

PUBLIC WORKS & UTILITIES COMMITTEE

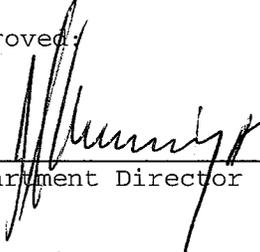
11-0597R

RESOLUTION AUTHORIZING A 50-YEAR LICENSE AGREEMENT WITH THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF HIGH PRESSURE GAS MAINS UNDER AMITY CREEK FOR A CONSIDERATION OF \$826.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a 50-year license agreement, a copy of which is on file in the office of the city clerk as Public Document No. \_\_\_\_\_, with the Minnesota Department of Natural Resources for construction, maintenance and operation of high pressure gas mains under Amity Creek for a consideration of \$826, payable out of Gas Fund 520, Department/Agency 500 (Public Works & Utilities), Division 1905 (Capital), Object 5533 (Capital Improvements - Revenue), city project no. 0904GS.

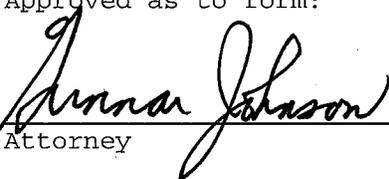
Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

ENG LLW:jh 11/4/2011

STATEMENT OF PURPOSE: This resolution will authorize a license agreement for a 50-year term with the Minnesota Department of Natural Resources allowing the city to construct, maintain and operate high pressure gas mains under Amity Creek. These high pressure gas main extensions are needed to serve new customers in Rice Lake Township and are located as shown on the attached maps.

**LICENSE FOR UTILITY TO CROSS PUBLIC WATERS**

This license is issued by the State of Minnesota, acting by and through its commissioner of natural resources, and hereafter called the "State", under authority and subject to the limitations in Minnesota Statutes, section 84.415, and Minnesota Rules Chapter 6135 and other applicable law to the Licensee as named and for the fee and term as specified below.

Name and Address of Licensee:           City of Duluth  
  Room 211, City Hall  
  411 West 1<sup>st</sup> Street  
  Duluth, MN 55802

License Fee: Eight Hundred Twenty Six Dollars and no/100.....\$826.00

Term (years): 50 years

Effective Date: November 1, 2011

Expiration Date: October 31, 2061

Purpose of License: Construction, maintenance and operation of a gas pipeline under water under the covenants and agreements of the Licensee to use the following described waters:

That part of the:

SE ¼ of the SE ¼ of Section 27, Township 51 North, Range 14 West  
NE ¼ of the SE ¼ of Section 27, Township 51 North, Range 14 West  
SE ¼ of the NW ¼ of Section 27, Township 51 North, Range 14 West  
NE ¼ of the NE ¼ of Section 26, Township 51 North, Range 14 West  
SE ¼ of the NE ¼ of Section 26, Township 51 North, Range 14 West  
SE ¼ of the SE ¼ of Section 26, Township 51 North, Range 14 West  
NE ¼ of the NE ¼ of Section 36, Township 51 North, Range 14 West  
SE ¼ of the NW ¼ of Section 25, Township 51 North, Range 14 West  
NE ¼ of the NE ¼ of Section 33, Township 51 North, Range 14 West  
SE ¼ of the NE ¼ of Section 33, Township 51 North, Range 14 West  
NE ¼ of the SE ¼ of Section 33, Township 51 North, Range 14 West  
SE ¼ of the SE ¼ of Section 33, Township 51 North, Range 14 West  
SW ¼ of the SW ¼ of Section 34, Township 51 North, Range 14 West

in St. Louis County as shown on the attached application and map, all of which are made a part hereof by reference.

