

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

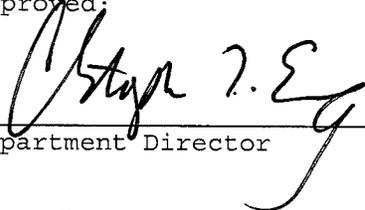
14-0234R

RESOLUTION AUTHORIZING FIRST AMENDMENT TO PEDESTRIAN PASSAGEWAY AGREEMENT PERTAINING TO THE PROPERTY OF NORTHWEST COMMUNICATIONS, INC. WITH FORUM COMMUNICATIONS COMPANY RELATED TO THE MAURICES OFFICE TOWER PROJECT.

CITY PROPOSAL:

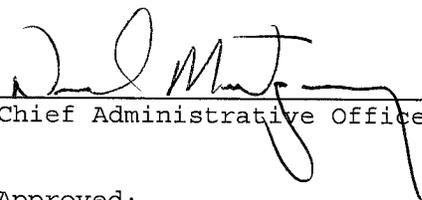
RESOLVED, that the proper city officials are hereby authorized to enter into a first amendment the to pedestrian passageway agreement pertaining to the property of Northwest Publications, Inc. with Forum Communication Company, a North Dakota corporation, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, approving modifications to the skywalks in the so-called warehouse and News-Tribune buildings in conjunction with the Maurices office tower project.

Approved:



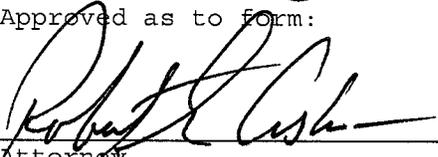
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

BD/ATTY REA:de 05/02/2014

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize a first amendment to the skywalk agreement for the building referred to as the Warehouse Building and the Duluth News Tribune Building.

FIRST AMENDMENT TO PEDESTRIAN PASSAGEWAY AGREEMENT

This First Amendment to Pedestrian Passageway Agreement (the "Amendment") is entered into as of _____, 2014, between the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (the "City"), and Forum Communications Company, a North Dakota corporation ("Forum").

A. The City, Forum (as a successor-in-interest) and 414 West First Unit Owners' Association (as successor-in-interest, the "Association") are parties to that certain Pedestrian Passageway Agreement Pertaining to Property of Northwest Publications, Inc., dated July 19, 1996 and recorded August 23, 2005 in the Office of the Registrar of Titles of St. Louis County as Document No. 803191 and in the Office of the County Recorder of St. Louis County as Document No. 991553 (the "Agreement"), for the extension of the City's skywalk system through certain buildings including those owned by Forum referred to as the "Warehouse Building" and the "News-Tribune Building" (collectively, the "Forum Buildings").

B. The Warehouse Building is located on the following described real property located in St. Louis County, Minnesota:

The west 25 feet (W 25') of Lot 68 and Lot 70, West First Street,
Duluth Proper, First Division

C. The News-Tribune Building is located on the following described real property located in St. Louis County, Minnesota:

Lots 74, 76, 78 and the east 16 feet (E 16') of Lot 80, West First
Street, Duluth Proper, First Division

D. The City and Forum desire to amend the Agreement as it pertains to the Forum Buildings as more fully described herein.

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

1. Modified Easement Area. The description of the portion of the pedestrian passageway in Section 3 of the Agreement that is located within the Warehouse Building is hereby deleted and replaced with the modified pedestrian passageway through the Warehouse Building as depicted on Exhibit A attached hereto (the "Modified Easement Area").

2. Grant of Perpetual Easement. The description of the portion of the perpetual easement described in Section 4 of the Agreement that is located within the Warehouse Building is hereby modified in its entirety so that such perpetual easement located within the Warehouse Building encumbers only the Modified Easement Area.

