

EXHIBIT 1

MAINTENANCE AND OPERATING AGREEMENT FOR MEDICAL DISTRICT PARKING RAMP SKYWALK BRIDGE

THIS MAINTENANCE AND OPERATING AGREEMENT (this “Agreement”), is effective as of October 24, 2019 and entered into by and between ST. MARY’S DULUTH CLINIC HEALTH SYSTEM, on behalf of itself and its subsidiary entities, (“ESSENTIA”) and THE CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (“City”).

WHEREAS, City has constructed a downtown skywalk system providing enclosed pedestrian passageways connecting buildings within the area; and

WHEREAS, City is the owner and operator of a parking ramp structure known as the Medical District Parking Ramp, located at 300-398 E. 1st St., Duluth, Minnesota (the “MDPR”); and

WHEREAS, ESSENTIA is the owner of the property and structure located at 420 E. 1st St., Duluth, Minnesota, (the “ESSENTIA Property”); and

WHEREAS, City and ESSENTIA entered into an Agreement for the Demolition and Reconstruction of the Medical District Parking Ramp Skywalk dated October 24, 2019 and on file as City Contract No. 23791, which Agreement was amended by a First Amendment dated January 17, 2023 (collectively the “MDPR Agreement”); and

WHEREAS, pursuant to the MDPR Agreement the City contracted with ESSENTIA to demolish and reconstruct the then existing Skywalk bridge connecting the MDPR and the ESSENTIA Property on behalf of the City; the newly constructed Skywalk is legally described and depicted on Exhibit A attached hereto (the “Skywalk”); and

WHEREAS, pursuant to the MDPR Agreement, ESSENTIA has agreed to enter into this agreement to operate and maintain the Skywalk at its sole cost; and

WHEREAS, the City, in cooperation with ESSENTIA, secured authorization to fund the above-described project pursuant to the Regional Exchange District legislation, Minnesota Laws

2019, 1st Special Session Chapter 6, Article 10, as amended by Section 1 of Laws of Minnesota 2021, 1st Special Session Chapter 9 (the “Act”).

NOW THEREFORE, in consideration of the mutual covenants and conditions herein set forth, the parties hereby agree as follows:

1. Grant Agreement and State Approval. In order for the City to access and expend funds provided for in the Act, the City has entered into a Master Grant Agreement Construction Grant for the Duluth Regional Exchange District Project (the “Grant Agreement”) with the State of Minnesota (the “State”), which places certain requirements, conditions and limitations on the City. ESSENTIA hereby acknowledges that this Agreement qualifies as a Use Contract as that term is defined in the Grant Agreement and ESSENTIA hereby commits that it will cooperate fully with City in assisting the City to meet all of its obligations under the Grant Agreement, to the extent it can, including but not limited to, obtaining State approval of this Agreement; and, providing all information and documentation required by the State under the Grant Agreement.

The State Department of Employment and Economic Development or the State Office of Management and Budget may require that the terms and conditions of this Agreement be modified. In the event that either of said State entities requires such modification the parties hereto agree that the terms and conditions of this Agreement shall be modified to meet those requirements and the parties hereby agree to negotiate in good faith to modify said terms and conditions to comply with the requirements of those State agencies.

2. ESSENTIA Grant of Perpetual Easement. Upon issuance of a Certificate of Completion pursuant to the MDPR Agreement, ESSENTIA shall grant to City, without cost, a perpetual pedestrian easement having the primary purpose of facilitating pedestrian travel over and across that portion of the ESSENTIA Property occupied by the Skywalk. ESSENTIA shall be responsible to provide a survey by a licensed surveyor of the area actually occupied by the Skywalk with a legal description of said area in recordable form and an easement in recordable form, approved by the City’s City Attorney granting to City an easement over and across the ESSENTIA Property for the Skywalk.

ESSENTIA acknowledges that it has been informed of its rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and

hereby knowingly and specifically waives all rights and benefits thereunder. Said grant of easement shall include the grant to City of the right of control and regulation thereof including control and regulation of concurrent uses, activities, traffic, signs, furnishings and decor within said easement and all powers necessary to carry out the elements of this Agreement.

