Rev: September 13, 2010

RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT

By and Between

THE

GEORGIA DEPARTMENT OF TRANSPORTATION

AND

DEKALB COUNTY PUBLIC WORKS – TRANSPORTATION DIVISION

DeKalb County AMPS# 728363 SR407 Permit # 12-2016-038-089 MP 12.32 {Pedestrian Bridge}

THIS AGREEMENT made and entered into this _____ day of _______, 20____ by and between the **DEPARTMENT** of Transportation, an agency of the State of Georgia, hereinafter alternately referred to as "**DEPARTMENT**" or "**LICENSOR**", and <u>DeKalb County</u> Public Works – Transportation Division, hereinafter referred to as "**LICENSEE**".

WHEREAS, the DEPARTMENT desires to enter into a public/private partnership to perform certain services relating to maintenance within DEPARTMENT'S right of way, hereinafter called the "PROJECT", and

WHEREAS, the LICENSEE has represented to the DEPARTMENT that, if such permission is granted to the LICENSEE, LICENSEE shall bear all costs and liability associated with the PROJECT; and

WHEREAS, the LICENSEE has represented to the **DEPARTMENT** that they are qualified and experienced to provide such services and the **DEPARTMENT** has relied upon such representations;

NOW, **THEREFORE**, for and in consideration of the mutual promises and covenants as herein contained, it is agreed by and between the parties hereto that:

ARTICLE I SCOPE OF PROJECT

The **DEPARTMENT** shall permit the **LICENSEE** to perform or cause to be performed, the **PROJECT** consisting of certain services related to maintaining an identified section of the **DEPARTMENT'S** rights of way.

This permission shall be granted by the means of this Agreement for the entire scope of the **PROJECT**, as set forth herein.

The maintenance duties and responsibilities of the LICENSEE are defined and set forth in Article XI – MAINTENANCE WORK PLAN of this Agreement, and further enumerated and described in Exhibit 'A' – Application and Permit for Special Encroachment with approved drawings or final working drawings for a Department-approved construction PROJECT. Exhibit 'A' is attached hereto and incorporated by reference as if fully set out herein. The PROJECT location shall be defined or delineated as part of Exhibit 'A'. The required Special Encroachment Permit and/or the construction PROJECT final working drawings are to be approved or issued by the DEPARTMENT.

Should the LICENSEE desire that these maintenance services be performed by a third party, LICENSEE and the third party shall enter into subsequent agreement, whereby the LICENSEE shall assume all responsibility of repayment to the third party for those services to be rendered as set forth in Article XI - MAINTENANCE WORK PLAN. The Agreement between LICENSEE and any third parties to this Agreement, shall meet all operational and administrative requirements, including the provisions of liability insurance, set forth by the DEPARTMENT, and all liability associated with the PROJECT shall be borne by LICENSEE and any third parties, as set forth in Article VIII, herein.

ARTICLE II

EXECUTION OF CONTRACT AND AUTHORIZATION TIME OF PERFORMANCE

Time is of the essence in this agreement. The LICENSEE shall execute this Agreement and return it to the **DEPARTMENT** within thirty (30) days after receipt of contract forms from the **DEPARTMENT**.

The **LICENSEE** shall begin work on the **PROJECT** under this Agreement immediately after receiving a signed and executed copy of the Agreement (unless noted otherwise in Exhibit A or upon **PROJECT** construction completion).

Subject to the terms and conditions set forth in this Agreement, and upon execution of this Agreement, the **DEPARTMENT** grants the right to the **LICENSEE** to mow, edge, and maintain, as set forth in Article XI- **MAINTENANCE WORK PLAN**, that specific section of right-of-way identified in this Agreement, and herein defined as the **PROJECT**.

The duration of this Agreement shall not exceed fifty years from the date above first written unless terminated sooner by the **DEPARTMENT** or **LICENSEE**.

ARTICLE III SUBSTANTIAL CHANGES

If, prior to the satisfactory completion of the services under this Agreement, any party materially alters the scope, character or complexity of the services from those required under the Agreement, a Supplemental Agreement shall be executed between the parties. It is understood, however, that LICENSEE shall not engage in any activities or conduct any work which would be considered to be outside the scope of the permission granted to LICENSEE by the DEPARTMENT. Minor changes in the work which do not involve increased compensation, extensions of time or changes in the goals and objectives of the work may be made by written notification of such change by any party with written approval by the other parties.

