

# **THE PORT AUTHORITY OF NY & NJ**

**PROCUREMENT DEPARTMENT  
2 MONTGOMERY STREET, 3<sup>RD</sup> FL.  
JERSEY CITY, NJ 07302**

## **INVITATION FOR BID/PUBLIC BID OPENING**

### **BID INFORMATION**

**ISSUED DATE: 03/09/2015**

**TITLE: Construct and Deliver Two (2) Barge-Type Rail Car Floats for the  
Transport of Rail Cars**

**BID NO.: 41672**

**SUBMIT SEALED BIDS BEFORE THE DUE DATE AND TIME TO THE ABOVE ADDRESS  
WHERE THEY WILL BE PUBLICLY OPENED AND READ**

**QUESTIONS DUE: MARCH 20, 2015**

**TIME: 11:00 AM**

**BID DUE DATE: APRIL 7, 2015**

**TIME: 11:00 AM**

**BUYER NAME: RICHARD A. GREHL**

**PHONE NO.: (201) 395-3441**

**EMAIL: rgrehl@panynj.gov**

**BIDDER INFORMATION  
(TO BE COMPLETED BY THE BIDDER)  
(PLEASE PRINT)**

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**(NAME OF BIDDING ENTITY)**

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**(ADDRESS)**

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**(CITY, STATE AND ZIP CODE)**

---

**(REPRESENTATIVE TO CONTACT-NAME & TITLE**

**(TELEPHONE)**

---

**(FEDERAL TAX I.D. NO.)**

**(FAX NO.)**

**\_\_\_\_\_ BUSINESS CORPORATION \_\_\_\_\_ PARTNERSHIP \_\_\_\_\_ INDIVIDUAL**

**\_\_\_\_\_ OTHER (SPECIFY): \_\_\_\_\_**

## **INVITATION FOR BID**

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- PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS
- PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS
- PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS AND PRICING SHEET(S)
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## **PART I - STANDARD INFORMATION FOR BIDDERS**

### **1. General Information: The Port Authority of New York and New Jersey**

The Port Authority of New York and New Jersey (the “Port Authority” or the “Authority”) is an agency of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Port Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia and Stewart International Airports), marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

In addition, the Port Authority operates the Port Authority Bus Terminal in Manhattan, the largest facility of its kind in the world, and the George Washington Bridge and Journal Square Transportation Center bus stations. A key link in interstate commuter travel, the Port Authority also operates the Port Authority Trans-Hudson Corporation (PATH), a rapid rail transit system linking Newark, and the Jersey City and Hoboken waterfronts, with midtown and downtown Manhattan. A number of other key properties are managed by the agency including but not limited to a large satellite communications facility (the Teleport) in Staten Island, and a resource recovery co-generation plant in Newark. Prior to September 11, 2001, the Port Authority’s headquarters were located in the World Trade Center, and that complex is still owned and being partially redeveloped by the Authority.

In September of 2008, the Port Authority acquired 100% of the membership interests in New York New Jersey Rail, LLC, which currently leases property in Jersey City, New Jersey, which is a part of the Greenville Yard – Port Authority Marine Terminal and functions as an intermodal transload facility for freight.

### **2. Federal Highway Authority Requirements**

This Contract is in support of the Cross-Harbor Freight Program, which is partially funded by funds earmarked by Federal Highway Authority (FHWA) and the successful Bidder will be required to comply with the “Federal Highway Authority Requirements” annexed to Part III as Attachment E, the Required Contract Provisions annexed to Part III as Attachment F and Form 1273 annexed to Part III as Attachment G.



### **3. Form and Submission of Bid**

The Bidder shall review carefully every provision of this document, provide all the information required, and sign and return one entire copy to the Port Authority in accordance with the instructions on the Cover Sheet and Part II – Contract Specific Information for Bidders. The Bidder should retain one complete duplicate copy for its own use. The “Signature Sheet” contained herein must be completed and signed by the Bidder. The Pricing Sheet(s) contained herein must also be completed. The bid shall be sealed in the enclosed self-addressed envelope conspicuously marked with the Bidder’s name, address, and Vendor Number, if available. In addition, the outside of the package must clearly state the Bid title, the Bid Collective Number and the Bid Due Date. Failure to properly label submissions may cause a delay in identification, misdirection or disqualification of the submissions. In submitting this bid, the Bidder offers to assume the obligations and liabilities imposed upon it herein and expressly makes the representations and warranties required in this document.

All Bids must be received by the bid custodian on or before the due date and time specified on the cover page, at which time they will be publicly opened and read. Bids are only accepted Monday through Friday, excluding Port Authority holidays, between the hours of 8:00 a.m. and 5:00 p.m., via (1) regular mail, (2) express delivery service (e.g. UPS), or (3) hand delivery. If your bid is to be hand-delivered by messenger or you are planning to attend the formal bid opening, please note that only individuals with valid photo identification will be permitted access to the Port Authority's offices. Individuals without valid identification shall be turned away and their packages not accepted. Bids that are not received by the bid custodian by the scheduled bid opening date will be considered late.

### **4. Buy America**

By submitting a bid, or executing a contract, hereunder, Contractor certifies compliance with 23 U.S.C. 313, which sets forth the FHWA Buy America requirements.

See the regulations at 23 C.F.R. 635.410 for more information on compliance, including the some latitude through minimum use waivers, and alternate bids.

To certify compliance with FHWA Buy America requirements, the contractor shall sign the attached Buy America Certification form, found in Exhibit A.

### **5. Vendor Profile**

To ensure maximum opportunities, it is vitally important that Bidders keep their vendor profiles up to date with an appropriate e-mail address, as this will enable their firm to receive timely notice of advertisements, reminders, solicitations and addenda. Bidders may update their vendor profile or register as a Port Authority Vendor by accessing the online registration system at <https://panynjprocure.com/VenLogon.asp>.

## **6. Acknowledgment of Addenda**

If any Addenda are posted or sent as part of this Bid, the Bidder shall complete, sign and include with its Bid the addenda form(s). In the event any Bidder fails to conform to these instructions, its Bid will nevertheless be construed as though the Addenda had been acknowledged.

If the Bidder downloaded this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> and download any addenda that might have been issued in connection with this solicitation.

## **7. Firm Offer**

The Bidder offers to provide the Port Authority of New York and New Jersey the services and to perform all Work in connection therewith required under this Contract, all as specified by the terms and conditions of the Contract, based on the Pricing Sheets provided herein.

**EXCEPTIONS TAKEN OR CONDITIONS IMPOSED BY A BIDDER TO ANY PORTION OF THE CONTRACT DOCUMENTS WILL RESULT IN REJECTION OF THE BID.**

## **8. Acceptance or Rejection of Bids**

The acceptance of a bid will be by a written notice signed by an authorized representative on behalf of the Authority. No other act of the Port Authority, its Commissioners, officers, agents or employees shall constitute acceptance of a bid. The Port Authority reserves the unqualified right, in its sole and absolute discretion, to reject any or all bids or to accept any bid, which in its judgment will best serve the public interest and to waive defects in any bid. No rights accrue to any Bidder unless and until its bid is accepted.

## **9. Bidder's Questions**

Any questions by prospective Bidders concerning the Work to be performed or the terms and conditions of the Contract may be addressed to the Contracts Specialist listed on the Cover Sheet of this document. The Contracts Specialist is only authorized to direct the attention of prospective Bidders to the portions of the Contract. No employee of the Port Authority is authorized to interpret any portion of the Contract or to give information in addition to that contained in the Contract. When Contract interpretation or additional information as to the Contract requirements is deemed necessary by the Port Authority, it will be communicated to all Bidders by written addenda issued under the name of the Assistant Director, Commodities & Services Division of the Port Authority and may be posted on the Port Authority website. Addenda shall be considered part of the Contract.

## **10. Additional Information To and From Bidders**

Should the Authority require additional information from the Bidder in connection with its bid, such information shall be submitted within the time frame specified by the Port Authority.

If the Bidder is a corporation, a statement of the names and residences of its officers should be submitted on the Name and Residence of Principals Sheet, directly following the Signature Sheet.

## **11. Union Jurisdiction**

All prospective Bidders are advised to ascertain whether any union now represented or not represented at the Facility will claim jurisdiction over any aspect of the operations to be performed hereunder and their attention is directed to the paragraph entitled "Harmony" in the Standard Contract Terms and Conditions.

## **12. Assessment of Bid Requirements**

The Bidder should carefully examine and study the entire contents of these bid documents and shall make its own determinations as to the services and materials to be supplied and all other things required to be done by the Contractor.

## **13. Bidder's Prerequisites**

Only Bidders who can comply with the prerequisites specified in Part II hereof at the time of the submission of its bid should submit bids, as only bids submitted by such Bidders will be considered. By furnishing this document to the Bidder, the Port Authority has not made a determination that the Bidder has met the prerequisites or has otherwise been deemed qualified to perform the services. A determination that a Bidder has met the prerequisites is no assurance that it will be deemed qualified in connection with other bid requirements included herein.

## **14. Qualification Information**

The Port Authority may give oral or written notice to the Bidder to furnish the Port Authority with information and to meet with designated representatives of the Port Authority relating to the Bidder's qualifications and ability to fulfill the Contractor's obligations hereunder. The requested information shall be submitted no later than three (3) days after said notice unless otherwise indicated. Matters upon which the Port Authority may inquire may include, but may not be limited to, the following:

- a. The Bidder may be required to demonstrate that it is financially capable of performing this Contract, and the determination of the Bidder's financial qualifications will be made by the Port Authority in its sole discretion. The Bidder shall submit such financial and other relevant information as may be required by the Port Authority from time to time including, but not limited to, the following:

1. (i) Certified financial statements, including applicable notes, reflecting the Bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Bidder's most recent fiscal year.  
  
(ii) Where the certified financial statements set forth in (i) above are not available, then either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided.  
  
(iii) Where neither certified financial statements nor financial statements from an independent accountant are available, as set forth in (i) and (ii) above, then financial statements containing such information prepared directly by the Bidder may be submitted; such financial statements, however, must be accompanied by a signed copy of the Bidder's most recent Federal income tax return and a statement in writing from the Bidder, signed by an executive officer or their authorized designee, that such statements accurately reflect the present financial condition of the Bidder.

Where the statements submitted pursuant to subparagraphs (i), (ii) or (iii) are dated prior to forty-five (45) days before the bid opening, then the Bidder shall submit a statement in writing, signed by an executive officer of the Bidder or their designee, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted.

2. Bidder's statement of work on hand, including any work on which a bid has been submitted, and containing a description of the work, the annual dollar value, the location by city and state, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Bidder's work on these jobs.
  3. The name and address of the Bidder's banking institution, chief banking representative handling the Bidder's account, the Bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Bidder's Dun and Bradstreet number, if any, the name of any other credit service to which the Bidder has furnished information, and the number, if any, assigned by such service to the Bidder's account.
- b. Information relating to the Bidder's Prerequisites, if any, as set forth in this document.
  - c. If the Bidder is a corporation: (1) a copy of its Certificate of Incorporation and, if applicable, all Amendments thereto with a written declaration signed by the Secretary of the Corporation with the corporate seal affixed thereto, stating that the copy furnished is a true copy of the Certificate of Incorporation and any such Amendments as of the date of the opening of the bid and (2) if the Bidder is not incorporated under the laws of the state in which the service is to be performed, a certificate from the Secretary of State of said state evidencing the Bidder's legal qualification to do business in that state.

- d. A statement setting forth the names of those personnel to be in overall charge of the service and those who would be exclusively assigned to supervise the service and their specific roles therein, setting forth as to each the number of years of experience and in which functions and capacities each would serve.
- e. Information to supplement any statement submitted in accordance with the Standard Contract Terms and Conditions entitled "Contractor's Integrity Provisions."
- f. In the event that the Bidder's performance on a current or past Port Authority or Port Authority Trans-Hudson Corporation (PATH) contract or contracts has been rated less than satisfactory, the Manager, Purchasing Services Division, may give oral or written notice to the Bidder to furnish information demonstrating to the satisfaction of such Manager that, notwithstanding such rating, such performance was in fact satisfactory or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of this Contract, and that such performance will be satisfactory.
- g. The Bidder recognizes that it may be required to demonstrate to the satisfaction of the Port Authority that it in fact can perform the services as called for in this Contract and that it may be required to substantiate the warranties and representations set forth herein and the statements and assurances it may be required to give.

Neither the giving of any of the aforesaid notices to a Bidder, the submission of materials by a Bidder, any meeting which the Bidder may have with the Port Authority, nor anything stated by the Port Authority in any such meeting shall be construed or alleged to be construed as an acceptance of said Bidder's bid. Nothing stated in any such meeting shall be deemed to release any Bidder from its offer as contained in the bid.

## **15. Facility Inspection**

Details regarding the Facility inspection, if any, for all parties interested in submitting a bid are stipulated in Part II hereof. All Bidders must present company identification and photo identification for access to the Facility.

## **16. Available Documents - General**

Certain documents, if listed in Part II hereof, will be made available for reference and examination by Bidders either at the Facility Inspection, or during regular business hours. Arrangements to review these documents at a time other than the Facility Inspection may be made by contacting the person listed in Part II as the contact for the Facility Inspection.

These documents were not prepared for the purpose of providing information for Bidders upon this Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. The Port Authority makes no representation or guarantee as to, and shall not be responsible for, their accuracy, completeness or pertinence, and,

in addition, shall not be responsible for the inferences or conclusions to be drawn there from.

## **17. Pre-award Meeting**

The lowest qualified Bidder may be called for a pre-award meeting prior to award of the Contract.

## **18. Price Preference**

A price preference may be available for Minority/Women Business Enterprises (M/WBEs) or Small Business Enterprises (SBEs) as set forth in the Standard Contract Terms and Conditions.

## **19. Disadvantaged Business Enterprises (DBEs)**

This Solicitation is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBEs) contained in Part 26 of Title 49 of the Code of Federal Regulations. The requirements for the DBE Program are located in Part III of this Solicitation.

For more information on the Port Authority certification process, please refer to the following website: <http://www.panynj.gov/business-opportunities/sd-become-certified.html>.

## **20. Certification of Recycled Materials**

Bidders are requested to submit, with their bid, a written certification entitled “Certified Environmentally Preferable Products / Practices” attached hereto as “Attachment I-A”, attesting that the products or items offered by the Bidder contain the minimum percentage of post-consumer recovered material in accordance with the most recent guidelines issued by the United States Environmental Protection Agency (EPA), or, for commodities not so covered, the minimum percentage of post-consumer recovered materials established by other applicable regulatory agencies. The data submitted by the Bidder in Attachment I-A is being solicited for informational purposes only.

Recycling Definitions:

For purposes of this solicitation, the following definitions shall apply:

- a. “Recovered Material” shall be defined as any waste material or by-product that has been recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- b. “Post-consumer Material” shall be defined as any material or finished product that has served its intended use and has been discarded for disposal or recovery

having completed its life as a consumer item. "Post-consumer material" is included in the broader category of "Recovered Material".

- c. "Pre-consumer Material" shall be defined as any material or by-product generated after the manufacture of a product but before the product reaches the consumer, such as damaged or obsolete products. Pre-consumer Material does not include mill and manufacturing trim, scrap, or broken material that is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.
- d. "Recycled Product" shall be defined as a product that contains the highest amount of post-consumer material practicable, or when post-consumer material is impracticable for a specific type of product, contains substantial amounts of Pre-consumer Material.
- e. "Recyclable Product" shall be defined as the ability of a product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs.
- f. "Waste Reducing Product" shall be defined as any product that will result in less waste generated due to its use rather than another product designed to serve the same function with an greater waste generation rate. This shall include, but not be limited to, those products that can be reused, refilled or have a longer life expectancy and contain a lesser amount of toxic constituents.

## **21. City Payroll Tax**

Bidders should be aware of the payroll tax imposed by the:

- a) City of Newark, New Jersey for services performed in Newark, New Jersey;
- b) City of New York, New York for services performed in New York, New York;  
and
- c) City of Yonkers, New York for services performed in Yonkers, New York.

These taxes, if applicable, are the sole responsibility of the Contractor. Bidders should consult their tax advisors as to the effect, if any, of these taxes. The Port Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph headed "Sales or Compensating Use Taxes", in the Standard Contract Terms and Conditions included herein, does not apply to these taxes.

## **22. Additional Bidder Information**

Prospective Bidders are advised that additional vendor information, including but not limited to, forms, documents and other information, including protest procedures, may be found on the Port Authority website at: <http://www.panynj.gov/business-opportunities/become-vendor.html>.

These documents were not prepared for the purpose of providing information for Bidders upon the present Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not

form a part of this Contract. The Port Authority/PATH makes no representation or guarantee as to, and shall not be responsible for their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the Bidders merely for the purpose of providing them with such information as is in the possession of the Port Authority/PATH, whether or not such information may be accurate, complete or pertinent or of any value to the bidders.



## ATTACHMENT I-A – Certified Environmentally Preferable Products/Practices

Bidder Name: \_\_\_\_\_ Date: \_\_\_\_\_

In line with the Port Authority's efforts to promote products and practices which reduce our impact on the environment and human health, Bidders are encouraged to provide information regarding their environmentally preferable/sustainable business practices as they relate to this contract wherever possible. Bidders are requested to complete this form and submit it with their response, if appropriate. Bidders are requested to submit appropriate documentation to support the items for which the Bidder indicates a "Yes" and present this documentation, in the proper sequence of this Attachment.

### 1. Packaging

Has the Bidder implemented any of the following environmental initiatives? (A checkmark indicates "Yes")

- \_\_\_\_\_ Use of corrugated materials that exceed the required minimum EPA recommended post-consumer recycled content
- \_\_\_\_\_ Use of other packaging materials that contain recycled content and are recyclable in most local programs
- \_\_\_\_\_ Promotes waste prevention and source reduction by reducing the extent of the packaging and/or offering packaging take-back services, or shipping carton return
- \_\_\_\_\_ Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives
- \_\_\_\_\_ Eliminates any packaging that may contain polyvinyl chloride (PVC), or polystyrene or heavy metals.

**If yes, a description of the practices being followed should be include with the submission.**

### 2. Business Practices / Operations / Manufacturing

Does the Bidder engage in practices that serve to reduce or minimize an impact to the environment, including, but not necessarily limited to, the following items? (A checkmark indicates "Yes")

- \_\_\_\_\_ Recycles materials in the warehouse or other operations
- \_\_\_\_\_ Use of alternative fuel vehicles or vehicles equipped with diesel emission control devices for delivery or transportation purposes
- \_\_\_\_\_ Use of energy efficient office equipment or signage or the incorporation of green building design elements
- \_\_\_\_\_ Use of recycled paper (that meets federal specifications) in their marketing and/or resource materials
- \_\_\_\_\_ Other sustainable initiative

**If yes, a description of the practices being followed should be included with the submission.**

### 3. Training and Education

Does the Bidder conduct/offer a program to train or inform customers and employees of the environmental benefits of the products to be offered under this contract, and/or does the Bidder conduct environmental training of its own staff?

- ☐ Yes      ☐ No      If yes, Bidder shall attach a description of the training offered and the specific criteria targeted by the training.

### 4. Certifications

Has the Bidder or any of its manufacturers and/or subcontractors obtained any of the following product / industry certifications? (A checkmark indicates "Yes")

- \_\_\_\_\_ ISO 14000 or adopted some other equivalent environmental management system
- \_\_\_\_\_ Other industry environmental standards (where applicable), such as the CERES principles, LEED Certification, C2C Protocol, Responsible Care Codes of Practice or other similar standards
- \_\_\_\_\_ Third Party product certifications such as Green Seal, Scientific Certification Systems, Smartwood, etc.

**If yes, Bidders should attach copies of the certificates obtained.**

I hereby certify under penalty of law, the above statements are true and correct.

\_\_\_\_\_ Name      \_\_\_\_\_ Date

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Attachment B – Bid Bond and Acknowledgement

## **PART II - CONTRACT SPECIFIC INFORMATION FOR BIDDERS**

The following information may be referred to in other parts hereof, or further detailed in other parts hereof, if applicable.

### **1. Service(s) Required**

The construction and delivery of two (2) barge-type rail car floats (“Carfloats”) for the transport of rail cars as more fully described in the Specifications.

### **2. Delivery**

Delivery at Greenville Yard, Jersey City, NJ and commissioning at Greenville Yard and 65th Street Yard, Brooklyn, NY.

### **3. Expected Date of Commencement of Contract**

On or about June 11, 2015.

### **4. Contract Type**

Unit price service contract.

### **5. Duration of Contract**

Contractor shall deliver the Carfloats, which must be accepted by the Port Authority (as set forth in Part V), consistent with the Schedule set forth in Part III, Contract Specific Terms and Conditions, Section 2, entitled “Duration” and Section 3, entitled “Delivery Schedule”.

### **6. Specific Bidder’s Prerequisites**

- a. The Bidder shall have had at least five (5) year(s) of continuous experience immediately prior to the date of submission of its Bid in the construction or modification of rail Carfloats, barges and/or equivalent marine vessels classed to American Bureau of Shipping or other recognized standards and during that time shall have actually engaged in providing said or such services to commercial or industrial accounts under contract. The Bidder may fulfill this prerequisite if the Bidder can demonstrate to the satisfaction of the Port Authority that the persons or entities owning and controlling the Bidder have had a cumulative total of at least five (5) year(s) of experience immediately prior to the date of the submission of its Bid in the management and operation of a business actually engaged in providing these services to commercial or industrial accounts under contract during that time or have owned and controlled other entities which have actually engaged in providing the above described services during that time period.

- b. During the time period stated in (a) above, the Bidder, or persons or entities owning and controlling the Bidder, shall have successfully performed or be performing the construction or modification of a minimum of three (3) carfloats, barges, and/or equivalent marine vessels under one (1) or more contract(s) requiring similar services of similar scope to those required under this Contract.
- c. The Bidder shall have had in its last fiscal year, or the last complete calendar year immediately preceding the opening of its Bid, a minimum of ten million dollars (\$10,000,000.00) annual gross income from the type of service required under this Contract.
- d. In the event a bid is submitted by a joint venture the foregoing prerequisites will be considered with respect to such Bid as follows: The prerequisites in subparagraphs (a) and (b) above, will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements. The prerequisite in subparagraph (c) above, will be considered satisfied if the gross income of the joint venture itself meets the prerequisite or the gross income of the participants in the joint venture cumulatively meets the prerequisite. If a joint venture which has not been established as a distinct legal entity submits a Bid, it and all participants in the joint venture shall be bound jointly and severally and each such participant in the joint venture shall execute the Bid and do each act and thing required by this Invitation for Bid. On the original Bid and wherever else the Bidder's name would appear, the name of the joint venture Bidder should appear if the joint venture is a distinct legal entity. If the Bidder is a common law joint venture, the names of all participants should be listed followed by the words "acting jointly and severally". All joint venture Bidders must provide documentation of their legal status.

Proof that the above prerequisites are met should be submitted with the Bid.

## **7. Bid Bond**

The Bidders are required to submit with their Bid either:

- a) the Bid Bond annexed to this Part II as Attachment B, duly executed by the Bidder as Principal and by one or more surety companies duly authorized to carry on the business of suretyship in the state(s) in which the carfloat assembly site is located, whose names appear on the current list of the Treasury Department of the United States as acceptable as sureties upon federal contracts; or
- b) in lieu of a Bid Bond, a certified check, payable to the order of The Port Authority of New York and New Jersey, in the same amount appearing in the Bid Bond form, which check shall be placed in an envelope marked "Bid Security" and enclosed with the Bid.

## **8. Contractor Staff Background Screening**

The Contractor awarded this contract may be required to have its staff, and any subcontractor's staff working under this Contract, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Contractor (and any subcontractor) may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense. The costs associated with background checks for Staff that are rejected for a credential for any reason are not reimbursable.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening, except as otherwise required by federal law and/or regulation. Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922.

## **BID XXXXX**

### **Attachment B – Bid Bond and Acknowledgement**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned<sup>1</sup>

as principal(s); and<sup>2</sup>

as surety are hereby held and firmly bound unto The Port Authority of New York and New Jersey (herein called the "Authority") an amount equal to five percent (5%) of the total bid price in the penal sum of \$\_\_\_\_\_ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

The condition of the above obligation is such that whereas the above named principal(s) has submitted to the Authority a certain Bid, bound herewith and hereby made a part hereof, to perform the obligations of the Contractor under a contract in writing, known as Bid XXXXX now therefore:

- A. If said Bid shall not be accepted, or
- B. If said Bid shall be accepted and the Port Authority does not require the principal(s) to furnish a Performance and Payment Bond, or
- C. If said Bid shall be accepted and the Port Authority requires the principal(s) to furnish a Performance and Payment Bond and either the principal(s) furnishes a Performance and Payment Bond satisfactory to the Port Authority in accordance with the requirements of said Bid or the Port Authority does not terminate the Contract as provided therein on account of the failure to furnish such a bond,

Then, this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The surety, for value received, hereby stipulates and agrees that the obligations of said surety and its bond shall be in no way impaired or affected by any extensions of the times within which the Authority may receive or accept such Bid or within which the principal(s) may furnish a Performance and Payment Bond or by any waiver by the Port Authority of any of the requirements of said Bid; and said surety does hereby waive notice of any such extensions or waivers.

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<sup>1</sup> Insert bidder's name. If a corporation, give the state of incorporation using the phrase "a corporation organized under the laws of the \_\_\_\_\_".  
If a partnership, give full names of partners, using also the phrase, "co-partners doing business under the firm name of \_\_\_\_\_".  
If an individual using a trade name, give individual name, using also the phrase, "an individual doing business under the trade name of \_\_\_\_\_".  
If a joint venture, give the information required above for each participant in the joint venture.

<sup>2</sup> Insert name of surety.

IN WITNESS WHEREOF, the principal(s) and surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

(Seal)

\_\_\_\_\_  
Principal <sup>3</sup>  
By<sup>4</sup> \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Surety  
By<sup>5</sup> \_\_\_\_\_

---

<sup>3</sup> If bidder is a joint venture, insert signature and information required as appropriate for one participant of the joint venture on this page and attach and complete an additional sheet in the same form as appears on this page for each other participant as required.

<sup>4</sup> If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

<sup>5</sup> If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

## ACKNOWLEDGMENT<sup>6</sup>

### ACKNOWLEDGMENT OF BIDDER, IF A CORPORATION

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_, that he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

### ACKNOWLEDGMENT OF BIDDER, IF A PARTNERSHIP

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known and known to me to be one of the members of the firm of \_\_\_\_\_, described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

### ACKNOWLEDGMENT OF BIDDER, IF AN INDIVIDUAL

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

### AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY

\_\_\_\_\_  
<sup>6</sup>

If bidder is a joint venture, insert signature as appropriate for one participant of the joint venture on this page and attach and complete an additional Acknowledgment sheet in the same form as appears on this page for each other participant as required.



**PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS,  
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Attachment C – DBE Participation Plan

Attachment D – Performance and Payment Bond

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Attachment G – Form 1273 - Required Contract Provisions Federal-Aid Construction  
Contracts

## PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS

### 1. General Agreement

Subject to all of the terms and conditions of this Contract, the undersigned (hereinafter called the “Contractor”) hereby offers and agrees to provide all the necessary supervision, personnel, equipment, materials and all other things necessary to perform the Work required by this Contract as specified in Part II, and fully set forth in Part V, (the “Specifications,”) with a delivery location listed in Part II and more fully set forth in the Specifications, and do all other things necessary or proper or incidental thereto, all in strict accordance with the provisions of the Contract Documents and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon it by this Contract.

In addition, all things not expressly mentioned in the Specifications but involved in the carrying out of their intent and in the complete and proper execution of the matters referred to in and required by this Contract are required by the Specifications, and the Contractor shall perform the same as though they were specifically delineated, described and mentioned therein.

### 2. Duration

The term of this Contract shall commence on or about the date specified in Part II hereof, on the specific date set forth in the Port Authority’s written notice of bid acceptance (hereinafter called the “Commencement Date”), and shall end upon successful completion of delivery, inspection and Port Authority acceptance of the Carfloats, as set forth in Part V, no later than 24 months from the Commencement Date, unless otherwise terminated or revoked in accordance with the provisions hereof.

### 3. Delivery Schedule

Acceptable delivery dates are as follows:

Car Float Delivery Schedule

Unit	Delivery Schedule
1 <sup>st</sup>	18 months from Commencement Date
2 <sup>nd</sup>	24 months from Commencement Date

### 4. Payment/Progress Payments

Subject to the provisions of this Contract, the Port Authority agrees to pay to the Contractor and the Contractor agrees to accept from the Port Authority as full and complete consideration for the performance of all its obligations under this Contract and as sole compensation for the Work performed by the Contractor hereunder, a compensation calculated from the actual quantities of services performed and the respective prices inserted by the Contractor in the Pricing Sheet(s), forming a part of this Contract, exclusive of compensation under the clause hereof entitled “Extra Work”. The manner of submission of all bills for payment to the Contractor by the Port Authority for Services rendered under this Contract shall be subject to the approval of the Manager in all respects, including, but not limited to, format, breakdown of items presented and verifying records. All computations made by the Contractor and all billing and billing procedures shall be done in conformance with the following procedures.

- a) Payment shall be made in accordance with the milestone payment schedule set forth below, minus any deductions to which the invoice may be subject and/or subject to any adjustments as may be required pursuant to increases and/or decreases in area, quantity or frequencies, if applicable.
- b) Upon completion of the work, and acceptance by the Port Authority of the work constituting each milestone, as set forth below, the Contractor shall submit an invoice for payment. The Port Authority will review the invoice for completeness and accuracy, and within thirty (30) days of receipt of a complete, Port Authority approved invoice, the Port Authority will pay the Contractor by check according to the following schedule:

<b><u>Percent Payment</u></b>	<b><u>Milestones</u></b>
1) <b>25%</b> of price	Upon demonstration that necessary steel has been ordered.
2) <b>25%</b> of price	Upon demonstration that 25% of construction has been completed.
3) <b>25%</b> of price	Upon demonstration that 75% of construction has been completed.
4) <b>12%</b> of price	Upon confirmation the Carfloats are in transit to Greenville Yard, NJ.
5) <b>10%</b> of price	Upon delivery at Greenville Yard, NJ and successful inspection and Provisional Acceptance at Greenville Yard, NJ.
6) <b>3%</b> of price	Upon final acceptance, or 6 months after Provisional Acceptance, whichever is earlier.

Note: Depending on the Contractor's decision to provide the Carfloats in parallel or sequentially, payments may be broken out (at the same percentages) on a per car float basis.

- c) No certificate, payment, acceptance of any Work or any other act or omission of any representative of the Port Authority shall operate (1) to release the Contractor from any obligation under or upon this Contract, or (2) to stop the Port Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or (3) to preclude the Port Authority from recovering any monies paid in excess of those lawfully due and any damage sustained by the Port Authority.
- d) In the event an audit of received invoices should indicate that the correct sum due the Contractor for the relevant billing period is less than the amount actually paid by the Port Authority, the Contractor shall pay to the Port Authority the difference promptly upon receipt of the Port Authority's statement thereof. The Port Authority may, however, in its discretion elect to deduct said sum or sums from any subsequent monthly payments payable to the Contractor hereunder.

"Final Payment," as the term is used throughout this Contract, shall mean the final payment made for services rendered. However, should this Contract be terminated for any reason, then Final Payment shall be the payment made for services rendered. The Contractor's acceptance of Final Payment shall act as a full and complete release to the Port Authority of all claims of and of all liability to the Contractor for all things done or furnished in connection with this Contract and for every act and neglect of the Port Authority and others relating to or arising out of this Contract, including claims arising out of breach of contract and

claims based on claims of third persons. No payment, however, final or otherwise, shall operate to release the Contractor from any obligations in connection with this Contract.

## **5. Insurance Procured by the Contractor**

The Contractor shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, including but not limited to premises-operations, products-completed operations, and independent contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract and, if vehicles are to be used to carry out the performance of this Contract, then the Contractor shall also take out, maintain, and pay the premiums on Automobile Liability Insurance covering owned, non-owned, and hired autos in the following minimum limits:

Commercial General Liability Insurance - \$10 million combined single limit per occurrence for bodily injury and property damage liability.

Automobile Liability Insurance - \$ 2 million combined single limit per accident for bodily injury and property damage liability.

### Protection & Indemnity coverage

When watercraft are to be used, the Contractor shall take out, maintain and pay premiums on a policy of Protection & Indemnity insurance relating to the operation, maintenance or use of any vessel in connection with work to be performed in this Contract, in a limit of not less than \$5 million per occurrence.

In addition, the liability policy (ies) shall name “The Port Authority of New York and New Jersey and its related entities, their commissioners, directors, officers, partners, employees and agents as additional insureds”, including but not limited to premise-operations, products-completed operations on the Commercial General Liability Policy. Moreover, the Commercial General Liability Policy shall not contain any provisions for exclusions from liability other than provisions for exclusion from liability forming part of the most up to date ISO form or its equivalent unendorsed Commercial General Liability Policy. The liability policy (ies) and certificate of insurance shall contain separation of insured condition and severability of interests clause for all policies so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. Any and all excess and umbrella policies shall ‘follow form’ by conforming to the underlying policies. Furthermore, the Contractor’s insurance shall be primary insurance as respects to the above additional insureds. Any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim. If work is to be performed on, or within 50 feet of railroad property, then the contractual liability shall contain an endorsement deleting any Railroad exclusions.

These insurance requirements shall be in effect for the duration of the contract to include any maintenance/warranty/guarantee period.

The certificate of insurance and liability policy (ies) must contain the following endorsement for the above liability coverages:

***“The insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.”***

The Contractor shall also take out, maintain, and pay premiums on Workers’ Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer’s Liability Insurance with limits of not less than \$1 million each accident. Where applicable, the Contractor and/or Subcontractor shall also include one or more endorsements to cover for 1) Federal Employer’s Liability Act (work near railroad), 2) Longshore and Harbor Workers’ Act ( work on or around navigable waters, 3) Maritime coverage (for Masters or members of the crews of vessels).

Each policy above shall contain an endorsement that the policy may not be canceled, terminated, or modified without thirty (30) days’ prior written notice to the Port Authority of NY and NJ, Att: Facility Contract Administrator, at the location where the work will take place and to the General Manager, Risk Financing.

The Port Authority may at any time during the term of this agreement change or modify the limits and coverages of insurance. Should the modification or change results in an additional premium, The General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after the award of this agreement or contract and prior to the start of work, the Contractor must submit an original certificate of insurance, to the Port Authority of NY and NJ, Facility Contract Administrator, at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy (ies), including but not limited to the cancellation notice endorsement and stating the agreement/contract number prior to the start of work. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Financing, a certified copy of each policy, including the premiums.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, if the Manager shall so direct, the Contractor shall suspend performance of the contract at the premises. If the contract is so suspended, no extension of time shall be due on account thereof. If the contract is not suspended (whether or not because of omission of the Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Contractor to the Port Authority.

Renewal certificates of insurance or policies shall be delivered to the Facility Contractor Administrator, Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on

the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Contractor shall promptly obtain a new and satisfactory certificate and policy.

The requirements for insurance procured by the Contractor shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this contract. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Contractor against the obligations imposed on them by law or by this or any other Contract. The Port Authority insurance tracking number for this Contract will be CITS #4726N.

## **6. Extra Work**

The Contractor is required to provide separate materials, supplies, equipment and personnel for Extra Work when such is deemed necessary by the Authority Engineer. "Extra Work" as used herein shall be defined as work which differs from that expressly or impliedly required by the Specifications in their present form. Total Extra Work performed by the Contractor shall not exceed six percent (6%) of the Total Contract Price of this Contract for the entire Term of this Contract including extensions thereof, or six percent (6%) of the Total Contract Price of each Section if this Contract is awarded by separate Sections.

The Contractor is required to perform Extra Work pursuant to a written order of the Authority Engineer expressly recognizing such work as Extra Work. If Lump Sum or Unit Price compensation cannot be agreed upon by the parties in writing prior to the start of Work, the Contractor shall perform such Extra Work and the Contractor's compensation shall be increased by the sum of the following amounts and such amounts only: (1) the actual net cost, in money, of the labor, and material, required for such Extra Work; (2) ten percent (10%) of the amount under (1) above; (3) such rental as the Manager deems reasonable for plant and equipment (other than small tools) required for such Extra Work; (4) if the Extra Work is performed by a subcontractor, an additional five percent (5%) of the sum of the amounts under (1) through (3) above

As used in this numbered clause (and in this clause only):

"Labor" means laborers, mechanics, and other employees below the rank of supervisor, directly employed at the Site of the Work subject to the Manager or their designee's authority to determine what employees of any category are "required for Extra Work" and as to the portion of their time allotted to Extra Work; and "cost of labor" means the wages actually paid to and received by such employees plus a proper proportion of (a) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages, and (b) taxes actually paid by the employer pursuant to law upon the basis of such wages and workers' compensation premiums paid pursuant to law. "Employees" as used above means only the employees of one employer.

"Net Cost" shall be the Contractor's actual cost after deducting all permitted cash and trade discounts, rebates, allowances, credits, sales taxes, commissions, and refunds (whether or not any or all of the same shall have been taken by the Contractor) of all parts and materials purchased by the Contractor solely for the use in performing its obligation hereunder provided, where such purchase has received the prior written approval of the Manager as required herein. The Contractor shall promptly furnish to the Manager such bills of sale and other instruments as the Manager may require, executed, acknowledged and delivered, assuring to the Manager title to such materials, supplies, equipment, parts, and tools free of encumbrances.

"Materials" means temporarily-installed and consumable materials as well as permanently-installed materials; and "cost of materials" means the price (including taxes actually paid by the Contractor pursuant

to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if the Contractor is the manufacturer or producer thereof, the reasonable cost to the Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to the Site of the Work in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporarily-installed materials, less their salvage value, if any.

The Manager shall have the authority to decide all questions in connection with Extra Work. The exercise by the Manager of the powers and authorities vested in him/her by this section shall be binding and final upon the Port Authority and the Contractor.

The Contractor shall submit all reports, records and receipts as are requested by the Manager so as to enable him/her to ascertain the time expended in the performance of the Extra Work, the quantity of labor and materials used therein and the cost of said labor and materials to the Contractor.

The provisions of this Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Specifications relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise.

If the Contractor deems work to be Extra Work, the Contractor shall give written notice to the Manager within twenty-four (24) hours of performing the work that it so considers as Extra Work, and failure of the Contractor to provide said notice shall constitute a waiver of any claim to an increase in compensation for such work and a conclusive and binding determination that it is not Extra Work.

The Contractor shall supply the amount of materials, supplies, equipment and personnel required by the Manager within two (2) weeks following the receipt of written or verbal notice from the Manager, or in the case of an emergency as determined by the Manager, within one (1) week following the receipt by the Contractor of the Manager's written or oral notification. Where oral notification is provided hereunder, the Manager will thereafter confirm the same in writing.

All Extra Work shall be billed to the Port Authority on a separate invoice on a monthly basis.

## **7. Attachments E, F and G- Federal Highway Administration Requirements**

This Contract may be funded in whole or in part by the United States Federal Highway Administration (FHWA). Contractor agrees to and shall comply with (and Contractor shall ensure that its approved subcontractors, if any, agree to and shall comply with) the applicable contract provisions of the FHWA Requirements, and all other federal, state and local laws that are or may become applicable to this Contract, including the execution of any and all required Certifications. The current FHWA Requirements and Required Contract Provisions are set forth in Attachments E, F and G (Form 1273) of Part III, Contract Specific Terms and Conditions.

## **8. Order of Precedence**

Anything to the contrary herein notwithstanding, all Contract Specific Terms and Conditions and applicable FHWA Requirements and all applicable federal, state and local laws shall be deemed to control in the event of a conflict with the Standard Contract Terms and Conditions contained in this Contract.

## 9. Disadvantaged Business Enterprise (DBE) Good Faith Effort

By submitting a Proposal on this Contract, the bidder assures the Authority that every good-faith effort will be made to provide for participation by certified Disadvantaged Business Enterprises (DBEs) as herein defined, in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services. The DBE participation goal set for this Contract is 2%. Good-faith efforts to include participation by DBEs shall include the following:

- a. Dividing the services and materials to be procured into small portions, where feasible.
- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such DBEs as may be appropriate.
- c. Soliciting services and materials from certified DBEs under any USDOT-approved State Unified Certification Program (UCP), pursuant to 49 CFR Part 26. See Section b. below for the UCP directories.
- d. Ensuring that provision is made to provide progress payments to DBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

This regulation applies to all agreements that include any federal funds; therefore the Contractor agrees to include the clauses cited below in all agreements for this project and to enforce such clauses. With regards to paragraph 2. below, the Contractor agrees to pay each subcontractor within seven days of receipt of payment from the Port Authority.

- a. The Contractor agrees to include the following clauses (printed in *Italics*) in all agreements and subcontracts:
  1. *The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, religion, age, disability or sex in the performance of this contract and shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted agreements. This regulation is incorporated into this agreement by reference. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Port Authority deems appropriate. This provision shall likewise apply to each subcontractor at each tier.*
  2. *The Contractor agrees to pay each subcontractor on this project for satisfactory performance of its subcontract no later than seven (7) days from the receipt of each payment received from the Port Authority or within such later period as is provided in the subcontract.*
  3. *49 CFR Part 26 is incorporated into this Agreement by reference.*

Assistance is available from the Port Authority's Office of Business Diversity and Civil Rights to identify DBE firms and to answer any questions related to the preparation and submission of the DBE Participation Plan and Affirmation Statement (Attachment C-2). Questions can be addressed to Jorge Mercado at (212) 435-7821 or email at [jmercado@panynj.gov](mailto:jmercado@panynj.gov). Eligible firms should be certified as DBEs under any USDOT-approved Uniform Certification Program (UCP) by any State in the nation under the requirements of 49 CFR Part 26 Subpart D and listed in the States' UCP Directory. The Directory lists the DBE firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. Each state UCP revises the Directory periodically. *The Contractor shall not make changes to its approved DBE Participation Plan or substitute DBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own*



forces, shall be a violation of this section. Progress toward attainment of DBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the DBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and *business address of each DBE* subcontractor and supplier actually *involved in the Contract*, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

## **10. Performance and Payment Bond**

If the Port Authority shall in its sole discretion so elect at the time of accepting the Contractor's Bid, the Contractor shall furnish a bond for the faithful performance of all obligations imposed upon it by the Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of the Contract. Such bond shall be in the form bound herewith as Attachment D to this Part III entitled, "Performance and Payment Bond", shall be in a penal sum equal to the Total Contract Price and such bond shall be signed by one or more sureties<sup>1</sup> satisfactory to the Port Authority. The bond may be executed on a separate copy of such form not physically attached to this Contract booklet. In any case, both the form of bond bound herewith and any unattached executed copy thereof shall form a part of this Contract as though herein set forth in full.

At any time after the opening of Bids, the Port Authority may give notice to one or more Bidders to advise the Port Authority as to the names of their proposed sureties. Within forty-eight hours thereafter each Bidder so notified shall so advise the Port Authority. The giving of such notice to a bidder shall not be construed as an acceptance of its Bid, and omission to give such notice shall not be construed as an election by the Port Authority not to require a bond.

If the Port Authority elects to require the Contractor to furnish a bond, it shall deliver such bond to the Port Authority within seven days after receipt by it of the acceptance of his Bid, and the sureties thereon shall be as proposed by it, provided, that if the Port Authority has theretofore given notice to it that its proposed sureties or any of them are not satisfactory, the bond shall be executed by other sureties satisfactory to the Port Authority.

The Port Authority shall give notice to the Contractor within ten (10) days after receipt of the Performance and Payment Bond as to whether or not such bond is satisfactory.

In the event of a default by the Contractor in its obligation to furnish a satisfactory bond within seven (7) days after it received an acceptance of its Bid, if such bonds are required, such default shall entitle the Port

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<sup>1</sup> Sureties must be corporations (commonly known as "surety companies"), authorized to do business as sureties in the state(s) in which the construction site is located, whose names appear on the current list of the Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Authority as acceptable as sureties to the Treasury Department. In addition, the aggregate underwriting limitations on any one risk as set forth in the aforementioned list of the Treasury Department of the sureties shall equal or exceed the penal sum of the Performance and Payment Bond.

Authority in its discretion to terminate this Contract at any time within forty-five (45) days after the acceptance of the Bid, without any liability on the part of the Port Authority.

Inasmuch as the damages to the Port Authority resulting from a termination by it upon the failure of the Contractor to furnish a satisfactory performance and payment bond will include items whose accurate amount will be difficult or impossible to compute, such damages shall be liquidated in the sum of the following amounts:

1. The excess, if any, of the Total Contract Amount in the Bid finally accepted over that in the Bid of the Contractor; and
2. The expense of such new advertisement of the Contract, if any, as may be deemed necessary by the Port Authority; and
3. The sum of five hundred dollars (\$500) for each day after seven (7) days after the receipt by the Contractor of the acceptance of its Bid and notification that bonds are required that the performance of the Contract is not commenced by reason of the failure of the Contractor to furnish the required bond.

In the recovery of the damages above specified, the Port Authority may proceed against the sum represented by the certified check deposited with it or against the Bid Bond and take such other action as it may deem best in the public interest.

If the Contractor furnishes a bond in accordance with the requirements of the Port Authority under this numbered clause, the Port Authority shall reimburse the Contractor for the net amount actually paid by it to the surety or sureties as the premium on such bond. The Contractor shall deliver to the Port Authority receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen days after receipt of such evidence satisfactory to the Port Authority, the Port Authority shall pay to the Contractor by check the amount provided in this numbered clause.

If at any time the Port Authority shall be or become dissatisfied with any surety or sureties then upon any bond furnished in accordance with the requirements of the Port Authority, or if for any other reason such bond shall cease to be adequate security to the Port Authority, the Contractor shall, within five days after notice from the Port Authority so to do, substitute a new bond in such form and sum and signed by such other sureties as may be necessary in the opinion of the Port Authority to constitute adequate security.

**Attachment D – Performance and Payment Bond**

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned

<sup>1</sup> Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

**Contractor**

**Surety**

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<sup>1</sup> Insert names of the Contractor and surety company (or companies) in the appropriate columns. If space is insufficient add rider.  
If the Contractor is a corporation, give the state of incorporation, using also the phrase "a corporation organized under the laws of \_\_\_\_\_".  
If the Contractor is a partnership, give full names of partners, using the phrase "co-partners doing business under the firm name of \_\_\_\_\_".  
If the Contractor is an individual using a trade name, give individual name, using also the phrase "an individual doing business under the trade name of \_\_\_\_\_".

are hereby held and firmly bound unto The Port Authority of New York and New Jersey (herein called the "Authority") in the penal sum of

\_\_\_\_\_ Dollars  
and \_\_\_\_\_ Cents (\$ \_\_\_\_\_), for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns. Each surety, however, if there is more than one, shall be jointly and severally liable for said penal sum.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20

The condition of the above obligation is that

WHEREAS, the above named principal has entered into a Contract in writing with the Authority, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated Contract XXX.XXX - "YYY-YYY", and

WHEREAS, the Authority has required this bond for the faithful performance of all obligations imposed by said Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract;

NOW, if the said principal shall well and faithfully do and perform the things agreed by him to be done and performed according to the terms and true intent and meaning of said Contract and if all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract are paid, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that, provided the sureties shall comply with the provisions hereof, the aggregate liability of all sureties for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

This undertaking is for the benefit of the Authority and all subcontractors, materialmen and workmen having lawful claims arising out of the performance of said Contract, and all such subcontractors, materialmen and workmen (as well as the Authority itself) shall have a direct right of action upon this bond; but the rights and equities of such subcontractors, materialmen and workmen shall be subject and subordinate to those of the Authority.

The sureties, for value received, hereby stipulate and agree that the obligations of said sureties and their bond shall be in no way impaired or affected by any extensions of time, modification, omission, addition or change in or to the said Contract or the construction to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the construction, or by any payment thereunder before the time required therein, or by any waiver of any provision or condition thereof (whether precedent or subsequent), or by any assignment, subletting or other transfer thereof or of any part thereof or of any construction to be performed or any moneys due or to become due thereunder; and said sureties do hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulate and agree that any and all things done and omitted to be done by and in relation to assignees, subcontractors and other transferees shall have the same effect as to said sureties as though done by or in relation to said principal.

The sureties shall give the General Counsel of the Authority the following notices:

- A. **Written notice of an intent to pay any claim of a subcontractor, materialman or workman hereunder;**
- B. **Written notice within five days of the institution of an action by a subcontractor, materialman or workman hereunder.**

The sureties shall not pay the claim of any subcontractor, materialman or workman hereunder until the expiration of thirty days after receipt by said General Counsel of notice under either subparagraph A or B above, describing the claim to be paid. IN WITNESS WHEREOF, the principal and the sureties have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

(Seal)

By <sup>2</sup>

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By <sup>3</sup>

APPROVED AS TO ACCEPTABILITY OF SURETIES:

\_\_\_\_\_  
Credit Manager

\_\_\_\_\_  
20

<sup>2</sup>

If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

<sup>3</sup>

Add signatures of additional sureties, if any.

**ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he resides at \_\_\_\_\_;

that he is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and \_\_\_\_\_ which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

**ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_,

to me known, and known to me to be one of the members of the firm of \_\_\_\_\_

described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

**ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

**AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY**

**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET  
AND PRICING SHEET(S), TABLE OF CONTENTS**

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2. Name and Residence of Principals Sheet.....**Error! Bookmark not defined.**

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**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET  
AND PRICING SHEET(S)**

**1. SIGNATURE SHEET**

OFFER: The undersigned offers and agrees to furnish to the Port Authority of New York and New Jersey the services and/or materials in compliance with all terms, conditions, specifications and addenda of the Contract. Signature also certifies understanding and compliance with the certification requirements of the standard terms and conditions as contained in the Standard Contract Terms and Conditions. This offer shall be irrevocable for one hundred twenty (120) days after the date on which the Port Authority opens this bid.

**ONLY THE COMPANY NAMED AS THE BIDDING ENTITY BELOW WILL  
RECEIVE PAYMENT. THIS MUST BE THE SAME NAMED COMPANY AS  
INDICATED ON THE COVER SHEET**

Bidding Entity\_\_\_\_\_

Bidder's Address\_\_\_\_\_

City, State, Zip\_\_\_\_\_

Telephone No.\_\_\_\_\_ FAX\_\_\_\_\_

Email\_\_\_\_\_ EIN# \_\_\_\_\_

SIGNATURE\_\_\_\_\_ Date\_\_\_\_\_

Print Name and Title\_\_\_\_\_

**ACKNOWLEDGEMENT:**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

On this \_\_\_\_day of\_\_\_\_\_, 20\_\_\_\_\_, personally came before me, \_\_\_\_\_, who duly sworn by me, did depose that (s)he has knowledge of the matters herein stated, that they are in all respects true and that (s)he has been authorized to execute the foregoing offer and statement of irrevocability on behalf of said corporation, partnership or firm.

\_\_\_\_\_  
Notary Public

NOTE: If a joint venture is bidding , duplicate this Signature Sheet and have each party to the joint venture sign separately and affix to the back of this Signature Sheet.

Bidder attention is called to the certification requirements contained in the Standard Contract Terms and Conditions, Part III. Indicate below if a signed, explanatory statement in connection with this section is attached hereto. ☐

If certified by the Port Authority as an SBE or MWBE: \_\_\_\_\_ (indicate which one and date).

**PART IV - 2**

**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET AND PRICING  
SHEET(S)**

**Rev. 1/7/15 (PA/PATH)**



## **2. NAME AND RESIDENCE OF PRINCIPALS SHEET**

Names and Residence of Principals of Bidder. If general or limited partner, or individual, so indicate.

NAME

TITLE

ADDRESS OF RESIDENCE

(Do not give business address)

### **3. Pricing Sheet (s)**

#### Entry of Prices

- a. The prices quoted shall be written in figures, in ink, preferably in black ink where required in the spaces provided on the Pricing Sheet(s) attached hereto and made a part hereof.
- b. Prices must be submitted for the Item required on the Pricing Sheet(s). Bidders are advised that the Item on the Pricing Sheet(s) correspond to the required services set forth in Part V, Specifications.
- c. Bidders must insert all figures as required and verify all computations for accuracy. The Port Authority in its sole judgment reserves the right to: (1) reject Bids without checking them for mathematical errors or omissions, (2) reject Bids that contain or appear to contain errors or omissions, and (3) supply corrections to Bids that contain or appear to contain mathematical errors and omissions, and in this case the Port Authority reserves the right to recompute the Total Contract Price based upon the Unit Prices inserted by the Bidder which amount shall then govern in all cases.
- d. In the event that a Bidder quotes an amount in the Total Contract Price column but omits to quote a Unit Price for that amount in the space provided, the Port Authority reserves the right to compute and insert the appropriate Unit Price.
- e. The Total Contract Price quoted shall be used for the purpose of facilitating the comparisons of Bids. Compensation shall be in accordance with the section of this Contract entitled "Payments/Progress Payments" (Part III, Section 4).

Pricing Sheet

Item of Work (Description)	Quantity		Unit Price		Total Contract Price
Construction and delivery of carfloats as described herein to Greenville Yard, Jersey City, NJ	2	x	\$	=	\$

**TOTAL CONTRACT PRICE = \$**\_\_\_\_\_

**Note: Unit price for carfloats is all inclusive, including but not limited to, fabrication, delivery, materials, and labor.**

**COMPANY NAME:**\_\_\_\_\_

#### **4. Certificate of Current Cost or Pricing Data:**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to The Port Authority or to the Port Authority's representative in support of:

Bid No. XXXXX are accurate, complete, and current as of **the date of Submission of this BID.**

This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the bidder and the Port Authority that are part of the Bid.

Firm: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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## 1. INTRODUCTION

This Part V (“Specifications”) provides technical specifications for the construction of two (2) barge type rail car floats (“Carfloat(s)”) for the transport of rail cars between the Greenville Yard in Greenville, NJ, and the 65<sup>th</sup> Street Yard in Brooklyn, NY, both managed by the New York and New Jersey Rail, LLC. The owner of the operation is the Port Authority of New York and New Jersey (“Port Authority” or “Authority”). Both yards have existing bridges to transfer rail cars from the yard to the Carfloats. Two (2) existing bridges will service the Carfloats at the 65<sup>th</sup> Street Yard. At the Greenville Yard, there is only one (1) existing bridge: a pontoon bridge at Slip 11. Adjacent to Slip 11, an additional Greenville Yard bridge, Bridge 10, is in the design phase and will service the Carfloats at Greenville Yard upon its completion.

Port operations are currently conducted with a single existing three (3)-track wide Carfloat. It uses a system of winches and locking bars with latch to rigidly maintain track alignment during loading and unloading. The new Carfloats will have four (4) tracks to increase capacity and to facilitate a more stable loading operation. The fendering arrangement at both yards will accept both the four track Carfloats and the three-track Carfloat currently in service. The new Carfloats are to be compatible with the pontoon bridge at Slip 11, the planned new bridge (Bridge 10 at Greenville Yard), and with the existing bridges of the 65th Street Yard Terminal in Brooklyn, NY.

## 2. DEFINITIONS

When used herein, the terms below shall have the following meanings.

“**ABS**” means the American Bureau of Shipping and/or any of its specialized branches.

The term “**Approved**” refers to written acceptance by the Authority or its authorized representative, unless otherwise stated, as in the case of ABS or USCG-approved components or equipment.

“**Authority**” or “**Port Authority**” means the Port Authority of New York & New Jersey.

“**CFR**” means the Code of Federal Regulations.

“**Commissioning**” means completion of Carfloat commissioning tests and sea trials. The commissioning tests and sea trials shall include at least three (3) consecutive satisfactory cycles of operations per Carfloat. One operation cycle includes loading rail cars at Greenville Yard, transiting the harbor to 65<sup>th</sup> Street Yard in Brooklyn, NY; unloading and loading rail cars at 65<sup>th</sup> Street Yard, returning to Greenville Yard and then unloading rail cars at Greenville Yard (see Section 14 for more details).

**“Contract”** means the Contract between the Authority and the Contractor for the construction, delivery, commissioning and acceptance of the Carfloat described in these Specifications, the contract plans, and any attachments, addenda and exhibits.

**“Contractor”** means the shipyard or the builder contracted to develop working drawing and build the Carfloat per Contract.

**“Contractor Furnished Material”** means all material and equipment required to be furnished by the Contractor as specified by the Contract, the Specifications and any other documents. It shall mean all material required to make the vessel complete and operable and meets all regulatory body requirements in every way.

The terms **“Contract plans”, “Contract drawings” and “Plans”** mean the contract plans listed in Exhibit A of these Specifications.

**“Delivery”** means the delivery of the Carfloat in accordance with the Contract in a fully cleaned condition from the construction and outfitting facility to Greenville Yard (FOB shipping point: New York Harbor – Greenville Yard Bridge, located on the Greenville Peninsula, Jersey City, in Hudson County, New Jersey; herein referred to as “Greenville Yard”), prior to commissioning, final testing, sea trials and acceptance.

**“Engineer”** means the Authority’s Chief Engineer or its duly authorized representatives acting within the scope of the particular authority vested in them.

**“Final Acceptance”** means written acceptance of Carfloat by the Port Authority after the work on the Carfloat has been fully and satisfactorily completed, all Commissioning tests and sea trials have been satisfactorily completed, all in accordance with the Contract Plans and Specifications, and when completed Carfloat has been delivered at the location specified in the Contract/Specifications, all inspectors’ certificates and all other required documents have been turned over to the Port Authority, and there are no outstanding deficiencies that remain unresolved (see Section 15 for more details).

**“NVIC”** means Navigation and Vessel Inspection Circular, issued by the United States Coast Guard.

Where the terms **“Or equal”, “Or equivalent” or “Suitable”** or other similar terms are used herein, the determination of the items “parity and suitability” shall be made in writing by the Authority or Authority’s representatives upon inspection of supporting data provided by the Contractor prior to use.

The terms **“Provide”, “Furnish” or “Install”** and similar terms refer to requirements for the Contractor to equip, install, connect and test for proper working order in accordance with the Specifications, contract plans, present or future Authority requirements, or present or future federal, state and municipal laws, rules, regulations, requirements,

ordinances, orders and directions any applicable laws, rules, regulations unless specifically stated otherwise in these Specifications.

**“Provisional Acceptance”** shall mean successful completion of internal and external underwater examinations of the Carfloat upon its delivery to Greenville Yard, Jersey City, NJ.

**“Representative”** shall mean the designated agent(s) or employee(s) of The Port Authority authorized by the Authority to act on its behalf.

**“Rule” or “Rules”** shall mean ABS Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 2014.

The term **“TBT”** shall mean Tributyltin.

**“USCG”** shall mean the United States Coast Guard, its cognizant inspector, inspection office, the Marine Safety Center, or a combination thereof.

Where additional terms and abbreviations are provided herein, the abbreviation will be spelled out in the initial instance and subsequent instances where the meaning may be ambiguous or imprecise if omitted.

### **3. WORK SCOPE**

The Contractor shall furnish all materials, labor, equipment, and services necessary to complete fabrication as per design drawings, delivery, and commissioning of two (2) identical Carfloats, each with four (4) tracks (eight (8) rails) and capacity for eighteen (18) sixty-foot (60') rail cars. Rail components, bumpers, and pin collars are not part of this contract; track will be installed by others after delivery of the Carfloats to Greenville Yard. The Contractor shall assume full responsibility for construction and quality control, with the exception of rail components, bumpers, and pin collars, installed by others. The Carfloats shall meet the structural strength, safety, durability, and performance requirements as established by these Specifications herein, the Contract Drawings (Exhibit A), all other Contract documents, ABS Rules and best industry practices for the intended service. In the event of a discrepancy among the documents, the Contract Drawings shall govern over these Specifications and these Specifications shall govern over other Contract documents pursuant to the order of precedence as prescribed therein.