3. Operation, Repair, Maintenance and Security. ESSENTIA hereby agrees to operate, maintain, repair and secure the Skywalk and ESSENTIA Property which is occupied by the Skywalk at its sole cost, including but not limited to structural maintenance (excluding any major repairs to the roof and curtainwall systems due to normal age-related wear and tear), and the provision of adequate heat, lighting and air conditioning to the Skywalk. ESSENTIA shall operate the Skywalk in accordance with the Minimum Maintenance Standards attached hereto as Exhibit B. ESSENTIA shall provide any security deemed desirable by ESSENTIA.

Nothing contained herein is intended to or shall in any way create any obligations of any kind on the part of the parties hereto to any third parties or confer any benefits or protections of any kind on such third parties not otherwise existing at law or in equity, and further provided that nothing contained herein shall create any requirement to improve or better the Skywalk once the Skywalk is constructed and accepted by City, without a subsequent agreement of ESSENTIA and the City as to the design for it and the funding thereof.

4. Hours. The parties acknowledge that the standard operating hours for those portions of the City's Skywalk System east of Lake Avenue are 7:00 A.M. to 1:00 A.M. seven days a week. The parties also acknowledge that the imposition of those operating hours would be problematic for the operation of the clinic and hospital on the ESSENTIA Property. Therefore, the parties agree to set operating hours for the Skywalk as described herein which take into account the City's interest in uniform operating hours for the Skywalk system east of Lake Avenue, any need for future access to potential developments from the ESSENTIA Property and the reasonable needs of ESSENTIA for the safe and secure operation of the clinic and hospital. ESSENTIA shall provide proposed operating hours to the Skywalk Administrator for approval upon execution of this Agreement, which approval shall not be unreasonably withheld. Any change to operating hours shall additionally be approved by the Skywalk Administrator, which approval shall not be unreasonably withheld. Notwithstanding the

foregoing, ESSENTIA retains the right to lock the entry connecting the Skywalk to the ESSENTIA Property whenever the ESSENTIA Property is not open for operation.

5. Temporary Closure. ESSENTIA acknowledges and agrees that the primary purpose of the Skywalk is for public pedestrian travel and the Skywalk shall remain open to the public during agreed upon operating hours. However, either party may temporarily close access to the Skywalk when necessary: (i) to permit repairs and maintenance; (ii) to permit repairs, replacements, maintenance, alterations or additions to the respective adjacent buildings including relocation of interior passageways; (iii) to comply with governmental orders; (iv) to respond to any emergency threatening pedestrian or property safety; (v) to prevent loitering or other disturbances and occurrences inconsistent or incompatible with the nature, character or use of the Skywalk or adjacent buildings; or, (vi) for purposes of patient safety or other reasonably necessary operational purposes of Grantor's operations connected to the Skywalk. ESSENTIA shall provide notice of any temporary closure lasting longer than eight hours by ESSENTIA to the Skywalk Administrator as soon as reasonably possible.

6. Initial Term and Renewal Term. The initial term of this Agreement shall be for a period of fifteen (15) years, commencing on the date of issuance of the Certificate of Completion pursuant to the MDPR Agreement, unless and until this Agreement is terminated earlier as provided for herein (the "Initial Term"). Prior to the expiration of the Initial Term, ESSENTIA may request renewal of this Agreement for a subsequent period of fifteen (15) years ("Renewal Term"), upon the delivery of written notice of ESSENTIA's desire to renew to the Skywalk Administrator pursuant to Section 17 herein. The Skywalk Administrator shall review the request and may, at their sole option and discretion, grant written approval of the request or allow the Agreement to expire at the end of the Initial Term. If the request is denied, the City may thereafter directly occupy the Skywalk or contract with a third party for the maintenance and operation of the Skywalk.

7. Damage to or Destruction of Skywalk. In the event of damage to or destruction of any portion of the Skywalk, ESSENTIA agrees that, within sixty (60) days of the date thereof, it will present to City complete construction plans for the restoration of said portion of the Skywalk together with a signed contract with a reputable contractor or reputable contractors for the

construction of said restoration and a bond in a form and with a surety approved by City insuring performance of said contracts. Construction plans shall be subject to approval of the Skywalk Administrator, provided that delays occasioned by failure of the Skywalk Administrator to approve plans shall not be included in the computation of time in this Section. Should ESSENTIA fail to perform its obligations under this Section, City may, at its option, restore said portion of the Skywalk and collect from ESSENTIA, by assessment or any other legal means, all of the costs occasioned thereby, including the costs of collection.

