

Seldovia City Council

Laydown

December 17, 2019

Pages 3-09 First Amendment to Bulk Fuel Storage and Distribution Facility Lease

Pages 10-14 Exhibit A to First Amendment to Bulk Fuel Storage and Distribution Facility Lease

NOTES

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**FIRST AMENDMENT
TO
BULK FUEL STORAGE AND DISTRIBUTION FACILITY LEASE**

This First Amendment to Bulk Fuel Storage and Distribution Facility Lease ("Amendment") is made as of the ____ day of _____, 2019, by and between City of Seldovia ("Lessor" or "City"), whose address is _____ Seldovia, AK _____, and Seldovia Fuel and Lube, Inc., ("Lessee" or "SF&L"), whose mailing address is _____ Seldovia, AK _____.

WHEREAS, Lessor and Lessee are parties to that certain Bulk Fuel Storage and Distribution Facility Lease executed on January 31, 2006 (the "Facility Lease") and recorded on March 8, 2006, at serial number 2006-000051-0, in the records of the Seldovia Recording District, Third Judicial District, State of Alaska, covering the Premises, as that term is defined in the Facility Lease;

WHEREAS, Lessor is the owner of certain Off-Premises Improvements (defined below) and certain Easement Properties (defined below);

WHEREAS, Lessor and Lessee wish to amend the Facility Lease to expressly include the Off-Premises Improvements and to provide for easements on the Easement Properties relating to the Off-Premises Improvements;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Lessor and Lessee agree as follows:

1. Section 1 of the Facility Lease is amended to read as follows:

1. The Facility. The City hereby leases to SF&L all of the following:

(a) The City's leasehold interest in the following-described real property under the terms of the Ground Lease between the City and SF&L dated the same date as this Facility Lease (the "Premises"), which Premises is located in the Seldovia Recording District, State of Alaska:

Portions of Lots 28 and 29, Block 10, U.S Survey 1771 and Lot 39, U.S. Survey 2160, as shown on the attached Exhibit A. The general location, as shown on Exhibit A, is subject to redescription upon survey, as necessary, to reflect as-built alignments of improvements;

(b) The bulk fuel storage and distribution facility constructed on the Premises, which includes all bulk fuel storage tanks, pipelines, appurtenances, other improvements, fixtures and equipment, owned by the City and located on the Premises, whether above- or below-ground (the "On-Premises Improvements"); and

(c) The Off-Premises Improvements.

The On-Premises Improvements and Off-Premises Improvements are hereinafter collectively referred to as the "Facility."

2. The Facility Lease is amended to add the following new sections 23 and 24, ~~and to incorporate Exhibit B hereto:~~

23. Definitions.

(a) “City Dock” means the dock owned by the City of Seldovia located on the Dock Area (defined below) and Tidelands Lot 1 (defined below), the approximate location of which is shown on Exhibit [AB](#) hereto.

(b) “Easement Properties” means all of the following real properties, which are located in the Seldovia Recording District, Third Judicial District, State of Alaska:

Lot 1, Block 5, WATERFRONT RESUBDIVISION NO. 1 OF SELDOVIA, ALASKA, according to the official plat thereof, filed under Plat Number 67-30, Records of the Seldovia Recording District, Third Judicial District, State of Alaska (“Lot 1”).

Lot 2, Block 5, WATERFRONT RESUBDIVISION NO. 1 OF SELDOVIA, ALASKA, according to the official plat thereof, filed under Plat Number 67-30, Records of the Seldovia Recording District, Third Judicial District, State of Alaska (“Lot 2”).

Lot 3, Block 5, WATERFRONT RESUBDIVISION NO. 1 OF SELDOVIA, ALASKA, according to the official plat thereof, filed under Plat Number 67-30, Records of the Seldovia Recording District, Third Judicial District, State of Alaska.

Lot 4, Block 5, WATERFRONT RESUBDIVISION NO. 1 OF SELDOVIA, ALASKA, according to the official plat thereof, filed under Plat Number 67-30, Records of the Seldovia Recording District, Third Judicial District, State of Alaska.

Kenai Street, as shown on Plat Number 67-30, in the Records of the Seldovia Recording District, Third Judicial District, State of Alaska.

Dock Street, as shown on Plat Number 67-30, in the Records of the Seldovia Recording District, Third Judicial District, State of Alaska (“Dock Street”).

Dock Area, as shown on Plat Number 77-1, Records of the Seldovia Recording District, Third Judicial District, State of Alaska (“Dock Area”).

Lot 1 (also known as Lot T-1), Block T5, TIDELANDS ADDITION TO WATERFRONT RESUBDIVISION NO. 1 SELDOVIA, ALASKA, according to the official plat thereof, filed under Plat Number 77-1, Records of the Seldovia Recording District, Third Judicial District, State of Alaska (“Tidelands Lot 1”).