ARTICLE IV ASSIGNMENT

It is understood by the **LICENSEE** that the work is considered personal and, except as provided for in Article I, **LICENSEE** agrees not to assign, sublet or transfer any or all of their interest in this Agreement without prior written approval of the **DEPARTMENT**.

ARTICLE V CONTRACT DISPUTES

This Agreement shall be deemed to have been executed in __Fulton _County, Georgia, without reference to its choice of law doctrine, and all questions of interpretation and construction shall be governed by the laws of the State of Georgia. Any litigation arising out of this contract shall be commenced within the State of Georgia. The foregoing provisions shall not be construed as waiving any immunity to suit or liability, including without limitation, sovereign immunity which may be available to the Department.

ARTICLE VI INSURANCE

Prior to beginning work, the **LICENSEE** shall obtain or self-insure, and certify to the **DEPARTMENT** that it has the following minimum amounts of insurance coverage for anyone that will be working on the right of way:

- (a) <u>Workmen's Compensation</u> Insurance in accordance with the laws of the State of Georgia.
- (b) <u>Public Liability</u> Insurance in an amount of not less than one hundred thousand dollars (\$100,000) for injuries, including those resulting in death to any one person, and in an amount of not less than three hundred thousand dollars (\$300,000) on an account of any one occurrence, or proof of self-insurance.

- (c) <u>Property Damage</u> Insurance in an amount of not less than fifty thousand dollars (\$50,000) from damages on account of any occurrence, with an aggregate limit of one hundred thousand dollars (\$100,000), or proof of self-insurance.
- (d) <u>Valuable Papers</u> Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the **PROJECT**.
- (e) <u>Insurance shall</u> be maintained in full force and <u>effect during</u> the life of the **PROJECT**.

The LICENSEE shall furnish upon request to the DEPARTMENT, certificates of insurance evidencing such coverage. These certificates shall also provide that the insurance will not be modified or canceled without a 30 day prior written notice to the DEPARTMENT. Failure by the LICENSEE to procure and maintain the insurance as set forth above shall be considered a default and cause for termination of this Agreement and forfeiture of the Performance and Payment Bonds. The LICENSEE shall, at least fifteen (15) days prior to the expiration date or dates of expiring policies, deposit certified copies of renewal, or new policies, or other acceptable evidence of insurance with the DEPARTMENT.

ARTICLE VII COMPENSATION

It is agreed that **LICENSEE** shall conduct all work at no cost to the **DEPARTMENT**, and without compensation from the **DEPARTMENT**. It is further agreed that any **and all** issues relating to compensation and payment shall be resolved by and between **LICENSEE** and any successors, subcontractors, or assigns thereto.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** be required to conduct any inspections and/or supervision of the **PROJECT** beyond that which would normally occur in the ordinary course of the **DEPARTMENT'S** maintenance activities, **LICENSEE** shall reimburse the **DEPARTMENT** for such inspection and supervision. The rate of reimbursement for the **DEPARTMENT'S** inspection and supervision shall in no case exceed a rate determined to be reasonable by the parties.

Should **LICENSEE** and the **DEPARTMENT** desire to change this agreement at a later date to provide for compensation to **LICENSEE**, or any successors or assigns thereto, such change

shall only be permitted by a supplemental agreement as set forth in Article III herein. Any supplemental agreements involving compensation shall be subject to the **DEPARTMENT** review and approval.

ARTICLE VIII

RESPONSIBILITY FOR CLAIMS AND LIABILITY LICENSEE NOT AGENT OF DEPARTMENT

To the extent permitted by law, LICENSEE, and all successors and assigns thereto, shall save harmless the **DEPARTMENT**, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting from the performance of work assigned to **LICENSEE** under this Agreement. **LICENSEE** further agrees that they shall be fully responsible for injury or damage to landscaping, landscape related items, and any other non-standard and decorative elements installed by or for the **LICENSEE** within the right of way, and for any damage to the **DEPARTMENT'S** signs, structures, or roadway fixtures, if **LICENSEE** causes the damage. These indemnities shall not be limited by reason of the listing of any insurance coverage.

