

EXHIBIT 1

AMENDMENT TO AGREEMENTS FOR DESIGN AND CONSTRUCTION OF ROAD AND UTILITY WORK REGIONAL EXCHANGE DISTRICT PROJECT

THIS AMENDMENT TO AGREEMENTS FOR DESIGN AND CONSTRUCTION OF ROAD AND UTILITY WORK REGIONAL EXCHANGE DISTRICT PROJECT (the “Amendment”), effective as of the date of attestation thereto by the City Clerk, is entered into by and between and among the CITY OF DULUTH, a Minnesota municipal corporation (the “City”), and St. Mary’s Duluth Clinic Health System, DBA Essentia Health East, a Minnesota nonprofit corporation (“SMDC”).

WHEREAS, the City, in cooperation with SMDC, secured authorization to implement the Regional Exchange District development, hereinafter defined and referred to as the “RED,” in the portion of the City generally referred to as the City’s Medical District pursuant to the Act; and

WHEREAS, the RED provides generally for the development of a new hospital and related facilities and parking facilities along with the redevelopment and extension of new and existing streets and utilities, which will enhance the provision of medical services in the City and will facilitate and strengthen the City’s position as a regional hub for the provision of medical services in the northcentral region of the country; and

WHEREAS, City and SMDC have determined that is mutually beneficial to cooperate and coordinate in the design and construction of the various road and utility work projects necessary to the implementation of the RED; and

WHEREAS, City has determined that it is in the best interests of the City to contract with SMDC for SMDC to design and construct certain road and utility work projects under the terms of the Project 5 Agreements (hereinafter defined); and

WHEREAS, City and SMDC entered into an agreement for certain road and utility work projects on November 13, 2019 under the Agreement for Design and Construction of Road and Utility Work Regional Exchange District Project bearing City Contract No. 23828 (the “Project 5 – Phase I Agreement”). The work performed by SMDC under the Project 5 – Phase I Agreement is hereinafter referred to as the “Project 5 – Phase I Work.” The maximum amount to be reimbursed to SMDC under the Project 5 – Phase I Agreement is \$5,262,000 (the “Project 5 – Phase I Maximum Amount”); and

WHEREAS, City and SMDC entered into an agreement for additional road and utility work projects on May 6, 2021 under the Agreement for Design and Construction of Road and Utility Work Phase II, 2nd Street – 4th – 6th Avenues East Regional Exchange District Project bearing City Contract No. 24104, as amended by its First Amendment dated January 17, 2023 bearing City Contract No. 24104-01 (collectively, the “Project 5 – Phase II Agreement”). The work performed by SMDC under the Project 5 – Phase II Agreement is hereinafter referred to as

the “Project 5 – Phase II Work.” The maximum amount to be reimbursed to SMDC under the Project 5 – Phase II Agreement is \$5,161,182.78 (the “Project 5 – Phase II Maximum Amount”); and

WHEREAS, the Project 5 – Phase I Agreement and Project 5 – Phase II Agreement are collectively referred to as the “Project 5 Development Agreements.” Capitalized terms used in this Amendment, but not defined herein, shall have the same meaning ascribed to them as in the Project 5 – Phase I Agreement and Project 5 – Phase II Agreement, as applicable; and

WHEREAS, under the Project 5 Development Agreements, the Project 5 – Phase I Maximum Amount and Project 5 – Phase II Maximum Amount total \$10,423,182.78 (collectively, the “Project 5 Maximum Amount”); and

WHEREAS, the actual costs for SMDC to complete the Project 5 – Phase I Work and Project 5 – Phase II Work (collectively, the “Project 5 – SMDC Work”) required under the Project 5 Development Agreements exceeded the Project 5 Maximum Amount by \$756,394.00 (the “SMDC Unfunded Amount”);

WHEREAS, the actual costs for City to complete its work relating to Project 5 (the “Project 5 – City Work”) exceeded the maximum amount allocated for in the Act by \$395,393.73 (the “City Unfunded Amount”); and

WHEREAS, Project 5 – SMDC Work and Project 5 – City Work are collectively referred to as “Project 5;” and

