

1
2 **Resolution Relating to**
3

RESOLUTION
Sponsor(s): Councilors Dober,
Blais, Berezniak: License Com.
Introduced: 06/13/11
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

4
5
6
7 **AUTHORIZATION TO EXECUTE OBSTRUCTION LICENSE**
8 **AGREEMENT WITH I.C.V. CONSTRUCTION, INC.**
9 **FOR 180-188 BATTERY STREET PROJECT CONSTRUCTION**
10

11
12 **CITY OF BURLINGTON**

13
14 In the year Two Thousand Eleven.....
15 Resolved by the City Council of the City of Burlington, as follows:

16
17 That WHEREAS, Investors Corporation of Vermont has received zoning and building permits
18 to construct a new four story building, including one level of underground parking and three
19 stories of business use above ground, at 180-188 Battery Street; and

20 WHEREAS, the construction of this building by ICV Construction, Inc. ("ICV")
21 necessitates the obstruction of sidewalks on King Street and Battery Street in front of the
22 construction site at 180-188 Battery Street for a period in excess of 30 days; and

23 WHEREAS, because such an obstruction requires the approval of the City Council, the
24 City Council authorized license agreements with ICV in September, 2010 and January, 2011,
25 such agreements terminating on April 30, 2011, pursuant to Charter § 48(49) and Burlington
26 Code of Ordinances § 27-32; and

27 WHEREAS, the continued construction of this building by ICV Construction, Inc.
28 ("ICV") necessitates the continuing obstruction of sidewalks on King Street and Battery Street in
29 front of the construction site at 180-188 Battery Street for a period in excess of 30 days, and a
30 new approval by the City Council as noted above; and

31 WHEREAS, the Department of Public Works has reviewed ICV's new application and
32 approves of a new obstruction agreement subject to the terms and conditions attached hereto;

33 NOW, THEREFORE, BE IT RESOLVED that the Honorable Mayor Bob Kiss be and
34 hereby is authorized to execute a License Agreement with ICV to allow ICV for the period

36 **Resolution Relating to** AUTHORIZATION TO EXECUTE OBSTRUCTION
37 LICENSE AGREEMENT WITH I.C.V.
38 CONSTRUCTION, INC. FOR 180-188 BATTERY
39 STREET PROJECT CONSTRUCTION
40

41 May 1, 2011 to October 31, 2011 to obstruct the public thoroughfares on King St. and Battery St.
42 in substantially the same form as the agreement attached hereto, subject to the approval of the
43 City Attorney.

44

45
46 lb/emb/c: Resolutions 2011/License Agreement w ICV (extension of term) re 180-188 Battery St. (Waterfront Plaza Project)
47 6/7/11

LICENSE AGREEMENT WITH ICV CONSTRUCTION, INC.
MAY 1, 2011 -- OCTOBER 31, 2011

This LICENSE AGREEMENT is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont (hereinafter CITY) and ICV CONSTRUCTION, INC., a Vermont Corporation with its principal offices in Burlington, Vermont (hereinafter ICV OR LICENSEE).

WHEREAS, the CITY owns property, including the street, sidewalk and greenbelt in front of the property at 180 Battery St. on Battery St. and King St.; and

WHEREAS, ICV is in need of a continued obstruction and encumbrance of the street, sidewalk, and greenbelt area in front (Battery St.) and on the side (King St.) of 180 Battery St. totaling approximately 7400 square feet in order to conduct construction activities, including the erection of a construction barrier around the construction site and the occupation of 5 metered parking spaces; and

WHEREAS, ICV's project has been reviewed and approved by the Department of Public Works (hereinafter DPW) subject to the conditions referenced herein; and

WHEREAS, such use of a public thoroughfare for periods in excess of 30 days requires approval of the City Council under Charter Sec. 48XLIX and Code of Ordinances, Chap. 27, Sec. 27-32.

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the above and the mutual covenants contained herein, the CITY and ICV enter into the following License Agreement:

1. **TERM**

This license agreement shall become effective upon full execution of this Agreement, with the commencement of the term of this agreement relating back to and beginning on May 1, 2011 and continuing until its termination on October 31, 2011. At the termination of this Agreement ICV shall promptly remove at its own expense all equipment and other materials or obstructions placed upon the Premises and shall cease to obstruct the Premises. Such removal shall be conducted with reasonable speed and diligence; time for prompt removal is of the essence. In the event ICV fails to promptly such obstructions, said obstructions may be removed by the City and ICV shall be liable for all expenses and costs associated with such removal, including reasonable attorney's fees.

2. **LOCATION**

ICV may use and encumber and obstruct the street, sidewalk, and greenbelt area in front of 180 Battery St. on Battery St. and King St. for an area of approximately 7400 square feet, as is more fully depicted on the attached plan, marked as Exhibit A, and hereinafter referred to as the Premises. The purpose of this encumbrance is to allow for the placement of a construction barrier related to the construction project at 180 Battery St., the placement of construction related vehicles and equipment, and other construction related activities.

