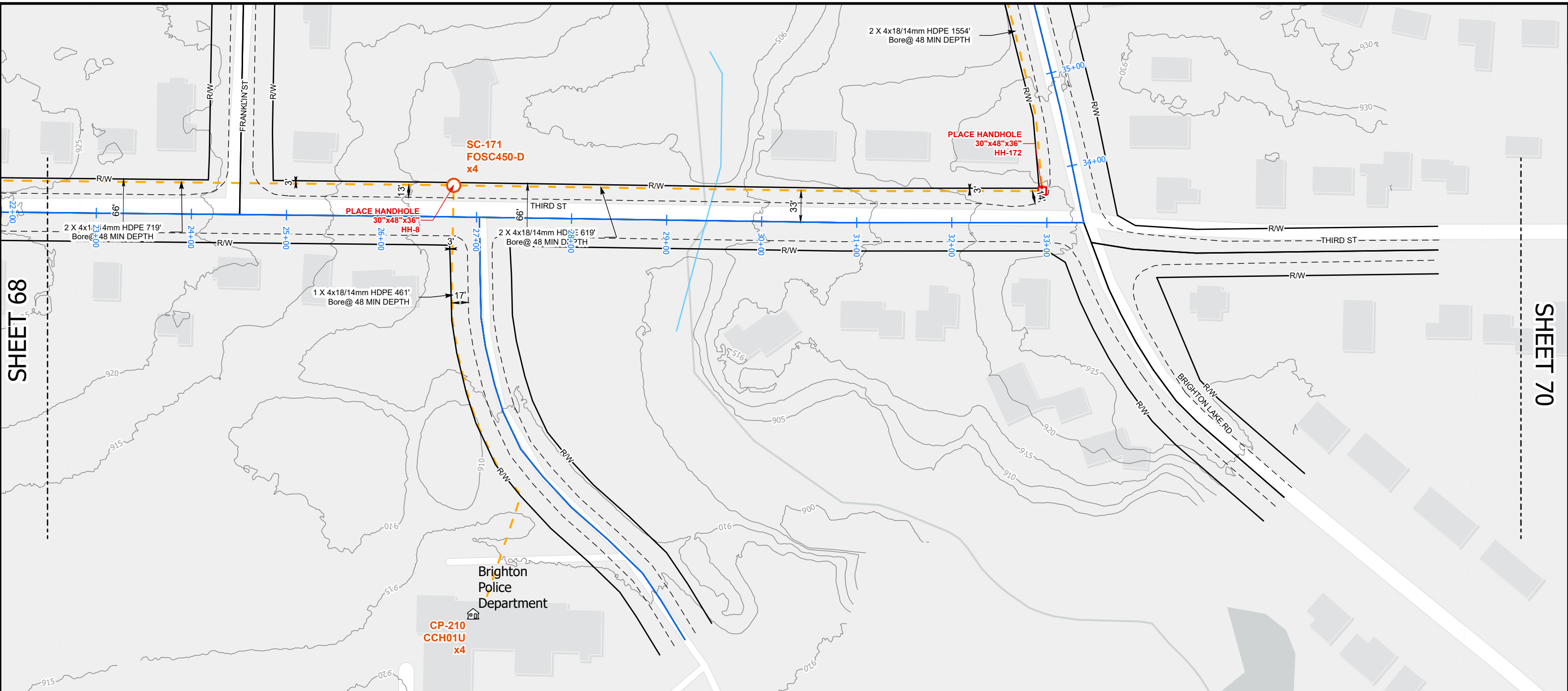
All Duct is (2) 4x18/14 mm HDPE

ROW information and all measurements are estimates based on public access information and will need to be verified on location before installation. It is the Contractor's responsibility to validate ROW upon installation of underground structures.



Grid: 68
Page 68 of 92





SHEET 68

SHEET 70

Livingston Co., MI

Construction Phase 3

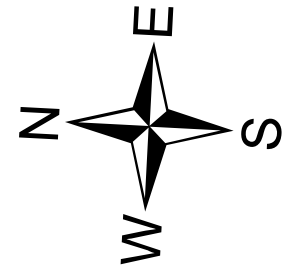
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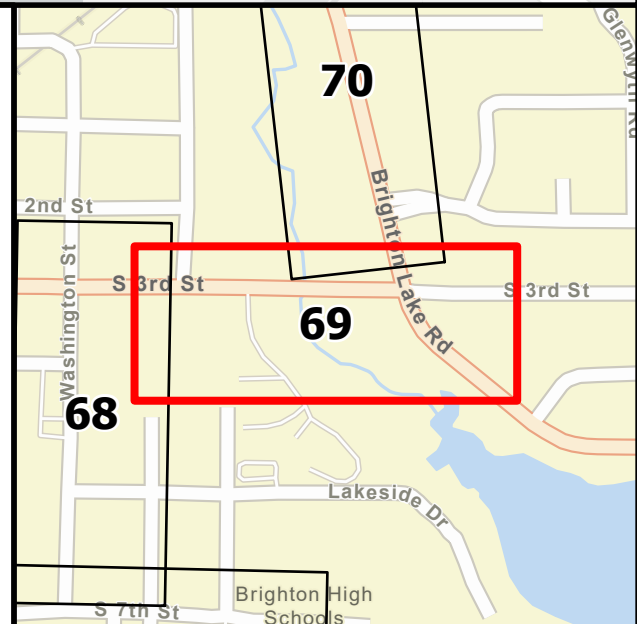
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- MCA
- Reel End
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- Dimensions
- ROW
- Road Centerline
- Edge of Pavement
- Elevation Contours

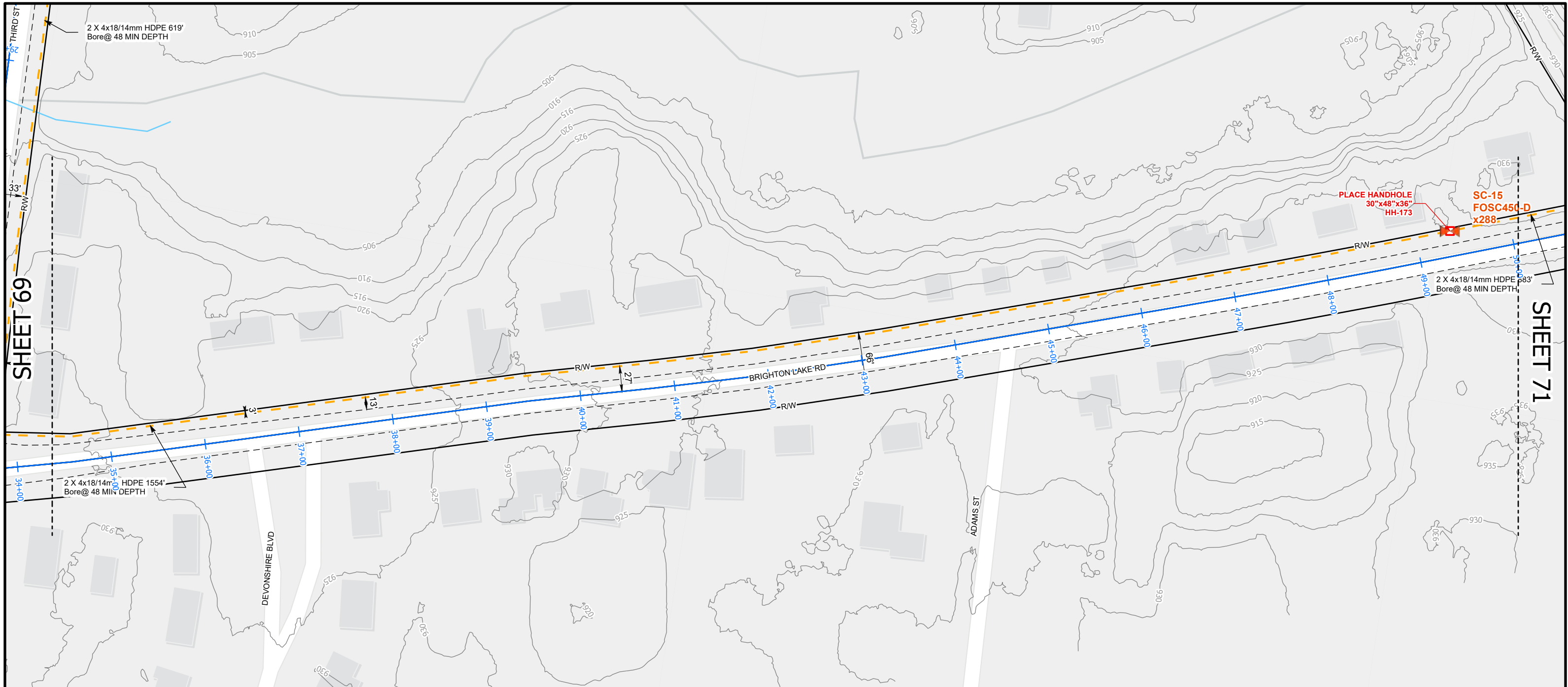
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Grid: 69
Page 69 of 92





SHEET 69

SHEET 71

Livingston Co., MI

Construction Phase 3

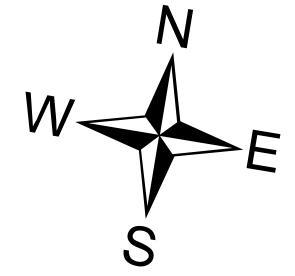
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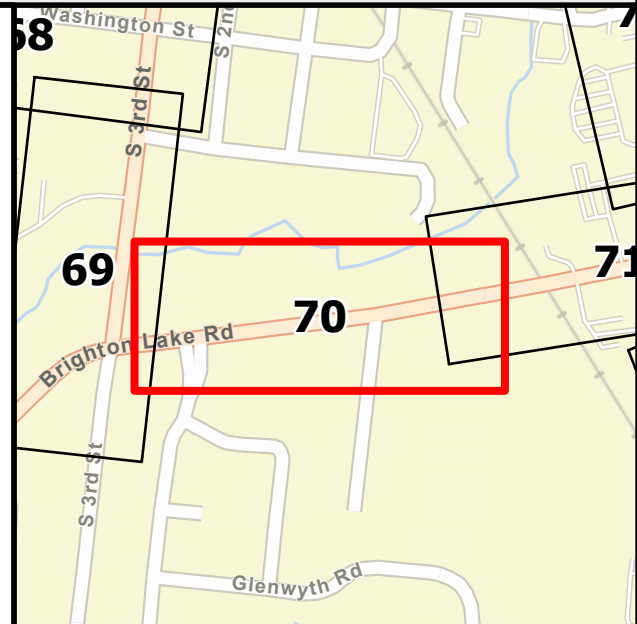
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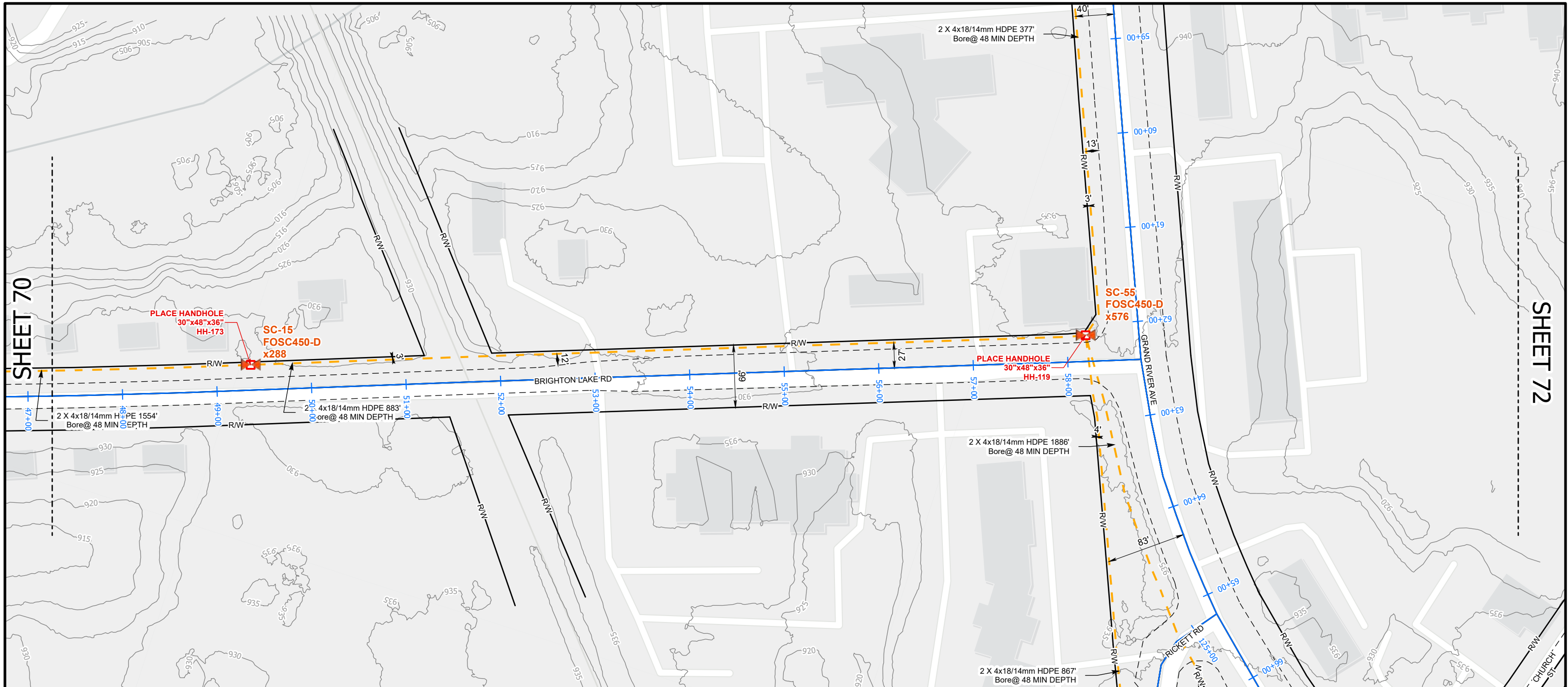
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Grid: 70
Page 70 of 92





