

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-017-0

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY AT 3RD AVENUE WEST AND THE I-35 FRONTAGE ROAD TO DTA AT NO COST FOR THE MULTI-MODAL TRANSPORTATION CENTER, SUBJECT TO CONDITIONS.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That pursuant to the requirements of Section 2-176 of the Duluth City Code, 1959, as amended, the city council finds that:

(a) The planning division has determined that the proposed sale of the property described in Public Document No. _____ on file in the office of the city clerk to the Duluth Transit Authority for incorporation into the multi-modal transportation center conforms to the city's comprehensive plan; and

(b) Given the limitations on title on the property and the requirement that the Duluth Transit Authority re-convey the surface parking back to the city after completion of the construction of said center, the city assessor has estimated the net market value of the conveyance of the property to the Duluth Transit Authority as being negligible; and

(c) The city council finds that the sale of the property described in Public Document No. _____ at no cost to Duluth Transit Authority to allow for the development of a multi-modal transportation center project over and adjacent to said property while preserving the city's use of the surface level of the property for parking is a superior use to the city's current use of the property for surface level parking only, subject to the provisions of Section 3 below.

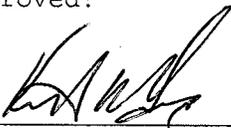
Section 2. That, pursuant to the provisions of Section 2-177.3 of the Duluth City Code, 1959, as amended, the proper city officials are hereby authorized to convey by quit claim deed the property described in Public Document No. _____, on file in the office of the city clerk to the Duluth Transit Authority, subject to the terms and conditions contained in Section 3 below.

Section 3. The authority granted pursuant to Section 2 above shall be

subject to the property being used for the construction and operation of a downtown multi-modal transportation center and shall be further subject to the execution and delivery of an agreement substantially in the form of that on file in the office of the City Clerk as Public Document No. _____ committing the Duluth Transit Authority to reconvey the surface level parking as described in the agreement back to the city upon the completion of construction of the multi-modal transportation center.

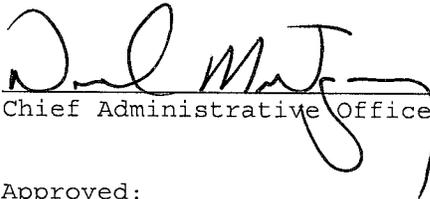
Section 4. That this ordinance shall take effect 30 days after its passage and publication.

Approved:



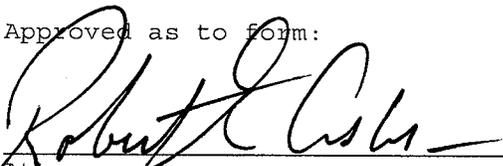
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ATTY REA:db March 1, 2013

STATEMENT OF PURPOSE: The purpose of this ordinance is to convey the property interests needed by the Duluth Transit Authority ("DTA") in the parking lot located between the Wells Fargo Parking Ramp and the I-35 frontage road to the DTA for the Multi-modal Transportation Center (the "Center"), subject to return of the surface-level parking when the project is completed.

As Councilors are aware, the Center is a joint undertaking by the DTA and INREIT, the owner of the Wells Fargo Parking Ramp, in partnership with the City, the DECC and other downtown interests, to demolish the ramp and to build on the site of that facility and in the air rights over the adjacent City-owned surface parking lot the Center which will include a new DTA transit center, a new, downtown intra-and inter-state bus depot for Jefferson Lines, public parking facilities, private parking for tenants and customers of the bank building, a new skywalk to the existing Transit Center East, a new Downtown satellite police station, and bicycle storage facilities. The project will also include the reconstruction and widening of the Northwest Passage from the Center to the DECC which will allow

bicycles to be walked through the Northwest Passage from the downtown to the DECC and visa versa.