Lot 2 (also known as Lot T-2), Block T5, TIDELANDS ADDITION TO WATERFRONT RESUBDIVISION NO. 1 SELDOVIA, ALASKA, according to the official plat thereof, filed under Plat Number 77-1, Records of the Seldovia Recording District, Third Judicial District, State of Alaska (“Tidelands Lot 2”).

(c) “Off-Premises Improvements” means all fuel storage tanks, pipelines, pumps, headers, fuel dispensers, truck racks, controls, appurtenances, other improvements, fixtures and equipment, owned by the City, whether above- or below-ground, and which are used in connection with, or which are otherwise associated with, the On-Premises Improvements or SF&L’s business, including without limitation the following:

- i. The pipeline located approximately as shown at Exhibit [AB](#) hereto and all related above- or below-ground pipes, pumps, fixtures and equipment (the “Pipeline”).
- ii. The pump and other fixtures and equipment located in the western half of the pump house (“Pump House”) on Tidelands Lot 1, the approximate location of which Pump House is shown on Exhibit [AB](#) hereto.
- iii. The marine cargo header (“Marine Cargo Header”) located on the City Dock, the approximate location of which is shown on Exhibit [AB](#) hereto.
- iv. The marine fuel dispenser (“Marine Fuel Dispenser”) located on the City Dock, the approximate location of which is shown on Exhibit [AB](#) hereto.
- v. The truck rack (“Truck Rack”) located on Lot 2, the approximate location of which is shown on Exhibit [AB](#) hereto.
- vi. The fuel dispensers (“Fuel Dispensers”) located on Lots 1 and 2, the approximate location of which is shown on Exhibit [AB](#) hereto.
- vii. The pump controls (“Pump Controls”) for the Fuel Dispensers, which Pump Controls are located in a building situated on Lot 1 and shown as the “Lot 1 Building” on Exhibit [AB](#) hereto.
- viii. The day tank (“Day Tank”) located on Lot 2, the approximate location of which is shown on Exhibit [AB](#) hereto.

(d) “Emergency Maintenance” means alterations or repairs necessary to prevent or remediate any damage to, or defect in, the Off-Premises Improvements that SF&L reasonably concludes must be completed immediately in order to address an imminent risk to human health and safety, or to the environment.

(e) “Routine Maintenance” means all other forms of scheduled and/or standard maintenance.

24. Easement

(a) Grant of Easement. City does hereby grant to Lessee a non-exclusive easement (the “Easement”) over, under, and through the Easement Properties, for the purpose of providing ingress and egress to, as well as the use and enjoyment of, the Off-Premises Improvements, subject to the rights and limitations set forth herein. Lessee shall have the exclusive right to construct, maintain, use, reconstruct, replace, renew, repair, and operate the Off-Premises Improvements, together with any and all necessary valves, meters, pumps and appurtenances thereto, for the transportation of petroleum products over, under, and upon the Easement Properties. The Easement and SF&L’s rights under this Section 24 are in addition to, and not in derogation of, SF&L’s rights and interest under any lease between the City and SF&L in regard to the Lot 1 Building.

(b) Location. The Easement shall extend five feet to each side of the Off-Premises Improvements, and its location is more specifically described in Exhibit [A€](#) attached hereto. SF&L shall have no right to move or otherwise relocate the Off-Premises Improvements without the City’s prior written consent.

(c) Term. This Easement shall continue for the term of this Facility Lease, including all extensions and renewals.

(d) Use. This Easement is granted solely for the purpose of permitting SF&L’s access to and use of the Off-Premises Improvements. SF&L shall have the right to enter upon the Easement Properties, including the right to vehicular ingress and egress, for the purposes of inspecting, maintaining, repairing, and operating the Off-Premises Improvements.

i. Right of Entry to Buildings and Structures. SF&L’s right of use shall include the right to enter any City-owned buildings or structures located on the Easement Properties in which any of the Off-Premises Improvements (including without limitation any controller console or pump) are located, subject to the limitation that should any such building or structure also be used by the City or its agents, representatives, contractors, invitees, successors or assigns, SF&L shall provide reasonable notice to City prior to the exercise of any right of entry granted under this Section.

ii. Right to Vehicular Ingress and Egress. SF&L’s right of use shall include the right to vehicular ingress and egress to and from the Off-Premises Improvements across the Easement Properties.

iii. Limitations on Authority to Excavate or Make Alterations. SF&L shall not excavate any portion of the Easement, nor shall it otherwise alter any portion of the Easement Properties or the Off-Premises Improvements, without the City’s prior written

authorization, unless such excavation or alteration is required to perform an Emergency Repair, in which case it shall immediately notify the City of the need for the Emergency Repair by contacting the City Manager once any immediate threat to life, safety or the environment has passed.

