



Hermantown City Council Meeting – May 4, 2020

Because attendance at the regular meeting location is not feasible due to the health pandemic, Hermantown’s May 4, 2020 City Council Meeting, as well as Pre-Agenda Meeting, will be conducted remotely.

Both meetings will utilize the platform “Zoom” - which allows the public to view and/or hear the meeting from their phone or computer.

The 6:30 p.m. City Council Meeting will be available at:

<https://us02web.zoom.us/j/86055108946?pwd=bGRiT283Sm9LTzZtcVQ3R0g4OEFHQOT09>

and/or by calling the number (312) 626-6799 and utilizing the meeting ID number of 860-5510-8946 and the password 024440.

Public comment may be possible but difficult, during the 6:30 p.m. meeting, but any public comments, questions, or concerns can be e-mailed to Community Engagement Manager, Joe Wicklund, at jwicklund@hermantownmn.com up to 3:30 p.m. the day of the meeting with the e-mail title “May 4, 2020 Meeting.” It is important to note that all comments regarding the May 4, 2020 meeting are public data.

A few important tips regarding the Zoom platform:

- If your computer does not support audio, you can still watch the meeting on your computer and call in on your phone to hear the meeting
- It is a challenging situation for all of us, so grace and understanding are appreciated

The 4:30 p.m. Pre-Agenda Meeting will be available at:

<https://us02web.zoom.us/j/85317243380?pwd=TIJWb250eIJlbTc5VnBvM2hVS DRwQT09>

and/or by calling the number (312) 626-6799 and utilizing the meeting ID number 853-1724-3380 and the password 574570. Public comment is not a factor in the pre-agenda meeting, even in the traditional meeting setting, but the public is invited to listen to this meeting.



AGENDA

Pre-Agenda Meeting Monday, May 4, 2020 at 4:30 p.m. Large Conference Room City Hall - Hermantown Governmental Services Building

Pre-agenda: The Pre-agenda meeting is a work session between the City Council and City staff to review the upcoming City Council meeting and future meetings. The agenda is the same document as the upcoming City Council meeting, but does not follow the same format as the City Council meeting. It is a time for the City Council and City staff to have discussions about the agenda items, and asking and answering questions. Traditionally it is not a time for public comment on the agenda items, as the public can listen to the conversation and ask questions or provide input at the upcoming City Council meeting.

City Council Meeting May 4, 2020 at 6:30 p.m. Council Chambers City Hall - Hermantown Governmental Services Building

Invitation to participate:

The Hermantown City Council welcomes your thoughts, input and opinions to this meeting. The agenda for this meeting contains a brief description of each item to be considered, and the City Council encourages your participation. If you wish to speak on an item contained in the agenda, you will be allowed to address the Council when a motion is on the floor. If you wish to speak on a matter that does not appear on the agenda, you may do so during the public comment period regularly scheduled and set for the beginning of the meeting.

When addressing the City Council, please state your name and address for the record. Please address the City Council as a whole through the Mayor. Comments to individual Council Members or staff are not permitted. Speakers will be limited to three (3) minutes.

Order of discussion

- 1. Reading of the resolution title by Mayor**
- 2. Motion/Second**
- 3. Staff Explanation**
- 4. Initial Discussion by City Council**
- 5. Mayor invites public to speak to the motion (3 minute rule)**
- 6. Follow up staff explanation and/or discussion by City Council**
- 7. Call of the vote**

**CITY OF HERMANTOWN
AGENDA**

**Pre-Agenda Meeting Monday, May 4, 2020 at 4:30 p.m.
Large Conference Room
Hermantown Governmental Services Building**

**City Council Meeting May 4, 2020 at 6:30 p.m.
Council Chambers
Hermantown Governmental Services Building**

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **ANNOUNCEMENTS** *(Council Members may make announcements as needed.)*
5. **PUBLIC HEARING** – *(Only when necessary. The rule adopted three minutes per person if necessary. Any action required after the public hearing will be taken immediately following the closing of the public hearing.)*
6. **COMMUNICATIONS**
 - A. **20-70** Steve Overom, Overom Law
TO: Roger Behrens, MN Management & Budget
RE: Essentia Wellness Center - Hermantown
 - B. **20-78** Lance Johnson, 4060 Ugstad Rd.
TO: Eric Johnson, Community Development Director
RE: Clear Vision Builders, 4063 Ugstad Rd.
 - C. **20-79** Becky Urbanski, 4560 Norway Pines Place
TO: Eric Johnson, Community Development Director
RE: ATK Enterprises, 45xx Norway Pines Place
 - D. **20-80** Jim Petruga, 4054 Ugstad Rd.
TO: Eric Johnson, Community Development Director
RE: Clear Vision Builders, 4063 Ugstad Rd.
 - E. **20-81** Eric Johnson, Community Development Director
TO: Dave Mesojedec, 3721 Lavaque Rd.
RE: Zoning Violation
 - F. **20-82** John Mulder, City Administrator
TO: Andy Hubley, Arrowhead Regional Development Commission
RE: Termination of Contract

G. **20-83** John Mulder, City Administrator
TO: Mayor & City Council
RE: Liquor License Update

H. **20-84** John Mulder, City Administrator
TO: Mayor & City Council
RE: Delinquent Utility Accounts

7. **PRESENTATIONS** (*Department Heads may give reports if necessary.*)

8. **PUBLIC DISCUSSION** (*This is the time for individuals to address the Council about any item not on the agenda. The time limit is three minutes per person.*)

9. **CONSENT AGENDA** (*All items on the Consent Agenda are items which are considered routine by the City Council and will be approved by one motion via voice vote. There will be no discussion of these items unless a Council Member or citizen so requests, in which event the item will be removed from the Consent Agenda and considered at the end of the Consent Agenda.*)

A. **Minutes** - Approval or correction of [April 20, 2020 City Council Continuation Minutes](#)

B. **Accounts Payable** – Approve general city warrants from April 16, 2020 through April 30, 2020 in the amount of \$819,976.15

(motion, roll call)

10. **MOTIONS**

11. **ORDINANCES**

12. **RESOLUTIONS** (*Roll call will be taken only on items required by law and items requiring 4/5's votes, all others can be done by voice vote.*)

A. **2020-54** Resolution Approving Pay Request Number 22 & Number 23 For The Essentia Wellness Center To McGough Construction Co. LLC In The Amount Of \$39,700

(motion, roll call)

B. **2020-55** Resolution Approving An Amendment To The City Handbook Regarding Information Security Policy

(motion, roll call)

C. **2020-56** Resolution Amending And Restating Resolution 2020-52 Resolution Providing For The Issuance, Sale And Delivery Of \$3,915,000 General Obligation Sewage Disposal System Bonds, Series 2020B, And Awarding The Sale Thereof

