

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

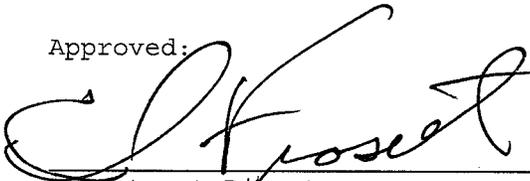
14-0210R

RESOLUTION AUTHORIZING A TEMPORARY CONSTRUCTION EASEMENT
IN FAVOR OF WISCONSIN CENTRAL LTD. RELATED TO ITS
STEELTON HILL PROJECT.

CITY PROPOSAL:

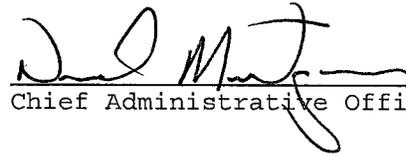
Resolved, that the proper City officials are hereby authorized to execute a temporary construction easement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with Wisconsin Central Ltd. ("Canadian National") related to its Steelton Hill Project.

Approved:



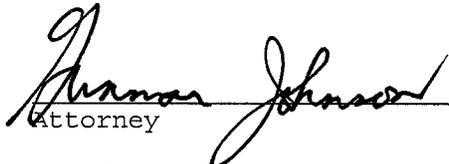
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PLNG/ATTY JMC:de 04/30/2014

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize a temporary construction easement over two areas which are adjacent to property being purchased by Canadian National for its Steelton Hill Project. The properties over which the temporary construction easement is being requested are shown on Exhibit B to the easement.

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), is between **City of Duluth**, a municipal corporation, whose mailing address is 402 City Hall, 411 W. 1st Street, Duluth, Minnesota, 55802 ("Grantor"), and **Wisconsin Central Ltd.**, a Delaware Corporation, whose mailing address is 17641 S. Ashland Avenue, Homewood, Illinois ("Grantee").

Grantor, in consideration of the sum of One Dollar and other good and valuable consideration (\$1.00) to it in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby Grant, Bargain, Sell and Convey to Grantee, a temporary non-exclusive construction easement in and upon real property located in St. Louis County, Minnesota legally described in Exhibit A and depicted in Exhibit B, attached hereto and made a part hereof (the "Property"). Grantor further grants to Grantee the right of ingress and egress over and across contiguous City-owned property necessary to access the Property (the "Adjacent Property") as approved by the City's Property and Facilities Manager (the "Manager") for the purposes for the construction of new and upgrade of existing tracks and bridge structure as part of Grantee's Steelton Hill Project (the "Work").

The term of this Temporary Construction Easement shall commence on the Effective Date and shall automatically terminate and expire upon (i) the date that the Work is completed, or (ii) August 31, 2016, whichever date shall first occur. Grantee shall, within ten (10) days of completion of the Work, provide a written, dated notice of completion to the Manager. Upon the expiration of the term of the Temporary Construction Easement, all of the rights and benefits of Grantee in, to and under this Temporary Construction Easement shall automatically terminate and be of no further force and effect.

At least ten (10) days prior to entry upon any parcel of Property or Adjacent Property, Grantee shall provide the Manager with proposed points of entry and access routes over the Adjacent Property. Such points of entry and access routes shall be subject to the prior written approval of the Manager.

Prior to entry upon any parcel of Property or Adjacent Property, Grantee shall stake approved points of entry and access routes over the Adjacent Property which shall clearly delineate the areas over which Grantee is allowed to traverse for purposes of this Temporary Construction Easement. Grantee shall only use the approved, staked

points of entry and routes for access over the Adjacent Property during the term of this Temporary Construction Easement.

The Work may be performed by Grantee through its employees, agents, consultants and contractors. Grantee shall be responsible for the costs of all labor, service equipment, and materials used in conducting its Work at the Property and shall not permit any lien or encumbrance upon the Property or the Adjacent Property from its activities thereon.

