

PUBLIC WORKS AND UTILITIES COMMITTEE

13-0456R

RESOLUTION AUTHORIZING AGREEMENT ACCEPTING WATER MAIN
EASEMENT FROM ISD 709 RELATED TO EAST HIGH SCHOOL.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby 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 Independent School District No. 709, accepting an easement across certain property therein-described which property is part of the campus of the new East High School at no cost to the city.

Approved:



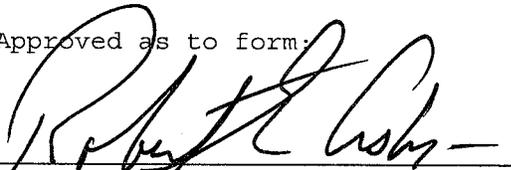
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PWU/PRCH/ATTY REA:de 08/28/2013

STATEMENT OF PURPOSE: This resolution authorizes an agreement accepting a waterline easement across a portion of the property occupied by the new Duluth East High School (formerly the Ordean Junior High School campus) at no cost to the City.

The easement will enter from Superior Street and exit onto 40th Avenue East. The City will agree to be responsible for maintenance and operation of the new water line.

WATER MAIN EASEMENT AGREEMENT

This Water Main Easement Agreement ("Agreement") is entered into by THE CITY OF DULUTH, MINNESOTA ("City"), and INDEPENDENT SCHOOL DISTRICT NO. 709 ("District"), effective _____, 2013.

RECITALS

A. District is the owner of the real property located in St. Louis County, Minnesota and described on **Exhibit A** attached hereto (the "District Property").

B. The District Property is a part of the Eastern High School campus.

C. As a part of its development of the Eastern High School campus, the District has agreed to provide a utility easement to the City and to install certain public improvements for which the City will assume responsibility.

D. The installation of the public improvements and the assumption of responsibility are governed by a Memorandum of Understanding ("MOU") between the City and the District dated August 31, 2013, ~~2009~~.

E. In conjunction with the installation of the public improvements, the District has agreed to convey to the City a utility easement within the area (the "Easement Area") as the same is described and depicted on **Exhibit B** attached hereto.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the District agree as follows:

1. The recitals are included as a part hereof.

2. The District grants to the City a non-exclusive and perpetual easement (the "Right-of-

Way") over the Easement Area for the construction, maintenance, inspection, operation, protection, repair, replacement, and/or removal of a water main and related appurtenances and facilities for the transportation of water on, over, under and across the Easement Area. Except as otherwise agreed by the City and the District, water must be confined in pipes or mains and all pipes, mains, appurtenances and related facilities must be installed underground.

3. The District also grants to the city the right of ingress to and egress from the Easement Area across the District Property by means of roads and lanes on the District Property as and if they exist, otherwise, by such road, roads or paths as shall cause the least practical damage and inconvenience to the District.

4. The District reserves the right to use the Easement Area for purposes that will not interfere with the City's full enjoyment of the rights granted in this Agreement. The rights reserved by the District include, without limitation, the right to install pipes, mains, appurtenances, and related facilities within the Easement Area and the right to construct, reconstruct and improve any roadway, parking lot, curbs, gutters and sidewalks within the Easement Area; provided that the District shall not erect or construct any building or other structure, build or operate any wells, construct any reservoir or other obstruction on the Easement Area or diminish or substantially add to the ground cover over the Easement Area and the District will not carry on any excavation, installation, construction or other activity over, on or under the Easement Area such as to interfere with the rights granted to the City hereunder without the prior consent of the City.

5. After the City's acceptance of the initial installation of public improvements by the District and subject to any warranty requirements set forth in the MOU, the City shall operate and maintain all public improvements and utilities in a manner so that they are safe and useful for their intended purposes, do not create a nuisance, and do not harm the District, the District's Property, the

This instrument was drafted by:

Fryberger, Buchanan, Smith &
Frederick, P.A.
700 Lonsdale Building
302 West Superior Street
Duluth, Minnesota 55802
(218) 722-0861
DDM/3566-35

EXHIBIT A

DISTRICT PROPERTY

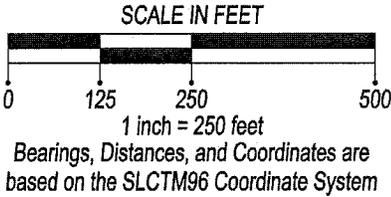
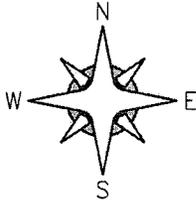
That portion of the W'ly $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 7, Township 50, Range 13 West, lying S'ly of Superior Street and N'ly of the right of way of the Duluth & Iron Range Railroad Company and E'ly of a line drawn parallel with and 20 rods E'ly of the West line of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 7.