3. **MAINTENANCE & PUBLIC PROTECTION**

The Premises shall be maintained in accordance with all conditions set by DPW. Such conditions shall include the following enumerated conditions but may also be supplemented by DPW upon reasonable notice in the event DPW determines that the public safety, health and or welfare require such supplemental conditions:

- a. ICV shall take all reasonable precautions to protect the public from potential hazards resulting and emanating from the Premises due to activities related to the uses for which this encumbrance is permitted.
- b. ICV shall control the dust and dirt and other debris on the encumbered area and adjoining areas, including picking up and sweeping such dust, dirt and debris. ICV shall submit a dust control and street sweeping plan to DPW's excavation inspector detailing the activities it shall take to control such dust, dirt and debris. ICV shall take all additional reasonable activities requested by DPW to control such dust, dirt and debris. ICV shall also follow all the terms and conditions of its approved Erosion Prevention and Sediment Control Plan.
- c. ICV shall maintain all construction barriers and keep them in good, working condition. All costs associated with the maintenance and upkeep of construction barriers are solely the responsibility of ICV.
- d. ICV shall maintain lines of sight at the intersection of Battery St. and King St. so as to allow motorists to observe traffic and enter and exit this intersection safely. The barrier fence on King St. and on Battery St. shall be free of any mounted items, including but not limited to signs and dust barriers. For a distance of seventy-five (75) feet, starting at the Premises at the corner of the Premises on Battery St. and King St. and going in both directions, ICV shall maintain the barrier fence in an open manner, free from all sight obstructions. For this same distance and area, ICV shall not allow obstructions and interferences in the lines of sight on the Premises or the adjacent construction site.
- e. ICV shall institute and properly maintain a traffic control plan for all types of vehicles and for pedestrians such that said vehicles and pedestrians are protected

from hazards and dangers emanating from the Premises and the associated construction site and related construction activities. ICV shall erect proper signage to redirect pedestrians safely from the Premises. ICV shall submit a traffic control plan for pedestrians, including a plan for signage, to DPW's excavation inspector detailing the activities it shall take to control such pedestrian traffic. ICV shall take all additional reasonable activities requested by DPW to control such pedestrian traffic. ICV shall submit a traffic control plan for vehicles, including a plan for signage, to DPW's excavation inspector detailing the activities it shall take to control such vehicular traffic. ICV shall take all additional reasonable activities requested by DPW to control such vehicular traffic.

- f. ICV shall protect all the utilities located on, about, adjoining, and adjacent to the Premises and shall protect all utilities regardless of their proximity to the Premises from all manner of harm and damage caused by activities conducted on or about or in connection with ICV's use of the Premises and the adjacent construction site. ICV shall submit a utility protection plan to DPW's excavation inspector detailing the activities it shall take to protect such utilities. ICV shall take all additional reasonable activities requested by DPW to protect such utilities.
- g. ICV shall not maintain or store any toxic or hazardous waste materials or contaminants upon the Premises. ICV shall defend, indemnify and save the City harmless from any claims, causes of action, penalties, fines or other assessments, or the expense and cost of cleanup arising out of or in connection with said hazardous or toxic materials or contaminants upon said premises caused by ICV.
- h. ICV shall be responsible for removing, hauling and properly disposing any accumulated snow or ice on the Premises.

4. PARKING METERS

ICV shall have the right to occupy, obstruct and encumber 5 metered parking spaces, 3 on King St. and 2 on Battery St., as depicted on Exhibit A, for the duration of this Agreement, in order to facilitate the construction project at 180 Battery St. and shall pay the fee set by Burlington Code of Ordinances § 27-33, as further set forth in the provision related to fees below. ICV shall comply with the provisions of said ordinance, including but not limited to the provisions on parking bans. The City shall provide meter bags as set forth in said ordinance. On completion of the term of this Agreement, any parking meters that have been removed on behalf of ICV and its construction project at 180 Battery St. shall be replaced by DPW at the full and sole cost of ICV. In the event that ICV completes its final use of the metered parking spaces prior to the end of the term of this Agreement and the meters have been replaced by DPW as herein provided, ICV shall release its right to obstruct the metered parking spaces in writing.

5. PLAN TO REESTABLISH PUBLIC INFRASTRUCTURE

ICV shall submit its plan to reestablish the public infrastructure being obstructed and encumbered by this Agreement to DPW's excavation inspector by July 1, 2011. Such plan shall cover all the streets, sidewalks, greenbelts, curbing and any other areas on the Premises and property otherwise disturbed by the work associated with and related to the use of the Premises and the construction project adjacent thereto. Such plan shall set a completion date no later than October 31, 2011. ICV shall be responsible for the cost of reestablishing the public infrastructure and for doing such work. Such work shall be performed pursuant to all required permits, laws, ordinances or codes and shall be completed by the completion date set forth above unless an express written extension is granted by DPW. ICV acknowledges that to reestablish the public infrastructure on the Premises, the new sidewalks, permeable pavers, and curbing that are required to be constructed shall require DPW excavation permits, such permits to be issued to the excavation contractor on

behalf of ICV, who shall be bound by the terms and conditions of said permits, and such permits to require additional insurance and bonding as required for such work pursuant to ordinance.