WHEREAS, the Act provides that, under certain terms and provisions, any unexpended amount for certain RED projects that have been substantially completed may be applied to Project 5;

WHEREAS, another RED project under the Act is the completion of the extension of 6th Avenue East from 2nd Street to 1st Street (“Project 3”). The costs to complete Project 3 are anticipated to be less than the maximum amount allocated in the Act, which would result in unexpended funds that could be applied toward other RED projects (the “Project 3 Unexpended Funds”); and

WHEREAS, City desires to, upon substantial completion of Project 3, submit a written plan to the commissioner of DEED to reallocate the Project 3 Unexpended Funds to Project 5; and

WHEREAS, under the terms of this Amendment, upon permission from the commissioner of DEED and receipt of funds from the State, the City desires to (i) reimburse itself for the City Unfunded Amount and (ii) reimburse SMDC for the SMDC Unfunded Amount.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree to amend the Project 5 Development Agreements with the addition of the following article:

ARTICLE XVI Additional Reimbursement of Reimbursable Costs

16.1 Completion of Project 5

The parties hereto acknowledge that Project 5 – SMDC Work and the Project 5 – City Work have been completed. SMDC acknowledges that it has been reimbursed for all permitted costs of the Project 5 – SMDC Work except for the SMDC Unfunded Amount.

16.2 Additional Reimbursement Payment

a. Upon the occurrence of all of the following items in sequential order, the City shall reimburse SMDC above the Project 5 Maximum Amount in an amount not to exceed the SMDC Unfunded Amount:

- i. Project 3 is substantially completed, which is defined as the time and date at which the work has progressed to the point where, in the opinion of the City Engineer, the work is sufficiently complete, in accordance with the plans, specifications, bid documents, and contracts relating to Project 3, as amended from time to time, so that the work can be occupied and/or utilized for the purposes for which it is intended;
- ii. The cost to substantially complete Project 3 is less than the maximum amount allocated in the Act for Project 3;
- iii. The City prepares and submits a written plan to DEED to reallocate the Project 3 Unexpended Funds to Project 5;
- iv. DEED approves the reallocation of the Project 3 Unexpended Funds to Project 5 (the “Project 5 Budget”);
- v. Upon submission of documentation by the City to the State to substantiate the City Unfunded Amount for the Project 5 – City Work and approval by the State of such documentation, State reimburses the City from the Project 5 Budget for the City Unfunded Amount;
- vi. There are funds remaining in the Project 5 Budget after payment to the City for the City Unfunded Amount (the “Outstanding Balance”).
- vii. Upon submission of documentation by the City to the State to substantiate the SMDC Unfunded Amount for the Project 5 – SMDC Work and approval by the State of such documentation, State pays the City from the Project 5 Budget for the SMDC Unfunded Amount. Any payment to SMDC will be contingent upon the State: (1) approving the documentation of the Project 5 – SMDC Work and (2) making payment to the City for the approved costs under the SMDC Unfunded Amount.

b. In the event that the Outstanding Balance is less than the SMDC Unfunded Amount, the City shall pay SMDC an amount equal to the Outstanding Balance.

c. In the event that the Outstanding Balance is greater than the SMDC Unfunded Amount, SMDC is only eligible to receive an amount up to the SMDC Unfunded Amount and shall not be eligible to receive any amount over the SMDC Unfunded Amount.

The recitals at the beginning of this Amendment are true and correct and are incorporated into this Amendment by reference. Except as specifically amended pursuant to this Amendment, the Project 5 Development Agreements remain in full force and effect. In the event of a conflict between the provisions of this Amendment and the provisions of the Project 5 Development Agreements, the provisions of this Amendment shall govern.

IN WITNESS WHEREOF, the City and SMDC have caused this Amendment to be duly executed as indicated below.

CITY OF DULUTH

ST. MARY'S DULUTH CLINIC HEALTH SYSTEM DBA ESSENTIA HEALTH EAST, a Minnesota nonprofit corporation

By: _____
Mayor

By: _____

Attest: _____
City Clerk

Its: _____

Dated: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney