

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

LIMITED USE PERMIT

C.S. 6925 (T.H. 61)
County of St. Louis
LUP # 6925-0084
Permittee: City of Duluth
Expiration Date: 03/05/2036
Coop./Const. Agmt #NA

In accordance with Minnesota Statutes Section 161.434, the State of Minnesota, through its Commissioner of Transportation, ("MnDOT"), hereby grants a Limited Use Permit (the "LUP") to City of Duluth, ("Permittee"), to use the area within the right of way of Trunk Highway No. 61 as shown in red on Exhibit "A", (the "Area") attached hereto and incorporated herein by reference. This Limited Use Permit is executed by the Permittee pursuant to resolution, a certified copy of which is attached hereto as Exhibit B.

Non-Motorized Trail

The Permittee's use of the Area is limited to only the constructing, maintaining and operating a non-motorized trail ("Facility") and the use thereof may be further limited by the Code of Federal Regulations, including, but not limited to 23 C.F.R. 217 also published as the Federal-Aid Policy Guide.

Final execution of this LUP is subject to review and concurrence by the Federal Highway Administration (FHWA). Should such concurrence by FHWA be denied or rescinded, this LUP shall be subject to cancellation as set forth in Section 1.

In addition, the following special provisions shall apply:

SPECIAL PROVISIONS

1. **TERM.** This LUP terminates at 11:59PM on 03/05/2036 ("Expiration Date") subject to the right of cancellation by MnDOT, with or without cause, by giving the Permittee ninety (90) days written notice of such cancellation. This LUP will not be renewed except as provided below.

Provided this LUP has not expired or terminated, MnDOT may renew this LUP for a period of up to ten (10) years, provided Permittee delivers to MnDOT, not later than ninety (90) days prior to

the Expiration Date, a written request to extend the term. Any extension of the LUP term will be under the same terms and conditions in this LUP, provided:

- (a) At the time of renewal, MnDOT will review the Facility and Area to ensure the Facility and Area are compatible with the safe and efficient operation of the highway and the Facility and Area are in good condition and repair. If, in MnDOT's sole determination, modifications and repairs to the Facility and Area are needed, Permittee will perform such work as outlined in writing in an amendment of this LUP; and
- (b) Permittee will provide to MnDOT a certified copy of the resolution from the applicable governmental body authorizing the Permittee's use of the Facility and Area for the additional term.

If Permittee's written request to extend the term is not timely given, the LUP will expire on the Expiration Date.

Permittee hereby voluntarily releases and waives any and all claims and causes of action for damages, costs, expenses, losses, fees and compensation arising from or related to any cancellation or termination of this LUP by MnDOT. Permittee agrees that it will not make or assert any claims for damages, costs, expenses, losses, fees and compensation based upon the existence, cancellation or termination of the LUP. Permittee agrees not to sue or institute any legal action against MnDOT based upon any of the claims released in this paragraph.

2. **REMOVAL.** Upon the Expiration Date or earlier termination, at the Permittee's sole cost and expense Permittee will:

- (a) Remove the Facility and restore the Area to a condition satisfactory to the MnDOT District Engineer; and
- (b) Surrender possession of the Area to MnDOT.

If, without MnDOT's written consent, Permittee continues to occupy the Area after the Expiration Date or earlier termination, Permittee will remain subject to all conditions, provisions, and obligations of this LUP, and further, Permittee will pay all costs and expenses, including attorney's fees, in any action brought by MnDOT to remove the Facility and the Permittee from the Area.

3. **CONSTRUCTION.** The construction, maintenance, and supervision of the Facility shall be at no cost or expense to MnDOT.

Before construction of any kind, the plans for such construction shall be approved in writing by the MnDOT's District Engineer. Approval in writing from MnDOT District Engineer shall be required for any changes from the approved plan.

The Permittee will construct the Facility at the location shown in the attached Exhibit "A", and in accordance with MnDOT-approved plans and specifications. Further, Permittee will construct

the Facility using construction procedures compatible with the safe and efficient operation of the highway.

Upon completion of the construction of the Facility, the Permittee shall restore all disturbed slopes and ditches in such manner that drainage, erosion control and aesthetics are perpetuated.

The Permittee shall preserve and protect all utilities located on the lands covered by this LUP at no expense to MnDOT and it shall be the responsibility of the Permittee to call the Gopher State One Call System at 1-800-252-1166 at least forty-eight (48) hours prior to performing any excavation.

Any crossings of the Facility over the trunk highway shall be perpendicular to the centerline of the highway and shall provide and ensure reasonable and adequate stopping sight distance.

4. MAINTENANCE. Any and all maintenance of the Facility shall be provided by the Permittee at its sole cost and expense, including, but not limited to, plowing and removal of snow and installation and removal of regulatory signs. No signs shall be placed on any MnDOT or other governmental agency sign post within the Area. MnDOT will not mark obstacles for users on trunk highway right of way.
5. USE. Other than as identified and approved by MnDOT, no permanent structures or no advertising devices in any manner, form or size shall be allowed on the Area. No commercial activities shall be allowed to operate upon the Area.

Any use permitted by this LUP shall remain subordinate to the right of MnDOT to use the property for highway and transportation purposes. This LUP does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge. No rights to relocation benefits are established by this LUP.

This LUP is non-exclusive and is granted subject to the rights of others, including, but not limited to public utilities which may occupy the Area.

6. APPLICABLE LAWS. This LUP does not release the Permittee from any liability or obligation imposed by federal law, Minnesota Statutes, local ordinances, or other agency regulations relating thereto and any necessary permits relating thereto shall be applied for and obtained by the Permittee.

Permittee at its sole cost and expense, agrees to comply with, and provide and maintain the Area, Facilities in compliance with all applicable laws, rules, ordinances and regulations issued by any federal, state or local political subdivision having jurisdiction and authority in connection with said Area including the Americans with Disabilities Act ("ADA"). If the Area and Facilities are not in compliance with the ADA or other applicable laws MnDOT may enter the Area and perform such obligation without liability to Permittee for any loss or damage to Permittee thereby

incurred, and Permittee shall reimburse MnDOT for the cost thereof, plus 10% of such cost for overhead and supervision within thirty (30) days of receipt of MnDOT's invoice.

7. **CIVIL RIGHTS.** The Permittee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event improvements are constructed, maintained, or otherwise operated on the Property described in this Limited Use Permit for a purpose for which a MnDOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Permittee will maintain and operate such improvements and services in compliance with all requirements imposed by the Acts and Regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation, Federal Highway Administration, (as may be amended) such that no person on the grounds of race, color, national origin, sex, age, disability, income-level, or limited English proficiency will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said improvements.
8. **SAFETY.** MnDOT shall retain the right to limit and/or restrict any activity, including the parking of vehicles and assemblage of Facility users, on the highway right of way over which this LUP is granted, so as to maintain the safety of both the motoring public and Facility users.
9. **ASSIGNMENT.** No assignment of this LUP is allowed.
10. **IN WRITING.** Except for those which are set forth in this LUP, no representations, warranties, or agreements have been made by MnDOT or Permittee to one another with respect to this LUP.
11. **ENVIRONMENTAL.** The Permittee shall 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 Permittee shall notify in writing MnDOT's District Engineer and shall provide for cleanup of the spilled material and of materials contaminated by the spillage in accordance with all applicable federal, state and local laws and regulations, at the sole expense of the Permittee.
12. **MECHANIC'S LIENS.** The Permittee (for itself, its contractors, subcontractors, its materialmen, and all other persons acting for, through or under it or any of them), covenants that no laborers', mechanics', or materialmens' liens or other liens or claims of any kind whatsoever shall be filed or maintained by it or by any subcontractor, materialmen or other person or persons acting for, through or under it or any of them against the work and/or against said lands, for or on account of any work done or materials furnished by it or any of them under any agreement or any amendment or supplement thereto.
13. **NOTICES.** All notices which may be given, by either party to the other, will be deemed to have been fully given when served personally on MnDOT or Permittee or when made in writing addressed as follows:

to Permittee at:

1532 West Michigan Street
Duluth, MN 55806-1101

and to MnDOT at:

State of Minnesota
Department of Transportation
District 1 Right of Way
1123 Mesaba Avenue
Duluth, MN 55811

The address to which notices are mailed may be changed by written notice given by either party to the other.

14. **INDEMNIFICATION AND RELEASE.** Permittee shall indemnify, defend to the extent authorized by the Minnesota Attorney General's Office, hold harmless and release the State of Minnesota, its Commissioner of Transportation, employees, the FHWA, and any successors and assigns of the foregoing, from and against all claims, demands, and causes of action for injury to or death of persons or loss of or damage to property (including Permittee's property) occurring on the Area and Facility or arising out of or associated with Permittee's use and occupancy of the Area and Facility, regardless of whether such injury, death, loss, or damage (i) is caused in part by the negligence (but not the gross negligence or willful misconduct) of MnDOT or (ii) is deemed to be the responsibility of MnDOT because of its failure to supervise, inspect, or control the operations of Permittee or otherwise discover or prevent actions or operations of Permittee giving rise to liability to any person. Nothing in this LUP shall obligate Permittee to indemnify or save MnDOT harmless from (a) any gross negligence or willful misconduct of MnDOT or its employees, contractors, agents, or anyone for whom MnDOT is legally responsible, or (b) any claims, demands or causes of action not arising out of or associated with Permittee's occupancy or use of the Area and Facility.

Permittee hereby releases the State of Minnesota, its Commissioner of Transportation, employees, the FHWA, and any successors and assigns of the foregoing, from and against all claims, demands, suits, losses, costs, expenses, and causes of action for loss of or damages to the Area and Facility or to Permittee's property on or about the Area and Facility, except when such loss or damage is caused solely by the negligence of MnDOT or its employees, contractors, agents, or anyone for whom MnDOT is legally responsible.

MnDOT's liability is subject to the Minnesota Tort Claims Act, Minn. Stat. §3.736 and other applicable law.

MINNESOTA DEPARTMENT
OF TRANSPORTATION
RECOMMENDED FOR APPROVAL
By: _____
District Engineer

Date: _____

APPROVED BY:
COMMISSIONER OF TRANSPORTATION

By: _____
Director, Office of Land Management

Date: _____

CITY OF DULUTH

By: _____
Mayor

Attested: _____
City Clerk

Date: _____

Approved as to form:

City Attorney

Countersigned:

Auditor

The Commissioner of Transportation
by the execution of this permit
certifies that this permit is
necessary in the public interest
and that the use intended is for
public purposes.

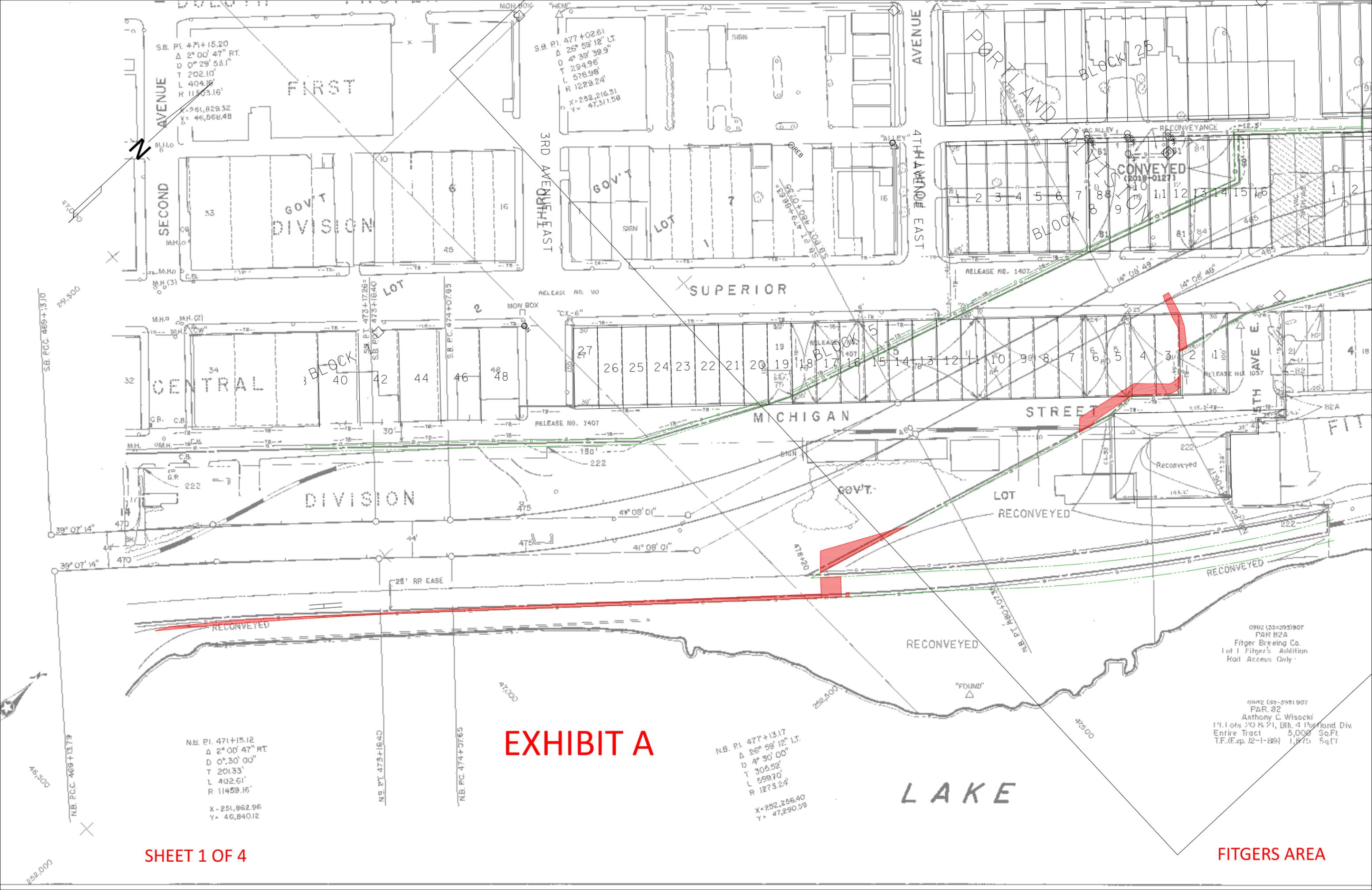


EXHIBIT A

S.B. P.I. 471+15.20
Δ 2° 00' 47" RT.
D 0° 29' 53.1"
T 202.10'
L 404.16'
R 11503.16'
X=251,828.32
Y= 46,868.48

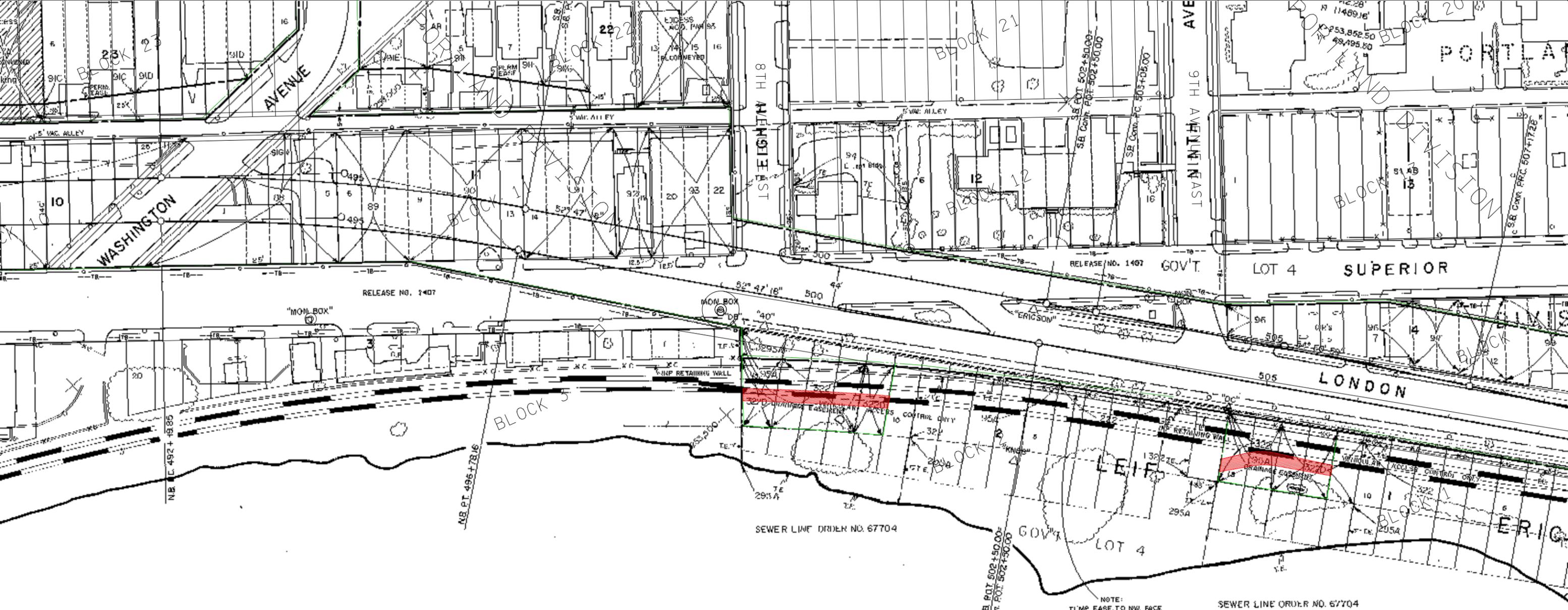
S.B. P.I. 477+02.61
Δ 26° 58' 12" LT.
D 4° 38' 38.9"
T 294.96'
L 578.98'
R 1229.24'
X=252,216.51
Y= 47,311.98

