



Planning & Development Division
Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

☎ 218-730-5580

✉ planning@duluthmn.gov

| | | | | |
|----------------------------|--|---------------------------------|--|------------------|
| File Number | PL 19-022* | Contact | Steven Robertson | |
| Type | Concurrent Use Permit* | Planning Commission Date | September 10, 2019 | |
| Deadline for Action | Application Date | August 2, 2019 | 60 Days | October 8, 2019 |
| | Date Extension Letter Mailed | August 23, 2019 | 120 Days | December 7, 2019 |
| Location of Subject | 5 th Avenue East, Generally Between East Third and East Second Street | | | |
| Applicant | Essentia Health | Contact | Scot Ramsey, Vice President Facilities | |
| Agent | LHB | Contact | Evan Aljoe, Healthcare Studio Lead | |
| Legal Description | See Attached | Sign Notice Date | August 27, 2019 | |
| Site Visit Date | September 2, 2019 | Number of Letters Sent | N/A | |

Proposal

The applicant is seeking an amendment to an approved concurrent use permit to construct private underground utilities within the public right-of-way of Fifth Avenue. The applicant intends on adding a second bank of underground private conduit for low voltage communication and data cabling along the same route.

Staff Recommendation

Staff is recommending Planning Commission recommend approval to the City Council.

| | Current Zoning | Existing Land Use | Future Land Use Map Designation |
|----------------|-----------------------|--------------------------|--|
| Subject | MU-I | Medical | Medical District |
| North | MU-I | Medical | Neighborhood Mixed Use/Urban Res. |
| South | F-8 | Highway/Commercial | Tourism/Open Space |
| East | MU-N/MU-I | Residential | Urban Residential |
| West | MU-I/F-5/F-8 | Commercial | Central Business Primary/Secondary |

Summary of Code Requirements

UDC Section 50-37.7C. The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
3. No portion of a public easement proposed for use is being physically used or occupied by the public.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Principle #5 -Promote reinvestment in neighborhoods.

Duluth is strongly defined by its neighborhoods. This system should be supported through land use and transportation that foster neighborhood reinvestment. New development or redevelopment should maximize public investment that strengthens neighborhood commercial centers or diversifies residential opportunities that fit the neighborhood's character.

Governing Principle #8 - Encourage mix of activities, uses and densities

Cities have evolved as a mix of land uses, building types, housing types, and activities. Accommodating choice while protecting investment is a balance to strike in land use regulation. Mixed uses provide opportunity for a diversity of activity that segregated, uniform uses do not provide.

Future Land Use

Future Land Use Institutional. Applicable to medical, university/college, public school, religious, or governmental campuses. Can include adjacent areas that support them, with related commercial and/or office uses, and residential uses in the fringe areas of the district.