6. LICENSE FEE

There shall be a fee for this license of \$23,225.00, the sum of the following: an application fee of \$25.00, the encumbrance fee of \$7,400.00 (\$1/SF), and the parking meter obstruction fee of \$15,800.00 (\$20.00/day/meter—excepting Sundays). In the event of an early termination of the obstruction of metered parking spaces and release of those spaces as set forth above, ICV shall be entitled to a refund of the appropriate parking meter obstruction fee that has been paid but was unused.

7. REVOCATION

This Agreement and the license granted herein shall be immediately revoked should ICV discontinue use of the Premises. This Agreement shall also be revocable by the City upon 15 days written notice of a breach of the terms and conditions of this Agreement; ICV shall have the right to cure said breach(es) within said 15 days, such cure being subject to the approval of DPW which shall not be unreasonably withheld. Upon revocation, ICV shall promptly remove at its own expense all equipment and other materials or obstructions placed upon the Premises and shall cease to obstruct the Premises. Such removal shall be conducted with reasonable speed and diligence; time for prompt removal is the essence in the event of revocation. In the event ICV fails to promptly remove such obstructions, said obstructions may be removed by the City and ICV shall be liable for all expenses and costs associated with such removal, including reasonable attorney's fees.

8. INSURANCE

- a. ICV shall maintain in effect throughout the term of this Agreement comprehensive public liability insurance with an A rated insurance carrier, or better, qualified to transact

business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Agreement in an amount not less than \$1,000,000 for each occurrence and \$2,000,000 general aggregate. The City shall be named as an additional insured on such insurance policy.

- b. Prior to the execution of the Agreement, ICV shall furnish the City with a certificate of insurance which shall include the provision that the City is named as an additional insured and shall be given 30 days written notification prior to cancellation of such insurance. The certificate shall be attached to this Agreement as Exhibit B.
- c. It is the responsibility of ICV to ensure that a current certificate of insurance is on file with the City at all times. Failure to furnish and maintain a current certificate of insurance on file with the City will result in an immediate revocation of this license, notwithstanding the above provision related to revocation for breach of this Agreement.

9. COMPLIANCE BOND

ICV shall provide a permit bond in the amount of five thousand dollars (\$5,000) to guarantee compliance with the terms and conditions of this Agreement, or a cash deposit in lieu thereof, payable upon execution of this Agreement, such bond to remain in effect for a period of three (3) years to guarantee that the terms and conditions of this License are complied with

10. INDEMNIFICATION

ICV agrees to indemnify, defend, and hold the City harmless and free from liability arising out of ICV's use of the City's right-of-way and the Premises licensed herein and ICV agrees to make no claim against the City or any of its officers, employees, agents or representatives for any loss or damage caused by the City's use or maintenance of the Premises.

11. PERMITS AND COMPLIANCE WITH LAW

ICV shall be responsible for obtaining all necessary permits, City, State or federal, including by not limited to zoning, building, dig-safe and excavation, prior any use requiring said permits.

ICV shall comply with all applicable laws, codes, or ordinances.

12. NUISANCES PROHIBITED

ICV shall not, during the term of this Agreement, on or in the Premises maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable City ordinance, State or Federal statute, or controlling bylaw, code, regulation or condition whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement. Nor shall ICV act in a way or permit an action that constitutes a public nuisance upon the Premises.

13. ASSIGNMENT OF RIGHTS

ICV shall not sell or assign its rights pursuant to this Agreement or permit the use of the Premises or any part thereof by any other entity without the express prior written consent of the City. Any unauthorized action in violation of this provision shall be void and shall terminate and immediately revoke this Agreement and ICV's rights pursuant to this Agreement.

14. LIMITATION OF RIGHTS

ICV acknowledges that no property or other right is created other than that specifically defined and limited by this Agreement.

15. WAIVER

No waiver of a breach of any of the covenants, agreements or provisions contained in this Agreement shall be construed to be a waiver of any subsequent breach of the same or of any other provision in the Agreement.

16. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties with respect to the subject matter

hereof.