The Contractor's detailed scope of work includes, but is not limited to:

- a. Prepare and submit accurate and complete detailed Working Drawings, as described in and in accordance with ABS 'Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways' (2014 Edition or as may be revised) for ABS Approval for Classification prior to the commencement



of construction. The ABS approved plans are to be submitted for Authority's Engineer review and approval. Such additional review will not augment or replace the Contractor's quality control nor relieve the Contractor of their responsibilities under this Contract. Working Drawings shall be consistent with the Contract Drawings. Any deviation from the Contract drawings shall be approved by the Port Authority or the Authority's Engineer. Copies of all regulatory body correspondence shall be given to the Authority.

- b. Construct two Carfloats to the structural requirements of the ABS 'Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways' (2014 Edition, or as may be revised) and under ABS survey, as per Contract Drawings, these Specifications and Contract Documents.
- c. Coordinate with ABS and Authority's Engineer for shop fabrication/ construction inspections by the ABS Surveyor and Authority's Engineer. Such additional inspections will not augment or replace the Contractor's quality control or relieve the Contractor of contractual responsibility.
- d. Coordinate with Authority's Engineer to address any requests for information as required by the contract documents.
- e. Coordinate with Authority's Engineer to receive all Engineering reviews and comments. Note that a minimum of ten (10) working days notification to the Authority's Engineer is required for on-site inspections.
- f. Provide a construction schedule that meets the project goals to be reviewed and approved by the Authority's Engineer.
- g. Inspect and monitor construction to ensure compliance with the project schedule. Prepare construction progress reports for the Authority and Authority's Engineer.
- h. Perform required inspections in accordance with all applicable codes and standards and submit appropriate sign off documents.
- i. Submit Construction QA/QC Plan for Authority's Engineer's approval. Provide QA/QC for all fabrication and construction in accordance with the approved QA/QC Plan.
- j. Provide As-Built Record Drawings for each Carfloat, inclusive of all fabrication, construction and components incorporated into the Carfloat. The title of all drawings shall include "AS-BUILT".
- k. Deliver the Carfloats to Greenville Yard (FOB destination: New York Harbor - Greenville Yard Bridge, located on the Greenville Peninsula, Jersey City in Hudson County, New Jersey; herein referred to as "Greenville Yard"). The delivery schedule shall be mutually agreed upon with the Authority provided two (2) weeks advanced written notice.
- l. Direct Commissioning Services for the two (2) Carfloats. Commissioning will include, but not be limited to verification that the Carfloats are compatible with the yard facilities, and that ABS certification has been received.

- m. Comply with the Authority's Sustainable Infrastructure Guidelines and provide necessary documentation to receive certification status.
- n. Submit monthly progress reports, including photographs showing the progress of the work to the Authority. The first set of photographs shall be taken prior to the actual commencement of the work at the site. During the construction period, the Contractor shall take an average of fifteen (15) pictures per month for each Carfloat under construction at that time, showing as much as possible the progress of the project. The Authority's Engineer may assign locations, angles and subjects being built on or off site for photography.

#### **4. APPLICABLE CODES AND STANDARDS**

The Contractor must be in compliance with all applicable rules, regulations and standards, which include, but are not limited to those in the documents specifically listed below:

- a. American Bureau of Shipping (ABS), "Rules for Building and Classing Steel Vessels for Service on Rivers and Intra-Coastal Waterways" (2014 Edition or as may be revised)
- b. ASTM- American Society for Testing of Materials
- c. American Welding Society (AWS) D3.5-93 "Guide for Steel Hull Welding"
- d. The Society for Protective Coatings (SSPC) Standards
- e. Det Norske Veritas (DNV) - DNV-RP-B401, "Recommended Practice Cathodic Protection Design" (October 2010)
- f. National Association of Corrosion Engineers (NACE) - SP0176, "Standard Practice Corrosion Control of Submerged Areas of Permanently Installed Offshore Structures Associated with Petroleum Production" (2007)
- g. Rules, regulations, standards, and guidelines promulgated by the Federal entities listed below:
  - 1. US Occupational Safety & Health Administration (OSHA) Regulations, including but not limited to 29 CFR 1926, Safety and Health Regulations for Construction, and 29 CFR 1915, Occupational Safety and Health Regulations for Shipyard Employment.
  - 2. US Environment Protection Agency (EPA) Regulations
  - 3. US Coast Guard (USCG) Regulations
  - 4. US Federal Highway Administration (FHWA) Regulations
  - 5. National Institute for Occupational Safety & Health (NIOSH) Guidelines

- h. The Port Authority of New York & New Jersey's 'Sustainable Infrastructure Guidelines' (<http://www.panynj.gov/about/pdf/Sustainable-infrastructure-guidelines.pdf>)
- i. The Port Authority of New York & New Jersey's 'Sustainable Infrastructure Guidelines' Project Credit Checklist Form and Project Credit Documentation Form (Exhibit B).

## **5. CERTIFICATION**

By responding to this Solicitation, the Contractor hereby certifies that the Carfloat hull structure has been designed in accordance with American Bureau of Shipping (ABS), "Rules for Building and Classing Steel Vessels for Service on Rivers and Intra-Coastal Waterways" (2014 Edition). ABS has reviewed and certified the Carfloat hull structural design in accordance with its requirements. Accordingly:

- a. The contractor is required to retain ABS for survey, testing and certification throughout the Carfloat construction process. Working drawings, on Contractor's title block, shall be submitted to ABS for review and approval before the work of construction is commenced. Additionally, the Contractor shall retain ABS to perform site visits to review and approve the construction welding and fabrication process as per ABS Rules.
- b. The Contractor is responsible for all costs, material, labor, equipment and services required to obtain and deliver to the Authority's Engineer upon Carfloat delivery the following certifications:
  - 1. ABS Certificate of Classification (Maltese Cross +A1 Barge, River Service)
  - 2. USCG Builder's Certification and First Transfer of Title.

## **6. COATING AND CATHODIC PROTECTION REQUIREMENTS**

- a. Coatings
  - o All paint manufacturer recommendations for surface preparation, priming, taping and coating application shall be followed. Where manufacturer recommendations or requirements differ from the guidance herein, the paint manufacturer's requirements shall take precedence over these requirements.
  - o The paints employed in a given coating system shall be from the same manufacturer unless otherwise specified herein or otherwise approved by the manufacturers concerned and the Authority. Each coat of paint shall be

compatible with the coat of paint which it will cover, including preconstruction primers (including weld through type) that are to be retained as part of the final coating system.

- All paints shall have low Volatile Organic Compounds (VOC) per EPA standards.
- All paints shall be TBT free and comply with all EPA regulations.
- A representative of the paint manufacturer shall be present as required to ensure proper preparation, weather and temperature conditions, and to measure achieved dry film thickness per commercially accepted practices.
- Unless otherwise specified, or approved by the manufacturer's representatives, paint and other coating material shall not be thinned with solvent, nor altered in any manner by the Contractor. Successive coating applications shall generally be of noticeably different colors in order to aid the inspection process.
- All steel, shall be cleaned of mill scale and debris, blasted to Min. SSPC - SP10, and prepared and coated with International Interplate N&A 933 / N&A 936 weldable pre-construction primer or equal prior to start of fabrication. The primer shall be applied at 2.3 mils wet and 0.5 mils dry thicknesses. Welded seams shall be cleaned, prepared, blasted to Min. SSPC - SP10, and stripe coated as a maintenance measure as soon as possible after weld inspections have been successfully conducted and approved.
- Hull - below water area coating shall consist of Hempadur Multi-Strength 45751 at 10 mils wet and 8 mils dry, Hempasil 27302 at 7 mils wet and 4.8 mils dry and an anti-fouling coating of Hempasil X3 87500 at 9 mils wet and 6 mils dry as manufactured by Hempel (USA) or Authority's Engineer approved equal, see below list of other acceptable coating manufacturers (Exhibit C).

– Sherwin-Williams Protective and Marine Coatings

- SEAGUARD 5000 HS.
- SEAGUARD ABLATIVE Anti-fouling Coating.

– PPG Protective and Marine Coatings

- Amercoat 235.
- Amercoat 214 Anti-fouling Coating.

- Hull - above water area, deck plating interior surface in addition to interior hull, bulk head plating and interior structures coating shall consist of Hempadur Multi-Strength 45751 at 10 mils wet and 8 mils dry and Hempathane HS 55610 at 6 mils wet and 4 mils dry

as manufactured by Hempel (USA) or Authority's Engineer approved equal, see below list of other acceptable coating manufacturers (Exhibit C).

– Sherwin-Williams Protective and Marine Coatings

- SEAGUARD 5000 HS.
- ACROLON 218 HS.
- SEAGUARD VOID COAT LT.

– PPG Protective and Marine Coatings

- Amercoat 235.
- Amercoat 450 H.

- Main deck top plating coating shall be Hempadur Multi-Strength 45751 at 10 mils wet and 8 mils dry and Hemplathane HS 55610 at 6 mils wet and 4 mils dry, including application of non-skid component, as manufactured by Hempel (USA) or Authority's Engineer approved equal, see below list of other acceptable coating manufacturers (Exhibit C).

– Sherwin-Williams Protective and Marine Coatings

- SEAGUARD 5000 HS.
- ACROLON 218 HS with Non-skid component.

– PPG Protective and Marine Coatings

- Amercoat 235.
- Dimetecote 302 H.
- Amercoat 237 M with Non-skid component.

- Color selection for each of the above items 7, 8, 9 and 10 is to be designated by the Authority.
- Refer to attached coating specification and datasheets for additional information including surface preparation and application instructions. (Exhibit C).
- Coatings shall be applied in accordance with manufacturer's recommendations (Exhibit C).
- On main deck, centerline of eight railcar track supporting girders shall be indicated with paint marks throughout the Carfloat length.

b. Cathodic Protection

- The cathodic protection system shall consist of cast zinc alloy hull type sacrificial anodes welded to the bottom and sides of the Carfloat hull. The anodes shall be cast using 99.99% pure high grade zinc and shall meet ASTM-B-418 and military specification MIL-A-18001. Anodes shall be GA-23 and GA-26 hull type military anodes as manufactured by Galvotec Alloys, Inc. or Authority's Engineer approved equal, see below list of other acceptable anode manufacturers (Exhibit D).
  - Farwest Corrosion Control Company
    - Zinc Hull Anodes #M-24.
  - GaUS Anode International, LLC.
    - Zinc Hull Anodes #TH\_22.5\_2S.
- The bottom hull section of the Carfloat shall have three (3) rows of twenty-five (25) GA-23 (22 lb.) anodes and two (2) rows of twenty-one (21) GA-23 (22 lb.) anodes spaced fifteen feet (15') apart center-to-center. (One hundred and seventeen (117) total of GA-23 (22 lb.) anodes shall be installed on the bottom hull section.)
- The port and starboard hull sections of the Carfloat shall each have one (1) row of twenty-three (23), GA-26 (26 lb.) anodes spaced fourteen feet (14'-0") apart center-to-center. (Forty-six (46) total, GA-26 (26 lb.) anodes shall be installed in total along the port and starboard hull sections.)
- Anodes shall be welded to the Carfloat using welds along each side and across the end of the core tab. After installation of the anodes, the weld locations shall be coated with the same coating as applied to the hull. Follow NACE recommendations for installation of the sacrificial anodes (Exhibit D).
- Apply the same hull coating to the bottom of each anode prior to installation. Do not allow coating on top or sides of anodes or core tab.
- Follow manufacturer's recommendations for storage, handling and installation of anodes.
- Anodes must be replaced if found to be damaged or consumed regardless of reason. Any damage to the hull coating systems found during inspection must also be corrected.

Contractor shall prevent damage to the galvanic anodes and hull coating during fabrication, shipping and delivery.

## **7. DRAFT MARKS AND CARFLOAT NAME**

- a. Draft marks shall be installed on the vessel, port and starboard, and fore and aft. Draft marks shall be in vertical columns, 6-inch projected height with the bottom of each number being the height in even feet above the bottom of the keel plate, and encompass the range of operating drafts from lightship to 12 feet.
- b. The vessel shall be marked with its name in a clearly visible exterior location on both sides of the bow and on the transom, with the hailing port on transom only. The name shall be formed from approximately 12-inch high letters, and the hailing port in approximately 6-inch high letters. The name of the first Carfloat shall be "NYNJR 100" and name of the second Carfloat shall be "NYNJR 200". The hailing port designation shall be: "New York Harbor Upper Bay - Greenville Channel" applied on one line.

## **8. RAIL AND TRACK WORK REQUIREMENTS**

- a. Track supply and installations are not part of this contract. Tracks will be installed by others after the Carfloats have been delivered to Greenville Yard.
- b. Rail stop supply and installations are not part of this contract. Rail stops will be installed by others after the Carfloats have been delivered to Greenville Yard.
- c. Final Acceptance of the Carfloat will take place after the installation of the tracks, rail steps, etc. onto the Carfloat.

## **9. CONSTRUCTION MATERIAL REQUIREMENTS**

- a. Rolled Sections:  
Material of structural steel members of Carfloat (Rolled Sections) shall be ABS Grade A, or equivalent. Substitutes will be considered only upon approval of Authority's Engineer.
- b. Plating:  
All Carfloat plating shall be ABS Grade A or equivalent. Substitutes will be considered only upon approval of Authority's Engineer.
- c. Material testing shall be performed according to ABS requirements.
- d. All Federal procurement rules along with the American Recovery and Reinvestment Act's Buy American provisions shall apply (See Part I).

## **10. CONSTRUCTION QUALITY ASSURANCE AND QUALITY CONTROL**

- a. Thirty (30) days after contract award, the Contractor shall submit a QA/QC Plan for review and approval by Authority's Engineer. QA /QC shall satisfy both ABS requirements and the following.
- b. A minimum of seven (7) days prior to start of fabrication, the Contractor shall submit the name and qualifications of its proposed independent

testing and inspection agency to the Authority's Engineer for approval.

- c. The Contractor shall submit to the Authority's Engineer certified copies of mill reports, analyses, and tests covering chemical and physical properties of materials to be used in the construction of the Carfloats. Note all steel must be melted and manufactured in the United States.
- d. All welding, welders, and weld procedures shall be AWS D3.5-93 certified. Contractor shall submit to the Authority's Engineer certified copies of welders' certificates and materials used.
- e. Welding inspection shall be carried out by a qualified independent agency and approved by the Authority's Engineer. Such additional inspections will not augment or replace the Contractor's quality control or relieve the Contractor of contractual responsibility.
- f. Welding, Fabrication and NDE of Carfloat structures shall be in accordance with ABS and AWS D3.5-93 "Guide for Steel Hull Welding".
- g. All welds shall be one hundred percent (100%) visually inspected. Visual inspection shall be performed before, during, and after the completion of welds. At least ten percent (10%) of all CP (Complete Penetration) welds are to be Ultrasonic Tested (UT) and ten percent (10%) of all fillet welds are to be Magnetic Particle Tested (MT). The importance to the integrity of structure shall be considered when selecting the welds to be examined.
- h. Void compartment leak tests shall be performed per ABS Rules before coatings have been applied and after all welding at joints and penetrations have been visually examined to the satisfaction of the attending ABS Surveyor and the Authority's Engineer.
- i. A stability test shall be performed by the Contractor at its expense per ASTM F 1321, "Standard Guide for Conducting a Stability Test (Lightweight Survey and Inclining Experiment) to determine the Lightship Displacement and Centers of Gravity of a Vessel" upon completion of the work. ABS shall witness and approve the stability test; Contractor is responsible for all necessary coordination with ABS. A minimum of six (6) weeks prior to the stability test, the Contractor will prepare and submit the stability test procedure to ABS and to the Authority's Engineer for approval. The test shall be witnessed by ABS and the Authority's Engineer and will be based on the approved stability test. The contractor shall prepare, secure ABS's and the Authority's Engineer's approval, and submit to the Authority's Engineer, the report of the stability test data establishing the Carfloat's light weight and center of gravity. The construction of the Carfloat at the time of the stability test shall be complete.

## **11. SUSTAINABLE INFRASTRUCTURE COMPLIANCE**



- a. The Contractor shall comply with the Port Authority's Sustainable Infrastructure Guidelines to meet 'certified' status. Credits for preliminary compliance are included in Exhibit B. The 'Sustainable Infrastructure Guidelines' do not indicate Carfloat construction as a project type. The contractor shall use applicable items in the Checklist Form to meet 'certified' status.
- b. Contractor shall submit a Final Port Authority of New York & New Jersey 'Sustainable Infrastructure Guidelines' Project Credit Checklist Form (Exhibit B) confirming that certification level has been attained.
- c. Contractor shall submit a Final Port Authority of New York & New Jersey 'Sustainable Infrastructure Guidelines' Project Credit Documentation Form (Exhibit B) and any other required documentation to confirm a minimum of 'Certified' status has been achieved.

## **12. CONSTRUCTION SCHEDULE**

The Contractor shall submit a complete construction schedule that shall call for delivery and acceptance of the first Carfloat at Greenville Yard no later than eighteen (18) months after award of contract; and to deliver and accept the second Carfloat at Greenville Yard no later than six (6) months thereafter. The commissioning, final testing and sea trials at Greenville Yard shall start within seven (7) calendar days from the installation of tracks by others. Written notification informing the Contractor of track installation completion will be issued by Authority's Engineer. The schedule shall be reviewed and approved by the Authority's Engineer. The time associated with all the requirements established by this document shall be included.

## **13. LAUNCHING, DELIVERY, AND PROVISIONAL ACCEPTANCE**

The Contractor shall be responsible for all risks, costs, and expenses associated with launch and delivery of the Carfloat from its construction and outfitting facility to the Greenville Yard (FOB shipping point: New York Harbor – Greenville Yard Bridge, located on the Greenville Peninsula, Jersey City, in Hudson County, New Jersey; herein referred to as "Greenville Yard"), with all costs for dock and sea trials, survey, insurance, towage, pilotage, riggers, dry and wet dock and any other cost or expense related to the launch and delivery of the Carfloat shall be furnished by the Contractor and to be included in the contract price. All documentation required by the Contract shall be turned over to the Authority's Representative at time of delivery. The Carfloat shall at all times be in the care, custody, and control of the Contractor and his qualified captain and crew, until the Carfloat is delivered to the Authority at the Greenville Yard, Jersey City, NJ facility and Provisional Acceptance is granted.

The contractor shall be responsible for the satisfactory launching of the Carfloat. A joint inspection of suspected damage shall be conducted after launch via internal or underwater inspection, or both at the Authority's discretion. If internal, external or underwater examination of the Carfloat reveals damage, the Contractor shall haul and repair the Carfloat at the Contractor's expense.

To ensure that the Carfloat is in proper condition following delivery and prior to Commissioning, internal and external underwater examinations shall be made at contractor's sole cost. Successful completion of these examinations shall constitute Provisional Acceptance.

#### **14. COMMISSIONING, FINAL TESTING AND SEA TRIALS**

- a. Commissioning tests shall be conducted as a joint activity between the Contractor, any third party designated by the Authority, and the Authority. The Contractor shall send a representative to the commissioning tests; the Authority will provide advance notice to the Contractor when these tests are scheduled. The commissioning tests shall be performed after completion of the track installation by others. The commissioning tests shall include at least three (3) consecutive satisfactory cycles of operations per Carfloat. One operation cycle includes loading rail cars at Greenville Yard, transiting the harbor to 65<sup>th</sup> Street Yard at Brooklyn, unloading and loading rail cars at 65<sup>th</sup> Street Yard, returning to Greenville Yard and then unloading rail cars at Greenville Yard.
- b. At the Commissioning Test, the following shall be demonstrated to the satisfaction of the Authority's Engineer:
  1. Proper and reliable functionality of the Carfloat while loading and unloading rail cars.
  2. Proper floatation, lightship freeboard, light ship pitch and heeling angle.
  3. Smooth passage of rail cars onto Carfloat tracks.
  4. Secure connection between the car rails and Carfloat deck.
  5. Sufficient drainage performance, i.e. the weep holes are adequate to prevent excessive ponding.
  6. Proper interface performance with the bridges. Special attention will be paid by the Engineer to operation and alignment of the locking pins and the rail track.
  7. Proper interface performance with the mooring and berthing structures.

8. Proper performance with the tug boat.
9. Full loading capacity – eighteen, sixty foot, fully loaded rail cars.

The Contractor shall be held responsible for acceptance of items 1, 2, 5,7,8, and 9. Items 3,4 and 6 relate to the track installation.

- c. Following successful completion of commissioning tasks outlined in Section 15(b) of this Part V, a final survey of the Carfloat will be made by the representatives of the Authority and the Contractor. A Report will be issued based on the observations prior to final acceptance of the Carfloat. The Report shall list any punch list items identified as deficient. If the Report is satisfactory (i.e., no deficiencies are detected), the substantial completion payment may be released to the Contractor and transfer of the Carfloat may commence, per the stipulations of the Contract documents. If the Report is unsatisfactory, Contractor shall develop a plan of necessary repairs or modifications to resolve the punch list items, and upon approval by the Authority, shall affect said repairs or modifications to the Authority's satisfaction, at Contractor's sole expense. The Contractor shall ultimately deliver the Carfloat per all specifications included in the Contract and ready to operate. All parts of the Carfloat including void compartments shall be thoroughly cleaned and ready to be immediately put to use without further preparation or cleaning.

## **15. FINAL ACCEPTANCE**

After the work on the Carfloat(s) has been fully and satisfactorily completed, all Commissioning tests and Sea trials have been satisfactorily completed, all in accordance with the Contract Plans and Specifications, and when completed Carfloat has been delivered at the location specified in the Contract/Specifications, all inspectors' certificates and all other required documents have been turned over to the Port Authority, and there are no outstanding deficiencies that remain unresolved, the Carfloat will be accepted by a letter of acceptance issued by the Authority, which shall serve as Final Acceptance.

## **16. WARRANTY**

The Contractor shall guarantee that the Carfloats will meet all applicable specifications and other specific product and work requirements including those for performance of this Contract and will be free from defects in materials and workmanship. While rails, bumpers, and pin collars will be added by a third party, the contractor is responsible for the workmanship, materials, and structural integrity of the rail Carfloat. The rails, bumpers and pin collars will be welded onto the surface of the rail Carfloat and will not impact its structural integrity. Any defects related to the rails, bumpers and pin collars, or

the welding thereof, will not be covered by this warranty. The warranty period for each rail Carfloat shall be one (1) year from Final Acceptance at Greenville Yard, NJ.

**EXHIBIT A.        CONTRACT DRAWINGS**

<b>Drawing Title</b>	<b>Drawing Number</b>
Title Page	G001
Car Float Design Criteria, General Notes, and Drawing List	S001
Car Float General Arrangement	S002
Car Float Void Compartment Key Plan	S003
Main Deck Plating and Scantlings	S004
Bottom Shell Plating and Scantlings	S005
Horizontal Section Scantlings	S006
Bow & Transom Shell Plating and Scantlings	S007
Longitudinal Side Shell Plating and Scantlings	S008
Transverse Section Scantlings & Details, sht. 1	S009
Transverse Section Scantlings & Details, sht. 2	S010
Transverse Section Scantlings & Details, sht. 3	S011
Transverse Section Scantlings & Details, sht. 4	S012
Bulkhead Scantlings & Details, sht. 1	S013
Bulkhead Scantlings & Details, sht. 2	S014
Longitudinal Section Scantlings & Details, sht. 1	S015
Longitudinal Section Scantlings & Details, sht. 2	S016
Longitudinal Section Scantlings & Details, sht. 3	S017
Longitudinal Section Scantlings & Details, sht. 4	S018
Longitudinal Section Scantlings & Details, sht. 5	S019
Connection Details, sht. 1	S020
Connection Details, sht. 2	S021
Connection Details, sht. 3	S022
Miscellaneous Details, sht. 1	S023
Miscellaneous Details, sht. 2	S024

Miscellaneous Details, sht. 3	S025
Miscellaneous Details, sht. 4	S026
Miscellaneous Details, sht. 5	S027
Hull Anode Arrangement & Details	S028
Cut-sheets for Cleat, Bollard and Watertight Flush Hatch Cover	

**EXHIBIT B.        SUSTAINABILITY DOCUMENTS**

<b>Document Title</b>
Sustainable Infrastructure Guidelines - Project Credit Checklist Form
Sustainable Infrastructure Guidelines - Project Credit Documentation Form

## **EXHIBIT C. COATING REFERENCE DOCUMENTS**

<b>Document Title</b>
Hempel Specification Sheets
Product Data - Hempadur Multi-Strength 45751/ 45753
Product Data - Hempasil Nexus 27302
Product Data - Hempasil X3 87500
Product Data - Hemplathane HS 55610

### **Other Acceptable Coating Manufacturers:**

<b>Document Title</b>
Sherwin – Williams Specification Sheets
Product Data – Sherwin – Williams SEAGUARD 5000 HS Black & Red
Product Data - Sherwin – Williams SEAGUARD ABLATIVE Antifouling Coating Red
Product Data - Sherwin – Williams SEAGUARD Void Coat LT
Product Data - Sherwin – Williams ACROLON 218 HS

<b>Document Title</b>
PPG Protective and Marine Coatings Specification Sheets
Product Data – Amercoat 235
Product Data – Amercoat 214 Antifouling Coating
Product Data – Amercoat 450 H
Product Data – Dimetecote 302 H
Product Data – Amercoat 237 M

## EXHIBIT D. CATHODIC PROTECTION REFERENCE DOCUMENTS

Document Title
Galvotec Specification Sheets
Zinc Anodes - Mil-Spec MIL-18001
Zinc Hull Anodes by Galvotec Alloys

### Other Acceptable Anode Manufacturers:

Document Title
Farwest Corrosion Specification Sheets
Zinc Hull Anodes # M-24 by Farwest Corrosion Control Company

Document Title
GaUS Specification Sheets
Zinc Hull Anodes # TH_22.5_2S by GaUS Anodes



**ATTACHMENT E – TITLE 23 AND FEDERAL GRANT RECIPIENTS**

## Title 23 and Federal Grants: Direct Recipient Requirements

### EXECUTIVE SUMMARY

A number of Federal requirements applicable to direct recipients of title 23 funding involve procedures, FHWA approvals, or administrative systems that must be in place before the Federal funding can be used. Other requirements affect how a direct recipient conducts project development, construction, operation, procurement, and financial administrative activities. This document outlines some of the key requirements applicable to title 23-funded projects that non-traditional direct recipients (also referred to as grantees) of title 23 funding will need to consider as they plan their resources and lead times.<sup>1</sup> A summary of the main categories of applicable requirements appears below, followed by more detailed information in Attachment A.

***Financial and administrative requirements*** govern such areas as authorization of Federal cost participation; required financial management systems including measures for fiscal control, accounting systems and procedures; recordkeeping and reporting; allowable costs; audit requirements; direct recipient responsibilities for compliance and monitoring; and records retention and access.

***Federal-aid contract and contract administration requirements*** cover areas such as

- ***Preauthorization measures:*** Project management and financial plan requirements for certain major projects; value engineering; FHWA oversight, design, and design build; direct recipient quality assurance/quality control measures; required agreements for projects involving railroads or utility relocation/removal work; bridge inspection and size and weight controls; direct recipient's DBE program and related requirements; direct recipient's capacity to carry out title 23 requirements; project review and oversight requirements; and engineering services contract and procurement requirements such as conflict of interest provisions.
- ***Authorization requirements:*** FHWA approval of the plans, specifications and estimates for a project, and requirements affecting the project agreement.
- ***Property and services procurement:*** Competitive procurement, audit, and direct recipient procedures.
- ***Construction services:*** Procurement requirements.
- ***Construction contracts:*** Advertising and bid opening, negotiation and award of contracts, force account work, direct recipient supervision of the federally-funded work; minimum wage and Buy America; subcontracting and contractor responsibilities; limitations on the use of convict labor and materials; general labor; contractor licensing and qualification; FHWA

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<sup>1</sup> General assumption: Notwithstanding terminology such as "State Department of Transportation," FHWA interprets a provision as applicable to all direct recipients if the provision is intended to govern direct recipients as a class, and the provision has a substantive purpose that is relevant to the type of program/project at issue (i.e., application of the provision furthers a Federal interest regardless of the size of the program/project the direct recipient is carrying out with Federal-aid funding).

approval for major changes in plans and contract provisions; liquidated damages; limitations on favoring proprietary products; and limitations on materials provisions.

***Tolling requirements*** relate to the limited situations under which a facility constructed under title 23 may charge tolls.

***Interstate system requirements*** affect projects involving interstate highways.

***Planning, environment, and right-of-way requirements*** such as inclusion of the project in a fiscally-constrained metropolitan long range transportation plan and TIP/STIP; compliance with NEPA, section 4(f), the Clean Air Act and amendments, and other environmental laws; public hearing/public involvement requirements; and compliance with FHWA and Uniform Act requirements governing the acquisition, management, and disposal of real property and the relocation of persons and businesses (including pre-work certification requirements and FHWA approval of procedures).

# **ATTACHMENT A**

## **SUMMARY OF KEY TITLE 23 and FEDERAL GRANT PROVISIONS**

### **FINANCIAL AND ADMINISTRATIVE REQUIREMENTS**

#### **1. Authorization**

- A. Federal-aid highway funds will only participate in costs which are reasonable and necessary, and have been incurred in accordance with applicable Federal and State law, regulations, and policies issued. After the project has been authorized Federal funds may be reimbursed. (23 CFR 1.9)

#### **2. Standards for financial management systems (49 CFR § 18.20)**

- A. Fiscal control and accounting procedures must be sufficient to:
  - i. Permit preparation of reports required by this part and the statutes authorizing the grant, and
  - ii. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
- B. Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- C. Accounting records. Must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. Must ensure that all transactions can be traced directly to source documentation.
- D. Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Direct recipient must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- E. Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant.
- F. Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability

of costs. Reimbursement requests will require supporting documentation. Division will review and approve each reimbursement request.

- G. Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
- H. Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement.
- I. FHWA may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

### **3. Allowable costs (49 CFR 18.22(b)).**

- A. Limitation on use of funds. Grant funds may be used only for:
  - i. The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and
  - ii. Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.
- B. Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs as set forth in the table under 49 CFR 18.22(b): OMB Circular A-87 (2 CFR 225); A-122 (2 CFR 230); A-21 (2 CFR 220); and 48 CFR Part 31.
- C. If the direct recipient seeks to charge indirect costs, FHWA must review and approve the recipient's latest approved indirect cost allocation plan.

### **4. Non-Federal audits (49 CFR § 18.26)**

- A. Grantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor, in accordance with generally accepted government auditing standards covering financial audits.

### **5. Monitoring and reporting program performance (49 CFR § 18.40)**

- A. Grantees must monitor grant supported activities to assure compliance with applicable Federal requirements and that performance goals are being

achieved. Grantee monitoring must cover each program, function or activity.

- B. Nonconstruction performance reports -- Grantees shall submit annual performance reports such performance information as set forth in 49 CFR 18.40(b)(2).
- C. Construction performance reports. For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants. [The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly].
- D. FHWA may make site visits as warranted by program needs.

**6. Financial reporting (49 CFR § 18.41)**

- A. Financial Status Report—
  - i. Grantees will report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 18.41(e)(2)(iii).
  - ii. Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency.
  - iii. Grantees will report reimbursement or outlay information when requested by FHWA in accordance with § 18.41(c).
- B. Accounting basis. The accounting basis for Outlay Reports and Requests for Reimbursement for Construction Programs shall be governed by § 18.41(b)(2). Accrual basis applies.

**7. Retention and access requirements for records (49 CFR § 18.42).**

- A. Length of retention period—Generally three years from the date of the last grant supported expenditure.
  - i. Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.
  - ii. Indirect cost rate proposals, cost allocations plans, etc (generally three years from the date of submission).
- B. Access to records—
  - i. FHWA, the DOT Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents,

- papers, or other records which are pertinent to the grant in order to make audits, examinations, excerpts, and transcripts.
- ii. Expiration of right of access. The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

## **FEDERAL-AID CONTRACT ADMINISTRATION REQUIREMENTS**

### **1. Preconstruction Preauthorization Issues**

- A. Major Projects (23 USC 106(h) and implementing guidance)
  - i. Projects with an estimated total cost of \$500 million or more, and other projects as may be identified by the Secretary must submit to the Secretary a project management plan and annual financial plan for approval
  - ii. Cost Estimate reviews are required for Major Projects
  - iii. Projects with an estimated total cost of \$100 million or more must prepare an annual financial plan and submit upon request
- B. Value Engineering (23 USC 106(e); 23 CFR Part 627)
  - i. State must provide a VE analysis for each Federal-aid highway project on the Federal-aid system with an estimated total cost of \$25 million or more; for each bridge project located on or off the Federal-aid system with an estimated total cost of \$20 million or more; and other projects as deemed appropriate by the Secretary
- C. Oversight (23 USC 106(c)(3) and (g); 23 CFR 1.36)
  - i. Secretary must establish an oversight program to monitor the effective and efficient use of funds addressing financial integrity and project delivery
  - ii. Secretary shall perform annual reviews addressing elements of the direct recipient's project delivery systems
  - iii. FHWA may withhold payment of Federal funds for the project, or other projects, if the local authority has violated or failed to comply with Federal laws or regulations.
  - iv. The direct recipient and the Secretary must enter into an agreement relating to the extent to which the direct recipient will assume the responsibilities of the Secretary with respect to design, plans, specifications, estimates, contract awards, and inspections.
  - v. The direct recipient shall be responsible for determining whether any subrecipients have adequate project delivery systems and sufficient controls to properly manage Federal-aid funds and ensuring compliance with Federal-aid requirements.
  - vi. The direct recipient must establish a stewardship and oversight agreement in partnership with FHWA detailing the monitoring, assessment, quality control, oversight, and responsibilities for

ensuring all projects that utilize Federal-aid highway program funding are developed, designed and constructed in a manner that complies with adopted Federal standards.

**D. Design**

- i. Design and construction standards and specifications for projects on the National Highway System must meet established standards
  - a. Bridge manual
  - b. Adoption of the MUTCD
  - c. Materials manual
  - d. Design manual
  - e. Construction manual
- ii. The direct recipient shall establish the design standards, policies, controls, and specifications to be used when designing projects that use Federal-aid highway program funding (23 CFR 625.3).
- iii. The Secretary shall ensure that the plans and specifications will adequately serve existing and planned future traffic in manner that is conducive to safety, durability, and economy of maintenance and is designed and constructed to accomplish these objectives and conform to the particular needs of the locality.
- iv. Exceptions must be approved by FHWA. It is suggested that an agreement be executed with FHWA regarding the applicable standards and the justification needed to support an exception.
- v. 23 USC 109 (a) and (c); 23 CFR Part 625
- vi. Intelligent Transportation Systems must conform to 23 CFR part 940

**E. QA/QC Program (23 CFR Part 637)**

- i. Each direct recipient must establish quality assurance and independent assurance program assuring that materials incorporated into each Federal-aid highway project on the National Highway System (NHS) are in conformity with approved plans and specifications.
- ii. Inclusive of a Quality Assurance Program will be:
  - a. Established frequency of sampling & testing of materials
  - b. Acceptance decisions will be made by qualified sampling & testing personnel (i.e. nationally recognized certification such as ACI, PCI, NPCA, NICET, NETTCP, NYSCMA-HMA QC/QA, AGC, etc.)
  - c. If the Federal Aid direct recipient uses the contractor's quality control test results for acceptance, then it is FHWA's policy that the process will require validation of all data not generated by the recipient or



its assigned agent(s) if used in the acceptance decisions. [FHWA Technical Advisory T6120.3]

- d. Use of Qualified Laboratories: both Central Laboratory and satellite laboratories shall be accredited in the testing to be performed by the AASHTO Accreditation Program or comparable laboratory accreditation program approved by FHWA.
- e. In order to avoid any appearance of a conflict of interest, any qualified non-Federal-aid recipient laboratory shall perform only one of the following types of testing on the same project: Verification testing, Quality Control testing, Independent Assurance testing, or Dispute Resolution testing.
- ii. Recipient must submit a materials conformance certification with respect to each construction project

F. Railroads (23 CFR Part 646, Subpart B)

- i. Each project involving the use or adjustment of property owned by a railroad must involve a written agreement between the recipient and railroad concerning the project.
- ii. The agreement is subject to the approval of the FHWA.
- iii. Ensure compliance with railroad standards.

G. Utilities (23 USC 123; 23 CFR Part 645)

- i. Direct recipient must submit a policy statement for FHWA to approve identifying the authority of utilities to relate or to use and occupy the right-of-way of highways, the State Transportation Departments laws and controls to regulate such use, and the laws and controls of the local authority employs or proposes for relocating or accommodating utilities (23 CFR 645.215)
- ii. Direct recipient must submit certifications to the FHWA regarding the eligibility of utility relocation or removal work (23 CFR 645.107)
- iii. Direct recipient and utility must execute a written agreement incorporating all Federal-aid utility relocation and removal standards and providing for the financing and accomplishment of the work (23 CFR 645.113)

H. Bridge Inspection Program (23 USC 151; 23 CFR Part 650, Subpart C)

- i. Each direct recipient must implement a National Bridge Inspection Program incorporating Federal standards and requirements if it has any bridge on a public road

I. Certification of Size and Weight Enforcement (23 USC 127; 23 CFR Part 657; 23 CFR Part 658)

- i. A direct recipient responsible for any federally-assisted roadway must enforce vehicle size and weight laws conforming to Federal requirements and certify each year as to such enforcement
  - ii. The direct recipient must ensure reasonable access is provided to commercial vehicles between the National Network and facilities for food, fuel, repairs, rest, and points of loading and unloading.
- J. DBE Program (Section 1101(b) of SAFETEA-LU; 49 CFR Part 26 (49 CFR § 26.21))
  - i. Each FHWA direct recipient receiving funds authorized under ISTEA, TEA-21, or SAFETEA-LU must have an approved DBE program meeting Federal requirements
- K. Civil Rights Program (23 U.S.C. § 140; 23 CFR Part 230; 49 CFR Part 21; 49 CFR Part 25; 49 CFR Part 27; 49 CFR Part 28)
  - i. Title VI of the Civil Rights Act
  - ii. ADA/504
  - i. Internal EEO
  - ii. OJT
- L. Direct Recipient Capacity (23 U.S.C. § 302; 23 CFR § 1.3)
  - i. The recipient shall have adequate powers and be suitably equipped and organized to discharge, to the satisfaction of the Secretary, the duties required under title 23.
- M. Project reviews, oversight & limitation on Federal participation (23 U.S.C. § 106(g) and 23 CFR § 1.9)
  - i. Develop a project management and oversight plan with the FHWA Division Office identifying the reviews, approvals and responsibilities of the direct recipient and FHWA (23 USC 106(g)(1)). This plan will establish the controls, procedures, and monitoring to ensure the effective and efficient development of the project and the financial integrity with the use of funds.
  - ii. Financial integrity
  - iii. Project oversight
  - iv. Federal-aid funds shall not participate in any costs that are not incurred in conformity with applicable Federal and State laws (23 CFR § 1.9).
- N. Engineering services (23 CFR § 1.11 and 23 CFR § 1.33)
  - i. Costs for engineering services performed by the direct recipient may be eligible for Federal participation only to the extent such costs are directly attributable and properly allocable to specific projects.
  - ii. Indirect costs for services which are not specific to a design related service or construction project and cannot be billed to a single

Federal-aid project are not eligible for Federal-aid funding unless the direct recipient has an approved indirect cost allocation plan for distribution to all benefiting cost objectives (49 CFR § 18.22(b): OMB Circular A-87 (2 CFR part 225)).

- iii. No official or employee who is authorized to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving, any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract.
- iv. No engineer, attorney, appraiser, inspector or other person performing services in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention, in any contract or subcontract in connection with such project.
- v. No officer or employee of such person retained shall have any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the direct recipient or other government instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the direct recipient.

**O. Work Zone Safety and Mobility (23 CFR Part 630, Subpart J)**

- i. The direct recipient shall implement a policy for the systematic consideration and management of work zone impacts on all Federal-aid highway projects

**P. Conflicts of Interest (23 CFR § 1.33)**

- i. The direct recipient shall enforce the prohibition against conflicts of interest contained in 23 CFR § 1.33

**2. PS&E and Authorization**

**A. Plans, Specifications, & Estimates (PS&E) (23 U.S.C. § 106(a)(1) and (c)(2); 23 CFR Part 630, Subpart B; 23 CFR Part 635, Subpart C)**

- i. Plans, Specifications and Estimates for each project must be submitted to the FHWA for approval.
- ii. For projects not located on the NHS, the direct recipient shall assume the responsibilities of the Secretary for design, plans, specifications, estimates, contract awards, and inspection unless the direct recipient determines that such assumption is not appropriate.

**B. Project Agreement (23 USC 106(b); 23 CFR Part 630, Subpart A; 23 CFR Part 635, Subpart C; 49 CFR Part 32; 49 CFR Part 20; 2 CFR Part 1200)**

- i. Upon approval of the PS&E, a project agreement shall be executed with the Secretary formalizing the conditions of project approval.

- ii. Project agreement must be executed prior to incurring any costs.
- iii. Project agreement must make provision for the payment of the non-Federal share of the project.
- iv. Project agreement must make provisions for the continued maintenance of the project after project completion as per Title 23, USC 116 and 23 CFR 1.27.
- v. Project agreement will provide for the compliance with all applicable terms and conditions set forth in title 23, USC; title 23, CFR; the policies and procedures promulgated by FHWA relative to the project; and all other applicable Federal laws and regulations.
- vi. Project agreement will provide for the reimbursement to FHWA of any Federal-aid participation in right-of-way acquisition if actual construction is not commenced by end of the 20<sup>th</sup> fiscal year following the year of project authorization, and for reimbursement of Federal-aid participation in preliminary engineering if right-of-way acquisition or actual construction is not undertaken in not commenced by the end of the 10<sup>th</sup> fiscal year following the of project authorization.
- vii. Project agreement will contain the required drug-free workplace certification unless an annual certification is provided.
- viii. Project agreement will provide for the required suspension and debarment certification.
- ix. Project agreement will provide for the required anti-lobbying certification.

### **3. Procuring Property and Services**

- A. Method of Procurement of Consulting Services (23 U.S.C. § 112(b)(2); 23 CFR § 172.5; 49 CFR § 18.36 (b through j))
  - i. The procurement of engineering and design related services shall evaluate and rank firms based on qualifications utilizing competitive negotiation in the same manner as required under 40 U.S.C. §§ 1101-1104 (Brooks Act). Each contract for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a project are subject to the provisions shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under the Brooks Act (23 U.S.C. § 112(b)(2) and 23 CFR part 172).
  - ii. For engineering and design service procurements meeting the Federal small purchase threshold (41 USC 403(11)), recipients may use small purchase procedures that comply with the law of their State.
  - iii. Noncompetitive negotiation may be used only in limited circumstances when it is not feasible to award the contract using

competitive negotiation or small purchase procedures that comply with State law. Contracting agencies shall submit justification and receive approval from FHWA prior to using this form of contracting for engineering and design related services.

- B. Audits (23 U.S.C. § 112(b)(2); 23 CFR § 172.7; 49 CFR § 18.36 (b through j))
  - i. Any engineering and design service contract shall be audited in compliance with cost principles contained in 48 CFR part 31.
  - ii. Recipients shall use the indirect cost rate established by a cognizant agency audit for conformance with 48 CFR part 31.
- C. Use of Consulting Services and Written Procedures (23 CFR § 172.9 and 49 CFR § 18.36 (b through j))
  - i. The direct recipient shall prepare written procedures for the method of procurement it wishes to utilize for the procurement of engineering and design services and submit such procedures to FHWA for approval.
  - ii. FHWA shall review and approve before procuring and hiring a consultant to act in a management role for the contracting agency when Federal-aid highway funding participates in the project (23 CFR 172.9(d))
  - iii. The procurement of property and services that involve Federal-aid highway program funding shall comply with Federal laws and regulations (23 USC 112(b)(2) and 23 CFR 172) and the grantee's own policies and procedures which reflect the applicable State and local laws and regulations as specified in the provisions of the Common Rule (49 CFR 18.36(b through i)). Procurements that do not involve Federal-aid highway program funding shall comply with the grantee's own policies and procedures which reflect the applicable State and local laws and regulations as specified in the provisions of the Common Rule.
  - iv. Procurements and contracts which do not comply with applicable State and local laws in conjunction with Federal laws and regulations would not be eligible for Federal-aid funding. Additionally, all state and/or local funds expended on these procurements or contracts that do comply with state and local laws and regulations will not be eligible to be used as a match on a future Federal-aid project.

#### **4. Construction Services**

- A. Competition (23 U.S.C. § 112)
  - i. "The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition." 23 U.S.C. § 112(a).

- ii. The construction of each project shall be performed by contract awarded by competitive bidding unless the direct recipient demonstrates to the satisfaction of the Secretary that some other method is more cost effective or an emergency exists. 23 U.S.C. § 112(b).
- iii. "No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or the Secretary's concurrence in the award of a contract to such bidder, unless the requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications." 23 U.S.C. § 112(b).
- iv. "The [direct recipient] shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids." 23 CFR § 635.104.

## **5. Advertisement and Bid Opening**

- A. "In all cases where the construction is to be performed by the recipient or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary." 23 U.S.C. § 112(a).
- B. "No work shall be undertaken on a Federal-aid project, nor shall any project be advertised for bids, prior to authorization by the Division Administrator." 23 CFR § 635.112(a).
- C. The advertisement and approved plans and specifications shall be available to bidders a minimum of 3 weeks prior to opening bids. 23 CFR § 635.112(b).
- D. Nondiscriminatory bidding procedures shall be afforded to all qualified bidders regardless of National, State or local boundaries, and without regard to race, color, religion, sex, national origin, age, or handicap. 23 CFR § 635.112(d).
- E. All bids shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading it aloud shall be publicly announced at the letting. 23 CFR § 635.113(a).
- F. Negotiation with contractors, during the period following the opening of bids and before award shall not be permitted. 23 CFR § 635.113(a).
- G. The direct recipient shall prepare and forward tabulations of bids to the Division Administrator. 23 CFR § 635.113(b).

## **6. Award of Contract**

- A. "Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility." 23 U.S.C. §112(b); 23 CFR § 635.114(a).
- B. The recipient shall formally request the concurrence by the Division Administrator in the award of all Federal-aid contracts. 23 U.S.C. § 112(d); 23 CFR § 635.114(b).
- C. A copy of the executed contract should be furnished to the Division Administrator as soon as practicable after execution. 23 CFR § 635.114(j).
- D. Following the award of the contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the recipients and submitted to the Division Administrator as soon as practicable for use in the preparation of the project agreement. 23 CFR § 635.115(a).

## **7. Force Account**

- A. Actual construction shall be performed by contract awarded by competitive bidding unless the direct recipient demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists. 23 CFR § 635.104(a).
- B. Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the direct recipient in accordance with 23 CFR part 635, subpart B. Before such finding is made, the direct recipient shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and cost effectively. 23 CFR § 635.104(b).
- C. It may be found cost effective for a direct recipient to undertake a project by force account when a situation exists in which the rights or responsibilities of the community at large are so affected as to require some special course of action, including situation where there is a lack of bids or the bids received are unreasonable. 23 CFR § 635.205(a).

## **8. Supervising Agency**

- A. The direct recipient has the responsibility for the construction of Federal-aid projects and is not relieved of such responsibility by authorizing performance of the work by a State, local or other Federal agency. The

direct recipient shall be responsible for insuring that such projects receive adequate supervision and inspection to insure that projects are completed in conformance with approved plans and specifications. 23 CFR § 635.105(a).

- B. Although the recipient may employ a consultant to provide construction engineering services, such as inspection or survey work, the direct recipient shall provide a full time engineer employed by the direct recipient, to be in responsible charge of the project. 23 CFR § 635.105(b).

## **9. Design-Build**

- A. Recipients using design build should be aware of applicable requirements, especially those contained in 23 CFR § 635.112(i)(1); 23 CFR § 636.109(c); 23 CFR §§ 636.201 and 203; 23 CFR § 636.302(a); 23 CFR § 636.302(b); 23 CFR § 636.505; 23 CFR § 636.509; and 23 CFR § 636.512.

## **10. Federal-aid Contract Requirements**

- A. Payment of Predetermined Minimum Wage and Submission of Certified Payrolls
  - i. The Secretary shall insure that all laborers and mechanics employed by contractors and subcontractors on the construction work performed on the Federal-aid highways shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality. 23 U.S.C. § 113(a); 23 CFR § 635.117(f).
  - ii. For all projects, copies of payrolls and statements of wages paid are to be retained by the recipient for a period of 3 years after the completion of the project. 23 CFR § 635.118; 29 CFR § 5.5(a)(3)(i).
- B. Buy America
  - i. All steel and iron permanently incorporated into a project shall be produced in the United States. 23 U.S.C. § 313(a); 23 CFR § 635.410(b)(1).
  - ii. The direct recipient must have standard contract provisions requiring the use of domestic materials and products to the same or greater extent as provided in 23 CFR § 635.410. 23 CFR § 635.410(b)(2).
  - iii. The direct recipient may request a waiver if the application of Buy America would be inconsistent with the public interest or the steel and iron products are not produced in sufficient and reasonably available quantities which are of a satisfactory quality. The waiver must be approved by the FHWA. 23 CFR § 635.410(c)(1).



C. Subcontracting and Contractor Responsibilities

- i. Contracts for all projects shall specify the minimum percentage (not less than 30 percent of the original contract price) of work that a contractor must perform with its own forces. 23 CFR § 635.116(a).
- ii. The direct recipient shall not permit any of the contract work to be performed under a subcontract unless such arrangement has been authorized by the recipient in writing. 23 CFR § 635.116(b).
- iii. The contractor shall be required to furnish a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work, and is in charge of all construction operations. 23 CFR § 635.116(c).
- iv. The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of payment. 49 CFR § 26.29.

D. Convict Labor and Materials

- i. No construction work shall be performed by convict labor unless the convict is on parole, supervised release or probation. 23 U.S.C. § 114(b)(1); 23 CFR § 635.117(a).
- ii. Materials produced by convict labor may not be used unless the materials are produced by convicts on parole, supervised release, or probation, or produced in a qualified prison facility and the amount of such materials does not exceed the amount produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987. 23 U.S.C. § 114(b)(2); 23 CFR § 635.417.

E. Labor Generally

- i. No procedure or requirement shall be imposed which will operate to discriminate against the employment of labor from any other State, possession or territory of the US. 23 CFR § 635.117(b).
- ii. The selection of labor to be employed on any Federal-aid highway project employed by the contractor shall be by the contractor without regard to race, color, religion, sex, national origin, age, or handicap. 23 CFR § 635.117(c).

F. Licensing and Qualification

- i. The procedures and requirements a direct recipient proposes to use for qualifying and licensing contractors shall be submitted to the Division Administrator for approval. 23 CFR § 635.110(a).
- ii. No procedure or requirement for bonding, insurance, prequalification, qualification, or licensing shall be approved which may operate to restrict competition, to prevent submission

of a bid, or prohibit the consideration of a bid by a responsible contractor, whether resident or nonresident of the State. 23 CFR § 635.110(b).

- iii. No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract. 23 CFR § 635.110(c).

G. Contract Changes

- i. Following authorization to proceed with a project, all major changes in the plans and contract provisions shall have formal approval of the Division Administrator. 23 CFR § 635.120(a).

H. Agreement Provisions Regarding Overruns in Contract Time

- i. Each direct recipient shall establish specific liquidated damages rates applicable to its projects. Such rates shall be subject to FHWA approval. 23 CFR § 635.127(a)&(b).

I. Use of Materials

- i. Contracts for projects shall require the contractor to furnish all materials to be incorporated in the work and shall permit the contractor to select the sources from which the materials are to be obtained. The direct recipient may require the contractor to use material furnished by the direct recipient only where the direct recipient determines, and the Division Administrator concurs, that it is in the public interest to do so. 23 CFR § 635.407(a).
- ii. No requirement shall be imposed and no procedure shall be enforced which may require the use of, or provide a price differential in favor of articles produced within the State or otherwise discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the US. 23 CFR § 635.409.

J. Proprietary Products

- i. Federal funds shall not participate directly or indirectly in payment for any premium or royalty on any patented or proprietary material, specification or process. 23 CFR § 635.411(a).

K. Disadvantaged Business Enterprises (DBE)

- i. The direct recipient shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. 23 CFR § 635.107(a).
- ii. The direct recipient must meet its overall DBE goal by using race-neutral means of facilitating DBE participation. 49 CFR § 26.51(a).

- iii. The direct recipient must establish contract goals to meet any portion of the overall goal that the direct recipient does not project being met using race-neutral means. 49 CFR § 26.51(d).
- L. FHWA Form 1273
  - i. FHWA Form 1273 must be physically incorporated into every prime contract and subcontract. 23 CFR § 633.102.
- M. Standardized Changed Conditions Clauses
  - i. Each Federal-aid contract must include standardized change conditions clauses addressing site conditions, suspensions of work ordered by the direct recipient, and material changes in the scope of work.
  - ii. 23 U.S.C. § 112(e); 23 CFR § 635.109.

## **INTERSTATE SYSTEM REQUIREMENTS**

- A. 23 U.S.C. § 111, 23 U.S.C. § 131, 23 CFR § 625.4(a)(2), 23 CFR § 710.405, 23 CFR part 752, 23 CFR part 771
- B. Direct recipient will not add any points of access to, or exit from, the project in addition to those approved by FHWA in the plans for such project, without prior approval by FHWA. (23 U.S.C. § 111).
- C. Direct recipient will not permit automotive service stations or other commercial establishments for serving motor vehicle users. (23 U.S.C. § 111).
- D. Prior to allowing any change in access control or other use or occupancy or other use or occupancy of acquired property along the Interstate, the direct recipient shall secure approval from FHWA for such changes or use. 23 CFR § 710.401.
- E. The direct recipient must assure that all real property within the boundaries of a federally funded facility is devoted exclusively to the purpose of that facility and is preserved free of all other public or private alternative uses, including advertising. (23 CFR § 1.23).
- F. For property it owns, the direct recipient, upon prior FHWA approval may grant rights for temporary or permanent occupancy or use of Interstate system airspace, if the direct recipient has acquired sufficient legal right, title and interest in the right-of-way; where such air space is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. (23 CFR § 710.405(c)).

- G. The direct recipient may permit the placement of vending machines in rest areas located on the right-of-way of Interstate system for the purpose of dispensing such food, drink, or other articles. No charge to the public may be made for goods and services at safety rest areas except for telephones and articles dispensed by vending machines. (23 USC § 131(c)(5) and 23 CFR § 752.5).

## **TOLLING**

- A. All highways, bridges and tunnels constructed under the provisions of title 23, United States Code, must be free from tolls of all kinds unless the project fits the statutory criteria for an exception in one of the 6 federal toll programs.
- B. The toll exceptions generally require the execution of a toll agreement between the Secretary and the direct recipient limiting the use of toll revenues to debt service, reasonable return on investment to a private party financing the project, and operations and maintenance. If there are any revenues collected in excess of these uses, then a provision may be included in the toll agreements under all but 2 of the toll programs (Interstate Reconstruction and Interstate Construction) allowing the direct recipient to use excess toll revenues for any other title 23, U.S.C., eligible purpose.
- C. All programs, except the Express Lanes Demonstration Program (ELDP) and the Value Pricing Pilot Program (VPPP), expressly require the State DOT to be a signatory to the agreement and this would apply even if another entity is the direct recipient. FHWA practice under the ELDP has been to require the State DOT to be a signatory since the Federal funds for the project were made available to the public authority through the State DOT; a non-State direct recipient in the ELDP would substitute for the State. States have been signatories to all agreements under the VPPP involving tolling since VPPP slots have been allocated to the State DOTs (Federal law limits the VPPP to 15 slots); States would continue to be required signatories where there is a non-State direct recipient unless that direct recipient also holds its own VPPP slot.

## **PLANNING, ENVIRONMENT, AND RIGHT-OF-WAY**

### **1. Metropolitan and Statewide Transportation Planning**

- A. 23 U.S.C. §§ 134-135 and 23 CFR Part 450
  - i. The direct recipient coordinates with FHWA, MPO, State DOTs and others to ensure inclusion of the project(s) in a fiscally-constrained long range transportation plan and TIP/STIP; and to meet all applicable Clean Air Act requirements for the plan and

TIP in air quality nonattainment and maintenance areas (see Clean Air Act requirements below.)

## 2. Environment

- A. National Environmental Policy Act (NEPA) (Pub. L. 91-190, 42 U.S.C. § 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982 and implementing regulations at 40 CFR Part 1500 *et seq.* and 23 CFR Part 771), 23 U.S.C. § 139, and 23 U.S.C. § 109(h).
- i. Entities that are the project sponsor and direct recipient of Title 23 funds serve with FHWA as mandatory joint lead agencies (note that if other entities contribute Federal-aid funding to the project, it may result in joint lead agency status for that entity as well). The non-Federal mandatory joint lead entity may prepare the required environmental documents in cooperation with, and under the independent oversight of, the FHWA. Environmental review process decision-making is consensus-based, but the FHWA is ultimately responsible for the NEPA process and Federal decisions arising out of that process. For example, FHWA makes decisions on the adequacy of the environmental documents and selection/approval of alternatives evaluated in the environmental documents.
  - ii. Front-end administrative requirements include determining roles and responsibilities of FHWA and the non-State DOT direct recipient; among the issues to be addressed are the direct recipient's capability to prepare environmental documents and the level of participation/oversight needed from FHWA.
  - iii. Roles for the cooperating agencies shall be developed in accordance with the provisions of 40 CFR § 1501.6 (Cooperating Agencies).
  - iv. Requires FHWA approval of direct recipient's public hearing/public involvement program (23 U.S.C. § 128 and 139, 23 CFR § 771.111(h)(1).
  - v. For general technical assistance, see FHWA's *SAFETEA-LU Environmental Review Process (Public law 109-59) – Final Guidance* (November 15, 2006), <http://www.fhwa.dot.gov/hep/section6002/index.htm>.
- B. Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)) (23 U.S.C. § 138 and 49 U.S.C. § 303; 23 CFR Part 774)
- i. As the project applicant, the direct recipient will develop any required 4(f) documentation in cooperation with the FHWA (23 CFR 774.7(f)).

- ii. For general technical assistance, see FHWA's Section 4(f) guidance and Legislation website,  
<http://environment.fhwa.dot.gov/4f/4fguidance.asp>.
- C. Clean Air Act requirements -- General conformity and/or transportation conformity (depending on nature of projects)
  - i. Clean Air Act § 176(c) (42 U.S.C. § 7506(c)) and implementing regulations: transportation conformity regulations at 40 CFR Parts 51 and 93; general conformity regulations at 40 CFR Parts 6, 51 and 93.
  - ii. The direct recipient is responsible for preparation of any required conformity analysis, and, in cooperation with FHWA and other transportation and air agencies, ensures all applicable Clean Air Act requirements are met. This includes, if applicable, a Federal conformity determination before the completion of the NEPA process and all the requirements specifically apply to transportation plan, program, and projects.
  - iii. For general technical assistance, legislation, and policy guidance on transportation conformity, see *FHWA Transportation Conformity website*:  
<http://www.fhwa.dot.gov/environment/conform.htm>

### 3. Property Acquisition, Relocation, Management, and Disposal of Excess or Surplus Properties

- A. Uniform Relocation and Real Property Acquisition Policies Act of 1970 (as amended) (Uniform Act) and related statutes and regulations (42 U.S.C. § 4601 et seq., 23 U.S.C. s. 108, 23 U.S.C. § 156, 23 CFR Part 201, 23 CFR Part 635, 23 CFR Part 710).
- B. The direct recipient is responsible for ensuring all project activities comply with Uniform Act and title 23 requirements, including pre-acquisition environmental review requirements.
- C. Front-end administrative requirements include assurances and certifications (42 U.S.C. § 4604, § 4630, and § 4655; 49 CFR § 24.4); ; procurement of any consultant services in conformity with 49 CFR § 18.36 (23 CFR § 710.201(g); and recordkeeping (23 CFR 710.201(f)). These include:
  - i. Providing information demonstrating that the organization is adequately staffed, equipped and organized to undertake right-of-way requirements in compliance with applicable laws and regulations; and
  - ii. Developing and submitting for FHWA approval a right-of-way operations manual describing the direct recipient's right-of-way organization, polices, and procedures (23 CFR 710.201).

