



To: MAYOR & COUNCIL

Agenda Item #: IV.L.

From: Bill Neuendorf
Economic Development Manager

Action
Discussion
Information

Date: February 19, 2013

Subject: Resolution No. 2013- 23, Naming the Metropolitan Council as a Permitted Designee of the Transit Easement at Southdale Center

Action Requested:

Adopt Resolution.

Information / Background:

As part of the April 2012 Redevelopment Agreement with Simon Properties, the City secured a Transit Easement on which to construct and operate a permanent transit center with park-and-ride lot at Southdale Center. Terms of the Transit Easement were drafted cooperatively between the mall owner, the City, Metro Transit and Metropolitan Council. The Easement was secured with the intention of delegating the authority and responsibility to build and operate the transit center to the Metropolitan Council, as the region's transit agency.

On December 12, 2012, the Metropolitan Council approved Item 2012-351 to authorize an interagency agreement that enables the construction and operation of a new \$850,000 transit center and park-and-ride at Southdale Center. Metro Transit intends to proceed with the construction of the new transit center in Spring/Summer 2013. Transit operations would be shifted from the existing (temporary) site at the mall to the new location upon completion in late 2013.

This Resolution authorizes the delegation of Transit Easement to the Metropolitan Council while still retaining the rights of the City to operate a local transit system along the same easement.

Attachments:

Resolution No. 2013-23
Delegation Agreement (5 pages)

RESOLUTION NO. 2013-23

NAMING THE METROPOLITAN COUNCIL AS A PERMITTED DESIGNEE
OF THE TRANSIT EASEMENT AT SOUTHDALE CENTER

BE IT RESOLVED by the City Council of the City of Edina, Minnesota, as follows:

WHEREAS, the City of Edina and Southdale Limited Partnership have entered into the Southdale Center Redevelopment Agreement dated April 18, 2012; and

WHEREAS, the Redevelopment Agreement contains an Easement Agreement dated October 19, 2012 for construction, operation, maintenance and use of Public Transit Improvements located on the mall property; and

WHEREAS, the City of Edina has authority to acquire, construct, maintain and operate a public transit system in the greater Southdale area as granted by Chapter 241 of Minnesota Statutes; and

WHEREAS, Metro Transit, an agency of the Metropolitan Council has secured financing and intends to construct a new transit center and park-and-ride facility in the northeast quadrant of the Southdale Center property in 2013; and

WHEREAS, the new transit center will create a permanent location for commuters, shoppers, employees and other transit riders so that they can best utilize the services of all regional transit providers; and

WHEREAS, Section 6.1 of the Easement Agreement grants the City the right to transfer or delegate its' authority to fulfill the terms of the Easement Agreement; and

WHEREAS, the Metropolitan Council approved Item 2012-351 at its December 12, 2012 meeting thereby authorizing the Regional Administrator to enter into an interagency agreement that would enable the construction and operation of a transit center and park-and-ride at Southdale Mall; and

NOW, THEREFORE BE IT RESOLVED that the City Council supports the delegation of the Southdale Transit Easement to the Metropolitan Council and authorizes the Mayor and City Manager to execute such agreements as are necessary to implement the delegation.

Adopted by the Edina City Council this 19th day of February, 2013.

Attest:

Debra A. Mangen, City Clerk

James B. Hovland, Mayor

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of February 19, 2013, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, _____.

City Clerk

**DELEGATION OF EASEMENT RIGHTS AND RESPONSIBILITIES
FOR CONSTRUCTION, OPERATION AND MAINTENANCE AND USE
OF PUBLIC TRANSIT IMPROVEMENTS**

This Delegation of Easement Rights and Responsibilities (“Delegation”) is made this ____ day of _____, 2013, by and between the City of Edina, Minnesota, a Minnesota statutory city (hereinafter the “City”) and Metropolitan Council, a public corporation and political subdivision of the State of Minnesota (hereinafter “Met Council”).

RECITALS

1. Southdale Limited Partnership, a Delaware limited partnership, (the “Partnership”) and the City have entered into an Easement Agreement for construction, operation, maintenance and use of public transit improvements (“Easement Agreement”) on property at Southdale Mall in Hennepin County described in **Exhibit A** attached to this Delegation and incorporated herein (“Easement Area”).

