

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
AND
CITY OF DULUTH
COOPERATIVE CONSTRUCTION
AGREEMENT**

State Project Number (SP):	<u>6925-145</u>	Total City Obligation
Trunk Highway Number (TH):	<u>61=103</u>	<u>\$2,695,243.18</u>
State Project Number:	<u>118-166-004</u>	Anticipated City Federal Aid
State Project Number:	<u>118-191-003</u>	<u>\$1,411,625.74</u>
State Project Number:	<u>118-193-003</u>	City Non-Federal Aid
City Project Number:	<u>1995</u>	<u>\$1,283,617.44</u>
Federal Project Number:	<u>NHPP-CRP-STBG 0061(353)</u>	
Lighting System Feed Points:	<u>A, B</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and the City of Duluth, acting through its City Council ("City").

Recitals

1. The State will perform grading, roundabouts, bituminous milling, bituminous and concrete surfacing, retaining walls, ADA improvements, TMS, signing, pedestrian crosswalk flasher systems (PCFS), lighting, and signals construction and other associated construction upon, along, and adjacent to Trunk Highway No. 61 (London Road) from 26th Avenue E to 0.14 miles north of 60th Avenue E and Trunk Highway No. 35 at 21st Avenue E according to State-prepared plans, specifications, and special provisions designated by the City as City Project No. 1995 and by the State as State Project No. 6925-145 (TH 61=103) ("Project"); and
2. The City agrees to participate in the costs of the roundabouts, PCFS, Railroad Work at 40th Avenue E, and City utility construction and associated State performed construction engineering; and
3. The City requests that it perform certain aspects of the construction engineering in connection with the water main, sanitary sewer, and gas main construction and the State concurs in that request; and
4. The federally eligible City participation construction will be reduced by the amount of Federal aid funding received for said construction; and
5. Agreement No. 1061211 between the State and Saint Louis and Lake Counties Regional Railroad Authority will address costs for railroad signal modifications, railroad crossing surface renewal/extension, and railroad flagging services and the City will reimburse the State for costs related to railroad work at 40th Avenue E; and
6. Agreement No. 1061151 between the State and the City will address the Project detour; and
7. Minnesota Statutes § 161.45, subdivision 2, allows for City-owned utility relocation to be included in a State construction contract, and payment by the City for such relocation according to applicable statutes and rules for utilities on trunk highways; and
8. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining, and improving the trunk highway system.

Agreement

1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits

- 1.1. **Effective Date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration Date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 1.3. **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 3. Maintenance by the City; 4. Pedestrian Crosswalk Flasher Systems Power, Ownership, Operation, Maintenance and Compliance; 9. Liability; Worker Compensation Claims; 11. State Audits; 12. Government Data Practices; 14. Governing Law; Jurisdiction; Venue; and 16. Force Majeure.
- 1.4. **Plans, Specifications, and Special Provisions.** Plans, specifications, and special provisions designated by the State as State Project No. 6925-145 (TH 61=103) are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference ("Project Plans").
- 1.5. **Exhibits.** Preliminary Schedule "I" is on file in the office of the City Engineer and attached and incorporated into this Agreement. Exhibit A – Ownership and Maintenance Responsibilities is attached and incorporated into this agreement. Exhibit B – Maintenance Responsibilities Plan and Schedule is attached and incorporated into this agreement. Exhibit C – Lighting Ownership and Maintenance Responsibilities is attached and incorporated into this agreement.

2. Construction by the State

- 2.1. **Contract Award.** The State will advertise for bids and award a construction contract to the lowest responsible bidder according to the Project Plans.
- 2.2. **Direction, Supervision, and Inspection of Construction.**
 - A. **Supervision and Inspection by the State.** The State will direct and supervise all construction activities performed under the construction contract, and except as provided below, perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project Plans.
 - B. **Construction Engineering and Inspection by the City.** The City will assign its City Engineer or other registered professional engineer to perform construction engineering in connection with the water main, sanitary sewer, and gas main construction. The engineer so assigned will act under the supervision and direction of the State and be responsible for construction inspection and materials inspection for the water main and gas main construction and materials inspection for the sanitary sewer construction. The construction will be performed according to the Project Plans and recognized and accepted practices and procedures as set forth in various State manuals, including Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction". The City will furnish other personnel, services, supplies, and equipment needed to properly carry on the construction.
 - i. **Documentation of Construction Costs.** At regular intervals after the State's contractor has started the water main, sanitary sewer, and gas main construction, the City will prepare partial estimates of the construction costs according to the terms of the construction contract and immediately submit the partial estimates to the State. The City will also prepare the final estimate data for said

construction and submit the final estimate to the State. Quantities listed on the partial and final estimates will be documented according to guidelines in the applicable documentation manual.

- ii. ***Final Inspection of Construction.*** Upon completion of the water main, sanitary sewer, and gas main construction, the City will advise the State whether or not said construction should be accepted by the State as being performed in a satisfactory manner. If the City recommends that the State not accept the construction, then the City will, as part of their recommendation, identify the specific defects in the construction and the reasons why it should not be accepted. Any recommendations made by the City are not binding on the State. The State will determine, after considering the City's recommendations, whether or not the construction has been properly performed and whether to accept or reject it.
- iii. ***Inspection of Other City Participation Construction.*** The remainder of the City participation construction covered under this Agreement will be open to inspection by the City. If the City believes the City participation construction covered under this Agreement has not been properly performed or that the construction is defective, the City will inform the State District Engineer's authorized representative in writing of those defects. Any recommendations made by the City are not binding on the State. The State will have the exclusive right to determine whether the State's contractor has satisfactorily performed the City participation construction covered under this Agreement.

2.3. *Plan Changes, Additional Construction, Etc.*

- A. The State will make changes in the Project Plans and contract construction, which may include the City participation construction covered under this Agreement, and will enter into any necessary addenda and change orders with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner. The State District Engineer's authorized representative will inform the appropriate City official of any proposed addenda and change orders to the construction contract that will affect the City participation construction covered under this Agreement.
- B. The City may request additional work or changes to the work in the plans as part of the construction contract. Such request will be made by an exchange of letter(s) with the State. If the State determines that the requested additional work or plan changes are necessary or desirable and can be accommodated without undue disruption to the project, the State will cause the additional work or plan changes to be made.

2.4. *Satisfactory Completion of Contract.* The State will perform all other acts and functions necessary to cause the construction contract to be completed in a satisfactory manner.

2.5. *Permits.*

- A. The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City to be constructed hereunder that are upon and within the Trunk Highway Right-of-Way. Applications for permits will be made on State form "Application For Utility Permit On Trunk Highway Right-of-Way" (Form 2525).
- B. The City will submit to the Minnesota Pollution Control Agency the plans and specifications for the construction or reconstruction of its sanitary sewer facilities to be performed under the construction contract and obtain, under Minnesota Statutes § 115.07 or Minnesota Rules 7001.1030, subpart 2C, either a permit or written waiver from that agency for that construction or reconstruction. The City is advised that under Minnesota Rules 7001.1040, a written application for the permit or waiver must be

submitted to the Minnesota Pollution Control Agency at least 180 days before the planned date of the sanitary sewer facility construction or reconstruction.

- 2.6. Utility Adjustments.** Adjustments to certain City-owned facilities, including but not limited to, valve boxes and frame and ring castings, may be performed by the State's contractor under the construction contract. The City will furnish the contractor with new units and/or parts for those in place City-owned facilities when replacements are required and not covered by a contract pay item, without cost or expense to the State or the contractor, except for replacement of units and/or parts broken or damaged by the contractor.

3. Maintenance by the City

Upon completion of the project, the City will provide the following without cost or expense to the State:

3.1. Roundabouts on TH 61 at 26th Avenue E and 40th Avenue E.

- A. Roundabout Approaches.** Maintenance of the London Road (City-owned portion), 26th Avenue E, and 40th Avenue E approaches up to the curb lines of the outer circles of the TH 61 roundabouts, including the Ecumen driveway approach at 40th Avenue E. Maintenance includes, but is not limited to, snow, ice and debris removal, resurfacing, and seal coating.
- B. Roundabout Circle.** Maintenance of the roundabout circle on TH 61 at 26th Avenue E and 40th Avenue E. The State and City will provide for snow, ice and debris removal of the roadway portion of the roundabout circle in conjunction with ongoing maintenance activities of their respective roadway approaches to the roundabout circle. The State will provide for resurfacing, seal coating, and any other maintenance activities necessary to perpetuate the roadway portion of the roundabout circle in a safe and usable condition.
- C. Roundabout Landscaping.** Maintenance of all landscaping plant materials within the roundabout circles on TH 61 at 26th Avenue E and 40th Avenue E after the one year construction warranty has expired. Maintenance includes but is not limited to, vegetation control, litter and debris removal, removal and replacement of all dead or diseased plantings, and any other maintenance activities necessary to perpetuate the landscaping in a safe, usable, and aesthetically acceptable condition. Exhibit B provides further details about landscaping maintenance.

- 3.2. Storm Sewers.** Routine maintenance of all constructed and existing storm sewer facilities not including centerline culverts under the trunk highway. Routine maintenance includes removal of sediment, debris, vegetation, and ice from grates and within catch basins. This also includes informing the District Maintenance Engineer of any needed repairs. Exhibit A further details the storm sewer maintenance responsibilities.
- 3.3. Pretreatment Sumps and Stormwater Filtration Basins.** Maintenance includes vacuuming out pretreatment sumps associated with stormwater filtration basins at 40th Avenue and 60th Avenue and the two sumps at the south side of the roundabout at 26th Avenue E. The City is responsible for traffic control during pumping of sumps. The State will own and maintain stormwater filtration basins. Exhibit A further details the storm sewer maintenance and ownership responsibilities.
- 3.4. Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 3.5. Sidewalks.** Routine maintenance of any new sidewalk construction and all existing sidewalks on TH 61 Right-of-Way. Routine maintenance includes, but is not limited to, snow/ice control/removal, sweeping/debris removal, crack repair, patching, City street pedestrian crosswalk markings (including

crosswalk markings at the City legs of roundabouts and crosswalk markings at the Ecumen driveway entrance to the 40th Avenue E roundabout), vegetation control of boulevards, and any other maintenance activities necessary to perpetuate the sidewalks in a safe, usable, and aesthetically acceptable conditions.

- 3.6. Shared Use Path.** The City will provide routine and minor maintenance of any new or existing SUP on TH 61 Right-of-Way. Routine and minor maintenance may include, but are not limited to, snow and ice control/removal, sweeping and debris removal, patching, crack repair, replacement of failing section(s) of pavement, vegetation control, signing, pavement markings, and any other maintenance activities necessary to perpetuate the SUP in a safe, usable, and aesthetically acceptable condition as determined by the State's District Maintenance Engineer and all applicable laws including, but not limited to, the Americans with Disabilities Act ("ADA"). If the City fails to perform its maintenance services under this Agreement in compliance with applicable laws, the State will provide the City with a notice of non-compliance. Within three business days of sending the notice of non-compliance, the State's District Maintenance Engineer and the City Engineer will meet to discuss the City performance of maintenance and decide upon next steps to remedy any non-compliant performance. If the parties cannot agree upon a remedy, the State may perform such obligation and the City will reimburse the State for the cost thereof, plus 10 percent of such cost for overhead and supervision within 30 days of receipt of the State's invoice. The State and the City agree that full pavement replacement is outside of routine and minor maintenance, and the State and the City will share in the cost of pavement replacement according to the State's Cost Participation and Maintenance Responsibilities with Local Units of Government Manual, as amended or revised.
- A. State Right-of-Way Access.** The State authorizes the City to enter upon State Right-of-Way to perform the maintenance activities described in this Agreement. The City must notify and coordinate with the State's District Maintenance Engineer prior to accessing State Right-of-Way. While the City is occupying the State's Right-of-Way, they must comply with the approved traffic control plan, and with applicable provisions of the Work Zone Field Handbook (<http://www.dot.state.mn.us/trafficeng/workzone/index.html>). All City personnel occupying the State's Right-of-Way must be provided with required reflective clothing and hats.
- B. Environmental.** The City will not dispose of any materials regulated by any governmental or regulatory agency onto the ground, or into any body of water, or into any container on the State's Right-of-Way. In the event of spillage of regulated materials, the City will immediately notify the State's Authorized Representative in writing and will provide for cleanup of the spilled material and any materials contaminated by the spillage in accordance with all applicable federal, state, and local laws and regulations, at the sole expense of the City.
- 3.7. Lighting.** Maintenance and ownership of any lighting facilities construction associated with the roundabout at 40th Avenue E. Maintenance of electrical lighting systems includes everything within the system, from the point of attachment to the power source or utility, to the last light on the feed point, including but not limited to re-lamping of lighting units or replacing of LED luminaires, repair or replacement of all damaged luminaire glassware, loose connections, luminaires when damaged or when ballasts fail, photoelectric control on luminaires, defective starter boards or drivers, damaged fuse holders, blown fuses, knocked down poles including wiring within the poles, damaged poles, pull boxes, underground wire, damaged foundations, equipment pad, installation of approved splices or replacement of wires, repair or extending of conduit, lighting cabinet maintenance including photoelectric cell, electrical distribution system, Gopher State One Call (GSOC) locates, and painting of poles and other equipment. The City will be responsible for the hook up cost and application to secure an adequate power supply to the service pad or pole and will pay all monthly electrical service expenses necessary to operate the lighting

facility. The State will be responsible for maintenance and ownership of any lighting facilities construction at 26th Avenue E. Exhibit C further details the lighting ownership and maintenance responsibilities.

- 3.8. *Additional Drainage.*** No party to this Agreement will drain any additional drainage volume into the storm sewer facilities constructed under the construction contract that was not included in the drainage for which the storm sewer facilities were designed, without first obtaining written permission to do so from the other party.

4. Pedestrian Crosswalk Flasher Systems Power, Ownership, Operation, Maintenance and Compliance

Power, ownership, operation, maintenance and compliance responsibilities will be as follows for the new Pedestrian Crosswalk Flasher Systems on TH 61 at 32nd Avenue E and on TH 61 at 60th Avenue E:

- 4.1. *Power.*** The flasher system is solar powered and will have no upfront hookup or ongoing power costs. If the systems are replaced in the future, any upfront and/or ongoing costs associated with providing power to the systems are the responsibility of the City. The City will own and be responsible for the solar panel to operate the flasher system.
- 4.2. *Ownership, Operation and Maintenance.*** Upon completion of this project, the City will own the Pedestrian Crosswalk Flasher System. The City will operate and maintain the Pedestrian Crosswalk Flasher System, perform all Gopher State One Call locating, and be responsible for future system replacement, all at the City's cost and expense. The maintenance includes, but is not limited to: snow, ice and debris removal of the pedestrian landings and ramps, associated signing, crosswalk pavement markings, solar panel cleaning/replacement, battery replacement (if any), and lighting without cost or expense to the State. The City will perform all system maintenance in a timely manner.
- 4.3. *Compliance.*** The City will also be responsible for replacement or upgrades to meet compliance of current and future ADA requirements without cost or expense to the State. If the City fails to comply with the maintenance terms or ADA requirements, or if a safety issue develops, the State may require the City to remove the Pedestrian Crosswalk Flasher System or the State may remove it at the City's cost.
- 4.4. *Right-of-Way Access.*** The City will submit to the State form "Application for Miscellaneous Work on Trunk Highway Right-of-Way" (Form 1723) in order to perform TH 61 pedestrian crosswalk marking maintenance as described in Article 4.2.

5. Basis of City Cost

- 5.1. *Schedule "I".*** The Preliminary Schedule "I" includes anticipated City participation construction items and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.
- 5.2. *City Participation Construction.*** The City will participate in the following at the percentages indicated. The construction includes the City's proportionate share of item costs for mobilization, field office, field laboratory, and traffic control. It is anticipated that Federal aid funding will be available to the City as defined below. The City may be billed for the match of their cost participation as shown on the Schedule "I". City costs will include an amount equal to all anticipated Federal aid funding not applied to the federally eligible City participation construction.
- A.** 100 Percent will be the City's rate of cost participation in all of the SP 118-166-004 construction. The construction includes, but is not limited to, those construction items tabulated on Sheet Nos. 2 through 5 of the Preliminary Schedule "I". Federal aid funds will be applied at a rate of 80 Percent. The total Federal aid funds are capped at **\$1,480,000.00** for the entire City-funded portion of the Project, and may be modified at the time of award.

- B. 100 Percent will be the City's rate of cost participation in all of the SP 118-191-003 construction. The construction includes, but is not limited to, those construction items tabulated on Sheet Nos. 6 and 7 of the Preliminary Schedule "I". Federal aid funds will be applied at a rate of 80 Percent. The total Federal aid funds are capped at **\$1,480,000.00** for the entire City-funded portion Project, and may be modified at the time of award.
- C. 100 Percent will be the City's rate of cost participation in all of the SP 118-193-003 construction. The construction includes, but is not limited to, those construction items tabulated on Sheet Nos. 8 through 10 of the Preliminary Schedule "I". Federal aid funds will be applied at a rate of 80 Percent. The total Federal aid funds are capped at **\$1,480,000.00** for the entire City-funded portion Project, and may be modified at the time of award.
- D. 100 Percent will be the City's rate of cost participation in all of the City Utility construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 11 of the Preliminary Schedule "I".

5.3. Construction Engineering Costs. The City will pay a construction engineering charge equal to 5 percent of the total water main and gas main participation construction covered under Article 5.2.D. The City will pay a construction engineering charge equal to 7 percent of the total sanitary sewer participation construction covered under Article 5.2.D. The City will pay a construction engineering charge equal to 8 percent of the remainder of the City participation construction covered under this Agreement.

5.4. Railroad Work. The City will reimburse the State for the costs of the railroad signal modifications, railroad crossing surface renewal/extension, and railroad flagging services associated with the 40th Avenue E railroad crossing ("Railroad Work") to be performed by Saint Louis and Lake Counties Regional Railroad Authority. The total estimated City cost for Railroad Work, as shown in the Preliminary Schedule "I", is **\$276,033.00**. The final City cost for Railroad Work will be based on final construction costs. Agreement No. 1061211 between the State and Saint Louis and Lake Counties Regional Railroad Authority provides further details on the Railroad Work.

5.5. Plan Changes, Additional Construction, Etc. The City will share in the costs of construction contract addenda and change orders that are necessary to complete the City participation construction covered under this Agreement, including any City requested additional work and plan changes.

The State reserves the right to invoice the City for the cost of any additional City requested work and plan changes, construction contract addenda, change orders, and associated construction engineering before the completion of the contract construction.

5.6. Liquidated Damages. All liquidated damages assessed the State's contractor in connection with the construction contract will result in a credit shared by each party in the same proportion as their total construction cost share covered under this Agreement is to the total contract construction cost before any deduction for liquidated damages.

6. City Cost and Payment by the City

6.1. City Cost. **\$2,695,243.18** is the City's estimated share of the costs of the contract construction, including Federal aid, and the construction engineering cost share as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using anticipated construction items and estimated quantities and unit prices and may include any credits or lump sum costs. Upon award of the construction contract, the State will prepare a Revised Schedule "I" based on construction contract construction items, quantities, and unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.

6.2. Conditions of Payment. The City will pay the State the City's total estimated construction and construction engineering cost share, minus anticipated City Federal aid, as shown in the Revised Schedule "I", after the following conditions have been met:

- A. Execution of this Agreement and transmittal to the City, including a copy of the Revised Schedule "I".
- B. The City's receipt of a written request from the State for the advancement of funds.

