

PUBLIC WORKS & UTILITIES COMMITTEE

14-0066R

RESOLUTION VACATING THE UTILITY AND PEDESTRIAN EASEMENT IN THAT PART OF VACATED EIGHTH AVENUE EAST AND VACATED EAST 11<sup>TH</sup> STREET, ALL IN LAKE VIEW DIVISION OF DULUTH, MINNESOTA AND ACCEPTING A DEDICATED UTILITY AND PEDESTRIAN EASEMENT IN THAT PART OF LOTS 14, 15, 16, BLOCK 26, THAT PART OF LOTS 1, 2, 3, BLOCK 30, AND THAT PART OF VACATED EAST 11<sup>TH</sup> STREET, ALL IN LAKE VIEW DIVISION OF DULUTH, MINNESOTA (INDEPENDENT SCHOOL DISTRICT 709) AND RESCINDING RESOLUTION NOS. 11-0677R AND 13-0010R.

CITY PROPOSAL:

RESOLVED, that the city council hereby makes the following findings:

(a) That a sufficient petition was filed with the city planning division requesting the vacation of a utility and pedestrian easement described as those portions of previously vacated Eighth Avenue East and previously vacated East 11th Street, subject to the retention of utility and pedestrian easements, all in LAKE VIEW DIVISION of Duluth, Minnesota, described as follows:

Beginning at the most southerly corner of Lot 1, Block 30, said LAKE VIEW DIVISION; thence S. 48°21'17" E., assumed bearing along the southwesterly line of said Lot 1, a distance of 21.50 feet; thence N. 41°37'07" E. 150.21 feet; thence S. 48°21'24" E. 15.00 feet; thence S. 41°37'07" W. 150.21 feet; thence S. 48°21'17" E. 76.81 feet along the northeasterly line of Vacated 8<sup>th</sup> Avenue E.; thence S. 41°38'43" W. 66.00 feet to the southwesterly line of said Vacated 8<sup>th</sup> Avenue E.; thence N. 48°21'17" W. 169.12 feet along the southwesterly line of said Vacated 8<sup>th</sup> Avenue E.; thence N. 53°01'36" E. 67.32 feet to the southwesterly line of said Lot 1, Block 30; thence S. 48°21'17" E. 42.53 feet along the southwesterly line of said Lot 1 to the point of beginning, as described in Exhibit B;

(b) That the city has received a grant of easement, in trust for the general public, from Independent School District 709, as shown on Public Document No. \_\_\_\_\_, legally described as that part of

Lots 14, 15, 16, Block 26, that part of Lots 1, 2, 3, Block 30 and that part of Vacated E. 11<sup>th</sup> Street, all in LAKE VIEW DIVISION of Duluth Minnesota described as follows:

Commencing at the most southerly corner of said Lot 1, Block 30; thence N. 48°21'17" W., assumed bearing along the southwesterly line of said Lot 1, a distance of 42.53 feet; thence N. 00°23'04" E. 3.75 feet along the east line of Kenwood Avenue to the point of beginning of the tract to be described; thence continuing N. 00°23'04" E. 53.10 feet along the east line of said Kenwood Avenue; thence N. 41°37'07" E. 65.27 feet; thence S. 48°21'17" E. 88.00 feet; thence N. 41°37'07" E. 42.21 feet; thence S. 48°21'17" E. 20.00 feet; thence S. 09°11'39" W. 50.03 feet; thence S. 48°21'17" E. 30.93 feet; thence S. 11°41'46" W. 124.64 feet to the southwesterly line of said Lot 16, Block 26; thence N. 48°21'17" W. 34.62 feet along the southwesterly line of said Lot 16; thence N. 11°41'46" E. 84.25 feet; thence N. 48°21'17" W. 116.28 feet; thence S. 41°37'07" W. 70.18 feet to the point of beginning, as described in Exhibit A;

(c) The planning commission, at its December 13, 2011, regular meeting, recommended approval of the aforesaid vacation and acceptance of the aforesaid easement;