This license is granted subject to the following provisions:

1. At the end of the license period and if both parties wish to renew, the renewal fee and time period will be determined by such methods as are developed by the State.
2. This license shall be cancelable upon reasonable notice by the State for violation of any of its terms, or if at any time its continuance will conflict with a public use of the land over or upon which it is granted, or for any other reason. Licensee shall ensure that Licensee's employees, agents and contractors have received and thoroughly understand all conditions of this license.
3. Unless otherwise authorized by the State, upon the surrender, expiration or cancellation of this license, the Licensee shall remove from the above described waters all the utility lines and related structures owned by it. If Licensee does not remove such lines or related structures, all such lines or structures remaining shall become the

- property of the State, to be used or disposed of as the State elects. The Licensee agrees to pay the State for the costs of removing and disposing of such lines or structures.
4. The Licensee shall comply with all federal, state and local laws and regulations, including municipal ordinances, affecting said waters or the area in which they are situated and keep them in a neat and orderly condition, and shall remove all refuse and debris that may accumulate thereon.
  5. No merchantable timber shall be cut, used, removed or destroyed without first paying the State the timber value in the sum stated above as determined by the State. After initial installation, no merchantable timber shall be cut, used, removed or destroyed by the Licensee without first contacting the State at least 60 days in advance to determine if a timber payment is needed. Slash material on state water crossings must be disposed of within 30 days of clearing or maintenance activities.
  6. The project hereunder shall at all times during and after construction be subject to inspection by the State and for that purpose the Licensee shall grant access to the premises at all reasonable times.
  7. The use of these waters by the Licensee in constructing or maintaining the lines for which this license is granted shall be subject to the use, sale, or leasing for mineral or other legal purposes. The Licensee will not cause any unnecessary hindrance to the activities of the State and shall allow access across the license area by the State when needed.
  8. This license is subject to the provisions of Minnesota Statutes, section 84.415 and Minnesota Rules Chapter 6135. All standards of Chapter 6135 are incorporated as terms and conditions of this license, except such variations as are identified and approved by the State in the license applications, plans and specifications which are attached and made part of the terms and conditions of this license. The Licensee is bound by the crossing location and installation method as detailed in the application and approved by the State. The Licensee shall not deviate from the terms and conditions of this license or the application as approved by the State unless it has first obtained written permission from the State.
  9. This license is permissive only. No liability shall be imposed upon or incurred by the State of Minnesota or any of its officers, agents, or employees, officially or personally, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of the Licensee or any of its agents, employees, or contractors relating to any matter hereunder. This license shall not be construed as estopping or limiting any legal claims or right of action of any person against the Licensee, its agents, employees, or contractors for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the State against the Licensee, its agents, employees, or contractors, for violation of or failure to comply with the provisions of the license or applicable provisions of law. The Licensee shall indemnify and hold harmless the State from all claims arising out of the Licensee's use of the above described waters whether such claims are asserted by civil action or otherwise.
  10. The Licensee shall not without the State's prior written consent: a) assign, convey or otherwise transfer this license or any interest under it; b) sublet the license corridor or any part thereof; or c) permit the use or occupancy of the license corridor or any part thereof by anyone other than the Licensee. This license shall extend to, and bind the successors, heirs, legal representatives and assigns of the Licensee, if any. The State may require a party who has requested to sublet, use or occupy the license corridor to obtain a separate license from the State prior to occupying or using the license corridor.
  11. No delay by the State in enforcing any of the conditions of this license shall operate as a waiver of any of its rights.
  12. Licensee will pay when due all taxes and assessments levied against said land or the improvements thereon.
  13. Placement and Marking of Lines:
    - A. For overhead crossings of state waters, lines shall have a minimum clearance of 25 feet above the water, unless otherwise approved by the State.
    - B. When directed by the State as a condition of the license, flight diverters shall be placed on overhead utility lines.
    - C. Any cable or conduit located at a shoreline shall be sufficiently buried so that it does not become exposed during drought or winter drawdowns.
    - D. When directed by the State as a condition of the license, underwater crossings shall be marked by permanent signs on the banks at the points where the line enters and leaves the public waters.
  14. Herbicides and Pesticides:
    - A. The Licensee must request and obtain written permission to apply herbicides or pesticides to state waters from the State prior to treatment. This request shall consist of a map and narrative identifying proposed treatment areas, target species, herbicide or pesticide name, rate of application and a description of application method and date. All applications must be according to label regulations and as otherwise specified by the State. The