8. Connections to Skywalk. ESSENTIA covenants and agrees that it will not make or allow to be made in any way, directly or indirectly, any internal or covered connection between any building on the ESSENTIA Property, other than those existing on the ESSENTIA Property and the proposed new hospital facility, and any other building without the approval of City.

9. Changes in Design Elements. In the event that ESSENTIA wishes to change any elements of design, equipment, decoration lighting, signing or other such elements, ESSENTIA shall provide complete plans for such changes to the Skywalk Administrator for approval, which shall not be unreasonably withheld. If the Skywalk Administrator shall fail to respond to a request for a change to the design elements within five business days from the date the plans were provided, said request shall be deemed to have been approved by the City.

10. Insurance and Indemnification. As part of its obligations under this Agreement, ESSENTIA agrees to provide and retain adequate fire and property insurance to the Skywalk. ESSENTIA further agrees to carry liability insurance in an amount sufficient to indemnify City from any liability occurring within those areas of the pedestrian concourse system wherein ESSENTIA has, through this Agreement, assumed the responsibility for operation, repair, and maintenance. Further, ESSENTIA agrees to indemnify and hold harmless City from all possible liability arising from the operation, repair or maintenance of those areas of the Skywalk under the terms of this Agreement. Provided, however, that the indemnification obligations stated above shall not apply to liability to the extent arising out of the acts or omissions of the City and its officers, agents, servants or employees. ESSENTIA will provide to City annual certificates of insurance to evidence said insurance coverage.

11. Event of Default. Failure by ESSENTIA to (i) substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement; or (ii) to make any representation or warranty under this Agreement that proves to have been incorrect in any material respect when made, shall be deemed an event of default, and if not cured within thirty (30) days of City's written notice thereof, City may terminate this Agreement without further notice.

12. Titles of Sections. Any titles of the Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

13. Disclaimer of Relationships. ESSENTIA acknowledges that nothing contained in this Agreement nor any act by the City or ESSENTIA shall be deemed or construed by ESSENTIA or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the City, ESSENTIA and/or any third party.

14. Conflicts of Interest. No member of the governing body or other official of the City shall participate in any decision relating to the Agreement, which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by ESSENTIA or their successors or on any obligations under the terms of this Agreement.

15. Modifications. This Agreement may be modified solely through written amendments hereto executed by both ESSENTIA and the City.

16. Counterparts. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

17. Notice. A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and delivered to:

In the case of City:

Skywalk Administrator

c/o City Clerk

Room 410, City Hall
Duluth, MN 55802

In the case of ESSENTIA: ESSENTIA Medical Center
 502 East Second Street
 Duluth, MN 55805
 Attn: Vice President of Facilities

The address of either party may be changed upon notice to the other party, and notices shall be sent to the last address designated.

18. Continuing Obligations. All parties to this Agreement further agree that this Agreement, together with all of the terms, covenants and conditions herein contained, shall be deemed to run with the land and to be binding on the respective parties successors and assigns, if any, and that in the event that ESSENTIA shall at any time sell the ESSENTIA Property of both or otherwise assign or transfer its interest therein, any such purchaser, transferor or assignee shall be liable for the performance of the obligations assumed by ESSENTIA hereunder, and that ESSENTIA shall, in addition, continue to be responsible for such obligations.

19. Termination of Agreement. Unless terminated earlier pursuant to specific provision of this Agreement, this Agreement and the obligations of ESSENTIA and the City shall terminate upon the completion thereof; provided, however, that any claims or causes of actions the basis for which arose prior to said time shall survive such termination and nothing herein shall be deemed as intended to limit the exercise by either party of its remedies in connection therewith except any relevant statute of limitations.

20. Applicable Law. The parties hereby agree that this Agreement together with all of its terms, covenants and conditions is made in the State of Minnesota and shall be governed by the laws of the State of Minnesota.

