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11/22/2017 Page

1 of

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Document Title:

Temporary Construction License and
Ownership and maintenance Agreement

Reference Number (if applicable): _____

Grantor(s):

☐ additional grantor names on page ____.

1) Skagit Highlands Homeowners Assoc.

2) _____

Grantee(s):

☐ additional grantor names on page ____.

1) Mount Vernon School Dist. No. 320

2) _____

Abbreviated Legal Description:

☐ full legal on page(s) ____.

Trail TR-T1 Skagit Highlands Div V
Phase 1 et al

Assessor Parcel /Tax ID Number:

☐ additional parcel numbers on page ____.

P125582

**TEMPORARY CONSTRUCTION LICENSE AND
OWNERSHIP AND MAINTENANCE AGREEMENT**

THIS TEMPORARY CONSTRUCTION LICENSE AND OWNERSHIP AND MAINTENANCE AGREEMENT (the "Agreement") is made this 20 day of October, 2017, by and between SKAGIT HIGHLANDS HOMEOWNERS ASSOCIATION, a Washington nonprofit corporation ("Grantor") and MOUNT VERNON SCHOOL DISTRICT NO. 320, a political subdivision of the State of Washington ("Grantee").

RECITALS

A. Grantor owns certain real property located in the City of Mount Vernon, Skagit County, Washington, as legally described on Exhibit A attached hereto (the "Grantor's Property"); and

B. Grantee is constructing a new elementary school and related improvements (the "School") on property adjacent to Grantor's Property (the "School Site"); and

C. A network of wetlands exist on the School Site; and

D. A failing culvert with associated gravel fill (the "Culvert") is located on a portion of Grantor's Property as identified and depicted on Exhibit B hereto. The Culvert is contributing to stormwater management issues relevant to the wetlands on the School Site.

E. As a condition of the School project, Grantee must address the stormwater management issues on the School Site by removing the Culvert and replacing it with a new foot bridge (the "Bridge"), all as consistent with that Hydraulic Project Approval, issued on September 14, 2017, by the Washington Department of Fish & Wildlife for Permit No. 2017-4-679+01 (the "HPA Permit") and the Bridge Design Criteria as set forth on Exhibit C hereto.

F. Grantee desires to obtain from Grantor a temporary construction license on a portion of the Property as identified and depicted on Exhibit B hereto and as may be more specifically described herein (the "License Area") for the limited purpose of removing the Culvert and installing the Bridge.

G. Grantor is willing to grant a temporary construction license to Grantee, subject to the terms and conditions of this Agreement.

H. Grantee and Grantor desire to clarify Grantor's ownership and maintenance responsibilities related to the Bridge, subject to the terms and condition of this Agreement.

AGREEMENT

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

EASEMENT
NOV 22 2017

1

Amount Paid \$
Skagit Co. Treasurer
By HB Deputy

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Temporary Construction License

1.1 Grant of License

Grantor hereby grants and conveys to Grantee a temporary, nonexclusive construction license ("License"), over, across and along an existing established trails system originating from Monarch Boulevard and located on the Property leading to and including the Culvert, all as depicted on Exhibit B (the "License Area"), for the limited purpose described in Section 1.2 herein. Grantee and its agents, contractors, subcontractors, and employees shall have unrestricted rights of access, and without a requirement of notice, onto and over the License Area for purposes of the License during the License Term.

1.2 Purpose and Use of the Temporary Construction and Access License.

The License is granted and shall be used by Grantee and its agents, contractors, subcontractors, and employees solely for the purpose of removing the Culvert and installing the Bridge (collectively, the "Work"), all as in compliance with the HPA Permit. Grantee's exercise of rights hereunder shall be subject to the following conditions:

(a) Grantee's access to the License Area shall not involve vehicular access or movement of heavy equipment.

(b) Without limiting any other provision of this Agreement, Grantee shall use its best efforts to minimize the impact of any activities in the License Area on the Property and on Grantor and Grantor's occupants, guests and invitees.

(c) Grantee shall at all times comply with any and all laws, rules, regulations ordinances, permits, approvals and other requirements applicable to the License Area and its activities in the License Area.

(d) Grantee shall promptly pay (and secure the discharge of any liens asserted by) all persons and entities furnishing any labor, equipment, services, supplies, materials or other items in connection with the Work or its activities in the License Area or on the Property

(e) Grantee shall be responsible, at its sole cost and expense, for all costs related to the Work and any of Grantee's obligations hereunder.