SHEET 70

SHEET 72

Livingston Co., MI

Construction Phase 3

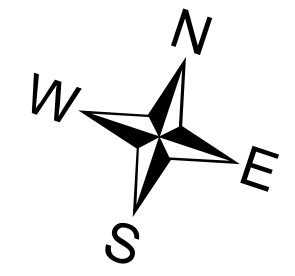
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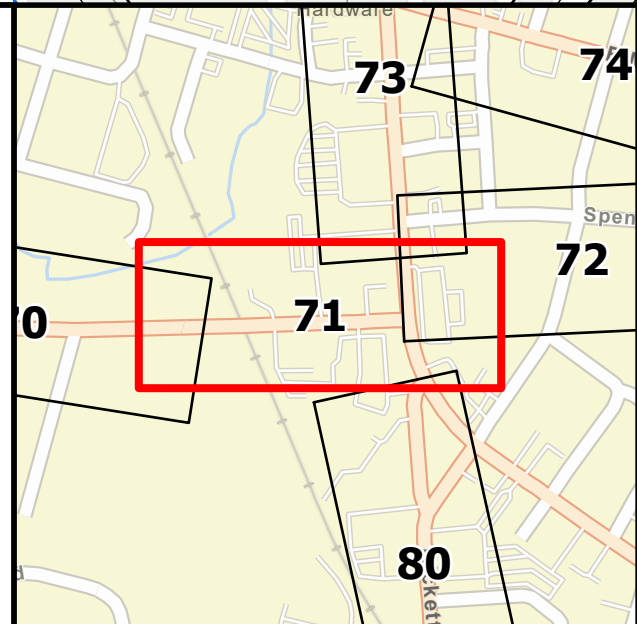
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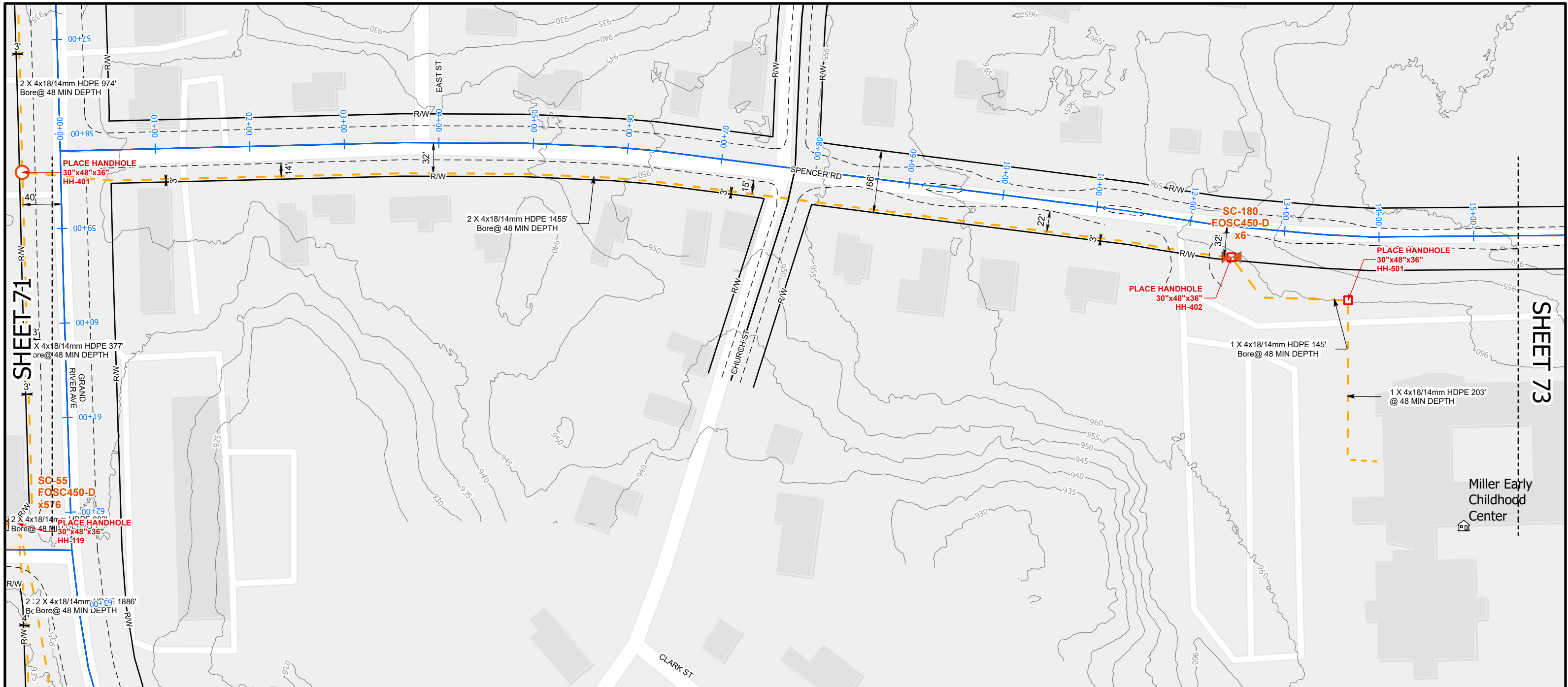
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Grid: 71
Page 71 of 92

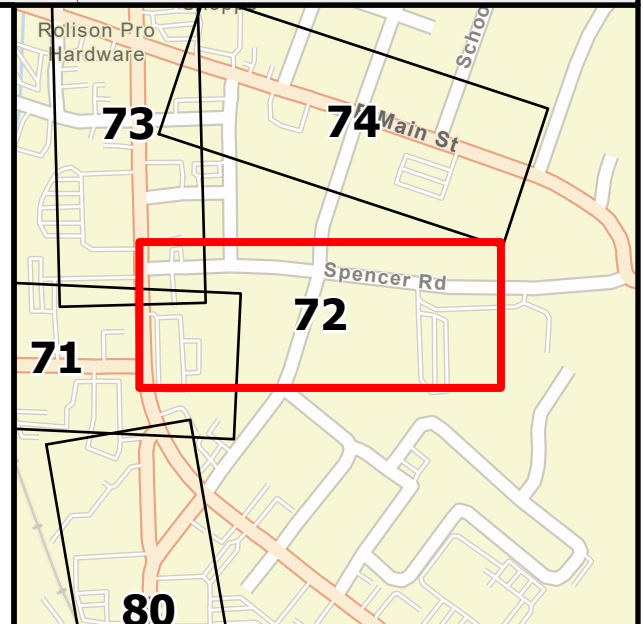
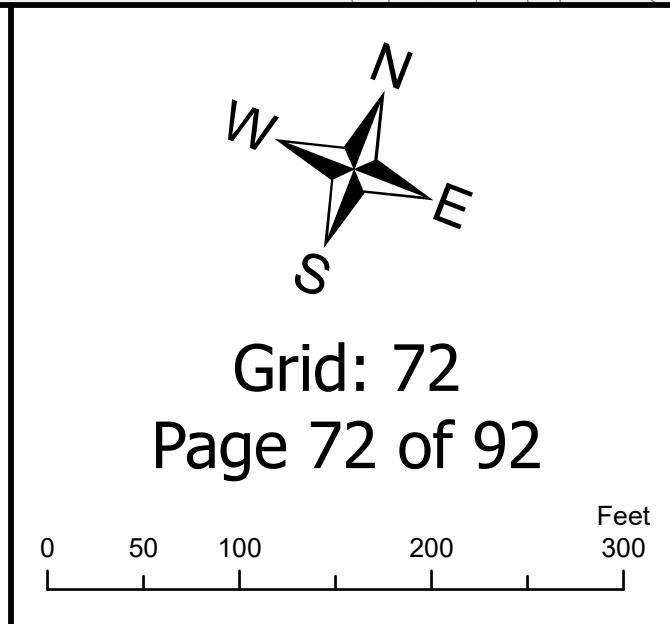




Livingston Co., MI
 Construction Phase 3
10/30/2023
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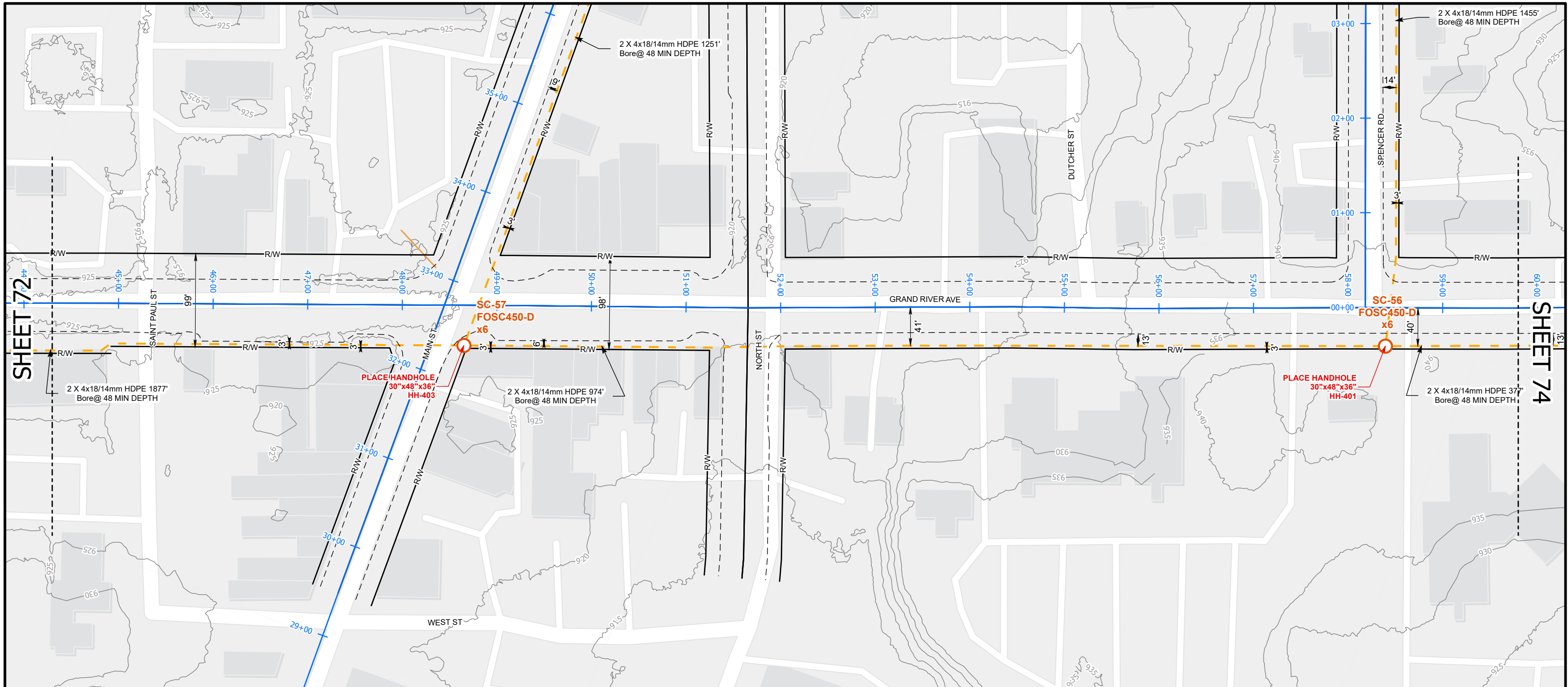
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SHEET 73

