

UNIVERSITY OF MINNESOTA

Temporary Construction Agreement Bridge No. 9 Pier 3 Repairs

This Temporary Construction Agreement ("Agreement") is entered into on the date of last signature below by and between Regents of the University of Minnesota, a Minnesota constitutional corporation ("Grantor") and the City of Minneapolis, a Minnesota home rule charter city ("Grantee").

WHEREAS, Grantor is the owner of certain real property in Government Lot 4 of Section 23, Township 29, Range 24; Government Lots 1 and 2 of Section 24, Township 29, Range 24; and parts of Lots 13 and 14 of "Auditor's Subdivision No. 44, Hennepin County Minnesota", all in the City of Minneapolis, Minnesota ("Grantor's Property").

WHEREAS, Grantee desires to obtain from Grantor a temporary construction easement over and across a portion of Grantor's Property.

WHEREAS, Grantor agrees to grant to Grantee an easement under the terms and conditions set forth below.

NOW, THEREFORE, the parties agree as follows:

1. Grant of Easements.

1.1 Grantor grants to Grantee a temporary easement over and across that portion of Grantor's Property shown and legally described in Exhibit A as "Temporary Easement Tract A" (the "Easement Area") for temporary construction purposes of repair and rehabilitation of Pier No. 3 and related work to Bridge No. 9 (the "Grantee's Work").

1.2 Grantor also grants to Grantee a temporary access easement over and across that portion of Grantor's Property presently used for access from Sixth Avenue SE to the Grantee's Dredge Storage Site D Tract (as the Site D Tract is described in Hennepin County Recorder Document No, 5002993), and access across Grantee's Site D Tract to Grantee's right of way of Bridge No. 9. The centerline of the temporary access easement is generally shown and described on Exhibit A as "Temporary Access Easement Centerline" and the easement shall have a varying easement width equal to that of the present access road, but in no case less than 11 feet wide (the "Temporary Access Easement Area"). .

1.3 The Easement Area and Temporary Access Easement Area is subject to: (a) any and all existing restrictions, covenants, easements, licenses, permits, leases and other encumbrances relating to the Easement Area; (b) all applicable federal, state, and local laws,

regulations, ordinances, rules, and requirements; and (c) applicable Grantor ordinances, policies, procedures, and rules.

a. Grantee's use of the Easement Area and Temporary Access Easement Area is also subject to contractual administrative and security requirements of the Adolfson & Peterson Construction Inc. (the "Grantor's Contractor"), previously authorized by Grantor to construct various improvements to and near the Grantor's Old Main Steam Plant and to occupy and control areas including the Easement Area and Temporary Access Easement Area. Grantee and its contractors shall cooperate to the fullest extent possible with Grantor's Contractor in the design, scheduling and execution of Grantee's Work and as specifically directed by this Agreement. Notwithstanding the good faith effort and obligations required of the Grantee to cooperate with the Grantor's Contractor, it will solely be the Grantor's responsibility to administer its contractual relationship with the Grantor's Contractor relative to this Agreement and any subsequent changes to that contractual relationship necessitated by the Grantee's Work which cannot be directly resolved through good faith cooperation or enforcement of the terms of this Agreement. The Grantor's Contractor is not a party to this Agreement.

1.4 Grantor acknowledges Grantee's existing rights in its right of way for Bridge No. 9 acquired from Burlington Northern Railroad Company, recorded November 14, 1986 in County Document No. 5185779 (Bridge No. 9 Property). Grantor further acknowledges its use of Grantee's Bridge No. 9 Property for steam line piping and other uses related to Grantor's utilities is subject to the Grantor's rights and obligations to operate, maintain and repair the bridge. Therefore:

a. The Grantor agrees to temporarily relocate, at its cost, its steam line piping, steam line riser structure and permanently remove such other structures within Grantee's Bridge No. 9 Property as necessary for completion of Grantee's Work and future repairs to Bridge No 9.

b. Grantor and Grantee shall mutually develop a plan for permanent and temporary relocation of Grantor's facilities that reasonably meets the needs of both Grantor and Grantee. At a minimum, Grantor shall temporarily or permanently relocate its steam facilities in a manner so as not to unreasonably restrict excavation by Grantee's contractor on the east side of Pier Three, and Grantee will, as may be mutually agreed, integrate into its construction contract(s) to the fullest extent practical the protection of Grantor's permanent or relocated temporary steam facilities that are to remain in place and in service during the Grantee's Work together with the demolition of those underground portions of Grantor's steam facilities (and excluding steam riser structure) that are to be abandoned but remain within the area to be excavated for the Grantee's Work.

c. Agreeing not to delay approval and implementation of this Agreement, but recognizing the indeterminate location of certain boundaries within the Project area and the need for the Grantor and Grantee to more fully define and document their long term interests in their facilities in the project area; Grantee and Grantor agree that concurrent

with Grantee's Work, but not more than 12 months later than the execution date of this Agreement, Grantor and Grantee will prepare and execute separate agreement(s) that:

- 1) accurately maps, describes, acknowledges and monuments the location of the Bridge No. 9 Property and the location of any existing appurtenant uses of that right of way by the Grantor;
- 2) describes and gives a license to the Grantor for continuation of its existing uses and any new and mutually agreed uses on the Bridge No. 9 Property, subject to the Grantee's on-going need and obligation to efficiently, safely and cost-effectively operate, maintain and repair the bridge; and
- 3) provides a permanent access easement to the Grantee across a limited and described portion of the Grantor's Property for access to bridge for operation, maintenance and repair of bridge, including foundations, super-structure and sub-structure, but subject to restoration of Grantor's Property damaged by such access by Grantee.

1.5 Grantee acknowledges commitments made by Grantor to Grantor's Contractor and hereby authorizes Grantor and its contractors to temporarily use and occupy that portion of Bridge No. 9 Property lying between Pier Three and Pier Two as a surface staging and construction storage area appurtenant to Grantor's improvements to the Old Main Steam Plant. Such temporary use and occupancy shall not restrict or interfere with Grantee's or Grantee's contractor(s) use of the Bridge No. 9 property except as explicitly described in this Agreement, nor shall such temporary use and occupancy modify, damage, imperil, or in any manner adversely affect the bridge or any part thereof or the operation, maintenance or repair of the bridge. Except for restoration of its steam line facilities and any other existing utilities, no permanent modifications or improvements will be made by the Grantor within the Bridge No. 9 Property except as Grantor and Grantee may agree in accordance with Section 1.4.c.