6.3. Acceptance of the City's Cost and Completed Construction. The computation by the State of the amount due from the City will be final, binding and conclusive. Acceptance by the State of the completed contract construction will be final, binding, and conclusive upon the City as to the satisfactory completion of the contract construction.

6.4. Final Payment by the City. Upon completion of all contract construction and upon computation of the final amount due the State's contractor and determination by the Federal Highway Administration of the amount of its reimbursement to the State, the State will prepare a Final Schedule "I" and submit a copy to the City. The Final Schedule "I" will be based on final quantities, and include all City participation construction items, the construction engineering cost share, and final Railroad Work costs covered under this Agreement. The Final Schedule "I" may also include City costs in an amount equal to all Federal aid funding not applied to the federally eligible City participation construction. If the final cost of the City participation construction exceeds the amount of funds advanced by the City, the City will pay the difference to the State without interest. If the final cost of the City participation construction is less than the amount of funds advanced by the City, the State will refund the difference to the City without interest.

The State and the City waive claims for any payments or refunds less than \$5.00 according to Minnesota Statutes § 15.415.

7. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

7.1. The State's Authorized Representative will be:

Name, Title: Malaki Ruranika, Cooperative Agreements Engineer (or successor)
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
 Telephone: (651) 366-4634
 E-Mail: malaki.ruranika@state.mn.us

7.2. The City's Authorized Representative will be:

Name, Title: Cindy Voigt, City Engineer (or successor)
 Address: 411 West First Street, Room 240, Duluth, MN 55802
 Telephone: (218) 730-5071
 E-Mail: cvoigt@duluthmn.gov

8. Assignment; Amendments; Waiver; Contract Complete

8.1. Assignment. No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office. The foregoing does not prohibit the City from contracting with a third-party to perform City maintenance responsibilities covered under this Agreement.

- 8.2. Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 8.3. Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.
- 8.4. Contract Complete.** This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

9. Liability; Worker Compensation Claims

- 9.1.** Each party is responsible for its own acts, omissions, and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.
- 9.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

10. Nondiscrimination

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

11. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, accounting procedures, and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

12. Government Data Practices

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the City or the State.

13. Telecommunications Certification

By signing this agreement, the City certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), and 2 CFR 200.216, the City will not use funding covered by this agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. The City will include this certification as a flow down clause in any contract related to this agreement.

14. Governing Law; Jurisdiction; Venue

Minnesota law governs the validity, interpretation, and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

15. Termination; Suspension

15.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties.

15.2. *Termination for Insufficient Funding.* The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the performance of contract construction under the Project. Termination must be by written or fax notice to the City.

15.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities and performance of work authorized through this Agreement.

16. Force Majeure

No party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance) if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

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CITY OF DULUTH

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions, or ordinances.

By: _____
(Mayor)

Date: _____

Attested: _____
(City Clerk)

Date: _____

Approved as to form:

By: _____
(City Attorney)

Date: _____

Countersigned: _____
(City Auditor)

Date: _____

By: _____
(City Engineer)

Date: _____

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

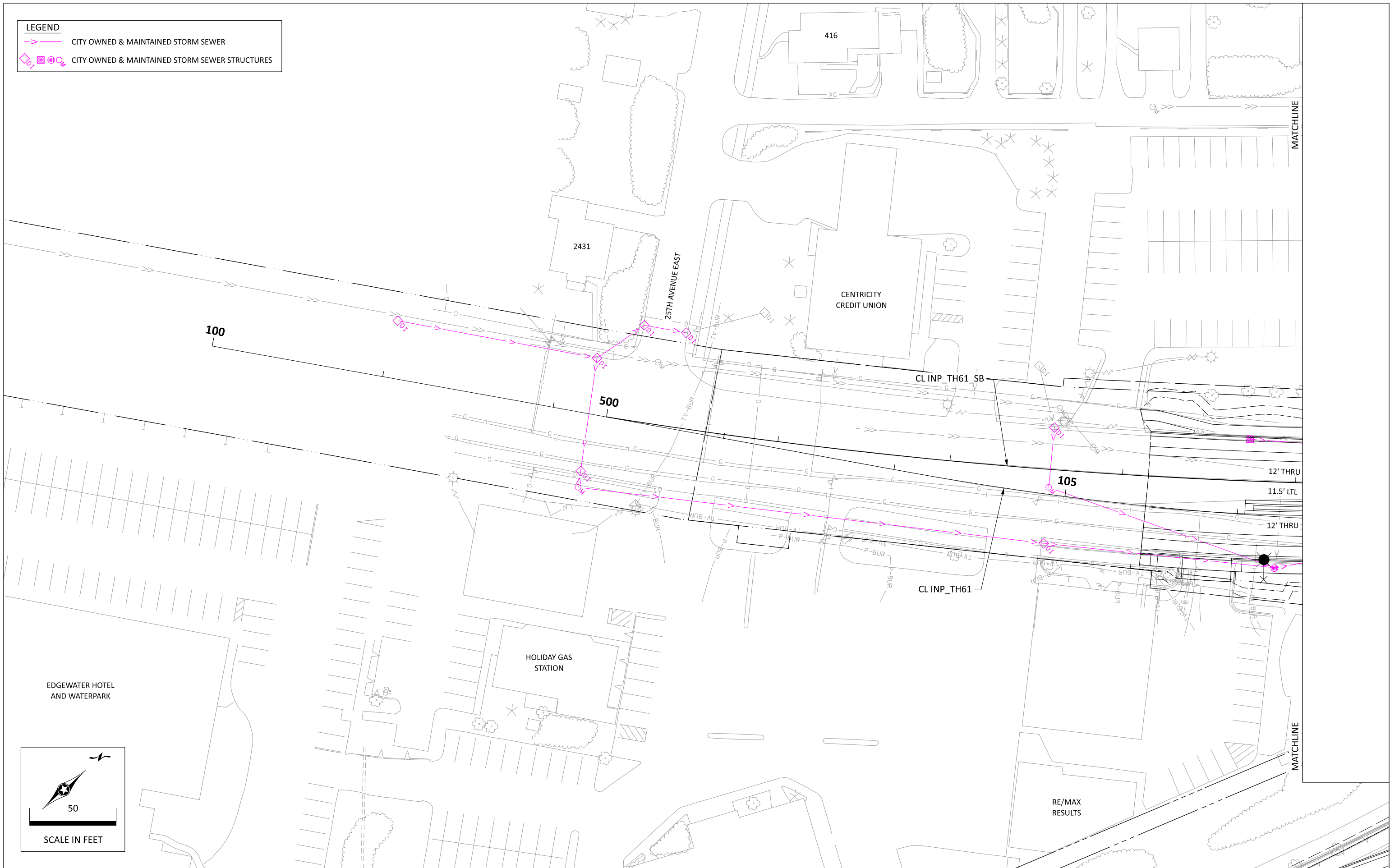
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INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.

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LEGEND

CITY OWNED & MAINTAINED STORM SEWER

CITY OWNED & MAINTAINED STORM SEWER STRUCTURES

50

SCALE IN FEET

NO	DATE	BY	CKD	APPR	REVISION



NOT FOR CONSTRUCTION

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TMP

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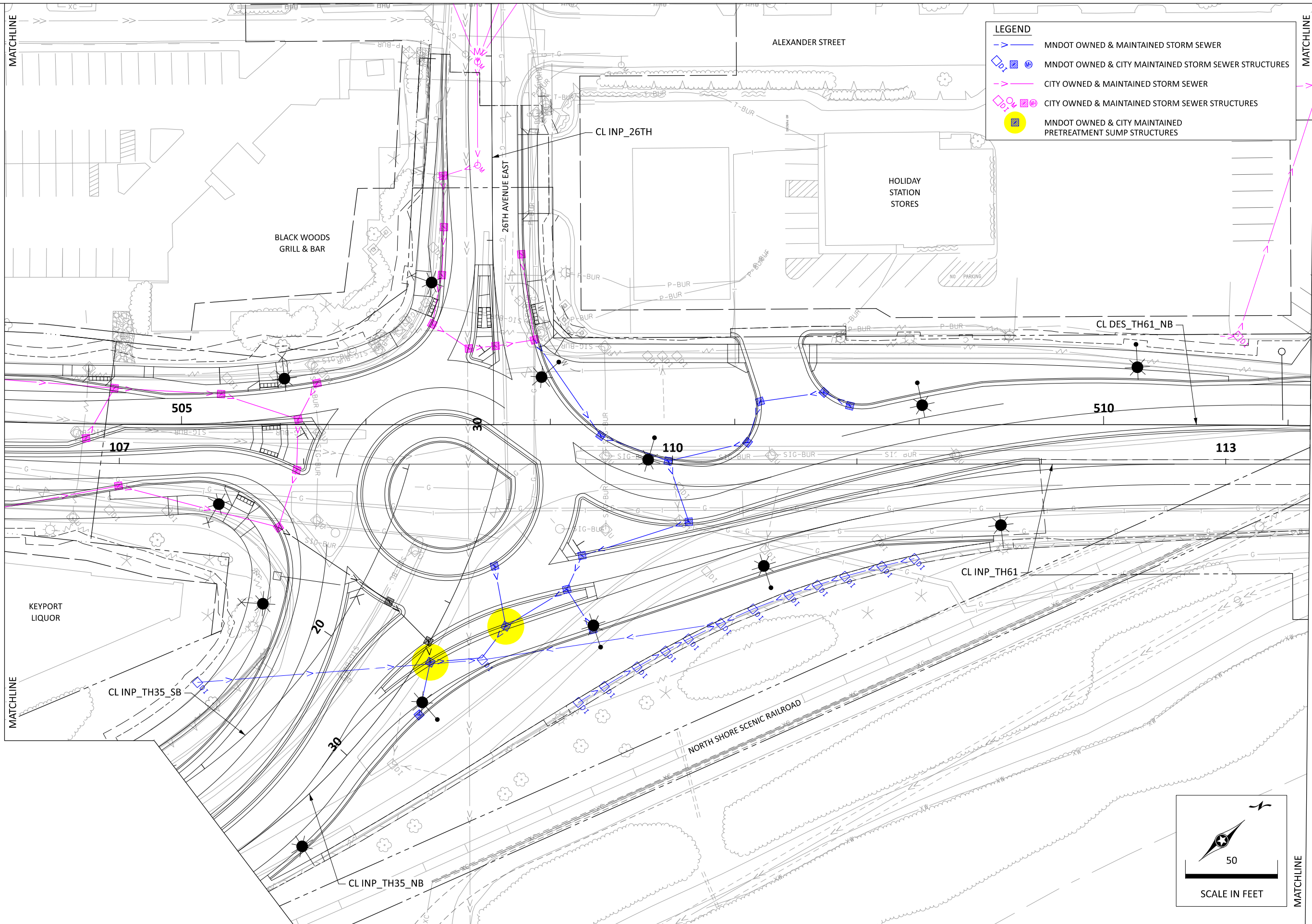
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MJS

EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

S.P. 118-166-004 S.P. 118-191-003 S.P. 118-193-003	STATE PROJ. NO. 6925-145 (T.H. 61)	SHEET NO. 1 TOTAL SHEETS 28
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NO	DATE	BY	CKD	APPR	REVISION



NOT FOR CONSTRUCTION

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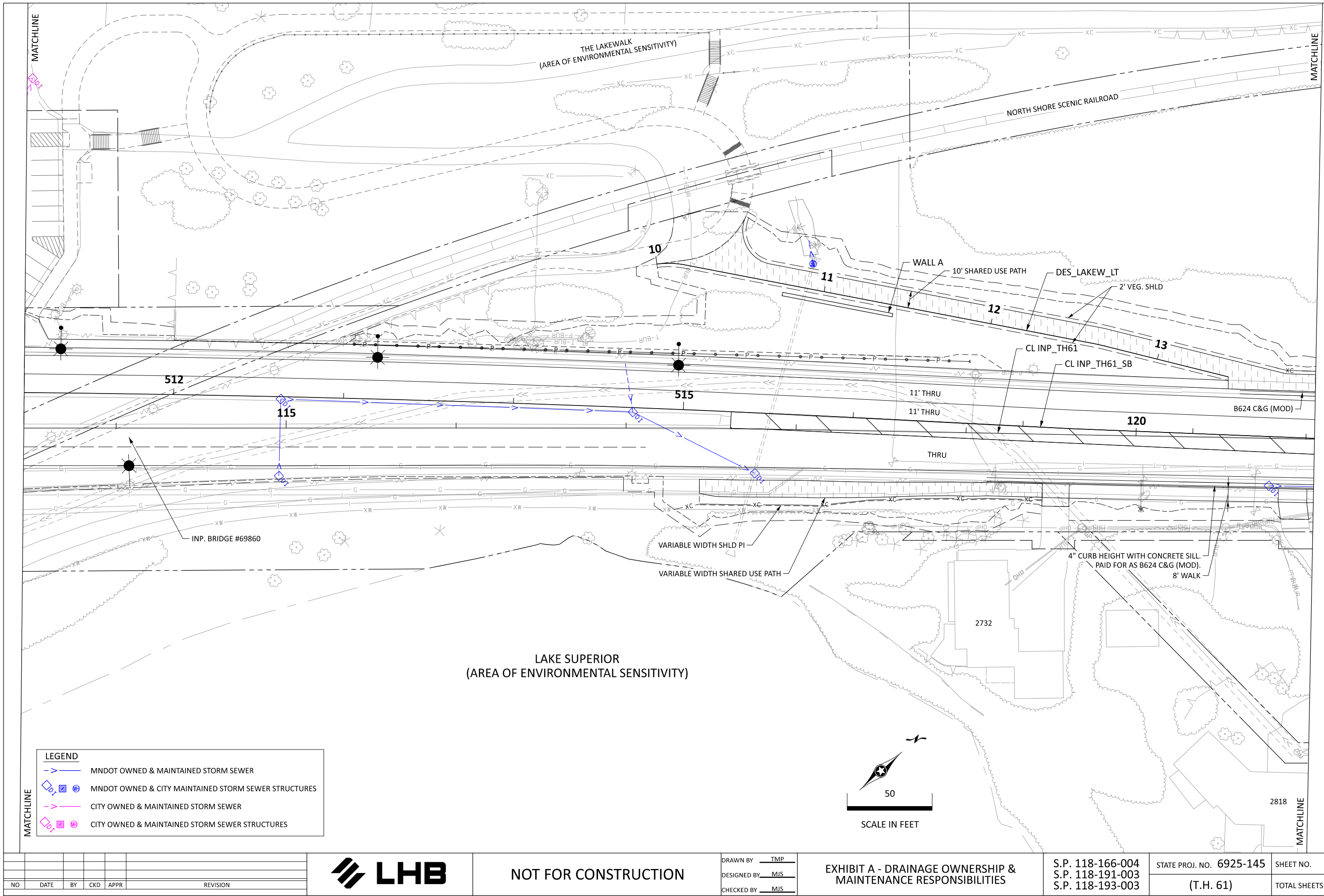
EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

S.P. 118-166-004
S.P. 118-191-003
S.P. 118-193-003

STATE PROJ. NO. 6925-145
(T.H. 61)

SHEET NO. 2
TOTAL SHEETS 28

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NO	DATE	BY	CKD	APPR	REVISION



NOT FOR CONSTRUCTION

DRAWN BY	TMP
DESIGNED BY	MJS
CHECKED BY	MJS

EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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S.P. 118-191-003
S.P. 118-193-003

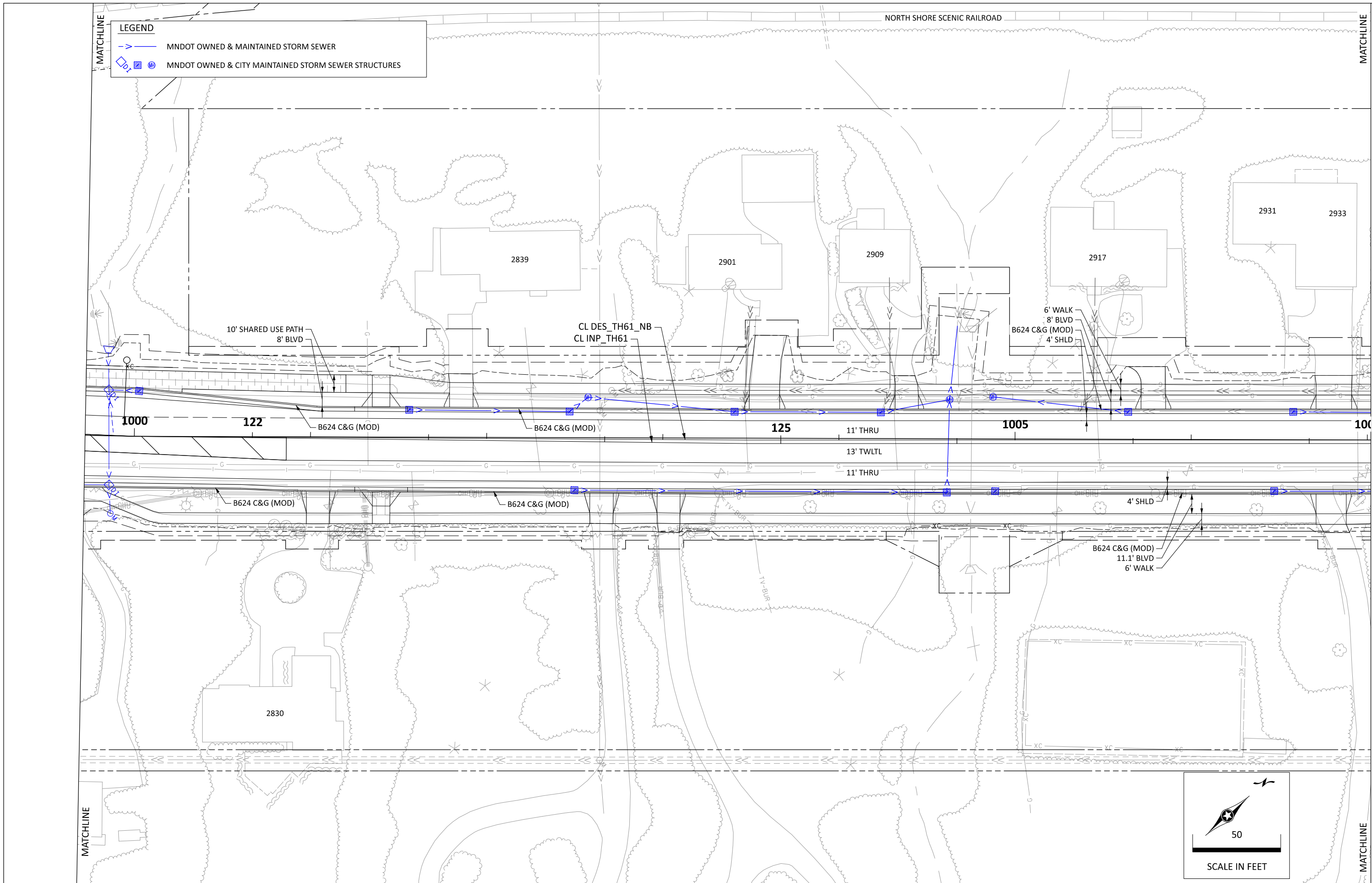
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(T.H. 61)