(motion, roll call)

D. **2020-57** Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver A Use And Operating Agreement Between The City Of Hermantown And Duluth Area Family Y.M.C.A. ("YMCA") For The Essentia Wellness Center

(motion, roll call)

- E. 2020-58** Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver A Memorandum Of Understanding Between The City Of Hermantown And Independent School District #700 For The Essentia Wellness Center
- (motion, roll call)
- F. 2020-59** Resolution Approving Cooperative Agreement With St. Louis County To Perform Improvements On Airbase Road (CSAH 17) CP 0017-369575/SAP 069-617-005, Swan Lake Road CP 0000-533596/SAP 202-111-001 And Sundby Road CP 0000-533597/SAP 202-112-001 Within The City Of Hermantown Corporate Limits
- (motion, roll call)
- G. 2020-60** Resolution Directing Preparation Of Preliminary Engineering Feasibility Report For 2021 Road Improvement Plan (Sundby Road & Swan Lake Road)
- (motion, roll call)
- H. 2020-61** Resolution Approving Pay Request Number 2 For Sewer Improvement District No. 448 To Utility Systems Of America, Inc. In The Amount Of \$30,045.81
- (motion, roll call)
- I. 2020-62** Resolution Approving Change Order No. 2 For Okerstrom Road Culverts Improvement Project No. 533 To Dirt Inc.
- (motion, roll call)
- J. 2020-63** Resolution Approving Preliminary And Final Planned Unit Development For ATK Storage
- (motion, roll call)
- K. 2020-64** Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver An Amended And Restated Naming Rights Agreement Between SMDC D/B/A Essentia Health Wellness Center And The City of Hermantown
- (motion, roll call)
- L. 2020-65** Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver An Amended And Restated Lease Agreement Between The City Of Hermantown And Essentia Health
- (motion, roll call)
- M. 2020-66** Resolution Approving General Obligation Bond Proceeds Grant Agreement-End Grant For The Essentia Wellness Center Between The City Of Hermantown And Minnesota Department Of Employment And Economic Development
- (motion, roll call)
- 13. RECESS**

DATE: 2020

TO: City Council Members

FROM: John Mulder, City Administrator

RE: Correspondence

In your packet is a correspondence summary log. This briefly summarizes and assigns a log number for written correspondence received at City Hall. You are provided with the summary so that you may request a full copy of any correspondence article of interest to you. Bonnie & I have copied only the correspondence that we believe to be of special interest.

JM

4/17/2020	20-70	Steve Overom, Overom Law	Roger Behrens	Essential Wellness Center - Hermantown	4/16/2020
4/17/2020	20-71	Bonnie Engseth, City Clerk	Scott Tanski, 4194 Solway Rd.	Appeal of Valuation	4/17/2020
4/17/2020	20-72	Eric Johnson, Community Development Director	Planning & Zoning Commission	PUD - 4063 Ugstad Rd.	4/17/2020
4/20/2020	20-73	Marianne Bohren, WLSSD	Minnesota Pollution Control Agency	Discharge Monitoring Report	4/20/2020
4/22/2020	20-74	Eric Johnson, Community Development Director	Planning & Zoning Commission	PUD, Clear Vision Builders, 4063 Ugstad Rd.	4/21/2020
4/22/2020	20-75	Eric Johnson, Community Development Director	Planning & Zoning Commission	SUP, Clear Vision Builders, 4063 Ugstad Rd.	4/21/2020
4/22/2020	20-76	Eric Johnson, Community Development Director	Planning & Zoning Commission	Variance, Clear Vision Builders, 4063 Ugstad Rd.	4/21/2020
4/22/2020	20-77	Josh Bergstad, City Planer	Planning & Zoning Commission	ATK Enterprises, 45xx Norway Pines	4/21/2020
4/22/2020	20-78	Lance Johnson, 4060 Ugstad Rd.	Eric Johnson, Community Development Director	Clear Vision Builders, 4063 Ugstad Rd.	4/21/2020
4/22/2020	20-79	Becky Urbanski, 4560 Norway Pines Pl.	Eric Johnson, Community Development Director	ATK Enterprises, 45xx Norway Pines	4/20/2020

4/22/2020	20-80	Jim Petruga, 4054 Ugstad Rd.	Eric Johnson, Community Development Director	Clear Vision Builders, 4063 Ugstad Rd.	4/17/2020
4/24/2020	20-81	Eric Johnson, Community Development Director	David Mesojedec, 3721 Lavaque Rd.	Zoning Violation	4/24/2020
4/28/2020	20-82	John Mulder, City Administrator	Andy Hubley, Arrowhead, Regional Dev. Commission	Termination of Contract Effective 6/1/2020	4/27/2020
4/28/2020	20-83	John Mulder, City Administrator	Mayor and City Council	Liquor License Update	4/28/2020
4/28/2020	20-84	John Mulder, City Administrator	Mayor and City Council	Deliquent Utility Accounts	4/28/2020
4/29/2020	20-85	Bonnie Engseth, City Clerk	Jerald & Diana Mahnke, 4855 Woodridge Dr.	Appeal of Valuation	4/21/2020
4/29/2020	20-86	MN Dept, of Natual Resources	City of Hermantown	Public Waters Work Permit - Okerstrom Rd. - Keene Creek Culvert	4/28/2020

Overom Law

Attorneys at Law

Attorneys
Steven C. Overom †*
Ryenne E. Overom

Paralegal
Aurora D. Kothe

Writer's Contact Information:
Direct: 218-625-8460
Mobile: 218-391-0798
soverom@overomlaw.com

* ALSO ADMITTED IN WISCONSIN
† BOARD CERTIFIED REAL PROPERTY LAW SPECIALIST

April 16, 2020

Transmitted Via Email
Roger.Behrens@state.mn.us

Roger Behrens
Minnesota Management and Budget
658 Cedar Street
Saint Paul, MN 55155

RE: Essentia Wellness Center - Hermantown
Our File No.: 91-308(391)a

Dear Roger:

I hope this letter finds you safe and well in this very difficult time.

This is an update related to the \$8mm grant to the City for the Essentia Wellness Center:

1. **Grant Agreement.** John Mulder has communicated with Ryan Bloomberg of DEED regarding the Grant Agreement. Ryan is reviewing comments we made to the Grant Agreement to reflect that the project is complete. Ryan indicated that he would need a letter or an email from MMB that said that MMB's review of the Use Agreements was complete and that DEED could proceed with the distribution of the grant. We advised Ryan of the status of the review of the various Use Agreements and suggested that he touch base with you regarding the status. He said that he would do so..
2. **YMCA Agreement.** We believe that we have completed the Agreement with the YMCA. The enclosed Agreement shows the one edit that the YMCA requested be made since the last version to you was reviewed. This is highlighted in yellow on the enclosed document. We are also enclosing a Use Checklist regarding this Agreement. There were no changes to the Use Checklist as a result of the change that the YMCA requested. We would really like to get this Agreement done and signed by the YMCA. Before we have them sign it, we would like to you

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11 E SUPERIOR ST • SUITE 543
DULUTH, MN 55802

MINNEAPOLIS OFFICE
2725 EVEREST LANE N
MINNEAPOLIS, MN 55447

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50005 POINT O' PINES RD
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Page 2 of 2

to confirm that the enclosed Agreement is acceptable to the MMB. Would you be willing to take a quick look at this and let me know if it is okay for us to complete this Agreement?