17. WRITING REQUIRED

No change, amendment or modification of this Lease Agreement shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

DATED at Burlington, Vermont this ____ day of _____, 2011

CITY OF BURLINGTON

Witness

By: _____
Bob Kiss, Mayor
Duly Authorize

ICV:

Witness

By: _____
Duly Authorized Agent

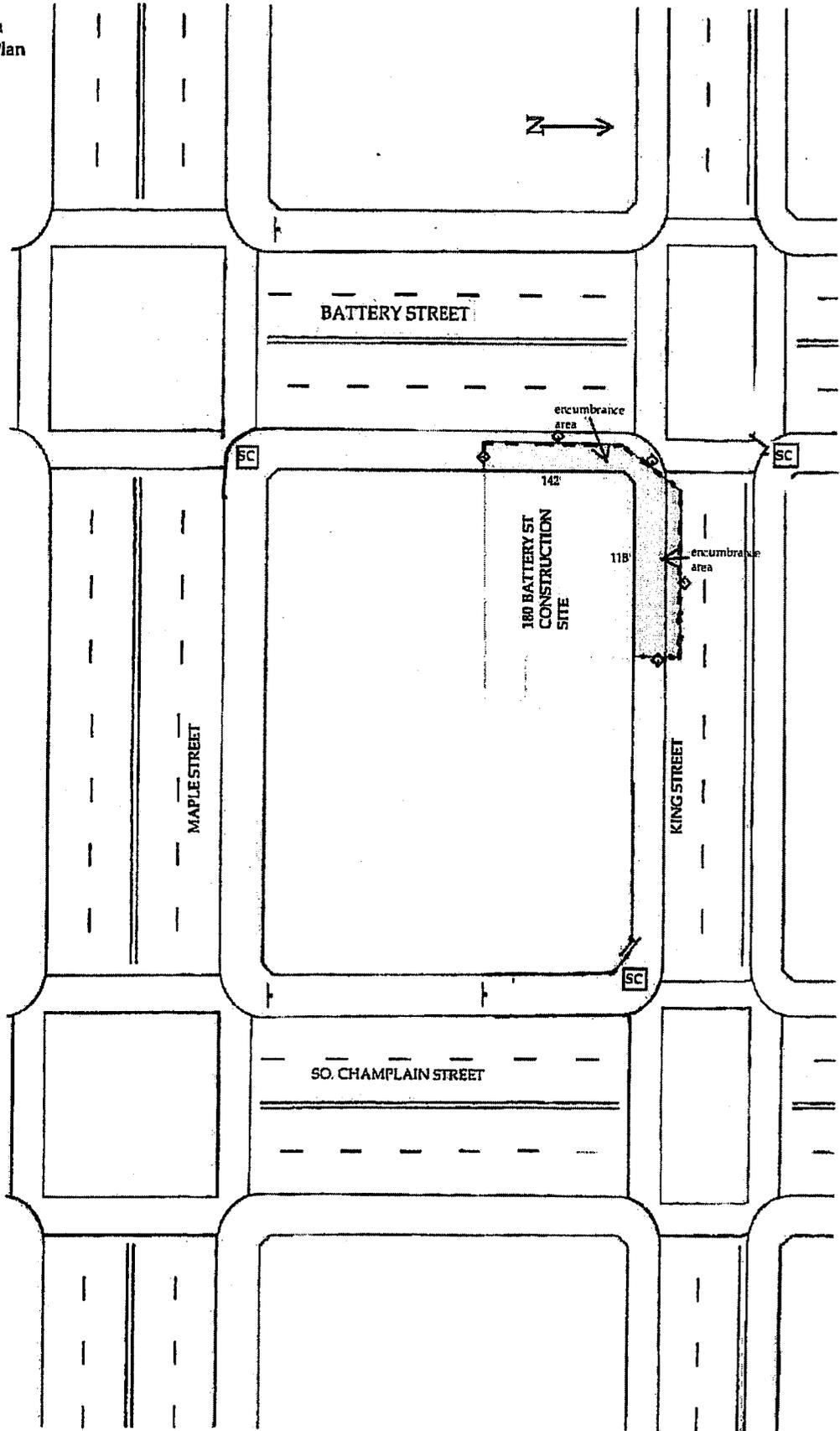
#4

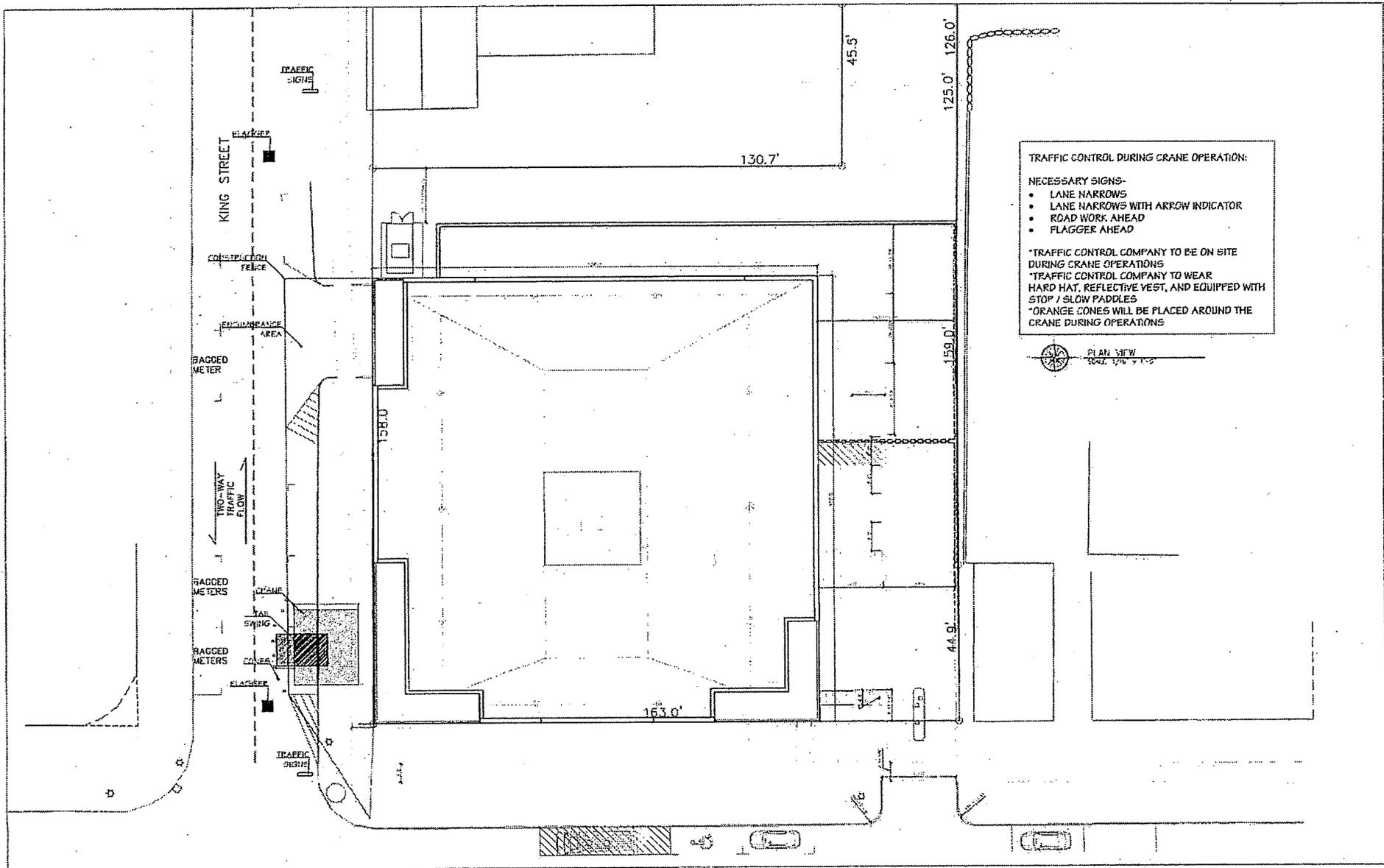
Waterfront Plaza
Traffic Control Plan
For Pedestrians

SC - SIDEWALK CLOSED
CROSS AT NEAREST
CROSSWALK

◇ - SIDEWALK CLOSED

--- CONSTRUCTION
FENCE





TRAFFIC CONTROL DURING CRANE OPERATION:

NECESSARY SIGNS-

- LANE NARROWS
- LANE NARROWS WITH ARROW INDICATOR
- ROAD WORK AHEAD
- FLAGGER AHEAD

*TRAFFIC CONTROL COMPANY TO BE ON SITE DURING CRANE OPERATIONS
 *TRAFFIC CONTROL COMPANY TO WEAR HARD HAT, REFLECTIVE VEST, AND EQUIPPED WITH STOP / SLOW PADDLES
 *ORANGE CONES WILL BE PLACED AROUND THE CRANE DURING OPERATIONS

PLAN VIEW
 SCALE: 1/4" = 1'-0"

