



Request for City Council Committee Action From the Department of Public Works

Date: March 23, 2010

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

Referral: Honorable Betsy A. Hodges, Chair Ways & Means Committee

Subject: **Cedar Lake Trail Amendment #1 to Minnesota Department of Transportation (MnDOT) Agreement No. 92797**

Recommendation:

Approval and execution of final settlement agreement for easements with the Burlington Northern Santa Fe Railway Company (BNSF) for the Cedar Lake Trail Phase III Project.

Previous Directives:

- Resolution 2010R-058 (February 12, 2010) Authorizing the execution of Amendment #1 to MnDOT Agreement #92797 allocating 100% of Federal High Priority Grant Funds for right-of-way acquisition.
- Resolution 2010R-009 (January 15, 2010) Approving a trail easement agreement with the Minnesota Ballpark Authority.
- Resolution 2009R-625 (December 18, 2009) Approving Stipulation of Settlement with State of Minnesota and Metropolitan Council for Cedar Lake Trail - Phase III.
- Resolution 2009R-624 (December 18, 2009) Approving Stipulation of Partial Settlement with BNSF Railway Company for Cedar Lake Trail - Phase III.
- Resolution 2009R-622 (December 18, 2009) Approving Trail Easement Agreement for the Cedar Lake Trail Phase III with the Federal Reserve Bank.
- Resolution 2009R-537 (October 30, 2009) Authorizing the acquisition through negotiations or condemnation of temporary construction easements and permanent easements across the parcels therein for trail and other transportation-related uses.
- Resolution 2009R-328 (July 17, 2009) Authorizing the filing of an amendment to the condemnation petition in the City of Minneapolis v. BNSF Railway Company, et al. for the purpose of acquiring temporary construction easements.
- Resolution 2009R-327 (July 17, 2009) Authorizing the filing of an amendment to the condemnation petition in the City of Minneapolis v. Land Partners II, et al. for the purpose of acquiring an additional temporary access easement over Parcel 15 (Duddy Limited Partnership).
- Resolution 2009R-307 (June 26, 2009), Approving a right of entry agreement with Minnesota Ballpark Authority for Cedar Lake Trail - Phase III.
- Resolution 2009R-235 (May 22, 2009), Approving the acquisition of permanent and temporary easements for transportation purposes and authorizing the use of eminent domain proceedings from the owners of Parcels 16; 17;19; 21; and 24.
- Resolution 2009R-079, Approving an agreement with the Hennepin County Regional Railroad Authority ("HCRRA") for the acquisition of permanent and temporary easements for transportation purposes, and authorizing use of eminent domain proceeding.
- Resolution 2008R-320 (July 25, 2008) Authorizing the execution of Amendment No 1 to Metropolitan Council Agreement No. SG-2006-145 (City Contract No. C-23910)

- Resolution 2008R-319 (July 25, 2008) Authorizing the execution of an Inter-Agency Agreement with the Minnesota Department of Transportation for federal participation in right-of-way.
- Council Action (December 7, 2007) Authorization to execute the required documents to acquire a permanent trail easement from 127 Building Partners, LLC.
- Council Action (December 7, 2007) Authorization to execute a Cooperative Agreement with Northstar Corridor Development Authority for the acquisition of a Trail Use Permit.
- Council Action (March 9, 2007) Authorization to enter into negotiations or condemnation for the Cedar Lake Trail Phase III Project.
- Resolution 2006R-634, Authorization to enter into negotiations with abutting property owners for the acquisition of trail easements.
- Resolution 2006R-584, Appropriation Increase to PW- Fund (0600-943-9480) by \$1,800,000 & increasing the revenue source (0600-943-9480-3215) by \$1,800,000; and Increasing the appropriation in PW- Fund (4100-943-9470- BIK01) by \$1,800,000 and increasing the revenue source (4100-943-9470-3215) by \$1,800,000.
- Council Action (November 17, 2006), Authorization to execute a Metropolitan Council Grant Agreement (No. SG-2006-145) in the amount of \$1,800,000 for the Cedar Lake Trail.
- Resolution 2005R-658, 2006-2010 Five Year Capital Budget which included an appropriation of \$583,000 for the Cedar Lake Bike Phase 3 Project with the revenue source being Net Debt Bonds
- Resolution 2005R-661, Requesting the issuance and sale of bonds including the Cedar Lake Bike Phase 3 Project
- Resolution 2005R-075, Supporting the completion of the Cedar Lake Bike Phase to the Mississippi River • Resolution 2004R-580, 2005-2009 Five Year Capital Budget which included an appropriation of \$2,160,000 for the Cedar Lake Bike Phase 3 Project with the revenue source being Federal Government
- Council Action (September 28, 2001), Authorizing the expenditure of \$40,000 from the Commuter Bike Fund System (4100-943-9470 - Project A7002990) for a temporary Cedar Lake Trail Phase III bike lanes alignment.
- Council Action (August 24, 2001), Recommendation that the proper City officers apply for a series of federal funds (TEA-21) including \$2,160,000 for Cedar Lake Bike Trail Phase III
- Resolution 2001R-147, Amending the 2001 Capital Improvement Appropriation Resolution which included an increase to the Cedar Lake Bike Trail of \$300,000 with the revenue source being the settlement from the Federal Reserve Bank Project Tax Increment Financing District for off-site public improvements.
- Council Action (March 2, 2001), Directing Public Works to develop a temporary bike route plan for Cedar Lake Trail Phase III due to construction delays caused by other projects in the area.
- Council Action (December 17, 1999), Authorization to enter into two easements for the Cedar Lake Bike Trail Phase III.

