

By Colvin Roy

Approving acquisition of temporary easement for transportation purposes, and authorizing use of eminent domain proceeding.

Whereas, the City of Minneapolis (the "City") completed Phase I and Phase II of the Cedar Lake Trail between the West City limits and Royalston Avenue in 1995; and

Whereas, extension of the Cedar Lake Trail from Royalston Avenue to the Mississippi River ("Cedar Lake Trail Phase III a/k/a Cedar Lake Bike Trail Phase III") is a high priority for the City of Minneapolis ("City") and its residents; and

Whereas, in a Council action on December 17, 1999, the City Council authorized the City to enter into two easements for the Cedar Lake Bike Trail Phase III; and

Whereas, in a Council Action on March 2, 2001, the City Council authorized the Director of 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; and

Whereas, in 2001, the City Council adopted Resolution No. 2001R-147, amending the 2001 Capital Improvement Appropriation Resolution, which included an increase to the budget for 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 the off-site public improvements; and

Whereas, in a Council action on August 24, 2001, the City Council authorized the proper City officers to apply for a series of federal funds (TEA-21) including \$2,160,000 for Cedar Lake Bike Trail Phase III; and

Whereas, in a Council Action on September 28, 2001, the City Council authorized the expenditure of \$40,000 from the Commuter Bike Fund System (4100-943-9470-Project A7002990) for a temporary bike lanes alignment for the Cedar Lake Trail Phase III; and

Whereas, in 2004, the City Council adopted Resolution No. 2004R-580, approving the 2005-2009 Five Year Capital Budget, which included an appropriation of \$2,160,000 for the Cedar Lake Trail Phase III Project with the revenue source being the Federal Government; and

Whereas, in 2005, the City Council adopted its Resolution No. 2005R-075, Supporting the Completion of the Cedar Lake Bike Trail to the Mississippi River; and

Whereas, in 2005, the City Council adopted its Resolution No. 2005R-661, Requesting the issuance and sale of bonds including the Cedar Lake Bike Phase III Project; and

Whereas, in 2005, the City Council adopted its Resolution No. 2005R-658, 2006-2010 Five Year Capital Budget which included an appropriation of \$583,000 for the Cedar Lake Bike Phase III Project, with the revenue source being Net Debt Bonds; and

Whereas, on November 17, 2006, the City Council authorized execution of Metropolitan Council Grant Agreement No. SG-2006-145 in the amount of \$1,800,000 for the Cedar Lake Trail Phase III Project; and

Whereas, in 2006, the City Council adopted its Resolution No. 2006R-584, Appropriation Increase to PW-Fund (0600-943-9480) by \$1,800,000 and increasing the revenue source (0600-943-9480-3215) by \$1,800,000; and increasing the appropriation in PW-Fund (4100-943-9470-BIKOI) by \$1,800,000 and increasing the revenue source (4100-943-9470-3215) by \$1,800,000; and

Whereas, in a Council action on December 22, 2006, the City authorized the proper City officers to enter into negotiations with abutting owners for the acquisition of trail easements; and

Whereas, on March 9, 2007, the City Council authorized the acquisition by negotiation or condemnation of permanent and temporary trail easements for completion of the Cedar Lake Trail-Phase III Project; and

Whereas, the region is currently constructing the first phase of the Downtown Minneapolis Intermodal Station (the "Intermodal Station"), which will provide a seamless connection between the Hiawatha and Central Light Rail Transit lines and the Northstar Commuter Rail line; and

Whereas, HCRRA's long-term transit vision for the region includes future phases of the Intermodal Station to accommodate additional Light Rail Transit lines (Southwest and Bottineau), additional Commuter Rail lines (Red Rock, Norwood/Young America, and Bethel/Cambridge), the Northern Lights Express Intercity Passenger Rail (Minneapolis to Duluth), and High Speed Rail from Chicago; and

Whereas, it is necessary for the City to commence construction of the Cedar Lake Trail Phase III in 2010 in order to meet state and federal funding deadlines and its obligations under an agreement with the Minnesota Department of Transportation, the Northstar Corridor Development Authority and the Metropolitan Council; and

WHEREAS, secure a use permit to permit construction of the trail on four parcels owned by HCRRA; and

Whereas, development of additional phases of the Intermodal Station will greatly benefit the City, Hennepin County, and the entire metropolitan region; and

Whereas, the City and HCRRA wish to coordinate the Cedar Lake Trail Phase III Project and future rail projects in the area between North 5th Street and Washington Avenue to ensure timely and successful implementation of both projects; and

Whereas, the City has begun the right of way acquisition process for the Cedar Lake Trail-Phase III Project, including an approximately 12 foot trail easement parallel to the property secured for the Northstar project between North 5th Street and Washington Avenue in the vicinity of where the Northstar Commuter Rail Line and the Hiawatha Light Rail Line connect, and where several other rail transit lines currently under study will converge at an intermodal station; and

Whereas, staging options for the ultimate build out of the Intermodal Station will be further developed after completion of Phase 2 of the Downtown Minneapolis Intermodal Station Study in late 2009/early 2010; and