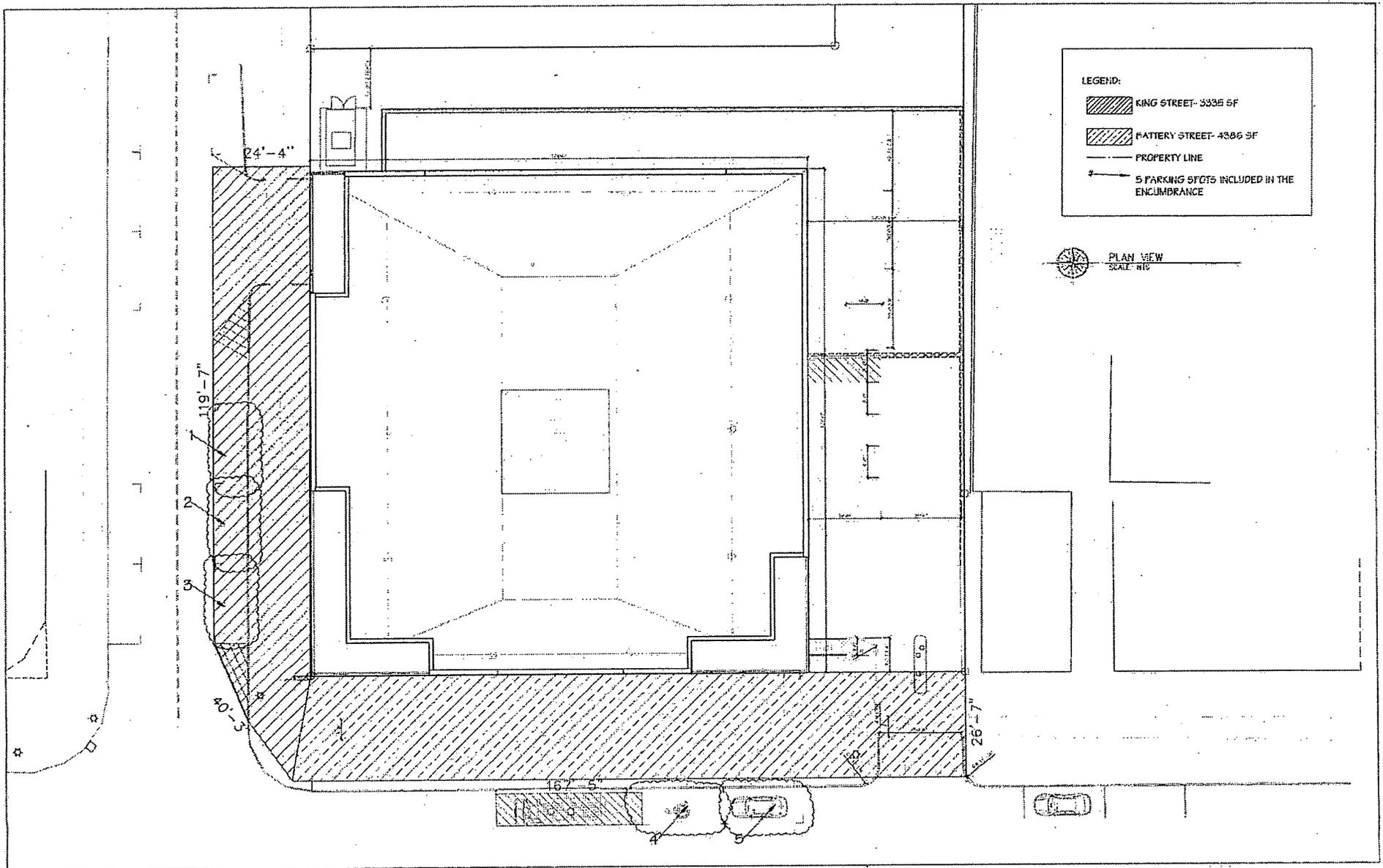
General Notes:

During crane operation-

- Signage shall be as indicated on plan
- All flaggers shall be equipped with a reflective vest
- All flaggers shall be equipped with a hardhat
- Any work that disturbs normal traffic signal operations shall be coordinated with the City

When crane is non-operational-

- All traffic control devices shall be removed from view when not in use
- Fence will be brought back into encumbrance area
- Cones will be brought in
- Signs will be removed
- Two way traffic will resume as normal

