

## TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation thereto by the Duluth City Clerk, by and between the CITY OF DULUTH, a municipal corporation created and existing under the law of the State of Minnesota, hereinafter referred to as "City", and U.S. BANK NATIONAL ASSOCIATION, a national banking association under the United States of America, hereinafter referred to as "US Bank".

WHEREAS, US Bank is the owner of that property, hereinafter referred to as the "US Bank Property" legally described on Exhibit A attached hereto and made a part hereof, which is located generally north of Arrowhead Road and between Kenwood and Warren Avenues in the City of; and

WHEREAS, pursuant to a Surrender of Access and Temporary Construction Easement Agreement between the parties, effective as of August 31, 2016 (the Prior Agreement), the City made the Improvements to the US Bank Property as shown on Exhibit E to the Prior Agreement; and

WHEREAS, after construction of the Improvements was substantially completed in accordance with Exhibit E, it was determined that a foundation drain from the southeast corner of US Bank's building on the US Bank Property and running in a southeasterly direction to a then-existing drainage structure had not been accommodated in the design of the Improvements; and

WHEREAS, a correction to the work performed in accordance with the Exhibit E plans and specifications needs to be designed and constructed (the "Correction") and investigation necessary to the design of the Correction, including excavation, needed to be undertaken, which Correction and investigation is hereinafter referred to as the "Project"; and

WHEREAS, the Project will impact the US Bank Property; and

WHEREAS, US Bank is willing to permit the implementation of the Project on the US Bank Property and is willing to grant the Temporary Construction Easements hereinafter described under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

1. Temporary Construction Easement—US Bank Property

US Bank hereby grants to City a Temporary Construction Easement over that portion of the US Bank Property designated as the “Excavation Area” and the “Laydown & Equipment Work Area”, all as described on Exhibit B attached hereto and made a part hereof for the purpose of implementing the Project as described on Exhibit B attached hereto and made a party hereof. The duration of this Temporary Construction Easement shall run from the effective date of this Agreement until December 31, 2016; provided that US Bank shall have the right but not the obligation to extend the term of said easement for an additional term by written authorization therefor given by an authorized person representing US Bank to the City.

2. City to Implement Project

In consideration of the granting of the Temporary Construction Easement by US Bank, City hereby agrees to cause the Project to be implemented substantially as described on Exhibit E, provided that City may cause to be made minor modifications to the Project determined to be reasonable and prudent by the City’s City Engineer with notice to US Bank. Upon completion of the investigation and the design of the Correction, City shall cause to have prepared and shall provide to US Bank’s local property manager plans and specifications for the Correction in sufficient detail to allow the Correction to be constructed. Said manager shall have forty-eight (48) hours to raise engineering-related objections to such plans and specification and to make other requests for modifications thereto to accommodate the needs or desires of US Bank. City agrees to make modifications to such plans and specifications based on valid engineering objections and to make reasonable accommodation to any other bank request. If City refuses to make any revision requested by US Bank, City and Banks agree to meet as expeditiously as possible and to negotiate in good faith to reach an agreement with regard to any such modification.

City shall use the easement area on the US Bank Property only as necessary for the purpose described in above, and shall use its best efforts to minimize interference with US Bank’s use and enjoyment of the US Bank Property; provided that at no time shall construction of the Project result in more than three (3) of US Bank’s drive-through lanes being closed. City shall require its contractor to remove construction debris from the easement area consistent with reasonable practices so as to minimize the impact of construction debris on Bank’s business.

City agrees to repair any and all damage caused to the easement area or the US Bank Property by City, its employees, agents or contractors, and the restoration of the easement area following any City work thereon to substantially the same or better condition as the easement area existed prior to such work, subject to the construction of the Improvements.

3. Construction Costs

City agrees that it will be solely responsible for paying all of the costs of implementing the Project, including any unforeseen costs associated with above ground lighting, and underground conduit, power, telephone, or data services upon the US Bank Property.

4. Insurance

As part of the City's process of contracting for the implementation of the Project, the City will require that the City's contractor, if any, agree to indemnify US Bank and that US Bank be named as additional insureds as to any portion of the work being constructed on their properties respectively. Such indemnification and insurance shall be the same indemnification and insurance required by the City for its protection.