1.6 Grantor acknowledges that Grantee and others own or control portions of the Temporary Access Easement Area. Grantor has a need to better define and document ownership and other usage rights within the Temporary Access Easement Area and Grantee agrees to cooperate and assist Grantor in addressing its needs in that area.

- a. Agreeing not to delay approval and implementation of this Agreement, but recognizing the need for the Grantor and Grantee to more fully define and document their long term interests in their facilities in the Temporary Access Easement Area and adjacent areas as well as the indeterminate location of certain boundaries within those areas; Grantee and Grantor agree that concurrent with Grantee's Work, but not more than 18 months later than the execution date of this Agreement, Grantor and Grantee will prepare such separate documents or agreements as may be mutually agreed to address their needs in the Temporary Access Easement Area. Except as the parties may subsequently agree, the cost of developing such separate documents or agreements shall be borne by each party for the property which it owns.

2. Term. The Agreement shall be effective on January 1, 2014, and end upon the later of the completion of the Grantee's Work or the completion of Grantor's Contractor's occupancy of Bridge No. 9 Property for Old Main Steam Plant improvements (the "Term"). The Agreement will be subject to such additional interim milestones as set forth elsewhere in this Agreement.

3. Fee. The fee for this easement is \$1.00, which is due and payable upon submittal of signed temporary easement. Grantee shall pay to Grantor the fee without demand, offset, or counterclaim.

4. Use of Easement Area.

4.1 Grantee and its employees, contractors, and consultants shall conduct all work on the Easement Area under a site-specific safety and health plan as defined and required in OSHA 29 CFR 1910.120.

4.2 Grantee and its contractors and consultants shall perform all construction in a good, safe, and workmanlike manner. Grantee and its contractors and consultants shall comply with all applicable federal, state, and local laws, regulations, ordinances, rules, and requirements and all applicable Grantor ordinances, policies, procedures, and rules in their use of the Easement Area.

4.3 Prior to June 1, 2014, Grantor shall remove the steam riser structure and relocate its steam line and steam condensate return line to a temporary or permanent location that will not unreasonably restrict excavation by Grantee's contractor on the east side of Pier Three. The Grantee's contractor may occupy the Easement Area and Bridge No. 9 Property and perform any of Grantee's Work prior to June 1, 2014 that will not restrict or impede the Grantor's steam line relocation. After June 1, 2014 Grantee will protect Grantor's permanent or relocated temporary steam facilities that are to remain in place and in service during the Grantee's Work. At all times during the Grantee's Work, the Grantee and Grantee's contractor(s) will coordinate and communicate with Grantor's steam facilities personnel on matters affecting the steam line facilities.

a. Grantee is advised by Grantor of presence of asbestos containing material and other potential Hazardous Substances associated with Grantor's steam facilities. Grantor shall abate and remove all Hazardous Materials encountered during the relocation of its steam facilities, including removal of Hazardous Substances in or on the interior of any steam tunnels to be demolished. The Grantee shall assume responsibility to abate any Hazardous Substances on underground portions of the steam facilities within the area to be excavated as part of Grantee's Work, including but not limited to concrete tunnel structures, which remain after Grantor's relocation of its steam facilities and which are mutually agreed to be demolished, removed and disposed by the Grantee's contractor.

4.4 Grantee, at its sole cost and expense, shall ensure security and safety in the Easement Area during construction. Grantee and Grantee's contractors shall at all times comply with the Grantor's Contractor's security and safety requirements while using areas under control of Grantor's Contractor. Grantor and Grantor's Contractor will, to fullest extent and as soon as practical, advise Grantee of any security and safety requirements and other site limitations so that Grantee can incorporate those requirements into Grantee's bidding documents.

a. Grantee shall have access to Mississippi River harbor and docking facilities located on Grantor's property as generally shown on Exhibit B, dated 11/8/13, or as may be re-configured by Grantor's Contractor to provide equivalent access and minimize interference with rights and uses previously assigned by Grantor to Grantor's Contractor. Use of harbor and docking facilities on Grantor's property shall be subject to security, safety, schedules and other site limitations imposed by Grantor's Contractor and shall include access from the docking facilities to the Temporary Access Easement Area.

b. Nothing herein shall prevent the Grantee or Grantee's contractors from independently negotiating or making separate agreements with Grantor's Contractor for temporary use of areas under control of Grantor's Contractor or for documenting terms of that use. It is agreed that the responsibility for coordination of such separate agreements relative to the contractual requirements between Grantor and Grantor's Contractor remains the solely the obligation of Grantor and Grantor's Contractor and Grantee shall have no responsibility for changes necessitated in those contractual agreements by Grantee's Work.

4.5 Grantee shall use its best efforts to minimize interference with or damage to Grantor's Property and the conduct of its business thereon. Grantee's contractors will maintain access across the Easement Area and Grantee's Bridge No. 9 Property for use of Grantor and Grantor's Contractor during Grantee's work in such a manner as to be suitable for pick up style vehicle access between the Old Main Steam Plant and areas south of Bridge No. 9 Property.

4.6 Grantee, at its sole cost and expense, shall promptly restore any damage to Grantor's Property arising from or related to Grantee's use of the Easement Area pursuant to this Agreement; or at Grantor's option, Grantee shall upon demand reimburse the Grantor for any costs incurred by Grantor in restoring such damage.

4.7 Promptly after completion of construction, Grantee, at its sole cost and expense, shall: (a) remove all equipment and other property placed upon the Easement Area by Grantee or its contractors or consultants; and (b) remove all debris resulting there from; and (c) in coordination and consultation with the University, promptly restore the surface of the Easement Area to University's reasonable satisfaction. If Grantee's obligations in this Section are not completed within 30 days after the end of the Term, Grantor shall have the right, but not the obligation, to perform them and Grantee agrees to reimburse Grantor for its costs incurred in doing so upon receipt of an invoice.

4.8 Grantee shall keep the Easement Area free of any and all mechanics', material suppliers', and other liens arising out of any work, labor done, services performed, or materials

furnished for Grantee or its contractors or consultants or claimed to have been furnished for Grantee or its contractors or consultants; provided, however, that Grantee shall have a right to reasonably contest the filing of any mechanics' lien if: (i) Grantee provides the Grantor with security reasonably satisfactory to the Grantor (and for this purpose, a bond, letter of credit, or cash escrow in an amount equal to one hundred fifty percent (150%) of the lien will be considered satisfactory); and (ii) Grantee causes Grantor's property to be released from the lien or liens in question not later than thirty (30) days prior to the time Grantor's interest in the subject property would be forfeited.