S.B. P.I. 473+17.26=
S.B. P.I. 473+16.40
S.B. P.C. 474+07.95

N.B. P.I. 477+13.17
Δ 26° 58' 12" LT.
D 4° 30' 00"
T 305.52'
L 599.70'
R 1273.24'
X=252,256.40
Y= 47,290.03

0902 (35-393)907
PAR B2A
Fitzger Brewing Co.
Lot 1 Fitzgers Addition
Rail Access Only

0902 (35-393)907
PAR B2
Anthony C. Wisocki
Entire Tract 5,000 Sq.Ft.
T.E.(Exp. 12-1-89) 1,875 Sq.Ft.



6982 (35-395) 907
PORTLAND DIVISION

LOT	BLK.	EX. TRACT	Sq. Ft.	PLAT	DATE	REMARKS
5	5	3000	150	2850	108 S.1	
5	5	3000	3000	None		
5	5	5400	5400	None		
5	5	14600	14600	None		
5	5	4875	4875	None		
5	5	43625	43625	None		
5	5	37240	37240	None		
9	9	3500	5500	None		
9	9	21000	21000	None		
9	9	55090	55090	None		
11	11	19296	19296	None		
11	11	10500	10500	None		
11	11	17500	17500	None		
11	11	14,000	14,000	None		
11	11	5250	5250	None		
11	11	26250	12250	EXCESS		
12	12	17500	1625	15875	61.118	
14	14	10200	10200	None		
14	14	3800	3800	None		
14	14	4300	4300	None		
14	14	10100	10100	None		

MB. Pl. 494+84.67
 Δ 11° 38' 57" RT.
 D 3° 00' 00"
 T 194.82'
 L 388.31'
 R 1909.86'
 X = 253,080.55
 Y = 48,838.87

RECONVEYANCE BY QCD DATED 3/8/1999 1250 SQ. FT.
CONVEYANCE BY QCD DATED 7-11-2019 (2018-0127) 17,171 SQ. FT.

Excess Acq. Order No. 63645 Reconveyance O.C.D. B-28 109
 (Exp. 12-1-87)

T.F. 61.118
 Vehicular Access Control Only

6987 (35-395) 907
 PAR 295A
 City of Duluth
 Pt. Lots 1-15, Blk. 1 } Portland Division
 Pt. Lots 1-15, Blk. 2 }
 Pt. Gov't. Lots 384 Sec. 23-50-14
 T.E. (Exp. 12-1-87) 19561 Sq. Ft. (Platted)
 T.E. (Exp. 12-1-87) 0.12 Ac. (Unplatted)

6987 (35-395) 907
 PAR 322 (Phase)
 Burlington Northern R/R Co.
 Pt. Lots 1-10, 1485, Blk. 1 } Portland Division
 Pt. Lots 1-10, 12-14, Blk. 2 }
 Pt. Gov't. Lots 384 Sec. 23-50-14
 Drainage Easement 11254 Sq. Ft.
 T.E. (Exp. 12-1-87) 5695 Sq. Ft. (Platted)
 T.E. (Exp. 12-1-87) 0.01 Ac. (Unplatted)

6982 (35-395) 907
PORTLAND DIVISION

PAR.	OWNER	LOT	BLK.	ENTIRE TRACT	AREA (sq. ft.)	BAL.	EASE ELEV.
91A	SBS Enterprises, Inc.	3-7	24	17,500	1,250	17,500	666.0
91B	Whinn Realty Company	8-16	24	35,007	3,250	35,007	666.0
91C	DK Auto Parts, Inc.	8-9	24	14,000	2,500	14,000	660.0
91D	National Life Insurance Co.	10-16	23	19,750	3,638	19,750	660.0
91E	NSJ Enterprises, Inc.	1-3	22	7,475	5,175	7,475	660.0
91F	Robert G. Johnson	4-8	22	17,188	4,911	17,188	660.0
91G	JASIX KA-1 Co.	9-10	22	7,000	1,214	7,000	650.0

RETAINING WALL ORDER NO. 70660

NOTE:
 TLMP EASE TO NW FACE
 OF INPLACE WALL DOES
 NOT INCLUDE WALL.

