

PUBLIC WORKS AND UTILITIES COMMITTEE

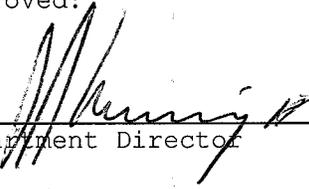
12-0213R

RESOLUTION AUTHORIZING AGREEMENT TO PETITION FOR STREET IMPROVEMENTS WITH WDIO-TV LLC FOR IMPROVEMENT OF STREETS IN ANTENNA FARM.

CITY PROPOSAL:

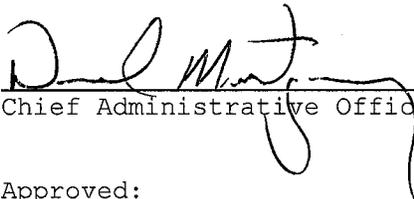
RESOLVED, that the proper city officials are authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. _____ with WDIO-TV, LLC for said party to join in a petition to improve portions of Winter Street, Buena Vista Street, Green Avenue and platted Highland Avenue, known as Orange Street, upon the city's determination to improve them and to accept an assessment related thereto.

Approved:



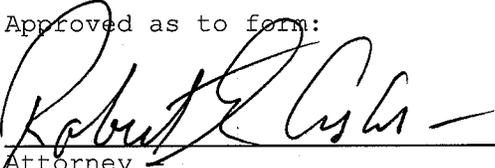
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PW&U/ATTY REA:dma 04/13/2012

STATEMENT OF PURPOSE: This resolution will authorize an agreement with WDIO-TV pursuant to which they agree to join in a petition to improve certain platted but unimproved streets in the "Antenna Farm" property if and when the City ever decides to improve them to public street status.

At present there are a number of streets in the Antenna Farm that are "paper streets" which therefore cannot serve as "frontage on a public street" for zoning purposes. WDIO which owns property adjacent to such streets wishes to lease some of it to Cellcom to allow Cellcom to erect new antenna and related structures on it and use it for the operation of their business. They need only driveway access to accomplish their goals but Condition No. 4. of the Special Use Permit

authorizing their project requires them to execute an "Agreement to Petition for Street Improvement".

The City's practice in such cases, where the City sees no current public need for a street, is to allow the permit to be issued if the property owner will agree to join in a petition to improve the easements to public street standards if the need should arise in the future and to accept an assessment for their proportionate share of the cost.

This agreement will accomplish that goal and will allow their project to proceed.

AGREEMENT TO PETITION FOR STREET IMPROVEMENT

THIS AGREEMENT, made this ____ day of _____, 2011, between WDIO-TV, LLC, a Minnesota limited liability company, hereinafter referred to as "Owner", and the CITY OF DULUTH, hereinafter referred to as the "City";

WHEREAS, the Owner is the owner of certain property located at 1435 East Orange Street in the City of Duluth, County of St. Louis, Minnesota, hereinafter referred to as the "Property", legally described as follows:

Lots 1, 2 and 3, Block 19, DULUTH HEIGHTS, First Division; and

WHEREAS, a third party (the "Lessee") proposes to lease a portion of the Property for the purpose of constructing and operating new structures (the "Project") thereon and has applied for a building permit therefore; and

WHEREAS, the Project as proposed will not have adequate access to an improved, maintained public street; and

WHEREAS, in order to facilitate the lease of a portion of the Property as described above from Owner to Lessee and as a condition of the issuance of the aforesaid permit, Owner has agreed to the terms and conditions of this Agreement which include an agreement, signed in recordable form, pursuant to which Owner, for itself and its successors and assigns, if any, irrevocably agrees to join in a Petition for the Permanent Improvement of the following streets, all in DULUTH HEIGHTS, First Division, as generally depicted on Exhibit A attached hereto and made a part hereof, and to be

assessed for the cost thereof in accordance with the City's standard assessment policy in place at the time that such improvement is constructed;