4.9 Grantee and its contractors shall complete and backfill all excavations within the Easement Area on or before October 31, 2014 and restore disturbed surfaces on the east side of Pier Three with a temporary crushed rock surface suitable for use by Grantor's Contractor as a staging and storage area. Area shall be considered restored upon placement of crushed rock surface. After October 31, 2014, Grantee and its contractors shall continue to have access to Bridge No. 9 Property through the Easement Area and Temporary Access Easement to perform roller and bearing repairs to the bridge superstructure. Such access after October 31, 2014 shall not include excavations (other than as may be required for emergency repairs to Grantee's Work) and shall be completed in full coordination with Grantor's Contractor, subject to schedules and limitations to be imposed by Grantor's Contractor so as not to unduly impede the operations of the Grantor's Contractor.

4.10 In the event that Grantee's contractors do not complete, backfill and restore the Easement Area on or before October 31, 2014 in a manner suitable for occupancy of Grantor's Contractor, the Grantee as part of its construction contract(s) shall assess liquidated damages to its contractors in an amount not less than that assessed by Grantor in its construction contract with Grantor's Contractor for failure to complete its work in a timely manner. If the Grantor is required to extend its contract with Grantor's Contractor on account of Grantee's contractors' failure to restore the Easement Area on or before October 31, 2014, then Grantor shall be entitled to be reimbursed by Grantee an amount equal to the Grantor's daily assessment for liquidated damages for each day that the Easement Area remains unrestored. Grantee shall not be required to reimburse Grantor for extensions of Grantor's Contractor's contract that are not directly caused by delays in Grantee's Work; or are due to events, including force majeure, that would have otherwise delayed the Grantor's Contractor from occupying the Easement Area in a timely manner; or are due to Grantee's use of its Bridge No. 9 property.

5. Reservation of Rights. Grantor reserves the right to occupy and use the Easement Area to inspect Grantee's use thereof and in any manner that is not inconsistent with any rights granted herein. Grantee reserves the right to occupy and use the Bridge No. 9 Property to inspect Grantor's use thereof and in any manner that is not inconsistent with any rights granted herein.

6. Condition of the Premises; Environmental.

6.1 Grantor has made no representation whatsoever to Grantee concerning the condition of the Easement Area or the nature or extent of Grantor's ownership interest therein.

Grantee accepts all rights granted under this Agreement in an "AS IS, WHERE IS" and "WITH ALL FAULTS" condition, and subject to all limitations on Grantor's rights, interests, and title to the Easement Area.

6.2 Grantee represents that it has inspected the Easement Area and enters into this Agreement with knowledge of its condition. Grantee shall determine the suitability of the Easement Area for Grantee's intended use, including without limitation geotechnical, structural, environmental, and health or safety conditions. Grantee acknowledges that this Agreement does not contain any implied warranties that Grantee or Grantee's contractors or consultants can successfully use the area to perform Grantee's work.

6.3 Grantee shall provide to Grantor without charge electronic copies of any test results and reports it or its contractors or consultants obtain pertaining to the Easement Area. All test results and reports shall be sent to the University of Minnesota, Real Estate Office, 424 Donhowe Building, 319 15th Avenue Southeast, Minneapolis, MN 55455-0199, prior to submission to any regulatory agency. Grantor may comment separately on said results and reports to any regulatory agency, but shall not alter any submission from Grantee to any regulatory agency.

6.4 Definitions. For purposes of this Agreement:

"Environmental Laws" means any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any governmental authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substances, environmental protection, or health and safety, as now or may at any time hereafter be in effect, and as amended from time to time, as well as the regulations adopted and promulgated thereunder, including without limitation: the Clean Water Act, also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et seq.; the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. Section 6901 et seq.; and, the Minnesota Environmental Response and Liability Act, Minnesota Statutes Chapter 1158.

"Hazardous Substance" means (i) hazardous materials, hazardous wastes, and hazardous substances as those terms are defined under any Environmental Laws; (ii) petroleum, petroleum products, and by-products, including crude oil and any fractions thereof; (iii) natural gas, natural gas liquids, liquefied natural gas, synthetic gas, and any mixtures thereof; (iv) asbestos or any material that contains any hydrated magnesium silicate minerals that crystallize as bundles of long, thin fibers that readily separate when broken or crushed; (v) radon; (vi) any other hazardous or radioactive substance, material, contaminant, pollutant, or waste; (vii) any substance with respect to which any federal, state, or local Environmental Law or governmental agency requires environmental investigation, monitoring, or remediation; and (ix) any other

substance or material now or in the future deemed to be hazardous, dangerous, toxic, or a pollutant or contaminant under any Environmental Laws.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching, or migration of a Hazardous Substance into the indoor or outdoor environment (including, without limitation, the abandonment or disposal of any barrels, containers, or other closed receptacles containing any Hazardous Substance), or into or out of any Easement Area, including the movement of any Hazardous Substance through the air, soil, surface water, groundwater, or property.

6.5 Grantee shall not-and shall ensure that others do not-violate any Environmental Laws, including but not limited to those governing the Release, use, generation, storage, treatment, transportation, discharge, disposal or handling of Hazardous Substances in, upon, under, over or from the Easement Area. Grantee shall indemnify, defend and hold harmless Grantor from and against any claim, damage or expense arising out of Grantee's breach of the foregoing obligations and covenants.

6.6 Grantee, at its sole cost and expense, shall:

- a. Notify Grantor prior to any activity on the Easement Area that involves the Release, use, storage, generation, treatment, transportation, disposal, or handling of any Hazardous Substance;
- b. Comply with all Environmental Laws, including but not limited to those governing the Release, use, storage, generation, treatment, transportation, disposal, or handling of Hazardous Substances;
- c. Immediately stop construction or any other activity in an area if Grantee encounters a Hazardous Substance in that area;
- d. Give immediate notice to Grantor's Department of Environmental Health and Safety at 612-626-6002 or, after normal business hours, the Police Department dispatch at 612-624-2677 (i) if Grantee encounters a Hazardous Substance; (ii) if a Hazardous Substance is Released on or from the Easement Area; (iii) of a violation of any Environmental Laws; (iv) of an inspection or inquiry by any governmental agency with respect to Grantee's use of the Easement Area; or (v) if Grantee receives any notice from any governmental agency alleging that any Environmental Laws have been violated by Grantee with respect to Grantee's use of the Easement Area.
- e. Promptly perform activities necessary to avoid or minimize injury or liability to any person, or to prevent the Release or spread of any Hazardous Substance, or to prevent the spread of any contamination Released by the Grantee or its contractor(s).
- f. Promptly respond to and comply with any United States Environmental Protection Agency and/or Minnesota Pollution Control Agency notice, order, request, or

demand relating to potential or actual contamination on the Easement Area resulting from a Release by the Grantee or its contractor(s).

6.7 If Grantor has reason to believe that a Hazardous Substance has been Released on the Easement Area by Grantee or its contractors or consultants, then Grantor has the right, but not the obligation, to require Grantee, at Grantee's sole cost and expense, to perform an environmental audit by an environmental consultant satisfactory to Grantor. Such an investigation shall be commenced within ten (10) days after Grantor's request, and thereafter be diligently prosecuted to completion. Grantee shall provide to Grantor without charge an electronic copy of the environmental audit immediately after it is completed.

6.8 If Grantee or its contractors or consultants expose or disturb soils, water, or other materials that appear to be contaminated based on visual and olfactory observation and/or field screening activities, Grantee shall test the soils, water, and other materials at Grantee's cost; testing shall be conducted by a certified laboratory. While the soils, water, and other materials are being tested, all potentially contaminated excavated soils and other materials shall be stored on 10 mil poly and covered appropriately until testing is complete. Water shall be stored and labeled, if necessary, in an approved storage vessel. Stored soils, water, and other materials shall be appropriately secured on-site, and are the responsibility of the Grantee. In addition, solely at Grantor's discretion and upon the Grantor's request, Grantee will provide to Grantor splits of any samples of materials that Grantee collects so that Grantor may undertake independent testing and analysis of the sample material.

a. If testing confirms - or any agency with jurisdiction thereof determines - that the excavated soils, water, or other materials are contaminated, Grantee shall, at its sole cost, collect, remove and appropriately dispose of all such contaminated soils, water, or other materials at an approved facility. Grantee shall assume full responsibility for impacted soil, water, and all other materials collected, excavated and removed from the Easement Area. Grantee shall (a) seek and receive from a State and/or country approved disposal facility written pre-approval for receipt of impacted materials; and (b) provide such pre-approval to Grantor. Grantee shall provide to Grantor without charge copies of all test results and documentation regarding analysis and disposal of impacted soil, water, and materials removed from the Easement Area, including, but not be limited to, waste manifests, bills of lading, chain of custody documents and landfill/disposal facility receipt records. Grantee shall also consult with Grantor before preparing any application for participation in the Minnesota Pollution Control Agency ("MPCA") Voluntary Investigation and Clean-up Program ("VIC") and/or the Petroleum Brownfields Program ("PB").

b. If testing determines that the soils, water, or other materials are not contaminated, Grantee may with Grantor's prior written consent dispose of such materials on the Easement Area in accordance with existing MPCA Guidelines.

6.9 Before performing any construction or other work on the Easement Area, Grantee shall provide to Grantor all documents evidencing Grantee's compliance with the requirements of the National Pollution Discharge Elimination System (NPDES) and/or State

Disposal System Stormwater Permit for Construction Activity, including but not limited to the preparation and implementation of a Stormwater Pollution Prevent Plan ("SWPPP") and associated maintenance records, together with all other applicable storm water requirements. Grantee shall make the documents available to Grantor at a pre-construction meeting before construction commences and on a weekly basis during the course of construction as maintenance and inspection records become available. Grantee shall submit to Grantor copies of storm water compliance documentation within thirty (30) days after substantial completion of construction.

6.10 If Grantee fails to perform its obligations under this Section, Grantor shall have the right, but not the obligation, to perform Grantee's obligations and charge Grantee for the costs and expenses reasonably incurred by Grantor in doing so. Grantee shall reimburse Grantor for all such costs and expenses within ten (10) days after receipt of an invoice therefor accompanied by supporting data in a form to reasonably evidence the costs in question.

7. Insurance.

7.1 Grantee, pursuant to authority granted in Minn. Stat. 471.981, is a self-insured municipality. Minn. Stat. 466.04 (2008) limits liability of a municipality on any claim within the scope of Minn. Stat 466.01 to 466.15 (2008) to \$1,500,000 for all claims arising out of a single occurrence for claims arising on or after July 1, 2009. The Grantee is also self-insured under the State of Minnesota's workers compensation laws.

7.2 The Grantee's Contractor(s) shall obtain and keep in force the insurance described in this Section:

a. Occurrence based general liability insurance covering claims arising from operations under this Agreement, with minimum limits of \$5 million per occurrence, \$5 million annual general aggregate per project, \$5 million annual aggregate for Products/Completed Operations, \$5 million Personal and Advertising Injury, \$50,000 fire damage (any one fire), and \$5,000 medical expense (any one person per occurrence). Products and Completed Operations coverage must be maintained for at least three years after the Construction Completion Date. The general aggregate limit shall be maintained for at least three years after the Construction Completion Date. The Regents of the University of Minnesota shall be named as Additional Insureds for ongoing and completed operations for claims arising out of the acts or omissions of Grantee's Contractor(s).

b. Business Automobile Liability Insurance with a minimum limit of \$1 million each accident for bodily injury and property damage. Coverage shall apply to all owned, hired, and non-owned automobiles. The Regents of the University of Minnesota shall be named as Additional Insureds for claims arising out of the acts or omissions of Grantee's Contractor(s). Pollution liability coverage equivalent to that provided by ISO pollution liability-broadened coverage for autos endorsement CA 99 48 and the Motor Carrier Act endorsement MCS90 shall be included.

c. Workers' compensation insurance in compliance with all statutory requirements of the State of Minnesota.

d. Employer's Liability (Part B) Insurance with minimum limits of \$5 million bodily injury by disease per employee; \$5 million bodily injury by disease aggregate; and \$5 million bodily injury by accident.

e. An Umbrella or Excess Liability insurance policy may be used to supplement Grantee's Contractor(s) policy limit to satisfy the minimum policy limits required by this Agreement. If these policies are not follow-form of the underlying coverage, the coverage shall, at a minimum, provide the coverage available on the underlying policies.

f. Pollution Liability Insurance in the amount of \$2 million per occurrence and written on an occurrence basis. Damages covered by pollution liability insurance shall include bodily injury, property damage, environmental damage, loss of use of property, governmental ordered cleanup costs, completed operations and defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for damages, as a result of pollution conditions (including mold and fungi) arising from Grantee's Work, (a) at the Easement Area, (b) in the course of transporting materials to or from the Easement Area, or (c) at or emanating from disposal sites to which the Grantee transported materials. Coverage for mold and fungi and for disposal sites maybe on a claims made basis. Claims-made provisions, if any, must have a retroactive date of policy inception and must include an extended reporting period that is equal to the completed operations extension of five (5) years after the end of the Term. The Regents of the University of Minnesota shall be named as Additional Insureds for claims arising out of the acts or omissions of Grantee's Contractor(s).

7.3 All policies shall provide: (i) that the policy will not be canceled, materially changed, or non-renewed without at least thirty (30) days' prior written notice to Grantor; and(ii) that the policy is primary and any insurance maintained by Grantor is excess and noncontributory. The certificates of insurance must reflect that the insurance requirements of this Agreement have been met as reasonably determined by Grantor. All policies shall be written by a reputable insurance company acceptable to Grantor or with a current AM Best Rating of A-VII or better, and authorized to do business in Minnesota.

7.4 Grantee shall waive and require all contractors and consultants of every tier to waive all subrogation and recovery rights against Grantor. This shall be provided on the commercial general liability policy using a Waiver of Transfer of Rights of Recover Against Others to Us endorsement and on the workers' compensation policy using a Waiver Of Our Rights To Recover From Others Endorsement in favor of Regents of the University of Minnesota.

7.5 No endorsements, except those expressly stated herein, may be included on any policy limiting coverage without Grantor's approval.

7.6 Grantee's Contractor(s) shall provide to Grantor prior to commencing any work on the Easement Area fully executed Certificates of Insurance evidencing that it has obtained the required coverage and endorsements. At Grantor's option, Grantee's Contractor(s) shall provide Grantor with certified copies of insurance policies and all endorsements substantiating maintenance of the insurance required by this Agreement.

8. Indemnification and Release.

a. Grantee agrees to indemnify, defend, and hold harmless Grantor and its officers, employees, agents, and others acting on their behalf from and against any and all loss, damage, liability, cost and expense (specifically including attorneys' fees and other costs and expenses of defense) resulting from (i) Grantee's or its contractors or consultants use of the Easement Area; or (ii) any breach by Grantee of this Agreement. Grantee releases Grantor from any liability, damage, loss or injury, either to persons or property, sustained by Grantee or any other party as a result of any damage, harm, injury, interference or reduction in use caused by the Grantor to the Easement Area, unless due to Grantor's willful or intentional acts.

b. Grantor agrees to indemnify, defend, and hold harmless Grantee and its officers, employees, agents, and others acting on their behalf from and against any and all loss, damage, liability, cost and expense (specifically including attorneys' fees and other costs and expenses of defense) resulting from (i) Grantor's or its contractors or consultants use of the Bridge No. 9 Property; or (ii) any breach by Grantor of this Agreement. Grantor releases Grantee from any liability, damage, loss or injury, either to persons or property, sustained by Grantor or any other party as a result of any damage, harm, injury, interference or reduction in use caused by the Grantee to the Bridge No. 9 Property, unless due to Grantee's willful or intentional acts.

9. Taxes and Fees. Grantee shall pay when due all taxes, assessments or other government charges against the Easement Area or Grantor's Property to the extent attributable to Grantee's use thereof.

10. Default. If at any time Grantee or Grantee's contractors or consultants fail to perform its obligations under this Agreement, Grantor, in its sole discretion, may, upon not less than 10 days written notice to Grantee (or immediately in the event of any danger or potential danger to human health or the environment): (i) seek specific performance of the unperformed obligations; (ii) perform Grantee's obligations and charge Grantee for its costs reasonably incurred in doing so; or (iii) terminate the Agreement and remove Grantee from the Easement Area. Grantee shall promptly reimburse Grantor for Grantor's uses incurred in performing Grantee's obligations and/or removing Grantee from the Easement Area within ten (10) days after receiving an invoice therefor. Grantor's remedies set forth in this Section shall be in addition to, and not in limitation of, any other remedies that Grantor may have at law or in equity.

11. Terms Affecting Use of Bridge No. 9 Property; Grantee as Additional Insured. In its use of the Bridge No. 9 Property and construction on that property by Grantor, the terms of Sections 6, 7, 9 and 10 shall be applicable to the Grantor and Grantor's consultants and contractors in the

same manner and to the same extent and obligation within the Bridge No. 9 Property as are applicable to the Grantee's use of the Easement Area. Such obligations include but are not limited to the Grantee being named as Additional Insured on insurance policies required under 7.2.a, 7.2.b and 7.2.f for Grantor's contractors while working on Bridge No. 9 Property and receiving the waivers required under 7.4.

12. Notices. A notice, communication, or demand by either party to the other shall be sufficiently given or delivered upon receipt if personally delivered or three (3) days after sent by U.S. registered mail or certified mail, postage prepaid, return receipt requested; and

(i) in the case of Grantor, is addressed or personally delivered to:

Regents of the University of Minnesota
C/o Real Estate Office
319 15th Avenue SE, Suite 424
Minneapolis MN 55455
reo@umn.edu

and

University of Minnesota
Office of the General Counsel
Attn: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006

(ii) in the case of Grantee, is addressed or personally delivered to:

CITY OF MINNEAPOLIS
Minneapolis Director of Public Works
City Hall Room 203
350 South 5th Street
Minneapolis, MN 55415

and

CITY OF MINNEAPOLIS
Minneapolis City Attorney
City Hall Room 210
350 South 5th Street
Minneapolis, MN 55415

or at such other address with respect to either such party as that party may, from time to time, designated in writing and forward to the other as provided in this Section.

13. Counterparts. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

14. Severability. If any provision of this Agreement is declared invalid, illegal or otherwise unenforceable, that provision shall be deemed to have been severed from this Agreement and the remainder of this Agreement shall otherwise remain in full force and effect.

15. Complete Agreement. This Agreement (including all exhibits) constitutes the complete agreement between the parties with respect to the matters addressed herein. This Agreement shall be amended only in a writing duly executed by the parties to this Agreement.

16. Assignment. Grantee may not transfer or assign its rights under this Agreement without Grantor's prior written consent.

17. Authority. Each of the undersigned parties represents and warrants that it has full authority to enter into this Agreement, and each individual signing this Agreement on behalf of a corporation or other entity hereby represents and warrants that he or she has full authority to sign on behalf of and to bind that party thereby.

18. Exhibits. Attached Exhibit A consisting of five pages and Exhibit B consisting of one page, incorporated by reference and hereby made a part of this Agreement.

(REMAINDER OF PAGE INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the Grantor and Grantee execute this Agreement.