- D. Advance acquisitions -- Particular consideration should be given to the limitations on the use of hardship and protective acquisitions (limitation on the number of parcels acquired, requirement for either an imminent development threat that would limit future transportation choices or the undue hardship on a particular property owner as compared to other owners based on health, safety, or financial reasons (23 CFR § 710.503(a) – (d)). Direct recipients may utilize early acquisition provisions, under which acquisitions are funded by the direct recipient and are potentially eligible for future Federal-aid reimbursement or credit, if all criteria are satisfied (23 U.S.C. § 108(c) and 23 CFR § 710.501).
- E. For general technical assistance, see *Office of Real Estate Services - Project Development Guide*, <http://www.fhwa.dot.gov/realestate/pdg.htm>.

## **ATTACHMENT F – FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS**



## FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS

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**1. INCORPORATION OF FEDERAL HIGHWAY ADMINISTRATION TERMS**

As used herein, the term “Agreement” shall also mean “Contract” and “Contractor” shall also mean “Consultant”. This Agreement is to be partially or wholly funded by the Federal Highway Administration (FHWA). As a result, this contract is subject to the provisions of these FHWA Requirements, and those set forth in Form FHWA-1273, attached and incorporated herein. In the event of any conflict between the provisions of these FHWA Requirements set forth below and Form FHWA-1273, the provision(s) of Form FHWA-1273 shall prevail.

Anything to the contrary herein notwithstanding, all FHWA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FHWA terms and conditions.

Each and every provision required by the FHWA to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If any provision of this Contract shall be such as to effect non-compliance with any FHWA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

**2. FEDERAL CHANGES**

The Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FHWA issues a written determination otherwise. All standards or limits within the Master Agreement are minimum requirements, unless modified by the FHWA.

**3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by the FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**4. ORGANIZATIONAL CONFLICT OF INTEREST**

- A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.
  - 1.) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
  - 2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Contractor's actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

## **5. CERTIFICATION - DEBARMENT AND SUSPENSION**

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR

180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

The Contractor is required to comply with 2 C FR 180, S ubpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. FHWA requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth following the clause herein entitled "Integrity Monitor".
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.
- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the clause herein entitled "Integrity Monitor" which will be deemed a part of the resulting Subcontract and Supplier agreement.

## **FHWA Requirements**

- E. The originals of any Certifications or correspondence relating hereto, that are not submitted with the bid, shall be sent by the Contractor to the Director of Procurement, Two Montgomery Street, Jersey City, NJ 07302.
- F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
- G. As required by FHWA, the Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

### **6. CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000**

- A. Definitions as used in this Clause:
  - 1.) "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the clause herein entitled "Integrity Monitor" t, it also includes any other public agency.
  - 2.) "Covered Federal action" means any of the following Federal actions:
    - a. The awarding of any Federal contract;
    - b. The making of any Federal grant;
    - c. The making of any Federal loan;
    - d. The entering into of any cooperative agreement; and
    - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.
  - 3.) "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.
  - 4.) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

- 5.) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.
- 6.) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
  - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
  - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
- 7.) A special government employee as defined in Section 202, title 18, United States Code;
  - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
  - b. An employee of a bi-state agency.
- 8.) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.
- 9.) "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- 10.) "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- 11.) "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

- 12.) "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.
- 13.) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

**B. Prohibition**

- 1.) Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included herein following the clause entitled "Integrity Monitor", it includes the award of the associated contract.
- 2.) The prohibition does not apply as follows:
  - a. Agency and legislative liaison by own employees.
    - (i) The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.
    - (ii) For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.

- (iii) For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.
    - (a.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
    - (b.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
  - (iv) For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
    - (a.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
    - (b.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
    - (c.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
  - (v) Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.
- b. Professional and Technical Services by Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.



- (ii) For purposes of subparagraph B. 2.) b. ( i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
  - (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
  - (iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.
- c. Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.
- d. Professional and Technical Services by Other than Own Employees.
  - (i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the

preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

- (ii) For purposes of subparagraph B. 2.) d. ( i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

**C. Disclosure**

- 1.) Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled

"Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth following the clause herein entitled "Integrity Monitor" that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth following the clause herein entitled "Integrity Monitor", if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.

- 2.) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
  - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- 3.) Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- 4.) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

**D. Agreement**

- 1.) In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

**E. Penalties**

- 1.) Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

- 2.) Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 3.) Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

**F. Cost Allowability**

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

**7. ACCESS TO RECORDS AND REPORTS**

The Contractor agrees to provide the Authority, the FHWA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.15 to provide the FHWA Administrator or his authorized representatives including any PMO Contractor access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, FHWA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor shall make available records related to the contract to the Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

## 8. CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.
  
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  - 1.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.
  
  - 2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.
  
  - 3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to

employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

- C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

## **9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the FHWA Administrator and grantee (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **10. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 U SC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000.

- A. Minimum Wages

- 1.) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.  
Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (A)(2) of this Section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- 2.)
  - a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
    - (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
    - (ii) The classification is utilized in the area by the construction industry;

- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
    - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
  - b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(i) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 3.) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4.) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.



- 5.)
- a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
    - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination;
    - (ii) The classification is utilized in the area by the construction industry; and
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

**B. Withholding**

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**C. Payrolls and Basic Records**

1.) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2.)

a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Highway Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the

Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
    - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
    - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.
  - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 3.) The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Highway Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**D. Apprentices and Trainees**

- 1.) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- 2.) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the

provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 3.) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Highway Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

**I. Disputes Concerning Labor Standards**

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**J. Certification of Eligibility –**

- 1.) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 2.) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 3.) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – CONTRACTS EXCEEDING \$100,000**

The Contract Work Hours and Safety Standards Act applies to grantee contracts and subcontracts under 40 U.S.C. 3701(b)(1)(B)(iii) and (b)(2), 29 C.F.R. 5.2(h), 49 C.F.R. 18.36(i)(6) for contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work, where the contract amount is greater than \$100,000.

**A. Overtime Requirements**

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**B. Violation; liability for unpaid wages; liquidated damages**

In the event of any violation of the clause set forth in paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including

watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.

- C. Withholding for unpaid wages and liquidated damages  
The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.
- D. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.

## **12. SEISMIC SAFETY**

If this is a contract for the construction of new buildings or additions to existing buildings, the Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance. The completed certification of compliance is to be submitted to the Engineer. The seismic safety standards applicable to this Contract are contained in Section 2312 ICBO Uniform Building Code (UBC), as modified by the Appendix to Title 27, Chapter 1 (Volume 7), of the Administrative Code and Charter of the City of New York at RS 9-6 Earthquake Loads.

## **13. ENERGY CONSERVATION**

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

## **14. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.
- B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

**15. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

**16. FLY AMERICA**

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

**17. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS**

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.



- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FHWA.

**18. PREFERENCE FOR RECYCLED PRODUCTS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recover Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**19. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C FR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**20. ADA ACCESS REQUIREMENTS**

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

## 21. STANDARD CHANGED CONDITIONS CLAUSE

Notwithstanding the Extra Work provisions of this Contract, the following applies to all construction projects.

A. **Differing Site Conditions Clause** - This clause provides for the adjustment of the contract terms if the contractor encounters:

1. Type I Condition - subsurface or latent physical conditions that differ materially from those indicated in the contract, or
2. Type II Condition - unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to the work.
3. Some examples of potential Type I conditions include encountering the following: more rock than indicated in the contract, larger rock, rock that is harder to drill, permafrost when the boring had given no indication of its general extent, or unexpected quantities of underground water not indicated on the boring logs.
4. While these are potential Type I conditions, in order to receive compensation, the contractor must prove the following by a preponderance of evidence:
  - a. *"(1) the contract documents must have affirmatively indicated or represented the subsurface or latent physical conditions which form the basis of plaintiff's claim; (2) the contractor must have acted as a reasonably prudent contractor in interpreting the contract documents; (3) the contractor must have reasonably relied on the indications of subsurface or latent physical conditions in the contract; (4) the subsurface or latent physical conditions actually encountered within the contract area must have differed materially from the conditions indicated in the same contract area; (5) the actual subsurface conditions or latent physical conditions encountered must have been reasonably unforeseeable; and (6) the contractor's claimed excess costs must be shown to be solely attributable to the materially different subsurface or latent physical conditions within the contract site. To prove these six elements, the contractor is only required to use a simple logical process in evaluating the information in the contract documents to determine the expected subsurface or latent physical conditions..."*  
(Source: NCHRP, "Selected Studies in Transportation Law, Construction Contract Law", p. 5-16)
5. Some examples of a potential Type II conditions include unanticipated hazardous waste deposits or unanticipated archaeological sites.
6. To recover costs under a Type II condition, the contractor must prove:
  - a. *"(1) that it did not know about the condition; (2) that it could not have reasonably anticipated the condition after a review of the contract*

*documents, a site inspection, and the contractor's general experience in that area; and (3) that the condition was unusual because it varied from the norm in similar construction work."*  
(Source: NCHRP "Selected Studies in Transportation Law, Construction Contract Law", p. 5-16)

7. Further guidance for design and construction engineers on Differing Site Conditions can be found in FHWA's Geotechnical Engineering Notebook, Geotechnical Guidelines No. 15, dated April 30, 1996. (See <http://www.fhwa.dot.gov/bridge/gt-15.pdf>).

**B. Suspensions of Work Ordered by the Engineer** - This clause provides for the adjustment of the contract terms if the performance of all or a portion of the work is suspended or delayed by the Engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry). The contractor is required to submit a request for adjustment, in writing, to the Engineer within 7 calendar days of receipt of the notice to resume work. Recovery of profit on costs resulting from suspensions of work is not allowed.

1. This clause does not preclude the recognition of constructive suspensions or delays resulting from the contracting agency's actions, without written notification. These are delays caused by the owner's instructions that are not in writing. The contractor may receive verbal orders from the engineer, or be delayed by the owners' lengthy review of submittals. Some states recognized constructive delays in their specifications prior to the FHWA regulation. The preamble to the regulation indicates that states may continue to recognize construction delays if this is provided in their standard specifications and contract administration procedures.
2. To qualify for an adjustment, suspensions must be for unreasonable periods and do not include brief, customary suspensions for reasons inherent to highway construction (i.e., material sampling and testing; approval of shop drawings, material sources, etc.; and other reasonable and customary suspensions necessary for the supervision of construction by the contracting agency). In addition, an adjustment under this clause is not allowed if the work is suspended for other reasons or if an adjustment is provided for, or excluded, under other terms or conditions of the contract.

**C. Material Changes in the Scope of the Work** - This clause provides for the adjustment of the contract terms if the Engineer orders, in writing, an alteration in the work or in the quantities that significantly change the character of work. The term "significant change" shall be construed to apply only to the following circumstances:

1. the altered character of the work differs materially from that of the original contract, or
2. a major item of work, as defined in the contract, is increased or decreased by more than 25 percent of the original contract quantity (adjustments shall apply only to that portion in excess of 125 percent of original contract quantity, or in case of a decrease, to the actual quantity performed).

3. This clause provides for adjustments resulting from formal change orders by the Engineer, in writing, to the extent that the impacted work is part of the contract. Either party may initiate an adjustment and both must be in agreement before the work is performed. As with the suspension of work provision, this clause does not preclude the recognition of constructive suspensions or delays.

## **22. BUY AMERICA**

By submitting a proposal, or executing a contract, hereunder, Contractor certifies compliance with 23 U.S.C. 313, which sets forth the FHWA Buy America requirements: all steel and iron used in Federally funded construction projects must be domestic. All foreign steel and iron materials and products are covered by Buy America regardless of the percentage they comprise in a manufactured product or the form they may take.

See the regulations at 23 CFR 635.410 for more information on compliance, including the some latitude through minimum use, waivers, and alternate bids.

**CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352**

The undersigned

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(name of authorized officer)  
certifies, to the best of my knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(I)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day \_\_\_\_\_ of \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Signature of Authorized Official

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Official Name and Title of Authorized Official

## FHWA REQUIREMENTS

## STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <u>  X  </u> a. contract _____ b. grant _____ c. cooperative agreement _____ d. loan _____ e. loan guarantee _____ f. loan insurance		<b>2. Status of Federal Action:</b> <u>  X  </u> a. bid/offer/application _____ b. initial award _____ c. post award		<b>3. Report Type:</b> <u>  X  </u> a. initial filing _____ b. material change  <b>For material change only:</b> Year _____ quarter _____ Date of last report _____	
<b>4. Name and Address of Reporting Entity:</b>   <u>  X  </u> Prime _____ Subawardee Tier _____, if Known: <b>Congressional District, if known:</b>			<b>5. If Reporting Entity in No. 4 is Subawardee,</b> Enter Name and Address of Prime:   <b>Congressional District, if known:</b>		
<b>6. Federal Department/Agency:</b>			<b>7. Federal Program Name/Description:</b>   CFDA Number, if applicable: _____		
<b>8. Federal Action Number, if known:</b>			<b>9. Award Amount, if known:</b> \$		
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>			<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>		
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>			<b>Signature:</b> _____  <b>Print Name:</b> _____  <b>Title:</b> _____  <b>Telephone No.:</b> _____ <b>Date:</b> _____		
<b>Federal Use Only</b>			<b>Authorized for Local Reproduction</b> <b>Standard Form - LLL (Rev. 7-97)</b>		

## FHWA REQUIREMENTS

### INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

1. The prospective lower tier participant,

\_\_\_\_\_, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day \_\_\_\_\_ of \_\_\_\_\_, 2009.

\_\_\_\_\_  
**BY SIGNATURE OF AUTHORIZED OFFICIAL**

\_\_\_\_\_  
**NAME AND TITLE OF AUTHORIZED OFFICIAL**



**INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -  
LOWER TIER COVERED TRANSACTIONS**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

**ATTACHMENT G - FORM 1273 - REQUIRED CONTRACT PROVISIONS FEDERAL-  
AID CONSTRUCTION CONTRACTS**

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 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 contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **b. Trainees (programs of the USDOL).**

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.



d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



16 January 2015  
Reference: csc/T1311097  
Project No: 3365885

NS Engineers, P.C.  
51 West Prospect Street, Suite 2  
East Brunswick, NJ 08816-5711

Attention: Nazrul Siddique, P.E.

Subject: Four Track Rail Car Floats for NYNJRR  
370' x 59' x 14'  
Inland Service  
Statement of Compliance Design Review

Gentlemen:

We have your submittal of the following drawings:

- Dated 1-12-15 Structural Plans Booklet (29 Sheets)

for the subject vessels. We have reviewed the drawing for compliance with the requirements found in our "Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 2014" and find the scantlings and arrangements to be acceptable. The vessels will be eligible to be classed ~~A~~A1 Barge, River Service.

An electronic copy of the approved drawing is being returned to you via e-mail.

We have reviewed the deck scantlings for the carriage of eighteen rail cars weighing up to 286,000 pounds each, arranged as shown on Drawing S002.

We also received the following drawing:

- Dated 13-11-14 Project Memorandum: New Four Track Carfloat  
Strength Analysis

for our record and file.

Should the contract not be awarded within one year of the date of this letter, resubmittal of the plans may be required in order to address any Rule changes that may have occurred during the interim time period.

Very truly yours,

Daniel D. Cronin  
Vice President, Engineering  
ABS Americas

by Clayton S. Cooper  
Clayton S. Cooper  
Senior Principal Engineer - Hull  
ABS Americas - New Orleans




THE PORT AUTHORITY OF NY & NJ

NEW YORK AND NEW JERSEY RAIL, LLC  
CONSTRUCTION OF TWO RAIL CARFLOATS

CONTRACT No. NYNJRR-644.528

**APPROVED  
AS AMENDED**  
This approval covers only ABS requirements and does not include items not required by ABS. Details of this approval are set forth in the ABS letter.



No.	Date	Revision	Approved

*John J. McConkey*  
for CHIEF OF DESIGN  
E/A DESIGN DIVISION  
*Vincent J. Carter*  
ASSISTANT DIRECTOR - PORT COMMERCE  
*Pete J. Ziff*  
CHIEF ENGINEER

2/20/15  
DATE  
2/20/2015  
DATE  
2/24/15  
DATE



## DESIGN CRITERIA:

### 1. PRINCIPAL DIMENSIONS

- 1.1 LENGTH: 370 FT.
- 1.2 BREADTH: 58 FT.
- 1.3 DEPTH: 14 FT.

### 2. SPECIFICATIONS

- 2.1 THE CAR FLOAT HULL STRUCTURE SHALL BE DESIGNED IN ACCORDANCE WITH AMERICAN BUREAU OF SHIPPING (ABS), "RULES FOR BUILDING AND CLASSING STEEL VESSELS FOR SERVICE ON RIVERS AND INTRACOASTAL WATERWAYS" (2014 EDITION).
- 2.2 ABS SHALL REVIEW AND CERTIFY THE CAR FLOAT HULL STRUCTURAL DESIGN IN ACCORDANCE WITH ITS REQUIREMENTS.
- 2.3 ABS CLASSIFICATION SHALL BE  $\nabla$  A1 BARGE, RIVER SERVICE.
- 2.4 CAR FLOAT HYDROSTATIC STABILITY SHALL SATISFY THE REQUIREMENTS OF U.S. COAST GUARD FEDERAL REGULATIONS, PART 174 - SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES.
- 2.5 ALL INTERNAL COMPARTMENTS ARE VOID SPACES.

### 3. LOADS

- 3.1 WIND (1 IN 50 YEARS):

STORM GUST VELOCITY: 104 MPH  
STORM GUST DURATION: 3 SEC  
GUST EXPOSURE CLASSIFICATION: D

- 3.2 MOORING LOADS:

MOORING LOADS ON CLEATS: 60000 LBS

- 3.3 BERTHING IMPACT

BERTHING VELOCITY: 0.6 KNOTS

- 3.4 RAILCAR:

TYPE: 60 FOOT  
WEIGHT: 286,000 LBS  
NUMBER OF RAIL CARS: 18

### 4. INSPECTION HATCHES

- 4.1 INSPECTION HATCHES SHALL BE MARINE FLUSH TYPE.

## DRAWING LIST:

### DRAWING NO. DESCRIPTION

G001	TITLE SHEET
S001	CARFLOAT DESIGN CRITERIA, GENERAL NOTES, AND DRAWING LIST
S002	CARFLOAT GENERAL ARRANGEMENT
S003	CARFLOAT VOID COMPARTMENT KEYPLAN
S004	DECK PLATING AND SCANTLINGS
S005	BOTTOM SHELL PLATING AND SCANTLINGS
S006	HORIZONTAL SECTION SCANTLINGS
S007	BOW & TRANSOM SHELL PLATING AND SCANTLINGS
S008	LONGITUDINAL SIDE SHELL PLATING AND SCANTLINGS
S009	TRANSVERSE SECTION SCANTLINGS & DETAILS, SHT. 1
S010	TRANSVERSE SECTION SCANTLINGS & DETAILS, SHT. 2
S011	TRANSVERSE SECTION SCANTLINGS & DETAILS, SHT. 3
S012	TRANSVERSE SECTION SCANTLINGS & DETAILS, SHT. 4
S013	BULKHEAD SCANTLINGS & DETAILS, SHT. 1
S014	BULKHEAD SCANTLINGS & DETAILS, SHT. 2
S015	LONGITUDINAL SECTION SCANTLINGS & DETAILS, SHT. 1
S016	LONGITUDINAL SECTION SCANTLINGS & DETAILS, SHT. 2
S017	LONGITUDINAL SECTION SCANTLINGS & DETAILS, SHT. 3
S018	LONGITUDINAL SECTION SCANTLINGS & DETAILS, SHT. 4
S019	CONNECTION DETAILS, SHT. 1
S021	CONNECTION DETAILS, SHT. 2
S022	CONNECTION DETAILS, SHT. 3
S023	MISCELLANEOUS DETAILS, SHT. 1
S024	MISCELLANEOUS DETAILS, SHT. 2
S025	MISCELLANEOUS DETAILS, SHT. 3
S026	MISCELLANEOUS DETAILS, SHT. 4
S027	MISCELLANEOUS DETAILS, SHT. 5
S028	HULL ANODE ARRANGEMENT & DETAILS

## ABBREVIATIONS:

BHD.	BULKHEAD
EQ	EQUAL
EQUIV.	EQUIVALENT
GALV.	GALVANIZED
GEN.	GENERAL
HORIZ.	HORIZONTAL
LONG.	LONGITUDINAL
NDE	NON-DESTRUCTIVE EXAMINATION
OPP.	OPPOSITE
PL	PLATES
PLC	PLACES
REF.	REFERENCE
SH	SIMILAR
SPC	SPACES
STBD	STARBOARD
TRANS.	TRANSVERSE
TYP	TYPICAL
UNO.	UNLESS NOTED OTHERWISE
L=	MEMBER LENGTH IS EQUAL TO

## GENERAL NOTES:

### 1. REFERENCE STANDARDS

- AMERICAN BUREAU OF SHIPPING (ABS), "RULES FOR BUILDING AND CLASSING STEEL VESSELS FOR SERVICE ON RIVERS AND INTRACOASTAL WATERWAYS (2014 EDITION)", INCLUDING PART 2 RULES FOR "MATERIALS AND WELDING"
- AMERICAN BUREAU OF SHIPPING (ABS), "GUIDE FOR NONDESTRUCTIVE INSPECTION OF HULL WELDS"
- US COAST GUARD, "FEDERAL REGULATIONS (2011 EDITION)"
- AISC 325, "STEEL CONSTRUCTION MANUAL (2010 EDITION)"
- ASTM A36, "STANDARD SPECIFICATIONS FOR CARBON STRUCTURAL STEEL (2008 EDITION)"
- AWS D3.5-93 "GUIDE FOR STEEL HULL WELDING"
- SSPC PAINTING MANUAL VOLUMES 1 AND 2
- NATIONAL ASSOCIATION OF CORROSION ENGINEERS (NACE) - SPO176, "STANDARD PRACTICE CORROSION CONTROL OF SUBMERGED AREAS OF PERMANENTLY INSTALLED OFFSHORE STRUCTURES ASSOCIATED WITH PETROLEUM PRODUCTION" (2007)
- DET NORSKE VERITAS (DNV) - DNV-RP-B401, "RECOMMENDED PRACTICE CATHODIC PROTECTION DESIGN" (OCTOBER 2010)

### 2. MATERIALS

- 2.1 ROLLED SECTIONS:  
MATERIAL OF STRUCTURAL STEEL MEMBERS OF CAR FLOAT (ROLLED SECTIONS) SHALL BE ABS GRADE A.
- 2.2 PLATING:  
MATERIAL OF ALL CAR FLOAT PLATING SHALL BE ABS GRADE A.
- 2.3 STRUCTURAL AND PLATE STEEL SHALL BE ACCORDANCE WITH ABS RULES FOR MATERIALS AND WELDING, PART 2, CHAPTER 1, SECTION 2 FOR ORDINARY HULL STRENGTH HULL STEEL.

### 3. WELDING, FABRICATION AND NDE

- 3.1 ALL WELDING SHALL BE DOUBLE CONTINUOUS 1/4" NOMINAL LEG SIZE FILLET WELDS UNLESS NOTED OTHERWISE. WELDING ELECTRODES SHALL BE E70XX.
- 3.2 WELDING, FABRICATION AND NDE OF CAR FLOAT STRUCTURES SHALL BE IN ACCORDANCE WITH AWS D3.5-93 "GUIDE FOR STEEL HULL WELDING" AND ABS RULES FOR MATERIALS AND WELDING (PART 2).
- 3.3 MINIMUM EXTENT OF NDE: ALL WELDS SHALL BE 100% VISUALLY INSPECTED. VISUAL INSPECTION SHALL BE PERFORMED BEFORE, DURING, AND AFTER THE COMPLETION OF WELDS. 10% OF ALL CJP WELDS ARE TO BE ULTRASONIC TESTED (UT) AND 10% OF ALL FILLET WELDS ARE TO BE MAGNETIC PARTICLE TESTED (MT). THE IMPORTANCE TO THE INTEGRITY OF STRUCTURE SHALL BE CONSIDERED WHEN SELECTING THE WELDS TO BE EXAMINED.
- 3.4 ALL FIT-UP, EDGE PREP, AND WELDING SHALL BE DONE IN ACCORDANCE WITH ABS RULES FOR MATERIALS AND WELDING (PART 2).
- 3.5 MATERIALS, FIT-UP, AND WELDING SHALL BE TO THE SATISFACTION OF ATTENDING ABS SURVEYOR. BULKHEAD JOINTS AND SHELL SEAMS SHALL BE WATERTIGHT AND TO SATISFACTION OF ATTENDING ABS SURVEYOR.

### 4. FABRICATION AND ERECTION TOLERANCE

- 4.1 ALL FABRICATION AND ERECTION TOLERANCES SHALL CONFORM TO AISC 325, "STEEL CONSTRUCTION MANUAL" AND ABS "RULES FOR MATERIALS AND WELDING (PART 2)".

### 5. COMPARTMENT WATERTIGHTNESS TESTING

- 5.1 COMPARTMENT TESTING SHALL BE TO THE SATISFACTION OF ATTENDING ABS SURVEYOR. LEAK TEST SHALL BE UP TO THE HIGHEST LEVEL OF COMPARTMENTS AND PERFORMED BEFORE THE COATINGS HAVE BEEN APPLIED AND AFTER ALL OF THE WELDS HAVE BEEN EXAMINED TO THE SATISFACTION OF THE ABS SURVEYOR.

### 6. CORROSION PROTECTION

- 6.1 HULL BELOW WATER SHALL BE COATED WITH ANTI-FOULING COATING. SEE CONTRACT SPECIFICATIONS FOR DETAILS.
- 6.2 ENTIRE HULL SHALL BE COATED WITH A CORROSION-RESISTANT COATING SYSTEM EFFICIENT FOR CAR FLOAT ENVIRONMENTAL CONDITION. SEE CONTRACT SPECIFICATIONS FOR DETAILS.
- 6.3 ALL UNDERWATER EXTERNAL HULL SHALL ALSO BE CORROSION-PROTECTED WITH GALVANIC ANODES IN ADDITION TO COATING SYSTEM AS SPECIFIED IN CONTRACT SPECIFICATIONS.
- 6.4 TOP DECK SHALL BE COATED WITH ANTI-SLIP COATING. SEE CONTRACT SPECIFICATIONS FOR DETAILS.
- 6.5 ALL SAFETY ATTACHMENTS (I.E. HANDRAILS/LADDER CAGES, ETC.) SHALL BE PAINTED WITH SAFETY COLOR ENAMELS.
- 6.6 CONTRACTOR SHALL PREVENT DAMAGE TO GALVANIC ANODES AND HULL COATING DURING FABRICATION, SHIPPING, AND DELIVERY.

### 7. RAILCAR TRACKS

- 7.1 RAILCAR TRACK SUPPLY AND INSTALLATION ARE NOT PART OF THIS CONTRACT. TRACKS WILL BE INSTALLED BY OTHERS AFTER DELIVERY TO GREENVILLE YARD.

### 8. CERTIFICATION

- 8.1 THE CONTRACTOR TO OBTAIN & DELIVER:
  - ABS CERTIFICATE OF CLASSIFICATION ( $\nabla$ A1 BARGE, RIVER SERVICE)
  - USCG BUILDER'S CERTIFICATE AND FIRST TRANSFER OF TITLE.
- 8.2 ALTHOUGH RAILCAR TRACK INSTALLATION IS NOT PART OF THIS CONTRACT AND WILL LATER BE PERFORMED BY OTHERS AFTER DELIVERY TO GREENVILLE YARD, CONTRACTOR IS RESPONSIBLE FOR ALL COORDINATION WITH ABS FOR INSPECTIONS AFTER THE TRACKS ARE INSTALLED IN ORDER TO OBTAIN ABS CERTIFICATION OF CLASSIFICATION.

### 9. ABS NOTES

- 9.1 ENVIRONMENTAL LOADS, PIN SOCKET LOADS AND MOORING LOADS ARE NOT PART OF ABS REVIEW.
- 9.2 ANODE ARRANGEMENT/CATHODIC PROTECTION IS NOT PART OF ABS REVIEW.
- 9.3 VERTICAL LADDERS, INTERNAL GUARDRAILS AND PLATFORMS ARE NOT PART OF ABS REVIEW.
- 9.4 MATERIALS TO ABS SURVEYOR'S SATISFACTION.

Sheet 2 of 29

THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

HAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 058767-1



No.	Date	Revision	Approved
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ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

## STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

CARFLOAT  
DESIGN CRITERIA,  
GENERAL NOTES, &  
DRAWING LIST

This drawing is subject to conditions in contract. All inventions, designs, and methods herein are reserved to their holders and may not be used without their written consent. The recipient of this drawing, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive it or a part of the contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the contract documents to prevent future disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or incineration with release burners that ensure that third persons will not have access to the documents, contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract team on the 10th Floor, 2 Gateway Center, Newark, NJ 07102, or their Jersey City, NJ 07302. It is a violation of law for any person to alter a document in any way, whether online under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall give to the document their seal and the notation "Altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.

A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

Contract  
Number NYNJRR-644.528

Drawing  
Number S001

PID# 10199000

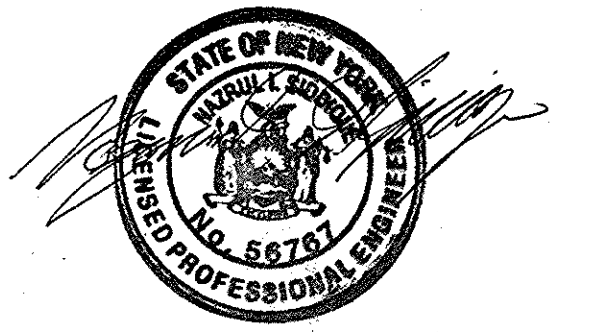


THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

HAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

CARFLOAT  
GENERAL  
ARRANGEMENT

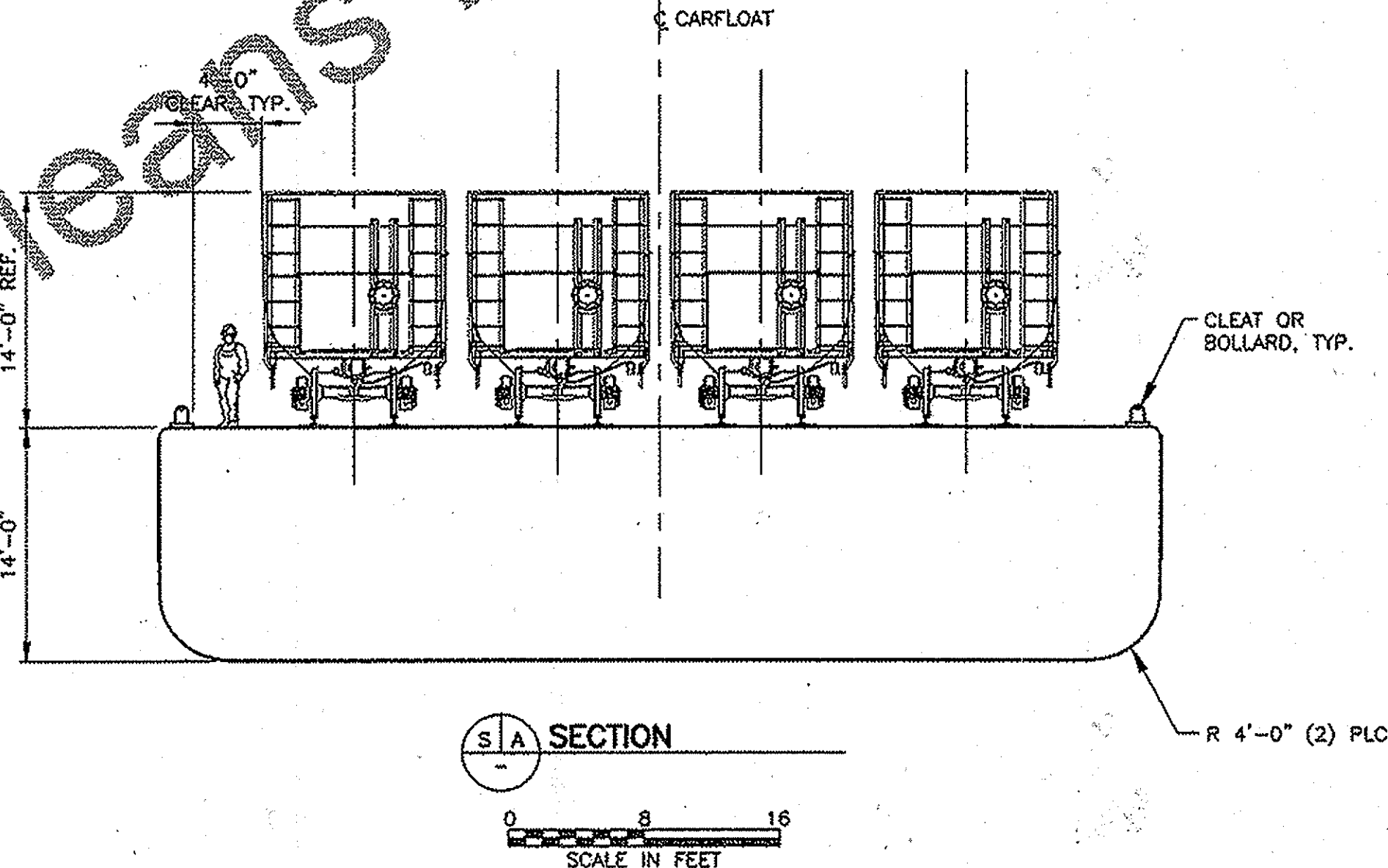
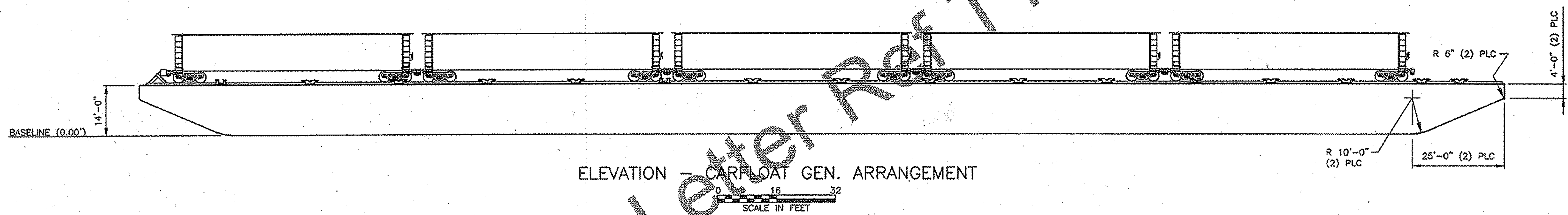
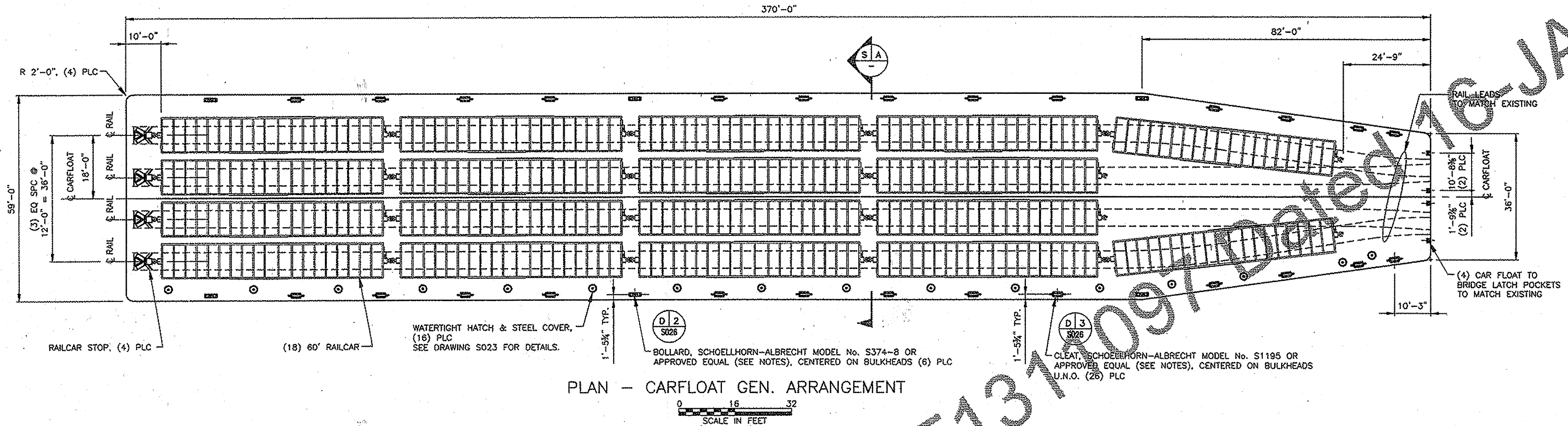
This drawing is subject to conditions in contract. All investigations, tests, designs and methods herein are approved by Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and responsible disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or arrangements with reliable handlers that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may not be retained for disposal purposes in the Contract Room on the 14th Floor, 2 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, Two Montgomery Street, 5th Floor, Jersey City, NJ 07302. It is a violation of law for any person to enter a document in any way, unless acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall affix to the document their seal and the notation "Altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.

A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

Contract Number NYNJRR-644.528

Drawing Number S002  
PID# 10199000



- NOTES:
- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT
  - CARFLOAT ABS CLASSIFICATION: +A1 BARGE, RIVER SERVICE.
  - CARFLOAT TRACK SUPPLY & INSTALLATION IS NOT PART OF THIS CONTRACT AND WILL BE PERFORMED BY OTHERS.
  - CARFLOAT RAILCAR STOP SUPPLY & INSTALLATION IS NOT PART OF THIS CONTRACT AND WILL BE PERFORMED BY OTHERS.
  - OTHER ACCEPTABLE BOLLARD & CLEAT MANUFACTURERS ARE:  
- NABRICO MARINE  
- J.C. MACELROY COMPANY



NOTES:

1. CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT
2. CARFLOAT ABS CLASSIFICATION:  $\frac{1}{2}$ A1 BARGE, RIVER SERVICE.

Sheet 4 of 29

**THE PORT AUTHORITY  
OF NY & NJ**

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approved
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ENGINEERING DEPARTMENT

NEW YORK AND	
NEW JERSEY RAIL,	
LLC	

STRUCTURAL

Title **CONSTRUCTION OF  
TWO RAIL CARFLOATS**

**CARFLOAT VOID  
COMPARTMENT  
KEYPLAN**

This drawing subject to conditions in Contract, all drawings, plans, designs and specimens herein are reserved to Air Corps, and may not be used without its written consent.

It is further agreed that the contractor, including bidders and those who do not bid and their prospective subcontractors and suppliers who may be employed by the contractor, shall be held responsible for the use of the drawings and shall make every effort to observe the security and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. The contractor shall be held responsible for the methods of document destruction such as shredding or arrangements for destruction of the documents. The contractor shall be held responsible to the documents containing either before, during, or after disposal.

Approved by the Director of Procurement, Headquarters Air Corps, 1400 D Street, Desk on the 14th Floor, 2nd Colony Center, Newark NJ 07102 or at the office of the Director of Procurement, Two Montgomery Street, 3rd Floor, Newark NJ 07102.

It is a violation of law for any person to alter a document in any way, except as authorized by the Director of Procurement, Air Corps, or as otherwise regulated otherwise. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall affix to the document a statement of the nature of the alteration, the date of the alteration, and the date of such alteration, and a specific description of the alteration.

A. ESFANDIARI	R. MUNRO	J. PETERSON
Designed by	Drawn by	Checked by

Date 01/12/2015

Contract  
Number **NYNJRR-644.528**

Drawing Number **S003**  
PID# 10199000

PID# 10199000



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NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1

No. Date Revision Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATSDECK PLATING AND  
SCANTLINGS

This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive it as a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or incineration with refuse handlers that ensure that third persons will not have access to the documents' contents after bidders, during or after disposal. Documents may also be returned for disposal pursuant to the Contract terms on the New York and New Jersey Rail, LLC Form 07/02, or the Office of the Director of Procurement, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302.

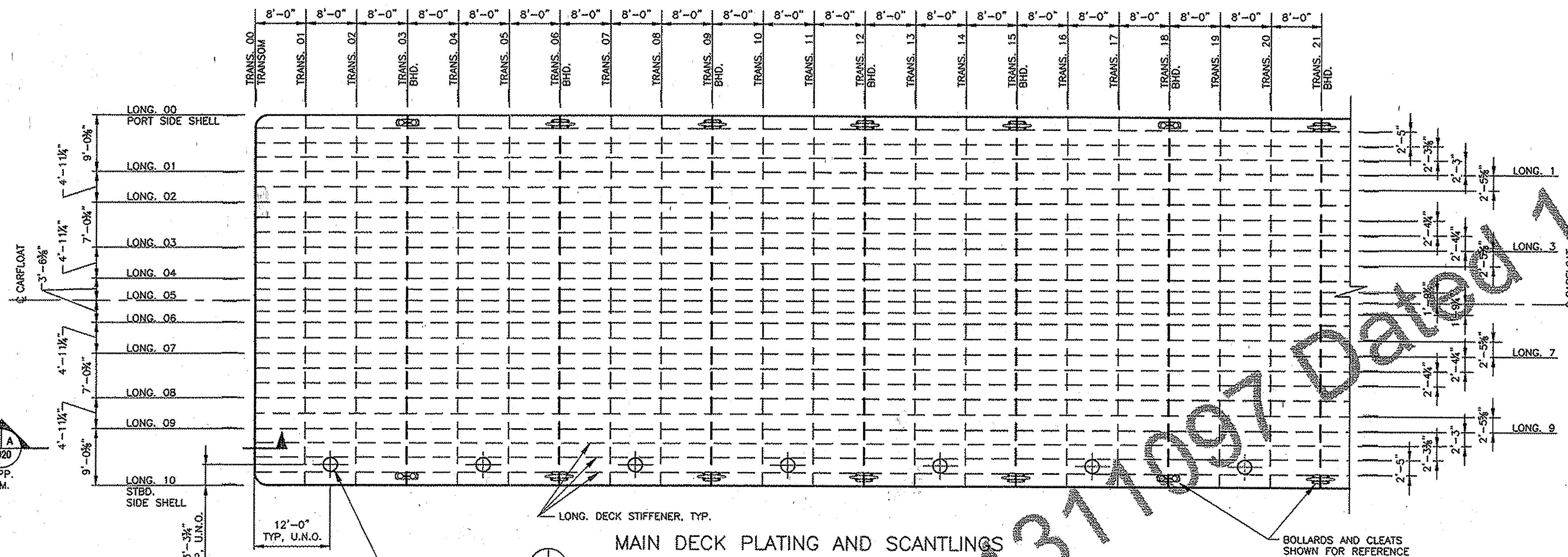
It is a violation of law for any person to alter a document in any way, whether using under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the drawing engineer/architect shall file to the document that seal and the notation stated by followed by their signature and the date of such alteration, and a specific description of the alteration.

A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

Contract  
Number NYNJRR-644.528Drawing  
Number S004

PID# 10199000

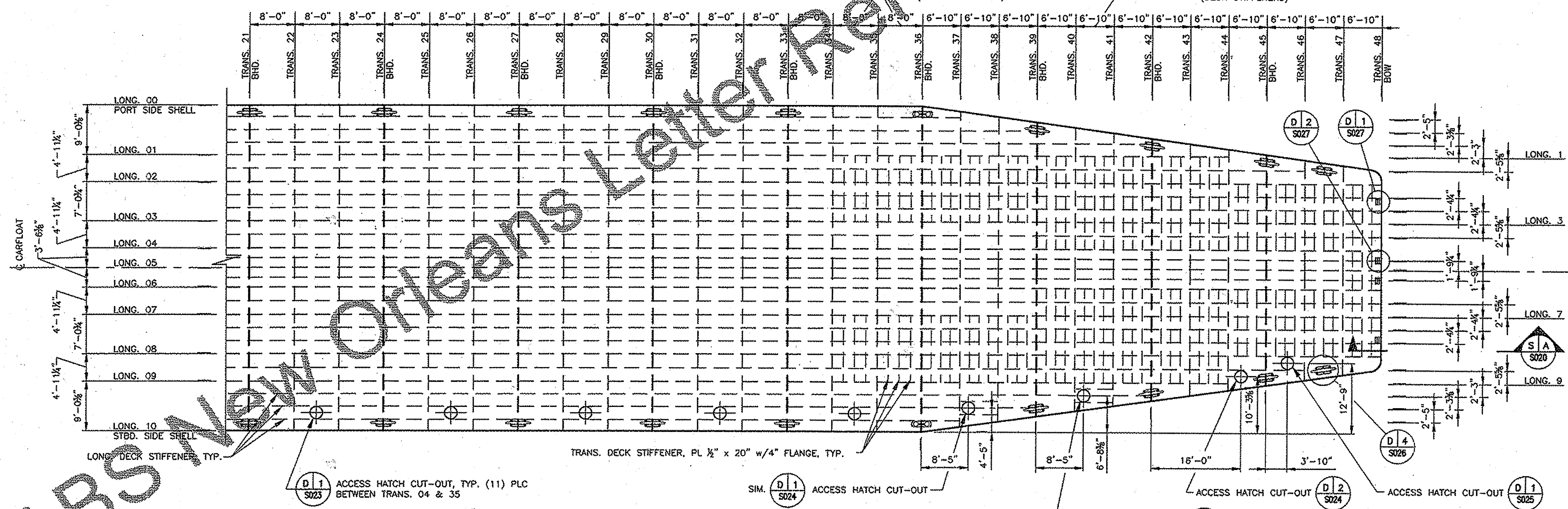


## MAIN DECK PLATING AND SCANTLINGS

- ALL DECK PLATE SHALL BE  $\frac{1}{2}$ " PLATE
- ALL LONG. DECK STIFFENERS SHALL BE L4x6x $\frac{1}{2}$ "

SCALE IN FEET

(4) EQ SPC @ 2'-0" = 8'-0" (DECK STIFFENERS)

(4) EQ SPC @ 1'-8 $\frac{1}{2}$ " = 6'-10" TYP. U.N.O. (DECK STIFFENERS)

## MAIN DECK PLATING AND SCANTLINGS (CONTINUED)

- ALL DECK PLATE SHALL BE  $\frac{1}{2}$ " PLATE
- ALL LONG. DECK STIFFENERS SHALL BE L4x6x $\frac{1}{2}$ "

SCALE IN FEET

## NOTES:

- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT
- CARFLOAT ABS CLASSIFICATION: \*A1 BARGE, RIVER SERVICE.



THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 058767-1



No. Date Revision Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

BOTTOM SHELL PLATING  
AND SCANTLINGS

This drawing is subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent. All recipients of contract documents, including letters and those who do not bid and their prospective subcontractors and suppliers who may receive it or a part of the contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or incineration with release handlers that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Office on the 11th Floor, 2 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302. It is a violation of law for any person to alter a document in any way, unless acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall affix to the document their seal and the notation "Altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.

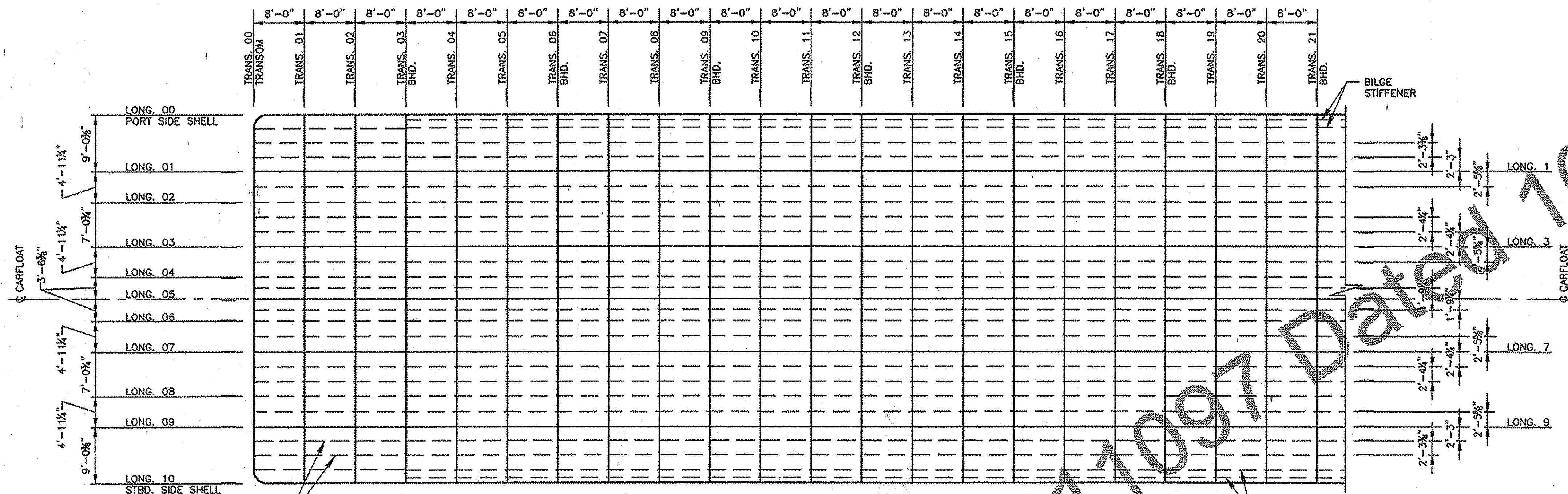
A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

Contract Number NYNJRR-644.528

Drawing Number S005

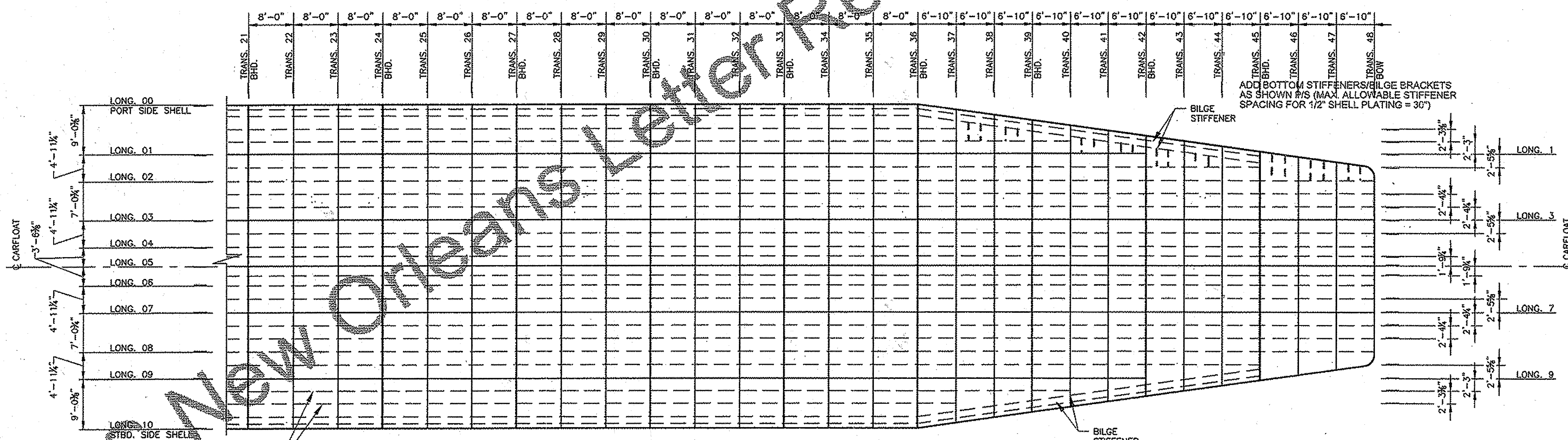
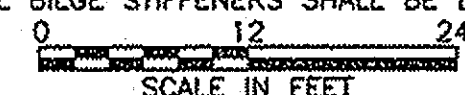
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BOTTOM SHELL STIFFENER, TYP. UNO.

### BOTTOM SHELL PLATING AND SCANTLINGS

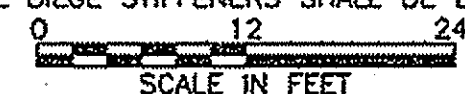
- ALL BOTTOM SHELL PLATE SHALL BE  $\frac{1}{2}$ " PLATE
- ALL BOTTOM SHELL STIFFENERS SHALL BE L4x6x $\frac{1}{2}$ "
- ALL BILGE STIFFENERS SHALL BE L4x6x $\frac{1}{2}$ "



BOTTOM SHELL STIFFENER, TYP. UNO.

### BOTTOM SHELL PLATING AND SCANTLINGS (CONTINUED)

- ALL BOTTOM SHELL PLATE SHALL BE  $\frac{1}{2}$ " PLATE
- ALL BOTTOM SHELL STIFFENERS SHALL BE L4x6x $\frac{1}{2}$ "
- ALL BILGE STIFFENERS SHALL BE L4x6x $\frac{1}{2}$ "



#### NOTES:

1. CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
2. CARFLOAT ABS CLASSIFICATION: \*A1 BARGE, RIVER SERVICE.

See ABS New Orleans Letter Ref T1311097 Dated 16-JAN-2015





**THE PORT AUTHORITY  
OF NY & NJ**

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

HAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approved
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ENGINEERING DEPARTMENT

**NEW YORK AND  
NEW JERSEY RAIL,  
LLC**

STRUCTURAL

Title  
**CONSTRUCTION OF  
TWO RAIL CARFLOATS**

**BOW & TRANSOM SHELL  
PLATING AND  
SCANTLINGS**

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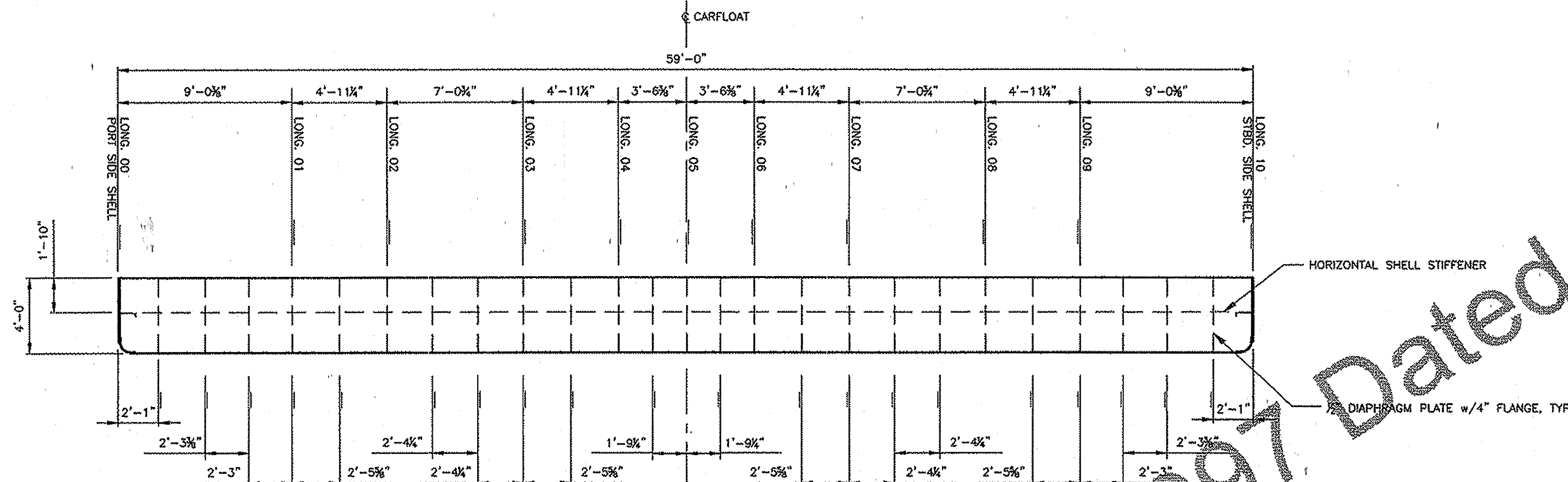
A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

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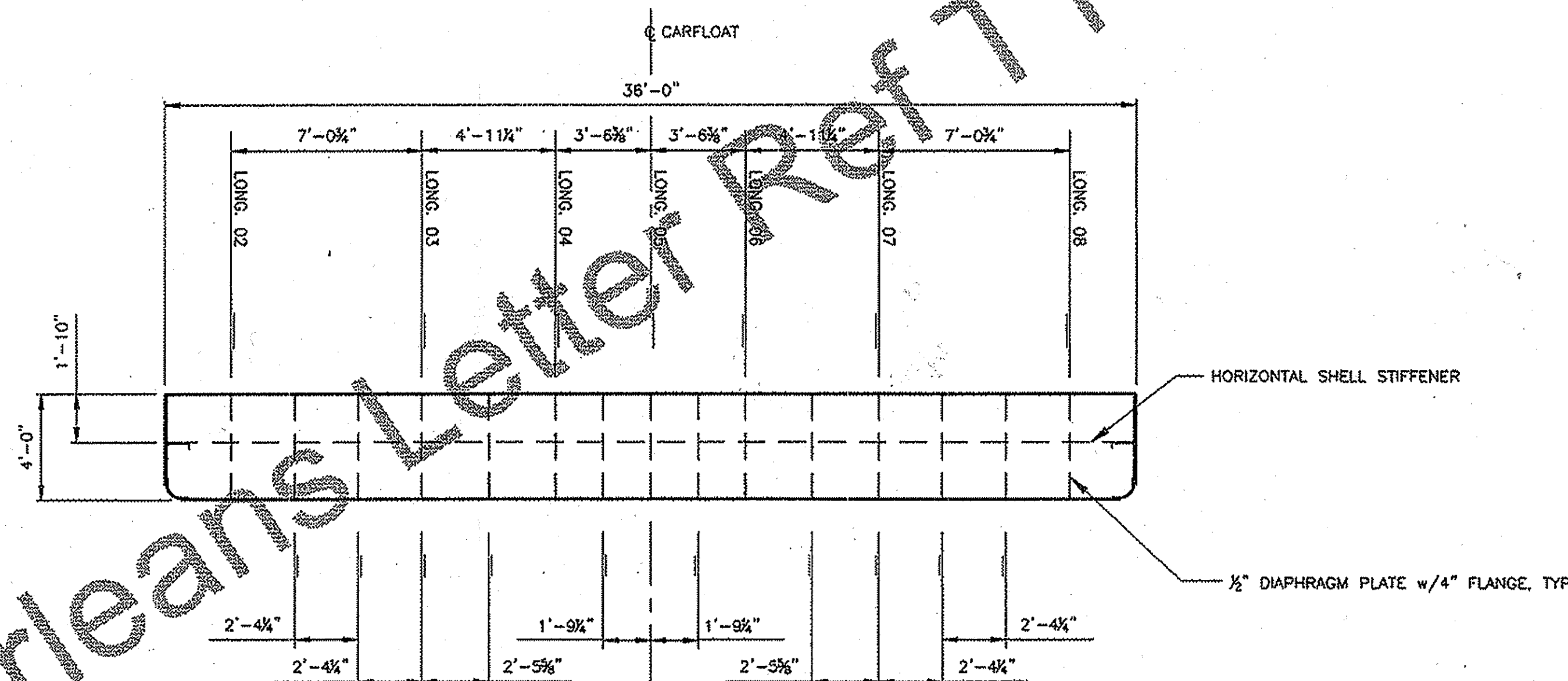
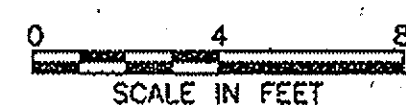
Drawing Number S007

PID# 10199000



**TRANSOM SHELL PLATING & SCANTLINGS**

- ALL AFT SHELL PLATE SHALL BE 1" PLATE



**BOW SHELL PLATING & SCANTLINGS**

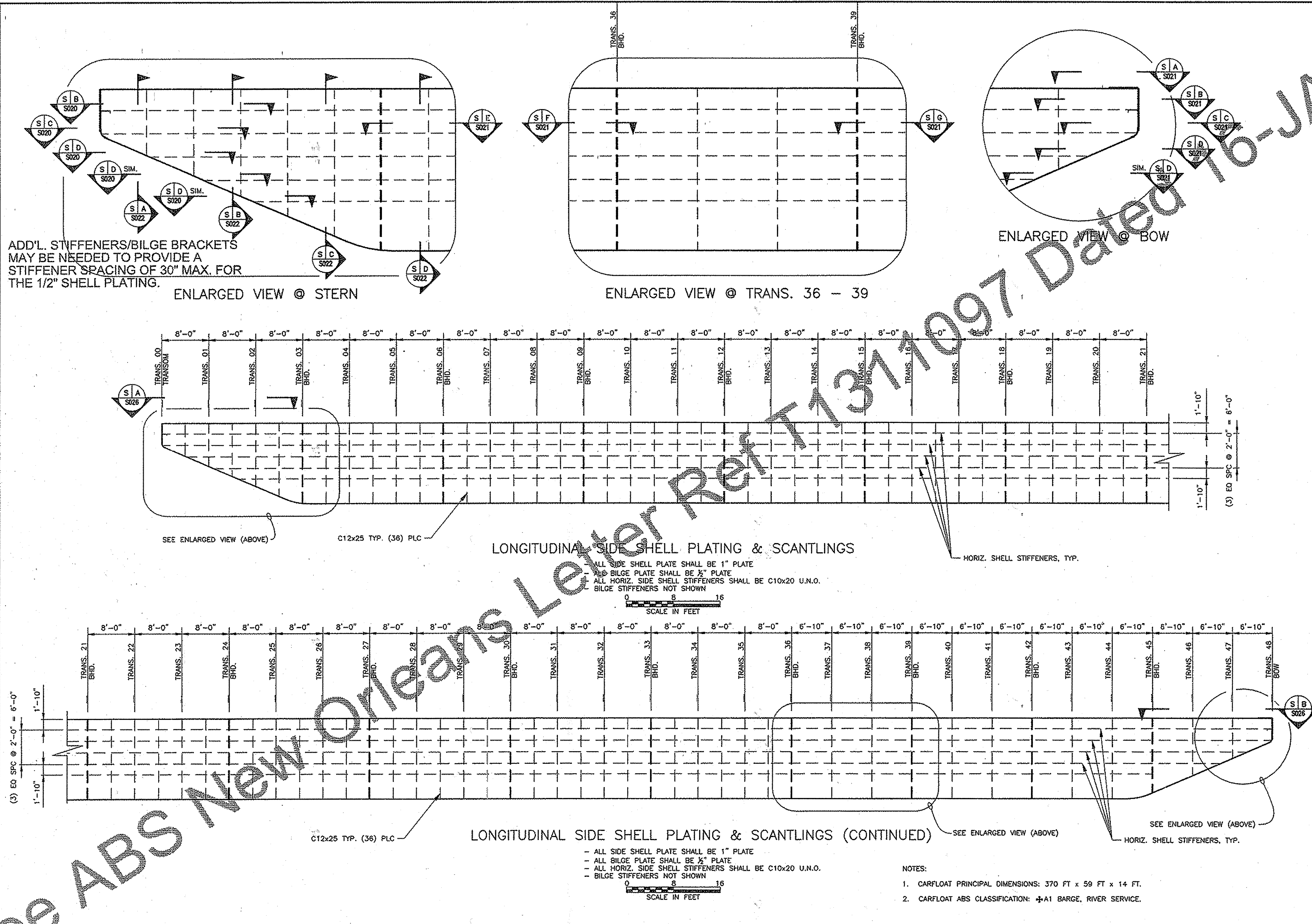
- ALL BOW SHELL PLATE SHALL BE 1" PLATE



NOTES:

- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
- CARFLOAT ABS CLASSIFICATION: A1 BARGE, RIVER SERVICE.