21. Venue. In the event either of the parties shall resort to legal proceedings in order to enforce any of the terms of this Agreement, such proceedings shall be venued in the State of Minnesota District Court for the Sixth Judicial District in Duluth, Minnesota.

22. Whereas Clauses Incorporated. The parties agree that the above "Whereas"

clauses are hereby agreed to be incorporated into and to be a part of this Agreement.

23. Miscellaneous Provisions Relating to Governmental Program. With respect to this Agreement, ESSENTIA and City understand and hereby agree to the following additional terms, which are necessitated by the City's acceptance of state appropriation bond funding pursuant to the Act:

23.1. ESSENTIA is the fee owner of the ESSENTIA Property and shall grant City an easement over the portion of the ESSENTIA Property covered by the Skywalk. City is the fee owner of the MDPR and the Skywalk.

23.2. City has the authority to enter into and execute the Use Contract, also known as this Agreement dated October 24, 2019 between ESSENTIA and City, pursuant to Minnesota Statutes §§ 412.211 and 412.221 and the City of Duluth Home Rule Charter, 1912, As Amended (the "Duluth City Charter").

23.3. The Use Contract is being entered into and executed in order to carry out a Governmental Program. The Governmental Program is the operation of a pedestrian skywalk system including skywalk bridges as defined by the Duluth City Council in Ordinance No. 8439, as amended, codified as Chapter 44A of the Duluth City Code, 1959, As Amended. The City's authority for the Governmental Program is set forth in the Duluth City Charter, Minnesota Statutes §§ 412.211 and 412.221, Subd. 6, and Minnesota Statutes § 441.48.

23.4. ESSENTIA shall provide City with an initial evaluation, and annual budgets thereafter, reflecting the amounts to be paid for the maintenance and operation of the Skywalk and containing a statement regarding ESSENTIA's use of the Skywalk.

23.5. During the Initial Term of this Use Contract and any subsequent Renewal Term, ESSENTIA shall list any vacant or new positions it may have with State of Minnesota Workforce Centers.

23.6. This Use Contract shall immediately terminate upon City's sale of the Skywalk, which sale is subject to approval of the Commissioner of Minnesota Management and Budget, any legislative revision of Minnesota Statutes §§ 412.211 and 412.221, Subd. 6, or Minnesota Statutes § 441.48 that repeals City's authority to operate the skywalk system, or any occurrence which causes termination of the Governmental Program or change in the

Governmental Program that no longer allows City to continue to own or operate the Skywalk for the Governmental Program.

23.7. City has statutory authority to expend monies to operate and maintain the Skywalk pursuant to the Duluth City Charter and Minnesota Statutes §§ 441.48 and 412.221, Subd. 6.

23.8. Any changes, additions or modifications of this Agreement must be agreed to, in writing, by the Commissioner of Minnesota Management and Budget.

[Remainder of this page left intentionally blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

CITY OF DULUTH, a Minnesota
Municipal corporation

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

Mayor

By: _____

Attest:

Its

City Clerk

Approved:

Countersigned:

Assistant City Attorney

City Auditor

EXHIBIT A

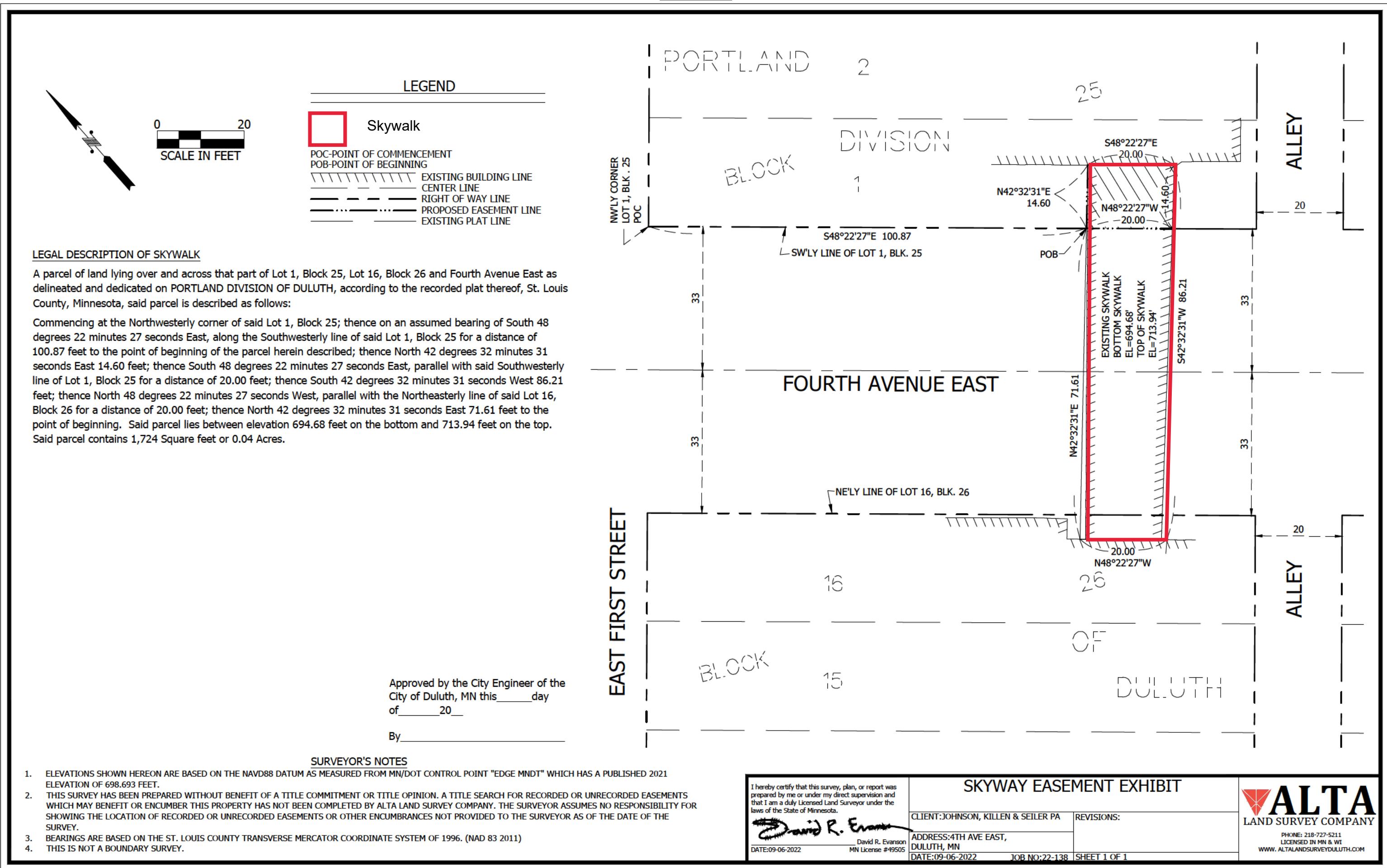


EXHIBIT B

Minimum Maintenance Standards

Skywalk Cleaning and Maintenance Expectations, Standards, and Procedures

Cleaning Standards:

1. Clean areas of responsibility at a minimum of two to three (2-3) times per week
2. Regularly check areas of responsibility for cleanliness by daily visual inspections
3. Create and implement plan for spot cleaning and emergency cleaning (as need arises)
4. Ensure that skywalk is clean and well-maintained at all times

Cleaning Responsibilities (as it is applicable to each section):

1. Dust mop and wet mop/auto scrub Skywalk
2. Spot clean glass door and window in Skywalk
3. Dust ledges, heaters, and railings in Skywalk
4. Clean interiors and exterior of elevators and landings
5. Dust horizontal surfaces – windows, ledges, etc.
6. Spot clean metal door frames and doors
7. Spot clean walls
8. Spot clean entry glass and adjacent glass
9. Empty trash – damp wipe containers, if needed
10. Clean ceiling light diffusers
11. Clean and sanitize restrooms
12. Vacuum all carpet runners
13. Polish all stainless steel in public areas
14. Polish all stainless in elevators
15. Spot and emergency clean as necessary

Maintenance Standards:

1. The Skywalk Administrator and the Greater Downtown Council (GDC) will work together to assess and ensure application maintenance standards are applied in all areas.
2. Building owners will keep Skywalk corridors in good working condition
 - a. Doors, locks, and glass will be functional and well-maintained without obvious or operational defects.