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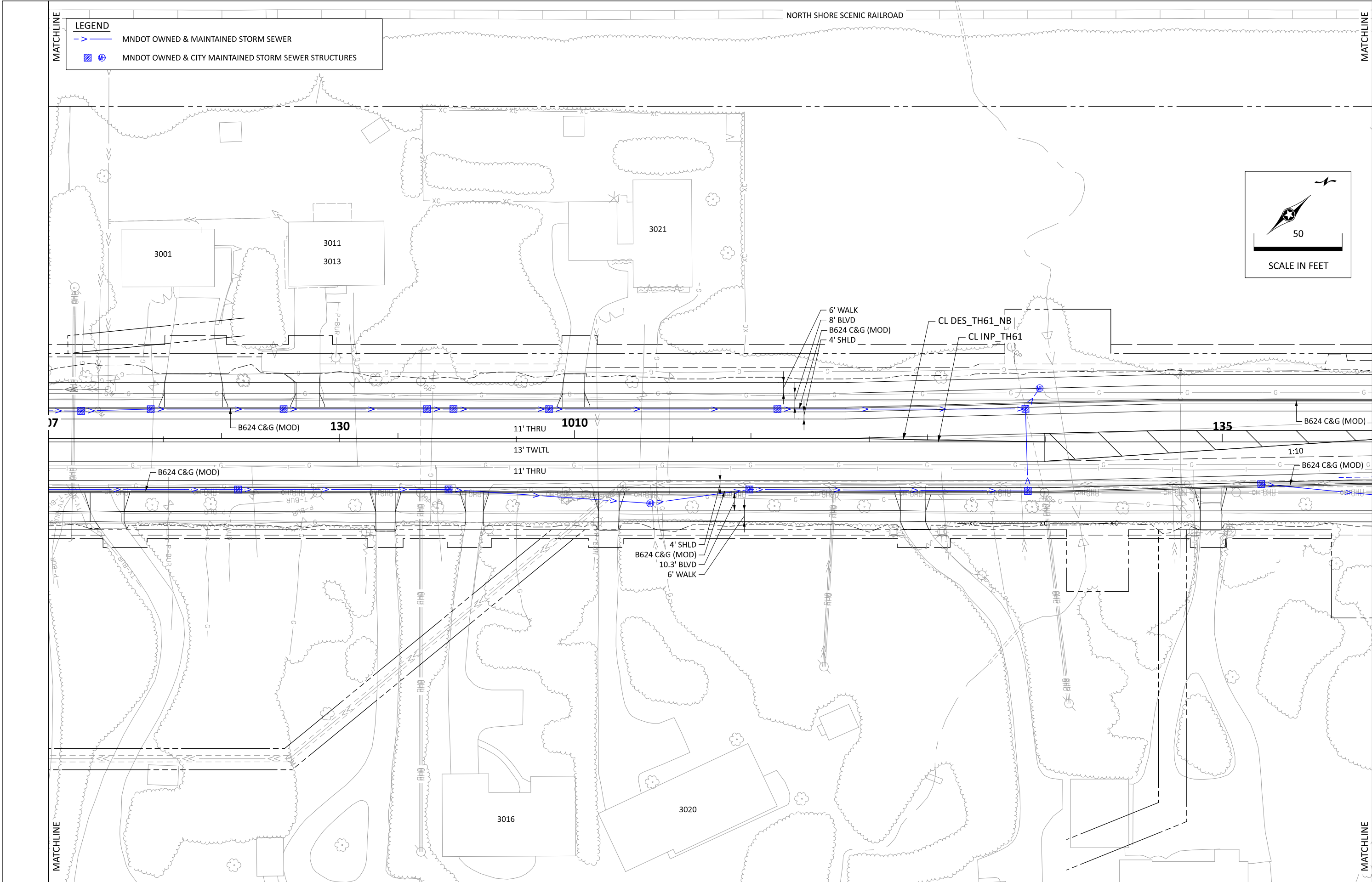
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STATE PROJ. NO. 6925-145
(T.H. 61)

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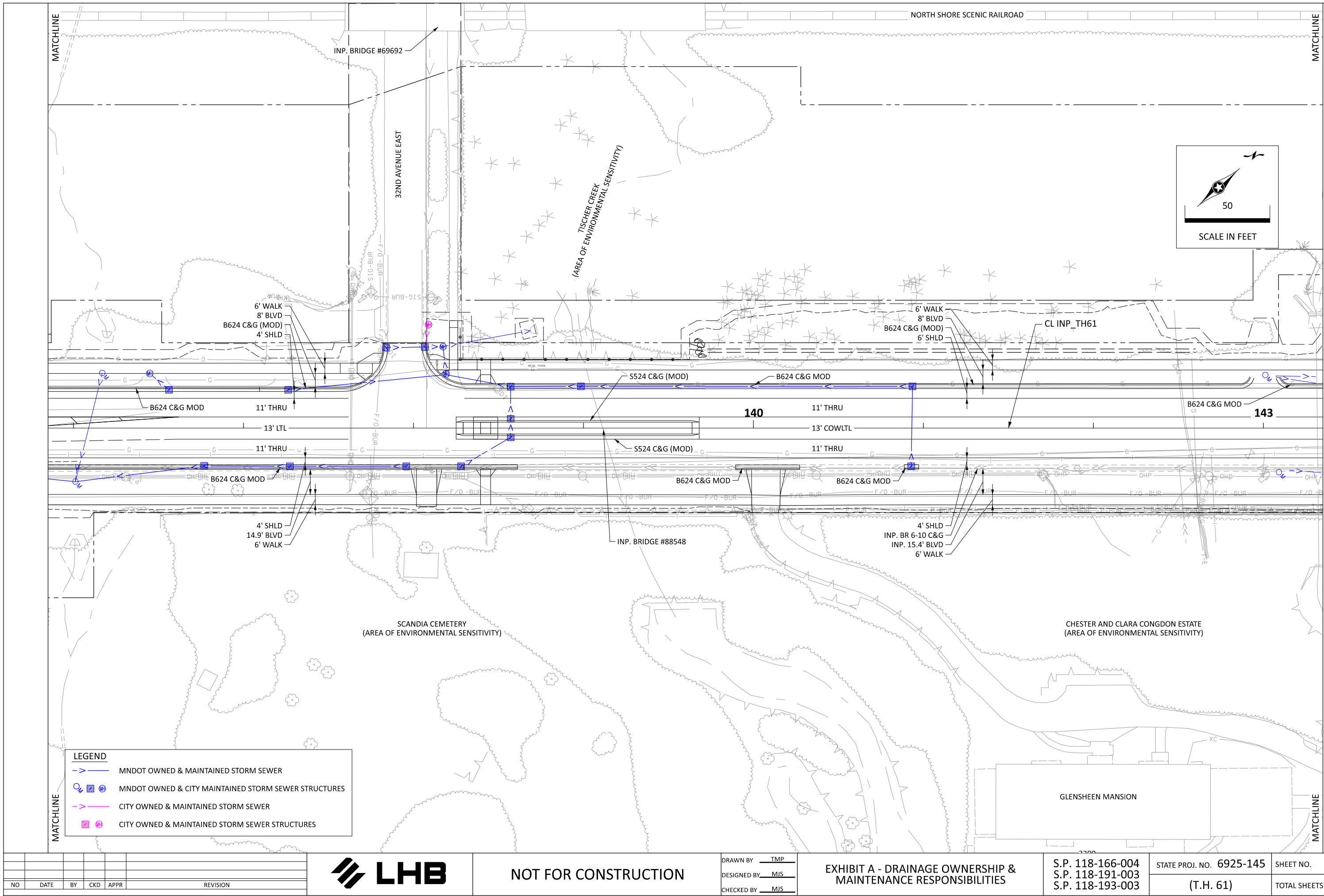


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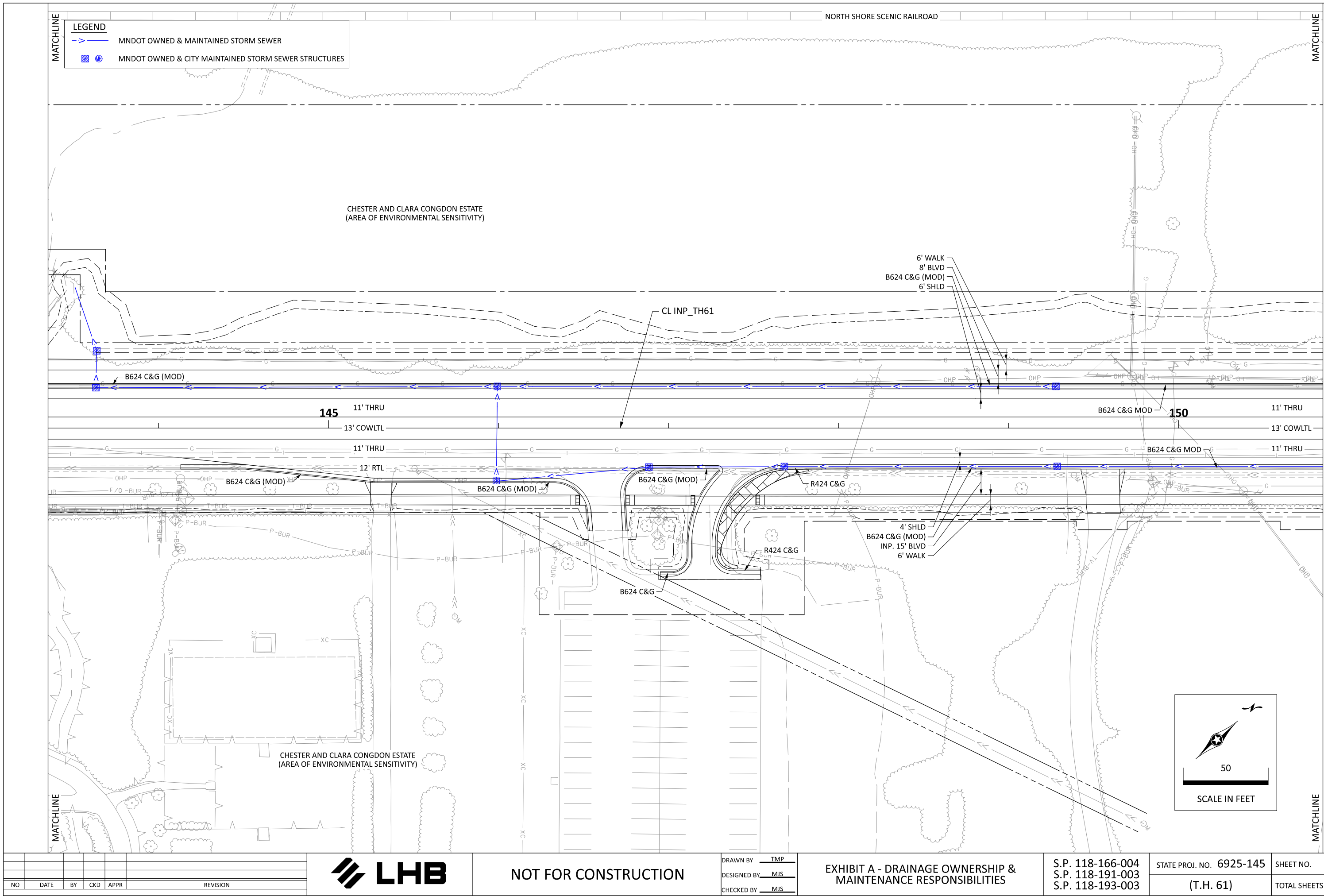
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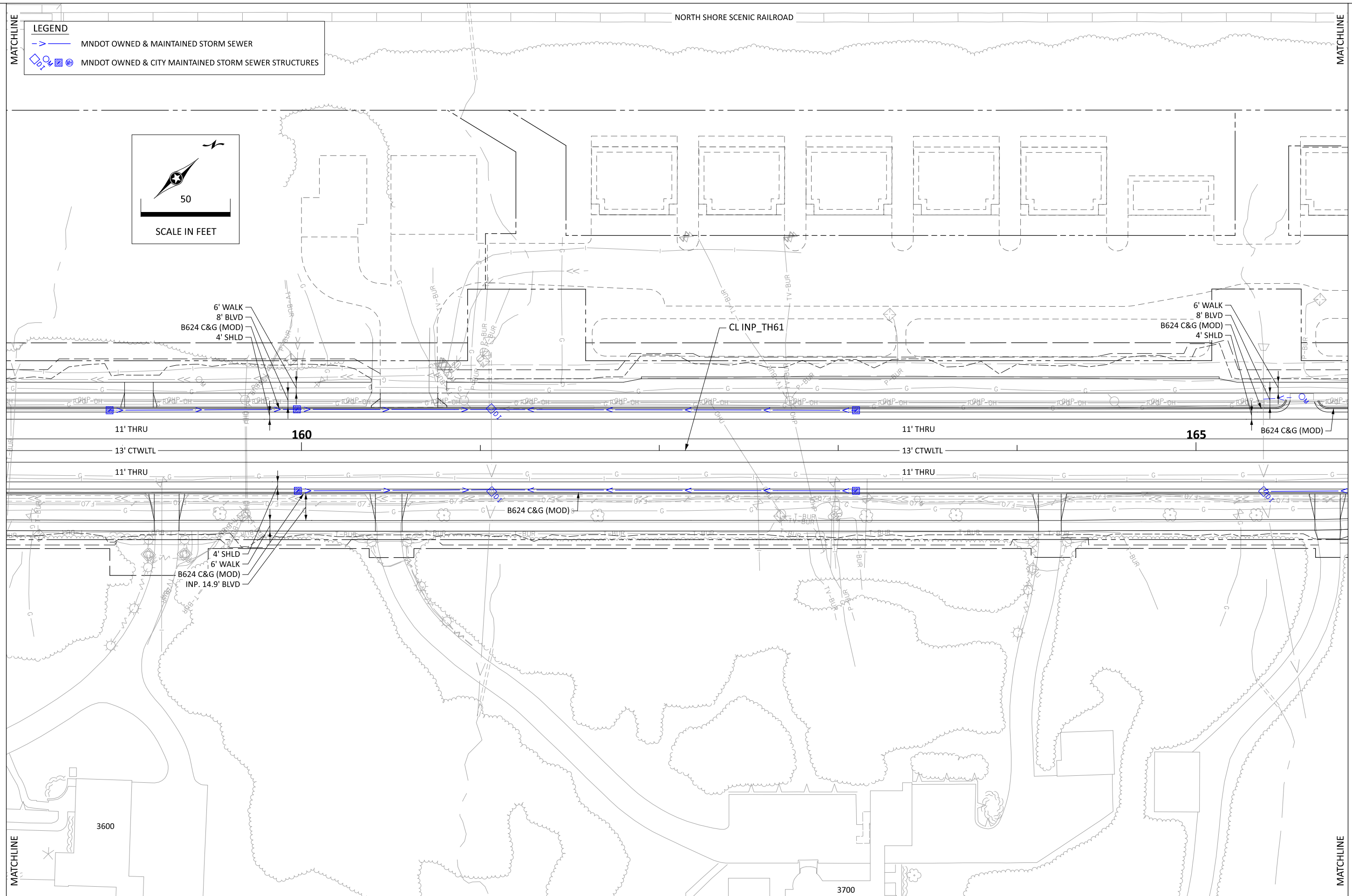
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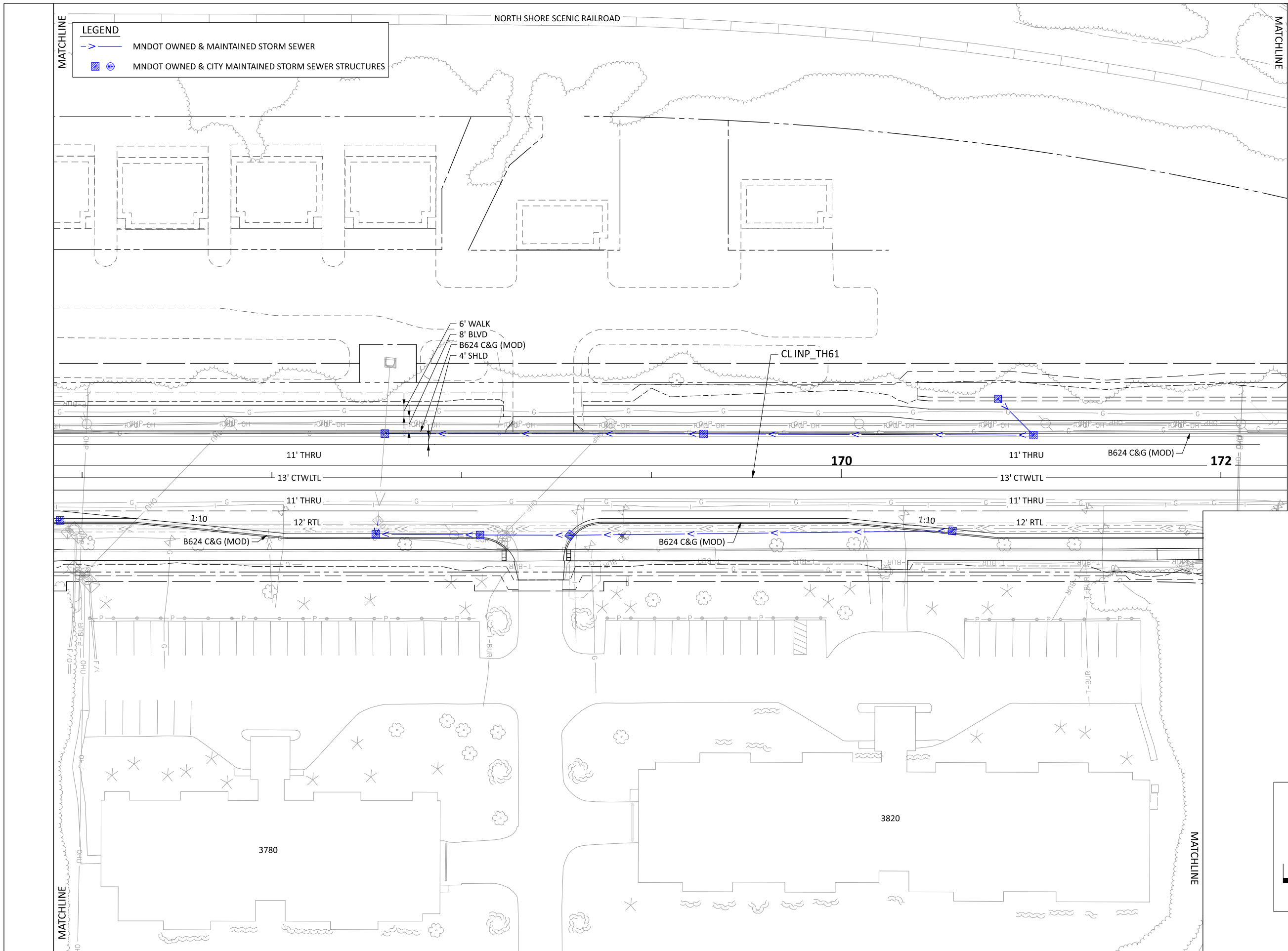
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S.P. 118-166-004
S.P. 118-191-003
S.P. 118-193-003

STATE PROJ. NO. 6925-145
(T.H. 61)