3. **Essentia Lease and Naming Rights Agreement.** The revised versions of these that contained your final edits were provided to Essentia on February 10, 2020. Clean copies of the documents you provided to us are attached. We met with Essentia representatives on March 11, 2020. Since then, the COVID-19 issues have increased and the Essentia expansion in Duluth, Minnesota is well underway. This has caused the Essentia legal team to be unavailable to address the revised Agreements. We are continuing to try to get these addressed by Essentia. In the meantime, we would request that MMB advise DEED that the attached document Naming Nights Agreement and Lease are acceptable to MMB?
4. **School Agreement.** The School Agreement is in a similar state as is the Essentia Agreements. The last version that you reviewed and approved is attached. The School Superintendent has resigned effective as of June 30, 2020 and is a lame duck. We believe that there are no issues with the School Agreement. We just need to get them to focus on the matter during the COVID-19 pandemic and with a lame duck administrator. We would request that you advise MMB that the agreement with the School that is attached is acceptable to MMB?

Please review the YMCA Use Agreement and Use Checklist and the items in this letter and let me know your thoughts.

Very truly yours,



Steven C. Overom
SCO/adk

Enclosure

cc: John Mulder
Mayor and City Council
Jennifer Hassemer
Senator Tom Bakk
Representative Mary Murphy

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CH-Eric Johnson

From: Lance Johnson <aljohnson1998@hotmail.com>
Sent: Tuesday, April 21, 2020 3:23 PM
To: CH-Eric Johnson
Cc: Lance Johnson
Subject: Concerns about PUD and Setback Variance
Attachments: lance.docx

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Eric, as a concerned homeowner who will be directly affected by this PUD. I would like my attached document brought up at tonight's meeting. I am at 4060 Ugstad Road. I am one of the Essential employees to the state and might not be able to attend tonight's virtual meeting. Thank you, Yours Truly . Lance Johnson

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RE: Preliminary and final Planned Unit Development (PUD) - City of Hermantown MN

1. Public hearing notice – dated 04/09/2020
2. Hermantown Planning Commission; Meeting Date 04/21/2020, Agenda Items 5A, 5B, 5C

Location: PUD and Setback Variance – 4063 Ugstad Road, Hermantown MN

Overall, one duplex (2 units) be allowed without a variance.

Concerns:

The benefit of 4 residential rental units on less than an acre of land, completely surrounded by wetland, does not provide a benefit to the other residence areas near this parcel. Units will be closely spaced with nominal useable yard/space outside the structure(s) in contrast to other residences in the area.

The area is comprised of single family detached homes on acreage lots. Introducing 2 duplexes (4 units) in extreme proximity to each other detracts from the makeup of the surrounding residences and neighborhood.

Two duplexes (4 units) on less than an acre of land is more than the density determination (see below) as allowed by the City of Hermantown in initial planning stages.

With an unknown anticipated cost of rent, compared to mortgage payments of current single family homes in the area, it is unknown if these units will in fact be more affordable than surrounding residences (mortgages) and no data was provided to substantiate “more affordable” housing statement(s).

RE: Agenda Item 5A (AMI Site Plan, job number – 181094, dated 03/14/18

Two townhomes (4 unit):

1. Current parcel is 5 Acres (217,800 SF); determined wetland area is: 177,250 SF or about 81.4 percent of parcel; proposed structures have unit impact area of: 4150 and 4830 SF ... bringing total wetland and impact area to approximately 85.4 percent or 85.5 percent of this parcel ...

*** 4150 plus 4930 = 8930 SF ... legend then indicates total impact are of: 8780 SF ... please clarify total impact area as there appears to be 150 SF difference ...

2. Since this is a PUD use of a zoned R-3 property, minimum lot size is ½ acre with a site density of 2 units/acre. If we take 5 acres total (217,800 SF); remove the identified wetland (177,250 SF) leaves us with 40,550 SF. An acre of land is 43,560 SF resulting in: .93 percent of one acre which is less than site density requirements to begin with ... please clarify

If the drawing is correct there appears to be 20 feet between structures; 20 feet of side yard to wetlands, and 20 feet of rear of structure to wetlands. Will wetland border areas be marked with permanent monuments?

Other Concerns

Is compliance with section 404 of the Clean Water Act (33 USC 1344) required or been determined? Is a US Army Corps of Engineers permit required? The concern is the unmapped tributary on this parcel and whether or not it provides for a continuous surface connection to a perennial tributary (Midway River) which has been determined and is a tributary to the St Louis River and Duluth Harbor which are traditionally navigable waters.

Is any compensatory mitigation required and if so have those requirements been met? What is the amount and restrictions of filling, grading, excavating, and ditching allowed in the proposed variance area per section 404 of the Clean Water Act as applicable?

Will construction in the variance area affect, destroy, or modify any habitat for species, flora, or fauna that could possibly be listed as endangered or threatened. If yes or no, where would/is this determination recorded/filed.

What procedures are in place to prevent future/additional discharges of dredged and fill material in the wetland areas outside of the proposed variance area.

Has the Minnesota Pollution Control Authority provided for water quality certification concerns prior to, during, and post construction on this parcel in the proposed variance area as noted in MIN R 7050 and other applicable MPCA statutes and rules as well as State Section 401 concerning water quality certification.

CH-Eric Johnson

From: Becky Urbanski <Becky.Urbanski@bhshealth.org>
Sent: Monday, April 20, 2020 3:48 PM
To: CH-Eric Johnson
Cc: Trent Pepper
Subject: Comments regarding April 21, 2020 planning and zoning commission meeting
Attachments: 20200420151736551.pdf

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Eric -

Thanks for taking the time to talk with me last week.

Attached are comments regarding the ATK Enterprises development at 45xx Norway Pines Place for the April 21, 2020 Planning and Zoning Commission meeting.

Please let me know if you have any questions or need further information.

Thank you.

Becky Urbanski

Becky Urbanski, Ed.D.
Senior Vice President, Mission Integration and Marketing Benedictine
4560 Norway Pines Place
Hermantown, Minnesota 55811
218-786-2370
Becky.urbanski@bhshealth.org
www.bhshealth.org

This message was secured by Zix(R).



