

Document A

**TRAINING AGREEMENT  
(Use of Essentia Property)**

This Training Agreement (“Agreement”) is made and entered into as of the date last signed below (“Effective Date”) by and between **Essentia Health**, on behalf of itself and its subsidiaries including St. Mary’s Medical Center (“Essentia”) and the **City of Duluth**, a Minnesota municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (the “City”), through the City’s Fire Department (the “Fire Department”) and the City’s Police Department (the “Police Department”).

**RECITALS**

- A. Essentia has an interest in certain real property pursuant to a Ground Lease with Benedictine Sisters Benevolent Association (“BSBA”), which contain structures not currently in use by Essentia as set forth in Exhibit A (the “Buildings”).
- B. Essentia plans to demolish the Buildings in the immediate future as part of the redevelopment of its campus complex in downtown Duluth.
- C. City, the Fire Department and the Police Department desire to use the Buildings prior to their demolition for certain training exercises of its Fire Department and Police Department personnel as more fully set forth herein.
- D. The parties desire to memorialize their agreement in writing to permit the City, the Fire Department and the Police Department to conduct their training exercises in the Buildings according to the terms of this Agreement as a service to the community.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

- 1. Entry onto the Property Authorized. In recognition of the valuable services provided by first responders and the value of maximizing available training opportunities, Essentia hereby expressly authorizes the City, the Fire Department and the Police Department, without compensation for entry, to enter onto the real property legally described in Exhibit A (the “Property”) one or more times to conduct artificial smoke training exercises and other related training exercises as more fully set forth in Exhibit B (the “Training Exercises”) in specifically designated areas of the Buildings and on the Property. The City, Fire Department and Police Department shall enter the Property and Buildings solely for the purpose of conducting training exercises and for related activities such as preliminary inspections, follow-up inspections, and clean-up activities. No live-fire training will be conducted on any of the Buildings or Property at any time. Any Training Exercises that are destructive in nature that are not set out in Exhibit B will require written permission of Essentia in advance. Notwithstanding the above, the City, the Fire Department and Police Department will be solely responsible for all costs necessary to conduct the Training Exercises.
- 2. Schedule. The scheduling of times for City and/or Fire Department and/or Police Department to access specifically designated areas of the Property for the Training Exercises shall be as mutually agreed upon by the parties and is anticipated to begin on

the Effective Date. No activities shall be permitted on the Property outside of the specifically designated areas or that have not been communicated with reasonable advance notice to Essentia. If the parties are unable to agree on the scheduling, either party may terminate this Agreement as set forth in section 6.

3. Waiver of Trespass. Essentia expressly waives any claim of trespass against the Fire Department, the Police Department or the City for entry onto specifically designated areas of the Property for the purpose of conducting the Training Exercises and related activities on the Property. This waiver is conditioned upon all entrants completing and signing a valid Release and Waiver of Liability form in favor of Essentia and the BSBA that includes assumption of the risk for exposure to hazards and hazardous substances inherent with demolition and remediation activities attached as Exhibit C and adhering to the requirements of this Agreement. The parties acknowledge and agree that Essentia has the right in its sole discretion to refuse 1) entry to any entrant, 2) require any entrant to leave the Buildings and Property at any time, and 3) to require the Training Exercises or any component thereof to immediately stop. This provision shall survive termination of this Agreement.
4. Waiver of Damages. Essentia expressly waives any claim against the Fire Department, the Police Department or the City for any damages to the Buildings caused by or allegedly caused by the Fire Department, Police Department or the City in the course of performing the Training Exercises and related activities thereto so long as they are in accordance with the terms of this Agreement and the express instructions of Essentia personnel. This provision shall survive termination of this Agreement.
5. Liability and Indemnification. The City, the Fire Department and the Police Department shall be solely liable for any injury to Fire Department or Police Department personnel, City personnel, or other persons caused by or as a direct result of the Training Exercises. The City, the Fire Department and the Police Department shall indemnify and hold Essentia (including any present and future affiliates and/or subsidiaries of Essentia Health) harmless against any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses, and compensation whatsoever which may accrue on account of or in any way growing out of the use of the Property (including the Buildings) and/or the entry upon said Property (including the Buildings), provided that the City, the Fire Department and the Police Department shall not be required to indemnify Essentia to the degree such liability arising out of the wrongful or negligent acts of employees or agents of Essentia. City, the Fire Department and the Police Department shall not assert any claims against Essentia related to this Agreement. This provision shall survive termination of this Agreement.
6. Term and Termination. This Agreement shall commence on the Effective Date set forth above, and shall terminate upon the earlier of: (i) completion of the Training Exercises; or (2) August 31, 2024. Either party may terminate this Agreement by giving the other party ten (10) days' prior written notice of such termination. Upon termination, City the Fire Department and Police Department shall return any keys or other Essentia-provided items back to Essentia.
7. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