See ABS New Orleans Letter Ref T1311097 Dated 16-JAN-2015




Sheet 9 of 29

THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
ENGINEERS

ORIGINAL SEALED AND SIGNED BY

HAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approved
ENGINEERING DEPARTMENT			
NEW YORK AND NEW JERSEY RAIL, LLC			
STRUCTURAL			
Title			
CONSTRUCTION OF TWO RAIL CARFLOATS			
LONGITUDINAL SIDE SHELL PLATING AND SCANTLINGS			
<small>This drawing is subject to conditions in contract. All dimensions, sizes, designs and methods herein are reserved to Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive or be a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or incineration with release burners that ensure that their personal will not be addressed to the documents' contents either before, during, or after disposal. Documents may also be released for disposal purposes to the Contract Bank on the 10th Floor, 2 Gateway Center, Newark, NJ 07102 or the Office of the Director of Procurement, Ten Madison Street, 3rd Floor, Jersey City, NJ 07302.</small>			
It is a violation of law for any person to alter a document in any way, unless acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall affix to the document their seal and the notation "Altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.			
A. ESFANDIARI		R. MUNRO	J. PETERSON
Designed by		Drawn by	Checked by
Date		01/12/2015	
Contract Number		NYNJRR-644.528	
Drawing Number		S008	
		PID# 10199000	





THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

HAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approved
-----	------	----------	----------

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

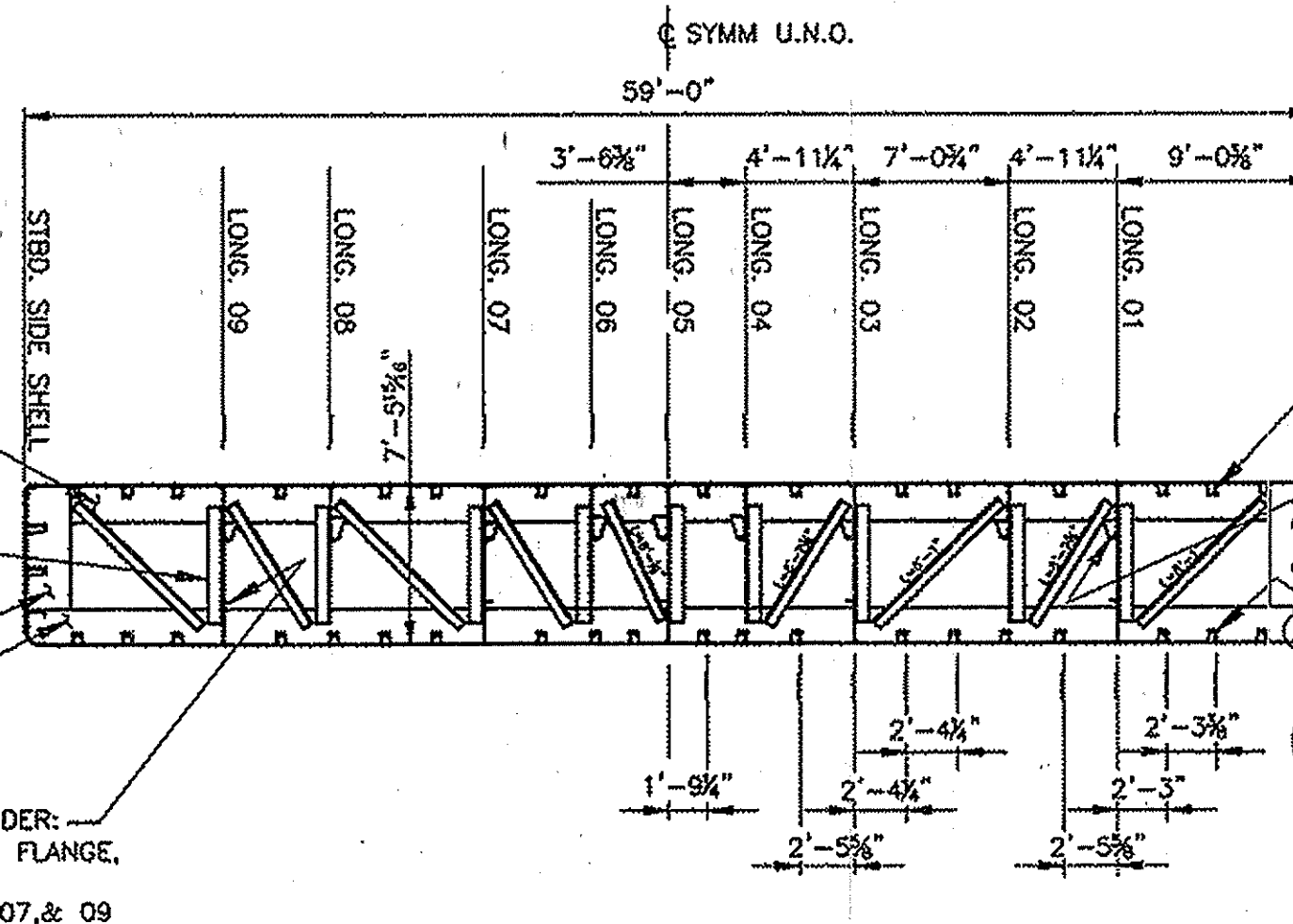
TRANSVERSE SECTION  
SCANTLINGS & DETAILS  
SHT. 2

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A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by  
Date 01/12/2015

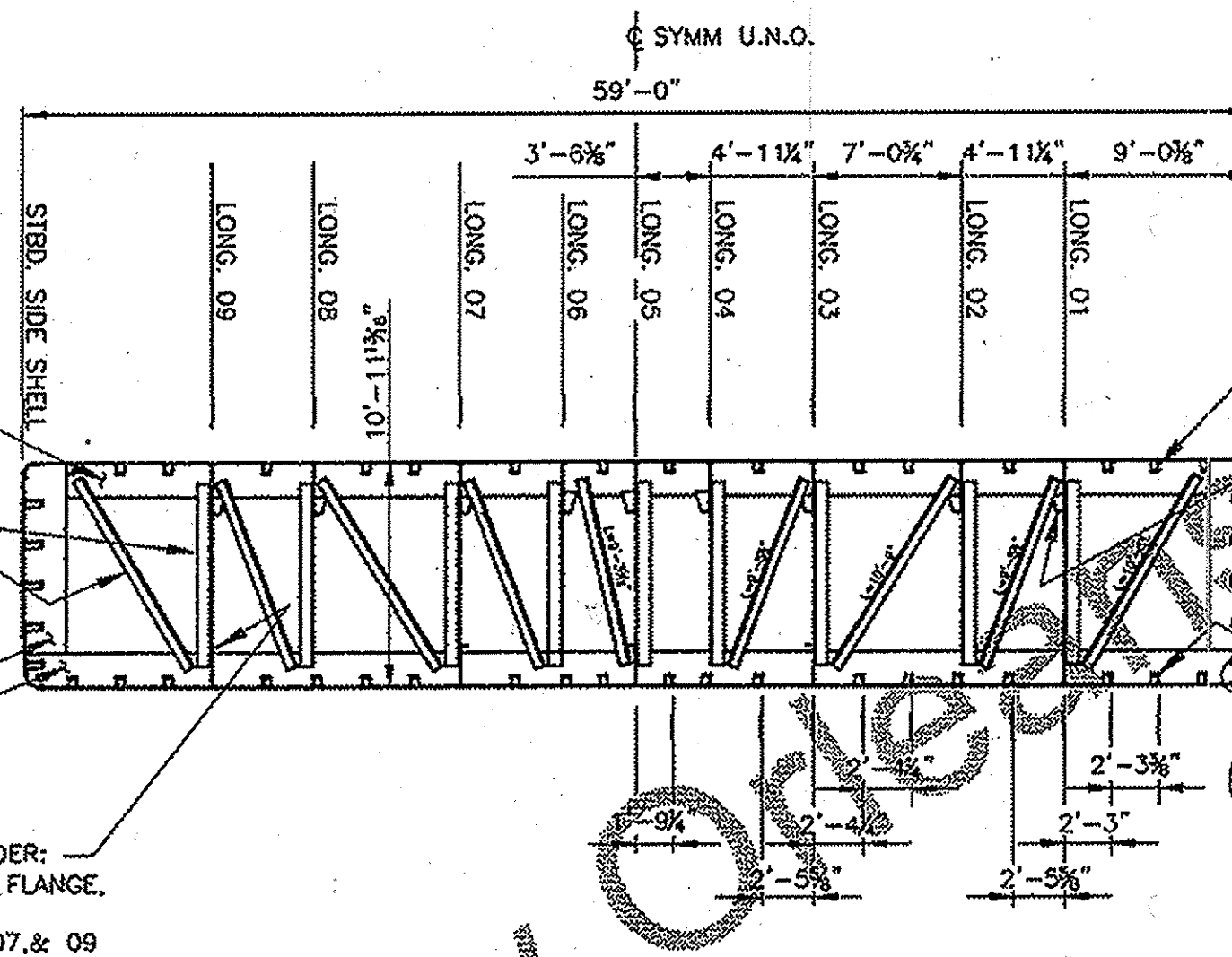
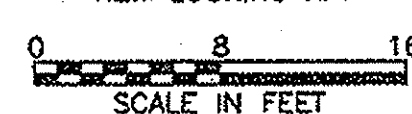
Contract Number NYNJRR-644.528

Drawing Number S010  
PID# 10199000



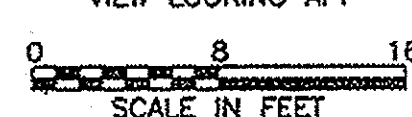
TRANSVERSE SECTION SCANTLINGS

TRUSS @ TRANS. 01  
VIEW LOOKING AFT



TRANSVERSE SECTION SCANTLINGS

TRUSS @ TRANS. 02  
VIEW LOOKING AFT

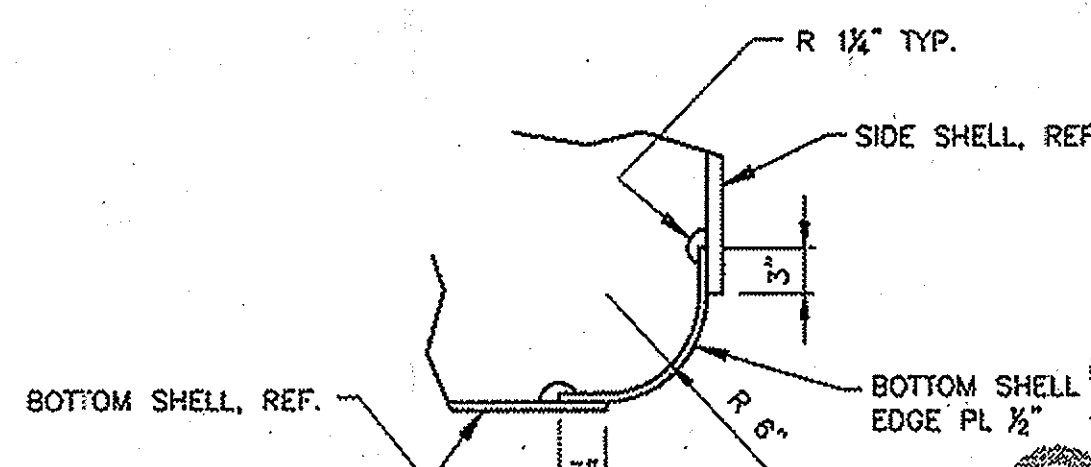


L4x6x3/4", TYP. @ DECK  
LONG. THRU GIRDER: PL 1/2" x 30" w/4" FLG, TYP. (9) PLC @ LONG. 01 THRU 09  
C10x20, TYP. @ SIDE SHELL  
L4x6x3/4", TYP. @ BOTTOM SHELL

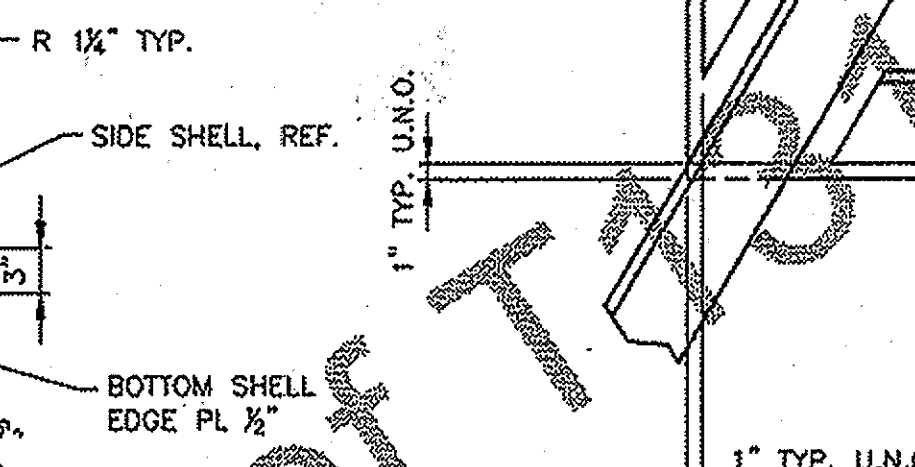
TYP. @ ALL ANGLES  
3/8  
7/8  
1 1/2

STIFFENER 1/2" x 7 1/2" x 1'-0" TYP. @ DECK GIRDERS U.N.O.

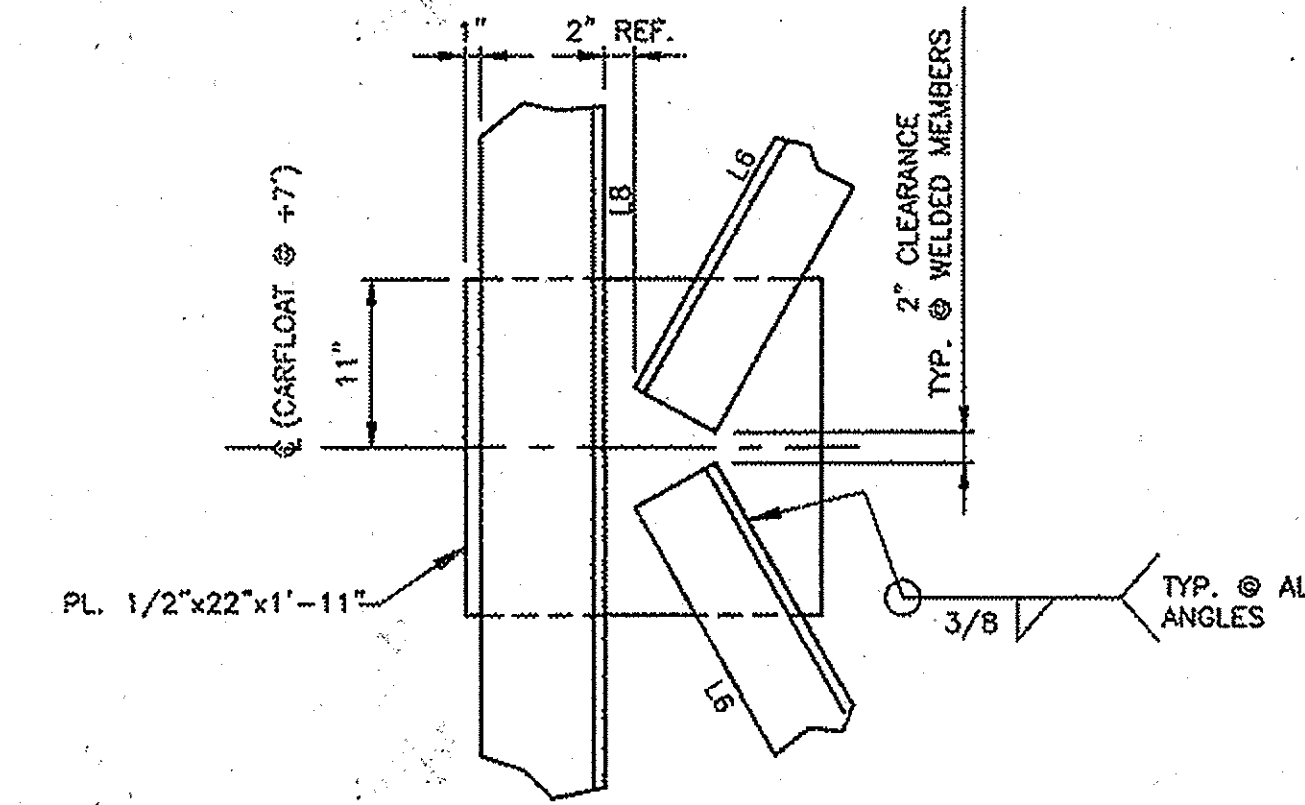
PL 1/2" x 18 3/4" x 1'-11" (2) PLC



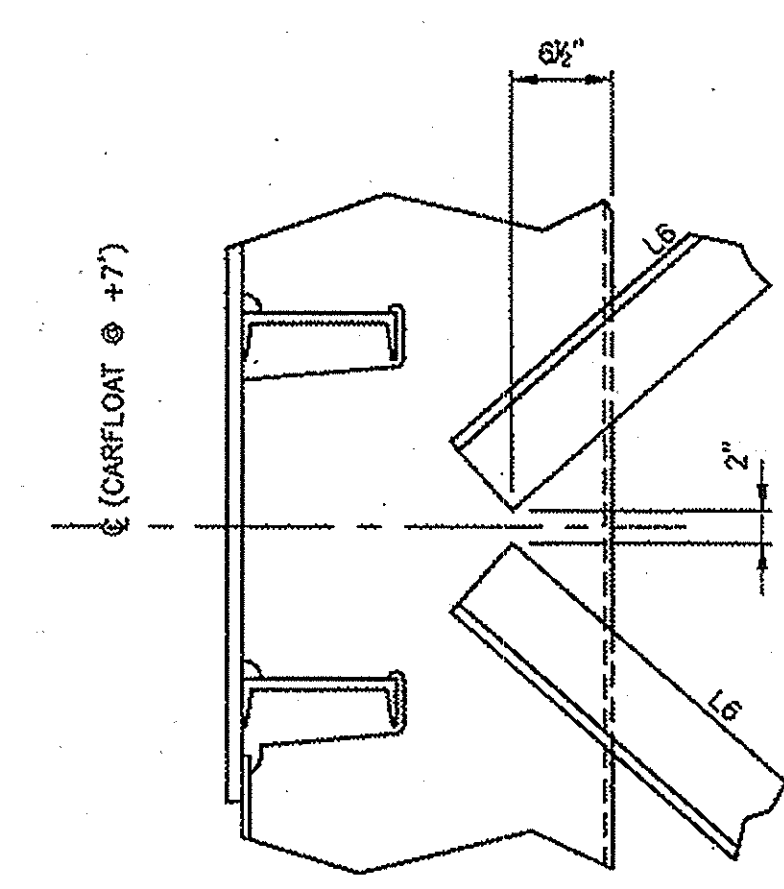
DETAIL D 4 SCALE: 1" = 1'-0"



DETAIL D 1 SCALE: 1" = 1'-0"



DETAIL D 2 SCALE: 1" = 1'-0"



DETAIL D 3 SCALE: 1" = 1'-0"

NOTES:

- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
- CARFLOAT ABS CLASSIFICATION: A1 BARGE, RIVER SERVICE.
- TRANSVERSE TRUSS DETAILS NOT SHOWN ARE THE SAME OR SIMILAR TO THE TRUSS @ TRANS. 04.



THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 066767-1



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

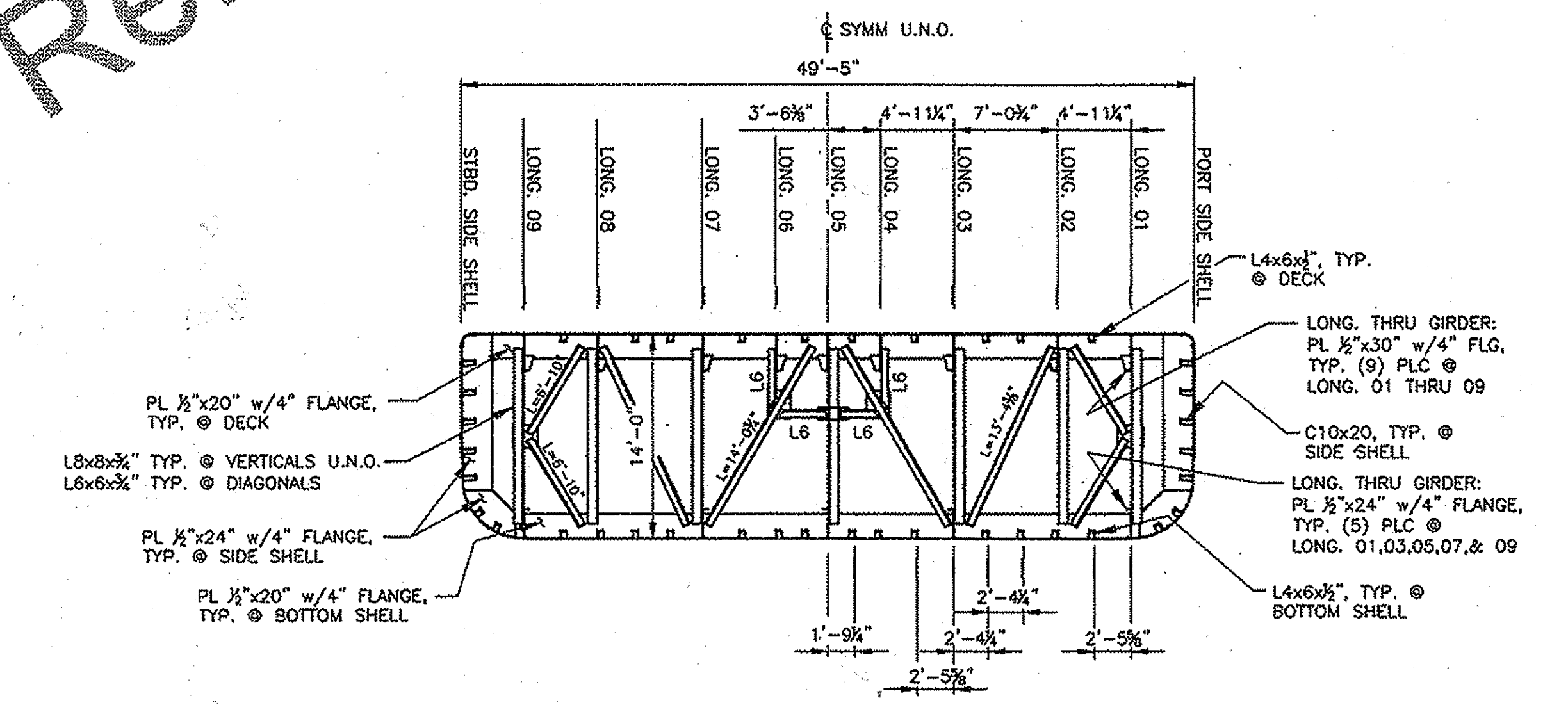
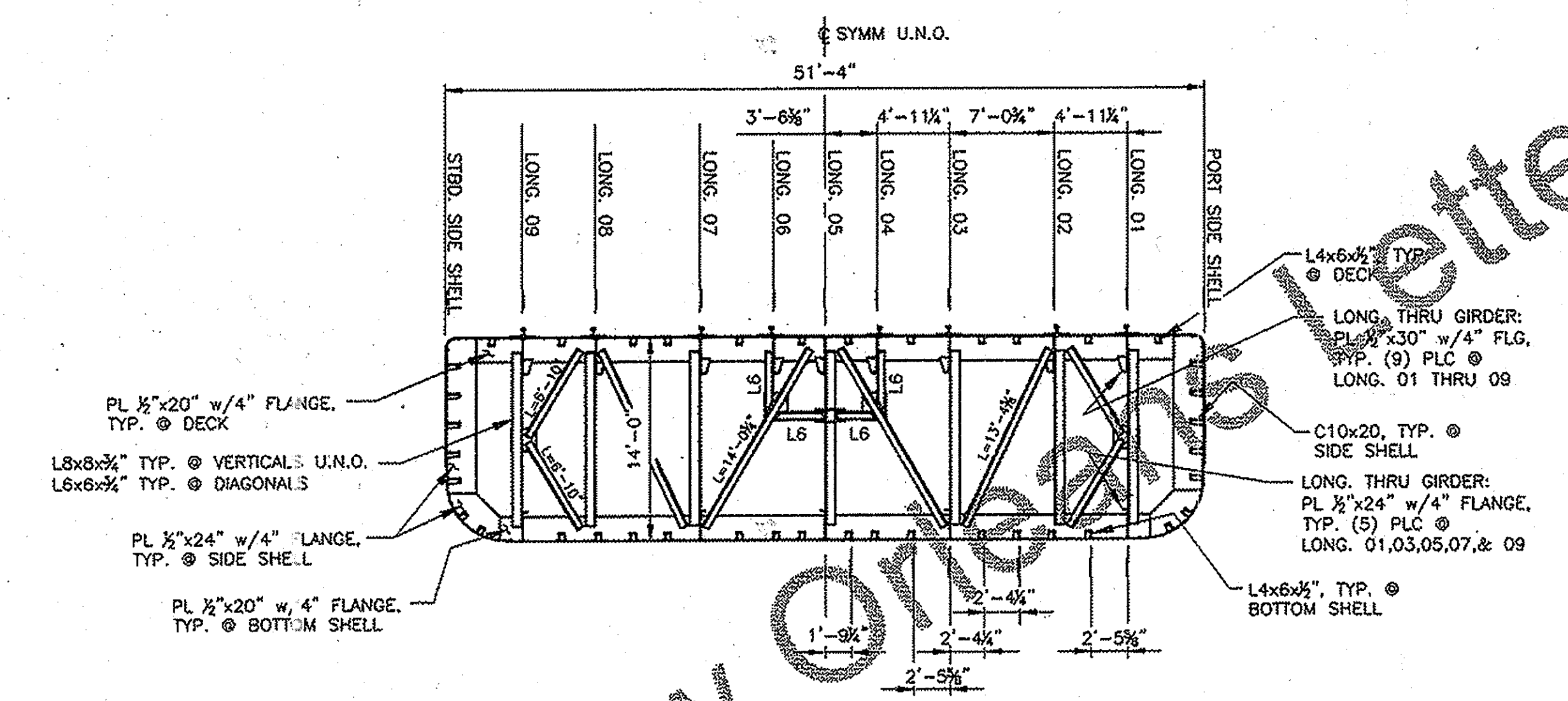
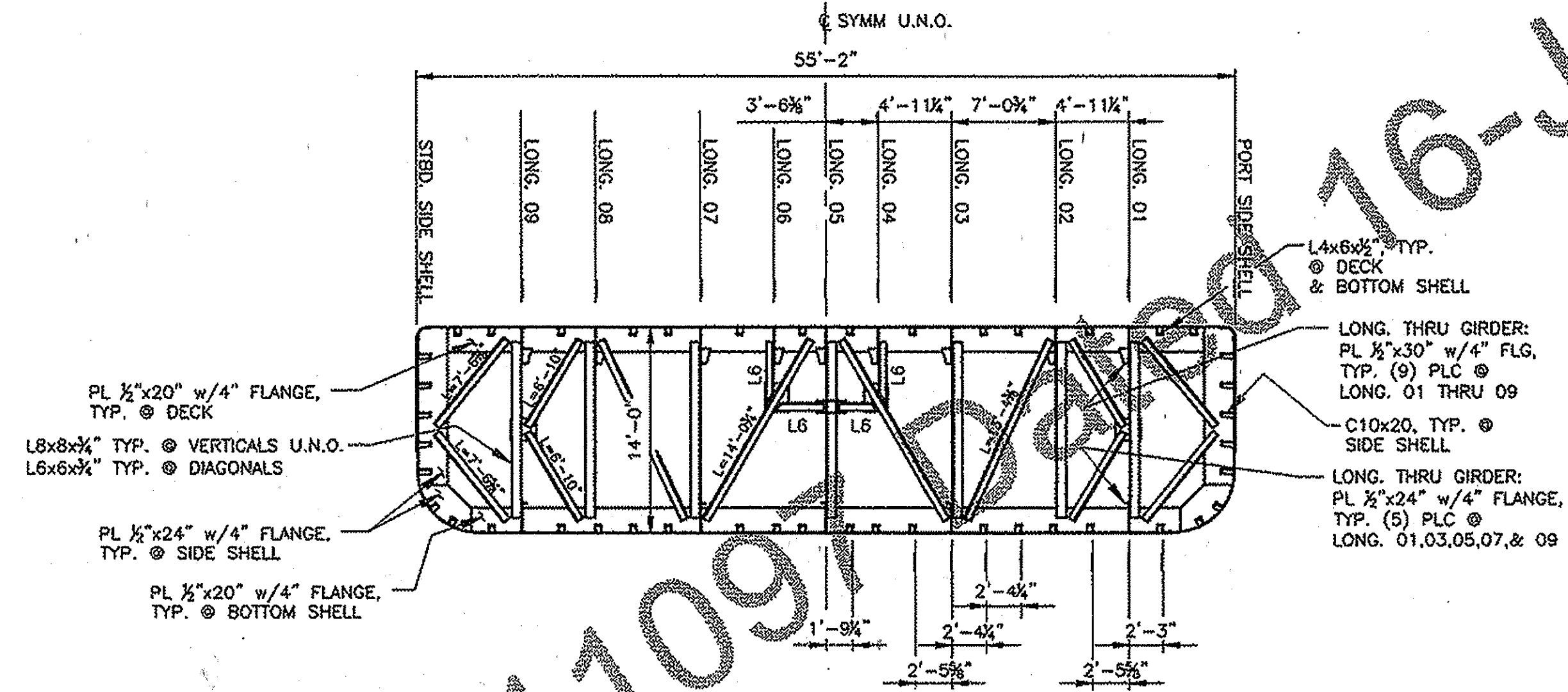
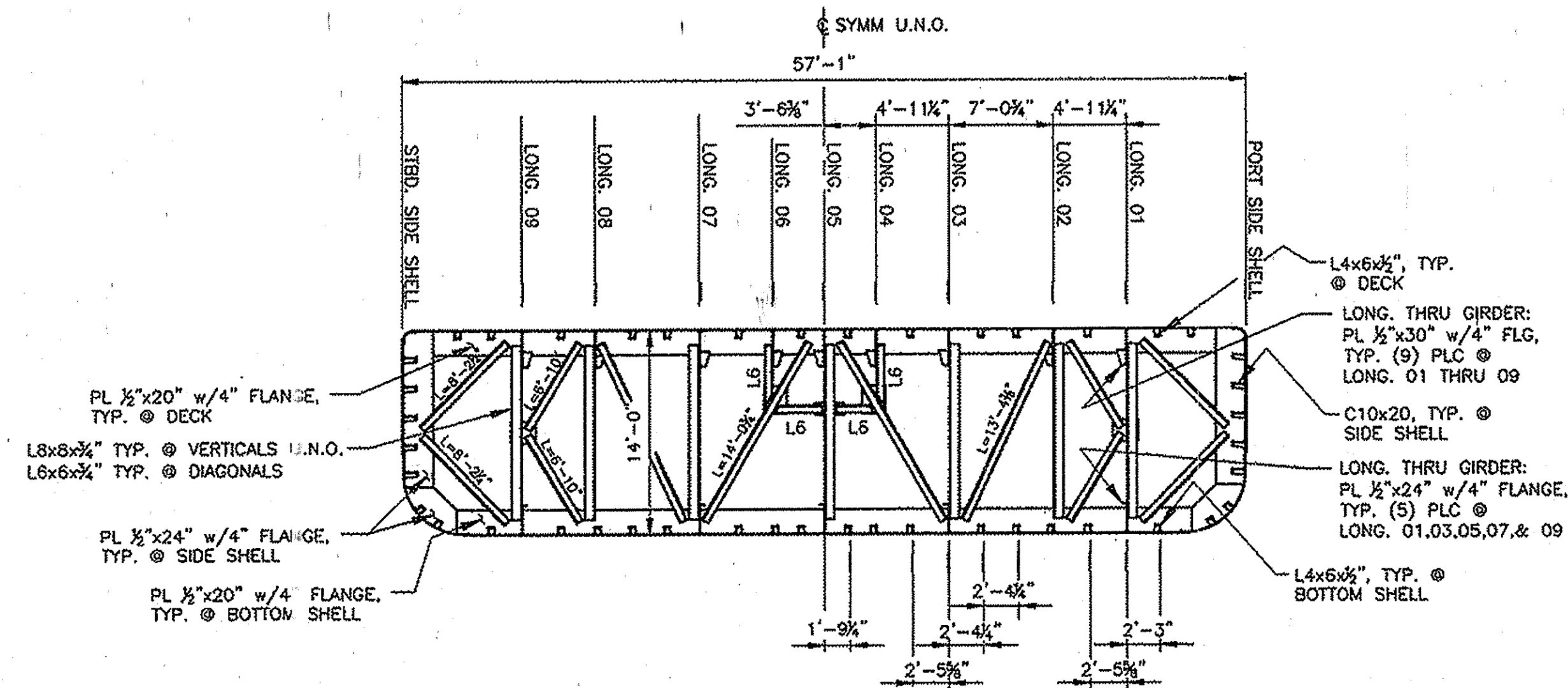
TRANSVERSE SECTION  
SCANTLINGS & DETAILS  
SHT. 3

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A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by  
Date 01/12/2015

Contract  
Number NYNJRR-644.528

Drawing  
Number S011  
PID# 10199000



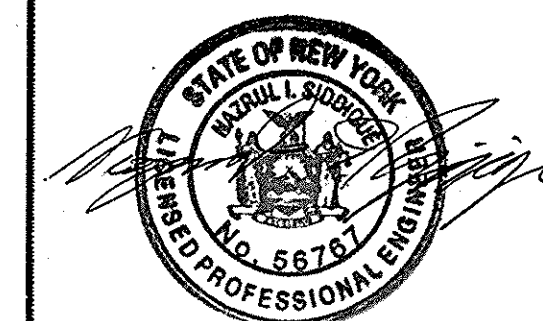
- NOTES:
- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
  - CARFLOAT ABS CLASSIFICATION: A1 BARGE, RIVER SERVICE.
  - TRANSVERSE TRUSS DETAILS NOT SHOWN ARE THE SAME OR SIMILAR TO THE TRUSS @ TRANS. 04.

THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

HAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

TRANSVERSE SECTION  
SCANTLINGS & DETAILS  
SHT. 4

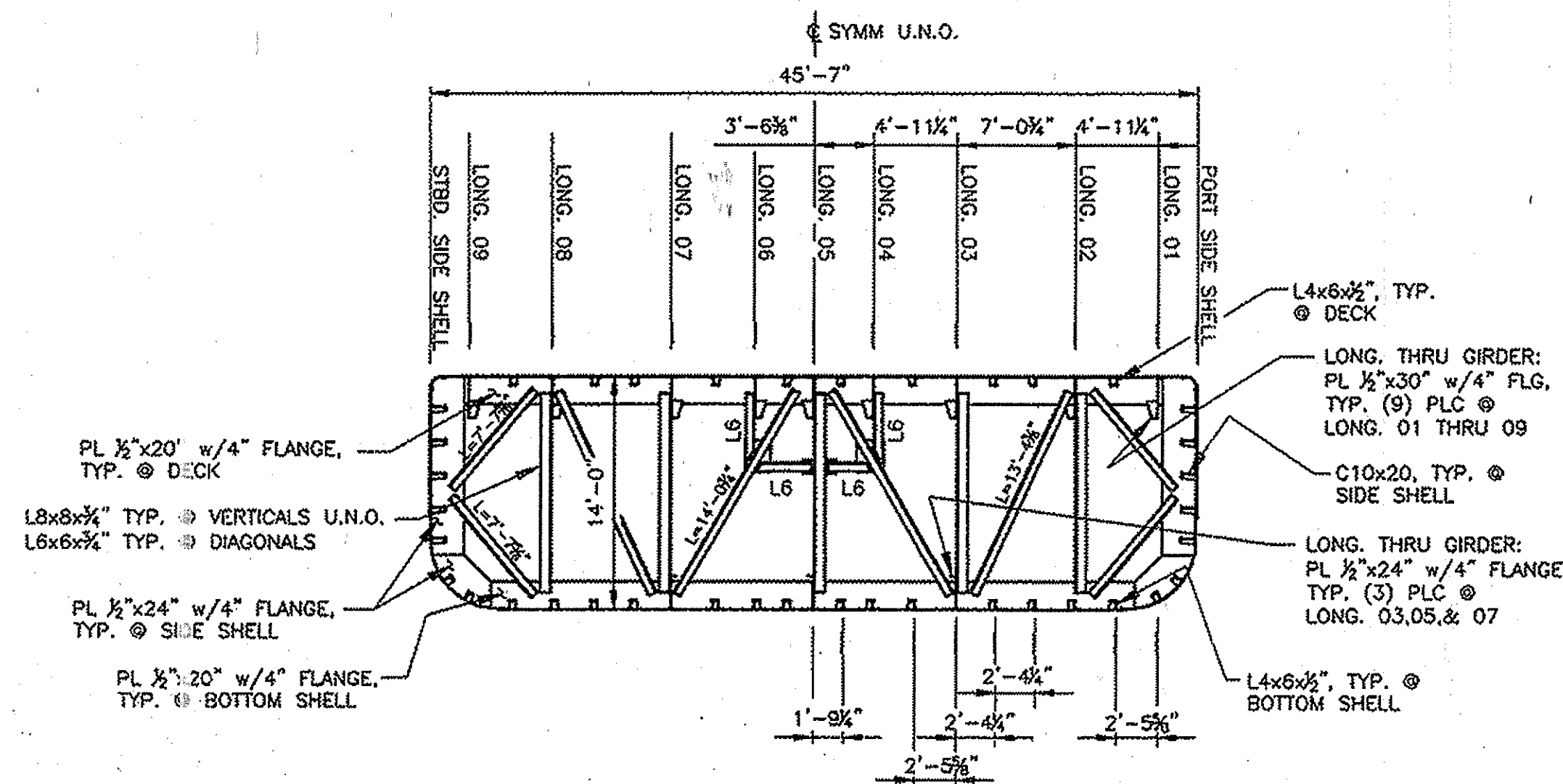
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A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

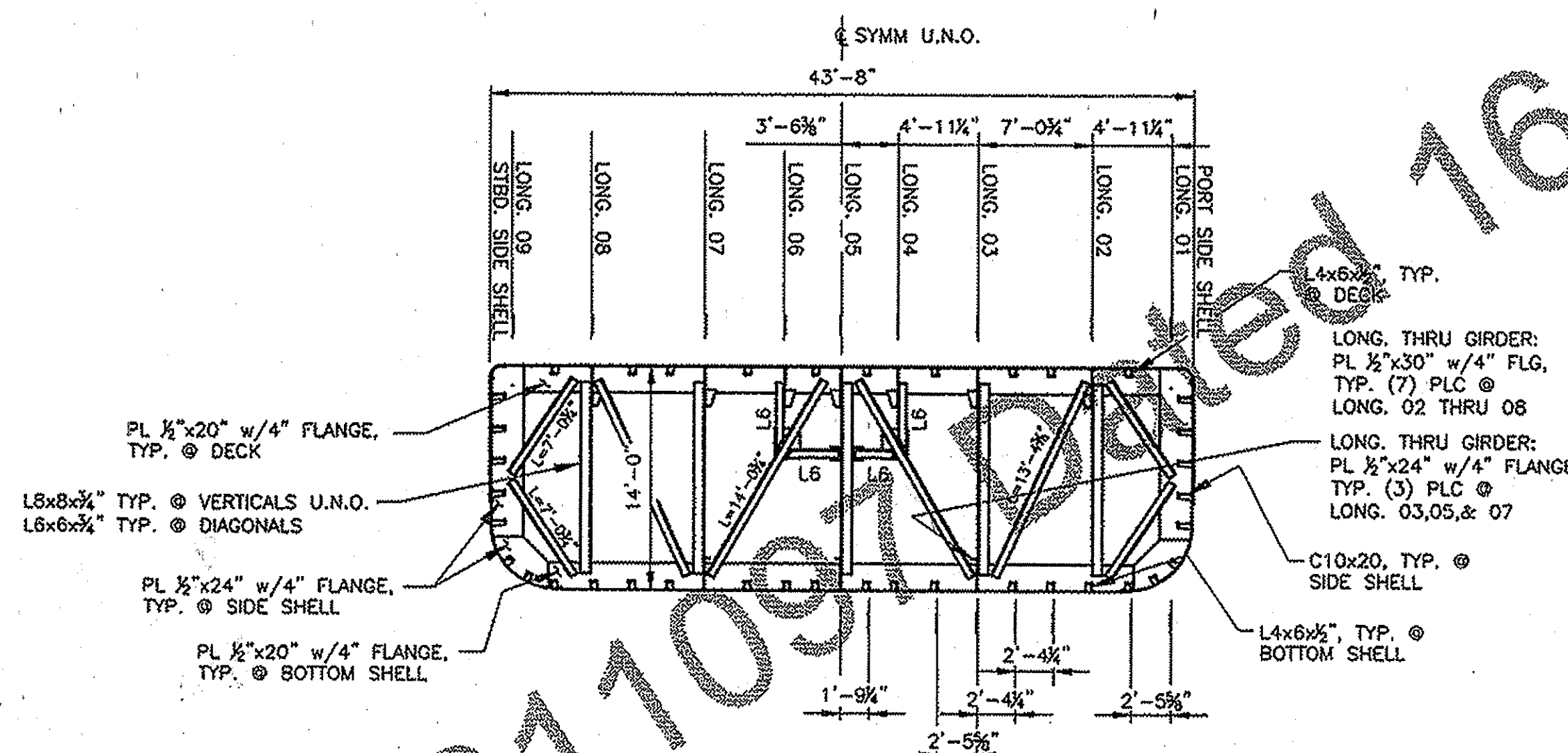
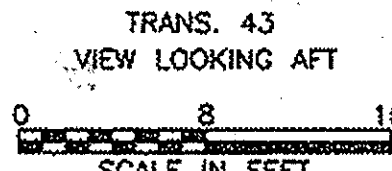
Date 01/12/2015

Contract Number NYNJRR-644.528

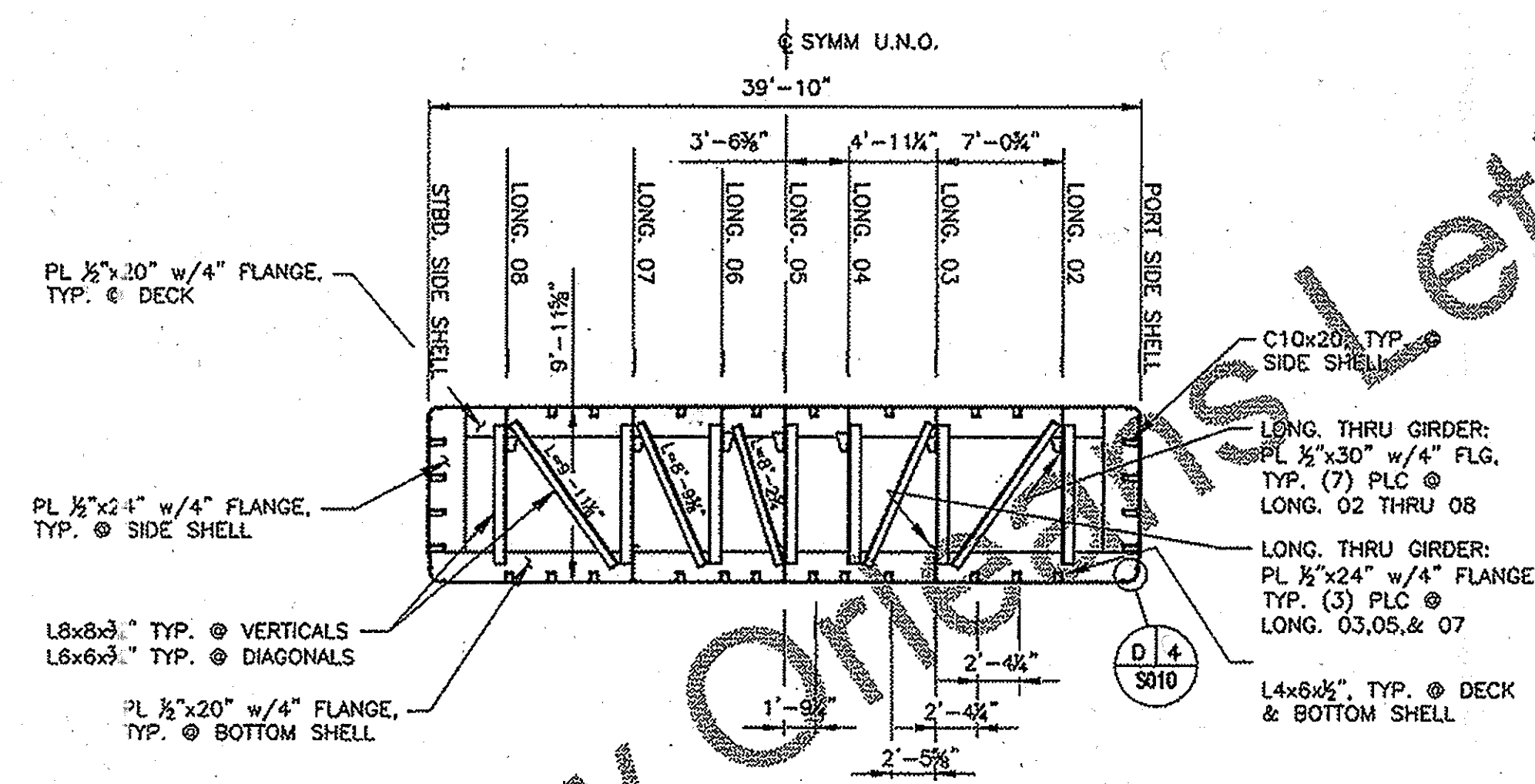
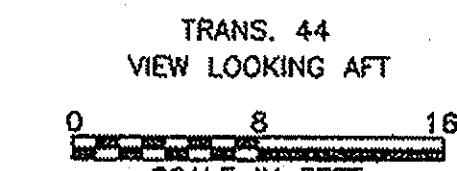
Drawing Number S012  
PID# 10199000



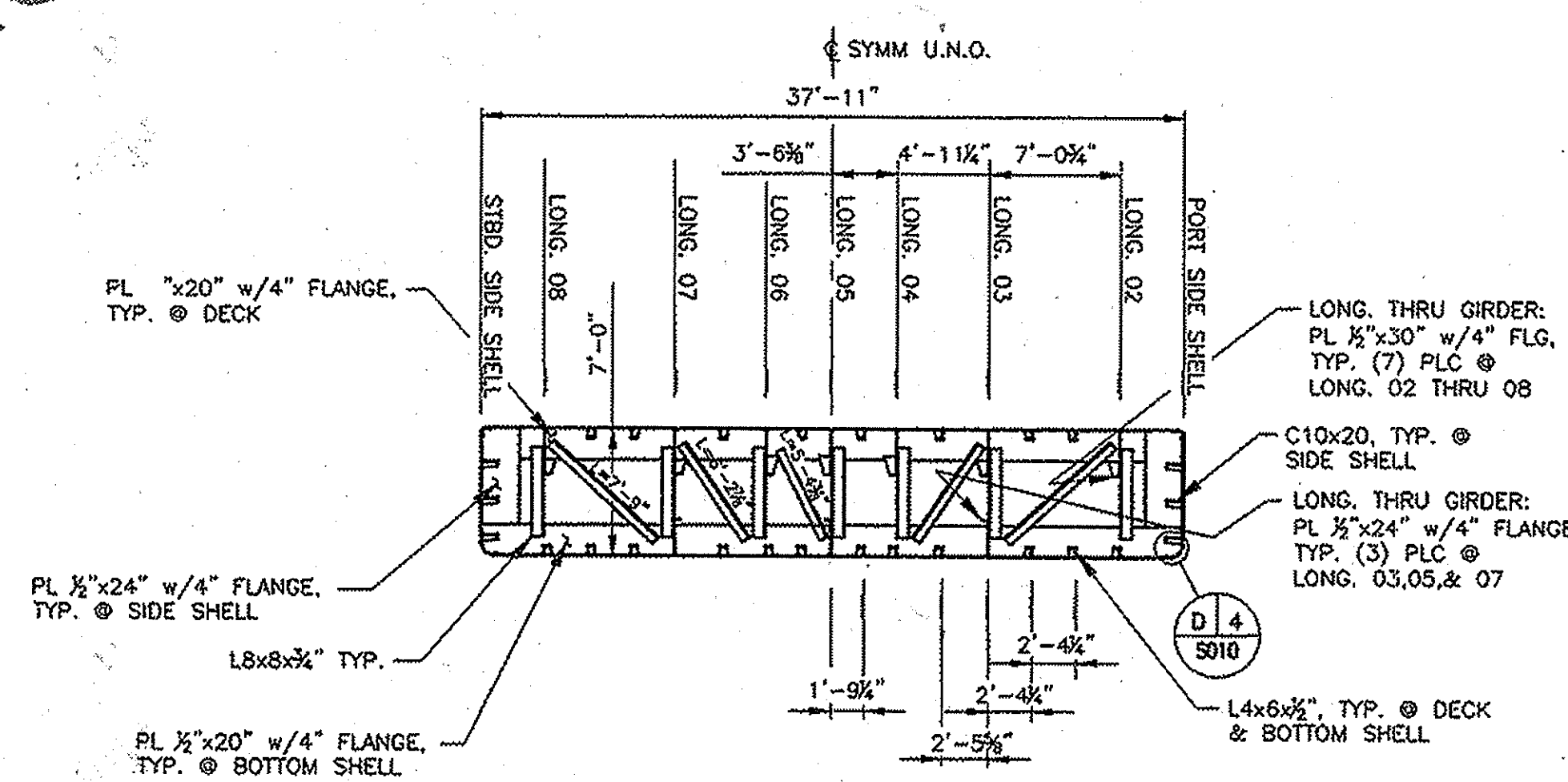
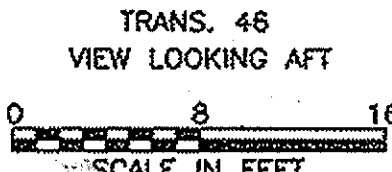
TRANSVERSE SECTION SCANTLINGS



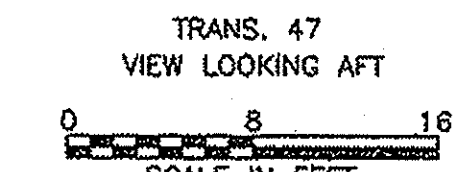
TRANSVERSE SECTION SCANTLINGS



TRANSVERSE SECTION SCANTLINGS



TRANSVERSE SECTION SCANTLINGS



NOTES:

- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
- CARFLOAT ABS CLASSIFICATION: A1 BARGE, RIVER SERVICE.
- TRANSVERSE TRUSS DETAILS NOT SHOWN ARE THE SAME OR SIMILAR TO THE TRUSS @ TRANS. 04.

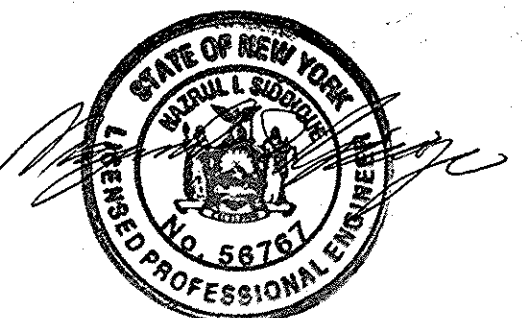


THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
ENGINEERS

ORIGINAL SEALED AND SIGNED BY

HAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No. Date Revision Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

BULKHEAD SCANTLINGS  
8 DETAILS  
SHT. 1

This drawing is subject to conditions in contract. All dimensions, materials, design and methods herein are reserved to Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who rely on or a part of the Contract documents or copies thereof, shall make every effort to ensure the accuracy and complete disclosure of the information contained in the documents. It is the responsibility of the recipient to ensure that the documents are complete and accurate and that they are used in accordance with the methods of construction specified therein. The Port Authority does not assume any liability for any errors or omissions in this drawing or for any consequences arising therefrom. The Port Authority does not assume any liability for any errors or omissions in this drawing or for any consequences arising therefrom. The Port Authority does not assume any liability for any errors or omissions in this drawing or for any consequences arising therefrom.