3. Construction; Maintenance. The City shall construct, or cause to be constructed, within the Modified Easement Area certain public improvements in a finished and completed condition. In connection with such construction, the City may relocate and/or replace the fire doors and door openings at the access points between the Warehouse Building and the buildings adjacent thereto, to ensure that such fire doors are three-hour rated fire doors as required by the City Building Inspection Department. It is agreed that all such above-described construction, including, but not limited to, openings and three-hour fire doors, shall be performed by the City in a good and workmanlike manner, using new materials. All design and architectural work relating to the Modified Easement Area and any improvements constructed within the Modified Easement Area, shall be the responsibility of, and be performed at the cost of, the City. Forum hereby grants to the City a temporary construction easement as necessary to accomplish the construction described in this paragraph; provided, however, said temporary construction easement shall automatically terminate upon the earliest to occur of the following dates: (a) the date construction of the improvements described in this paragraph by the City are completed; or (b) the date that is twenty-four (24) months from the date of this Amendment. The City and Forum acknowledge and agree that Section 6 of the Agreement does not apply to the work described in this paragraph and that the Modified Easement Area will not be heated. The Forum shall maintain any fire door (as relocated or replaced, if applicable) located within the Warehouse Building in accordance with requirements of the City Building Inspection Department and other applicable law.

4. Insurance. At all times during the making of any improvements or other construction within the Modified Easement Area by City, the City or the City contractor(s) shall have and maintain in full force the following insurance for such contractor(s) and covering the contractor(s) activities: builder's risk insurance (completed value form, if available), general liability (in a commercially reasonable amount and naming Forum as an additional insured), and Workers Compensation; prior to the commencement of any such work, the City shall provide Forum a certificate of such insurance evidencing compliance with this paragraph.

5. Rights and Obligations of Owner. Any rights and obligations of Owner (as defined in the Agreement) under the Agreement are hereby understood to reflect the separate ownership of the Forum Buildings by Forum and the Water and Gas Building (as defined in the Agreement) by the Association, and Forum shall only enjoy those rights, and shall only be responsible for those obligations, as pertain to the Forum Buildings under the Agreement and this Amendment, and the Forum shall not be liable for any obligations of the Association, or with respect to the Water and Gas Building, whatsoever.

6. Payment. The City and Forum hereby agree that the payment referenced in Section 19 of the Agreement was paid by the City to Forum's predecessor-in-interest in connection with the original pedestrian passageway contemplated by the Agreement, and that no further payment shall be payable by the City to Forum as a result of this Amendment.

7. Certain Terms Redefined. Wherever the phrases "the location of the easement herein granted", the "pedestrian passageway", or phrases of similar meaning appear in the Agreement, the same are hereby defined to mean the Modified Easement Area to the extent that they relate to the Warehouse Building.

8. Costs; No Liens. All actions of the City discussed herein or contemplated hereby, including, but not limited to, construction of the improvements described in paragraph 3 above, shall be undertaken at the City's cost and expense, without any cost or expense to Forum. The City shall not permit any mechanics', materialmen's or other liens to attach to the Forum Buildings, or any part thereof, for work or materials furnished in connection with this Amendment, and the City agrees to indemnify, defend and hold Forum and its properties harmless from and against any of the same caused by the City or for which it is responsible.

9. Enforcement. In the event of any violation, or failure to perform, by any party of any of the terms, covenants and conditions provided in this Amendment or the Agreement, the other party hereto shall have, in addition to all other remedies at law, the right to enjoin such violation or threatened violation, or seek specific performance of the Agreement (as amended hereby), as applicable, in a court of competent jurisdiction.

10. Conflict. In the event of a conflict between the Agreement and this Amendment, this Amendment shall control.

11. Continuing Effect. Except as specifically modified by the terms of this Amendment, the Agreement remains unchanged and in full force and effect.

12. Counterparts. This Amendment may be executed and delivered in counterparts, each of which will be deemed an original and which together will constitute one and the same instrument.

[Signature Pages Follow]

US.53789978.07

EXHIBIT A

Modified Easement Area

