EXHIBIT A

STATE OF MINNESOTA DEPARTMENT OF TRANSPORTATION

And CITY OF DULUTH COOPERATIVE CONSTRUCTION AGREEMENT

State Project Number (S.P.):6982-322WP1 & 6982-322WP2Trunk Highway Number (T.H.):35Federal Project Number:BLD-NHFP-NHPP 1350(129)Lighting System Feed Point No.:XC, Y, and BTemporary Signal System "A" :Garfield Avenue at West Railroad StreetTemporary Signal System "B":Piedmont Avenue at 24th Avenue West

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

- The State will perform Bituminous Paving, Concrete Sidewalk, Drainage System, Lighting, and a Temporary Signal System construction, and other associated construction upon, along, and adjacent to Trunk Highway No. 35 from 13th Avenue West to 26th Avenue West according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 6982-322WP1 (T.H. 35) ("Project"); and
- 2. The State requests the City to allow the construction of Bituminous Paving, Sidewalk, Drainage System, and a Temporary Signal System and the City is willing to allow said construction on City Right-of-Way; and
- 3. 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: 4. Maintenance by the City; 8. Liability; Worker Compensation Claims; Insurance; 10. State Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure.
- **1.4.** *Plans, Specifications, and Special Provisions.* Plans, specifications, and special provisions designated by the State as State Project No. 6982-322WP1 (T.H. 35) 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.* Exhibits A – Roadway and Sidewalk ownership and maintenance responsibility, B – Storm Sewer ownership and maintenance responsibility and C – Lighting ownership and maintenance responsibility are attached and incorporated into this agreement. Right-of-Way Use

2. Right-of-Way Use

2.1. *Limited Right to Occupy.* The City grants to the State (and its contractors and consultants) the right to occupy City Right-of-Way as necessary to perform the work described in the Project Plans. This right is limited to the purpose of constructing the project, and administering such construction.

3. Construction by the State

3.1. *Contract Award.* The State will advertise for bids and award a construction contract to the lowest responsible bidder according to the Project Plans.

3.2. 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 perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project Plans.

3.3. Plan Changes, Additional Construction, Etc.

- A. The State will make changes in the Project Plans and contract construction and will enter into any necessary addenda, change orders, supplemental agreements and work orders with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner.
- **3.4.** 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. 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.

4. Maintenance by the City

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

- **4.1.** *Roadways.* Maintenance and ownership of South 19th Avenue West, Superior Street, West 1st Street, North 21st Avenue West, North 22nd Avenue West, 1st Street, and Piedmont Avenue as shown in Exhibit A. Maintenance includes, but is not limited to, snow, ice, and debris removal, resurfacing, seal coating, pavement markings, and any other maintenance activities according to accepted City maintenance practices.
- **4.2.** *Storm Sewers.* Routine maintenance and ownership of storm sewer facilities construction. Routine maintenance includes, but is not limited to, removal of sediment, debris, vegetation and ice from grates and catch basins, and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, or sedimentation for those systems as shown in Exhibit B. For any MnDOT owned storm sewer that is maintained by the City this also includes informing the District Maintenance Engineer of any needed repairs.
- **4.3.** *Sidewalks.* Maintenance and ownership of sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps as shown in Exhibit A. Maintenance includes, but is not limited to, snow, ice, and debris removal, patching, crack repair, panel replacement, cross street pedestrian crosswalk

markings, mowing grass boulevards (if any), and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.

4.4. *Lighting.* Maintenance and ownership of lighting facilities construction as shown in Exhibit C. 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, pullboxes, 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.

5. 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.

5.1. The State's Authorized Representative will be:

Name, Title: Perry Collins, Assistant District Engineer – Operations (or successor)Address:1123 Mesaba Avenue, Duluth, MN 55811Telephone:(218) 725-2827E-Mail:perry.collins@state.mn.us

5.2. The City's Authorized Representative will be:

Name, Title: Cari Pederson, Transportation Engineer (or successor)Address:411 West 1st Street, Room 202, Duluth, MN 55802Telephone:(218) 730-5091E-Mail:cpederson@duluthmn.gov

6. Assignment; Amendments; Waiver; Contract Complete

- **6.1.** *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.
- **6.2.** *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.
- **6.3.** *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.
- **6.4.** 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.

7. Liability; Worker Compensation Claims; Insurance

7.1. 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, 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. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

8. Nondiscrimination

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

9. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, and 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.

10. 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.

11. 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.

12. Termination; Suspension

- **12.1.** By Mutual Agreement. This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.
- **12.2.** *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.
- **12.3.** *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.

13. 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.

Ву:	
Title: <u>Mayor</u>	
Date:	
Attested:	
Title: <u>City Clerk</u>	
Date:	
Approved as to form:	
Ву:	
Title: <u>City Attorney</u>	
Date:	
Countersigned:	
Title: <u>City Auditor</u>	
Date:	

State Let Construction on Non-State R/W with Local Maintenance (Cooperative Agreements 4/5/13)

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

Approved:

By: ______ (District Engineer)

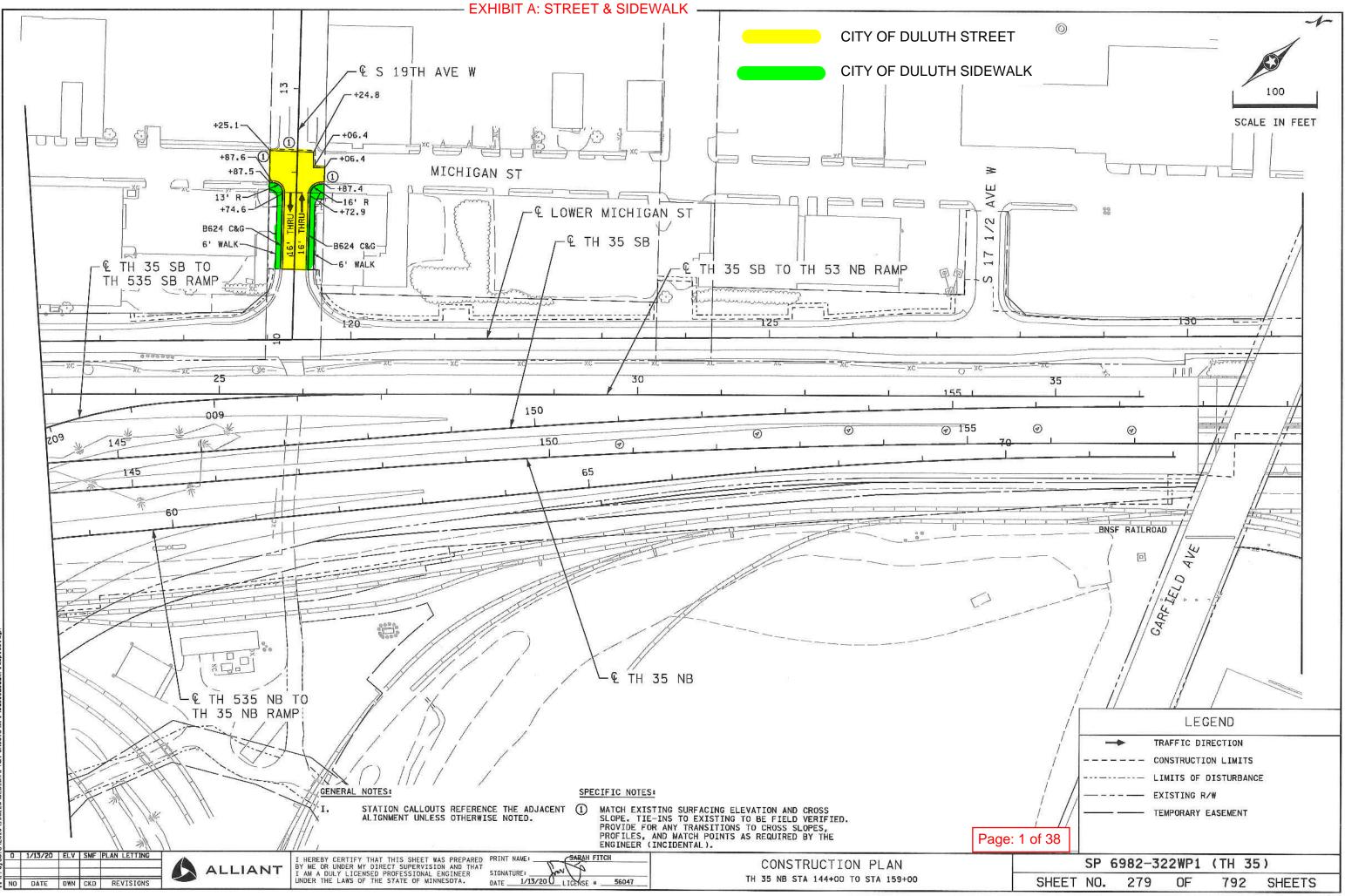
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COMMISIONER OF ADMINISTRATION

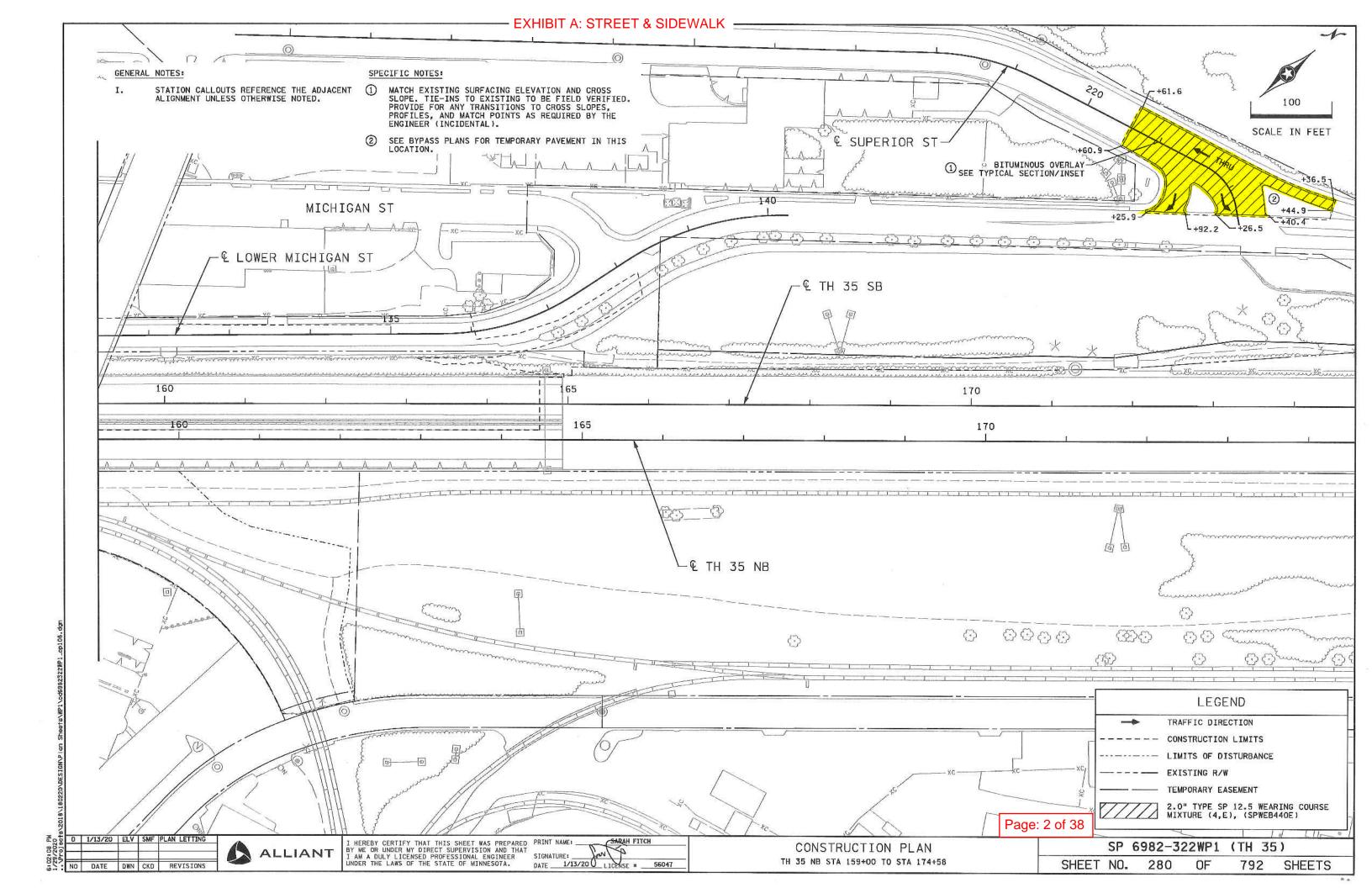
By: _____ (With Delegated Authority)

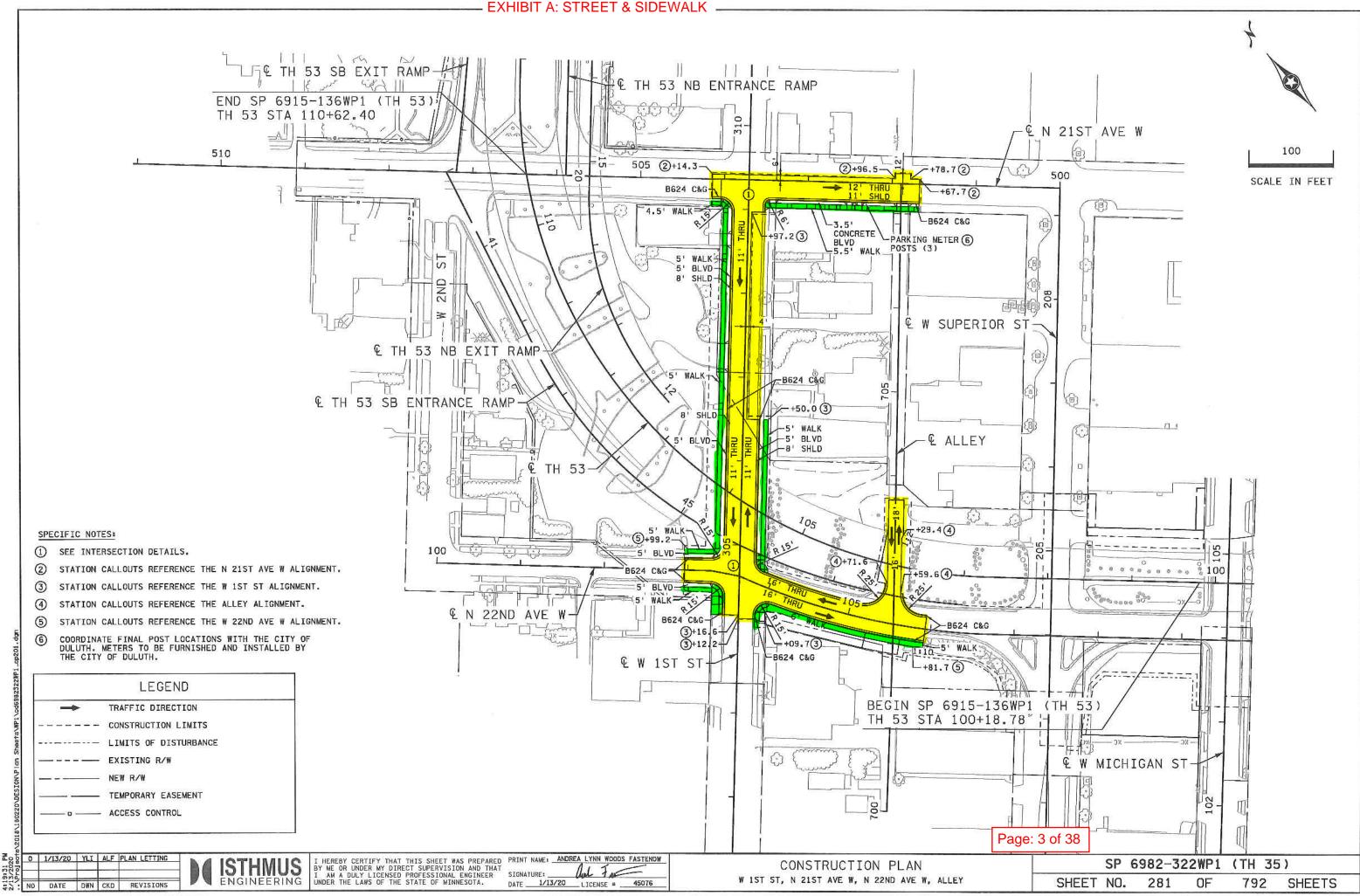
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INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.



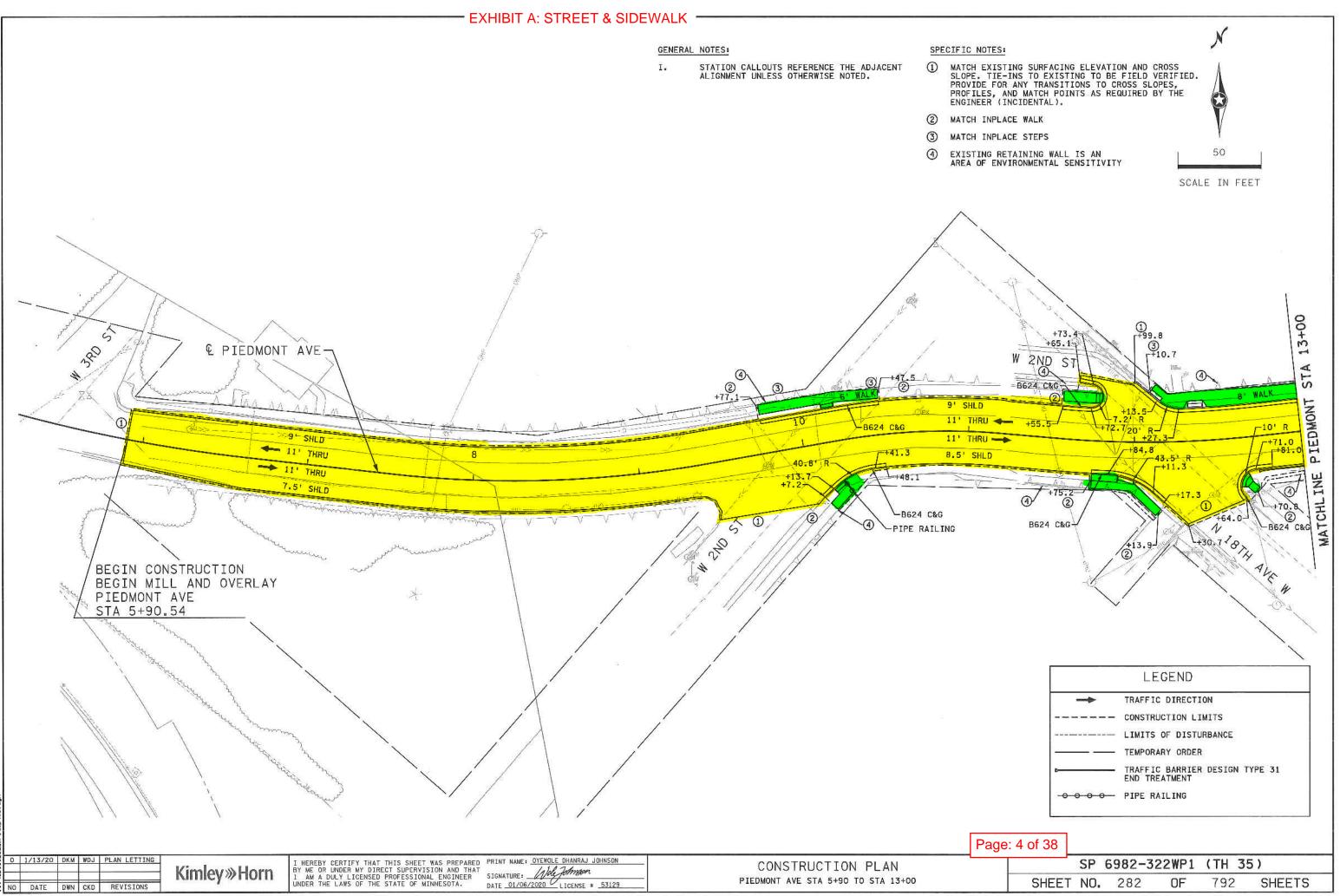
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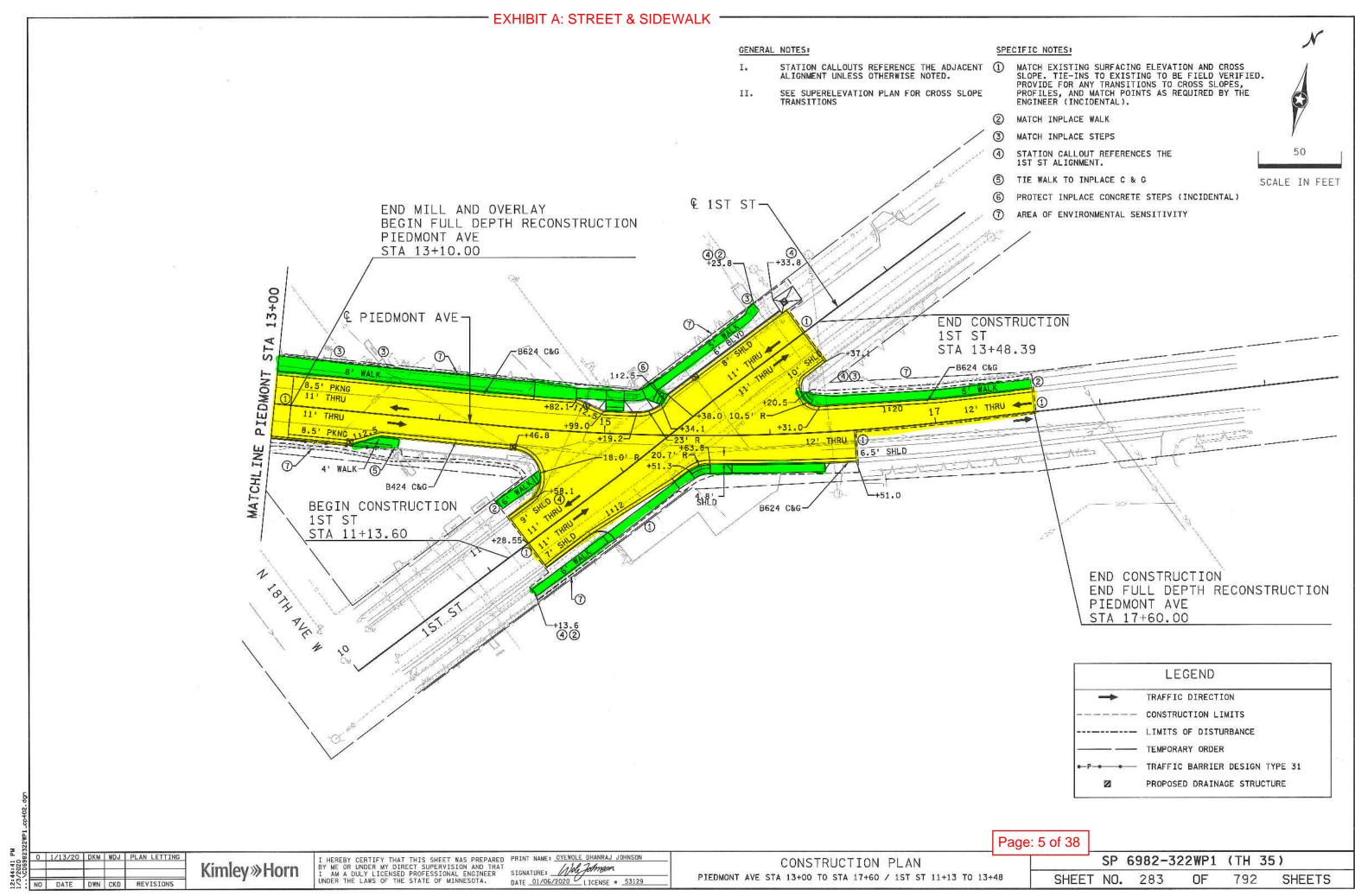
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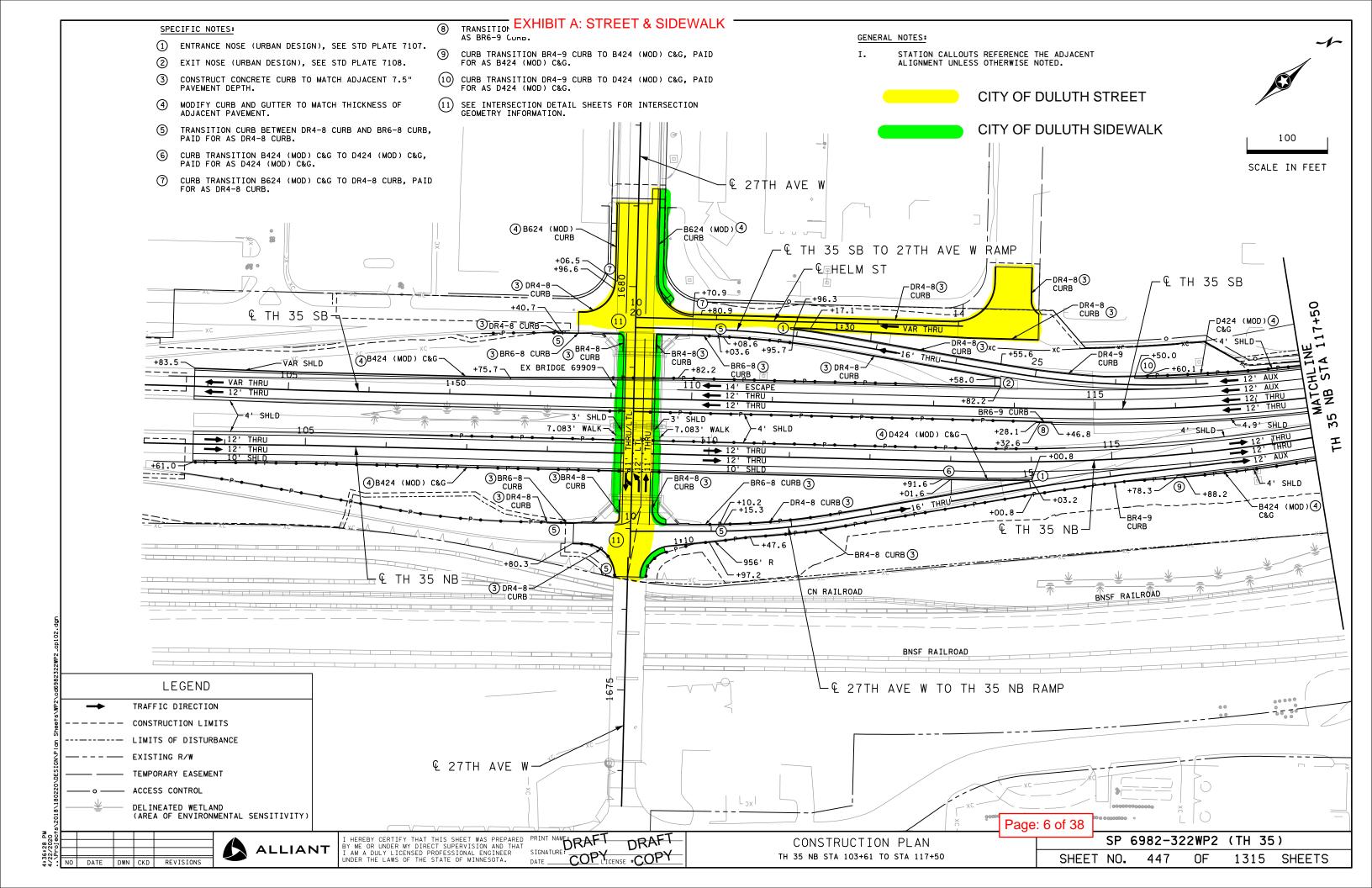


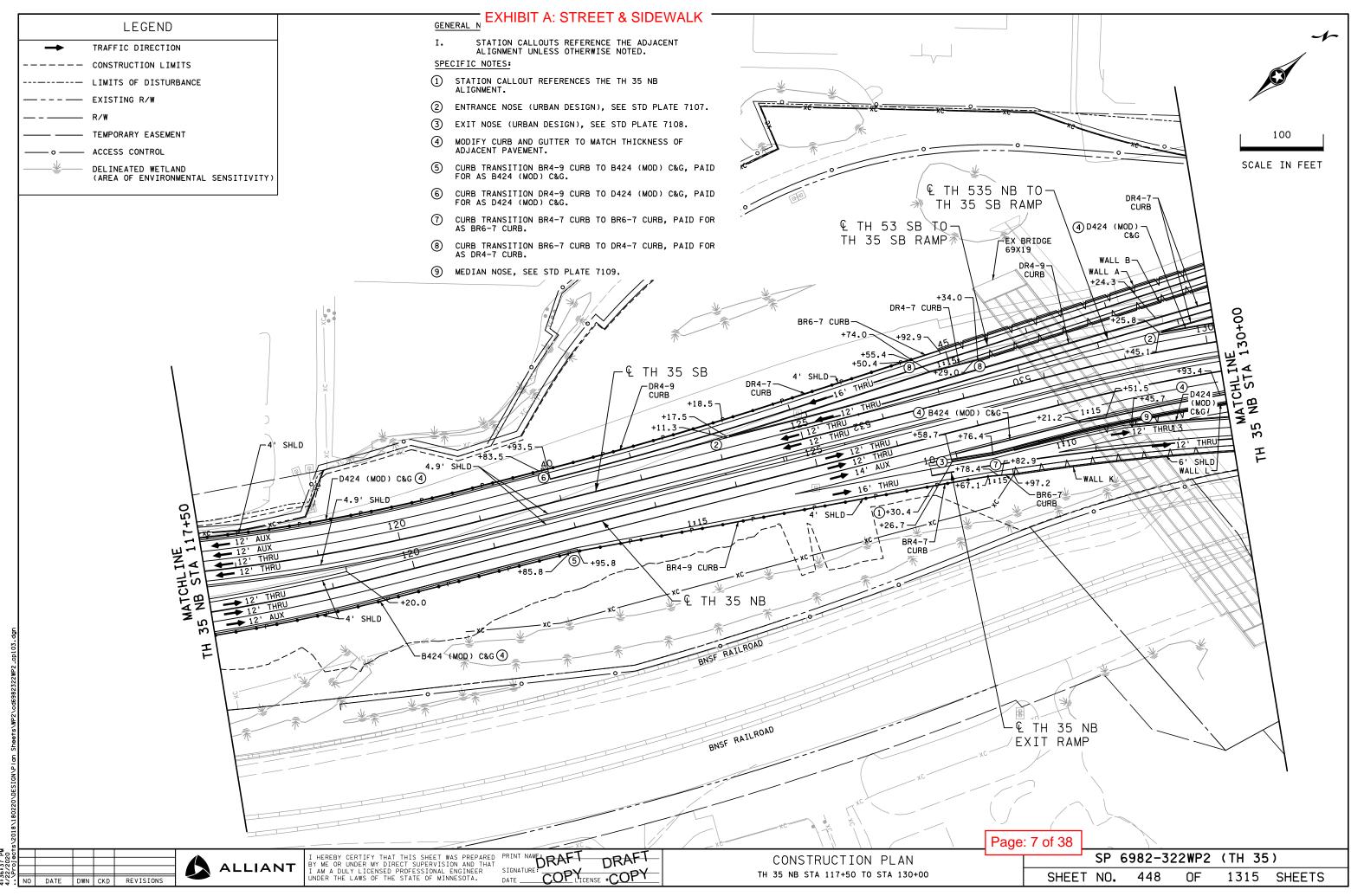
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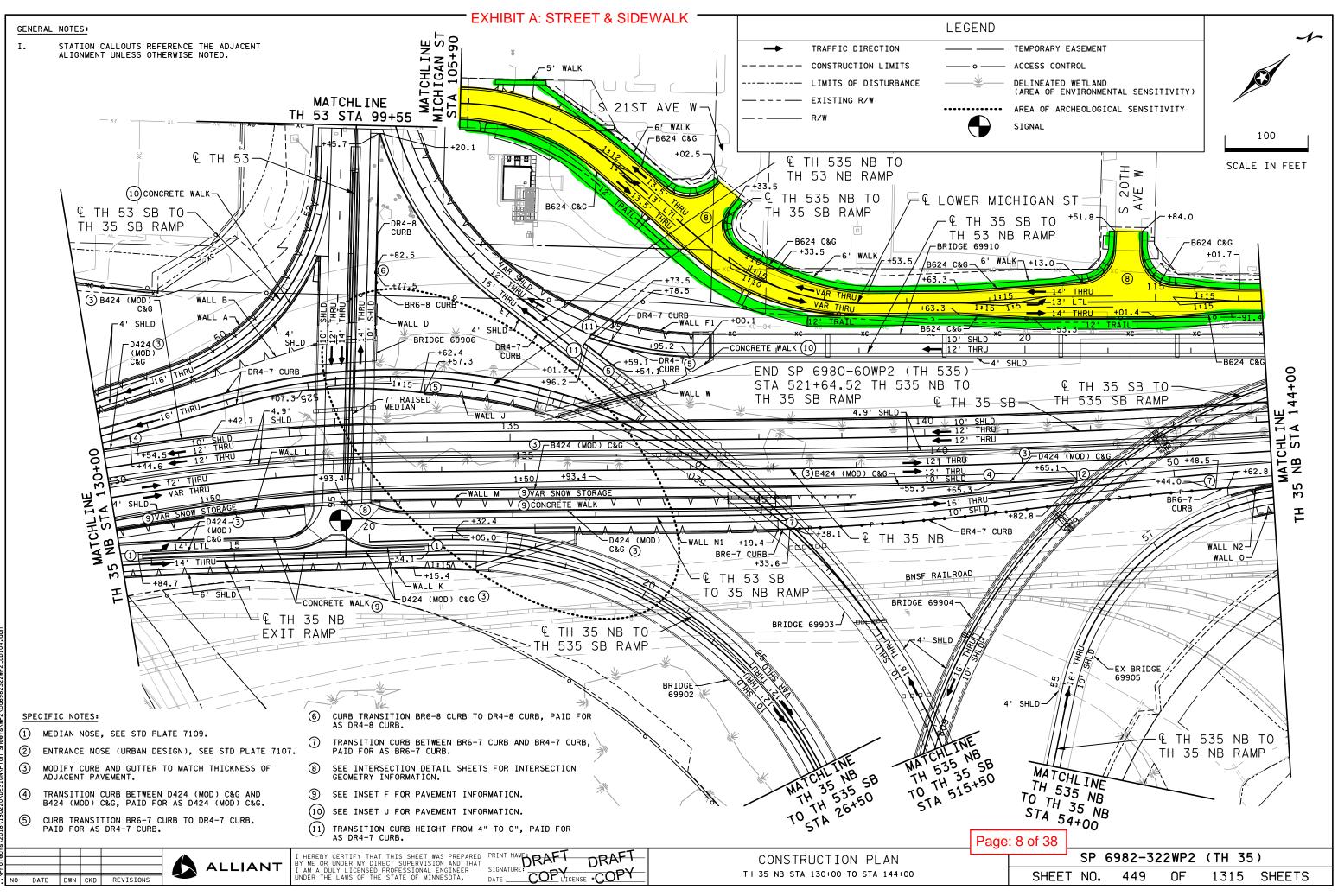
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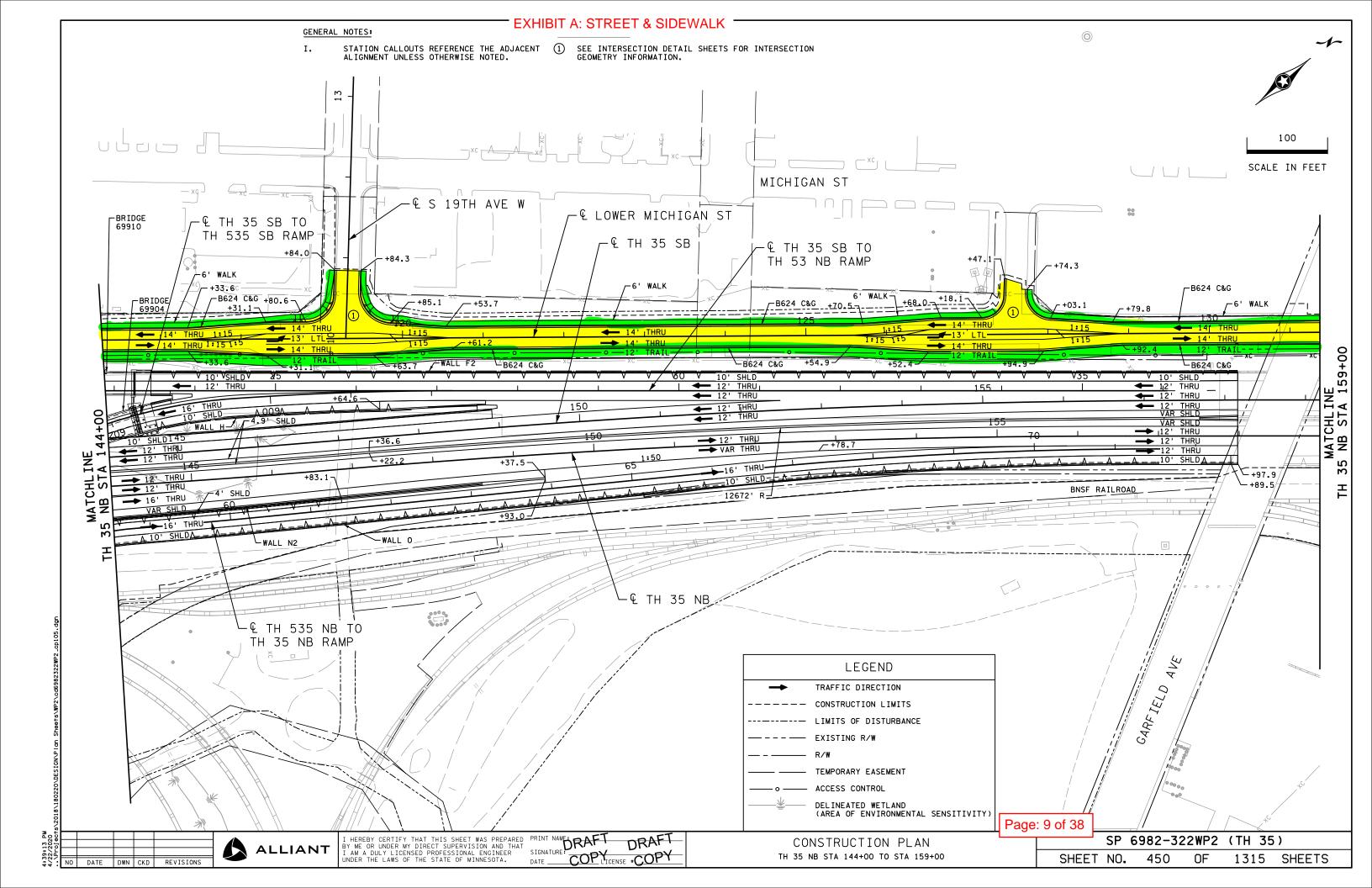