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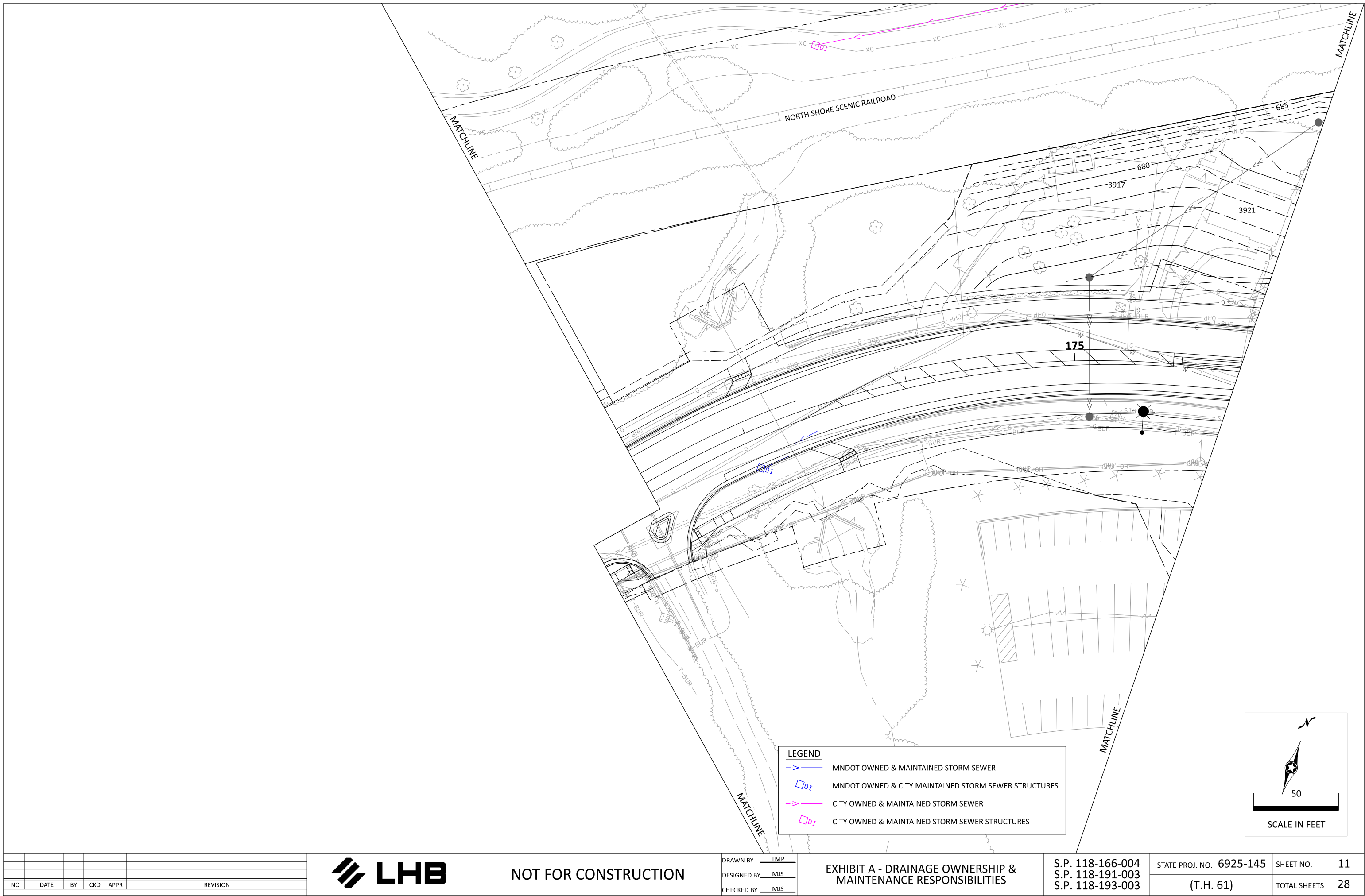


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EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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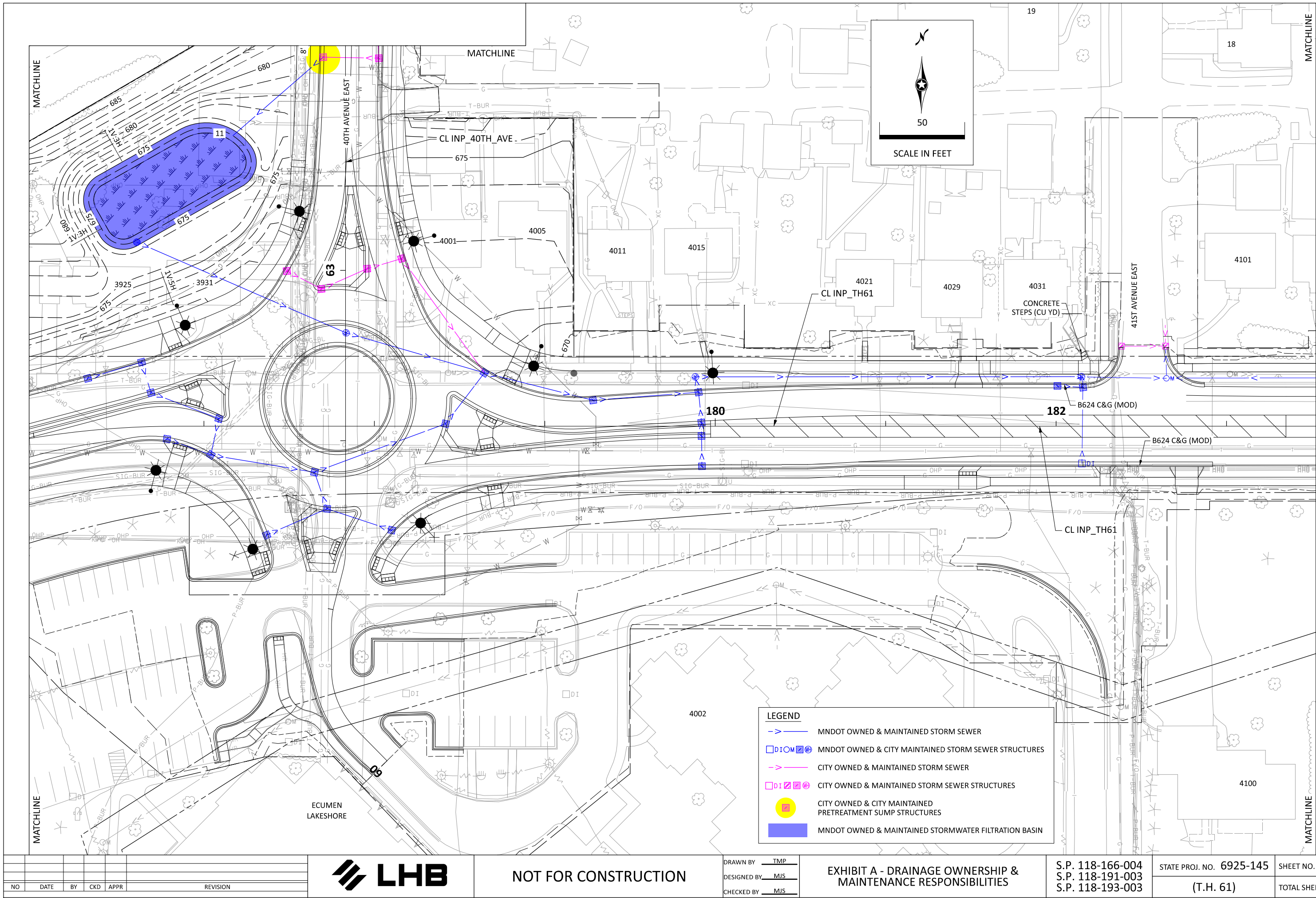
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EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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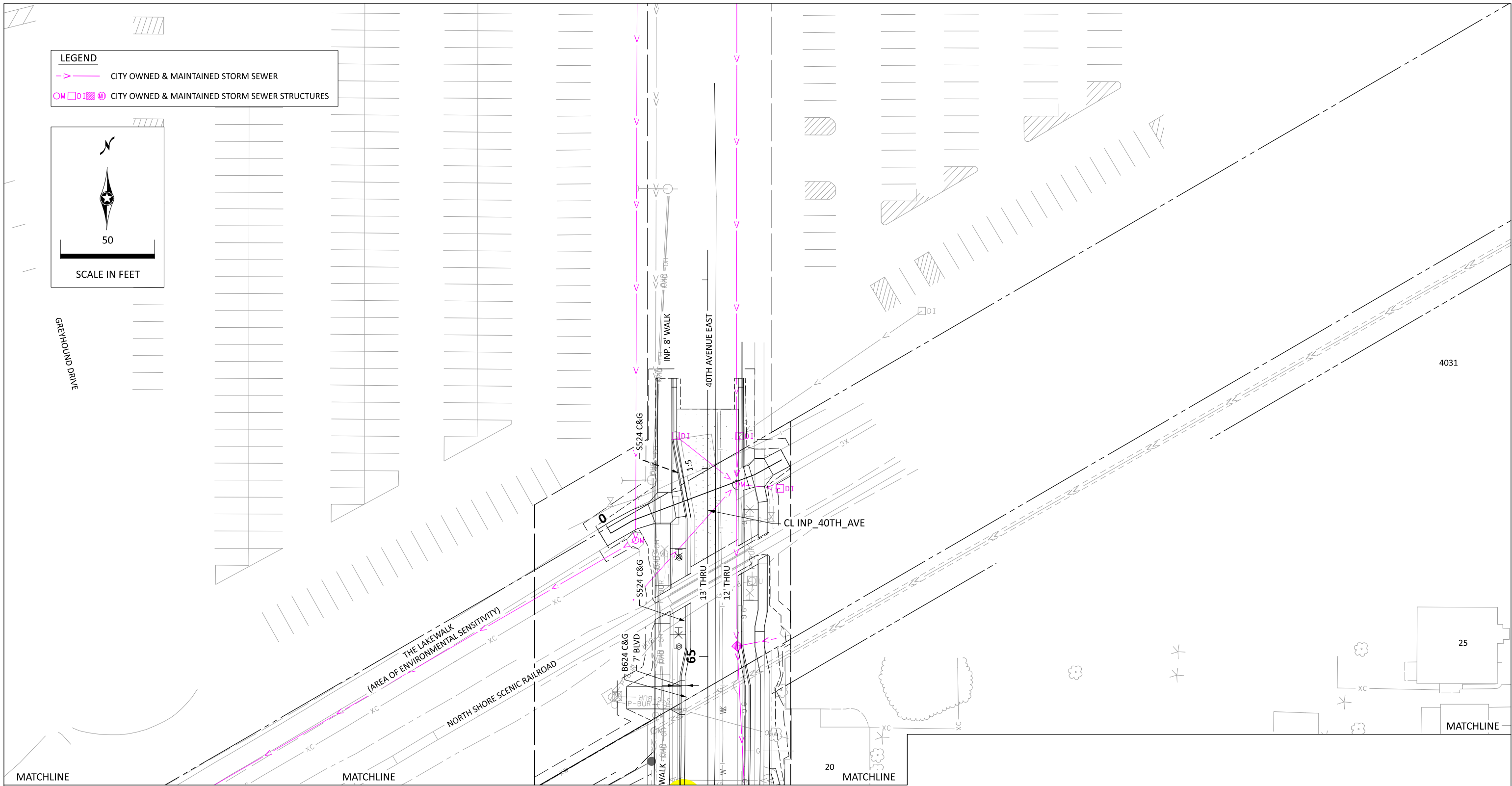
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(T.H. 61)

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TOTAL SHEETS 28

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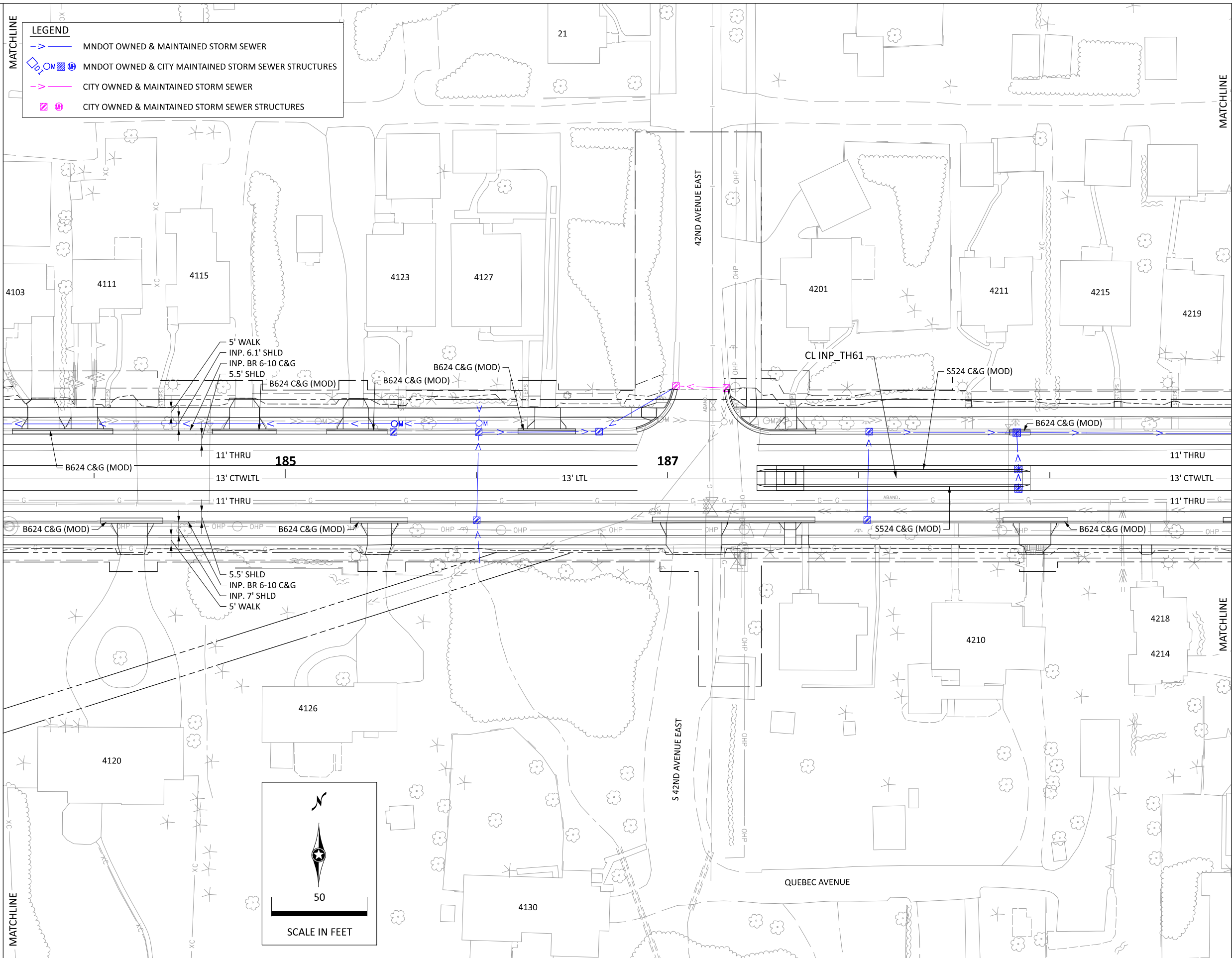
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EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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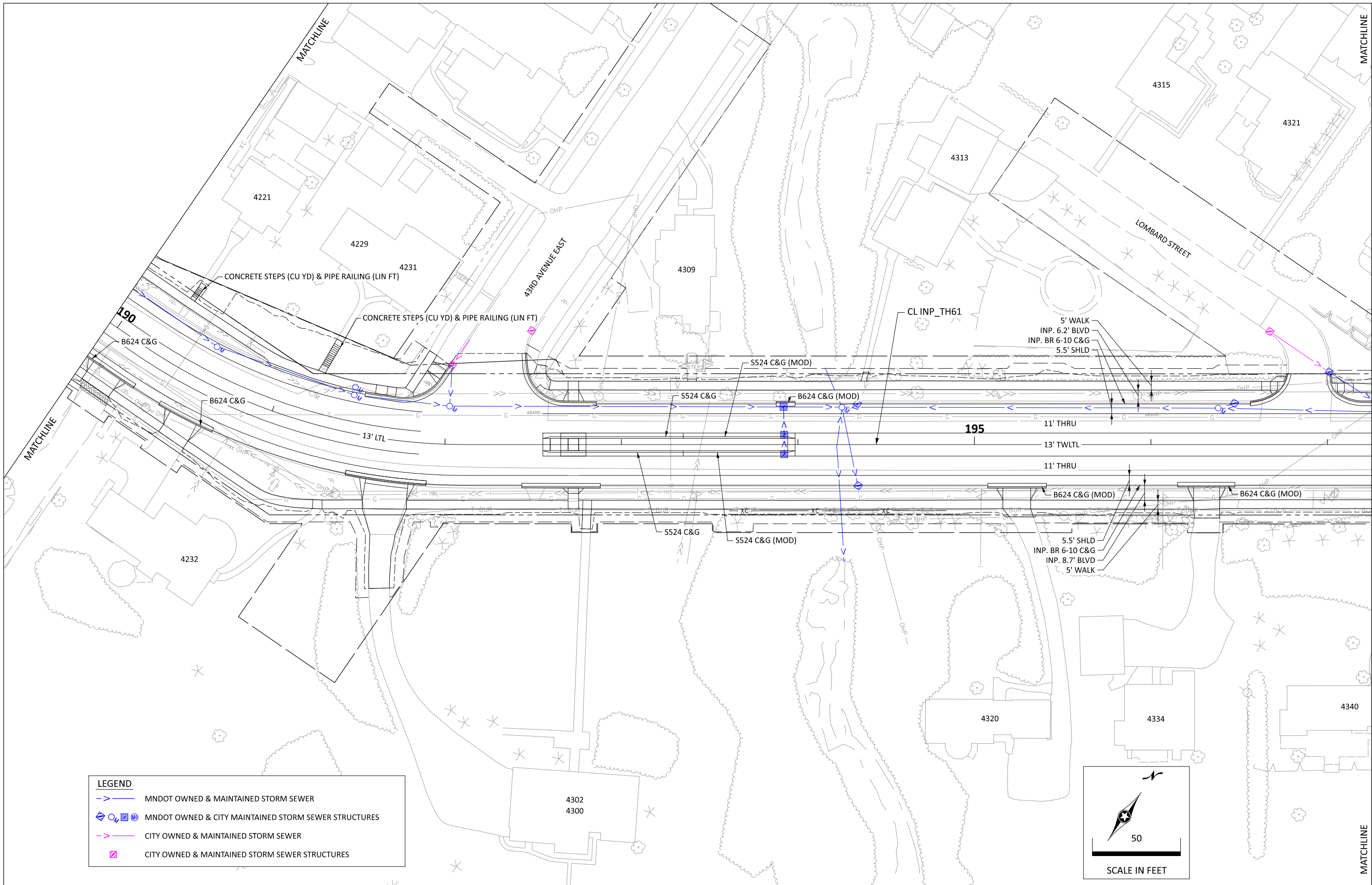
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LEGEND

- MNDOT OWNED & MAINTAINED STORM SEWER
- MNDOT OWNED & CITY MAINTAINED STORM SEWER STRUCTURES
- CITY OWNED & MAINTAINED STORM SEWER
- CITY OWNED & MAINTAINED STORM SEWER STRUCTURES

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SCALE IN FEET

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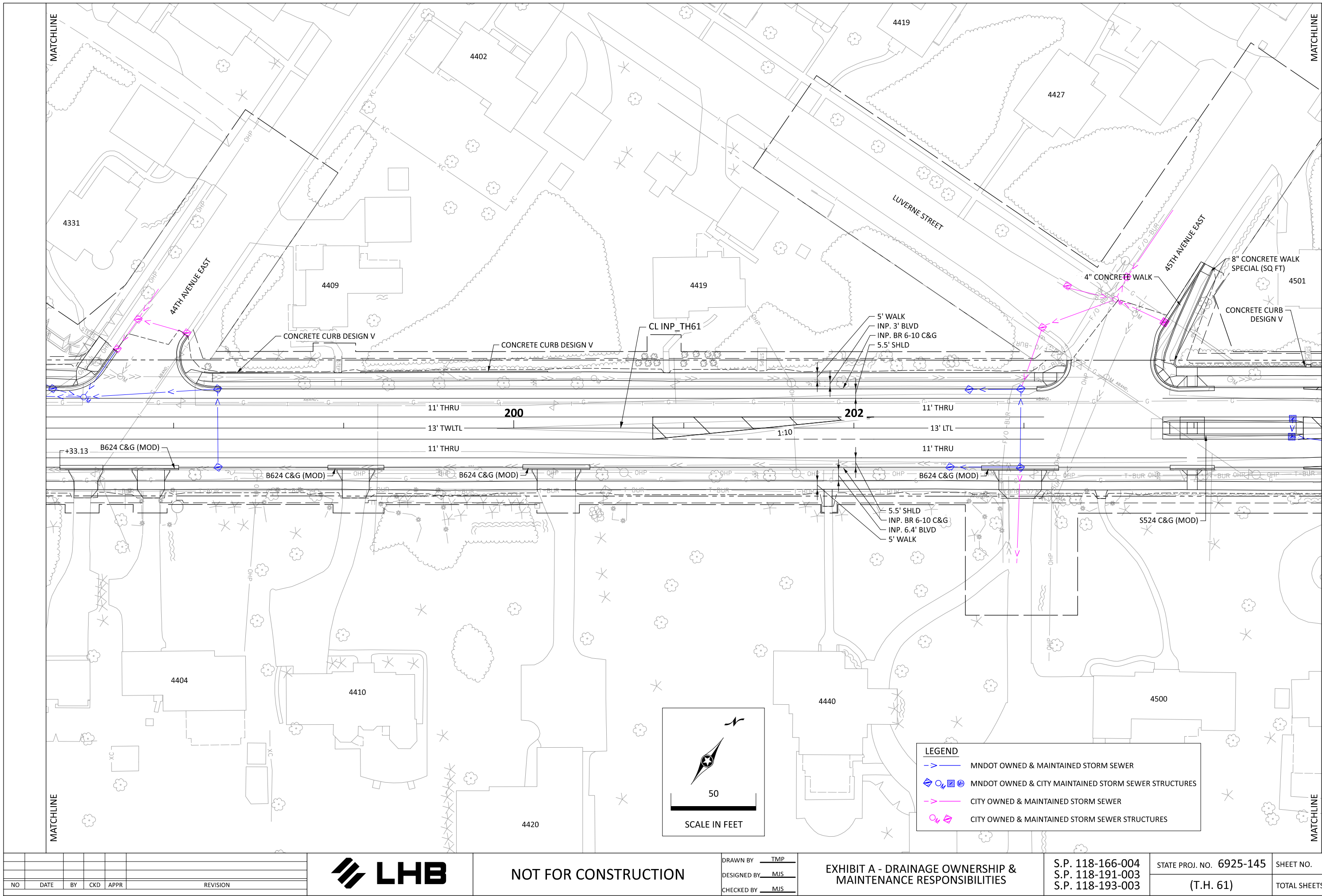
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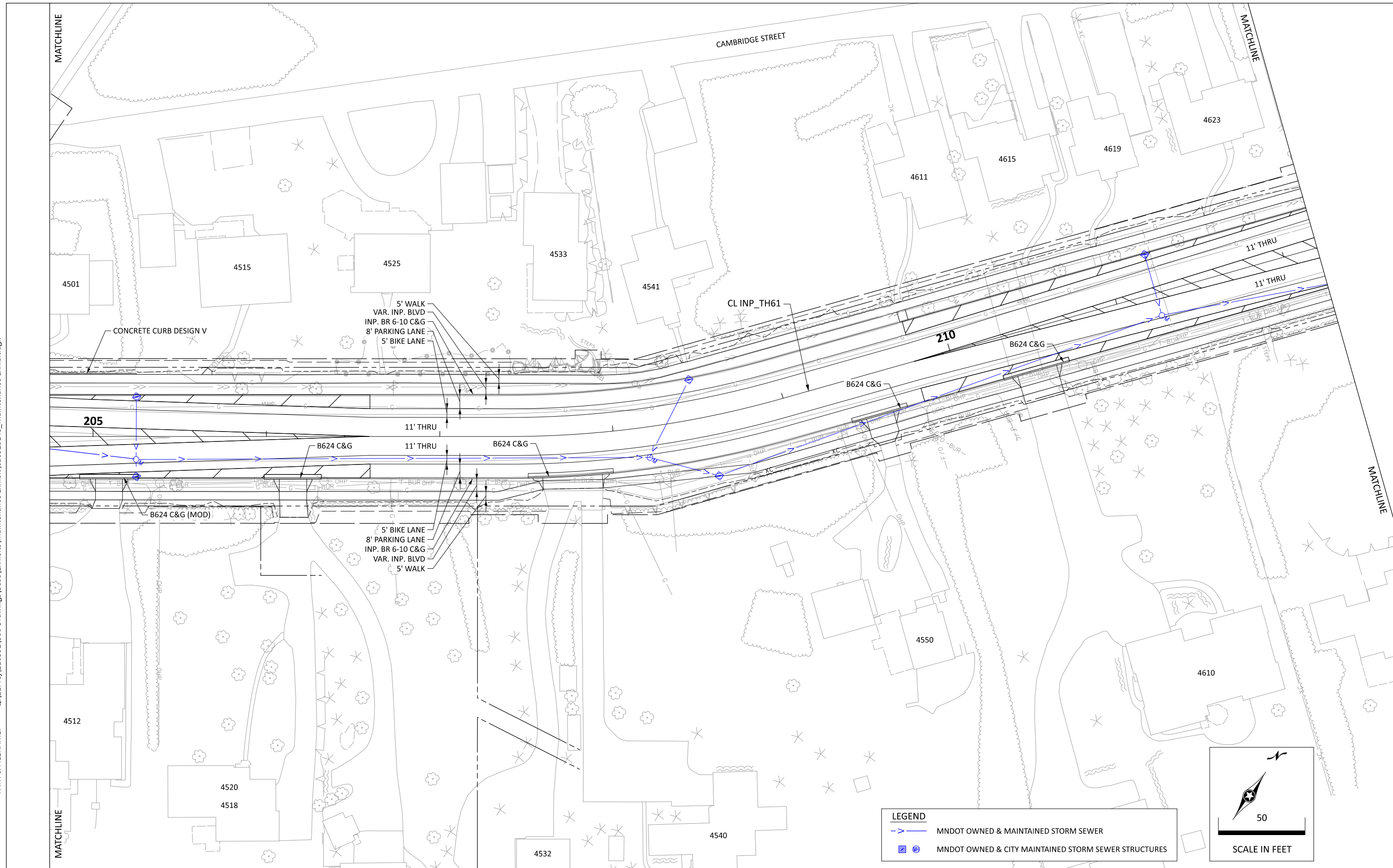
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EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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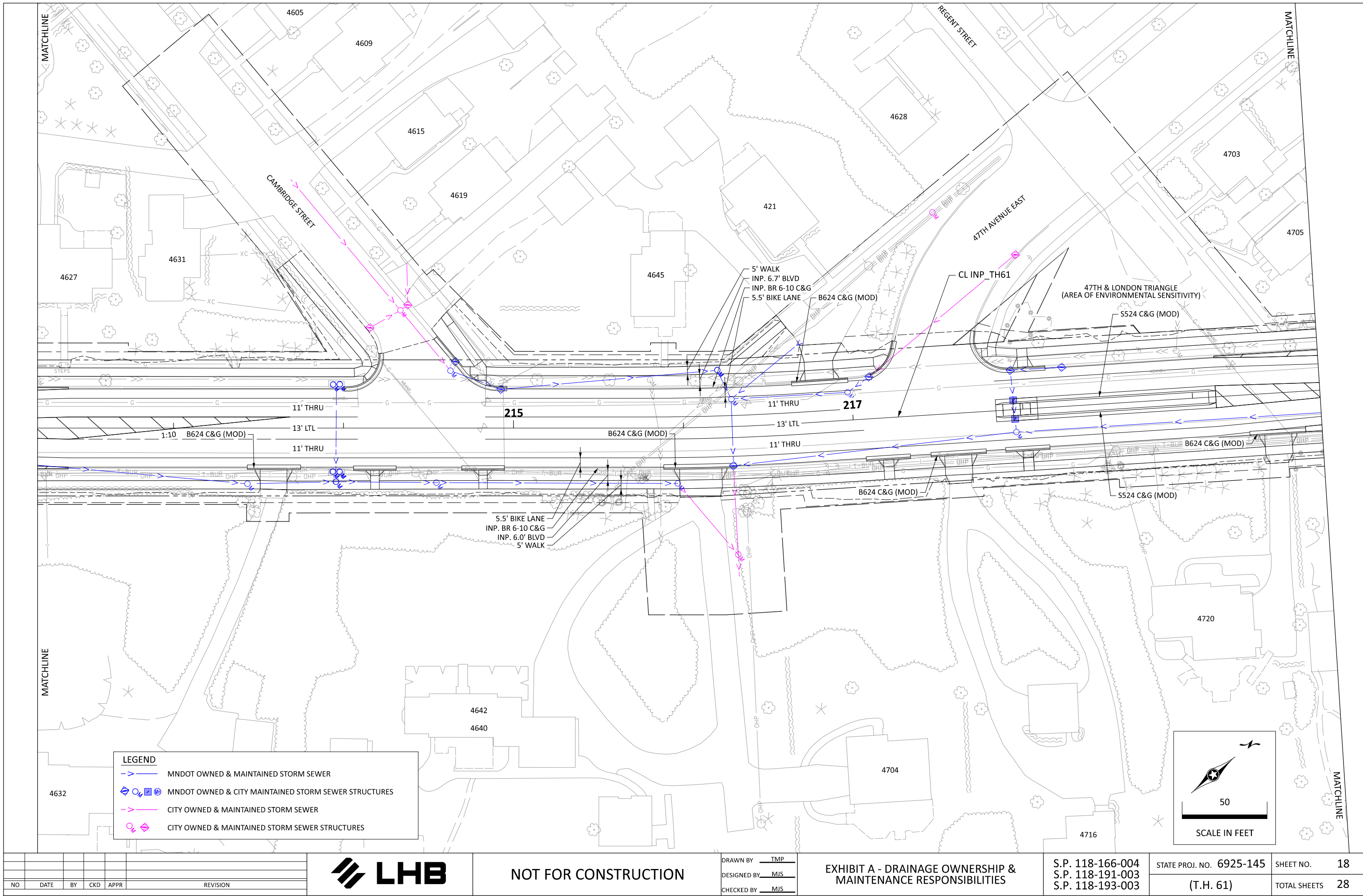
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S.P. 118-193-003

STATE PROJ. NO. 6925-145
(T.H. 61)

SHEET NO.	17
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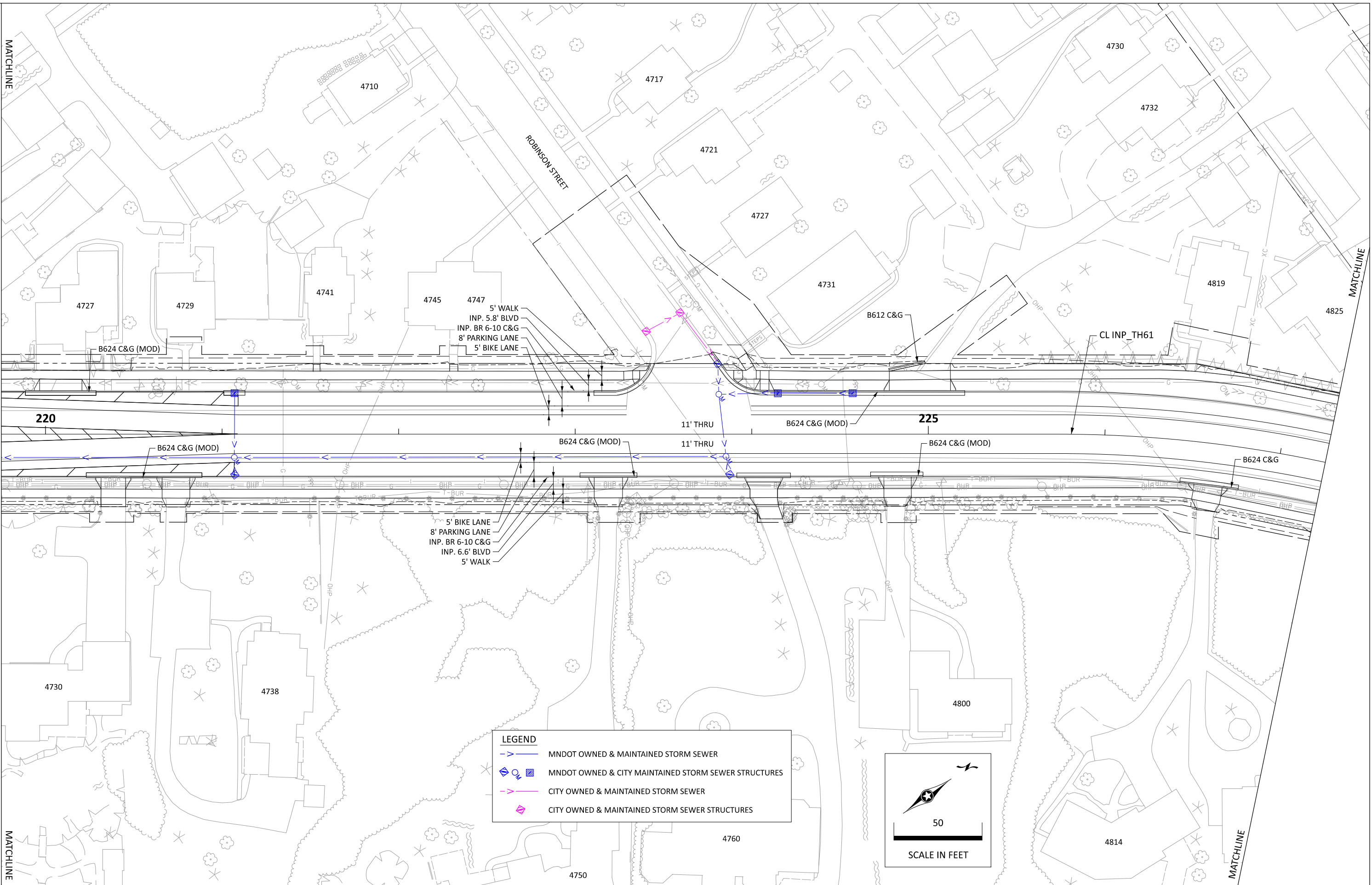


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EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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S.P. 118-191-003
S.P. 118-193-003

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(T.H. 61)	TOTAL SHEETS 28



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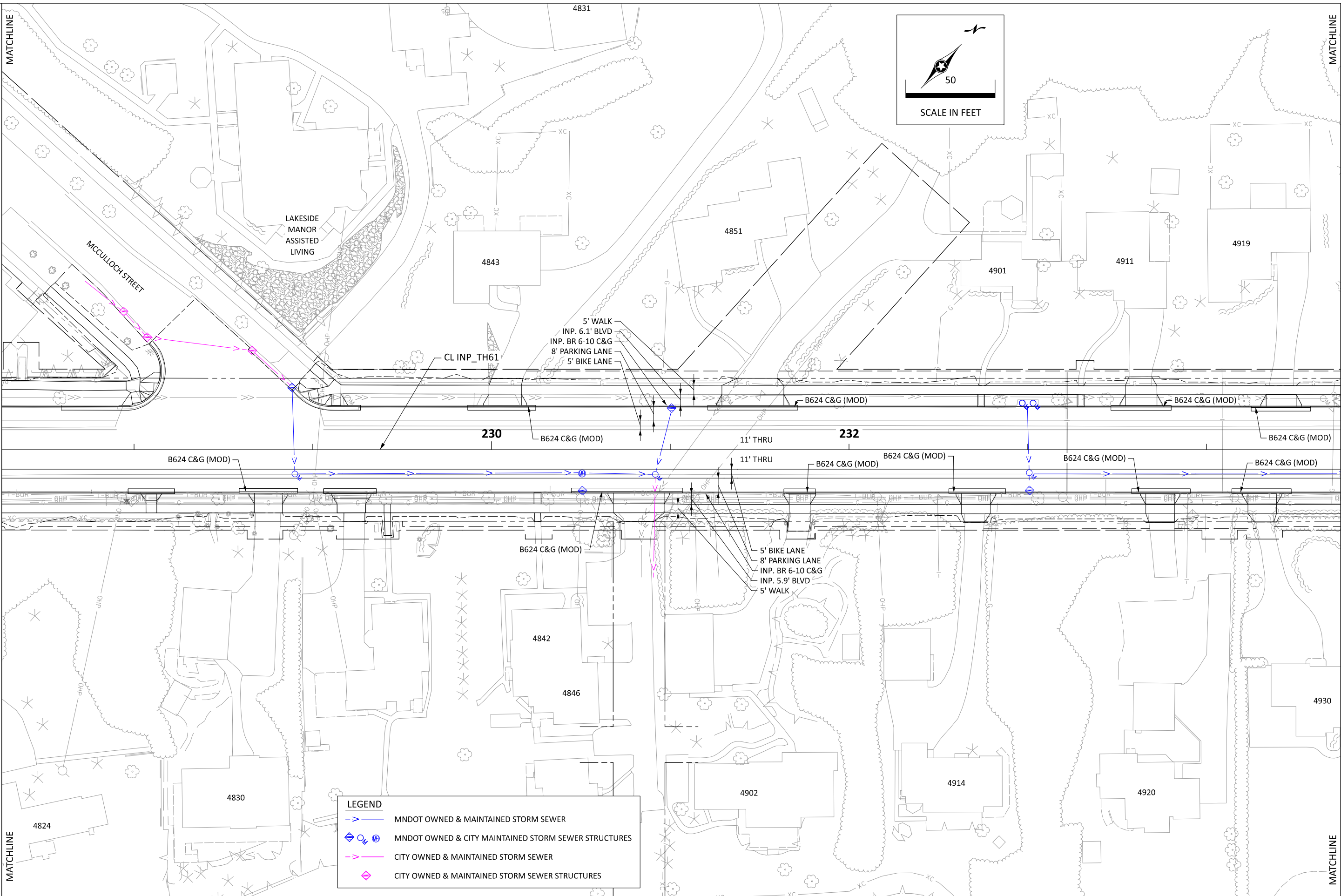
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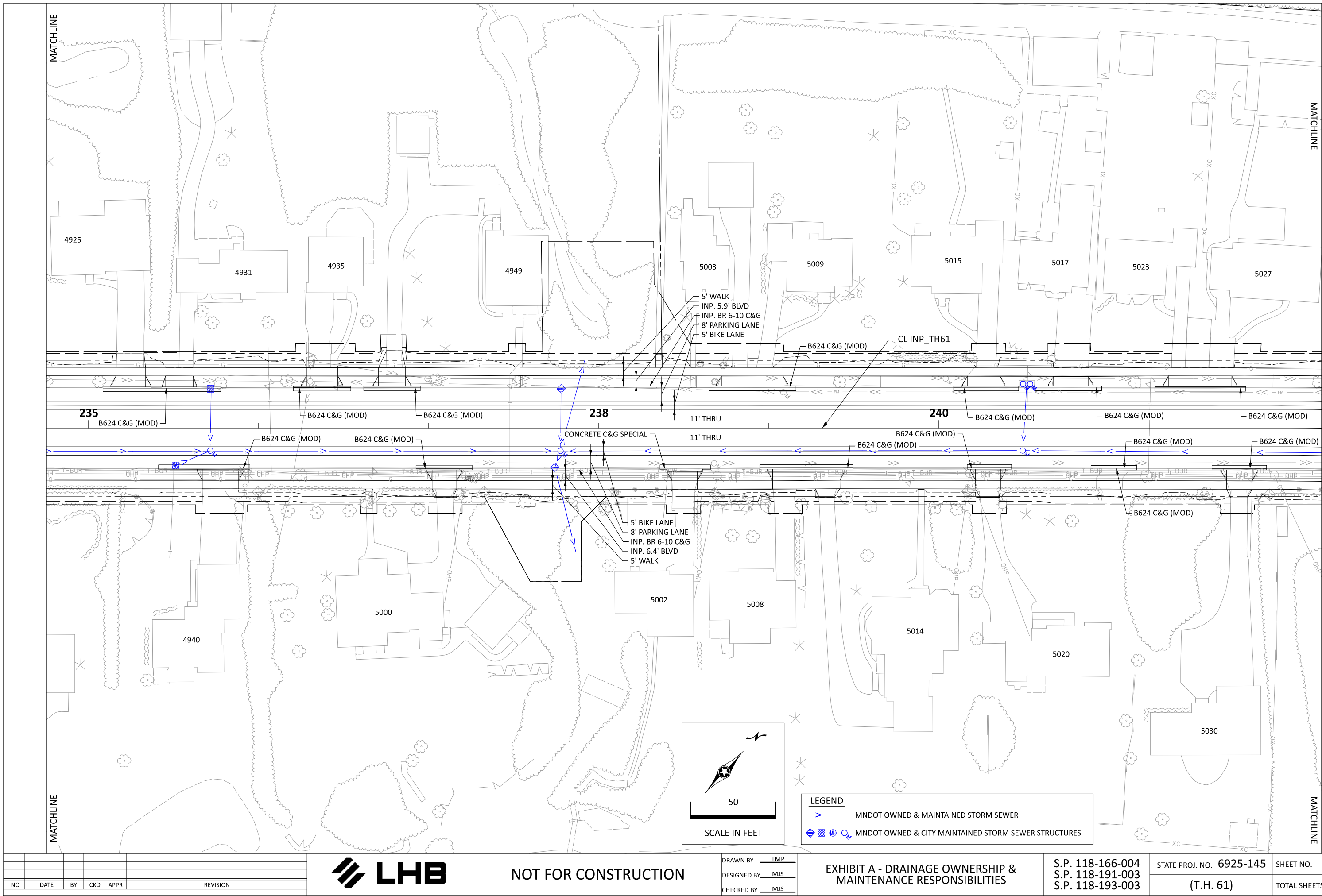
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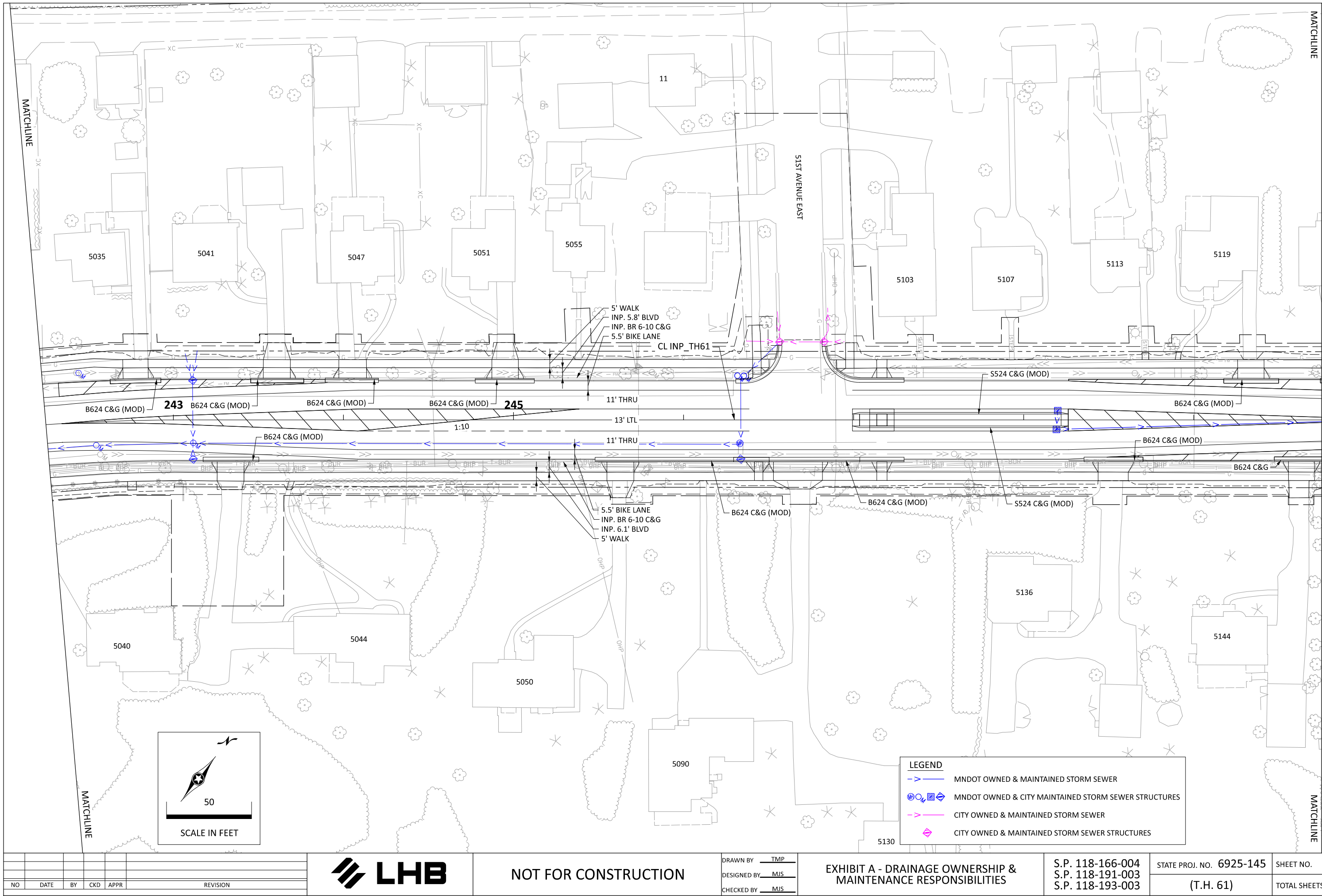
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EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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S.P. 118-191-003
S.P. 118-193-003

STATE PROJ. NO. 6925-145
(T.H. 61)

SHEET NO. 21
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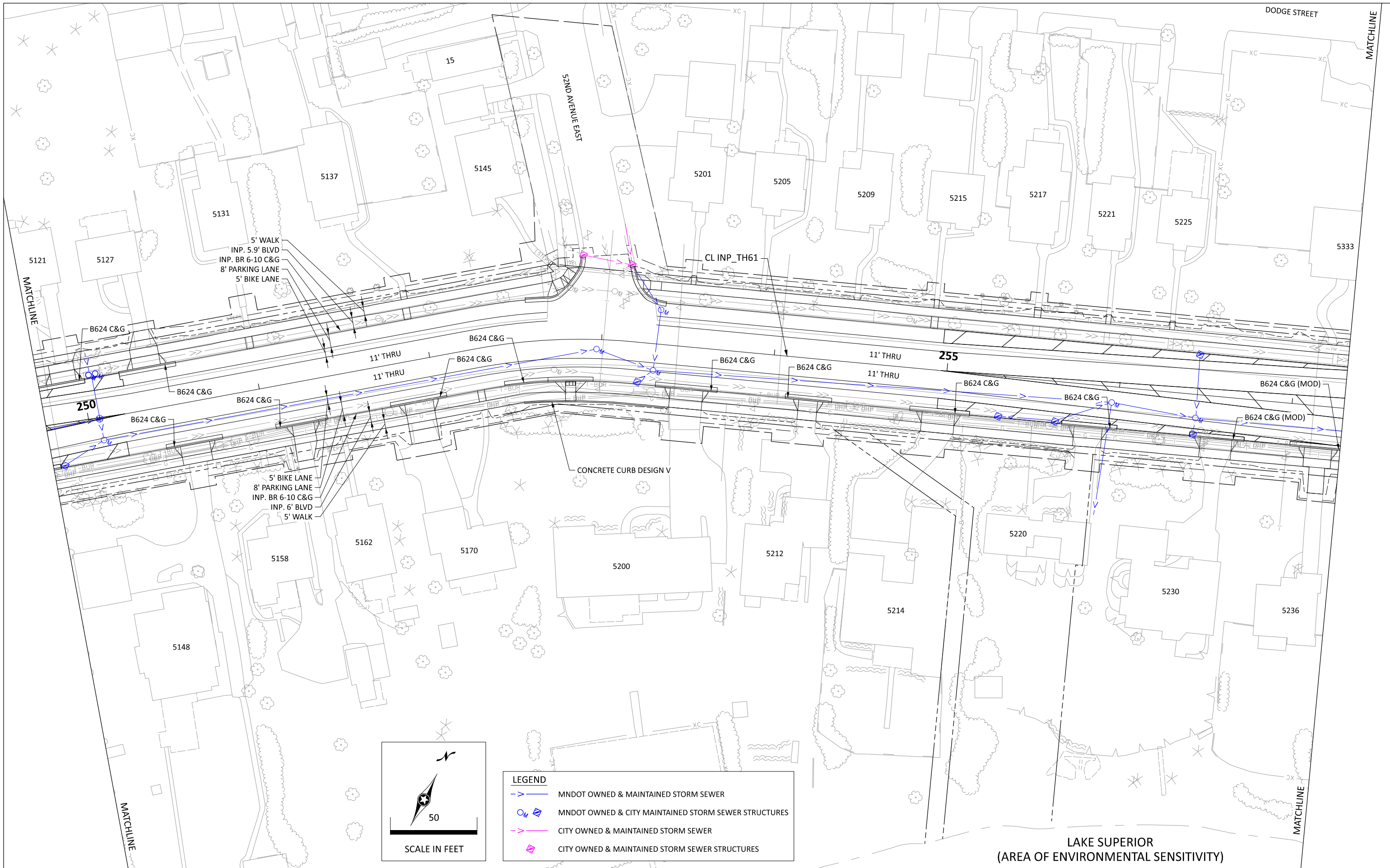
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S.P. 118-193-003

STATE PROJ. NO. 6925-145
(T.H. 61)

SHEET NO. 22
TOTAL SHEETS 28

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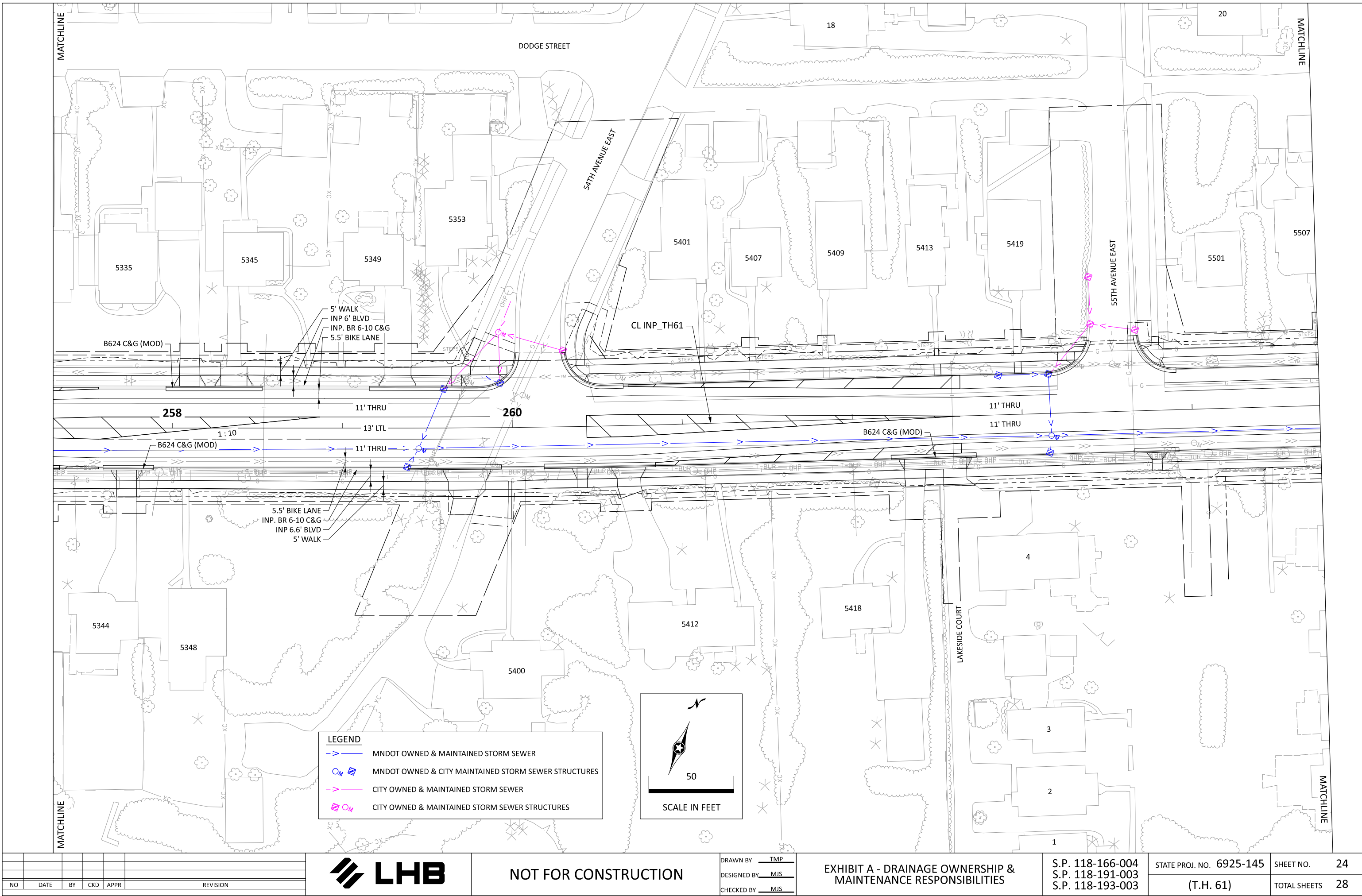
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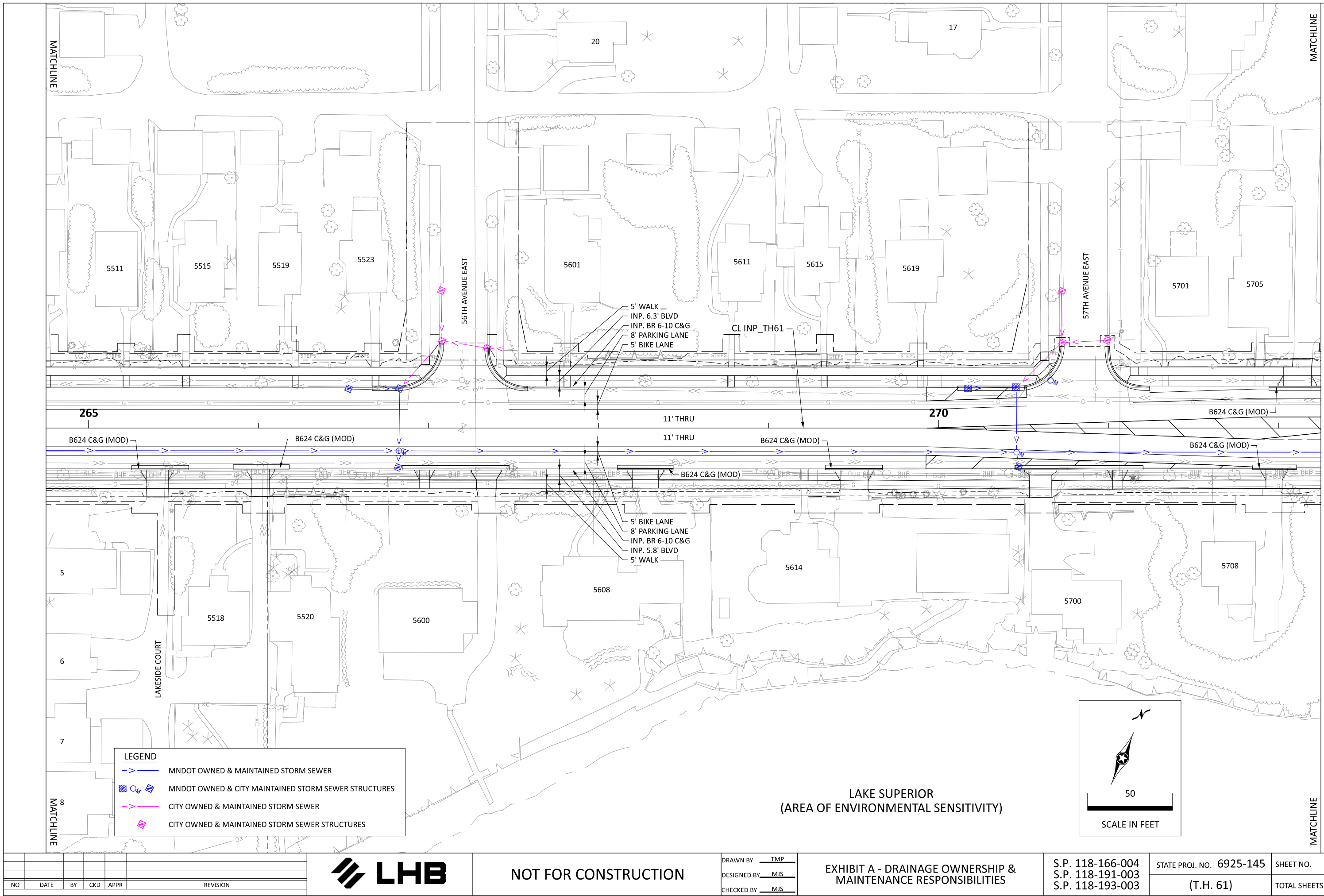
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EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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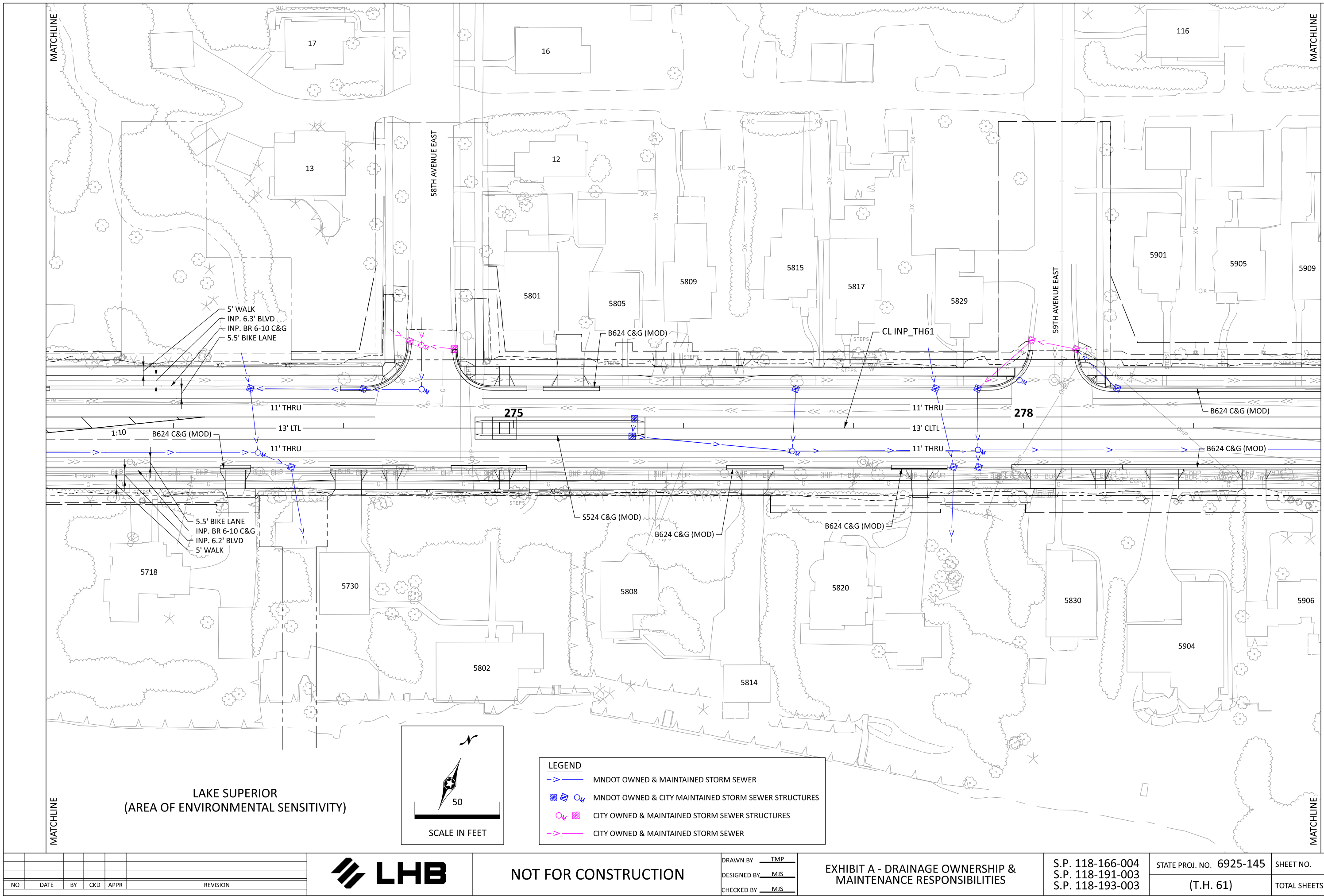
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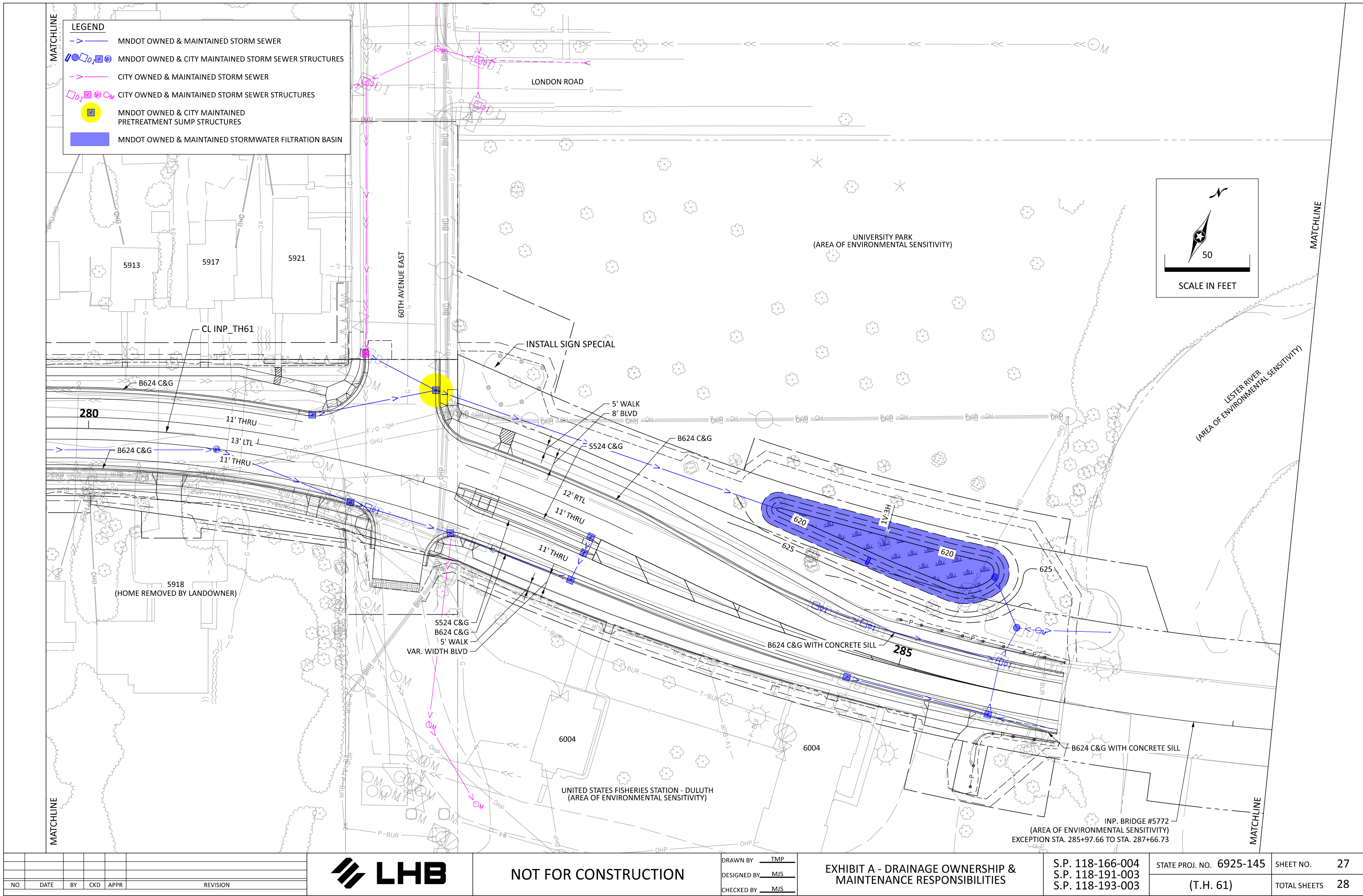