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Whereas, if the full Intermodal Station is to be constructed in the future, it is likely to occupy at least a portion of the area being acquired for the Cedar Lake Trail Phase III project; and

Whereas, on March 6, 2009, in Resolution 2009-079, the City Council found that Parcels 14 and 15 described in Exhibit A to that Resolution ("Parcels 14 and 15") are needed for the Cedar Lake Trail Phase III Project, for reasons of cost effectiveness and efficiency and to ensure that Parcels 14 and 15 will remain free from encroachments by structures, and available for other foreseeable future uses, it is necessary, desirable, convenient and for a public purpose to secure permanent easements encumbering Parcels 14 and 15 for transportation purposes and related facilities, including, without limitation, rail, bus, bicycle, road and foot travel, the location of utility and communication facilities, including fiber optic lines, and for other future transportation and public facilities, and temporary easements for construction of the Cedar Lake Trail over Parcels 14 and 15, including by use of eminent domain proceedings, if necessary; and

Whereas, in Resolution 2009-079, the City Council found that acquisition of such transportation easements encumbering Parcels 14 and 15 is necessary for transportation uses, serves a public purpose and is consistent with the use of the Cedar Lake Trail until such time as rail improvements and/or other public facilities are constructed within the right of way; and

Whereas, the City has previously commenced eminent domain proceedings to acquire permanent and temporary easements over Parcel 15 as described in said Resolution 2009-079; and

Whereas, the City Council finds that it is necessary, convenient and for a public purpose that the City also acquire a non-exclusive temporary easement for transportation purposes over said Parcel 15, as is legally described in First Amended Exhibit A attached hereto ("Additional Temporary Easement") to expire December 31, 2010, to enable the City to facilitate construction of the Cedar Lake Trail, and to provide access for emergency, repair and maintenance vehicles for the benefit of the City, Minnesota Department of Transportation, Northstar Corridor Development Authority and the Metropolitan Council, as contemplated by the City's agreements with those agencies;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That if the Director of Public Works is unable to acquire said Additional Temporary Easement encumbering Parcel 15 for construction purposes by and for emergency access, maintenance, and repair vehicles upon terms acceptable to the City, the City Attorney and outside counsel retained by the City are hereby authorized and directed to amend the currently pending eminent domain proceedings to acquire such Additional Temporary Easement, and to use the quick take provisions of Minn. Stat. § 117.042 to acquire title and possession of such Easement prior to the filing of the Court Appointed Commissioners' report of damages caused by the taking.

Be It Further Resolved that with the assistance of the reports of independent real estate appraisers secured on behalf of the City, the Director of Public Works is hereby authorized to determine the amount of the City's offer of compensation to the owners of Parcel 15 for the Additional Temporary Easement and the approved appraisal of damages to be paid or deposited by the City pursuant to Minn. Stat. § 117.042.

Be It Further Resolved that the acquisition of such Additional Temporary Easement is hereby determined to be necessary and convenient and for a public purpose.

FIRST AMENDED EXHIBIT A

The complete legal description of easements to be acquired is on file in the office of the City Engineer. The Additional Temporary Easement to be acquired from Parcel 15 pursuant to this resolution is described below.

Parcel No. 15 (Torrens Certificate of Title No. 1032399 (PIN No. 22-029-24-42-0098 and No 22-029-24-13-0110):

Property Address: 328 North 4th Street Minneapolis, Minnesota (PID #22-029-24-13-0110)

Property Address: 333 Washington Avenue North, Minneapolis, Minnesota (PID #22-029-24-42-0098)

Additional Temporary Easement

A temporary easement for construction and vehicular access (by emergency, maintenance and repair vehicles) purposes over, under and across those portions of Blocks 10, 57 and 58, HOAG'S ADDITION TO MINNEAPOLIS; and those portions of Blocks 57 and 58, TOWN OF MINNEAPOLIS; and those portions of Blocks 19, 21 and 22 in BRADFORD AND LEWIS ADDITION TO MINNEAPOLIS; together with those portions of abandoned alleys, abandoned Fourth Avenue North and abandoned Third Street North all described as follows:

Lot 3, said Block 57; Lot 6, said Block 10, all in HOAG'S ADDITION TO MINNEAPOLIS;

Those portions of Lots 4 and 5, said Block 10, lying Southeastery of a line drawn parallel with and 25 feet Southeastery from the center line of the East Bound track of the Burlington Northern Railroad (now known as BNS RAILWAY COMPANY) as said centerline was located and established on September 16, 1999, which lies Southwestery from the Northeastery right-of-way of Interstate Highway No. 94;

The Northwestery 62 feet of said Block 58, the Southeastery line of said Northwestery 62 feet is prolonged to terminate on the Northeastery line of said Block 58; That part of Lot 10, Block 58, TOWN OF MINNEAPOLIS, shown as Block 21 in the plat of BRADFORD AND LEWIS ADDITION TO MINNEAPOLIS;

Together with that part of said abandoned Fourth Avenue North lying between a line drawn northerly from the most Northerly corner of said Block 21, to the most easterly corner of said Block 19 and the Northeastery right-of-way line of Interstate Highway No. 94;