April 20, 2020

Eric Johnson
Zoning and Planning Department
City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811

Re: ATK Enterprises, Inc. planned development at 45xx Norway Pines Place

Dear Mr. Johnson, Members of the Planning and Zoning Commission and City Council:

Benedictine is the current tenant in the building located at 4560 Norway Pines Place. We are a support center office for our organization which provides long-term care services and senior housing options for aging adults. We are a Ministry of the Benedictine Sisters of St. Scholastica Monastery in Duluth.

While we have no objections to the pending construction by ATK Enterprises, we would like to make the following requests to alleviate unnecessary traffic and turnaround on Norway Pines Place:

- The driveway from Norway Pines Place to the mini-storage warehouse facilities be lit and have visible signage with direction to the storage facility.
- Signs are posted regarding parking on Norway Pines Place.
- Construction vehicles are limited to short-term parking on Norway Pines Place.

Finally, we request that attention be given during the construction to be mindful of the disruption to nature and the beauty of the surroundings. One of the reasons we moved from downtown Duluth was the peaceful nature of the location. We are grateful for the trees, rock formations and other natural elements that make our office so special to those of us who work in the building.

Thank you and please contact me if you have questions or need further information.

Sincerely,

Becky Urbanski, Ed.D.

Senior Vice President, Mission Integration and Marketing

C: Gregg Billman

CH-Eric Johnson

From: Jim Petruga <jpetruga@gmail.com>
Sent: Friday, April 17, 2020 10:12 AM
To: CH-Eric Johnson
Subject: Re: PUD and Setback Variance - 4063 Ugstad Rd
Attachments: City of Hermantown - Response 4-16-2020.pdf

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Eric,

Thank you for the quick response. Attached is a written response stating my concerns.

- The SUP does not meet the requirement stated in item 4
- The penalty for a violation does little to discourage the developer from violating the terms of the agreement. A \$750 administrative find with no requirement to correct the violation is a weak incentive to get someone to adhere to the terms of the agreement
- I personally like Doug but wish he would decide to build a single family detached home (or two) that are more in-line with the neighborhood and preserves the existing surface drainage

Again, I appreciate your taking the time to consider this feedback.

Sincerely,
 Jim Petruga

On Fri, Apr 17, 2020 at 8:32 AM CH-Eric Johnson <eric.johnson@hermantownmn.com> wrote:

Hello Jim, thank you for the email. I have forwarded this to our Communications and Community Engagement manager who will be coordinating the meeting on Tuesday. In addition, copies of this email will be sent to the Planning Commission and City Council members.

To clarify, the proposal is for 2 townhomes (4 total units) on 5 acres, not 1. This proposal is a cluster development which utilizes a smaller building footprint and preserves the majority of a site. This property, as is yours, is zoned R-3, Residential, with a Planned Unit Development being an allowed use in a R-3 zoning district. Minimum lot size for a R-3 property is ½ acre with a site density of 2 units/acre. The proposed project is for 4 units on 5 acres which is a density of 0.8 units/acre.

This project requires both a Planning Commission and City Council meeting which both include opportunities for the public to provide input. The Planning Commission meeting is Tuesday 4/21 at 7:00 and assuming the project is recommended to City Council it would be at the Monday 5/4 meeting at 6:30.

Please provide written responses to my attention here at City Hall and I will forward these accordingly.

Thank you

Eric

Eric Johnson

Community Development Director

City of Hermantown

Working together to serve and build our community.

Hermantownmn.com - 218.729.3618

[Eric.johnson@hermantownmn.com](mailto:eric.johnson@hermantownmn.com)

From: Jim Petruga <jpetruga@gmail.com>

Sent: Friday, April 17, 2020 7:51 AM

To: CH-Eric Johnson <eric.johnson@hermantownmn.com>

Subject: PUD and Setback Variance - 4063 Ugstad Rd

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Eric,

Good morning. I am writing in regard to the proposed PUD and setback variance letter I received earlier this week.

I will be calling in for the meeting and submitting a formal written response opposing the proposed PUD and variance. My neighbor to the north is also opposed however I do not know if he will be available to attend as he has been working extended shifts. I am disappointed that a development that involves 4 units being placed on less than one acre of land surrounded by a wetland is being considered. This type of development does not reflect the type of residential construction that is in the area. The area around the proposed PUD is comprised of detached single family homes on acreage lots. The proposed PUD is for something quite different.

The community restriction related to COVID-19 make it difficult for neighbors to discuss the proposal as we are asked to not visit one-another's homes. Under normal circumstances neighbors would visit with one-another and consider the advantages and disadvantages of this type of proposal. Is some tool available or can some accommodation be considered that will allow for full and open discussion in addition to the electronic meeting that is proposed? Would it make sense to require a second meeting due to the restrictions on how people can interact? One more thing, the letter states that written responses will be considered. Please confirm how you would like to receive the responses.

I sincerely appreciate your consideration.

Jim Petruga

jpetruga@gmail.com

4054 Ugstad Road

cell 715-817-5508

PUD and Setback Variance - 4063 Ugstad Road

The PUD and setback variance does not provide a public benefit to the area surrounding 4063 Ugstad Road.

1. Placing 4 homes on less than 1 acre of land that is surrounded by wetland is not a benefit to the neighborhood that surrounds 4063 Ugstad Road. Based on statement that over 4 acres of wetland will be preserved on a 5-acre lot.
 - a. There will be minimal usable yard.
 - b. The development is markedly different than the surrounding neighborhood, the proposed PUD has duplexes in close proximity to one-another in a neighborhood of single-family detached homes on acreage lots.
 - c. The development will not consist of owner-occupied housing.
2. How does the anticipated cost of rent compare to the mortgage payments of new homes recently added to Ugstad Road? Will these duplexes more affordable than some of the new, modest homes that have been recently built on Ugstad? This is in reference to the development providing housing that is more affordable than the surrounding area.
3. What assurance is there that future owners will not add fill to increase the amount of usable yard? There is very little provision for yard space in the existing site plan.

Special Use Permit – states that the permit will not be approved unless positive findings are made with respect to each and every one of the following criteria -

Item 1 states that the proposed density of 1.25 units per acre is less than the surrounding area. Please confirm, is this meant to read 1.25 acres per unit? The density of the PUD will be higher than the surrounding area (not less as stated in the application). Building single family homes with very little usable yard is not a desirable outcome for the people who reside in the new homes. The proposed PUD is significantly different than the homes in the immediate surrounding area.

