

**625 TOMBSTONE CANYON
EASEMENT AND DEVELOPMENT AGREEMENT**

This Easement and Development Agreement (“Agreement”) is made and entered into this 10 day of January, 2023, by and between York Family Properties LLC, a Utah limited liability company (the “Owner”) the owner of real property located at 625 Tombstone Canyon, Bisbee, Arizona 85603, and the City of Bisbee, an Arizona municipal corporation (“City”). The Owner and the City may be referred to herein collectively as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, Owner is the owner of real property located at 625 Tombstone Canyon, Bisbee, Arizona 85603 (hereinafter the “Property”); and,

WHEREAS, Owner has an existing driveway to access the Property, which is constructed over and on the City’s Airway Canal (the “Canal”), essentially a small bridge for single vehicle access to the Property; and,

WHEREAS, the driveway has become unsafe and unusable for vehicular traffic and requires removal and replacement; and,

WHEREAS, the proposed replacement driveway/bridge, as depicted in the attached structural drawings and plans, which are attached hereto as Exhibit “A” and incorporated herein by this reference, would require the continued use of the Canal’s concrete side wall structures to support the driveway; and,

WHEREAS, Owner has obtained a structural engineering report to demonstrate that the proposed replacement driveway will be sufficiently supported by both the Property and Canal’s structure and that use of the Canal’s structure will not adversely affect the Canal or the integrity of any of the Canal’s structure; and,

WHEREAS, City has agreed that Owner may construct a replacement single vehicle private driveway bridge over and on that portion of the Canal adjacent to Owner’s Property, in substantially the same location as the current driveway; and,

WHEREAS, Owner and City desire to enter into this Agreement for the purpose of allowing the replacement of the existing driveway, providing an easement above and on the Canal and acknowledging Owner’s maintenance and indemnification obligations of the proposed replacement driveway.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual terms and conditions contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The Owner and the City agree the Recitals set forth above are true and accurate and are hereby incorporated by reference.

2. **Improvement and Easement Rights.** In consideration of the improvements to be made by Owner, and subject to reasonable restrictions that may be necessary to protect the health and safety of persons using the Property and the City of Bisbee building standards to be followed for the Project, Owner shall have the

following rights (the "Improvement and Easement Rights") with regard to the development and operation of the Property:

a. Owner, at its own cost and expense, shall be entitled to remove and reconstruct the driveway bridge that provides single vehicular access to the Property (the "Replacement Driveway" or "Improvements"). The Replacement Driveway shall be constructed in accordance with the plans and specifications approved by the City, which plans and specifications shall be certified by a licensed Arizona structural engineer that the Improvements will not adversely affect the Canal or any other portion of City property.

b. Owner shall be obligated to construct the Improvements in accordance with City of Bisbee building standards and requirements, including, but not limited to Design Review Board approval. All Improvements shall be constructed in a manner as to not adversely affect or impact the integrity of the City's Canal and the Canal's purpose of conveying water.

c. Upon completion of the Improvements, the City will grant Owner a permanent easement for the use, operation and maintenance of the Replacement Driveway for residential uses over and on the City's Canal (the "Easement"), and which Easement shall run with the land and be freely transferable by Owner with no consent or approval by City. Upon the execution of this Agreement, Owner shall be granted a temporary construction easement for the purposes of removal of the existing driveway and for constructing the Replacement Driveway, so long as such work does not impede the use and flow of the Canal.

3. Owner's Indemnification Obligations. Owner shall indemnify, defend, save and hold harmless the City and its officers and employees, from and against all suits or claims that may be based upon any damage or injury or death, to any person or property that may occur, or that may be alleged to have occurred (collectively "Damages"), in the course of the construction and use of the improvements to the Property, unless such Damages are the result of the City and/or its officers and/or its employees' negligence or willful misconduct thereof. Owner shall indemnify, defend, save and hold harmless the City and its officers and employees, from and against all suits or claims that may be based upon any liability of the City. Owner shall, at the Owner's own expense, pay all charges of attorneys, and all costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against the City and/or its officers and/or its employees in any such action, or actions ("Fees"), Owner, at the Owner's own expense, shall satisfy and discharge the same, unless such Fee is the result of the City and/or its officers and/or its employees sole negligence or willful misconduct.

4. Owner Representations. Owner represents and warrants that:

a. Owner has the full right, power and authorization to enter into and perform this Agreement and the obligations and undertakings of Owner under this Agreement.

b. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

c. Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

d. As of the date of this Agreement, Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting Owner, which could have a material adverse effect on Owner's

performance under this Agreement that has not been disclosed in writing to City.

e. This Agreement (and each undertaking of Owner contained herein) constitutes a valid, binding and enforceable obligation of Owner according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

f. The execution, delivery and performance of this Agreement by Owner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Owner is a party or to which Owner is otherwise subject.

g. Owner has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services for the design and construction of the improvements.

h. Owner has had an opportunity for independent legal review of this Agreement by counsel of its choosing prior to the execution hereof.

5. City Representations. City represents and warrants to Owner that:

a. City has the right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Bisbee City Charter and the Bisbee City Code.

b. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

c. City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

d. City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Owner.

e. This Agreement (and each undertaking of City contained herein), constitutes a valid, binding and enforceable obligation of City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditor's rights and by equitable principles, whether considered at law or in equity.

f. The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

g. City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

6. **Notice.** All notices, demands or other communications relative to this Agreement must be in writing and are deemed duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

CITY: City Manager
City of Bisbee
76 Erie Street
Bisbee, Arizona 85603

OWNER: York Family Properties LLC
625 Tombstone Canyon
Bisbee, Arizona 85603

If either Party changes address, they must give written notice to the other Party. Notice of change of address is deemed effective five (5) days after mailing by the Party changing address.

7. **Assignment.** Owner shall not transfer or assign all or any part of its rights or obligations under this Agreement without the prior express written consent of City, which approval may be given or withheld in the City's reasonable discretion. Except that the easement granted upon final construction of the driveway shall run with the land.

8. **Entire Agreement/Integration.** This Agreement contains the entire agreement between the Parties, and no oral or written statements, promises, or inducements made by either Party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be in writing, signed and endorsed by the Parties.

9. **No Partnership; Third-Parties.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. Except as provided for herein, no term or provision of this Agreement is intended to, or shall, be for the benefit of any person or entity not a Party hereto, and no such other person or entity shall have any right or cause of action hereunder, except for permitted successors in interest to the extent that they assume or succeed to the rights and/or obligations under this Agreement.

10. **Governing Law; Venue.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Cochise (or, as may be appropriate, in the Justice Courts of Cochise County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

11. **Default.** If either Party defaults (the "Defaulting Party") with respect to any of such Party's obligations, then the other Party (the "Non-Defaulting Party") shall give written notice in the manner described in Section 6 above to the Defaulting Party. The notice shall state the nature of the default claimed and make demand that such default be corrected. The Defaulting Party shall then have:

- a. twenty (20) days from the date of receipt of such notice within which to correct such default if it can be reasonably corrected by the payment of money, or
- b. sixty (60) days from the date of receipt of such notice to cure such default if action other than payment of money is reasonably required, or
- c. if any such non-monetary default cannot reasonably be cured within sixty (60) days for reasons beyond its control (financial inability, construction delays and market conditions excepted), then such longer period as may be reasonably required, provided and so long as such cure is promptly commenced within such period and diligently prosecuted to completion.

12. Remedies. If the default is not corrected within the time periods described in Section 11 above, the Non-defaulting Party shall have all remedies available to it at law or in equity, subject to the limitations set forth herein. Owner or City, or any successor-in-interest or assignee, may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including but not limited to suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages, provided that claims for damages shall be limited to actual damages as of the time of entry of judgment. The Parties hereby waive any right to seek consequential, punitive, multiple, exemplary or any damages other than actual damages.

13. Delays/Waiver. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the default involved.

14. Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.

15. Attorney's Fees, Costs and Expenses. In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, costs of expert witnesses, transportation, lodging and meal costs of the Party and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

16. A.R.S. § 38-511. Notice is hereby given of the applicability of A.R.S. § 38-511.

17. Authority. Each of the Parties represents and warrants to the other that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

18. Individual Nonliability. No City Council member, official, representative, agent, attorney or

employee shall be personally liable to any of the other Parties hereto, or to any successor in interest to such Parties, in the event of any default or breach by City or for any amount which may become due to a Party or its successor, or with respect to any obligation of City under the terms of this Agreement.

19. Headings and Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, and when each Party has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete original contract between the Parties. An electronic transmission or other facsimile of this Agreement shall be effective and binding upon the Parties as if such signatures were originals, and shall be admissible as evidence of the document and the signer's execution thereof; provided that such Party shall upon request of any other Party, immediately provide an original signature to such other Party.

20. Exhibits; Sections. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. References to Sections are to Sections of this Agreement unless stated otherwise.

21. Construction. This Agreement and the documents to be executed pursuant to this Agreement are the result of negotiations between the Parties. Accordingly, neither Party shall be deemed to be the author of this Agreement nor the resulting documents, and there shall be no presumption that this Agreement or any of such documents are to be construed for or against any such Party on the basis of the authorship of the documents. Words importing the singular number only shall include the plural and vice-versa, and words importing gender shall include all genders. Use of the word "including" shall mean "including without limitation."

22. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses City or Owner from undertaking any contractual commitment to perform under any provision hereunder, the remaining portions of this Agreement shall remain in full force and effect, and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

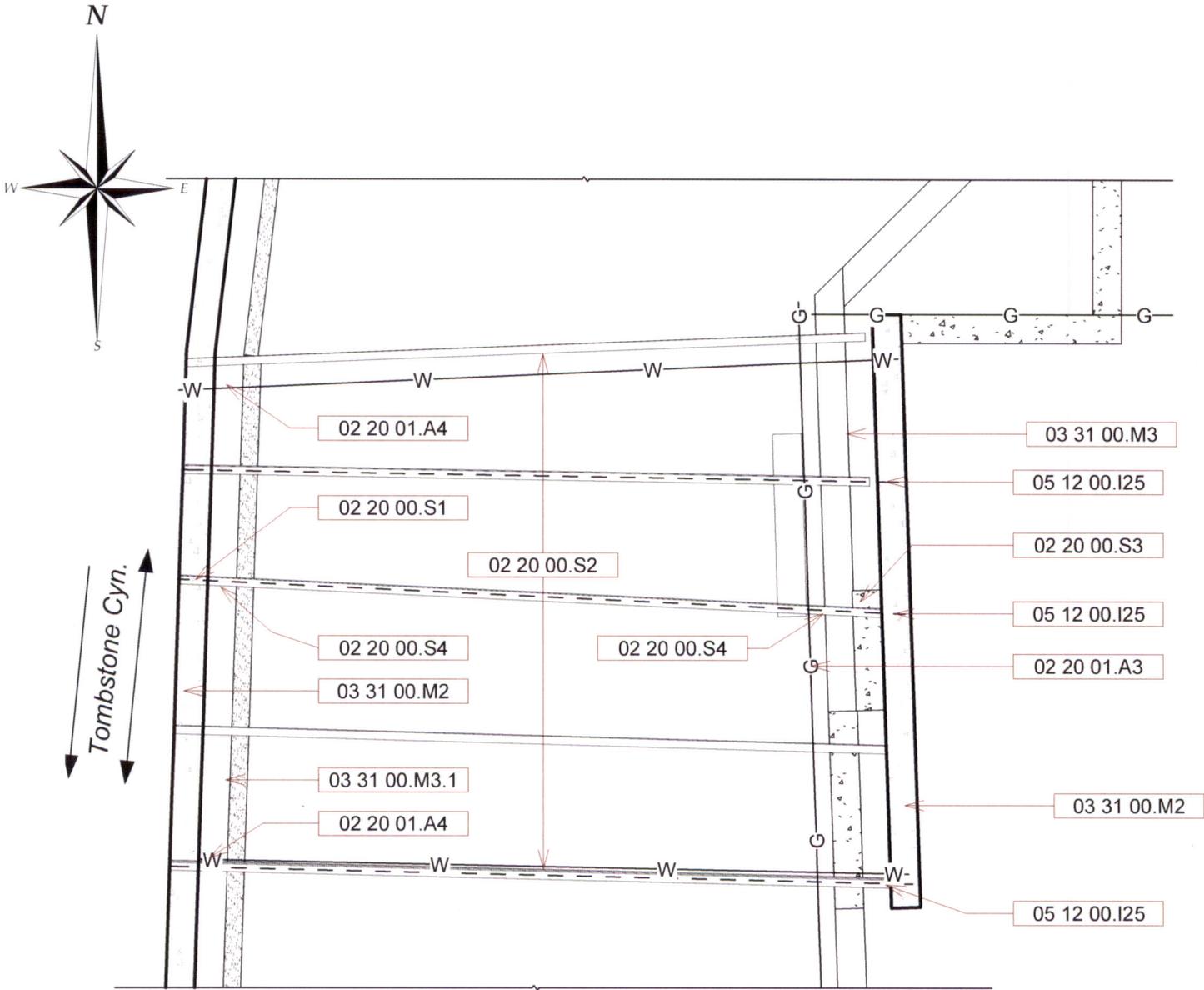
23. Recordation. The City shall record a copy of this Agreement no later than ten (10) days from date of entering into this Agreement pursuant to A.R.S. § 9-500.05.

24. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

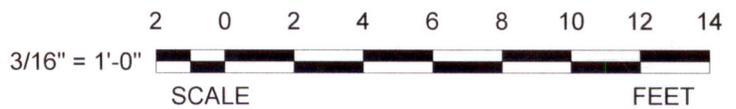
25. Successor Laws. Each reference in this Agreement to a particular City Ordinance, Arizona statute or other Applicable Laws shall include any successor City ordinance, successor Arizona statute or successor Applicable Laws.

26. Proposition 207 Waiver. Owner hereby waives and releases the City from any and all claims under Arizona Revised Statutes § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of the Property or any portion thereof, as a result of City's approval or failure to approve this Agreement. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowner, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

EXHIBIT 1
Design and Construction Plans and Specifications

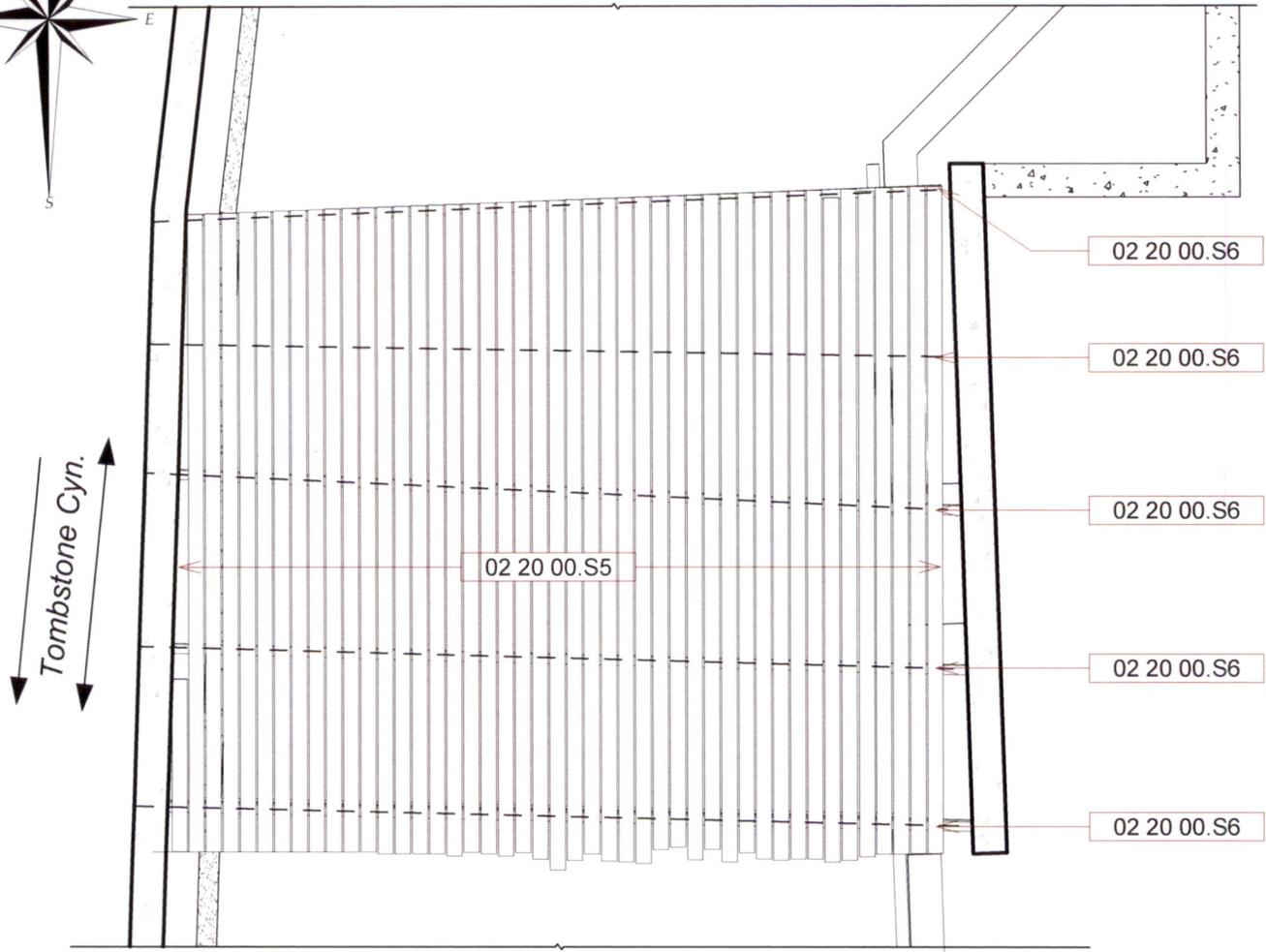
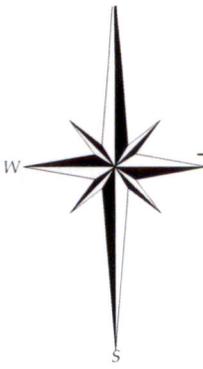


