



CITY OF DULUTH
REQUEST FOR PROPOSALS FOR

**Landscape Architectural Design Services
for Duluth Lakewalk and Brighton Beach**

RFP NUMBER 21-AA11

ISSUED MARCH 24, 2021

PROPOSALS DUE WEDNESDAY, APRIL 14, 2021 AT 2:00 PM

SUBMIT TO

**CITY OF DULUTH
ATTN: PURCHASING DIVISION
CITY HALL, ROOM 120
411 WEST 1ST STREET
DULUTH, MN 55802**

PART I - GENERAL INFORMATION

I-1. Project Overview. The City of Duluth is looking for an experienced consulting Landscape Architect to provide, design services, public engagement, and construction administration for the Lakewalk from Endion Station in Canal Park to 23rd Avenue East, and for all of Brighton Beach. Project limits of both locations are depicted in the maps attached in Appendix B. This project includes Civil Engineering design services for site stormwater and grading, and Electrical Engineering services for lighting and other electrical needs. The Electrical and Civil Engineer(s) will be sub-consultants to the Landscape Architect.

Coastal Engineering services will be secured by the City of Duluth under a separate RFP process; and selected firms will be required to coordinate and integrate their respective design scopes and construction administration activities to ensure the successful outcome of the project.

Additional detail is provided in **Part IV** of this RFP.

I-2. Calendar of Events. The City will make every effort to adhere to the following schedule:

Activity	Date
Pre-proposal site visit will be held on this date. Attendees should meet at the Rose Garden Parking Lot, 13 th Ave E and London Rd.	Wed. 3/31/21 at 1:00 - 2:30 pm
Deadline to submit Questions via email to purchasing@duluthmn.gov	Sun., 4/4/21
Answers to questions will be posted to the City website no later than this date.	Tue., 4/6/21
Proposals must be received in the Purchasing Office by 2:00 PM on this date.	Wed., 4/14/21

I-3. Rejection of Proposals. The City reserves the right, in its sole and complete discretion, to reject any and all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in its best interests. The City is not liable for any costs the Bidder incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

I-4. Pre-proposal Conference. The City will hold a pre-proposal site visit at the date and time specified in the Calendar of Events to view representative sites. Interested Bidders are strongly encouraged to attend the site visit, and must follow current CDC guidelines for social distancing and masks. In addition, bidders are encouraged to familiarize themselves with the entire length of the project (as identified in the maps), both along the Lakewalk and at Brighton Beach, at their earliest convenience.

I-5. Questions & Answers. Any questions regarding this RFP must be submitted by e-mail to the Purchasing Office at purchasing@duluthmn.gov **no later than** the date indicated on the Calendar of Events. Answers to the questions will be posted as an Addendum to the RFP.

I-6. Addenda to the RFP. If the City deems it necessary to revise any part of this RFP before the proposal response date, the City will post an addendum to its website <https://www.duluthmn.gov/purchasing/bids-request-for-proposals/> . Although an e-mail notification will be sent, it is the Bidder's responsibility to periodically check the website for any new information

I-7. Proposals. To be considered, hard copies of proposals must arrive at the City on or before the time and date specified in the RFP Calendar of Events. The City will not accept proposals via email or facsimile transmission. **Due to the closure of City Hall as a result of the pandemic, proposals cannot be dropped off in the Purchasing office. There is a black drop box on the 2nd Street side of City Hall near the parking spaces with an opening that is 11in x 3in. If your proposal is larger than the opening, you must submit it via a delivery or carrier service such as USPS, FedEx or UPS. It is recommended that you have proposals delivered the day before the deadline to ensure they are delivered on time.** The City reserves the right to reject or to deduct evaluation points for late proposals.

Proposals must be signed by an authorized official. If the official signs the Proposal Cover Sheet attached as Appendix A, this requirement will be met. Proposals must remain valid for 60 days or until a contract is fully executed.

Please submit one (1) paper copy of the Technical Submittal and one (1) paper copy of the Cost Submittal. The Cost Submittal should be in a separate sealed envelope. In addition, Bidders shall submit one copy of the entire proposal (Technical and Cost submittals, along with all requested documents) on flash drive in Microsoft Office-compatible or pdf format.

All materials submitted in response to this RFP will become property of the City and will become public record after the evaluation process is completed and an award decision made.

I-8. Small Diverse Business Information. The City encourages participation by minority, women, and veteran-owned businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use minority, women, veteran-owned and other disadvantaged business entities as subcontractors and suppliers. A list of certified Disadvantaged Business Enterprises is maintained by the Minnesota Unified Certification Program at <http://mnucp.metc.state.mn.us/> .

I-9. Term of Contract. The term of the contract will begin once the contract is fully executed and is anticipated to end by October 15, 2023. The selected Bidder shall not start the performance of any work nor shall the City be liable to pay the selected Bidder for any service or work performed or expenses incurred before the contract is executed.

I-10. Award. Due to this project being funded in part by state bond funds, the initial contract will be awarded only for predesign work, including concept designs and cost estimates. The remaining work is anticipated to be awarded as an amendment to the original agreement upon final approval of the project by the state bond reviewing authority.

I-11. Payment. All compensation will be based on percentage of project completed and will not exceed the amount identified in the agreement. Weekly progress reports will be provided to the City and will include tracking of estimated percentage of overall project scope completed to date. Hourly task breakdown by employee is for evaluation purposes and does not imply that payment will be based on hours worked.

I-12. Mandatory Disclosures. By submitting a proposal, each Bidder understands, represents, and acknowledges that:

- A. Their proposal has been developed by the Bidder independently and has been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor or suppliers of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit independent bidding or competition, and that the contents of the proposal have not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder.
- B. There is no conflict of interest. A conflict of interest exists if a Bidder has any interest that would actually conflict, or has the appearance of conflicting, in any manner or degree with the performance of work on the project. If there are potential conflicts, identify the municipalities, developers, and other public or private entities with whom your company is currently, or have been, employed and which may be affected.
- C. It is not currently under suspension or debarment by the State of Minnesota, any other state or the federal government.
- D. The company is either organized under Minnesota law or has a Certificate of Authority from the Minnesota Secretary of State to do business in Minnesota, in accordance with the requirements in M.S. 303.03.

I-13. Notification of Selection. Bidders whose proposals are not selected will be notified in writing.

PART II - PROPOSAL REQUIREMENTS

1. Cover Letter

2. A restatement of the goals and objectives and the project tasks to demonstrate the Proposer's understanding of the project.
3. An outline of the Proposer's background and experience with similar projects. Experience shown should provide proof of past work experience in successful waterfront landscape designs and any experience with the City of Duluth.
4. Identify the personnel that will be conducting the project and detail their training and work experience, particularly in the projects listed to document competency in waterfront landscape design. Identify a professional Landscape Architect licensed in the State of Minnesota who will oversee the project.

No change in personnel assigned to the project will be permitted without approval of the City.

5. Provide a detailed work plan identifying the tasks to be accomplished and the budget hours to be expended on each task. The work plan shall also identify the deliverables at key milestones in the project as well as any other services expected to be provided by the City.
6. Provide a minimum of three (3) non-City references, including names, addresses and telephone numbers, for whom the Proposer has performed similar services and the reference can address past performance in public engagement and waterfront landscape design.
7. Provide one copy of the cost proposal in a separate envelope, clearly marked on the outside with "Cost Proposal". The terms of the proposal as stated must be valid for the length of the project.

The responder must also include a lump sum not-to-exceed total project cost, including any sub consultant fees, along with the following information:

- A subtotal of the contract cost for each phase identified in the attached draft agreement.
 - A breakdown of the hours by task for each employee.
 - Identification of anticipated direct expenses.
 - Include miscellaneous charges such as mileage and copies.
 - Identification of any assumptions made while developing the cost proposal.
 - Identification of any cost information related to additional services or tasks. Include this in the cost proposal but identify it as additional costs and do not make it part of the total project cost.
8. The proposal shall be limited to 15 single-sided 8 ½ x 11 pages, excluding the front and back covers, the cover letter and the cost proposal. The separate cost proposal can be an 11" X 17" sheet.
 9. Provide anticipated project schedule from the start of the design process to completion of construction.

PART III - CRITERIA FOR SELECTION

The proposals will be reviewed by City Staff. The intent of the selection process is to review proposals and make an award based upon qualifications as described therein. A 100-point scale will be used to create the final evaluation recommendations. The factors and weighting on which proposals will be judged are:

Qualifications of the Bidder and Personnel	40%
Prior experience with similar work	40%
Work Plan & Schedule	5%
Cost	15%

PART IV – PROJECT DETAIL

Lakewalk

Project limits are from the center line of the North Shore Scenic Railroad to generally where shoreline stabilization activities occur, and from Endion Station to the point at which the Lakewalk intersects 23rd Avenue East (see maps in Appendix B). The dividing line between the Coastal Design and Landscape Design projects will generally be defined as the transition between flatter areas near the Lakewalk Trail and the sloping banks leading down to the shore below.

Brighton Beach

Project limits are from the center line of the Lakewalk Trail extension currently under construction, including all previous developed portions of the Park between the highway and the Lake; and from the box culvert under London Road east of the park to where Brighton Beach Road turns uphill toward London Road at the western exit of the park (see maps in Appendix B). On the Brighton Beach portion of this project, the overlap between the adjacent Coastal engineering design process will likely be more fluid and interactive than in other project areas.

General Scope

These design projects include all the hardscape and softscape spaces as enumerated above in the project limit descriptions.

The design of the landscape sections of this project may directly influence design needs for some elements of the shoreline reconstruction and vice versa. The Landscape Design team and the Coastal Engineering Team will need to coordinate throughout the entire design process, ensuring designs are constructible as they relate to the entire project.

The Landscape Architectural design team will coordinate with the City to develop designs that are low maintenance and with placement of built infrastructure as far from the lake as reasonable.

Guiding Principles

Design of the revitalized Lakewalk and Brighton Beach are to be guided by the following principals:

1. Maintenance burden shall be reduced over the entire facility through minimizing formal landscaped areas and converting non-programmable and unused spaces to a native natural landscape.
2. Guide users to the lake and points of interest through formal resilient pathways made from natural materials. Direct usage away from sensitive erodible shoreline and restore those damaged areas caused by informal social use.
3. Move paved trail and accessible pathways away from shoreline as much as possible. Create more space for shore stabilization, plantings and restoration.
4. Landscaping is to draw from a planting palate that is native to the north shore of Minnesota. This includes all woody and herbaceous selections. Phase out and remove nonnative invasive and planted landscape species.
5. Develop a standard of design for site amenities that balances intensity of use with density and spacing. Look to create a standard look of amenities and site elements throughout entire length that is consistent with the Duluth Parks 2017 "Gate Wayfinding and Signage Plan".
6. Improve multi-use aspect of trail for bikes and pedestrians. Look at ways to increase trail volume in the most heavily used areas.
7. Develop nodes of interest along the Lakewalk trail that allow programming and educational interpretative opportunities.
 - a. Primary nodes of interest include but are not limited to: Lakewalk War Memorials, Hole in the Wall Beach near Fitger's, sanitary sewer overflow structure at 18th Avenue East, parking lot area at 21st Avenue East.
8. Address accessibility issues, particularly steep slopes that do not meet minimum standards.
9. Review lighting and electrical needs along the entire length of the project. Determine gaps and opportunities to add new or replace existing lighting and electrical elements with an eye toward consistency in design and placement.
10. Identify locations for turnaround of emergency and park maintenance vehicles.
11. Fully evaluate and coordinate surface and underground stormwater flow, with trail reconstruction and shoreline rehab/stabilization. Utilize BMP's to eliminate existing problem areas.
12. Develop signage and wayfinding recommendations along the entire length of the project consistent with the Duluth Parks 2017 "Gate Wayfinding and Signage Plan".
13. Look at ways to re-wild unused and non-programmable areas of Brighton Beach and create pockets of formal gathering areas for public use between daylighted creeks and drainages.

The Project Will Not:

1. Examine commercial uses/users
2. Create a plan for redesign of existing parks (i.e. Leif Erikson).
3. Propose placement of new facilities or amenities such as bathroom facilities, playgrounds, new art or cultural installations.