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EXHIBIT A - DRAINAGE OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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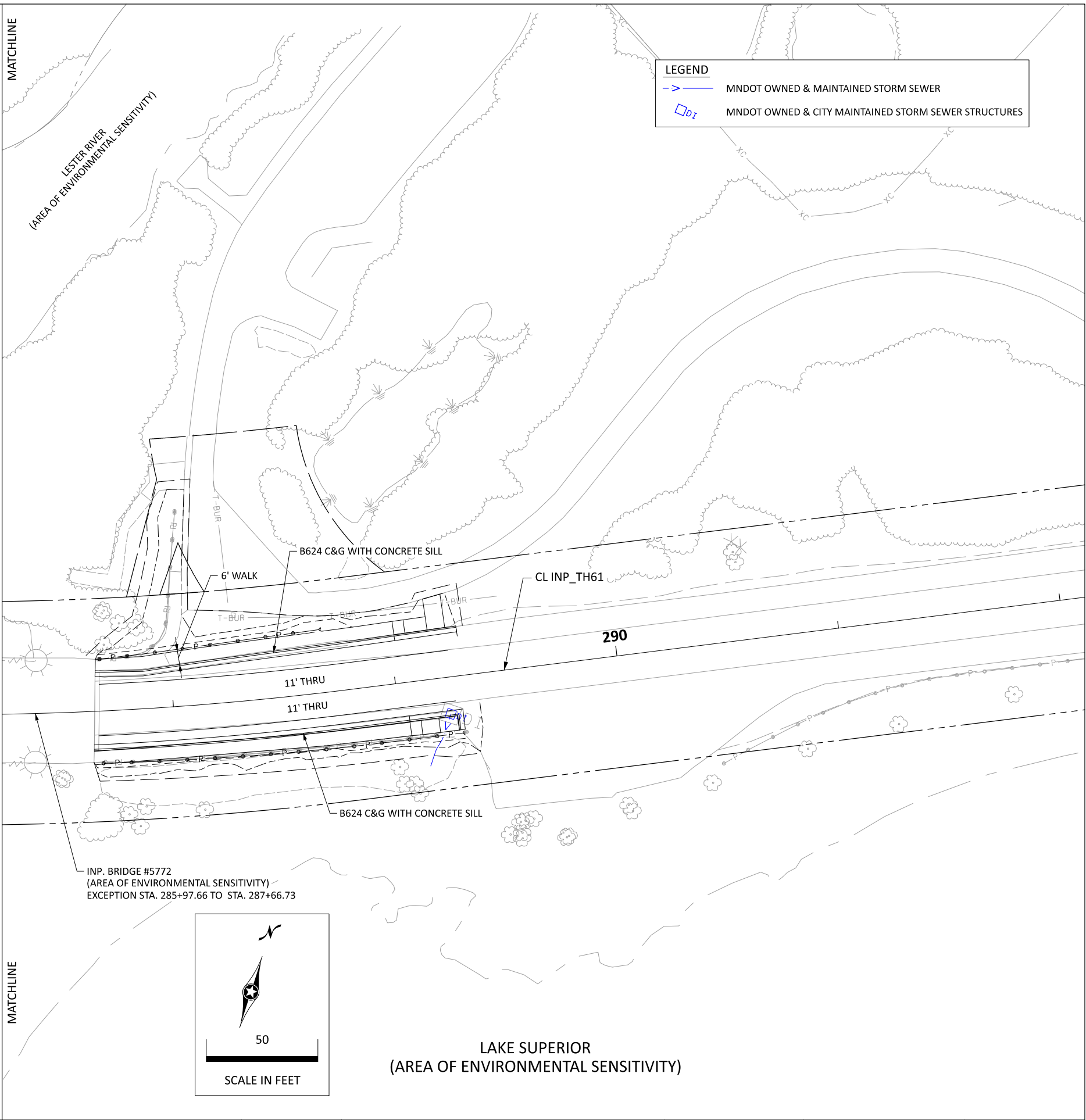
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S.P. 118-166-004 S.P. 118-191-003 S.P. 118-193-003	STATE PROJ. NO. 6925-145 (T.H. 61)	SHEET NO. 28 TOTAL SHEETS 28
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EXHIBIT B

Maintenance Responsibilities Plan and Schedule

Table 1a. REQUIRED LANDSCAPE MAINTENANCE ACTIVITIES

MAINTENANCE CONSIDERATION				
PLANT GROUPS	PRUNING		WEED CONTROL	FERTILIZATION See Table 5, Fertilization Schedule
	When To	Type Of		
Evergreen Trees	Anytime - Dry	Corrective and Deadwood Removal	Maintain mulch at 3" minimum around trees in mowed areas, keep weed free.	Yes
Shade Trees	Anytime - Dry*	Training and Corrective		Yes
Ornamental Trees	Winter**	Corrective		Yes
Evergreen Shrubs	Anytime - Dry	Deadwood Removal		Yes
Deciduous Shrubs	Dormant	Corrective and Renewal	Maintain minimum 3" woodchip mulch in a weed free condition until shrub crown closure.	Yes
Vines	Dormant	Deadwood Removal		No
Groundcovers				

* Do not prune oaks during April, May and June. Do not prune Honeylocust while dormant or when humid or wet.

** Do not prune apples, crabapples or Mountain Ash during April, May and June.

TABLE 1b. REQUIRED LANDSCAPE MAINTENANCE ACTIVITIES

MAINTENANCE CONSIDERATION				
PLANT GROUPS	WATERING	INSECT AND DISEASE CONTROL	RODENT PROTECTION	REMOVALS AND REPLACEMENTS
Evergreen Trees	Yes until established (2 yrs.).	As needed.	Yes - Pine Only	Remove all dead plants.
Shade Trees			Yes	
Ornamental Trees	Supplemental watering may be needed during drought periods (especially during July and August) even after plants are established.	Remove diseased plants that pose threats to adjacent plantings.	Yes	Replace dead or dying plants unless the lost plants do not noticeably compromise the visual appearance or design intent.
Evergreen Shrubs			No*	
Deciduous Shrubs			No*	
Vines			No*	
Groundcovers			No*	

* Rodent protection is generally not practical for mass shrub plantings, maintaining clean mulched planting areas free of weed growth will reduce problems. Mowed turf in formal planting areas will help reduce rodent problems.

TABLE 2a. CALENDAR OF LANDSCAPE MAINTENANCE

ACTIVITY	January	February	March	April	May	June
Pruning	See Table 1a for Best Time for Specific Species.					
Weed Control:	Planting beds must be kept in a weed free condition.					
Remulch				OXX	XXXX	XO
Herbicide	Must be applied by a licensed Pesticide Applicator.					
Fertilization: Turf Shrubs, Trees				XXXX		
Insect & Disease	Time of control depends on the type of insect or disease and when it is detected.					
Sunsclad Protection				Remove wrap*		
Watering	During first and second growing seasons approximately once a week or as needed to maintain adequate but not excessive soil moisture.					
Maintain Rodent Protection	O000	O000	O000	O000	O000	O000
Turf Maintenance Mowing					O0X	XXXX
Mower Damage Prevention				X	XXXX	XXXX
Replanting Evergreen Trees Deciduous Trees Container Plants Turf				OXX OXX XXX O	XXO XXXX XXXX XXXX	XXXO XXOO

X - Optimum Time O - Less than Optimum Time

* Undiluted white latex paint is recommended, repaint as necessary until trees reach 4" caliper.

TABLE 2b. CALENDAR OF LANDSCAPE MAINTENANCE

ACTIVITY	July	August	September	October	November	December
Pruning	See Table 1a for Best Time for Specific Species.					
Weed Control:	Planting beds must be kept in a weed free condition.					
Remulch	XXXX	XXXX	XXXX	XXXX	OO	XO
Herbicide	Must be applied by a licensed Pesticide Applicator.					
Fertilization: Turf Shrubs, Trees				XXXX XXXX		
Insect & Disease	Time of control depends on the type of insect or disease and when it is detected.					
Sunscauld Protection				Apply or maintain paint. Install wrap*.		
Watering	During first and second growing seasons approximately once a week or as needed.					
Maintain Rodent Protection	OOOO	OOOO	XXXX	XXXX	XOOO	OOOO
Turf Maintenance Mowing	XXXX	XXXX	XXXX	XXOO		
Mower Damage Prevention	XXXX	XXXX	XXXX	XXOO		
Replanting Evergreen Trees Deciduous Trees Container Plants Turf	 OOOO OOOO	 OX OOOX OOXX	 XXXO XXXO XXXX	 OXXX OO	 XO	

X - Optimum Time O - Less than Optimum Time

* Undiluted white latex paint is recommended, repaint as necessary until trees reach 4" caliper.

TABLE 3. DESCRIPTIONS OF TYPES OF PRUNING

TYPES OF PRUNING	WHEN TO PRUNE	DESCRIPTION
Disease Removal	After Diagnosis	Removal of fungal bacterial growths. Sterilize pruners between cuts.
Deadwood Removal	See Table 1	Removal of dead branches, normally from the interior portion of the crown.
Training	See Table 1	Maintaining the central leaders and acceptable symmetry in evergreen, shade and ornamental trees. Removal of suckers and water sprouts.
Corrective	See Table 1	Removal of storm-damaged, vehicle-damaged or vandalized limbs.
Renewal	See Table 1	Removing all top growth at or near the ground line and remulch. Or removal of 1/3 of the oldest stems at the ground line.

TABLE 4. WEED CONTROL METHODS - INTEGRATED APPROACH

METHOD	CATEGORY		
	TREES	SHRUB BEDS	TURF
Replanting - Filling Voids		X	X
Fertilization	X	X	X
Remulch*	X	X	X
Herbicides	X	X	X
Weed Whip	No	X	

* Wood chip mulch should be replenished around shade trees and low growing shrubs every 3-5 years. Place mulch to a 4" depth. Mulching will help control weeds, reduce mower damage and conserve moisture.

TABLE 5. FERTILIZATION SCHEDULE

CATEGORY	FREQUENCY	TIME OF APPLICATION	ANALYSIS **	RATE
Mowed Turf	Every 3 Years	April or October	23-0-30	1 lb (N)/1000 sq. ft.
Shrub Beds*	Every 3 Years	October or April	23-0-30	1 lb (N)/1000 sq. ft.
Shade Trees*	Every 3 Years	October or April	23-0-30	.5 lbs/1 Cu. Yd. of soil

Note: Do not fertilize trees and turf during the same season. Offset tree fertilization by one season in order to prevent fertilizer burn on turf.

* Plants that fix nitrogen, like Silver Buffaloberry, Caragana, Honeylocust, Russian Olive or other legumes, should not be fertilized except under special conditions.
Tall shrubs do not need to be fertilized if leaf color remains normal.

