

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”) to acquire property for and to design and construct a parking ramp in connection with the Regional Exchange District Project; 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, the parties agree that circumstances have rendered that objective to be not practicably attainable and therefore the parties wish to amend the Agreement to substitute a new date which the parties agree will be reasonably attainable while still insuring that the parking ramp to be constructed will be ready for service 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 as defined in the Agreement, requiring and amendment to Exhibit A to the Agreement;

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 1.1.14 of the Agreement is hereby amended by deleting “Exhibit A” and by substituting “Exhibit A-1” therefore
2. That Section 2.2 of the Agreement is hereby amended to read as follows:

The City acknowledges that SMDC is herein committing to accept obligations under the Grant Agreement which Grant Agreement has not yet been received by City and therefore which the nature and scope of which obligations are as yet unknown to SMDC. The parties hereby agree that, in the event that, upon receipt of the Grant Agreement, SMDC shall reasonably determine that its obligations under the Grant Agreement and this Agreement, taken together, are so onerous as to jeopardize the reasonable feasibility of the Project, the parties shall meet and confer in good faith to seek to have the State modify the Grant Agreement to ameliorate the onerous obligations or to modify this Agreement or both as is reasonably necessary to make the Project reasonably feasible for both parties. If the terms and conditions of the Grant Agreement cause the Project to be not reasonably financially feasible within the parameters of the State Funds allocated therefore by the Act and the parties are not able to reach agreement with the State to modify the Grant Agreement or modify this Agreement or both as is reasonably necessary to make the Project reasonably feasible for both parties prior to September 1, 2021, (“Consideration Period”) then SMDC may terminate this Agreement by giving written notice to City within seven (7) days of expiration of the Consideration Period, without default or penalty to SMDC.

3. That Section 3.3 of the Agreement is hereby amended by deleting therefrom the date of “December 31, 2020” and by substituting therefore the date of “July 1, 2021”.
4. That Section 3.6 of the Agreement is hereby amended to read as follows:

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.

5. 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 the 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 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.

6. 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

By: _____
Emily Larson
Its Mayor

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

By: _____
Its: _____

Attest:

By: _____
Chelsea Helmer

Its City Clerk
Date: _____

Approved:

Assistant City Attorney

Countersigned:

City Auditor