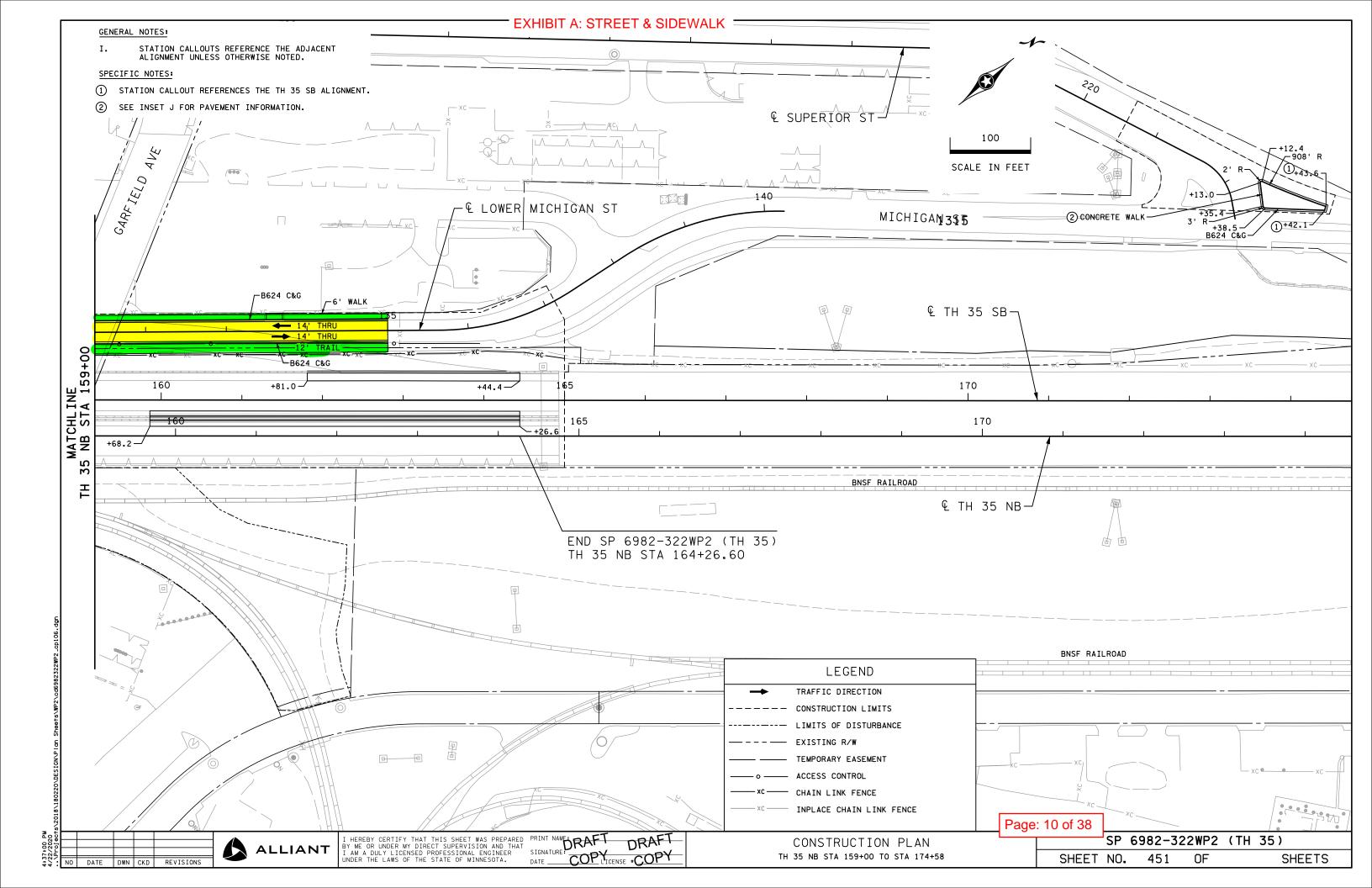
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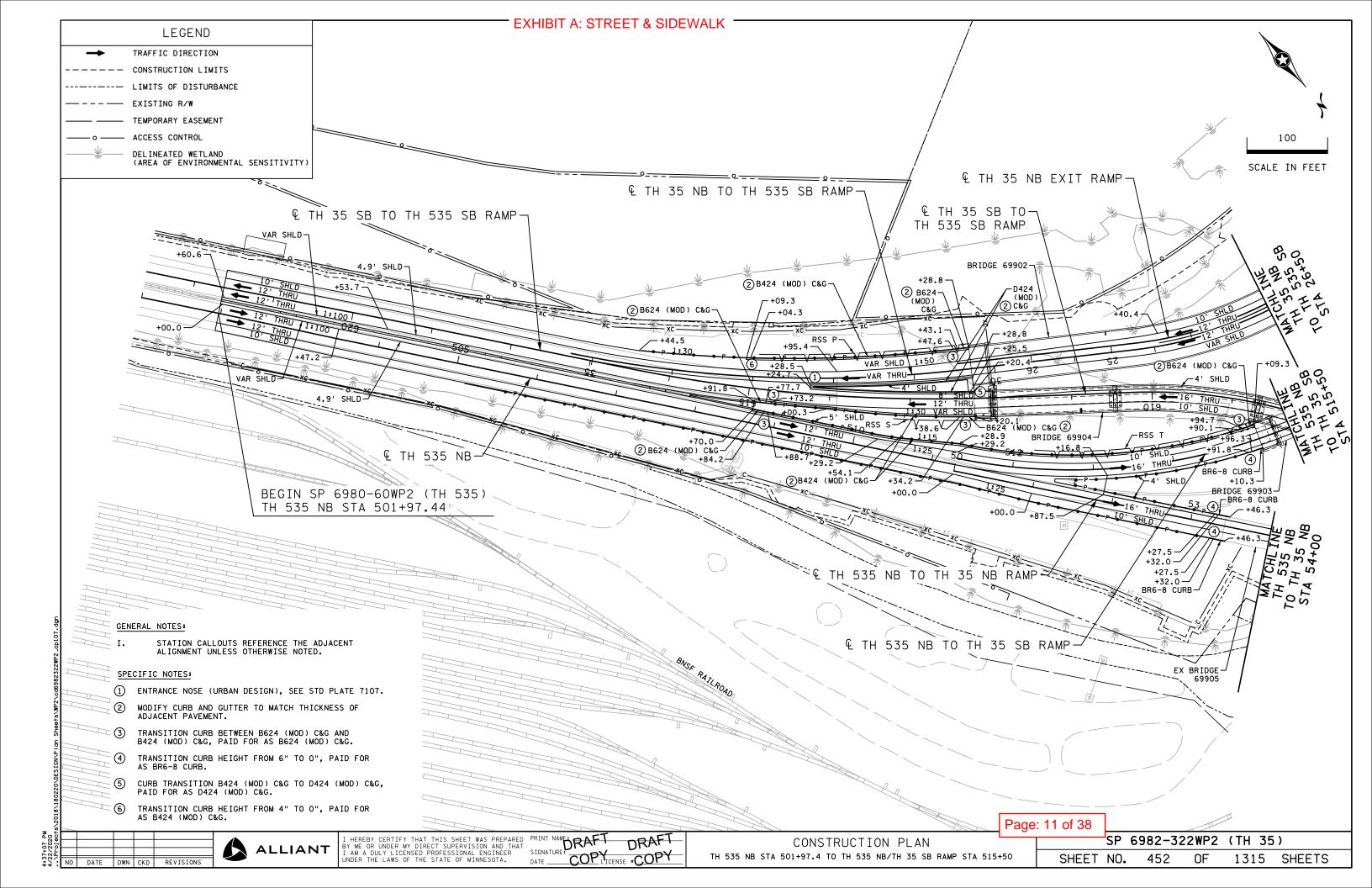