Further, SF&L acknowledges and understands that the Off-Premises Improvements pass under a portion of the Main Street right-of-way owned by the State of Alaska, as authorized by State of Alaska Department of Transportation and Public Facilities Permit No. 1-100125-19-177, that SF&L shall operate such section of the Off-Premises Improvements on the City's behalf pursuant to that permit, and that SF&L may only excavate or alter the portion of the Off-Premises Improvements subject to that permit in a manner that complies with the requirements of that permit and with any other applicable provisions of state or federal law.

(e) Non-Exclusivity. SF&L hereby acknowledges that, except as otherwise noted, this Easement is non-exclusive in nature and that City, City's employees and agents, or other persons or entities authorized by City, shall have the right to the full use or enjoyment of the Easement Properties except for such use as may unreasonably interfere with the exercise by SF&L of the rights granted to it herein. In no event may SF&L exercise its rights of use and enjoyment in a manner that impedes the general use of public rights-of-way within the City by members of the public without the City's express prior written authorization.

(f) Protection of Easement and Off-Premises Improvements. SF&L shall use the Easement Properties as authorized by this Easement, and operate and maintain the Off-Premises Improvements in a manner that does not cause any waste or nuisance, and in accordance with all state, federal, and local laws, rules, and regulations, including, but not limited to, environmental protection, fire, health and safety laws, rules, and regulations. SF&L hereby represents and warrants, which representation and warranty shall be continuing during the entire term of this Easement, that SF&L's use of the Easement Properties and the Off-Premises Improvements is in full compliance with all laws, regulations, and orders applicable thereto. SF&L shall obtain and maintain at all times during the term of this Easement, at SF&L's sole cost and expense, all necessary permits, licenses, approvals, and other governmental authorizations necessary or incidental to the Off-Premises Improvements or SF&L's activities and operations on the Easement Properties. SF&L shall maintain and operate the Off-Premises Improvements, as well as the Easement Properties, in a safe and orderly condition. City shall have no obligation whatsoever to maintain or make safe the Easement Properties or to maintain the Off-Premises Improvements.

i. Obligation to Notify City of All Maintenance. SF&L shall notify the City of all maintenance that it performs on the Off-Premises Improvements within 30 days of completion; provided that SF&L shall not be required to provide notice of weed removal, brush

removal, chipping, painting, coating, or any other activity that one person can perform without affecting the pipeline infrastructure or cause concern for security, safety or the environment.

(g) Rights Subject. The rights granted under this Easement are subject to all reservations, restrictions, exceptions, encumbrances, liens, easements, conditions, covenants, reservations and restrictions of record or that can be ascertained by an inspection or survey of the Easement Properties as of the effective date of this Easement.

(h) Reversion to City. Upon the expiration, abandonment, or earlier termination of this Easement, all of SF&L's right, title, and interest in and to the Easement Properties shall automatically revert to City.

(i) Assignment. This Easement is personal to SF&L and does not run with the land and does not inure to the benefit of any other person or create any property interest other than as described herein. SF&L may not assign or transfer its rights under this Easement without the prior written consent of the City, which the City shall not unreasonably withhold. Any purported assignment or transfer without such consent shall be void and of no force or effect.

(j) Nonwaiver. The failure of SF&L to use the Easement or to exercise any of the rights granted under this Section 24 shall not be construed as a waiver or abandonment of the Easement or such rights.

3. Except as amended by this Amendment, all other terms, provisions and conditions of the Facility Lease shall remain unaltered and in full force and effect. This Amendment supersedes all prior understandings between the parties with respect to the subject matter of this Amendment and constitutes a complete and exclusive statement of the terms of agreement among the parties with respect to its subject matter. This Amendment may be executed in two or more counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

EXHIBITS:¹

Exhibit A – ~~August 13, 2019 Survey~~ ~~[is attached to the original Facility Lease]~~

Exhibit B – ~~Map~~

Exhibit C – ~~Easement Location~~

[Signature Page Follows]

¹ ~~Note to draft: Exhibit list and internal references to be updated as necessary to refer to completed as-built survey.~~

IN WITNESS WHEREOF, Lessor and Lessee have duly executed and acknowledged this Amendment on the dates indicated below.

City of Seldovia

Date: _____

By: _____

Its: City Manager

Seldovia Fuel and Lube, Inc.

