

## **AGREEMENT AND RELEASE**

This Agreement and Release, effective on the date of final city council approval, is entered into by and between:

1. Hovland, Inc ("Hovland"), on behalf of itself, its directors, officers, employees, representatives, agents, insurers, members, future members, successors, assigns and subrogees;
2. Lon Hovland, in his personal capacity, on behalf of his self, successors, assigns and subrogees; and
3. City of Duluth ("City"), a Minnesota charter city and statutory city of the first class, on behalf of itself, its directors, officers, employees, representatives, agents, insurers, successors, assigns and subrogees.

## **RECITALS**

- A. The City contacted Hovland, Inc. on or about July, 2015 regarding certain fill material that was alleged to have been placed on City property on or about July 6, 2015.
- B. The subject fill was alleged to have been placed within a shoreline zoning district in violation of Minnesota DNR regulations as well as the City's Shoreland Protection Ordinance.
- C. On or about August 14, 2015 the City, through its employees, approached Hovland with a proposed solution where Hovland would remove the fill materials that were alleged to have been placed within the shoreline zoning district. As part of the City's proposed resolution, Hovland would be required to secure necessary permits from the City, submit a required restoration plan, and complete the remediation work to remove the fill by September 15, 2015.
- D. Due to an inability to reach an agreement, the City hired a separate contractor to remediate the shoreland zone in Piedmont Park which was alleged to have been damaged by the subject fill. The City paid for the cost of remediation, which totaled \$27,802.17.
- E. The remediation work authorized and approved by the City at Piedmont Park was done in an appropriate manner and satisfied and remedied all claims of violation issued to the City by the Minnesota DNR.
- F. The City has sought reimbursement from Hovland and Lon Hovland for the cost of the remediation work in Piedmont Park which totaled \$27,802.17.

- G. Hovland and Lon Hovland dispute their liability for the amount of \$27,802.17 which has been claimed by the City. However, Hovland and Lon Hovland recognize there are costs and uncertainties inherent in litigation and desire to avoid a lawsuit.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the parties agree as follows:

**1. RELEASE OF CLAIMS.**

A. *Services, equipment and materials to be provided by Hovland and Lon Hovland for the benefit of the City:* As consideration for this agreement, Hovland and Lon Hovland will use their expertise and skill to provide labor, equipment, and materials to improve certain property of the City as further described herein (“Services”). Based upon the nature of the work, the experience of the supervisors and tradesmen, and the equipment which will be provided by Hovland and Lon Hovland, the total value of these Services to the City, the parties agree, is equal to or greater than the \$27,802.17 the City claims to be owed by Hovland for the cost of remediation in Piedmont Park. A detailed description of the Services is attached to this Agreement and Release as Exhibit A. A brief description of the Services to be provided by Hovland and Lon Hovland is provided below.

On or before July 1, 2017, Hovland and Lon Hovland agree to:

- i. Repair/replacement of several sidewalk slabs, including repair or replacement of the adjacent hand railing, at the Great Lakes Aquarium;
- ii. Repair/replacement of four pedestrian ramps at or near the N. 4th Ave. W. & pt St. alley;
- iii. Repair/replacement of street concrete, sidewalk, curb and storm/catch basin adjustment at or near the Holiday Station on S. 27th Ave. W.;
- iv. Install two new pedestrian ramps at or near Bayview Elementary School, including removal of existing curb;

- v. Repair/replacement of street concrete, curb, and sidewalk in and around the area damaged by water main work at 49th Ave. W. and Grand Ave.;
- vi. Repair/Replacement of the street concrete damaged by the water main break at N. 6<sup>th</sup> Ave. E. and E. 9<sup>th</sup> St.;
- vii. Repair/Replacement of the sidewalk and curb at or near the hydrant replacement at Grand Ave. and N. Central Ave.

Hovland and Lon Hovland agree that all Services described herein shall be performed in accordance with all applicable city codes, specifications and other applicable local, state or federal laws. Services shall be deemed complete when accepted by the City Engineer in writing.