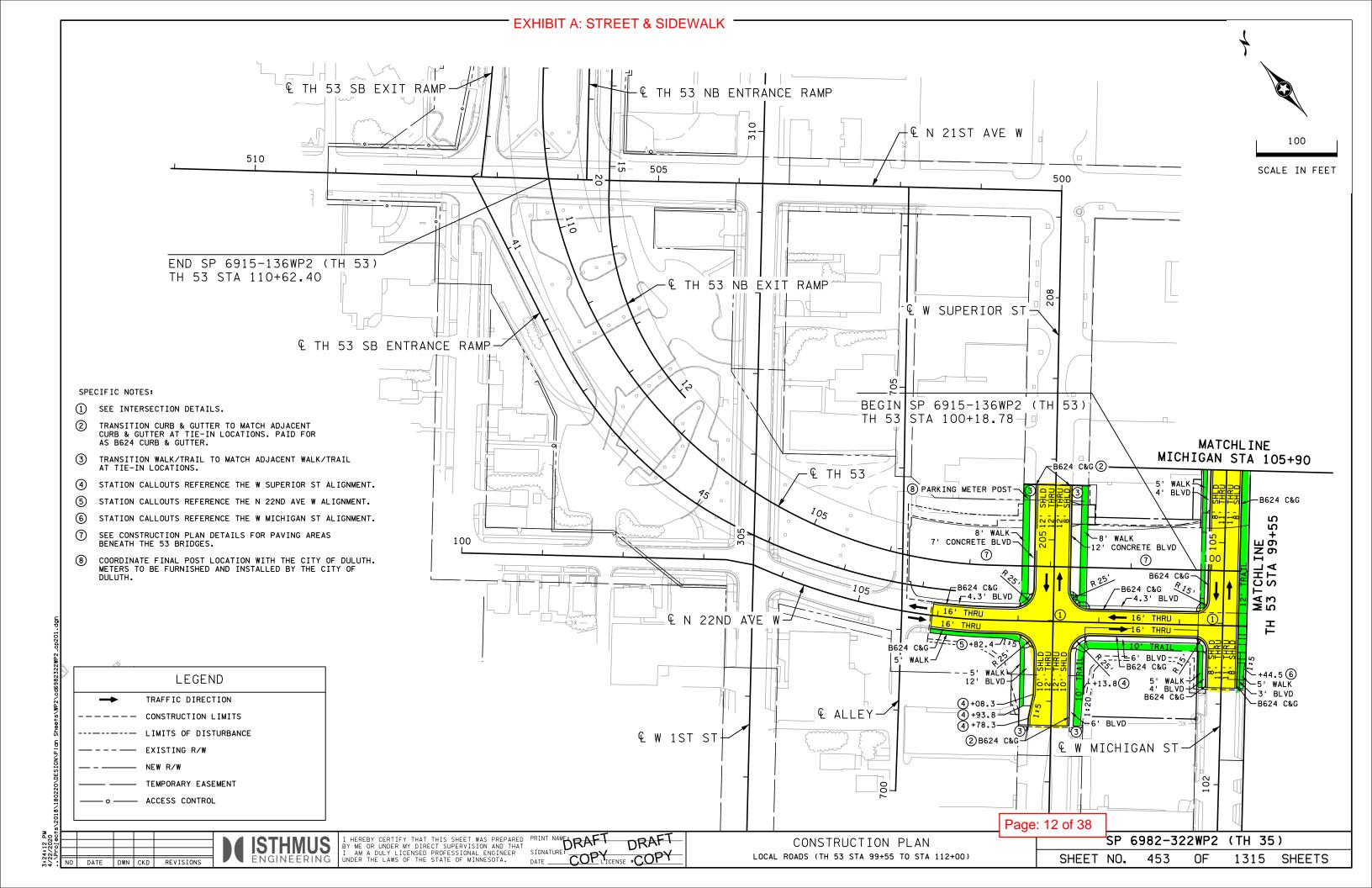


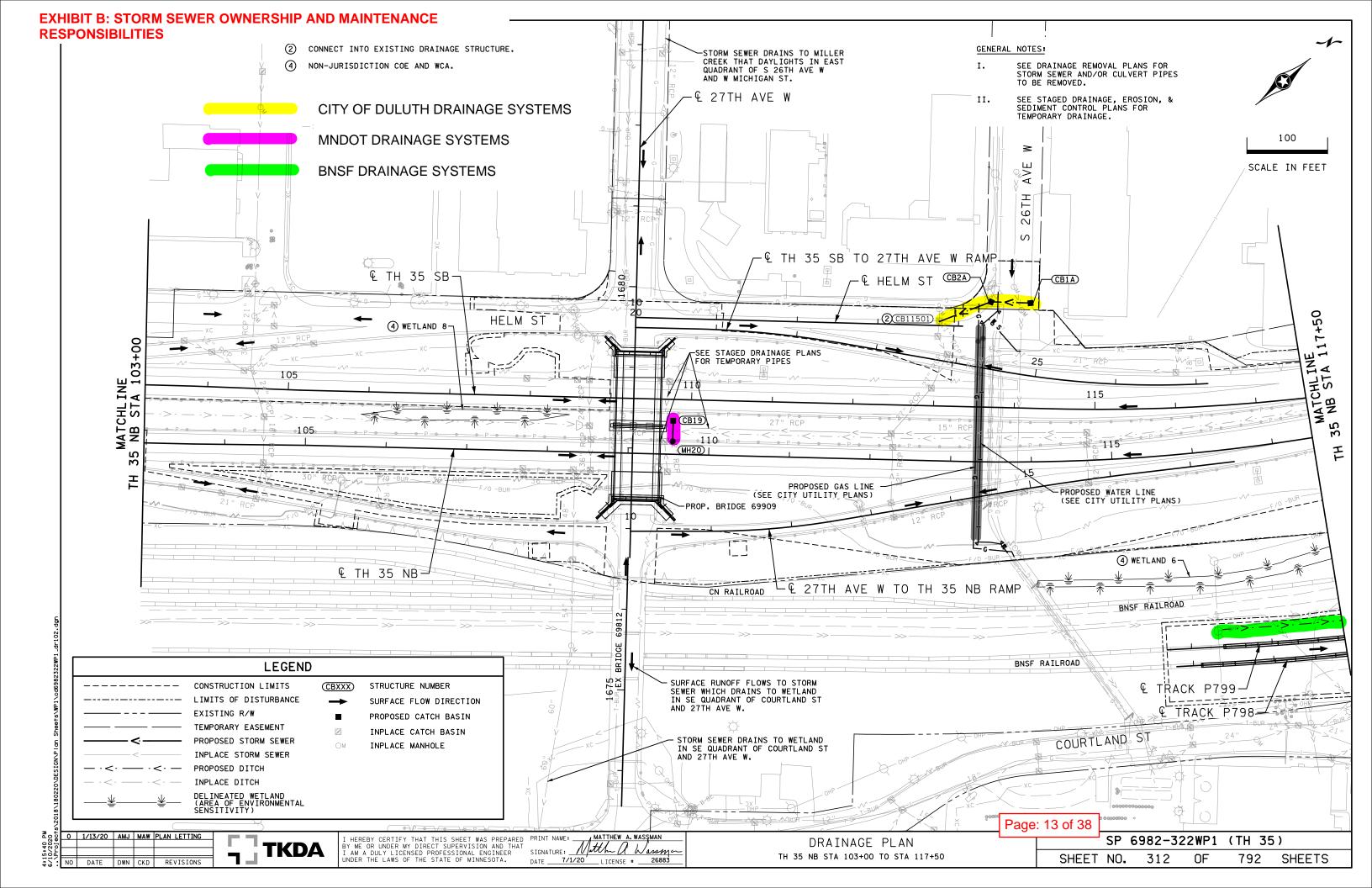


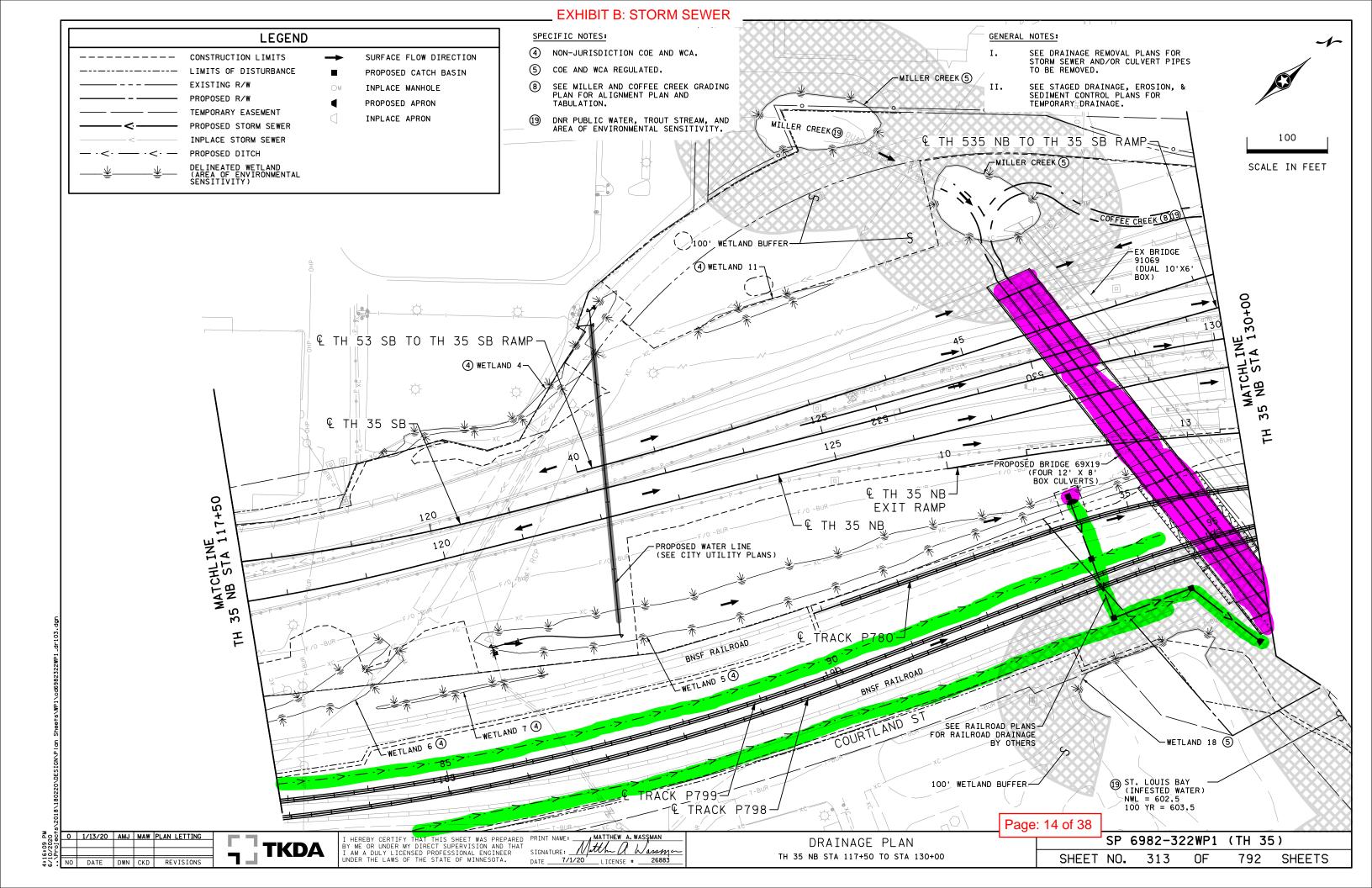


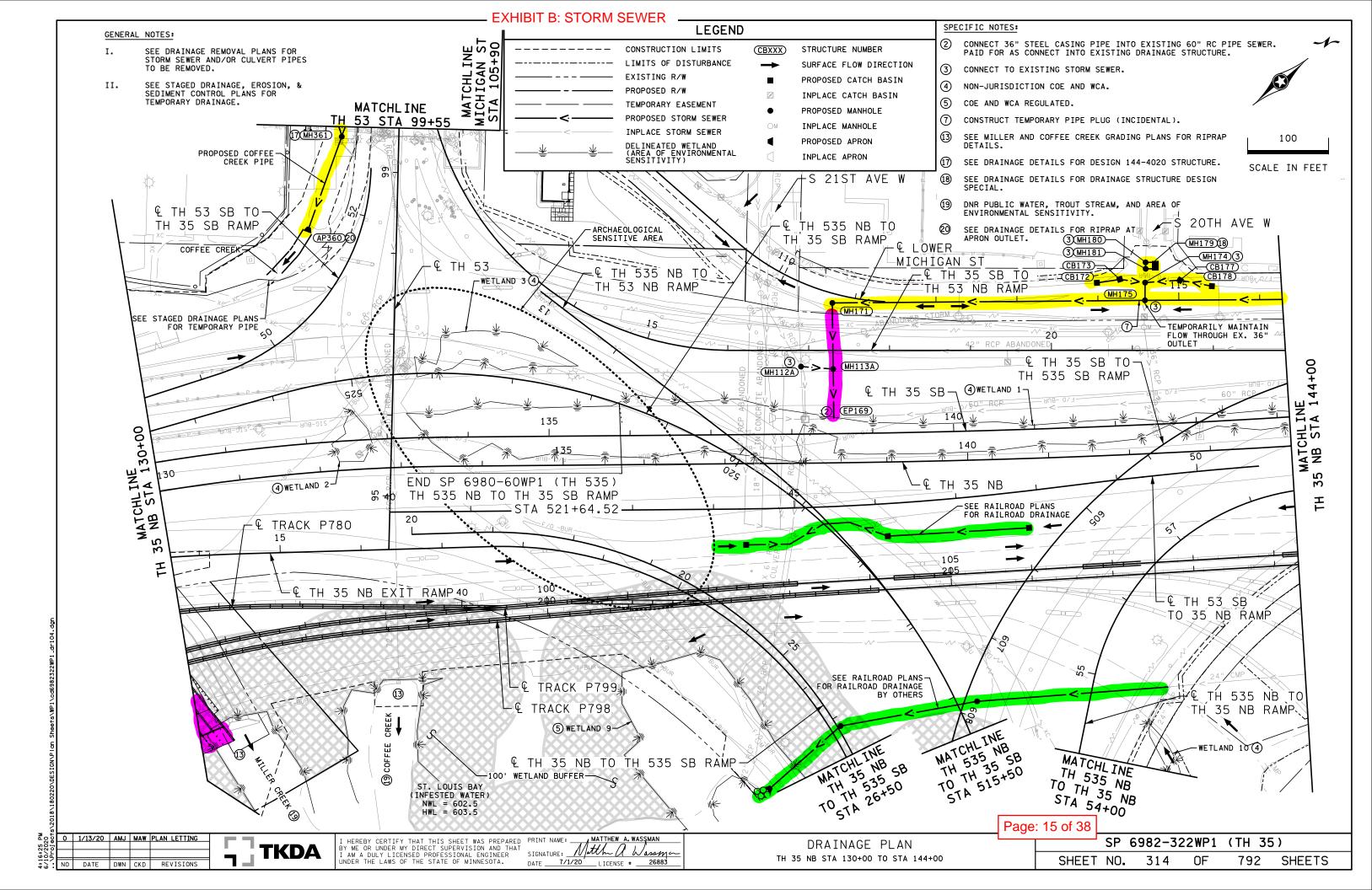


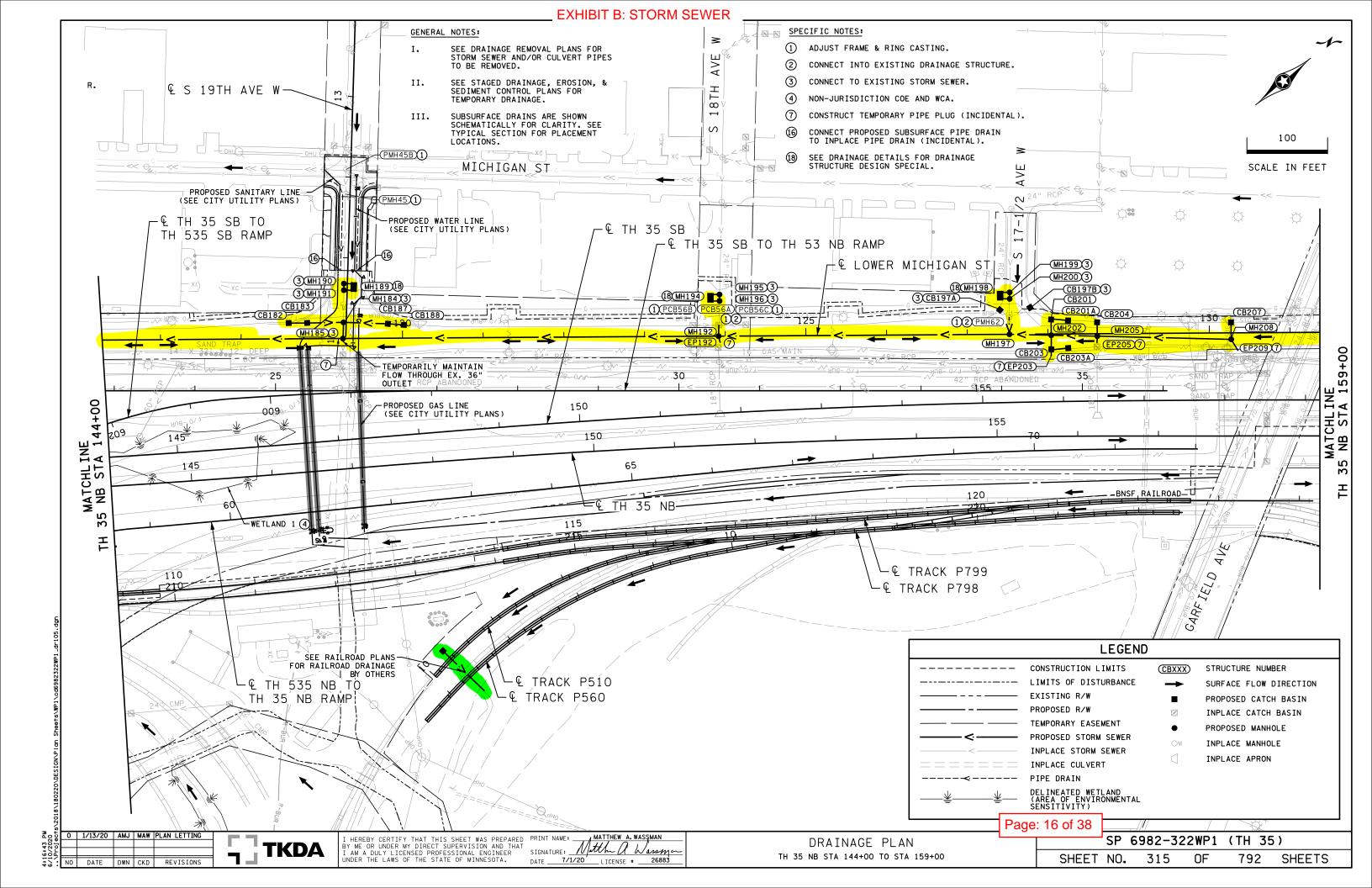


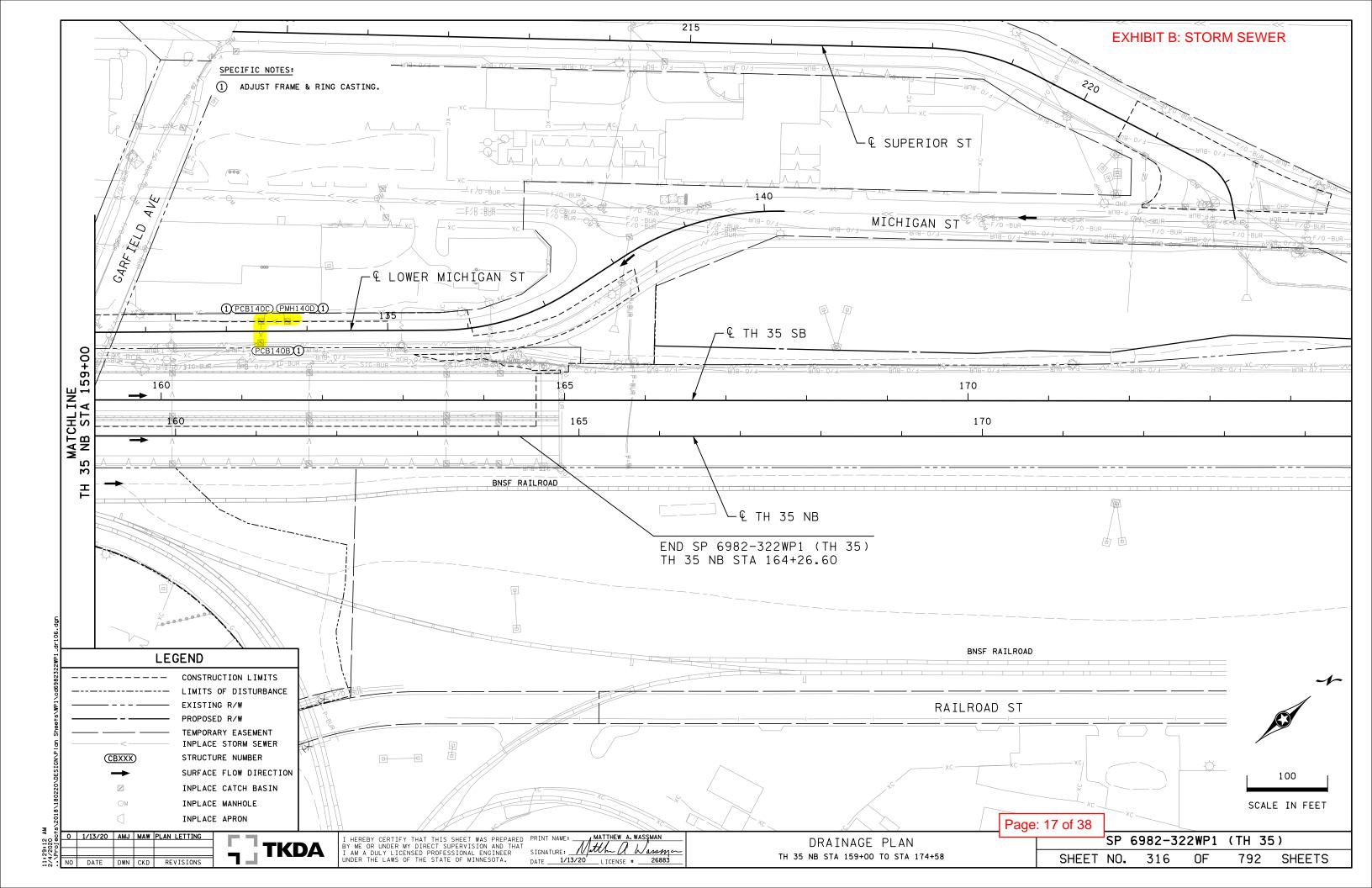