Date: _____

By: _____

Its: President

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, the _____ of the City of Seldovia.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF LINCOLN)

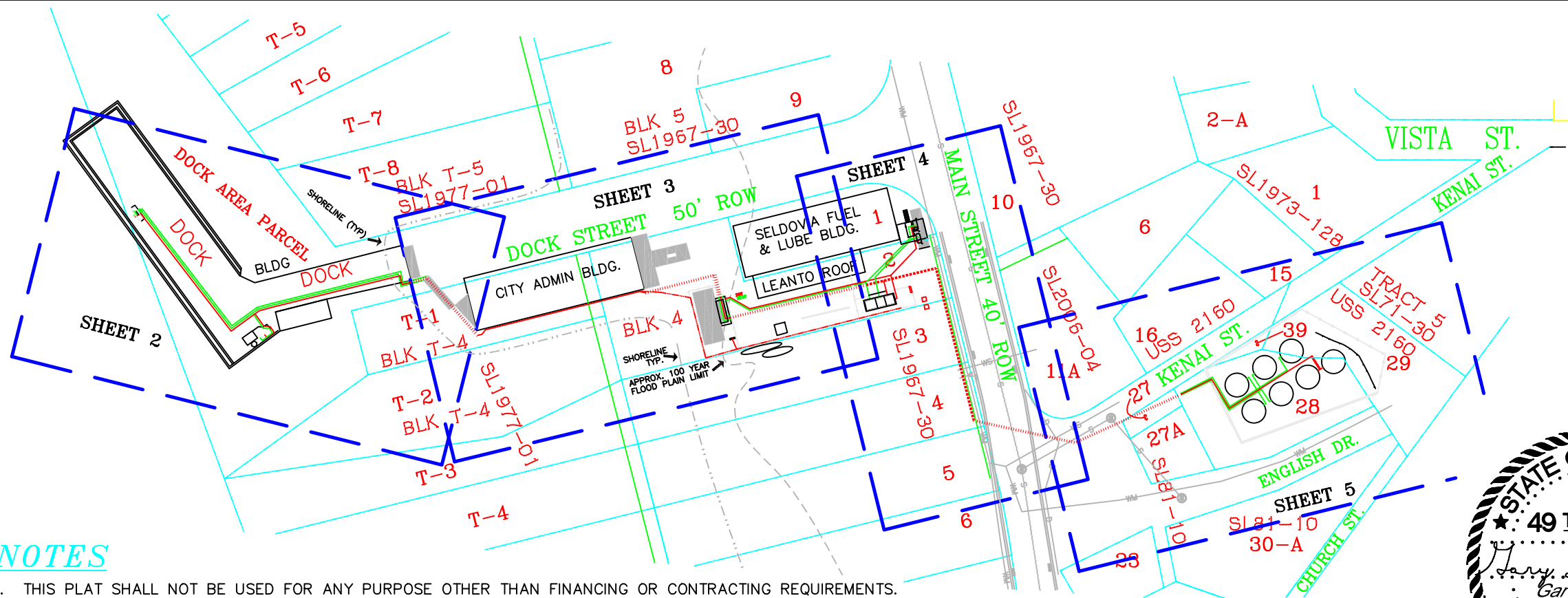
The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, the President of Seldovia Fuel and Lube, Inc., on behalf of the corporation.

Notary Public in and for South Dakota
My Commission Expires: _____

AFTER RECORDING IN THE SELDOVIA RECORDING DISTRICT, RETURN TO:

Daniel Blodgett
315 N. Duluth Avenue
Sioux Falls, SD 57104

EXHIBIT A TO BULK FUEL STORAGE AND TRANSPORTATION FACILITY LEASE



NOTES

1. THIS PLAT SHALL NOT BE USED FOR ANY PURPOSE OTHER THAN FINANCING OR CONTRACTING REQUIREMENTS.
2. THE PURPOSE OF THIS AS-BUILT SURVEY IS TO SHOW THE LOCATION OF FUEL LINES, TANKS, AND APPURTENANT FUEL FACILITIES IN THEIR RELATIONSHIP TO PROPERTY LINES, BUILDINGS, AND DOCKS WITHIN 30 FEET OF THE FUEL FACILITIES.. AN UNDERGROUND PIPE LOCATOR WAS USED TO ASSIST IN LOCATING UNDERGROUND BURIED PIPES, THOUGH IT WOULD NOT GIVE ADEQUATE LOCATIONS FOR PORTIONS OF THE BURIED FUEL LINES (SEE LEGEND). NOT ALL BURIED FUEL LINES COULD BE LOCATED. MAINLINE CORRIDOR IS APPROXIMATELY 1131 HORIZONTAL FEET NOT COUNTING RISERS AND SPURS. LENGTHS OF EACH PIPED SECTION ARE SHOWN ADJACENT TO THE SECTION.
3. NO MONUMENTS WERE SET. BOUNDARIES SHOWN ARE FROM BOUNDARY DATA OF SUBDIVISION PLATS OF RECORD BEST FIT TO FOUND MONUMENTS. RECORDED PLATS USED ARE; U.S. SURVEY 1771, U.S. SURVEY 2160, PLAT NUMBERS 67-30, 77-01, 81-10, AND 2006-04. BASIS OF BEARING IS DUE EAST FROM WITNESS CORNER TO MEANDER CORNER #13, A FOUND GLO BRASS CAP SET IN 1927, A MEASURED DISTANCE OF 940.53 FEET (950.5 PER U.S. SURVEY 1770) TO CORNER #14, U.S. SURVEY 1770, A FOUND BRASS CAP SET BY GLO IN 1927, ALSO BEING THE NORTH 1/16 CORNER OF SECTIONS 31 AND 32. SAID CORNER #14 BEARS N31°10'22"E 1304.00 FROM THE NORTHEAST CORNER OF LOT 2, BLOCK 4, WATERFRONT RESUBDIVISION #1 (SL1967-30).
4. IT IS THE RESPONSIBILITY OF THE OWNER TO DETERMINE THE EXISTENCE OF ANY EASEMENTS, COVENANTS OR RESTRICTIONS THAT DO NOT APPEAR ON THE RECORDED SUBDIVISION PLATS, NO TITLE SEARCH HAS BEEN MADE TO DETERMINE OTHER EASEMENTS OR ACTIONS AFFECTING TITLE TO THE LANDS SHOWN..
5. I HAVE SURVEYED THE FUEL TANKS, LINES, AND ASSOCIATED FACILITIES AS SHOWN TO SHOW THEIR RELATIONSHIP TO THE PARCELS AND BUILDINGS AS SHOWN HEREON, LOCATED IN THE CITY OF SELDOVIA, NE1/4 OF SECTION 31, T8S, R14W, S.M., IN THE KENAI PENINSULA BOROUGH, SELDOVIA RECORDING DISTRICT, ALASKA. THE IMPROVEMENTS SITUATED THEREON ARE LOCATED AS SHOWN ON THIS PLAT.