- Licensee shall not apply pesticides that are restricted for use on certified state forest land administered by the State.
- B. The Licensee must submit annual reports detailing herbicide or pesticide application on areas covered under the license to the State. The report must include at a minimum, the dates, acres, location expressed as quarter-quarter section, township and range, herbicide or pesticide used and target species.
  - C. The Licensee shall post all places commonly used by the public for access along the utility corridors treated with herbicides or pesticides. The Licensee shall notify private landowners when application is made within 300 feet of an agricultural field or within a quarter mile of a residence.
15. Erosion and Revegetation:
- A. Erosion control measures shall be adequately designed for site characteristics. They shall be installed prior to commencement and maintained for as long as needed. All erosion control measures installed next to a water body shall run parallel to the contours.
  - B. All disturbed areas shall be restored to original contours and elevations and stabilized as soon as possible following construction. Areas of subsidence and crowing shall be repaired. Topsoil shall be reserved on site and used to re-dress disturbed areas.
  - C. All disturbed areas shall be revegetated using state seed mixes compiled by the Minnesota Board of Water and Soil Resources. All seed and plant materials shall be certified weed-free. Weed-free straw or hay shall be used for mulching and erosion control. Native species plants should be used, whenever possible, to revegetate disturbed areas. This revegetation should occur as early in the season as possible to permit adequate regrowth.
  - D. The Licensee shall monitor revegetation at state water crossings until the site is stabilized and the vegetation is self sustaining. Where severe or repeated damage is occurring or where measures have not been successful, preventative and corrective actions shall be taken by the Licensee, including construction of appropriate barriers, installation of warning signs, and other methods in consultation with the State.
  - E. The Licensee shall routinely inspect for erosion that may develop during the term of the license. Areas of erosion shall be stabilized by the Licensee.
  - F. If a disturbed area cannot be stabilized with vegetation before September 15 in the year that the utility was installed, the Licensee shall submit a written site stabilization plan to the State for approval. This plan shall describe erosion control, mulching, dormant seeding and monitoring. Seeding shall occur as soon as soil conditions are suitable.
  - G. Excavated materials shall not be deposited or stored alongside a public water in a manner where the materials can be redeposited into the public water by reasonably expected high water or storm run-off.
16. Invasive Species:
- A. The Licensee shall inspect all state water crossings for the presence of invasive species and noxious weeds prior to commencing clearing activities and take action to prevent their spread. If invasive species are known to be present, the State shall identify on a map the known infested sites to be avoided.
  - B. If the State or the Licensee discover additional invasive species infestation areas on state water crossings during construction, the Licensee shall immediately take action to prevent spread from the newly discovered infested area and then consult with the State on a resolution.
  - C. The Licensee shall prevent invasive species from entering into or spreading within a state water crossing by cleaning equipment and clothing prior to arriving at the license area. The Licensee shall legally dispose of material cleaned from equipment and clothing at a location offsite and the materials must be secured prior to transport to avoid dispersal.
  - D. Whenever possible, parking, staging areas and travel routes shall not be within known infested sites. Where there are multiple state water crossings and at least one contains invasive species, the Licensee shall to the extent practicable start work at the site with the fewest number of invasive plants, leaving the most heavily infested sites to last. The Licensee shall make every effort to schedule operations and site visits to avoid the spread of weed seed.
  - E. The Licensee shall continue to control invasive species on state water crossings for the terms of the license using methods approved by the State.
17. Crossing of State Trail:
- A. The location of any crossing of a state trail must be approved in advance by the State. The State may provide written instructions as to specific construction standards to be followed for the crossing of the state trail.
  - B. Utility installation and maintenance activities shall be conducted in a manner so as to minimize disturbance of state trail use and to separate the public from work areas. The Licensee must provide signs to warn state trail users of construction hazards.
  - C. The Licensee is responsible for repairing any damage to the state trail in a manner satisfactory to the State.

