

Exhibit A

FIRST AMENDMENT TO
AGREEMENT FOR
PROPERTY ACQUISITION FOR AND
DESIGN AND CONSTRUCTION OF
AN UP TO 1400 STALL PARKING RAMP
REGIONAL EXCHANGE DISTRICT PROJECT

THIS FIRST AMENDMENT TO AGREEMENT, effective as of the date of attestation thereto by the City Clerk, 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, effective as of March 30, 2020, City and SMDC entered into the “Agreement for Property Acquisition for and Design and Construction of an up to 1400 Stall Parking Ramp Regional Exchange District Project” (the “Agreement”) for SMDC to become City’s Designee, as defined under the Grant Agreement, and incur Costs for the Project for which SMDC may be reimbursed pursuant to the terms of such Agreement, the Grant Agreement and the Act; and

WHEREAS, Section 3.3 of the Agreement required SMDC to “convey ‘insurable title’ to the Property to City and that it will provide a Title Commitment insuring title to the Property to City on or before December 31, 2020; and

WHEREAS, since the signing of the Agreement, the parties have determined the following:

- i) that circumstances rendered the Title Commitment date of December 31, 2020 set forth in Section 3.3 of the Agreement to not be practicably attainable, including acquisition of additional parcels desirable for the Project, and that the parties have mutually agreed that SMDC will convey “insurable title” to the Property and a Title Commitment insuring title to the Property to City prior to commencing construction of the Project;

- ii) updates are required to the Agreement to account for Minnesota Laws 2019, 1st Special Session Chapter 6, Article 10 being amended by Section 1 of Laws of Minnesota 2021, 1st Special Session Chapter 9;
- iii) modification to Section 2.2 of the Agreement and the addition of a new Section 10.2 are required to account for the revisions requested by MMB for the finalization of the Grant Agreement;
- iv. that circumstances, including impacts of the Covid-19 pandemic and rising costs due to supply chain constraints, have resulted in the Parties hereto identifying alternative funding sources and revisions in scope mutually acceptable to the Designee to resolve the difference between the current budget of the Project and the State Funds; and

WHEREAS, the parties wish to amend the Agreement to make changes to the Agreement as hereinafter set forth while still using their commercially reasonable best efforts to ensure that the parking ramp to be constructed will be ready for service as close to the date when SMDC's new hospital facility is opened; and

WHEREAS, since the signing of the Agreement, the parties have determined that additional property should be acquired for Project as Project is defined in the Agreement, requiring an amendment to Exhibit A to the Agreement; and

WHEREAS, on April 26, 2021, the Duluth City Council approved Resolution No. 21-307 approving a First Amendment to the Agreement which was never executed nor made effective and which the parties hereto desire to execute this revised First Amendment that contains the current understanding of the parties; and

WHEREAS, as of the Effective Date of this Amendment, the parties acknowledge that no Grant Agreement has been executed.

NOW THEREFORE, in consideration of the mutually agreed-upon conditions set forth above and hereinafter set forth, the parties hereto hereby agree as follows:

1. That Section 1.1.1. of the Agreement is hereby amended to read as follows:
1.1.1. Act: shall mean 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 and as the Act may, from time to time be amended as

approved by City. In addition all words and phrases defined in the Act which are used in this Agreement shall have the meanings ascribed to them in the Act unless otherwise specifically stated herein.

2. That Section 1.1.13. is hereby amended to read as follows:
1.1.13. Project: shall mean all activities qualifying as eligible costs as set out in Minnesota Statutes Section 469.53(a), including but not limited to, acquisition of the Property, the demolition of any structures existing on the Property, the performance of all site work necessary for the design and construction of the Ramp, which Project shall include the Skywalk.
3. That Section 1.1.14. of the Agreement is hereby amended by deleting “Exhibit A” and by substituting “Exhibit A-1” therefore.
4. That Section 1.1.15. of the Agreement is hereby amended to read as follows:
1.1.15. Ramp: shall mean a motor vehicle parking ramp facility for the Project having a capacity of no fewer than 200 motor vehicle parking spaces (+/- 5 spaces), but with the goal of maximizing the capacity of the Ramp based on the available State Funds. The Ramp shall also include the Skywalk.
5. That Section 1.1.19 is hereby amended to read as follows:
1.1.19. State Funds: shall mean all funds to be provided by State for the Project pursuant to the Act.
6. That Section 1.1.22. of the Agreement is hereby amended by deleting therefrom the amount of “\$36,400,000” and by substituting therefore “\$37,900,000”
7. That Section 2.2 is hereby deleted.
8. That Section 3.3. of the Agreement is hereby amended to read as follows:
3.3. Quality of Title
SMDC agrees that it will convey “insurable title” to the Property to City and that it will provide a Title Commitment insuring title to the Property to City prior to commencing construction of the Project.