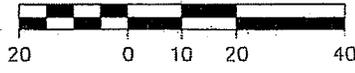
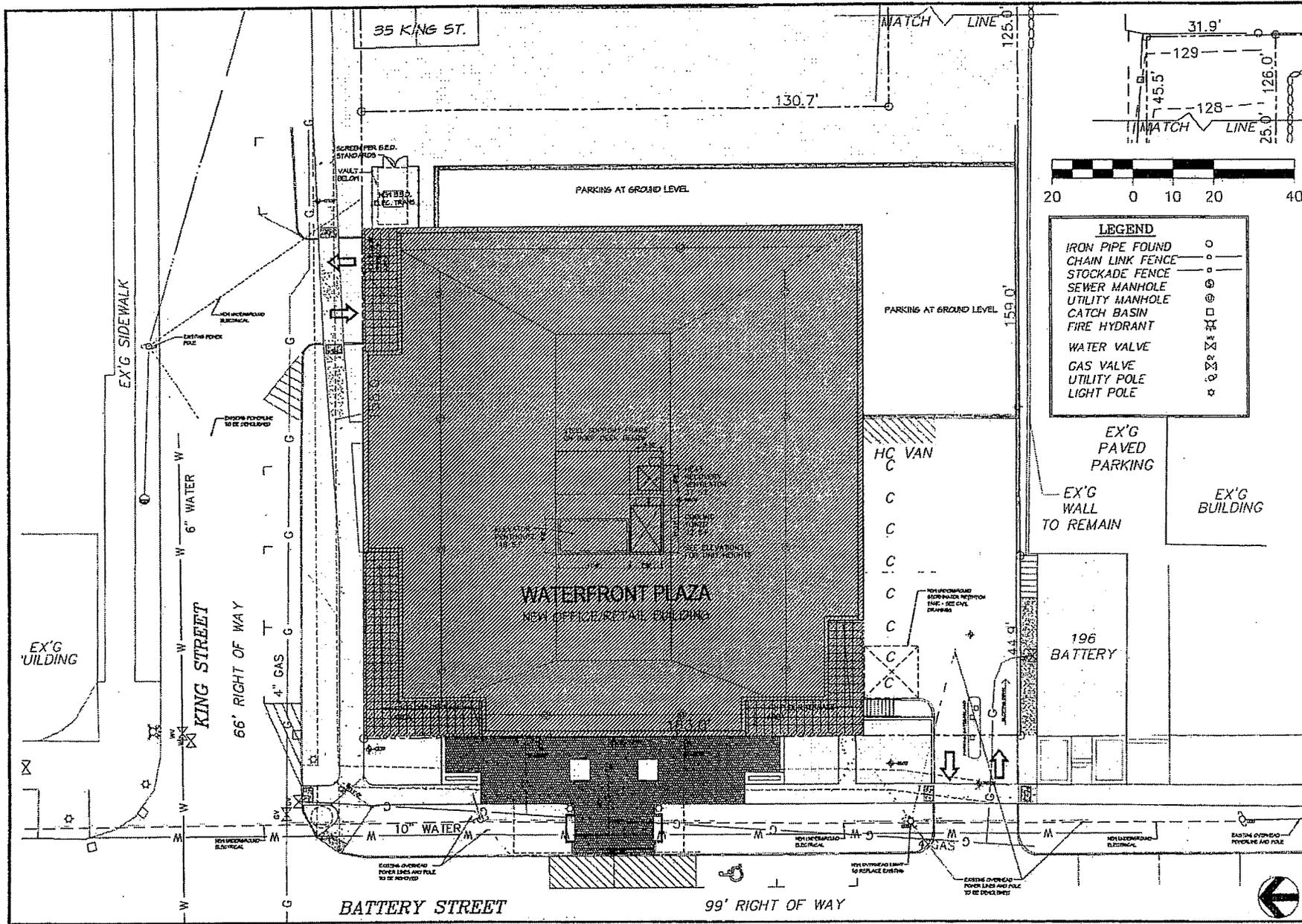


LEGEND:

-  KING STREET- 3335 SF
-  FATERY STREET- 4386 SF
-  PROPERTY LINE
-  5 PARKING SPOTS INCLUDED IN THE ENCUMBRANCE

 PLAN VIEW
SCALE: NTC

#2



LEGEND

- IRON PIPE FOUND ○●
- CHAIN LINK FENCE - - - -
- STOCKADE FENCE ————
- SEWER MANHOLE ○⊕
- UTILITY MANHOLE ○●
- CATCH BASIN ○⊕
- FIRE HYDRANT ○⊕
- WATER VALVE ○X
- GAS VALVE ○X●
- UTILITY POLE ○●
- LIGHT POLE ○●⊕

DATE	REVISION	DATE	REVISION
01/21/10	PRELIM DESIGN SUBMISSION	02/11/10	ISSUED FOR BID
01/14/10	REVIEW OF THIS SUBMISSION	02/11/10	DESIGN SUBMISSION
02/11/10	REVIEWED THIS SUBMISSION	02/11/10	FINAL DESIGN SUBMISSION
02/11/10	FINAL DESIGN SUBMISSION	02/11/10	FINAL DESIGN SUBMISSION

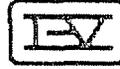
J. GRAHAM GOLDSMITH ARCHITECTS, P.C.
 7 Kilham Street Burlington, VT 05401
 13 Essex Road - Newmarket, MA 02454

Project Name: **Waterfront Plaza**
 Location: **Burlington Vermont**
 Sheet No.: **UTILITY PLAN**

SCALE: 1" = 10'
 DATE: 02/11/10
 DRAWN: [Name]
 CHECKED: [Name]
 IN CHARGE: [Name]