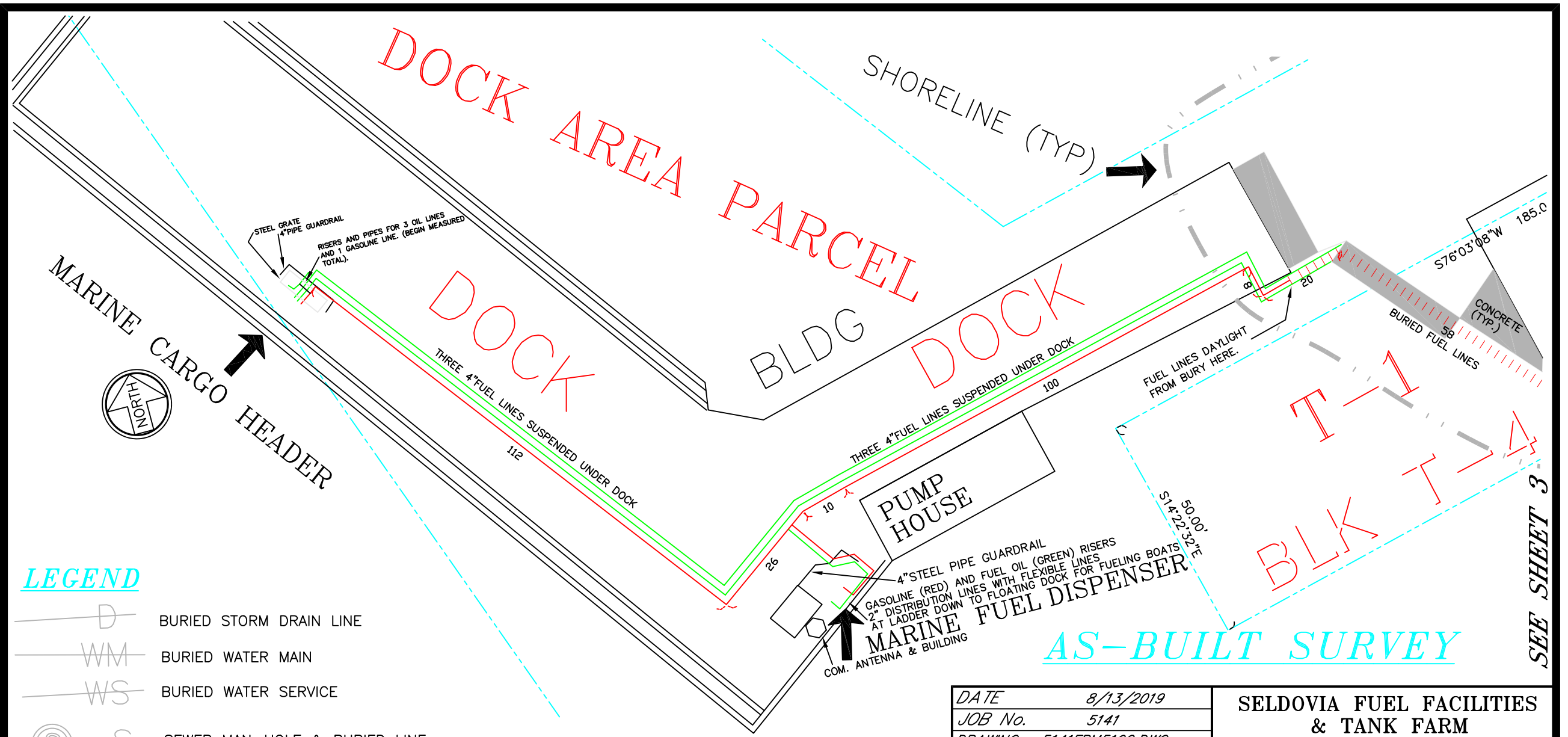
AS-BUILT SURVEY

DATE	8/13/2019
JOB No.	5141
DRAWING:	5141FRM5102.DWG
SCALE	1" = 100' OR AS SHOWN
SECTION	31 (NW1/4)
TOWNSHIP	8 SOUTH
RANGE	14 WEST (5M)
SHEET	1 OF 5

**SELDOVIA FUEL FACILITIES
& TANK FARM**
WITHIN THE CITY OF SELDOVIA

IN THE KENAI PENINSULA BOROUGH,
SELDOVIA RECORDING DISTRICT, ALASKA

ABILITY SURVEYS
REGISTERED LAND SURVEYORS
(907) 235-8440
152 DEHEL AVE., HOMER, ALASKA 99603



LEGEND

- BURIED STORM DRAIN LINE
- BURIED WATER MAIN
- BURIED WATER SERVICE
- SEWER MAN-HOLE & BURIED LINE
- 3 BURIED 4" FUEL LINES, POSITIVE LOCATOR POSITION
- 3 BURIED 4" FUEL LINES, LOCATION BY TESTIMONY OF JOHN GEAGLE ONLY
- 2" BURIED GASOLINE (RED), BURIED LOCATION FROM PLANS & TESTIMONY, NOT LOCATES
- 2" BURIED FUEL OIL (GREEN), BURIED LOCATION FROM PLANS & TESTIMONY, NOT LOCATES

AS-BUILT SURVEY

SEE SHEET 3

DATE	8/13/2019
JOB No.	5141
DRAWING:	5141FRM5102.DWG
SCALE	1" = 25'
SECTION	31 (NW1/4)
TOWNSHIP	8 SOUTH
RANGE	14 WEST (SM)
SHEET	2 OF 5

SELDOVIA FUEL FACILITIES & TANK FARM
 WITHIN THE CITY OF SELDOVIA
 IN THE KENAI PENINSULA BOROUGH,
 SELDOVIA RECORDING DISTRICT, ALASKA

ABILITY SURVEYS
 REGISTERED LAND SURVEYORS
 (907) 235-8440
 152 DEHEL AVE., HOMER, ALASKA 99603

DOCK STREET 50' ROW

CITY ADMIN BLDG.

SELDOVIA F & LUBE BLDG.

LEANTO ROC

BLK 4 TRUCK RACK SHORELINE TYP.