(d) Resolution 11-0677, approved on December 19, 2011 and Resolution 13-0010, approved on March 11, 2013, addressing said vacation and said dedication, contained errors in the legal descriptions used therein and therefore need to be rescinded;

FURTHER RESOLVED, that the city council of the city of Duluth approves the vacation of the above-referenced utility and pedestrian easement described on the aforesaid Exhibit B and the acceptance of the above described utility and pedestrian easements on behalf of the general public, as described on the aforesaid Exhibit A and as said vacation and dedication are identified on Public Document No. \_\_\_\_\_.

FURTHER RESOLVED, that the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended and authorized to record, with the register of deeds and/or the registrar of titles

of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. \_\_\_\_\_ showing the portions of utility and pedestrian easements to be vacated and the acceptance of dedication of the new easements, all as authorized hereunder.

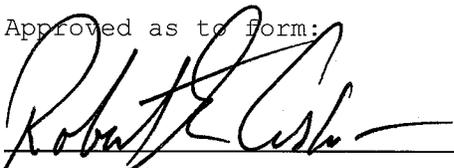
FURTHER RESOLVED, that Resolution Nos. 11-0677 and 13-0010 are hereby rescinded.

Approved:

  
\_\_\_\_\_

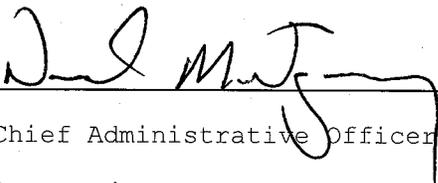
Department Director

Approved as to form:

  
\_\_\_\_\_

Attorney

Approved for presentation to council:

  
\_\_\_\_\_

Chief Administrative Officer

Approved:

  
\_\_\_\_\_

Auditor

ENG CJV:jh 1/23/2014

STATEMENT OF PURPOSE: This resolution rescinds two previously adopted resolutions contained errors in the legal descriptions that were provided to the city and re-approves the vacation and dedication of easements with the correct legal descriptions so they can be legally recorded in the official land records of the county.

The original resolutions contained technical errors such that, if they were recorded, would result in the wrong property being affected by the city's action and needed easements not being in place from the property standpoint. Fortunately, the errors were discovered before either of the erroneous documents were recorded and so the errors can be easily corrected by eliminating the record of the errors through rescission of resolutions containing the errors and approval of the vacation and dedication of the correctly-described easements. This resolution accomplishes that.

## EASEMENT AGREEMENT

This **EASEMENT AGREEMENT**, entered into this \_\_\_ day of \_\_\_\_\_, 2013, by and between **Independent School District #709** f/k/a the Board of Education of the City of Duluth, "Grantor" and the **City of Duluth**, a municipal corporation created and existing under the laws of the State of Minnesota, "Grantee":

WITNESSETH:

Whereas, Grantor is the owner of the property in St. Louis County, Minnesota legally described as follows (the "Property"):

Lots One (1), Two (2), Three (3) and Four (4), Block Thirty (30), and that part of vacated E. 11<sup>th</sup> Street, all in Lakeview Division of Duluth

AND

The Northerly Ninety-five (95) feet of Lots Fifteen (15) and Sixteen (16), and all of Lot Fourteen (14), Block Twenty-Six (26), and that part of vacated E. 11<sup>th</sup> Street, all in Lakeview Division of Duluth

and;

Whereas, Grantor wishes to convey to the Grantee an easement as hereinafter described for utilities and pedestrian purposes over the Property for the benefit of the Property and at no cost to Grantee.

