

# ATTACHMENT 1

## TEMPORARY CONSTRUCTION EASEMENT AND CONSTRUCTION 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 Zenith Asset Company, LLC, a California Limited Liability Company, hereinafter referred to as “Owner”.

WHEREAS, Owner is the owner of that property, hereinafter referred to as the “Property” legally described on Exhibit A attached hereto and made a part hereof, which Property will be materially impacted by the City’s impending Superior Street Reconstruction Project (the ‘Project’) which is anticipated to be constructed from 2018 through 2020; and

WHEREAS, in order for the City to be able to construct the Project on and in the vicinity of the Property, City will require a construction easement on the Property as hereinafter described on and the right to construct certain improvements on and to the Property as hereinafter described; and

WHEREAS, Owner has agreed to grant the referenced construction easement and has approved the City constructing the referenced improvements 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. Definitions

The following terms and phrases shall have the meanings hereinafter ascribed to them:

- A. Construction Easement: shall mean a temporary easement for construction purposes over and across that portion of the Property described on Exhibit B and depicted on Exhibit C, which easements are attached hereto and made a part hereof
- C. Engineer: shall mean the Duluth City Engineer or such other person as she may have designated from time to time in writing.

- D. Plans: shall mean the plans and specifications for the construction of the improvements to be constructed on the Property. Which plans and specifications are attached hereto and made a part hereof as Exhibit D.
- E. Project: shall mean the reconstruction of Superior Street from Mesaba Avenue to 4<sup>th</sup> Avenue East including all utilities to be constructed during 2018 through 2020.
- F. Property: shall mean the property in St. Louis County, Minnesota described on Exhibit A.

2. Construction Easement

Owner hereby grants to City a temporary Construction Easement over that portion of the Property described on Exhibits B and C attached hereto and made a part hereof for the purpose of constructing the improvements on the Property as shown on the Plans. The duration of this temporary Construction Easement shall run from the effective date of this Agreement until October 31, 2019 or until the City Engineer certifies in a document in recordable form that the Project has been completed, whichever is sooner; provided that Owner 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 Owner to the City. The City acknowledges that this Agreement will not be recorded on any public title record related to the Property.

3. City to Construct Improvements

In consideration of the above grant of easement by Owner, City hereby agrees to cause to be constructed the improvements substantially as described on Sheets RW29 to RW36 attached as Exhibit D, provided that City may cause to be made minor modifications to the plans for the Improvements determined to be reasonable and prudent by the City's City Engineer without seeking approval of Owner, so long as Owner's rights under this Agreement are not materially altered. In the event that City wishes to make modifications to the Plan as shown on Exhibit D which would materially adversely affect the Owner or the Property, City shall provide a revised Exhibit D showing such changes. Owner shall have ten (10) business days from the date the City provides a request for such modification and provides such revised Exhibit D to approve or disapprove such proposed revisions of the Improvements. If Owner approves of the modification in writing or fails to object to such modification within said ten (10) day period, City shall have the right to have the improvements constructed in accordance with the revised Exhibit D. If the Owner disapproves of the proposed revisions, City and Owner agree to meet as expeditiously as possible and to negotiate in good faith to reach an agreement with regard to modification of Exhibit D. The constructed

improvements (retaining wall) have been designed to the standard as detailed in a letter from LHB, Inc. dated January 17, 2019 attached as Exhibit E

6. Construction Costs

City agrees that it will be solely responsible for paying all of the costs of constructing the improvements as shown on Exhibit D and as the same may be modified by City and approved by Owner as provided for in Paragraph 3 above, including any unforeseen costs associated therewith.

7. Insurance

As part of the City's process of contracting for the construction of the Improvements, the City will require that the City's contractor agree to indemnify the Owner and that the Owner 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.

8. Maintenance and Operation of Improvements

After the wall is constructed, the Owner shall install a prefabricated assembly consisting of a 16" slip on pipe flange welded to a section of 16" sch. 40 black pipe capped with a 16" weld cap bolted to the wall to protect the end of the water service stubbed through the wall.

Upon completion of the construction of the improvements, ownership of and title to the Improvements shall be deemed to be solely in the Owner. Thereafter, City shall have no obligations to maintain or to operate the improvements or the property upon which they are located and responsibility for the maintenance and operation thereof shall be solely that of the Owner.

9. 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 Owner as an agent, representative or employee of City for any purpose or in any manner whatsoever. Neither Owner nor any officers or employees thereof shall 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 Owner while so engaged and any and all claims whatsoever on behalf of Owner 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. Owner and its officers, agents, contractors and employees shall not be entitled to any



12. Civil Rights Assurances

Owner, 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.

13. Rules and Regulations

Owners 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.

14. Waiver

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

15. 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.

16. 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.