For Caption on Par 222 see File No. 180 IOC

6982 (35-395) 907
PORTLAND DIVISION

PAR.	OWNER	LOT	BLK.	Drain. Area Sq. Ft.	T.E. (Exp. 12-1-87) Sq. Ft.
322D	Duluth, Missabe & Iron Range R.R.	Pt. Lots 1-13 (1-10 & 11 & 15)	1	7400	4575

EXHIBIT A

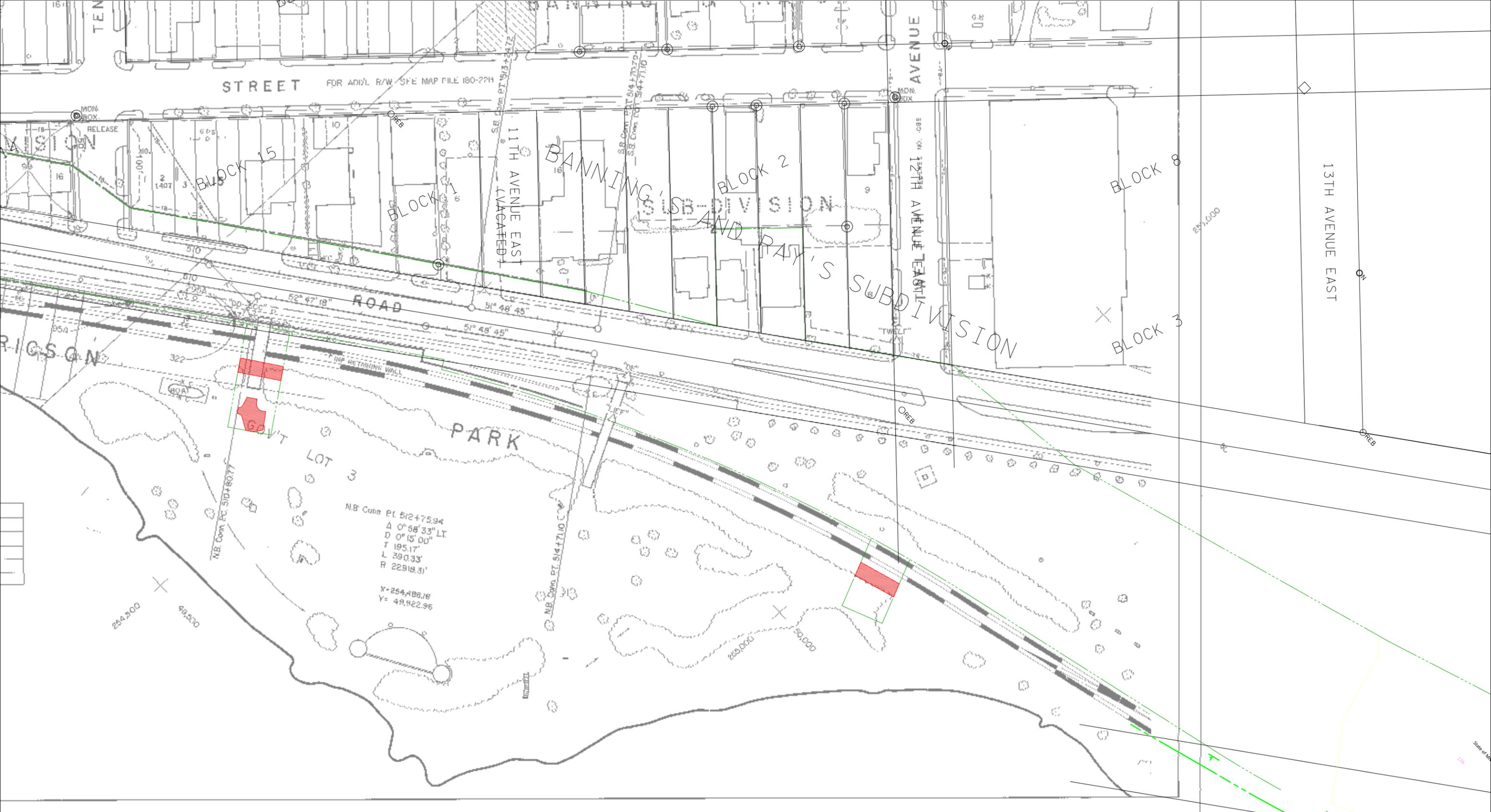


EXHIBIT A

