

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0233R

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT FOR THE RECONSTRUCTION OF THE MISSION CREEK TRAIL OVERPASS AND FURTHER AUTHORIZING ACCEPTANCE OF A PERMANENT AIR RIGHTS EASEMENT RELATED TO SAID OVERPASS FROM WISCONSIN CENTRAL LTD. RELATED TO ITS STEELTON HILL PROJECT.

CITY PROPOSAL:

Resolved, that the proper city officials are hereby authorized to execute an agreement for reconstruction of the mission creek trail overpass, substantially in the form of that on file in the office of the city clerk as Public Document No. \_\_\_\_\_, with Wisconsin Central Ltd. ("Canadian National") related to its Steelton Hill project.

Further resolved, that the proper city officials are hereby authorized to execute a permanent air rights easement, substantially in the form of that on file in the office of the city clerk as Public Document No. \_\_\_\_\_, with Canadian National, granting the city an air rights easement for the mission creek trail overpass.

Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

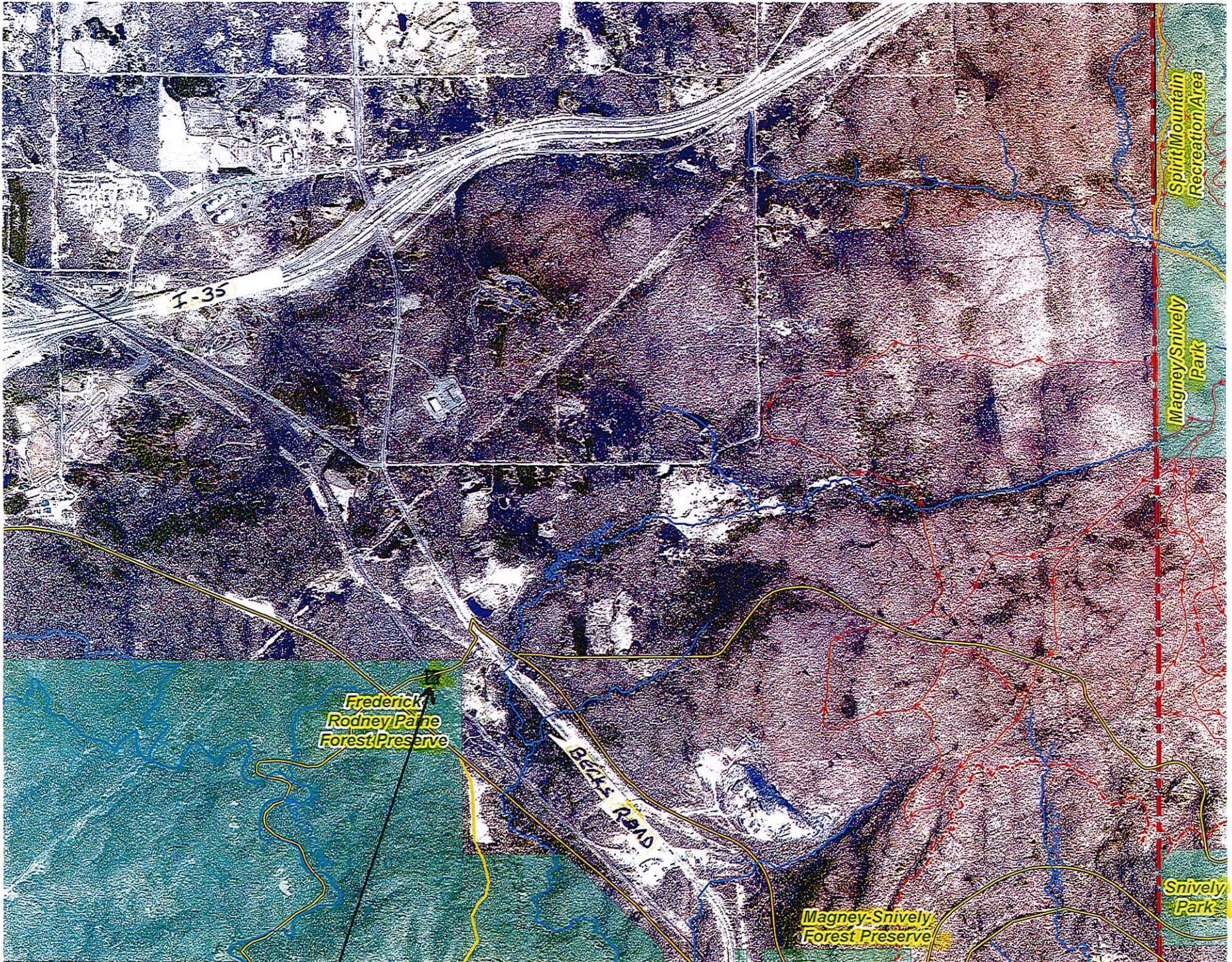
  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

PLNG/ATTY JMC:de 05/02/2014

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize an agreement with Wisconsin Central Ltd. ("Canadian National") pursuant to which it agrees to remove the existing Mission Creek Trail Overpass and reconstruct a new Overpass at no cost to the city. The location of the overpass is shown on the attachment. After the reconstruction, the city will be responsible to maintain and repair the overpass. The resolution also authorizes the execution of an easement pursuant to which Canadian National is granting air rights to the city for the Mission Creek Overpass.



AIR RIGHTS EASEMENT -- MISSION CREEK TRAIL

AGREEMENT FOR  
RECONSTRUCTION OF THE  
MISSION CREEK TRAIL OVERPASS

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Duluth, Minnesota, hereinafter referred to as the "City" and the Wisconsin Central Ltd., hereinafter referred to as "Railroad";

WITNESSETH

Whereas, the Mission Creek Trail Overpass crosses over Railroad property depicted and legally described in Exhibit "A" attached hereto and made a part hereof (the "Premises"); and

Whereas, by separate agreement, the Railroad is conveying to the City a permanent air rights easement over the Premises for purposes of the Mission Creek Trail Overpass (the "Easement"); and

Whereas, the Railroad proposes to remove the existing overpass and reconstruct a new Mission Creek Trail Overpass in the Easement as more specifically defined in Exhibit B and in accordance with the approved plans and specifications pursuant to Article IV (the "Overpass") to allow Railroad to add a second track under said Overpass; and

Whereas, the Railroad agrees to remove the existing overpass and construct the Overpass with the use of Railroad funds.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectfully kept and performed as hereinafter set forth, it is hereby agreed as follows:

ARTICLE I. For the purpose of identifying the plans, specifications, estimates and other documents, the project will be designed as "Reconstruction of the Mission Creek Trail Overpass", at Railroad Milepost 470.70 of the Superior Subdivision, in St. Louis County, Duluth, Minnesota.