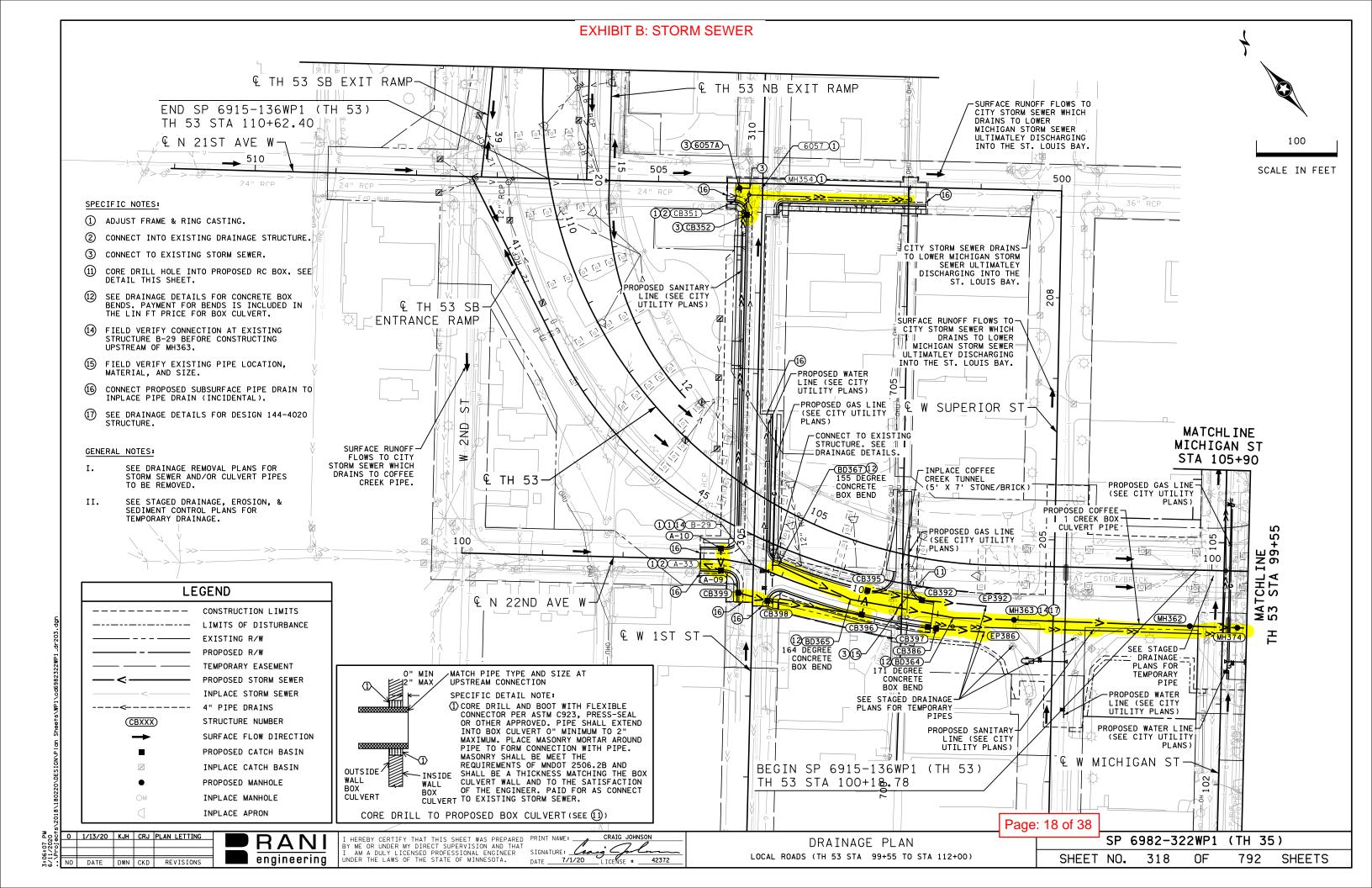


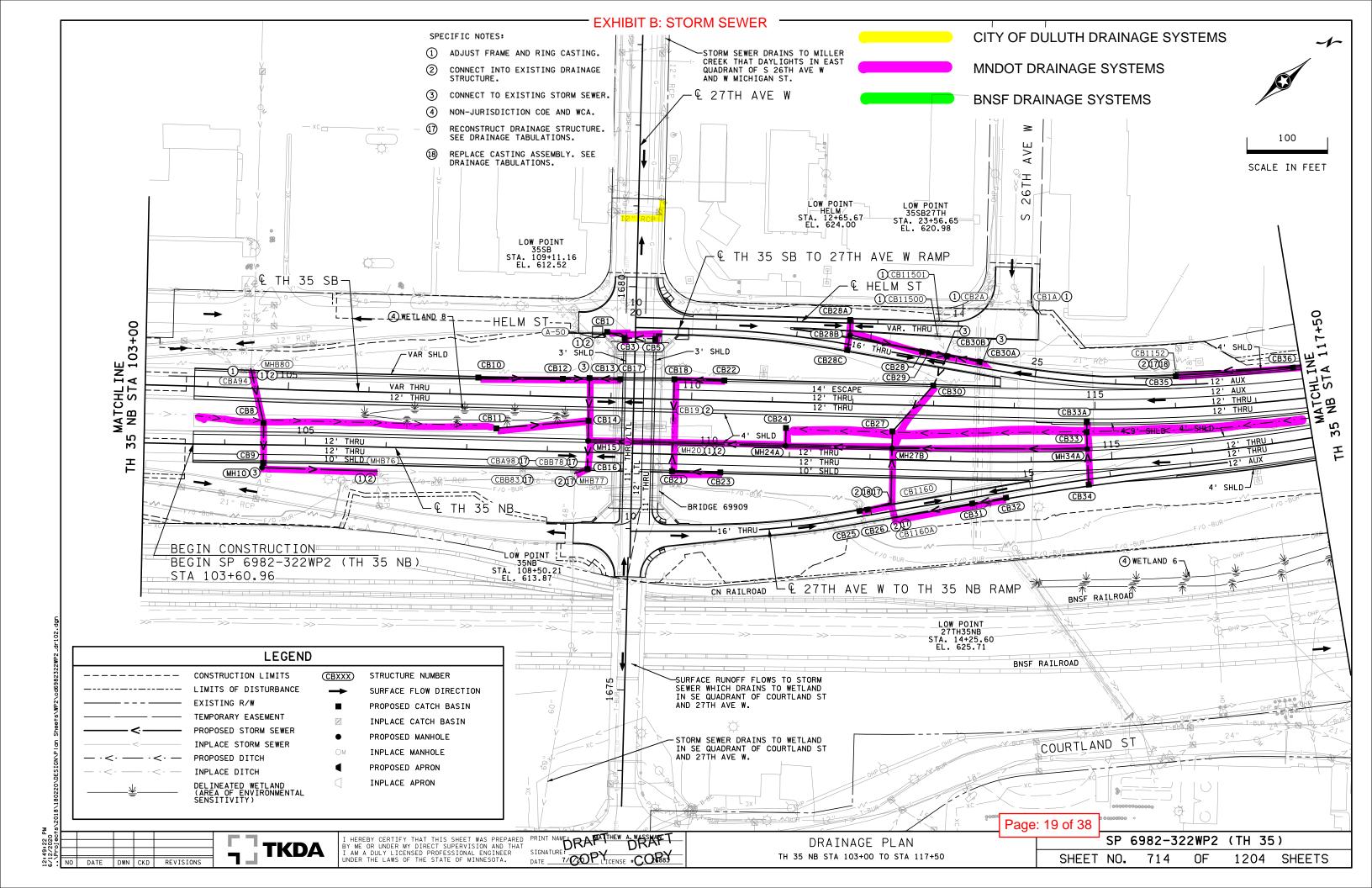


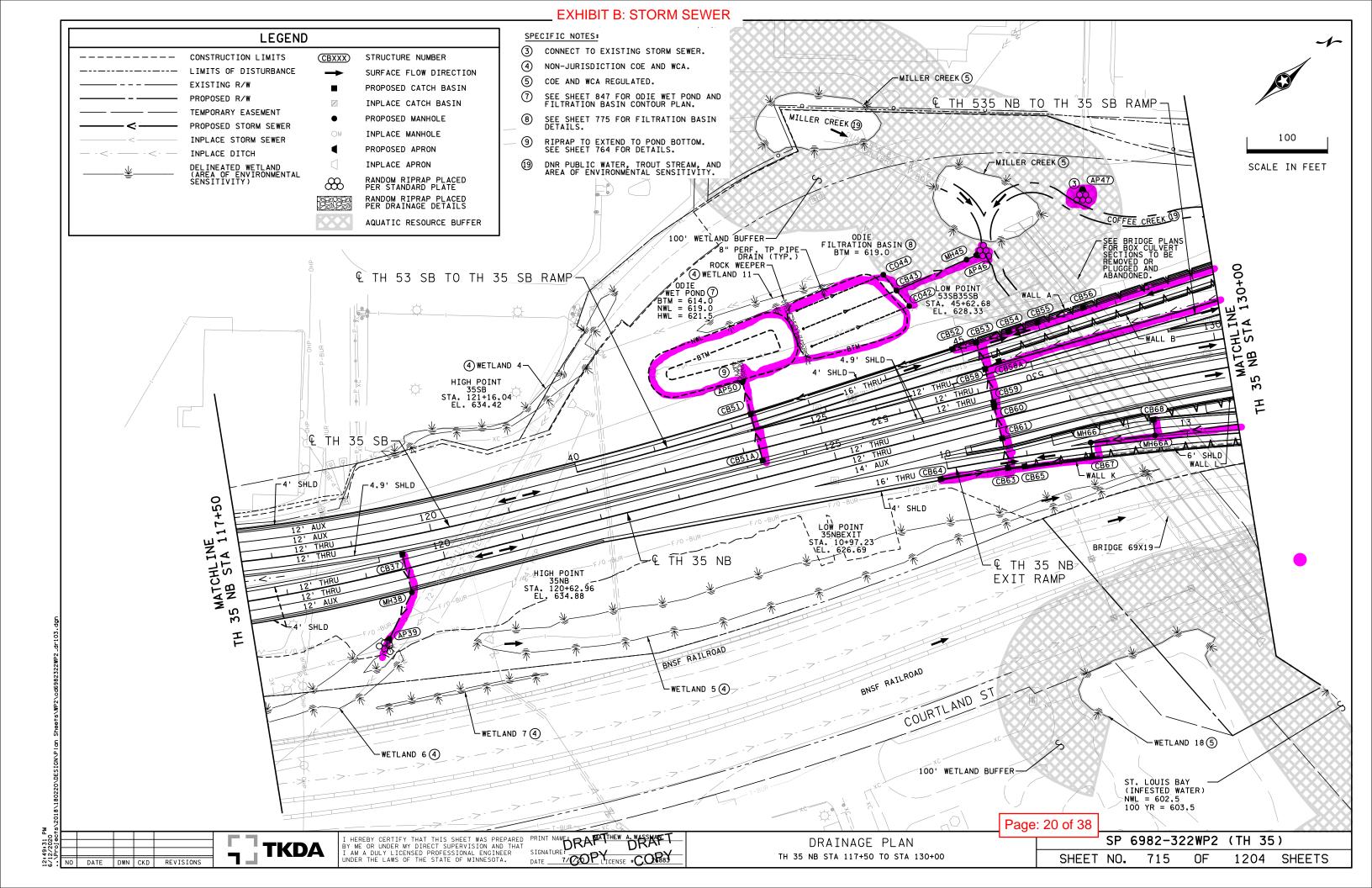


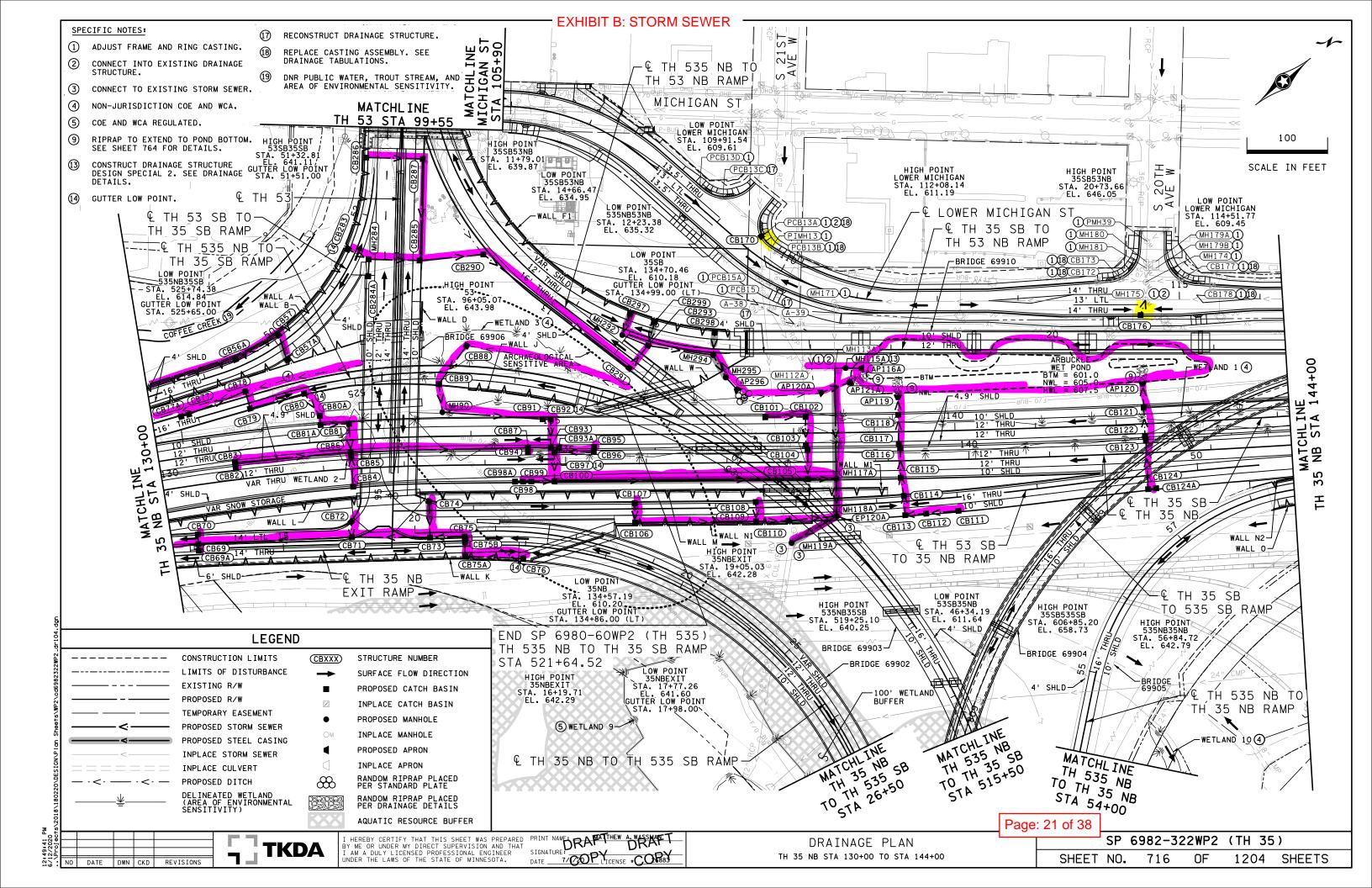


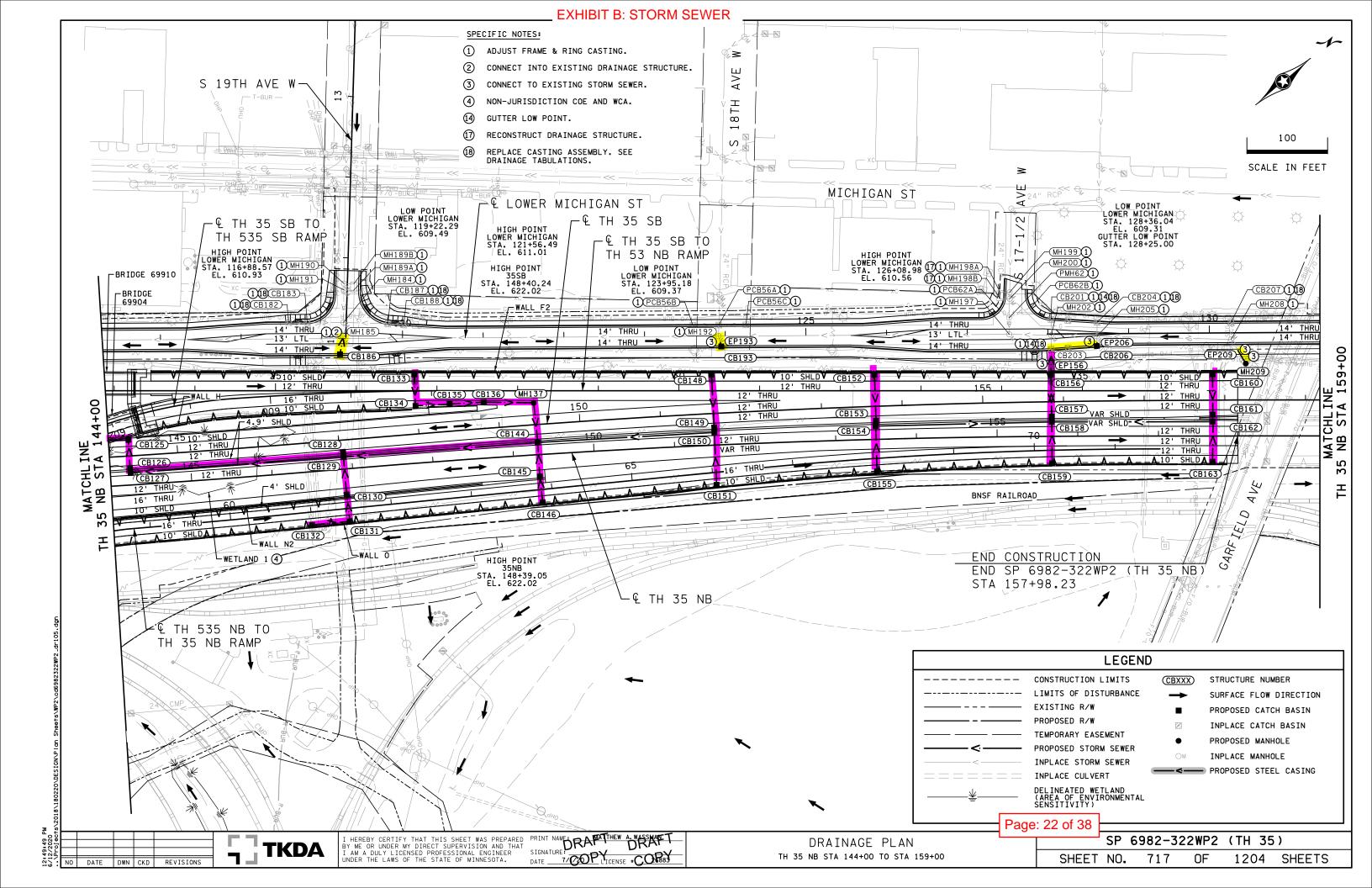