B. *Services and Materials to be Provided By the City:*

City shall arrange for payment of the Redimix concrete used in the performance of the Services described herein upon same-day notification of the concrete mix order to be placed at each site. City shall endeavor to have a senior engineering technician at each site while Hovland and Lon Hovland complete the Services on each site. City shall perform the bituminous surfacing over the finished concrete at 49<sup>th</sup> Avenue West. City shall supply truncated dome panels. City shall arrange for the placement of all necessary traffic control devices. Hovland and Lon Hovland shall inform the senior engineering technician of the need for traffic control devices a minimum of five (5) working days in advance.

C. *Incomplete Performance/Tolling:*

Hovland and Lon Hovland agree that if the Services described herein are not completed and accepted by the City Engineer on or before July 1, 2017 (and the City Engineer, with the approval of the City Attorney, has not otherwise granted an extension of time to complete the Services described herein), the incomplete performance shall be deemed a debt or obligation due and owing to the city within the meaning of Duluth City Code Sec. 31-3(a)(2). The parties further agree that any claims,

crossclaims, counterclaims or defenses arising out of the placement of fill material on city property on or about July 6, 2015, as recited above, are tolled upon execution and approval of this agreement until January 5, 2018.

D. In accordance with and as consideration for the services to be rendered in benefit to the City by Hovland and Lon Hovland, the City agrees to unconditionally release and forever discharge both Hovland and Lon Hovland, in his personal capacity, and their sureties, successors, parents, affiliates, assigns, agents, subsidiaries, dealers and distributors, and the officers, directors, employees and assigns of each including any estates, heirs, or devisees (hereinafter sometimes collectively referred to as the "Released Parties") from any and all of its claims and all of its past, present, and/or future claims, actions, causes of action, suits, demands, rights, and damages of whatever kind or nature for compensatory, consequential or punitive damages, costs or expenses of any kind or nature for all potential claims stemming from the alleged actions of Lon Hovland or Hovland, Inc. on or about July, 6, 2015 at Piedmont Park. All the claims released hereunder are hereinafter collectively referred to as the "Released Claims".

**2. NO ADMISSION OF LIABILITY.**

The parties recognize and agree that this Agreement is the compromise of disputed claims and that the consideration accepted and paid hereunder is not intended nor shall it be construed by anyone to be an admission of liability.

**3. BINDING EFFECT.**

The terms of this Agreement shall be binding upon and be enforceable against and shall inure to the benefit of the parties hereto jointly and severally and the heirs, successors, personal representatives, and assigns of each.

In entering into this Agreement, each party represents that it has relied upon the advice of its attorney, who is the attorney of their own choice, concerning the legal consequences of the Agreement; that the terms of the Agreement have been completely read and explained to each party by its attorney; and that the terms of this Agreement are fully understood and voluntarily accepted.

**5. ENTIRE AGREEMENT.**

The parties understand and agree that this document contains the entire agreement between them with respect to the Released Claims, and that the terms of this Agreement are contractual and not a mere recital. By their signatures below the parties each represent that they have carefully read this document, know and understand the terms and effect hereof, have fully discussed the terms and effect of this document with their attorneys, and have signed this Agreement as their free and considered act.

**6. ENFORCEABILITY.**

If any provisions of this Agreement shall be unlawful, void or for any reason unenforceable, they shall be deemed separable from, and shall in no way affect the validity or enforceability of, the remaining provisions of this Agreement. Each party also acknowledges and confirms that the preparation of this Agreement has been a joint effort of the parties and counsel, and that it shall be construed fairly in accordance with its terms and shall not be construed for or against any individual party as drafter.

**7. REVIEW OF AGREEMENT.**

Each Party represents and certifies that they (1) have received a copy of this Agreement for review and study before being asked to sign it; (2) have read this Agreement carefully; (3) have been given a fair opportunity to discuss and negotiate the terms of this Agreement; (4)

understand its provisions; (5) have been advised and has consulted with their attorney; (6) have determined that it is in its best interest to enter into this Agreement; (7) have not been influenced to sign this Agreement by any statement or representation not contained in this Agreement or that it is subject to as a condition precedent; and (8) enter into this Agreement knowingly and voluntarily.

**8. EXECUTION OF AGREEMENT.**

This Agreement may be executed by the Parties in any number of counterparts so that the collection of all counterparts or partial executions shall constitute a fully executed and enforceable agreement. An electronic or facsimile copy of any execution of a counterpart shall have the same force and effect as if the same were an original. Each signatory hereto represents and warrants that they have the full, sufficient and continuing power, authorization and right to bind the Party to the terms of this Agreement on whose behalf their signature is affixed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Release  
as of the date first set forth above.