(f) Upon completion of any activities of Grantee that may disturb the surface or subsurface of, or leave debris on, any area of the License Area (or any improvements thereon), Grantee shall restore such area (and any improvements thereon) to a condition as good or better than the condition area (or such improvements) was in prior to such disturbance.

(g) In the event any portion of the Property beyond the License Area is in any manner disturbed by the activities of Grantee or Grantee's contractors or agents relating to, or arising from, the exercise of any of Grantee's rights under this Agreement, Grantee shall promptly remove all debris and restore the Property (including any improvements thereon) to substantially the condition in which it existed at the commencement of such activities. Such restoration shall occur within not more than thirty (30) days from Grantee's completion of the Work.

(h) The Work shall be supervised and deemed complete by a biologist associated with the City of Mount Vernon (the "City Biologist").

(i) Grantor shall have the right to observe the performance of the Work so long as Grantor does not interfere or otherwise impede such performance.

(j) The terms and obligations of this Subsections 1.2 shall survive expiration of the License Term and any termination of this Agreement.

1.3 Duration of License

The term of the license granted under this Agreement (the "License Term") shall commence upon execution of this Agreement by all parties and shall end on the earlier of (a) November 3, 2017, or (b) Grantee's early termination of the License upon completion of the Work.

2. Reservation of Rights

Grantor reserves the right to engage in any use of the Property that does not unreasonably hinder, inhibit, interfere with or otherwise prevent Grantee's use of or access to and from the License Area or unreasonably hinder, inhibit or interfere with the Work.

3. Acceptance of Ownership and Maintenance

3.1 Upon Grantee's completion of the Work as determined by the City Biologist, with Grantor being given documentation as to the City Biologist's determination, Grantor agrees to accept ownership of the Bridge as installed and shall be solely responsible for all ongoing maintenance and liability obligations related to the Bridge and the Property.

3.2 Except as may be provided in Section 5 herein, Grantee shall have no further liability or responsibility whatsoever for the Bridge or the License Area.

4. Insurance

During the Term, Grantee shall maintain commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about the Easement Area, combined single limit coverage of not

less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall name the Grantor as an additional insured. Upon execution of this Agreement, Grantee shall furnish Grantor with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or non-renewed without the giving of thirty (30) days prior written notice to the holders of such certificates. Such insurance obligations in this Agreement may be satisfied through a program of self-insurance or with a blanket policy of insurance.

5. Indemnification

Grantee agrees to release, defend, indemnify and hold Grantor, Grantor's directors, officers, employees, agents and representatives (and the respective successors and assigns of each of the foregoing) (collectively, "Grantor Indemnitees") harmless from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages and liability (including, but not limited to, attorneys' fees) of any kind or character asserted or arising directly or indirectly from, on account of, or in connection with: (a) Grantee's exercise of (or failure to exercise) the rights, benefits and privileges granted to Grantee by this Agreement, or (b) the acts or omissions of Grantee (and Grantee's agents, employees, consultants, contractors, subcontractors (of any tier), representatives, licensees, invitees or visitors), including, without limitation, any contribution to or exacerbation of any environmental condition in or upon the Property; provided, however, (a) nothing herein shall require Grantee to indemnify Grantor Indemnitees for damages arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of the Grantor Indemnitees, and (b) in the event such damages for bodily injury to persons or damage to property is caused by the concurrent negligence of the Grantee and the Grantor Indemnitees, then Grantee's obligation to indemnify is enforceable only to the extent of Grantee's negligence; and provided further that nothing herein shall require Grantee to indemnify Grantor Indemnitees for damages arising out of bodily injury to persons or damage to property caused by or resulting from Grantor's or Grantor Indemnitee's unauthorized use of the License Area; and provided further that nothing herein shall require Grantee to indemnify Grantor for any claims, liens, demands, actions, costs, losses, expenses, harm, damages and liability (including, but not limited to, attorneys' fees) of any kind or character arising from the functioning of the Bridge and the condition of the surrounding area. Without limiting the generality of the foregoing, Grantee hereby waives any immunity, defense or other protection that may be afforded by any workers' compensation, industrial insurance or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51 of the Revised Code of Washington).

This Section 5 shall survive expiration of the License Term as it relates to Grantee's use of the License Area during the License Term.

6. Successors and Assigns

The rights and obligations of this Agreement, including the License created hereby, shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.

7. Recording

This Agreement may be recorded at Grantee's cost and expense.