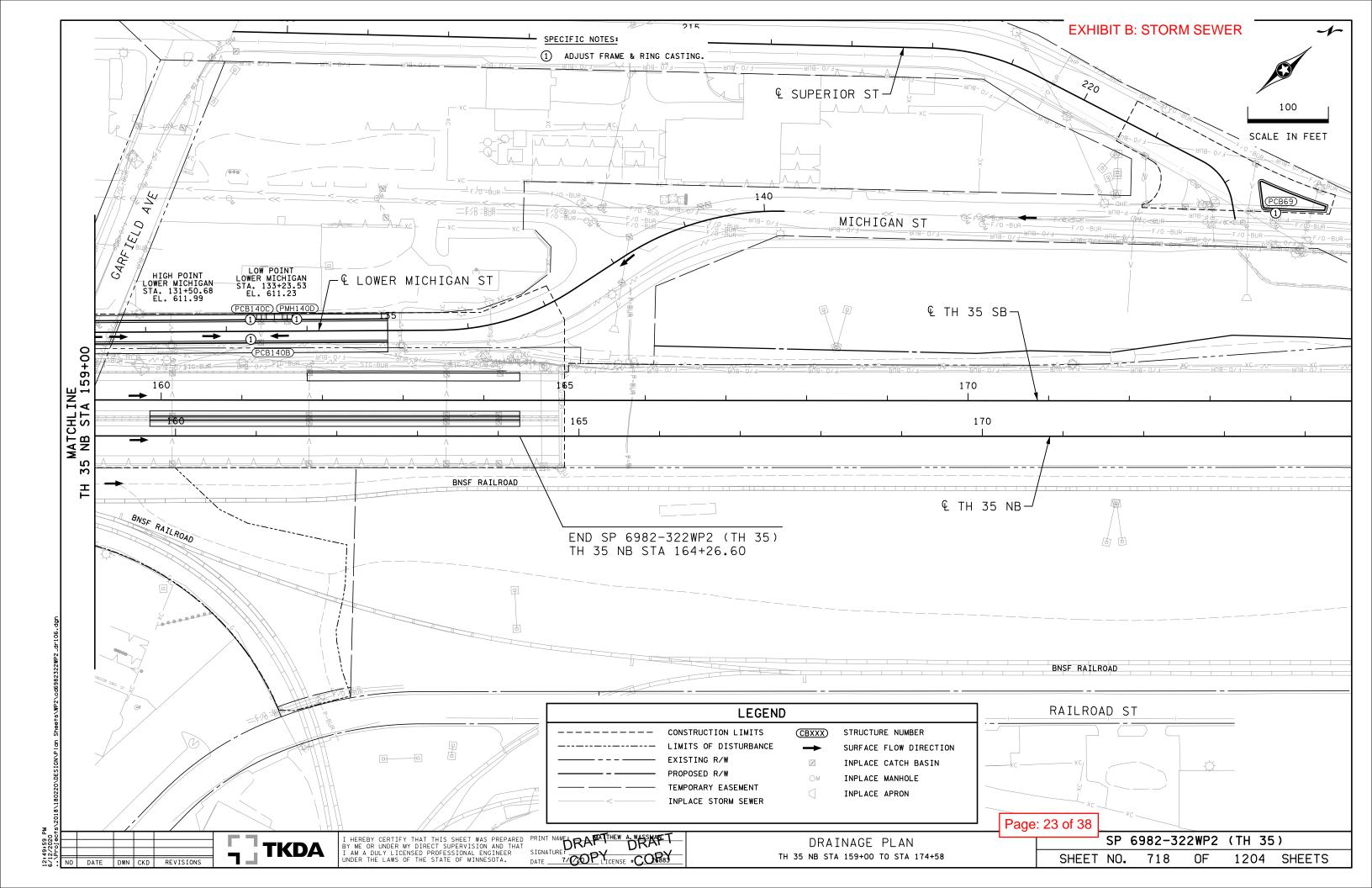


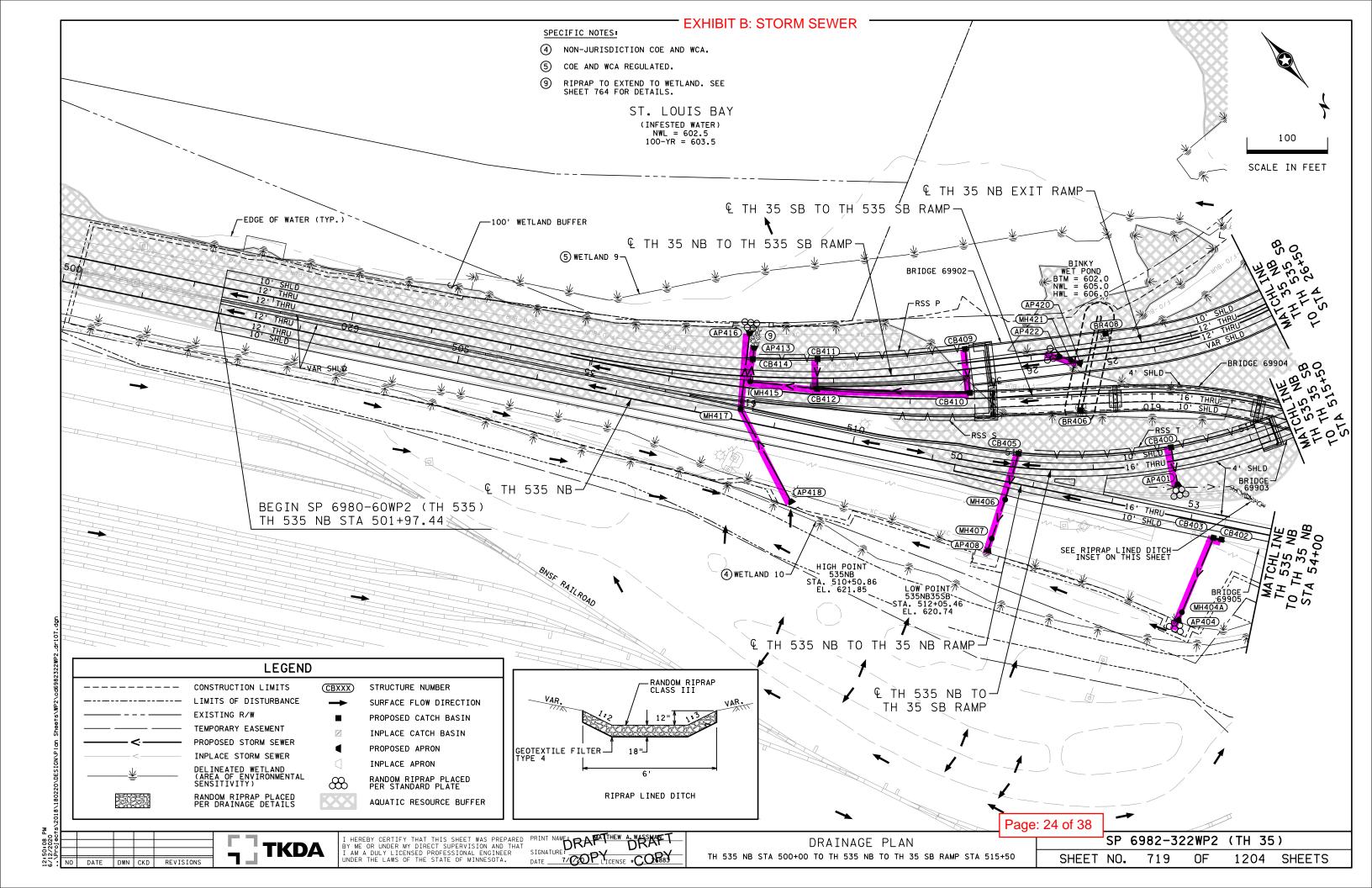


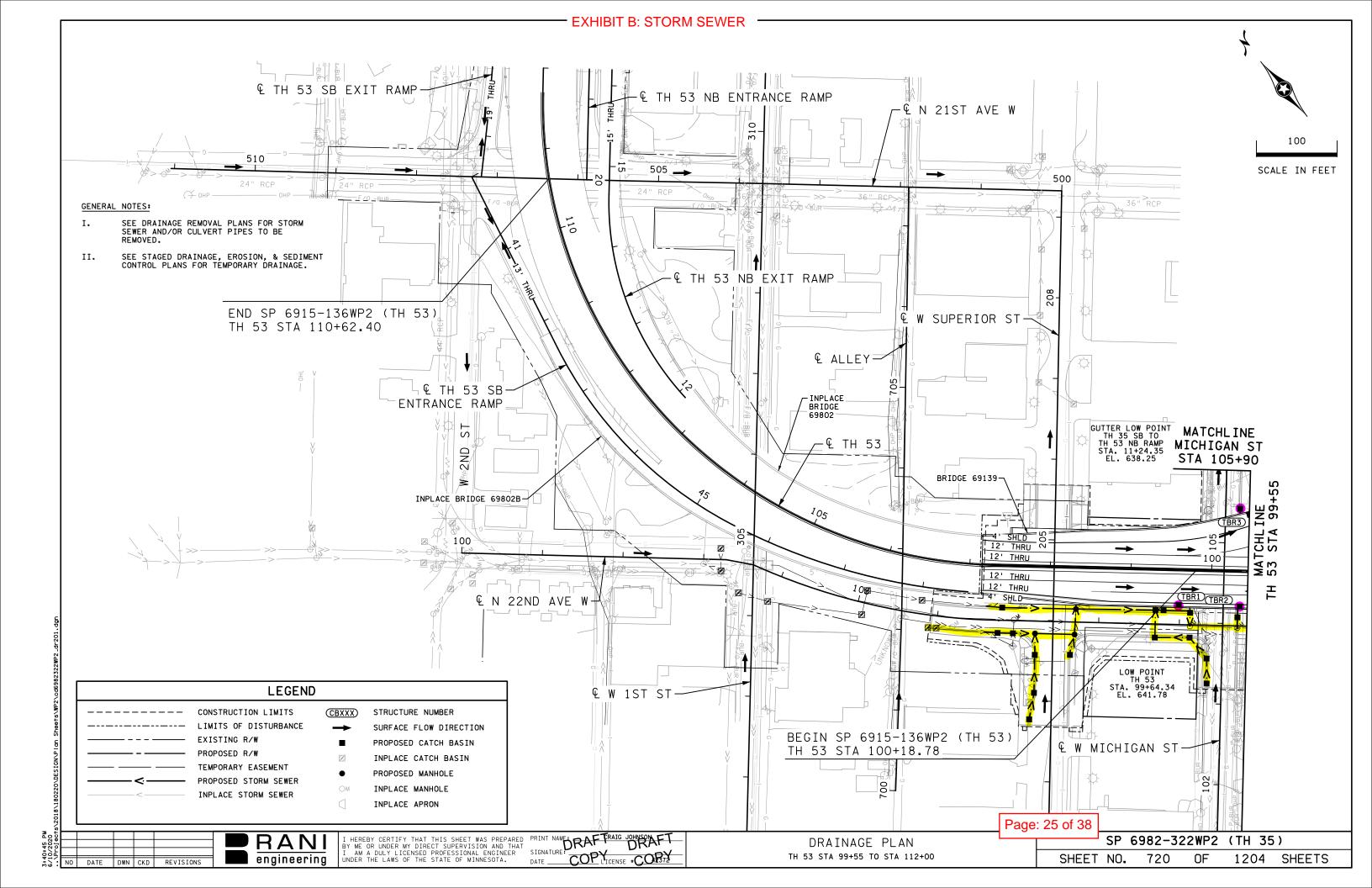












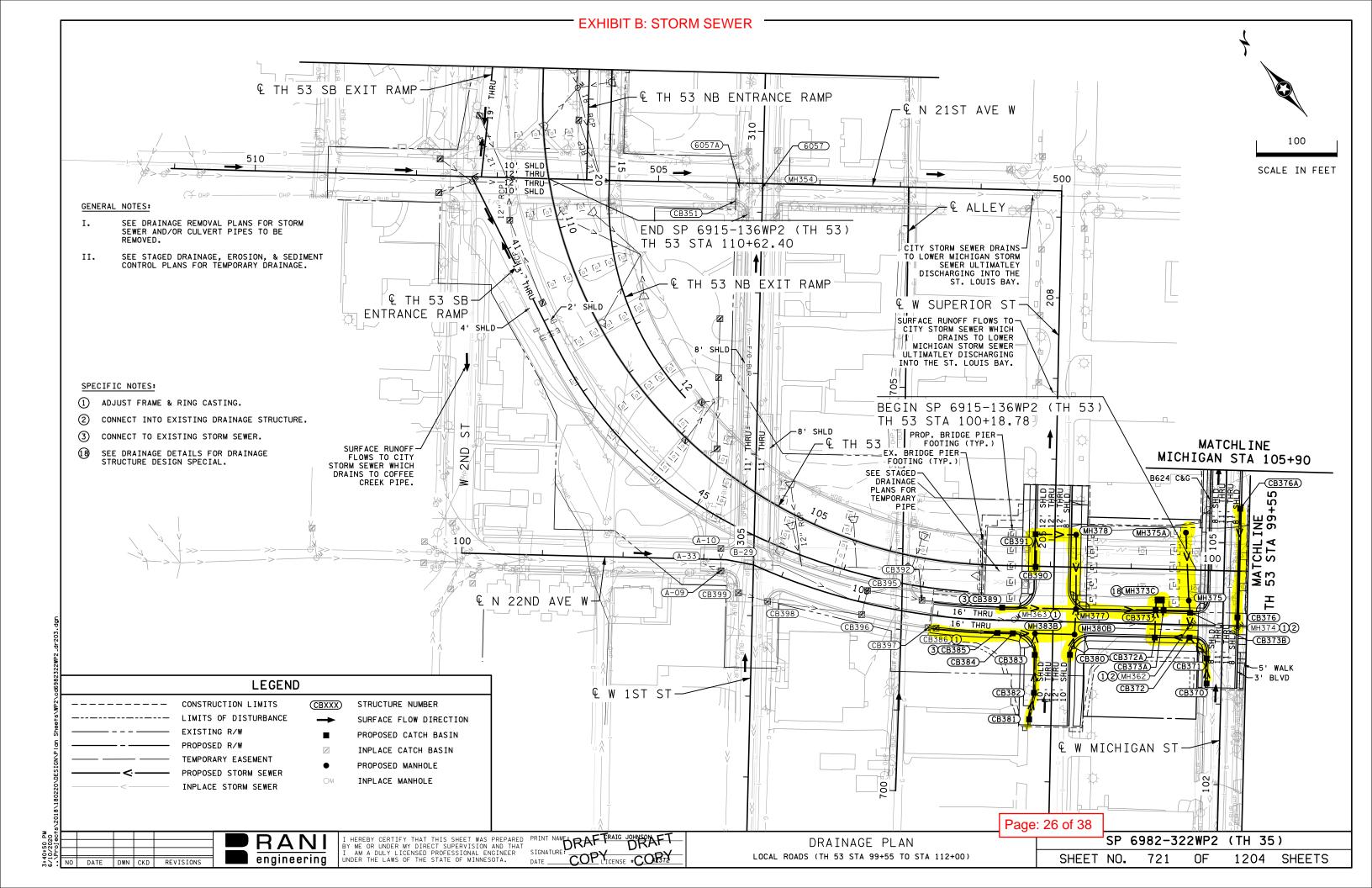
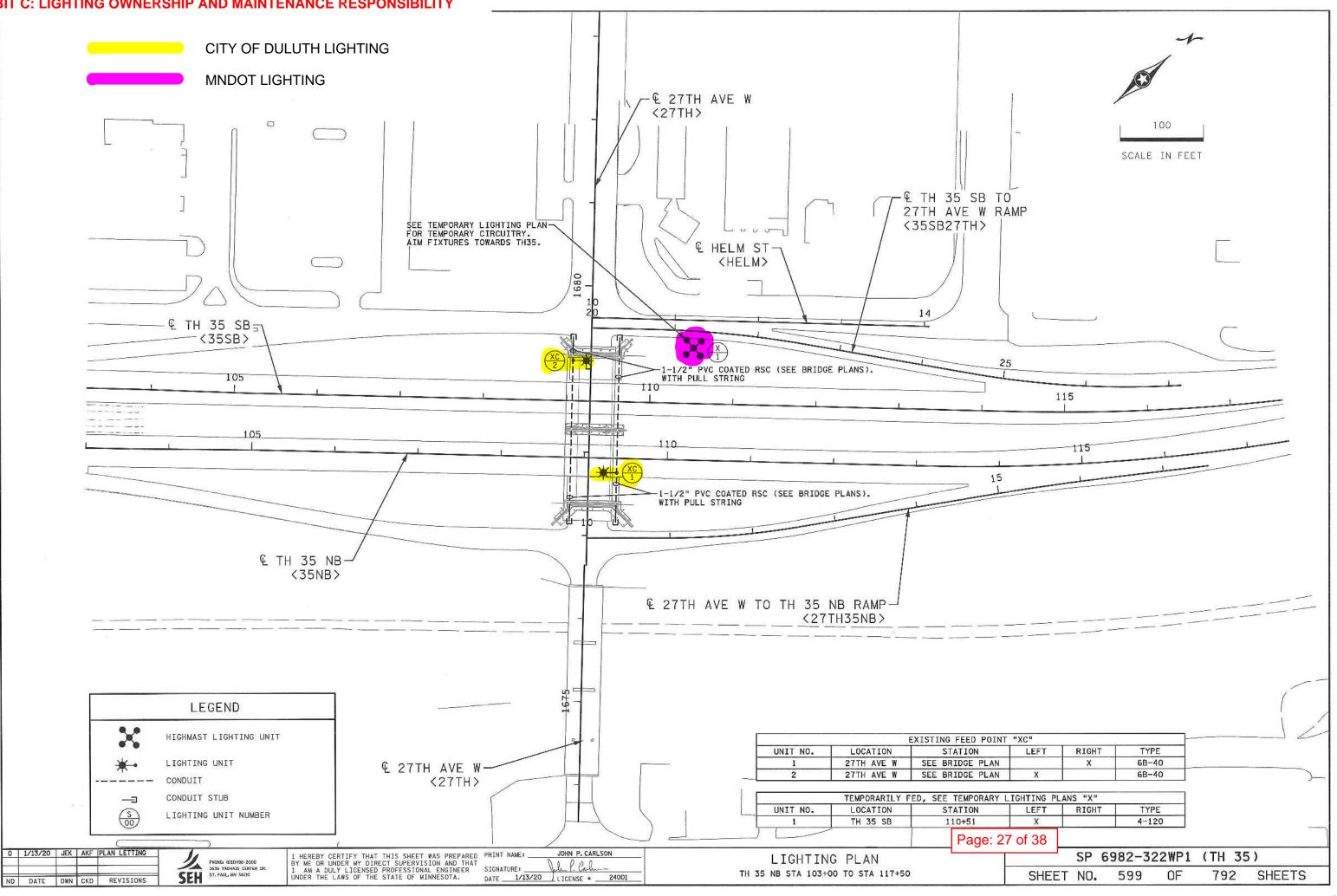
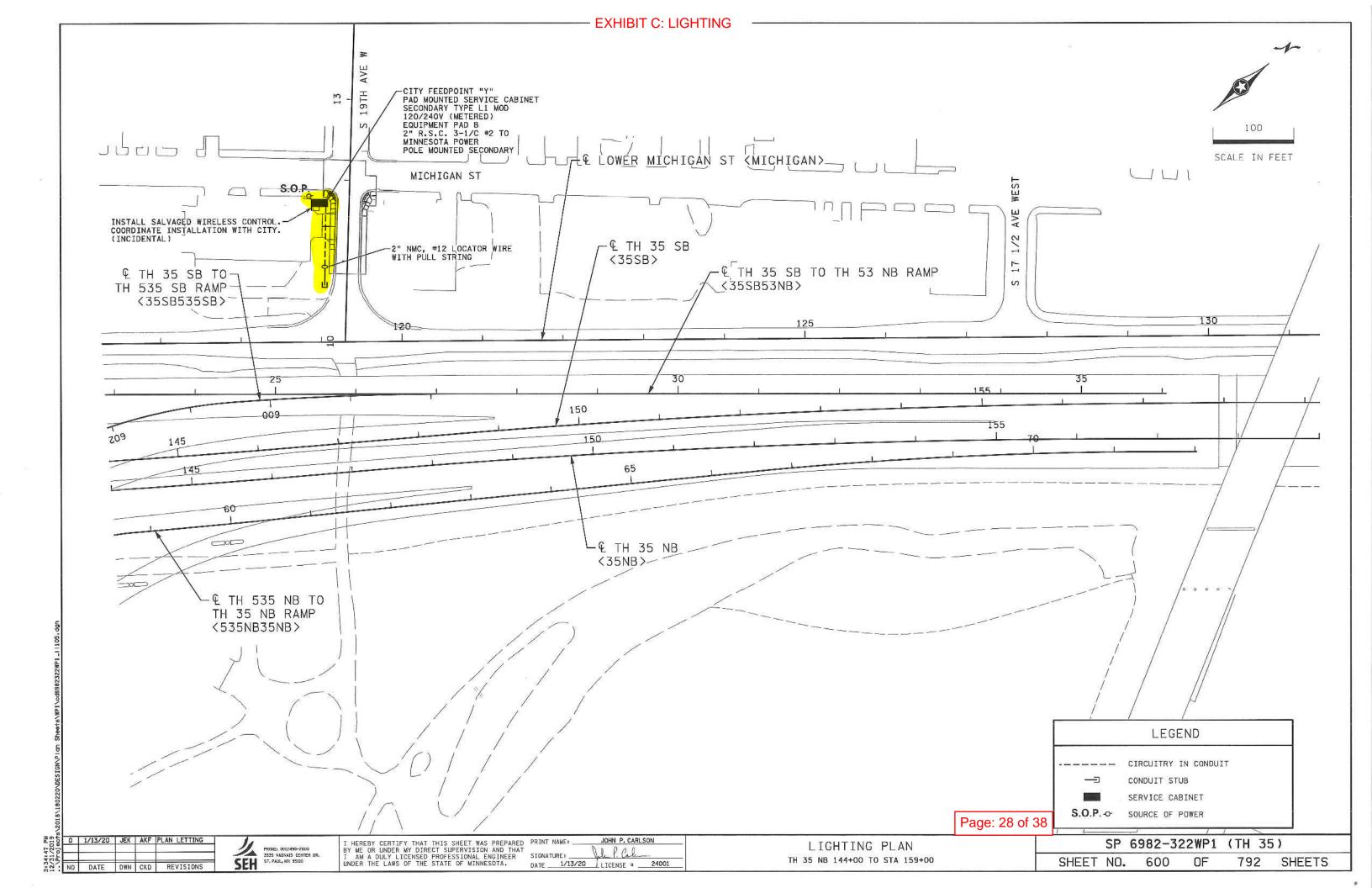