17. 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

Zenith Asset Company, LLC  
a California Limited Liability  
Company

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

By:   
Its: BVA Asset Management

Attest:

By: \_\_\_\_\_  
Chelsea J. Helmer  
Its City Clerk

\_\_\_\_\_  
Date

Approved:

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

Countersigned:

\_\_\_\_\_  
City Auditor





## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

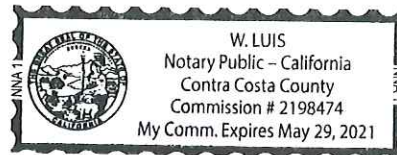
State of California  
County of Contra Costa )

On 3/14/19 before me, W.Luis, Notary Public  
(insert name and title of the officer)

personally appeared Todd Torvinen,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)



## **Exhibit A**

Lot 22 Block 2 Central Division of Duluth

Lot 24 Block 2 Central Division of Duluth

St. Louis County, Minnesota

(Torrens Property Certificate of Title No. 302623.0)

## EXHIBIT B

### DESCRIPTION:

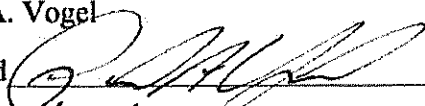
Lot Twenty-two (22) and Lot Twenty-four (24), Block Two (2), CENTRAL DIVISION OF DULUTH, according to the recorded plat thereof on record in the Office of the St. Louis County Recorder, St. Louis County, Minnesota.

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

  
\_\_\_\_\_

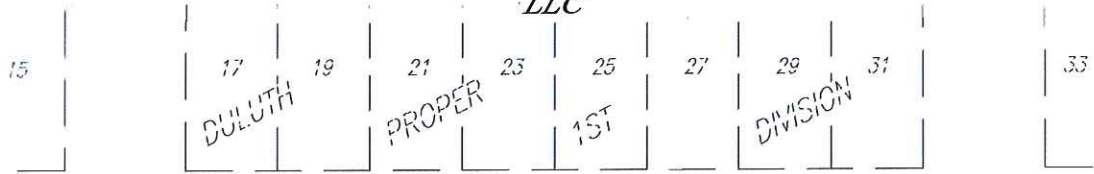
11/27/2017

License No. 44075

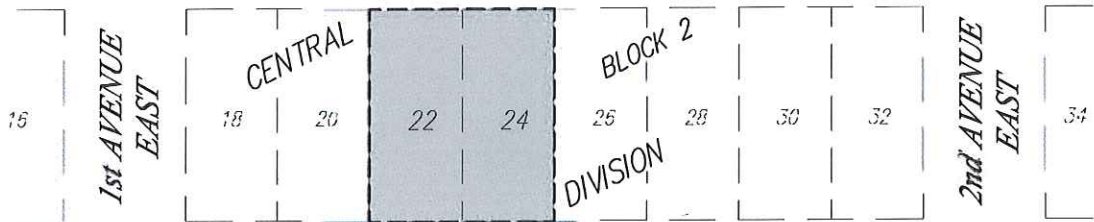


# EXHIBIT C

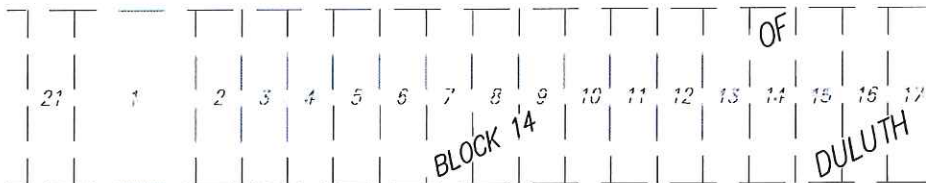
ZENITH ASSET COMPANY,  
LLC



SUPERIOR STREET



MICHIGAN STREET




 = EASEMENT AREA

**DESCRIPTION:**

Lot Twenty-two (22) and Lot Twenty-four (24), Block Two (2), CENTRAL DIVISION OF DULUTH, according to the recorded plat thereof on record in the Office of the St. Louis County Recorder, St. Louis County, Minnesota.



  
(SCALE IN FEET)

Basis of Bearing is Grid North,  
St. Louis County Transverse  
Mercator 96 Coordinate System.