Lon Hovland, in his personal capacity

\_\_\_\_\_

Hovland, Inc.

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

City of Duluth

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

Mayor

Attest:\_\_\_\_\_

City Clerk

Countersigned:

\_\_\_\_\_

City Auditor

Approved as to form:

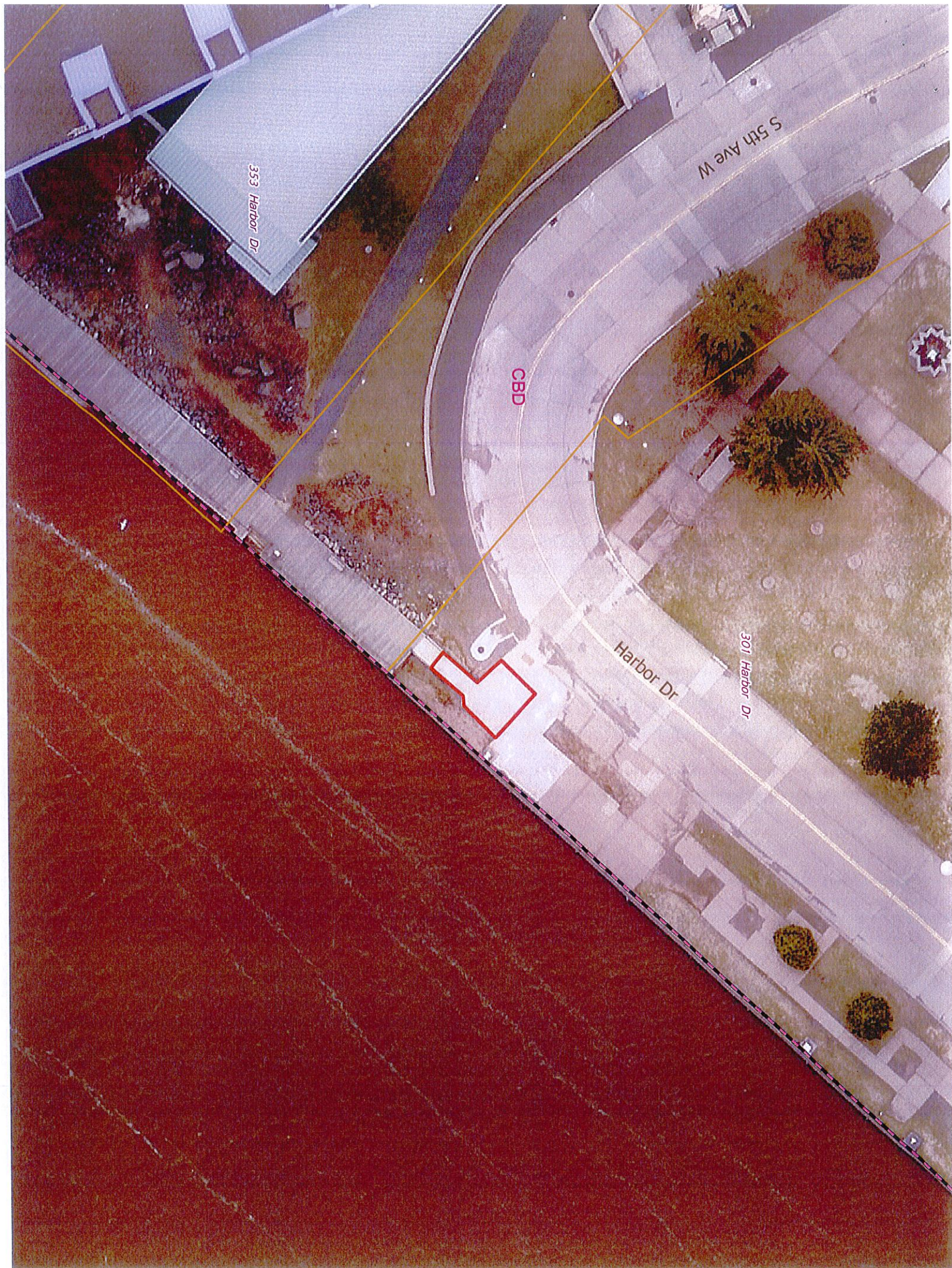
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City Attorney