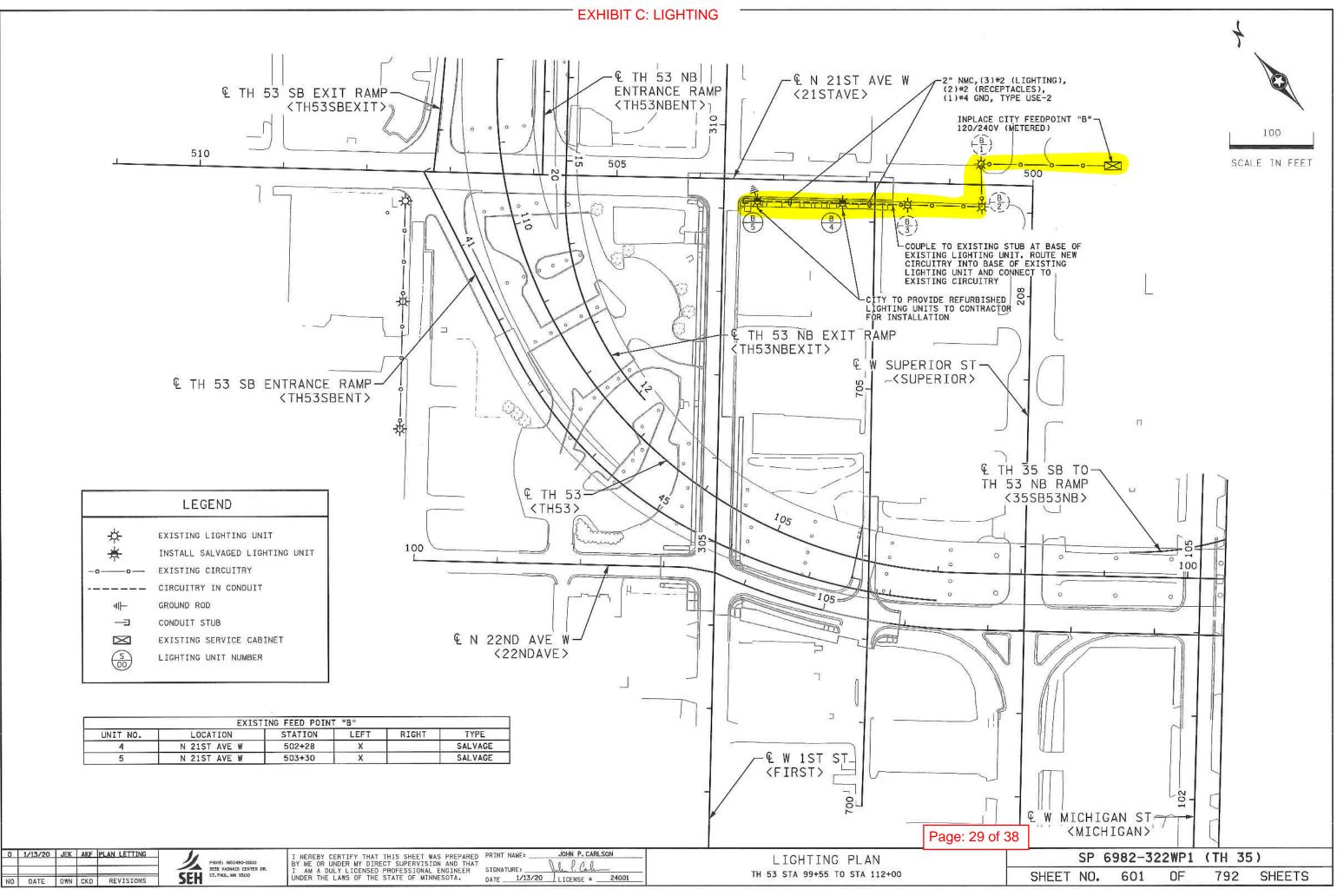
EXHIBIT C: LIGHTING OWNERSHIP AND MAINTENANCE RESPONSIBILITY

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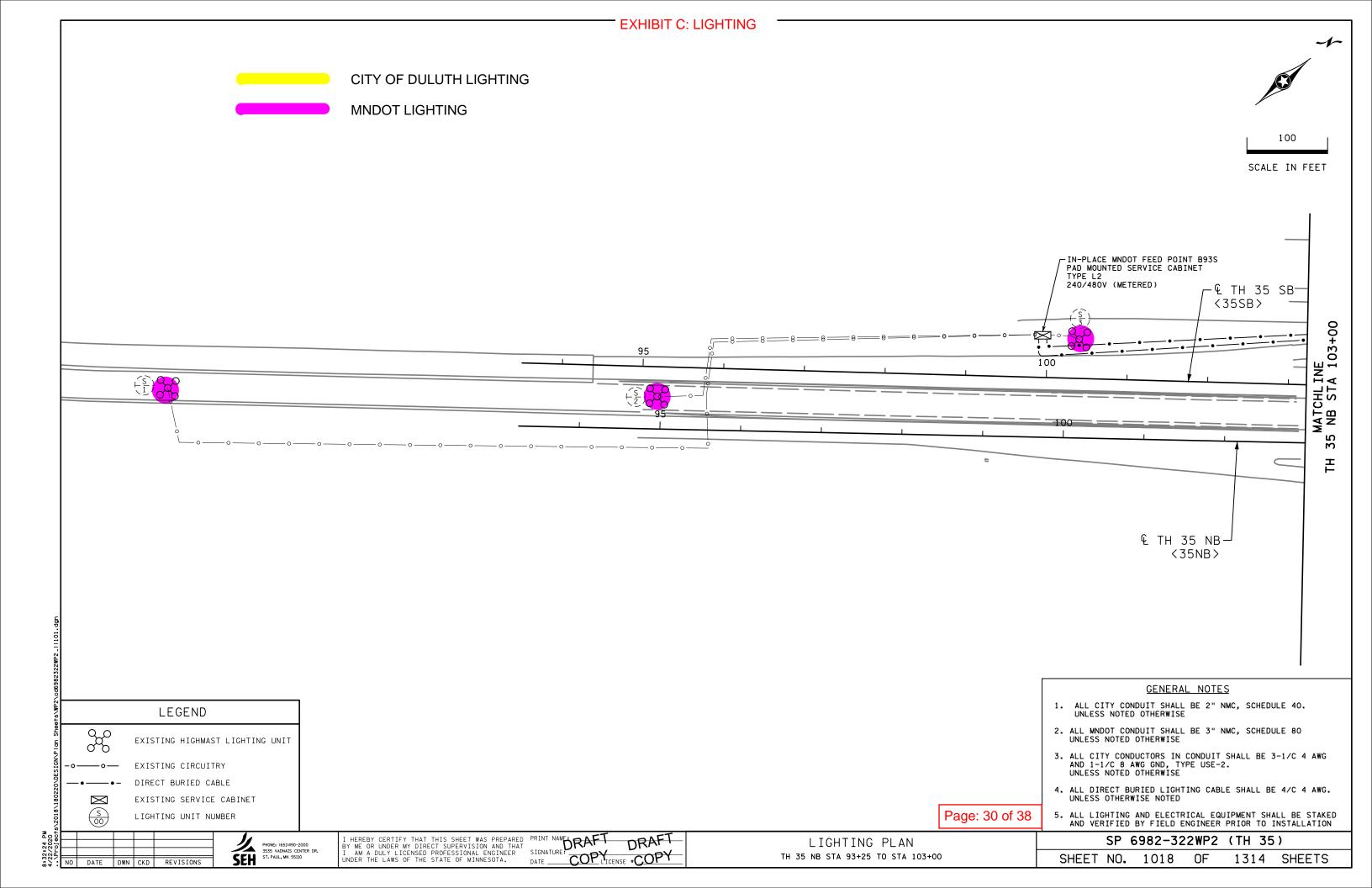