SHEET 71



SHEET 72

SHEET 74

Livingston Co., MI

Construction Phase 3

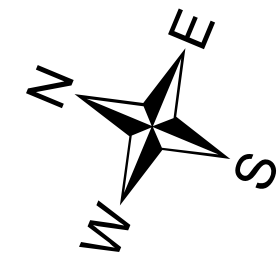
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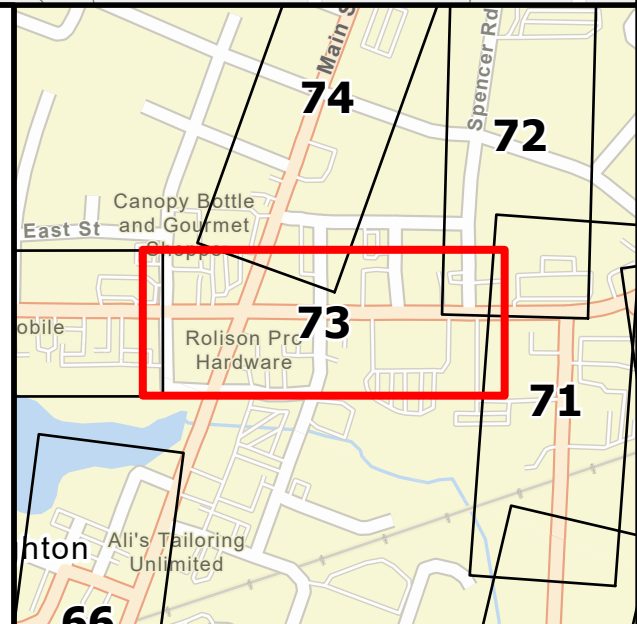
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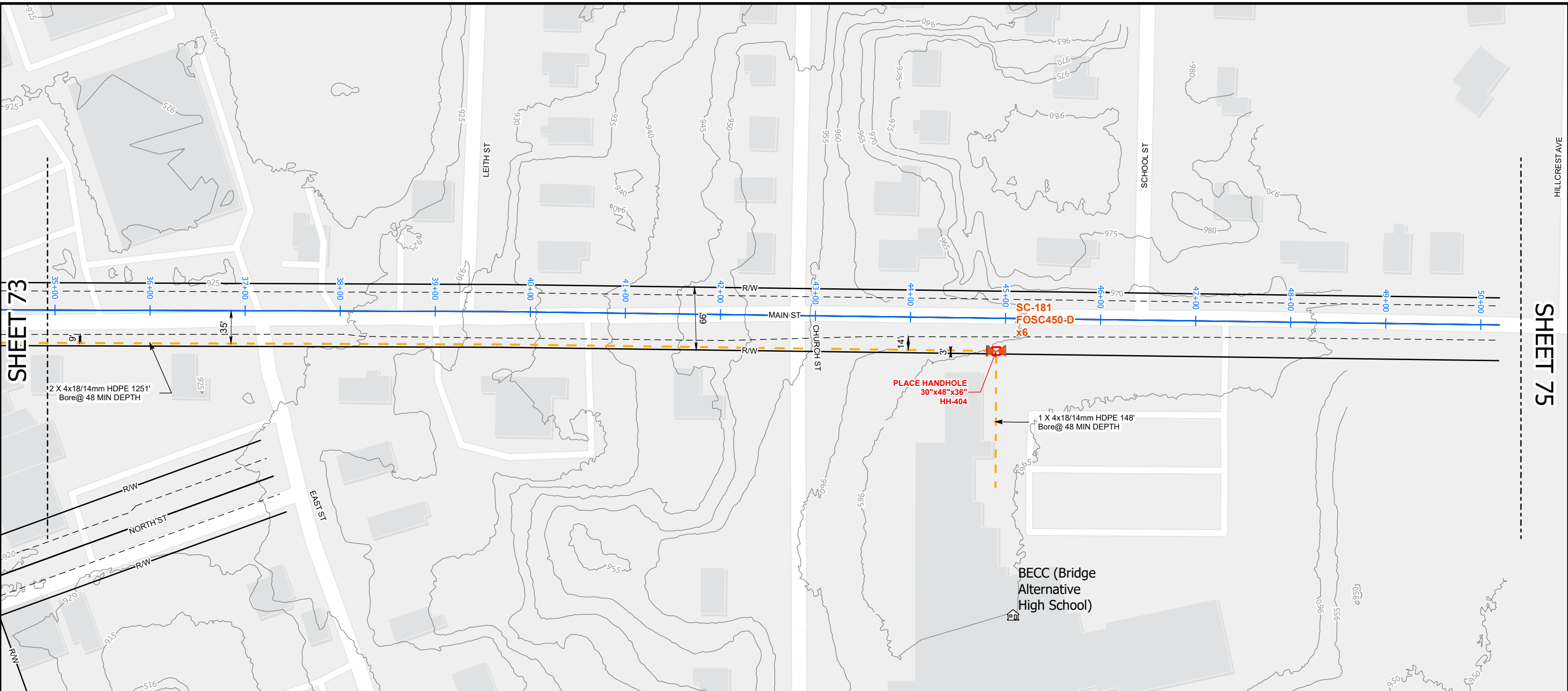
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Grid: 73
Page 73 of 92





SHEET 73

SHEET 75

Livingston Co., MI

Construction Phase 3

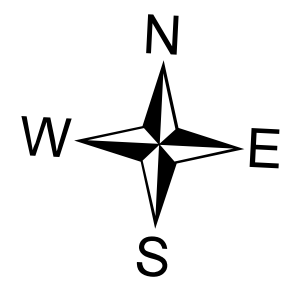
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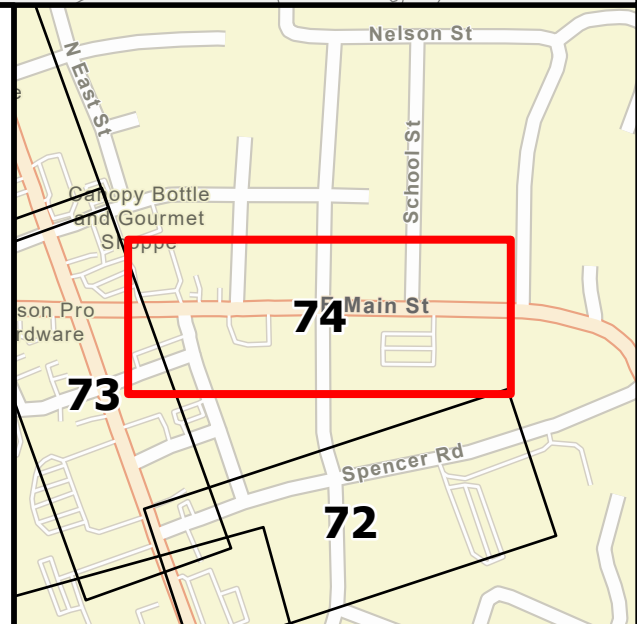
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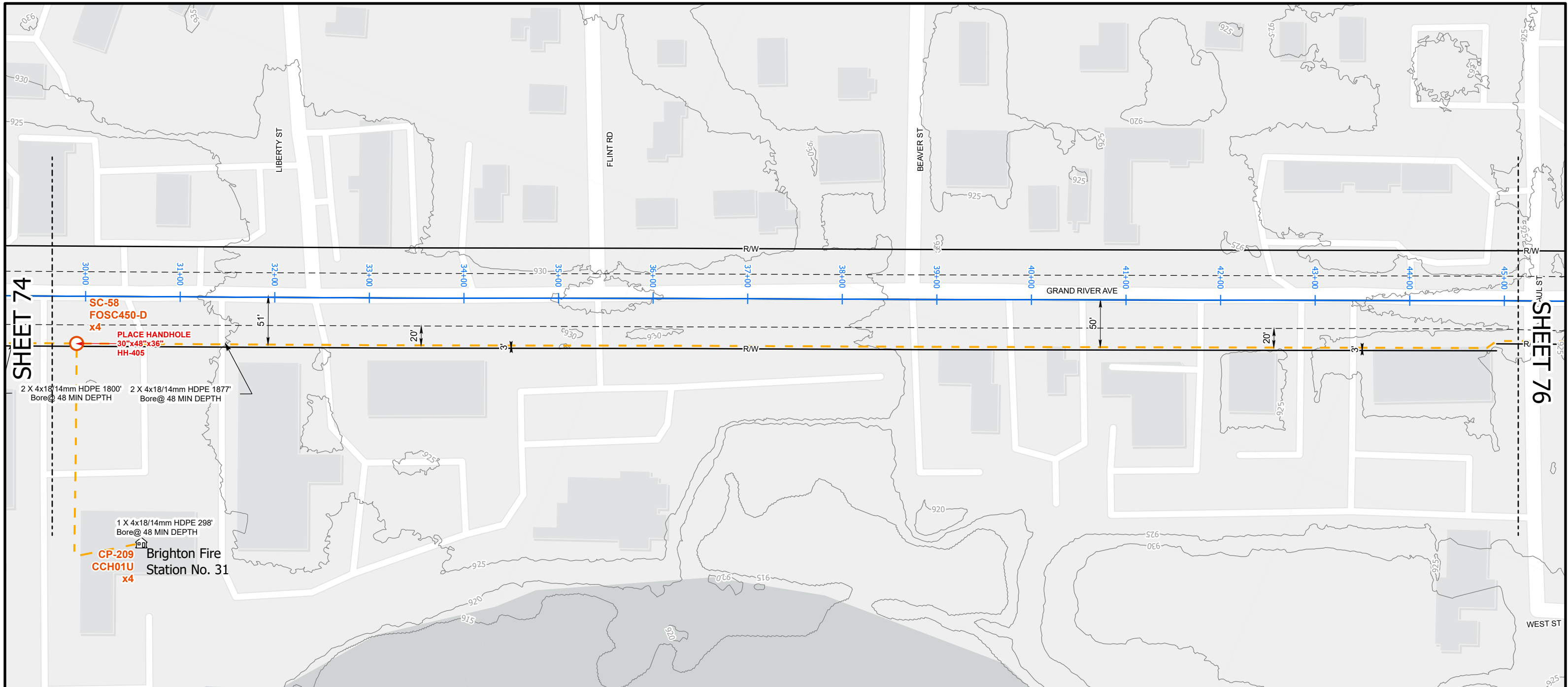
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Grid: 74
Page 74 of 92





SHEET 74

SHEET 76

Livingston Co., MI

Construction Phase 3

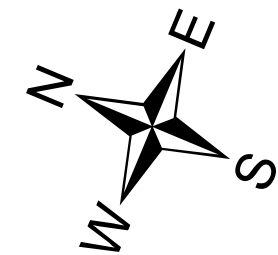
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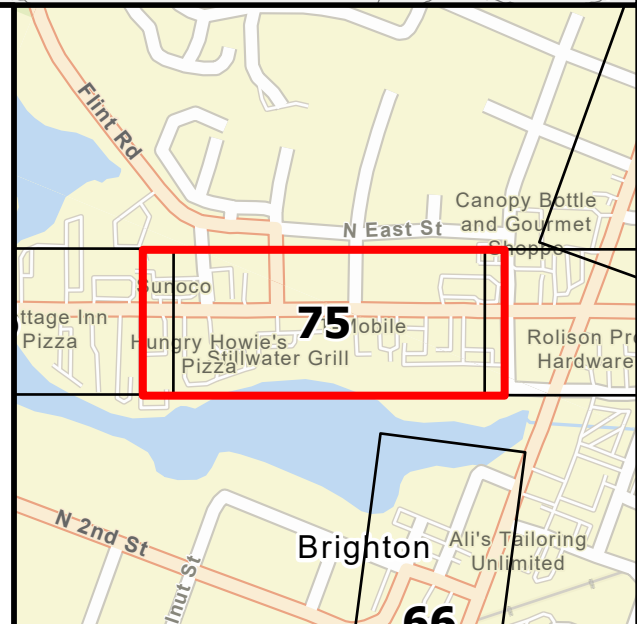
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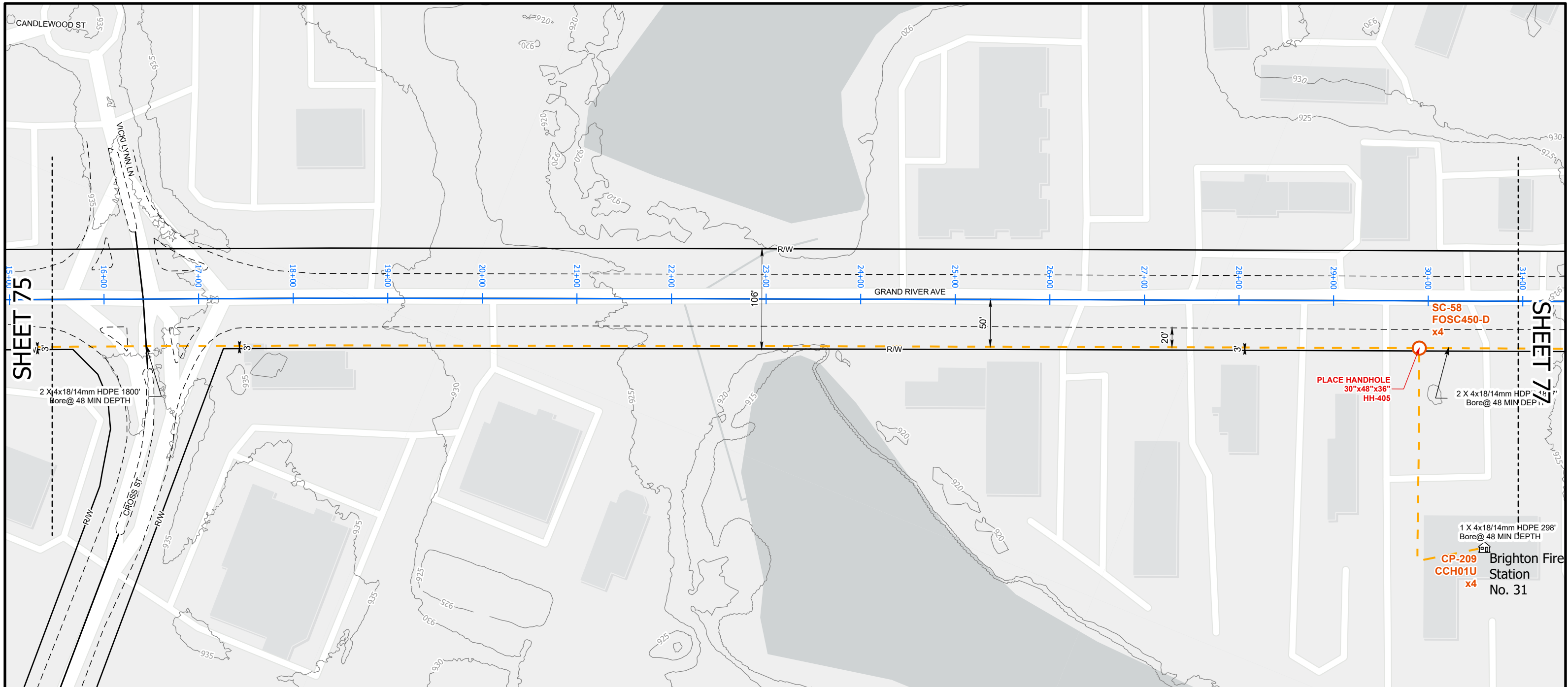
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Grid: 75
Page 75 of 92





