

**FIRST AMENDMENT TO
AGREEMENT FOR
DESIGN AND CONSTRUCTION OF
ROAD AND UTILITY WORK
PHASE II, 2nd STREET – 4TH – 6TH AVENUES EAST
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 May 6, 2021, the parties hereto entered into an agreement bearing City Contract Number 24104 (the "Agreement") pursuant to which SMDC would construct certain road and utility improvements referenced in the Agreement as the "Project"; and

WHEREAS, the passage of time and changing circumstances have caused the parties to desire to amend the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, 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. 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 5.2 of the Agreement is hereby amended by deleting therefrom the reference to "Section 469.53(b)" and substituting therefore "Section 469.53(c)" therefore. The following shall be added as the final sentence of this Section, "For the avoidance of doubt, the parties agree that the Project is not subject to the B3 Guidelines of the State."

3. That Section 5.4 of the Agreement is hereby amended to read as follows:

5.4 Warranty Requirement

SMDC agrees to cause Contractor to warranty the Project for at least one (1) year after issuance of the Certificate of Completion by the Director as provided in Section 7.1 below. Such warranty shall include, but not be limited to, repairs or corrective action due to improper construction or compaction.

4. That Section 11.3 is hereby amended to read as follows:

11.3 Indemnity Exceptions

The indemnification obligations contained in Sections 11.1 and 11.2 above shall not apply to any loss, damage, or liability arising out of the following:

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

11.3.2 any environmental conditions existing on any portion of the Property prior to the Project;

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

5. That Section 12.4 of the Agreement is hereby amended to read as follows:

12.4 Damage to Project.

SMDC agrees to notify the City with reasonable promptness in the case of damage exceeding \$5,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty that occurs prior to completion of the Project. In the event of any such damage to or destruction of any portion of the Project, SMDC will, within a reasonable time and with due diligence repair, reconstruct and restore, or cause the repair, reconstruct or restoration of the Project to substantially the same or an improved condition or value as existed prior to the event causing such damage.

6. That the last sentence of Section 13.2.3 of the Agreement is hereby amended to read as follows:

Provided that if SMDC is required by the State to reimburse City for any Project costs and if, after SMDC reimburses City for any such costs, 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 to the extent not due to default of City.

7. Delete all references to the “Note” in Section 13.2.4
8. The following new Section 13.5 is hereby added to this Agreement:
“13.5 Previous Acts Deemed Approved or Waived. All actions requiring approval by the Director as set forth in Sections 5.5, 5.6, 5.7, and 6.1, occurring prior to the Effective Date of this Amendment are acknowledged by the City to be approved or waived.
9. In all other respects, the Agreement, together with all of its terms, covenants and conditions, is hereby confirmed in its entirety.

[Signature Page to Follow]

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: _____

Ian B. Johnson
Its City Clerk

Date: _____

Approved:

City Attorney

Countersigned:

City Auditor