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: 11/27/2017

DATE PREPARED: 11/27/17

PROJ NO: 150714

FILE: 150714vSurv

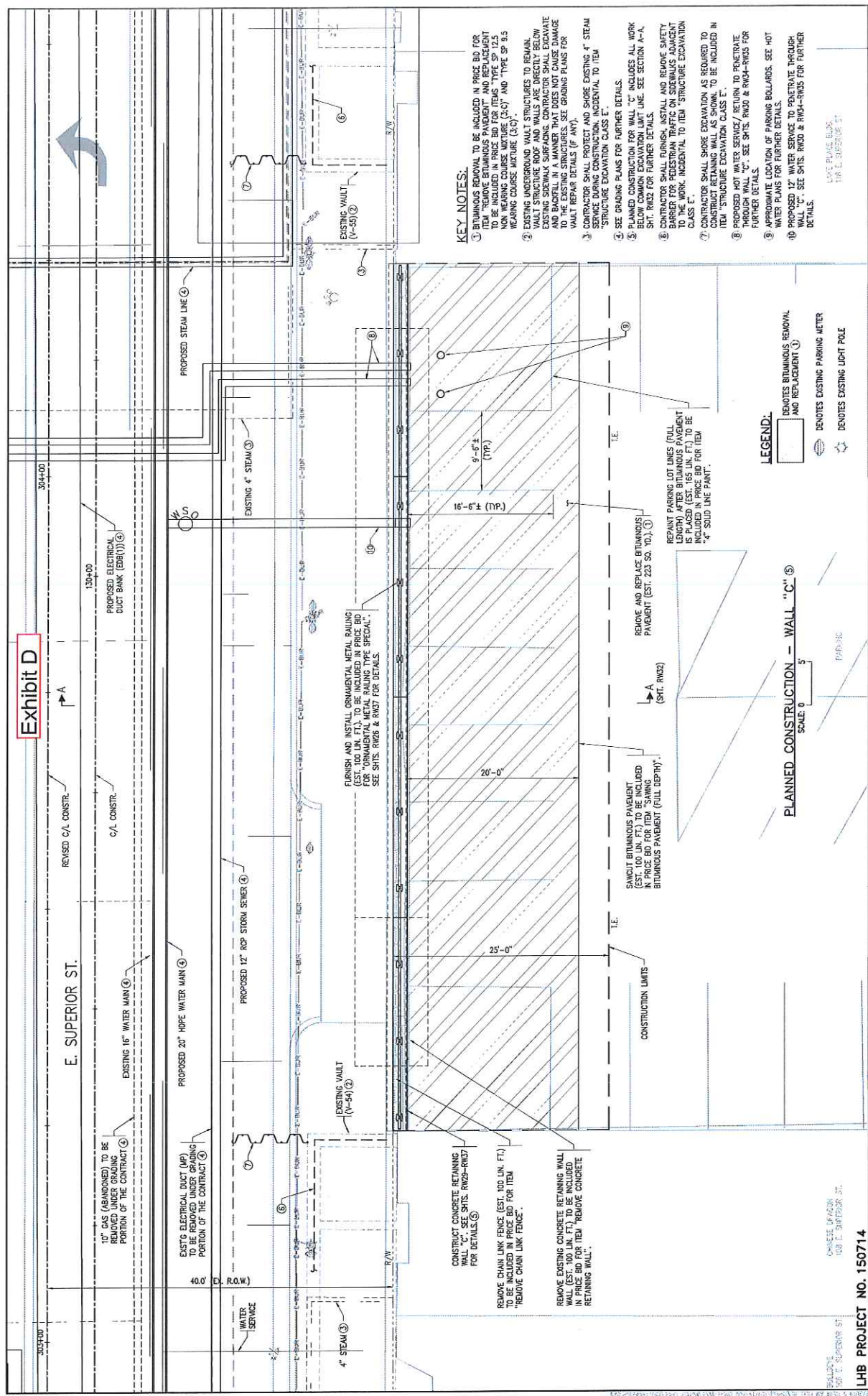
SHEET 1 of 1 SHEETS



**PERFORMANCE  
DRIVEN DESIGN.**  
LHBcorp.com

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

# Exhibit D



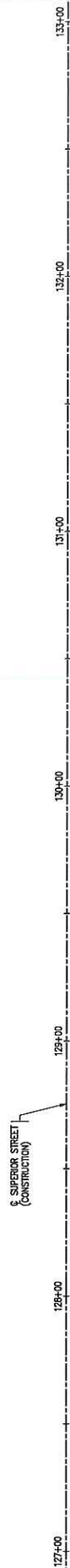
<b>LHB PROJECT NO. 15071.4</b> <small>LIBERTY CEMENT HAS NOT ASS. REGISTRATION or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.</small>		<b>JON W. SITTER</b> PRINTED NAME	 SIGNATURE	01/12/2018 DATE	25128 LC. NO.	<b>SUPERIOR STREET</b> CITY PROJECT NO. 0923TR	S.A.P. NO. 118-171-006	REVISION A 3-4-2019	WALL "C" PLANNED CONSTRUCTION SHEET NO. RW29 OF 37 SHEETS
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WALL "C" ALIGNMENT (WLC)					
POINT NUMBER	SUPERIOR ST. (CONSTRUCTION) STATION	WALL STATION	COORDINATES		
			OFFSET	X	Y
P 10	129+35.79	20+00.00	36.00 RT	484575.757	1343553.972
P 11	130+36.04	21+00.25	36.00 RT	4845842.346	1343628.972

NOTE: WALL "C" ALIGNMENT REFERENCE IS ALONG FRONT FACE OF WALL AT TOP OF FOOTING.



WALL "C" ALIGNMENT  
SCALE 0" = 20'

LHB PROJECT NO. 150714

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.