Regents of the University of Minnesota

By: _____

Name: Susan Carlson Weinberg

Title: Director of Real Estate

Date: _____

FOR THE CITY OF MINNEAPOLIS

By: _____

Department Head

Date: _____

Approved by:

By: _____

Finance Officer

Approved as to form:

By: _____

Assistant City Attorney

CITY OF MINNEAPOLIS
FINANCE DEPT.COPY
Contract Management Office
330 2nd Avenue S Ste.552
Minneapolis, MN 55401-2211

TEMPORARY ACCESS EASEMENT CENTER LINE

A temporary easement for ingress and egress purposes, over, under and across part of Government Lot 4, Section 23, Township 29, Range 24; part of Government Lots 1 and 2, Section 24, Township 29, Range 24; and parts of Lots 13 and 14, "Auditor's Subdivision No. 44, Hennepin County, Minnesota", all in Hennepin County, Minnesota, being a strip of land of varying width. The center line of said easement is described as follows:

Commencing at the northeast corner of the Northwest Corner of said Section 24; thence on an assumed bearing of South 89 degrees 55 minutes 37 seconds West along the north line of said Northwest Quarter, to the northwest corner of said Northwest Quarter; thence South 00 degrees 02 minutes 06 seconds East a distance of 4135.61 feet; thence North 59 degrees 21 minutes 40 seconds East a distance of 35.00 feet; thence North 07 degrees 27 minutes 44 seconds West a distance of 83.50 feet; thence North 42 degrees 39 minutes 00 seconds West a distance of 22.50 feet to the point of beginning of a line hereinafter referred to as Line "A"; thence North 70 degrees 25 minutes 50 seconds West a distance of 139.00 feet; thence North 56 degrees 23 minutes 13 seconds West a distance of 25.50 feet; thence North 34 degrees 05 minutes 55 seconds West a distance of 123.50 feet; thence North 44 degrees 32 minutes 12 seconds West a distance of 58.50 feet; thence North 76 degrees 49 minutes 22 seconds West a distance of 36.00 feet; thence South 86 degrees 23 minutes 03 seconds West a distance of 68.00 feet; thence North 77 degrees 21 minutes 11 seconds West a distance of 103.50 feet; thence North 79 degrees 39 minutes 01 seconds West a distance of 153.00 feet; thence North 87 degrees 07 minutes 57 seconds West a distance of 58 feet, more or less, to the southeasterly right-of-way line of 6th Avenue Southeast as donated in Book 10 of Miscellaneous, Page 514, and said Line "A" there terminating. Said point also being the point of beginning of the easement center line to be described; thence easterly along said Line "A" to said point of beginning of said Line "A"; thence South 69 degrees 24 minutes 25 seconds East a distance of 419.59 feet; thence southeasterly a distance of 98.59 feet along a tangential curve, concave to the southwest, having a radius of 200.00 feet and a central angle of 28 degrees 14 minutes 42 seconds; thence South 41 degrees 09 minutes 43 seconds East, tangent to said curve, a distance of 22.02 feet; thence southeasterly a distance of 52.00 feet along a tangential curve, concave to the northeast, having a radius of 80.00 feet and a central angle of 37 degrees 14 minutes 44 seconds; thence South 78 degrees 24 minutes 27 seconds East, tangent to said curve, a distance of 279.54 feet; thence South 85 degrees 31 minutes 37 seconds East a distance of 90.78 feet; thence South 73 degrees 06 minutes 55 seconds East a distance of 122.56 feet; thence easterly a distance of 85.34 feet along a tangential curve, concave to the north, having a radius of 400.00 feet and a central angle of 12 degrees 13 minutes 29 seconds; thence South 85 degrees 20 minutes 24 seconds, tangent to said curve, a distance of 61.50 feet; thence South 77 degrees 04 minutes 37 seconds a distance of 159.65 feet; thence southeasterly a distance of 23.61 feet along a tangential curve, concave to the southwest, having a radius of 100.00 feet and a central angle of 13 degrees 31 minutes 49 seconds; thence South 63 degrees 32 minutes 48 seconds East, tangent to said curve, a distance of 124.56 feet; thence southeasterly a distance of 114.09 feet along a tangential curve, concave to the southwest, having a radius of 200.00 feet and a central angle of 32 degrees 41 minutes 00 seconds; thence South 30 degrees 51 minutes 48 seconds East, tangent to said curve, a distance of 27.75 feet; thence South 40 degrees 31 minutes 15 seconds East a distance of 163.83 feet; thence South 45 degrees 28 minutes 49 seconds East a distance of 53.47 feet; thence South 69 degrees 44 minutes 08 seconds East a distance of 43.88 feet; thence South 58 degrees 20 minutes 15 seconds East a distance of 60.00 feet to the southeasterly right-of-way line of former Northern Pacific Railway Company (later Burlington Northern and Santa Fe Railroad Company) as described per Document No. 1228828; thence continuing South 58 degrees 20 minutes 15 seconds East a distance of 55.00 feet, and there terminating.

TEMPORARY EASEMENT TRACT A

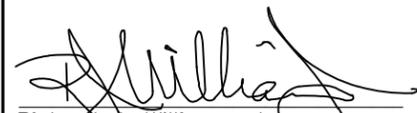
A temporary easement for construction staging purposes, 36.00 feet wide, over, under and across that part of said Government Lot 2, Section 24, Township 29, Range 24, Hennepin County, Minnesota, described as follows:

Commencing at the northeast corner of the Northwest Corner of said Section 24; thence on an assumed bearing of South 89 degrees 55 minutes 37 seconds West along the north line of said Northwest Quarter, to the northwest corner of said Northwest Quarter; thence South 00 degrees 02 minutes 06 seconds East a distance of 4135.61 feet; thence North 59 degrees 21 minutes 40 seconds East a distance of 35.00 feet; thence North 07 degrees 27 minutes 44 seconds West a distance of 83.50 feet; thence North 42 degrees 39 minutes 00 seconds West a distance of 22.50 feet; thence South 69 degrees 24 minutes 25 seconds East a distance of 419.59 feet; thence southeasterly a distance of 98.59 feet along a tangential curve, concave to the southwest, having a radius of 200.00 feet and a central angle of 28 degrees 14 minutes 42 seconds; thence South 41 degrees 09 minutes 43 seconds East, tangent to said curve, a distance of 22.02 feet; thence southeasterly a distance of 52.00 feet along a tangential curve, concave to the northeast, having a radius of 80.00 feet and a central angle of 37 degrees 14 minutes 44 seconds; thence South 78 degrees 24 minutes 27 seconds East, tangent to said curve, a distance of 279.54 feet; thence South 85 degrees 31 minutes 37 seconds East a distance of 90.78 feet; thence South 73 degrees 06 minutes 55 seconds East a distance of 122.56 feet; thence easterly a distance of 85.34 feet along a tangential curve, concave to the north, having a radius of 400.00 feet and a central angle of 12 degrees 13 minutes 29 seconds; thence South 85 degrees 20 minutes 24 seconds, tangent to said curve, a distance of 61.50 feet; thence South 77 degrees 04 minutes 37 seconds a distance of 159.65 feet; thence southeasterly a distance of 23.61 feet along a tangential curve, concave to the southwest, having a radius of 100.00 feet and a central angle of 13 degrees 31 minutes 49 seconds; thence South 63 degrees 32 minutes 48 seconds East, tangent to said curve, a distance of 124.56 feet; thence southeasterly a distance of 114.09 feet along a tangential curve, concave to the southwest, having a radius of 200.00 feet and a central angle of 32 degrees 41 minutes 00 seconds; thence South 30 degrees 51 minutes 48 seconds East, tangent to said curve, a distance of 27.75 feet; thence South 40 degrees 31 minutes 15 seconds East a distance of 163.83 feet; thence South 45 degrees 28 minutes 49 seconds East a distance of 53.47 feet; thence South 69 degrees 44 minutes 08 seconds East a distance of 43.88 feet; thence South 58 degrees 20 minutes 15 seconds East a distance of 60.00 feet to the southeasterly right-of-way line of former Northern Pacific Railway Company (later Burlington Northern and Santa Fe Railroad Company) as described per Document No. 1228828, being the point of beginning of the easement to be described; thence northeasterly along said southeasterly right-of-way line, a distance of 10.00 feet; thence southeasterly, deflecting at a right angle, a distance of 55.00 feet; thence southwesterly, deflecting at a right angle, a distance of 36.00 feet; thence northwesterly, deflecting at a right angle, a distance of 55.00 feet to said southeasterly right-of-way line; thence northeasterly along said southeasterly right-of-way line, a distance of 26.00 feet to the point of beginning.

CERTIFICATION:

On behalf of Bolton & Menk, Inc.:

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.


Richard J. Williams, Jr.
Minnesota License Number 19840

January 14, 2014

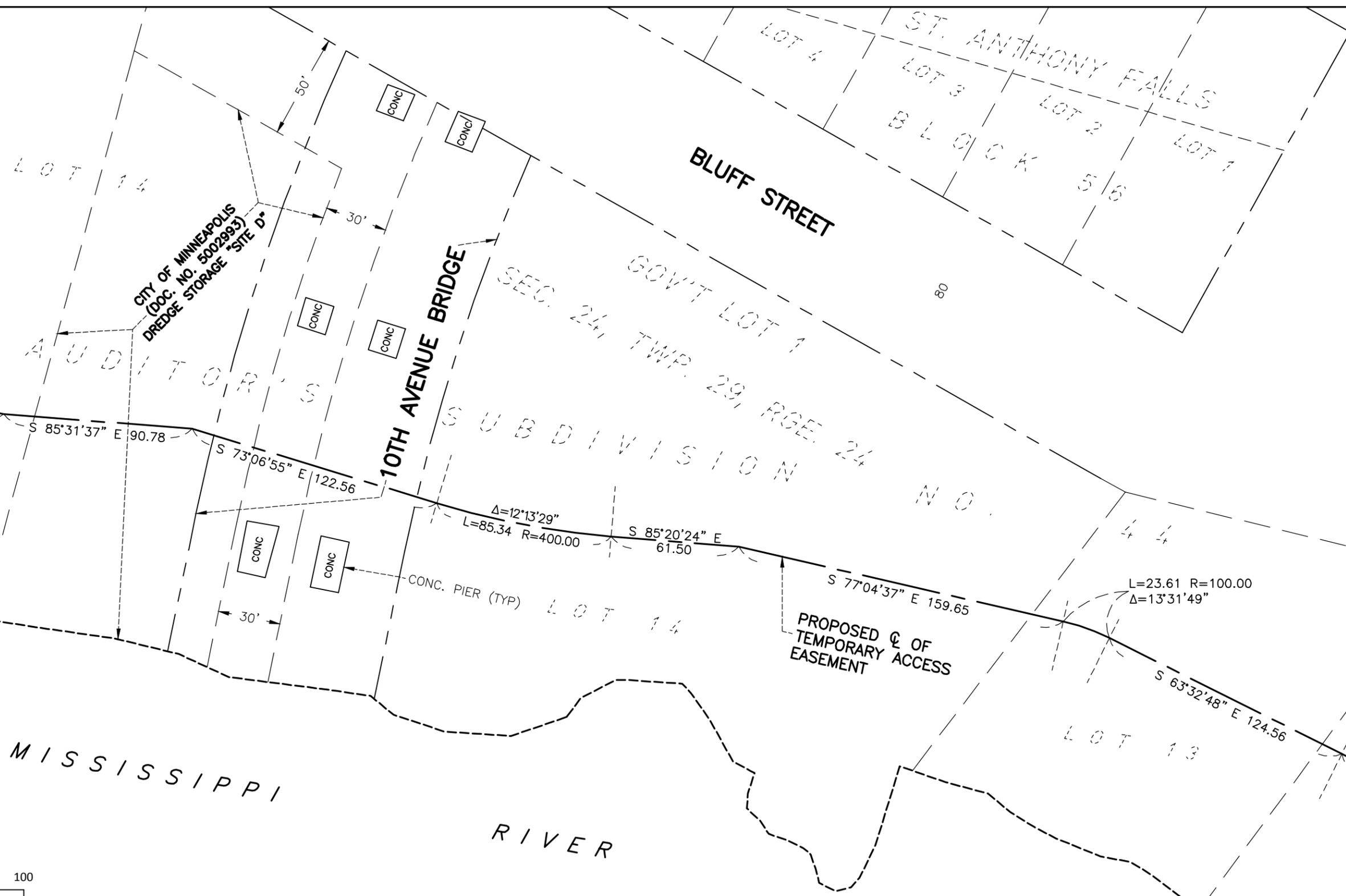
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EASEMENT EXHIBIT A - BRIDGE NO. 9 MINNEAPOLIS, MN		TEMPORARY EASEMENTS UNIVERSITY OF MINNESOTA & CITY OF MINNEAPOLIS SHEET 1 OF 5 SHEETS FOR: CITY OF MINNEAPOLIS
 BOLTON & MENK, INC. Consulting Engineers & Surveyors 12224 NICOLLET AVENUE, BURNSVILLE, MN 55337 (952)-890-0509		