8. Miscellaneous.

8.1 Attorney's Fees and Costs. If any party shall bring an action to enforce the terms of this Agreement, in any such action the prevailing party shall be entitled to an award of its reasonable attorneys' fees and reasonable costs. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal or in any proceedings under any present or future federal bankruptcy, forfeiture or state receivership or similar law.

8.2 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

8.3 Severability. All provisions of this Agreement are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions.

8.4 Headings. The headings used herein are for convenience only and are not to be used in interpreting this Agreement.

8.5 Exhibits. All Exhibits attached hereto are hereby incorporated by reference.

8.6 Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any prior written or oral agreements with respect to the matters described herein.


8.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first above written.

GRANTOR

SKAGIT HIGHLANDS HOMEOWNERS
ASSOCIATION, a Washington nonprofit
corporation

By: 
Print Name: Heidi Brown
Its: President, Skagit Highlands HOA

GRANTEE

MOUNT VERNON SCHOOL DISTRICT NO.
320, a political subdivision of the State of
Washington

By: 
Name: DR. CARL BRUNER
Its: Superintendent

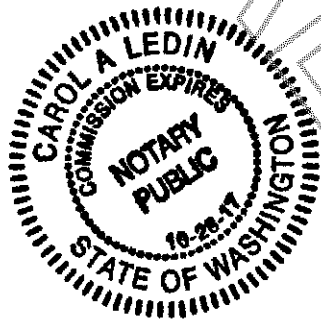
STATE OF Washington

) ss.

COUNTY OF Skagit

I certify that I know or have satisfactory evidence that Aeidi Brown is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of SKAGIT HIGHLANDS HOMEOWNERS ASSOCIATION to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/27/17



Carol A. Ledin
(Signature of Notary)

Carol A. Ledin
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at Sedro-Woolley
My appointment expires: 10-28-17

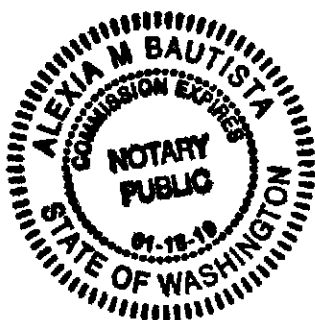
STATE OF Washington)

) ss.

COUNTY OF Snohomish)

I certify that I know or have satisfactory evidence that Dr. Carl Bruner is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the SUPERINTENDENT of the MOUNT VERNON SCHOOL DISTRICT NO. 320 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/30/2017



A handwritten signature of Alexia M. Bautista in black ink.

(Signature of Notary)

ALEXIA M. BAUTISTA

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at Snohomish County
My appointment expires: 01/15/2019.

**EXHIBIT A
HOA PROPERTY DESCRIPTION**

PROPERTY LEGAL DESCRIPTION

SKAGIT COUNTY PARCEL NUMBER P125575:

OPEN SPACE TRACT OS1, "PLAT OF SKAGIT HIGHLANDS DIVISION V (PHASE 1), AS PER PLAT, RECORDED DECEMBER 21, 2006, UNDER AUDITOR'S FILE NO. 200612210067, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF MOUNT VERNON, COUNTY OF SKAGIT, STATE OF WASHINGTON.

SKAGIT COUNTY PARCEL NUMBER P125582:

TRAIL TR. T1, "PLAT OF SKAGIT HIGHLANDS DIVISION V (PHASE 1), AS PER PLAT, RECORDED DECEMBER 21, 2006, UNDER AUDITOR'S FILE NO. 200612210067, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF MOUNT VERNON, COUNTY OF SKAGIT, STATE OF WASHINGTON.



HARMSEN & ASSOCIATES INC.
603 SOUTH FIRST STREET • MOUNT VERNON, WA 98273
(360) 336-9199 • (888) 794-7811
WWW.HARMSENINC.COM