- D. Underground installations must not damage or destroy the principle root structure of specimen trees. Prior approval must be obtained from the State for the cutting or trimming of trees within the state trail right-of-way.
  - E. The Licensee shall notify the State in advance of its intent to perform any installation or maintenance operations within the state trail right-of-way. The Licensee may not close the state trail right-of-way without the prior written approval of the State.
18. Maintenance and Repairs:
- A. Emergency repairs and replacements may be made without prior notification to the State by the Licensee according to conditions and standards prescribed by Minnesota Rules, Chapter 6135 and the method of installation identified in this license. The Licensee shall notify the State of this activity as soon as practicable.
  - B. The Licensee shall employ appropriate erosion and sedimentation measures at the site during any emergency repairs. The State must approve plans for restoration of the site after the emergency repairs are conducted.
  - C. At least 20 days prior to commencing any routine maintenance work on state water crossings subject to this license, the Licensee shall notify the State in writing of the extent and method of maintenance and proposed schedule. The Licensee shall include a specific description of the proposed maintenance activities including clearing methods, erosion and sedimentation control measures, and revegetation plans. The Licensee shall not commence any routine maintenance work prior to approval by the State.
- 19. To protect fish spawning activities, the State may prohibit work in the public water or within a specified distance of the public water during the spawning season.
  - 20. The Licensee shall contact the State 10 days prior to installation and within 10 days following completion of licensed work. The Licensee may be required to submit the "as built" location of the utility after construction.
  - 21. This license is subject to the SPECIAL PROVISIONS attached hereto (if none, state none). None
  - 22. The contact for the State is the Regional Lands and Minerals Operations Supervisor, who is Joe Rokala at (218) 999-7894. Any questions about this license shall be directed to the Regional Lands and Minerals Operations Supervisor. The Regional Lands and Minerals Operations Supervisor may direct the Licensee to contact additional State staff for reviews and approvals.

ACCEPTED AND ACKNOWLEDGED

STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES

CITY OF DULUTH

Licensee(s)

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

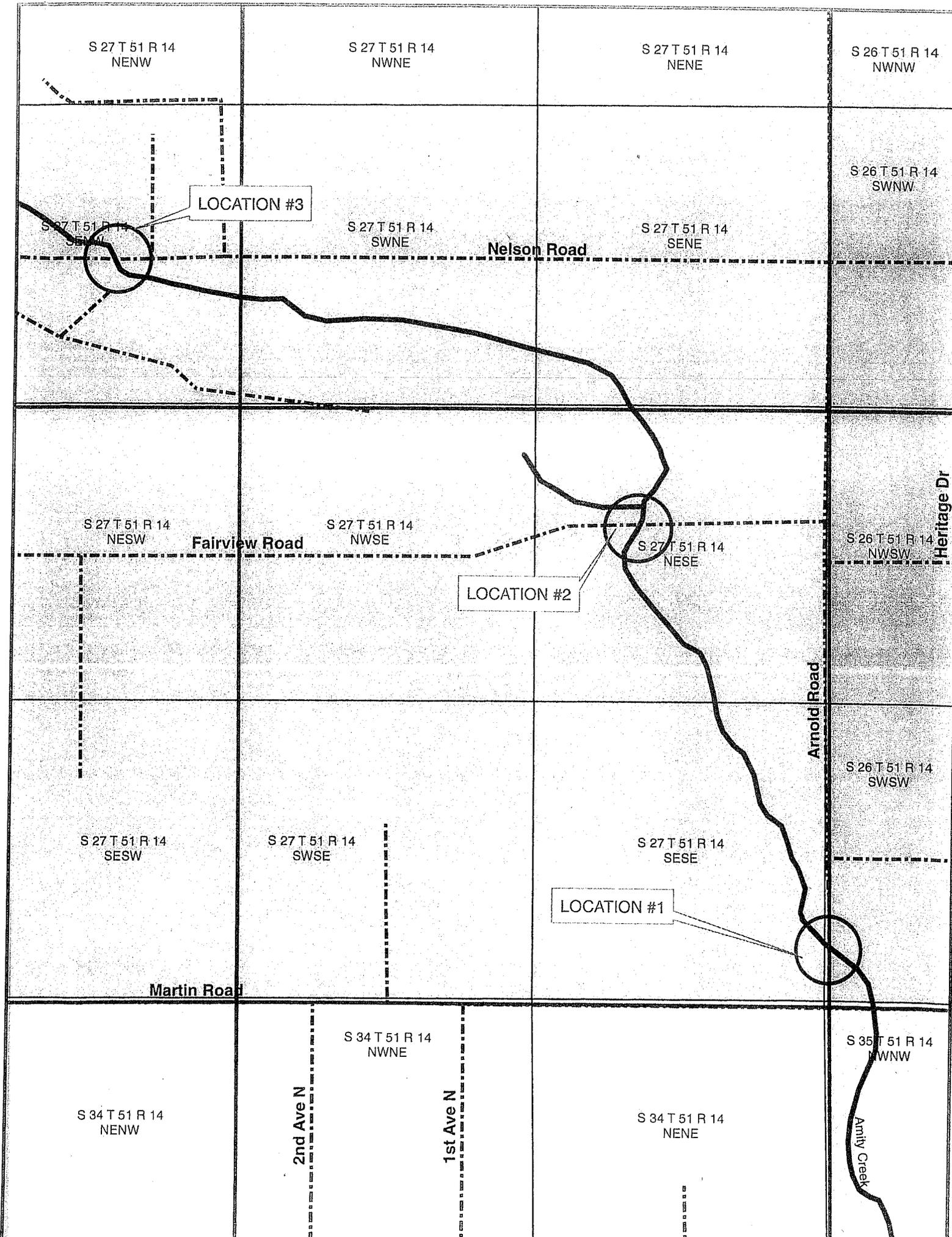
Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Regional Operations Supervisor