- a.) of Winter Street from the westerly side of Lot 3 of the Property in an easterly direction to East Orange Street;
- b.) of Buena Vista Street from the northeasterly corner of Lot 13, Block 19, DULUTH HEIGHTS, First Division in an northeasterly direction to East Orange Street;
- c.) of Green Avenue from the northerly point of Lot 1, Block 18, DULUTH HEIGHTS, First Division to the north right-of-way line of Winter Street; and
- d.) and of platted Highland Avenue, commonly known as East Orange Street from the northern point of Lot 1, Block 17, DULUTH HEIGHTS, First Division to the north right-of-way line of Winter Street.

NOW, THEREFORE, in consideration of the issuance by the City of the above described building permit, the Owner agrees:

1. That for itself and its successors and assigns, Owner hereby irrevocably appoints the Director of Public Works and Utilities of the City of Duluth or the City's Chief Administrative Officer as its agent for joining in and executing a Petition to the Duluth City Council for the permanent improvement of those portions of Winter Street, Buena Vista Street, Green Avenue and platted Highland Avenue, commonly known as East Orange Street , all as described above (the "Improvements"), in accordance with the City Engineer's standard urban street profile for a 9 ton street.

2. Assessment

A. Generally

That the Owner does bind itself and its successors and assigns to pay all assessments arising by reason of the ordering in or making of such permanent improvement on the basis of the special benefits conferred thereby on the above described property, and waives any rights of appeal under Chapter IX of the

Charter of the City of Duluth. In the event that the Improvements are constructed, the Owner's assessment shall be equal to the cost of the Improvements and related costs multiplied times a number equal to the lineal footage of the frontage of the Property adjacent to the Improvements divided by the lineal footage of all property having frontage adjacent to the Improvements including the Property; said amount shall be hereinafter referred to as "Owner's Proportionate Share".

B. Benefits of Street Improvements

It is mutually agreed between the parties hereto that the construction by the City of the Improvements will constitute the construction of public improvements which will confer special benefits on the Property. It is hereby stipulated and agreed that value of the benefits conferred upon the Property by the construction of the Improvements will equal or exceed the Owner's Proportionate Share thereof, without reference to any benefits conferred upon other benefitted properties.

C. Owner Agrees to Assessment

Because the Owner agrees that the value of the benefits to the Property arising out of the construction of the Improvements equals or exceeds the anticipated Owner's Proportionate share, Owner agrees to accept and to pay an Assessment in the amount equal to the cost thereof levied against it by City to defray the costs of the Improvements. Said Assessment shall run for a term of fifteen (15) years at the City's standardized rate for special assessments then in effect.

D. Waiver of Defenses

Owner, for itself and its successors and assigns and for any other affected party, specifically waives, without limitation, all defenses of any kind whatsoever, including, but not limited to, procedural defenses to the Assessments to be levied pursuant to this Agreement, including any supplemental Assessments, and agrees that Owner and its successors and assigns, if any, shall be bound thereby.

3. As a further condition of this Agreement, Owner does bind itself and its successors and assigns, to construct and maintain a driveway serving the Property and any

proposed structure located thereon until such time as the City of Duluth shall cause the Improvements to be made.

- 4. That this Agreement shall be recorded or registered against and run with the above Property and shall be binding upon the Owner, its assigns and successors in interest with respect to the Property.

THIS AGREEMENT is entered into the day and date first shown above.

WDIO-TV, LLC, a Minnesota Limited Liability Company

By: _____

Its: _____

“Owner”

STATE OF MINNESOTA)
)ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 201____, by _____ and _____.

Notary Public

STATE OF MINNESOTA)
)ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 201____, by _____ the _____ of _____, a _____ under the laws of the state of Minnesota.

Notary Public

This document drafted by:

Robert E. Asleson
Assistant City Attorney
411 West First Street
Room 410 City Hall
Duluth, MN 55802
(218) 730-5490