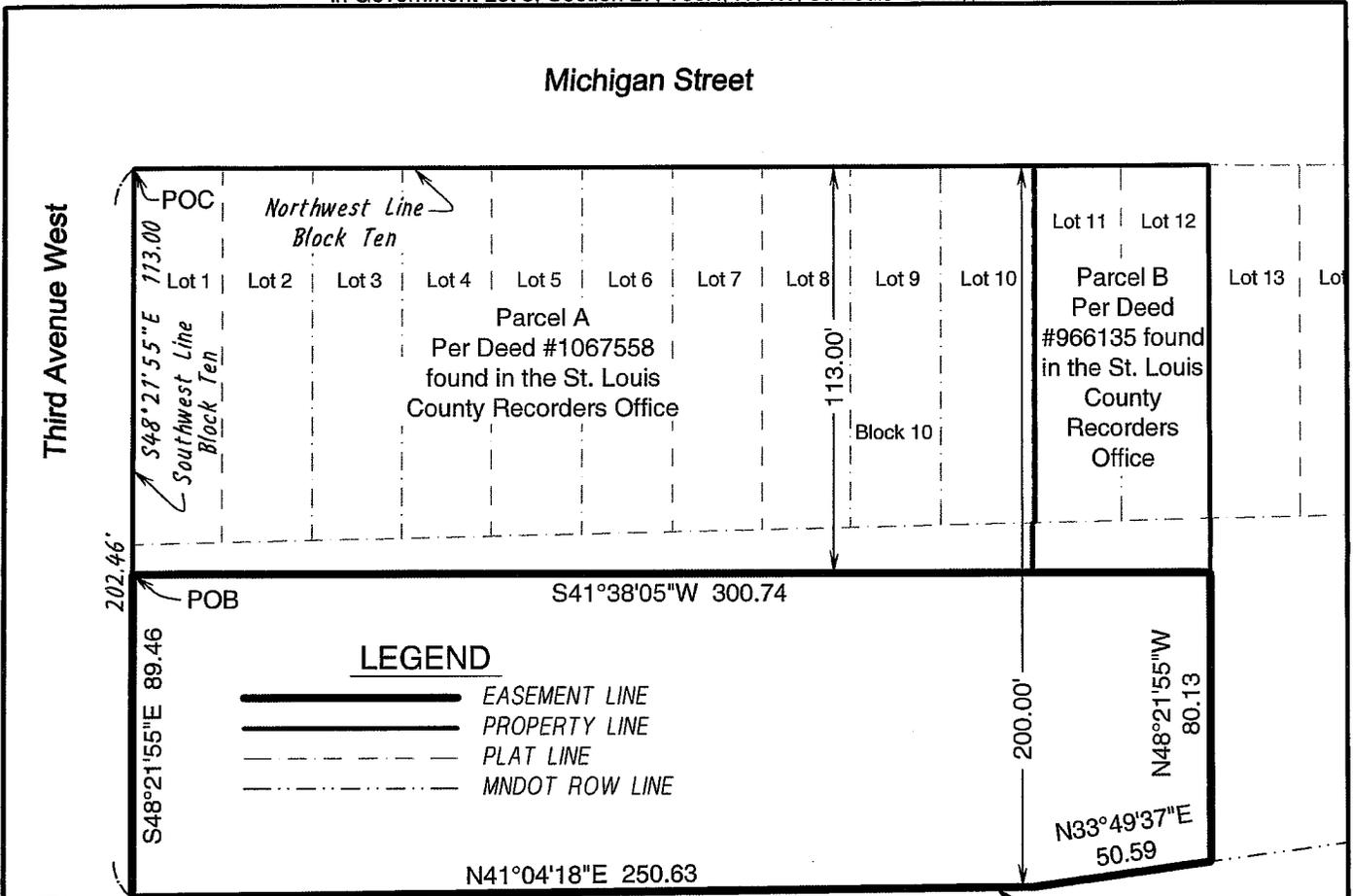
The funding for the public portion of the project is being provided by the Federal Transportation Administration ("FTA") and one of their requirements before they will finalize the grant for the project is for DTA to demonstrate "site control"; this would include "site control" of the sub-surface and surface of the property upon which the foundation elements and the columns to support the Center are to be built. However, since the Center is not yet designed, we do not know at this time exactly where the foundation elements and the columns will be located on the property so it is impossible to legally describe the property interests that the Center will require in the surface and sub-surface of the property.

In addition, at this time, DTA is not interested in operating the surface parking currently existing on that property and the City has no desire to divest itself of that surface parking.

To address these issues, this ordinance proposes to convey the entirety of the parking lot property, including surface and sub-surface rights, to DTA so that they can demonstrate the "site control" they need for FTA, subject to an agreement committing DTA to convey those portions of the surface and sub-surface of the property not ultimately needed for the Center back to the City when the project is completed.

