



**Request for City Council Committee Action
From the City Attorney's Office**

Date: December 11, 2007

To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Subject: **Acceptance of Storm Drain Easement and Memorandum of Agreement for Storm Drain Replacement**

Recommendation: That the City Council authorize the Director of Public Works to enter into a Storm Drain Easement and Easement Restriction Agreement among American Iron and Steel Company, Atlas Land Company and the City of Minneapolis; and that the Director of Public Works be authorized to enter into a Memorandum of Agreement with American Iron and Steel Company for Storm Drain Replacement.

Prepared by: Peter W. Ginder, Civil Deputy, Minneapolis City Attorney, 673-2478

Approved by: _____
Steve A. Kotke, P.E., City Engineer, Director of Public Works

Presenter: Peter W. Ginder, Civil Deputy, Minneapolis City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

Neighborhood Notification
City Goal(s)
Comprehensive Plan
Zoning Code
Other

Background/Supporting Information

American Iron and Steel Company ("American Iron") operates a scrap metal recycling facility at 2800 Pacific Street North, Minneapolis, Minnesota. Atlas Land Company is the owner in fee simple of the land located at this address. American Iron intends to install at the Pacific Street location, a metal recycling mill, a building to house the mill, infeed and outlet areas, storm water management improvements, railroad track improvements and other related improvements.

In August, 2001, American Iron submitted to the City a "Consolidated City Approvals Application for American Iron and Supply Company's Metal Recycling Mill Project at 2800 Pacific Street North). A site plan attached to the application showed a City storm drain that crosses from west to east under the Pacific Street location to an outfall on the banks of the Mississippi River. No easement for the City storm drain could be found in City or Hennepin County property records. In November, 2001, after public hearings and an appeal, the Minneapolis City Council granted the requested approvals. As a condition of approval, the City required that Atlas Land grant the City a 20 foot wide easement centered over the City storm drain. Public Works has since requested a 30 foot wide easement.

Atlas Land desires to grant the storm drain easement to the City, however, the City storm drain underlies active areas of the Pacific Street location as well as a railroad track in the area. American Iron and Atlas Land are concerned that any of the following activities could significantly disrupt operations at the Pacific Street yard.

1. Continued use of the City's storm drain.
2. City inspection, maintenance, reconstruction, repair, or replacement of the City's storm drain.
3. Improper design of such work.
4. Poor construction of the work.

Atlas Land and American Iron therefore desire to attach certain reasonable conditions to the requested storm drain easement in order to protect operations at the Pacific Street location.

In order to receive the enlarged easement, City staff believe that it is reasonable to accept a storm drain easement for the City's storm drain subject to reasonable conditions that the parties have discussed. Certain restrictions on easement will be in favor of the City, e.g., no buildings will be placed on the storm drain easement area nor will other utilities be placed in the storm drain easement area. Conversely, the City agrees to certain notification requirements to American Iron prior to performing inspections or maintenance work on the storm drain. Staff believe that the restrictions placed on the storm drain easement are reasonable and request Council authority for the Director of Public Works to enter into this storm drain easement and easement restriction agreement.

In addition, American Iron has been remediating soil at the Pacific Street location pursuant to a "2005 Voluntary Response Action Plan, 2800 Pacific Street North, Minneapolis, Minnesota" approved by the Minnesota Pollution Control Agency. During soil excavation, American Iron uncovered portions of the existing City storm drain and observed deterioration in the pipe. City staff has inspected the City's storm drain and decided that it would be appropriate to replace it from Pacific Street North to the Mississippi River while American Iron is performing soil remediation and in conjunction with certain dock rehabilitation. American Iron and the City seek to cooperate in a project that would include replacement of the City storm drain, extension of the storm drain to the reconstructed dock and construction of a new outfall in the face of the reconstructed dock. Pursuant to the proposed agreement, American Iron, at its expense, will construct and replace the storm drain in accordance with project plans as accepted by the City and in accordance with standard City construction practices. This would include any soil remediation that may be necessary under the MPCA oversight and which would be at American Iron's expense. In exchange, the City would agree to provide at its cost, the pipe and other materials necessary to complete the project. City staff believes that replacing the storm drain at this time at American Iron's expense is a significant benefit to the City and request authorization for the Director of Public Works to enter into a memorandum of agreement for storm drain replacement.