

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

LIMITED USE PERMIT

8504 T.H. 61 C.S. 8504 (T.H. 61)
County of Winona
LUP # 8504-0048
Permittee: City of Winona
Expiration Date: 10/15/2031

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

Municipal Identification Entrance Sign

The Permittee's use of the Area is limited solely for the purpose of constructing and maintaining a Municipal Identification Entrance Sign ("Facility"), and the use thereof may be further limited by Minnesota Statutes Section 173.02 Subdivision 6(a) and Section 173.025.

[The Permittee will be allowed access to the Area from said trunk highway for the purpose of constructing and maintaining the Facility at a time and in a manner designated by MnDOT's District Engineer. When working on the Area, the Permittee will conduct its operations in accordance with the requirements of the "Minnesota Field Manual on Temporary Traffic Control Zone Layouts". The Permittee must not block or close any lane of traffic during construction or maintenance activities unless prior written approval has been obtained from MnDOT.]

No advertising of any nature is permitted on the Facility except that the Permittee may incorporate a pictograph or a short promotional slogan which has historically been used in the identification of the Permittee.

The Permittee agrees that this permit totally replaces and supersedes the previously issued permits affecting the Area, specifically: The first permit, #8504-005, was issued on 2/27/2003 on CS 8504 (TH 61). The second permit, #, was issued on 8504-0033 on CS 8504 (TH 61). The issuance of this permit cancels each of these earlier issued permits.

In addition, the following provisions shall apply:

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

Provided this LUP has not expired or terminated, MnDOT may renew this LUP for a period of up to ten (10) years, provided Permittee delivers to MnDOT, not later than ninety (90) days prior to the Expiration Date, a written request to extend the term. Any extension of the LUP term will be under the same terms and conditions in this LUP, provided:

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

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

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

2. **REMOVAL.** Upon the Expiration Date or earlier termination, at the Permittee’s sole cost and expense Permittee will:
 - (a) Remove the Facility and restore the Area to a condition satisfactory to the MnDOT District Engineer; and
 - (b) Surrender possession of the Area to MnDOT.

If, without MnDOT’s written consent, Permittee continues to occupy the Area after the Expiration Date or earlier termination, Permittee will remain subject to all conditions, provisions, and obligations of this LUP, and further, Permittee will pay all costs and expenses, including

attorney's fees, in any action brought by MnDOT to remove the Facility and the Permittee from the Area.

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

The Facility shall be constructed according to the plans that are attached as Exhibit A. Approval in writing from MnDOT District Engineer shall be required for any changes from the approved plan.

The Permittee shall construct the Facility only at the location shown in the attached Exhibit "A" subject to verification by MnDOT that the construction geometrics and procedures result in a Facility that is compatible with the safe and efficient operation of the highway.

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

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

4. MAINTENANCE. The Permittee shall keep the Facility in good repair. Any and all maintenance of the Facility shall be provided by the Permittee at its sole cost and expense, including, but not limited to, plowing and removal of snow and installation and removal of regulatory signs. No signs shall be placed on any MnDOT or other governmental agency sign post within the Area. MnDOT will not mark obstacles for users on trunk highway right of way. MnDOT may, without prior notice, remove any Facility that presents a safety risk or which has not been properly maintained.
5. USE. Other than as identified and approved by MnDOT, no permanent structures or no advertising devices in any manner, form or size shall be allowed on the Area. No commercial activities shall be allowed to operate upon the Area.

Any use permitted by this LUP shall remain subordinate to the right of MnDOT to use the property for highway and transportation purposes. This LUP does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge that would become subject to Section 4(f) of the Federal-Aid Highway Act of 1968. No rights to relocation benefits are established by this LUP.

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

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

Permittee at its sole cost and expense, agrees to comply with, and provide and maintain the Area, Facilities in compliance with all applicable laws, rules, ordinances and regulations issued by any federal, state or local political subdivision having jurisdiction and authority in connection with said Area including the Americans with Disabilities Act ("ADA"). If the Area and Facilities are not in compliance with the ADA or other applicable laws MnDOT may enter the Area and perform such obligation without liability to Permittee for any loss or damage to Permittee thereby incurred, and Permittee shall reimburse MnDOT for the cost thereof, plus 10% of such cost for overhead and supervision within 30 days of receipt of MnDOT's invoice.