Grantor shall have no liability to (a) Grantee (b) any employee, contractor, or agent of Grantee, or (c) any other person who, at the direction of Grantee or its contractor(s), agent(s), or representative(s), enters upon the Property or Adjacent Property (or portion thereof), for bodily injury, personal injury, death, illness, disease, or property damage, of any character, sustained by any of them; and all their respective activities on or affecting the Property or Adjacent Property shall be conducted at their sole risk, loss, cost and expense, and in compliance with applicable laws and regulations. This Temporary Construction Easement is granted, and is accepted, on an "AS IS" basis with respect to the Property and the Adjacent Property and their condition.

Grantee shall indemnify, defend and hold harmless Grantor, its officers, agents, servants, employees from and against all liabilities, losses, damages, costs, expenses, including attorney's fees and expenses, causes of action, suits, claims, demands and judgments of any nature that arise out of, results from or is in any way related to the exercise of the rights granted under this Temporary Construction Easement, and on ten (10) days' written notice from Grantor, Grantee will appear and defend all claims and lawsuits against Grantor growing out of any such injury or damage.

In addition, Grantee shall not allow lien claims, third party interests or any other encumbrances to be (1) filed against Grantor or (2) placed upon Grantor's Property or Adjacent Property. Grantee shall defend, indemnify and hold harmless Grantor, its affiliates, employees, officers, or directors from and against all claims, damages or expenses, including liens of subcontractors, laborers, equipment suppliers, service providers and other persons or entities arising out of, resulting from or in any way connected with this Temporary Construction Easement. If a lien or encumbrance has been filed or noticed, Grantee shall bond-over the lien or encumbrance not later than the earlier of five (5) days after the lien or encumbrance has been filed or notice has been received. If Grantee chooses to bond-over the lien or encumbrance, the amount of the bond shall not be less than One Hundred Fifty percent (150%) of the claim.

Grantee covenants and agrees that it will not keep, ship to, ship from, store, permit, dispose, or generate any Hazardous Material on the Property or Adjacent Property or surrounding lands. Hazardous Material shall mean: (i) "Hazardous Substances", as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 U.S.C. §9601 et. seq.; (ii) "Hazardous Wastes", as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6902 et. seq.; (iii) "Hazardous Substance", as defined by the Minnesota Environmental Response Liability Act, Minn. Stat. § 115B.01 et. seq.; (iv) "Hazardous Waste" as defined by the Minnesota Waste Management Act, Minn. Stat. §115A.01 et. seq.; (v) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement as amended or hereafter amended; (vi) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (vii) any radioactive material, including any source, special nuclear or by-product material as defined at 42. U.S.C. §2011 et. seq., as amended or hereafter amended; and (viii) asbestos in any form or condition.

To Grantor's satisfaction, Grantee at Grantee's sole expense, shall restore the Property and the Adjacent Property to substantially the condition in which it existed at the commencement of this Temporary Construction Easement. Grantee shall be responsible, at Grantee's sole expense, to repair any damage resulting from Grantee's activities related to this Temporary Construction Easement.

Grantee shall not assign in whole or in part, its rights or obligations under this Temporary Construction Easement to any party without Grantor's prior written consent.

For purposes of this Temporary Construction Easement, the respective parties' points of contact are as follows:

Grantor:

City of Duluth
Erik Birkeland
Manager, Property and Facilities
1532 West Michigan Street
Duluth, MN 55806
218-730-4435
ebirkeland@duluthmn.gov

Grantee:

Wisconsin Central Ltd.
Michael Matteucci
Counsel – Regulatory
17641 South Ashland Avenue
Homewood, Illinois 60430
mike.matteucci@cn.ca

Grantee agrees to comply with all applicable federal, state, county and municipal laws, rules, ordinances and regulations relating to all activities contemplated under this Temporary Construction Easement. Such strict compliance shall include, but is not limited to, applicable laws, rules, ordinances and regulations governing permitting and licensing. Grantee hereby assumes, at its sole cost and expense, all obligations imposed upon Grantor by virtue of Grantee's exercise of its rights under this Temporary Construction Easement.