EXHIBIT B

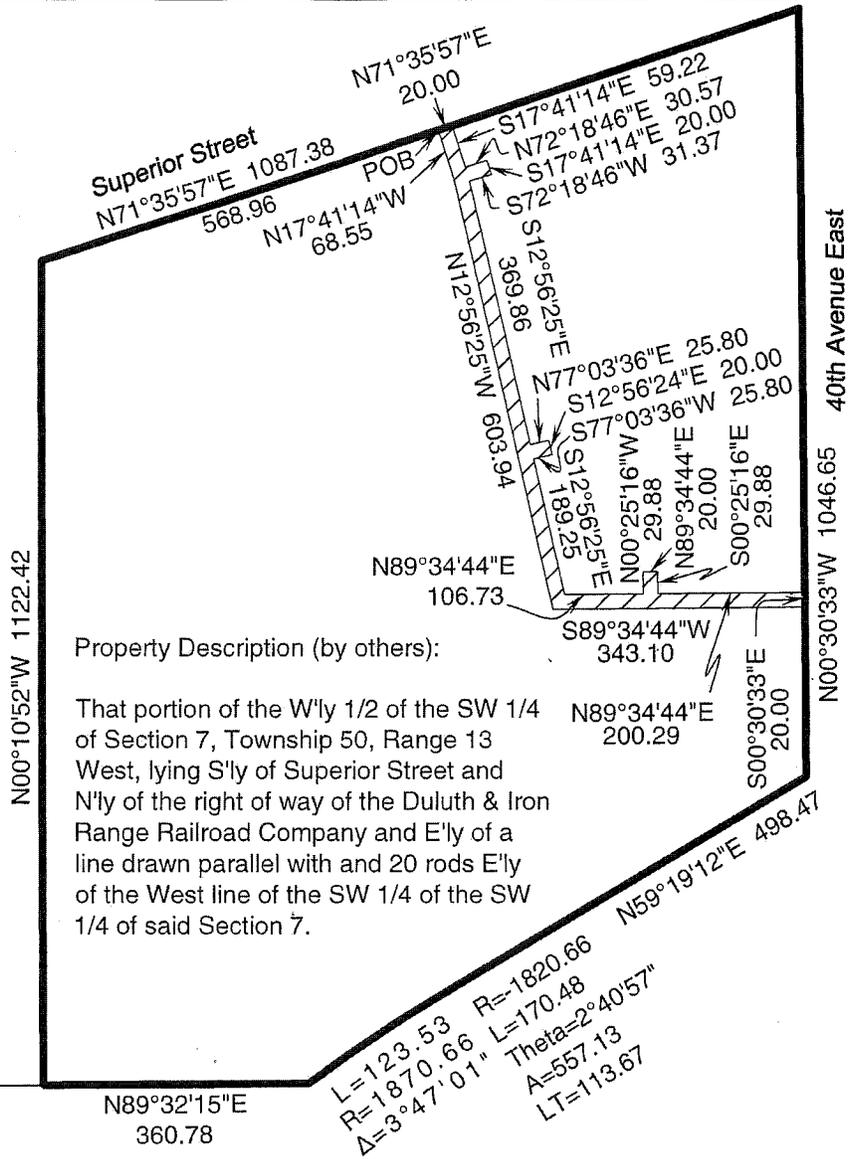
DESCRIPTION AND DEPICTION OF EASEMENT AREA

Watermain Easement Exhibit

in the W½ of the SW¼ of Section 7, T50N, R13W, St. Louis County, Minnesota



Capped Rebar
Southwest Corner
Section 7
N89°32'15"E
329.33



Property Description (by others):

That portion of the W½ 1/2 of the SW 1/4 of Section 7, Township 50, Range 13 West, lying S'ly of Superior Street and N'ly of the right of way of the Duluth & Iron Range Railroad Company and E'ly of a line drawn parallel with and 20 rods E'ly of the West line of the SW 1/4 of the SW 1/4 of said Section 7.

Legal Description:

A 20 foot wide easement over that portion of the W½ 1/2 of the SW 1/4 of Section 7, Township 50, Range 13 West, lying S'ly of Superior Street and N'ly of the right of way of the Duluth & Iron Range Railroad Company and E'ly of a line drawn parallel with and 20 rods E'ly of the West line of the SW 1/4 of the SW 1/4 of said Section 7 described as follows:

Commencing at a capped rebar set for the southwest corner of said Section 7; thence North 89°32'15" East, (bearings based on the St. Louis County Transverse Mercator 96 Coordinate System) a distance of 329.33 feet along the south line of Section 7 to the southeast corner of the westerly 20 rods of said Section 7; thence North 00°10'52" West a distance of 1122.42 feet along the easterly line of the westerly 20 rods of said Section 7 to the southerly right-of-way of Superior Street; thence North 71°35'57" East along the southerly right-of-way of Superior Street a distance of 568.96 feet to the point of beginning;

Thence continuing North 71°35'57" East along the southerly right-of-way of Superior Street a distance of 20.00 feet; thence South 17°41'14" East a distance of 59.22 feet; thence North 72°18'46" East a distance of 30.57 feet; thence South 12°56'25" East a distance of 369.86 feet; thence North 77°03'36" East a distance of 25.80 feet; thence South 12°56'24" East a distance of 20.00 feet; thence South 77°03'36" West a distance of 25.80 feet; thence South 12°56'25" East a distance of 189.25 feet; thence North 89°34'44" East a distance of 106.73 feet; thence North 00°25'16" West a distance of 29.88 feet; thence North 89°34'44" East a distance of 200.29 feet to a point on the westerly right-of-way of 40th Avenue East; thence South 00°30'33" East along the westerly right-of-way of 40th Avenue East a distance of 20.00 feet; thence South 89°34'44" West a distance of 343.10 feet; thence North 12°56'25" West a distance of 603.94 feet; thence North 17°41'14" West a distance of 68.55 feet to the point of beginning.

Described easement contains 0.5 acres, more or less.

Approved by the City Engineer of Duluth, MN

Date: 8/29/13 by: *[Signature]*

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: 7/1/2013
[Signature]
DAVID SZYSZKOSKI
MINNESOTA LICENSE NO. 47046

ENGINEERS • SURVEYORS • PLANNERS
SALO ENGINEERING, INC.
4560 Norway Pines Place - Duluth, MN 55802
SALO JOB NUMBER: E1844V ph 218/727-8796

Watermain
Utility Easement
Exhibit
For: ISD709 c/o K.Leider