PREPARED FOR:
MOUNT VERNON SCHOOLS

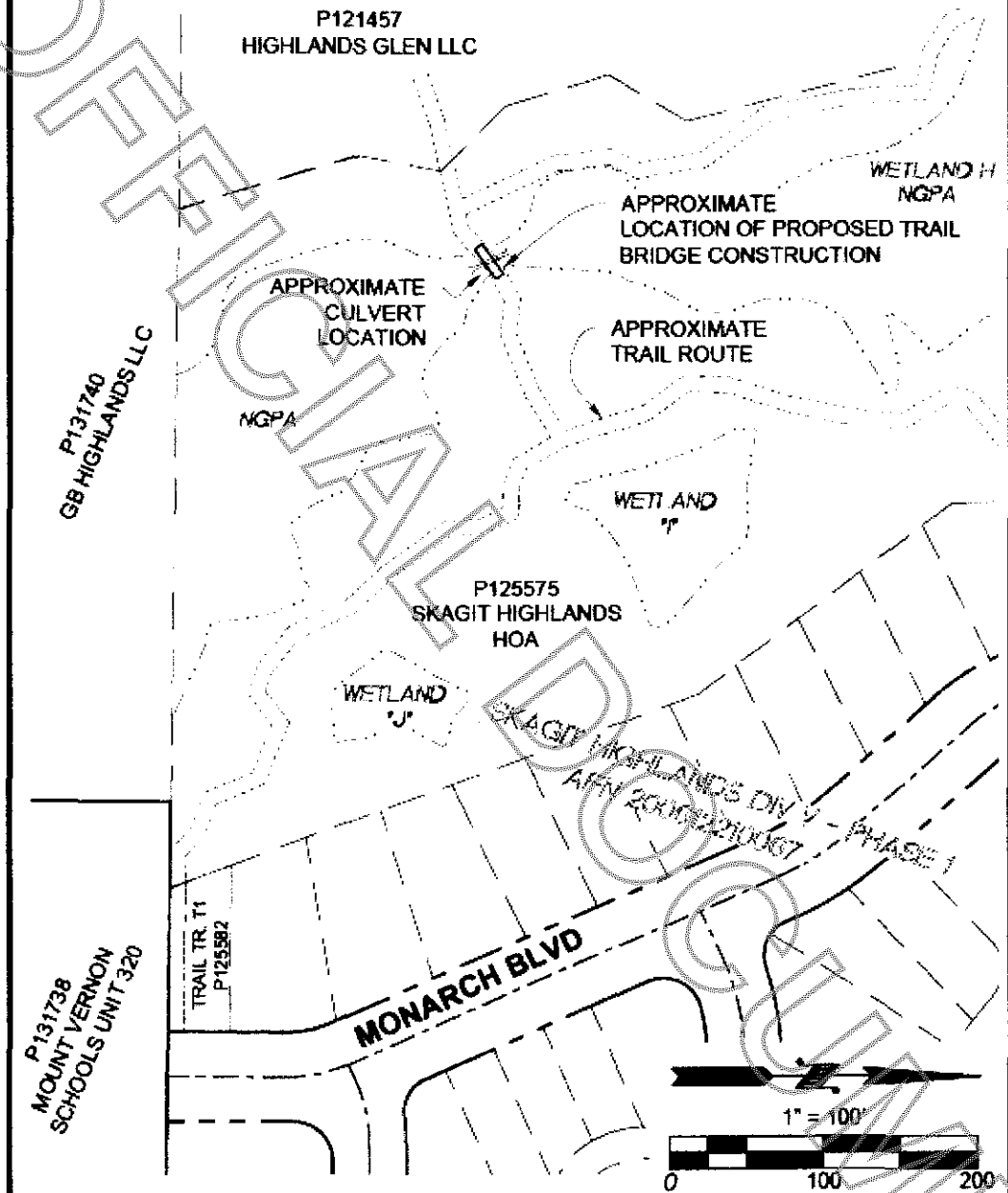
JOB NO.	DATE:
16-185	OCT 2017

EXHIBIT B
DEPICTION OF LICENSE AREA

UNOFFICIAL DOCUMENT

TRAIL BRIDGE SKETCH

IN THE NE 1/4 OF SECTION 22, TOWNSHIP 34N, RANGE 4E, W.M.



HARMSSEN & ASSOCIATES INC.
603 SOUTH FIRST STREET - MOUNT VERNON, WA 98273
(360) 336-9199 - (888) 794-7811
WWW.HARMSSENINC.COM