- b. Skywalk tunnels, corridors, and bridges will be functional, meet code and life safety requirements, and be without minor or major operational defects.
- c. Carpet and tile will be in good condition and must be replaced as necessary.
- d. Lights will be functional at all times.
- e. Skywalk HVAC systems will provide adequate climate control—approximately 50-60 degrees year round at a minimum—and corridors and bridges must be comfortable enough to traverse without a jacket. The City may add temporary heat to bridges and corridors deemed too cold should a building owner fail to negotiate a sufficient and reasonable solution to the temperature problem. The cost of supplemental heat will be billed back to those owners responsible for the bridge or corridor in question.
- f. Building and systems connecting to the Skywalk system will be in good working order and will not cause any damage to Skywalk corridors, tunnels, or bridges.

Inspections, Reporting, and Correction Procedures:

1. A specifications sheet may be generated for a Skywalk building owner to confirm area of responsibility and area specific cleaning and maintenance needs on and as-needed basis.
2. The Clean and Safe Team (GDC), in partnership with the City of Duluth, will perform regular visual inspections of the entire Skywalk system as part of its regular duties.
3. When cleaning and maintenance issues are identified, they will be verbally communicated to the building owner by the Clean and Safe Team or the Skywalk Administrator. Options for remedy may be discussed and/or negotiated, provided that solutions to said issues are resolved in a reasonable timeframe to the Skywalk Administrator's satisfaction.
4. Cleaning. If the owner does not correct the identified major/emergency cleaning issue(s) within 24 hours, then the Clean and Safe Team (or any other inspector) will write up the issue and submit it to the City Skywalk Administrator. If owner(s) is cited for not meeting minimum standards for routine cleaning, then the City will notify the deficiency and the owner must respond within four (4) business days with a new cleaning plan and a negotiated cleaning specification sheet for the area identified.
5. If owner fails to respond and correct the deficiency noted in the written citation, then the Skywalk Administrator will take the following measures:

- a. Skywalk Administrator will hire a cleaning company to deal with the identified cleaning issue;
 - b. The cleaning company will bill the City, and the Skywalk Administrator will invoice the building owner for the cleaning service; and
 - c. If, after thirty (30) days, the building owner has not reimbursed the City, a lien will be filed by the Skywalk Administrator (with the County) against property taxes owed for the total amount of the invoice. Any other remedies prescribed under the Duluth City Code will also be applied and/or enforced.
6. **Maintenance.** If the owner does not correct or communicate an effective plan to correct the identified maintenance issue(s) within five (5) days from the verbal notice, then the Clean and Safe Team (or any other inspector) will write up the issue and submit it to the Skywalk Administrator
7. Maintenance issues that are written up and given to the Skywalk Administrator will be dealt with in the following manner:
 - a. Skywalk Administrator will contact the building owner and seek to find a remedy;
 - b. If the building owner is not available and/or willing to remedy the maintenance issue, then the City will hire a contractor to fix the issue and will then send the invoice to the building owner; and
 - c. If, after 30 days, the building owner has not reimbursed the city, a lien will be filed by the Skywalk Administrator (with the county) against property taxes owed for the total amount of the invoice. Any other remedies prescribed under the Duluth City Code will also be applied and/or enforced.

Process to Implement New Procedures:

Specification Sheets

1. Conduct visual walk-through inspections of the Skywalk and create building specification sheets (as needed) for cleaning and maintenance of each part of the Skywalk system, by owner; and
2. Communicate finalized specifications for cleaning and maintenance to each building owner, by mail and in-person with building owner or designated representative.

Cleaning and Maintenance Standards

1. Communicate and discuss new and/or revised standards and procedures with input from the GDC, BOMA, and Skywalk Committee;
2. Get official letters of support from GDC and BOMA;
3. Communicate said support to City Administration; clarify standards and procedures with City Attorney;
4. Communicate standards and procedures to all Skywalk building owners;
5. City council approval of new standards and procedures in accordance with Section 44A-12(b) of the Duluth City Code; and
6. Implement and manage new standards and procedures.