Date \_\_\_\_\_



S 27 T 51 R 14  
NENW

S 27 T 51 R 14  
NWNE

S 27 T 51 R 14  
NENE

S 26 T 51 R 14  
NWNW

S 26 T 51 R 14  
SWNW

LOCATION #3

S 27 T 51 R 14  
SWNW

S 27 T 51 R 14  
SWNE

Nelson Road

S 27 T 51 R 14  
SENE

S 27 T 51 R 14  
NESW

Fairview Road

S 27 T 51 R 14  
NWSE

LOCATION #2

S 27 T 51 R 14  
NESE

S 26 T 51 R 14  
NWSW

Heritage Dr

S 26 T 51 R 14  
SWSW

Arnold Road

S 27 T 51 R 14  
SESW

S 27 T 51 R 14  
SWSE

S 27 T 51 R 14  
SESE

LOCATION #1

Martin Road

S 34 T 51 R 14  
NWNE

S 35 T 51 R 14  
NWNW

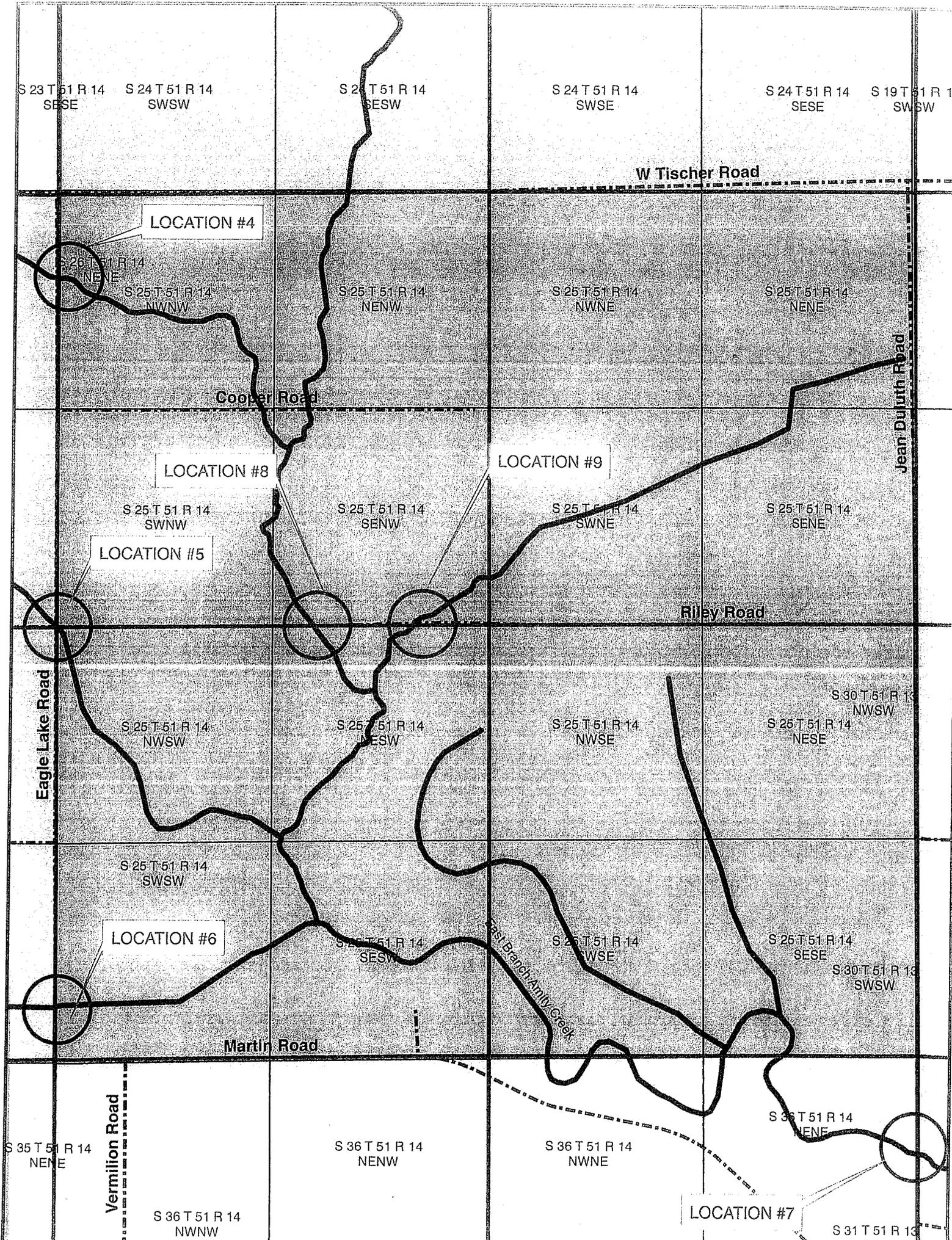
S 34 T 51 R 14  
NENW

2nd Ave N

1st Ave N

S 34 T 51 R 14  
NENE

Amity Creek



S 23 T 51 R 14  
SESE

S 24 T 51 R 14  
SWSW

S 24 T 51 R 14  
SESW

S 24 T 51 R 14  
SWSE

S 24 T 51 R 14  
SESE

S 19 T 51 R 1  