ARTICLE II. Terms and conditions covering the Easement shall be covered by a separate agreement entitled Permanent Air Rights Agreement between the Railroad and the City of even date herewith.

ARTICLE III. All work required for the removal of the existing overpass and construction of the Overpass shall be performed or arranged to be performed by the Railroad at no expense to the City. A Bill of Sale for ownership of the

Overpass and all appurtenances will be conveyed by the Railroad to the City upon the completion of the Overpass. A copy of the Bill of Sale is attached hereto as Exhibit C.

ARTICLE IV. The Railroad shall prepare the detailed drawings, plans (including surveys and other engineering services), estimates of cost and any required specifications for the project. These detailed drawings, plans, estimates and specifications shall be submitted to the City Engineer (the "Engineer") for prior written approval. No approved drawing, plan or specification shall be changed by the Railroad without prior written permission from the Engineer, except for minor changes necessitated by actual field conditions encountered at the time of construction which changes shall be reported to the Engineer as soon as possible thereafter, or substitutions of equivalent materials as may be agreed upon by Railroad's and City's respective representatives.

ARTICLE V. In the event that delays or difficulties arise in securing necessary City, State or Federal approvals, or in acquiring rights of ways, or in settling damage claims, or for any other cause which in the opinion of the Railroad renders it impracticable to proceed with the removal of the existing overpass and construction of the Overpass, then at any time before the removal of the overpass is started, Railroad may serve formal written notice of cancellation of the project upon the City. In the event of cancellation, Railroad shall reimburse the City for all costs and expenses incurred by the City, including the cost of City staff time related to the project, prior to receipt of notice of cancellation and payment by Railroad.

ARTICLE VI. Railroad intends to use forces other than its own by competitive bid for removal of the existing overpass and construction of the Overpass. Railroad will notify the City of contractor(s) whose services will be selected to perform the work.

ARTICLE VII. Subsequent to the award of any contract or contracts by Railroad, and before any work is started on the removal of the existing overpass and the construction of the Overpass, a conference shall be held between the representatives of the City, the Railroad and the selected contractor(s), at a time and place as designated by the City's representative, for the purpose of coordinating the work to be performed on the project, and at which time a schedule of work will be adopted.

ARTICLE VIII. Following completion of construction of the Overpass, the Railroad shall provide to the Engineer a copy of the final record drawings showing any changes to the plans made during construction. The Overpass shall be placed in service immediately after completion, pending final inspection by representatives of the parties hereto, the preparation of a revised legal description of the Easement by the Railroad using a surveyed elevation as required in the Permanent Air Rights Easement, and the recording of the

amended Permanent Air Rights Easement. The Railroad shall notify the City of the date on which the completed improvements will be ready for final inspection. The City, upon final inspection, the provision of final record drawings, the preparation of a revised legal description of the Easement by the Railroad using a surveyed elevation as required in the Permanent Air Rights Easement, and the recording of the amended Permanent Air Rights Easement shall notify Railroad in writing of said acceptance of the newly constructed Overpass.

ARTICLE IX. After completion of construction of the Overpass, the City, at its sole cost and expenses, shall operate, own and perpetually maintain the Overpass and appurtenances. For the purpose of this Article, it is agreed that maintenance shall include, but not be limited to, routine inspections and repairs and any future rehabilitation, renewal and/or replacement of the Overpass ("Maintenance"), in whole or part as may be needed.

ARTICLE X. Any Maintenance of the Overpass covered under this Agreement shall be subject to the Railroad's "SPECIAL PROVISIONS" attached as Exhibit D and made a part hereof, and to all Federal and State laws, rules, regulations, orders and approvals pertaining to agreements, specifications, award of contracts, acceptance of work and procedures in general applicable to the Maintenance of the Overpass. With respect to reimbursement for safety precaution work performed by the Railroad related to the City's Maintenance of the Mission Creek Trail Overpass, the City and Railroad shall be governed by the applicable provisions of the Federal-Aid Policy Guide (FAPG).

ARTICLE XI. The City shall prepare detailed drawings, plans and specifications as may be required for any Maintenance and shall perform or arrange for the performance of said items of work at its sole cost, risk and expense, except as may otherwise be specifically provided for in this Agreement.

ARTICLE XII. In the event the Maintenance work to be performed by the City is to be let by contract, the City shall require its contractor(s) before entering upon the tracks or Premises of the Railroad, or performing any work on or in close proximity thereof, to secure a fully executed right of entry agreement from the authorized representative of the Railroad for the occupancy and use of its Premises and/or to confer with the Railroad relative to its requirements for clearances, operations and general safety regulations. The Railroad reserves the right to furnish the City's contractor(s), at the sole cost and expense of said contractor(s), protective services such as, but not limited to, flagman, watchman or other as the Railroad may deem desirable to promote safety and continuity of rail traffic during the progress of the safety precaution work, for which said contractor(s) shall be required to prepay to the Railroad, and the City shall withhold final payment to the said contractor(s) until the Railroad has notified the City that all such bills have been settled. For any such safety precaution work related to the Maintenance of the Overpass which is performed by the Railroad, the City hereby agrees to so reimburse the Railroad within forty-five (45) days of

receipt of bills if said costs were not otherwise prepaid by the City's contractor as set forth herein. Cost and expense for work performed by Railroad, as referred to in this Article, shall consist of the actual cost of labor, materials and related items, plus Railroad's standard additives in effect at the time the work is performed.

ARTICLE XIII. The Railroad shall keep an accurate and detailed account of the actual cost and expense as incurred by it, or for its account, in the performance of any safety precaution work it provides during the City's Maintenance. The Railroad, for the performance of such safety precaution work, may bill the City monthly for the City's share of the costs and expenses incurred, including the cost of materials (including applicable sales, excise or value-added taxes) purchased, delivered and stored on the Railroad's property but not yet installed, provided said materials are designated for the City's exclusive use if said costs were not otherwise prepaid by the City's contractor as set forth herein.