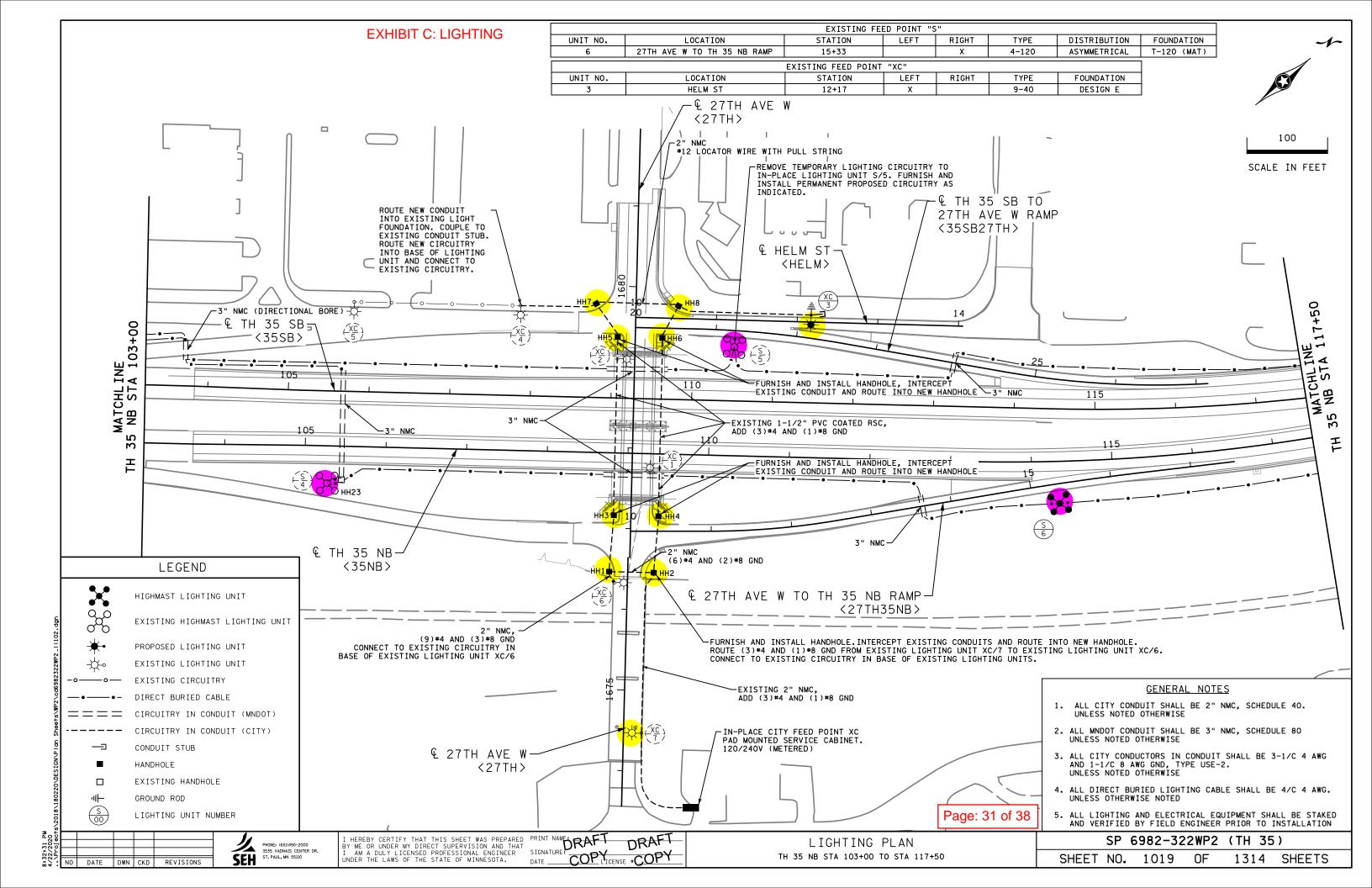


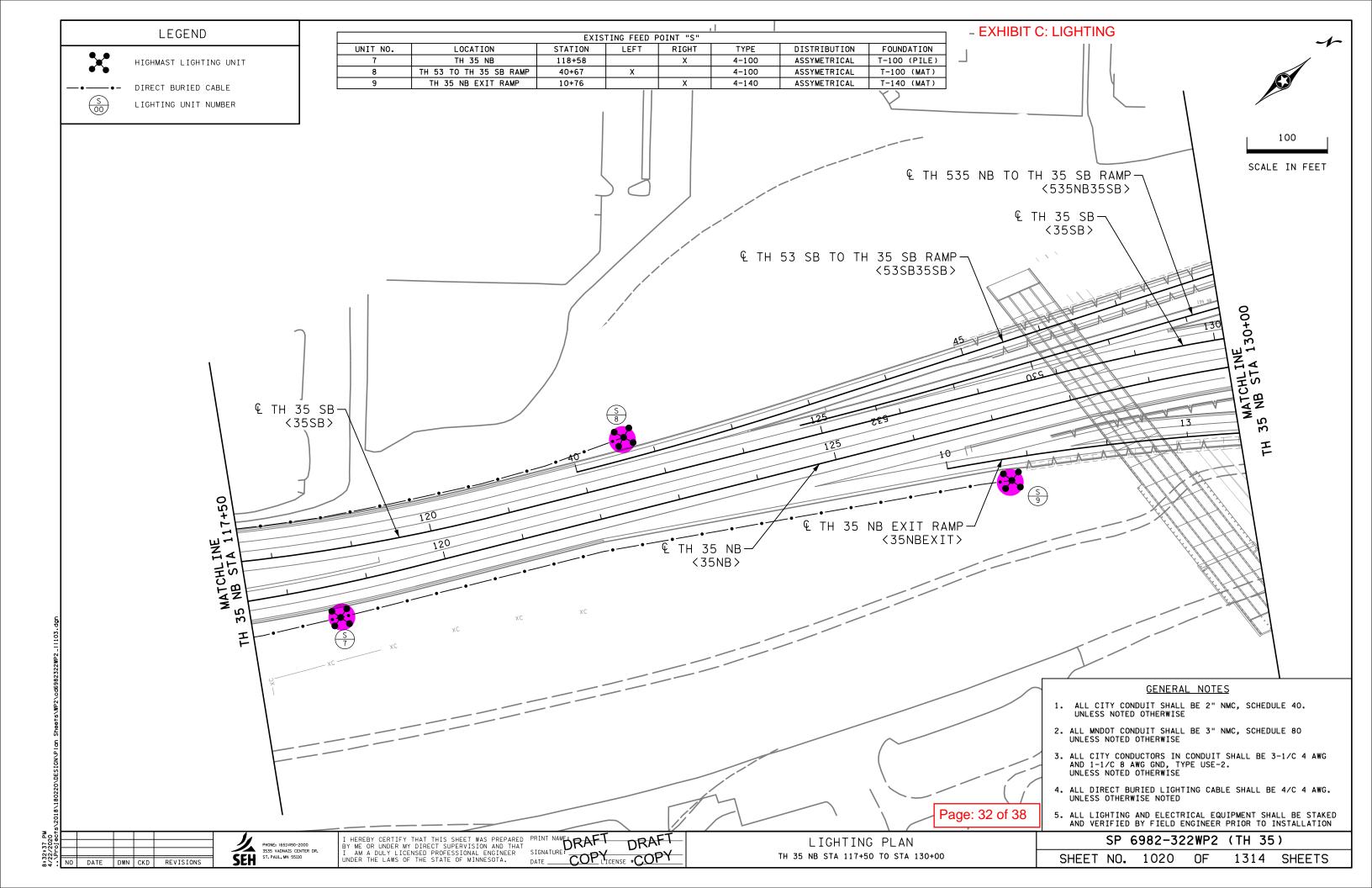


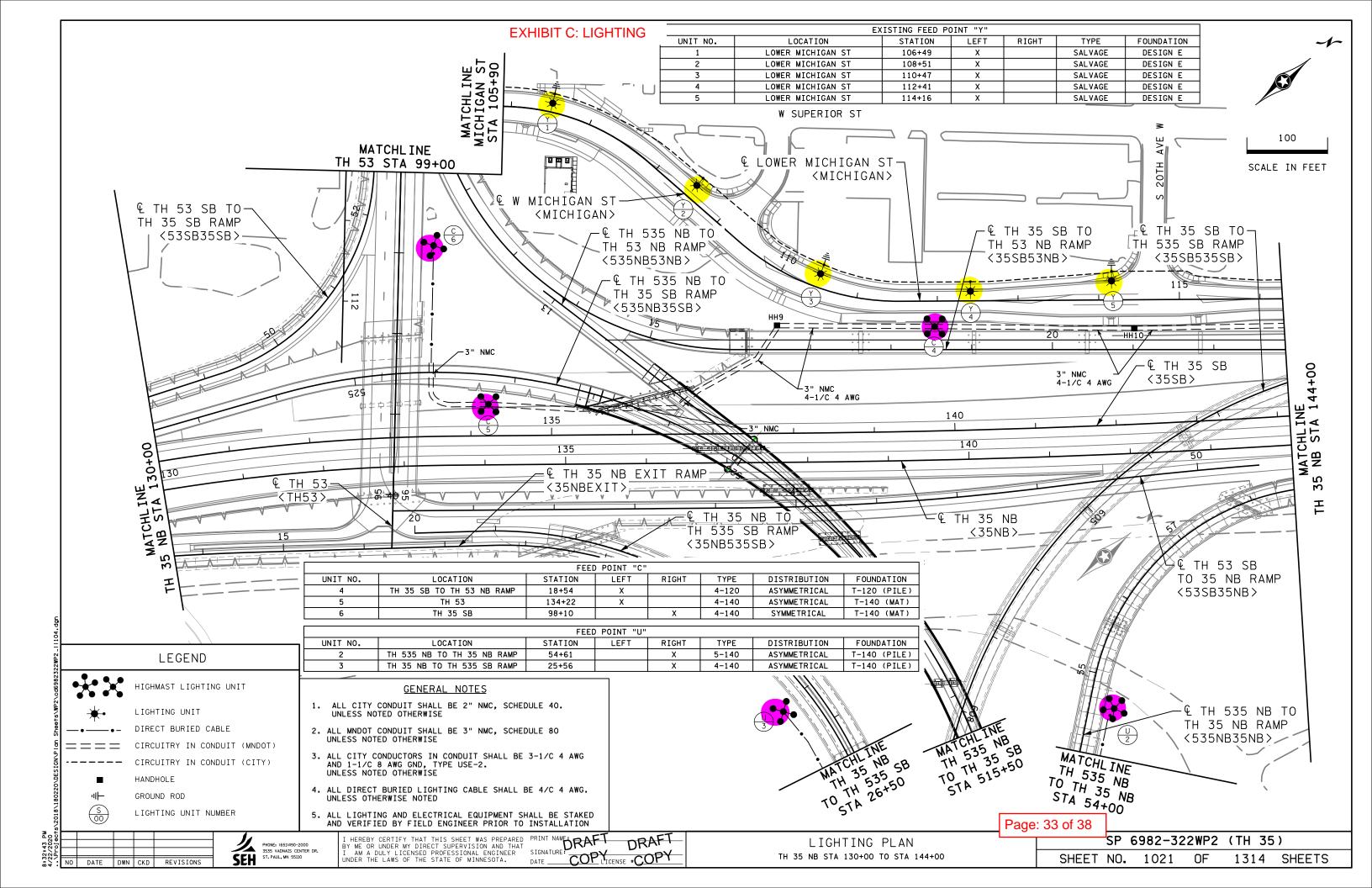
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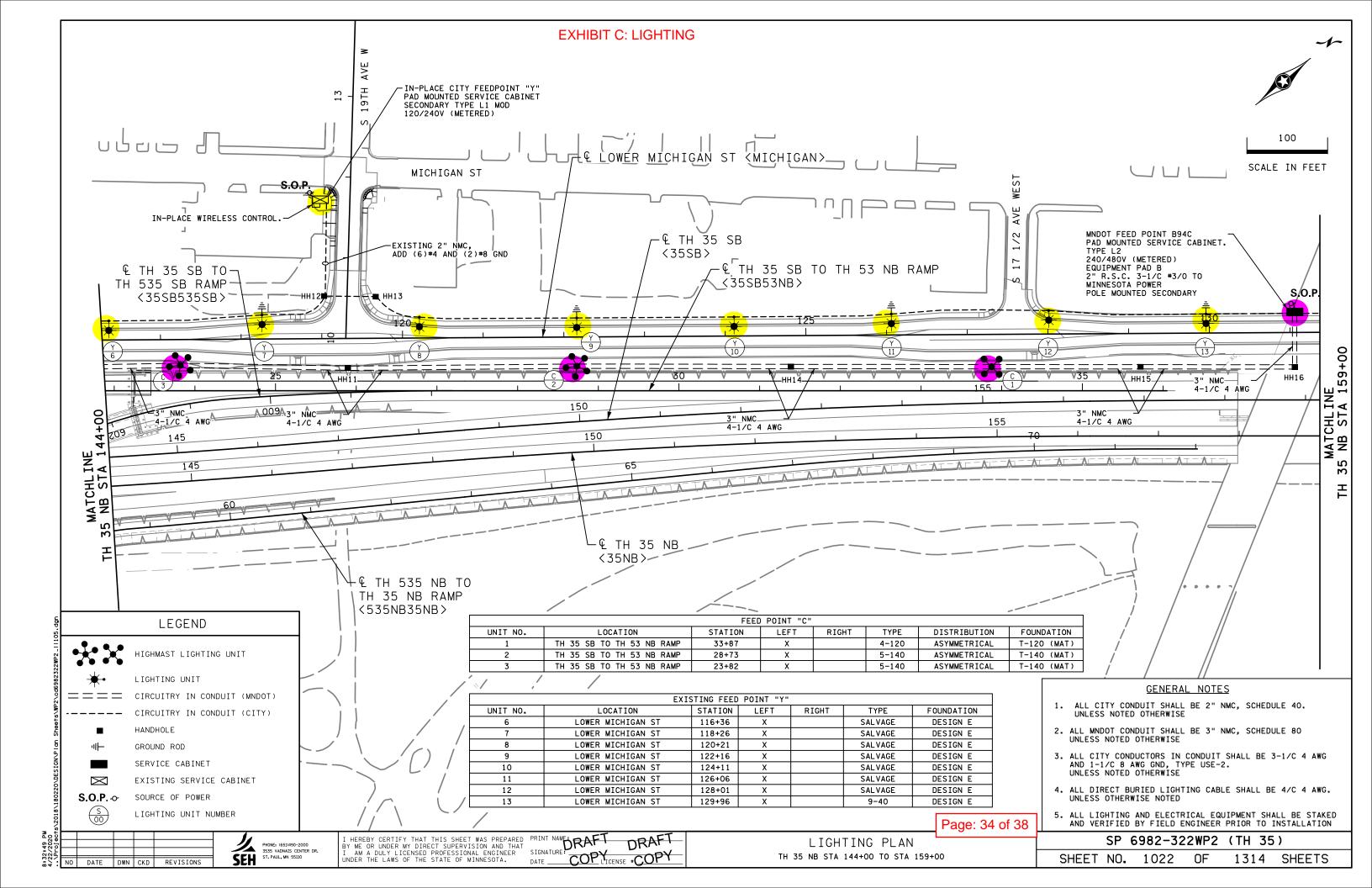
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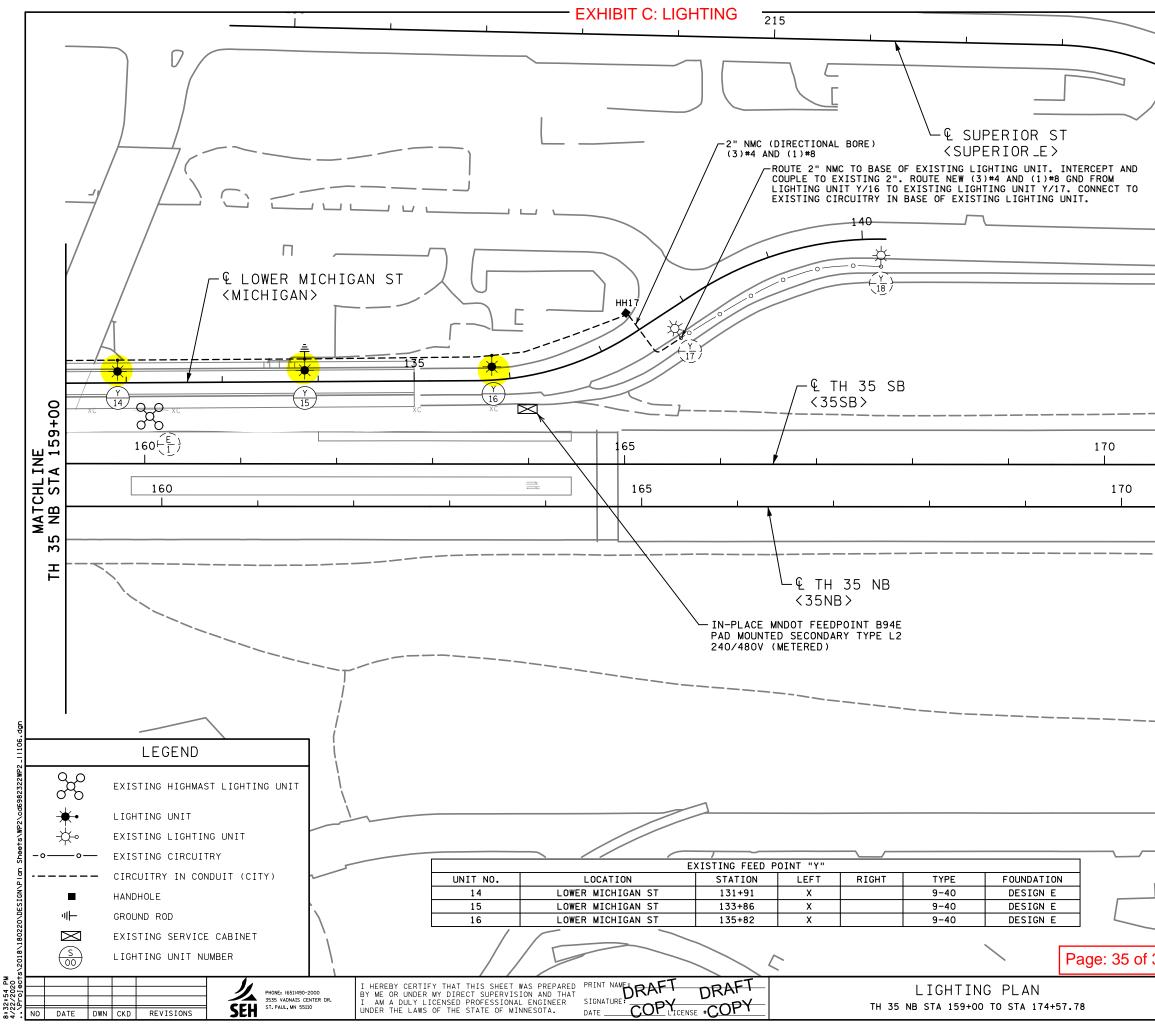




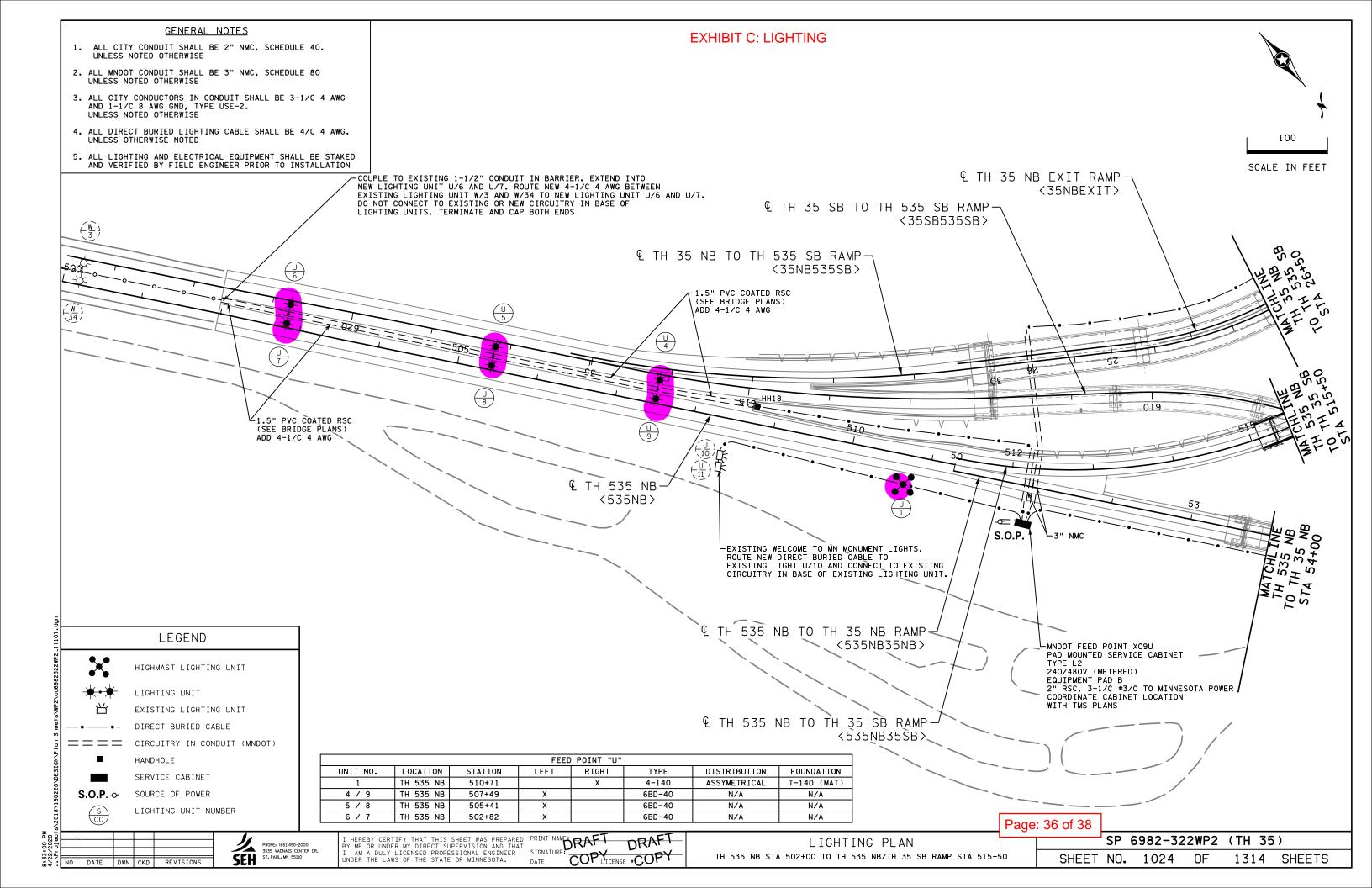


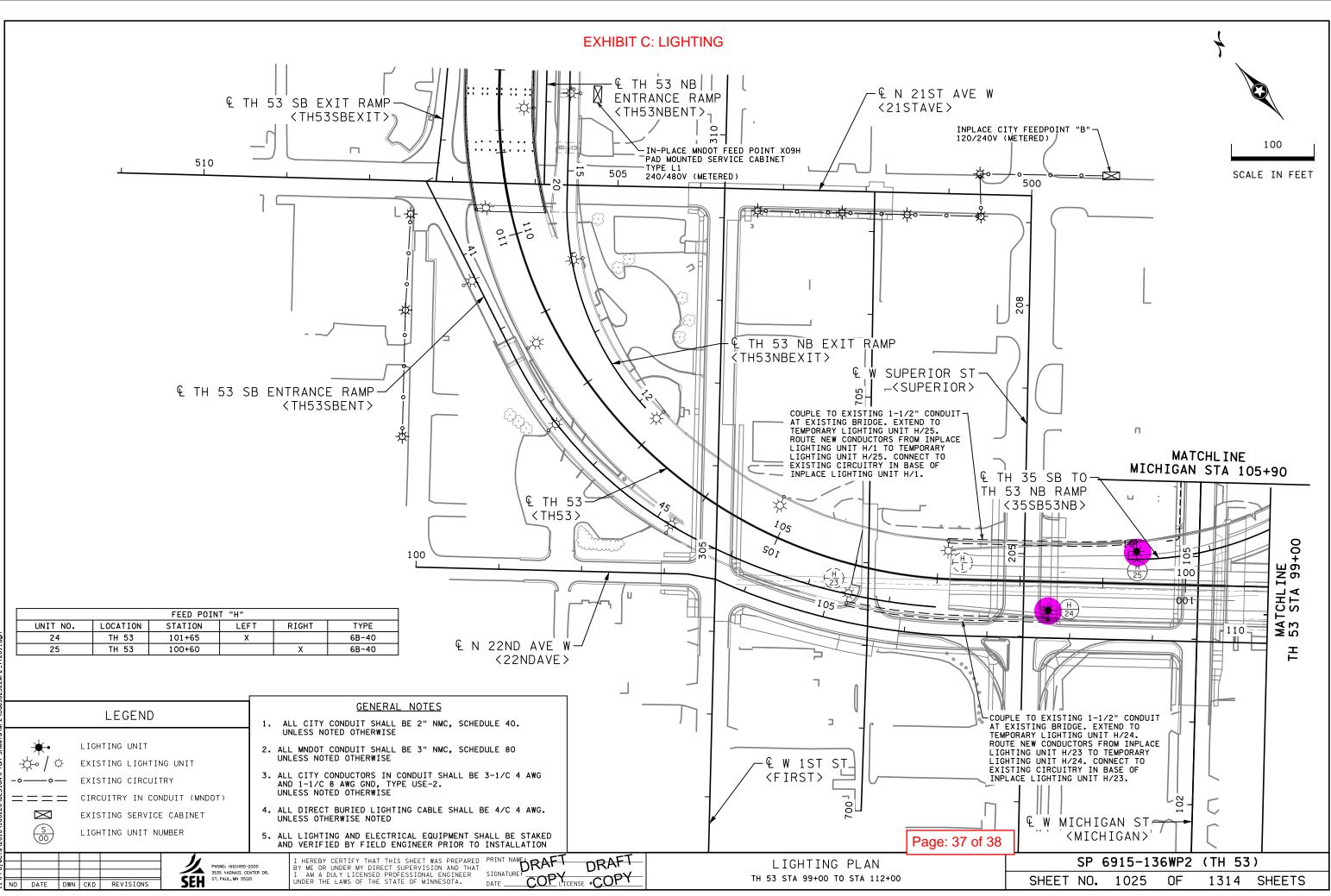






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	GENERAL NOTES 1. ALL CITY CONDUIT SHALL BE 2" NMC, SCHEDULE 40.
	UNLESS NOTED OTHERWISE 2. ALL MNDOT CONDUIT SHALL BE 3" NMC, SCHEDULE 80
	UNLESS NOTED OTHERWISE
	3. ALL CITY CONDUCTORS IN CONDUIT SHALL BE 3-1/C 4 AWG AND 1-1/C 8 AWG GND, TYPE USE-2. UNLESS NOTED OTHERWISE
	4. ALL DIRECT BURIED LIGHTING CABLE SHALL BE 4/C 4 AWG. UNLESS OTHERWISE NOTED
38	5. ALL LIGHTING AND ELECTRICAL EQUIPMENT SHALL BE STAKED AND VERIFIED BY FIELD ENGINEER PRIOR TO INSTALLATION
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