



**Planning & Development Division**  
*Planning & Economic Development Department*

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

<b>File Number</b>	PL 19-020	<b>Contact</b>	Steven Robertson	
<b>Type</b>	Concurrent Use Permit	<b>Planning Commission Date</b>	September 10, 2019	
<b>Deadline for Action</b>	<b>Application Date</b>	August 2, 2019	<b>60 Days</b>	October 8, 2019
	<b>Date Extension Letter Mailed</b>	August 23, 2019	<b>120 Days</b>	December 7, 2019
<b>Location of Subject</b>	4 <sup>th</sup> Avenue East, and East 1 <sup>st</sup> Street			
<b>Applicant</b>	Essentia Health	<b>Contact</b>	Scot Ramsey, Vice President Facilities	
<b>Agent</b>	LHB	<b>Contact</b>	Evan Aljoe, Healthcare Studio Lead	
<b>Legal Description</b>	See Attached	<b>Sign Notice Date</b>	August 27, 2019	
<b>Site Visit Date</b>	September 2, 2019	<b>Number of Letters Sent</b>	N/A	

**Proposal**

The applicant is seeking a concurrent use permit to construct private underground utilities within the public right-of-way of Fourth Avenue East and East First Street, for electrical power conduits from their project to new Minnesota Power transformers.

**Staff Recommendation**

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

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	MU-I	Medical	Medical District
<b>North</b>	MU-I	Medical	Neighborhood Mixed Use/Urban Res.
<b>South</b>	F-8	Highway/Commercial	Tourism/Open Space
<b>East</b>	MU-N/MU-I	Residential	Urban Residential
<b>West</b>	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:**

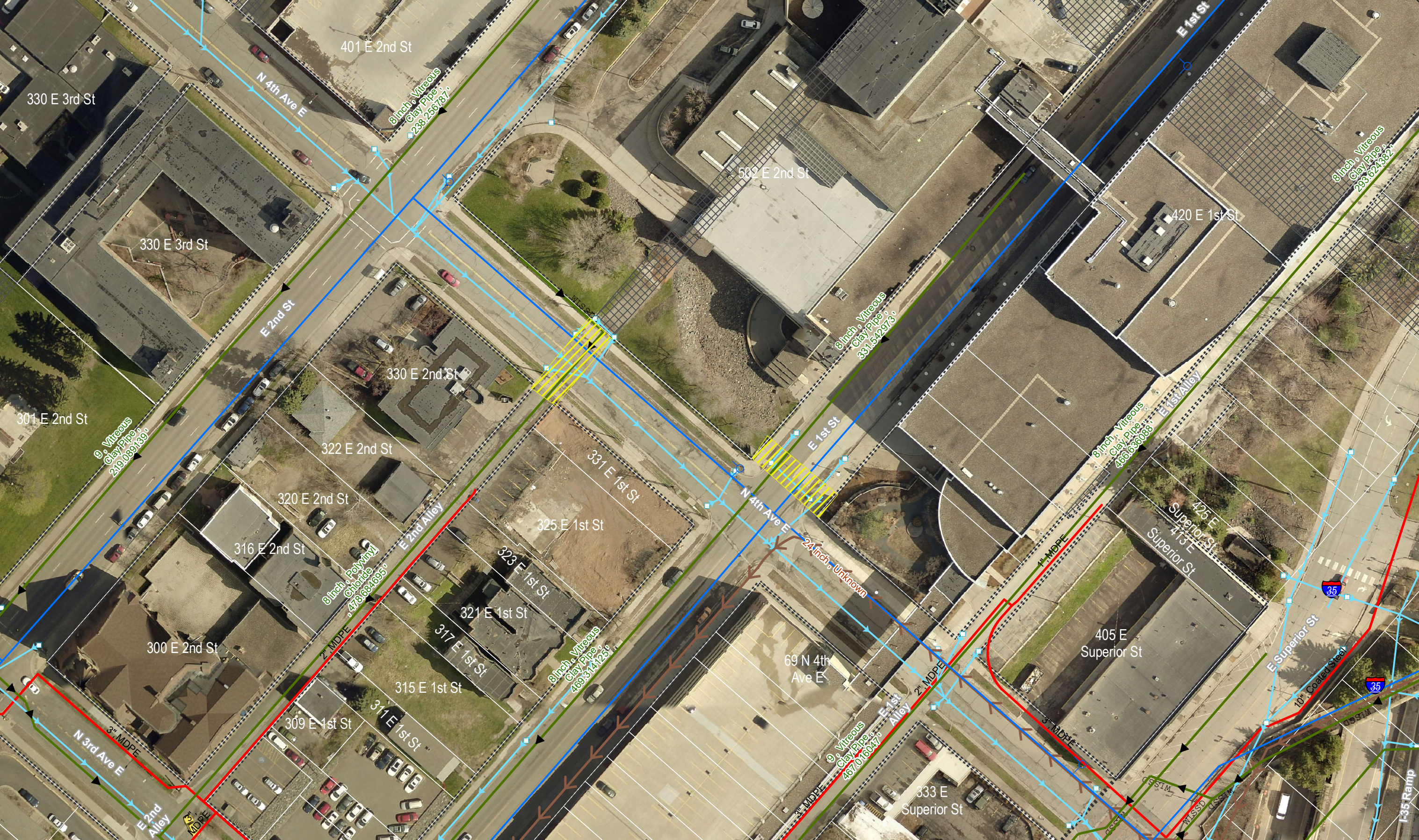
- 1) The applicant is seeking a concurrent use permit to construct private underground utilities within the public right-of-way of Fourth Avenue, to provide electrical duct banks from the existing emergency generators. This application is related to the MU-I Planning Review (PL 19-018) for the new 940,000 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.**  
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August 22, 2019