The City, after verifying that the bills are reasonable and proper, shall promptly reimburse the Railroad within 45 days for 100% of the amount billed. It is the intention of this Agreement that the City shall be solely responsible for all costs and expenses incurred for all safety precaution work provided by the Railroad related to the Maintenance performed by the City and its contractors.

The Railroad, upon completion of its safety precaution work related to the City's Maintenance as set forth in this Article, shall promptly render to the City a detailed final statement of its actual expense as incurred. After the City has checked the final statement and verified that it is reasonable and proper, the City shall then reimburse the Railroad an amount, less previous payments, if any, equal to 100% of the amount of the City's share as billed within 45 days. After the final inspection of the Maintenance has been made, and the City, or at the City's request, the State, has audited the expenses as incurred by the Railroad, the City shall bill the Railroad for, and the Railroad shall promptly refund, any item or items of expense found as not being eligible for reimbursement.

For the purpose of this Article, the City's share of any costs and expenses for Maintenance shall be deemed to include all funds advanced to, or to be reimbursed to, the City, regardless of source, for the purpose of defraying the cost and expense Maintenance.

ARTICLE XIV. This Agreement shall be binding on the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and date first written above.

**CITY OF DULUTH**

**WISCONSIN CENTRAL LTD.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its Mayor

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Its City Clerk

Date: \_\_\_\_\_

Countersigned:

By: \_\_\_\_\_

Its City Auditor

Approved as to form:

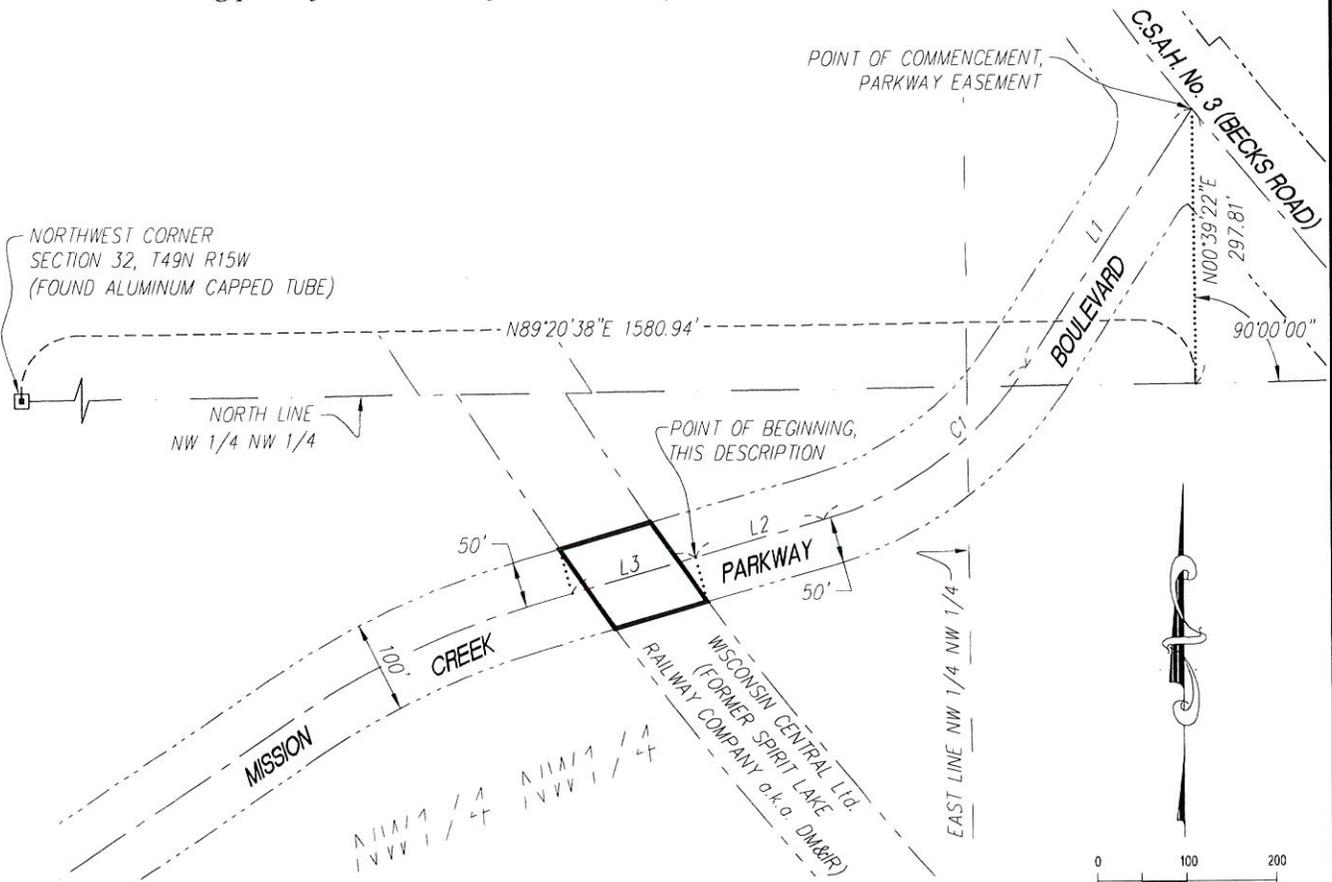
By: \_\_\_\_\_

Its City Attorney

# EXHIBIT A

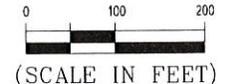
## PARKWAY EASEMENT

Being part of the NW1/4 of the NW1/4 of Section 32, T.49N., R.15W. 4th P.M.



CURVE TABLE				
CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH	CHORD BEARING
C1	407.23'	40°27'30"	287.56'	S53°59'23"W

LINE TABLE		
LINE	BEARING	LENGTH
L1	S33°45'38"W	334.00'
L2	S74°13'08"W	148.17'
L3	S74°13'08"W	142.91'



(SCALE IN FEET)  
Basis of Bearing is Grid North, St. Louis County Transverse Mercator 96 Coordinate System.

### LEGAL DESCRIPTION:

All that part of the Wisconsin Central Ltd. (f.k.a. Spirit Lake Transfer Company Railway) located in the Northwest One-quarter Northwest One-quarter (NW1/4 of the NW1/4) of Section 32, Township 49 North, Range 15 West of the Fourth Principal Meridian lying between two lines 50.00 feet northwesterly of and 50.00 feet southeasterly of Mission Creek Parkway Boulevard centerline described as follows:

Commencing at the intersection of the centerlines of Mission Creek Parkway Boulevard and County State Aid Highway No. 3 (Becks Road); thence South 33 degrees 45 minutes 38 seconds West along the centerline of said Boulevard, a distance of 334.00 feet; thence southwesterly 287.56 feet along a tangential curve concave to the the northwest having a radius 407.23 feet, a central angle of 40 degrees 27 minutes 30 seconds; thence South 74 degrees 13 minutes 08 seconds West, distance of 148.17 feet to the Point of Beginning of the centerline to be described; thence South 74 degrees 13 minutes 08 seconds West, distance of 142.91 feet and said centerline there terminating.

SUBJECT to easements, restrictions or reservations of record, if any.

Containing 10,650 Sq. Feet or 0.244 Acres, more or less.

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.

Print Name: Paul A. Vogel License # 44075

Signature:  Date: 5/6/2014

DATE REVISED: 5/6/14
DATE PREPARED: 4/23/14
PROJ NO: 140017
FILE: 140017vSurv.
SHEET 1 of 1 SHEETS



**PERFORMANCE DESIGN.**  
LHBcorp.com  
21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446

## EXHIBIT B

### Mission Creek Trail Overpass Duluth, Minnesota St. Louis County

#### CROSSING IDENTIFICATION:

RAILROAD: Wisconsin Central Ltd.  
RR MILEPOST: 470.70  
ROAD NAME: Mission Creek Trail  
LOCATION: Duluth, Minnesota  
US DOT NUMBER: 931796U

#### EXISTING CONDITIONS:

Existing Overpass to be removed and reconstructed by Railroad for the addition of a second track.

#### DESCRIPTION OF WORK TO BE PERFORMED BY RAILROAD:

1. Removal of existing overpass.
2. Construction of bridge, approach work, in accordance with plans and specifications to be prepared by Railroad or its consultant and approved by the City
3. Facility relocation as required for the structure
4. Incidental work necessary for completion of above
5. Provision of a Bill of Sale to the City
6. Provision of a copy of the final record drawings showing any changes to the plans made during construction
7. Preparation of a revised legal description using a surveyed elevation established pursuant to the NAVD88
8. Recording in the St. Louis County Recorder's Office of an amended Permanent Air Rights Easement containing the revised legal description

#### DESCRIPTION OF WORK TO BE PERFORMED BY THE CITY:

1. Inspection of bridge upon final completion
2. Acceptance of bridge following recording of the amended Permanent Air Rights Easement
3. Routine inspections, repairs, rehabilitation, renewal and/or replacement of the Mission Creek Trail Overpass at the City's sole cost, risk and expense.

ESTIMATED COST: \$ 650,000  
RAILROAD'S SHARE OF COST: \$ 100%  
CITY'S SHARE OF COST: \$ 0

**EXHIBIT C**

**BILL OF SALE**

Wisconsin Central Ltd., a Delaware/ corporation, hereinafter referred to a **“Seller”**, for and in consideration of the sum of One and NO/100 Dollar (\$1.00), to it in hand paid by the City of Duluth, a municipal corporation under the laws of the state of Minnesota, hereinafter referred to as **“Buyer”**, the receipt and sufficiency of which is herein acknowledged, grants, bargains, sells and delivers to the Buyer, the following described property:

*The Mission Creek Trail Overpass structure and all appurtenances thereto including abutments, in accordance with the drawings and cross section of same attached hereto as Exhibit A and as shown in the photo of the completed structure in Exhibit B hereto.*

Seller hereby represents and warrants to Buyer that Seller is the absolute owner of said property, and that said property is free and clear of all liens, charges and encumbrances, and that Seller has full right, power and authority to sell said personal property and to make this Bill of Sale.

No representation or warranty is made by Seller to Buyer, either express or implies as to the condition of said property or its appurtenances or the fitness thereof for use or otherwise, all of which is sold **“AS-IS, WHERE-IS”**.

Buyer represents that it has examined said property, is familiar with and accepts same in its present condition and assumes all risks incident thereto.

Seller shall not be liable for any incidental or consequential damages in connection with any representation or warranty.

**TO HAVE AND TO HOLD** the said property unto the Buyer, its successors and assigns, to and for its own proper use and behoof forever.

**IN WITNESS WHEREOF**, the parties have caused this instrument to be executed effective this \_\_\_ day of \_\_\_\_\_, 201 \_\_\_\_.

**Seller:**

By: \_\_\_\_\_

Name:

Title:

**Acknowledged and Accepted:**

**Buyer:** City of Duluth

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: Chief Administrative Officer

## EXHIBIT D

### SPECIAL PROVISIONS

RELATIVE TO FLAGGING AND OTHER PROTECTION OF RAILROAD COMPANY TRAFFIC AND FACILITIES DURING CONSTRUCTION ADJACENT AND ABOVE, ON OR ACROSS, THE PROPERTY OF, OR ON, ABOVE AND BENEATH THE TRACKS OF WISCONSIN CENTRAL LTD.

The Licensee shall, before entering upon the property of Railroad Company for performance of any work, secure a fully executed right of entry license from Railroad Company's Engineering Manager or their authorized representative for the occupancy and use of Railroad Company's property. Licensee shall confer with Railroad Company relative to requirements for railroad clearances, operation and general safety regulations.

To obtain a Right-of-Entry permit in the states of Wisconsin and Minnesota contact Manager of Public Works at least three (3) weeks prior to project start:

Jackie Macewicz  
CN-Manager Public Works  
1625 Depot Street  
Stevens Point, WI 54481  
Office: 715-345-2503  
Email: [Jackie.Macewicz@cn.ca](mailto:Jackie.Macewicz@cn.ca)

The standard \$750 permit fee is waived for this project

All employees or subcontractors of Licensee not hired by Railroad Company performing work on Railroad Company property are required to take the basic safety and security tests through [www.contractororientation.com](http://www.contractororientation.com)

- a. EXCEPTION: Railroad Company has exempted those it classifies as "Delivery Persons" from this training. This will include contractors such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.

Contractor Orientation provides the basic safety, security and personal protective equipment requirements for Railroad Company. Licensees and/or their contractors may find more information on registering at [www.contractororientation.com](http://www.contractororientation.com). Licensees and/or their contractors must register and follow the CN links to take the course labeled "Contractor Orientation / Security Awareness Course and Test English."

All employees and/or subcontractors of the City, Licensee and/or its Contractor, whose duties include and who are engaged in the inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, roadway facilities, or roadway machinery that will work foul of or have the potential to foul a live track are considered Roadway Workers under FRA regulations and CN Policy. They must complete the On-Track Safety Training course approved by Railroad Company and provided by Anna Rivera, R.R. Safety – AMR, P.O. Box 75, Lomira, WI 53048, telephone (920) 517-1677, email [rrsafetytraining@yahoo.com](mailto:rrsafetytraining@yahoo.com). This training must be repeated at least once each calendar year.

- a. EXCEPTION: Railroad Company has exempted those employees of contractors providing paving services at a road crossing under construction or repair from this requirement.
- b. EXCEPTION: Railroad Company has exempted those it classifies as “Delivery Persons” from this training. This will include contractors such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.

All the employees and/or subcontractors of the City, Licensee and/or its Contractor who will operate on-track machinery or those who will provide protection for other employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor must also be trained on CN US Operating Rules pertaining to their duties. They must take and pass the required examination. This training is good for a period of two years.

“Potential to foul a live track” is considered, at a minimum, to be working within twenty-five feet of the track; or as otherwise to be determined by CN Design & Construction Department.

Licensee and/or any contractor engaged on their behalf, shall at all times conduct work in a manner satisfactory to the Engineering Manager of Railroad Company, or their authorized representative, and shall exercise care so as to not damage the property of Railroad Company, or that belonging to any other grantees, licensees, permittees or tenants of Railroad Company, or to interfere with railroad operations.

Engineering Manager of Railroad Company, or their authorized representative, will at all times have jurisdiction over the safety of railroad operations. The decision of the Engineering Manager or their authorized representative as to procedures which may affect the safety of railroad operations shall be final, and Licensee and/or their contractor shall be governed by such decision.

All work shall be conducted in such a manner as will assure the safety of Railroad Company. Railroad Company's authorized representative shall have the right, but not the duty, to require certain procedures to be used or to supervise the work on Railroad Company's property.

Should any damage occur to Railroad Company property as a result of the authorized or unauthorized operations of Licensee and/or their contractor and Railroad

Company deems it necessary to repair such damage or perform any work for the protection of its property or operations, the Licensee and/or their contractor, as the case may be, shall promptly reimburse Railroad Company for the actual cost of such repairs or work. For the purpose of these Special Provisions, actual cost shall be deemed to include the direct cost of any labor, materials, equipment, or contract expense plus Railroad Company's current standard additives in each instance.

If the work requires the construction of a temporary grade crossing across the track(s) of Railroad Company, Licensee and/or their contractor shall make the necessary arrangements and execute Railroad Company's temporary grade crossing agreement for the construction, protection, maintenance, and later removal of such temporary grade crossing. The cost of such temporary grade crossing construction and later removal shall be prepaid to Railroad Company. Additional costs for repairs, maintenance or protection will be paid within thirty (30) days upon receipt of bill(s) therefor.

Licensee and/or their contractor shall at no time cross Railroad Company's property or tracks with vehicles or equipment of any kind or character, except at such temporary grade crossing as may be constructed as outlined herein, or at any existing and open public grade crossing. Operation over such crossing shall be at the direction and method of Railroad Company's Engineering Manager or their authorized representative.

Railroad Company may, at Licensee's and/or their contractor's sole cost, risk and expense, furnish whatever protective services it considers necessary, including, but not limited to, flagger(s), inspector(s), and stand-by personnel. Flagging protection, inspection services, or standby personnel required by Railroad Company for the safety of railroad operations because of work being conducted by Licensee and/or their contractor, or in connection therewith, will be provided by Railroad Company and the cost of Licensee and shall be prepaid to Railroad Company by Licensee and/or their contractor. Flagging protection, inspection services, or standby personnel, necessary or provided in excess of prepayment amounts will be billed at the proper rates and will be promptly paid by overnight delivery.

In the event Railroad Company is unable to furnish flagging protection, inspection services, or standby personnel at the desired time or on the desired date(s), or if Licensee's prepayment for such services is exhausted and not replenished by Licensee and/or their contractor, Licensee and/or their contractor shall not perform any work on Railroad Company's property until such time and date(s) that appropriate Railroad Company services can be made available and/or appropriate prepayment is received. It is understood that Railroad Company shall not be liable for any delay or increased costs incurred by Licensee and/or their contractor owing to Railroad Company's inability or failure to have appropriate flagging protection, inspection services, or standby personnel available at the time or on the date requested.

Licensee and/or their contractor shall request and secure flagging protection by written notice to Railroad Company using CN's "Request for Flagging Services" form.

This form must be submitted at least ten (10) working days in advance of proposed performance of any work or access to Railroad Company's property.

Flagging protection will be required during any operation involving direct and potential interference with Railroad Company's tracks or traffic. This may include but is not limited to fouling of railroad operating clearances, reasonable proximity of accidental hazard to railroad traffic, work within twenty-five (25) feet horizontally of the nearest centerline of any railroad track, any work over any railroad track, or in any other condition that Railroad Company deems protective services necessary, which may include work on or off Railroad Company's property more than twenty-five (25) feet from the nearest centerline of any railroad track, such as any equipment extension (including but not limited to a crane boom) that will reach or has the potential to reach within twenty-five (25) feet of any track. Licensee and/or its contractor shall prepay to Railroad Company the current flagging protection rates in effect at the time of the request.

Licensee and/or its contractor shall request, prepay, and secure Railroad Company signal facility locates by written notice to Railroad Company along with submission of CN's "Request for Flagging Services" form at least ten (10) working days in advance of proposed performance of any work or access to Railroad Company property. Notice to Railroad Company does not fulfill or satisfy any other notification requirements for utility locates for non-railroad facilities.

Mary Ellen Carmody  
CN-Audit Officer  
700 Pershing Street  
Pontiac, MI 48340  
Phone: (248) 452-4705  
Fax: (248) 452-4972  
Email: [Maryellen.Carmody@cn.ca](mailto:Maryellen.Carmody@cn.ca)

Railroad Company may require that prior to digging, trenching, or boring activities on or near Railroad Company property, or beneath any railroad track, an on-site meeting be conducted with Railroad Company's Signal Department representative. No digging, trenching or boring activities shall be conducted in the proximity of any known buried Railroad Company signal cables without Railroad Company's Signal Department representative being present. Railroad Company utilities are not part of Digger's Hotline. Please request a cable locate by using the Flagging - Cable Locate Form. There is a \$250 fee for the cable locate that must be prepaid to Railroad Company.