SWSW

W Tischer Road

LOCATION #4

S 26 T 51 R 14  
NENE

S 25 T 51 R 14  
NWNW

S 25 T 51 R 14  
NENW

S 25 T 51 R 14  
NWNE

S 25 T 51 R 14  
NENE

Cooper Road

LOCATION #8

S 25 T 51 R 14  
SWNW

S 25 T 51 R 14  
SENW

LOCATION #9

S 25 T 51 R 14  
SWNE

S 25 T 51 R 14  
SENE

LOCATION #5

Riley Road

Eagle Lake Road

S 25 T 51 R 14  
NWSW

S 25 T 51 R 14  
NESW

S 25 T 51 R 14  
NWSE

S 30 T 51 R 13  
NWSW

S 25 T 51 R 14  
NESE

S 25 T 51 R 14  
SWSW

LOCATION #6

S 25 T 51 R 14  
SESW

S 25 T 51 R 14  
SWSE

S 25 T 51 R 14  
SESE

S 30 T 51 R 13  
SWSW

Martin Road

East Branch Andy Creek

S 35 T 51 R 14  
NENE

Vermilion Road

S 36 T 51 R 14  
NENW

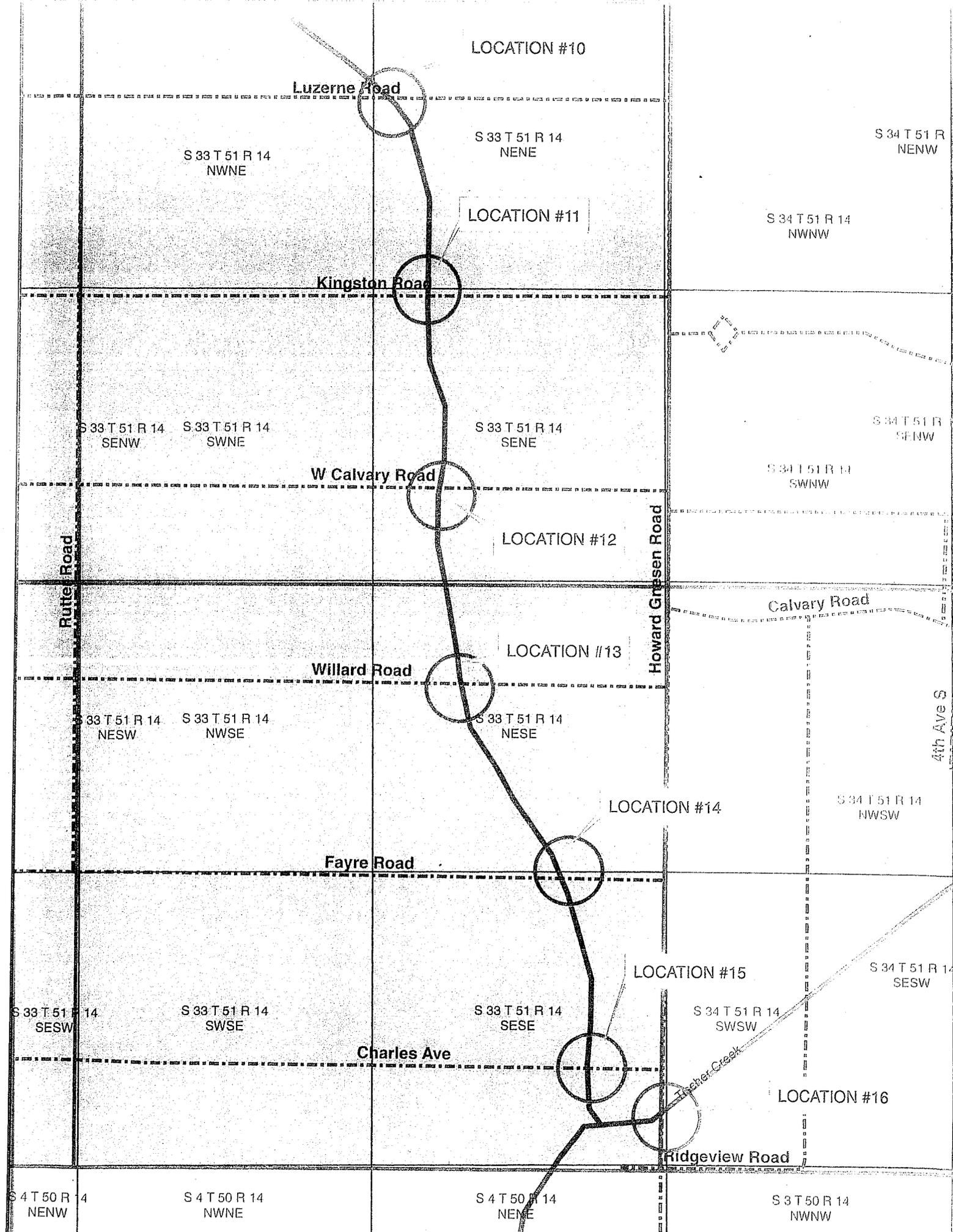
S 36 T 51 R 14  
NWNE

S 36 T 51 R 14  
NENE

LOCATION #7

S 36 T 51 R 14  
NWNW