# Exhibit A

Site Number	Location	Scope of work
1	Sidewalk @ Aquarium	Several large sidewalk slabs with thickened edges, repair or replace the adjacent handrail
2	N 4th Ave W & W 1st St alley	4 pedestrian ramps
3	Holiday Station - S 27th Ave W	Concrete St - Storm/Catch basin adjustment
4	Bay View Elementary School	2 pedestrian ramps
5	49th Ave W & Grand Ave	Concrete St / Curb / Sidewalk- Water main work repair
6	N 6th Ave E & E 9th St	Concrete St - Water main break repair
7	Grand Ave & N Central Ave	Sidewalk / Curb - Hydrant replacement





353 Harbor Dr

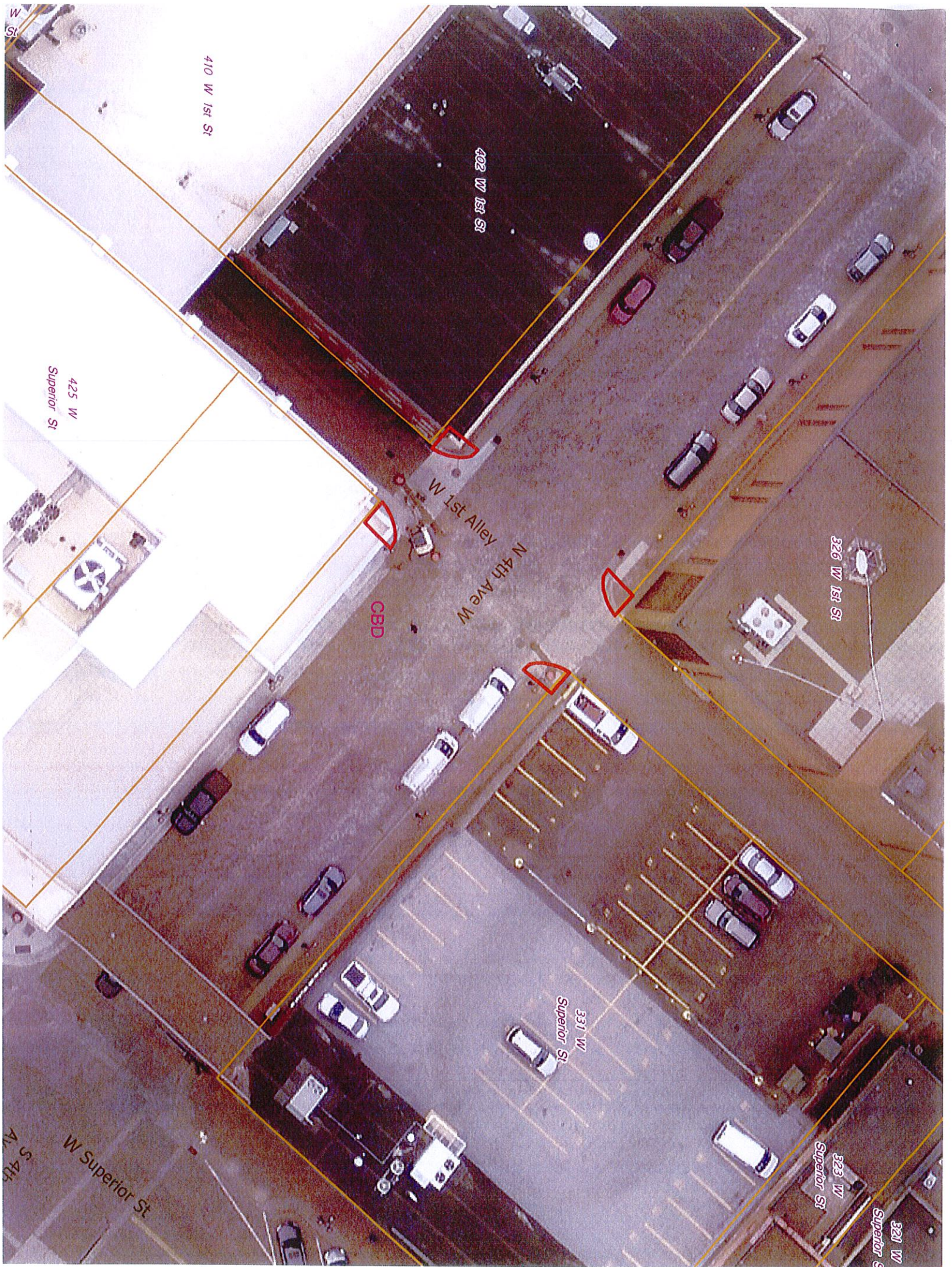
S 5th Ave W

CBD

Harbor Dr

301 Harbor Dr







215 S  
27th Ave W

S 27th Ave W

Lincoln Park

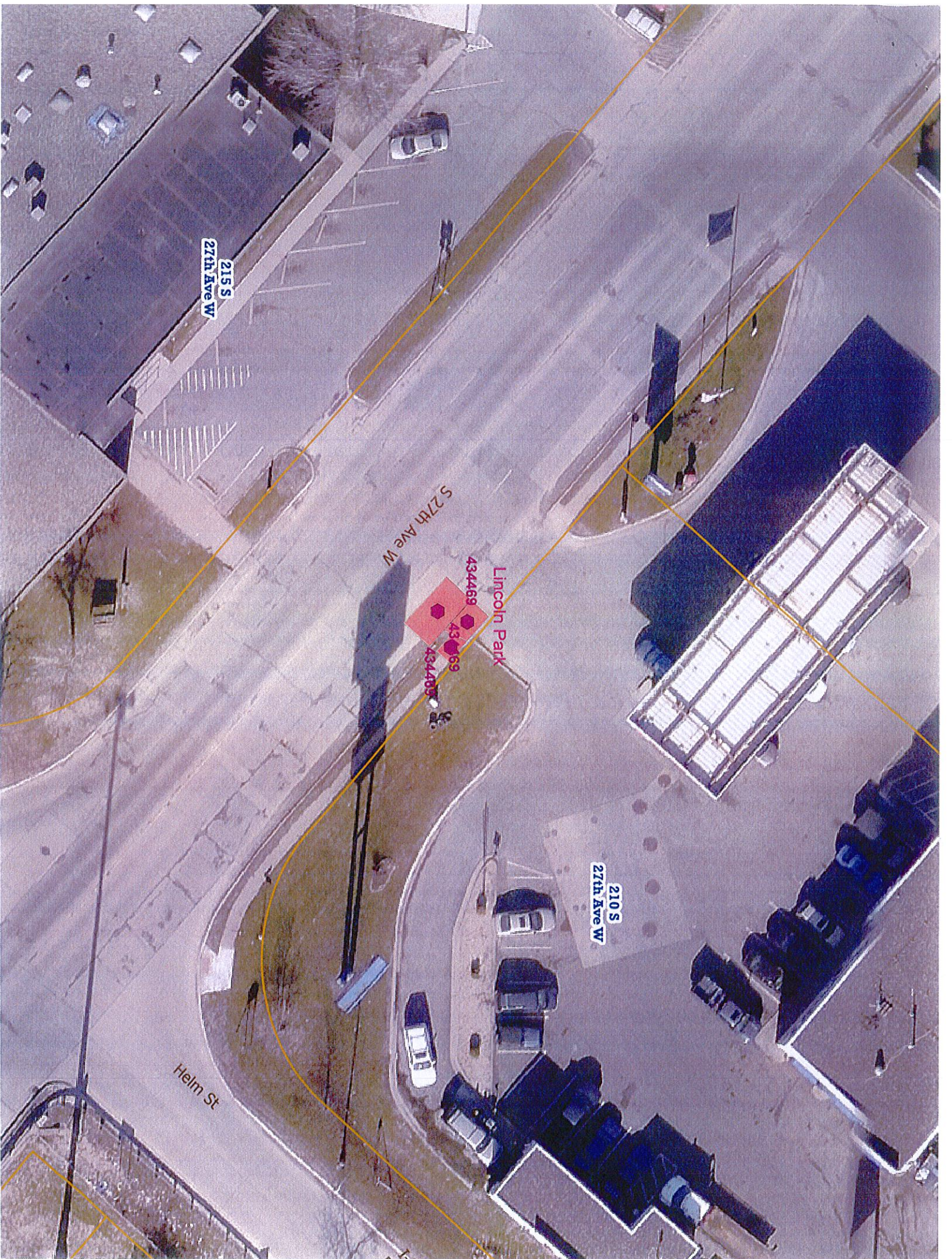