Before commencing work and until any License shall be terminated, Licensee or its contractor shall provide and maintain the following insurance in form and amount with companies satisfactory to and as approved by Railroad Company.

- a. Statutory Workers Compensation and Employer's Liability insurance.

- b. Automobile Liability in an amount not less than \$1,000,000 dollars combined single limit.
- c. Comprehensive General Liability (occurrence form) in an amount not less than \$5,000,000 dollars per occurrence, with an aggregate limit of not less than \$10,000,000 dollars. The Policy must name Railroad Company and its Parents as additional insureds in the following form:

Wisconsin Central Ltd. and its Parents  
Attn: Jackie Macewicz  
1625 Depot Street  
Stevens Point, WI  
715-345-2503 (office)  
Jackie.Macewicz@cn.ca

If the commercial general liability policy required herein contains any exclusions related to doing business or undertaking construction or demolition on, near, or adjacent to railroad facilities; such exclusion must be removed through issuance of endorsement CG 24 17, or a similar endorsement approved by Railroad Company in its sole discretion prior to the commencement of work hereunder.

Before commencing work, Licensee shall deliver to Railroad Company a certificate of insurance evidencing the foregoing coverage, and upon request, Licensee shall deliver a certified, true and complete copy of the policy or policies at its sole cost and expense. The policies shall provide for not less than thirty (30) days prior written notice to Railroad Company of cancellation of or any material change in, the policies, and shall contain the waiver of right of subrogation.

All persons on Railroad Company's property shall be suitably dressed to perform his/her duties safely and in a manner that will not interfere with his/her vision, hearing or free use of his/her hands or feet. Only waist-length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. All persons shall wear sturdy and protective footwear. All persons shall not wear boots (other than work boots), sandals, canvas-type shoes or other shoes that have thin soles or heels that are higher than normal. All persons shall wear personal protective equipment as specified by Federal and/or State rules, regulations or Railroad Company's requirements. Specifically, the following protective equipment to be worn shall be:

1. Protective head gear (hardhats) that meets ANSI Z89.1, latest revision. It is suggested that all hard hats be affixed with Contractor's company name or logo.
2. Eye protection (safety glasses with side shields) that meet ANSI Z87.1, latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.

3. Hearing protection appropriate for noise levels that will be occurring on the job site.
4. Safety/reflective vests.

The rate of pay for Railroad Company employees will be the prevailing hourly rate for not less than eight (8) hours for the class of labor at regular rates during regularly assigned work hours, and at overtime rates outside of regular hours and in accordance with Labor Agreements or Schedules plus Railroad Company's current standard additives in each instance.

Wage rates are subject to change, at any time, by law or agreement between Railroad Company and employees, and may be retroactive because of negotiations or a ruling by an authorized Governmental Agent. If the wage rates are changed, Licensee and/or their contractor shall pay on the basis of the new rates and/or additives.

No digging, trenching, or boring on Railroad Company property shall be conducted without Railroad Company's written approval of the plans that were furnished to Railroad Company's Engineering Manager at least thirty (30) in advance of the excavation.

The following temporary clearances are the minimum that must be maintained at all times during any operation on or adjacent to Railroad Company property:

- Vertical: 22'-0" (7.00 m) above top of highest rail within 12'-0" (3.81 m) of the centerline of any track
- Horizontal: 12'-0" (3.81 m) from centerline of the nearest track, measured at right angles thereto

If lesser clearances than the above are required for any part of the work, Licensee and/or their contractor shall secure written authorization from Railroad Company's Engineering Manager for such lesser clearances in advance of the start of that portion of the work.

No materials, supplies, or equipment will be stored within twenty-five (25) feet from the centerline of any railroad track, measured at right angles thereto.

Licensee and/or their contractor will be required upon the completion of the work to remove from within the limits of Railroad Company's property all machinery, equipment, surplus materials, false work, rubbish or temporary buildings, and to leave said property in a condition satisfactory to the Engineering Manager of Railroad Company or their authorized representative.

Nothing in these Special Provisions shall be construed to place any responsibility on Railroad Company for the quality or conduct of the work performed by Licensee

and/or their contractor hereunder. Any approval given or supervision exercised by Railroad Company hereunder, or failure of Railroad Company to object to any work done, material used, or method of operation shall not be construed to relieve Licensee and/or their contractor of any obligations pursuant hereto or under the License these Special Provisions are appended to.

Mission Creek Trail Overpass  
Duluth, Minnesota  
St. Louis County  
US DOT# 931796U

## **PERMANENT AIR RIGHTS EASEMENT**

WITNESSETH, that the Grantor, Wisconsin Central Ltd., a corporation of the State of Delaware, for and in consideration of the sum of One Dollar (\$1.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, so far as it lawfully may, to the City of Duluth, County of St. Louis, Minnesota, Grantee, a permanent air rights easement for the purpose of maintenance, rehabilitation, reconstruction, operation and use of a recreational trail overpass (the "Overpass"), over, upon and across the land of the Grantor, in the vicinity of Grantor's Superior Subdivision Milepost 470.70 in Duluth, St. Louis County, Minnesota, legally described as follows and shown on Exhibit A attached hereto and made a part hereof:

### **LEGAL DESCRIPTION OF PREMISES OVER WHICH AIR RIGHTS EASEMENT IS GRANTED:**

All that part of the Wisconsin Central Ltd. (f.k.a. Spirit Lake Transfer Company Railway) located in the Northwest One-quarter Northwest One-quarter (NW1/4 of the NW1/4) of Section 32, Township 49 North, Range 15 West of the Fourth Principal Meridian lying between two lines 50.00 feet northwesterly of and 50.00 feet southeasterly of Mission Creek Parkway Boulevard centerline described as follows:

Commencing at the intersection of the centerlines of Mission Creek Parkway Boulevard and County State Aid Highway No. 3 (Becks Road); thence South 33 degrees 45 minutes 38 seconds West along the centerline of said Boulevard, a distance of 334.00 feet; thence southwesterly 287.56 feet along a tangential curve concave to the northwest having a radius 407.23 feet, a central angle of 40 degrees 27 minutes 30 seconds; thence South 74 degrees 13 minutes 08 seconds West, distance of 148.17 feet to the Point of Beginning of the centerline to be described; thence South 74 degrees 13 minutes 08 seconds West, distance of 142.91 feet and said centerline there terminating (the "Premises").