Livingston Co., MI

Construction Phase 3

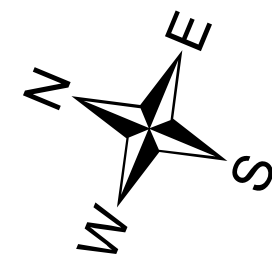
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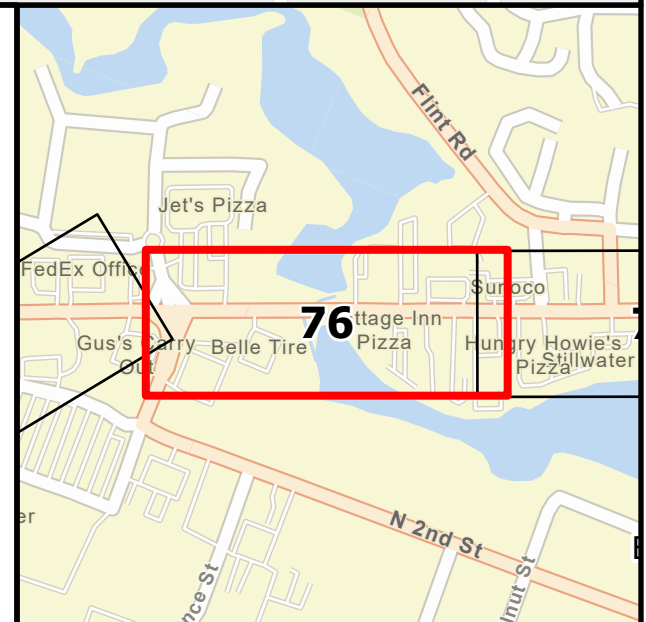
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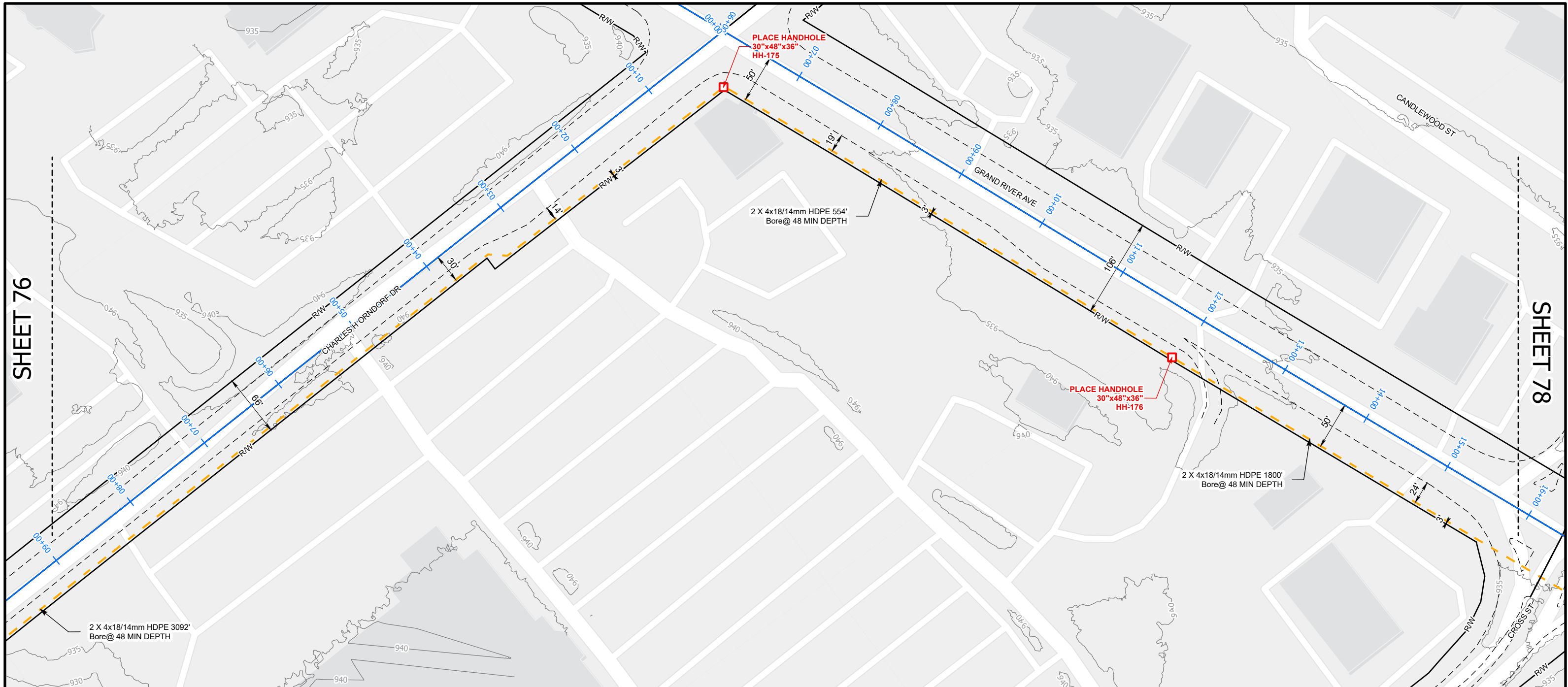
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Grid: 76
Page 76 of 92





SHEET 76

SHEET 78

Livingston Co., MI

Construction Phase 3

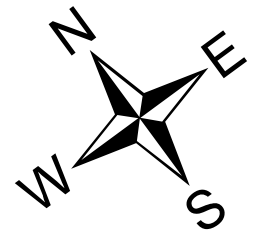
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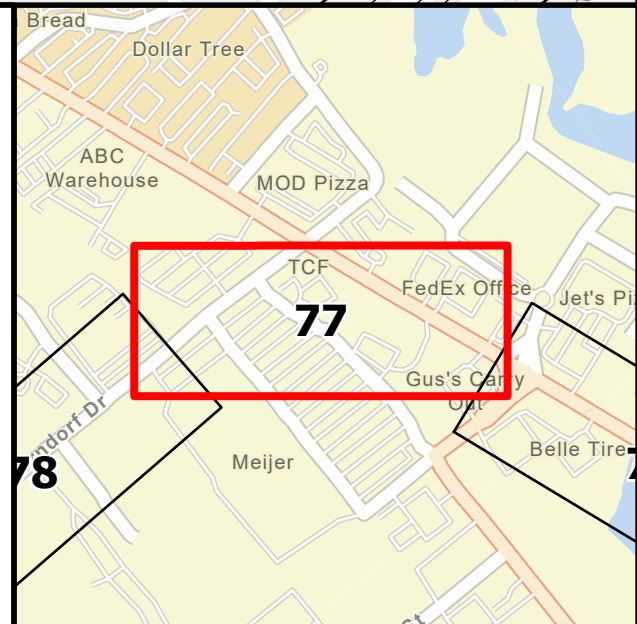
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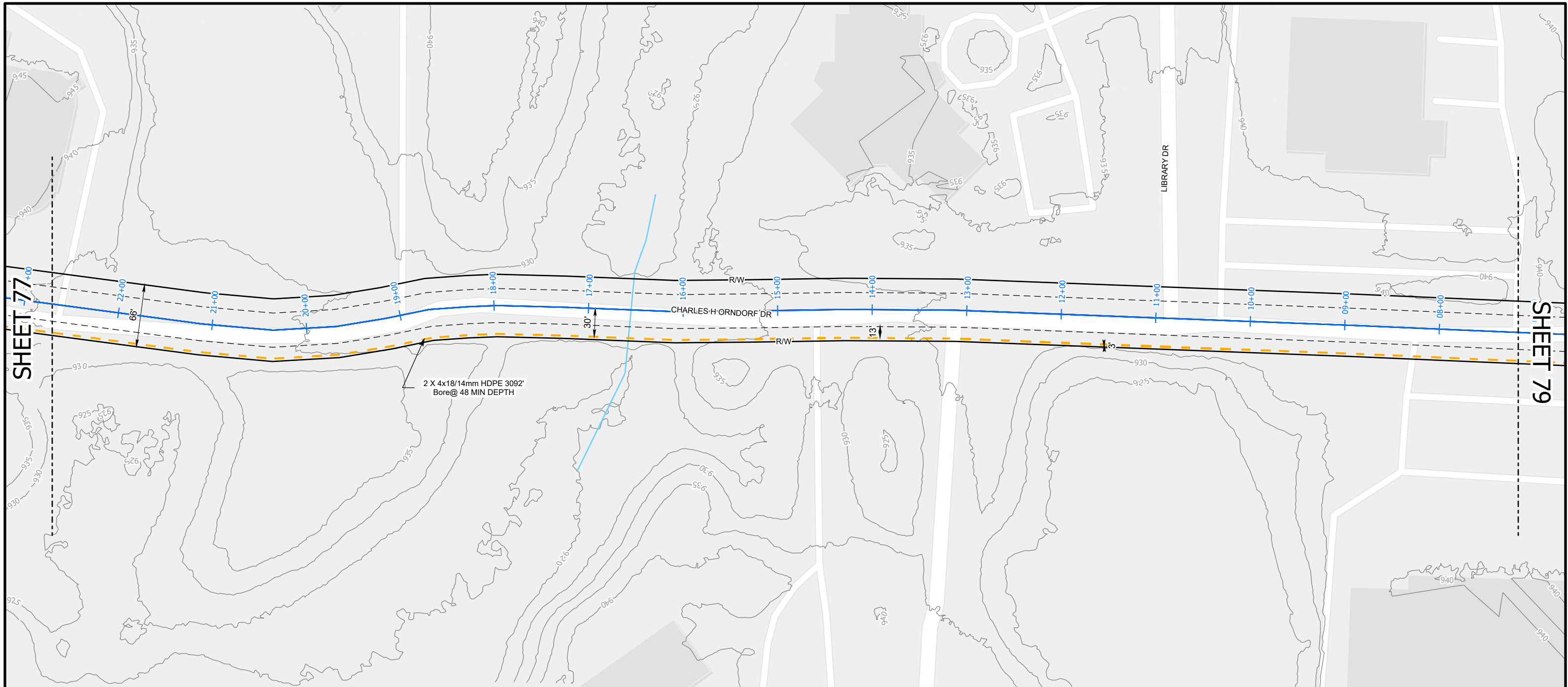
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Grid: 77
Page 77 of 92





SHEET 77

SHEET 79

Livingston Co., MI

Construction Phase 3

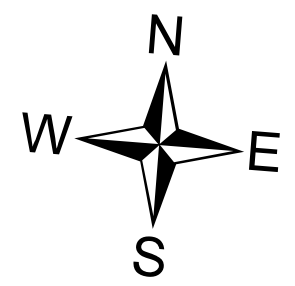
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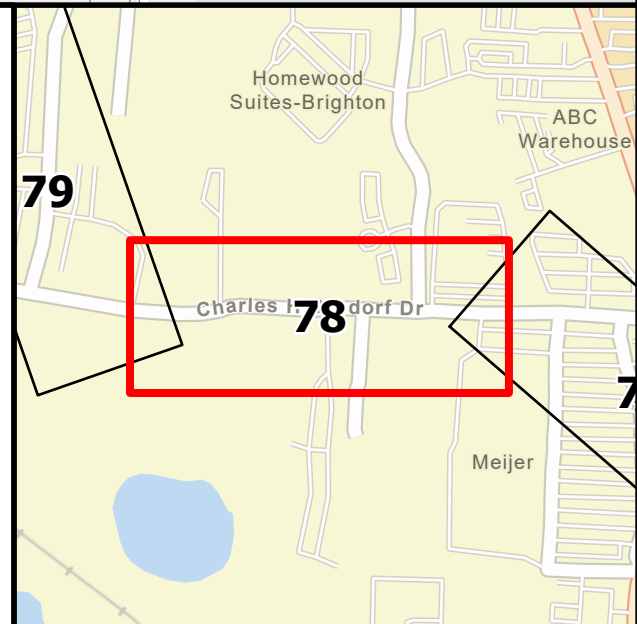
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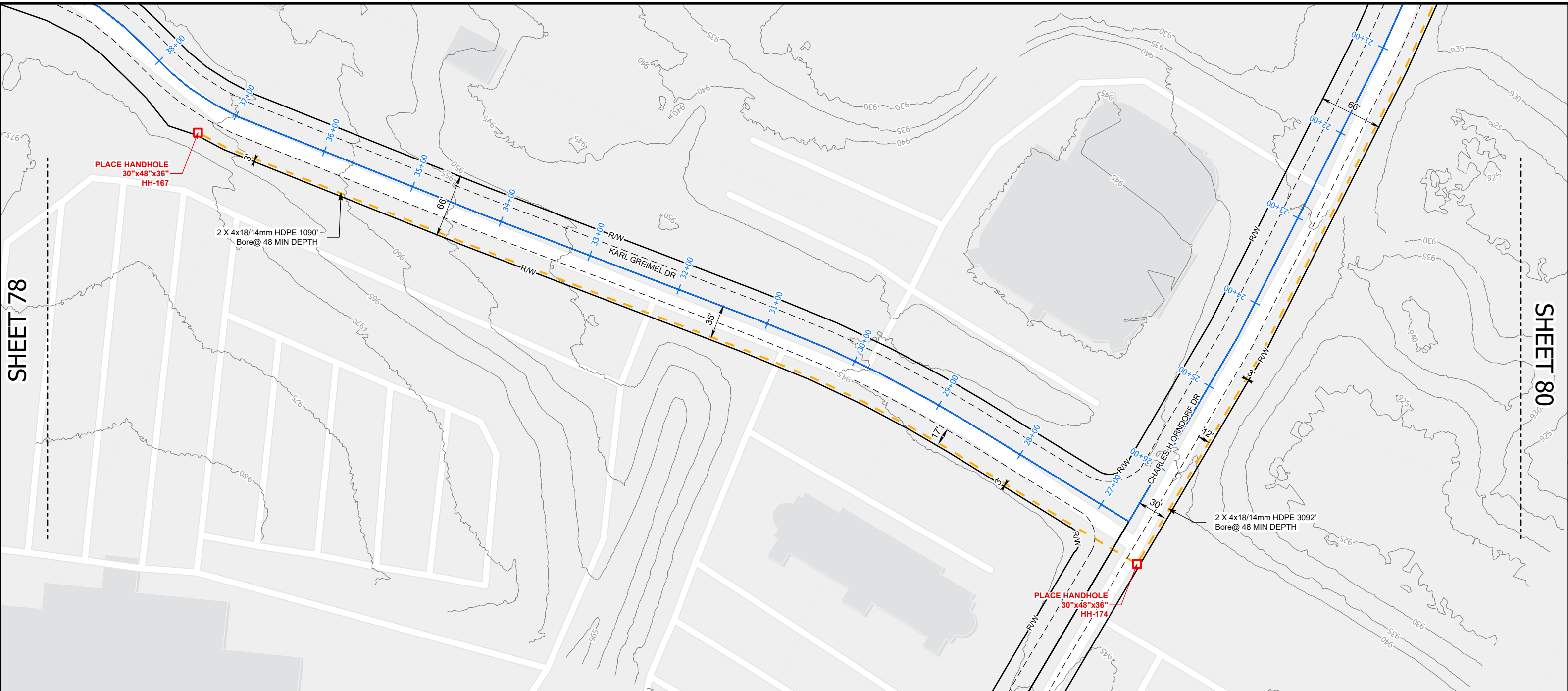
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Grid: 78
Page 78 of 92