5. Maintenance and Operation of Improvements

It is the understanding of the parties hereto that, upon completion of the implementation of the Project, ownership of and title to any improvements shall be deemed to be solely in US Bank. Thereafter, City shall have no obligations to maintain or to operate such improvements or the property upon which they are located and responsibility for the maintenance and operation thereof shall be solely that of US Bank except for such costs caused by latent defects in design or construction of the Project.

6. Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting US Bank as an agent, representative or employee of City for any purpose or in any manner whatsoever. Neither US Bank nor any officers or employees thereof shall not be considered an employee of City, and any and all claims that may or might arise under the Workers ' Compensation Act of the State of Minnesota on behalf of US Bank while so engaged and any and all claims whatsoever on behalf of US Bank arising out of employment or alleged employment, including without limitation, claims of discrimination against City, its officers, agents, contractors or employees shall in no way be the responsibility

of City. US Bank and their officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, City shall not, in any way, be responsible to defend, indemnify or save harmless US Bank from liability or judgments arising out of the intentional or negligent acts or omissions of US Bank while performing the work specified by this Agreement.

7. Default and Remedies

In the event that any party shall fail to perform any obligation of said party owed to another party hereunder, the non-defaulting party may give notice in writing to the defaulting party setting forth the obligation or obligations which the defaulting party shall have failed to perform in conformance with the requirements of this Agreement and upon receipt thereof the defaulting party shall immediately commence to cure any such default or, if cure cannot be reasonably commenced immediately, shall commence such cure as soon as reasonably practical and shall complete such cure as soon as is reasonably practical. If cure of such default shall not be so commenced and completed, the non-defaulting party shall be entitled to seek damages for any damages resulting from such failure to cure, injunctive relief to compel performance of any obligation under the Agreement with regard to which the defaulting party is in default or both.

18 Notices

Notices to be given hereunder shall be deemed to be sufficient if deposited in the U.S. Mail, postage prepaid to the address set forth below or if sent by overnight mail to the address set forth below unless a party shall send notice to the other party as herein provided directing that such notices shall be sent to a different address:

In the case of City:      Director of Public Works and Utilities  
City of Duluth  
411 West First Street, Room 211B  
Duluth, MN 55802

In the case of US Bank: U.S. Bank National Association  
Corporate Real Estate  
101 East 5<sup>th</sup> Street, Suite 100  
St. Paul, MN 55101

With a copy to:

U.S. Bank National Association  
Corporate Counsel – Corporate Real Estate  
800 Nicollet Mall, 21<sup>st</sup> Floor  
Minneapolis, MN 55402

9. Civil Rights Assurances

Banks, for themselves and their officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

10. Rules and Regulations

Banks agree to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and City and their respective agencies which are applicable to its activities under this Agreement.

11. Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

12. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

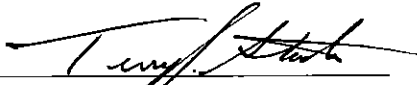
14. Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

CITY OF DULUTH, a Minnesota Municipal  
Corporation

U.S. BANK NATIONAL  
ASSOCIATION, a  
national banking  
association

By: \_\_\_\_\_  
Emily Larson  
Its Mayor

By: \_\_\_\_\_  
Terry Stade  
Its: Property Manager

Attest:

By: \_\_\_\_\_  
Tom Duffy  
Its: Vice President

By: \_\_\_\_\_  
Jeffrey J. Cox  
City Clerk

Its

\_\_\_\_\_  
Date

Approved:

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

Countersigned:

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City Auditor

Drafted by:  
Robert E. Asleson  
Assistant City Attorney  
City of Duluth  
411 West First Street  
Room 410, City Hall  
Duluth, MN 55802  
(218) 730-5490