JON W. SITTER  
PRINTED NAME

SIGNATURE

01/10/2018  
DATE

25128  
LIC. NO.

SUPERIOR STREET  
CITY PROJECT NO. 0923TR

S.A.P. NO. 118-171-006

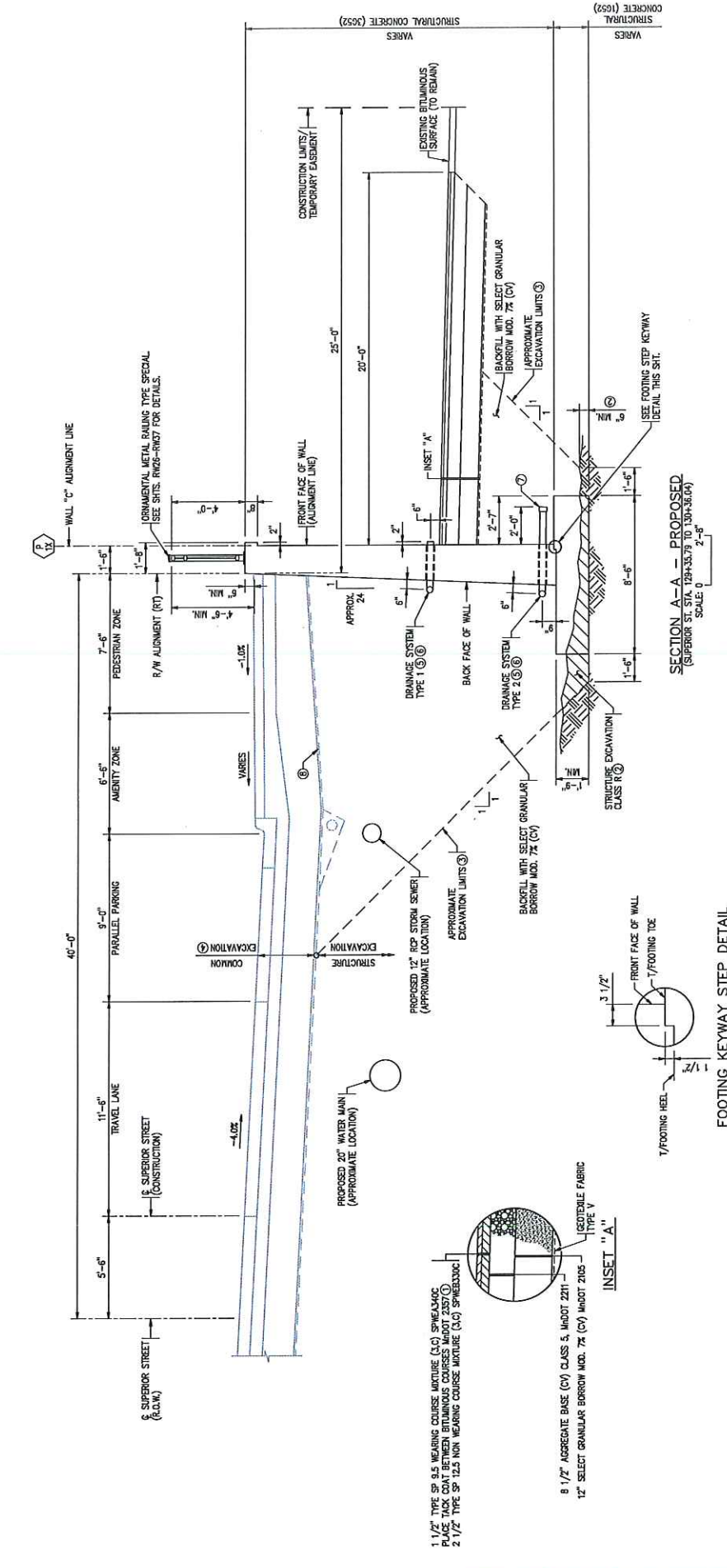
WALL "C" ALIGNMENT  
SHEET NO. RW31 OF 37 SHEETS

**KEY NOTES:**

- ① TACK COAT SHALL BE CONSIDERED INCIDENTAL TO BITUMINOUS COURSES.
- ② REMOVE EXISTING BEDROCK PRIOR TO FOOTING CONSTRUCTION.
- ③ LINE REPRESENTS THE MINIMUM EXCAVATION LIMITS AND PAY LIMIT LINE FOR ITEM "STRUCTURE EXCAVATION CLASS F" AND "STRUCTURE EXCAVATION CLASS E" CONTRIBUTIONS TO EXISTING SOIL CHARACTERISTICS AND ISSA SAFETY REQUIREMENTS EXCAVATION BACKFILL FOR EXCAVATION AND ART SURFACE RESTORATION BEYOND THE PAY LIMIT LINE IS INCIDENTAL.
- ④ SEE GRADING PLAN FOR CONSTRUCTION DETAILS ABOVE COMMON EXCAVATION LIMIT LINE.
- ⑤ TO BE INCLUDED IN BID PRICE FOR ITEM "DRAINAGE SYSTEM 1".
- ⑥ 4" DIA. PERFORATED DRAIN PIPE.
⑦ 4" DIA. NON-PERFORATED TYPE 2 DRAINAGE SYSTEM PIPES BEYOND FRONT FACE OF WALL TO DIMENSION SHOWN AND CAP ENDS FOR CONNECTION TO FUTURE WORK BY OTHERS.
- ⑧ LINE REPRESENTS MAXIMUM PAY LIMIT LINE FOR WALL ENHANCEMENT (ITEM "SELECT GRANULAR BORROW MOD. 7% (CV)"); ALL GRADING AND SURFACING WORK ABOVE THIS LINE IS INCLUDED FOR PAYMENT UNDER QUANTITIES IN GRADING PLAN.