This Temporary Construction Easement shall be construed and interpreted under the laws of the State of Minnesota. Grantor and Grantee agree that the proper venue with respect to any litigation in connection with this Temporary Construction Easement shall be in State of Minnesota.

This Temporary Construction Easement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors, and assigns.

This Temporary Construction Easement may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Temporary Construction Easement; provided, however, that each of the counterparts shall have been executed by the parties hereto.

This Temporary Construction Easement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the construction easement over the Property. There are no verbal agreements that change this Temporary Construction Easement and no waiver of any of its terms will be effective unless in writing executed by the parties.

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown below.

CITY OF DULUTH

WISCONSIN CENTRAL LTD.

By: _____
Its Mayor

By: _____
Its _____

Printed Name _____

Attest: _____
Its City Clerk

By: _____
Its: _____

Date: _____

Printed Name _____

Countersigned:

By: _____
Its City Auditor

Approved as to form:

By: _____
Its City Attorney

This instrument was drafted by:
Joan M. Christensen
410 City Hall
Duluth, MN 55802

EXHIBIT A

BECK'S ROAD TEMPORARY CONSTRUCTION EASEMENT AREA:

All that part of the Northeast One-quarter of the Northeast One-quarter (NE1/4 of the NE1/4) of Section 4 and Northwest One-quarter Northwest One-quarter (NW1/4 of the NW1/4) of Section 3, all in Township 48 North, Range 15 West of the Fourth Principal Meridian lying 80.00 feet southerly of and parallel with the following described line:

Commencing at the Northeast Corner of the Northeast One-quarter Northeast One-quarter (NE1/4 of the NE1/4) of Section 4; thence South 00 degrees 04 minutes 16 seconds East 9 (assumed bearing), a distance of 427.82 feet (Record = 427.89 feet) to a point on the northerly line of the Becks Road as described in Parcel M of Document No. 575958 as recorded in the St. Louis County Minnesota, Office of the County Recorder and as Document No. 567401 in the St. Louis County Minnesota, Registrar of Titles Office; hereinafter referred to as Point "A"; and being the Point of Beginning of the line to be described; thence southwesterly 69.13 feet along the northerly line of said Parcel M and being a non-tangential curve concave to the southwest having a radius 1532.40 feet, a central angle of 02 degrees 35 minutes 05 seconds, and a chord bearing South 77 degrees 36 minutes 49 seconds West and said line there terminating.

AND

All that part of the Northeast One-quarter of the Northeast One-quarter (NE1/4 of the NE1/4) of Section 4, Township 48 North, Range 15 West of the Fourth Principal Meridian lying between two lines 15.00 feet and 80.00 feet southerly of and parallel with the following described line:

Commencing at the aforementioned Point "A"; thence southwesterly 69.13 feet along the northerly line of said Parcel M and being a non-tangential curve concave to the southwest having a radius 1532.40 feet, a central angle of 02 degrees 35 minutes 05 seconds, and a chord bearing South 77 degrees 36 minutes 49 seconds West to the Point of Beginning of the line to be described; thence southwesterly 541.80 feet tangential along said northerly line and being a curve concave to the southwest having a radius 1532.40 feet, a central angle of 20 degrees 15 minutes 28 seconds, and a chord bearing South 66 degrees 11 minutes 32 seconds West and said line there terminating.

AND

All that part of the Northeast One-quarter of the Northeast One-quarter (NE1/4 of the NE1/4) of Section 4, Township 48 North, Range 15 West of the Fourth Principal Meridian lying 80.00 feet southerly of and parallel with the following described line:

Commencing at the aforementioned Point "A"; thence southwesterly 69.13 feet along the northerly line of said Parcel M and being a non-tangential curve concave to the southwest having a radius 1532.40 feet, a central angle of 02 degrees 35 minutes 05 seconds, and a chord bearing South 77 degrees 36 minutes 49 seconds West to the Point of Beginning of the line to be described; thence southwesterly 541.80 feet tangential along said northerly line and being a curve concave to the southwest having a radius 1532.40 feet, a central angle of 20 degrees 15 minutes 28 seconds, and a chord bearing South 66 degrees 11 minutes 32 seconds West ; thence southwesterly 69.13 feet tangential along said northerly line and being a curve concave to the southwest having a radius 1532.40 feet, a central angle of 04 degrees 36 minutes 39 seconds, and a chord bearing South 53 degrees 45 minutes 29 seconds West and said line there terminating.