Designer is to consider but not be limited to the following in the design solution:

1. Replace asphalt – move trail as far from shoreline as possible.
2. Replace fencing – move as close to railroad as possible to gain space.
3. Replace boardwalk where needed that is flush with asphalt to avoid difference in grade. Salvage old boardwalk for City reuse in other park settings.
4. Prepare a photometric study to identify lighting needs.
5. Look at adding lighting to highlight some of the existing elements such as mural wall and war memorials
6. Look at ways to eliminate or formalize social trail use such as obliteration and restoration or natural stone pathways and steps down to the lake.
7. Create access to natural cobble beaches where possible.
8. Removal foreign debris (concrete, building demolition, etc.) in old revetments and on beaches.
9. Increase prevalence of deep rooting shoreline species native to the north shore of Lake Superior.
10. The species selected in the planting design must follow pollinator best practices. Species only native or naturalized to the area will be accepted. The City is striving for a low maintenance landscape.
11. Identify areas to reduce mowing. The City only wants to mow maintenance strips and programmable areas for public use only.
12. Replace railings and guardrails.
13. Sound barrier along freeway to reduce noise, but not too high that it blocks view of the lake by traffic on highway.
14. Create standard and make recommendation for bench spacing and density.
15. Daylighting once-open creek channels
16. Removal of old obsolete infrastructure such as the damaged Brighton Beach asphalt road.

Meetings

Provide a summary of the necessary meetings along the entire duration of the project along with anticipated cost of each meeting.

Survey Services

The City of Duluth will provide a full existing-conditions topographic and tree survey in PDF and AutoCAD format to the selected consultant team.

Concept Design/Pre-Design and Public Engagement Phase

The Landscape Architectural Team shall:

1. Review existing conditions, plans, and other pertinent documents.
2. Facilitate an internal stakeholder meeting with Planning, DEDA/Economic Development, Parks, Property & Facilities Management, Engineering, and the Coastal Engineering consultant team to determine what is on the table and what is not
3. With input from City staff, prepare a draft plan that addresses guiding principles above.
4. Staff and Landscape Architectural Team will present the draft to the public by:
 - a. presenting initial draft plan to Parks and Recreation Commission
 - b. posting the design online

- c. holding a meeting consistent with current CDC guidelines presenting concepts to, and gathering input from, invited stakeholder groups (Bike, Pedestrian, Friends of the Lakewalk, Duluth Bike Coalition, Healthy Duluth Coalition, Parks Commission, and others)
 - d. holding a meeting consistent with current CDC guidelines for presentation of concepts to the public
 - e. host a two-week comment period, including online comment portal with pertinent documents
5. Consultant will incorporate input from the internal stakeholder meeting into a revised final draft
 6. Final draft will be presented to and reviewed by Parks Commission who will forward a recommendation to City Council for final approval.
 7. Utilize the approved plan to work collectively with the City and coastal engineering consultants to create a plan for shoreline stabilization.

Final Design

Prepare a signed set of plans and specs including site plans, grading plans, planting plans, electrical plans and any other necessary details or plans to implement the council-approved design.

Permitting Phase

Consultant to list in the RFP response any necessary permits (local, state, federal). Preparation and submission of any and all necessary permits shall be included in the scope of services provided. Permitting necessary for any shoreline or revetment work will be the responsibility of the Coastal Engineering consultant firm selected under a separate RFP process. Permitting fees will be paid for by the City of Duluth.

Cost Estimates, Design and Bidding Phase

Cost estimates of the project shall be prepared, updated, and submitted to the City at each step in the design process.

Consultant shall support the bid process by attending the pre-bid meeting with contractors, preparing addenda as needed, evaluating the bids in a timely manner, and assist City staff in making a recommendation for contract award.

Construction Administration Phase

Consultant will provide construction administration onsite during construction. The City will require a minimum of weekly construction progress meetings, and on site observation of at least 1 day (8 hours per week).

APPENDIX A - PROPOSAL COVER SHEET

CITY OF DULUTH

RFP# 21-AA11

Landscape Architect Services for Duluth Lakewalk and Brighton Beach

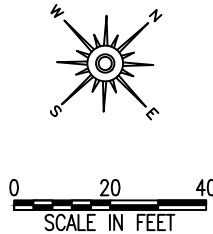
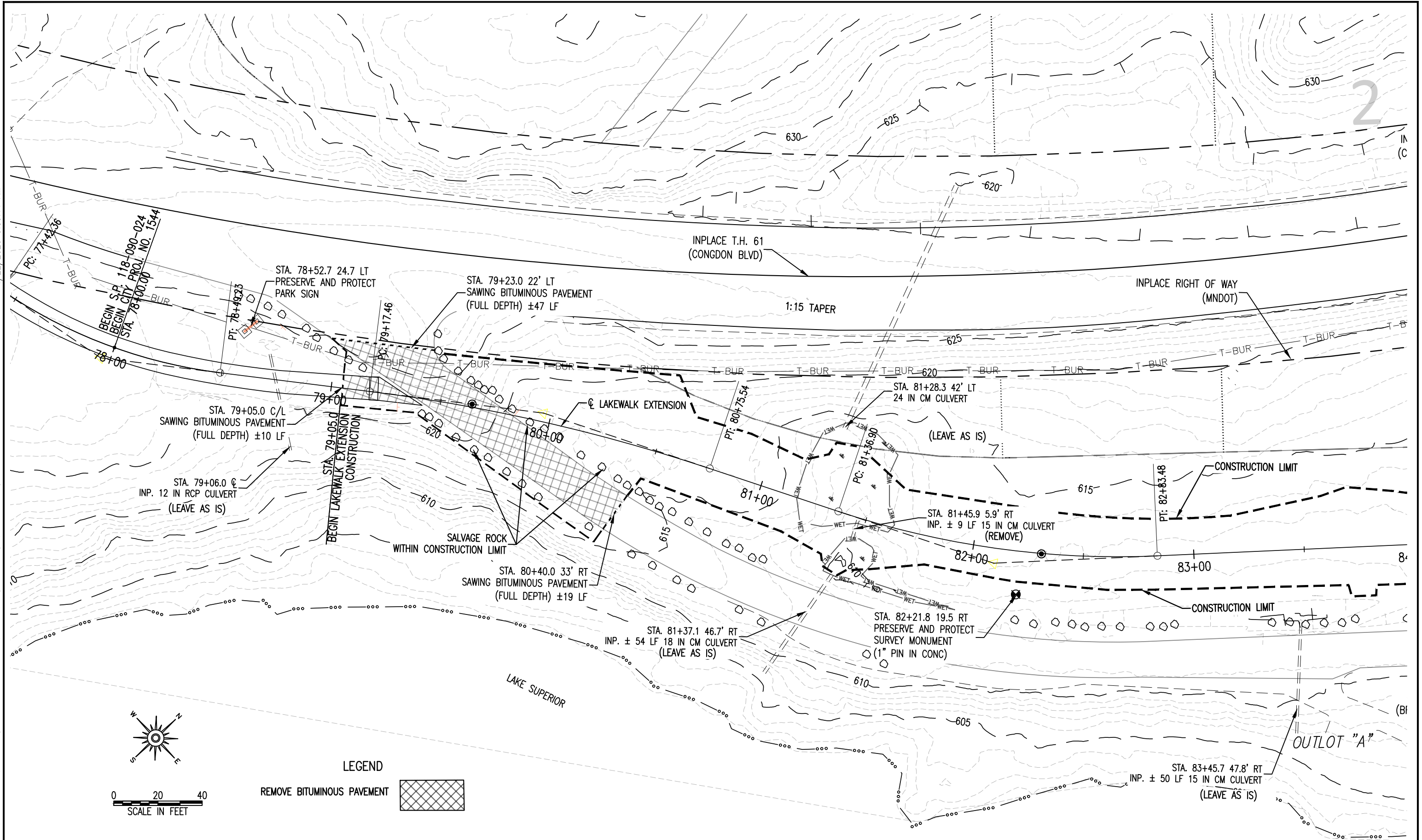
Bidder Information:	
Bidder Name	
Mailing Address	
Contact Person	
Contact Person's Phone Number	
Contact Person's E-Mail Address	
Federal ID Number	
Authorized Signature	
Title	

APPENDIX B

TOPOGRAPHICAL SURVEY AND MAPS

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SIGNATURE: *Patrick F. Loomis*