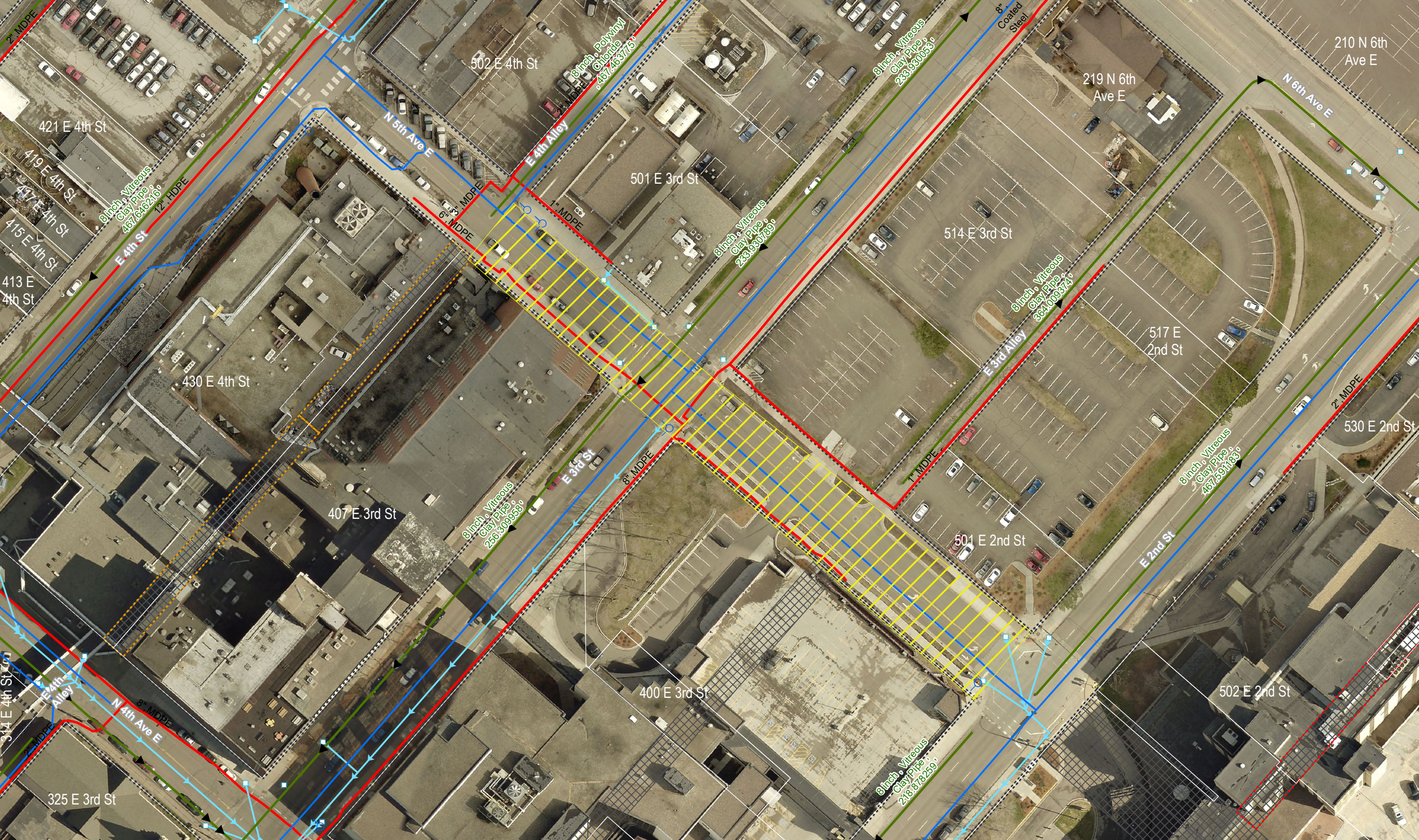
Review and Discussion Items:

- 1) The applicant is seeking an amendment to a previously approved concurrent use permit to construct private underground utilities within the public right-of-way of Fifth Avenue, adding a second bank of underground private conduit for low voltage communication and data cabling along the same route. This application is related to the MU-I Planning Review (PL 19-018) for the new 940,000 square foot medical facility proposed by Essentia Health.
- 2) The area proposed for the concurrent use permit will not take away from the public's ability to use the public right-of-way, nor will it harm or inconvenience the health, safety and general welfare of the city.
- 3) Concurrent use permits are approved by the City Council via an ordinance. Unlike street right-of-way vacations, concurrent use permits are not recorded at with St. Louis County as they are voidable agreements between the City and property owners. City engineering has reviewed and approved the exhibits.
- 4) The City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against all occurrences in the right-of-way. Other protections for the city and the public are typically included in the ordinance that is submitted for the City Council's review. The ordinance will require that the project proposer will locate any underground items in accordance with Gopher State One Call rules, and that the city will bear no responsibility for locating any facility related to the concurrent use permit except as it is legally responsible under the Gopher State One Call rules.
- 5) No comments were received from the public or other government agencies at the time this staff report was written (September 3, 2019), other than technical comments/corrections to the exhibits.
- 6) A condition of earlier zoning applications was that Essentia Health locate any private improvements in accordance with Gopher State Once Call rules and that they or subsequent owner of the private improvements shall relocate any improvements found to be in conflict with existing or future city utility or street projects. On August 14, 2019, Essentia Health was enrolled in Gopher One as a provider (MN01741).
- 7) Per UDC Sec. 50-37.1.N, approved concurrent use permits lapse if the project or activity authorized by the permit has not begun within one-year.

Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission approve the concurrent use permit with the following conditions:

- 1) Applicant construct and maintain the project as identified in the attached exhibits.
- 2) Applicant provide annual proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
- 3) Applicant will remove the obstructions at the applicant's expense if directed to by the City with appropriate notice.
- 4) The structure will need to comply with any applicable engineering standards, or building or fire code requirements.
- 5) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.





**PERFORMANCE
DRIVEN DESIGN.**
LHBcorp.com

August 22, 2019

Community Planning Division – City Hall
c/o Steven Robertson
411 W. 1st Street
Room #110
Duluth, MN 55802

RE: Concurrent Use Permit for 5th Avenue East

Dear Mr. Roberson:

The purpose for this concurrent use is to locate private underground utilities within the ROW. The utilities consist of two separate sets of electrical conduit. 1 set of conduit will extend emergency electrical power from existing emergency generators located north of 3rd Avenue down the west side of 5th avenue east and across 2nd street to the project. The second set of conduit will extend low-voltage communication and data cabling along the same route.

Please feel free to contact me directly if you have any further questions or concerns.

LHB

Evan Aljoe
Healthcare Studio Leader

c: Scot Ramsey
Vice President – Facilities
Essentia Health East

Q:\18Proj\180203\400 Design\403 Regulatory\concurrent use\5th Ave\20190802 Amendment\Concurrent Use cover letter - 5th Ave.docx



Essentia Health

April 17, 2019

Community Planning Division – City Hall
c/o Keith Hamre, Director
411 W. 1st Street
Room #110
Duluth, MN 55802

RE: Concurrent Use Permit Acknowledgement

Dear Mr. Hamre:

Pursuant to our Concurrent Use of Streets Application and the requirement of Section 50-37.7.C (f), we acknowledge that to the extent any of Essentia's private improvements are installed in the public right of way that they may be removed by the City of Duluth if needed for installation or repair of public improvements or if Essentia, as applicant, violates the terms of the permit granted.

Please feel free to reach me by phone at (218) 786-2625 with any questions or concerns related to this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Scot Ramsey".