** Analysis will be allowed within the following ranges: N (16-24) – P (0) – K (20-30).

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NO	DATE	BY	CKD	APPR	REVISION



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DRAWN BY TMP
DESIGNED BY MJS
CHECKED BY MJS

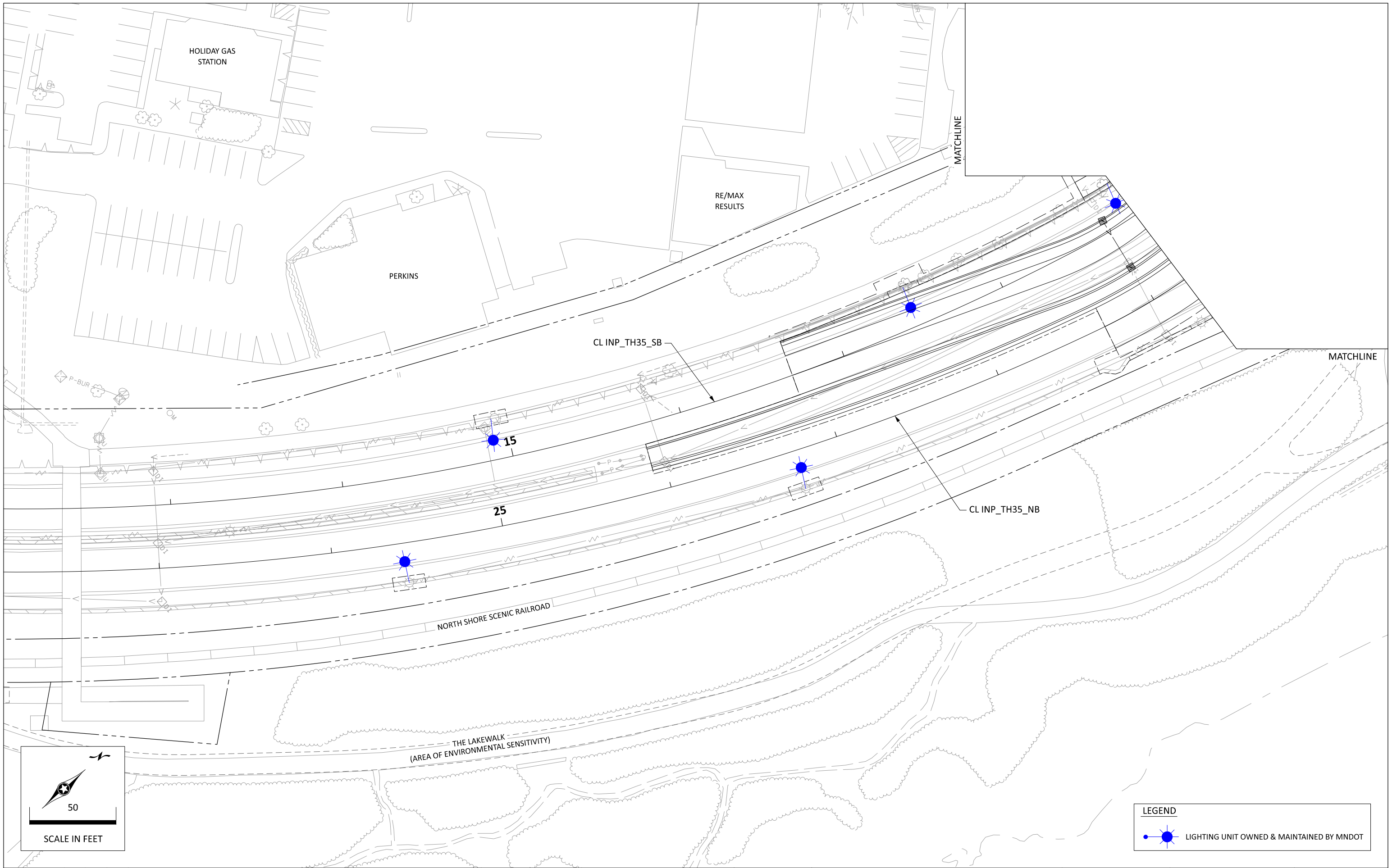
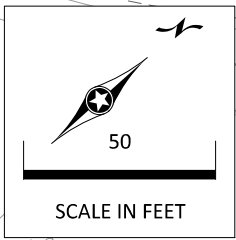
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LEGEND

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NO	DATE	BY	CKD	APPR	REVISION

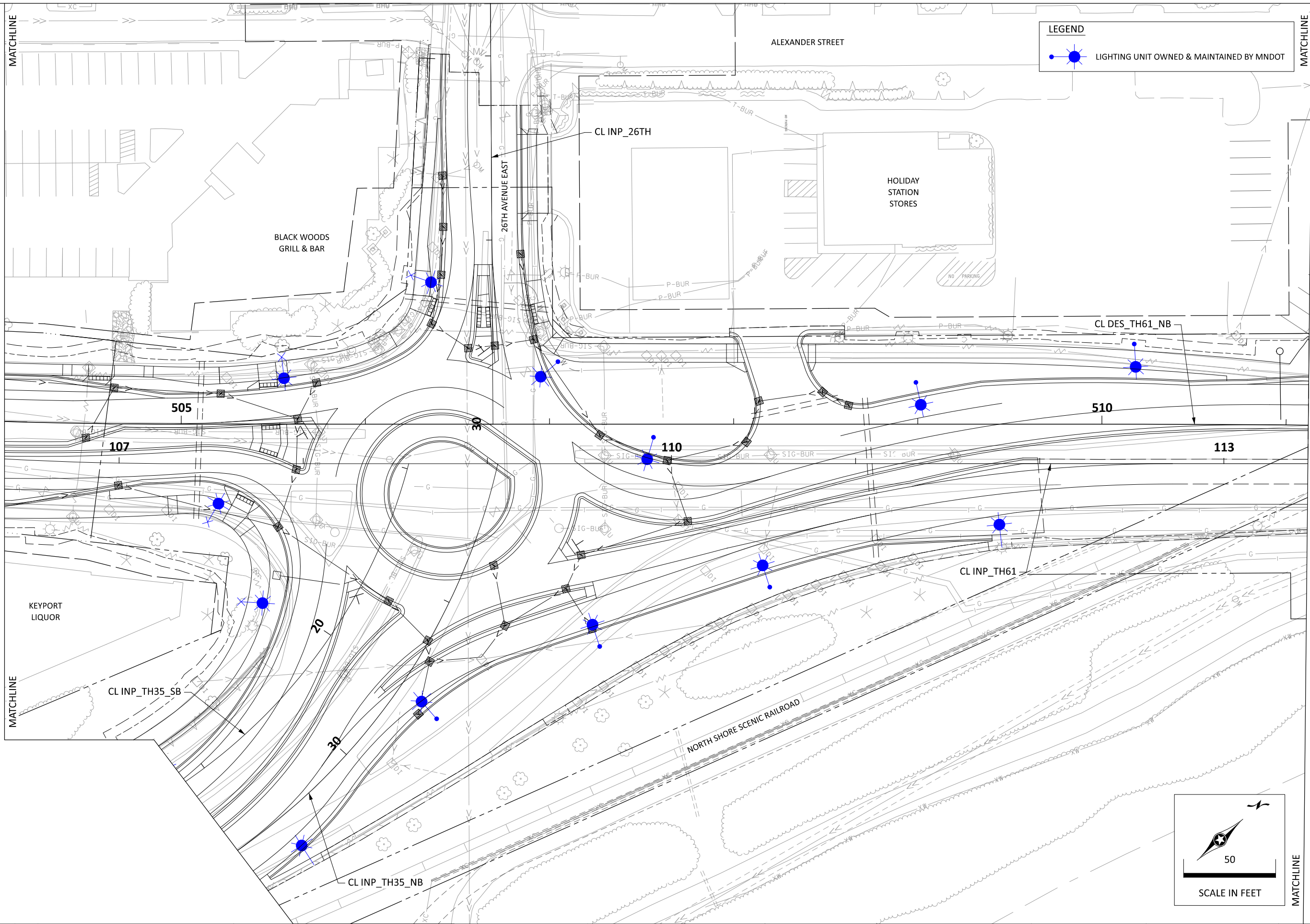


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EXHIBIT C - LIGHTING OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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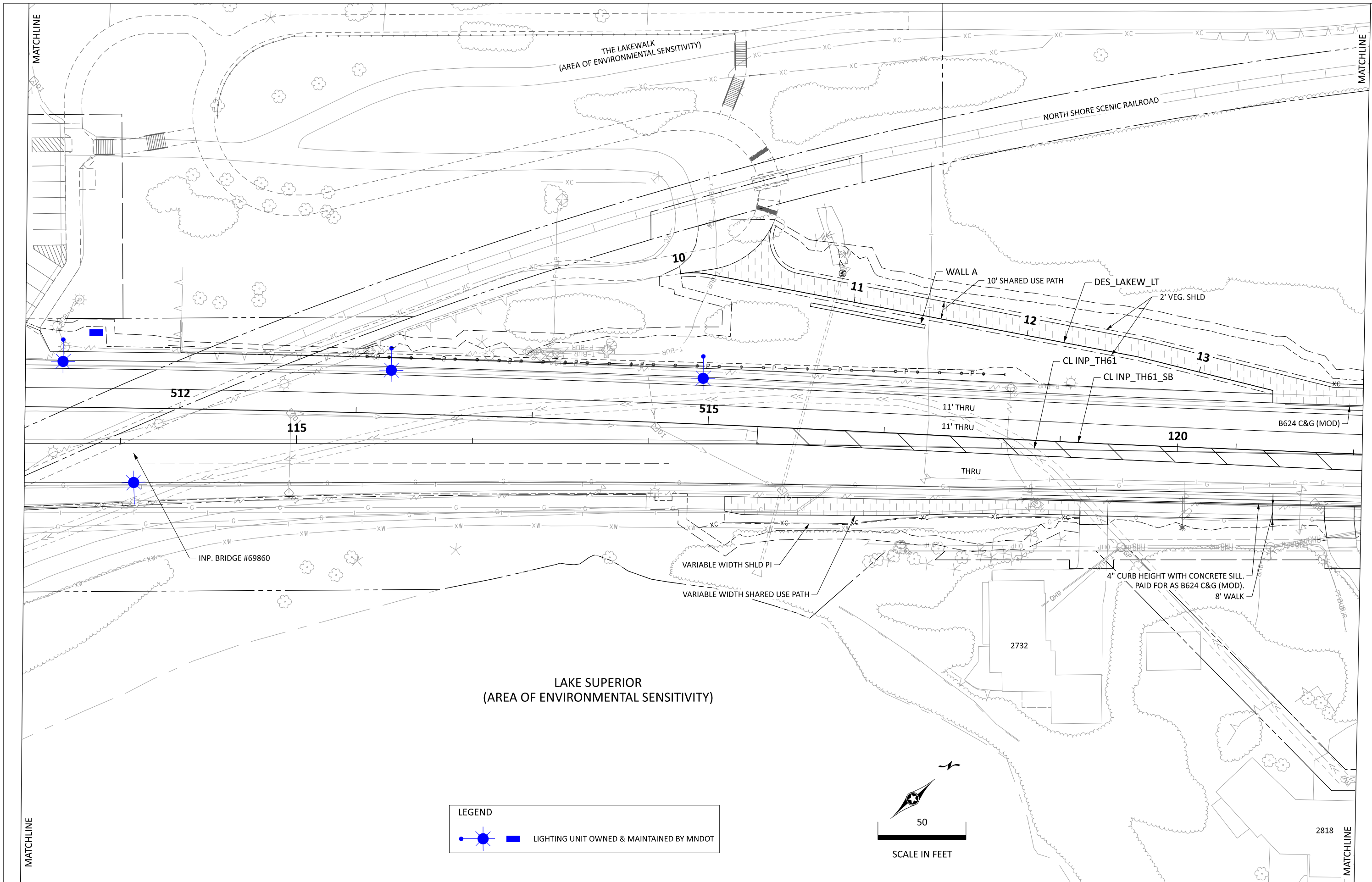
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S.P. 118-191-003
S.P. 118-193-003

STATE PROJ. NO. 6925-145
(T.H. 61)

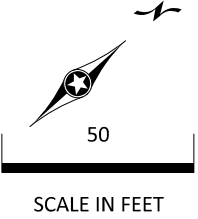
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LEGEND

LIGHTING UNIT OWNED & MAINTAINED BY MNDOT



NO	DATE	BY	CKD	APPR	REVISION



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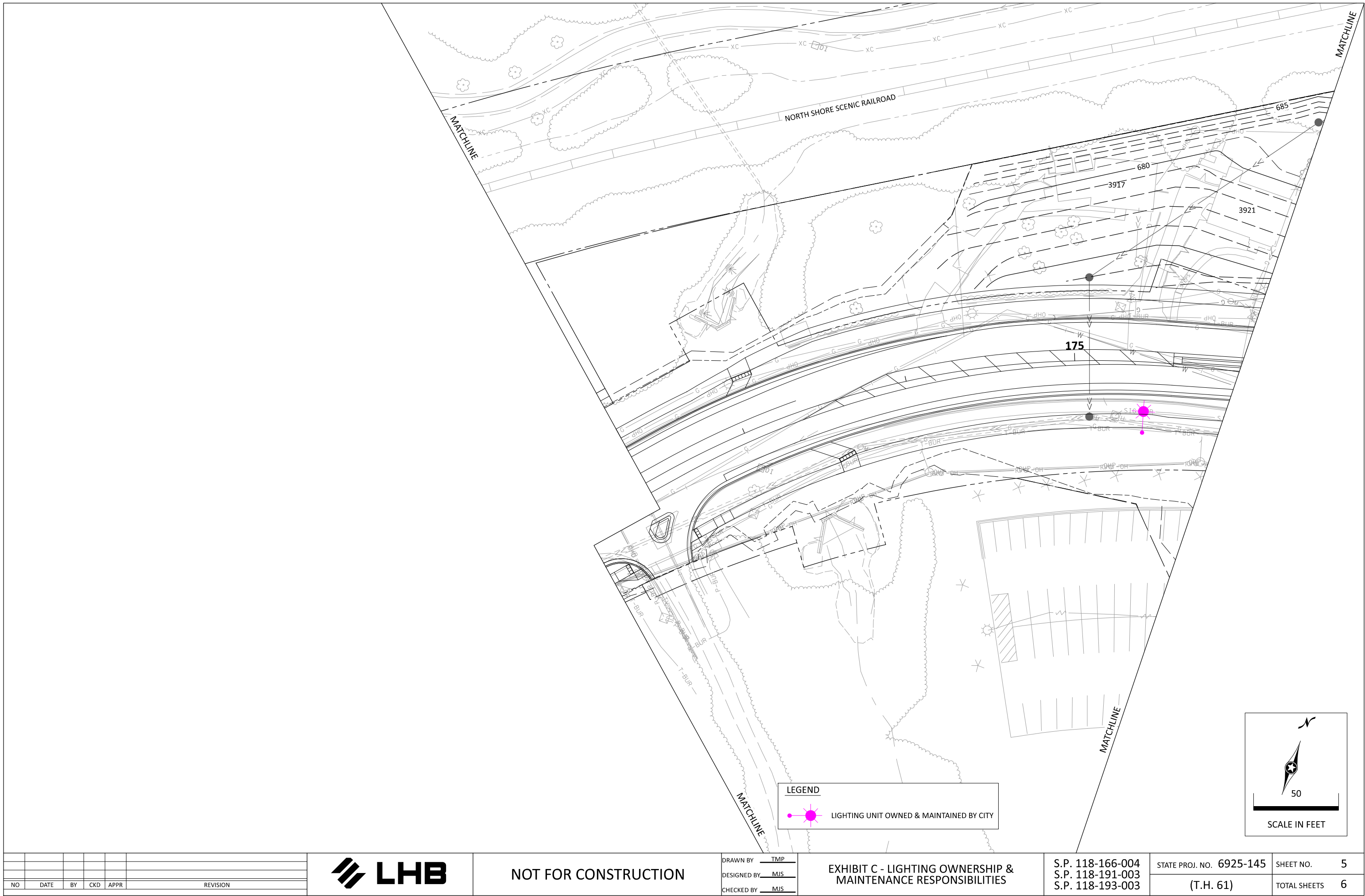
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EXHIBIT C - LIGHTING OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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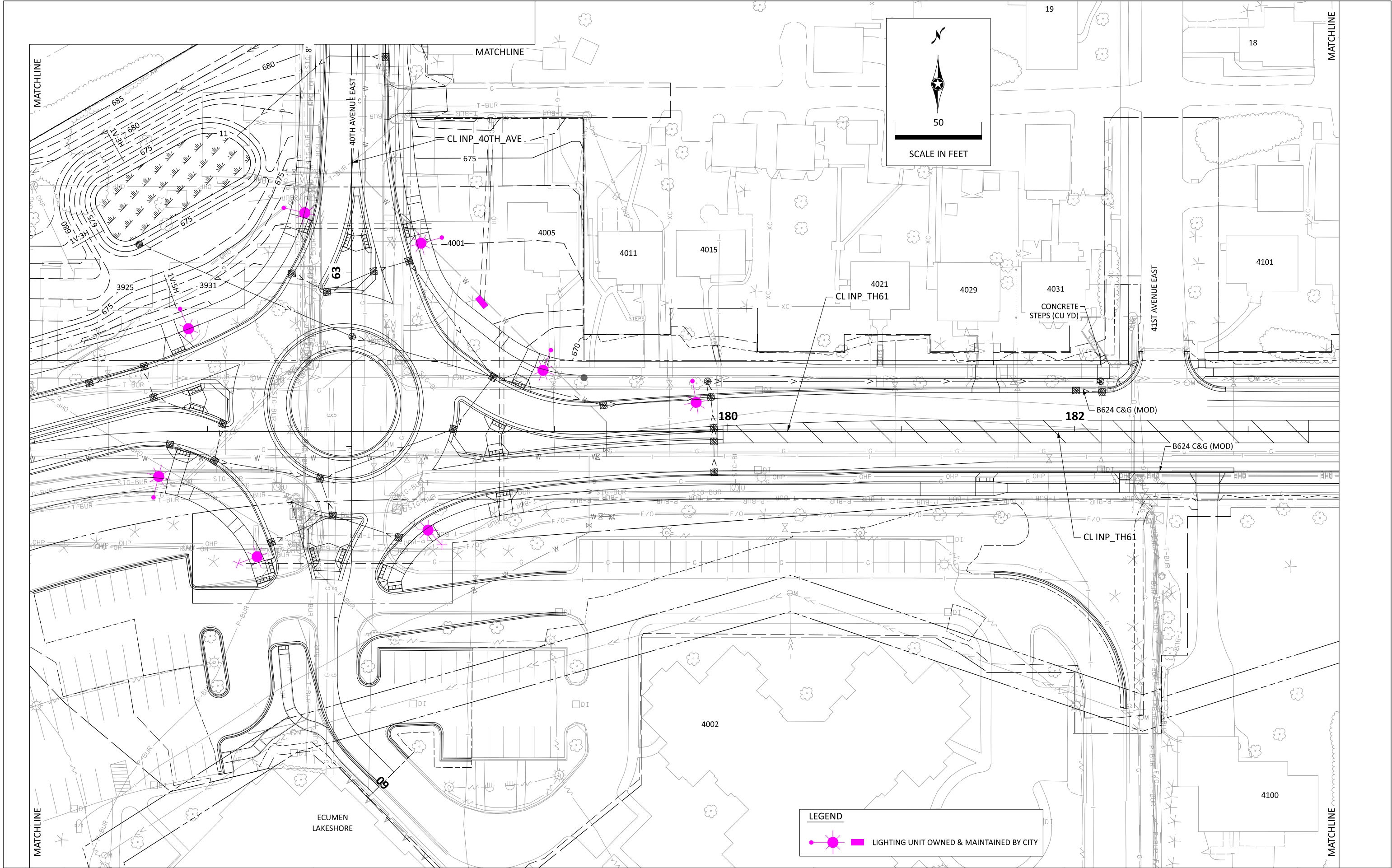


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DESIGNED BY: MJS
CHECKED BY: MJS

EXHIBIT C - LIGHTING OWNERSHIP & MAINTENANCE RESPONSIBILITIES

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NO	DATE	BY	CKD	APPR	REVISION



NOT FOR CONSTRUCTION

DRAWN BY	TMP
DESIGNED BY	MJS
CHECKED BY	MJS

EXHIBIT C - LIGHTING OWNERSHIP & MAINTENANCE RESPONSIBILITIES

S.P. 118-166-004 S.P. 118-191-003 S.P. 118-193-003	STATE PROJ. NO. 6925-145 (T.H. 61)	SHEET NO. 6 TOTAL SHEETS 6
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CITY OF DULUTH

RESOLUTION

IT IS RESOLVED that the City of Duluth enter into MnDOT Agreement No. 1059497 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the City to the State of the City's share of the costs of the roundabouts, Pedestrian Crosswalk Flasher Systems, and City Utility construction and other associated construction to be performed upon, along, and adjacent to Trunk Highway No. 61 (London Road) from 26th Avenue E To 0.14 miles north of 60th Avenue E and Trunk Highway No. 35 at 21st Avenue E within the corporate City limits under State Project No. 6925-145.

IT IS FURTHER RESOLVED that the Mayor and the _____
(Title)
are authorized to execute the Agreement and any amendments to the Agreement.

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Duluth at an authorized meeting held on the _____ day of _____, 2025, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this _____ day of _____, 2025

Notary Public _____

My Commission Expires _____

(Signature)

(Type or Print Name)

(Title)