Item 4, the PUD does not reflect the character of the surrounding neighborhood and ***will result in a random pattern of development with little contiguity*** to the surrounding neighborhood. The PUD places 4 homes on less than one acre of space, surrounded by a wetland, with small usable yards. The duplexes are markedly different than the single-family detached homes in the surrounding area. There is only 18' of space between the home and the designated buffer area. The duplex owner may be challenged to manage a significant change in elevation without encroaching on the buffer area. Building a small development of duplexes will likely create a negative impact to home values in the surrounding area. The addition higher density housing in a neighborhood of single-family detached homes does not benefit anyone with the exception of the developer. The neighbors will see property values go down and the people who live in the rental housing will live in homes with virtually no usable yard space.

Setback Variance

Reducing the required setback from 150' to 68' increases the likelihood that the tributary could be compromised.

Findings of Fact and Recommendations

Item 7 states that the applicant shall pay an administrative fine of \$750 fine per violation of any condition of the approval. There is no language that states violations would need to be corrected. It is possible that the applicant could alter or block the flow of the creek, pay a \$750 fine and not be required to correct the problem. Or, the applicant could encroach on the 50' buffer, pay a \$750 fine and not be required to correct the encroachment.



April 24, 2020

Mr. David Mesojedec
3721 Lavaque Road
Hermantown, MN 55811

Re: 3721 Lavaque Road – Zoning Violation

Dear Mr. Mesojedec,

I am writing as a follow up to your letter to the Hermantown Board of Appeal and Equalization on April 15, 2020 regarding your property tax classification at 3721 Lavaque Road. Staff reviewed the City Zoning map and verified that your property is zoned R-3, Residential. However, from review of the property file, internet search and visual inspection it is apparent that you are conducting a business out of a residentially zoned property, which is in violation of the City ordinance.

From staff review of the property file, this lot was originally zoned C, Commercial. In 2010 the previous property owner applied for a lot split and a rezoning of the original 22 acre property. This application was approved with the result being a 5.82 acre lot (3721 Lavaque Road) and a 16.23 acre lot (3747 Lavaque Road) which were both rezoned from C, Commercial to R-3, Residential.

In addition to the lot split and rezoning, staff also discovered a letter from the City to you dated November 29, 2011 regarding Operation of a Business in a Residential Zone. This letter notified you of Sections 1810.04.3, 1810.04.4 and 1810.05 of the City's Home Occupation zoning section and set forth the rules of such, all of which your business operation is in violation of.

Given this site history and its current operation, the City is recommending one of two courses; The rezoning of your property back to a C, Commercial zoning or the relocation of your business to an appropriately zoned district.

Please contact me at eric.johnson@hermantownmn.com or 218-729-3618 in order to discuss this letter and routes for you to move forward.

Regards,



Eric Johnson
Community Development Director

Working together to serve and build our community.

5105 Maple Grove Road, Hermantown, MN 55811
218-729-3600 hermantownmn.com



Enclosures: Hermantown Zoning Map
Property Aerial
Section 1810 – Home Occupation
November 29, 2011 Letter
Northstar Insulating Facebook Page
Zoning Map Amendment Application

Working together to serve and build our community.

5105 Maple Grove Road, Hermantown, MN 55811
218-729-3600 hermantownmn.com

3721 Lavaque Road - Zoning Map



4/22/2020, 4:26:24 PM

HT_Zoning_02062017 HermantownBoundary

C
 R3

Hermantown_Roads

County State-Aid Highway

Tax Parcels - Community

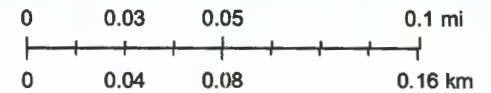
Pictometry2019SID

Red: Red

Green: Green

Blue: Blue

1:4,514



St. Louis County, MN - Enterprise GIS, Sources: Esri, HERE, Garmin,



County Land Explorer

St. Louis County, Minnesota



3721 Lavaque Road

City of hermantown



County Land Explorer
St. Louis County www.stlouiscountymn.gov/explorer Minnesota

Disclaimer

This is a compilation of records as they appear in the Saint Louis County Offices affecting the area shown. This drawing is to be used only for reference purposes and the County is not responsible for any inaccuracies herein

Map created using County Land Explorer
www.stlouiscountymn.gov/explorer

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■ Section 1810 – Home Occupation

1810.01 Home Occupation in Residential Zone District. A home occupation may be conducted in a residential dwelling within a residential zone district subject to the following conditions.

1810.02 Exterior Parking and Traffic Flow.

1810.02.1. The home occupation shall not increase vehicular traffic flow and parking by more than two additional vehicles at any time. Driveways serving a home occupation must be surfaces with concrete, bituminous, brick pavers, or other dustless and durable surface properly graded for proper drainage.

1810.02.2. No on-street parking related to the home occupation is permitted unless the road where such parking will occur has adequate width for parking.

1810.03 Employees. One non-resident individual may be employed by the home occupation on the property where the home occupation is located except: Only residents of the dwelling unit may engage in or conduct massage as defined by Hermantown City Code. This does not prohibit networks or employees based at other locations.

1810.04 Accessory Use of the Property.

1810.04.1. The home occupation shall be conducted entirely indoors within the principal dwelling or attached garage, subject to the provisions of 1810.04.3., and shall be clearly incidental and subordinate to its use for residential purposes by its occupants. The home occupation may also be conducted in a detached garage, subject to the provisions of 1810.04.3., but only if the detached garage was in existence on March 1994.

1810.04.2. Except as provided by 1810.04.1. and 1810.04.3. of this section, no accessory building, attached or detached garage may be used for the operation of or display of goods relating to a home occupation.

1810.04.3. No more than 200 square feet of an attached or detached garage may be utilized for the home occupation.

1810.04.4. Outside storage of equipment, machinery or materials used in the home occupation is prohibited.

1810.05 Appearance.

1810.05.1. Except for allowed customer, employee and delivery vehicles, there shall be no evidence of the home occupation visible from the exterior of the dwelling.

1810.05.2. The home occupation shall not generate any offensive noise, vibration, sound, smoke, dust, odor, heat, glare, x-ray or electrical disturbance to radio or television beyond the

property boundaries of the property upon which dwelling in which the home occupation is conducted is located.

1810.05.3. Structural changes to the exterior or interior of the dwelling, any accessory buildings or property itself for the purpose of a home occupation shall be prohibited.

1810.05.4. Interior or exterior signs, commercial lighting, exterior display of products or exterior storage of equipment, machinery, material or supplies related to the home occupation is prohibited.

1810.06 Public Health.

1810.06.1. The use of dumpsters in conjunction with the home occupation is prohibited.

1810.06.2. Notwithstanding 1810.06.1., all owners or occupants of residential structures must comply with the provisions of Chapter 9 of the Hermantown Code of Ordinances.