NOW THEREFORE, in consideration of One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does grant, sell, bargain and convey to Grantee in trust for the general public a permanent, perpetual and exclusive easement for utilities and pedestrian purposes, the location of which easement is more particularly described as follows:

Shown on **Exhibit A** attached hereto and made a part hereof, and



STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF ST. LOUIS    )

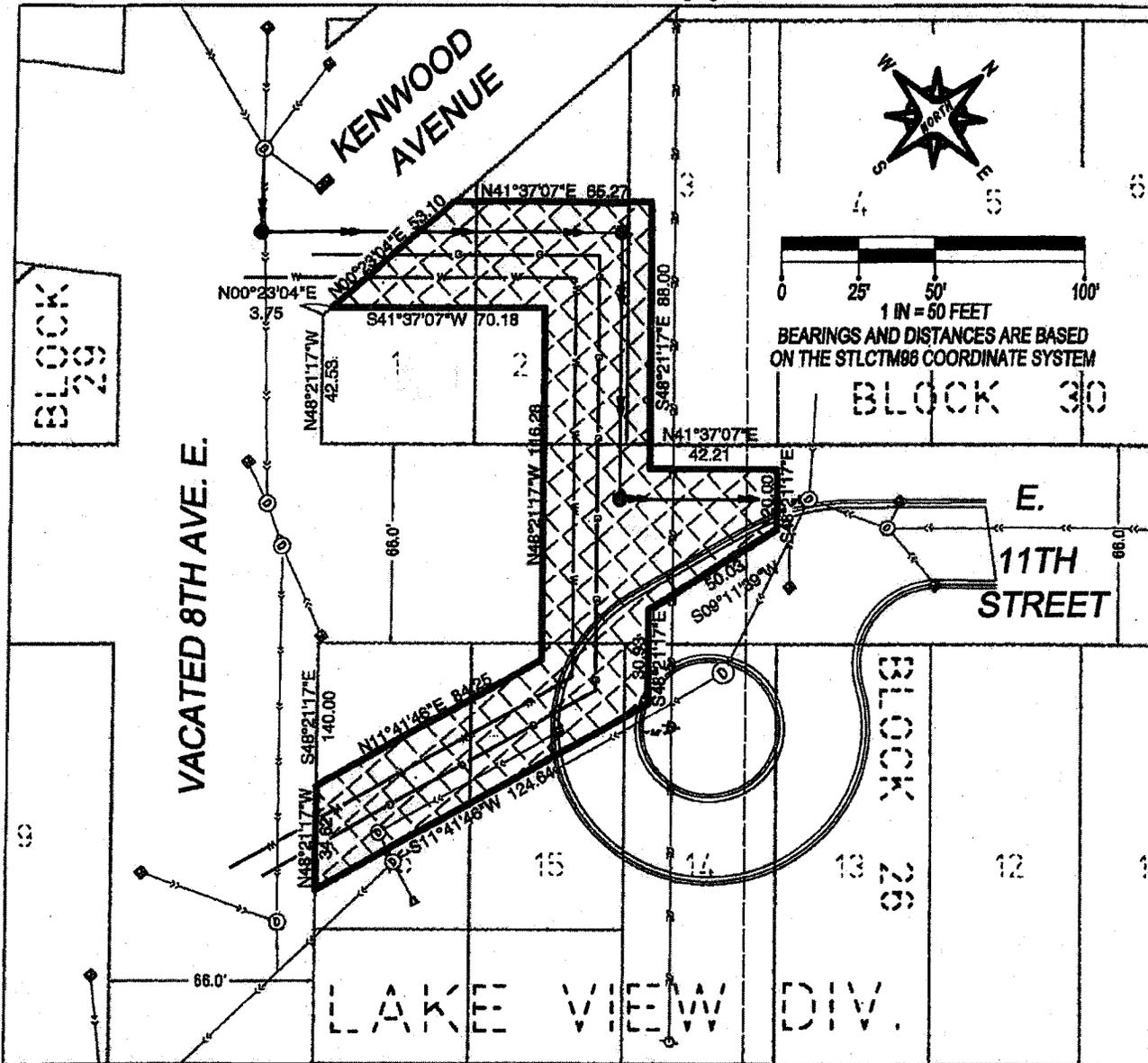
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013 by \_\_\_\_\_ and \_\_\_\_\_, the Mayor and City Clerk of the City of Duluth, a municipal corporation and political subdivision created and existing under the laws of Minnesota on behalf of the corporation.

\_\_\_\_\_  
Notary Public

This instrument drafted by:  
Fryberger, Buchanan, Smith & Frederick, P.A.  
302 West Superior Street, Suite 700  
Duluth, Minnesota 55802-5150  
DRO

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# EXHIBIT A



## LEGAL DESCRIPTION: (UTILITY & PEDESTRIAN EASEMENT)

That part of Lots 14, 15, 16, Block 26, that part of Lots 1, 2, 3, Block 30 and that part of Vacated E. 11<sup>th</sup> Street, all in LAKE VIEW DIVISION of Duluth Minnesota described as follows: Commencing at the most southerly corner of said Lot 1, Block 30; thence N. 48°21'17" W., assumed bearing along the southwesterly line of said Lot 1, a distance of 42.53 feet; thence N. 00°23'04" E. 3.75 feet along the east line of Kenwood Avenue to the point of beginning of the tract to be described; thence continuing N. 00°23'04" E. 53.10 feet along the east line of said Kenwood Avenue; thence N. 41°37'07" E. 65.27 feet; thence S. 48°21'17" E. 88.00 feet; thence N. 41°37'07" E. 42.21 feet; thence S. 48°21'17" E. 20.00 feet; thence S. 09°11'39" W. 50.03 feet; thence S. 48°21'17" E. 30.93 feet; thence S. 11°41'46" W. 124.64 feet to the southwesterly line of said Lot 16, Block 26; thence N. 48°21'17" W. 34.62 feet along the southwesterly line of said Lot 16; thence N. 11°41'46" E. 84.25 feet; thence N. 48°21'17" W. 116.28 feet; thence S. 41°37'07" W. 70.18 feet to the point of beginning.

Containing 11,849.9 square feet.

DEC - 6 2011

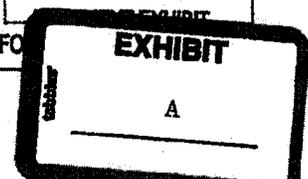
I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

DATE 10-31-11  
*James W. Forster*  
 JAMES W. FORSTER MIN. LIC. NO. 16104

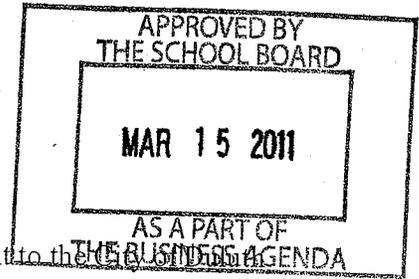


ENGINEERS • SURVEYORS • PLANNERS  
**SALO ENGINEERING, INC.**  
 4980 Norway Pines Place - Duluth, Minnesota 55802  
 SALO JOB NUMBER: E-1828 218/727-3765

FOR



RESOLUTION



Dedicating and Granting a New Pedestrian and Utility Easement to the City of Duluth

WHEREAS, Independent School District #709 is the owner of the property in St. Louis County, Minnesota, near Grant School; and

WHEREAS, to construct the addition to the current Grant Elementary School there are existing pedestrian walkways and public utilities that must be relocated; and

WHEREAS, the City of Duluth will require the dedication and granting of permanent and perpetual easements required to maintain the relocated pedestrian walkways and public utilities.

NOW THEREFORE, BE IT RESOLVED, by the School Board of Independent School District No. 709, St. Louis County, State of Minnesota that the School Board agrees to the Dedication of New Pedestrian and Utility Easements near Grant School to the City of Duluth, and it is hereby approved; and

BE IT FURTHER RESOLVED that following the relocation work completed by the District, when such easements can be accurately described, the final easement agreement and related exhibits will be presented to the School Board as informational and for the permanent Board record prior to their execution by the School Board Chair.