SUBJECT to easements, restrictions or reservations of record, if any.

Containing 10,650 Sq. Feet or 0.244 Acres, more or less.

The easement granted shall be for and in that air right over the Premises which right begins twenty three (23') feet above the top of the rail

("Easement"). The parties agree that upon completion of construction of the Overpass by Grantor, a revised legal description shall be prepared by Grantor using a surveyed elevation of the Easement established pursuant to the NAVD88, and this Permanent Air Rights Easement shall be amended in recordable form by the parties to incorporate the amended legal description of the Easement and thereafter all references to the Easement shall be as so amended. The grant aforesaid is made solely upon the conditions and limitations hereinafter contained, and the Grantee, by its acceptance of the said grant, accepts such conditions and limitations and agrees to the full, strict and prompt observance and performance thereof.

1. The Easement is limited to the uses and purposes hereinbefore expressed and for no other purpose. A Bill of Sale for ownership of the Overpass and all appurtenances shall be conveyed by Grantor to Grantee upon the completion of the Overpass. A copy of the Bill of Sale is attached hereto as Exhibit B.

2. Terms and conditions covering the construction and maintenance of said Overpass across and in said Easement and the expenses resulting therefrom shall be covered by a separate Agreement for Reconstruction of the Mission Creek Trail Overpass of even date herewith between the Grantee and Grantor (the "Reconstruction Agreement") and all work regarding the construction of the new Overpass set forth therein shall be performed at no expense to Grantee. It is expressly understood and agreed that no work shall be performed in the Easement by the Grantor or Grantee prior to the execution of the Reconstruction Agreement by the parties.

3. The Grantor reserves to itself, its grantees (other than the grantee named in this indenture), licensees, lessees, successors and assigns, all rights and the exclusive use of the Premises below the Easement and the right not only to continue to keep and use or operate all tracks and other facilities or structures now upon or beneath the surface of the Premises and below the Easement, but also the right to install and use or operate additional tracks, facilities and structures upon and beneath the surface of the Premises and below the Easement, and the Grantor reserves also the right to grant to others permission to install and use or operate other facilities and structures, including, but not limited to, underground pipes and conduits, upon and beneath the surface of the Premises, and overhead wires, cables, and poles or other structures for the support of such facilities and structures which may now or hereafter be on the Premises, provided that said installations can and shall be below the Easement and without interference with the use of the Easement as provided for herein. No attachments of any kind shall be permitted to be installed by Grantor on the Overpass or any other structures or facility of the Grantee without the prior written consent of the Grantee.

4. Following completion of construction of the Overpass by Grantor pursuant to the Reconstruction Agreement, neither the Grantor, nor its property, shall be subjected to any charge, assessment or expense, arising from, growing out of, or

in any way attributable to, the maintenance, use or operation of the Overpass, whether within or without the confines of Grantor's property, nor for any crossing protection thereat. If the Grantor or its property is legally subjected to any such charge, assessment or expense, the Grantee shall pay Grantor, as additional compensation for the rights granted in this indenture, an amount of money equal to any such charge, assessment or expense paid by Grantor.

5. The Grantor does not warrant title to the Premises in which the Easement is granted and does not undertake to defend the Grantee in the peaceable enjoyment thereof, and the grant of the Easement shall be subject to the continuing lien of all lawful outstanding existing liens and superior rights, if any, in and to the Premises.

6. Following completion of construction of the Overpass by Grantor pursuant to the Reconstruction Agreement, if any work to be performed by or for the Grantee is let by contract, the Grantee shall require each contractor, before coming upon the Grantor's tracks or Premises, to obtain from the Grantor's authorized representative a fully executed right of entry agreement for occupancy and use of the Premises in the form of that attached to the Reconstruction Agreement (the "Special Provisions") and to ascertain and comply with the Grantor's requirements for clearances, operation, and its general safety regulations. The Grantor may furnish each contractor, at such contractor's sole cost and expense, protective services and devices, including, but not limited to, switch tenders, flagmen, or watchmen as the Grantor may deem desirable for the safety and continuity of railroad traffic during the work. A Flagman is required when any work is performed within 25 feet to the centerline of tracks. Flagmen will be paid in accordance with the Special Provisions. Any work or access performed by Grantee or its contractors or assigns shall be in accordance with the separate Reconstruction Agreement of even date herewith. In the event of a conflict between the terms and conditions of this Paragraph 6 and the Reconstruction Agreement, the terms and conditions of the Reconstruction Agreement shall control.

7. In the event that, after 180 days' written notice by Grantor to Grantee, the Grantee fails to undertake any repair, maintenance and/or reconstruction of the Overpass necessary for the safe and uninterrupted and continuous railroad freight operation on the mainline tracks below the Overpass, Grantor shall have the right, but not the obligation, to perform any such necessary repair, maintenance and/or reconstruction of the Overpass (the "Work") . Grantor shall provide prior written notice to Grantee of commencement of the Work. The Work shall be designed and constructed as to minimize the impact of the Easement for use of a recreational trail. Prior to commencement of the Work, Grantor shall provide to the Grantee's Engineer estimates of costs, as well as plans and specifications if reasonably necessary to perform the Work. Additionally, if such plans and specifications are so reasonably required, Grantor shall provide to the Grantee as built or final record drawings following construction. Notwithstanding the foregoing, in the event of an emergency, which shall mean an immediate risk to safety or to the continuous and

uninterrupted operation of the main line tracks, Grantor shall have the right to make repairs immediately to the extent required to avert such risks. If it is determined by a court of competent jurisdiction that the Grantee was in default or in violation of this Easement or the Reconstruction Agreement due to the nonperformance of the Work, then Grantee shall reimburse Grantor its reasonable costs incurred in the performance of the Work as determined by said court. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

8. This indenture and the conditions contained in it shall run with the land and be binding upon the respective grantees, licensees, lessees, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown below.