Prepared by: Jack Yuzna, P.E., Principal Project Engineer, 673-2415

Approved by:

Steven A. Kotke, P.E., City Engineer, Director of Public Works

Presenters: Jack Yuzna, P.E., Principal Project Engineer,
Department of Public Works, Transportation Planning & Engineering Division

Reviews

Permanent Review Committee (PRC):	Approval	NA	Date
Civil Rights Affirmative Action Plan	Approval	NA	Date
Policy Review Group (PRG):	Approval	NA	Date

Financial Impact

No financial impact

Community Impact

Neighborhood Notification: Not Applicable

City Goals: The city's infrastructure will be well-maintained, people will feel safe in the city.

Comprehensive Plan: Not Applicable

Zoning Code: Not Applicable

Background/Supporting Information

Extension of the Cedar Lake Trail from Royalston Avenue to West River Parkway continues to be a high priority. Construction is scheduled to begin in early 2010 with completion by November 2010.

Since 2006, City staff has worked with the BNSF Railway Company (BNSF) on how the Cedar Lake Trail Phase III project would pass along its right-of-way. In order to maintain the project schedule, in May 2009 the City Council authorized Public Works the use of eminent domain to acquire the BNSF easements.

Negotiations continued with BNSF and in December 2009 the City Council approved a Stipulation of Partial Settlement with the BNSF. The Stipulation provided the City issuance of orders in our eminent domain proceedings authorizing the City to construct, operate, maintain and repair the Cedar Lake Trail across the BNSF easement parcels. The City agreed to remit to the BNSF our original appraised easement value \$422,108.68 as partial payment with the final amount of compensation to be determined upon completion of our pending eminent domain proceeding.

Since reaching the Stipulation of Partial Settlement, both Public Works and the BNSF felt that a final settlement could be reached prior to our pending eminent domain. In February of this year, Public Works staff, along with our legal counsel, met with a representative of the BNSF in an effort to reach a tentative settlement. After reviewing the BNSF Appraiser's opinion of damages with the City Appraiser's original opinion of damages, both parties agreed that a) the actual area of easements was larger than the City's original appraised easement value; and b) in the BNSF's opinion of damages, the term of the temporary easements was five months longer than needed by the City. The City's valuation of total damages increased to \$491,295 (an increase of \$69,187) after it was adjusted for the increased area. Likewise, adjusting for the shorter temporary easements term reduced the BNSF valuation by \$30,596 for a total opinion of damages of \$542,404.

This brought the two parties difference in valuation to within \$51,109. After some discussion, the parties agreed to \$535,000 as the tentative settlement valuation for the total damages of the easements.

Public Works agreed on the tentative settlement valuation based on the following factors. The City will incur additional attorney, appraisal and commissioners fees to complete its eminent domain proceedings. We estimate cost of those fees to be at least \$12,500. Due to the recently enacted state eminent domain statute, property owner rights to recover attorney fees after condemnation have been strengthened. In our counsel's opinion the BNSF attorney fees would very possibly exceed \$50,000.