9. That Section 3.6. of the Agreement is hereby amended to read as follows:

3.6. Partial Payment

Upon receipt of a request for reimbursement of Property acquisition costs as provided for in Section 3.5 above with supporting documentation approved by the Chief Financial Officer as provided for in Section 3.5 above, and subject to the provisions of that Section, the City will reimburse SMDC for the Costs documented in said request, subject to the limitations set forth in Section 3.5.

10. That Article IV of the Agreement is hereby amended by adding a new Section 4.4. which reads as follows:

4.4. Initial A & E and CM

As of the date of the signing of this Agreement, SMDC has selected LHB, Inc. to provide A & E services to the Project and has selected McGough Construction to provide CM services to the Project. Subject to the terms and conditions of this Agreement, City hereby agrees to the selection and contracting with LHB, Inc. as A & E and McGough Construction as CM for the Project.

11. That Section 5.1. of the Agreement is hereby amended to read as follows:

5.1 In General

The Plans for the Project as bid, shall conform to the definition of the Project contained herein and to all applicable laws, codes and design requirements applicable to said improvements. Said Plans provided for the construction of the Ramp. The review and approval of the Plans did not constitute the Director's certification or guaranty that the Plans comply with terms and conditions of this Article or otherwise represent the City's opinion of the adequacy of the Plans or the improvements shown therein to meet the requirements of the Project or of the RED. Notwithstanding the foregoing, all said public improvements shall have been approved in writing by the Director prior to the commencement of the construction, thereof.

12. That Section 6.1. of the Agreement is hereby amended by deleting therefrom the reference to "Section 5(b)" and substituting therefore "Section 5(c)" therefore.

13. That Section 6.2. of the Agreement is hereby amended by deleting therefrom the reference to “Section 469.53(b)” and substituting therefore “Section 469.53 (c)” therefore and that the following language shall be added at the end of said Paragraph: “SMDC agrees that it will require the A & E to prepare and provide to City a report stating how any elements of the Project meet best practices of sustainability for new construction projects. For the avoidance of doubt, the parties agree that the Project is not subject to the B3 Guidelines of the State.
14. That Section 6.4. of the Agreement is hereby amended to read as follows:
6.4. Warranty Requirement
SMDC agrees to cause the Contractor to warranty the Project for at least one (1) year after issuance of the Certificate of Completion by the Director as provided for in Article VIII below. Such warranty shall include, but not be limited to, repairs or corrective action due to improper construction.
15. That Article VII of the Agreement is hereby amended by adding a new Section 7.6 which reads as follows:
7.6 Environmental Monitoring.

In addition to the rights of the City to inspect and monitor the construction of the Project in general as provided for in Section 7.4 above, City shall have the right but not the obligation to hire or contract directly with the environmental consultants and testing firms necessary for the Project. In the event that any environmental condition is found to exist on the Property which would require remediation under any law, rule or regulation, City and SMDC agree to meet and confer with the environmental consultant(s) and/or the testing firms, the A & E, the CM, the Contractor and any Federal and State officials having jurisdiction over matters related to the environmental conditions found on the Property to determine the best way to remediate said condition and that the Plans and construction contract shall be modified to include such remediation in the construction of the Project. The costs of such remediation and the costs for the services of the environmental consultants and testing firms are agreed to be Costs; provided, however, that to the extent any Costs incurred pursuant to the provisions of this Section 7.6 occur after all ground-level concrete and back-fill for the Project are in

place, which result in Costs exceeding the amount of State Funds available for the Project, the City agrees to be responsible for such costs pursuant to this Section 7.6 incurred after all ground-level concrete and back-fill for the Project are in place that exceed the amount of State Funds available for the Project.

16. That Article X of the Agreement is hereby amended by adding a new Section 10.2. which reads as follows:

10.2. State as Third-Party Beneficiary

The parties hereby agree that the State of Minnesota, acting through its Commissioner of DEED, shall be deemed to be an intended third-party beneficiary of the provisions of this Article.

17. That Section 11.1. of the Agreement is hereby amended to read as follows:

11.1. Partial Payment Requests

Subject to the receipt by the City of State Funds, made available pursuant to the Act, to reimburse SMDC for Costs incurred by SMDC for the Project and no more frequently than monthly, SMDC may submit a request for reimbursement of such Costs to the Chief Financial Officer be in the form of that attached hereto and made a part hereof as **Exhibit C** approved for payment by the A & E, the CM and the Director and shall be accompanied by such documentation as is necessary to demonstrate compliance with the requirements of the Act, the Grant Agreement and this Agreement and shall also be accompanied by such other documentation as shall be reasonably requested by the Chief Financial Officer.