7. **CIVIL RIGHTS.** The Permittee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this permit for a purpose for which a MnDOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Permittee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA),(as may be amended) such that no person on the grounds of race, color, national origin, sex, age, disability, income-level, or limited English proficiency (LEP) will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
8. **SAFETY.** MnDOT shall retain the right to limit and/or restrict any activity, including the time and manner of access to the Facility located on the trunk highway right of way, so as to maintain the safety of both the traveling public and Permittee.
9. **ASSIGNMENT.** No assignment of this LUP is allowed.
10. **IN WRITING.** Except for those which are set forth in this LUP, no representations, warranties, or agreements have been made by MnDOT or Permittee to one another with respect to this LUP.
11. **ENVIRONMENTAL.** The Permittee shall not dispose of any materials regulated by any governmental or regulatory agency onto the ground, or into any body of water, or into any container on the State's right of way. In the event of spillage of regulated materials, the Permittee shall notify in writing MnDOT's District Engineer and shall provide for cleanup of the spilled material and of materials contaminated by the spillage in accordance with all applicable federal, state and local laws and regulations, at the sole expense of the Permittee.

12. MECHANIC'S LIENS. The Permittee (for itself, its contractors, subcontractors, its materialmen, and all other persons acting for, through or under it or any of them), covenants that no laborers', mechanics', or materialmen's liens or other liens or claims of any kind whatsoever shall be filed or maintained by it or by any subcontractor, materialmen or other person or persons acting for, through or under it or any of them against the work and/or against said lands, for or on account of any work done or materials furnished by it or any of them under any agreement or any amendment or supplement thereto.
13. NOTICES. All notices which may be given, by either party to the other, will be deemed to have been fully given when served personally on MnDOT or Permittee or when made in writing addressed as follows: to Permittee at:

Attention: Mayor
207 Lafayette City Hall
PO Box 378
Winona, MN 55987

and to MnDOT at:

State of Minnesota
Department of Transportation
District 6 Right of Way
2900 48th Street NW
Rochester, MN 55901-5848

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

14. INDEMNITY. Permittee shall indemnify, defend to the extent authorized by the Minnesota Attorney General's Office, hold harmless and release the State of Minnesota, its Commissioner of Transportation and employees and any successors and assigns of the foregoing, from and against:
 - (a) all claims, demands, and causes of action for injury to or death of persons or loss of or damages to property (including Permittee's property) occurring on the Facility or connected with Permittee's use and occupancy of the Area, except when such injury, death, loss or damage is caused solely by the negligence of State of Minnesota, but including those instances where the State of Minnesota is deemed to be negligent because of its failure to supervise, inspect or control the operations of Permittee or otherwise discover or prevent actions or operations of Permittee giving rise to liability to any person;
 - (b) claims arising or resulting from the temporary or permanent termination of Facility user rights on any portion of highway right of way over which this LUP is granted;

(c) claims resulting from temporary or permanent changes in drainage patterns resulting in flood damages;

(d) any laborers', mechanics', or materialmens' liens or other liens or claims of any kind whatsoever filed or maintained for or on account of any work done or materials furnished; and

(e) any damages, testing costs and clean-up costs arising from spillage of regulated materials attributable to the construction, maintenance or operation of the Facility.

By: _____

— Transportation District Engineer

CITY OF _____

Date _____

APPROVED BY:

COMMISSIONER OF TRANSPORTATION

By _____

—

Its

By: _____

Director, Office of Land Management

And _____

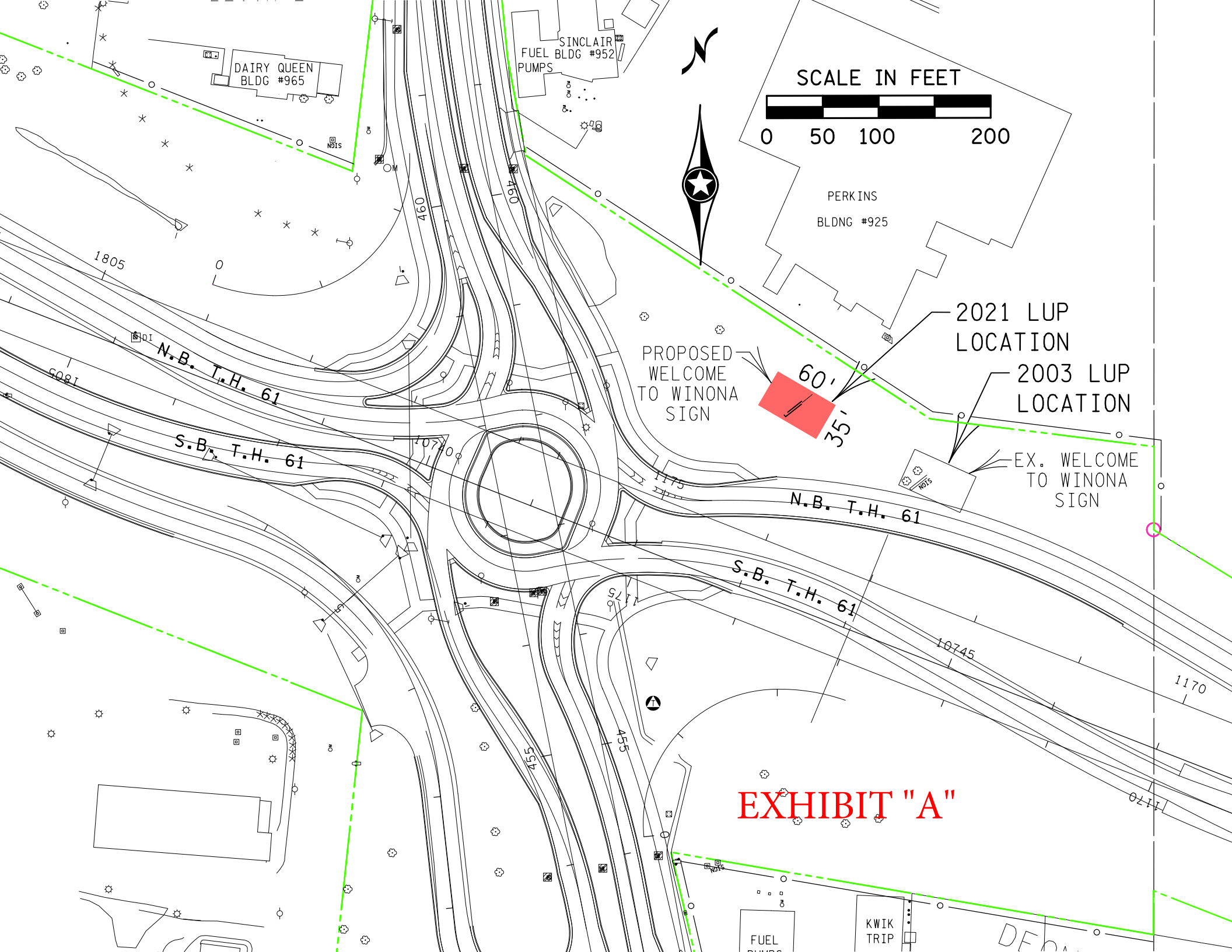
—

Its

Date _____

—

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



DAIRY QUEEN
BLDG #965

SINCLAIR
FUEL BLDG #952
PUMPS

SCALE IN FEET

0 50 100 200

PERKINS
BLDNG #925

2021 LUP
LOCATION

2003 LUP
LOCATION

EX. WELCOME
TO WINONA
SIGN

PROPOSED
WELCOME
TO WINONA
SIGN

60'
35'

N.B. T.H. 61

S.B. T.H. 61

N.B. T.H. 61

S.B. T.H. 61

EXHIBIT "A"

FUEL
PUMPS

KWIK
TRIP

DEF

EXHIBIT "A"

SCALE IN FEET

0 50 100 200



DAIRY QUEEN
BLDG #965

SINCLAIR
FUEL BLDG #952
PUMPS

PERKINS
BLDNG #925

2021 LUP
LOCATION

2003 LUP
LOCATION

PROPOSED
WELCOME
TO WINONA
SIGN

EX. WELCOME
TO WINONA
SIGN

N.B. T.H. 61

S.B. T.H. 61

N.B. T.H. 61

S.B. T.H. 61

10745

1170

1170

KWIK
TRIP

DE