**CITY OF DULUTH**

**WISCONSIN CENTRAL LTD.**

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its \_\_\_\_\_  
Printed Name \_\_\_\_\_

Attest: \_\_\_\_\_  
Its City Clerk

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Printed Name \_\_\_\_\_

Countersigned:

By: \_\_\_\_\_  
Its City Auditor

Approved as to form:

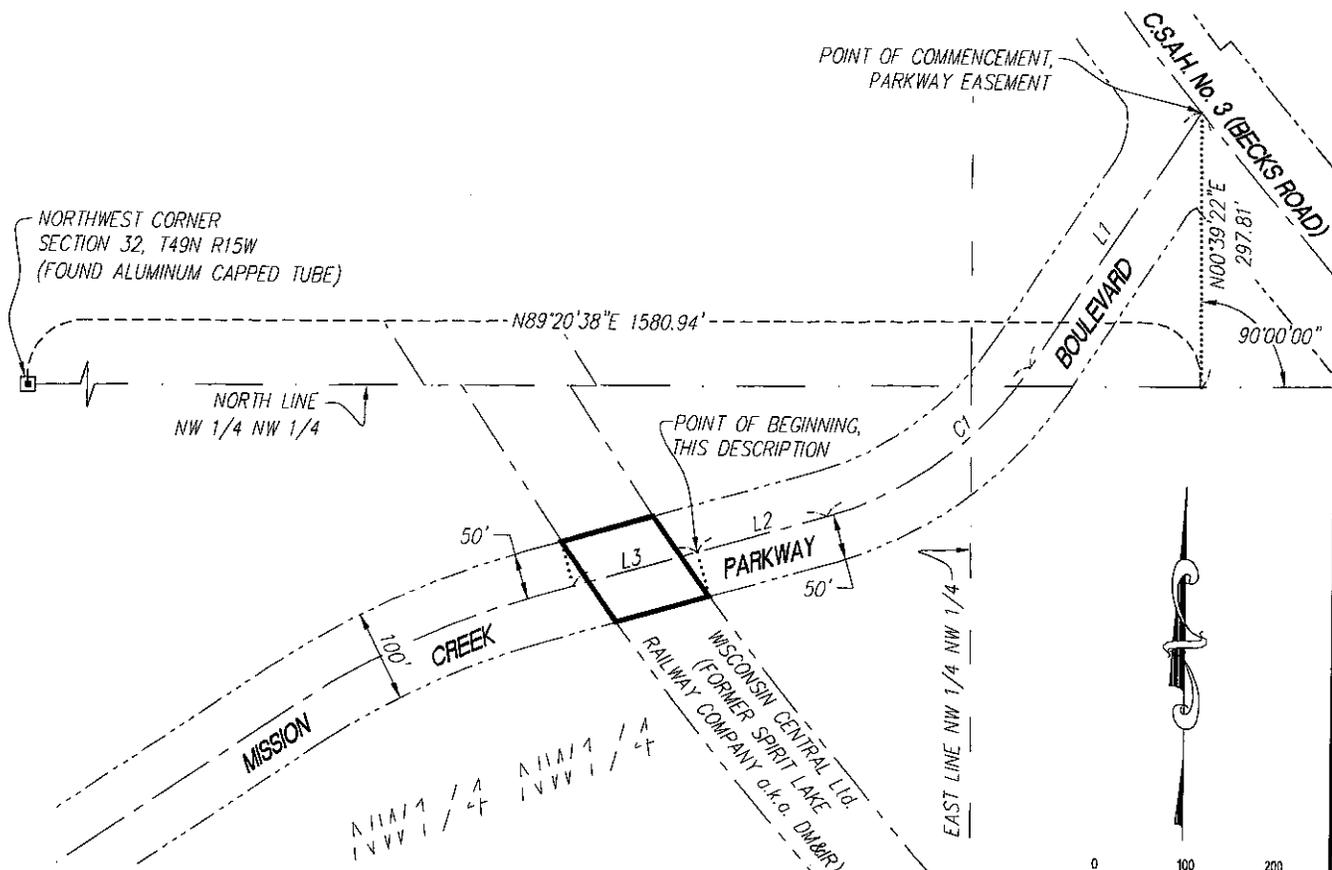
By: \_\_\_\_\_  
Its City Attorney



# EXHIBIT A

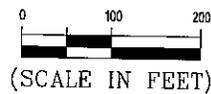
## PARKWAY EASEMENT

Being part of the NW1/4 of the NW1/4 of Section 32, T.49N., R.15W. 4th P.M.



CURVE TABLE			
CURVE	RADIUS	CENTRAL ANGLE	CHORD BEARING
C1	407.23'	40°27'30"	S53°59'23"W

LINE TABLE		
LINE	BEARING	LENGTH
L1	S33°45'38"W	334.00'
L2	S74°13'08"W	148.17'
L3	S74°13'08"W	142.91'



(SCALE IN FEET)  
Basis of Bearing is Grid North,  
St. Louis County Transverse  
Mercator 96 Coordinate System.

### LEGAL DESCRIPTION:

All that part of the Wisconsin Central Ltd. (f.k.a. Spirit Lake Transfer Company Railway) located in the Northwest One-quarter Northwest One-quarter (NW 1/4 of the NW 1/4) of Section 32, Township 49 North, Range 15 West of the Fourth Principal Meridian lying between two lines 50.00 feet northwesterly of and 50.00 feet southeasterly of Mission Creek Parkway Boulevard centerline described as follows:

Commencing at the intersection of the centerlines of Mission Creek Parkway Boulevard and County State Aid Highway No. 3 (Becks Road); thence South 33 degrees 45 minutes 38 seconds West along the centerline of said Boulevard, a distance of 334.00 feet; thence southwesterly 287.56 feet along a tangential curve concave to the the northwest having a radius 407.23 feet, a central angle of 40 degrees 27 minutes 30 seconds; thence South 74 degrees 13 minutes 08 seconds West, distance of 148.17 feet to the Point of Beginning of the centerline to be described; thence South 74 degrees 13 minutes 08 seconds West, distance of 142.91 feet and said centerline there terminating.

SUBJECT to easements, restrictions or reservations of record, if any.

Containing 10,650 Sq. Feet or 0.244 Acres, more or less.

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.

Print Name: Paul A. Vogel License # 44075

Signature:  Date: 5/6/2014

DATE REVISED: 5/6/14  
DATE PREPARED: 4/23/14  
PROJ NO: 140017  
FILE: 140017vSurv.  
SHEET 1 of 1 SHEETS



**PERFORMANCE DESIGN.**  
LHBcorp.com  
21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446