PATRICK F. LOOMIS
TYPE NAME

DATE: 4/8/2020

LIC. NO: 49099



CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

LAKE WALK EXTENSION - BRIGHTON BEACH

CITY PROJECT NO.: 1544

STATE AID PROJECT NO.: 118-090-024

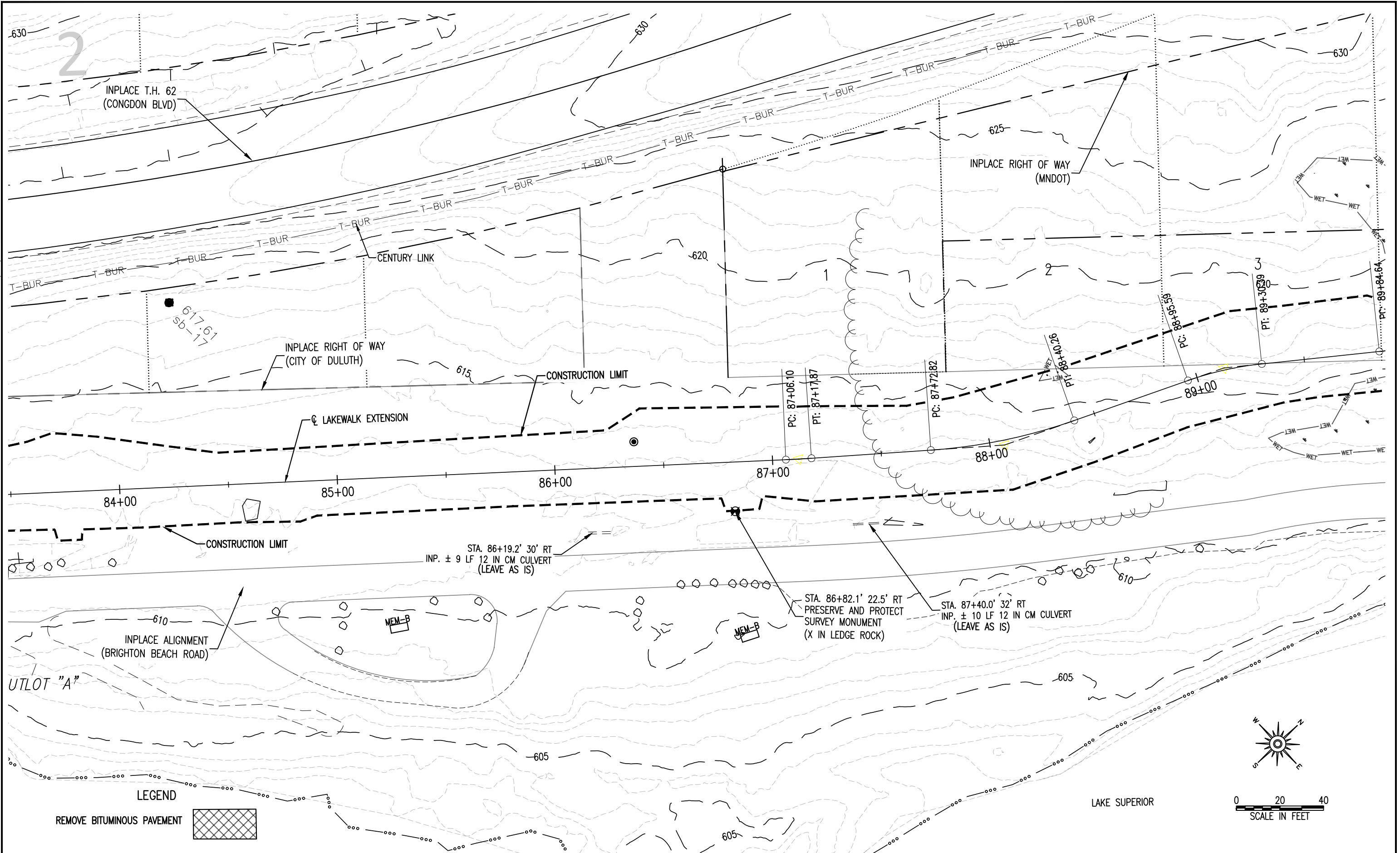
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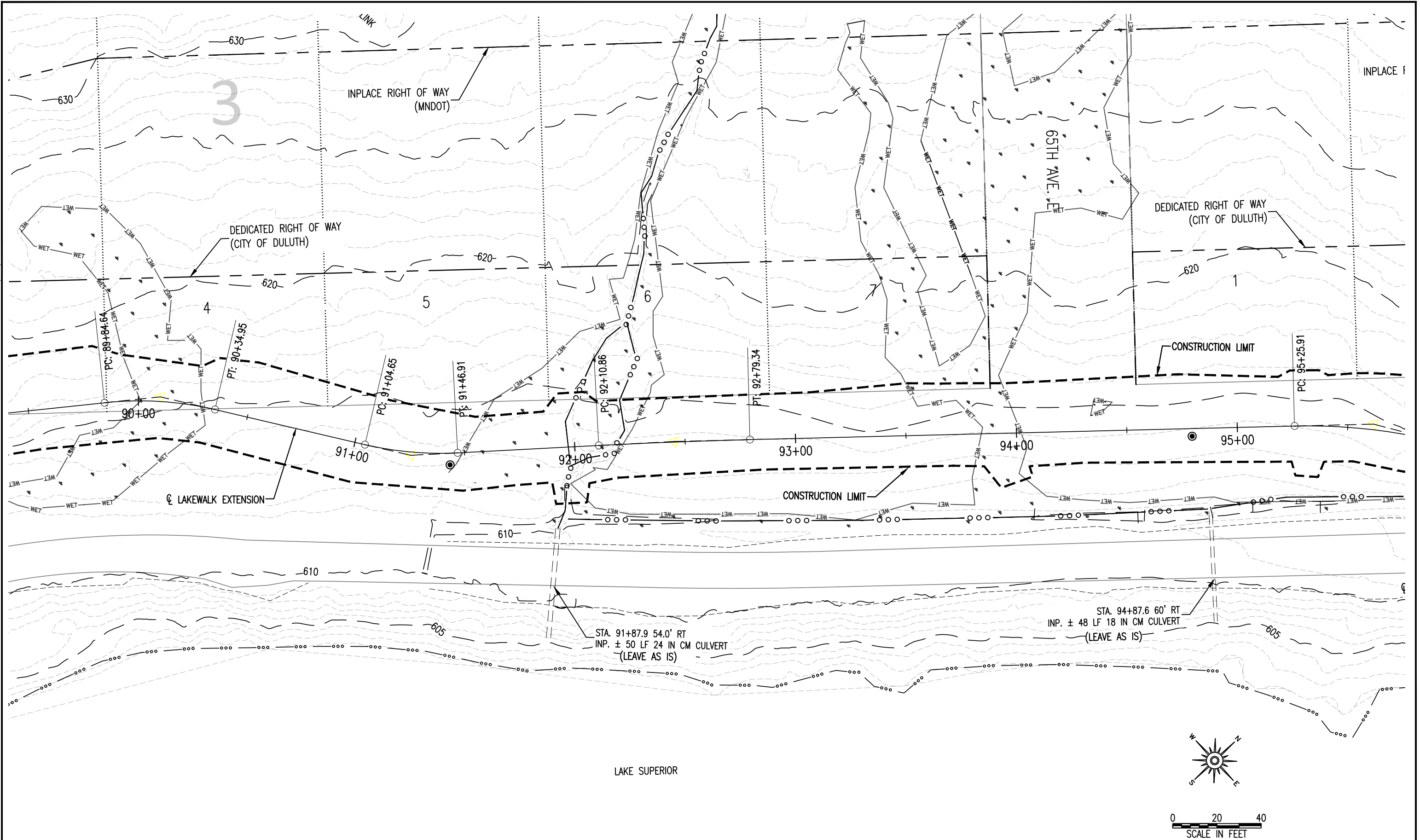
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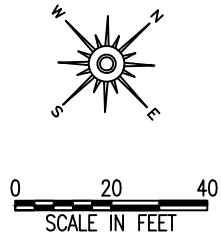
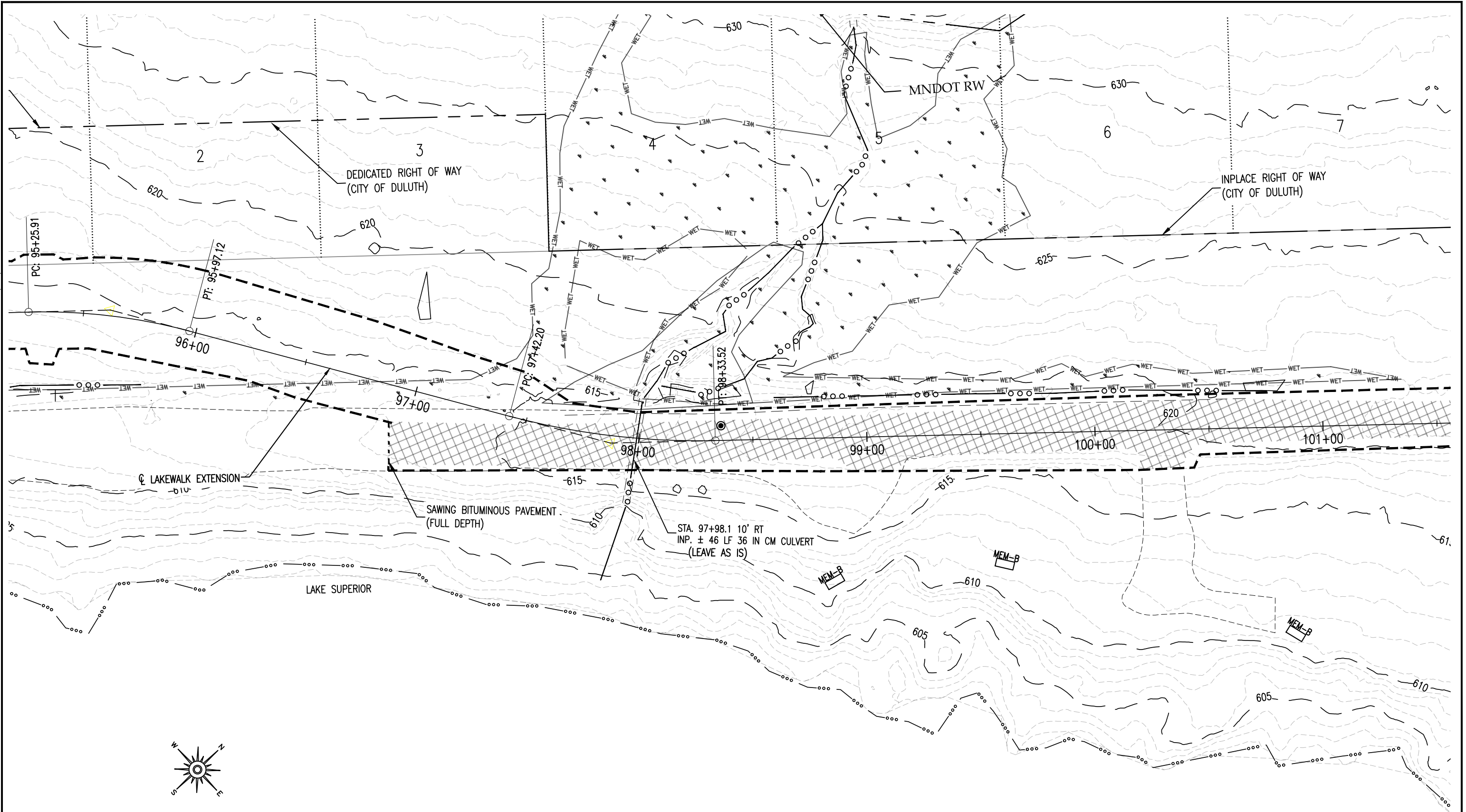
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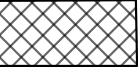
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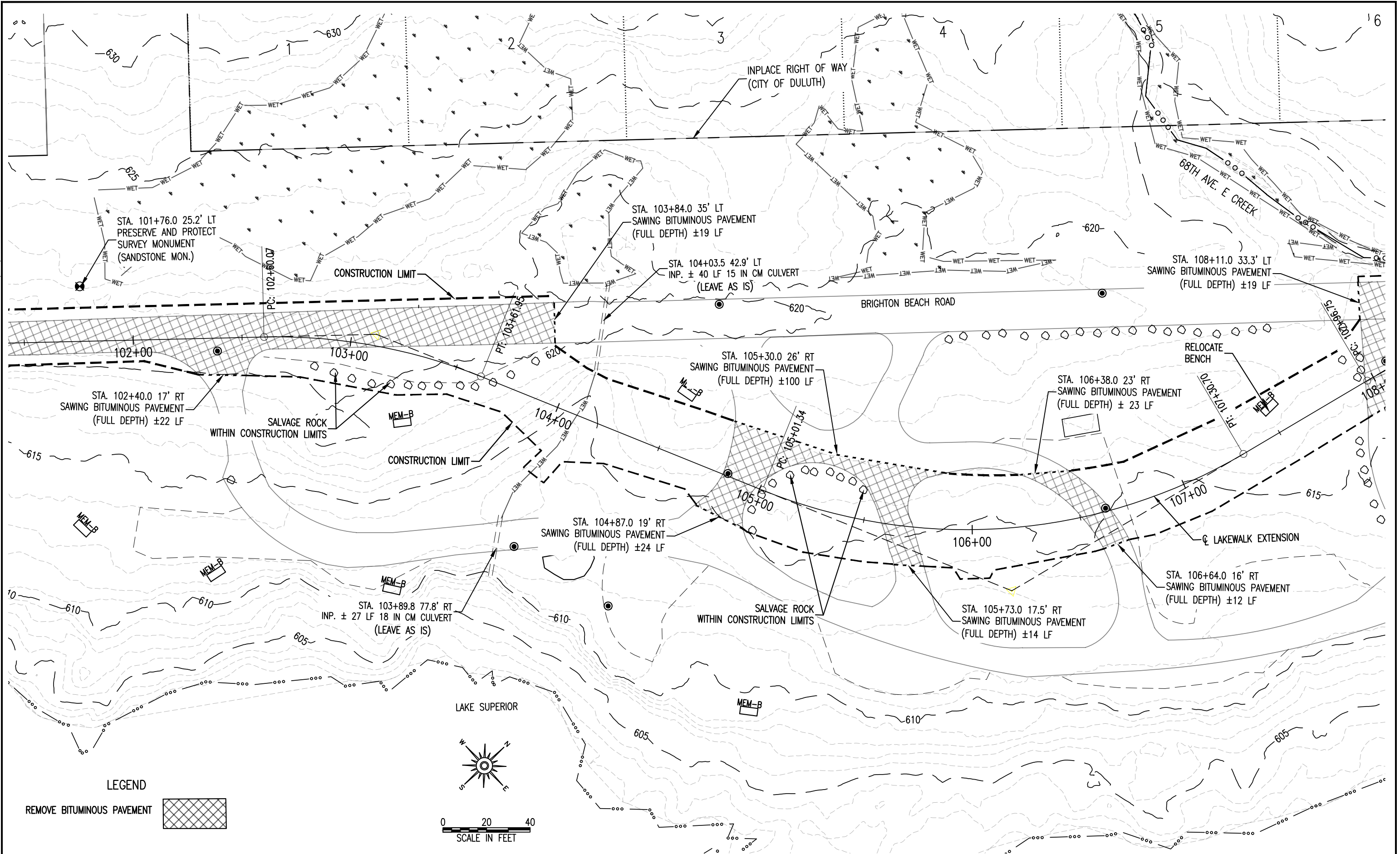