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

**RE: Concurrent Use Permit for 4th Avenue East**

Dear Mr. Roberson:

The purpose for this concurrent use is to locate private underground electrical conduits from the new Minnesota Power transformers located west of 4th avenue east to the new project located east of 4th avenue east. These electrical feeds provide the main power for the project.

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

LHB

A handwritten signature in blue ink that reads 'Evan Aljoe'.

Evan Aljoe  
Healthcare Studio Leader

c: Scot Ramsey  
Vice President – Facilities  
Essentia Health East

Q:\18Proj\180203\400 Design\403 Regulatory\concurrent use\4th Ave\Re-submittal 20190802\Concurrent Use cover letter-4th ave.docx



April 17, 2019

Community Planning Division – City Hall  
c/o Keith Hamre, Director  
411 W. 1<sup>st</sup> 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", written over a light blue horizontal line.

Scot Ramsey  
Vice President – Facilities  
Essentia Health East

# EXHIBIT CONCURRENT USE

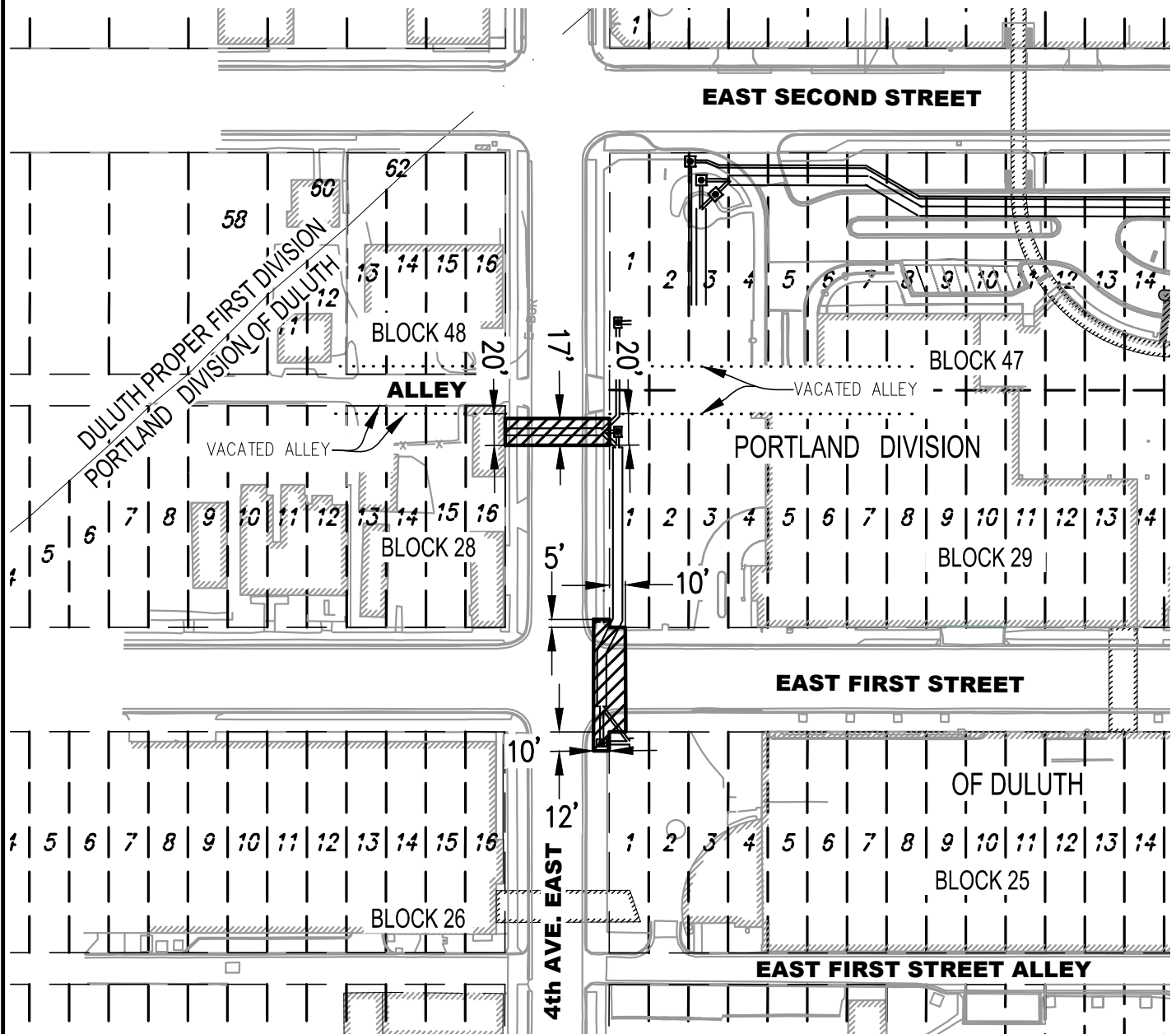
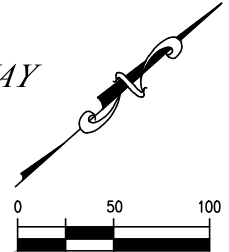
PRIVATE ELECTRICAL DUCT BANK IN CITY RIGHT-OF-WAY

Part of Streets and Avenues

PORTLAND DIVISION OF DULUTH

## 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: 08/02/2019

REVISED: 08/02/19

DATE PREPARED: 03/05/19

PROJ NO: 180203

FILE: 180203 Concu

SHEET 1 of 1 SHEETS



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

LEGAL DESCRIPTION:

That part of Fourth Avenue East southwesterly of the northeasterly line of said Fourth Avenue East, adjacent to the southeasterly 17.00 feet of the northwesterly 20.00 feet of Lot 1, Block 29, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

That part of Fourth Avenue East northeasterly of the southwesterly line of said Fourth Avenue East, adjacent to the southeasterly 17.00 feet of the northwesterly 20.00 feet of Lot 16, Block 28, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

Those parts of East First Street and Fourth Avenue East adjacent to the southeasterly 5.00 feet of the southwesterly 10.00 feet of Lot 1, Block 29, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota; lying between two lines 10.00 feet southwesterly of and 10.00 feet northeasterly of the northeasterly line of said Fourth Avenue East and said Fourth Avenue East extended.

AND

Those parts of East First Street and Fourth Avenue East adjacent to the northwesterly 12.00 feet of the southwesterly 10.00 feet of Lot 1, Block 25, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota; lying between two lines 10.00 feet southwesterly of and 10.00 feet northeasterly of the northeasterly line of said Fourth Avenue East and said Fourth Avenue East extended.

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 8/2/2019 License No. 44075