SHEET 78

SHEET 80

Livingston Co., MI

Construction Phase 3

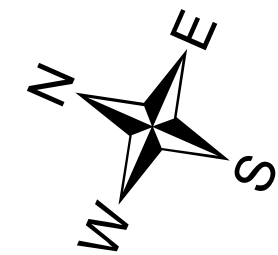
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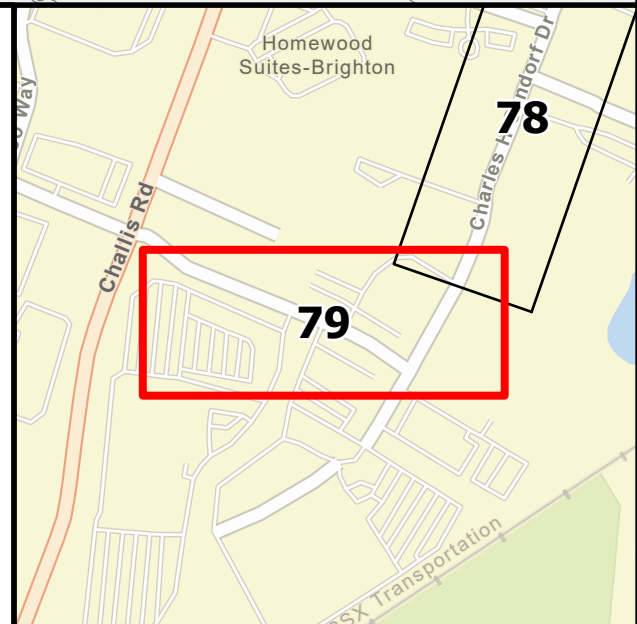
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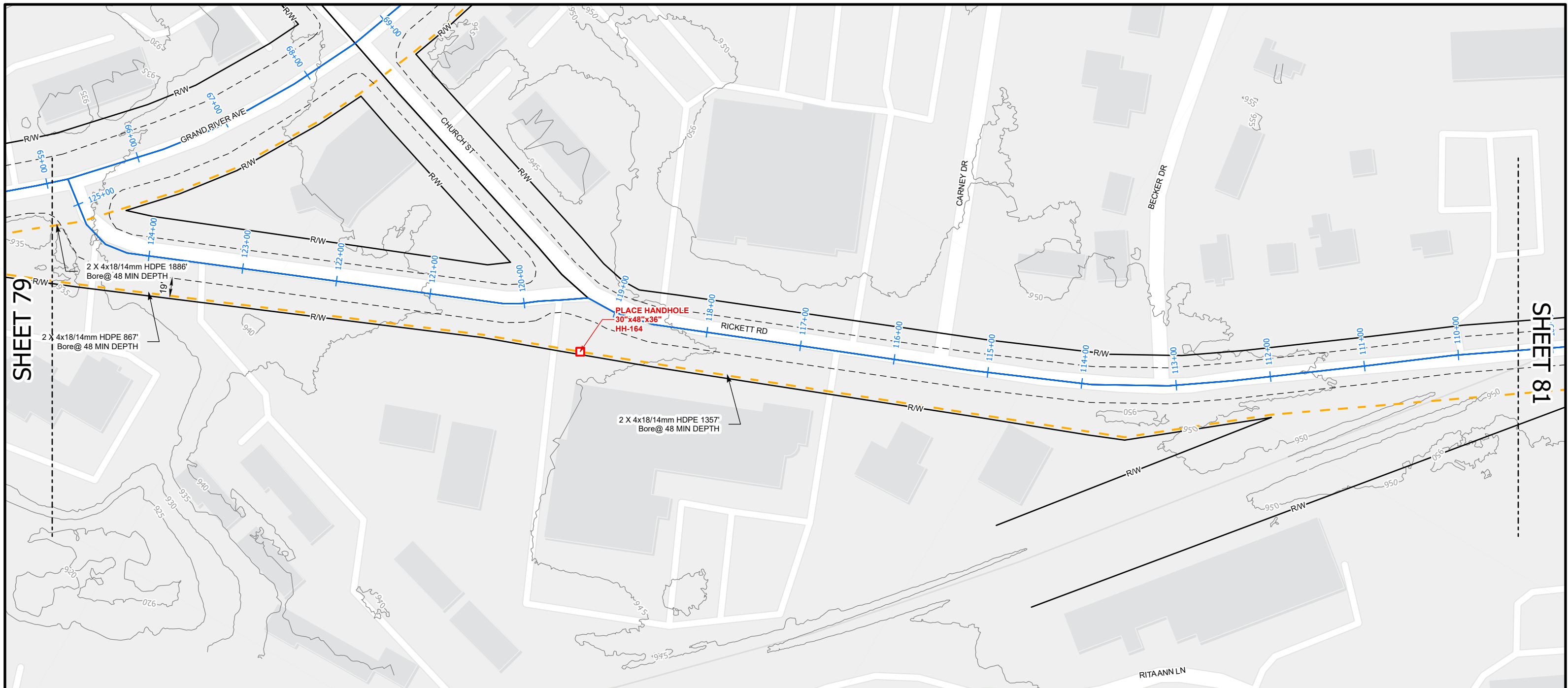
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Grid: 79
Page 79 of 92





SHEET 79

SHEET 81

Livingston Co., MI

Construction Phase 3

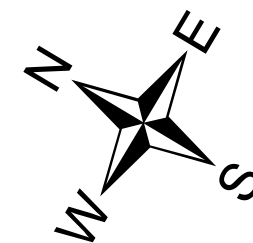
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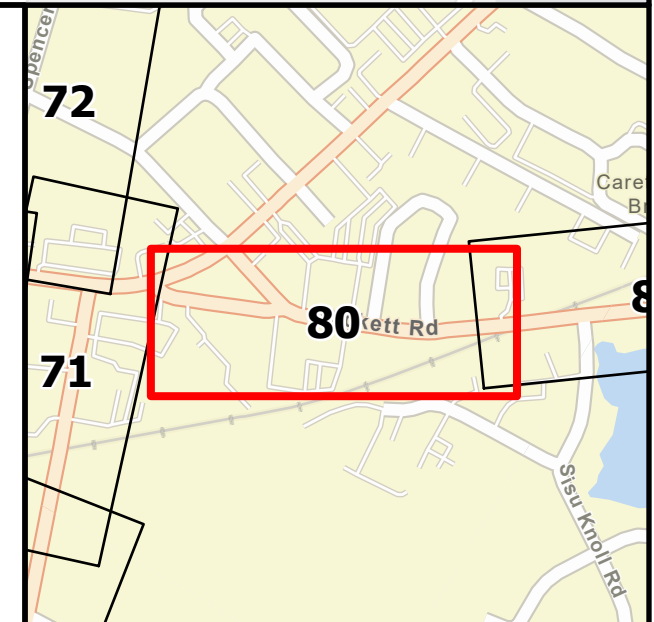
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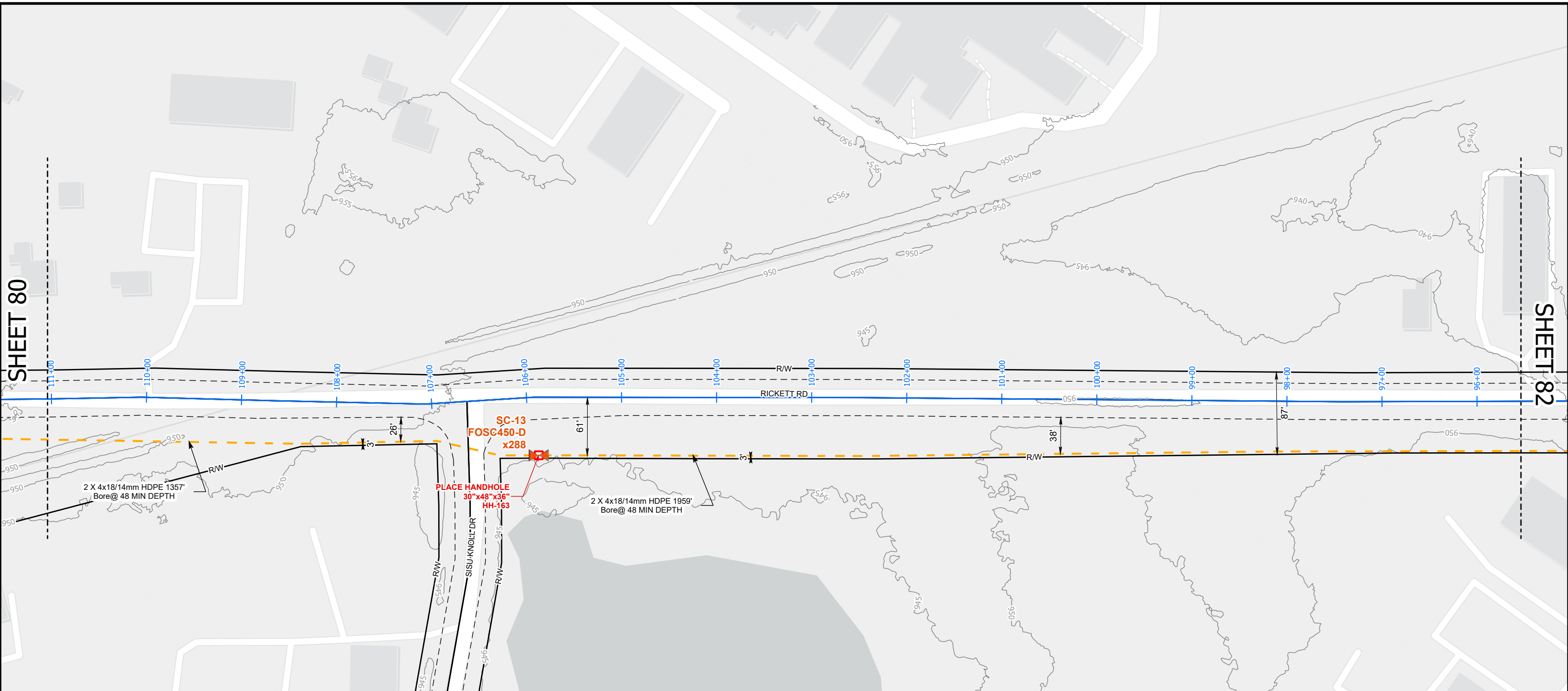