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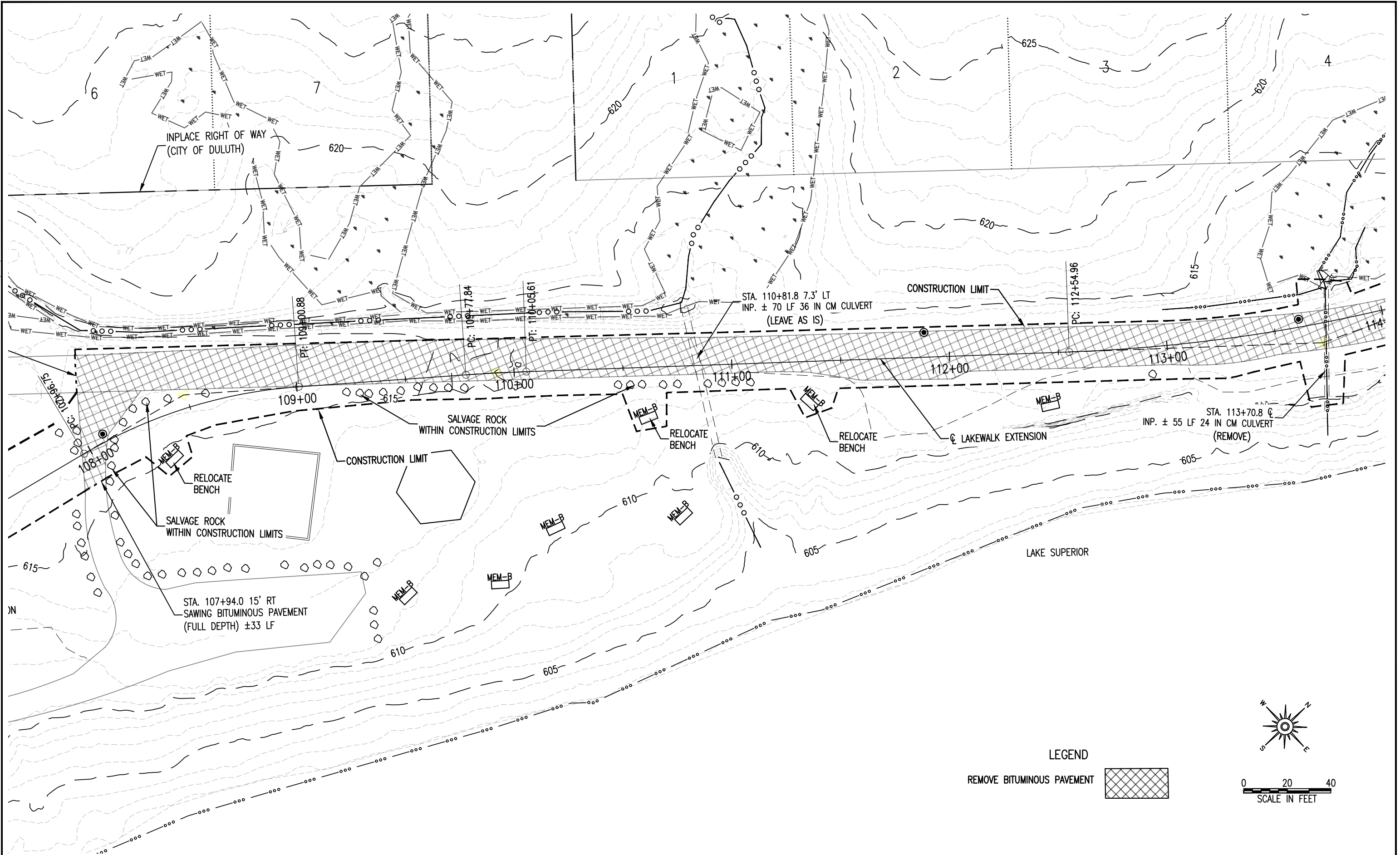
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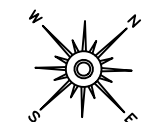
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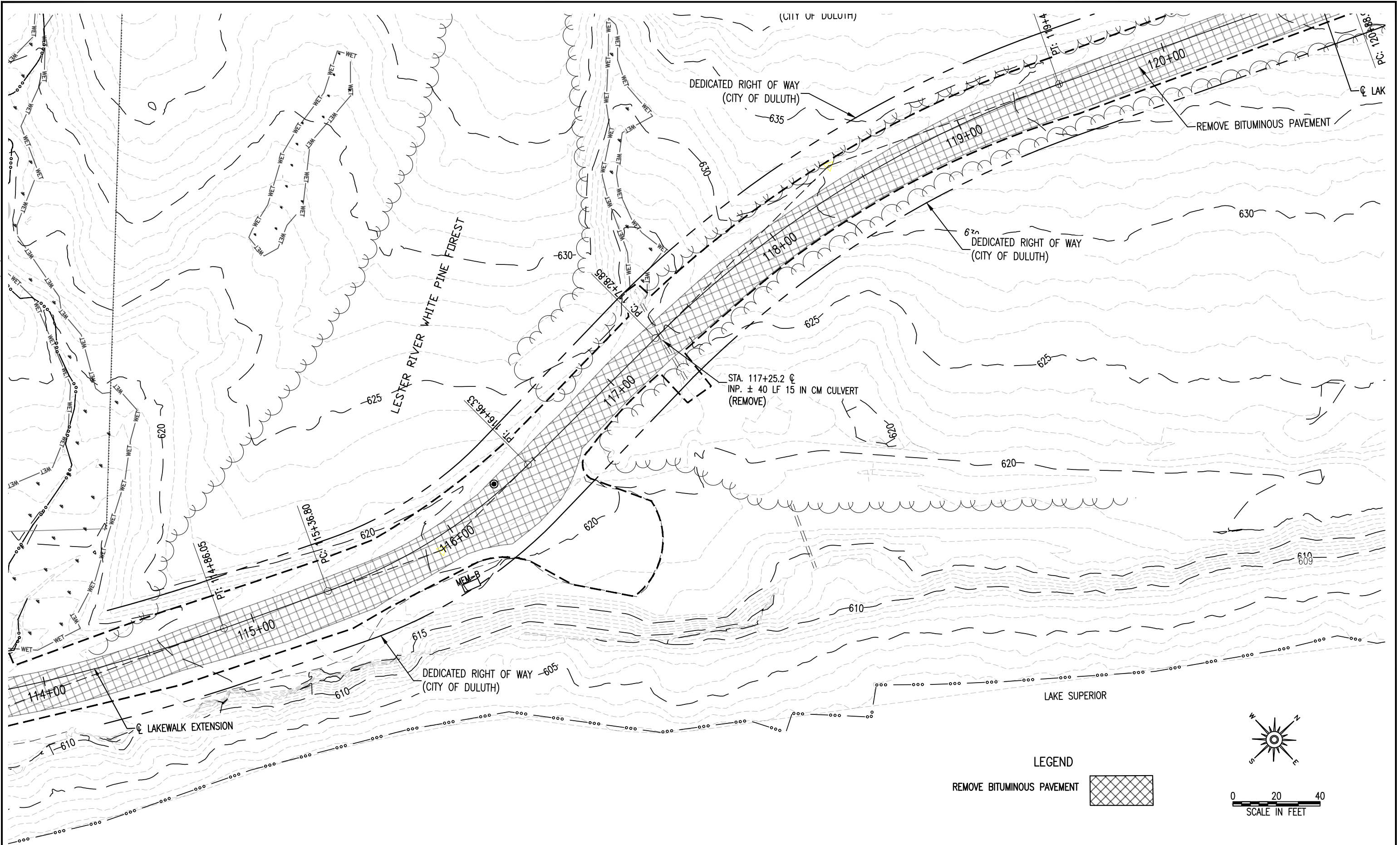
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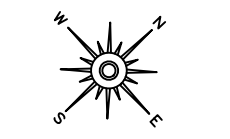
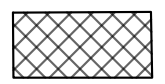
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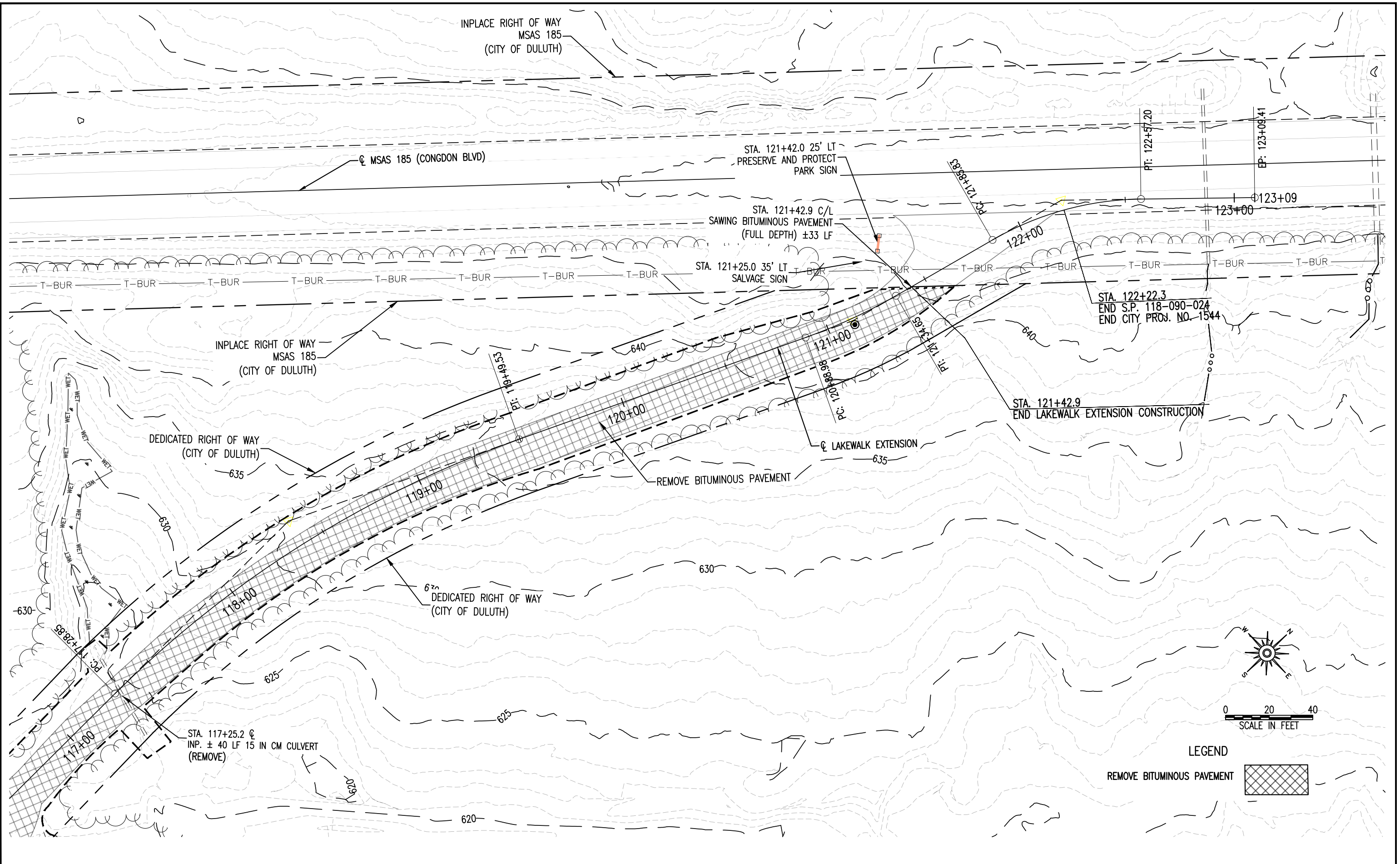
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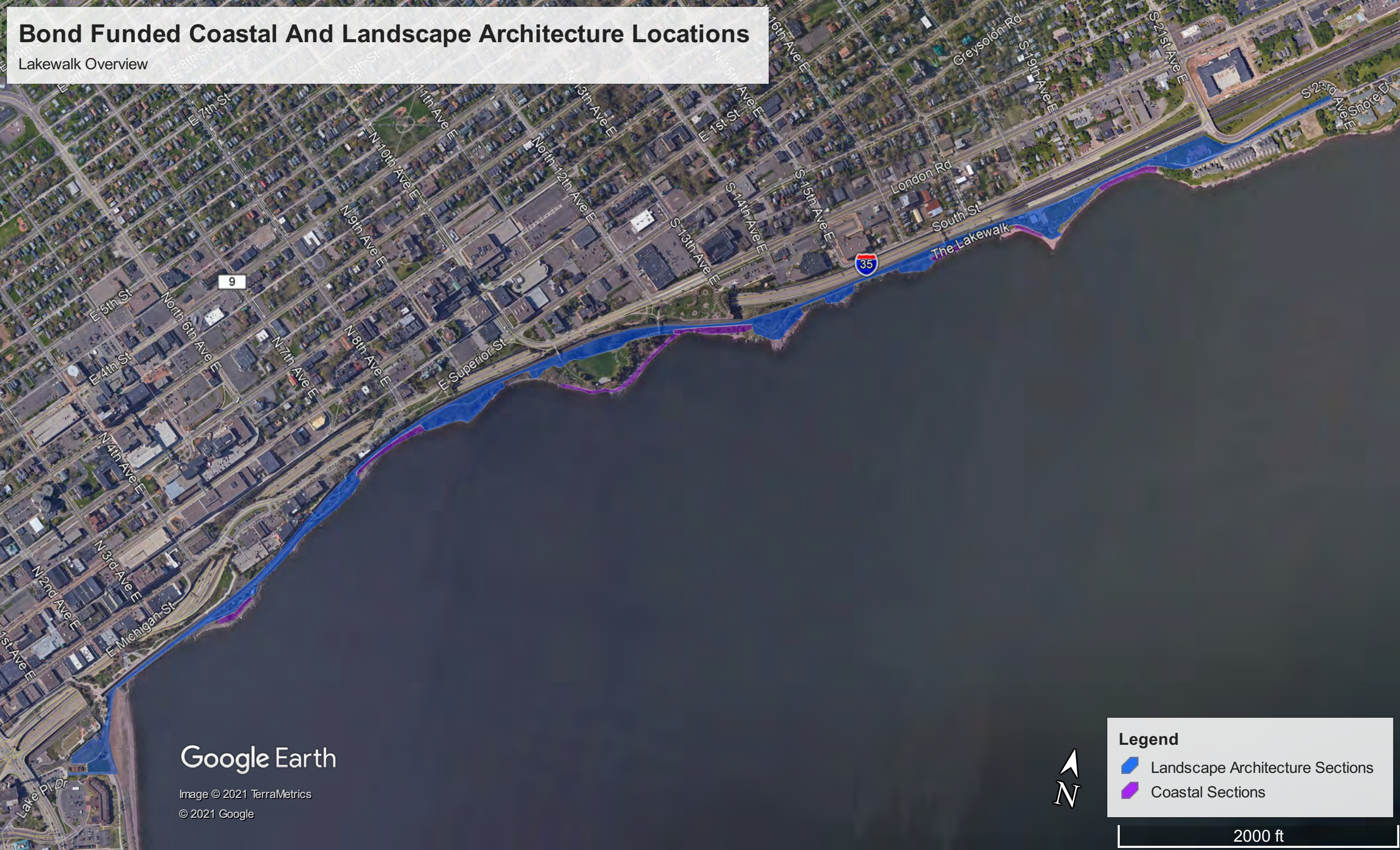
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Bond Funded Coastal And Landscape Architecture Locations

Lakewalk Overview



Google Earth

Image © 2021 TerraMetrics

© 2021 Google

Legend

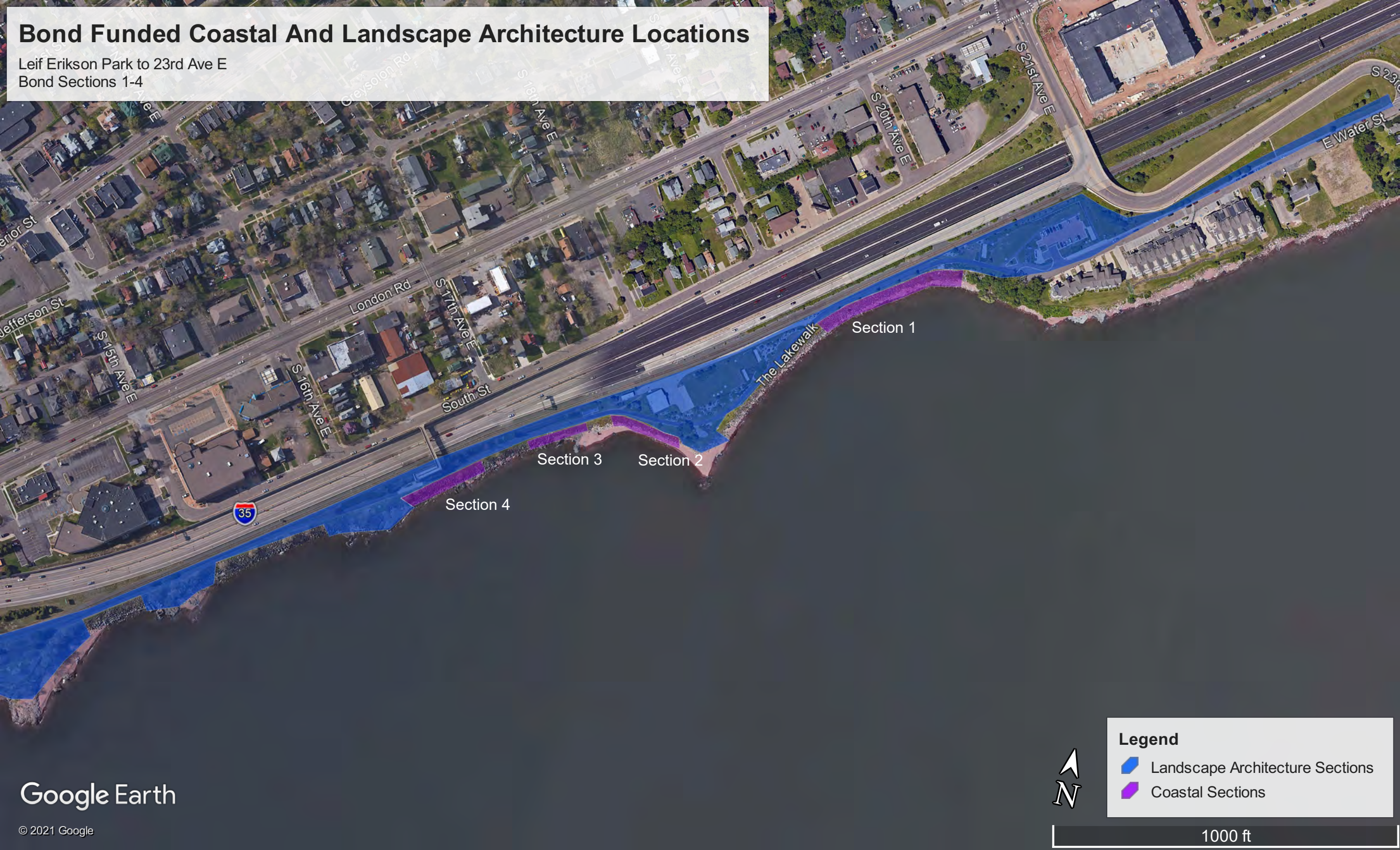
-  Landscape Architecture Sections
-  Coastal Sections



2000 ft

Bond Funded Coastal And Landscape Architecture Locations

Leif Erikson Park to 23rd Ave E
Bond Sections 1-4



Legend

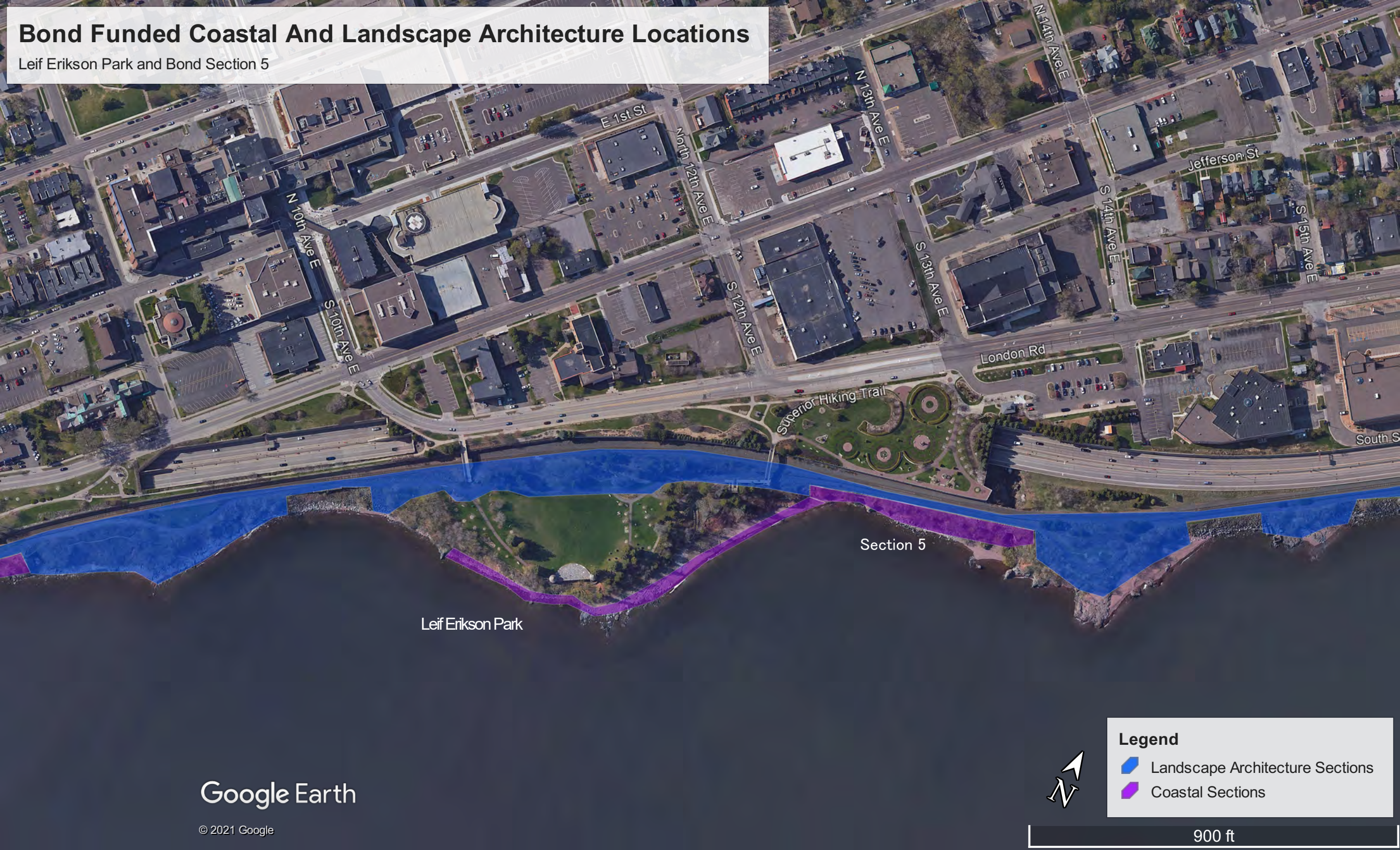
-  Landscape Architecture Sections
-  Coastal Sections



1000 ft

Bond Funded Coastal And Landscape Architecture Locations



Leif Erikson Park and Bond Section 5



Google Earth

© 2021 Google

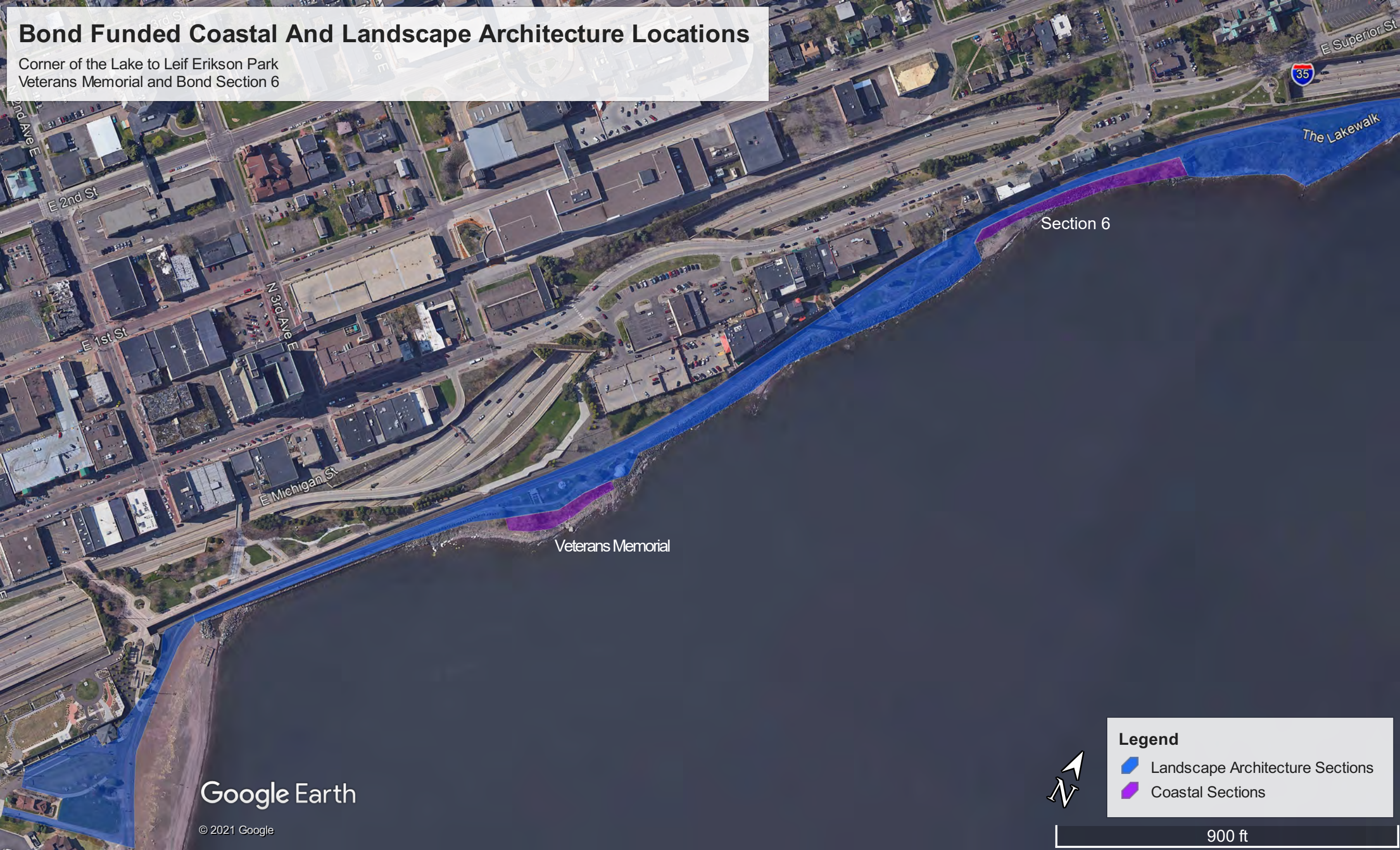


- Legend**
-  Landscape Architecture Sections
 -  Coastal Sections

900 ft

Bond Funded Coastal And Landscape Architecture Locations

Corner of the Lake to Leif Erikson Park
Veterans Memorial and Bond Section 6



Google Earth

© 2021 Google



Legend

-  Landscape Architecture Sections
-  Coastal Sections



900 ft

Bond Funded Coastal And Landscape Architecture Locations

Brighton Beach



Legend

-  Landscape Architecture Sections
-  Coastal Sections



1000 ft

City of Duluth
Supplementary Provisions – State & Federal Funding
21-AA11 RFP for Landscape Architectural Svcs for Shoreline Rehab (7th – 21st Ave East and Brighton Beach)

1. Disbursements

- a. No money under this Contract shall be disbursed by the City to any Contractor unless the Contractor is in compliance with the Federal Agency requirements with regard to accounting and fiscal matters to the extent they are applicable.
- b. Unearned payments under this Contract may be suspended or terminated upon the Contractor's refusal to accept any additional conditions that may be imposed by the Federal Agency at any time; or if the grant, if applicable, to the City under which this Contract is made is suspended or terminated.

2. Subcontracting Requirements

- a. The Contractor shall include in any subcontract the clauses set forth in these City of Duluth Supplementary Provisions in their entirety and shall also include a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
- b. The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the City's prior written approval of the subcontractors. The City will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by a Federal Agency or the Secretary of Labor, United States Department of Labor, to receive an award of such subcontract.

3. Breach of Contract.

The City may, subject to the Force Majeure provisions below and in addition to its other rights under the Contract, declare the Contractor in breach of the Contract by written notice thereof to the Contractor, and terminate the Contract in whole or in part, in accordance with Section 4, Termination, for reasons including but not limited to any of the following:

- a. Failure to begin the Work within the time specified in the Contract;
- b. Failure to perform the Work with sufficient labor, equipment, or material to insure the completion of the specified Work in accordance with the Contract terms;
- c. Unsatisfactory performance of the Work;
- d. Failure or refusal to remove material, or remove and replace any Work rejected as defective or unsatisfactory;
- e. Discontinuance of the Work without approval;
- f. Failure to resume the Work, which has been discontinued, within a reasonable time after notice to do so;
- g. Insolvency or bankruptcy;
- h. Failure to protect, to repair, or to make good any damage or injury to property;
- i. Breach of any provision of the Contract;
- j. Misrepresentations made in the Contractor's bid/proposal; or
- k. Failure to comply with applicable industry standards, customs, and practice.

4. Termination

If the Contractor is in breach of the Contract, the City, by written notice to the Contractor, may terminate the Contractor's right to proceed with the Work. Upon such termination, the City may take over the Work and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any additional cost incurred by the City in its completion of the Work and they shall also be liable to the City for liquidated damages for any delay in the completion of the Work as provided below. If the Contractor's right to proceed is terminated, the City may take possession of and utilize in completing the Work such materials, tools, equipment, and plant as may be on the site of the Work and necessary therefore.

City shall have the right to terminate this contract immediately without other cause in the event that all or a portion of the funds that the City intends to use to fund its obligations under the contract have their source with the State or Federal government or any agency thereof and said source reduces or eliminates their obligation to provide some or all of the funds previously committed by it to fund City's payment obligations under the Contract. The City

agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date.

Notwithstanding anything herein to the contrary, the City may terminate this Contract at any time upon written notice given by the City (for any reason, including the convenience of the City) to the Contractor at least thirty (30) days prior to the effective date of the termination of this Contract. The City agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date of the termination provided that Contractor has not committed a breach of this Contract. Nothing contained in this section shall prevent either party from pursuing or collecting any damages to which it may be entitled by law.

5. Force Majeure.

The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the Work due to any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency; any acts of the City; causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in their performance of some other contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; nor to any delay of any Subcontractor occasioned by any of the causes specified above. The Contractor shall promptly notify the City in writing within ten (10) days of the delay. Upon receipt of such notification, the City shall ascertain the facts and the cause of the delay. If, upon the basis of facts and the terms of the Contract, the delay is properly excusable, the City shall extend the time for completing the Work for a period of time commensurate with the period of excusable delay.

6. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Per 2 CFR 200.321, prime contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms (collectively referred to as socioeconomic firms) are used when possible. The affirmative steps must include:

- a. Placing qualified socioeconomic firms on solicitation lists;
- b. Assuring that socioeconomic firms are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by socioeconomic firms;
- d. Establishing delivery schedules, where the requirements permit, which encourage participation by socioeconomic firms; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7. Suspension and Debarment.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

PROFESSIONAL LANDSCAPE ARCHITECTURAL SERVICES AGREEMENT

ARCHITECT & CITY OF DULUTH

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, is made by and between the City of Duluth, Minnesota hereinafter referred to as the "City" and:

Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

hereinafter referred to as the "Landscape Architect", in consideration of the mutual promises contained herein.

Payments as described in Section V shall be made from Funding Click or tap here to enter text.; Project # Click or tap here to enter text.; and Resolution No. Click or tap here to enter text., passed on Click or tap here to enter text..

The professional landscape architectural services obtained by the City under this agreement concern the following described project hereinafter referred to as the "Project":

Project Number: Click or tap here to enter text.

Project Name: Click or tap here to enter text.

Project Budget: Click or tap here to enter text.

Project Description: Click or tap here to enter text.

The professional landscape architectural services to be provided under this agreement consist of those phases A through I checked below. A more particular description of each phase is contained in Section II, "Basic Services", of the agreement.

	<u>Phase</u>	<u>Description</u>
<input type="checkbox"/>	A.	Study and Report Phase
<input type="checkbox"/>	B.	Preliminary Survey Phase
<input type="checkbox"/>	C.	Public Input Phase
<input type="checkbox"/>	D.	Schematic Design Phase
<input type="checkbox"/>	E.	Design Development Phase
<input type="checkbox"/>	F.	Construction Document Phase
<input type="checkbox"/>	G.	Bidding Phase
<input type="checkbox"/>	H.	Construction Survey and Layout Phase
<input type="checkbox"/>	I.	Construction Administration and Inspection Phase

SECTION I. GENERAL

A. LANDSCAPE ARCHITECT

The Landscape Architect shall provide professional landscape architectural services for the City in all phases of the Project to which this agreement applies including complete

architectural services and complete structural, mechanical, electrical and civil engineering services, and such other services as may be necessary to assist the City in the design and construction of each authorized Phase of the Project, serve as the City's professional architectural representative for the Project as set forth below and shall give professional architectural consultation and advice to the City during the performance of services hereunder. Landscape Architect's services shall include all services set forth in Landscape Architect's Proposal attached hereto as Exhibit B except that to the extent that the provisions of Exhibit B are contrary to any provisions of this Agreement, this Agreement shall be deemed to be controlling. All services provided hereunder shall be performed by the Landscape Architect in accordance with generally accepted Architectural standards to the satisfaction of the City.

B. NOTICE TO PROCEED

The Landscape Architect shall only begin performance of each Phase of work required hereunder upon receipt of a written Notice to Proceed by City representative with that Phase.

C. TIME

The Landscape Architect shall begin work on each successive phase promptly after receipt of the Notice to Proceed and shall devote such personnel and materials to the Project so as to complete each phase in an expeditious manner within the time limits set forth in Section II. Time is of the essence to this agreement.

D. CITY'S REPRESENTATIVE

The City's representative to the Landscape Architect shall be the Director of [Click or tap here to enter text.](#) or his or her designees (the "Director") assigned in writing.

E. PROJECT BUDGET

Landscape Architect shall design the Project in such a manner as to meet the City's goals and objectives for the Project at a cost for design and construction which does not exceed the City's Project Budget; provided that the Director may, from time to time, increase or decrease the Project Budget, which increase or decrease shall be communicated to the Landscape Architect in writing as provided for in Section VII below.

F. SUBCONSULTANTS

Landscape Architect may contract for the services of sub-consultants to assist Landscape Architect in the performance of the services to be provided by Landscape Architect hereunder, but the selection of any sub-consultant to perform such services shall be subject to the prior written approval of the Director. Landscape Architect shall remain responsible for all aspects of any services provided by such sub-consultants to City under this Agreement. City shall reimburse Landscape Architect for sub-consultant services under the categories of services to be provided by Landscape Architect under Phases A through I, as applicable.

G. COORDINATION WITH OTHER CITY CONSULTANTS

☐ If this box is checked, the City has contracted with or will contract with one or more other design professionals to perform design services on projects related to or which need to interface with the Project. Attached to this Agreement as Exhibit is a document entitled "Coordinated Work Plan" which sets forth in detail the manner of coordination between Landscape Architect and such other design professional(s) which will be required of Landscape Architect and such other design professional(s) in designing the Project and said related projects. Landscape Architect agrees to use its best efforts to implement the Coordinated Work Plan in designing the Project and to design the Project in such a manner so that the resulting combination of the Project and the related projects result in an integrated whole which achieves the City's goals and objectives for the Project and the related projects.

SECTION II. BASIC SERVICES

A. STUDY AND REPORT PHASE

- ☒ Included in this Agreement
☐ Not included in this Agreement

The Landscape Architect shall:

1) City's Requirements

Review available data and consult with the City to clarify and define the City's requirements for the Project.

2) Advise Regarding Additional Data

Advise the City as to the necessity of the City's providing or obtaining from others data or services in order to evaluate or complete the Project and, if directed by the Director, act on behalf of the City in obtaining other data or services.

3) Technical Analysis

Provide analysis of the City's needs, planning surveys, site evaluations, and comparative studies of prospective sites and solutions.

4) Economic Analysis

Provide a general economic analysis of various alternatives based on economic parameters and assumptions provided by the City.

5) Report Preparation

Prepare a report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions available to the City and setting forth the Landscape Architect's findings and recommendations with opinions of probable total costs for the Project, including construction cost, contingencies, allowances for charges of all professionals and consultants, allowances for the cost of land and rights-of-way, compensation for or

damages to properties and interest and financing charges (all of which are hereinafter called "Project Costs").

6) Report Presentation

Furnish three copies of the report and present and review the report in person with the City as the City Representative shall direct.

7) Supplementary Duties

The duties and responsibilities of Landscape Architect during the Study and Report Phase shall also include any additional duties and responsibilities to be provided pursuant to the Landscape Architect's proposal attached as Exhibit B.

8) Completion Time

The Study and Report Phase shall be completed and report submitted by [Click or tap here to enter text.](#)

B. PRELIMINARY SURVEY PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

After written authorization by the Director to proceed with the preliminary survey phase, the Landscape Architect shall:

1) General

☐ If checked, perform topographic survey as necessary to prepare the design and to identify environmental conditions which will affect the design of the Project and provide Construction Survey and Layout as described in Section II.H

2) Boundary Survey

☐ If checked, perform boundary survey.

3) Document Presentation

☐ If checked, furnish a CAD file of the survey base map to the City. Files shall be in the software specified by the Director.

4) Preliminary Design

Prepare the Preliminary Design Studies and submit to the Director a digital copy of drawings and other documents, in a file type approved by the Director, which illustrate the scale and relationship of the Project components. Landscape Architect shall submit outline specifications for all major elements of construction including but not limited to: structural, mechanical and electrical systems, special equipment.

5) Probable Cost

Landscape Architect shall submit to City a Statement of Probable Construction

Cost based on current area, volume or other unit costs in a form acceptable to the Director.

6) Supplementary Duties

The duties and responsibilities of the Landscape Architect during the preliminary survey phase shall also include any additional duties and responsibilities to be provided pursuant to the Landscape Architect's proposal attached as Exhibit B.

7) Completion Time

The preliminary survey phase shall be completed and submitted by [Click or tap here to enter text..](#)

C. PUBLIC INPUT PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

After written authorization by the Director to proceed with the Public Input Phase, the Landscape Architect shall:

1) Advertisement

The City will take primary responsibility for advertising the public input phase of the project. Landscape Architect shall assist the City with advertising the project for public input by providing information on the nature, scope and timing of the proposed Project, and any other information necessary for a successful public engagement process. Any content created by the Landscape Architect shall be made available in a format that meets the needs of public media and the City website.

2) Stakeholder Meetings

Hold and moderate a minimum of ____ meetings with stakeholders as identified by the Director at sites approved by the Director in writing at which the Project is explained and at which meeting attendees are invited to provide input and feedback. Stakeholders may provide input by way of input at the meeting or written comment immediately thereafter.

