

## **PROJECT AGREEMENT**

**THIS PROJECT AGREEMENT** (this “Agreement”) is by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”) and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (“City”).

**WHEREAS**, DEDA owns the real property depicted and designated as the “Licensed Premises” on the attached Exhibit A (the “Licensed Premises”).

**WHEREAS**, DEDA desires to contract with the City to demolish a DEDA-owned railroad bridge on, over, and under the Licensed Premises, as well on property owned by a third party, in western Duluth (the “Project”).

**WHEREAS**, City hired hereinafter-defined LHB, Inc. (“LHB”) to perform the hereinafter-defined LHB Work, in an amount not to exceed \$21,189.25.

**WHEREAS**, City will be hiring a contractor(s) to perform the demolition work on the Project (the “Demolition Work”).

**WHEREAS**, City desires to access the Licensed Premises and complete the Project, and DEDA wishes to provide City with written permission to do so, as well as provide payment for the LHB Work and reimbursement for the Demolition Work, all in an amount not to exceed \$130,000.00.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

### **I. DEFINITIONS**

The following terms shall have the meanings hereinafter ascribed to them:

A. Bridge: shall mean the railroad bridge owned by DEDA over Oneota Street and 37<sup>th</sup> Avenue West located on and adjacent to the Licensed Premises.

B. Contract: shall mean the contract between the City and the Contractor for the performance of the Demolition work.

C. Contractor: shall mean the contractor with whom the City enters into the Contract.

D. Demolition Work: shall mean the demolition work as described in the Plans necessary to the demolition and removal of the Bridge and shall include traffic control; removal of existing timber bridge entirely including timber piers, abutments and wingwalls, removal of existing timber piles and steel posts (all removals to 3 feet below grade); regrading of slopes and resurfacing slopes with turf (seed, fertilizer and blankets).

E. License: shall mean the non-exclusive License granted by DEDA to the City to enter upon the Licensed Premises to perform the.

F. Licensed Premises: shall mean that property in St. Louis County, Minnesota owned by DEDA that is outlined in black hashing on the attached Exhibit A.

G. LHB: shall mean the firm of LHB Inc.

H. LHB Work: shall mean all work necessary to the design and construction supervision of the Project including complete site survey, site plans and demolition details, project coordination, and construction administration and inspection on the Project

I. Other Property: shall mean that Property shown and depicted on Exhibit B immediately adjacent to the Licensed Premises upon which a portion of the Bridge is located.

J. Plans: shall mean the plans and specifications for the Demolition Work prepared by LHB on file in the office of the City Engineer as City Project No. 1883.

K. Project: shall mean the LHB Work and Demolition Work.

## **II. LICENSE**

A. DEDA grants to City, and its employees, agents, contractors and subcontractors, the License to enter onto the Licensed Premises with all necessary tools, equipment, vehicles, and related materials for the purpose of completing the Project.

B. City's use of the Licensed Premises shall be limited to the activities and purposes stated herein. This Agreement does not permit the public to use the Licensed Premises. DEDA shall have access to the Licensed Premises during the term of Project.

C. City acknowledges that the License only permits City to access the Licensed Property and to complete the Project on the Licensed Premises. City is responsible to obtain permission to complete the Project on property outside of the Licensed Premises.

### **III. DESIGN & CONSTRUCTION**

A. With DEDA's concurrence, City has hired LHB to prepare the Plans and to provide all design and construction supervision services necessary to the Project. The Plans shall conform to all applicable codes and legal requirements and shall be in a form that is appropriate for competitive bidding.

B. City shall bid out the Contract for the Demolition Work based on the Plans in accordance with its standard competitive bidding policies and practices and shall award the Contract to the lowest responsible bidder in accordance therewith; said Contract payable from City Fund 411-035-5530. The Contract shall require the Contractor to indemnify DEDA from liability in conformance with Section XII below and shall require the Contractor to insure DEDA in the same manner as the City is insured under the City's standard construction insurance requirements.

### **IV. REIMBURSEMENT AND SALVAGE**

A. The City and DEDA hereby agree that DEDA shall pay LHB directly for the its work pursuant to the hereinbefore-referenced contract between the City and LHB related to the Project in an amount not to exceed \$21,189.25 payable from DEDA Fund 860 upon receiving LHB's invoice therefore approved for payment by the City Engineer.

B. DEDA shall reimburse the City for the cost of the Contract upon being invoiced therefore by the City in an amount not to exceed \$108,810.75, payable from DEDA Fund 860 and payable into City Fund 411-035-4263. DEDA will reimburse the City within 45 days of invoice.

C. The parties agree that the City or its contractor may retain any salvage material from the Bridge Demolition Project at no cost. All salvage material from Project must be removed from the Licensed Premises once the Project is completed.

## **V. TERM**

Notwithstanding the date of execution of this Agreement, the term of this Agreement shall be deemed to have commenced as of February 4, 2020 and shall terminate at the end of the day on June 31, 2021 (the “Term”). Notwithstanding the above, the Term of this Agreement may be extended upon the prior written approval of DEDA’s Executive Director and the City’s Director of Public Works.

## **VI. LAWS, RULES AND REGULATIONS**

During the term of this Agreement, City will conduct its activities related to this Agreement in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and City of Duluth.

## **VII. NO THIRD PARTY RIGHTS**

This Agreement is to be construed and understood solely as an agreement between the parties hereto regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person, organization, or business shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

## **VIII. NOTICES**

Notices sent pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City  
City of Duluth  
Attn: Director of Public Works  
411 W. First Street, Room 274  
Duluth, Minnesota 55802

DEDA  
Duluth Economic Development  
Authority  
Attn: Executive Director  
418 City Hall  
411 West First Street  
Duluth, Minnesota 55802

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

## **IX. COMPLIANCE WITH AGREEMENT**

The rights of City to occupy and use the Licensed Premises are subject to City's compliance with the undertakings, provisions, covenants, and conditions herein.

## **X. APPLICABLE LAW**

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those state courts located within St. Louis County, Minnesota.

## **XI. AMENDMENTS**

Any amendments to this Agreement shall be in writing and shall be executed by the same individuals who executed this Agreement or their successors in office.

## **XII. SEVERABILITY**

If any term or provision of this Agreement is declared by a court of competent-jurisdiction to be illegal or in conflict with any law, then the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **XIII. INDEMNIFICATION**

### **A. Generally**

City will to the fullest extent permitted by law, protect, indemnify and save DEDA and its officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Project or the Licensed Premises or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Licensed Premises or any part thereof and the construction or installation of the Project on any portion of the

Project and the Licensed Premises. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the City, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

2. Any violation by City of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Licensed Premises which shall have existed at the commencement of the term of this Agreement or shall have been approved by the City.
4. Any violation of any law, ordinance, court order or regulation affecting the Licensed Premises, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, City hereby agrees that for itself, its successors and assigns that it will indemnify and save the DEDA and its officers, agents, servants and employees and any person who controls the DEDA within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created in the Licensed Premises after the date of the signing of this Agreement which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Licensed Premises of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency

including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing on the Property.

C. Indemnification Procedures

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which the other party is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

**XIV. ENTIRE AGREEMENT**

This Agreement, including Exhibits A and B, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party. This Agreement may be executed in counterparts, which together shall form one original.

*[Remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as indicated below.

**CITY OF DULUTH**

**DULUTH ECONOMIC  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
President

Attest:

By: \_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Clerk  
Date Attested: \_\_\_\_\_

Dated: \_\_\_\_\_

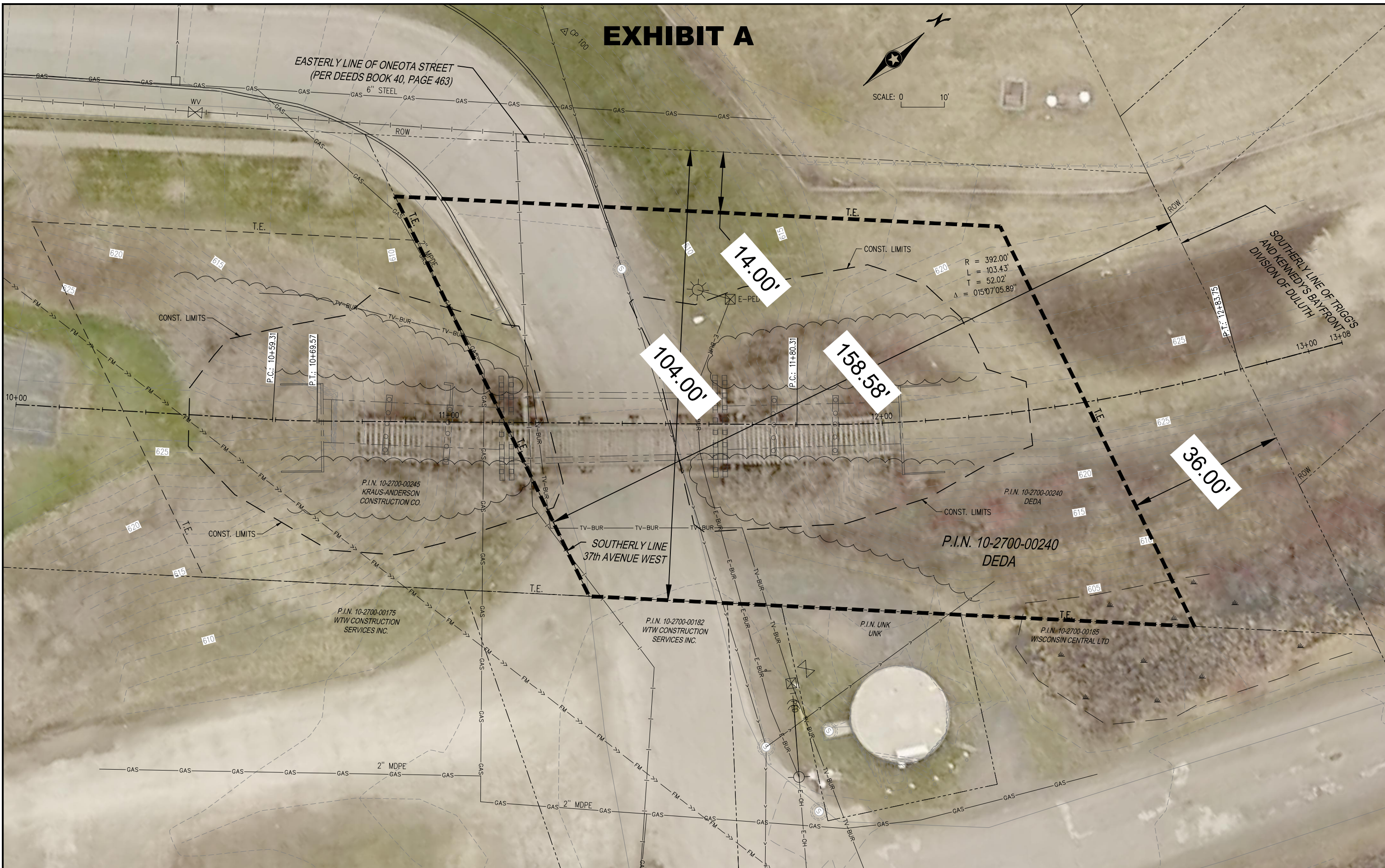
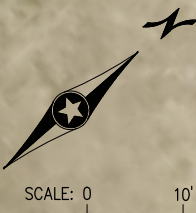
Approved as to form:

\_\_\_\_\_  
City Attorney

Countersigned:

\_\_\_\_\_  
City Auditor

EXHIBIT A



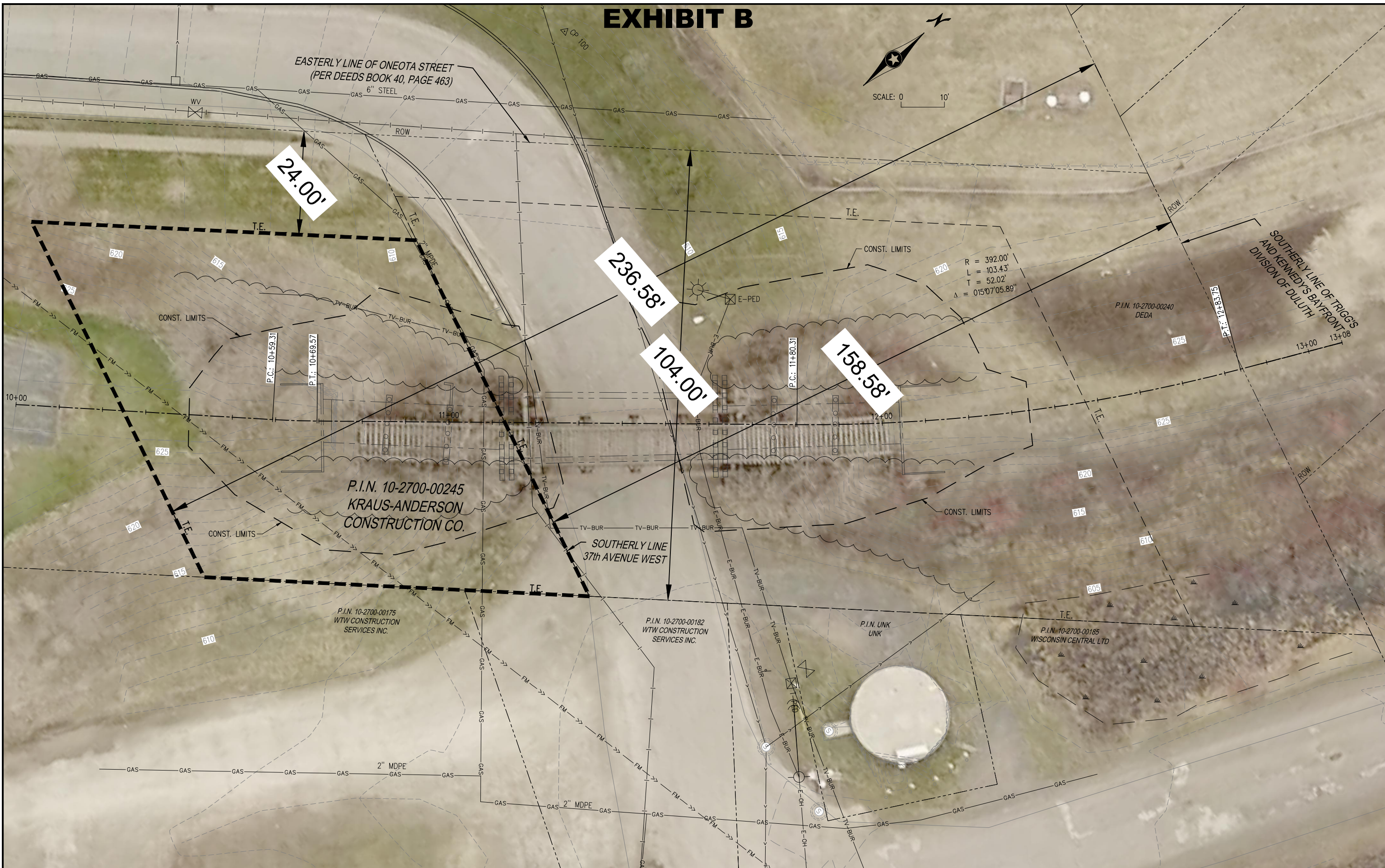
I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.  
NAME: Paul A. Vogel LIC. NO. 44075 DATE 07/24/2020

CITY OF DULUTH

DEDA PARCEL 1 OF 1

Sheet No. 1 of 1 Sheets

EXHIBIT B



I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.  
NAME: Paul A. Vogel LIC. NO. 44075 DATE 07/24/2020

CITY OF DULUTH

KRAUS ANDERSON PARCEL 1 OF 1

Sheet No. 1 of 1 Sheets