A0.2

#9



INVESTORS CORPORATION OF VERMONT
ICV Construction, Inc. • ICV Real Estate

Waterfront Plaza
180 Battery Street
Burlington, VT 05401

DUST CONTROL PLAN

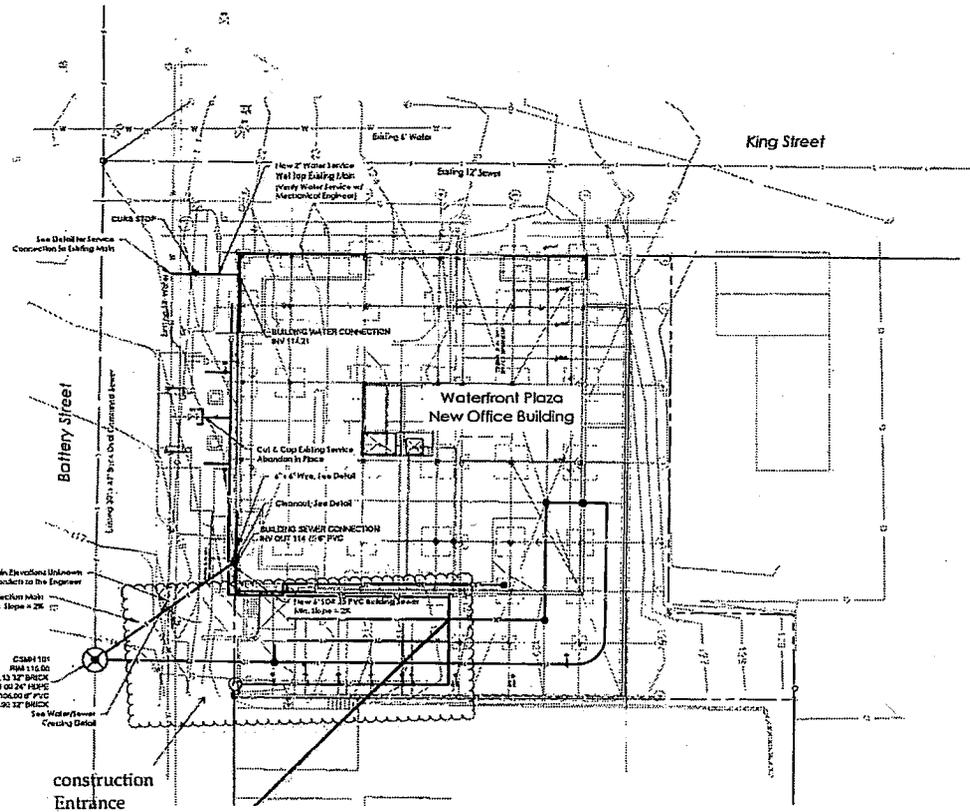
Project Description: Develop a four story office building with underground parking at 180 Battery Street.

Project Start Date: 12/1/2010

Project End Date: 10/30/2011

Plan:

- Construction entrance will be limited to one, along Battery Street. (see attached)
- Stabilized construction entrance will be maintained as per ESI plan #C4.03. (see attached).
- Daily sweeping along King and Battery Streets will occur to minimize any build up of dirt from construction.
- Roadway in front of construction entrance will be kept broom clean as truck enter / exit.
- Water will be used to minimize dust as needed.
- ICV Construction, Inc. will be responsible for implementing and maintaining this plan.



Location Map
7/5

esi
ENGINEERED SOLUTIONS

Engineered Solutions, Inc.
141 West Canal Street, 2nd Fl.
Winooski, Vermont 05410
(802) 436-2445
www.esi.com

Waterfront Plaza
180 Battery Street
Burlington, VT

Water - Wastewater Site Plan

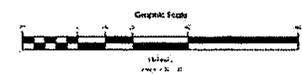


General Notes:

1. Utilities shown are approximate and do not necessarily represent all utilities located on or adjacent to the area surveyed. The Contractor shall field verify all utility conditions. All discrepancies must be reported to the Engineer. All existing utilities not incorporated in this final design are to be removed or abandoned as indicated on the plans unless otherwise directed by the Engineer.
2. The Contractor shall excavate to show all lines both existing and underground utilities. These plans shall be submitted to the Owner for the completion of the project.
3. The Contractor shall repair (or replace) all disturbed areas, on or off the site, as to reflect or protect the rest of the construction.
4. All ground markers shall be maintained until full vegetation is established.
5. Markers of lines outside of construction limits.
6. The Contractor shall be responsible for all work necessary for complete and operable facilities and utilities.
7. In addition to the requirements set in these plans and specifications, the Contractor shall complete the work in accordance with all general conditions, local Public Works Standards and all construction safety regulations.
8. Any detailing necessary for the completion of the above work shall be considered as part of the contract and shall be the Contractor's responsibility.
9. If there are any conflicts or inconsistencies with the plans or specifications, the Contractor shall contact the Engineer for verification before work continues on the field in question.
10. All system components (pools, pipes, joints) shall be water-tight.

Design Legend

- Existing Centerline
- Existing Right-of-Way
- Proposed Right-of-Way
- Existing Sewer/Stormwater Service Line
- Proposed Sewer Line
- Existing Storm Sewer Line
- Proposed Storm Sewer Line
- Proposed Storm Service Line
- Existing Gas Line
- Property Lines



Survey Credits

Property Boundary and Topographic Survey Provided by Vermont Land Services.

Index of Drawings

C1.01 - Water-Wastewater Site Plan
C1.02 - Water-Wastewater Details

No.	Description	Date	By

DATE: 8/20/2010
BY: [Signature]
SCALE: 1" = 20'

C1.01
OF 2

ESI-01

9a