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Page 80 of 92



SHEET 80

SHEET 82



Livingston Co., MI

Construction Phase 3

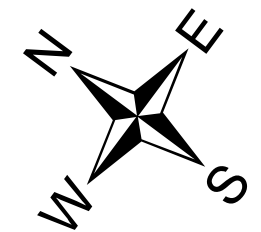
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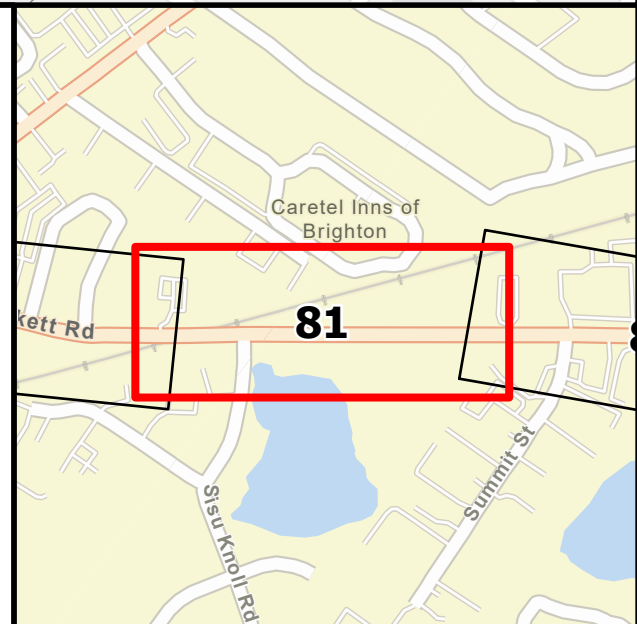
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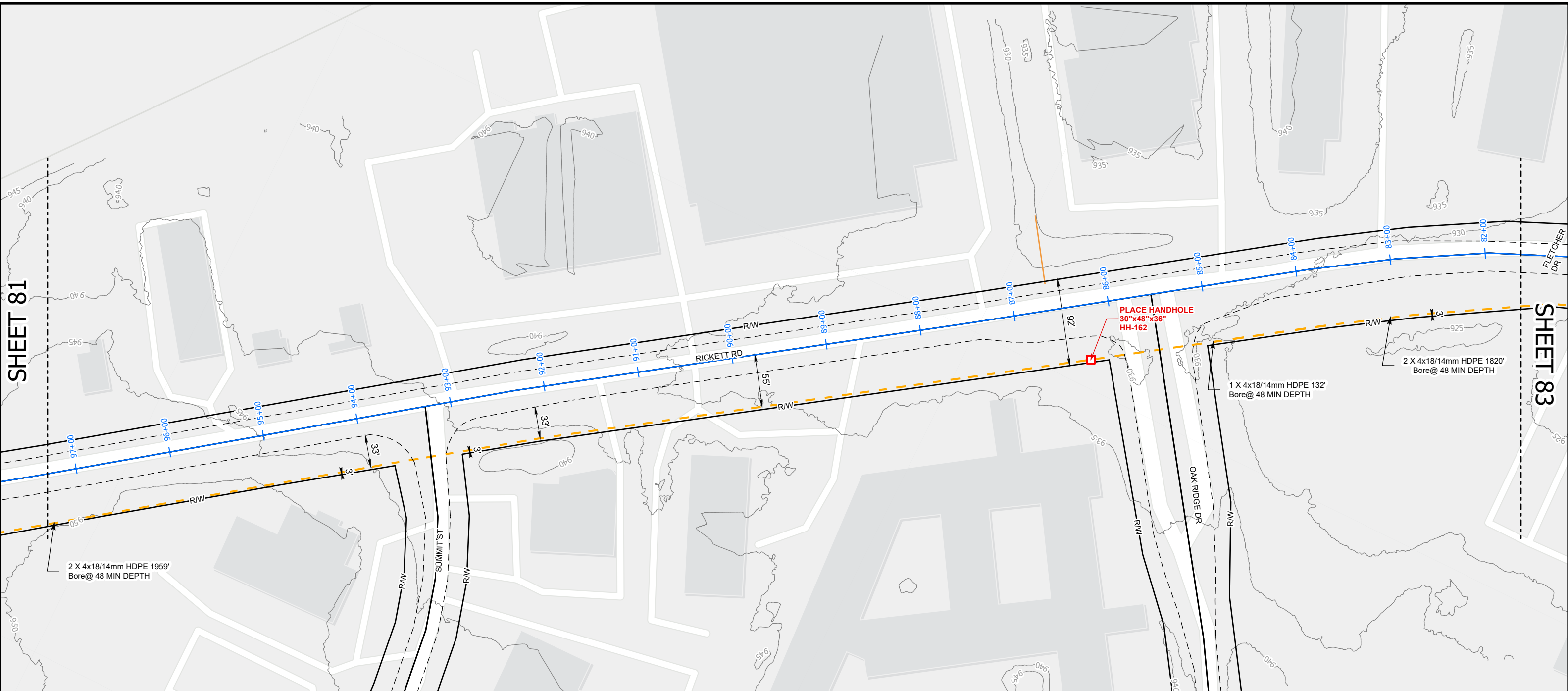


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Page 81 of 92



SHEET 81

SHEET 83



Livingston Co., MI

Construction Phase 3

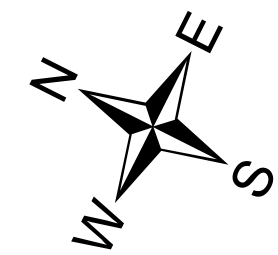
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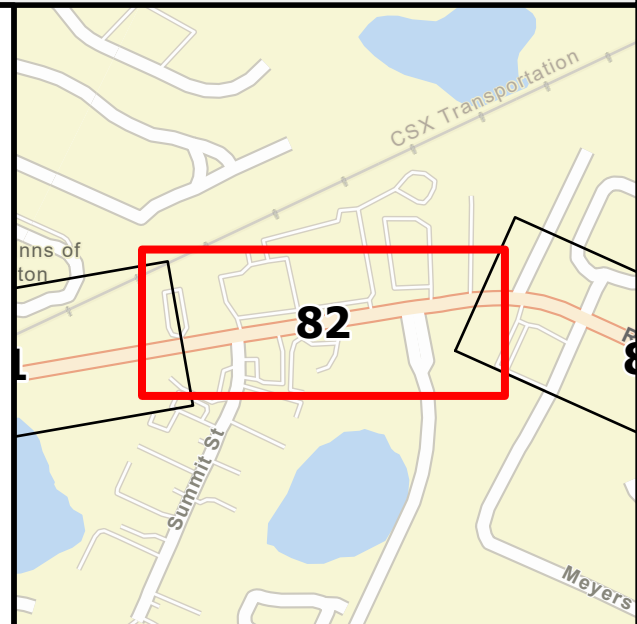
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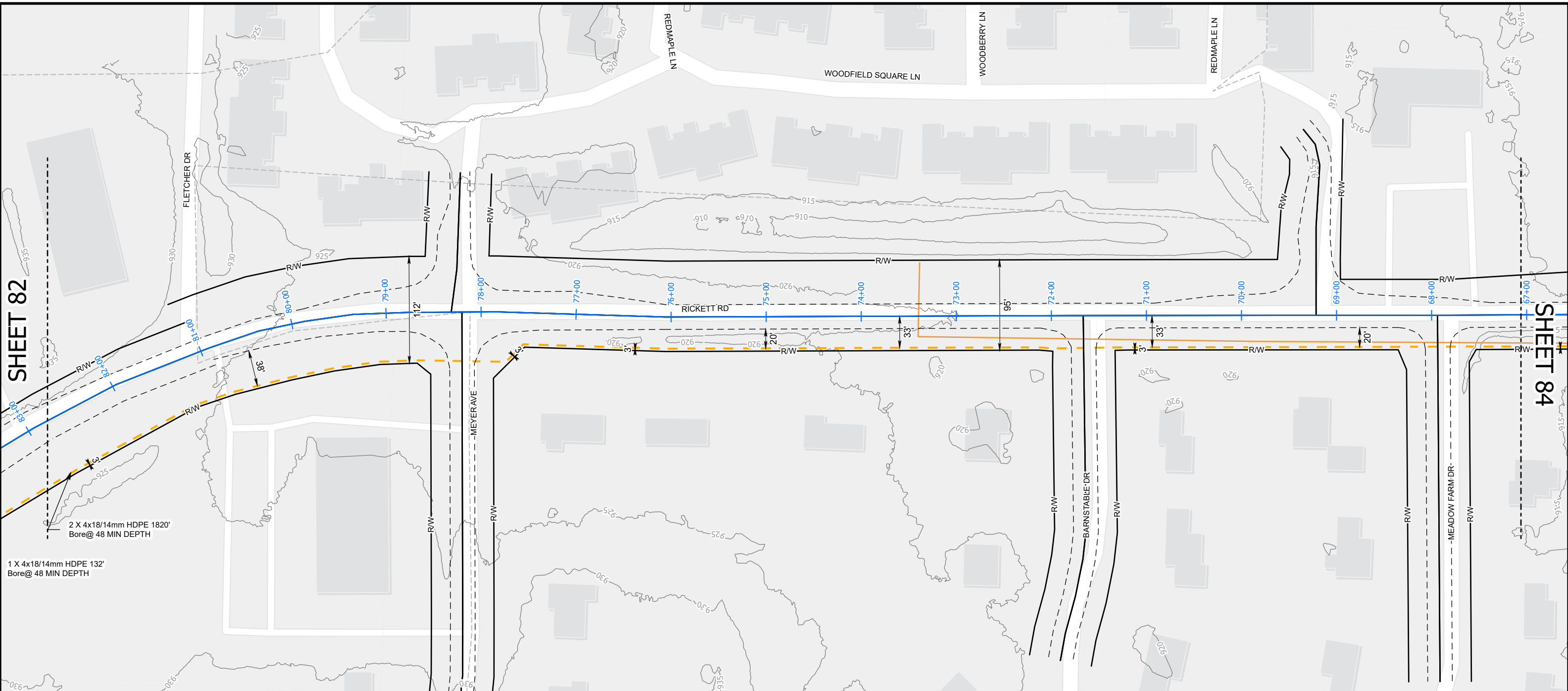


Grid: 82
Page 82 of 92



SHEET 82

SHEET 84



Livingston Co., MI

Construction Phase 3

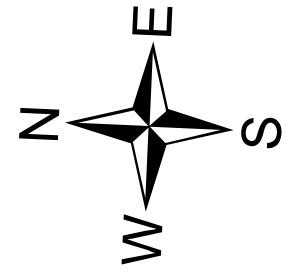
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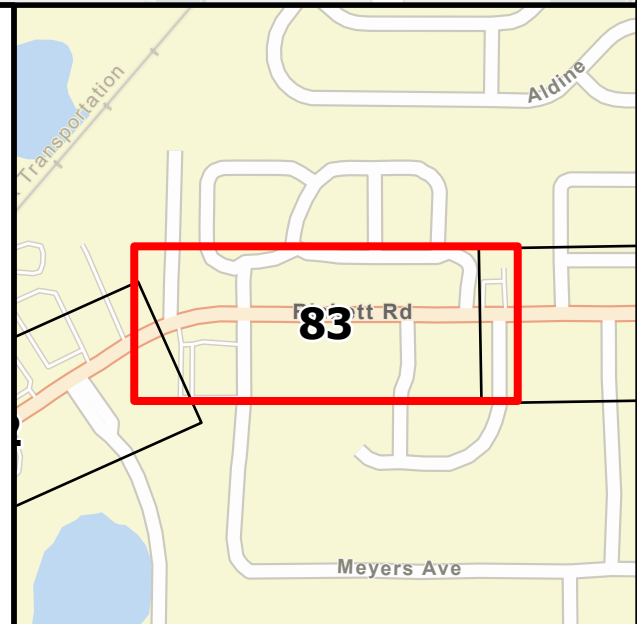
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Grid: 83
Page 83 of 92





City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

JANUARY 9, 2024

SUBJECT: CONSIDER APPROVAL OF A DESIGN AND CONSTRUCTION ENGINEERING PROPOSAL FROM TETRA TECH ENGINEERING SERVICES FOR THE PINE CREEK BOOSTER STATION IN AN AMOUNT NOT TO EXCEED \$97,000

BACKGROUND

Pine Creek subdivision is located west of the City of Brighton in Genoa Township. The majority of Genoa Township receives water and sewer services from the Marion, Howell, Oceola, and Genoa (MHOG) Water Authority; however, the City of Brighton provides service for the Pine Creek neighborhood. MHOG transferred ownership of the water system to the City of Brighton in the early 1990's and since that time, the city has been responsible for the maintenance, repair and installation of new equipment when needed.

ADMINISTRATIVE SUMMARY

Originally when the Pine Creek subdivision was installed, the water system was sufficient to manage the daily and emergency water service that was needed. With added housing and irrigation use over the years, the subdivision has slowly seen a reduction in water pressure in the Pinemont Drive area of the neighborhood. It has reached a critical point where action is necessary to ensure the continued provision of adequate services to the customers in that area. The issue was recognized in previous years, leading to the City's directive in 2017 for its engineer to develop plans for the installation of a water booster station.

Once the City progressed with the engineering phase of the water booster station and approached the bidding process, obstacles arose that required attention from the Pine Creek Homeowners Association (PC-HOA). The proposed location of the station fell within one of the subdivision's designated open spaces with a conservation easement. To proceed, PC-HOA members needed to secure a majority vote to amend neighborhood by-laws and allow the use of this property. However, the initial vote fell short of the required majority, leading to a halt in the project.

Last year, members of the PC-HOA approached City Council, expressing their renewed interest in addressing the water pressure issue. Subsequently, City staff engaged with PC-HOA members to explore potential developments that could facilitate the project's revival. PC-HOA members, noting increased instances of lower water pressure, were confident in obtaining the necessary votes. Following this, the PC-HOA conducted a successful vote, amending their by-laws to permit the project. Upon notification, City staff collaborated with engineers to request proposals and updates to the original booster station plans.

While significant progress was made in the design engineering during the initial attempt, some aspects still require finalization. Given the increased number of homes and usage, staff deemed it necessary to re-pressure test the area to ensure accurate information for determining the appropriate equipment size. Tetra Tech, in their proposal, will review the new pressure test results, conduct hydraulic modeling, and recommend booster station equipment. This proposal also encompasses design updates to the original plans and assistance with permits from regulatory agencies like the Department of Environment, Great Lakes, and Energy (EGLE), Livingston County Road Commission, and Hamburg Township.

Despite PC-HOA's approval for the project, questions have arisen regarding the conservation easement, potentially necessitating additional engineering work beyond the proposal's scope. In such cases, the funds from the engineering

retainer, approved in the current fiscal year's budget, will be utilized by the staff.

BUDGET INFORMATION

Funds were not initially budgeted for this project in the current budget year as the PC-HOA contacted the City this past fall. The City received bond funds in 2021 and most of the infrastructure projects originally planned to be paid for with these funds have been completed and final costs have resulted in unused money.

DPS Staff held discussions with the City Manager and Finance Director and the decision was made to utilize some of these remaining funds for installation of the Pine Creek booster station. We have estimated approximately \$1,000,000 for the entire project, which includes the design and construction engineering along with the purchase and installation of the station.

RECOMMENDATION

Approve Design and Construction Engineering Proposal from Tetra Tech Engineering Services for the Pine Creek Booster Station in an amount not to exceed \$97,000 and authorized the DPS Director to execute.