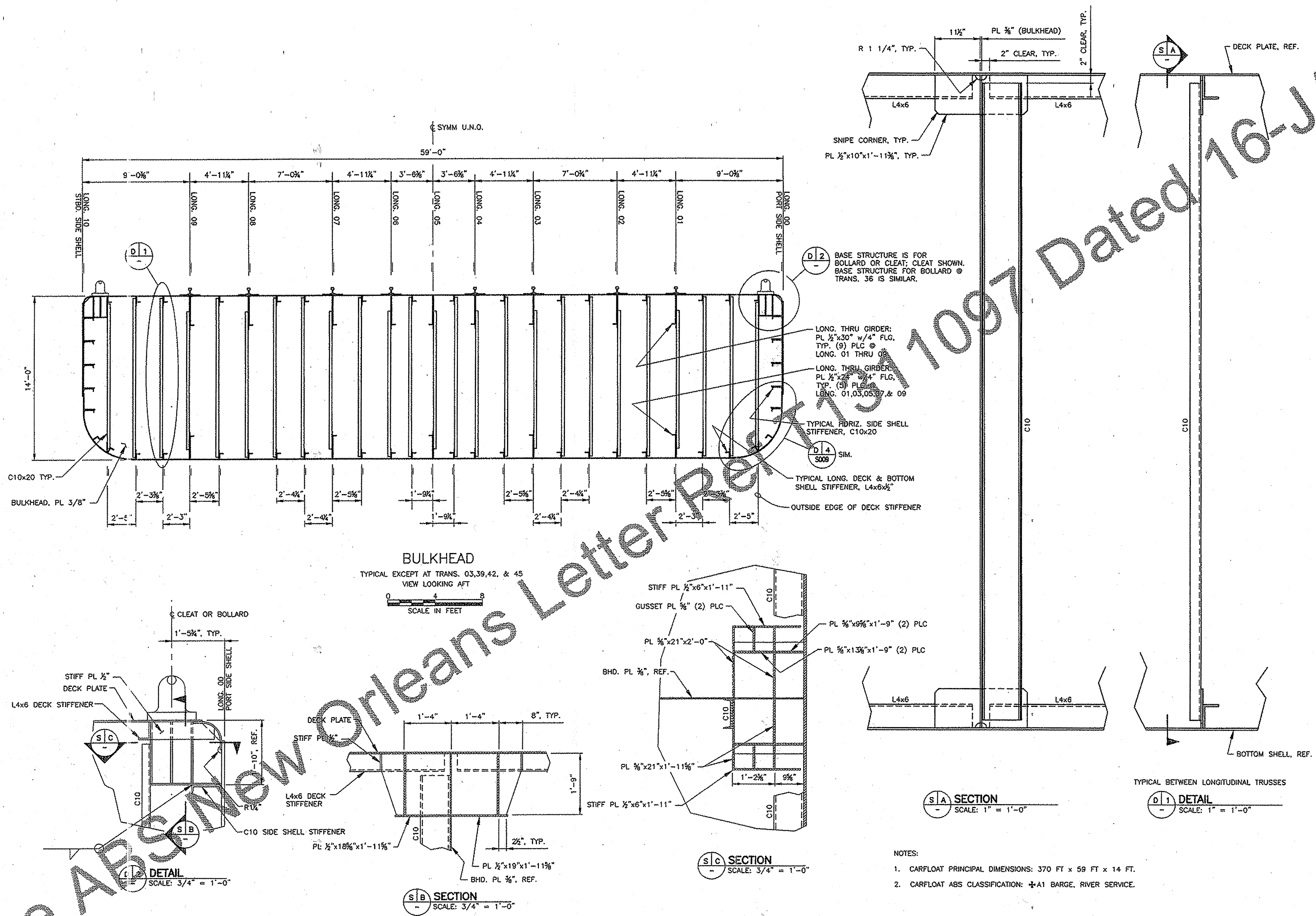
A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

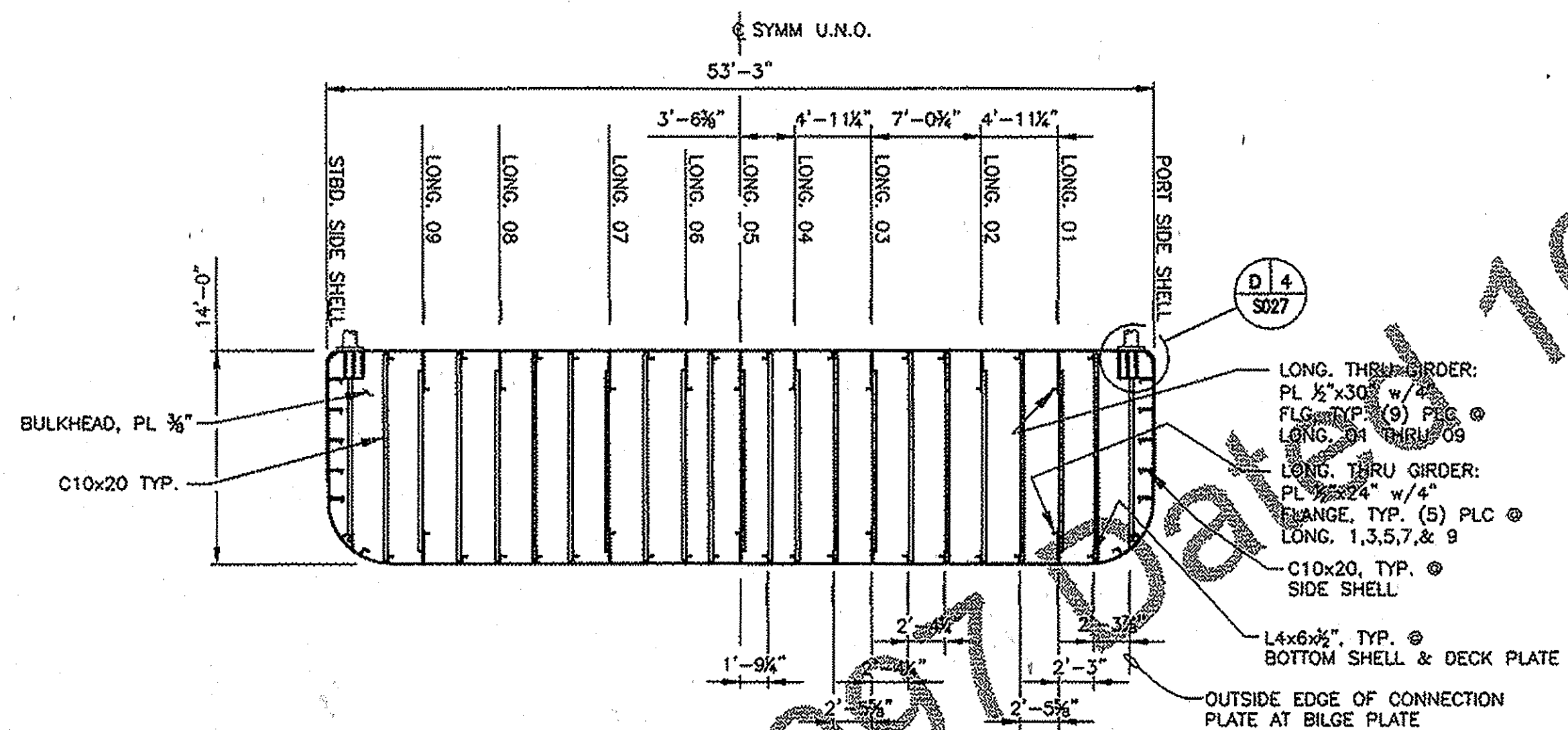
Date 01/12/2015

Contract  
Number NYNJRR-644.528

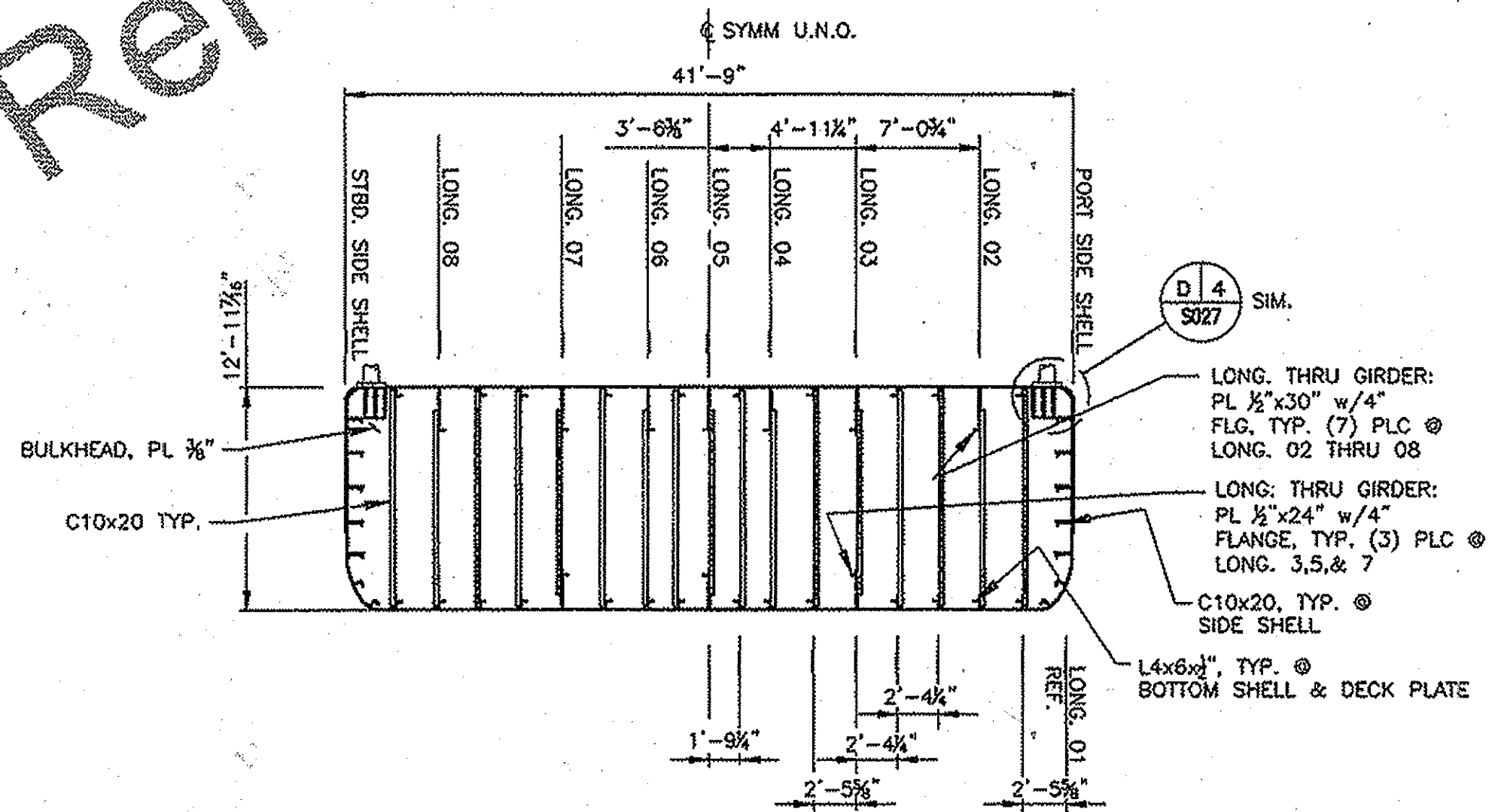
Drawing  
Number S013

PID# 10199000





**BULKHEAD**  
© TRANS. '39



BULKHEAD  
 © TRANS. 45



1. CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
2. CARFLOAT ABS CLASSIFICATION:  $\nabla$ A1 BARGE, RIVER SERVICE.
3. BULKHEAD DETAILS NOT SHOWN ARE THE SAME OR SIMILAR TO THE BULKHEAD @ TRANS. 06.

NEW YORK AND	
NEW JERSEY RAIL,	
LLC	

**BULKHEAD SCANTLINGS  
& DETAILS  
SHT. 2**

Drawing Number S014

PID# 10199000



**THE PORT AUTHORITY  
OF NY & NJ**

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approve
-----	------	----------	---------

ENGINEERING DEPARTMENT

NEW YORK AND	
NEW JERSEY RAIL	
LLC	

STRUCTURAL

Title **CONSTRUCTION OF  
TWO RAIL CARFLOATS**

LONGITUDINAL SECTION  
SCANTLINGS & DETAILS  
SHT. 1

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As recipients of this drawing, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure storage and safeguarding of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes shredding of documents and other means of destruction or disposal with refuse handlers that ensure that third parties will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Administrator, 16th Floor, 200 West Street, New York, New York, or to the office of the Director of Procurement, Two Montgomery Street, and

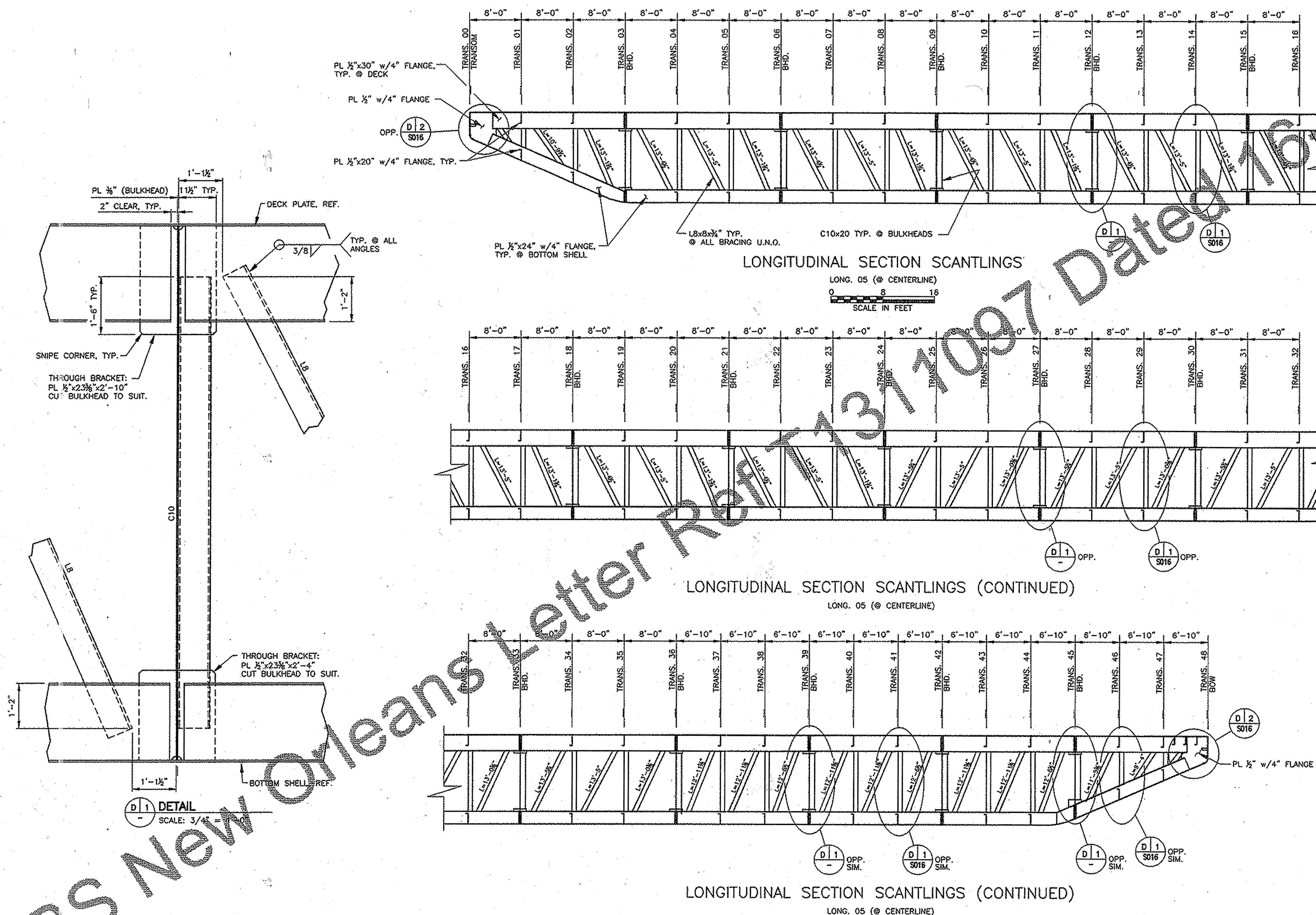
A. ESFANDIARI	R. MUNRO	J. PETERS
Designed by	Drawn by	Checked by

Date 01/12/201

Contract  
Number **NYNJRR-644.528**

Drawing Number S015

PID# 1019900



- NOTES:

1. CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
2. CARFLOAT ABS CLASSIFICATION:  $\nabla$ A1 BARGE, RIVER SERVICE.

THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

HAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approved
ENGINEERING DEPARTMENT			
NEW YORK AND NEW JERSEY RAIL, LLC			
STRUCTURAL			
Title			
CONSTRUCTION OF TWO RAIL CARFLOATS			
LONGITUDINAL SECTION SCANTLINGS & DETAILS SHT. 2			

This drawing is subject to the conditions in contracts, all inventions, designs, and methods herein are assumed to be the property of the Port Authority and may not be used without its written consent. It is the responsibility of the Contractor to ensure that all drawings and specifications are followed as shown. The Contractor shall be responsible for the accuracy of the information contained in the documents. The Contractor shall be responsible for the accuracy of the information contained in the documents. The Contractor shall be responsible for the accuracy of the information contained in the documents.

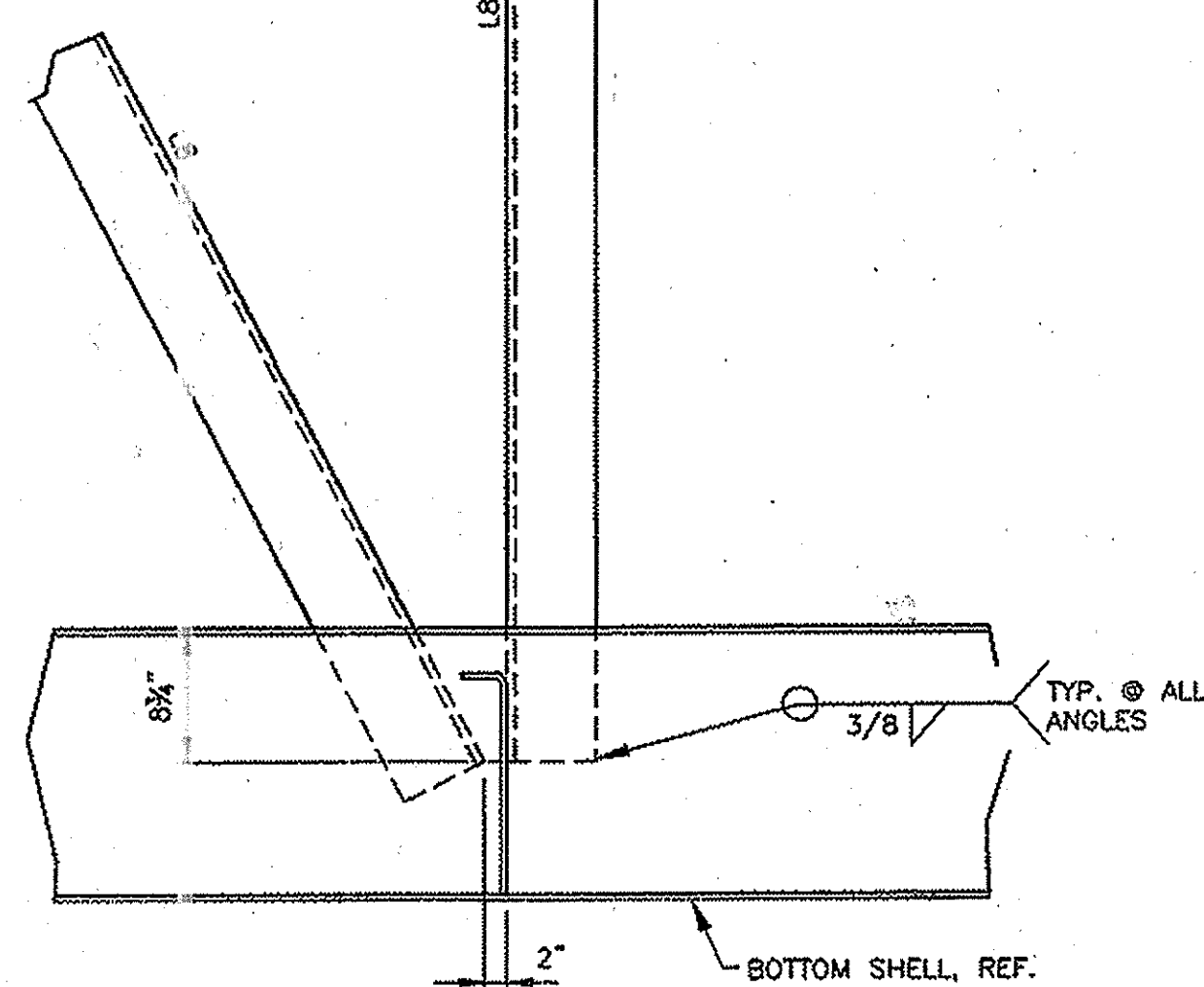
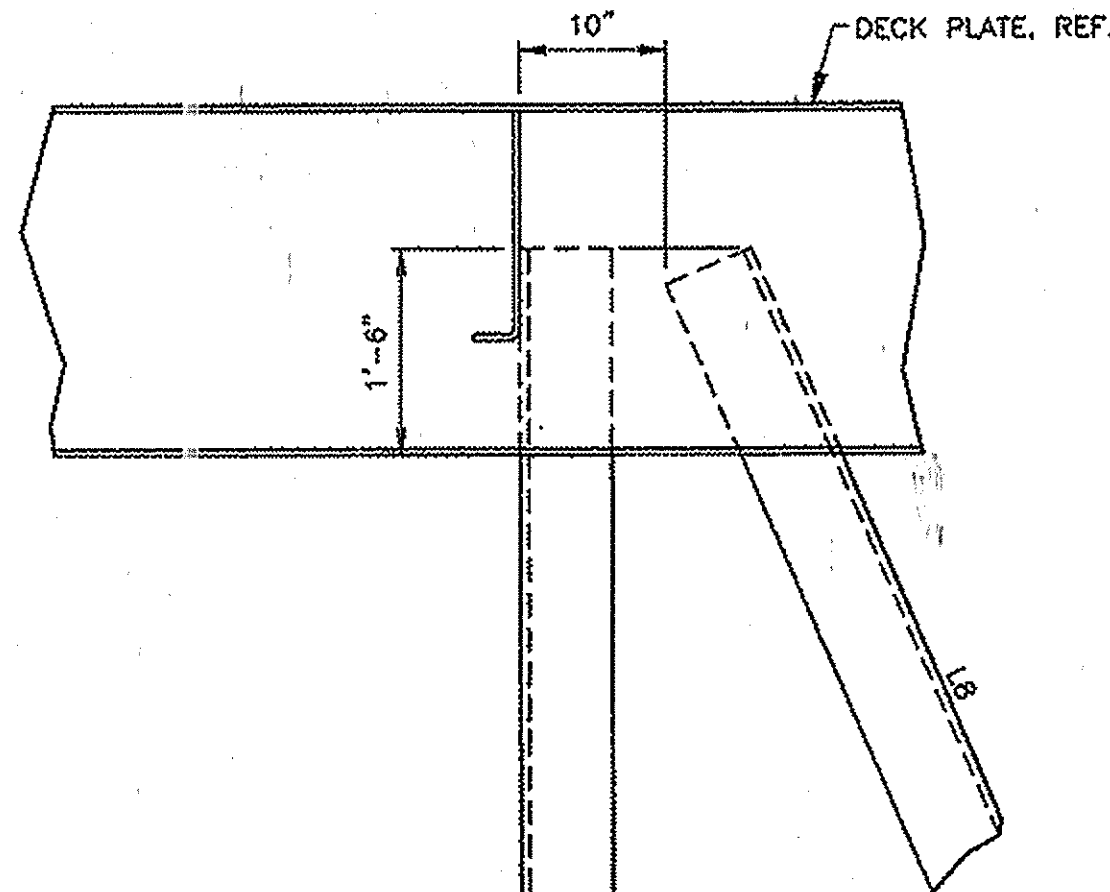
A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

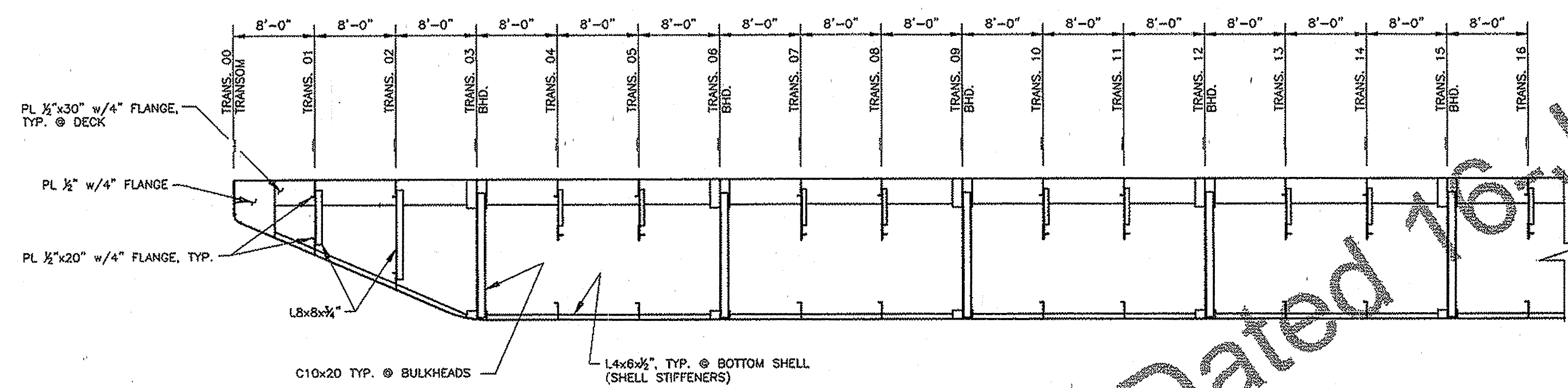
Contract Number NYNJRR-644.528

Drawing Number S016

PID# 10193000



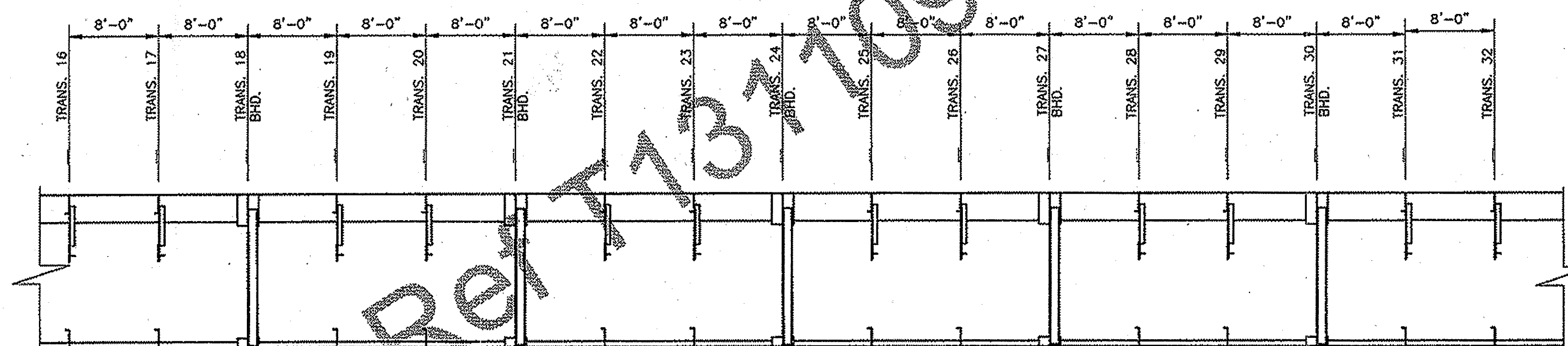
D1 DETAIL  
SCALE: 3/4" = 1'-0"



LONGITUDINAL SECTION SCANTLINGS

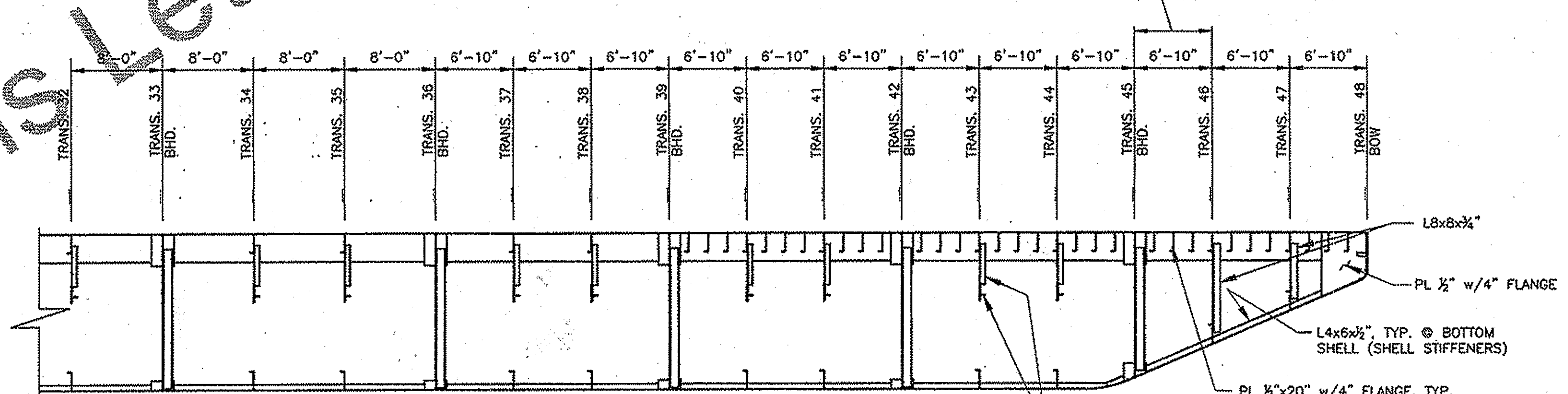
LONG. 06 (LONG. 04 OPPOSITE)

SCALE IN FEET



LONGITUDINAL SECTION SCANTLINGS (CONTINUED)

LONG. 06 (LONG. 04 OPPOSITE)

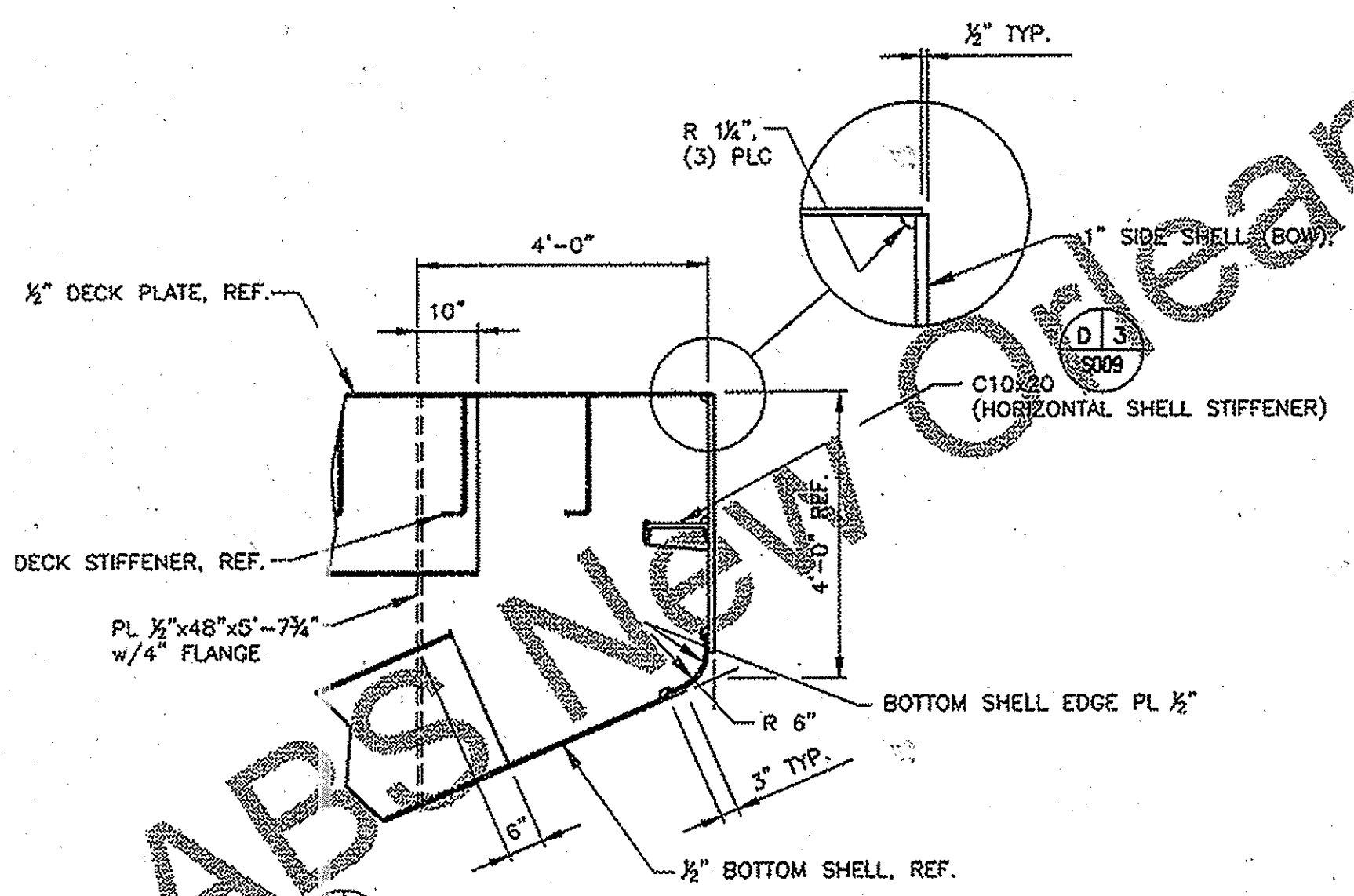


LONGITUDINAL SECTION SCANTLINGS (CONTINUED)

LONG. 06 (LONG. 04 OPPOSITE)

NOTES:

- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT
- CARFLOAT ABS CLASSIFICATION: A1 BARGE, RIVER SERVICE.
- LONGITUDINAL TRUSS DETAILS NOT SHOWN ARE THE SAME OR SIMILAR TO THE TRUSS @ LONG. 05.



D3 DETAIL  
SCALE: 1/2" = 1'-0"



THE PORT AUTHORITY  
OF NEW YORK AND NEW JERSEY

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 058767-1



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

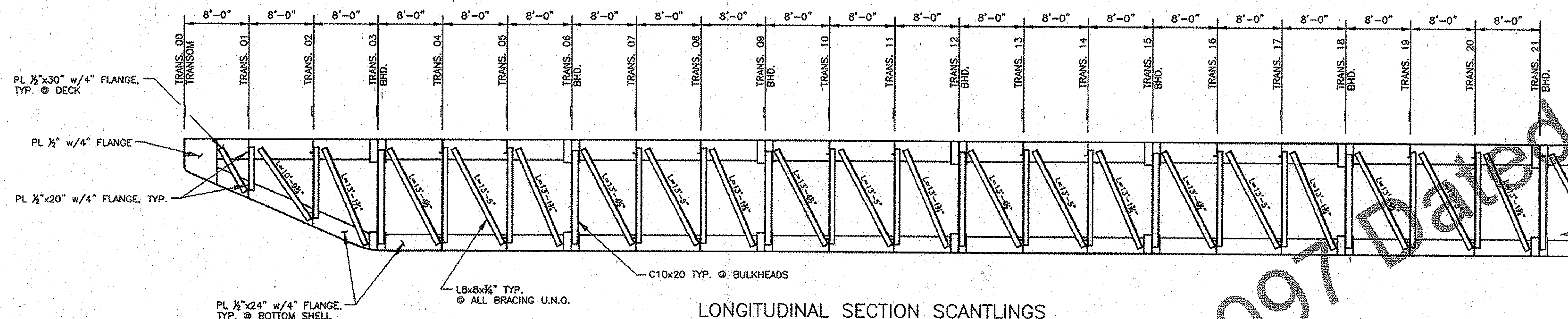
Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS  
  
LONGITUDINAL SECTION  
SCANTLINGS & DETAILS  
SHT. 3

This drawing is subject to conditions in contract. All drawings, plans, specifications and methods herein are deemed to be part of the contract and may not be used for any other purpose without the written consent of the Port Authority. The Port Authority is not responsible for the accuracy of the information provided by others. The Port Authority is not responsible for the accuracy of the information provided by others. The Port Authority is not responsible for the accuracy of the information provided by others.

A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by  
Date 01/12/2015

Contract  
Number NYNJRR-644.528

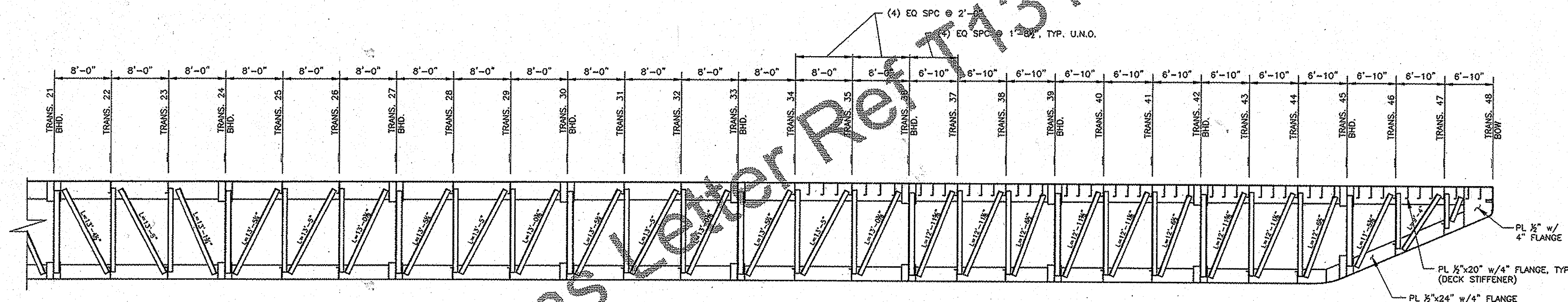
Drawing  
Number S017  
PID# 10199000



LONGITUDINAL SECTION SCANTLINGS

LONG. 07 (LONG. 03 OPPOSITE)

0 8 16  
SCALE IN FEET



LONGITUDINAL SECTION SCANTLINGS (CONTINUED)

LONG. 07 (LONG. 03 OPPOSITE)

NOTES:

- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
- CARFLOAT ABS CLASSIFICATION: A1 BARGE, RIVER SERVICE.
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See ABS New Orleans

Ref 1311097

16-JAN-2015

THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

HAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 058787-1



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

LONGITUDINAL SECTION  
SCANTLINGS & DETAILS  
SHT. 4

This drawing is subject to conditions in contract, all inventions, designs, designs and methods herein are reserved to Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the security and confidentiality of the Contract documents to prevent further disclosure of the information contained in the documents. Source and copyright notices and notices of document destruction such as shredding or arrangements with reliable vendors that ensure that third parties will not have access to the documents' contents either before, during, or after disposal. Documents may only be prepared for disposal purposes to the Contract Desk on the 14th Floor, 2 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, Two Montgomery Street, 5th Floor, Jersey City, NJ 07302.

It is a violation of law for any person to alter a document in any way, unless acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall file to the document their seal and the notation "Altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.

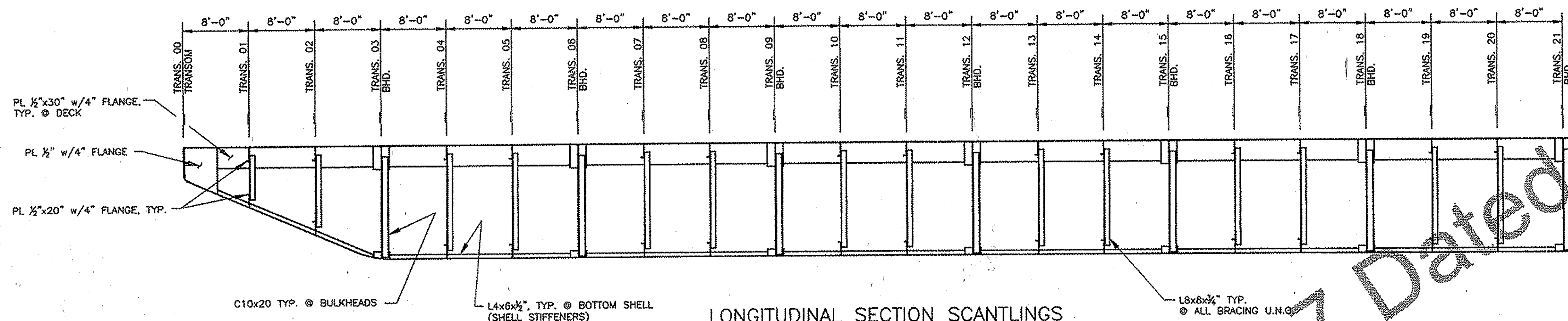
A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

Contract Number NYNJRR-644.528

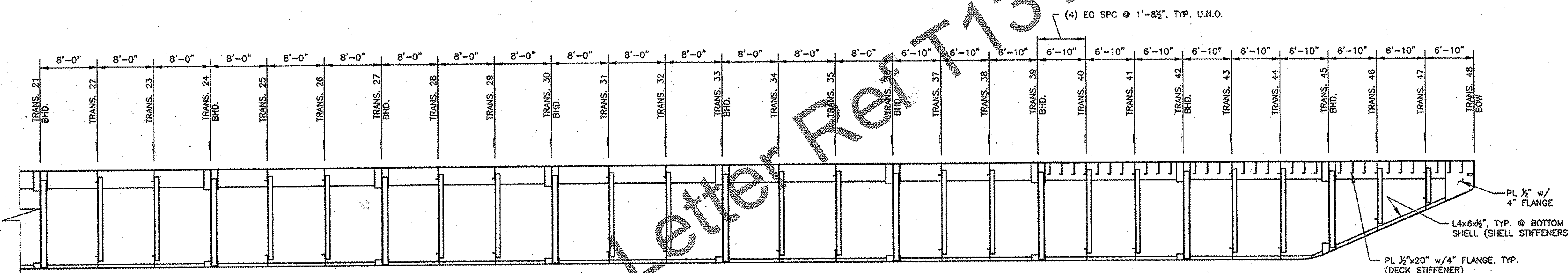
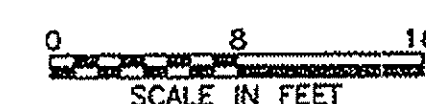
Drawing Number S018

PID# 10199000



LONGITUDINAL SECTION SCANTLINGS

LONG. 08 (LONG. 02 OPPOSITE)



LONGITUDINAL SECTION SCANTLINGS (CONTINUED)

LONG. 08 (LONG. 02 OPPOSITE)

NOTES:

- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
- CARFLOAT ABS CLASSIFICATION: A1 BARGE, RIVER SERVICE.
- LONGITUDINAL TRUSS DETAILS NOT SHOWN ARE THE SAME OR SIMILAR TO THE TRUSS @ LONG. 05.

See ABS New Orleans Letter Ref 1311097 Dated 16-JAN-2015



THE PORT AUTHORITY  
OF NEW YORK AND NEW JERSEY

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

LONGITUDINAL SECTION  
SCANTLINGS & DETAILS  
SHT. 5

This drawing is subject to conditions in contract. All materials, dimensions, and methods herein are required in Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive it as a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal involves methods of document destruction such as shredding or other disposal. It is the responsibility of the recipient to ensure that this information is not made available to the general public or other unauthorized persons. Documents may also be returned for disposal purposes to the Contract Dept. on the 14th Floor, 2 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302.

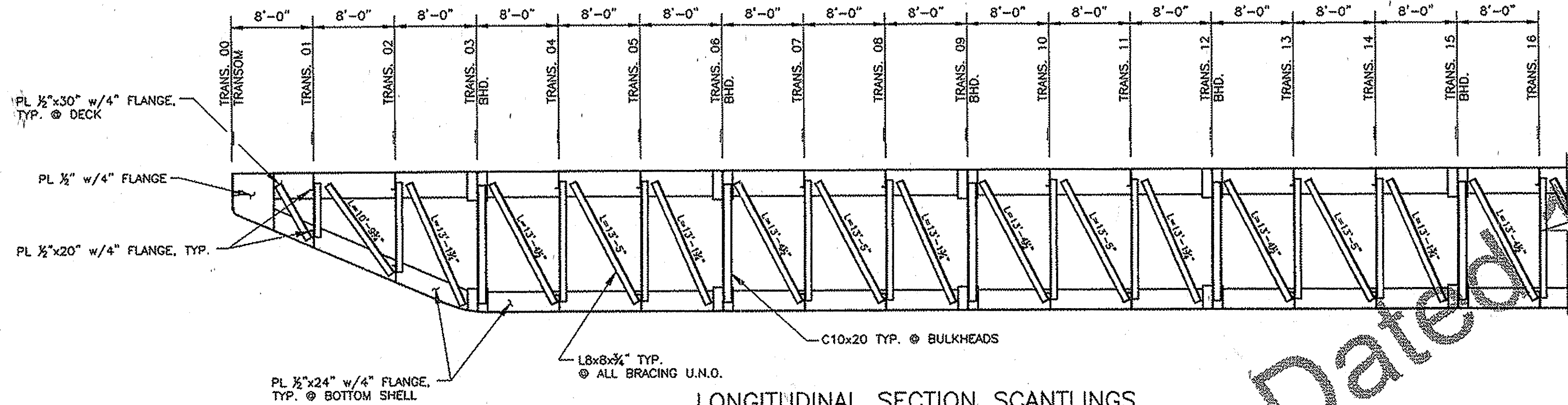
It is a violation of law for any person to alter a document in any way, whether acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall file to the document their seal and the notation "Altered by" followed by their signature and the date of such alteration, and a brief description of the alteration.

A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

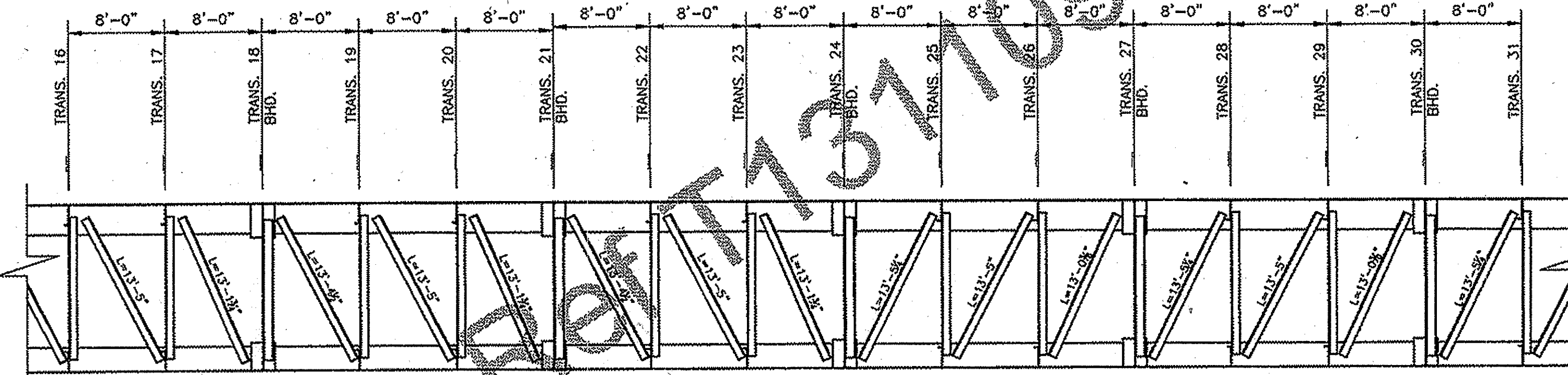
Contract Number NYNJRR-644.528

Drawing Number S019  
PID# 10199000



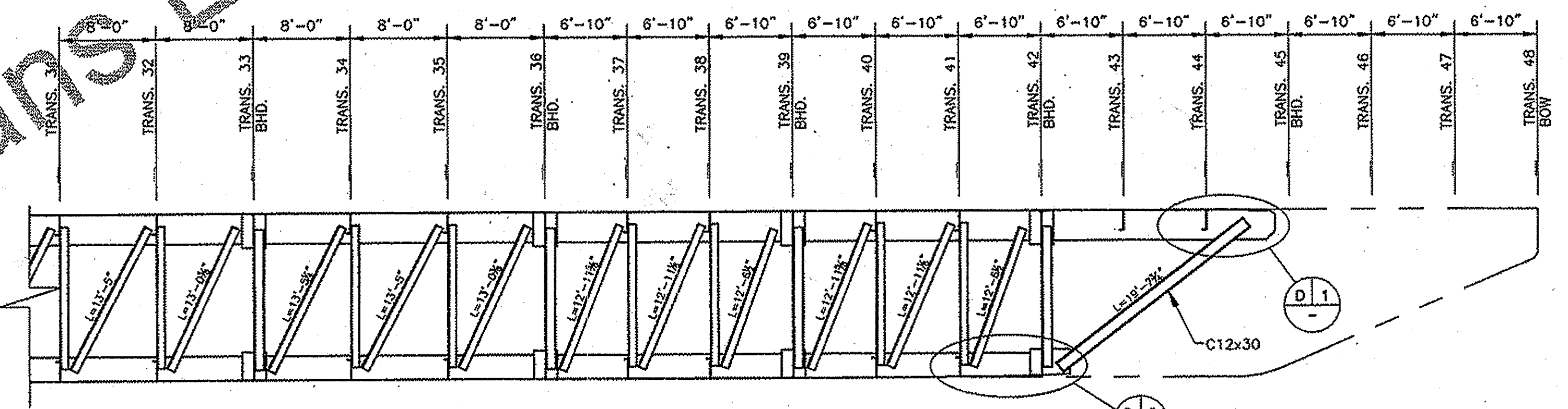
LONGITUDINAL SECTION SCANTLINGS

LONG. 09 (LONG. 01 OPPOSITE)  
0 8 16  
SCALE IN FEET



LONGITUDINAL SECTION SCANTLINGS (CONTINUED)

LONG. 09 (LONG. 01 OPPOSITE)

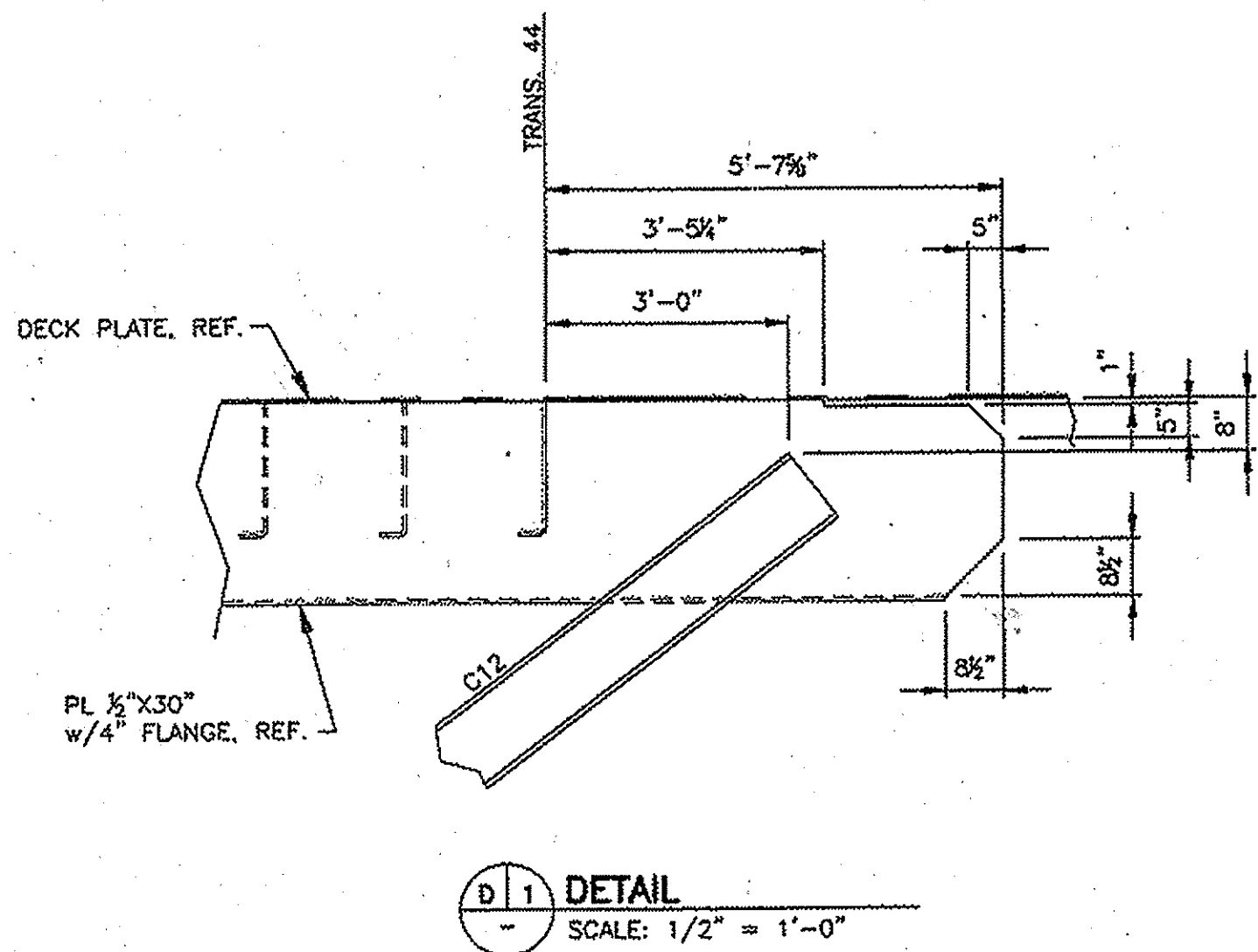


LONGITUDINAL SECTION SCANTLINGS (CONTINUED)

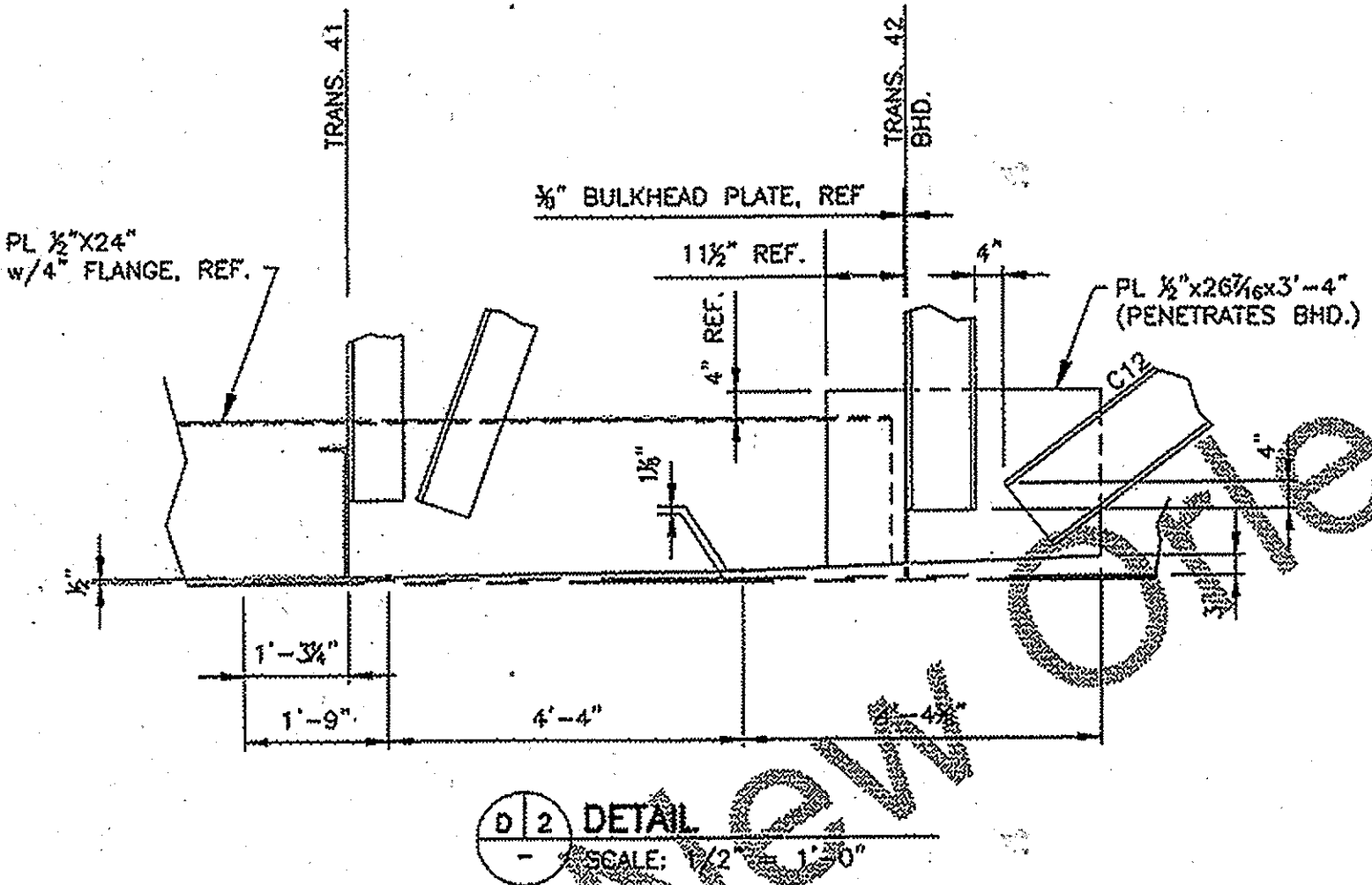
LONG. 09 (LONG. 01 OPPOSITE)

NOTES:

- CARFLOAT PRINCIPAL DIMENSIONS: 370 FT x 59 FT x 14 FT.
- CARFLOAT ABS CLASSIFICATION: +A1 BARGE, RIVER SERVICE.
- LONGITUDINAL TRUSS DETAILS NOT SHOWN ARE THE SAME OR SIMILAR TO THE TRUSS @ LONG. 05.

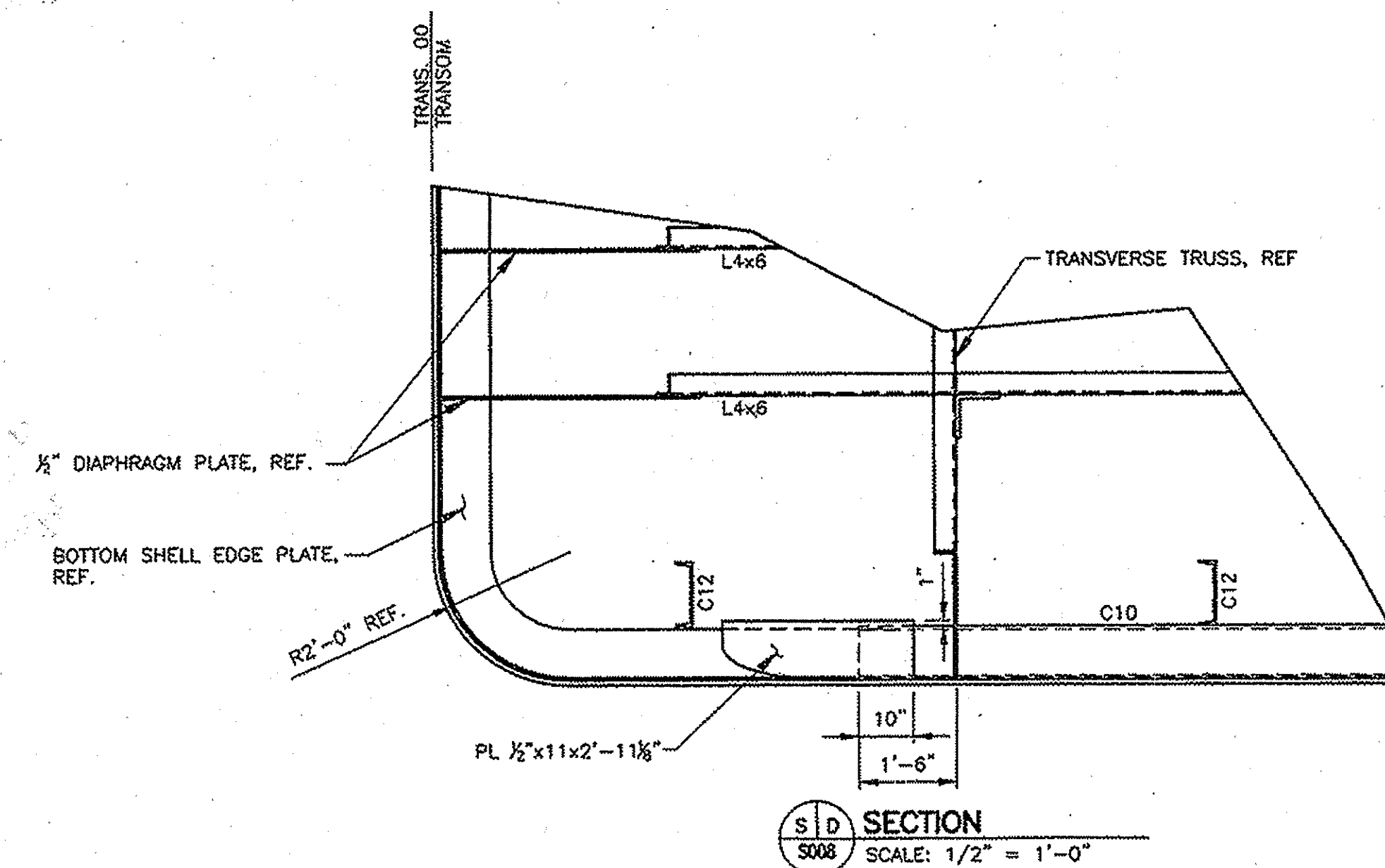
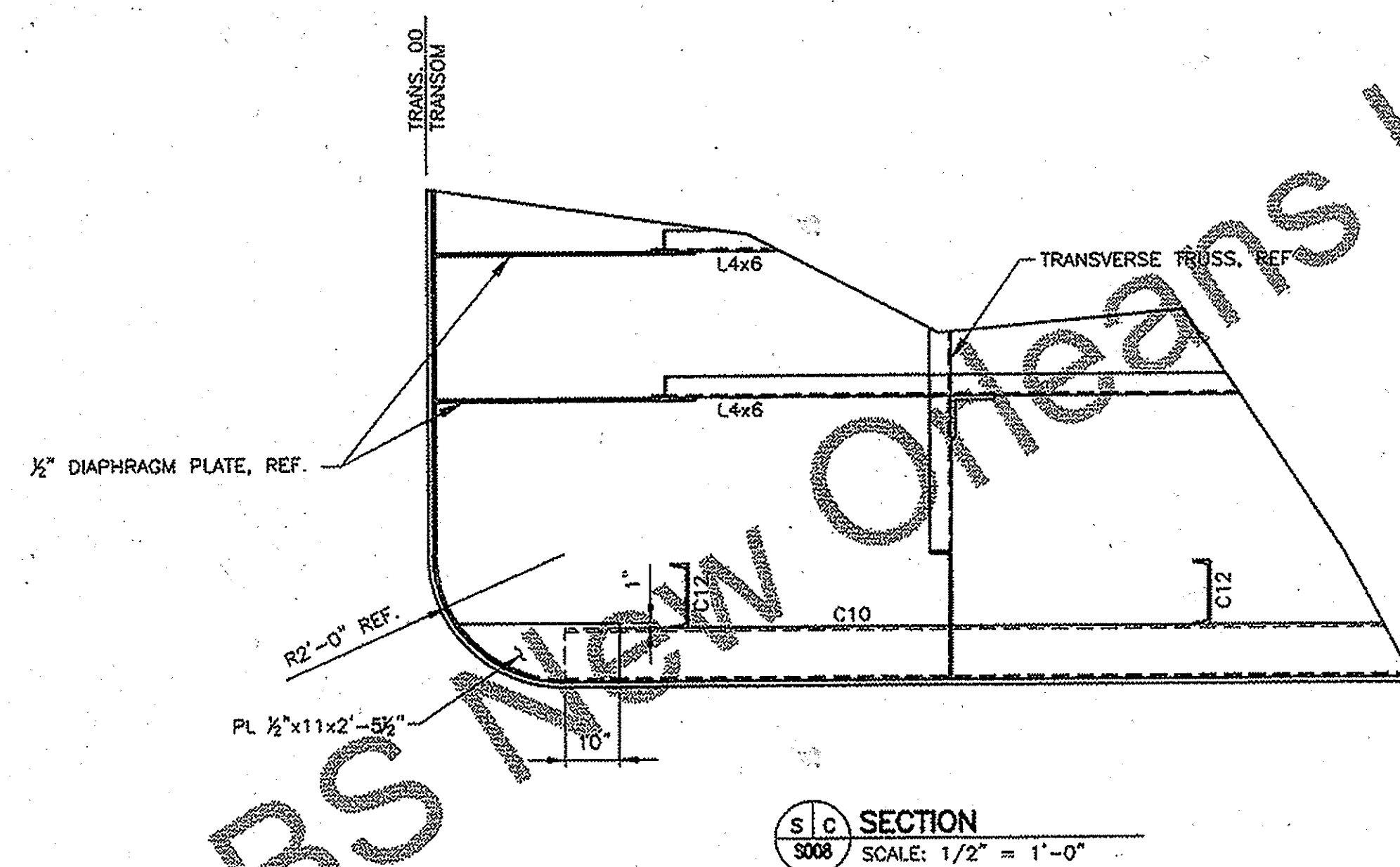
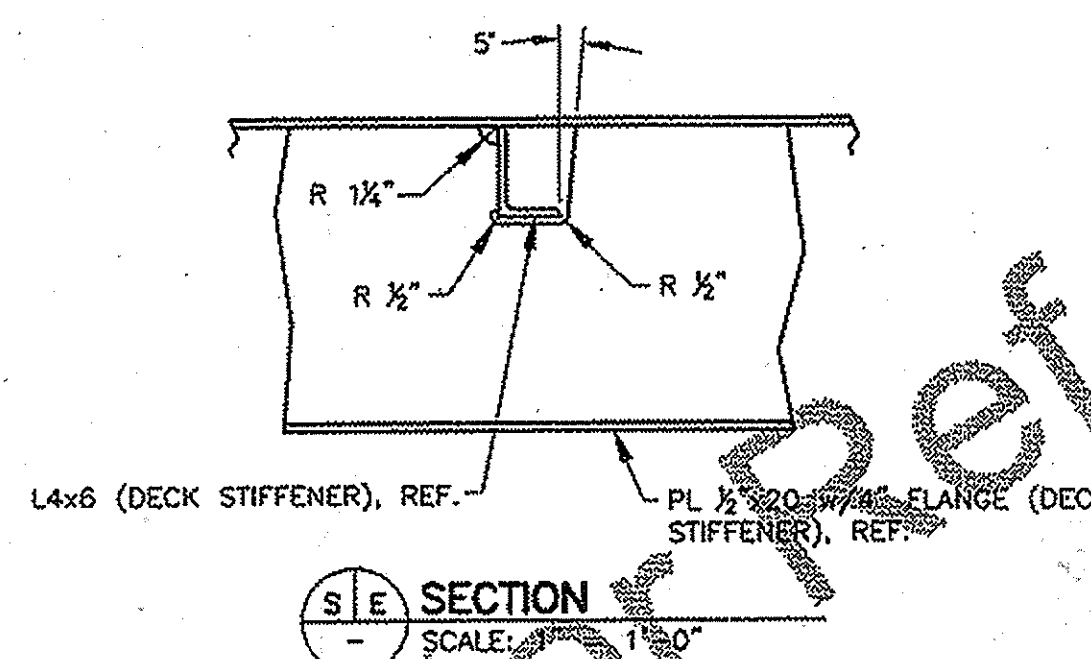
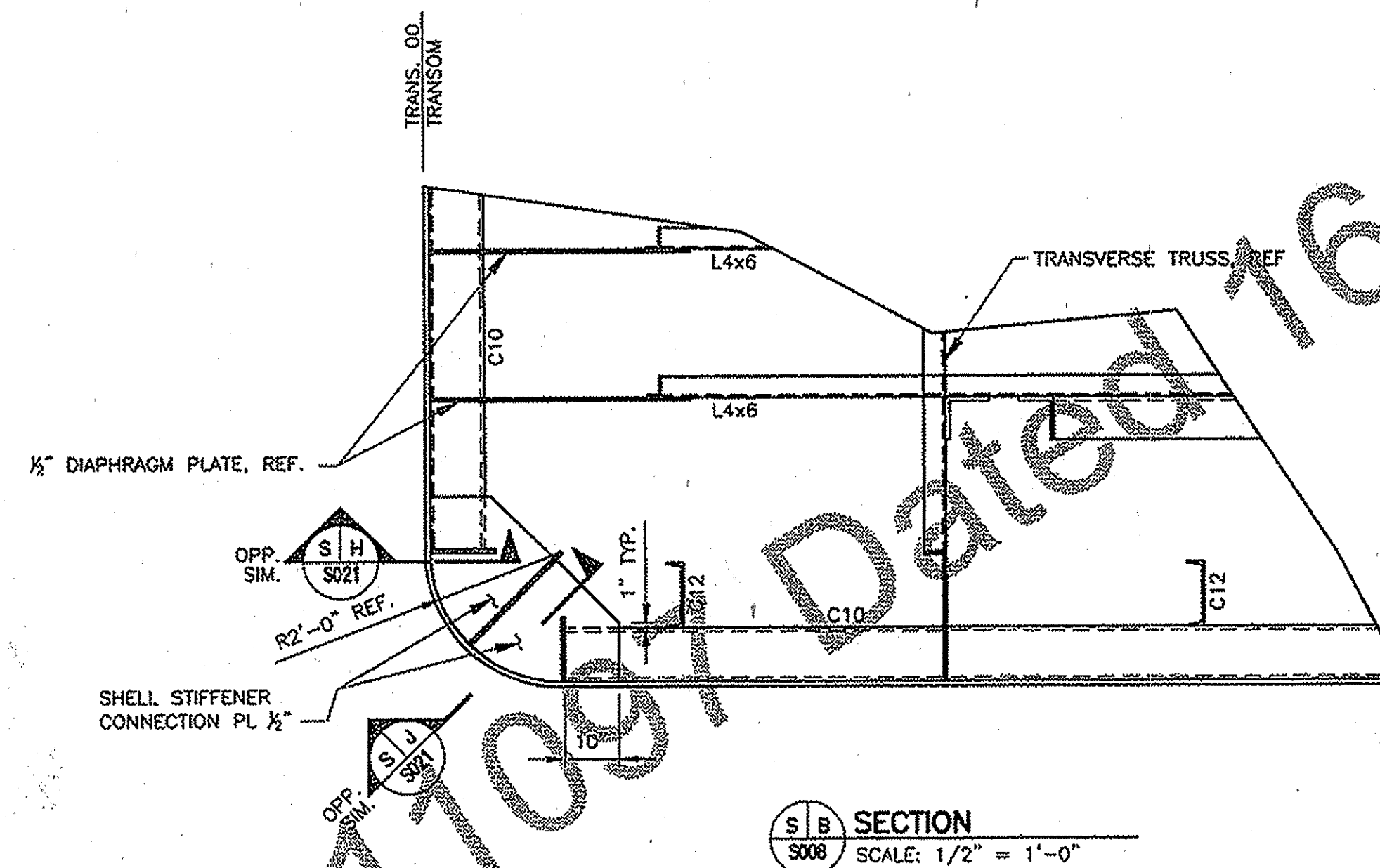


D1 DETAIL  
SCALE: 1/2" = 1'-0"



D2 DETAIL  
SCALE: 1/2" = 1'-0"

See ABS New Orleans Letter 1737/097 Dated 16-JAN-2015



NEW YORK AND	
NEW JERSEY RAIL,	
LLC	

CONNECTION DETAILS  
SHT. 1

[illegible]

A. ESFANDIARI	R. MUNRO	J. PETERSON
Designed by	Drawn by	Checked by

Date 01/12/2015

Contract  
Number **NYNJRR-644.528**

Drawing Number **S020**  
PID# 1019900



THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 058767-1



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

CONNECTION DETAILS  
SHT. 2

This drawing is subject to conditions in contract, all provisions, laws, codes and standards herein are subject to Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and those prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, must make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or incineration with refuse handlers that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Desk on the 16th Floor, 2 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302.

It is a violation of law for any person to use a document in any way unless acting under the direction of a licensed professional engineer or registered architect. It is the responsibility of the user of the document to ensure that the document is not used for any purpose other than that intended by the Port Authority and the user is not to be held responsible for any misuse of the document.

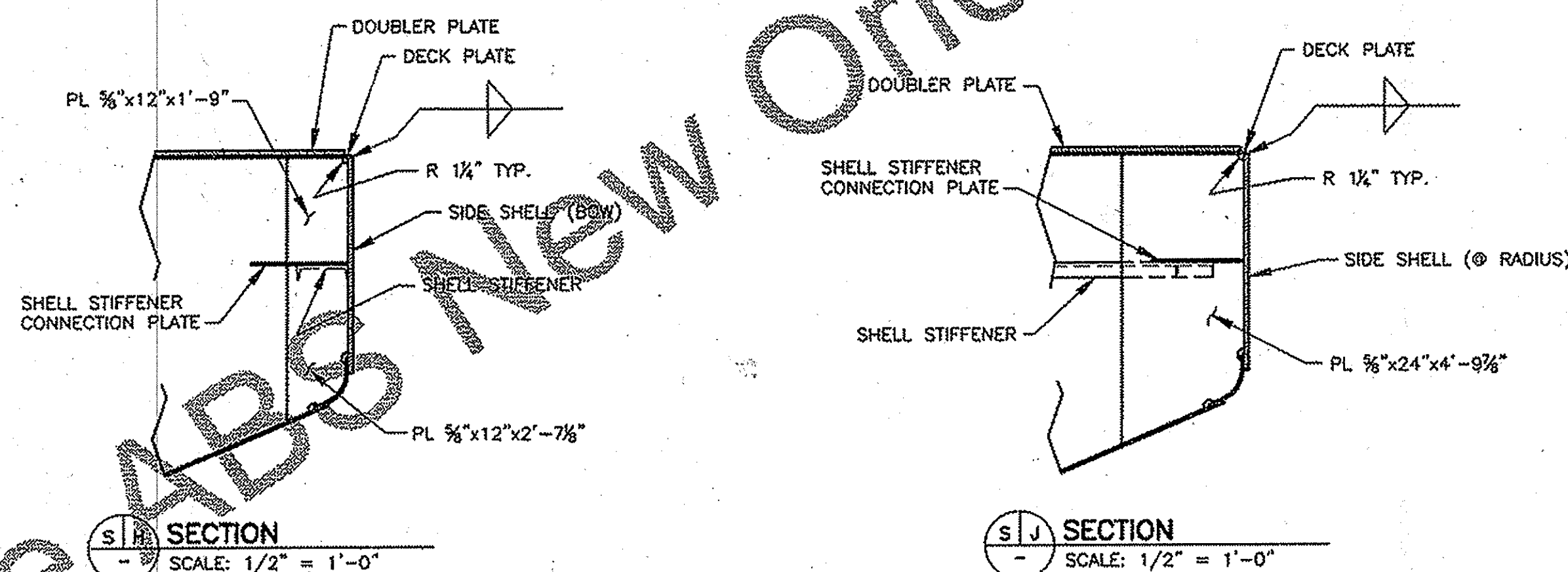
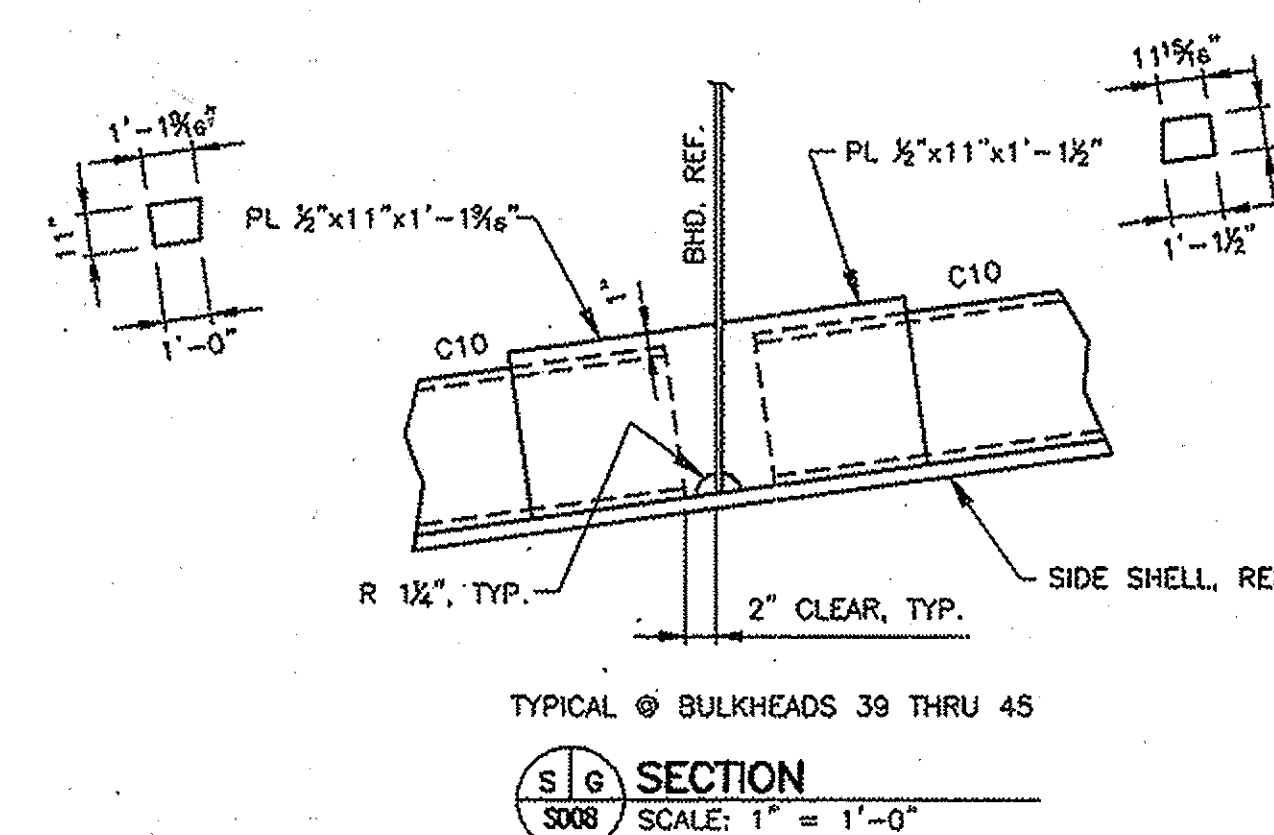
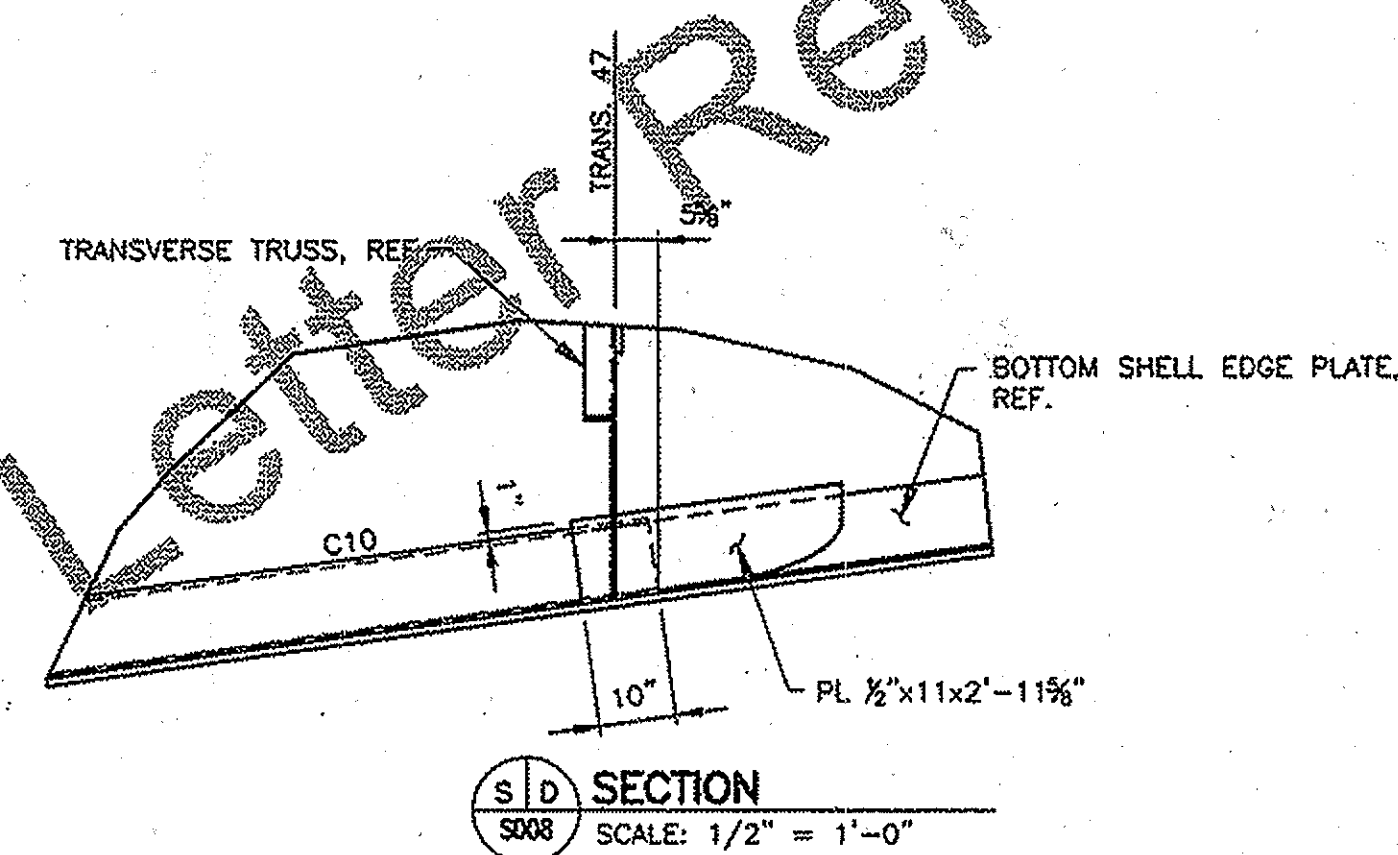
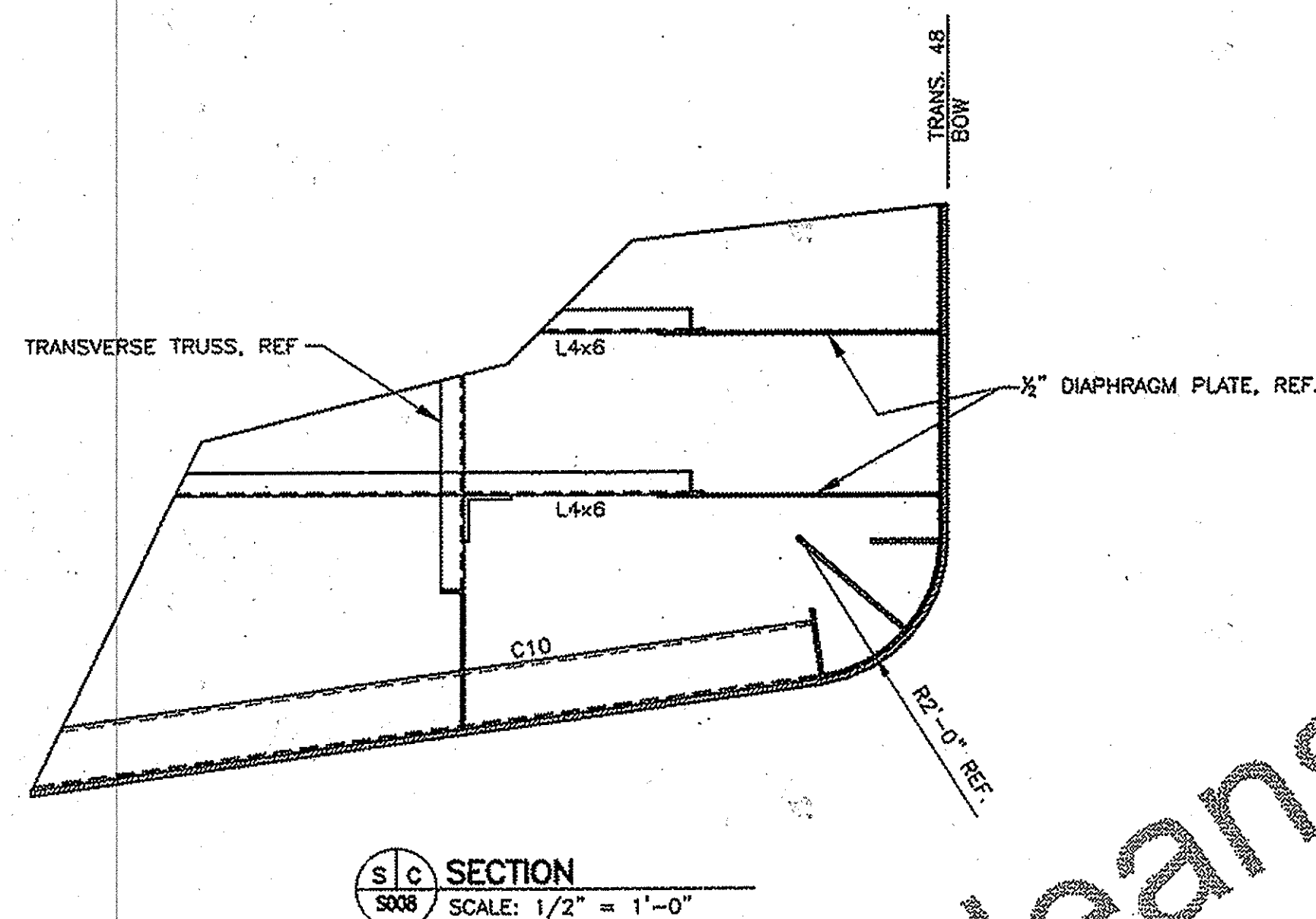
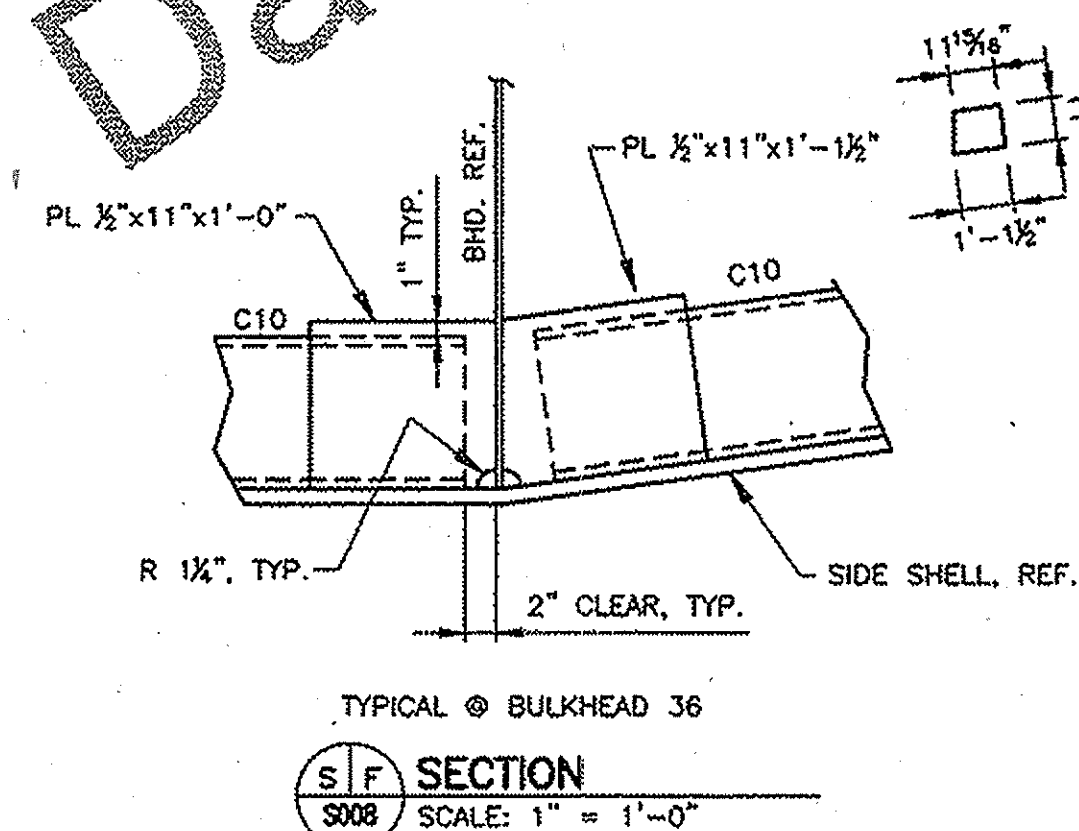
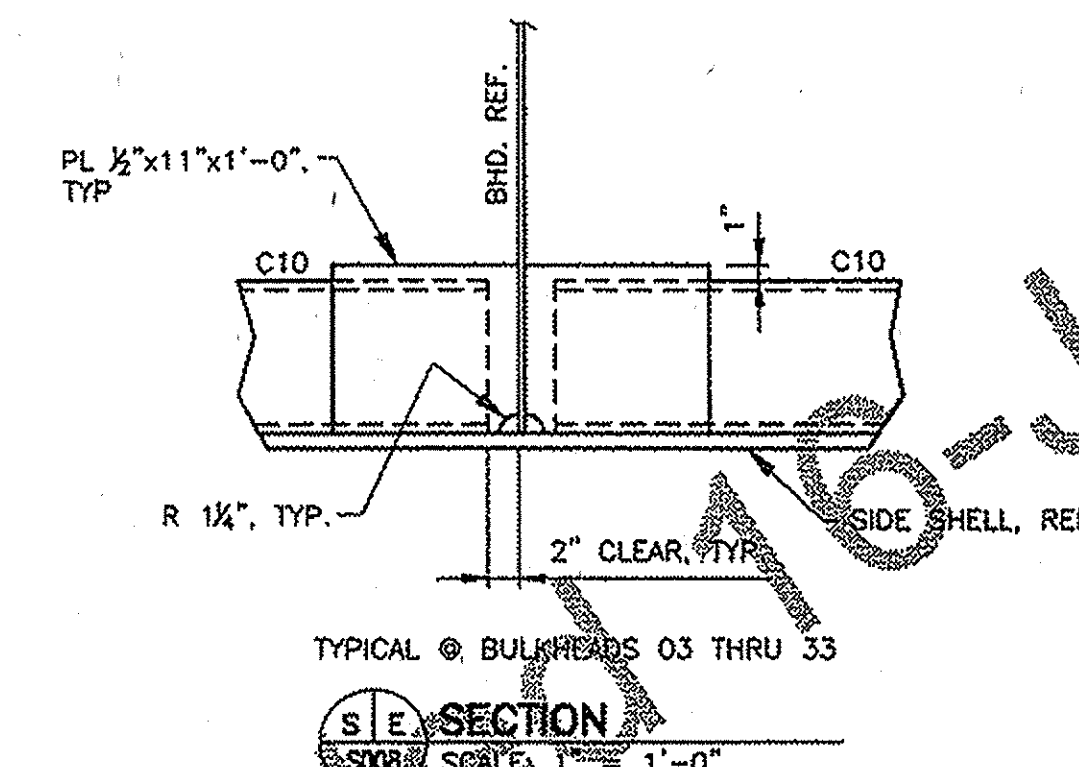
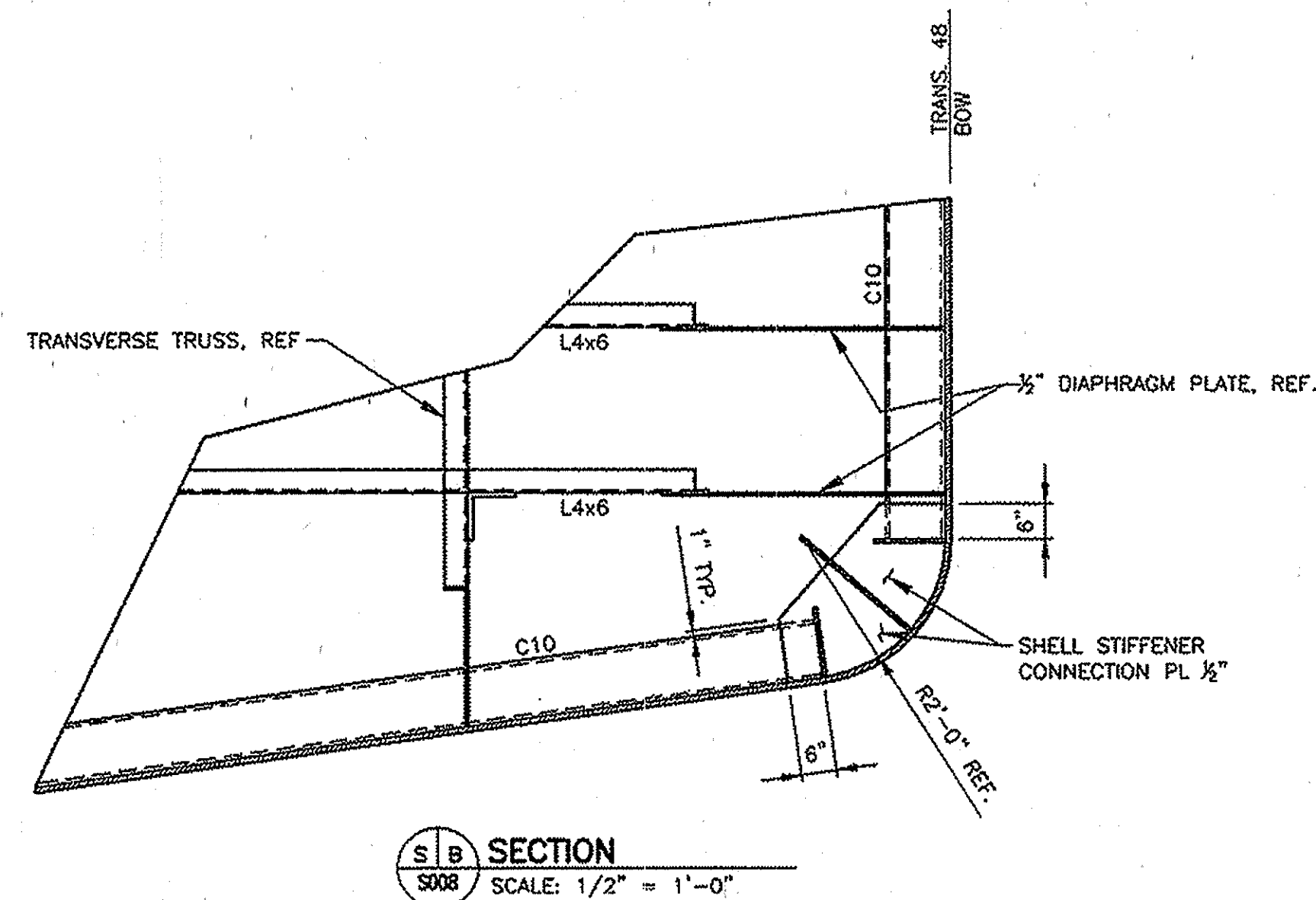
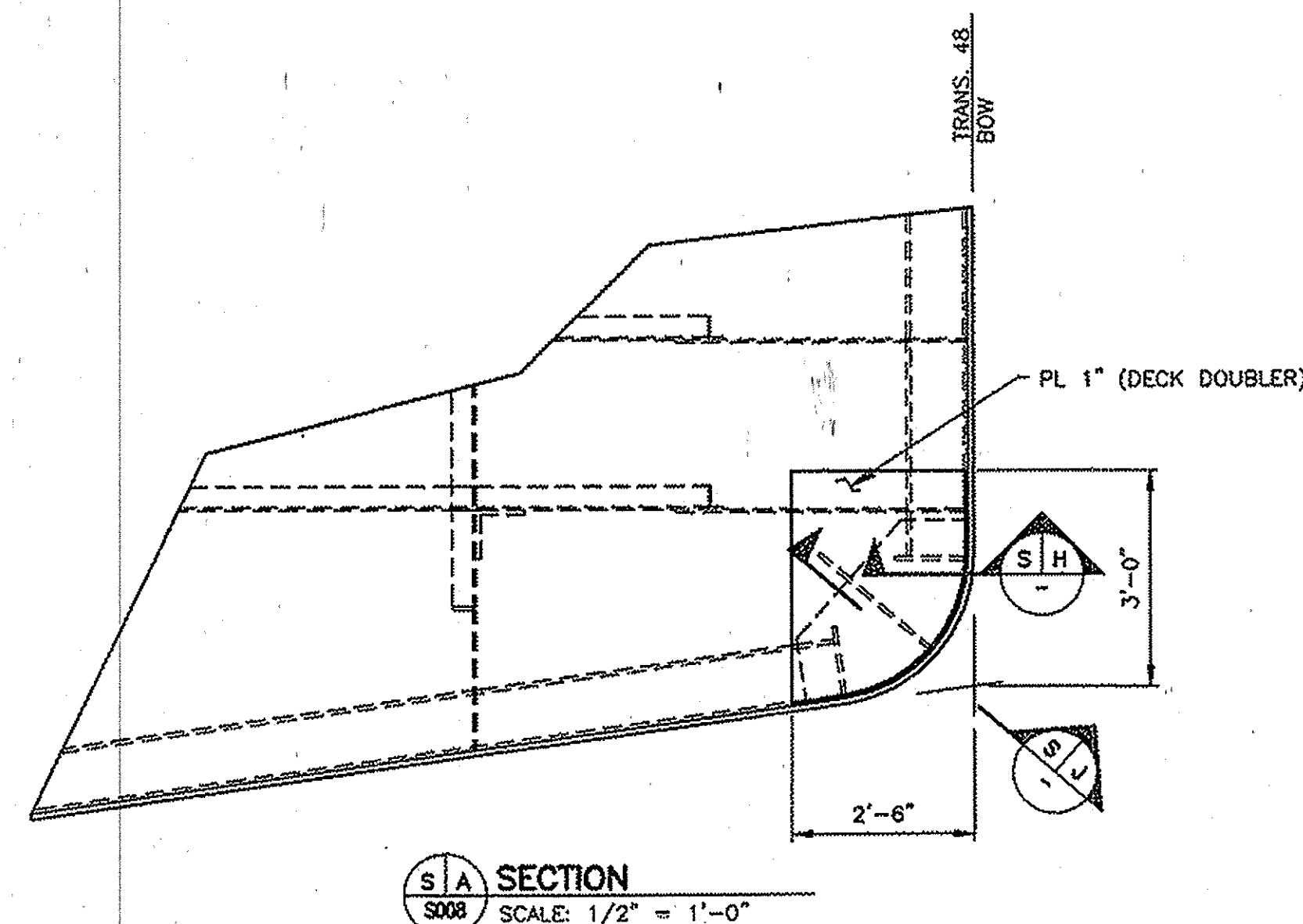
A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

Contract Number NYNJRR-644.528

Drawing Number S021

PID# 10199000



THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 058767-1



No.	Date	Revision	Approved
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ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

CONNECTION DETAILS  
SHT. 3

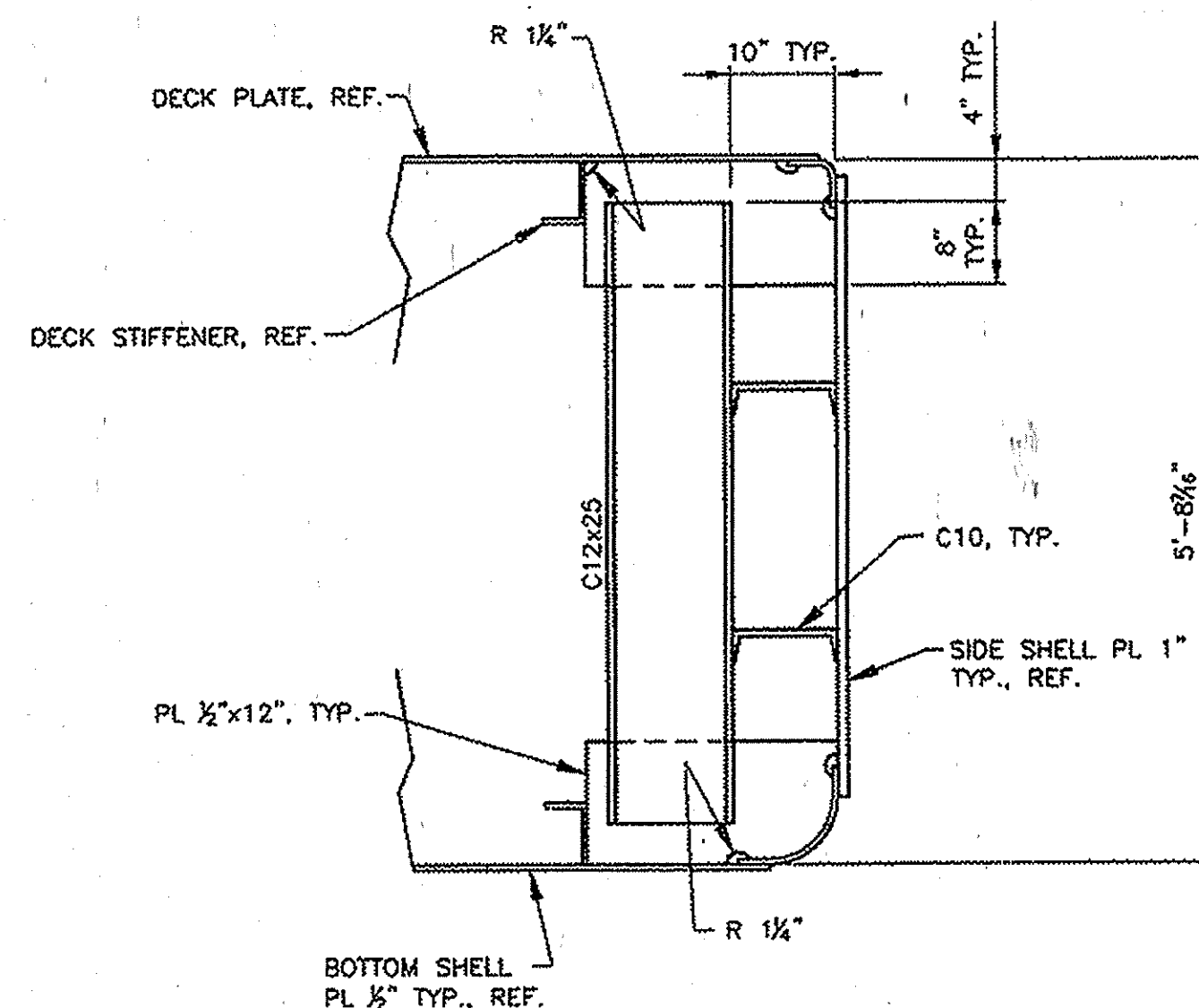
This drawing is subject to conditions in contract, all dimensions, sizes, designs and materials herein are subject to Port Authority and may not be used without its written consent.  
All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive it as a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or incineration with release burners that ensure that third persons will not have access to the documents' contents after burning, or other disposal.  
Documents may also be retained for disposal purposes to the Contract Date on the 14th Floor, 2 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302.  
It is a violation of law for any person to enter a document in any way, unless acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is copied, the original engineer/architect shall file to the document their seal and the notation "copied by" followed by their signature and the date of such alteration, and a specific description of the alteration.

A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

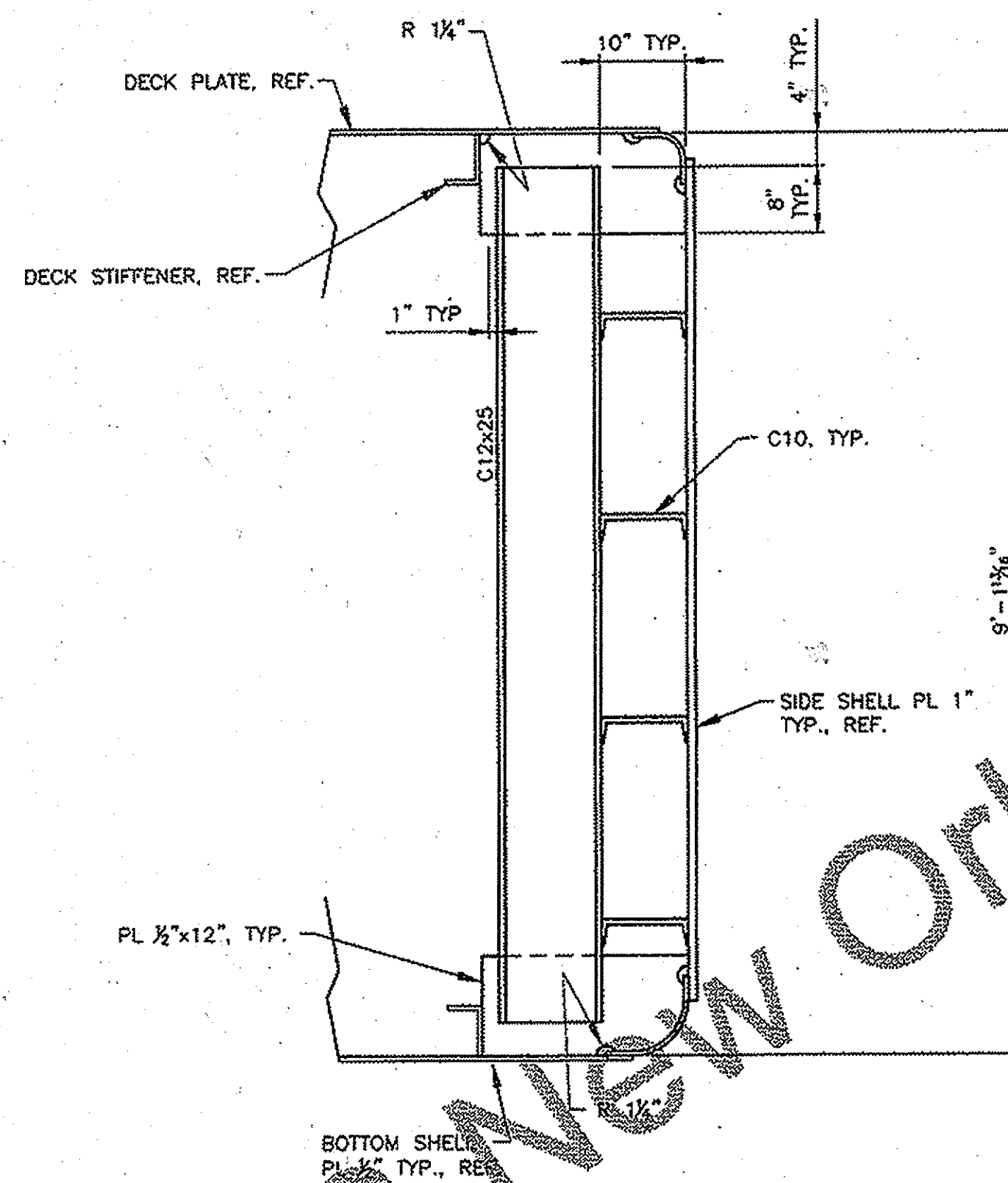
Date 01/12/2015

Contract Number NYNJRR-644.528

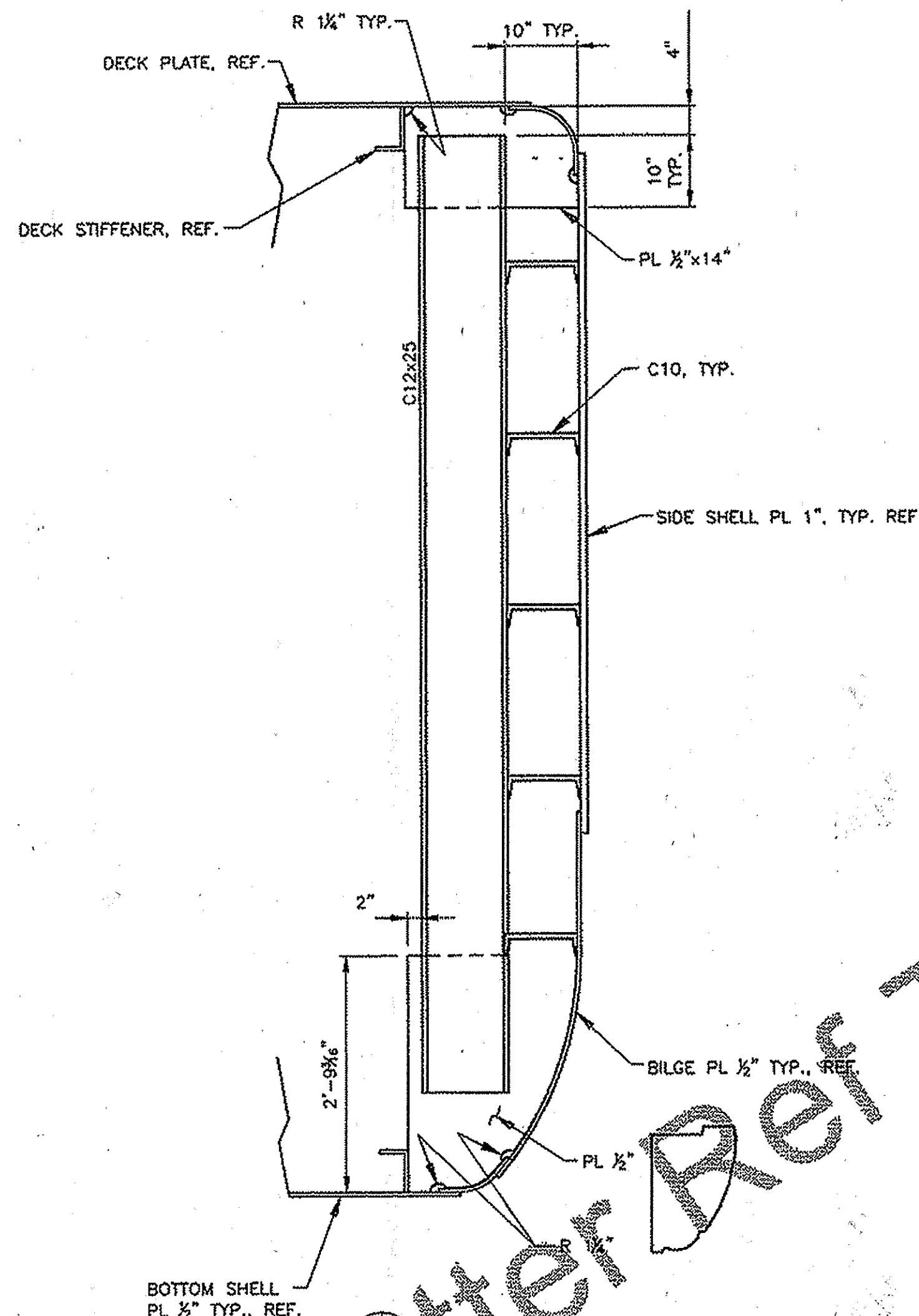
Drawing Number S022  
PID# 10199000



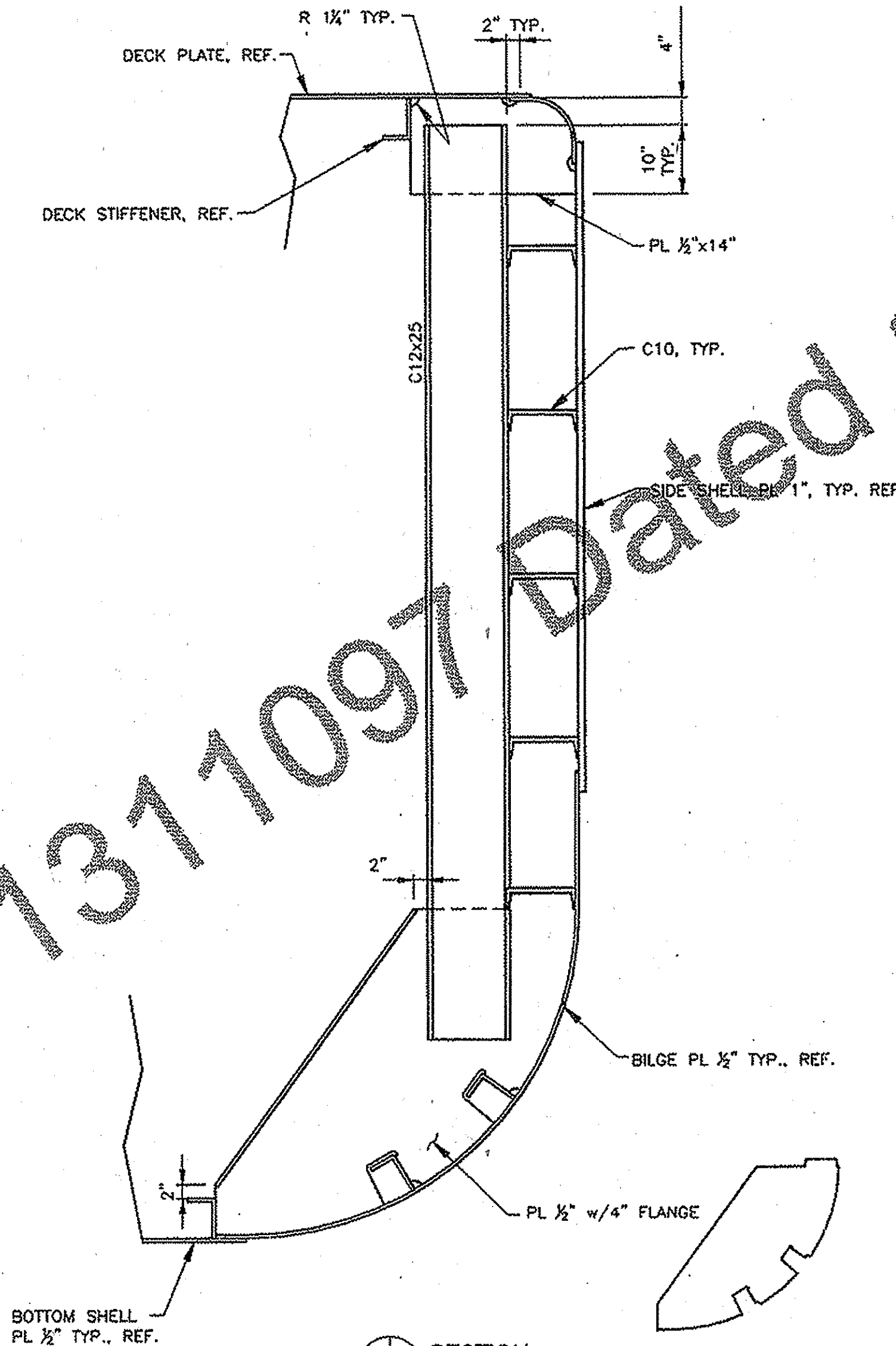
S A SECTION  
S008 SCALE: 3/4" = 1'-0"



S B SECTION  
S008 SCALE: 3/4" = 1'-0"

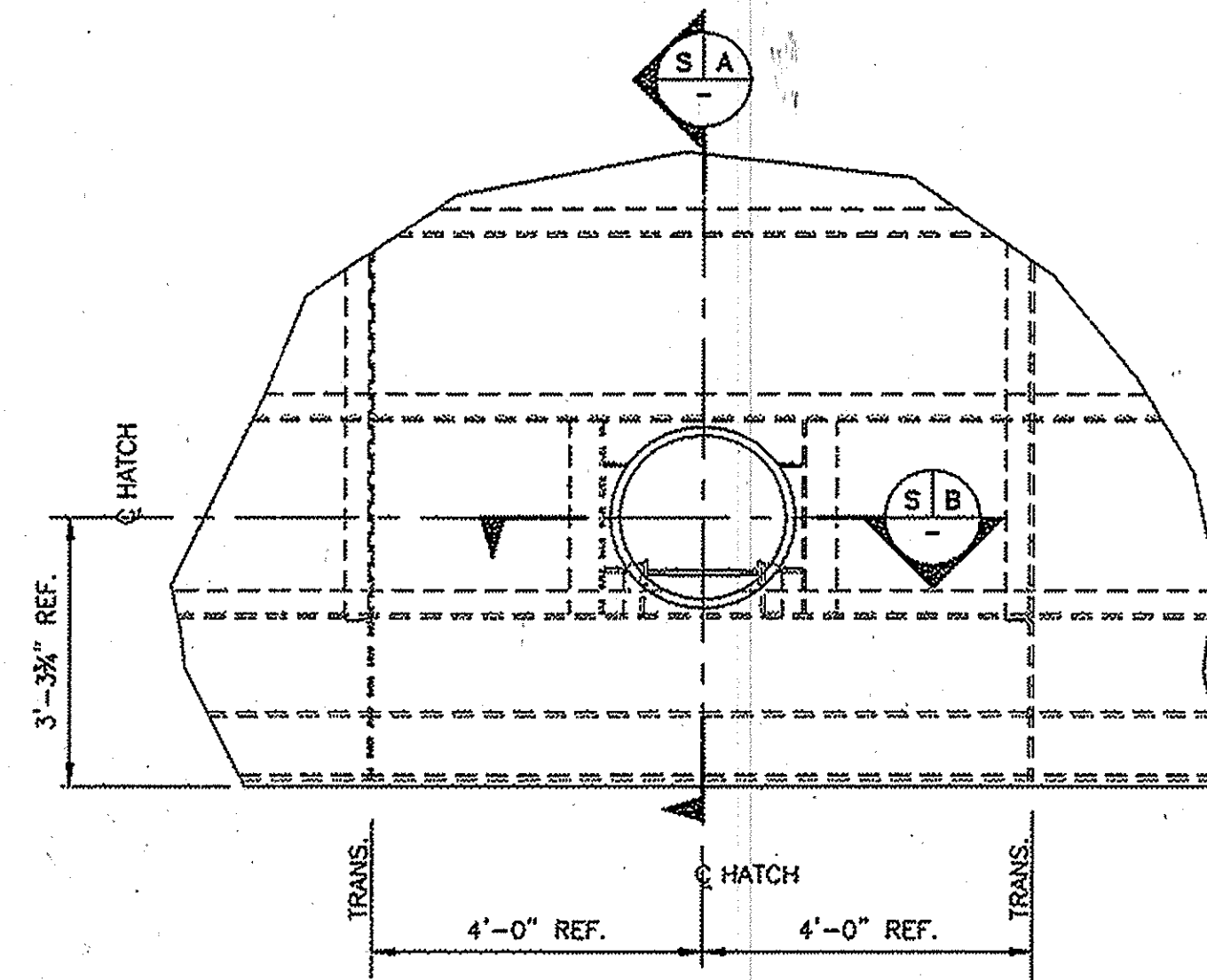


S C SECTION  
S008 SCALE: 3/4" = 1'-0"




S D SECTION  
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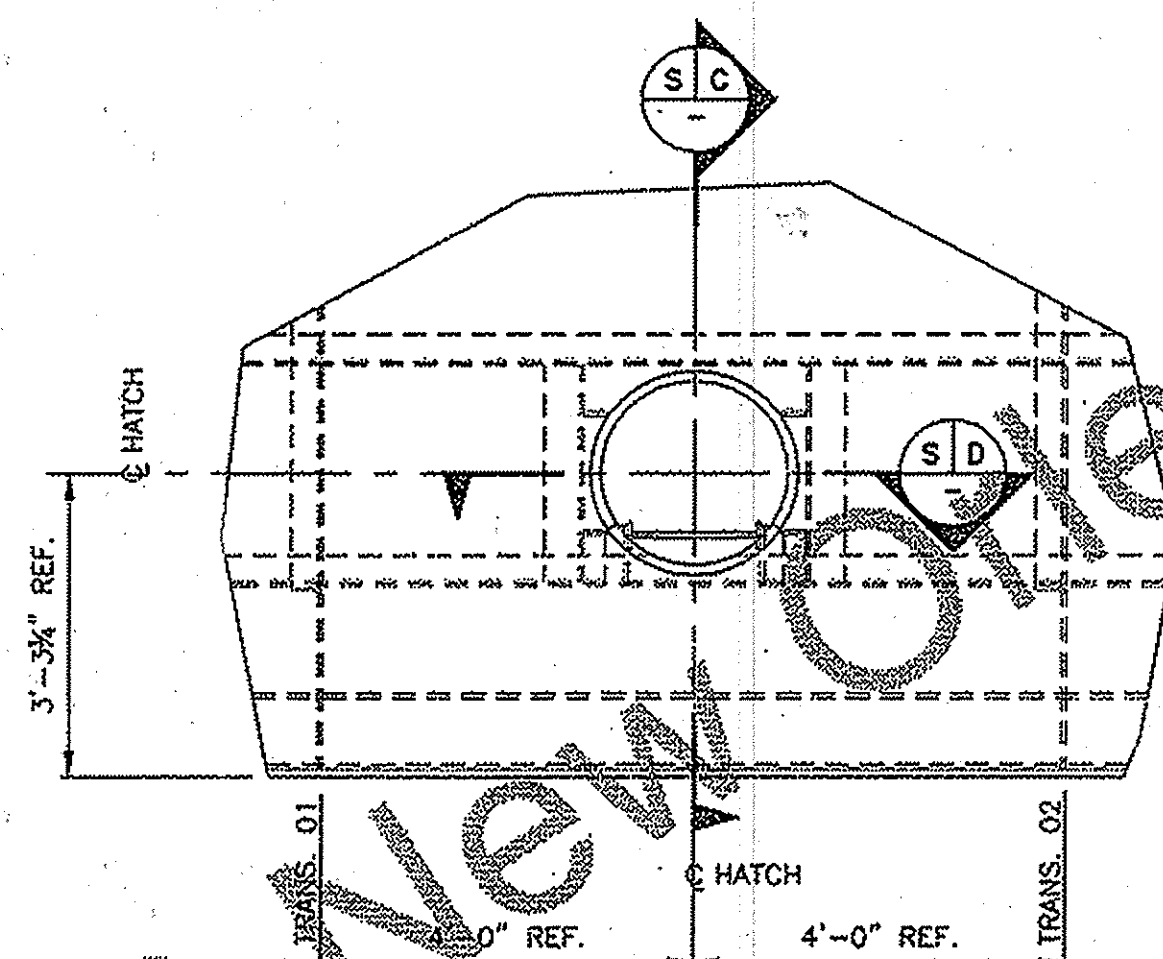





SHOWN WITH HATCH COVER REMOVED

 **DETAIL**

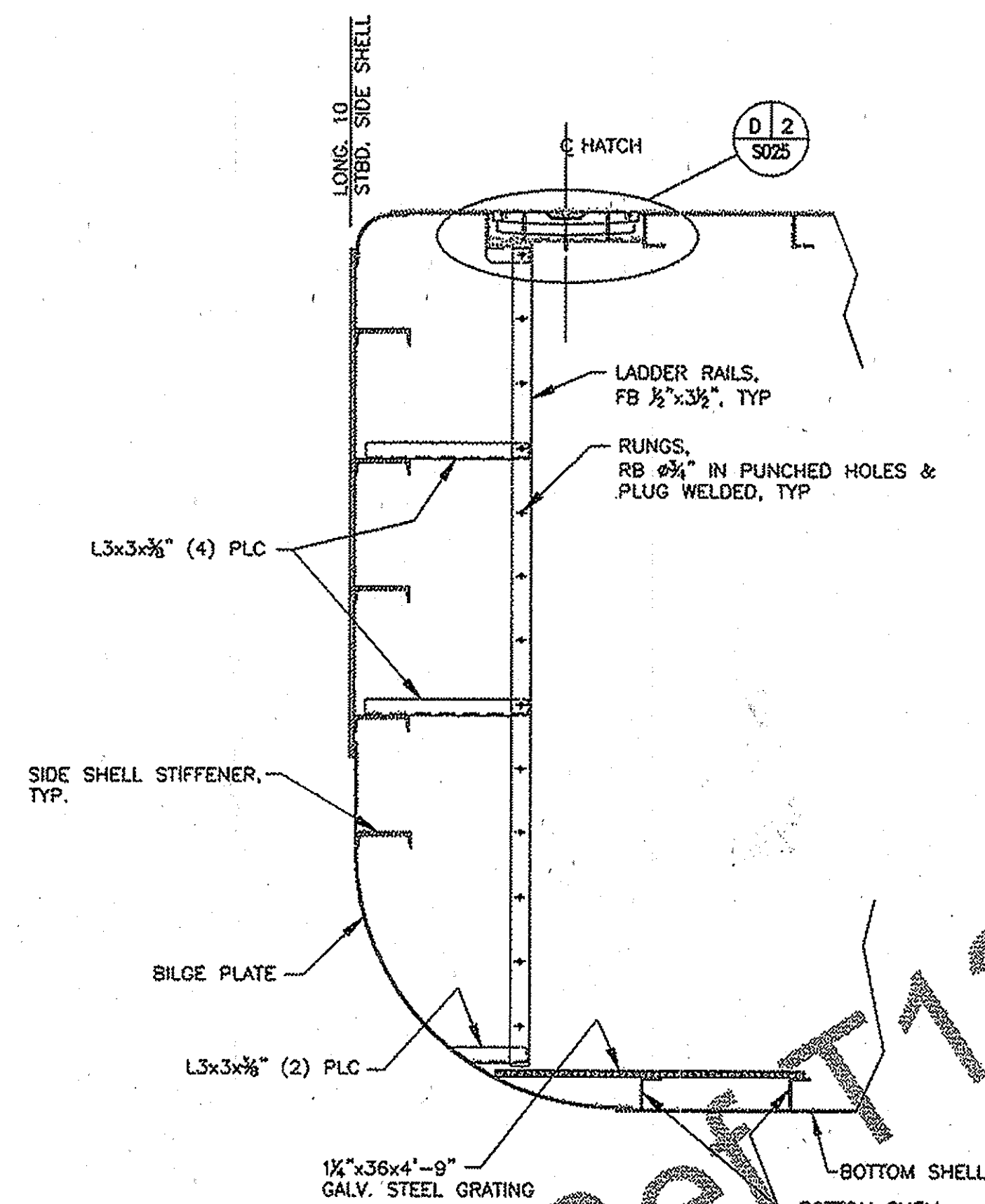
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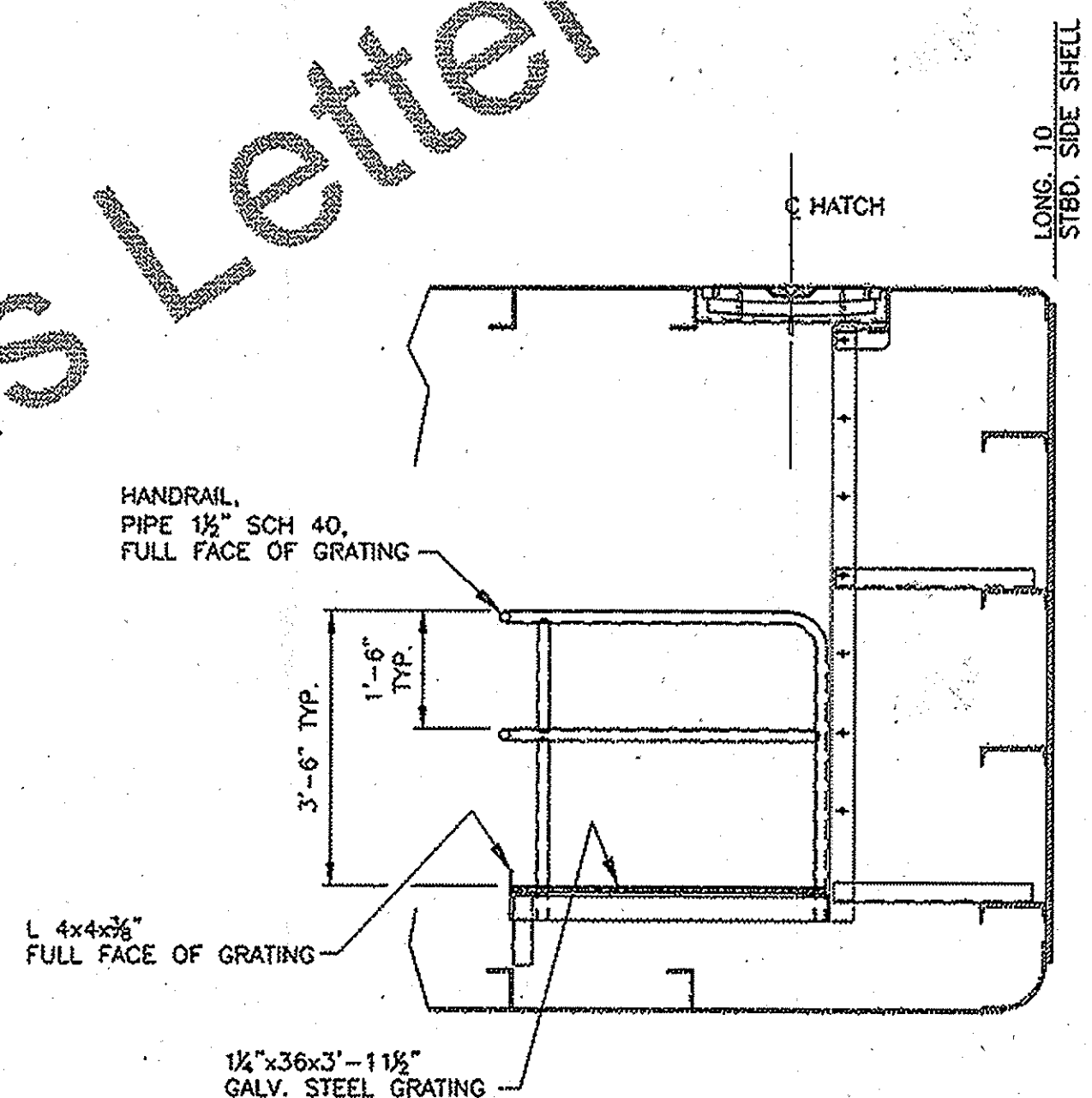
SHOWN WITH HATCH COVER REMOVED


 **DETAIL**

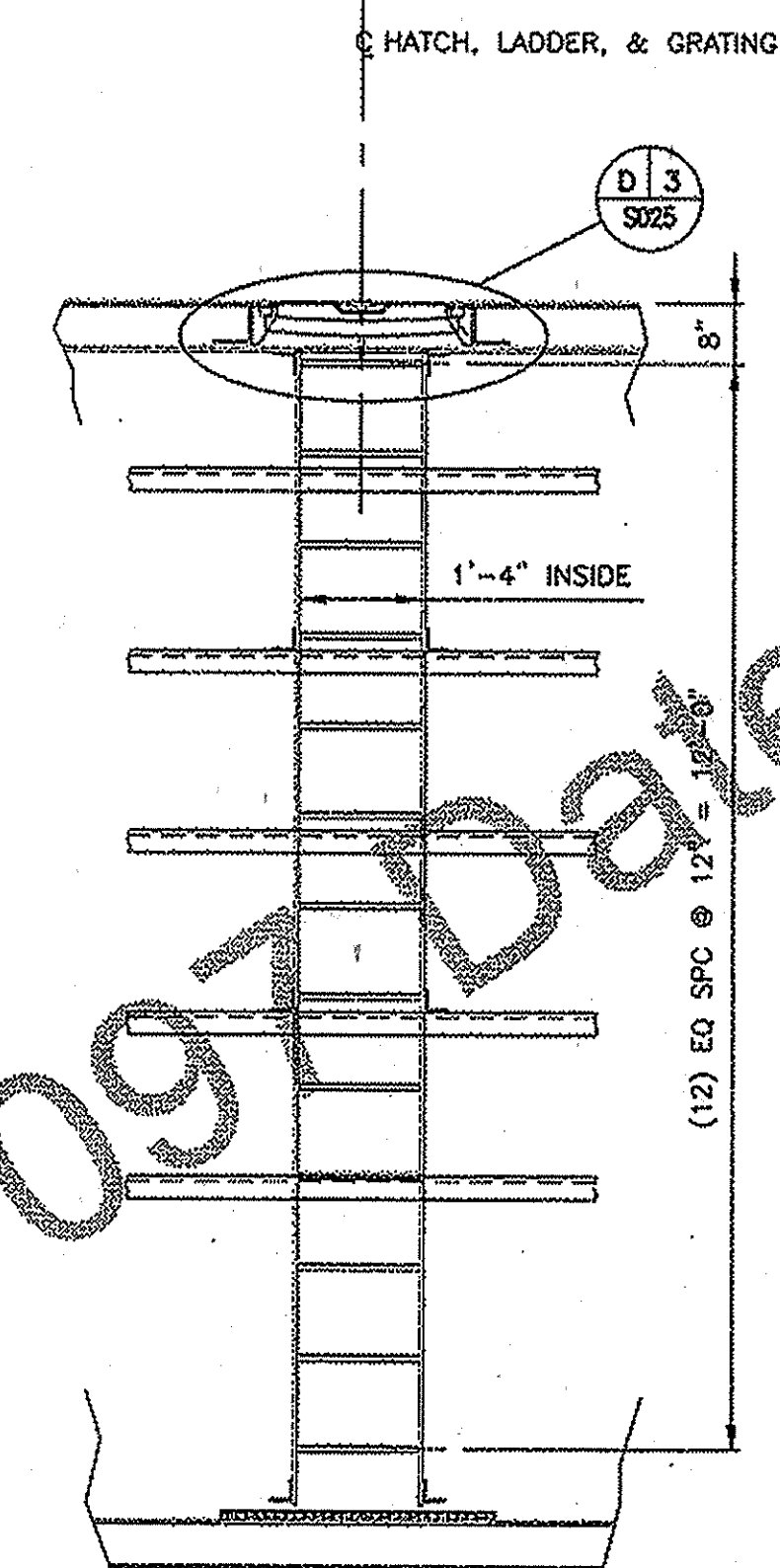
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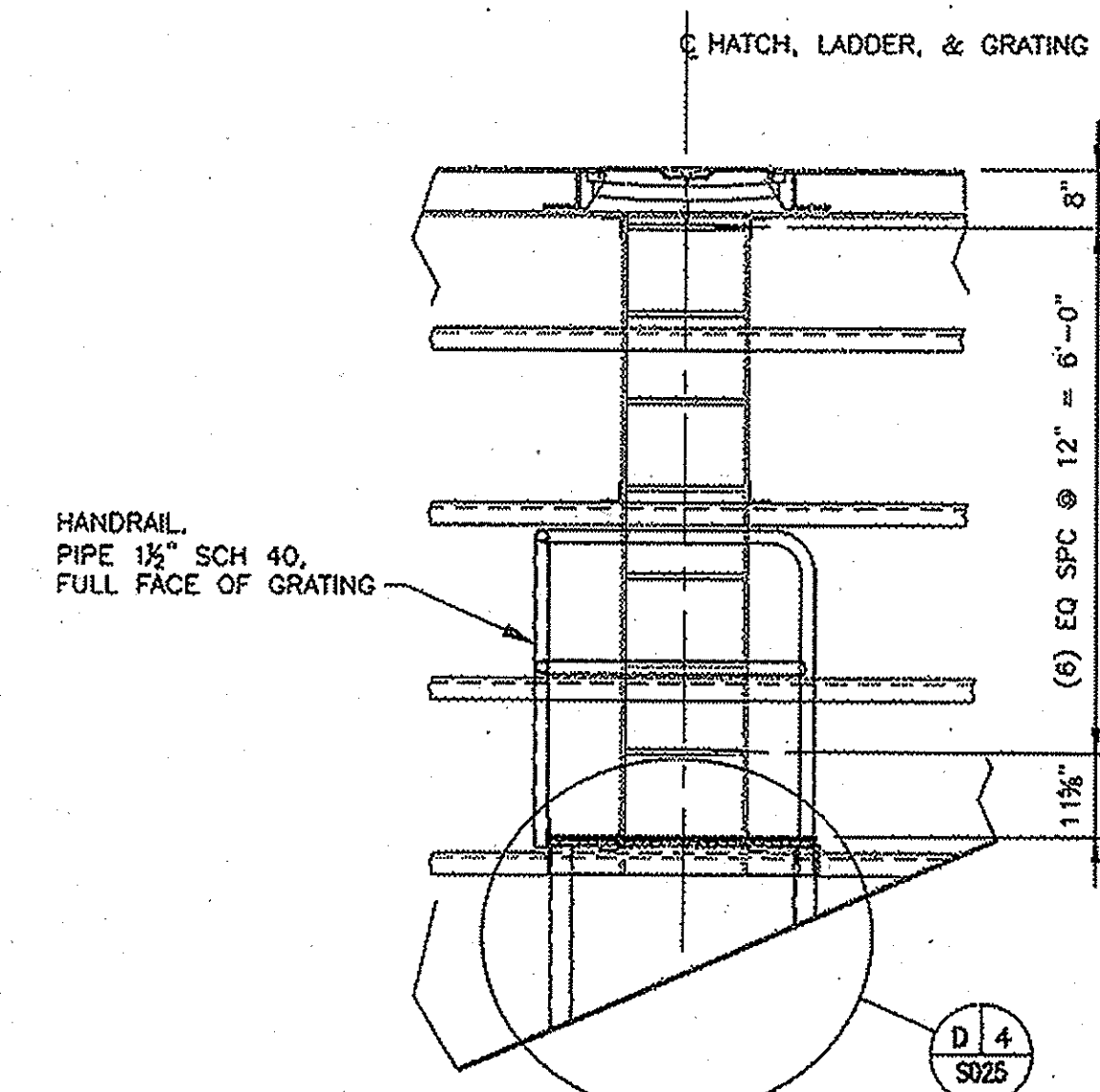
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SCALE: 1/2" = 1'-0"




SEE  FOR DIMENSIONS AND MATERIAL CALLOUTS NOT SHOWN



**SECTION**  
SCALE: 1/2" = 1'-0"



SEE  FOR DIMENSIONS AND MATERIAL CALLOUTS NOT SHOWN



NOTES:  
1. MANHOLE COVERS SHALL BE TO  
ABS SURVEYOR'S SATISFACTION.

**THE PORT AUTHORITY  
OF NY & NJ**

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056767-1



No.	Date	Revision	Approved
-----	------	----------	----------

ENGINEERING DEPARTMENT

NEW YORK AND					
NEW JERSEY RAIL,					
LLC					

**STRUCTURAL**

Title

CONSTRUCTION OF  
TWO RAIL CARFLOATS

MISCELLANEOUS  
DETAILS SHT. 1

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With refuse handlers that ensure that third persons will not have access to the drawings and documents, the drawings and documents may be disposed of by the drawings and documents disposal company. The drawings and documents disposal company may be retained for disposal of drawings and documents at the 14th Floor, 2 Gateway Center, Newark NJ 07102 or the office of the drawings and documents disposal company at the 14th Floor, Jersey City, NJ 07302.

When the drawings and documents are disposed of in any way, written notice under the direction of a licensed professional engineer or architect shall be given to the drawings and documents disposal company. If an engineer/architect is altered, the altering engineer/architect shall affix to the document their date and the notation "altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.

A. ESFANDIARI	R. MUNRO	J. PETERSON
Designed by	Drawn by	Checked by

Date 01/12/2015

Contract  
Number **NYNJRR-644.528**

Drawing Number S023

PID# 10199000





THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 658767-1



No.	Date	Revision	Approved
ENGINEERING DEPARTMENT			

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

MISCELLANEOUS  
DETAILS SHT. 3

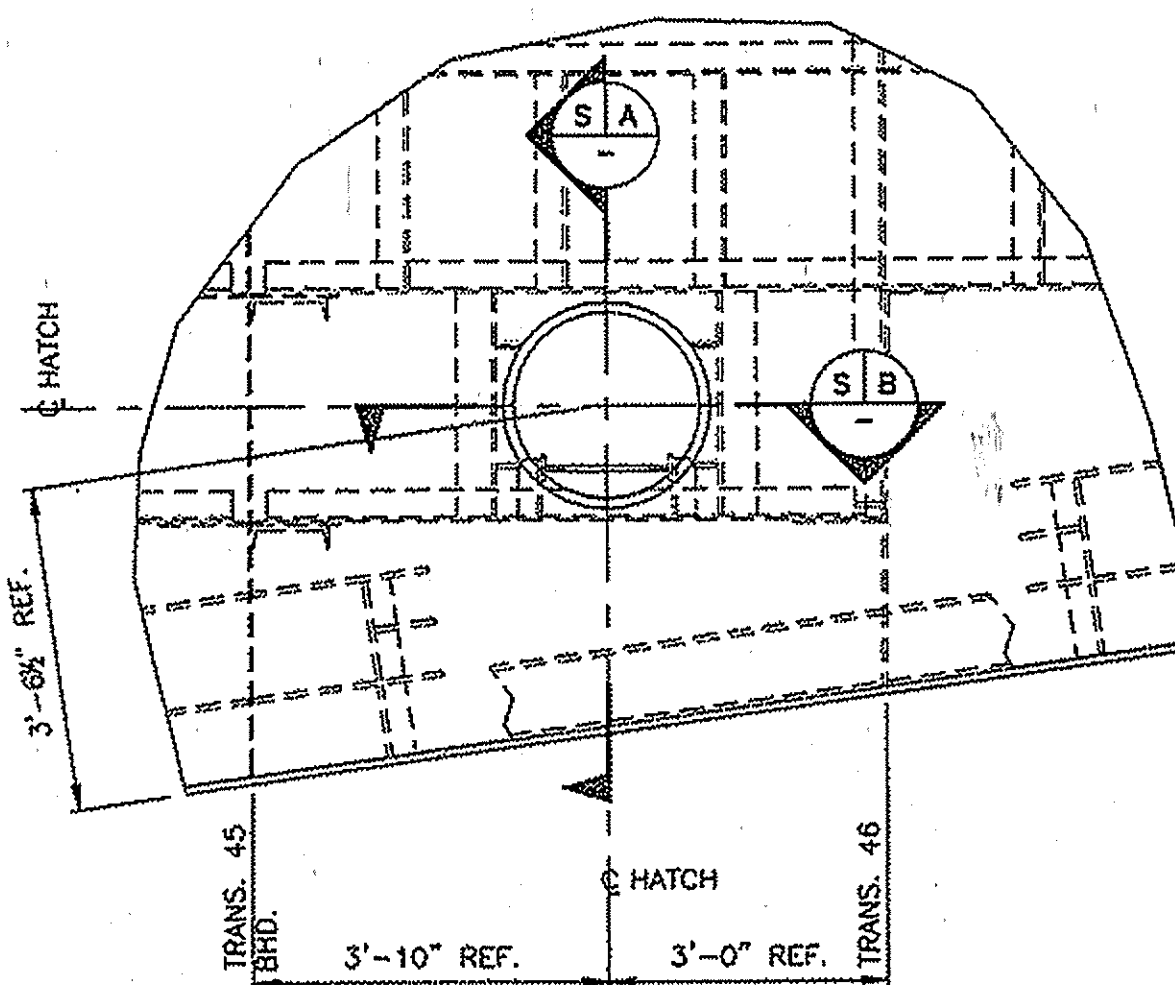
This drawing is subject to conditions in contract. All dimensions, sizes, materials, and methods shown are subject to Port Authority and may not be used without its written consent. All dimensions, sizes, materials, and methods shown are subject to Port Authority and may not be used without its written consent. All dimensions, sizes, materials, and methods shown are subject to Port Authority and may not be used without its written consent.

A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

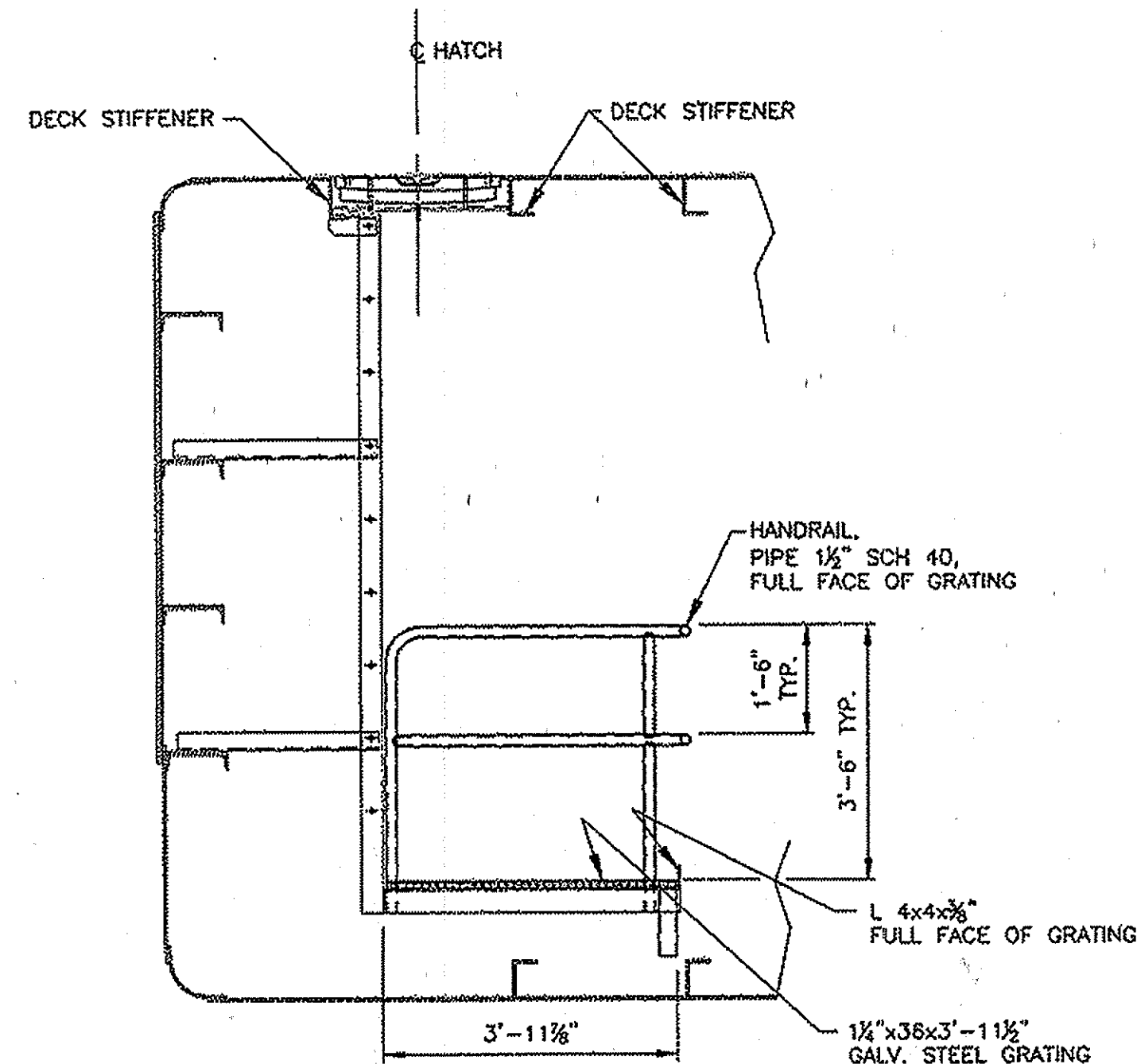
Date 01/12/2015

Contract Number NYNJRR-644.528

Drawing Number S025  
PID 10199000

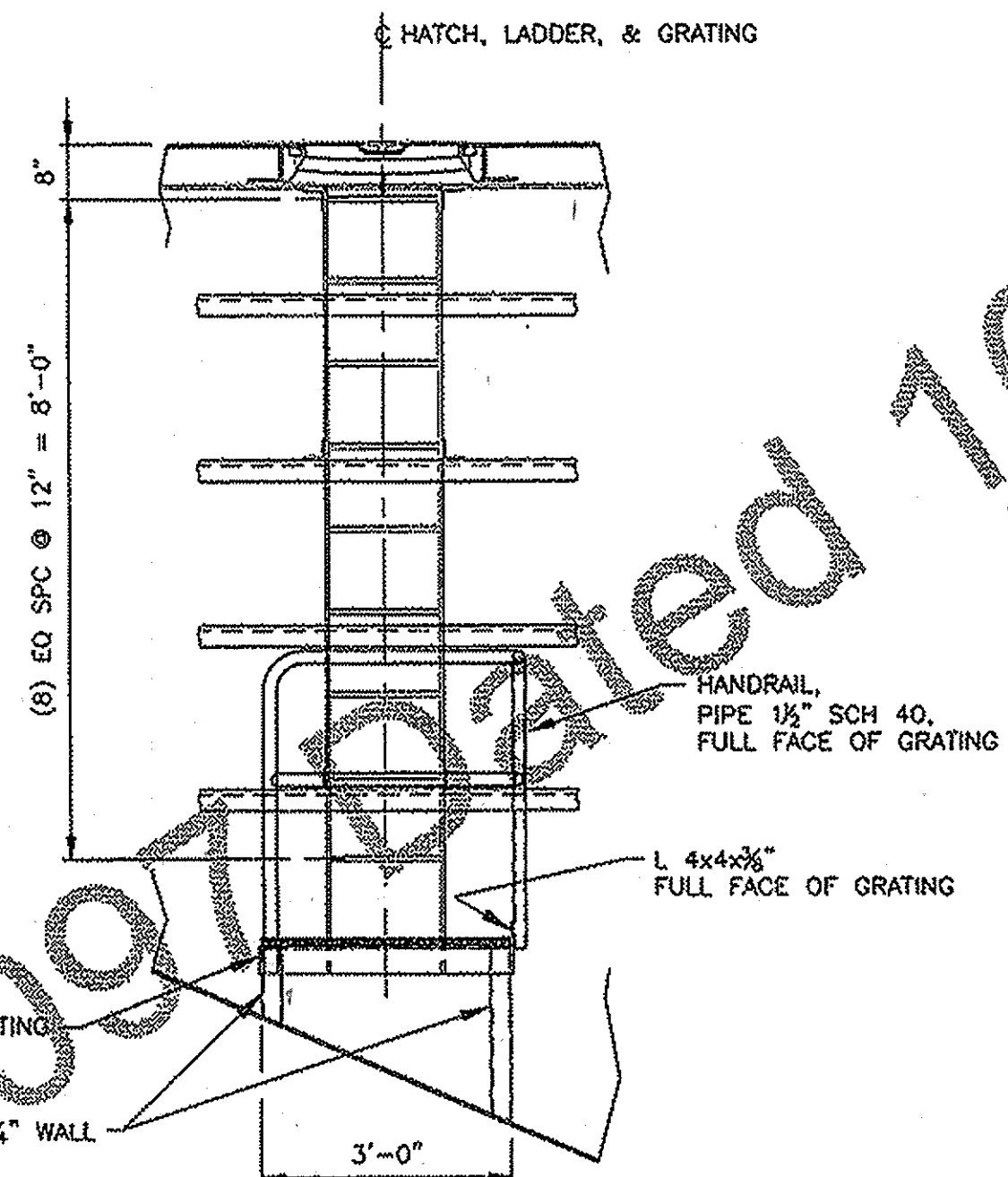


SHOWN WITH HATCH COVER REMOVED  
D 1 DETAIL  
S004 SCALE: 1/2" = 1'-0"



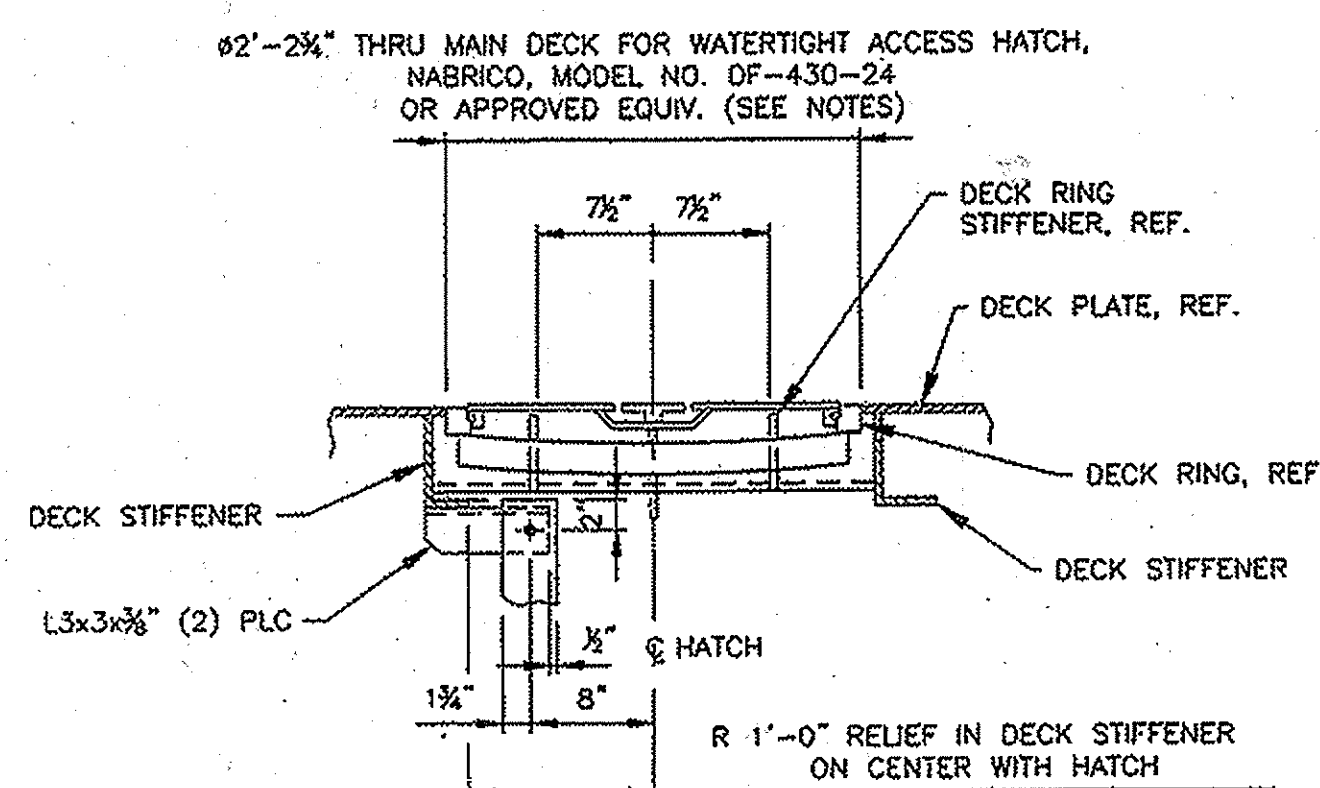
SEE S/A S023 FOR DIMENSIONS AND MATERIAL CALLOUTS NOT SHOWN

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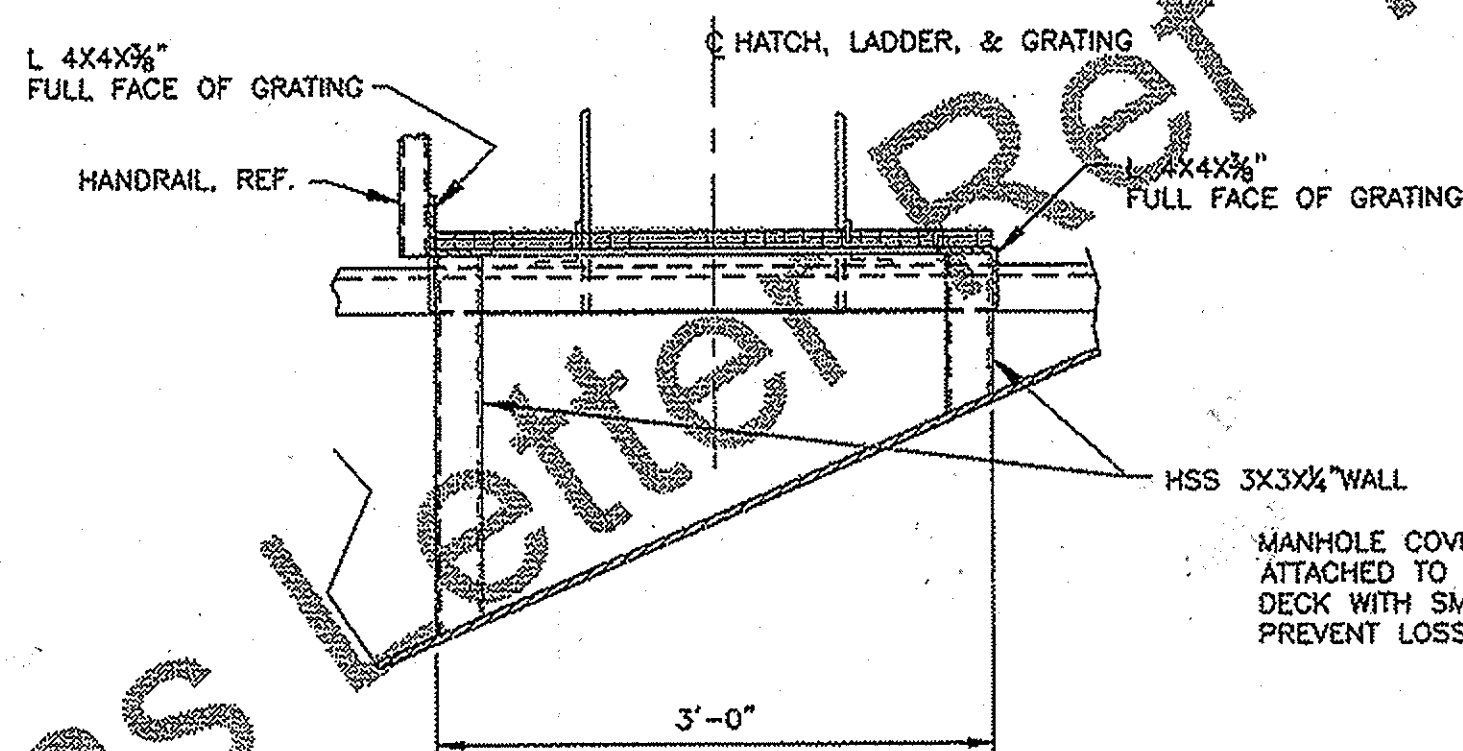


SEE S/B S023 FOR DIMENSIONS AND MATERIAL CALLOUTS NOT SHOWN

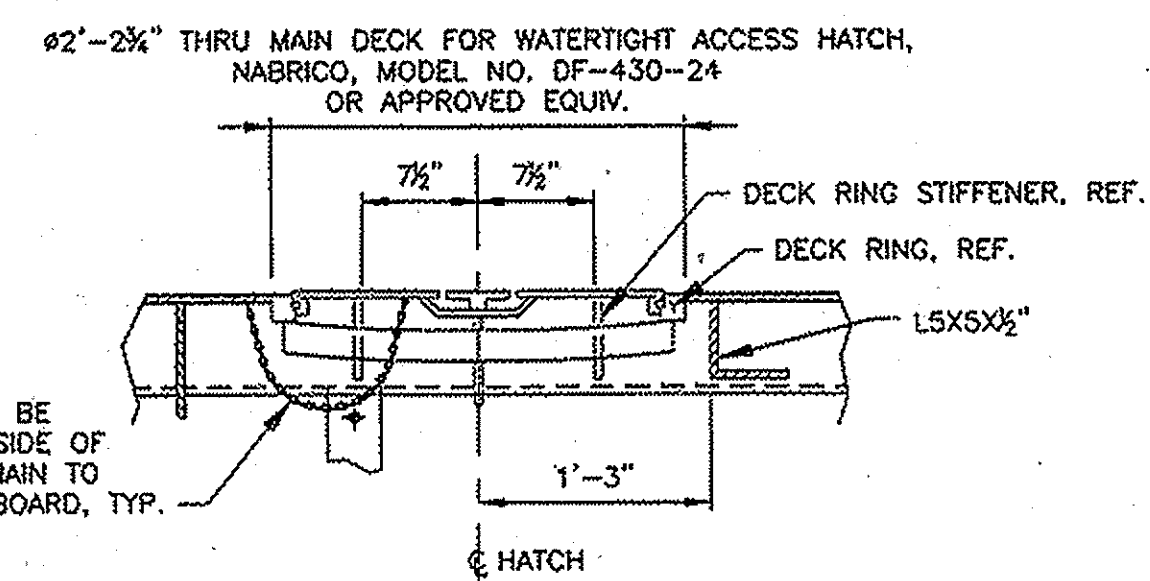
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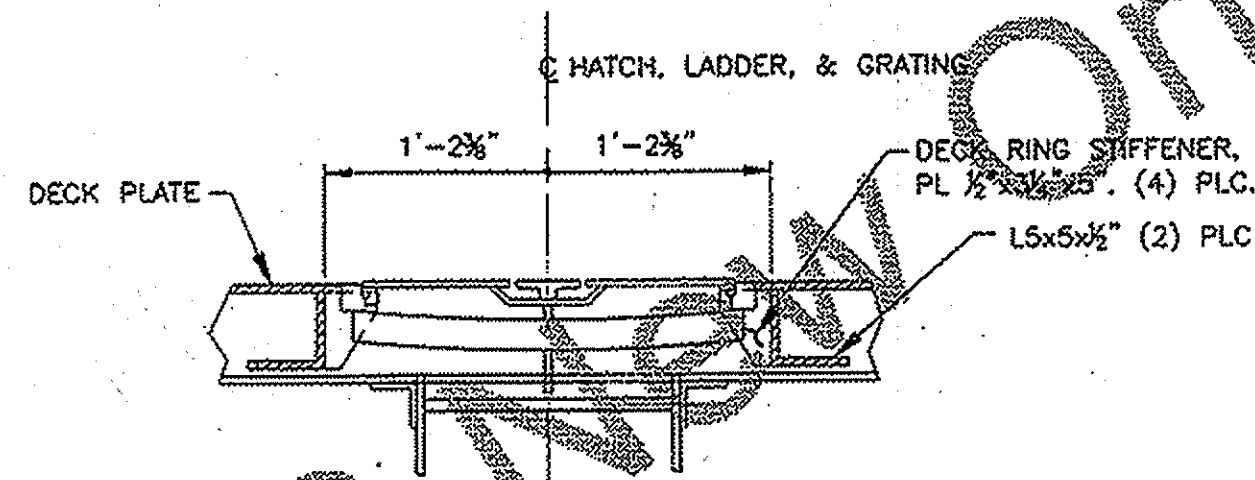
D 2 DETAIL  
S023 SCALE: 1" = 1'-0"



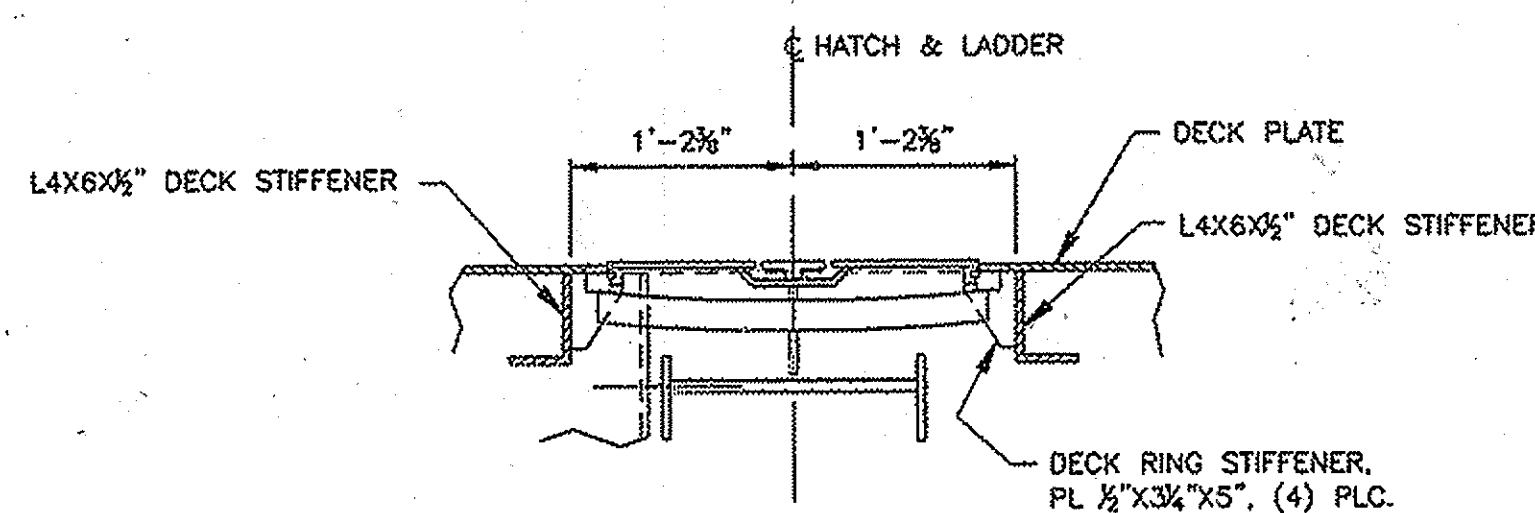
D 4 DETAIL  
S023 SCALE: 1" = 1'-0"



D 6 DETAIL  
S024 SCALE: 1" = 1'-0"



D 3 DETAIL  
S023 SCALE: 1" = 1'-0"



D 5 DETAIL  
S024 SCALE: 1" = 1'-0"

- NOTES:
- MANHOLE COVERS SHALL BE TO ABS SURVEYOR'S SATISFACTION.
  - OTHER ACCEPTABLE HATCH MANUFACTURERS ARE:  
- BAIER MARINE  
- FREEMAN MARINE EQUIPMENT

THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 055767-1



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

MISCELLANEOUS  
DETAILS SHT. 4

This drawing is subject to conditions in contract. All dimensions, sizes, quantities and materials shown are subject to change without notice and may not be used without the written consent of the Port Authority. The Engineer's responsibility is limited to the design of the structure shown and does not extend to the construction or the use of the structure. The Engineer is not responsible for the design of the structure shown if it is used for any purpose other than that for which it was designed. The Engineer is not responsible for the design of the structure shown if it is used for any purpose other than that for which it was designed. The Engineer is not responsible for the design of the structure shown if it is used for any purpose other than that for which it was designed.

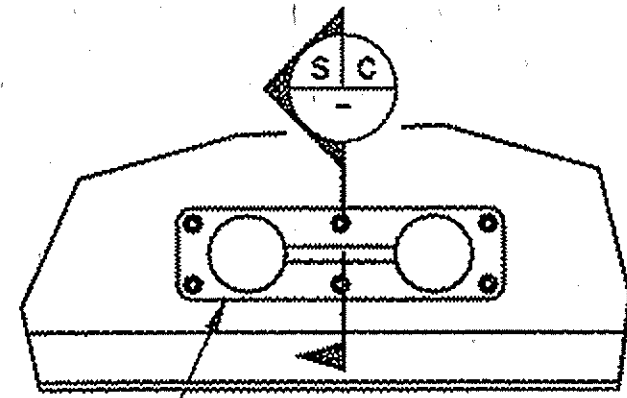
A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

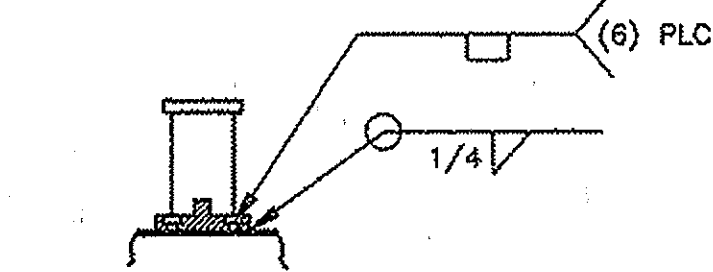
Contract Number NYNJRR-644.528

Drawing Number S026

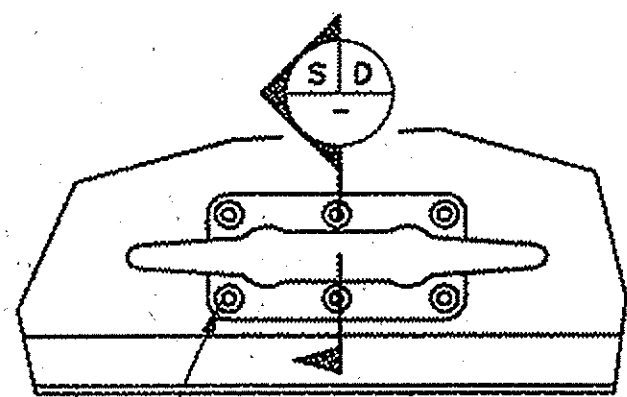
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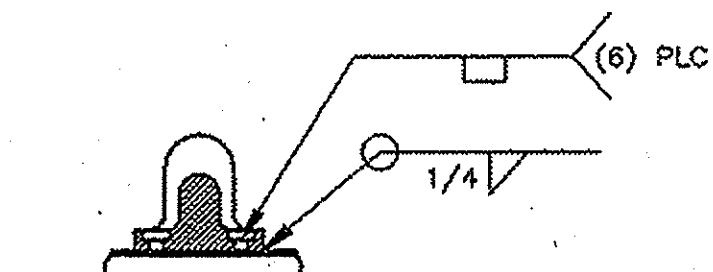
D 2 DETAIL  
S002 SCALE: 1/2" = 1'-0"



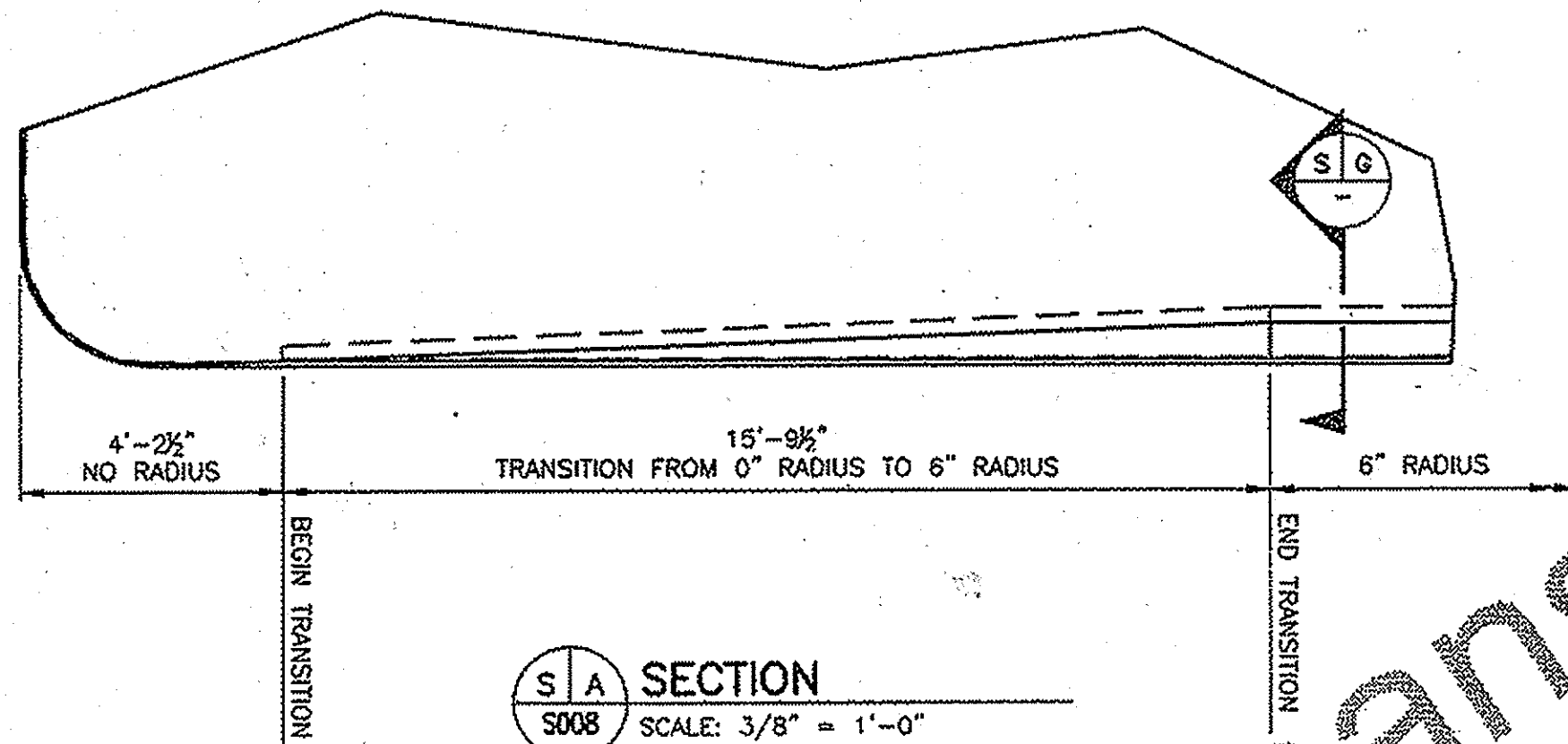
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SCALE: 1/2" = 1'-0"



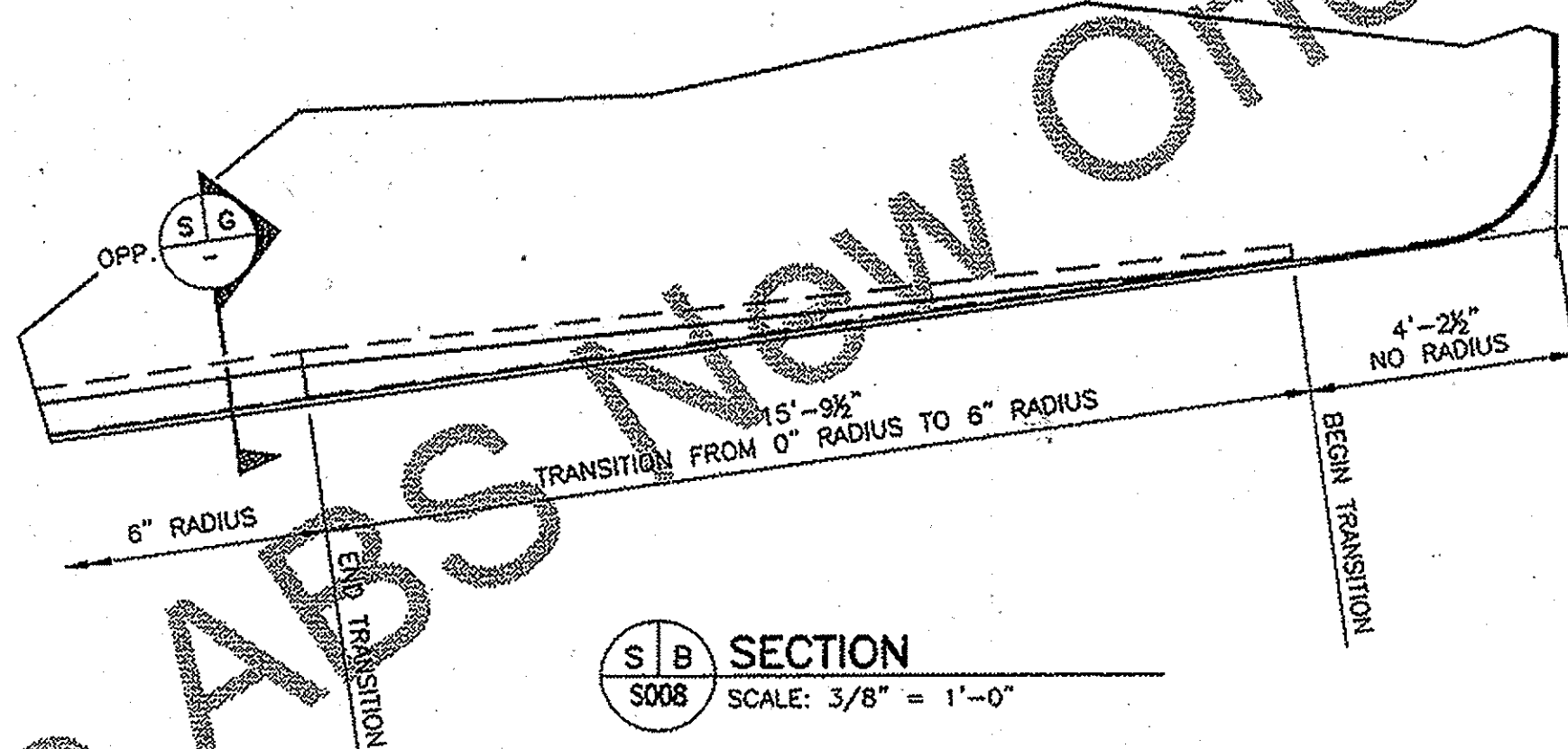
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S002 SCALE: 1/2" = 1'-0"



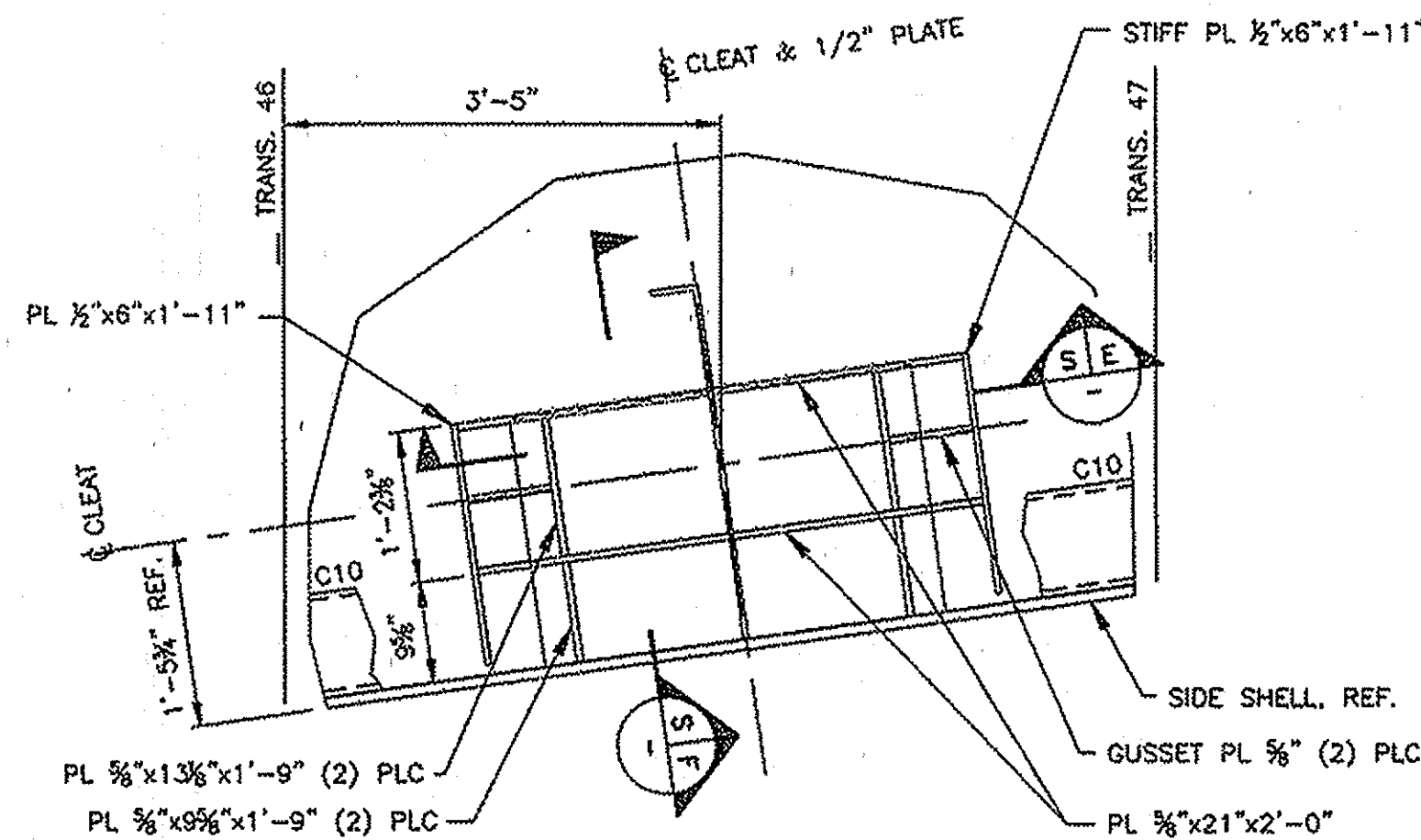
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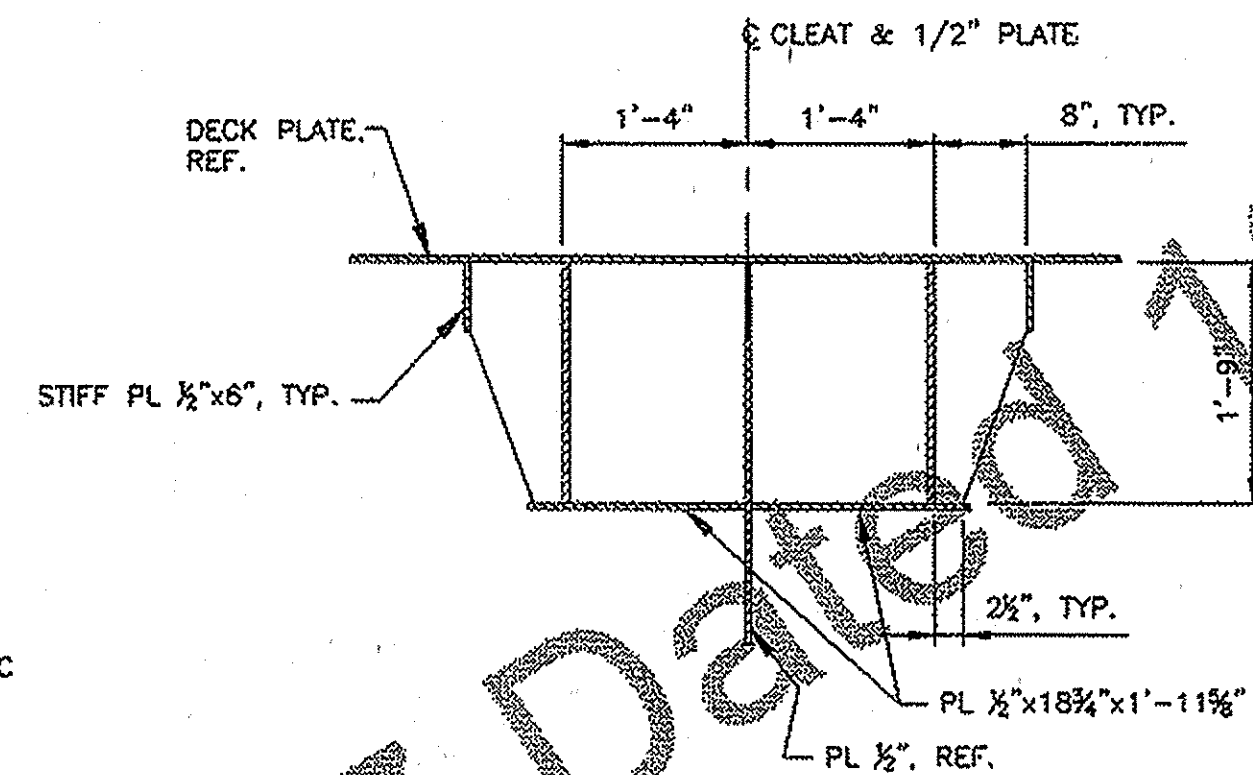
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S008 SCALE: 3/8" = 1'-0"



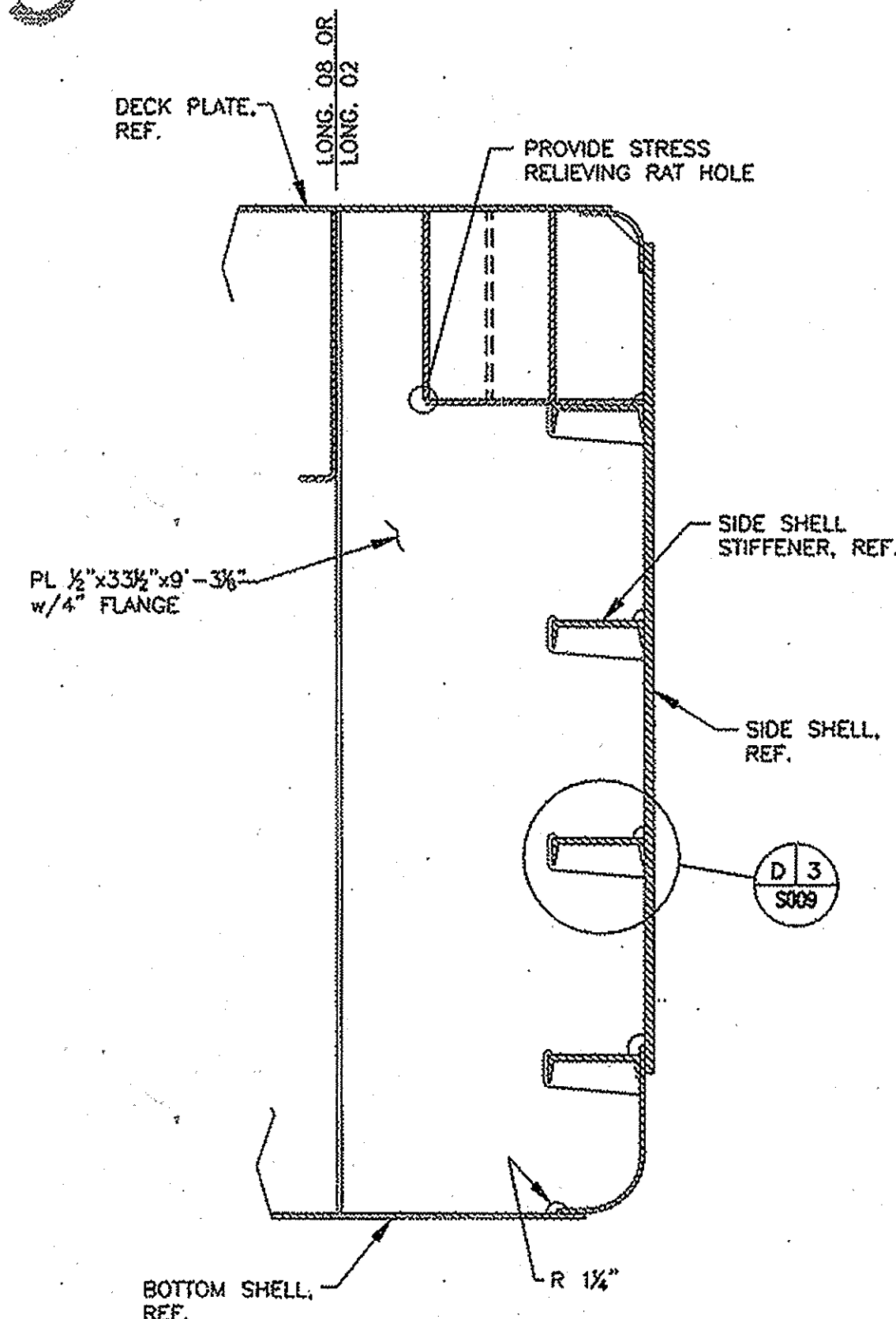
S 1B SECTION  
S008 SCALE: 3/8" = 1'-0"



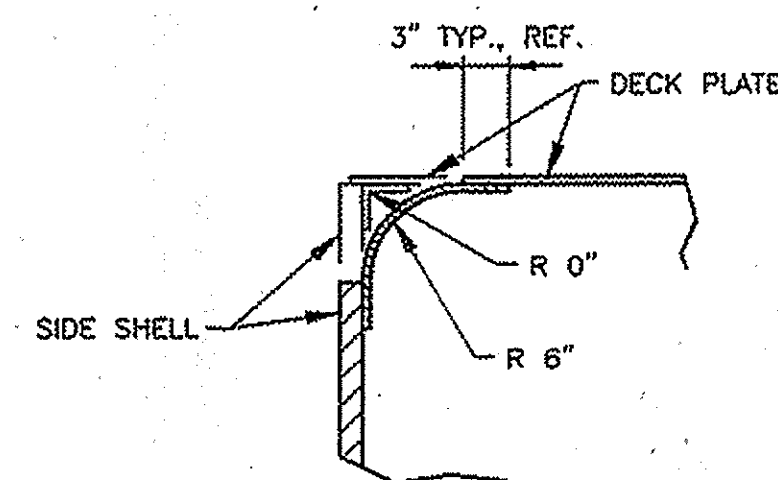
D 4 DETAIL  
S004 SCALE: 3/4" = 1'-0"



S 1E SECTION  
SCALE: 3/4" = 1'-0"



S 1F SECTION  
SCALE: 3/4" = 1'-0"



S 1G SECTION  
SCALE: 1" = 1'-0"



THE PORT AUTHORITY  
OF NY & NJ

WORLEYPARSONS  
NS ENGINEERS

ORIGINAL SEALED AND SIGNED BY

NAZIRUL I. SIDDIQUE, P.E.  
N.Y. Professional Engineer # 056787-1



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND  
NEW JERSEY RAIL,  
LLC

STRUCTURAL

Title  
CONSTRUCTION OF  
TWO RAIL CARFLOATS

MISCELLANEOUS  
DETAILS SHT. 5

This drawing is prepared in accordance with the provisions of the New York and New Jersey Rail, LLC Contract Documents, including Addenda and those who do not conform to the provisions of the Contract Documents shall be rejected. It is a violation of law for any person to alter a document in any way, without the written consent of the Port Authority. If this document is altered, the alteration shall be noted on the drawing and the original shall be retained. Documents may also be returned for disposal purposes to the Contract Documents Unit, 2 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302.