APPROX. 100 YEAR FLOOD PLAIN LIMIT

AS-BUILT SURVEY

SEE SHEET 2

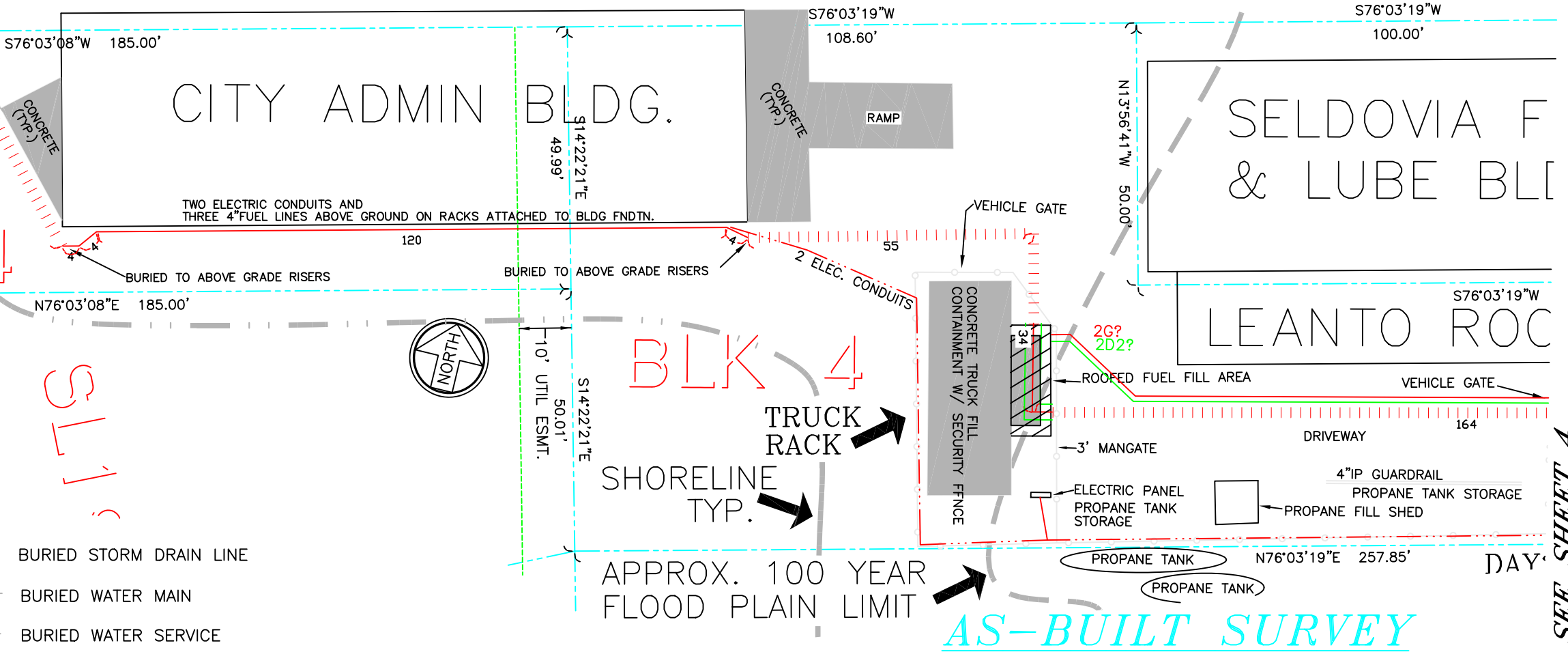
SEE SHEET 4

LEGEND

- D BURIED STORM DRAIN LINE
- WM BURIED WATER MAIN
- WS BURIED WATER SERVICE

- Ⓢ S SEWER MAN-HOLE & BURIED LINE

- 3 BURIED 4" FUEL LINES, POSITIVE LOCATOR POSITION
- 3 BURIED 4" FUEL LINES, LOCATION BY TESTIMONY OF JOHN GEAGLE ONLY
- 2G? 2" BURIED GASOLINE (RED), BURIED LOCATION FROM PLANS & TESTIMONY, NOT LOCATES
- 2D? 2" BURIED FUEL OIL (GREEN), BURIED LOCATION FROM PLANS & TESTIMONY, NOT LOCATES



DATE	8/13/2019
JOB No.	5141
DRAWING:	5141FRM5102.DWG
SCALE	1" = 25'
SECTION	31 (NW1/4)
TOWNSHIP	8 SOUTH
RANGE	14 WEST (SM)
SHEET	3 OF 5

SELDOVIA FUEL FACILITIES & TANK FARM
 WITHIN THE CITY OF SELDOVIA
 IN THE KENAI PENINSULA BOROUGH,
 SELDOVIA RECORDING DISTRICT, ALASKA

ABILITY SURVEYS
 REGISTERED LAND SURVEYORS
 (907) 235-8440
 152 DEHEL AVE., HOMER, ALASKA 99603

DOCK STREET

1967-30
10

SL2005-04
11A

MAIN STREET 40' ROW

LEGEND AND NOTES ON OTHER SHEETS

AS-BUILT SURVEY

FUEL DISPENSERS

2 FUEL PUMPS ON ROOFED CONC. ISLAND

A FUEL BLDG.