3) Public Meetings

Hold and moderate a minimum of ____ public meetings at sites approved by the Director in writing at which the Project is explained and at which members of the public are invited to comment. Provide a public comment period, the duration of which is not less than two weeks, to help inform the final concept.

4) Public Meeting Summary

Within five (5) days of the last of such meeting, present to City a summary of all public comments received, both from the hearings and from written communications.

Summary shall be organized in a manner that is easy to read and understand and shareable with stakeholders, governing boards and commissions, and the public.

5) Supplementary Duties

The duties and responsibilities of the Landscape Architect during the public input and inspection phase shall also include any additional duties and responsibilities to be provided pursuant to the Landscape Architect's proposal attached as Exhibit B.

6) Completion Time

The Public Comment Phase shall be completed and report or plan submitted by [Click or tap here to enter text.](#)

D. SCHEMATIC DESIGN PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

After written authorization by the Director to proceed with the Schematic Design Phase, the Landscape Architect shall:

1) Schematic Design Documents

Prepare schematic design documents consisting of final design criteria, preliminary drawings and outline specifications, taking into account any public comment received during a Public Input Phase, if that phase is included.

2) Revised Project Costs

Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project costs.

3) Preparation of Grants; Environmental Statements

Preparation of applications and supporting documents for governmental grants, loans or advances, if any, in connection with the Project, preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documentation prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

4) Renderings and Models

Providing renderings or models for the City's use.

5) Economic Analysis

Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting the City in obtaining licensing; detailed quantity

surveys of material, equipment and labor; and audits of inventories required in connection with construction performed by the City.

6) Document Presentation

Furnish one digital copy of the above schematic design documents in a form acceptable to the Director, and present and review such documents in person with the City as the Director may direct.

7) Revised Probable Costs

Landscape Architect shall submit to Director a Revised Statement of Probable Construction Cost in a form acceptable to the Director. Any variance in the estimated construction costs that will adversely affect the established Project Budget will be submitted to the Director with appropriate comments and recommendations prior to beginning the Construction Documents Phase.

8) Supplementary Duties

The duties and responsibilities of the Landscape Architect during the Schematic Design Phase shall also include any additional duties and responsibilities to be provided pursuant to the Landscape Architect's proposal attached as Exhibit B.

9) Completion Time

The Schematic Design Phase shall be completed and report or plan submitted by [Click or tap here to enter text..](#)

E. DESIGN DEVELOPMENT PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

1) Drawings and Specifications

On the basis of the accepted schematic design documents and the revised opinion of probable Project costs, Landscape Architect shall prepare Design Development Documents based on the approved Schematic Design Documents to include adequate Specifications for elements of the Project for consideration and approval by the Director. A sufficient number of copies (as determined by the Director) of the Design Development Documents will be submitted to the Director for distribution, each copy consisting of drawings and other documents to fix and describe the size, cross sections and character of the Project as to architectural, structural, mechanical and electrical systems, materials, and such other essentials as may be necessary and appropriate.

2) Revised Probable Cost

Landscape Architect shall submit to City a Revised Statement of Probable Construction Cost in a form acceptable to the Director. Any variance in the estimated construction costs that will adversely affect the established Project Budget will be

submitted to the Director with appropriate comments and recommendations prior to beginning the Construction Documents Phase.

3) Completion Time

The Design Development Phase shall be completed and report or plan submitted by

[Click or tap here to enter text..](#)

F. CONSTRUCTION DOCUMENT PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

1) Drawings and Specifications

On the basis of the accepted design development documents and the revised opinion of probable Project costs, Landscape Architect shall prepare from the approved Design Development Documents, for consideration and approval by the Director, complete Working Drawings and Specifications. The Working Drawings and Specifications shall set forth in complete detail the requirements of the entire Project, including the necessary bidding information prepared in such a way to allow City, if it so desires, to advertise for the award of one or more contracts for the construction and completion of the entire Project, or any phase of the Project.

2) Approvals of Governmental Entities

Landscape Architect shall perform those services pertaining to governmental approvals and permits set forth adjacent to the checked box below:

- ☐ Furnish to the City such documents and design data as may be required for, and prepare the required documents so that the City may apply for approvals and permits of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.
- ☐ Apply for approvals and permits of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and obtain such approvals by participating in submissions to and negotiations with appropriate authorities.

3) Adjusted Project Costs

Advise the City of any adjustments to the latest opinion of probable Project costs, identify cause of change and furnish a revised opinion of probable Project cost based on the drawings and specifications.

4) Contract Document Preparation

Prepare final plans and specifications for the Project, which shall include incorporation of plans and specifications prepared by subconsultants. Landscape Architect shall assist in the preparation of contract documents. Landscape Architect shall prepare all necessary

project/plan review forms checklists, labor compliance requests, wage determination requests, bidding documents and other forms to assist the City with procuring Bids. Landscape Architect shall review all plans and specifications and supporting documentation and resolve any inconsistencies in said documents being incorporated into the Contract prior to bid. To the extent possible, the Landscape Architect will follow the document format supplied by the City and use the standard terms and conditions supplied by the City in preparation of these documents.

5) Real Estate Acquisition: Legal Description

- ☐ If checked, based on design development documents, Landscape Architect shall furnish a legal description and recordable reproducible 8-1/2" X 11" plat of each parcel of real estate in which the City must acquire an interest in order to proceed with construction of the Project.

6) Document Presentation

Landscape Architect shall, within the agreed Performance Schedule, submit a digital file of the complete set of proposed Construction Documents, including a cost estimate, to the Director for review and official approval prior to the advertisement of bids for construction of the Project. Should paper sets of Construction Documents be required or requested by the Director, Landscape Architect will be reimbursed for the actual cost of reproduction, upon approval in advance by City.

7) Supplementary Duties

The duties and responsibilities of the Landscape Architect during the Final Design Phase shall also include any additional duties and responsibilities to be provided pursuant to the Landscape Architect's proposal attached as Exhibit B.

8) Completion Time

The Construction Document Phase shall be completed and contract documents submitted by [Click or tap here to enter text..](#)

G. BIDDING PHASE

- ☐ Included in this Agreement
☐ Not included in this Agreement

The Landscape Architect shall:

1) Assist in Bidding

Assist the City in obtaining bids for each separate City contract for construction, materials, equipment and services.

2) Advise Regarding Contractors and Subcontractors

Consult with and advise the City as to the acceptability of subcontractors and other persons and organizations proposed by the City's contractor(s) (hereinafter called "Contractor(s)" for those portions of the work as to which such acceptability is required

by the bidding documents).

3) Consult Regarding Substitutes

Consult with and advise the City as to the acceptability of substitute materials and equipment proposed by the contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

4) Evaluation of Bids

Assist the City in evaluating bids or proposals and in assembling and awarding contracts.

5) Supplementary Duties

The duties and responsibilities of the Landscape Architect during the Bidding Phase shall also include any additional duties and responsibilities to be provided pursuant to the Landscape Architect's proposal attached as Exhibit B.

6) Completion Time

The bidding phase shall be completed by [Click or tap here to enter text..](#)

H. CONSTRUCTION SURVEY AND LAYOUT PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

1) General

This phase of work may or may not be performed in conjunction with Phase I, "Construction Administration and Inspection Phase" of this agreement. Inclusion of this phase in the agreement does not imply that services identified under Phase I are to be provided unless specifically indicated in this agreement.

2) Duties

The Landscape Architect shall provide horizontal and vertical control line and grade to enable construction of the improvement as depicted in the Project plans. The number of control points to be established by the Landscape Architect shall be sufficient to permit the construction contractor to construct the improvement within the construction tolerances established in the Project specifications. In addition, the number of control points shall be consistent with standard engineering practice.

3) Accuracy

The Landscape Architect shall provide the horizontal and vertical control points within the same measurement tolerances as the construction tolerances established in the Project specifications. The Landscape Architect shall be responsible for the accuracy of the control points which are established. The Landscape Architect shall be responsible for costs which may result from errors in placement of control points. The Landscape Architect shall be required to establish control points at Landscape Architect's costs only one time. Control points which are lost, damaged, removed or otherwise moved by the Contractor or others shall be promptly replaced by the Landscape Architect and costs for such replacement shall be computed on a time and materials basis, and reimbursed

by the City. The Landscape Architect shall take all reasonable and customary actions to protect the control points established by the Landscape Architect.

4) Supplementary Duties

The duties and responsibilities of the Landscape Architect during the construction survey and layout phase shall also include any additional duties and responsibilities to be provided pursuant to the Landscape Architect's proposal attached as Exhibit B.

5) Completion Time

The construction survey & layout phase shall be completed by [Click or tap here to enter text..](#)

I. CONSTRUCTION ADMINISTRATION AND INSPECTION PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

1) General Duties

Consult with and advise the City and act as its representative as provided herein and in the General Conditions of the construction contract for the Project. This phase of the work may or may not be performed in conjunction with Phase H "Construction Survey and Layout Phase" of this agreement. Inclusion of this phase in the agreement does not imply that services identified under Phase H are to be provided unless specifically indicated in this agreement.

2) Construction Inspection and Reporting

Make visits to the site with sufficient frequency at the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of the contractor(s) and to insure that such work is proceeding in accordance with the contract documents. During such visits and on the basis of on-site observations, the Landscape Architect shall keep the City informed of the progress of the work, shall endeavor to guard the City against defects and deficiencies in such work and may disapprove or reject work failing to conform to the contract documents.

3) Warranty Inspection

Eleven months following construction completion, conduct an inspection to document any items to be repaired by the contractor under the conditions of the construction contract warranty. Submit work to be corrected to the Contractor and the City.

4) Review of Technical and Procedural Aspects

Review and approve (or take other appropriate action in respect to Shop Drawings), the results of tests and inspections and other data which each contractor is required to submit, determine the acceptability of substitute materials and equipment proposed by the contractor(s), and receive and review (for general content as required by the specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by the contractor(s).

5) Contract Documents

Receive from each contractor and review for compliance with contract documents all required document submissions including but not limited to performance and payment bonds, certificates of insurance report forms required by any City, State or Federal law or rule or regulation and submit the forms to the City for final approval.

6) Conferences and Meetings

Attend meetings with the contractor, such as preconstruction conferences, progress meetings, job conferences and other Project-related meetings, and prepare and circulate copies of the minutes thereof including to the City.

7) Records

a) Maintain orderly files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original contract documents, including all work directive changes, addenda, change orders, field orders, additional drawings issued subsequent to the execution of the contract, the Landscape Architect's clarifications and interpretations of the contract documents, progress reports, and other Project-related documents.

b) Keep a diary or log book, recording the contractor's hours on the job site, weather conditions, data relative to questions of work directive changes, change orders, or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail, as in the case of observing test procedures and send copies to the City. Take multiple photographs of the Work and keep a log and file of the photos. Specifically maintain records of acceptance and rejection of materials and workmanship.

c) Record names, addresses and telephone numbers of all the contractors, subcontractors, and major suppliers of materials and equipment.

8) Reports

a) Furnish the City periodic reports, as required, on progress of the work and of the contractor's compliance with the progress schedule and schedule of shop drawings and sample submittals.

b) Consult with the City, in advance of scheduled major tests, inspections, or start of important phases of the Work.

c) Draft proposed change orders and work directive changes, obtaining back-up material from the contractor, and make recommendations to the City regarding change orders, work directive changes and field orders.

d) Report immediately to the City upon the occurrence of any accident.

9) Contract Interpretation, Review of Quality of Work

Issue all instruction of the City to the contractor(s); issue necessary interpretations and clarifications of the contract Documents and in connection therewith prepare change orders as required, subject to the City's approval; have authority, as the Director, to require special inspection or testing of the work; act as initial interpreter of the

requirements of the contract documents and judge of the acceptability of the work there under and make decisions on all claims of the contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the contract documents pertaining to the execution and progress of the work.

10) Change Orders and Revisions

Prepare change orders to reflect changes in the Project requested or approved by the City, evaluate substitutions proposed by the contractor(s) and make revisions to drawings and specifications occasioned thereby, and provide any additional services necessary as the result of significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

11) Review of Applications for Payment

Based on the Landscape Architect's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amount owing to the contractor(s) and recommend in writing payments to the contractor(s) in such amounts; such recommendations of payment will constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated, that, to the best of the Landscape Architect's knowledge, information and belief, the quality of such work is in accordance with the contract documents (subject to an evaluation of such work as a functioning Project upon substantial completion, to the results of any subsequent tests called for in the contract documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due the contractor(s).

12) Determination of Substantial Completion

Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the contract documents and if each contractor has fulfilled all of his obligations there under so that the Landscape Architect may recommend, in writing, final payment to each contractor and may give written notice to the City and the contractor(s) that the work is acceptable (subject to any conditions therein expressed).