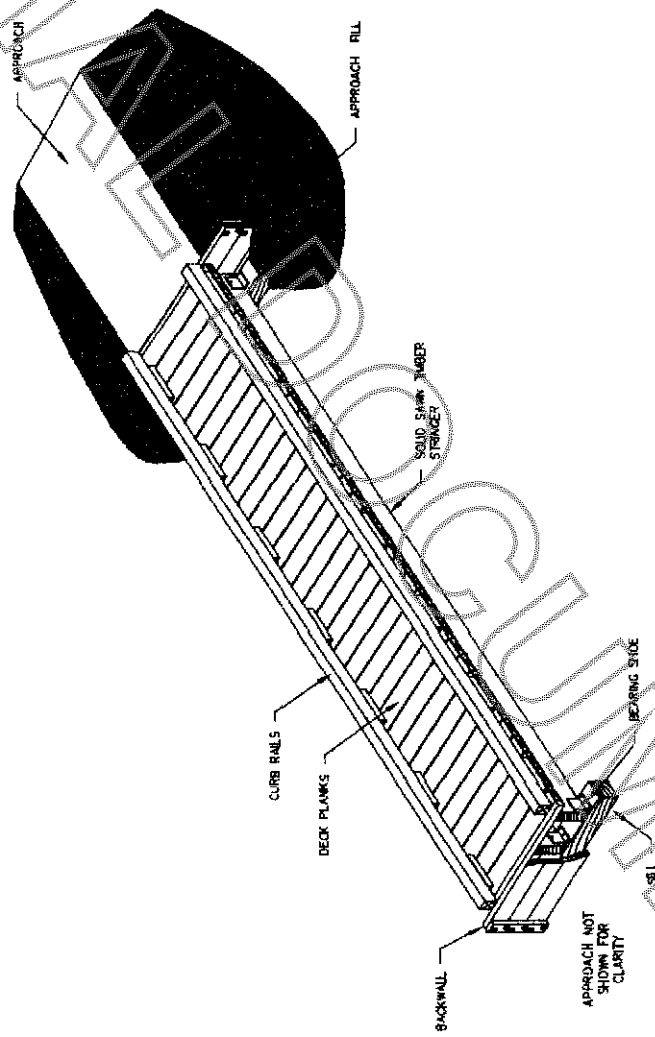
PREPARED FOR:
MOUNT VERNON SCHOOLS
JOB NO. 16-185 DATE: OCT 2017

EXHIBIT C
BRIDGE DESIGN CRITERIA

UNOFFICIAL DOCUMENT

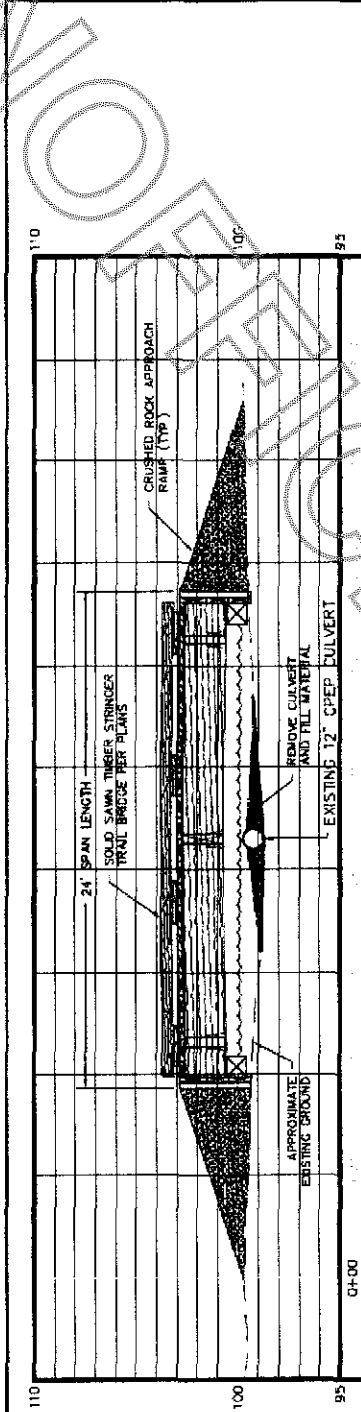
SW 1/4 OF THE NE 1/4 AND THE SE 1/4 OF THE NE 1/4 OF SECTION 22, T. 34 N., R. 4 E., W.M

MOUNT VERNON SCHOOL DISTRICT EAST DIVISION ELEMENTARY SCHOOL SOLID SAWN TIMBER STRINGER TRAIL BRIDGE



ISOMETRIC VIEW - TRAIL BRIDGE WITH CURB RAIL
SCALE: 3/8" = 1'-0"