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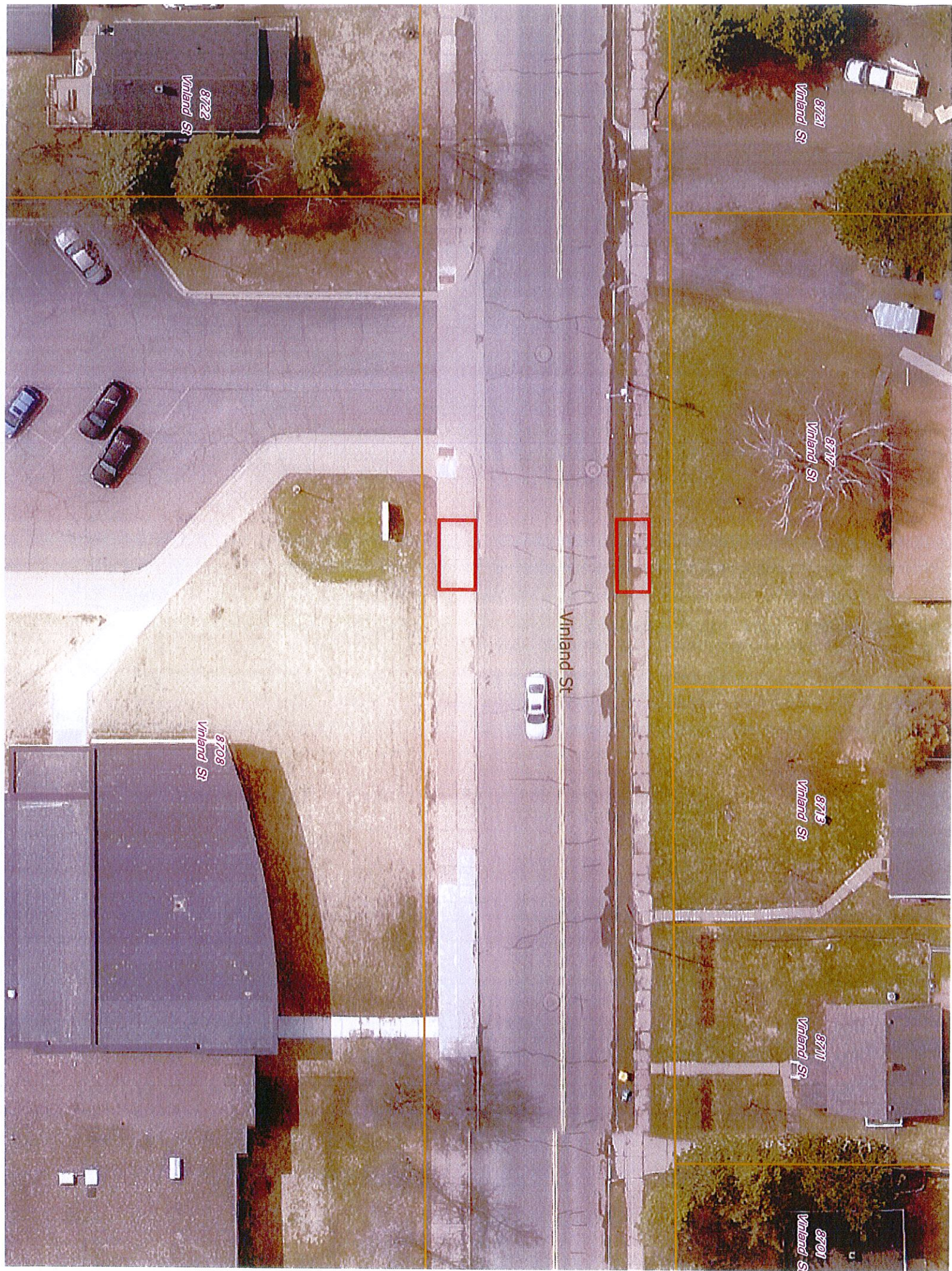
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210 S  
27th Ave W

Helm St











Elinor St  
10051

4901 Grand Ave

Denfeld

49th Ave W

Grand Ave

4825 Grand Ave

436851

436851

436851

422382

436851

Spirit Valley

4832 Grand Ave