1 EXISTING BEAM SYSTEM-
3/16" = 1'-0"

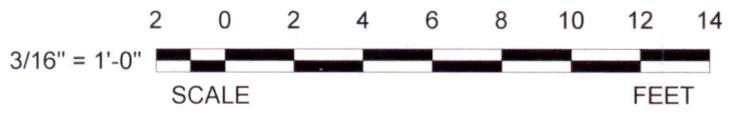


KEYNOTES

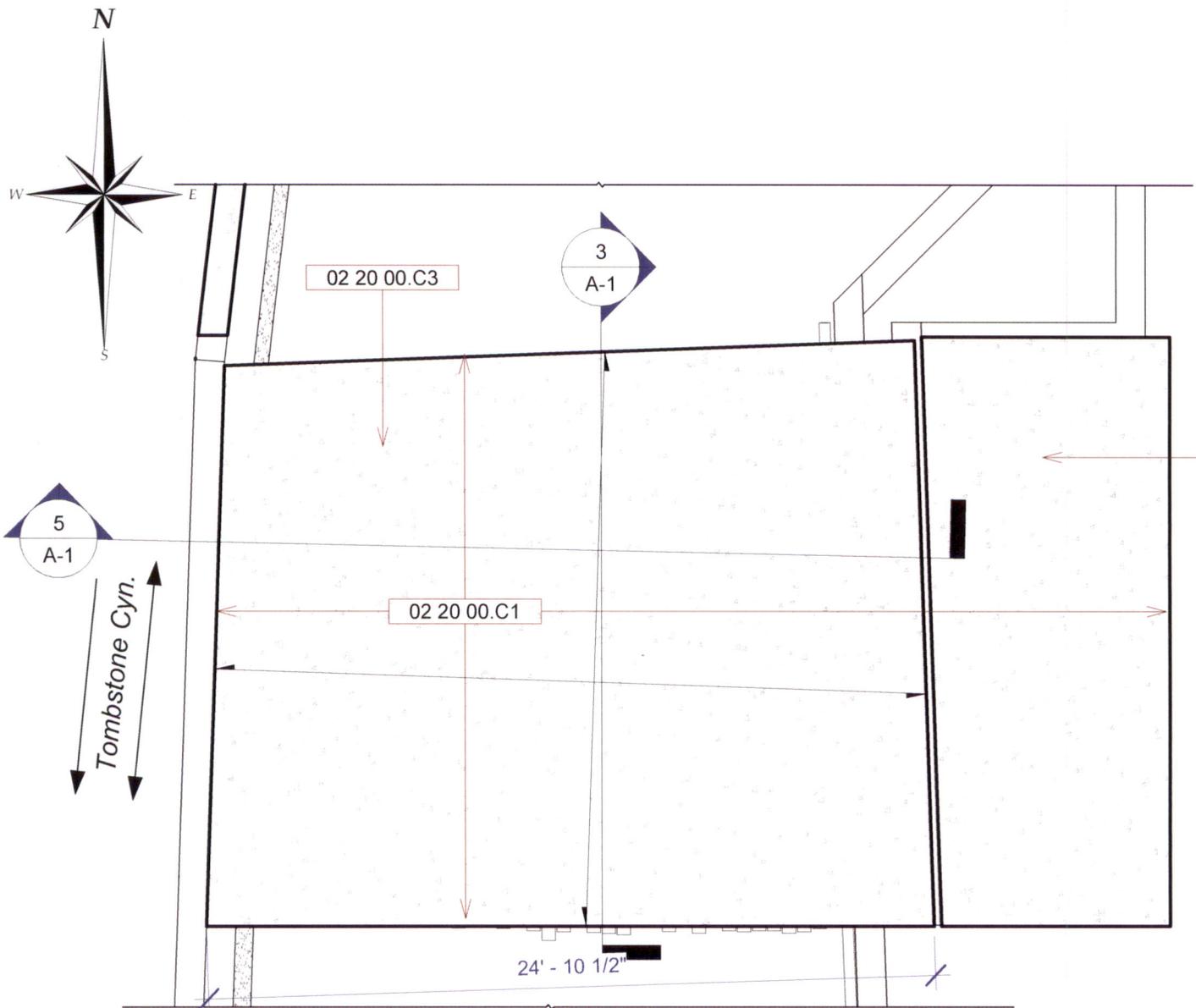
MARK	NOTE
02 20 00.S1	WALL NOTCHED TO ACCEPT I-BEAMS TYP
02 20 00.S2	RANDOM OC RANGING FROM APPROX 50" TO 60" @ STRUCTURE CENTRELINE
02 20 00.S3	I BEAMS EMBEDDED IN WALL TYP
02 20 00.S4	NO BEAM CONTACT @ LOWER WALL TYP
02 20 01.A3	4" GAS MAIN ATTACHED TO EXISTING CANAL WALL
02 20 01.A4	1" WATER PIPE ATTACHED TO OR SUSPENDED FROM BRIDGE STRUCTURE
03 31 00.M2	12" CAST-IN-PLACE CONCRETE WALL, VERT PROFILE
03 31 00.M3	14" CAST-IN-PLACE CONCRETE WALL, STRAIGHT PROFILE
03 31 00.M3.1	14" CAST-IN-PLACE CONCRETE WALL, VERT PROFILE
05 12 00.I25	AM STD I-BEAM S6X12.5



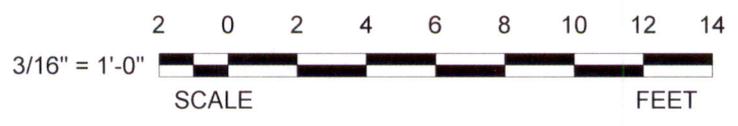
1 EXISTING RR TIE SUBSTRATE-
3/16" = 1'-0"



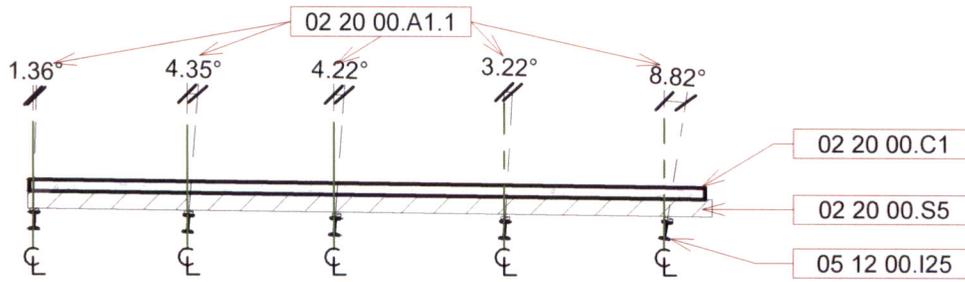
KEYNOTES	
MARK	NOTE
02 20 00.S5	6X6 TIES BUTTED LENGTHWISE TYP
02 20 00.S6	2X SHIM MATL ALLIGNED TO BEAM & UNDER RR TIE