**DRAINAGE SYSTEM NOTES:**

- PAYMENT WILL BE INCLUDED IN THE SINGLE LINE SUM PRICE FOR "DRAINAGE SYSTEM 1" INCLUDES BUT IS NOT LIMITED TO 4" DIAMETER PERFORATED AND NON-PERFORATED PIPE, GEOTEXTILE FABRIC, ELBOWS, TEES, END CAPS, COUPLINGS TEES, ROBERT SCREENS AND SLEEVES.
- ALL PIPE TO COMPLY WITH M/DOT SPEC. 3245.
- WRAP PERFORATED PIPE WITH GEOTEXTILE PER M/DOT SPEC. 3733, TYPE 1, ATTACH TO PIPE PER M/DOT SPEC. 2502.
- SLOPE PIPE TO ENSURE PROPER DRAINAGE AT ALL TIMES.
- BACKFILL MATERIAL SHALL COMPLETELY SURROUND PIPE AT ALL TIMES.
- ALL PIPE OUTLETS SHALL HAVE ROBERT SCREENS.



**SECTION A-A - PROPOSED**  
(SUPERIOR ST. STA. 729+35.79 TO 730+36.04)  
SCALE: 1/4" = 1'-0"

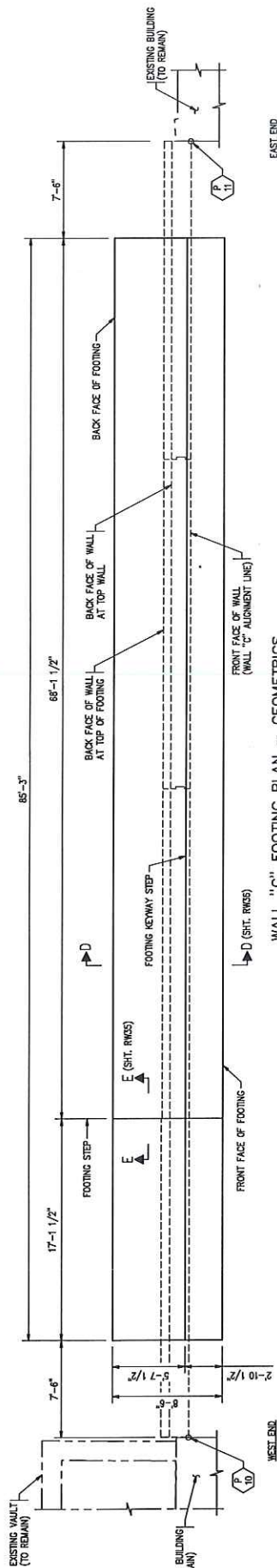
**FOOTING KEYWAY STEP DETAIL**

<p><b>LHB PROJECT NO. 150714</b></p> <p><small>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.</small></p>	<p>DATE: 01/16/2018</p> <p>DATE: 2/1/2018</p> <p>DATE: 2/1/2018</p>	<p><b>SUPERIOR STREET</b></p> <p>CITY PROJECT NO. 0923TR</p>	<p>WALL "C" PROPOSED SECTION</p> <p>SHEET NO. RW32 OF 37 SHEETS</p>
	<p><i>[Signature]</i></p> <p><b>JON W. SITTER</b></p> <p>PRINTED NAME</p>	<p><b>JON W. SITTER</b></p> <p>DATE: 2/1/2018</p> <p>DATE: 2/1/2018</p> <p>DATE: 2/1/2018</p>	<p><b>S.A.P. NO. 118-171-006</b></p>

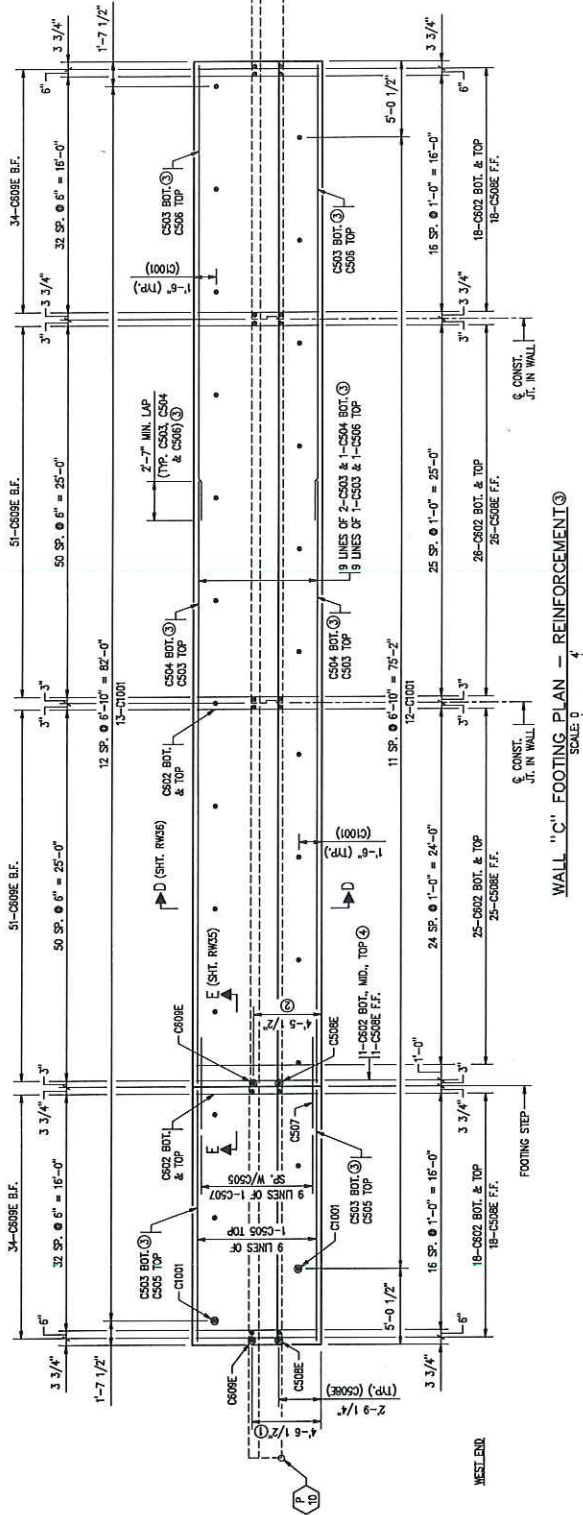


**KEY NOTES:**

- ① C30RE DIMENSION FROM FRONT FACE OF FOOTING STEP.
- ② C30RE DIMENSION FROM FRONT FACE OF FOOTING EAST OF FOOTING STEP.
- ③ BOTL. LINES FROM FRONT FACE OF FOOTING (C503 & C504) NOT SHOWN FOR CLARITY. SEE SHT. RW55 FOR FURTHER DETAIL.
- ④ SEE SECTION E-E, SHT. RW55 FOR DETAILS.
- F.F. DENOTES FRONT FACE.
- B.F. DENOTES BACK FACE.
- E.F. DENOTES EACH FACE.



WALL "C" FOOTING PLAN - GEOMETRICS  
SCALE: 1/4" = 4'-0"



WALL "C" FOOTING PLAN - REINFORCEMENT  
SCALE: 1/4" = 4'-0"

LHB PROJECT NO. 150714

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.

JON W. SITTER  
PRINTED NAME

*Jon W. Sitter*  
SIGNATURE

SUPERIOR STREET  
CITY PROJECT NO. 0923TR

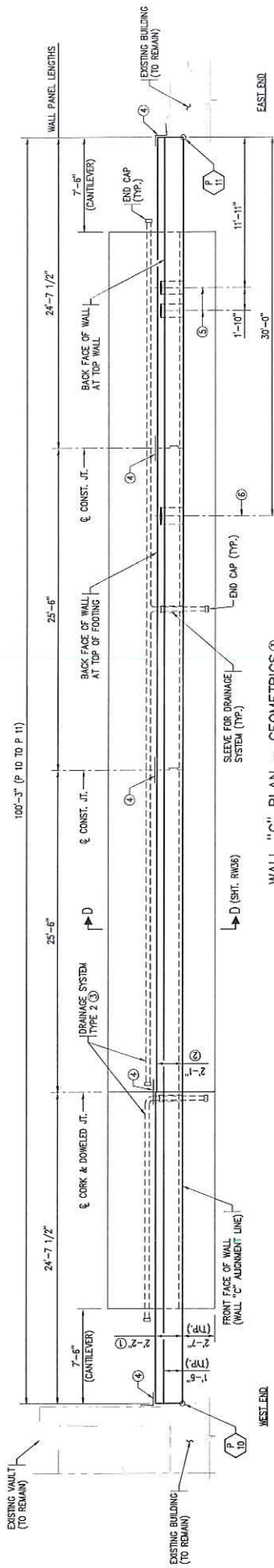
01/10/2018  
DATE  
25128  
LIC. NO.

S.A.P. NO. 118-171-006

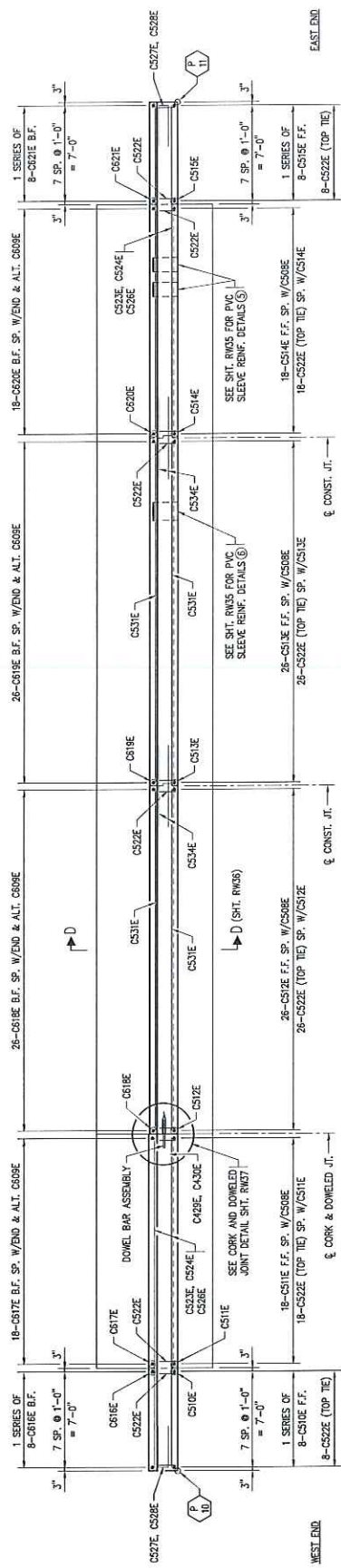
WALL "C" FOOTING PLAN  
SHEET NO. RW53 OF 37 SHEETS

**KEY NOTES:**

- ① WALL "C" STEM WIDTH AT TOP OF FOOTING WEST OF CORK & DOWELED JOINT.
- ② WALL "C" STEM WIDTH AT TOP OF FOOTING EAST OF CORK & DOWELED JOINT.
- ③ DRAINAGE SYSTEM TYPE 1 NOT SHOWN FOR CLARITY. SEE SHTS. RW02 & RW02 FOR DETAILS.
- ④ MEMBRANE WATERPROOFING SYSTEM PER SPEC. 2481.3.B.
- ⑤ 14" (NOM.) SCH. 80 PVC (INSIDE DIA. = 12.4") SLEEVE THROUGH WALL FOR HOT WATER SERVICE/RETURN. SEE SHT. RW02 FOR INVERT ELEVATION.
- ⑥ 18" (NOM.) SCH. 80 PVC (INSIDE DIA. = 16.0") SLEEVE THROUGH WALL FOR 12" WATER. SEE SHT. RW02 FOR INVERT ELEVATION.
- F.F. DENOTES FRONT FACE.
- B.F. DENOTES BACK FACE.
- E.F. DENOTES EACH FACE.



WALL "C" PLAN - GEOMETRICS ③  
SCALE: 0 4



WALL "C" PLAN - REINFORCEMENT  
SCALE: 0 4

LHB PROJECT NO. 150714

HEREBY CERTIFY that the plan, specification or computation and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

JON W. SITTER  
PRINTED NAME

*Jon W. Sitter*  
SIGNATURE

SUPERIOR STREET  
CITY PROJECT NO. 0923TR

DATE: 2/1/20  
LIC. NO.

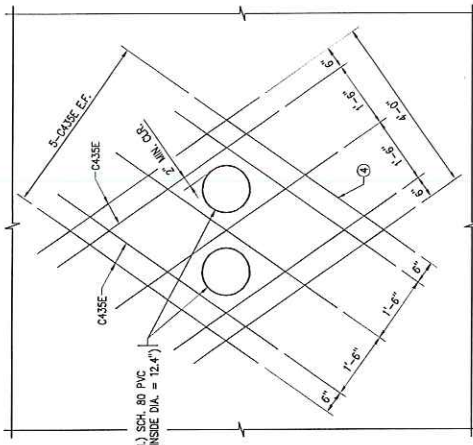
S.A.P. NO. 118-171-006

REVISION  
3-E-2010

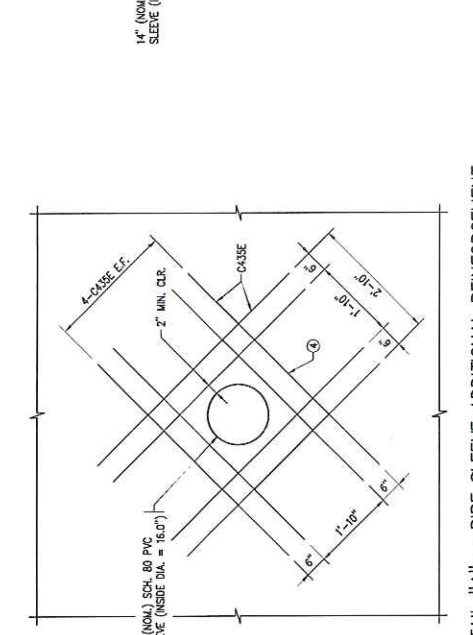
WALL "C" PLAN  
SHEET NO. RW34 OF 37 SHEETS

**KEY NOTES:**

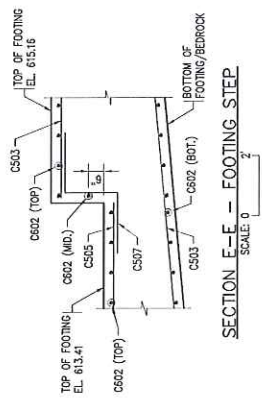
- ① PLACE CS26E END TIES WITH TOP 10 ROWS OF HORIZONTAL REINFORCEMENT BARS.
- ② PLACE CA3E & CA3E END TIES WITH TOP 10 ROWS OF HORIZONTAL REINFORCEMENT BARS.
- ③ DOWEL BAR ASSEMBLY (EPoxy COATED) SP. W/ CS31E. SEE SHT. RW37 FOR DETAILS.
- ④ PLACE ON INSIDE FACE OF HORIZONTAL BARS.
- FF. DENOTES FRONT FACE.
- BF. DENOTES BACK FACE.
- EF. DENOTES EACH FACE.