Prepared by: Marcel Goch, DPS Director

Reviewed by:

Elizabeth Gaines, Finance Director

- Within Budget
- Budget Amendment Necessary and In Proper Form
- Other: Will use a portion of remaining budgeted bond funds

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachment: Tetra Tech Proposal



December 29, 2023

Ms. Gretchen Golmolka, City Manager
City of Brighton
200 North First Street
Brighton, MI 48116

**Re: Pine Creek Booster Station – Design & Construction Engineering
Letter Proposal for Professional Consultant Services**

Dear Ms. Golmolka:

Tetra Tech is pleased to present this letter proposal for engineering consulting services for the proposed Pine Creek Residential Development water system booster station. The purpose of this project is to improve the static and dynamic operating water pressure within the City of Brighton's water system for Pine Creek residents. Tetra Tech's design engineering team is prepared to begin work immediately, in association with key scope items that include hydraulic modeling analysis for booster station sizing, design engineering, bidding, and construction administration and field services.

PROJECT UNDERSTANDING

Pine Creek's development has increased its water service demand near Rexford Court, Pinemont Drive, and Wyndam Lane (subject area). During prior field investigations performed by Tetra Tech's engineers, it was determined that the most appropriate place for installing a new water booster station would be along the easterly side of Pinemont Drive. The proposed booster station location is within the development, and within the jurisdiction of Hamburg Township, Michigan. New residential homes are currently under construction within the development, increasing future water service demand. The Michigan Department of Environment, Great Lakes, & Energy (EGLE) regulatory standards require the city's water system maintain a minimum operating pressure for residents. Recent water static and water pressure flow test data was obtained during the Fall of 2023 by the city's DPW staff within area of concern. The static and dynamic pressure data obtained confirms that a properly sized booster station be installed to increase water pressure within this targeted residential area of the Pine Creek development.

The meet State standards for maintaining a minimum operating pressure within the system, Tetra Tech will update drawings prepared in 2017. In addition, the recently obtained pressure data will be used to confirm the hydraulic modeling created in 2017 as part of the original Basis of Design efforts. This is an important task as several additional residential homes are utilizing the existing water system services. The confirmation will verify booster station sizing for current and future development within the current site plan of Pine Creek. The installation of a new booster station will also comply with EGLE regulations through the permitting process of Public Act 399.

Scope of services within this proposal will confirm the 1) hydraulic model data used to determine booster station sizing to meet current and future water pressure demand within the development; 2) update the 2017 construction bid set which includes drawings and specifications for the construction of a new booster station, permitting and

coordination with local governmental agencies; 3) evaluate bids from prospective, qualified contractors; 4) perform construction engineering, administration & field observation services.

Our team is currently assisting City staff with preliminary budgetary information and reviewing early-stage due diligence file information obtained in 2017/2018 as a preliminary basis for determining budgetary capital costs, access, PC-HOA communications, and a general (rough) layout configuration. City of Brighton staff have been in regular communication with the Pine Creek Homeowners Association (PC-HOA) representatives in recent months on matters relating to the proposed booster station project. It is our understanding the PC-HOA Board is in support of the proposed booster station by action of a vote that has taken place in late 2023.

SCOPE OF SERVICES

Project Approach

Our project manager and engineering team will work with the City to complete the hydraulic modeling analyses, design engineering, booster station recommendation, and suggested sequence of construction. An outlined summary of our proposed approach follows:

Task No. 1 – Hydraulic Modeling Verification

Tetra Tech proposes the following scope of services for confirming the Basis of Design, as prepared in 2017, which includes hydraulic modeling analysis for the Pine Creek Booster Station:

- Review and confirm Basis of Design for booster station sizing.
- Review existing hydraulic model data developed for the prior reliability study and review the calibration within the Pine Creek development, based on hydrant test data at up to three (3) locations provided by the city.
- Adjust model calibration with recently obtained flow test results performed in Fall 2023, as required.

Task No. 2 - Engineering Design Updates, Coordination and Permitting

- Update current construction drawings prepared from 2017 to include revisions for 2024 construction as required for bidding. Review and update technical specifications relating to proposed booster station facility, product manufacturers and update standards for construction.
- Utilize existing survey information that is available from prior work completed on this site. It is anticipated a pick-up survey of information will be performed to confirm existing site survey remains the same as was prepared in 2017.
- Confirm system pump curve data for pump size selection for booster station.
- As the City intends to prepare a purchase order for the proposed booster station in advance of receiving bids from prospective contractors, Tetra Tech will assist the city in soliciting information from an appropriate list of water distribution booster station suppliers to provide sufficient static and dynamic operating pressures to efficiently operate within the city's water system.
- Coordinate with city staff on pre-ordering the proposed booster station through a purchase order. Once the purchase order is initiated, Tetra Tech will perform a shop drawing review of the proposed booster station equipment for concurrency with the construction drawings prepared for this project. Timelines for preparation of shop drawings by the manufacturers, production of the proposed booster station, and delivery are entirely in the control of the booster station manufacturer. Tetra Tech will provide regular updates (at least monthly) on an anticipated booster station delivery date, or adjustments that may be associated with the manufacture's timelines.

- Review updated 100% plans and specifications. Any review comments received by outside parties (such as Pine Creek representation) will be at the discretion of the City of Brighton.
- Prepare Act 399 Water System Permit application and submit to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) construction permit - Prepared by Tetra Tech and signed by a City of Brighton authorizing agent.
- Update Final Construction Documents to include the following:
 - Title Sheet
 - Site Clearing Sheet, Including Tree Removals
 - Driveway Approach Details Sheet (Application to be Submitted to Livingston County Road Commission)
 - Site Improvements Plans
 - Booster Station Drawings (prepared by others)
 - Site Utilities Plans
 - Soil Erosion and Sedimentation Control Plan (permit application to be submitted to the Livingston County Drain Commissioner's Office)
 - City of Brighton City Standards Sheet
 - CSI Format Front-End Documents and Technical Specifications for Construction.
- Prepare drawing package and apply for site plan approval to Hamburg Township.
- Prepare a detailed Final Opinion of Probable Construction Cost for City review.

Task No. 3 - Bidding Services

- Assist City in prequalifying contractors prior to bidding.
- Conduct a pre-bid meeting with City and qualified bidders.
- Prepare addenda as required during the bidding phase to clarify bidding documents, if necessary.
- Attend a public bid opening of the construction contract.
- Assist City in evaluating bids and submit a letter of recommendation for award for the construction contract for City approval.
- Assist City in executing the contract and issuing a Notice to Proceed to the Contractor.

Task No. 4 - Construction Administration and Field Observation Services

Tetra Tech proposes the following scope of services associated with construction administration and field observation services:

- Act as Owner's representative during the construction of the improvements.
- Organize and conduct a pre-construction meeting with the awarded Contractor and Owner to discuss several key items including, but not limited to, the project schedule, lines of communication for contractor, construction pay items, project safety, and execution of the work. Please note that a pre-construction meeting will be scheduled after a committed delivery date is determined by the selected pump station manufacturer.
- Perform on-site field observation by our Tetra Tech team for each key aspect of the proposed work. It is anticipated that field observation visits may be intermittent, at times, depending upon contractor's progress and scheduled activities, as appropriate to the various stages of construction. Our team will utilize an experienced and qualified professional to record the Contractor's progress of the executed work. The goal of such visits shall be to secure completion of the work in accordance with the Contract Documents and to keep Owner informed of the progress of the work. Since much of the work is above grade and visible after installation, the RPR services will be provided on a part-time basis. Our proposal anticipates a 60-calendar day construction

period. Our proposal assumes an average of one day per week of the construction period for time on site (total estimated field observation time: 180 hours).

- Tetra Tech will attend the pump control panel factory test. The panel will be checked for quality assurance, along with uploading the program to the PLC. Some minor testing of the program will be performed at the factory. After the factory test, the program will be finalized, and desk tested. The WTP will be updated to provide complete control and monitoring of the station. Some existing interfaces may be expanded to incorporate the new equipment and control. After site installation is finalized, Tetra Tech will perform a site visit to upload the final program and HMI interface and perform a complete site acceptance test. At completion of testing and sign off by the Owner, we will provide a digital copy of both the PLC and HMI programs.
- Review or take other appropriate action in respect to shop drawings, samples, the results of tests and inspections, and other data which the Contractor is required to submit, for conformance with the design concept of the Project. Discuss with Owner submittals that are critical to the progress of the work for approval of recommendations and material used for the construction.
- Consult with Owner and Contractor for necessary interpretations and clarifications of the Contract Documents, prepare change order requests, and act as initial interpreter of the project requirements to assess the acceptability of the work.
- Prepare applications for payment and recommend payments to Contractor.
- Coordinate and attend testing and walk-throughs with City staff to place in operation the Pine Creek booster station equipment.
- Determine Project’s substantial completion - Perform an on-site review to determine if the work is substantially complete in accordance with the Contract Documents, so that Engineer may issue a certificate of substantial completion.
- Upon notification from Contractor that the entire Work is complete, Engineer will make a final inspection with Owner and Contractor to determine if the work has been completed in accordance with the Contract Documents, so that upon review of Contractor application for final payment, Engineer may recommend, in writing, final payment to the Contractor and may give written notice to Owner and the Contractor that the work is acceptable.
- Prepare for Owner, record drawings showing those changes made during the construction process, based on the marked-up prints, drawings, tracings, and other data furnished by Contractor and Engineer
- Programming services will include the development of programmable logic, operator interface with graphic programs, telemetry radio communication, factory testing and start-up services.

FEES FOR SERVICES

Compensation for our personnel directly engaged in the work of this proposal will be based on our hourly billable rates plus in-house reimbursable expenses. We propose the following not-to-exceed budget for the above-mentioned scope of work.

Task No. 1 – Hydraulic Modeling Confirmation	\$1,500
Task No. 2 – Engineering Design Updates, Coord. & Permitting	\$24,250
Task No. 3 – Bidding Services	\$3,750
Task No. 4 – Construction Admin & Field Services	\$52,500
PLC Programming and SCADA Allowance	<u>\$15,000</u>
TOTAL	\$97,000

PROJECT SCHEDULE

Engineering services would commence upon receiving authorization and design engineering would be completed within an estimated twelve (12) week timeframe. Award of a construction contract would take place in June 2024. It is anticipated that for an owner-purchased booster station, the manufacturer’s lead times could extend as much as 26-30 weeks, and this anticipated timeframe includes an initial shop drawing preparation and review period. Substantial completion and operational use would be complete within fall 2024. A detailed project schedule is shown below for anticipated timelines for project milestones.

Hydraulic Modeling Confirmation	January 9, 2024 – February 1, 2024
Engineering Design Updates	January 9, 2024 – March 10, 2024
Purchase Order Issuance Booster Station	January 31, 2024 (estimated)
Permitting	February 2023 – April 2024
Bidding	May 2024
Award of Construction Contract	June 2024
Delivery of Booster Station	August 2024 (estimated)
Construction	July 2024 – October 2024

Assumptions

The following assumptions are to be taken into consideration for this project:

- Water main installation beneath Pinemont Drive is intended to be directionally bored with a casing pipe or other means acceptable to the City of Brighton to minimize impacts to existing road surfaces.
- Permit application fees are to be paid for by City of Brighton.
- No architectural aesthetics are associated with the design of the proposed booster station. It is anticipated that the booster station would be a ‘packaged’ system for ready installation under the terms defined within a construction contract. Additional special architectural or ornamental features associated with the proposed booster station are not included in the scope of services.
- No environmental investigations are associated with this work (e.g., potential species habitat or hazardous materials).
- No geotechnical investigations are associated with this work. Tetra Tech will coordinate with the City to witness subsurface soil characteristics by use of spot excavations performed by City staff.
- Preparation of amendments associated with Pine Creek Development HOA by-laws, easement preparation, Exhibit B documentation, deeds, and title work are not included in the scope of services.
- Permission is granted by the Pine Creek HOA to access the proposed site and Pinemont Drive for field investigation work, design engineering, and construction throughout the duration of the project.
- Permanent easement access is to be granted by the Pine Creek HOA from Hamburg Road for operational use and maintenance of the proposed booster station facility by City personnel, and authorized representatives. Water main access from Pinemont Drive will also be permitted through an easement for future maintenance, repair, or replacement of the newly installed water main pipe.
- Coordination of legal reviews between the City of Brighton, the Pine Creek Development HOA, and Hamburg Township legal counsel, in association with conservation easement amendments is not included in the scope of services.

If the City agrees with this proposal, please sign in the space provided below and return one (1) signed original indicating your authorization to proceed. The agreement for this project is comprised of this proposal and the attached Tetra Tech Standard Terms and Conditions.

Ms. Gretchen Golmolka
Pine Creek Booster Station Project
December 29, 2023
Page 6

We appreciate the opportunity to provide continuing professional services to the City of Brighton.

Sincerely,



Steven J. Magnan, P.E.
Senior Project Manager

cc: Marcel Goch, DPS Director

Attachment: Tetra Tech Standard Terms and Conditions

PROPOSAL ACCEPTED BY CITY OF BRIGHTON

BY: _____

TITLE: _____ **DATE:** _____

Engineering Services Standard Terms & Conditions

Services Consultant will perform services for the Project as set forth in the provisions for Scope of Work/Fee/Schedule in the proposal and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

Compensation In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

Fee Definitions The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

Additional Services The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Underground Facilities Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities.

Regulated Wastes Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

Contractor Selection Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

Ownership of Documents Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Client.

Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

Standard of Care Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no other warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

Period of Service This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule above. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

Insurance and Liability Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute
Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate
Automobile Liability –\$1,000,000 combined single limit for bodily injury and property damage
Professional Liability (E&O) - \$5,000,000 each claim and in the aggregate

Indemnification Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

Dispute Resolution The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence not later than the date of substantial completion.