## EXHIBIT A

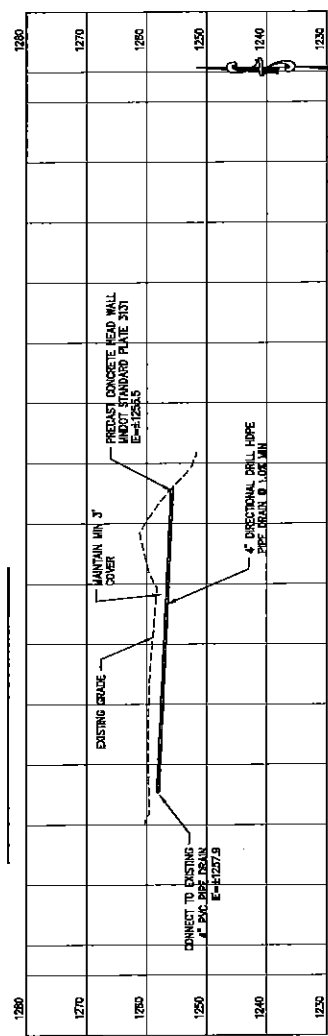
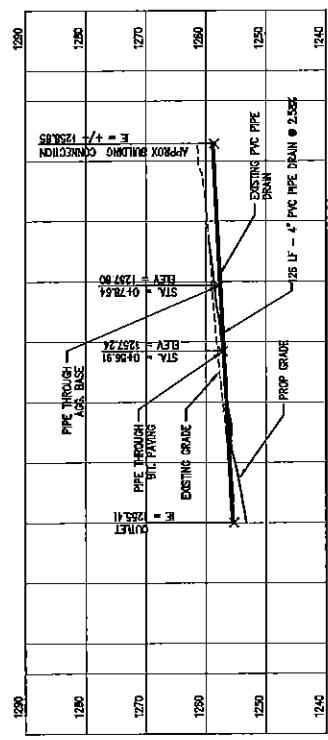
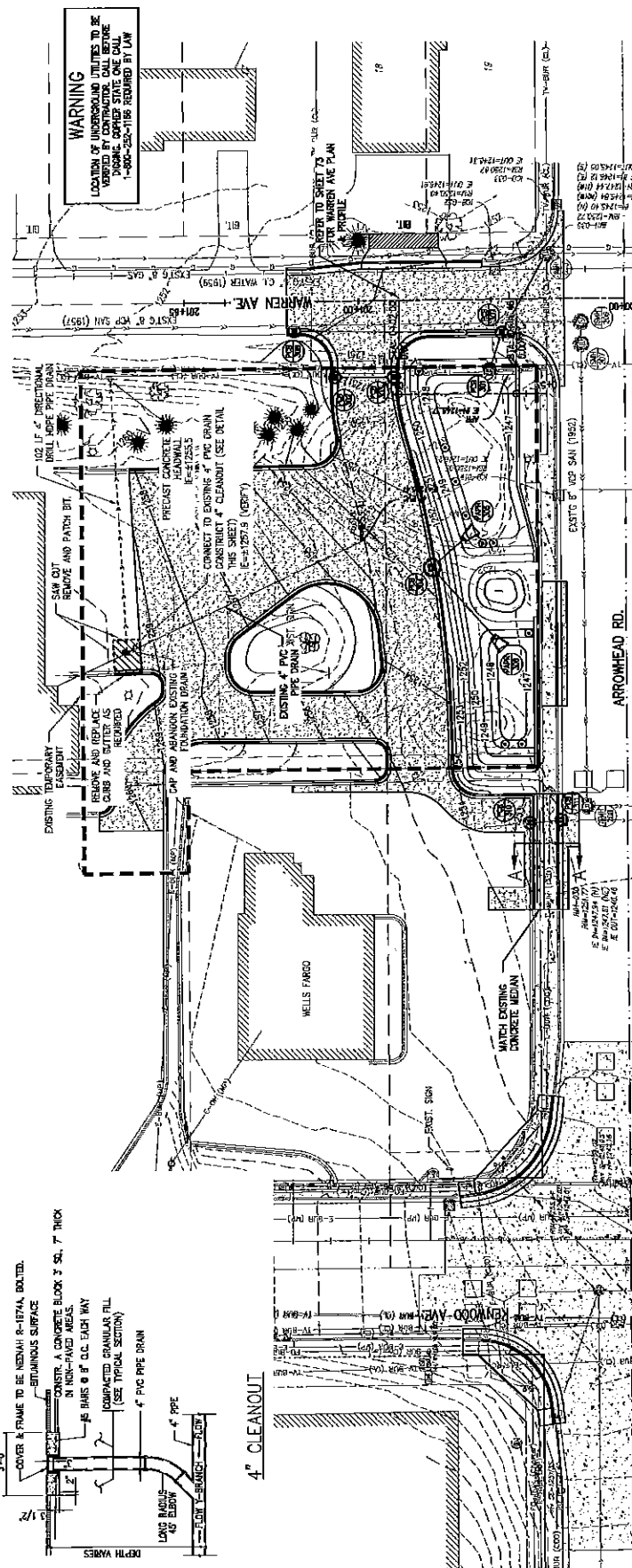
A tract of land in the SW 1/4 of SW 1/4 of the SE 1/4 of Section 10 Township 50 North Range 14 West of the Fourth Principal Meridian, described as follows:

Beginning at a point 165.03 feet North and 33 feet East of the SW corner of the SW 1/4 of the SW 1/4 of the SE 1/4, of Section 10 Township 50 North, Range 14 West of the Fourth Principal Meridian, thence North 141.84 feet along the East line of Kenwood Avenue, thence East 80 feet to a point, thence North 40 feet to a point, thence East 223.49 feet to the Westerly line of Warren Avenue, thence South 181.84 feet, along the West line of Warren Avenue, thence West 303.49 feet, to the place of beginning.

EXCEPTING and reserving any and all iron ore and other valuable Minerals in and upon said parcel of land, with the right to explore for, mine and remove the same, all in accordance with the provisions of Section 638, Masons Minnesota Statutes for 1937.

SUBJECT, however, to a 10 foot building line easement along the West Side of the Tract of land hereby conveyed, and also a 5 foot easement for public utilities along the East side of same.





### PROFILE AT PROPOSED DRAINTILE

[illegible]

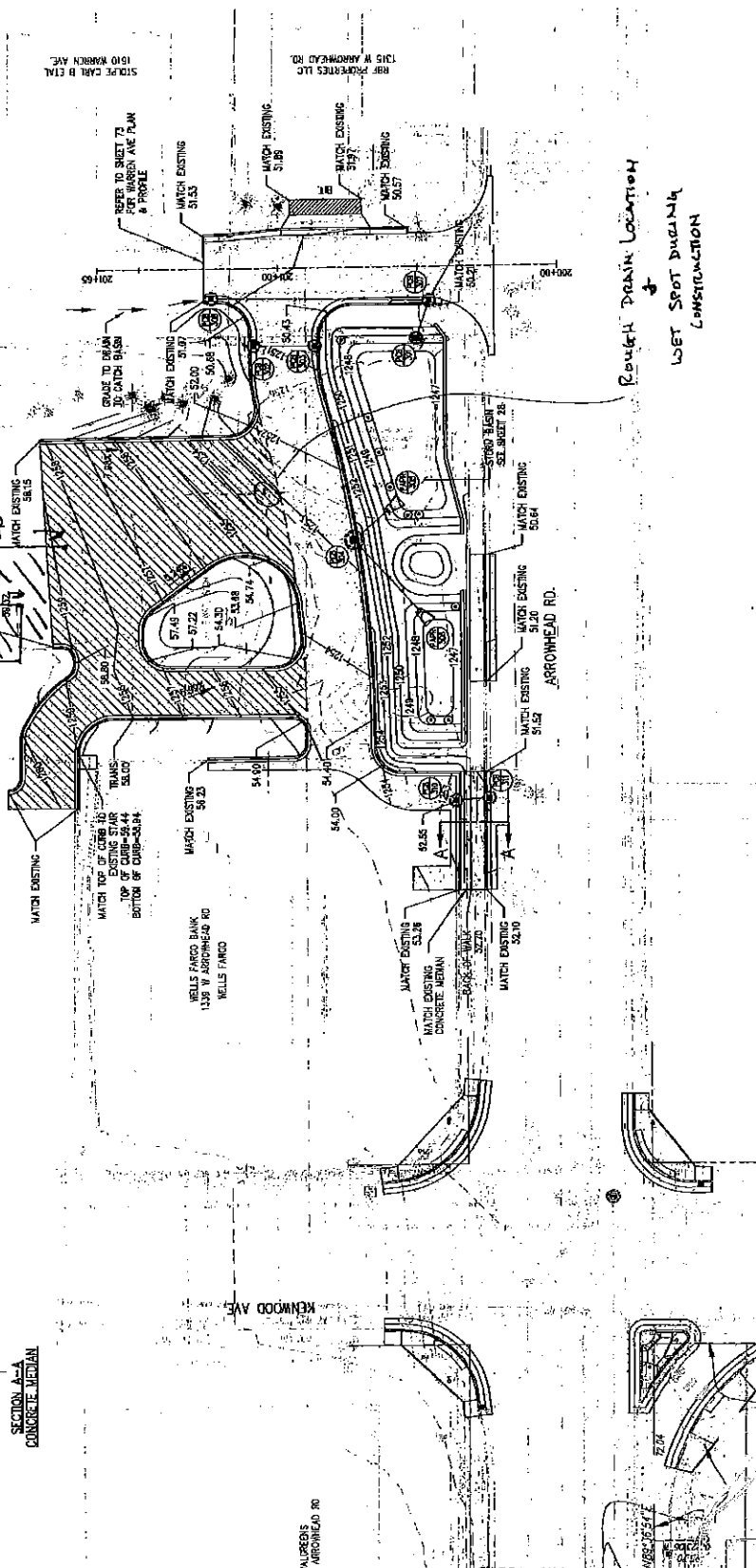
RIGHT  
620 1

**WARNING**  
LOCATION OF UNDERGROUND UTILITIES TO BE  
VERIFIED BY CONTRACTOR. CALL BEFORE  
DIGGING. Gopher State One Call  
1-800-252-1168 REQUIRED BY LAW

LAY DOWN & EQUIPMENT  
WORK AREA 20'X40'  
AND LANE ONE  
OF DRIVE THRU

20X20'  
EXCAVATION  
AREA

ROUGH DRAIN LOCATION  
+  
WET SPOT DURING  
NOISE TESTING



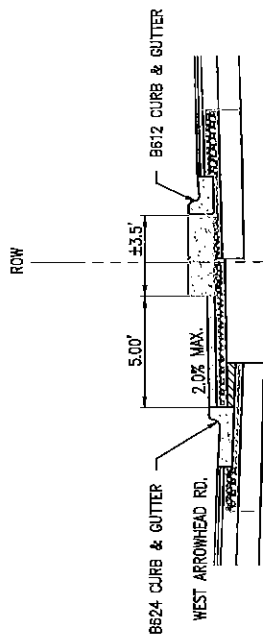
I hereby certify that this plan, specification, or report was prepared by me, or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Tennessee. Print Name _____ Date _____ Title _____ License # _____ Seal No. _____					