18. That Section 11.2. of the Agreement is hereby amended to read as follows:

11.2. Final Payment Request

Upon issuance of the Certificate of Completion as provided for in Article VIII above, the conveyance of the Property and the Project to the City as provided for in Article X above and the provision of the Documentation required pursuant Article IX above, SMDC may request that the City reimburse it for all not previously reimbursed Costs incurred by SMDC. Such request shall be in the form of that attached hereto and made a part hereof as **Exhibit C** and shall be accompanied by such documentation as is necessary to demonstrate compliance with the requirements of the Act, the

Grant Agreement and this Agreement and shall also be accompanied by such other documentation as shall be reasonably requested by the Chief Financial Officer.

19. That the first paragraph of Section 11.2.1. is hereby amended to read as follows:

Upon receipt of the Request for Final Reimbursement and supporting documentation, all as approved by the Chief Financial Officer, City hereby agrees that it will reimburse SMDC for Costs incurred by it and any amounts retained pursuant to Sections 3.6. and 11.1.1. above upon the later of the following dates and occurrences: [. . .]

20. That Section 11.3. of the Agreement is hereby amended to read as follows:
11.3. Maximum Amounts

With the exception of certain costs set forth in Section 7.6 occurring after all ground-level concrete and back-fill for the Project are in place, the maximum amounts which the City shall be obligated to pay to SMDC to reimburse it for Costs incurred by it shall be the State Funds.

21. That Section 13.4. is hereby amended to read as follows:

13.4. Indemnity Exceptions.

The indemnification obligations contained in Sections 13.1, 13.2 and 13.3 above shall not apply to any loss, damage, or liability arising out of the following:

13.4.1 solely due to any acts or omissions of the City and its officers, agents, servants or employees;

13.4.2 any environmental conditions existing on any portion of the Property prior to the acquisition of such Property by SMDC, unless owned by SMDC prior to the enactment of the Act on May 30, 2019 for purposes unrelated to the Project; or

13.4.3 any claims, damages, demands, causes of action, losses, costs and expenses occurring after the transfer of title to the Property to City as provided for hereunder

22. That Section 15.3. of the Agreement is hereby amended to read as follows:

15.3. Remedy for Default under Sections 15.1.1. and 15.1.2.

Notwithstanding any other remedy available to City hereunder, in the event of a default by SMDC of its obligations under Section 15.1.1 or 15.1.2 or both, and, as a result of said default, the State requires the City to reimburse the State for any State Funds received by City and disbursed to SMDC pursuant to this Agreement, City shall have the right to terminate this Agreement and to require that SMDC repay to City amounts previously paid to SMDC hereunder exactly equal to the amount that the State requires the City to reimburse the State as set forth above by giving Notice to SMDC as provided for in Section 16.8 below and SMDC shall promptly repay all such sums to City. From and after thirty (30) days after the sending any such notice to SMDC or the date when the City repays the State, whichever is later, any unpaid amounts shall bear interest at the rate of six (6%) percent simple annual interest until fully paid. Provided that if, after SMDC reimburses City for any such costs and the State shall thereafter reimburse City for said costs, City agrees to reimburse SMDC for such costs up to the amount of reimbursement received by City. Provided further, should the State later recapture all or any portion of its reimbursement to City, SMDC shall immediately repay to City the amount so recaptured by the State. The reimbursement obligation so this Section shall not apply to obligations to the extent arising from the acts or omissions of the City.

23. The following new Section 15.6. is hereby added to this Agreement:

“15.6. Previous Acts Deemed Approved or Waived. All actions requiring approval by the Director as set forth herein, including but not limited to Sections 4.1, 4.2, 4.3, 6.5, 6.7, and Article 14 insurance requirements occurring prior to the Effective Date of this Amendment are acknowledged by the City to be approved or waived.

24. That in all other respects, the Agreement, together with all of its terms, covenants and conditions, is hereby affirmed in its entirety.

IN WITNESS WHEREOF, the City and SMDC have caused this Agreement to be duly executed on or as of the date first above written.

CITY OF DULUTH, a Minnesota
Municipal Corporation

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

By: _____
Emily Larson
Its Mayor

By: _____
Its: _____

Attest:

By: _____

Its City Clerk

Date: _____

Approved:

Assistant City Attorney

Countersigned:

City Auditor

EXHIBIT A-1

(Cover Page – Attachment to Follow)