It is further understood and agreed that LICENSEE, or any successor or assigns thereto, in the conduct of any work involved in the PROJECT, shall not be considered the agent of the DEPARTMENT or of the State of Georgia.

ARTICLE IX TERMINATION OF CONTRACT

The **DEPARTMENT** may terminate this contract for just cause at any time by giving of thirty (30) days written notice of such termination. Upon receipt of such notice of termination, **LICENSEE** shall discontinue and cause all work under this contract to terminate upon the date specified in the said notice. In the event of such termination, the **DEPARTMENT** shall be paid for any amounts as may be due it as specified in Article VII up to and including the specified date of termination. **LICENSEE** shall have the right to terminate this contract at any time, provided that such termination is first approved by the **DEPARTMENT**, and that the **DEPARTMENT** is reimbursed in full for all services rendered pursuant to Article VII.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** allow the **LICENSEE** to terminate the agreement, the termination, unless determined otherwise in writing by the **DEPARTMENT**, shall be contingent upon the following:

- A. The LICENSEE, at the discretion of the DEPARTMENT, removing the planted landscaping, landscape related items, and any other non-standard and decorative elements that were installed by or for the LICENSEE at no cost to the DEPARTMENT.
- B. The LICENSEE restoring the removed landscape areas to their original condition or a condition that meets federal standards and is acceptable to the **DEPARTMENT**.
- C. The LICENSEE restoring the removed non-standard and decorative elements with standard DEPARTMENT elements that meet federal and state requirements.
- D. The LICENSEE reimbursing the **DEPARTMENT** in full any state and/or federal funds used to purchase and install the landscaping, landscape related items, and other non-standard and decorative elements that are no longer to be maintained by the **LICENSEE**.
- E. No reimbursal is required for termination of agreements for Mowing Only.

The **DEPARTMENT** and the **LICENSEE** agree that, should the **LICENSEE** fail to perform the maintenance, as set forth in Article XI - **MAINTENANCE WORK PLAN**, the **DEPARTMENT** may require the **LICENSEE** to remove, restore, and reimburse according to items "A", "B", "C", and "D" above, as applicable, and then terminate the agreement.

ARTICLE X COMPLIANCE WITH APPLICABLE LAW

The undersigned certify that:

- A. This Agreement is subject to applicable state and federal laws, standards, and rules and regulations.
- B. The provisions of Sections 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State Employees and Officials Trading with the State have been complied with in full.
- C. The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full.

ARTICLE XI

MAINTENANCE WORK PLAN

LICENSEE is to provide any and all needed maintenance to the pedestrian bridge permitted and constructed as part of **PROJECT**. See Exhibit 'A'.

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

GEORGIA DEPARTMENT OF TRANSPORTATION	DEKALB COUNTY, GEORGIA
	by Dir.(SEAL)
Commissioner or designee	MICHAEL L. THURMOND Chief Executive Officer DeKalb County, Georgia
ATTEST:	Deltaid County, Georgia
	Date
Angela Whitworth Treasurer	
	ATTEST:
	BARBARA SANDERS-NORWOOD, CCC, CMC Clerk of the Chief Executive Officer And Board of Commissioners of DeKalb County, Georgia
	Date
Sworn before me this day of, 2017	
	APPROVED AS TO FORM:
NOTARY PUBLIC	County Attamay Signatura
My commission expires,	County Attorney Signature
	County Attorney Name (Typed or Printed)
	APPROVED AS TO SUBSTANCE: David Pettor
	Department Director

EXHIBIT 'A'

(Attach the Application and Permit for Special Encroachment with approved drawings or the final working drawings for a Department-approved construction)



GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center, 600 West Peachtree Street, NW Atlanta, Georgia 30308 Telephone: (404) 631-1000

December 5, 2016

DeKalb County Public Works Department - Transportation Division 1950 West Exchange Place Tucker, Georgia 30084 ATTN: Mr. David Pelton

Re: Special Encroachment Permit #12-2016-038-089, AMPS 728363, DeKalb County, S.R. 407, MP 12.32

Dear Applicant:

Your permit has been approved, however; before final authorization can be made, you must return the documents specified on the attached "Instruction List" to the person shown. Upon receipt of these items, we will issue to you a "Document Receipt". You or a qualified representative on the project should contact our Area Engineer who will authorize the issuance of your permit for construction. This approval is subject to the revisions and additions shown in red on the plans, which are with your permit. The plans should be discussed with the permit inspector at that time. Your copy of the permit along with this letter should be kept at the construction site and available for inspection at all times. The red identification sign, which will accompany the permit, must be displayed within the working area and visible from the highway.