PLAN AND PROJECT NO. 118-10-112 STATE PROJECT NO. COUNTY PROJECT NO. LOCAL PROJECT NO.					
DRAWN BY PAB/SAM/AJB/MSB DESIGNED BY DATE OF DESIGN CHECKED BY DATE OF CHECK					
CITY OF DULUTH SIGNALING PLAN ARROWHEAD/KENWOOD CROSSING IMPROVEMENTS BANK SITES					
SHEET 31 OF 17					

## **EXHIBIT B**

**Page 2 of 2**

Proposed work includes removal of existing bituminous and curb (if necessary), excavating and locating the existing 4" foundation drain with a vacuum excavation equipment, televise and locate the existing foundation drain away from the building to locate the pipe end, installing and cutting in a 4" cleanout on the outside of the building once the drain is located. Depending on the ability to directional drill a new pipe, if this is possible from the pond up to the SE corner of the bank, connect the new pipe to the existing foundation drain at the cleanout. If directional drilling is not feasible, the contractor will open cut the parking lot within the existing easement area, locate the end of the existing drain, and extend the pipe to the nearest existing storm structure.

# **EXHIBIT E** **DRIVEWAY, PEDESTRIAN AND WATER QUALITY POND IMPROVEMENTS** **SHEET (1 OF 2)**



US BANK  
 1325 W ARROWHEAD RD

WELLS FARGO BANK  
 1339 W ARROWHEAD RD

WARREN AVE  
 1315

ADA IMPROVEMENTS

STORM WATER  
 IMPROVEMENTS

WEST ARROWHEAD ROAD

REMOVAL OF INPLACE  
 DRIVEWAY ACCESS

SCALE 1" = 40'

**EXHIBIT E**  
LANDSCAPING IMPROVEMENTS  
(SHEET 2 OF 2)

SCALE 1" = 40'