1810.06.3. The home occupation shall not generate sewage of a nature or rate greater or different than that normally associated with a residential occupancy, nor shall it generate hazardous waste or solid waste at a rate greater than that normally associated with a residential occupancy.

1810.07. General Restrictions.

1810.07.1. The home occupation must be owned or operated by an occupant of the dwelling unit.

1810.07.2. Customer/business related visits or retail sales related to the home occupation shall be allowed as follows:

1810.07.2.1. By prior appointment;

1810.07.2.2. A maximum of one appointment per hour is allowed; and

1810.07.2.3. Appointments may be taken between the hours of 8:00 a.m. and 9:00 p.m. Monday through Friday.

1810.07.3. Deliveries and pickups related to the home occupation shall only be allowed between the hours of 8:00 a.m. and 9:00 p.m. Monday through Saturday.

1810.07.4. Regular weekly or monthly deliveries by semitrailer truck are not allowed.

1810.07.5. No home occupation may be conducted which is illegal or prohibited under any other city ordinance or applicable state or federal law, rule or regulation.

1810.07.6. There shall be no rental of space within a residence for non-residential purposes.

(Am. Ord. 2019-11, passed 9-16-2019)

Mayor
Wayne Boucher

Administrator
John Mulder

Councilors
Pete Stauber
Darlene Koski
Brad Tafs
John Geissler



5105 Maple Grove Road Hermantown, Minnesota 55811
Phone: 218-729-3600 / Fax: 218-729-3620
Website: www.hermantownmn.com

November 29, 2011

David Mesojedic
3721 Lavaque Road
Hermantown, MN 55811

RE: Operation of a Business in a Residential Zone

Dear Dave:

A recent inspection of Lavaque Road properties requires me to notify you regarding the rules for operation of a business in a residential zone. Attached for your review and information is a copy of the rules governing home occupations in residential zones in Hermantown. I call your attention to Sections 1810.04.3, 1810.04.4 and 1810.05

In addition to the above referenced requirements, the City prohibits parking of commercial vehicles in the R-3 zone district. A copy of that ordinance requirement is also attached.

Please contact me if you have any questions on these ordinances or the zoning for your property.

Sincerely,

A handwritten signature in black ink that reads "John".

John M. Klaers
City Planner/Zoning Director

JMK/be

Enclosures



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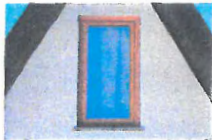
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**3721 Lavaque Road
Hermantown, MN 55810
218.525.4637**

info@northstar-insulating.com



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Dave Mesojedec · 2nd

Owner, NorthStar Insulating Systems, Inc.

Duluth, Minnesota Area · 114 connections · Contact in

Highlights



3 mutual connections

You and Dave both know Greg Schendel, Digger-Darre

Experience

Owner

NorthStar Insulating Systems, Inc.

Contractor

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David Bolf

Northland Consulting Engineers, ...



Digger-Darrel Johnson

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Paul Solberg Realtor® GRI ...

Paul: Thank you Eric. We are an...



Joe Samuel, PE, PMP, LEED ...

You: Congratulations Joe, I hope...



Scott Harmes

Scott: Thanks Family is doing w...



Jen & the Sales Naviga...

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Nick Stojanovich

Sponsored · Cloud Data Lakes ...



Alan Nelson

Alan: Congrats on your work an...



Rich Koechlein

Rich: Hope your doing well!



Kate Hughes



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Connections to Dave



David Bolf

Northland Consulting Engineers, ...



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Paul Solberg Realtor® GRI ...

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Joe Samuel, PE, PMP, LEED ...

You: Congratulations Joe, I hope...



Scott Harmes

Scott: Thanks Family is doing w...



Jen & the Sales Naviga...

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Nick Stojanovich

Sponsored · Cloud Data Lakes ...



Alan Nelson

Alan: Congrats on your work an...



Rich Koechlein

Rich: Hope your doing well!



Kate Hughes



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CITY OF HERMANTOWN

ZONING MAP AMENDMENT

APPLICATION

(REZONING)

Rezoning Application Checklist

Submit the following to the City Clerk's Office

- Rezoning Application
- \$300.00 Application Fee
(You will also be required to pay all assessed additional staff review costs incurred.)
- Application for Zoning Certificate
- Plat Plan showing the locations, dimensions, and nature of any structure involved, including setbacks from property lines
- A copy of the Certificate of Title, Abstract of Title, or Title Opinion showing the legal description and the current fee owner of the property which will be affected by the Commercial-Industrial Development Permit, and written consent of the fee owner(s) of the property (refer to Resolution #83-04)
- Names and addresses of all property owners within 350' of the affected property

Upon receipt of the above information, a public hearing to held by the Planning and Zoning Commission will be scheduled. The Planning and Zoning Commission meets the third Tuesday of each month. In order to be placed on a particular Planning and Zoning Agenda, the above information must be submitted to the Clerk's Office one month before the scheduled meeting.

Zoning Certificate Application

Amount Due for Rezoning Application: \$ _____

Applicant Information

- Name:
- Address:
- Telephone Number:
- E-mail Address:
- Case Number:
- Authorized Representative:
- Legal Description:
- Address (if different from above):

Proposed Setbacks

- Side Yard Nearest (in feet):
- Side Yard Farthest (in feet):
- Front Yard Right of Way (in feet):
- Front Yard Road Center Line (in feet):
- Rear Yard Shoreline (in feet):

- Present Zoning:
- Proposed Zoning:
- Description of Request:

- Justification of Request:

- Sketch Required (please attach)

I hereby certify that I am the owner or authorized agent of the owner of the above property and that all uses will conform with existing State Laws and local ordinances. I further certify that I will comply with all conditions placed upon this permit should this application or any attachments thereto will serve to make this application and any resultant permit invalid.

Tennessee Warning - Data Practice Advisory

Some or all of the information that you are asked to provide on the attached application is classified by state law as either private or confidential. Private data is information, which generally cannot be given to the public, but can be given to the subject of the data. Confidential data is information which generally cannot be given to either the public or the subject of the data. Our purpose and intended use of this information is to consider your application. You are not legally required to provide this information. You may refuse to provide this information. The consequences of supplying or refusing to supply data are that your application may not be considered or it may be denied. Other persons or entities may be authorized by law to receive the information.



Signature: _____

Printed Name: _____

Date: _____

Mobile Home Information - Make: _____ **Year of Manufacture:** _____

Serial Number: _____ **Width:** _____ **Length:** _____

April 27, 2020

Andy Hubley
Arrowhead Regional Development Commission
221 West First Street,
Duluth MN 55802

Dear Mr. Hubley:

Like many local governments and private businesses, the City of Hermantown is bracing for the economic fallout of the Coronavirus/COVID 19. We fully expect a significant reduction in revenues as local property owners struggle to pay their local property taxes. We have begun to review the 2020 budget and are making cuts to our budget.