It shall be your responsibility to notify the inspector when the work authorized by this permit is complete. A final inspection will be scheduled at that time for the release of your bond. No work should be considered accepted by the Georgia DOT until you are notified in writing.

If you have any questions, please call (770) 216-3893.

Yours very truly,

Kathy Zahul, P.E.

District Engineer

by: Paul DeNard, P.E., P.T.O.E.

District Traffic Engineer

KZ:PD:bc

cc: Andrew Heath, P.E., State Traffic Engineer (Attn: Daphne Cautela)

J. Brad Humphrey, Area 1 Engineer (Attn: Reuben Woods)

City of Clarkston

Instruction List

Location:

The work to be performed is located at the property on the E. & W. side of highway, beginning 50 feet ±S. of the centerline of E. Ponce de Leon Avenue, fronting 20 feet ± further S. and at milepost 12.32.

Stipulations:

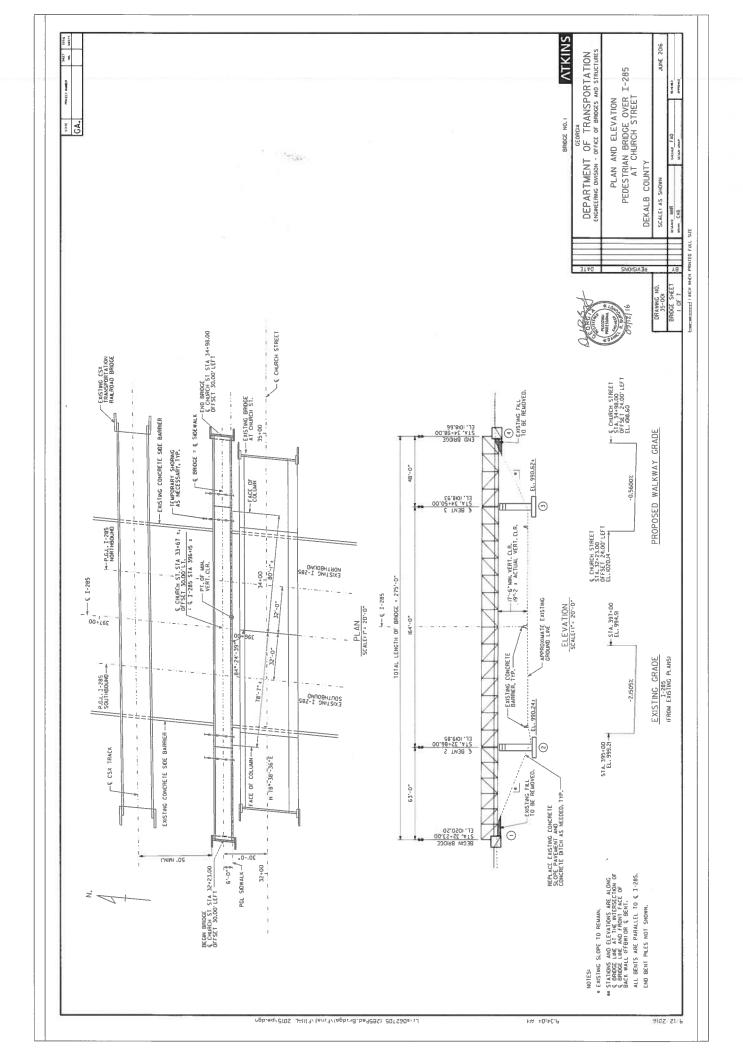
Before your permit can be released for construction you must return the following documents to Traffic Operations Office of the Georgia Department of Transportation at 5025 New Peachtree Road NE - Chamblee, Georgia 30341. Please call 24 hours in advance for an appointment so Bryan Carter will be present to issue you your document receipt. (770) 986-1772 or brcarter@dot.ga.gov