13) Authority and Responsibility

The Landscape Architect shall not guarantee the work of any contractor or subcontractor, shall have no supervision or control as to the work or persons doing the work, shall not have charge of the work, shall not be responsible for safety in, on, or about the job-site or have any control of the safety or adequacy of any equipment, building component, scaffolding, supports, forms or other work aids. If the Landscape Architect determines that there are deficiencies in materials or workmanship on the Project, or otherwise deems it to be in the best interest of the City to do so, the Landscape Architect shall be responsible to stop any contractor or subcontractor from performing work on the Project, until conditions giving rise to this need, therefore, are rectified.

14) Landscape Architect Not Responsible for Acts of Contractor

The Landscape Architect shall not be responsible for the supervision or control of the acts or omissions or construction means, methods or techniques of any contractor, or subcontractor, or any of the contractor(s)' or subcontractors' or employees or any other person (except the Landscape Architect's own employees and agents) at the site or otherwise performing any of the contractor(s) work; however, nothing contained in this paragraph shall be construed to release the Landscape Architect from liability for failure to properly perform duties undertaken by him in these contract documents or this agreement.

15) Preparation of Record Drawings

The Landscape Architect shall cause to have been prepared a set of record drawings in accordance with generally accepted architectural standards, and shall provide at least one set to Director.

16) Manuals

The Landscape Architect shall furnish operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, and adjusting and balancing); and training personnel for operation and maintenance.

17) Supplementary Duties

The duties and responsibilities of the Landscape Architect during the construction administration and inspection phase shall also include any additional duties and responsibilities to be provided pursuant to the Landscape Architect's proposal attached as Exhibit B.

18) Completion Time

The construction administration and inspection phase shall be completed by [Click or tap here to enter text..](#)

SECTION III. CITY'S RESPONSIBILITIES

A. FURNISH REQUIREMENTS AND LIMITATIONS

Provide all criteria and full information as to the City's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, economic parameters and any budgetary limitations; and furnish copies of all design and construction standards which the City will require to be included in the Drawings and Specifications.

B. FURNISH INFORMATION

Assist the Landscape Architect by placing at the Landscape Architect's disposal all available information reasonably known to and in possession of the City.

C. REVIEW DOCUMENTS

Examine all studies, reports, sketches, drawings, specifications, proposals and other

documents presented by the Landscape Architect.

D. OBTAIN APPROVALS AND PERMITS

Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

E. ACCOUNTING, LEGAL AND INSURANCE SERVICE

Provide such auditing service as the City may require to ascertain how or for what purpose any contractor has used the monies paid to him under the construction contract, and such inspection services as the City may require to ascertain that the contractor(s) are complying with any law, rule or regulation applicable to their performance of the work except as otherwise provided in Section II.

F. NOTIFY THE LANDSCAPE ARCHITECT OF DEFECTS OR DEVELOPMENT

Give prompt written notice to the Landscape Architect whenever the City observes or otherwise becomes aware of any development that affects the scope or timing of the Landscape Architect's services, or any defect in the work of the contractor(s).

G. COSTS OF THE CITY'S RESPONSIBILITIES

Bear all costs incidental to compliance with the requirements of this Section III.

SECTION IV. GENERAL CONSIDERATIONS

A. SUCCESSORS AND ASSIGNS

The City and the Landscape Architect each binds their respective partners, successors, executors, administrators and assigns to the other party of this agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this agreement; the Landscape Architect shall not assign, sublet, or transfer their respective interests in this agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Landscape Architect.

B. OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work product developed by the Landscape Architect in connection with this Project shall remain the property of the City whether the Project is completed or not. Reuse of any of the work product of the Landscape Architect by the City on extensions of this Project or any other Project without written permission of the Landscape Architect shall be at the City's risk and the City agrees to defend, indemnify and hold harmless the Landscape Architect from all damages and costs including attorney fees arising out of such reuse by the City or others acting through the City.

C. ESTIMATES OF COST (COST OPINION)

Estimates of construction cost provided are to be made on the basis of the Landscape Architect's experience, qualifications and the best of their professional judgment, but the Landscape Architect does not guarantee the accuracy of such estimates as compared to the contractor's bids or the Project construction cost.

D. INSURANCE

1) Landscape Architect shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota unless Landscape Architect shall have successfully demonstrated to the City Attorney, in the reasonable exercise of his or her discretion that such insurance is not reasonably available in the market. If the Landscape Architect demonstrates to the reasonable satisfaction of the City Attorney that such insurance requires hereunder is not reasonably available in the market, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the city which is reasonably available.

- a) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
- b) Public Liability Insurance and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- c) Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, Landscape Architect hereby commits to provide at least 60 days' notice prior to any change to the Professional Liability Insurance policy or coverage ; and in event of any change, Landscape Architect agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- d) **City of Duluth shall be named as Additional Insured** under the Public Liability and Automobile Liability, or as an alternate, Landscape Architect may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Landscape Architect shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Landscape Architect to provide Certificate of Insurance evidencing such coverage with notice to City of cancellation in accordance with the provisions of the underlying insurance

policy included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Landscape Architect's interests and liabilities.

- e) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than the notice provisions contained in the underlying insurance policy or policies. In addition, Landscape Architect commits to provide notice to City at least 30 days prior to any change of the policy or coverages.

2) The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Landscape Architect, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Landscape Architect, its employees, agents and representatives in the performance of work covered by this Agreement.

3) Certificates showing that Landscape Architect is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

4) The City shall be named as an additional insured on each liability policy other than the professional liability and the workers' compensation policies of the Landscape Architect.

5) The certificates shall provide that the policies shall not be cancelled during the life of this Agreement without advanced notice being given to the City at least equal to that provided for in the underlying policy of insurance.

6) Except as provided for in Section IV.D.1.c) above, Landscape Architect hereby commits to provide notice to City at least 30 days in advance of any change in the insurance provided pursuant to this Section IV or in advance of that provided for in the underlying insurance policy or policies whichever is longer. For the purposes of Section IV.D of this Agreement, the term, "changed", shall include cancellation of a policy of insurance provided hereunder and any modification of such policy which reduces the amount of any coverage provided thereunder below the amounts required to be provided hereunder or otherwise reduces the protections provided under such policy to City.

E. HOLD HARMLESS

The Landscape Architect agrees that it shall defend, indemnify and hold harmless the City of Duluth and its officers, agents, servants and employees from any and all claims including claims for contribution or indemnity, demands, suits, judgments, costs and expenses asserted by any person or persons including agents or employees of the City of Duluth or the Landscape Architect by reason of death or injury to person or persons or the loss or damage to property arising out of, or by reason of, any act, omission, operation or work of the Landscape Architect or its employees while engaged in the execution or performance of services under this Agreement except to the extent that such indemnification is specifically

prohibited by Minnesota Statutes Chapter 337 or Section 604.21. Landscape Architect shall not be required to indemnify City for claims of liability arising out of the sole negligent or intentional acts or omission of the City but shall be specifically required to and agrees to defend and indemnify City in all cases where claims of liability against the City arise out of acts or omissions which are passive or derivative of the negligent or intentional acts or omissions of Landscape Architect, including but not limited to, the failure of the City to supervise, the failure to warn, the failure to prevent such acts or omission by Landscape Architect and any other such source of liability. On ten days' written notice from the City of Duluth, the Landscape Architect shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages.

F. TERMINATION

- 1) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligation under this agreement through no fault of the terminating party; provided that no such termination may be affected unless the other party is given not less than fifteen (15) calendar days' prior written notice (delivered by certified mail, return receipt requested) of intent to terminate.
- 2) This agreement may be terminated in whole or in part in writing by the City for its convenience; provided that the Landscape Architect is given (1) not less than fifteen (15) calendar days' prior written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the City prior to termination.
- 3) Upon receipt of a notice of intent to terminate from the City pursuant to this agreement, the Landscape Architect shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) make available to the City at any reasonable time at a location specified by the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have accumulated by the Landscape Architect in performing this agreement, whether completed or in process.
- 4) Upon termination pursuant to this agreement, the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.

G. LAWS, RULES AND REGULATIONS

The Landscape Architect agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, State of Minnesota, the City of Duluth and their respective agencies and instrumentalities which are applicable to the work and services to be performed hereunder.

H. INDEPENDENT CONTRACTOR STATUS

Nothing contained in this agreement shall be construed to make the Landscape Architect an employee or partner of the City. The Landscape Architect shall at all times hereunder be construed to be an independent contractor.

I. FEDERAL FUNDING

If Federal Funds (i.e. HUD, FEMA, Revenue Sharing) are utilized as a source of Project funding, the Landscape Architect shall abide by the terms of all Federal requirements in the performance of duties hereunder.

J. AMENDMENT OF AGREEMENT

This agreement shall be amended or supplemented only in writing and executed by both parties hereto.

SECTION V. PAYMENT

A. BASIS OF BILLING

Upon completion of each phase of the work, City shall pay the Landscape Architect the percentage of the amount set forth in Section V.C as is set forth below for all services rendered under each such phase, the total of said amounts in no event to exceed the amount in Section V.C, including any and all Project-related expenses such as travel, reproduction of reports and drawings, tolls, mileage, etc.

% of Contract Amount (per section V.C)	Phase	Description
%	A	Study and Report Phase
%	B	Preliminary Survey Phase
%	C	Public Input Phase
%	D	Schematic Design Phase
%	E	Design Development Phase
%	F	Construction Document Phase
%	G	Bidding Phase
%	H	Construction Survey and Layout Phase
%	I	Construction Administration and Inspection Phase

B. PAYMENT FOR WORK COMPLETED

- 1) Monthly progress payments may be requested by the Landscape Architect for work satisfactorily completed within each phase and shall be made by the City to the Landscape Architect as soon as practicable upon submission of statements requesting payment by the Landscape Architect to the City. For the purposes of this agreement, the principals and employees of the Landscape Architect and their hourly rates are set forth in Exhibit A.
- 2) No payment request made pursuant to subparagraph 1 of this Section V shall exceed the estimated maximum total amount and value of the total work and services to be performed by the Landscape Architect under this agreement without the prior

authorization of the City and nothing herein, including exhaustion of the funds authorized pursuant to this Agreement, shall relieve the Landscape Architect from completing all work required under this Agreement or to demand increased compensation for completing such work. These estimates have been prepared by the Landscape Architect and supplemented or accompanied by such supporting data as may be required by the City.

3) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement, and as a condition precedent thereto, the Landscape Architect shall execute and deliver to the City a release of all claims against the City arising under or by virtue of this agreement.

4) In the event of termination by City under Section IV.F., upon the completion of any phase of the Basic Services, progress payments due Landscape Architect for services rendered through such phase shall constitute total payment for such services. In the event of such termination by City during any phase of the Basic Services, Landscape Architect also will be reimbursed for the charges of independent professional associates and consultants employed by Landscape Architect to render Basic Services, and paid for services rendered during that phase on the basis of hourly rates defined in Exhibit A of this agreement for services rendered during that phase to date of termination by Landscape Architect's principals and employees engaged directly on the Project. In the event of any such termination, Landscape Architect will be paid for all unpaid additional services plus all termination expenses. Termination expenses mean additional expenses directly attributable to termination, which, if termination is at City's convenience, shall include an amount computed as a percentage of total compensation for basic services earned by Landscape Architect to the date of termination as follows: 10% of the difference between the amount which the Landscape Architect has earned computed as described in paragraphs A and B of this section and the maximum payment amount described in paragraph C of this section. The above applies only if termination is for reasons other than the fault of the Landscape Architect.

C. TOTAL NOT TO EXCEED:

All payments under this Contract are not to exceed Click or tap here to enter text. (\$Click or tap here to enter text.).

SECTION VI. SPECIAL PROVISIONS

The following exhibits are attached to and made part of this agreement:

- 1) Exhibit A, Landscape Architect's Hourly Rates
- 2) Exhibit B, Landscape Architect's Proposal
- 3) Exhibit C, Coordinated Work Plan (delete if not included)

In the event of a conflict between the agreement and any Exhibit, the terms of the Agreement will be controlling.

SECTION VII. NOTICES

Notices to be given by either party to the other shall be deemed to be sufficiently given if deposited in the United States Mail, postage prepaid, addressed to the notice party as follows or to such other address as the noticed party may have provided in writing from time to time to the other party:

City:	(Director) City of Duluth 411 West First Street, Room ## Duluth, MN 55802
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Landscape Architect:	Name Company Address City State Zip
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SECTION VIII. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

[Remainder of this page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

CITY OF DULUTH-Client

Click or tap here to enter text.

By: _____
Mayor

By: _____

Attest:

Its: _____
Title of Representative

By: _____
City Clerk

Date: _____

Date: _____

Countersigned:

City Auditor

Approved as to Form:

City Attorney