Per Section 5 of the contract between the Arrowhead Regional Development Commission and the City of Hermantown, either party may terminate the contract with 30 days' notice. This letter is to inform you that the City will be terminating the contract effective June 1, 2020. At this time, we do not know if we will be able to renew this contract for 2021.

Please contact me if you have any questions.

Sincerely,

John Mulder
City Administrator

JM/be

TO: Mayor & City Council
FROM: John Mulder, City Administrator



DATE: April 28, 2020

Meeting Date: 5/4/20

SUBJECT: Liquor License Update

Agenda Item: 6-G

Communication

REQUESTED ACTION

No Action required – update only

BACKGROUND

As we worked with the local on-sale liquor license holders who wanted to have off-sales with their food, we learned that our plans hit a COVID related snag.

One of the license holders was told that they would not be able to buy certain sizes of alcohol from the distributor. We attempted to explain our ordinance to the distributor, but he stated he would only take direction from the MN Dept. of Public Safety Alcohol & Gambling Enforcement Division office (AGE). We then talked to someone from the AGE to clarify.

When the AGE issues combination licenses under the MN statute, they actually issue the license and they don't do that until one of their inspectors actually goes out and inspects the premises of the applicant. They are not sending out inspectors at this time. In effect, the state is not allowing combination licenses at this time. On-sale liquor license holders would only be allowed to sell alcohol under the new state law which has been passed by the Legislature last week.

The Hermantown establishments would be limited to the Governor's Order which would **negate the following:**

1. Our allowance of hard liquor
2. Our allowance of 72 ounces (the governor limits to 750ml – approx. 25 ounces)
3. Would not allow for delivery
4. Expiration at the end of the Governor's order, not at the end of the month following the end of the Governor's order.

The Governor's order of only beer, wine, cider, and seltzer no more than 750 ml (no distilled spirits) and only pick up orders will be allowed (no delivery). For example, they can sell six packs of beer, hard cider, hard seltzer, 750 ml of wine. They can sell both a six pack and a bottle of wine in the same order of food. Also, it won't last to the end of the month when his order is lifted, but will expire on the day the order is lifted.

The City tried to do what we could, but our hands are tied. We have communicated this to all the license holders with our regrets that we could not help them as we had planned.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

TO: Mayor & City Council
FROM: John Mulder, City Administrator
DATE: April 28, 2020
SUBJECT: Delinquent Utility Accounts



Meeting Date: 5/4/20
Agenda Item: 6-H
Communication

REQUESTED ACTION

No action required – update only

BACKGROUND

As I reported in my Friday follow up last week in response to the question regarding delinquent utility accounts, we looked at the number of individuals, both residential and commercial, who have paid their utility bills late for the months of March and April. We also looked at the outstanding balance for each month. In a typical month (pre-coronavirus), 22 accounts would be late. In March and April this year there are 78 accounts that are late.

Typically, the past due amounts are around \$10,000. In March the past due amount was \$15,552 and in April it was \$26,701.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Report on Impact of COVID -19

IMPACT OF COVID-19

(For: March & April, 2020)

Commercial Accounts

March 1st Billing	\$	143,104.33
Payments thru 3/24/20 (-)	\$	(133,262.44)
EWC (W/O - Fund 275) (-)	\$	<u>(3,820.02)</u>
Outstanding Balance	\$	6,021.87

Commercial Accounts

April 1st Billing	\$	157,887.59
Payments thru 4/24/20 (-)	\$	(131,608.76)
EWC (W/O - Fund 275) (-)	\$	<u>(4,902.97)</u>
Outstanding Balance	\$	21,375.86

Residential Accounts

March 1st Billing	\$	145,869.73
Payments thur 3/24/20 (-)	\$	<u>(136,339.06)</u>
Outstanding Balance	\$	9,530.67

Residential Accounts

April 1st Billing	\$	142,887.31
Payments thur 4/24/20 (-)	\$	<u>(137,488.64)</u>
Outstanding Balance	\$	5,398.67

Combined Accounts

Total Outstanding Balance	\$	15,552.54
----------------------------------	-----------	------------------

(51% Increase over Average)

Combined Accounts

Total Outstanding Balance	\$	26,701.25
----------------------------------	-----------	------------------

(160% Increase over Average)

Consists of (66) Residential Customers & (12) Commercial Customers = 78 Total Customers

Monthly Averages

Past Due Customers: (22) Residential & (3) Commercial = **(25)** Customer Average
Past Due Balance: \$6,600 (Residential) + \$3,700 (Commercial) = **\$10,300** Total Average

CITY OF HERMANTOWN
CITY COUNCIL CONTINUATION MEETING
April 20, 2020
6:30 p.m.

MEETING CONDUCTED VIA ZOOM

Pledge of Allegiance

ROLL CALL: Councilors Geissler, Nelson, Peterson, Schmidt, Mayor Boucher

CITY STAFF: John Mulder, City Administrator; Bonnie Engseth, City Clerk; Kevin Orme, Director of Finance & Administration; Joe Wicklund, Communications Manager; Steve Overom, City Attorney

ABSENT:

VISITORS: 4

ANNOUNCEMENTS

PUBLIC HEARING

COMMUNICATIONS

Communications 2020-45 through and including 2020-69 were read and placed on file.

PRESENTATIONS

Todd Hagen, Ehlers & Associates – He presented the Sale of Bonds Report on the Series 2020A & 2020B Bonds.

PUBLIC DISCUSSION

CONSENT AGENDA

Motion made by Councilor Peterson, seconded by Councilor Schmidt to approve the Consent Agenda which includes the following items:

- A. Approve April 6, 2020 City Council Minutes
- B. Approve general city warrants from April 1, 2020 through April 15, 2020 in the amount of \$429,805.54

Roll Call: Councilors Geissler, Nelson, Peterson, Schmidt, Mayor Boucher, aye. Motion carried.

MOTIONS

ORDINANCES

2020-04 An Ordinance Amending Chapter 5, Alcoholic Beverages, Of The Hermantown City Code By Adding A New Section 530.28.6, COVID-19 Temporary Off-Sale Intoxicating Liquor Licenses

Motion made by Councilor Peterson, seconded by Councilor Geissler to adopt Ordinance 2020-03, An Ordinance Amending Chapter 5, Alcoholic Beverages, Of The Hermantown City Code By Adding A New Section 530.28.6, COVID-19 Temporary Off-Sale Intoxicating Liquor Licenses. Roll Call: Councilors Geissler, Nelson, Peterson, Schmidt, Mayor Boucher, aye. Motion carried.