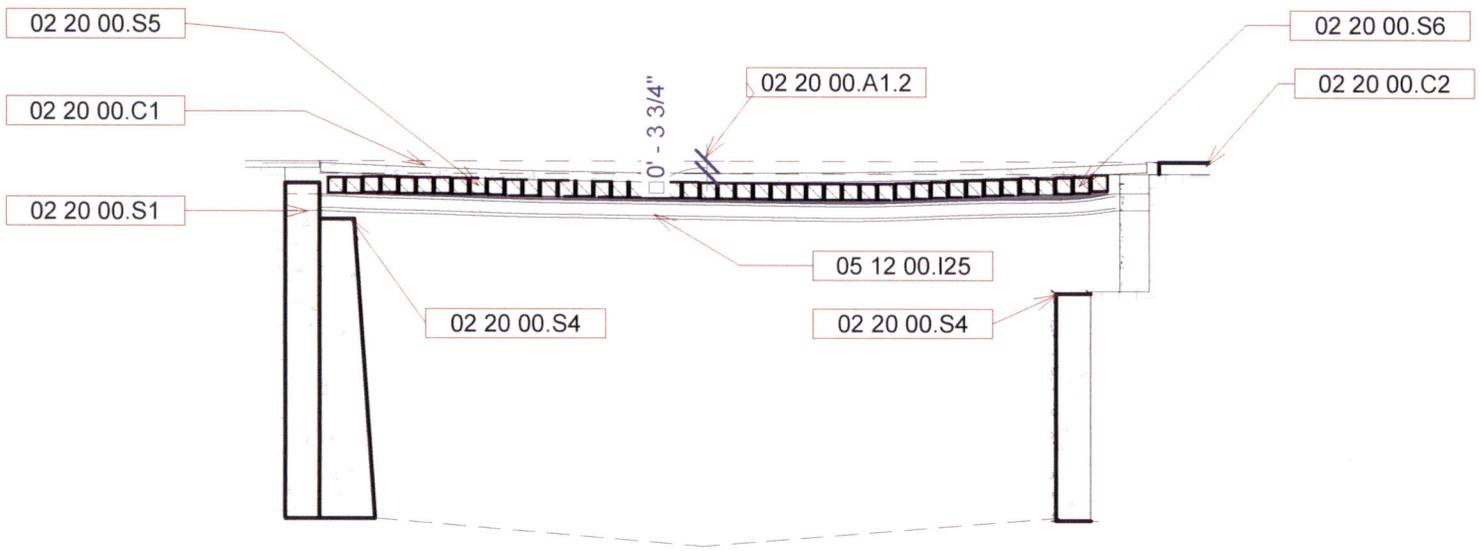
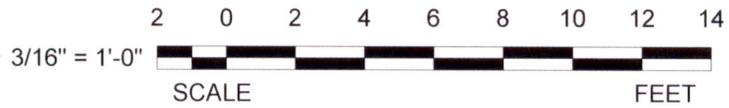
1 EXISTING CONC SURFACE-
3/16" = 1'-0"



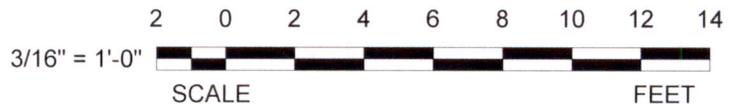
KEYNOTES	
MARK	NOTE
02 20 00.C1	EXISTING CONC SLAB 4"
02 20 00.C3	SPANS CANAL
02 20 00.C4	BEARS ON SOIL



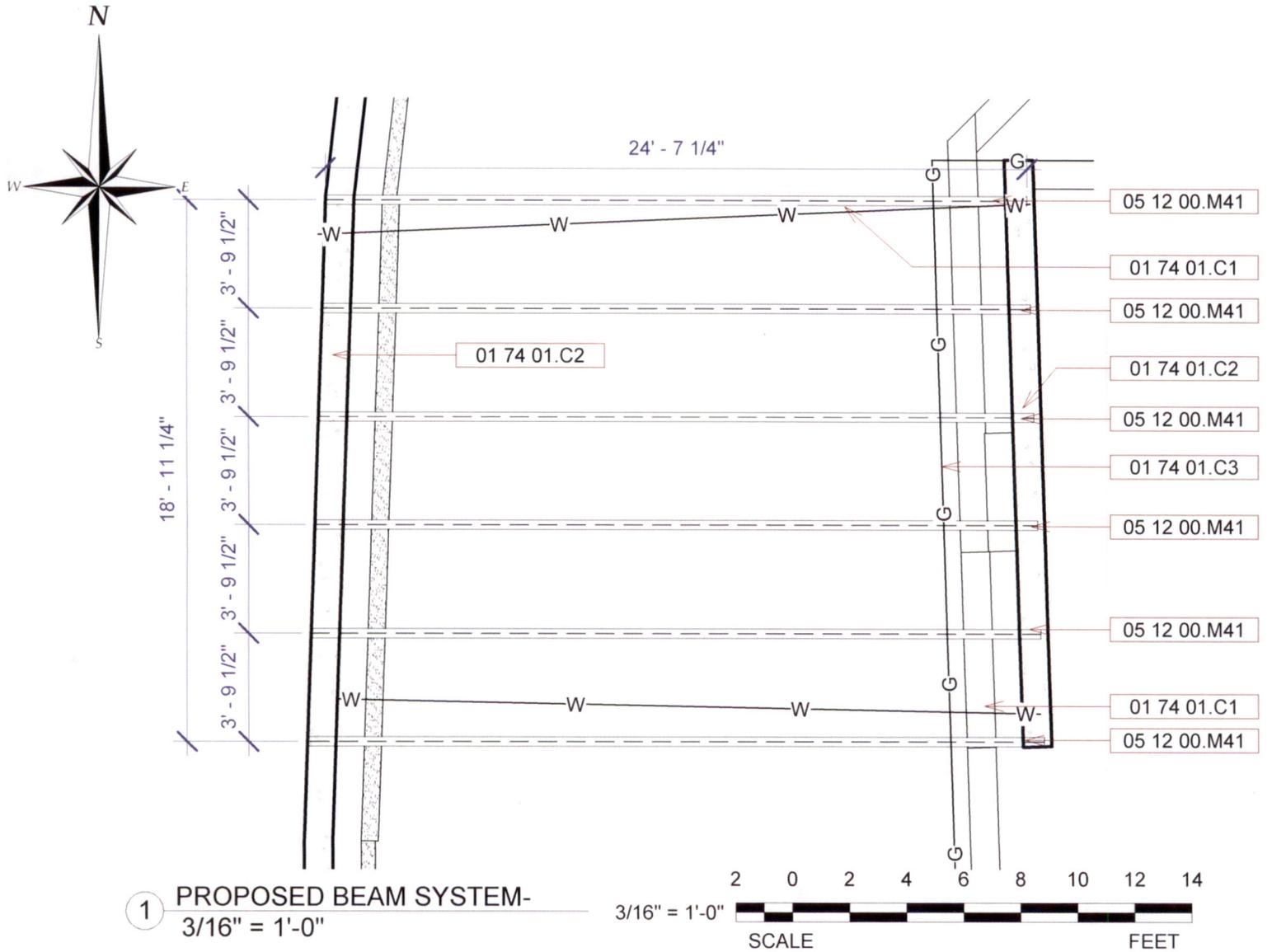
1 Section 2 Copy 1
3/16" = 1'-0"