S 31 T 51 R 13  
NWNW



LOCATION #10

Luzerne Road

S 33 T 51 R 14  
NWNE

S 33 T 51 R 14  
NENE

S 34 T 51 R  
NENW

LOCATION #11

S 34 T 51 R 14  
NWNW

Kingston Road

S 33 T 51 R 14  
SEW

S 33 T 51 R 14  
SWNE

S 33 T 51 R 14  
SENE

S 34 T 51 R  
SEW

W Calvary Road

S 34 T 51 R 14  
SWNW

LOCATION #12

Route Road

Howard Griesen Road

Calvary Road

Willard Road

LOCATION #13

S 33 T 51 R 14  
NESW

S 33 T 51 R 14  
NWSE

S 33 T 51 R 14  
NESE

4th Ave S

LOCATION #14

S 34 T 51 R 14  
NWSW

Fayre Road

LOCATION #15

S 33 T 51 R 14  
SESW

S 33 T 51 R 14  
SWSE

S 33 T 51 R 14  
SESE

S 34 T 51 R 14  
SWSW

S 34 T 51 R 14  
SESW

Charles Ave

LOCATION #16

S 4 T 50 R 14  
NENW

S 4 T 50 R 14  
NWNW

S 4 T 50 R 14  
NENE

S 3 T 50 R 14  
NWNW

Ridgeview Road

Tischer Creek