SEE SHEET 3 OF 5 SHEETS

SEE SHEET 5 OF 5 SHEETS

INTERSTATE HWY. NO. 35W



 TEMPORARY EASEMENT TRACT A

EASEMENT EXHIBIT A - BRIDGE NO. 9 MINNEAPOLIS, MN		TEMPORARY EASEMENTS UNIVERSITY OF MINNESOTA & CITY OF MINNEAPOLIS SHEET 4 OF 5 SHEETS FOR: CITY OF MINNEAPOLIS
 BOLTON & MENK, INC. Consulting Engineers & Surveyors 12224 NICOLLET AVENUE, BURNSVILLE, MN 55337 (952)-890-0509		

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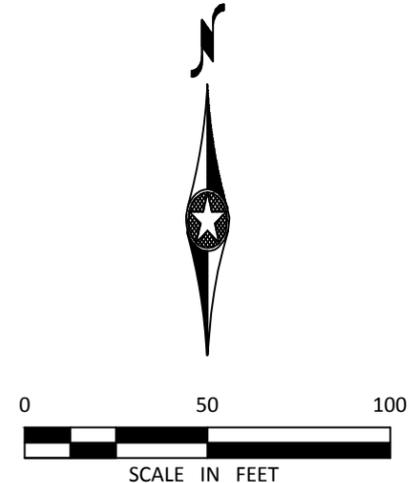
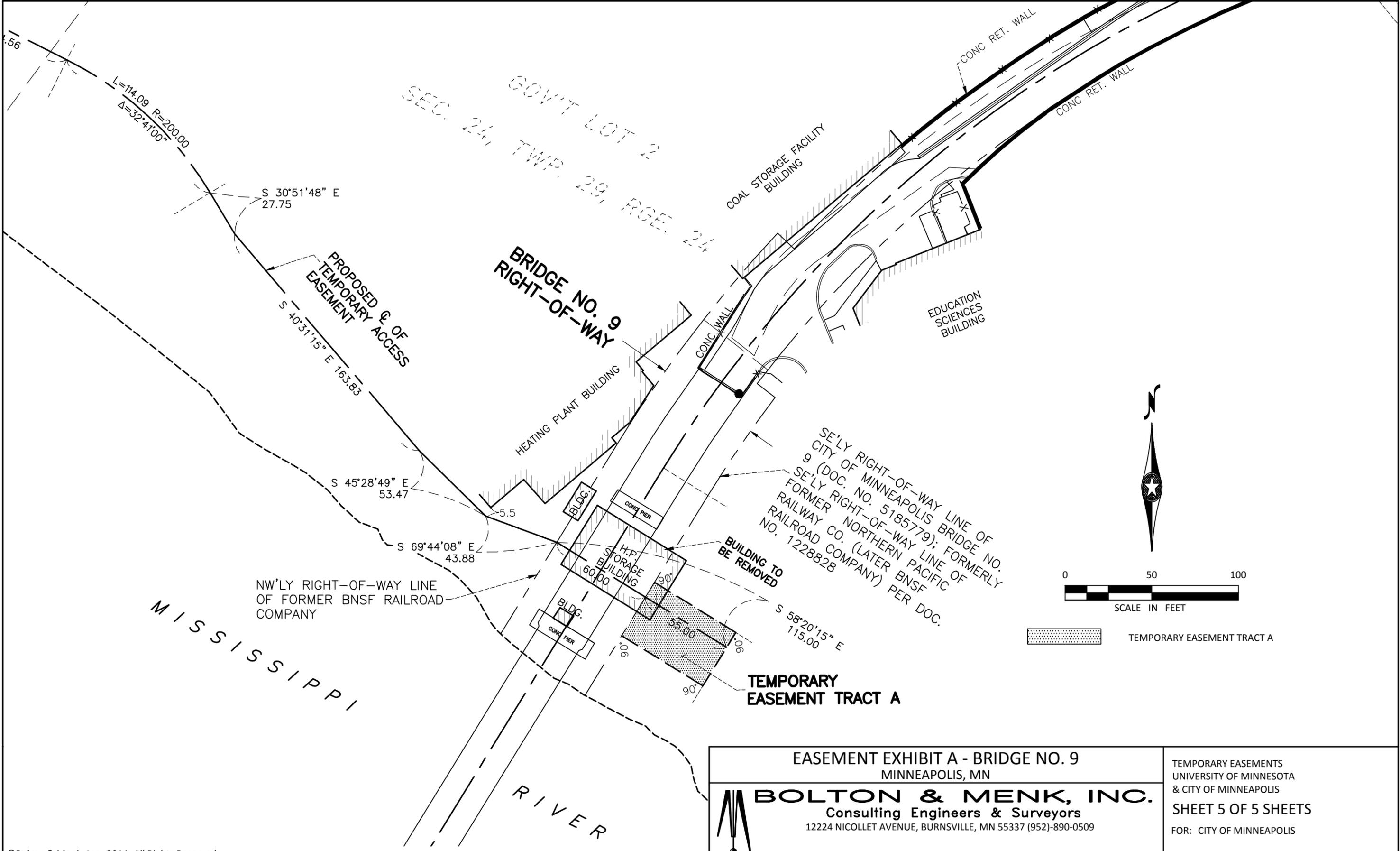
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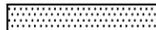
FIELD BOOK:

DRAWN BY: ERW

FILE NO. 4471
 S23-T29-R24-41,44
 S24-T29-R24-33,34

SEE SHEET 4 OF 5 SHEETS



 TEMPORARY EASEMENT TRACT A

EASEMENT EXHIBIT A - BRIDGE NO. 9 MINNEAPOLIS, MN		TEMPORARY EASEMENTS UNIVERSITY OF MINNESOTA & CITY OF MINNEAPOLIS SHEET 5 OF 5 SHEETS FOR: CITY OF MINNEAPOLIS
 BOLTON & MENK, INC. Consulting Engineers & Surveyors 12224 NICOLLET AVENUE, BURNSVILLE, MN 55337 (952)-890-0509		

This access will be granted from July 1, 2014 until October 31, 2014.



Access to the site will be through this gate.

The City of Mpls. can have access to this area for storage.

The City can have access to the pier for docking and unloading. They will be responsible for installing a gate in the construction site fence for access to the pier.

Imagery ©2013 Google, Map data ©2013 Google-