PROJECT DESIGN CRITERIA	
THIS BRIDGE SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE FOLLOWING CRITERIA:	
PEDESTRIAN LIVE LOAD	= 85 P.S.F.
GROUND SNOW LOAD (WITH NO MODIFICATION FACTORS)	= 120 P.S.F.
SPAN LENGTH (6' BEARING-TO-6' BEARING)	= 24'-0"
CLEAR WIDTH (SEE TYPICAL SECTION)	= 5'-0"
STRINGERS	
NUMBER REQUIRED	= 3
NOMINAL DIMENSIONS	= 6 x 14 (IN.)
CURBS/BRIDGE RAIL	= CURBS ONLY
STEEL HARDWARE	= WEATHERING STEEL
TREATMENT - SEE GENERAL NOTES FOR SPECIFICATIONS	
SILLS AND BACKING PLANKS	= COPPER NAPHTHENEATE
EAST OMSION ELEMENTARY SCHOOL	
SOLID SAWN TIMBER STRINGER TRAIL BRIDGE	
JOB# 18-111 F.B.# N/A CHK BY: OMH DATE: 8/10/12 SCALE AS NOTED SHEET # 1 OF 4	



TYPICAL SECTION

SCALE: H: 1"=5'
V: 1"=5'

GENERAL NOTES

SPECIFICATIONS
CONSTRUCTION OF THIS STRUCTURE SHALL BE IN ACCORDANCE WITH THE CURRENT ADOPTED U.S. FOREST SERVICE SPECIFICATIONS FOR CONSTRUCTION OF ROADS AND BRIDGES, AS MODIFIED FOR THIS CONTRACT.

TIMBER & LUMBER

SOLID SAWM TIMBER MEMBERS SHALL CONFORM TO THE REQUIREMENTS OF THE GRADING RULES AGENCY FOR THE SPECIES, TYPE, AND GRADE SPECIFIED BELOW.

- STRINGERS, DECK PLANKS - COASTAL REGION DOUGLAS FIR-LARCH
- CURBS, SILLS & BACKING PLANKS - ROUGH SAWN, NO. 1 GRADE
- GRADING RULES AGENCY - NWPA, WCLUB

TREATMENT

EXCEPT CRITERIA FOR MEMBERS IDENTIFIED TO BE TREATED AND FOR TREATMENT TYPE PRESERVATION, TREATMENT SHALL BE IN ACCORDANCE WITH THE CURRENT NWPA SPECIFICATIONS USING THE TREATMENT MATERIALS LISTED BELOW. TREATMENT WILL COMPLY WITH THE REQUIREMENTS OF THE CURRENT EDITION OF NWPA'S "BEST MANAGEMENT PRACTICES FOR THE USE OF TREATED WOOD IN AQUATIC ENVIRONMENTS".

- SOLID SAWM LUMBER - AWPA C2, (ABOVE GROUND USE)
- COPPER NAPHTHENE IN LIGHT OIL (TYPE C SOLVENT)

FIELD TREATMENT
COPPER NAPHTHENE (2% SOLUTION) SHALL BE FURNISHED FOR FIELD TREATMENT OF CURBS, SILLS, AND FIELD CURBS APPROVED BY THE C.O. SHALL BE CAREFULLY TRAINED AND GIVEN THREE BRUSH COATS OF THE FIELD TREATMENT SOLUTION.

HARDWARE AND STRUCTURAL STEEL
SEE PROJECT DESIGN CRITERIA FOR STEEL HARDWARE FINISH. GALVANIZED OR UNFINISHED HARDWARE SHALL MEET THE REQUIREMENTS OF AASHTO M270. GRADES 50R WITH NUTS AND BOLTS CONFORMING TO ASTM A307. HARDWARE SHALL BE GALVANIZED OR UNFINISHED. HARDWARE SHALL MEET THE REQUIREMENTS OF AASHTO M270. GRADES 50R WITH NUTS AND BOLTS CONFORMING TO ASTM A307. TYPE 3, USE WALLEABLE IRON WASHERS AGAINST WOOD UNLESS OTHERWISE NOTED.

WHEN STRUCTURAL STEEL IS TO BE WELDED, THE WELDING PROCEDURE SHALL BE IN ACCORDANCE WITH AWS D1.1 AND SHALL BE SUITABLE FOR THE GRADE OF STEEL AND INTENDED USE OR SERVICE.

FABRICATION
SUBMIT SHOP DRAWINGS FOR ALL BRIDGE COMPONENTS (EXCEPT TIMBER RUNNING PLANKS) SHOW ALL DIMENSIONS AND FABRICATION DETAILS FOR ALL CUT OR BORED TIMBER. FIELD DRILLING OF HOLES SHALL NOT BE ALLOWED UNLESS OTHERWISE NOTED ON THE PLANS.

EAST DIVISION ELEMENTARY SCHOOL

SOLID SAWM TIMBER STRINGER TRAIL BRIDGE

108-16-111
F.B. & N/A
CHK. BY DMH
DATE: 8/10/17
SCALE: AS SHOWN
SHEET #
4 OF 4