Since the BNSF corporate office has notified us that they will accept the tentative settlement, Public Work requests the approval of the terms and compensation and request authorization to have the proper City officers execute the final settlement agreement with the BNSF.

Attachments Resolution
Cedar Lake Trail map

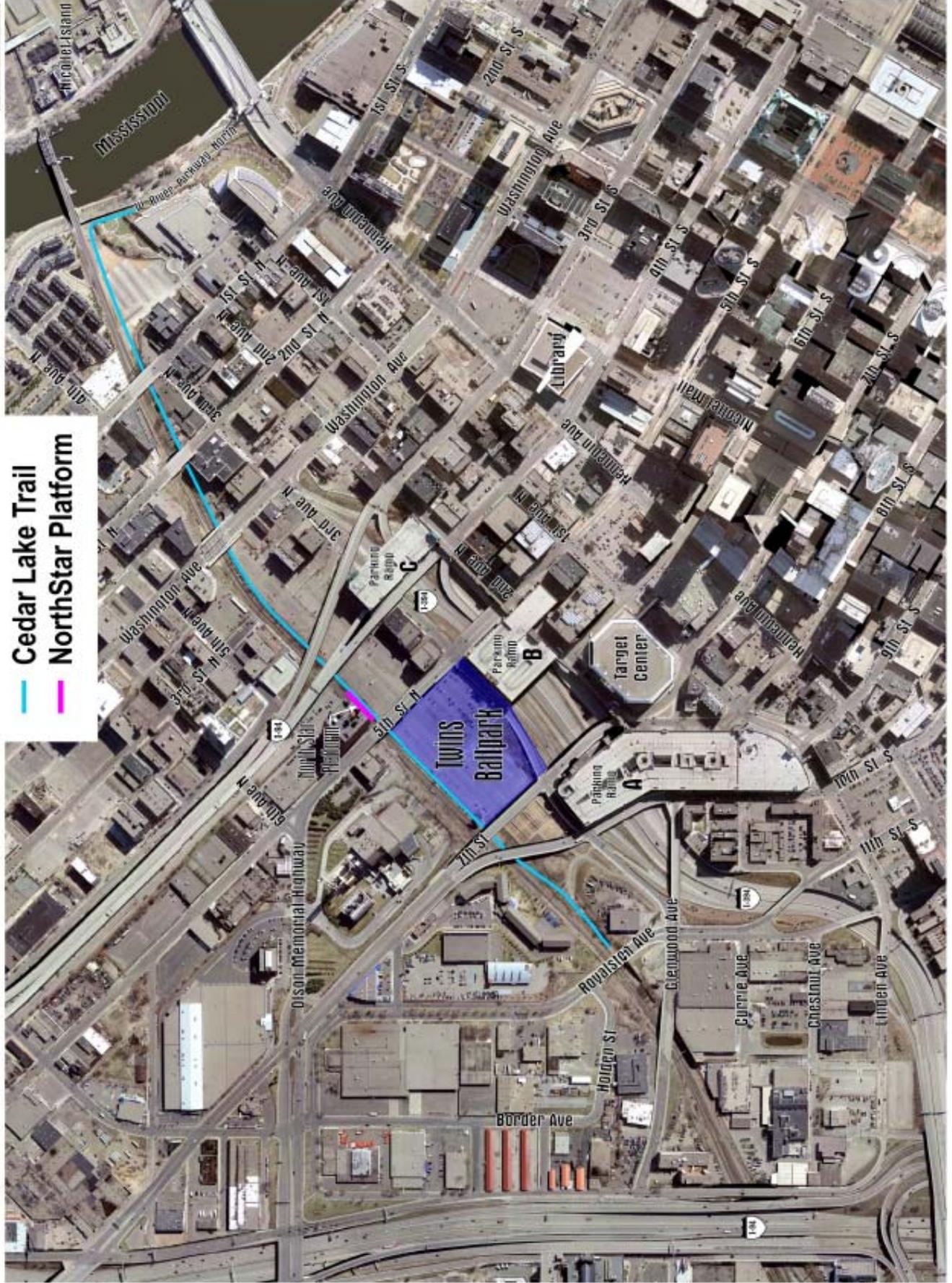
Cc: CM Goodman, Ward 7

Cedar Lake Trail - Phase III

JAN 11, 2008



MINNESOTA PUBLIC WORKS



-  Cedar Lake Trail
-  NorthStar Platform