2 Section 3 Copy 1
3/16" = 1'-0"

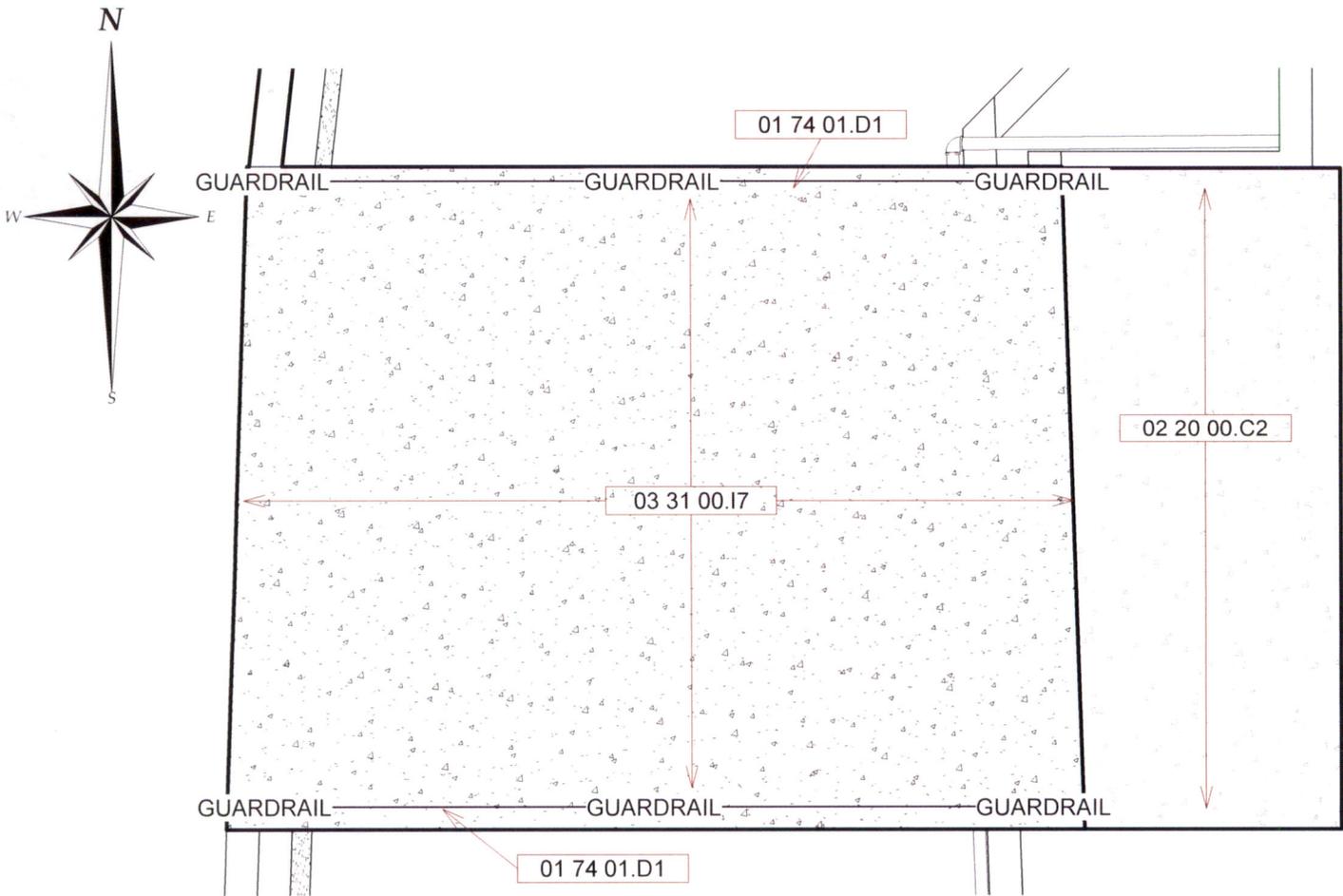


KEYNOTES	
MARK	NOTE
02 20 00.A1.1	MEASURED OUT-OF-PLUMB DEVIATION
02 20 00.A1.2	MEASURED DEFLECTION
02 20 00.C1	EXISTING CONC SLAB 4"
02 20 00.C2	EXISTING CONC SLAB 4", NO CHANGE
02 20 00.S1	WALL NOTCHED TO ACCEPT I-BEAMS TYP
02 20 00.S4	NO BEAM CONTACT @ LOWER WALL TYP
02 20 00.S5	6X6 TIES BUTTED LENGTHWISE TYP
02 20 00.S6	2X SHIM MATL ALLIGNED TO BEAM & UNDER RR TIE
05 12 00.I25	AM STD I-BEAM S6X12.5