Suspension of Work The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards,

they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Independent Consultant Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate applicable laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Permits and Approvals Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

Consequential Damages Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project or with this Agreement.

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Environmental Matters The Client warrants that they have disclosed all known potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. To the extent permitted by law, the Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

Cost Opinions Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

Contingency Fund The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

Safety Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

Information from Other Parties The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Force Majeure Neither party shall be liable for any damages caused by any delay that is beyond the reasonable control of either party, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Warranty Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

Severability Any provision of these terms later held to be unenforceable shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All obligations arising prior to the termination of this Agreement and all provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

Assignments Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

Governing Law The terms of Agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Collection Costs In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

Equal Employment Opportunity Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, reasonable attorney fees, costs, and disbursements may be recovered only as permitted by law.

Third Party Beneficiaries Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

Captions The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

January 9, 2024

SUBJECT: CONSIDER APPROVAL OF RESOLUTION #2024-02 TO ALLOW THE CITY OF BRIGHTON TO ENTER INTO CONTRACT #23-5508 WITH THE MICHIGAN DEPARTMENT OF TRANSPORTATION TO RECEIVE FUNDS FOR THE 2023 SIDEWALK GAP IMPROVEMENT PROGRAM

ADMINISTRATIVE SUMMARY

At its October 20, 2022 City Council's authorized staff to apply for the Transportation Allocation Program (TAP) grant from the Michigan (MDOT) Department of Transportation to help fund the 2023 Sidewalk Gap Improvement Program along Flint Road (Williamsen Drive to Spring Mountain Drive), Williamsen Drive (Nelson Street to Flint Road) and Nelson Street (Williamsen Drive to N Church Street).

We were notified in early 2023 that we had been awarded \$329,560. In order to be fully awarded the grant funding the city had to go through several compliance steps including obtaining easements in certain areas. City staff was able to secure the easements and other compliance and received a final approval of the award.

As part of the approval process, City Council must approve a resolution approving the contract between MDOT and the City. Contract #23-5508 and Resolution #2024-02 are attached.

Giffels Webster has estimated the project cost to be \$467,000, the grant amount is \$329,560, and the City is required to match 30 percent of the grant, as well as any non-grant eligible costs, all costs associated with engineering, permitting, construction administration and potential cost overruns. The estimated match amount is \$137,440.

BUDGET INFORMATION

City Council approved a total of \$400,000 of bond funds for Sidewalk Gap Improvement use. Of that total, approximately \$100,000 was approved for design and construction engineering, and the remaining \$300,000 is sufficient to cover the 30 percent match required to receive the \$329,560 in TAP grant funds.

RECOMMENDATION

Approve Resolution #2024-02 to allow the City of Brighton to enter into Contract #23-5508 with the Michigan Department of Transportation to receive funds for the 2023 Sidewalk Gap Improvement Program and authorize the City Manager to execute the contract.

Prepared by: Patty Thomas, Asst. to the DPS Director

Reviewed by: Marcel Goch, DPS Director

Elizabeth Gaines, Finance Director

- Within Budget
- Budget Amendment Necessary and In Proper Form
- Other _____

City Attorney

Acceptable Form and Ready to Execute

Other _____

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachments: Resolution #2024-02

Contract #23-5508

**RESOLUTION APPROVING THE CITY OF BRIGHTON TO ENTER INTO A CONTRACT WITH THE MICHIGAN DEPARTMENT OF TRANSPORTATION TO RECEIVE FUNDS FOR THE 2023 SIDEWALK GAP IMPROVEMENT PROGRAM
CITY OF BRIGHTON
COUNTY OF LIVINGSTON, STATE OF MICHIGAN**

WHEREAS, The City of Brighton will be completing the Sidewalk Gap Program located along Nelson Street from Williamsen Drive to Church Steet, along Williamsen Drive from Nelson Street to Flint Road, along Flint Road from Williamsen Drive to Spring Mountain Drive, and

WHEREAS, the installation of this five-foot wide, ADA-compliant sidewalk will provide a continuous pedestrian route within the public right-of-way in the stated areas and promote another means of access to the downtown area for residents, and

WHEREAS, the estimated construction costs of the project is \$467,000, and

WHEREAS, the Michigan Department of Transportation is contributing \$329,560 towards the cost of the project, and

WHEREAS, the City agrees to pay \$137,440 for the project, and

WHEREAS, the City commits to being responsible for all costs associated with non-eligible costs under the grant, and

WHEREAS, the City commits to being responsible for all costs associated with engineering, permitting, construction administration and potential cost overruns, and

WHEREAS, the City of Brighton will commit to owning the sidewalk, retaining walls, etc. and funding a maintenance plan and program in perpetuity,

NOW, THEREFORE BE IT RESOLVED, the City Council of the City of Brighton, Livingston County, Michigan, resolves to enter into Contract #23-5508 with the Michigan Department of Transportation for the Grant for the 2023 Sidewalk Gap Improvement Program, and

BE IT FURTHER RESOLVED, to authorize the City of Brighton to pay \$137,440 and all non-grant eligible costs and all costs associated with engineering, permitting, construction administration and potential cost overruns, and

BE IT FURTHER RESOLVED, to authorize the City Manager to sign all documents between the City of Brighton and the Michigan Department of Transportation (MDOT) .

IT IS HEREBY CERTIFIED that the City Council of the City of Brighton adopted the foregoing resolution at its regular meeting held on the 9th day of January, 2024 by roll call vote:

PRESENT:

NAYS:

ABSENT:

RESOLUTION DECLARED ADOPTED.

Dated: _____

CERTIFICATION

I, Tara Brown, City Clerk for the City of Brighton, do hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council at its regular meeting held on January 9, 2024.

Tara Brown, City Clerk
City of Brighton
200 N. First Street
Brighton, MI 48116

TAP

DA

Control Section	TAU 47000
Job Number	218963CON
Project	24A0106
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	23-5508

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF BRIGHTON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in Brighton, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated December 4, 2023, attached hereto and made a part hereof:

Concrete sidewalk along Nelson Street from Williamsen Drive to Church Steet, along Williamsen Drive from Nelson Street to Flint Road, along Flint Road from Williamsen Drive to Spring Mountain Drive, including grading, aggregate base, concrete curb and gutter, curb ramps, drainage, segmental concrete retaining wall, boulder retaining wall, split rail fence, permanent signing and pavement markings; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of transportation enhancement activities; and

WHEREAS, it has been determined that the PROJECT qualifies for such funding by virtue of its direct relationship with the intermodal transportation system; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s) or funding:

TRANSPORTATION ALTERNATIVES PROGRAM

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

The Michigan Department of Environment, Great Lakes, and Energy has informed the DEPARTMENT that it adopted new administrative rules (R 325.10101, et. seq.) which prohibit any governmental agency from connecting and/or reconnecting lead and/or galvanized service lines to existing and/or new water main. Questions regarding these administrative rules should be directed to EGLE. The cost associated with replacement of any lead and/or galvanized service lines, including but not limited to contractor claims, will be the sole responsibility of the REQUESTING PARTY.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT. Such administration shall be in accordance with PART II, Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, under the terms of this contract, shall:

A. At no cost to the PROJECT

(1) Design or cause to be designed the plans for the PROJECT.

- (2) Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.
 - (3) Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.
- B. At least 10 days prior to any ceremony to be held in connection with the PROJECT, notify the DEPARTMENT.
 - C. When issuing any news release or promotional material regarding the PROJECT, give the DEPARTMENT and FHWA credit for participation in the PROJECT and provide a copy of such material to the DEPARTMENT.

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection, without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

5. The PROJECT COST shall be met in part by contributions by the Federal Government. Federal Funds shall be applied to the eligible items of the PROJECT COST up to the lesser of: (1) \$329,560, or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, is not exceeded at the time of the award of the construction contract. The balance of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Any items of PROJECT COST not reimbursed by Federal Funds shall be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds earned as the PROJECT progresses.

7. It is understood that the REQUESTING PARTY is responsible for the facilities constructed as the PROJECT and that said facilities may require special or unusual operation and/or maintenance. The REQUESTING PARTY certifies, by execution of this contract, that upon completion of construction and at no cost to the PROJECT or the DEPARTMENT, it will properly maintain or provide for the maintenance and operation of the PROJECT, making ample

provisions each year for the performance of such maintenance work as may be required. Upon completion of the PROJECT, the REQUESTING PARTY shall accept the facilities constructed as built to specifications within the construction contract documents.

On projects involving the mobility for bicyclists, the REQUESTING PARTY will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such facility constructed as the PROJECT except those for maintenance or emergency assistance purposes, or mobility for persons with disabilities.

On projects involving the restoration of historic facilities, the REQUESTING PARTY agrees that the project will not be awarded until the owner of such facilities has an Historic Preservation Covenant, which includes an Historic Preservation Easement, or an Historic Preservation Agreement, as appropriate, with the Michigan State Historic Preservation Office in accordance with 1995 PA 60 for the purpose of ensuring that the historic property will be preserved. The REQUESTING PARTY also agrees that such facilities shall be maintained and repaired by the REQUESTING PARTY or owner, as applicable, at no cost to the DEPARTMENT or the PROJECT, in such a manner as to preserve the historical integrity of features, materials, appearance, workmanship, and environment.

On projects which include landscaping, the DEPARTMENT, at PROJECT COST, agrees to perform or cause to be performed, the watering and cultivating necessary to properly establish the plantings for a period of two growing seasons, in general conformance with Section 815.03(I) of the DEPARTMENT'S Standard Specifications for Construction. The REQUESTING PARTY shall maintain all plantings following completion of said period of establishment.

Failure of the REQUESTING PARTY to fulfill its responsibilities as outlined herein may disqualify the REQUESTING PARTY from future Federal aid participation in Transportation Alternatives Program projects or in other projects on roads or streets for which it has maintenance responsibility. Federal aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhered to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that it is not aware if and has no reason to believe that the property on which the work is to be performed under this agreement is a facility, as defined by the Michigan Natural Resources and Environmental Protection Act [(NREPA), PA

451, 1994, as amended 2012]; MCL 324.20101(1)(s). The REQUESTING PARTY also certifies that it is not a liable party pursuant to either Part 201 or Part 213 of NREPA, MCL 324.20126 et seq. and MCL 324.21323a et seq. The REQUESTING PARTY is a local unit of government that has acquired or will acquire property for the use of either a transportation corridor or public right-of-way and was not responsible for any activities causing a release or threat of release of any hazardous materials at or on the property. The REQUESTING PARTY is not a person who is liable for response activity costs, pursuant to MCL 324.20101 (vv) and (ww).

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Michigan Department of Environment, Great Lakes, and Energy, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Michigan Department of Environment, Great Lakes, and Energy and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT or its agents pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections, and recommendations by the DEPARTMENT shall not relieve the REQUESTING PARTY of its ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT is assuming any liability, control, or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT or its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of any of their highways and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT or its agents is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

Upon completion of the PROJECT, the REQUESTING PARTY shall accept the facilities constructed as built to specifications within the contract documents. It is understood that the REQUESTING PARTY shall own the facilities and shall operate and maintain the facilities in accordance with all applicable Federal and State laws and regulations, including, but not limited to, Title II of the Americans with Disabilities Act (ADA), 42 USC 12131 et seq., and its associated regulations and standards, and DEPARTMENT Road and Bridge Standard Plans and the Standard Specifications for Construction.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of any REQUESTING PARTY highway for purposes of MCL 691.1402 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. Each party to this contract will remain responsible for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

18. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction and to:

- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume either ownership of any portion of the PROJECT or jurisdiction of any REQUESTING PARTY highway as a result of being named as an insured on the owner's protective liability insurance policy.
- C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

19. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolutions approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as written below.

CITY OF BRIGHTON

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
for Department Director MDOT

By _____
Title:



December 4, 2023

EXHIBIT I

CONTROL SECTION TAU 47000
JOB NUMBER 218963CON
PROJECT 24A0106

ESTIMATED COST

CONTRACTED WORK

Estimated Cost \$467,000

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST \$467,000
Less Federal Funds* \$329,560
BALANCE (REQUESTING PARTY'S SHARE) \$137,440

*Federal Funds for the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

DOT

TYPE B
BUREAU OF HIGHWAYS
03-15-93

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

- A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.
- B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.
 - 1. Engineering
 - a. FAPG (6012.1): Preliminary Engineering
 - b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts
 - c. FAPG (23 CFR 635A): Contract Procedures
 - d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
 - 2. Construction
 - a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims
 - b. FAPG (23 CFR 140B): Construction Engineering Costs
 - c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies
 - d. FAPG (23 CFR 635A): Contract Procedures
 - e. FAPG (23 CFR 635B): Force Account Construction
 - f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

- g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)
 - h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways
 - i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments--Allowable Costs
3. Modification Or Construction Of Railroad Facilities
- a. FAPG (23 CFR 140I): Reimbursement for Railroad Work
 - b. FAPG (23 CFR 646B): Railroad Highway Projects
- C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
- 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
 - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
 - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

- A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.
- B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.
- C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.
- D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.
- E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

- F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than \$100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

- G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.
- H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.
- I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

- J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.
- K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.
- L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.
- M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.
- N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.
- O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.
- P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.
- Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate

arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

- a. Agencies expending a total of \$500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

- The Reporting Package
- The Data Collection Form
- The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than \$500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education
Accounting Service Center
Hannah Building
608 Allegan Street
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.
3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than \$1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.
5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.
6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than \$1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.
2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.
3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).
5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

- B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.
- C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.
- D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

- A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.
- B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.
- C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.
- D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.
- E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

**APPENDIX B
TITLE VI ASSURANCE**

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

1. **Compliance with Regulations:** For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
 - a. Withholding payments to the contractor until the contractor complies; and/or
 - b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.