Scot Ramsey
Vice President – Facilities
Essentia Health East

EXHIBIT CONCURRENT USE

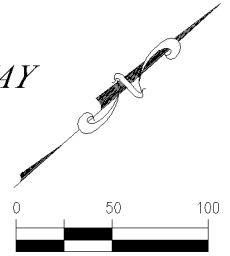
PRIVATE ELECTRICAL DUCT BANK IN CITY RIGHT-OF-WAY

Part of Streets and Avenues


PORTLAND DIVISION OF DULUTH

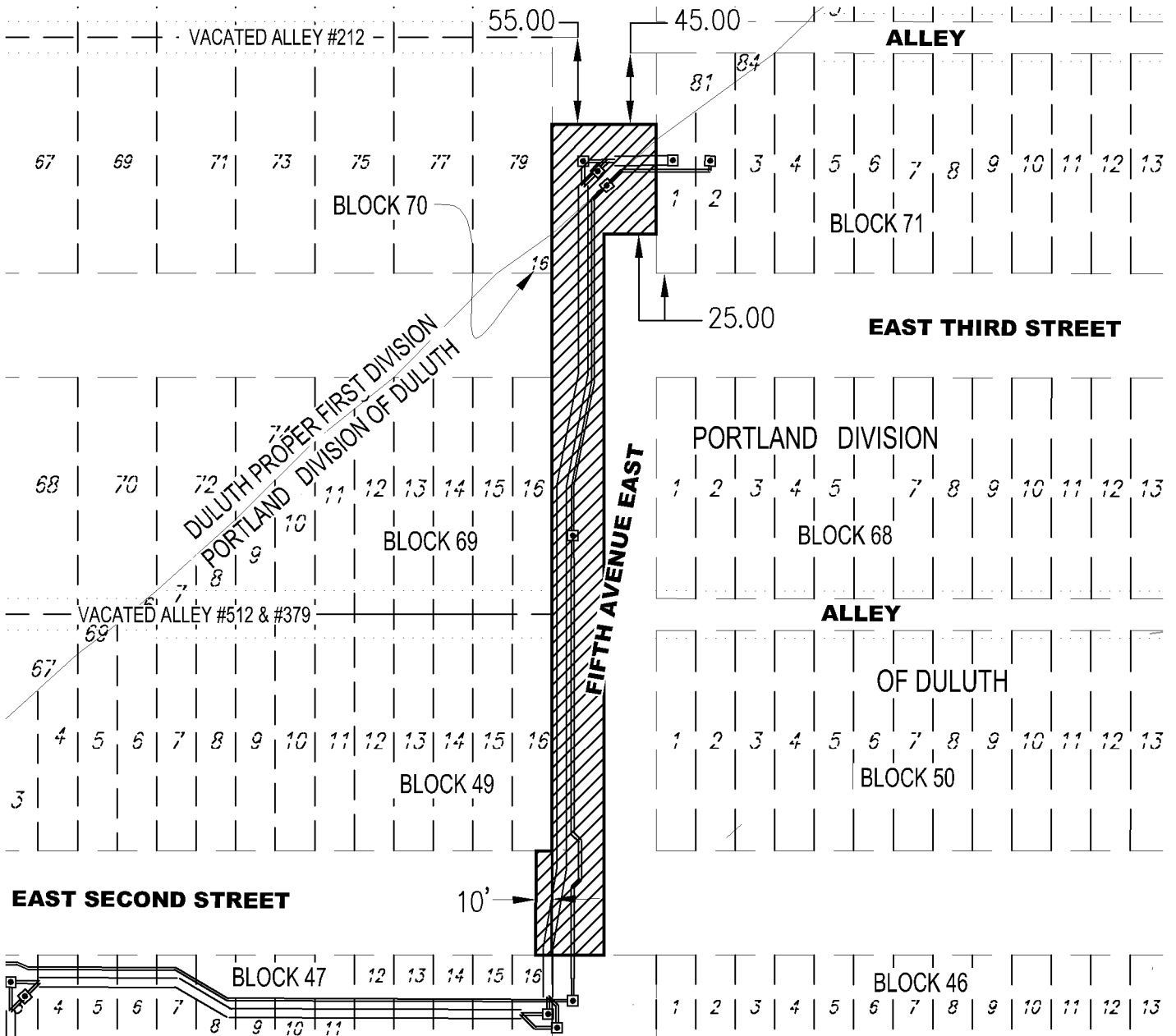
AND

DULUTH PROPER FIRST DIVISION



LEGEND

 = CONCURRENT USE AREA



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.

Print Name: Paul A. Vogel

License # 44075

Signature: 

Date: 08/20/2019

REVISED: 08/20/19

DATE PREPARED: 03/05/19

PROJ NO: 180203

FILE: 180203 Concu

SHEET 1 of 1 SHEETS



PERFORMANCE
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LHBcorp.com

21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446

LEGAL DESCRIPTION:

All that part of Fifth Avenue East and East Second Street easterly of a line 10.00 feet westerly of the west line of said Fifth Avenue East and northerly of the south line of East Second Street adjacent to Lot 16, Block 47, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East and East Second Street easterly of a line 10.00 feet westerly of the west line of said Fifth Avenue East adjacent to Lot 16, Block 49, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East and East Third Street easterly of west line of said Fifth Avenue East adjacent to Lot 16, Block 69, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East and East Third Street easterly of west line of said Fifth Avenue East adjacent to Lot 16, Block 70, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East northerly of line 25.00 feet northerly of the north line of East Third Street adjacent to Lot 1, Block 71, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East adjacent to Lot 79 southerly of a line 55.00 feet southerly of and parallel with the centerline of vacated alley adjacent to said Lot 79, East Third Street, DULUTH PROPER FIRST DIVISION, City of Duluth, St. Louis County, Minnesota.