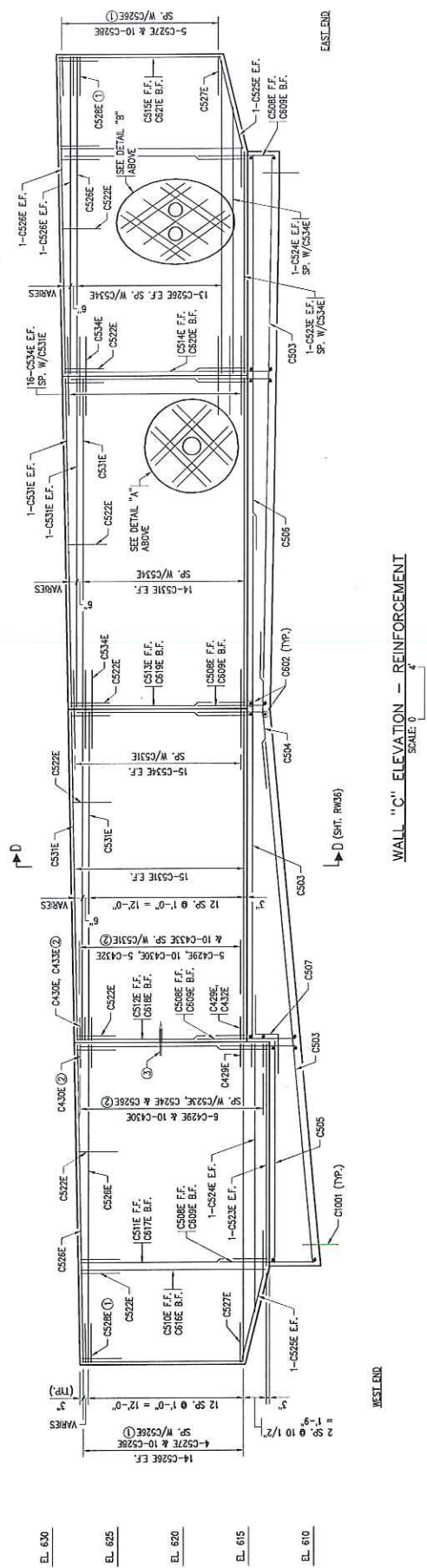
DETAIL "A" - PIPE SLEEVE ADDITIONAL REINFORCEMENT



DETAIL "B" - PIPE SLEEVE ADDITIONAL REINFORCEMENT



SECTION E-E - FOOTING STEP  
SCALE: 0 2



WALL "C" ELEVATION - REINFORCEMENT  
SCALE: 0 4

LHB PROJECT NO. 150714

I HEREBY CERTIFY that the plan, specification or schedule of work shown on these drawings 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.

JON W. SNITZER  
PRINTED NAME

*Jon W. Snitzer*  
SIGNATURE

SUPERIOR STREET  
CITY PROJECT NO. 0923TR

DATE: 07/16/2018  
SCALE: 25/128  
LIC. NO.

S.A.P. NO. 118-171-006

REVISION  
3-E-2019

WALL "C" ELEVATION  
SHEET NO. RW35 OF 37 SHEETS







PERFORMANCE  
DRIVEN DESIGN.  
LHBcorp.com

January 17, 2019

Duncan C. Schwensohn, PE  
Senior Engineer  
City of Duluth  
411 West First Street, Room 211  
Duluth, MN 55802

**RE: SUPERIOR STREET RECONSTRUCTION PROJECT  
PROPOSED RETAINING WALL AT 112 E SUPERIOR ST**

We have been requested to document the design basis for the proposed retaining wall to be constructed with the Superior Street project at 112 East Superior Street in Duluth, MN. This proposed retaining wall is detailed on Plan Sheets RW29-RW36 of the City of Duluth Superior Street Reconstruction plan set prepared by LHB Inc.

Design Basis: The proposed retaining wall has been designed in accordance with the 2017 AASHTO LRFD Bridge Design Specification. It has been designed as a cantilevered retaining wall with a spread footing. The spread footing is designed to be founded directly on competent bedrock. The wall has been designed as a "pure cantilever" in that for the design loads (backfill/ street surfacing and Superior Street live loading etc.) it does not require restraint for its stability other than what is imparted by its planned foundation on bedrock.

As the site fronting the wall is presently vacant we understand there is potential for a new building (development) to be built in front of the wall. Provided the development is designed and constructed in such a manner that it does not compromise the supporting bedrock upon which the proposed retaining wall relies or produce additional loading to the back (Superior Street) side of the retaining wall the wall should be unaffected by the development and thus will remain structurally stable and not require additional restraint or supporting features.

LHB,

Joseph D. Litman, PE | Public Works/ Structures Leader

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.

Joseph D. Litman, PE

21833  
Lic. No.

1-17-2019  
Date

21 West Superior Street, Suite 500		Duluth, MN 55802		218.727.8446
701 Washington Avenue North, Suite 200		Minneapolis, MN 55401		612.338.2029
324 Garfield Street South		Cambridge, MN 55008		763.689.4042
63 East Second Street, Suite 150		Superior, WI 54880		715.392.2902