- An original Performance Bond or Letter of Escrow in the Amount of \$100,000.00. (Sample and original bond form enclosed). The Department is unable to accept performance bond documents that have been photocopied or faxed at any time. Please submit only the original performance bond document provided by this office. Also, please use a GEORGIA-HOUSED bonding agency, or have a GEORGIA RESIDENT AGENT provide their signature and address in the designated area on the bond form. (If a Blanket Bond is being used to cover the work authorized by this permit a copy of the Blanket Bond needs to be provided to this office).
- Maintenance Agreement

Special Stipulations:

The Georgia Department of Transportation may curtail any work activities authorized under this permit, if Department representatives deem the existing or expected traffic conditions could be negatively impacted.

Construction on the right-of-way is to begin only when the site construction is begun, including buildings, parking lots, etc. and is approved only for the type business indicated on the application. Any change in site usage will require a revision to this permit.



GENERAL NOTES

SPECIFICATIONS - GEORGIA STANDARD SPECIFICATIONS, 2013 EDITION, AS MODIFIED BY COMTRACT DOCUMENTS.

REINFORCING STEEL - PLACE AND TIE ALL REINFORCING STEEL IN ACCORDANCE WITH GEORGIA DOT SPECIFICATIONS. DO NOT WELD REINFORCING STEEL,

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CHAMFER - CHAMFER ALL EXPOSED CONCRETE EDGES 3" UNLESS OTHERWISE NOTED.

IEMPORARY SHORING - INCLUDE THE COST OF TEMPORARY SHORING AS NECESSARY FOR BRIDGE CONSTRUCTION IN THE OVERALL BID SUBMITTED.

TRAFFIC SPECIAL PROVISIONS FOR TRAFFIC CONTROLS AND SEE TRAFFIC CONTROLS -CONTROL PAYMENT. EXISTING SLOPE PAVING - TAKE CARE TO PREVENT DAMAGING THE EXISTING SLOPE PAVING. REPART ANY DAMAGING THAT OCCUPE OF THAT MAY DAMAGING THAT OCCUPE PAVING. DOUGH PAVING THAT MAY REQUIRED TO BE REDOVED FOR SUBSPIRACINGE EXCANATION AND TO TIE NEW SLOPE PAVING. INTO EXISTING SLOPE PAVING. INTO EXISTING SLOPE PAVING IN THE OVERALL BID SUBMITTED.

EXISTING CONCRETE DITCH PAVING - TAKE CARE TO PREVENT DAMAGING THE EXISTING CONCRETE DITCH PAVING. REPOYE DALY THE PORTION OF CONCRETE DITCH PAVING THAT IS NECESSARY FOR SUGRENICTURE EXCAVATION AND REPAIR WY DAMAGE THAT OCCURS TO THE CONCRETE DITCH PAVING. REBUILD ALL PORTIONS OF CONCRETE DITCH PAVING REMOYED TO RETURN TO EXISTING CONCITION. INCLUDING DRAINAGE FLOW-INCLUDE THE COST FOR REMOYAL AND REBUILDING OF CONCRETE DITCH PAVING IN THE OVERALE BIS SHANTIED.

MAITING PERIOD - NONE REQUIRED.

INTERMEDIATE BENT EXCAVATION - WHEN EXCAVATING, TAKE CARE NOT TO DISTURB THE EXISTING FOOTINGS. BLASTING WILL NOT BE ALLOWED.

"DOTING ELEVATIONS - DO NOT LOWER FOOTING ELEVATIONS, AS SHOWN ON THE PLANS, MORE THAN 3'-O" WITHOUT THE APPROVAL OF THE STATE BRIDGE ENGINEER.

OF TYPE I FOUNDATION BACKFILL. FOUNDATION BACKFILL HATERIAL - PLACE 1'-0" OF MATERIAL UNDER EACH FOOTING AT BENTS 2 AND 3. PLAN FOOTING DIMENSIONS PLUS 2'-0".

PLAN DRIVING DBJECTIVE - SEE SUBSTRUCTURE DETAILS.

ANCHOR BOLIS - PLACE ANCHOR BOLIS IN FORMED 3" DIAMETER X 12" DEEP HOLES AND GROUT IN PLACE AS PER SAB-SECTION SO1.3.05.8.3 OF THE GEORGIA DOT SPECIFICATIONS. STIRRUPS MAY BE SHIFTED SLIGHLY TO CLEAR ANCHOR BOLT HOLES.

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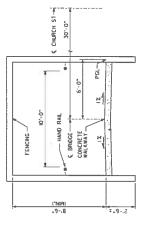
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STORAGE OF CONSTOCTION MATERIALS - THE CONTRACTOR SHALL BE REQUIRED TO MAINTAIN CLEAR ZONE, WHILE STAGINE COUPPRINT MAD MATERIALS DORING CONSTRUCTION. IF MATERIALS OR EQUIPMENT ARE STORED BEHIND EXISTING GUARDRALL IN THE SHOULDERS. THE CONTRACTOR SHALL ENSURE THAT THERE CONTINUES TO BE AN ACEDIATE LEAD OF GUARDRALL. IERPORARY BARRIER MAY BE REQUIRED IF THE LEMBER OF GUARDRALL ENDERDATE AS DETERMINED BY THE FIELD REGINEED. IF THE

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TYPICAL SECTION NO SCALE

ASSUMED TRUSS REACTIONS - 63'SPAN (KIPS)	REACTION	S - 63' SF	AN (KIPS)
LOAD	VERTICAL		TRANSVERSE LONGI TUDINAL
DEAD LOAD	21.745		
PEDESTRIAN LIVE LOAD	14.060		
VEHICULAR LIVE LOAD	10.000		
WIND UPLIFT	-5.750		
MIND	14.860	5.240	
THERMAL			3.265

ASSUMED TRUSS REACTIONS - 164' SPAN (KIPS)	REACTION	S - 164' SF	AN (KIPS)
LOAD	VERTICAL		TRANSVERSE LONGI TUDINAL
DEAD LOAD	70.725		
PEDESTRIAN LIVE LOAD	36.595		
VEHICULAR LIVE LDAD	10.000		
WIND UPLIFT	-14,965		
WIND	115,160	14.115	
THERMAL			10.615

AN (KIPS)	TRANSVERSE LONGITUDINAL						2.485	
ASSUMED TRUSS REACTIONS - 48'SPAN (KIPS)						3.995		
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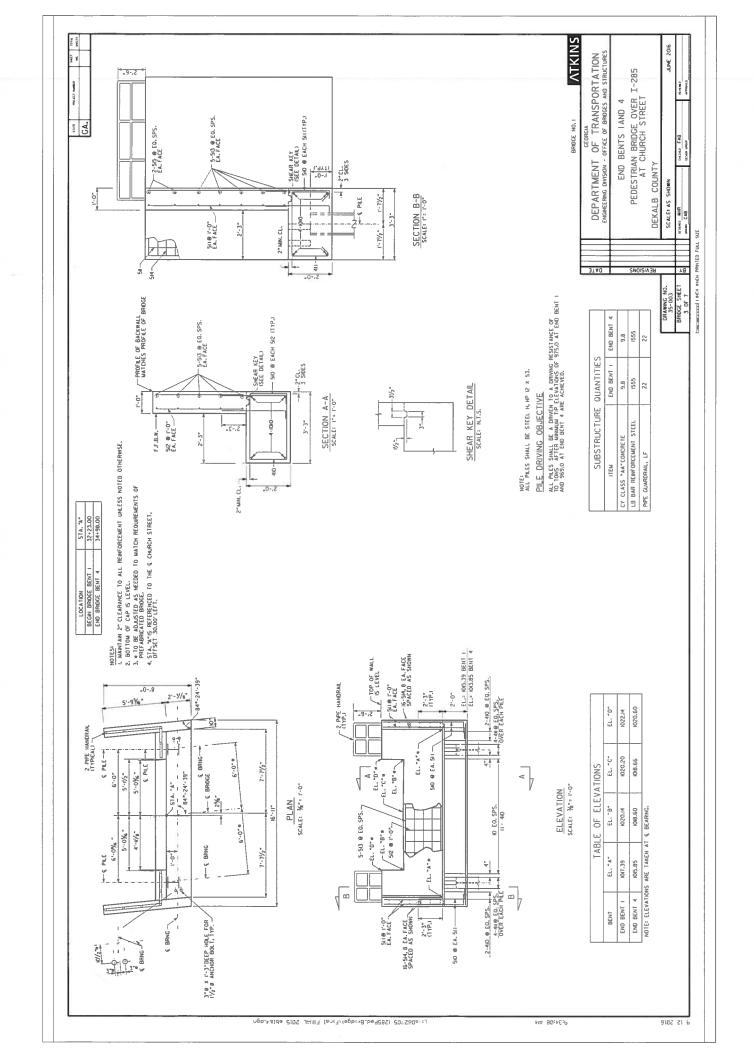
SUMMARY OF QUANTITIES