AND

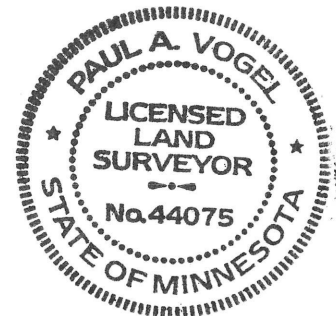
All that part of Fifth Avenue East adjacent to Lot 81 southerly of a line 45.00 feet southerly of and parallel with the south line of alley adjacent to said Lot 81, East Third Street, DULUTH PROPER FIRST DIVISION, City of Duluth, St. Louis County, Minnesota.

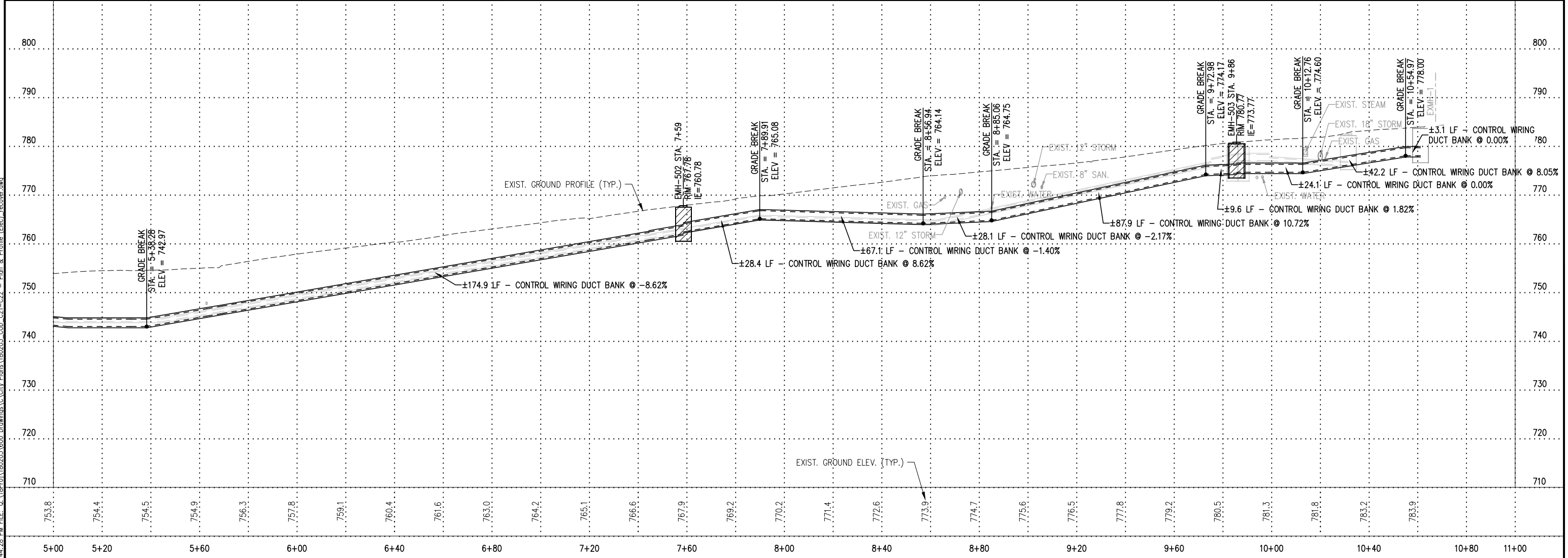
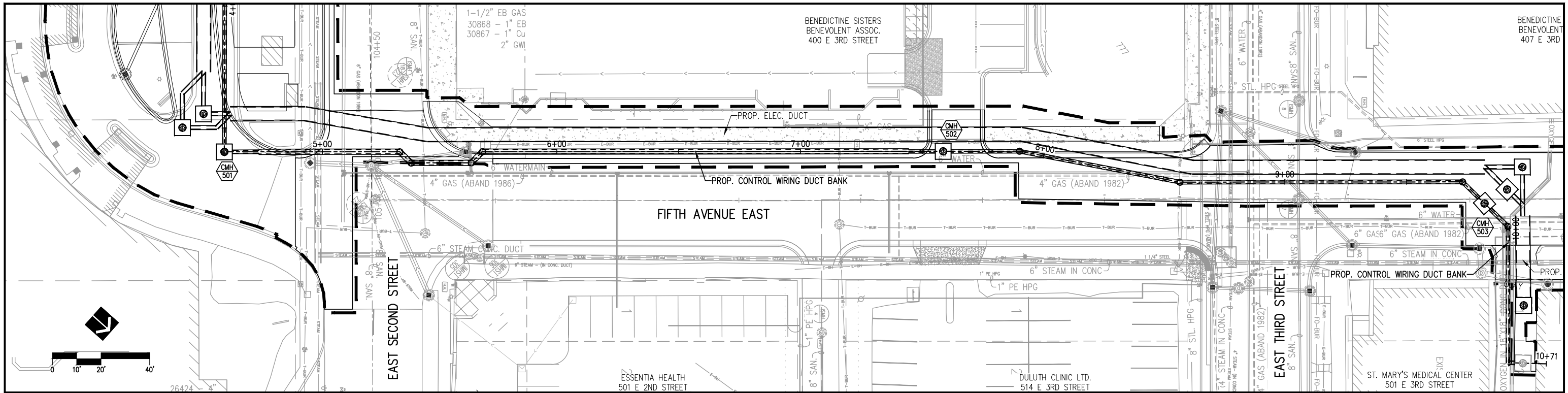
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Paul A. Vogel