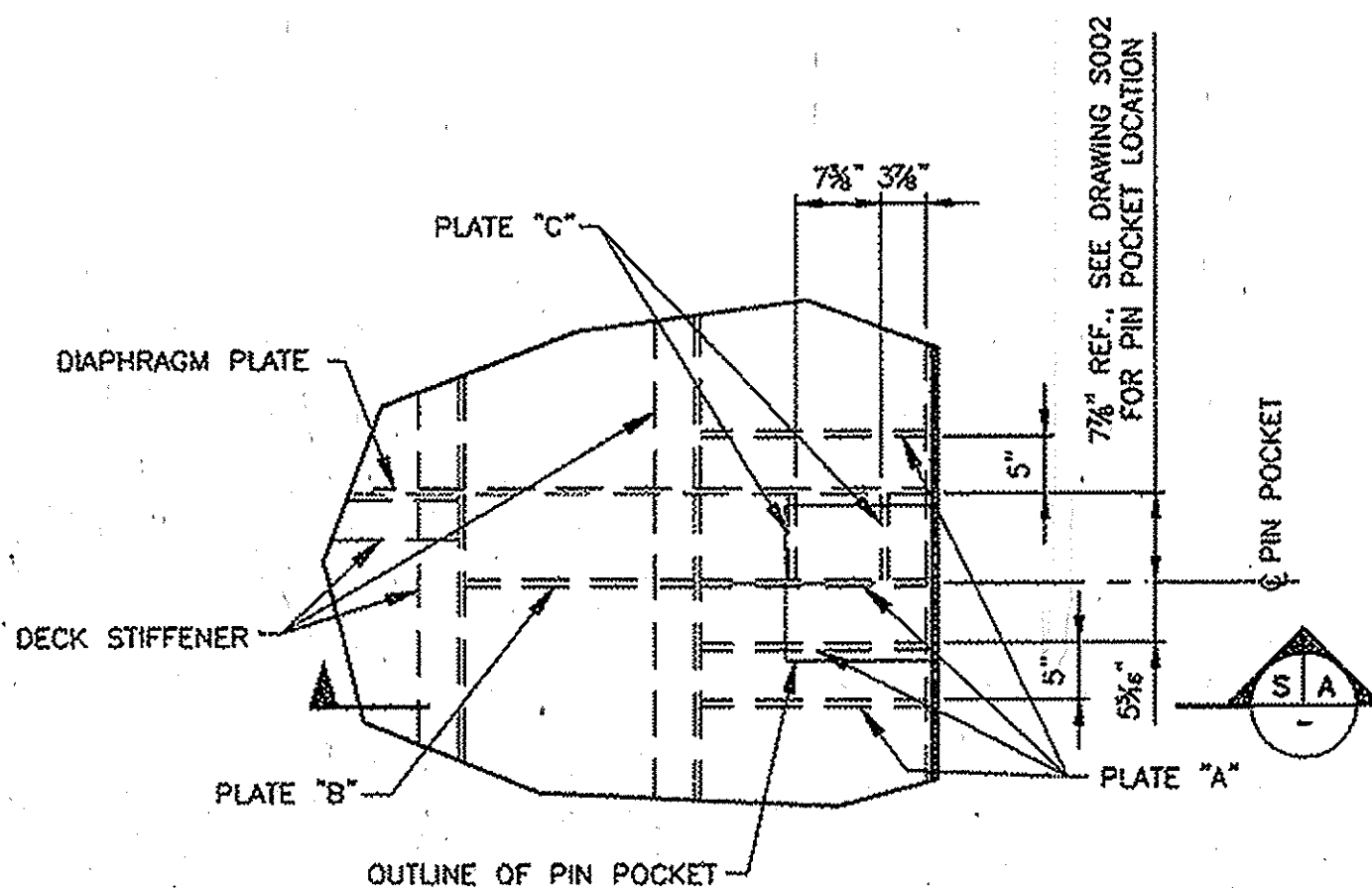
A. ESFANDIARI R. MUNRO J. PETERSON  
Designed by Drawn by Checked by

Date 01/12/2015

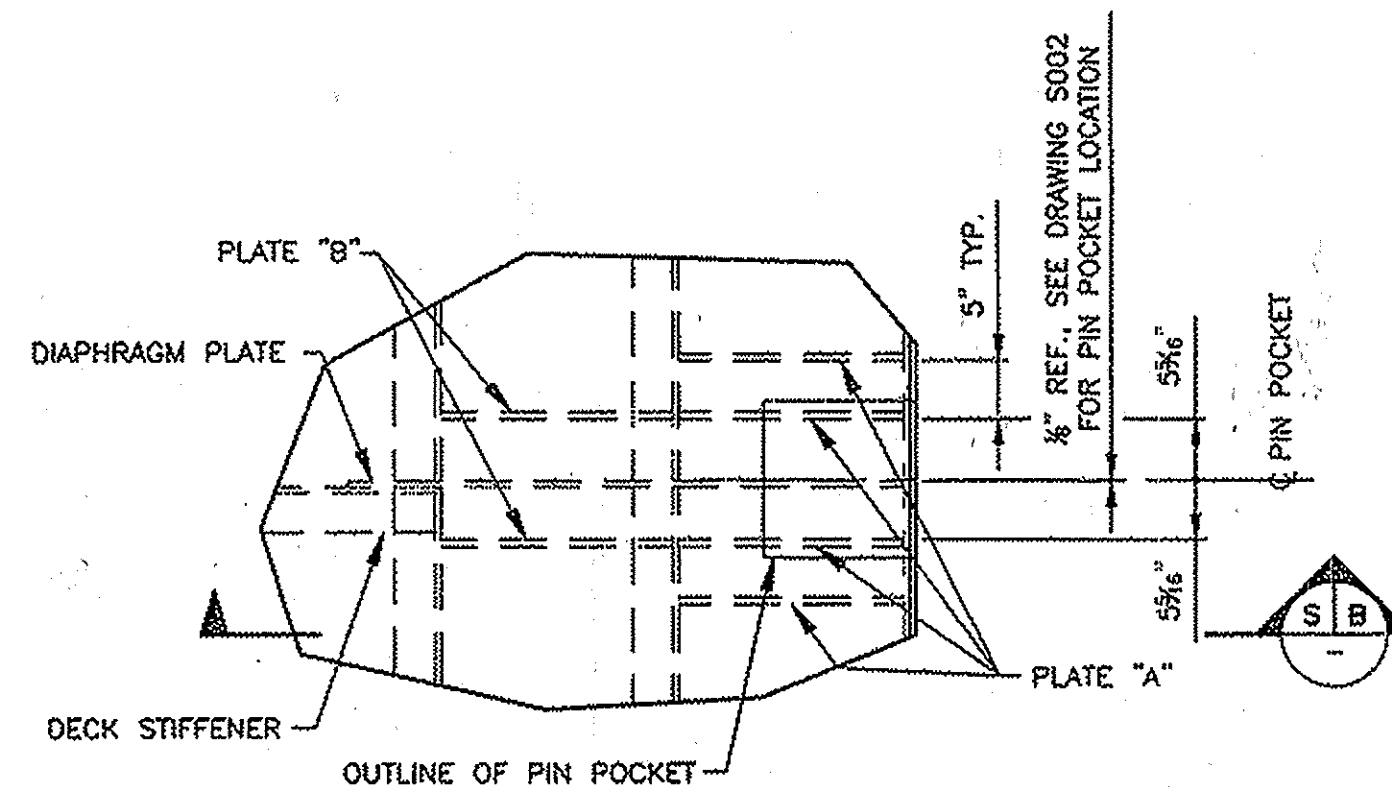
Contract Number NYNJRR-644.528

Drawing Number S027

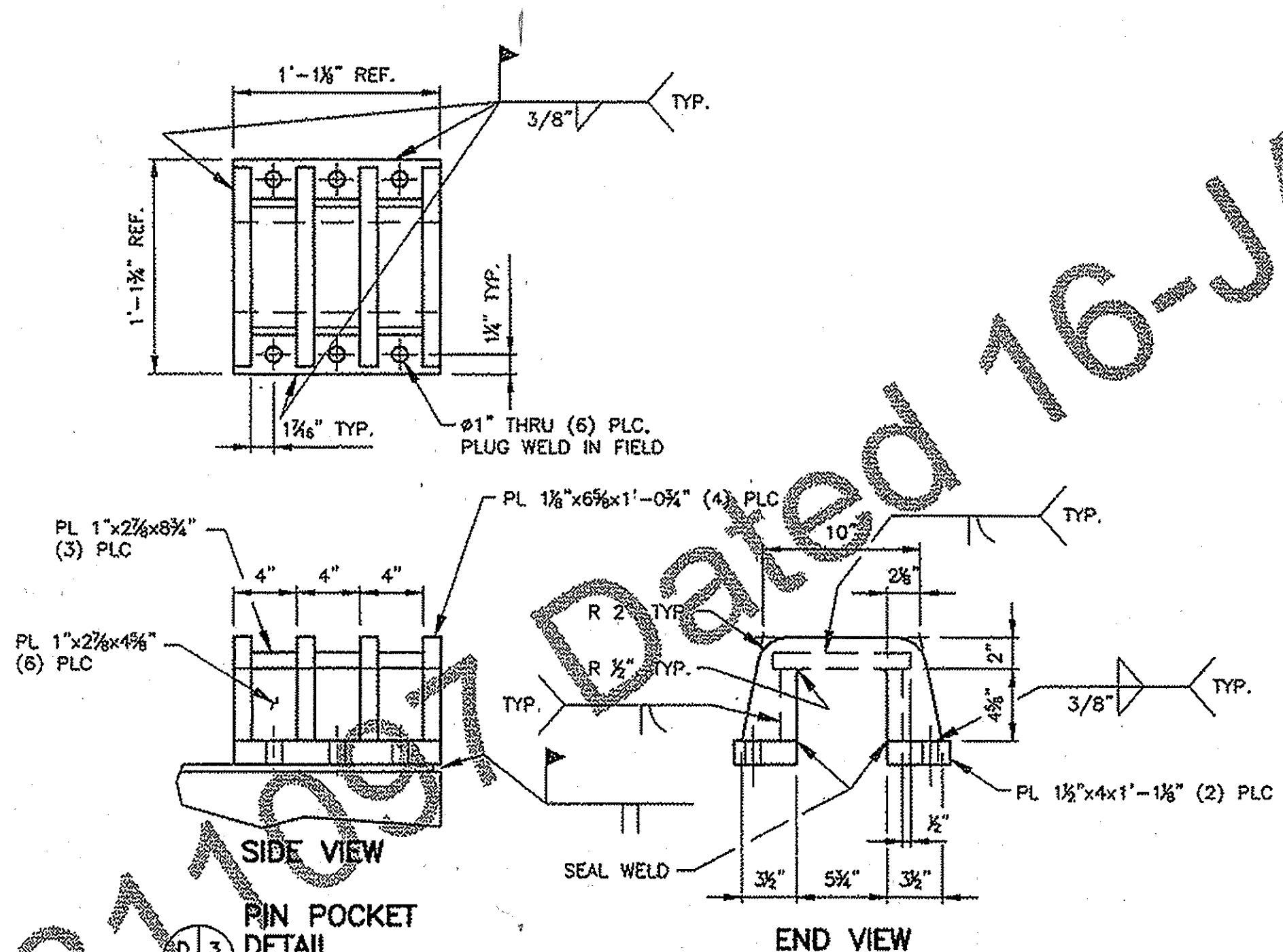
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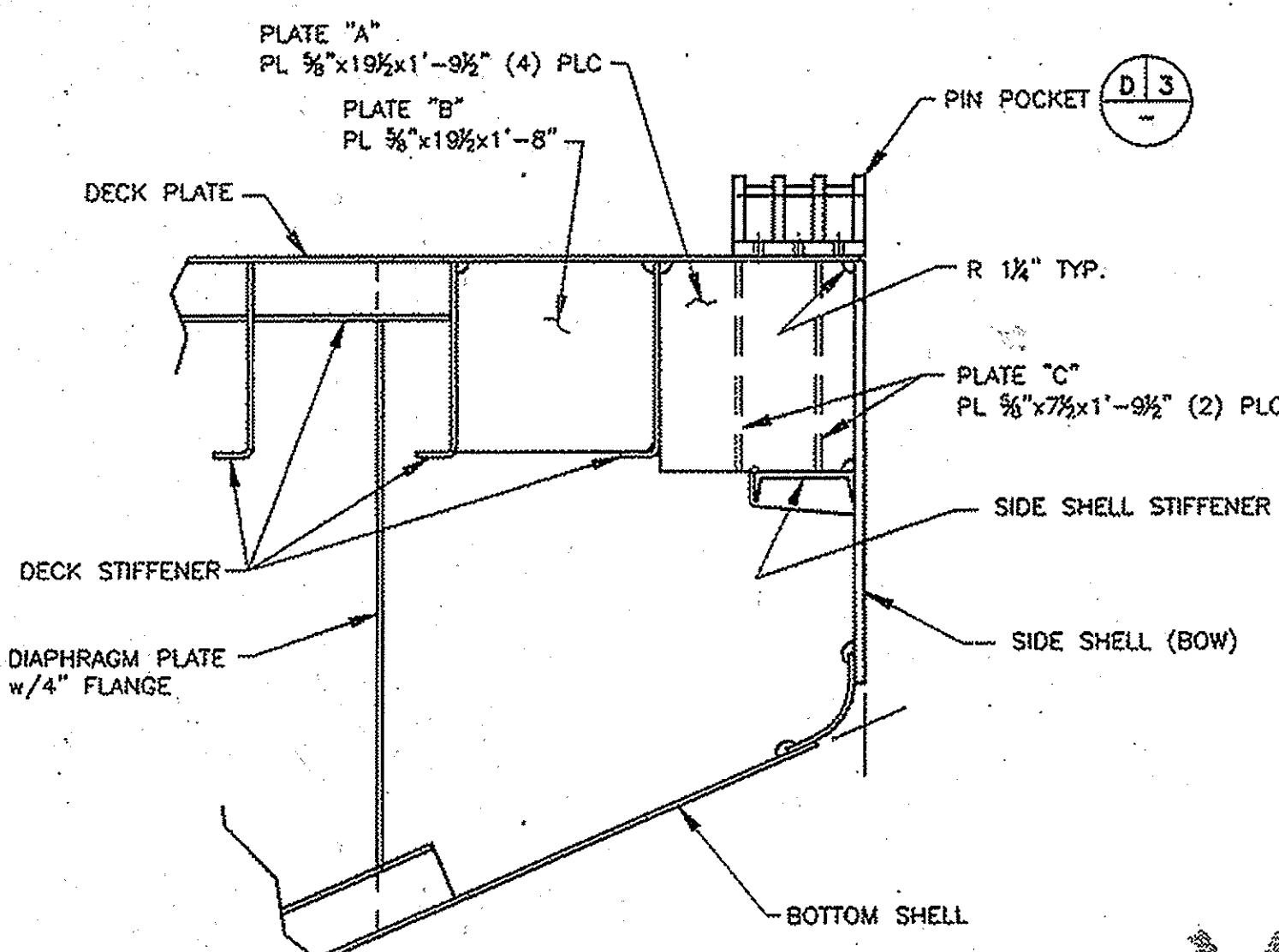
D1 DETAIL  
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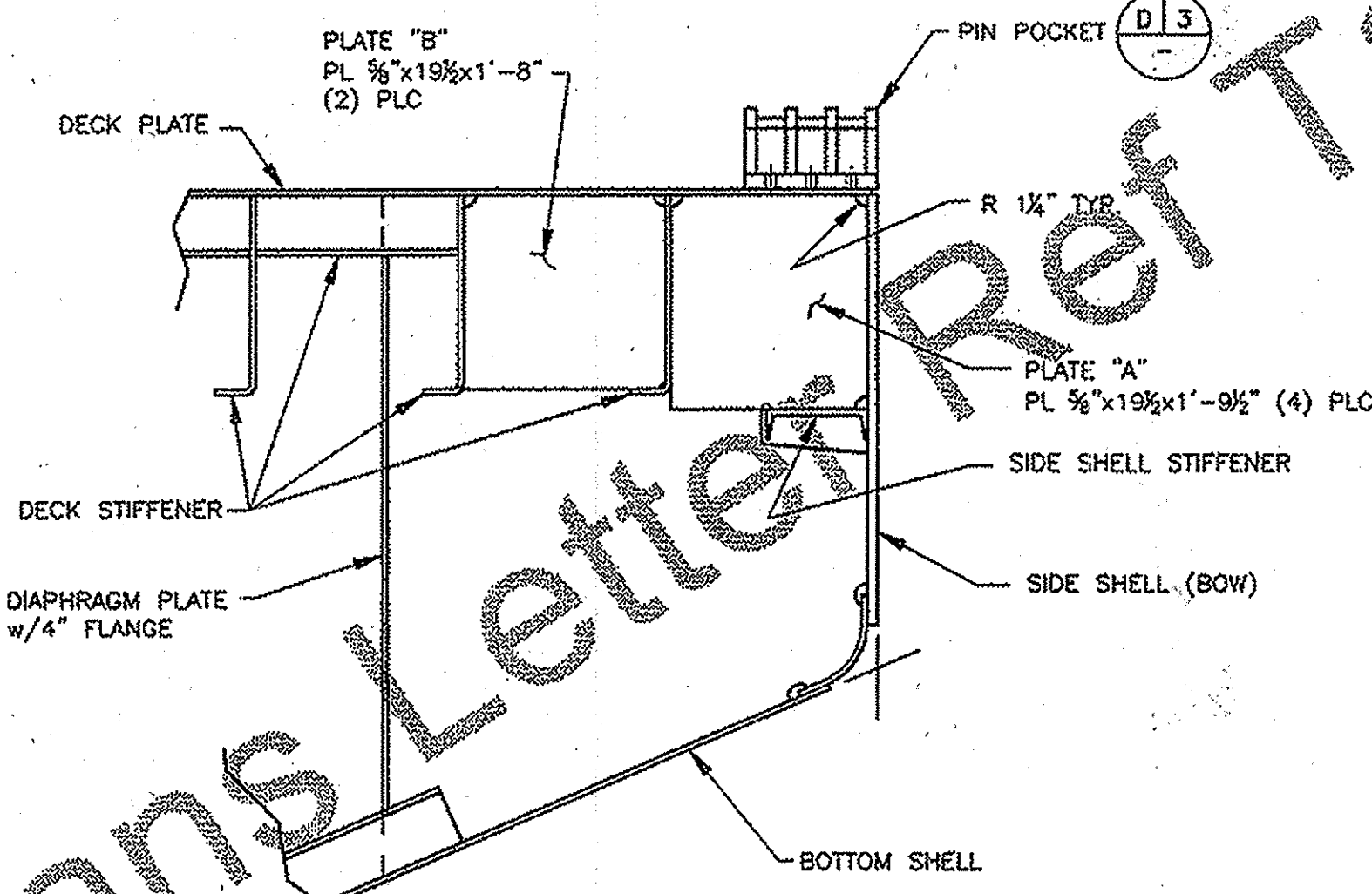
D2 DETAIL  
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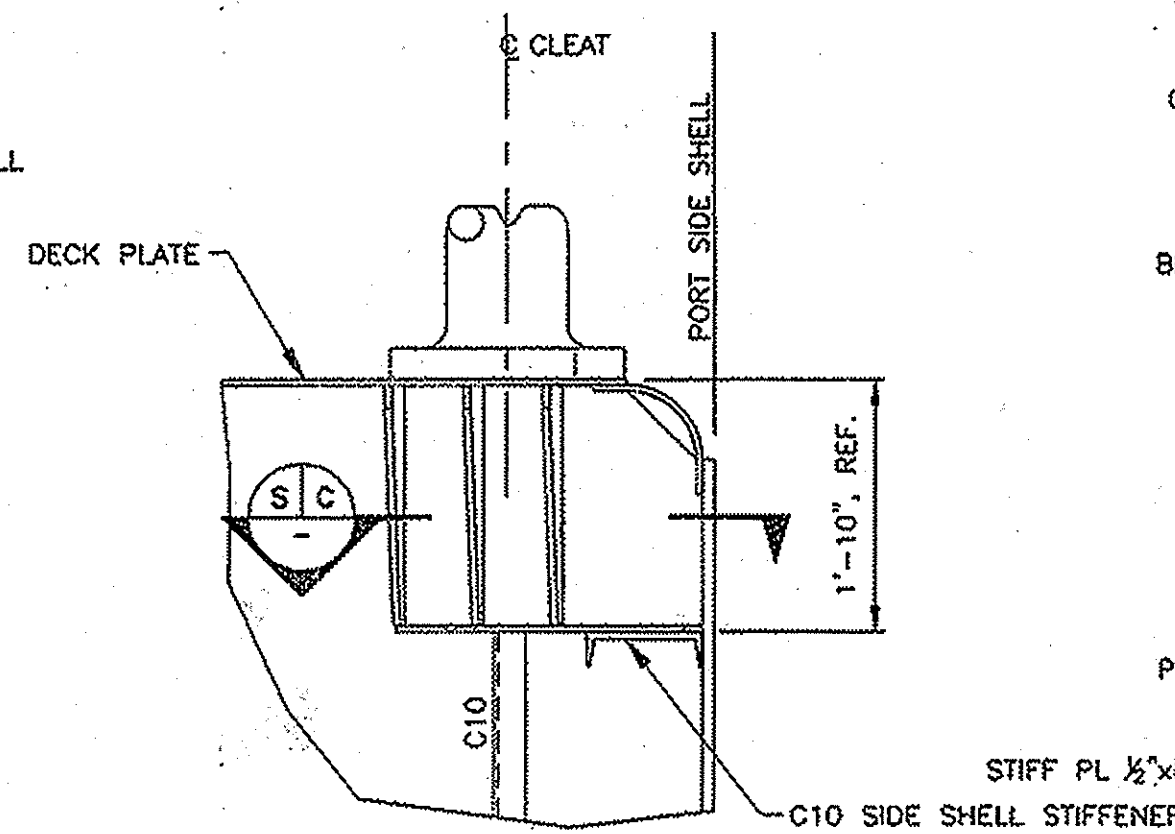
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SCALE: 1 1/2" = 1'-0"  
PIN POCKETS SHALL BE SHIPPED LOOSE AND FILED, ADJUSTED AND WELDED AT SITE.



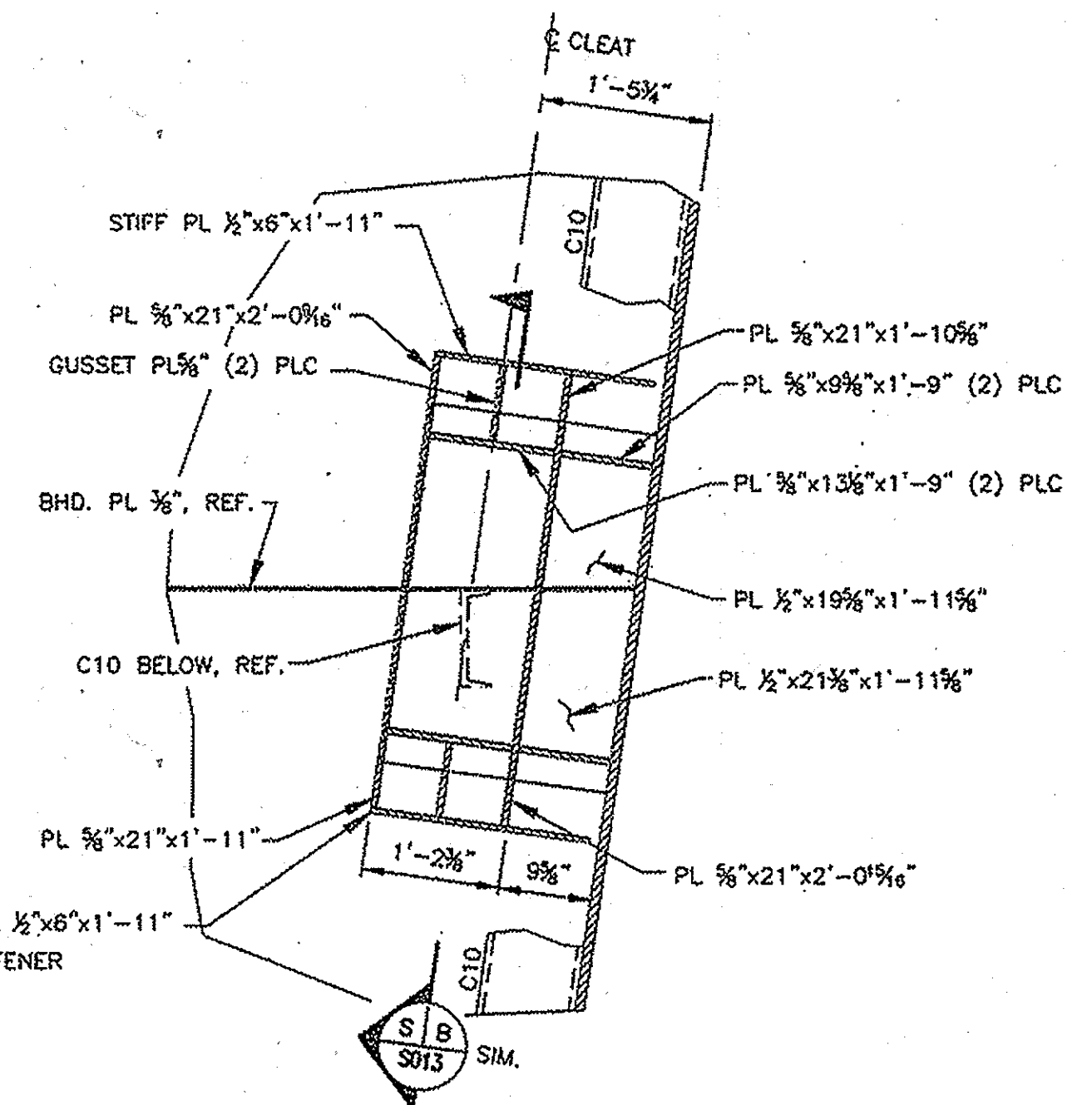
S1 SECTION  
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S2 SECTION  
S004 SCALE: 3/4" = 1'-0"



D3 DETAIL  
S004 SCALE: 3/4" = 1'-0"



S3 SECTION  
S004 SCALE: 3/4" = 1'-0"



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## **STANDARD CONTRACT TERMS AND CONDITIONS**

### **PART I GENERAL DEFINITIONS**

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

Authority or Port Authority - shall mean the Port Authority of New York and New Jersey.

Contract, Document or Agreement - shall mean the writings setting forth the scope, terms, conditions and Specifications for the procurement of Goods and/or Services, as defined hereunder and shall include, but not be limited to: Invitation for Bid (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), Purchase Order (PO), Cover Sheet, executed Signature Sheet, AND PRICING SHEETS with Contract prices inserted," "STANDARD CONTRACT TERMS AND CONDITIONS," and, if included, attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Assistant Director, Commodities and Services Division, Procurement Department..

Days or Calendar Days - shall mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Week - unless otherwise specified, shall mean seven (7) consecutive calendar days, Saturdays, Sundays, and holidays.

Month - unless otherwise specified, shall mean a calendar month.

Director - shall mean the Director of the Department which operates the facility of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, or one of his/her authorized representatives for the purpose of this Contract.

Manager - shall mean the Manager of the Facility for the time being, or his successor in duties for the purpose of this Contract, or his duly authorized representative for the purpose of this Contract.

No person shall be deemed a representative of the Director or Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director or Manager, as the case may be. Further, no person shall be deemed a successor in duties of the Director unless the Contractor is so notified in writing signed by the Assistant Director, Commodities & Services Division, Procurement Department. No person shall be deemed a successor in duties of the Manager unless the Contractor is so notified in a writing signed by the Director.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Minority Group" means any of the following racial or ethnic groups:

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;



- (d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;
- o Average gross income limitations by industry as established by the Port Authority.

Subcontractor - shall mean anyone who performs work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services. "Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens.

Work - shall mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

## **PART II GENERAL PROVISIONS**

### **1. Facility Rules and Regulations of The Port Authority**

- a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of the Port Authority now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. The Port Authority agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.
- b. A copy of the facility Rules and Regulations of the Port Authority shall be available for review by the Contractor at the Office of the Secretary of the Port Authority.

### **2. Contractor Not An Agent**

This Agreement does not constitute the Contractor the agent or representative of the Port Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all



times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be deemed to be agents, servants or employees of the Port Authority.

### **3. Contractor's Warranties**

The Contractor represents and warrants:

- a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;
- c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;
- d. That no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;
- e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

Moreover, the Contractor accepts the conditions at the Site of the Work as they may eventually be found to exist and warrants and represents that it can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at its own cost and expense, anything in this Contract to the contrary notwithstanding.

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by the Port Authority as to the feasibility of performance of this Contract or any part thereof.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Port Authority to review thoroughly all documents forming this Contract prior to opening of Bids on this Contract in order that it might request inclusion in this Contract of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that it expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to the Port Authority's consent to enter into this Contract and that without such provisions, the Authority would not have entered into this Contract.

#### **4. Personal Non-Liability**

Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

#### **5. Equal Employment Opportunity, Affirmative Action, Non-Discrimination**

- a. The Contractor is advised to ascertain and comply with all applicable federal, State and local statutes, ordinances, rules and regulations and, federal Executive Orders, pertaining to equal employment opportunity, affirmative action, and non-discrimination in employment.
- b. Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non-compliance with the equal opportunity and non-discrimination clause of this Contract, or with any of such statutes, ordinances, rules, regulations or Orders, this Contract may be cancelled, terminated or suspended in whole or in part.

#### **6. Rights and Remedies of the Port Authority**

The Port Authority shall have the following rights in the event the Contractor is deemed guilty of a breach of any term whatsoever of this Contract:

- a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.
- b. The right to cancel this Contract as to any or all of the Work yet to be performed.
- c. The right to specific performance, an injunction or any appropriate equitable remedy.
- d. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of the Port Authority indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of the Port Authority shall not be deemed to limit any other rights or remedies which the Authority would have in the absence of such enumeration; and no exercise by the Authority of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to estop it from exercising such other rights or remedies.

#### **7. Rights and Remedies of the Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Port Authority, the Contractor expressly agrees that no default, act or omission of the Port Authority shall constitute a material breach of this Contract, entitling the Contractor to cancel or rescind this Contract or to suspend or abandon performance.

#### **8. Submission To Jurisdiction**

The Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address

of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if the Contractor be a partnership or to any officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

## **9. Harmony**

- a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of the Port Authority or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of the Port Authority, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as the Port Authority deems necessary and without cost to the Port Authority. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to the Port Authority under this Contract or otherwise.

- b. During the time that the Contractor is performing the Contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.

The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of the Port Authority and the public as may be directed by the Port Authority.

## **10. Claims of Third Persons**

The Contractor undertakes to pay all claims lawfully made against it by subcontractors, suppliers and workers, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims

lawfully made against them.

#### **11. No Third Party Rights**

Nothing contained in this Contract is intended for the benefit of third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action."

#### **12. Provisions of Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

#### **13. Costs Assumed By The Contractor**

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service or otherwise under this Agreement shall be borne by the Contractor or without compensation or reimbursement from the Port Authority, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall the Port Authority be liable to any third party (including the Contractor's employees) for any such costs and expenses incurred by the Contractor and under no circumstances shall the Port Authority be liable to the Contractor for the same, except as specifically set forth in this Section.

#### **14. Default, Revocation or Suspension of Contract**

a. If one or more of the following events shall occur:

1. If fire or other cause shall destroy all or a substantial part of the Facility.
2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of the Port Authority's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of revocation as if said date were the date of the expiration of this Contract. Such revocation shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

b. If one or more of the following events shall occur:

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of

its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right upon five (5) days notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

c. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or
2. The Contractor shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or during the continuance thereof, the Port Authority shall have the right on twenty four (24) hours notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities which shall have accrued on or prior to the effective date of termination.

- d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.
- e. No payment by the Port Authority of any monies to the Contractor for any period or periods after

default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.

- f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.
- g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.
- h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port Authority shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the

delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

- i. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- j. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- k. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

#### **15. Sales or Compensating Use Taxes**

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). Therefore, the Port Authority's purchase of the Contractor's services under this Contract is exempt from Taxes. Accordingly, the Contractor must not include Taxes in the price charged to the Port Authority for the Contractor's services under this Contract. The Contractor certifies that there are no such taxes included in the prices for this Contract. The Contractor shall retain a copy of this Contract to substantiate the exempt sale.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and the Port Authority will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

#### **16. No Estoppel or Waiver**

The Port Authority shall not be precluded or estopped by any payment, final or otherwise, issued or made under this Contract, from showing at any time the true amount and character of the services performed, or from showing that any such payment is incorrect or was improperly issued or made; and the Port Authority shall not be precluded or estopped, notwithstanding any such payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with this Contract, and any moneys which may be paid to it or for its account in excess of those to which it is lawfully entitled.

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach hereof, shall be deemed a waiver of any money damages to which the Port Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

#### **17. Records and Reports**

The Contractor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and maintain) in accordance with generally accepted accounting practice during the term of this Agreement and



any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the Contractor (and its subcontractors), at, through or in any way connected with or related to the operations of the Contractor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors' employees) and such additional information as the Port Authority may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The Contractor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor anywhere in the Port District. However, if within the aforesaid three year period the Port Authority has notified the Contractor in writing of a pending claim by the Port Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

Upon request of the Port Authority, the Contractor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing work under this Contract. This includes citizens and noncitizens.

The Contractor (and its subcontractors) shall, at its own expense, install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the general manager or the Facility Manager may from time to time require, and the Contractor (and its subcontractors) shall at all reasonable times allow inspection by the agents and employees of the Port Authority of all such equipment or devices.

- a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.
- b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

## **18. General Obligations**

- a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Manager at the Facility.
- b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations

under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements are not to be construed as a submission by the Port Authority to the application to itself of such requirements.

- c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.
- d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Manager.
- e. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

The Contractor shall not do or permit to be done any act which:

- 1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or
  - 2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or
  - 3. in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or
  - 4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or
  - 5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or
  - 6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.
- f. If by reason of the Contractor's failure to comply with the provisions of this Section and provided the Port Authority has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay the Port Authority that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by the Port Authority which shall have been charged because of such violations by the Contractor.
  - g. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of the Port Authority and shall conduct operations hereunder in a courteous, efficient and safe manner.
  - h. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first

aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

## **19. Assignments and Subcontracting**

- a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.
- b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.
- c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

## **20. Indemnification and Risks Assumed By The Contractor**

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including Contractor's employees, employees, officers, and agents of the Port Authority) arising out of or in any way connected or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of the Contractor under this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Contractor, the Port Authority, third persons (including Contractor's employees, employees, officers, and agents of the Port Authority), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons (including Contractor's employees, employees, officers, and agents of the Port Authority) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

- a. The risk of any and all loss or damage to Port Authority property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority the cost thereof.
- b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.
- c. The risk of claim, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile

equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.

- d. The risk of claims for injuries, damage or loss of any kind just or unjust of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

## **21. Approval of Methods**

Neither the approval of the Port Authority of the methods of furnishing services hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of the Port Authority to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

## **22. Safety and Cleanliness**

- a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.
- b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Manager.
- c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by the Port Authority for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of the Port Authority which are located in said facilities.

## **23. Accident Reports**

The Contractor shall promptly report in writing to the Manager of the Facility and to the Deputy Chief, Litigation Management of the Port Authority all accidents whatsoever arising out of or in connection with its operations hereunder and which result in death or injury to persons or damage to property, setting forth such details thereof as the Port Authority may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of the Port Authority.

## **24. Trash Removal**

The Contractor shall remove daily from the Facility by means provided by the Contractor all garbage, debris and other waste material (solid or liquid) arising out of or in connection with its operations hereunder, and any such garbage, debris and other waste material not immediately removed shall be temporarily stored in a clear and sanitary condition, approved by the Facility Manager and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall always be subject in all respects to the continual approval of the Port Authority. No equipment or facilities of the Port Authority shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

## **25. Lost and Found Property**

The Contractor shall instruct its personnel that all items of personal property found by the Contractor's employees at the Site must be turned in to the Port Authority and a receipt will be issued therefor.

## **26. Property of the Contractor**

- a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.
- b. If the Contractor shall fail to remove its property upon the expiration, termination or revocation of this Contract the Port Authority may, at its option, dispose of such property as waste or as agent for the Contractor and at the risk and expense of the Contractor, remove such property to a public warehouse, or may retain the same in its own possession, and in either event after the expiration of thirty (30) days may sell the same in accordance with any method deemed appropriate; the proceeds of any such sale shall be applied first, to the expenses of sale and second, to any sums owed by the Contractor to the Port Authority; any balance remaining shall be paid to the Contractor. Any excess of the total cost of removal, storage and sale and other costs incurred by the Port Authority as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to the Port Authority upon demand.

## **27. Modification of Contract**

This Contract may not be changed except in writing signed by the Port Authority and the Contractor. The Contractor agrees that no representation or warranties shall be binding upon the Port Authority unless expressed in writing in this Contract.

## **28. Invalid Clauses**

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

## **29. Approval of Materials, Supplies and Equipment**

Only Port Authority approved materials, supplies, and equipment are to be used by the Contractor in performing the Work hereunder. Inclusion of chemical containing materials or supplies on the Port Authority Approved Products List – Environmental Protection Supplies constitutes approval. The list may be revised from time to time and at any time by the Port Authority and it shall be incumbent upon the Contractor to obtain the most current list from the Manager of the Facility.

At anytime during the Solicitation, pre-performance or performance periods, the Contractor may propose the use of an alternate product or products to those on the Approved Products List – Environmental Protection Supplies, which product(s) shall be subject to review and approval by the Port Authority. Any alternate

product so approved by the Port Authority may be used by the Contractor in performing the Services hereunder. Until such approval is given, only products on the Approved Products List – Environmental Protection Supplies may be used.

### **30. Intellectual Property**

The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks, copyrights and trade secrets, collectively hereinafter referred to as “Intellectual Property Rights”, in the performance of the work, shall be obtained by the Contractor without separate or additional compensation. Where the services under this Agreement require the Contractor to provide materials, equipment or software for the use of the Port Authority or its employees or agents, the Port Authority shall be provided with the Intellectual Property Rights required for such use without further compensation than is provided for under this Agreement.

The Contractor shall indemnify the Port Authority against and save it harmless from all loss and expense incurred as a result of any claims in the nature of Intellectual Property Rights infringement arising out of the Contractor’s or Port Authority’s use, in accordance with the above immediately preceding paragraph, of any Intellectual Property. The Contractor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Contractor or the Port Authority, its employees or agents be enjoined either temporarily or permanently from the use of any subject matter as to which the Contractor is to indemnify the Port Authority against infringement, then the Port Authority may, without limiting any other rights it may have, require the Contractor to supply temporary or permanent replacement facilities approved by the Manager, and if the Contractor fails to do so the Contractor shall, at its expense, remove all such enjoined facilities and refund the cost thereof to the Port Authority or take such steps as may be necessary to insure compliance by the Contractor and the Port Authority with said injunction, to the satisfaction of the Port Authority.

In addition, the Contractor shall promptly and fully inform the Director in writing of any intellectual property rights disputes, whether existing or potential, of which it has knowledge, relating to any idea, design, method, material, equipment or any other matter related to the subject matter of this Agreement or coming to its attention in connection with this Agreement.

### **31. Contract Records and Documents – Passwords and Codes**

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of the Port Authority, and the Port Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.

### **32. Designated Secure Areas**

Services under the Contract may be required in designated secure areas, as the same may be designated by the Manager from time to time (“Secure Areas”). The Port Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel designated by the Contractor or any subcontractor’s personnel required to

work therein. All personnel that require access to designated secure areas who are not under positive escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Contractor shall notify the Manager. The Contractor shall conform to the procedures as may be established by the Manager from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of work, the Contractor shall request a description from the Manager of the Secure Areas which will be in effect on the commencement date. The description of Secure Areas may be changed from time to time and at any time by the Manager during the term of the Contract.

### **33. Notification of Security Requirements**

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems, and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to certain documents, sensitive security construction sites and facilities (including rental spaces) to any person that declines to abide by Port Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise poses a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, or may make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Port Authority Approved Non-disclosure Agreements

At the direction of the Port Authority, the Contractor shall be required to have its principals, staff and/or subcontractor(s) and their staff, execute Port Authority approved non-disclosure agreements.

- Contractor/ Subcontractor identity checks and background screening

The Port Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like.

The Contractor may be required to have its staff, and any subcontractor's staff, material-men, visitors or others over whom the Contractor/subcontractor has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Contractor and subcontractors may also be required to use an organization designated by the Authority to perform the background checks.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person will be permitted on or about the Authority construction site or facility (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the authority requires facility-specific identification credential for the Contractor's and the subcontractor's



staff, the Authority will supply such identification at no cost to the Contractor or its subcontractors. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Contractor or subcontractor to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Contractor or subcontractor shall be billed for the cost of the replacement identification credential. Contractor's and subcontractor's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, un laminated social security card for identify and SSN verification. Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identify verification for all employees of the Contractor and subcontractors shall be completed prior to being provided a S.W.A.C. ID Photo Identification credential.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Contractor, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at the Authority construction sites or facilities (including rental spaces), except when necessary to perform the Work under this Contract, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction site or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

The Contract may require access to Port Authority information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, corrected as of November 14, 2013, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:

- (1) require that the Contractor and subcontractors, when appropriate, sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Protected Information categorized and protected as per the Handbook;
- (2) require that individuals needing access to PI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.
- (3) require Contractors and commercial enterprises to attend training to ensure security awareness regarding Port Authority information;
- (4) specific guidelines and requirements for the handling of PI to ensure that the storage and protection of PI;
- (5) restrictions on the transfer, shipping, and mailing of PI;
- (6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing PI on websites or web pages. This may also include

- restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to PI, from viewing such information;
- (7) require that PI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;
  - (8) require the Contractor to mandate that each of its subcontractors maintain the same levels of security required of the Contractor under any Port Authority awarded contract.
  - (9) prohibit the publication, exchange or dissemination of PI developed from the project or contained in reports, except between Contractors and subcontractors, without prior approval of the Port Authority;
  - (10) require that PI only be reproduced or copied pursuant to the requirements set forth in the Handbook.

· **Audits for Compliance with Security Requirements**

The Port Authority may conduct random or scheduled examinations of business practices under this section entitled "NOTIFICATION OF SECURITY REQUIREMENTS" and the Handbook in order to assess the extent of compliance with security requirements, Protected Information procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

**34. Construction In Progress**

The Contractor recognizes that construction may be in progress at the Facility and may continue throughout the term of this Contract. Notwithstanding, the Contractor shall at all times during the term hereof maintain the same standards of performance and cleanliness as prevails in non-affected areas as required by the standards hereunder.

**35. Permit-Required Confined Space Work**

Prior to commencement of any work, the Contractor shall request and obtain from the Port Authority a description of all spaces at the facility which are permit-required confined spaces requiring issuance of an OSHA permit.

Prior to the commencement of any work in a permit-required confined space at a Port Authority facility requiring issuance of an OSHA permit, the Contractor shall contact the Manager to obtain an Authority Contractor Permit-Required Confined Space Notification form. The notification form must be filled out and submitted prior to commencing permit-required confined space work. All confined space work shall be performed in accordance with all applicable OSHA requirements. The Contractor shall provide its employees with a copy of its own company permit and shall furnish the Port Authority with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

**36. Signs**

Except with the prior written approval of the Port Authority, the Contractor shall not erect, maintain or display any signs or posters or any advertising on or about the Facility.

**37. Vending Machines, Food Preparation**

The Contractor shall not install, maintain or operate on the Facility, or on any other Port Authority property, any vending machines without the prior written approval of the Port Authority. No foods or beverages shall be prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by the Port Authority for such purpose.

### **38. Confidential Information/Non-Publication**

a. As used herein, confidential information shall mean all information disclosed to the Contractor or the personnel provided by the Contractor hereunder which relates to the Authority's and/or PATH's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and/or PATH and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Contractor's Services under this Contract.

b. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of November 14, 2013)*, Protected Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

c. The Contractor shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract.

d. The Contractor shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Port Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the vendor first obtains the written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

### **39. Time is of the Essence**

Time is of the essence in the Contractor's performance of this Contract inasmuch as the Work to be performed will affect the operation of public facilities.

### **40. Holidays**

The following holidays will be observed at the Site:

New Year's Day	Labor Day
Martin Luther King Jr. Day	Columbus Day
Presidents Day	Veterans Day
Memorial Day	Thanksgiving Day
Independence Day	Day After Thanksgiving
Christmas Day	

This list is subject to periodic revision and the Contractor shall be responsible for obtaining all updated lists from the office of the Manager. If any such holiday falls on a Sunday then the next day shall be considered the holiday and/or if any such holiday falls on a Saturday then the preceding day shall be considered the holiday.

#### **41. Personnel Standards**

In addition to any specific personnel requirements that may be required under the clause entitled "Personnel Requirements" in the Specifications, the Contractor (and any Subcontractor) shall furnish competent and adequately trained personnel to perform the Work hereunder. If, in the opinion of the Manager, any employee so assigned is performing their functions unsatisfactorily, they shall be replaced by the Contractor within twenty-four (24) hours following the Contractor's receipt of the Manager's request for such replacement.

All Contractor's employees performing Work hereunder shall have the ability to communicate in the English language to the extent necessary to comprehend directions given by either the Contractor's supervisory staff or by the Manager's staff. Any employee operating a motor vehicle must have a valid driver's license.

The Contractor shall verify that employees working under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program

#### **42. General Uniform Requirements for Contractor's Personnel**

In addition to any specific uniform requirements that may be required by the Specifications, uniforms must be worn at all times during which the Services are being performed hereunder. The Contractor agrees that his/her employees will present a neat, clean and orderly appearance at all times. Uniforms shall include the Contractor's identification badge with picture ID bearing the employee's name. All uniforms, colors, types and styles shall be subject to the prior approval of the Manager. The Contractor will also be responsible for ensuring that its employees are wearing shoes appropriate for the tasks performed. The Manager shall have the right to require removal of any employee who shall fail to wear the proper uniform and shoes, and the exercise of this right shall not limit the obligation of the Contractor to perform the Services or to furnish any required number of employees at a specific location at the Site as specified.

#### **43. Labor, Equipment and Materials Supplied by the Contractor**

The Contractor shall, at all times during the performance of this Contract, furnish all necessary labor, supervision, equipment and materials necessary for the prompt and efficient performance of the Work, whether such materials and equipment are actually employed in the furnishing of the Work or whether incidental thereto.

All materials used by the Contractor in furnishing Work hereunder shall be of such quality as to accomplish the purposes of this Contract and the Services to be furnished hereunder in such manner so as not to damage any part of the Site.

The Port Authority by its officers, employees and representatives shall have the right at all times to examine the supplies, materials and equipment used by the Contractor, to observe the operations of the Contractor, its

agents, servants and employees and to do any act or thing which the Port Authority may be obligated or have the right to do under this Contract or otherwise.

All equipment, materials and supplies used in the performance of this Contract required hereunder shall be used in accordance with their manufacturer's instructions.

Materials and supplies to be provided by the Contractor hereunder shall comply with OSHA and all applicable regulations.

#### **44. Contractor's Vehicles – Parking - Licenses**

At the discretion of the Manager, the Port Authority may permit the Contractor during the effective period of this Contract to park vehicle(s) used by it in its operations hereunder in such location as may from time to time or at any time be designated by the Manager. The Contractor shall comply with such existing rules, regulations and procedures as are now in force and such reasonable future rules, regulations and procedures as may hereafter be adopted by the Port Authority for the safety and convenience of persons who park automotive vehicles in any parking area at the Site or for the safety and proper persons who park automotive vehicles in any parking area at the Site or for the safety and proper identification of such vehicles, and the Contractor shall also comply with any and all directions pertaining to such parking which may be given from time to time and at any time by the Manager. Any vehicle used by the Contractor hereunder shall be marked or placarded, identifying it as the Contractor's vehicle.

#### **45. Manager's Authority**

In the performance of the Work hereunder, the Contractor shall conform to all orders, directions and requirements of the Manager and shall perform the Work hereunder to the satisfaction of the Manager at such times and places, by such methods and in such manner and sequence as he/she may require, and the Contract shall at all stages be subject to his/her inspection. The Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Specifications and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or staff or personnel to which the Manager objects. Upon request, the Manager shall confirm in writing any oral order, direction, requirement or determination.

The Manager shall have the authority to decide all questions in connection with the Services to be performed hereunder. The exercise by the Manager of the powers and authorities vested in him/her by this section shall be binding and final upon the Port Authority and the Contractor.

#### **46. Price Preference**

If this solicitation has not been set aside for the purposes of making an award based on bids solicited from Port Authority certified Minority Business, Women Business or Small Business Enterprises as indicated by the bidder pre-requisites in Part II hereof, for awards of contracts, not exceeding \$1,000,000, for:

(a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or

(b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (M/WBE),

certified by the Port Authority by the day before the bid opening.

If the Bidder is a Port Authority certified MBE, WBE or SBE, enter the applicable date(s) certification was obtained in the space provided on the Signature Sheet attached hereto.

#### **47. M/WBE Good Faith Participation**

If specified as applicable to this Contract, the Contractor shall use every good-faith effort to provide for participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as herein defined, in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include the following:

- a. Dividing the services and materials to be procured into small portions, where feasible.
- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.
- c. Soliciting services and materials from a Port Authority certified MBE/WBE or seeking MBEs/WBEs from other sources. To access the Port Authority's Directory of MBE/WBE Certified Firms go to [www.panynj.gov/supplierdiversty](http://www.panynj.gov/supplierdiversty)
- d. Ensuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Subsequent to Contract award, all changes to the M/WBE Participation Plan must be submitted via a modified M/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the M/WBE Plan, Contractors are directed to use form PA3749C, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Contractor shall not make changes to its approved M/WBE Participation Plan or substitute M/WBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of M/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each M/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

If, during the performance of this Contract, the Contractor fails to demonstrate good faith efforts in carrying out its M/WBE Participation Plan and the Contractor has not requested and been granted a full or partial waiver of the M/WBE participation goals set forth in this Contract, the Authority will take into consideration the Contractor's failure to carry out its M/WBE Participation Plan in its evaluation for award of future Authority contracts.

### **PART III CONTRACTOR'S INTEGRITY PROVISIONS**

#### **1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information**

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

- a. been indicted or convicted in any jurisdiction;
- b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
- c. had a contract terminated by any governmental agency for breach of contract or for any cause

- based in whole or in part on an indictment or conviction;
- d. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
- e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of fifty thousand dollars (\$50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- f. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- g. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

**2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees**

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request) nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and
- f. the Bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.
- g. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Contract, or (ii) the preparation of specifications or request for submissions in connection with this Contract.

The foregoing certifications in this Part III, Sections 1 and 2, shall be deemed to have been made by the Bidder as follows:



- \* if the Bidder is a corporation, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each parent, affiliate, director, and officer of the Bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Bidder with an ownership interest in excess of 10%;
- \* if the Bidder is a partnership, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each partner.

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "2g", if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Contract, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Contract. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

Failure to make the required disclosures shall lead to administrative actions up to and including a finding of non-responsiveness or non-responsibility.

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids and the term of the Contract, if Bidder is awarded the Contract, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding and continuing this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and

relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

### **3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts**

Bidders are advised that the Authority has adopted a policy to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a Bidder is not eligible to bid on or be awarded public contracts because the Bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

The full text of the resolution adopting the policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

### **4. Contractor Responsibility, Suspension of Work and Termination**

During the term of this Contract, the Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Port Authority to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Port Authority, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Port Authority issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and an opportunity to be heard with appropriate Port Authority officials or staff, the Contract may be terminated by Port Authority at the Contractor's expense where the Contractor is determined by the Port Authority to be non-responsible. In such event, the Port Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Contractor associated with such termination.

### **5. No Gifts, Gratuities, Offers of Employment, Etc.**

At all times, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Port Authority contract),

etc. which might tend to obligate the Port Authority employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

The Contractor shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

In the event that the Contractor becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", it shall report such occurrence to the Port Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>" for information about to report information to the Office of Inspector General). Failing to report such conduct shall be grounds for a finding of non-responsibility.

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

## **6. Conflict of Interest**

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Chief Procurement Officer in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Chief Procurement Officer, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Chief Procurement Officer may require the Contractor to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Chief Procurement Officer and shall become a requirement, as though fully set forth in this Contract. In the event the Chief Procurement Officer shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the Chief Procurement Officer to be no longer appropriate because of such preclusion, then the Chief Procurement Officer shall have full authority on behalf of both parties to order that such portion of the Contractor's Services not be performed by the Contractor, reserving the right, however, to have the Services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of

interest on the Contractor's part. The Contractor acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any contract, which results, directly or indirectly, from the Services provided by the Contractor hereunder. The Port Authority's determination regarding any questions of conflict of interest shall be final.

## **7. Definitions**

As used in this section, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting and/or law enforcement agency and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, State, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Bidder by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the Bidder.

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;

Bidder - shall mean Bidder; except and until the Contract has been awarded, then it shall mean Contractor

Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean executing this Contract.