AND

All that part of the Northwest One-quarter of the Northwest One-quarter (NW1/4 of the NW1/4) of Section 3, Township 48 North, Range 15 West of the Fourth Principal Meridian lying 80.00 feet southerly of and parallel with the following described line:

Beginning at the aforementioned Point "A"; thence northeasterly 103.72 feet along the northerly line of Parcel N-2 of Document No. 575958 as recorded in the St. Louis County Minnesota, Office of the County Recorder and as Document No. 567401 in the St. Louis County Minnesota, Registrar of Titles Office and being a non-tangential curve concave to the northeast having a radius 1532.40 feet, a central angle of 03 degrees 52 minutes 41 seconds, and a chord bearing North 80 degrees 50 minutes 42 seconds East; thence North 82 degrees 47 minutes 02 seconds East, a distance of 456.16 feet to the centerline of 108th Avenue West and said line there terminating.

Containing 101,870 Sq. Feet or 2.339 Acres, more or less.

MISSION CREEK TEMPORARY CONSTRUCTION EASEMENT AREA:

All that part of the Northwest One-quarter Northwest One-quarter (NW1/4 of the NW1/4) of Section 32, Township 49 North, Range 15 West of the Fourth Principal Meridian lying northeasterly of the Wisconsin Central Ltd. (f.k.a. Spirit Lake Transfer Company Railway) and between two lines 50.00 feet northwesterly of and 75.00 feet northwesterly of Mission Creek Parkway Boulevard centerline described as follows:

Commencing at the intersection of the centerlines of Mission Creek Parkway Boulevard and County State Aid Highway No. 3 (Becks Road); thence South 33 degrees 45 minutes 38 seconds West along the centerline of said Boulevard; thence southwesterly 210.00 feet along a tangential curve concave to the the northwest having a radius 407.23 feet, a central angle of 29 degrees 32 minutes 46 seconds to the Point of Beginning of the centerline to be described; thence continuing southwesterly 77.56 feet tangential along said curve concave to the the northwest having a radius 210.00 feet, a central angle of 10 degrees 54 minutes 44 seconds; thence South 74 degrees 13 minutes 08 seconds West, distance of 329.94 feet to a point hereinafter referred to as Point "A" and said centerline there terminating.

AND

All that part of the Northwest One-quarter Northwest One-quarter (NW1/4 of the NW1/4) of Section 32, Township 49 North, Range 15 West of the Fourth Principal Meridian lying between two lines 50.00 feet southeasterly of and 88.00 feet southeasterly of Mission Creek Parkway Boulevard centerline described as follows:

Beginning at the aforementioned Point "A"; thence South 74 degrees 13 minutes 08 seconds West, distance of 3.28 feet; thence southwesterly 188.00 feet along a tangential curve concave to the the southeast having a radius 960.62 feet, a central angle of 11 degrees 12 minutes 47 seconds and said centerline there terminating.

The northeasterly sidelines of said temporary easement are prolonged or shortened to a point 70.00 feet southwesterly of the southwesterly line of the Wisconsin Central Ltd. (f.k.a. Spirit Lake Transfer Company Railway).

AND

All that part of the Northwest One-quarter Northwest One-quarter (NW1/4 of the NW1/4) of Section 32, Township 49 North, Range 15 West of the Fourth Principal Meridian lying between two lines 50.00 feet northwesterly of and 65.00 feet northwesterly of Mission Creek Parkway Boulevard centerline described as follows:

Commencing at the aforementioned Point "A"; thence South 74 degrees 13 minutes 08 seconds West, distance of 3.28 feet; thence southwesterly 30.00 feet along a tangential curve concave to the the southeast having a radius 960.62 feet, a central angle of 01 degrees 47 minutes 22 seconds to the Point of Beginning of the line to be described; thence continuing southwesterly 23.00 feet tangential along said curve concave to the the southeast having a radius 960.62 feet, a central angle of 01 degrees 22 minutes 18 seconds and said centerline there terminating.