Signed

Date 8/20/2019 License No. 44075





LHB PROJECT NO. 180203

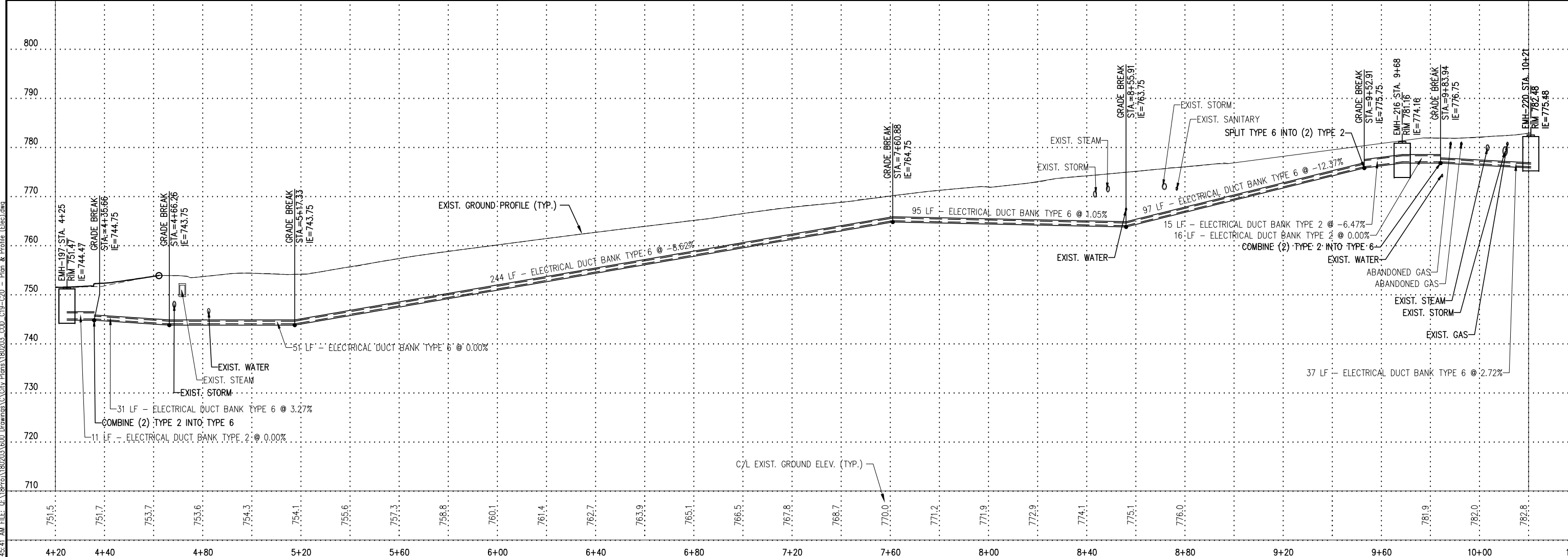
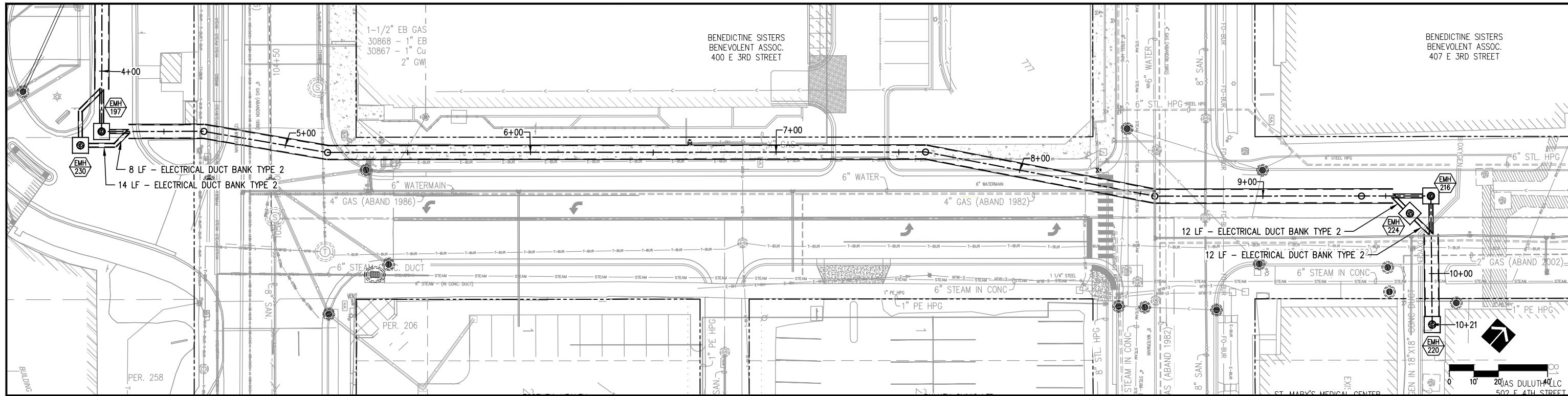
I HEREBY CERTIFY that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

DANIEL G. SHAW
 PRINTED NAME
Daniel G. Shaw
 SIGNATURE

07/25/19
 DATE
 41423
 LIC. NO.


CITY PROJECT NO. 1842

CONTROL WIRING DUCT BANK PLAN & PROFILE
 SHEET NO. 22 OF 65 SHEETS



LHB PROJECT NO. 180203

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 Professional Engineer under the laws of the State of Minnesota.

DANIEL G. SHAW
 PRINTED NAME

 SIGNATURE

07/25/19
 DATE
 41423
 LIC. NO.

CITY PROJECT NO. 1842

ELECTRICAL DUCT BANK PLAN & PROFILE
 SHEET NO. 20 OF 59 SHEETS

PLOT DATE: 7/26/2019 2:45:41 AM FILE: G:\p\proj\180203\600 Drawings\City Plans\180203_CDD_C19-C20 - Plan & Profile (Elev).dwg



Legislation Details (With Text)

File #: 19-033-O **Name:**
Type: Ordinance **Status:** Passed
File created: 6/14/2019 **In control:** Planning and Economic Development
On agenda: 6/24/2019 **Final action:** 7/8/2019
Title: AN ORDINANCE GRANTING ESSENTIA HEALTH A CONCURRENT USE PERMIT FOR A PRIVATE ELECTRICAL DUCT BANK IN THE PLATTED STREET RIGHT OF WAY OF NORTH FIFTH AVENUE EAST.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Attachment 1, 2. Attachment 2

| Date | Ver. | Action By | Action | Result |
|-----------|------|--------------|-------------------------|--------|
| 7/8/2019 | 1 | City Council | adopted | |
| 6/24/2019 | 1 | City Council | read for the first time | |

AN ORDINANCE GRANTING ESSENTIA HEALTH A CONCURRENT USE PERMIT FOR A PRIVATE ELECTRICAL DUCT BANK IN THE PLATTED STREET RIGHT OF WAY OF NORTH FIFTH AVENUE EAST.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to St. Mary's Duluth Clinic Health System, dba Essentia Health East, and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) A private electrical duct bank, as shown in the exhibit Attachment 1.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and

(c) The insurance policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth, directed to the attention of the director of planning and economic development; and

(d) The city of Duluth shall be named as an additional insured; and

(e) The certificate shall also reference this ordinance by its ordinance number.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to

use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 60 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to hold harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, sidewalks, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public right of way or easement shall be limited to the designated area described in Section 1 above and further shown on the exhibits; and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement; and

(c) Permittee will locate any private improvements in accordance with Gopher State Once Call rules and the Permittee or subsequent owner of the private improvements shall relocate any improvements found to be in conflict with existing or future city utility or street projects; and

(d) Within 45 days of installing the private improvements, Permittee shall submit record drawings shall be in accordance with the city of Duluth Public Works and Utilities' "Engineering

guidelines for Professional Services and Developments”; and

(e) Permittee shall provide notice to City Engineer at 218-730-5200 at least two working days in advance of any work permitted under this permit or any other permits related to such work and shall schedule such work to coordinate with any required inspections; and

(f) Permittee shall obtain all other permits as may be required by the city, other governmental agencies, and, including, but not limited to obstruction, excavation, electrical, stormwater, etc; and

(g) Permittee must repair or replace at their expense any damage to anything in the right-of-way caused by the Permittee’s permitted installation or operations to the city’s reasonable satisfaction; and

(h) The Permittee shall maintain the private improvements in a good and safe condition, and in compliance with all applicable fire, health, building or other codes or permits as applicable.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file the required insurance certificate as specified in Section 2 60 days after this ordinance takes effect, or to file the insurance certificates annually thereafter; or

(b) The failure of the permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect; or

(c) The failure of the permittee to register with Gopher State One Call as a facility operator, or to maintain current contact information with Gopher One.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This is one of three concurrent use permits allowing private obstructions in the public right of way, granted to Essentia Health East for the new Vision Northland project (replacement hospital bed tower, clinic space, and surgery suites).

PL 19-019, inpatient tower and replacement of a portion of existing clinic over the alley right of way between Superior Street and East First Street;

PL 19-021, inpatient tower and replacement of a portion of existing clinic over First Street and placement of new structural supports within right of way of East First Street,

PL 19-022, private utility work to provide electrical duct banks from the existing emergency generators within the right of way of North 5th Avenue East.

These three concurrent use permits are being reviewed in coordination with a MU-I Planning Review (PL 19-018) and an UDC Map Amendment to rezone (PL 19-023) in conformance with the City’s Comprehensive Plan and future land use map.

On May 29, 2019, the Duluth city planning commission held a special public hearing on the proposal as described in Attachment 2, and voted 7 yeas, 0 nays, 0 abstentions, to recommend that the city council approve the request for a concurrent use of streets, with the condition that the applicant comply with all the conditions listed in the ordinance.

Petition received: May 8, 2019

Action deadline: September 5, 2019

Applicant: Essentia Health East

PL 19-022