



City of Duluth

411 West First Street
Duluth, Minnesota 55802

Master

File Number: 15-087-O

File ID: 15-087-O

Type: Ordinance

Status: Passed

Version: 1

**Agenda
Section:**

Committee: Public Works and
Utilities

File Created: 10/02/2015

Subject:

Final Action: 10/26/2015

Title: AN ORDINANCE GRANTING ST. LOUIS COUNTY TEMPORARY EASEMENTS OVER
VACATED 20TH AVE. E AND HERITAGE PARK.

Internal Notes:

Sponsors:

Enactment Date:

Attachments: Exhibit A

Enactment Number: 10416

Recommendation:

Hearing Date:

Drafter: derjavec@duluthmn.gov

Effective Date: 11/26/2015

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	10/12/2015	read for the first time				
1	City Council	10/26/2015	approved				Pass
1	City Clerk	10/26/2015	attested				
1	Mayor	10/26/2015	approved				

Text of Legislative File 15-087-O

AN ORDINANCE GRANTING ST. LOUIS COUNTY TEMPORARY EASEMENTS OVER VACATED 20TH AVE. E AND HERITAGE PARK.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to enter into an agreement, a copy of which is attached hereto as Exhibit A, with St. Louis County granting said county a temporary easement over the following-described property in St. Louis County, Minnesota for street and utility purposes and for construction related thereto, said easements to terminate upon the sooner of the completion of reconstruction of 4th Street by said county or December 31, 2017:

That portion of vacated 20th Avenue East bounded on the Southeast by the Northwesternly line of 4th Street, and on the Northeast by a line lying 103.86 feet Northwesternly of and parallel with the Northwesternly line of platted 4th street: and

A 10.00 foot wide temporary construction easement in Lots 9 and 10 of Block 10, Highland Park Addition to Duluth, according to the recorded plat thereof, described as follows:

Beginning at the intersection of the northeast line of said Lot 9 with the east line of Woodland Avenue; thence southerly along the east line of Woodland Avenue 43.80 feet; thence southeasterly 75.00 feet to a point on the southeast line of said Lot 10, said point being 60.00 feet southwest of the east corner of said Lot 9, hereinafter described as Line A; thence northeast 60.0 feet along southeast line of said Lots 9 and 10 to the east corner of Lot 9; thence northwest along the northeast line of said Lot 9 to the intersection with a line that is parallel with and distant 10.00 feet northwest of southeast line of said Lots 9 and 10; thence southwest along said line parallel with southeast line of Lots 9 and 10 to the intersection with a line that is parallel with and distant 10.00 feet northeasterly of said Line A; thence northwesterly along said line parallel with Line A to the intersection with a line that is parallel with and distant 10.00 feet east of said east line of Woodland Avenue; thence north along said line parallel with said east line of Woodland Avenue to the northeast line of said Lot 9; thence northwest along northeast line of said Lot 9 to the Point of Beginning.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

EXHIBIT A

TEMPORARY EASEMENT AGREEMENT
VACATED 20TH AVE. E.
ST. LOUIS COUNTY
CITY OF DULUTH

THIS AGREEMENT is made and entered into by and between the County of St. Louis, a duly organized county within the State of Minnesota, hereinafter referred to as the “County”, and the City of Duluth, hereinafter referred to as the “City”, a municipal corporation of St. Louis County, Minnesota.

Whereas, in conjunction with the 4th Street Reconstruction Project being jointly undertaken by City and County and at County’s request, City has vacated 20th Avenue East between 4th Street and Woodland Avenue; and

WHEREAS, by virtue of said vacation, City is the owner in fee of the below-described property in St. Louis County, Minnesota, hereinafter referred to as the “Road Property”, said Property being legally described as follows:

That portion of vacated 20th Avenue East bounded on the Southeast by the Northwesterly line of 4th Street, and on the Northwest by a line lying 103.86 feet Northwesterly of and parallel with the Northwesterly line of platted 4th street;

and

WHEREAS, City is the owner in fee of the below-described property in St. Louis County, Minnesota hereinafter referred to as the “Park Easement Property”, hereinafter described below over which County requires a construction easement related to the 4th street Reconstruction Project:

A 10.00 foot wide temporary construction easement in Lots 9 and 10 of Block 10, Highland Park Addition to Duluth, according to the recorded plat thereof, described as follows:

Beginning at the intersection of the northeast line of said Lot 9 with the east line of Woodland Avenue; thence southerly along the east line of Woodland Avenue 43.80 feet; thence southeasterly 75.00 feet to a point on the southeast line of said Lot 10, said point being 60.00 feet southwest of the east corner of said Lot 9, hereinafter described as Line A; thence northeast 60.0 feet along southeast line of said Lots 9 and 10 to the east corner of Lot 9; thence northwest along the northeast line of said Lot 9 to the intersection with a line that is parallel with and distant 10.00 feet northwest of southeast line of said Lots 9 and 10; thence southwest along said line parallel with southeast line of Lots 9 and 10 to the intersection with a line that is parallel with and distant 10.00 feet northeasterly of said Line A; thence northwesterly along said line parallel with Line A to the intersection with a line that is parallel with and distant 10.00 feet east of said east line of Woodland Avenue; thence north along said line parallel with said east line of Woodland Avenue to the northeast line of said Lot 9; thence northwest along northeast line of said Lot 9 to the Point of Beginning.

and

WHEREAS, the Road Property and the Park Easement Property are hereinafter jointly and severally referred to as the "Property"; and

WHEREAS, County is desirous of having the Road Property, along with the adjacent portion of 20th Avenue East owned by County, hereinafter referred to as the "Vacated Street", open and held available for use as a temporary county road until construction of the 4th Street Reconstruction Project starts and of performing construction work on the Property as part of said Project during the construction thereof; and

WHEREAS, City is willing to grant a right of use and a temporary easement over the Property to be effective until December 31, 2017 or until completion of said project, whichever is sooner, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN CONTAINED, the parties hereto hereby agree as follows:

1. Grant of Temporary Easement

City does hereby grant to County an easement over the Road Property for street and utility purposes until the commencement of construction of the 4th Street Reconstruction Project and thereafter over the Property until the completion of construction of said Project or until December 31, 2017, whichever occurs sooner, for the purposes of construction, including demolition, related to said Project.

2. Maintenance of Vacated Street

County hereby agrees that, during such time as it holds the Vacated Street open to use by the general public as a temporary county road pursuant to this Agreement, it shall be solely responsible for any maintenance work needed to be performed with regard thereto, including but not limited to the removal or treatment or both of ice and snow on said Vacated Street. If the County wishes to have the City perform any maintenance work in the form of removal or treatment of ice or snow or both, County shall notify City in writing of its request that City perform such maintenance work and City agrees that it will provide such services with regard to the Vacated Street to the level of such services normally provided by City to city streets of similar character and traffic characteristics. County agrees that it will reimburse the City for any such services in accordance with that agreement between the parties for street maintenance services dated November 25, 2014 and bearing City Contract No. 22340 and County Damion No. 2014-9098.

3. Indemnification of City

County agrees that it shall defend, indemnify and save harmless, City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or of County, by reason of the death of or injury to person or persons or the loss of or damage to property arising out of County's performance or non-performance of its obligations under this Agreement; provided however, that nothing herein shall be deemed to require County to indemnify City from liability arising solely out of the negligent or intentional acts or omissions of the City or of persons acting solely under its control. The liability of County shall be limited to its liability under Minnesota Statutes Chapter 466. On ten (10) days' written notice from any of City, County will appear and defend all lawsuits against City growing out of such injuries or damages.

4. Notices

Each party designates an Authorized Representative for the purpose of administering this Agreement. A party's authorized representative has the authority to give and receive notices, and to make any other decision required or permitted by this Agreement.

a. For the County:

Steve Krasaway, P.E.
Public Works Department / Resident Engineer
4787 Midway Road
Duluth, MN 55811
(218) 625-3841

b. For the City:

City of Duluth
C/O City clerk

411 W 1st Street- Room 330
Duluth, MN 55802
(218) 730-5071

5. Termination

This Agreement may be terminated only as follows:

- a. At any time by mutual agreement of the parties;
- b. By any party at any time upon 30 days notice in the event of default by a party, provided however that such termination shall not be effective if the defaulting party cures such default by end of the 30 day notice period; In the event of such termination, the County and City shall be entitled to pro-rata payment for work and services satisfactorily performed up to the effective date of such termination.

6. Independent Contractor.

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting County as an agent, representative or employee of the City for any purpose or in any manner whatsoever. County and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of County's employees while so engaged, and any and all claims whatsoever on behalf of County's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Paragraph 2. of this Agreement, County's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City

shall in no way be responsible to defend, indemnify or save harmless County from liability or judgments arising out of County's intentional or negligent acts or omissions of County or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

COUNTY OF ST. LOUIS

By _____
James T. Foldesi
County Engineer/Director of Public Works

Approved as to form and execution:

By _____
Assistant County Attorney
Damion No. 2015-9766

CITY OF DULUTH

COUNTERSIGNED:

Mayor

By _____
City Clerk

(City Seal)

APPROVED AS TO FORM:

City Auditor

By _____
City Attorney

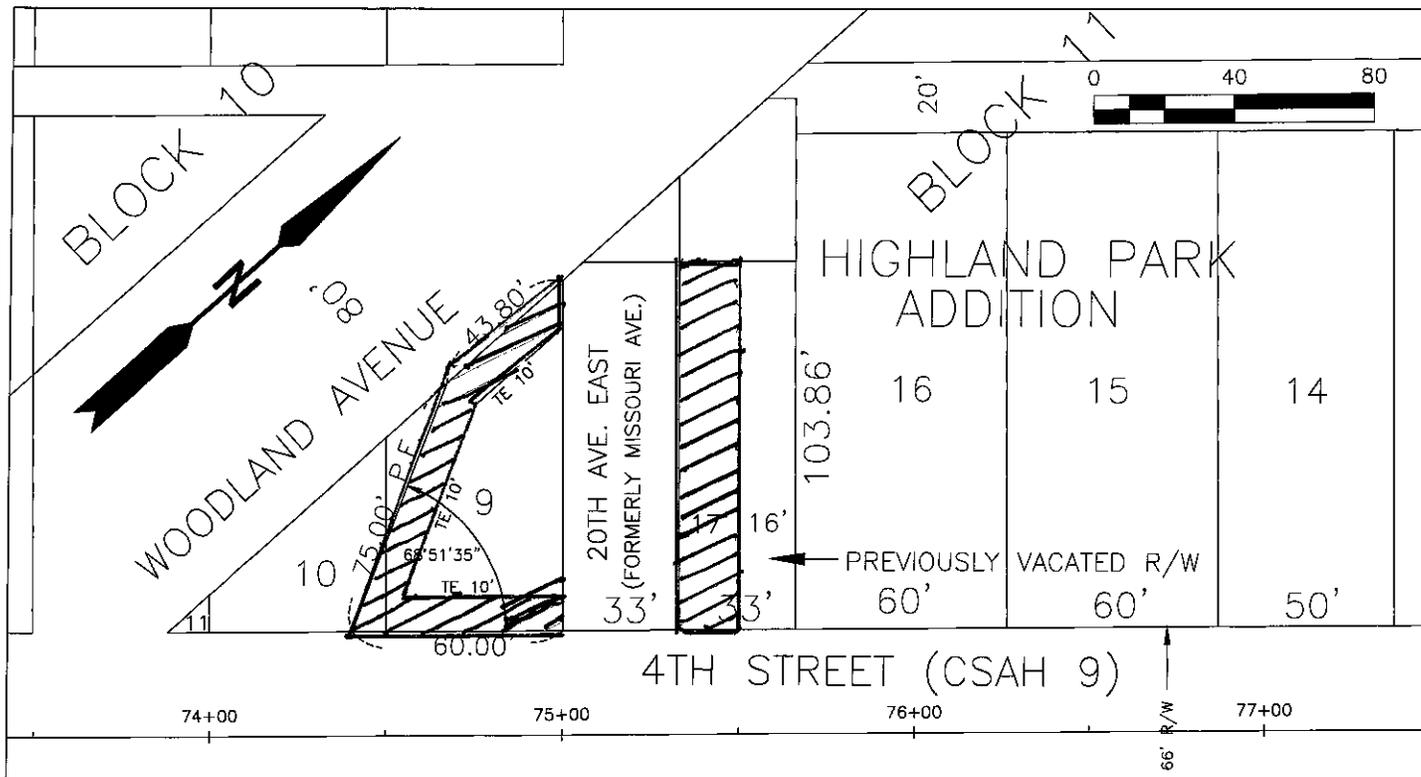


EXHIBIT B

PARK TO SLC

 TEMPORARY EASEMENT 1575 SQ.FT.