ROOF

DAY TANK

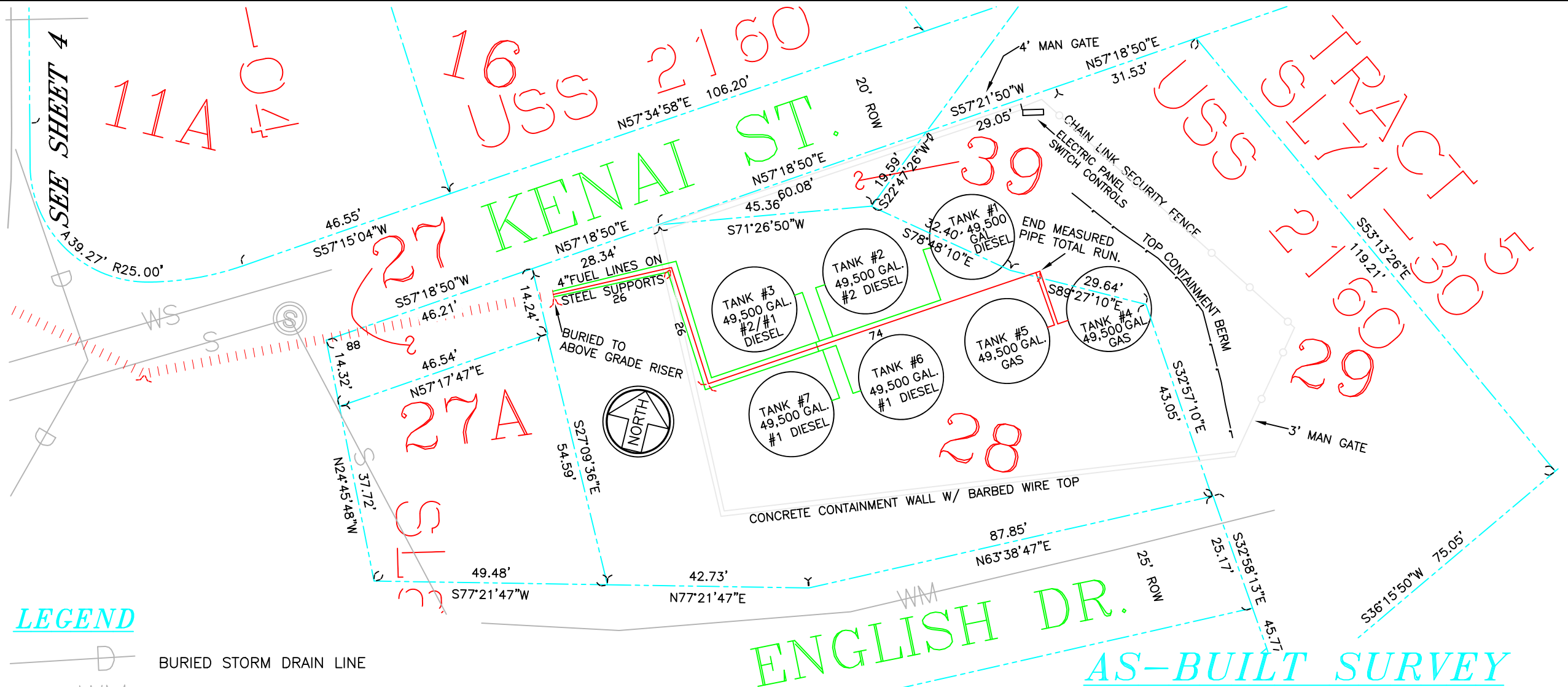
SEE SHEET 3



SL1967-30
3
4
5

SEE SHEET 5

SELDOVIA FUEL FACILITIES & TANK FARM WITHIN THE CITY OF SELDOVIA		DATE	8/13/2019
IN THE KENAI PENINSULA BOROUGH, SELDOVIA RECORDING DISTRICT, ALASKA		JOB No.	5141
ABILITY SURVEYS		DRAWING:	5141FRM5102.DWG
REGISTERED LAND SURVEYORS (907) 235-8440 152 DEHEL AVE., HOMER, ALASKA 99603		SCALE	1" = 25'
SECTION	31 (NWT/4)		
TOWNSHIP	8 SOUTH		
RANGE	14 WEST (SM)		
		SHEET 4 OF 5	



LEGEND

- BURIED STORM DRAIN LINE
- BURIED WATER MAIN
- BURIED WATER SERVICE
- SEWER MAN-HOLE & BURIED LINE
- 3 BURIED 4" FUEL LINES, POSITIVE LOCATOR POSITION
- 3 BURIED 4" FUEL LINES, LOCATION BY TESTIMONY OF JOHN GEAGLE ONLY
- 2" BURIED GASOLINE (RED), BURIED LOCATION FROM PLANS & TESTIMONY, NOT LOCATES
- 2" BURIED FUEL OIL (GREEN), BURIED LOCATION FROM PLANS & TESTIMONY, NOT LOCATES

DATE	8/13/2019
JOB No.	5141
DRAWING:	5141FRM5102.DWG
SCALE	1" = 25'
SECTION	31
TOWNSHIP	8 SOUTH
RANGE	14 WEST (SM)
SHEET	5 OF 5

SELDOVIA FUEL FACILITIES & TANK FARM
 WITHIN THE CITY OF SELDOVIA

IN THE KENAI PENINSULA BOROUGH,
 SELDOVIA RECORDING DISTRICT, ALASKA

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