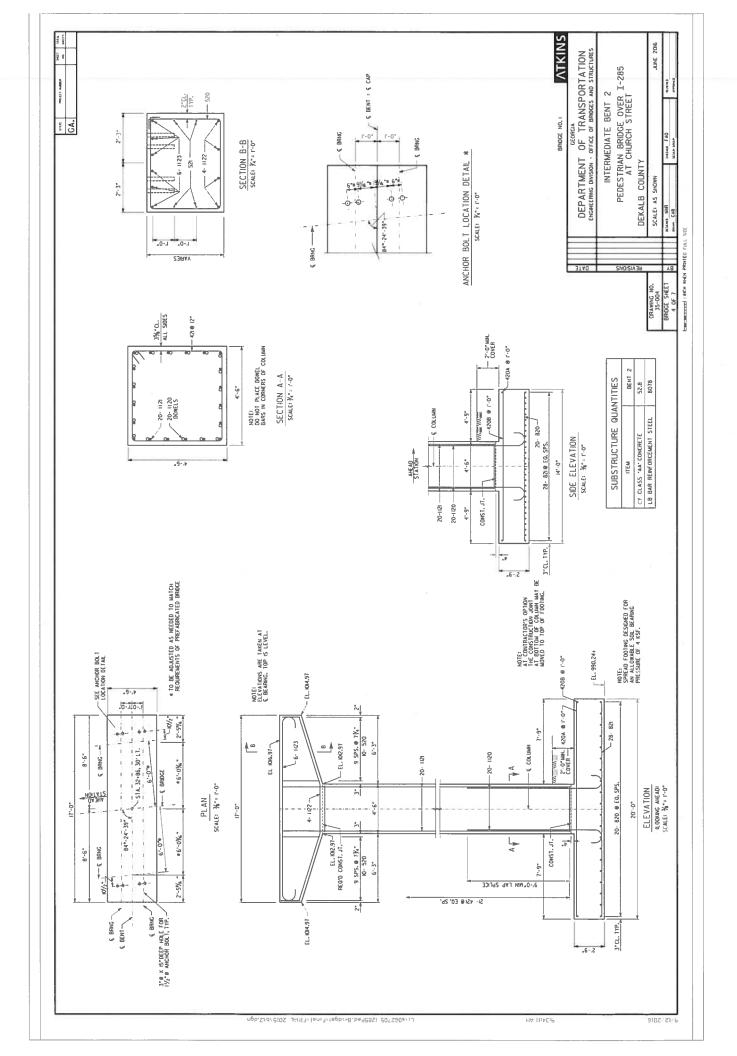
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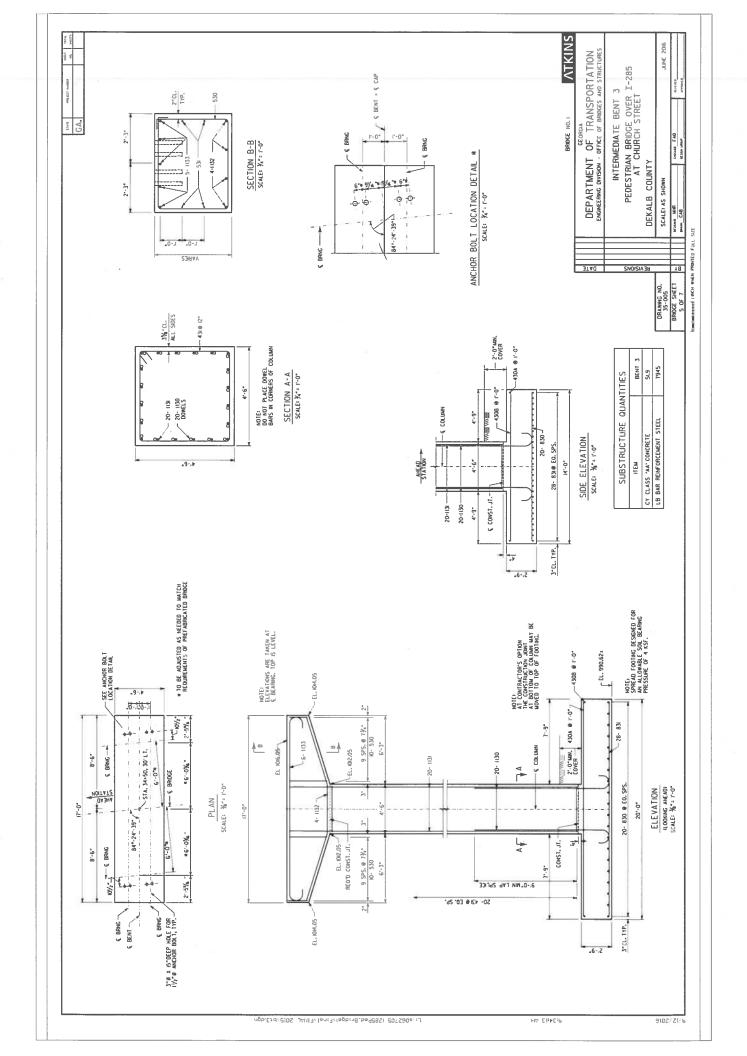
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