2. The Easement Agreement was recorded on January 10, 2013 in the Hennepin County Registrar of Titles’ Office as Document No. T5031979. A copy of the recorded Easement Agreement is attached hereto and made a part hereof, as **Exhibit B**.

3. Article VI, Section 6.1 of the Easement Agreement provides that the City may, in compliance with the provisions of Section 6.1, delegate or transfer all or a portion of its rights and obligations under the Easement Agreement to the Met Council without the consent of the Partnership for the purpose of providing regional transit services.

4. The Met Council operates regional transit service within the Minneapolis-St. Paul metropolitan area.

5. The City now wishes to delegate to Met Council all of its rights and obligations under the Easement Agreement, except as otherwise provided under the terms of this Delegation, for the operation of the regional transit services.

DELEGATION

1. *Delegation.* For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the City hereby delegates to Met Council (the “Permitted Designee”) all of its rights and obligations under the Easement Agreement, except to the extent that rights are reserved by the City under the terms of this Delegation.

2. *Assumption.* For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Met Council hereby accepts the delegation and assumes and is liable for the performance of all obligations, covenants and undertakings of the City under the terms of the Easement Agreement and agrees to be bound by the terms of the Easement Agreement, as though the Met Council were named the grantee in said Easement Agreement.

3. *Exception.* The City reserves the right under this Delegation and the terms of the Easement Agreement to operate an intra-city transit service within the Easement Area, pursuant to its authority granted by state law, which service shall be reasonably coordinated with the Met Council and with any other regional transit service provider, if any.

4. *Liability.* Each party agrees that it will be responsible for its own acts and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts of the other party and the results thereof. Both the City's and Permitted Designee's liability is governed by the provisions of the Minnesota Statutes chapter 466 and neither the City's nor Permitted Designee's obligations under this paragraph shall be construed to negate or abridge or otherwise waive, with respect to the City's or Permitted Designee, the liability limits of Minnesota Statutes chapter 466.

5. City shall indemnify and hold harmless Permitted Designee, its members, officials, officers, agents and employees from any and all losses, damages, expenses, liability, claims or demands including without limitation, attorney's fees, arising out of, resulting from, or relating to City's own acts and the result thereof, including from City's exercise of the rights granted to it by this Agreement and from its failure to comply with City's obligations under this Agreement.

Permitted Designee shall indemnify and hold harmless the City, its officials, officers, agents and employees from any and all losses, damages, expenses, liability, claims or demands including without limitation, attorneys' fees arising out of, resulting from or relating to Permitted Designee's own acts and the result thereof, including from or relating to Permitted Designee's own acts and the result thereof, including Permitted Designee's exercise of the rights granted to it by this Agreement and from its failures to comply with Permitted Designee's obligations under this Agreement.

Neither City nor Permitted Designee waives any immunities, defenses or defenses on liability to the parties at law or in equity, and the parties expressly agree that the terms of the

Agreement shall not be construed to affect any waiver, including those set forth in Minnesota Statutes chapter 466.

6. *Recitals.* The Recitals hereto are fully incorporated into and are a part of this Delegation.

TERMINATION OF DELEGATION

1. *Termination Due to Default or Noncompliance.* The Delegation of the Met Council under this Delegation may be terminated upon notice by the City to the Met Council, if the Met Council fails to comply with the terms of this Delegation or fails to perform its obligations under the terms of the Easement following notice by Redeveloper or City of non-compliance under Section 9.1 of the Easement and failure to cure within the time period provided;

2. *Default.* Upon receipt by City of notice of default by the Met Council under Section 9.1 of the Easement, the City may take any action it deems necessary to cure the default and protect its rights in the Easement.

3. Except for termination as provided in Section 1 of this Section entitled *Termination of Delegation*, the delegation to the Met Council as Permitted Designee under this Delegation may not be terminated by the City without the express written consent of the Met Council as Permitted Designee.

IN WITNESS WHEREOF, the parties hereto have caused this Delegation of Easement Rights and Responsibilities to be duly executed as of the day and year first written above.

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CITY OF EDINA

By: _____
James Hovland, Mayor

By: _____
Scott Neal, City Manager

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by James Hovland, Mayor of the City of Edina, and Scott Neal, City Manager of the City of Edina, a Minnesota statutory city, on behalf of the City.

Notary Public