8. Essentia Representations. Essentia represents and warrants that it has the full right and authority to enter into this agreement and that it will obtain any necessary consents or authorizations prior to the communicated performance date(s) of the Training Exercises.
9. No Partnership or Joint Venture. The parties do not intend to create a partnership, joint venture, or joint enterprise and expressly waive any right to claim such status in any dispute arising out of this Agreement.

*[The remainder of this page intentionally left blank; signature page to follow.]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date set forth above.

**ESSENTIA HEALTH**

**CITY OF DULUTH**

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

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

Print name: \_\_\_\_\_

Mayor

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

Attest:

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

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

City Clerk

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

Countersigned:

\_\_\_\_\_

City Auditor

Approved as to Form:

\_\_\_\_\_

City Attorney

**EXHIBIT A  
LEGAL DESCRIPTIONS**

Parcel ID # 010-0970-00520

*Lots 65 Thru 79 Odd Numbered Lots Inc Part of Vacated Alley EAST THIRD STREET,  
DULUTH PROPER, FIRST DIVISION & Inc Lots 15 and 16 Blk 70 PORTLAND DIVISION*

Parcel ID # 010-0990-01310

*Lots 66, 68, 70, 72, 74, 76, 78, 80, EAST FOURTH STREET, DULUTH PROPER, FIRST  
DIVISION*

## **EXHIBIT B DESCRIPTION OF TRAINING EXERCISES**

City and Fire Department plan to conduct the following Training Exercises on the Property and/or Buildings of Essentia:

The Duluth Fire Department will use the “Legacy St Mary’s” facility located at 407 E. 3<sup>rd</sup> Street, Duluth, MN for the purposes of non-destructive training prior to asbestos mitigation occurring on the premises.

These activities would include but not be limited to:

- Active shooter/hostile event responses scenarios in conjunction with Duluth Police
- Elevator rescue
- Confined space entry and rescue
- Standpipe operations and hose line advancement
- Search patterns and techniques

Upon completion of asbestos mitigation, the Duluth Fire Department will seek to do any allowable destructive training such as flowing of water and forcing of doors.

City and Police Department plan to conduct the following Training Exercises on the Property and/or Buildings of Essentia:

The Police Department will use the “Legacy St. Mary’s” facility located at 407 E. 4<sup>rd</sup> Street, Duluth, MN for the purposes of non-destructive training prior to asbestos mitigation occurring on the premises.

These activities would include but not be limited to:

- Active shooter/hostile event response scenarios in conjunction with Duluth Fire
- Practicing movement patterns and techniques to protect medical first responders as they treat and evacuate injured persons
- Learning to develop safe corridors for movement of persons out of warm zones and potentially dangerous zones

**EXHIBIT C**  
**RELEASE AND WAIVER OF LIABILITY**

[Cover Page – Attachment to Follow]



## RELEASE AND WAIVER OF LIABILITY

General Information	
Name:	Date:
Company/Organization:	Emergency Contact:
	Emergency Contact Phone Number:
Training Exercises Description:	

The City of Duluth, through the City's Fire Department ("City") is conducting certain Training Exercises pursuant to the Training Agreement dated \_\_\_\_\_, between the City and Essentia Health, on behalf of itself and its affiliated entities, at the property located at 407 E. 3rd Street, Duluth, MN 55805 ("Property"). All persons entering the Property for purposes of these Training Exercises ("Participant" or "Participants"), as a condition of gaining entry, must sign below to signify that they have read, understand, and agree to the following:

- 1) The undersigned Participant has been informed of and does hereby acknowledge that there are certain risks, hazards, and dangers connected with entering the Property, due to its vacant condition and ongoing preparations for near future demolition, possible presence of debris, possible presence of lead, possible presence of asbestos, possible presence of PCBs, possible presence of mold, and possible presence of other hazardous materials on the Property. The undersigned Participant further acknowledges that there are specific risks, hazards and dangers connected with entering the Property due to: decommissioned status, past medical operations [REDACTED].
- 2) The undersigned Participant has been informed and hereby acknowledges that Essentia is merely allowing access to the Property by the City for the Training Exercises and is not responsible for the planning and conduct of the Training Exercises or materials used for the Training Exercises.
- 3) In consideration for being permitted to enter the Property for the purpose of voluntary participation in the Training Exercises, the undersigned Participant hereby voluntarily assumes the risk of any and all injury, bodily harm, death and damage to or loss of personal property, and waives all claims, actions, liabilities and losses against Essentia, its Landlord for the Property (Benedictine Sisters Benevolent Association), and their respective board members, officers, employees, agents and contractors (including subcontractors), and volunteers, which may occur as a result of the undersigned entering the Property.
- 4) In consideration for being permitted to enter the Property for the limited purpose of the Training Exercises, the undersigned Participant hereby personally assumes all risks in connection with the Training Exercises and entry upon the Property related to the Training Exercises and hereby agrees to hold Essentia, its Landlord for the Property (Benedictine Sisters Benevolent Association), and their respective board members, officers, employees, agents and contractors (including subcontractors), and volunteers harmless and waive any right to make claims or bring lawsuits against Essentia or anyone working on behalf of Essentia for any injuries or damages related to the alleged negligence of Essentia.
- 5) This waiver does not apply to any injuries or damages that are the result of willful, wanton, or intentional misconduct by Essentia, its Landlord, or anyone acting on their behalf.



- 6) That entering into and signing this agreement affects my legal rights and result in my giving up or waiving certain legal rights, and I accept this and sign this agreement of my own free will.
- 7) The terms of this agreement will bind the members of my family, if I am alive, and my heirs, assigns, and personal representatives if I am deceased.
- 8) I understand that a copy of my Minnesota Driver's License/or other form of government identification will be required to document my identity for entrance on the Property.
- 9) I agree to attend any safety briefing or orientation required for my entry upon the Property, to enter and exit the Property through designated access points, and only access those portions of the Property designated for access for the Training Exercises. For the avoidance of doubt, at no time will I enter areas communicated to be "restricted" or "off-limits," that contains signage communicating the same or indicating remediation activities beyond such location, or contain caution tape or some other physical barrier to entry. In the event there is uncertainty or a condition is encountered that a reasonable person would consider hazardous or potentially harmful, I agree to immediately stop and once in a safe place communicate the issue to the responsible supervisor of the Training Exercises.
- 10) My signature indicates I have read this entire document and understand it completely, acknowledge that it cannot be modified or changed in any way by oral representations, handwritten changes or otherwise, and agree to be bound by its terms to the fullest extent of the law.
- 11) I do hereby for myself, my family, my heirs, executives, administrators, successors and assigns release and forever discharge Essentia Health, its Landlord for the Property (Benedictine Sisters Benevolent Association), and their respective board members, officers, employees, agents and contractors (including subcontractors), and volunteers its board members, officers, employees, agents and contractors (including subcontractors), and volunteers from any and all actions, causes of action, claims and demands for or by reason of any damage, loss or injury to my person and/or property which heretofore has been or hereafter may be sustained in consequence of my presence at the Property under the terms herein.
- 12) If any provision of this Release and Waiver of Liability is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. The parties agree to replace the invalid, illegal, or unenforceable provision with a valid, legal, and enforceable provision that most closely reflects the intent of the original provision.

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Print Name

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Signature

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Date