

FIRST AMENDMENT TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN  
ENGINEERING SYSTEMS INC.  
AND  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY

This First Amendment to Agreement, effective as of the \_\_\_\_ day of February, 2022 (“Effective Date”) is by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, (“DEDA”) and ENGINEERING SYSTEMS INC. (“ESi”).

WHEREAS, DEDA and ESi entered into an Agreement on or about April 1, 2021 bearing DEDA Contract No. 21-860-125 (the "Agreement") for a condition assessment and historic review of the Pastoret Terrace Property located at 129-131 East First Street in Duluth MN; and .

WHEREAS, DEDA and ESi wish to extend the term of the Agreement to December 31, 2022, expand the scope of work to include a formal written report of the condition of the Pastoret Terrace Building, to provide professional testimony as needed pertaining to litigation related to the Building, and increase the amount payable to ESi for the additional work.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties agree as follows:

In this First Amendment, deleted terms will be ~~struck out~~ and added terms will be underlined.

1. Section I is amended as follows:

I. Services

Consultant will provide the following-described services related to the Project: Initial review of the file materials; survey and evaluation of the physical condition of the Property to identify areas of concern: and discuss with the DEDA the findings of the research, including assessments of historically significant characteristics and structural integrity, all as described in Exhibit A

attached hereto. In addition, the Consultant will produce a formal written report summarizing findings and opinions of three experts, produce a rebuttal report, attend meetings and conferences as required to prepare trial exhibits and provide direct and rebuttal court testimony as needed, all as more particularly described in Exhibit B attached hereto. The services described in Exhibits A and B are hereinafter referred to as the “Services”. Consultant agrees that it will provide its Services at the written direction of DEDA’s Executive Director or such person as is designated by them from time to time in writing (the “Executive Director”). In the event of a conflict between Exhibit A or B and this Agreement the terms and conditions of this Agreement shall be deemed controlling.

2. Section II is amended as follows:

## II. Fees

It is agreed between the parties that Consultant’s maximum fee for the Project and Service shall not exceed the sum of One Hundred and Eighty-Three Thousand dollars (\$183,000) ~~Twenty-Eight Thousand and 00/100<sup>th</sup> dollars (\$28,000.00)~~ exclusive of all travel and other expenses associated with the Project, payable from Fund 860-860-8640-5441. All fees must be approved by the Executive Director and ~~All~~ invoices for services rendered shall be submitted monthly to the attention of the Executive Director. Payment of expenses is subject to DEDA’s receipt of reasonable substantiation/back-up supporting such expenses.

3. Section III (5) is amended as follows:

## III. 5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 2022 ~~May 31, 2021~~, unless terminated earlier as provided for herein. Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and

finished or unfinished documents and other writings prepared by consultant under this Agreement shall become the property of DEDA and Consultant shall promptly deliver the same to DEDA. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, DEDA shall retain all other remedies available to it, and DEDA shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

4. Except as specifically amended pursuant to this First Amendment, the Agreement remains in full force and effect. In the event of a conflict between the provisions of this First Amendment and the provisions of the Agreement, the provisions of this First Amendment shall govern.

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown below.

**DULUTH ECONOMIC  
DEVELOPMENT AUTHORITY**

By \_\_\_\_\_  
Matt Cartier  
Its President

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

Attest:

\_\_\_\_\_  
Ellie Just  
Its Secretary

Countersigned:

\_\_\_\_\_  
Josh Bailey  
City Auditor

Approved:

\_\_\_\_\_  
Robert E. Asleson  
Assistant City Attorney  
Attorney for DEDA

**ENGINEERING SERVICES INC.**

By \_\_\_\_\_  
Scott Nesvold  
Senior Managing Consultant

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

## Exhibit B

### CONTACT US:

**Mr. Scott Nesvold**

w: [www.engsys.com](http://www.engsys.com)

e: [sanesvold@engsys.com](mailto:sanesvold@engsys.com)

p: (763) 557-9090



**Engineering Systems Inc.**

Technical Expertise. Practical Experience. Actionable Insights.

# INVESTIGATION SERVICES PROPOSAL

### PREPARED FOR:

**Ms. Elizabeth Tabor**

City of Duluth

# PROJECT APPROACH

## BACKGROUND

Ms. Elizabeth Tabor with the City of Duluth requested Engineering Systems Inc. (ESi) to provide a proposal for the preparation of written reports and testimony related to the condition assessment and historic review of the Pastoret Terrace property located at 129-131 East 1<sup>st</sup> Street in Duluth, Minnesota.

## PROJECT UNDERSTANDING

The Pastoret Terrace Building was constructed in 1887 and has characteristics that list it on the National Register of Historic Places. The building has been damaged from a major fire, vacancy and age. The City of Duluth originally contacted ESi to perform a condition assessment to determine a repair concept to restore the building appropriately based on its condition and character defining features. This second phase of work requested by the City of Duluth involves the review of the available documents, the preparation of a report, rebuttal reports and testifying to the opinions and observations developed.

## SCOPE OF SERVICES

From the information above, ESi has prepared this proposal to approximate the anticipated architectural and engineering costs for the condition assessment and historical review of the Pastoret Terrace Building. For this project, ESi has partnered with MacDonald & Mack Architects, an architecture firm specializing in historic preservation and stewardship of historic properties. Specifically, ESi and MacDonald & Mack will perform the following scope and expect the fees to be approximately \$144,686.20:

- Document review of material we currently have and associated discipline-specific research.
- Meetings and conferences.
- One written report summarizing our findings and opinions from each of DLA, SAN, and AWS, or a combined report of some combination of the three of us.
- One rebuttal report from each of DLA, SAN, and AWS, or a combined report of some combination of the three of us.
- Trial preparations, exhibits, and attend a virtual bench trial.

## ADDITIONAL SERVICES

Additionally, the following services may be provided by ESi and MacDonald & Mack Architects at an hourly rate basis:

- Travel time or expenses.
- Site inspection.
- Depositions or testimony in addition to the trial.

## NOTES

- The opinions of cost herein are approximate and preliminary. The services will be performed in accordance with the Terms and Conditions contained in the original retention agreement sent to your attention on March 3, 2021.



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