The northeasterly sidelines of said temporary easement are prolonged or shortened to a point 70.00 feet southwesterly of the southwesterly line of the Wisconsin Central Ltd. (f.k.a. Spirit Lake Transfer Company Railway).

Containing 12,760 Sq. Feet or 0.293 Acres, more or less.

EXHIBIT "B"

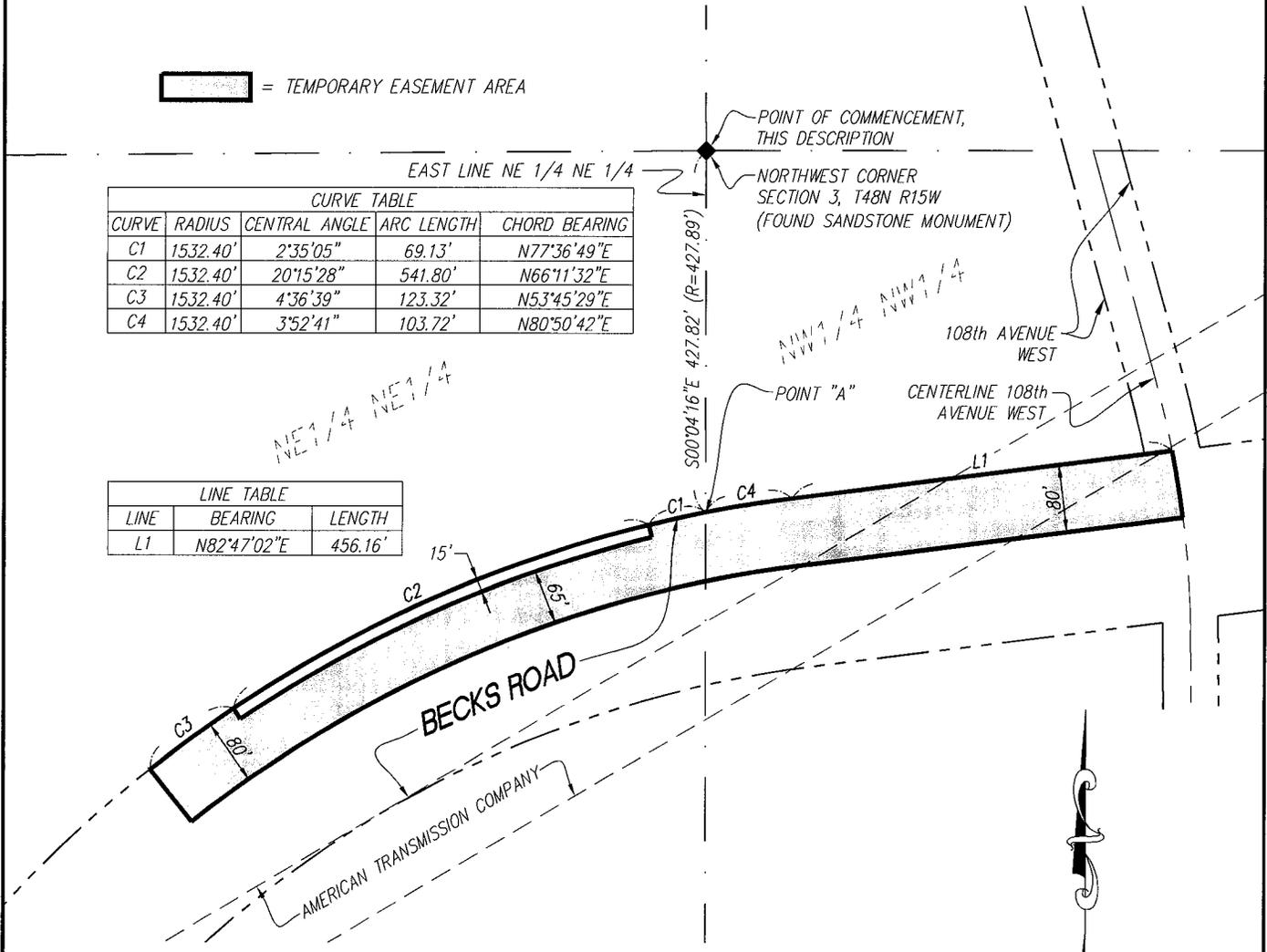
Being part of the NW1/4 of the NW1/4 of Section 3, T.48N., R.15W. 4th P.M.
 and
 Being part of the NE1/4 of the NE1/4 of Section 4, T.48N., R.15W. 4th P.M.
 PID: 010-2730-00242
 010-2730-00345