Exhibit A

in Government Lot 3, Section 27, T50N, R14W, St. Louis County, MN

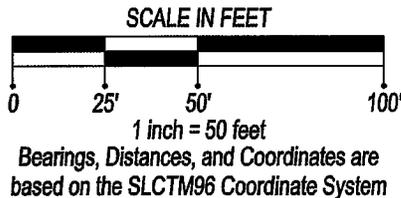


LEGEND

- EASEMENT LINE
- PROPERTY LINE
- PLAT LINE
- MNDOT ROW LINE

TH35

Line Three
Per Deed #1181834
found in the St. Louis
County Recorder's Office



Legal Description:

A parcel of property in Government Lot 3, Section 27, T50N, St. Louis County, Minnesota legally described as follows:

Commencing at the most westerly corner of Block Ten, Central Division of Duluth; thence South 48 °21'55" East (basis for bearings is the SLCTM96 coordinate system) on the southwesterly line of Block Ten and its southeasterly extension for a distance of 113.00 feet to the point of beginning; thence continuing on the southeasterly extension of the southwesterly line of Block Ten South 48°21'55" East for a distance of 89.46 feet, more or less, to that line described as "Line Three" in pages four and five of that deed recorded in the St. Louis County Recorder's Office as Document Number 1181834 ("Line Three"); thence North 41°04'18" East along said Line Three for a distance of 250.63 feet; thence continuing along said Line Three North 33°49'37" East for a distance of 50.59 feet to the southeasterly extension of the northeasterly line of Lot Twelve, Block Ten; thence North 48°21'55" West on the southeasterly extension of the northeasterly line of Lot Twelve, Block Ten for a distance of 80.13 feet to a line parallel to and 113.00 feet southeasterly of the northwesterly line of Block Ten; thence South 41°38'05" West on said parallel line for a distance of 300.74 feet to the Point of Beginning.

Approved by the City Engineer of Duluth, MN

Date: _____ by: _____

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Date: 3/1/2013

DAVID SZYSZKOSKI
MINNESOTA LICENSE NO. 47046

ENGINEERS • SURVEYORS • PLANNERS
SALO ENGINEERING, INC.
4560 Norway Pines Place - Duluth, MN 55802
SALO JOB NUMBER: L3303F ph 218/727-8796

Exhibit A
Sec 27, T50N, R14W
For : LSA
c/o William Fossing

**PROPERTY CONVEYANCE AND
RECONVEYANCE AGREEMENT
DOWNTOWN MULTI-MODAL TRANSPORTATION PROJECT
DULUTH TRANSIT AUTHORITY
CITY OF DULUTH**

THIS AGREEMENT, effective upon the date of attestation thereto by the City Clerk by and between the DULUTH TRANSIT AUTHORITY, an authority created under Laws of Minnesota, 1969 Chapter 720, hereinafter referred to as "DTA" and the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "City".

WHEREAS, DTA is a public transit authority charged with providing and operating public transit of various forms within the City of Duluth and surrounding areas and is empowered to own and operate public transit vehicles and real and personal property necessary and appropriate to these functions; and

WHEREAS, DTA has determined it to be necessary and appropriate to have constructed and operated a new Multi-modal Transportation Center in Downtown Duluth which will provide not only an integrated transit center for DTA's transit operations in Duluth and the surrounding areas but also terminal for interstate and intrastate bus service and facilities for pedestrian and bicycle transport (the "Center"). The project also includes redevelopment of the Northwest Passage presently providing for pedestrian transit from the Downtown across Interstate Highway 35 ("I 35") to the DECC; and

WHEREAS City is the owner of certain hereinafter-described property (the "City Property") lying northwest of I 35 and its frontage road and northeast of and adjacent to the right-of-way for 3rd Avenue West which it currently uses for surface parking; and

WHEREAS, whereas DTA has an agreement with the owner of certain property lying northwest of and immediately adjacent to the City Property pursuant to which DTA and said owner will demolish the structure presently located on said adjacent property and construct on said adjacent property and the City Property the Center which will also include a parking ramp which will provide approximately 300 vehicle parking spaces available to the public, bicycle storage facilities, accommodations for a satellite police station, and reconstructed Skywalk and Northwest Passage facilities connecting to the Downtown and the DECC, subject to obtaining ownership of the City Property; and

WHEREAS, DTA has been granted funds by the Federal Transportation Administration which, together with other funding sources, is sufficient to fund the design and construction of the Center on the subject property but, in order to qualify for such funding, DTA must demonstrate that it owns or controls those portions of the real estate upon which federal funds will be expended; and

WHEREAS, City has determined that the construction and operation of the Center as described above would be of great benefit to the City and its citizens and therefore wishes to encourage its development but neither City nor DTA are desirous of the DTA's continued ownership, use and operation of the surface parking presently located on the City Property.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

1. Conveyance of City Property to DTA

In consideration of the terms and covenants of this Agreement subject to the terms and conditions hereinafter set forth, City hereby agrees and the proper City officials are authorized to convey to the DTA by quit claim deed the City Property, which property in the city of Duluth, County of St. Louis and State of Minnesota is described in Exhibit A attached hereto and made a part hereof. DTA agrees to take said property "as is-where is" without any guaranties or warranties of any kind including but not limited to warranties of fitness for any use or for any particular purpose or warranties as to title or environmental condition.