Lots 1, 3 and 10; that part of Lot 2 lying Southeastery of the Northwestery 23.3 feet of said Lot 2; that part of Lot 9 lying Southeastery of the Northwestery 22 feet of said Lot 9, all in said Block 57, TOWN OF MINNEAPOLIS;

Those portions of Lots 2, 15 and 16, Block 22, Bradford and Lewis Addition to Minneapolis and that part of said Lot 5, Block 19, HOAG'S ADDITION TO MINNEAPOLIS lying Northeastery of the Northeastery right-of-way line of Interstate Highway No. 94, together with that part of adjoining abandoned alleys in said Blocks 10 and 22, all which lie Southeastery of a line hereinafter referred to as "Line A" and described as follows:

Beginning of a point on the Southwestery line of said Block 10, distant 29.27 feet Northwestery from the most Southerly corner of said Block 10; thence Northeastery along a straight line to a point in the Southwestery line of said Block 22, distant 107.48 feet Northwestery from the most Southerly corner of said Block 22; thence Northeastery along the prolongation of the last described line 105.27 feet; thence Northeastery along a non-tangential curve concave to the South having a radius of 1875.86 feet, the chord of said curve is measured 13 degrees 24 minutes 52 seconds to the right from said prolongation of the last described line to the Northeastery line of said Block 22 and said "Line A" there terminating.

Lot 12, Block 19; Lot 1, Block 22; all in BRADFORD AND LEWIS ADDITION TO MINNEAPOLIS;

That part of abandoned Third Street North lying between "Line A" and a line described as beginning at the most Southerly corner of Lot 1, Block 57, TOWN OF MINNEAPOLIS; thence along the Southwestery extension of the Southwestery line of said Lot 1 to the center line of said street; thence Northwestery along said center line to the Northeastery prolongation of a line drawn Northeastery from a point on the Southwestery line of Block 58, HOAG'S ADDITION TO MINNEAPOLIS distant 293.1 feet Northwestery from the most Southerly corner of said Block 58 to a point on the Northwestery extension of the Northeastery line of said Block 58 distant 290.15 feet Northwestery from the most Easterly corner of said Block 58; thence Southwestery along the last described line to said Northwestery extension and there terminating;

Together with that part of said abandoned Third Street North lying Northeastery of the center line of said street which lies between the Southwestery extension of the Southeastery line of the Northwestery 23.3 feet of Lot 2, said Block 57 and the Southwestery extension of the Southeastery line of Lot 3, Block 57, TOWN OF MINNEAPOLIS to said center line and there terminating.

That part of Northeastery half of the abandoned alley in Block 57, TOWN OF MINNEAPOLIS lying Northwestery of the Southwestery extension of the Southeastery line of the Northwestery 22 feet of Lot 9, in said Block 57, together with that part of the Southwestery half of said abandoned alley lying Northwestery of the Northeastery extension of the Southeastery line of the Northwestery 23.3 feet of Lot 2, said Block 57.

Being registered land as evidenced by Certificate of Title No. 1032399.

Said temporary construction and access easement lies within a distance of 157.50 feet southeastery of the following described "Line 1" and also lying between two lines run parallel with and distant 37.32 feet and 74.49 feet southwestery of the southwestery line of said Third Street North and also lying southeastery of a line parallel with an 35.00 feet southeastery of the following described "Line 2":

"Line 1" is described as commencing at the most easterly corner of Block 85, said HOAG'S ADDITION TO MINNEAPOLIS; thence North 44 degrees 53 minutes 45 seconds West along the northeastery line thereof and its northwestery extension for 439.89 feet to the point of beginning of "Line 1" to be described; thence North 44 degrees 57 minutes 50 seconds East to an intersection with the southeastery right of way line of BNSF Railway Company and there terminating.

"Line 2" is described as commencing at the most southerly corner of said Block 10; thence North 45 degrees 01 minutes 39 seconds West, assumed bearing along the southwestery line of said Block 10, a distance of 17.87 feet to the point of beginning of said "Line 2"; thence North 45 degrees 03 minutes 49 seconds East a distance of 88.06 feet; thence northeastery along a tangential curve concave to the southeast having a radius of 1000.00 feet, a central angle of 01 degrees 08 minutes 45 seconds, a distance of 20.00 feet; thence North 46 degrees 1 minutes 34 seconds East, tangent to said curve, a distance of 29.86 feet; thence northeastery along a tangential curve concave to the northwest having a radius of 1015.00 feet, a central angle of 01 degrees 08 minutes 45 seconds, a distance of 20.30 feet; thence North 45 degrees 03 minutes 49 seconds East, tangent to last described curve, a distance of 400.40 feet; thence northeastery along a tangential curve concave to the southeast having a radius of 550.00 feet, a central angle of 18 degrees 33 minutes 00 seconds, a distance of 178.07 feet; thence North 63 degrees 36 minutes 51 seconds East, tangent to last described curve, a distance of 30.17 feet to the northeastery line of said Block 22 and said "Line 2" there terminating.

Said temporary construction and access easement to be effective on July 6, 2009 and shall terminate on December 31 2010.