CONCEPT ONLY. NOT FOR CONSTRUCTION

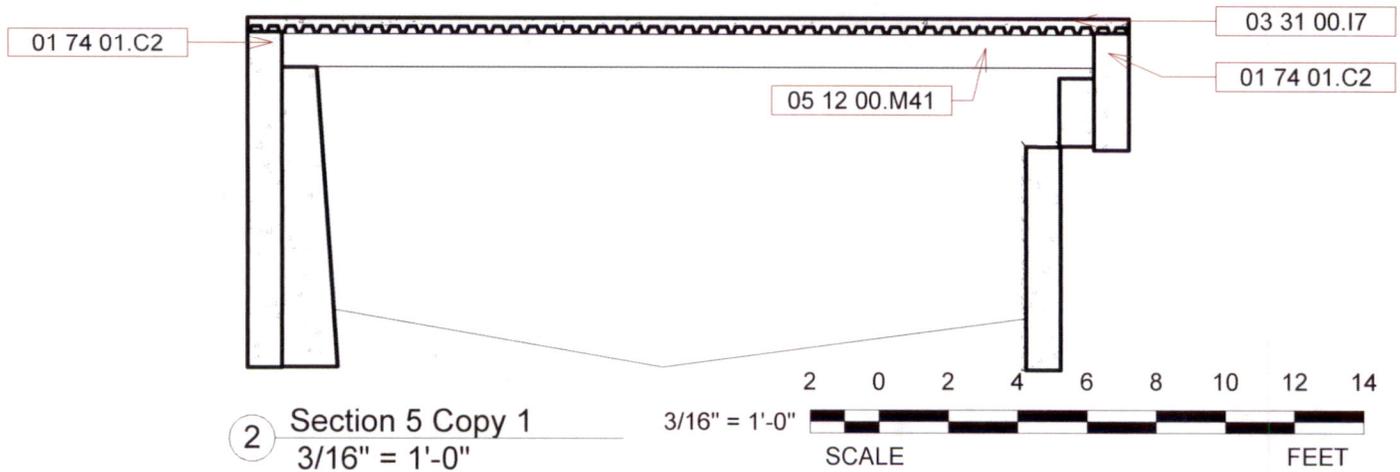
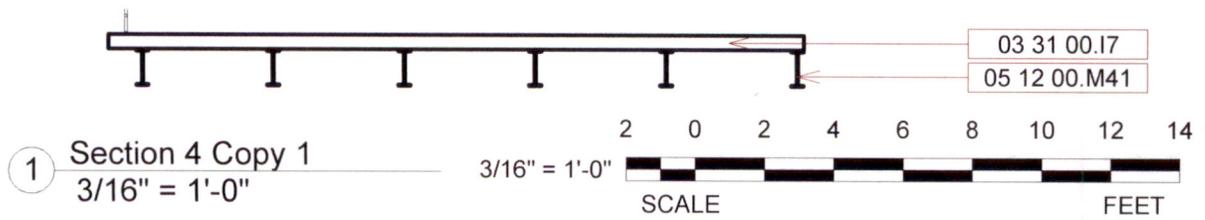
KEYNOTES	
MARK	NOTE
01 74 01.C1	PROVIDE FOR PERMANANT WATER SUPPLY SUPPORT ACROSS CANAL
01 74 01.C2	NOTCH EXISTING WALL AS REQ
01 74 01.C3	PROVIDE FOR PROTECTIVE SHIELDING OF GAS MAIN DURING CONSTRUCTION
05 12 00.M41	WIDE FLANGE STEEL BEAM W12X14



1 PROPOSED STRUCTURAL COMPOSITE DECK-
 3/16" = 1'-0"

CONCEPT ONLY. NOT FOR CONSTRUCTION

KEYNOTES	
MARK	NOTE
01 74 01.D1	SALVAGE EXISTING GUARDRAIL FOR REINSTALLATION
02 20 00.C2	EXISTING CONC SLAB 4", NO CHANGE
03 31 00.I7	5" CAST-IN-PLACE CONCRETE SLAB W/ METAL DECKING



CONCEPT ONLY. NOT FOR CONSTRUCTION

KEYNOTES	
MARK	NOTE
01 74 01.C2	NOTCH EXISTING WALL AS REQ
03 31 00.17	5" CAST-IN-PLACE CONCRETE SLAB W/ METAL DECKING
05 12 00.M41	WIDE FLANGE STEEL BEAM W12X14

SELF WEIGHT CALCULATIONS

MEMBER	COUNT	LEN	WEIGHT	UNIT	TOTAL
AM. STD S6X17.5 I-BEAM	6	24	17.25	LF	2484
RR TIE STD 6X6	46	24	11.7	LF	12916.8
CONC STD 4"	1	476	69.15	SF	32915.4
SHIM MTL	6	24	1.3	SF	187.2
					48503.4 SELF-WEIGHT
AM. WIDE FLANGE W12X14	6	24	14	LF	2016
CMP 20 GA	1	476	2.14	SF	1018.64
CONC LW 4"	1	476	39.27	SF	18692.52
					21727.16 SELF-WEIGHT
					44.79% REDUCTION