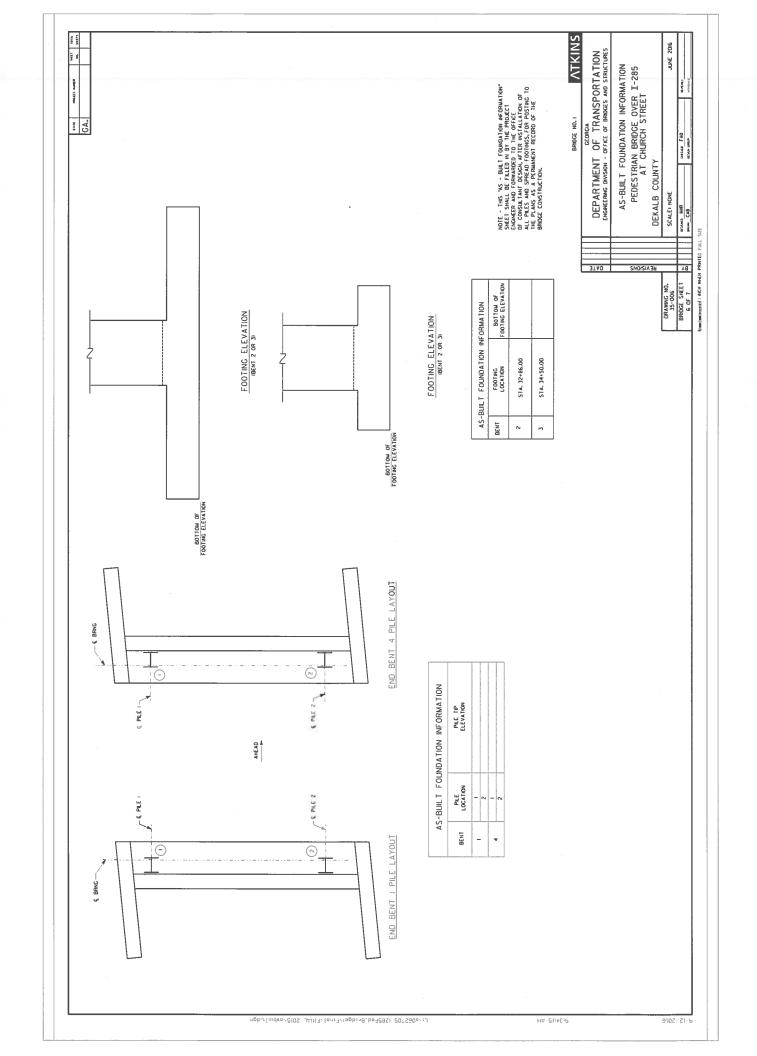
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	/38				DEKALB COUNTY	
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