 = TEMPORARY EASEMENT AREA

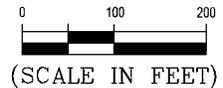
EAST LINE NE 1/4 NE 1/4

CURVE TABLE				
CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH	CHORD BEARING
C1	1532.40'	2°35'05"	69.13'	N77°36'49"E
C2	1532.40'	20°15'28"	541.80'	N66°11'32"E
C3	1532.40'	4°36'39"	123.32'	N53°45'29"E
C4	1532.40'	3°52'41"	103.72'	N80°50'42"E

LINE TABLE		
LINE	BEARING	LENGTH
L1	N82°47'02"E	456.16'



TEMPORARY EASEMENT AREA
 Containing 101,870 Sq. Feet or 2.339 Acres, more or less.



Basis of Bearing is Grid North,
 St. Louis County Transverse
 Mercator 96 Coordinate System.

DATE REVISED: 4/29/14
DATE REVISED: 4/16/14
DATE REVISED: 3/12/14
DATE PREPARED: 3/03/14
PROJ NO: 140017
FILE: 140017vSurv.
SHEET 1 of 1 SHEETS

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Print Name: Paul A. Vogel License # 44075

Signature:  Date: 4/29/2014



**PERFORMANCE
 DRIVEN DESIGN.**
 LHBcorp.com

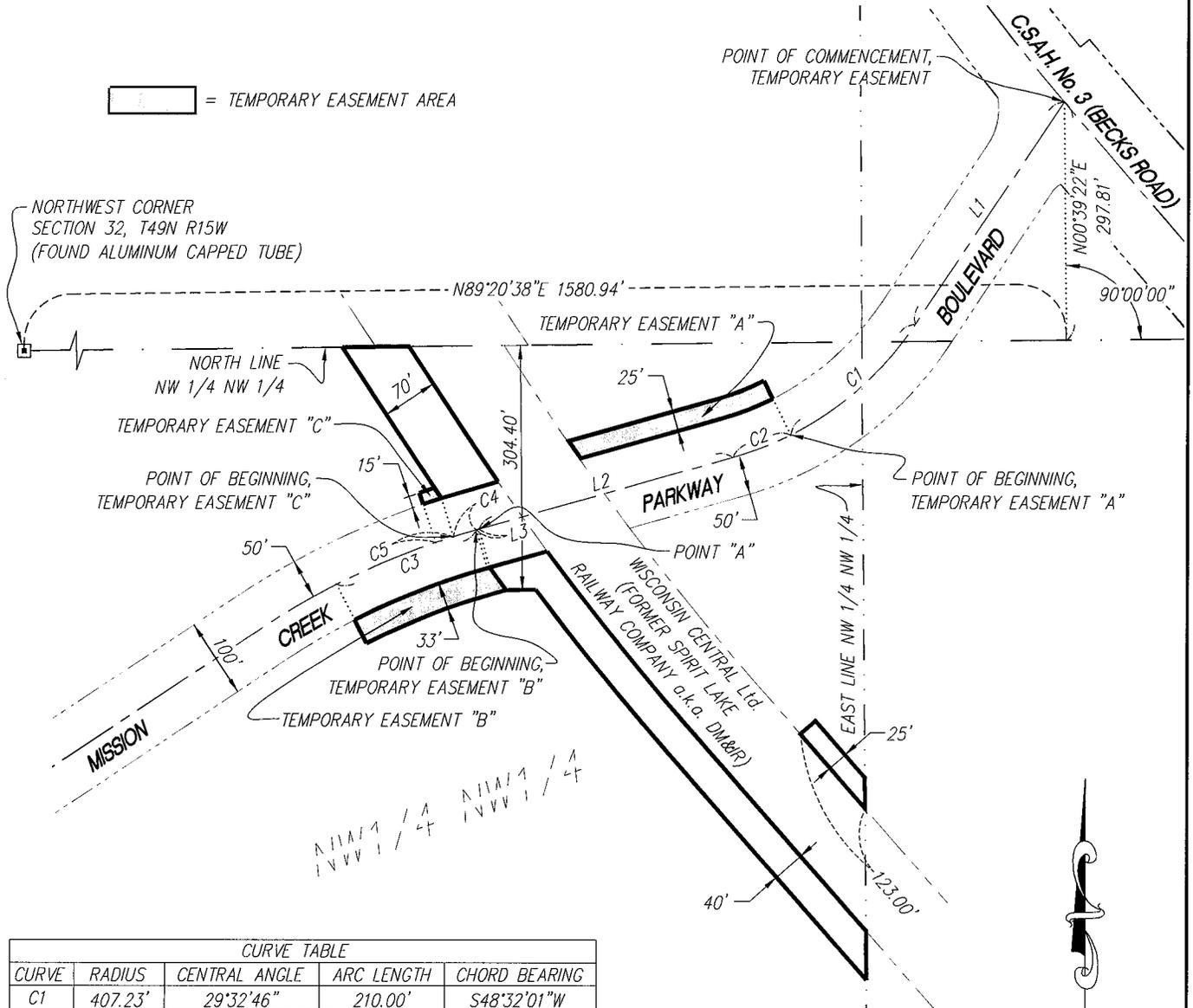
21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446

FILE: ..140017600 Drawings\Survey\140017vSurv.dwg

EXHIBIT "B"

Being part of the NW1/4 of the NW1/4 of Section 32, T.49N., R.15W. 4th P.M.
PID: 450-0010-04990

 = TEMPORARY EASEMENT AREA



CURVE TABLE

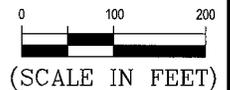
CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH	CHORD BEARING
C1	407.23'	29°32'46"	210.00'	S48°32'01"W
C2	407.23'	10°54'44"	77.56'	S68°45'46"W
C3	960.62'	11°12'47"	188.00'	S68°36'44"W
C4	960.62'	1°47'22"	30.00'	S73°19'27"W
C5	960.62'	1°22'18"	23.00'	S71°44'37"W

ACREAGE TABLE

	SQUARE FEET	ACRES
ACQUISITION AREA	44,940	1.032
TEMPORARY EASEMENT AREA	12,760	0.293

LINE TABLE

LINE	BEARING	LENGTH
L1	S33°45'38"W	334.00'
L2	S74°13'08"W	329.94'
L3	S74°13'08"W	3.28'



Basis of Bearing is Grid North,
St. Louis County Transverse
Mercator 96 Coordinate System.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Print Name: Paul A. Vogel

License # 44075

Signature: 

Date: 4/29/2014

DATE REVISED: 4/29/14

DATE REVISED: 4/3/14

DATE REVISED: 4/1/14

DATE PREPARED: 3/31/14

PROJ NO: 140017

FILE: 140017vSurv.

SHEET 1 of 1 SHEETS



**PERFORMANCE
DRIVEN DESIGN.**
LHBcorp.com

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FILE: ..\140017\600 Drawings\Survey\140017vSurv.dwg