2. Use of City Property

The conveyance authorized under this Agreement is for the sole purpose of development thereon, in conjunction with the development on the property adjacent to and to the northwest of the City Property, the Center as hereinbefore described. If DTA shall have failed to complete design and construction of the Center within Five (5) years of the effective date of this Agreement, City shall have the right but not the obligation to demand reconveyance to it of any and all portions of the City Property not previously reconveyed to City pursuant to Paragraph 3 below at no cost to City.

3. Re-conveyance of City Property

Upon completion of the construction of the Center, DTA agrees to convey to the City by quit claim deed that portion of the City Property constituting the surface parking facilities, generally described as that portion of the City Property lying between the elevations of 609 feet (NAVD88) and 623 feet (NAVD88), except that portion thereof containing columns necessary to support the Center in accordance with the plans and specifications. The reconveyance of the City Property shall be subject to a reservation to the DTA of an easement for access from 3rd Avenue West to the lower level of the Center. City shall be entitled to the same quality of title in said re-conveyed property as that conveyed to DTA without added encumbrances or restrictions of any kind, subject to said easement reservation.

4. Indemnification

A. Generally

Subject to the limitations contained in Subparagraph D below, DTA will to the fullest extent permitted by law, protect, indemnify and save City and its officers, agents, servants, employees and any person who controls City within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes

of action, suits, claims demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to City Property in or upon the Center or growing out of or in connection with the use or non-use, condition or occupancy of the Center or the City Property or any part thereof and the construction or installation of the Center on any portion of the Center and the City Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the DTA, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by DTA of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Center which shall have existed at the commencement of the term of this Agreement or shall have been approved by the DTA.
4. Any violation of any law, ordinance, court order or regulation affecting the Center or the City Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, DTA hereby agrees that for itself, its successors and assigns that it will indemnify and save the City and its officers, agents, servants and employees and any person who controls the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created in the Center or the City Property after the date of the signing of this Agreement which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Center or the City Property of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to City Property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Center or on the City Property.

C. Indemnification Procedures

Promptly after receipt by City of notice of the commencement of any action with respect to which the other party is required to indemnify the party

receiving such notice under this Paragraph, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

D. Limitation of Indemnification

Nothing to the contrary in the foregoing withstanding, DTA's indemnification obligation pursuant to Subparagraphs A and B above shall not apply until such time as the City Property is conveyed to the DTA. Additionally, DTA's indemnification obligation pursuant to Subparagraph A above shall not apply to that portion of the City Property reconveyed to City pursuant to Paragraph 3 above after the occurrence of said reconveyance.

6. Insurance

Upon entering into any contract for design or construction of the Center and the Northwest Passage with a design-builder, DTA agrees that it will require that the City be named as an additional insured on all policies of insurance required of such designer-builder and that City shall be protected thereby in the same manner and to the same extent as DTA.

7. City Property Non-transferable

The conveyance of the City Property to DTA as herein authorized is solely for the purpose of facilitating the Development and operation of the Center. Therefore, DTA shall not sell, transfer or convey in any manner whatsoever any right, title or interest in the City Property, in whole or in part, in any way whatsoever without the prior consent of the City as manifested by a resolution of the City Council thereof, except as provided for in Paragraph 3, above.

8. Runs With the Land

This Agreement shall be deemed to run with the land and shall enure to the benefit of the parties hereto and to their successors and assigns.

9. Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of City:

City of Duluth
Office of the City Engineer
Room 211 City Hall
411 West First Street
Duluth, MN 55802

In the case of DTA:

Duluth Transit Authority
2402 West Michigan Street
Duluth, MN 55806

10. Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREAS, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH, a Minnesota
municipal corporation

DULUTH TRANSIT AUTHORITY,
a Minnesota Authority

By: _____
Mayor

By: _____
Its: _____

Attest:

By: _____
City Clerk

Date: _____

Countersigned:

City Auditor

Approved:

City Attorney