Motion made by Councilor Schmidt, seconded by Councilor Peterson to approve the following COVID-19 Temporary Off-Sale Liquor Licenses contingent upon applications being received: AAD Shrine, 5152 Miller Trunk Hwy; Beacon Sports Bar, 5044 Hermantown Rd; Foster's Sports Bar & Grill, 4767 W. Arrowhead Rd; Maya Mexican Restaurant, 4702 Miller Trunk Hwy; McKenzie's Bar & Grill, 5094 Miller Trunk Hwy; Outback Steakhouse, 4255 Haines Rd; Skyline Lounge, 4894 Miller Trunk Hwy; The Social House, 4897 Miller Trunk Hwy; China Star Restaurant, 4227 Haines Rd; Do North Pizzeria, 5094 Miller Trunk Hwy; Valentini's, 4960 Miller Trunk Hwy

Roll Call: Councilors Geissler, Nelson, Peterson, Schmidt, Mayor Boucher, aye. Motion carried.

RESOLUTIONS

2020-51 Resolution Providing For The Issuance, Sale And Delivery Of \$3,585,000 General Obligation Improvement And Refunding Bonds, Series 2020A, And Awarding The Sale Thereof

Motion made by Councilor Geissler, seconded by Councilor Nelson to adopt Resolution 2020-51, Resolution Providing For The Sale, Issuance and Delivery Of \$3,585,000 General Obligation Improvement And Refunding Bonds, Series 2020A, And Awarding The Sale Thereof. Roll Call: Councilors Geissler, Nelson, Peterson, Schmidt, Mayor Boucher, aye. Motion carried.

2020-52 Resolution Providing For The Issuance, Sale And Delivery Of \$3,915,000 General Obligation Sewage Disposal System Bonds, Series 2020B, And Awarding The Sale Thereof

Motion made by Councilor Schmidt, seconded by Councilor Peterson to adopt Resolution 2020-52, Resolution Providing For The Issuance, Sale And Delivery of \$3,915,000 General Obligation Sewage Disposal System Bonds, Series 2020B, And Awarding The Sale Thereof. Roll Call: Councilors Geissler, Nelson, Peterson, Schmidt, Mayor Boucher, aye. Motion carried.

2020-53 Resolution Approving An Amendment To The City Handbook Regarding Culverts

Motion made by Councilor Geissler, seconded by Councilor Nelson to adopt Resolution 2020-53, Resolution Approving An Amendment To The City Handbook Regarding Culverts. Roll Call: Councilors Geissler, Nelson, Peterson, Schmidt, Mayor Boucher, aye. Motion carried.

Motion made by Councilor Schmidt, seconded by Councilor Peterson to close the regular meeting of the Hermantown City Council at 6:53 p.m. and go into a closed session pursuant to the following statute and stated reason: MN Statutes Section 13D.05 subd 3(a) to discuss the City Administrator's performance evaluation. Motion carried.

City Council Continuation Meeting

April 20, 2020

Page | 3

Motion made by Councilor Peterson, seconded by Councilor Nelson to recess the closed session at 8:26 p.m. to Motion carried.

Mayor

ATTEST:

Clerk

CITY OF HERMANTOWN

CHECKS #65760-#65808
04/16/2020 -04/30/2020

PAYROLL CHECKS

Electronic Checks - #72329-72371 \$68,937.99

LIABILITY CHECKS

Electronic Checks - #72322-72328 \$53,045.77

Printed Checks- #65798-65804 \$67,343.50

Printed Checks= #65807-65808 \$2,052.19

PAYROLL EXPENSE TOTAL \$191,379.45

ACCOUNTS PAYABLE

Checks - #65760-65797 \$625,373.39

Checks - #65805-65806 \$2,140.50

Electronic Payments - #99945-#99946 \$1,082.81

ACCOUNTS PAYABLE TOTAL \$628,596.70

TOTAL \$819,976.15

CITY OF HERMANTOWN, MN 04/16/2020-04/30/2020
Check # is between 65760 and 65808 or Check # is between -99946 and -99945

4/28/2020

Page 1

Fund	Account	Department	Vendor Name	Description	Amount	Check #
101	217450	Employee Flexplan	FURTHER ELECTRONIC PAYMENTS	Claim Reimbursement	421.52	-99946
101	217450	Employee Flexplan	FURTHER ELECTRONIC PAYMENTS	Claim Reimbursement	661.29	-99945
101	419100	Community Development	ARROWHEAD ABSTRACT & TITLE CO.	O&E City of Htown O-307117	125.00	65760
101	419100	Community Development	ARROWHEAD ABSTRACT & TITLE CO.	O&E ATK Ent O-308118	75.00	65760
101	421100	Police Administration	AT&T MOBILITY	Cell Phones (PD)	1,220.43	65761
101	415300	Administration & Finance	AT&T MOBILITY	Cell Phones (PW)	45.54	65761
601	494400	Water Administration and General	AT&T MOBILITY	Tablets (PW)	38.23	65761
602	494900	Sewer Administration and General	AT&T MOBILITY	Cell Phones (PW)	85.38	65761
601	494400	Water Administration and General	AT&T MOBILITY	Cell Phones (PW)	128.07	65761
602	494900	Sewer Administration and General	AT&T MOBILITY	Tablets (PW)	76.46	65761
101	419901	City Hall & Police Building Maintenance	AT&T MOBILITY	Cell Phones (PW)	45.54	65761
101	431100	Street Department	AT&T MOBILITY	Cell Phones (PW)	159.39	65761
101	452100	Parks	BRENT'S SEPTIC SERVICE LLC	Pump Tank/Rose Rd	200.00	65762
101	422902	Firehall #2 Morris Thomas Road	CENTURYLINK	Internet FH #2 April	70.82	65763
101	431100	Street Department	CINTAS CORPORATION	Uniforms	25.77	65764
101	431100	Street Department	CINTAS CORPORATION	Uniforms	10.80	65764
101	431901	City Garage	CINTAS CORPORATION	Supplies	21.55	65764
101	431901	City Garage	CINTAS CORPORATION	Mats at PW	2.10	65764
101	431901	City Garage	CINTAS CORPORATION	Mats at PW	2.10	65764
101	431901	City Garage	CINTAS CORPORATION	Supplies	3.05	65764
101	431901	City Garage	CINTAS CORPORATION	Supplies	1.83	65764
101	431100	Street Department	CINTAS CORPORATION	Uniforms	10.80	65764
101	431100	Street Department	CINTAS CORPORATION	Uniforms	10.80	65764
101	431901	City Garage	CINTAS CORPORATION	Mats at PW	20.58	65764
101	431100	Street Department	CINTAS CORPORATION	Uniforms	25.77	65764
101	421100	Police Administration	CITIES DIGITAL INC	Scanner- Canon DR-M260	434.81	65765
602	494900	Sewer Administration and General	CITIES DIGITAL INC	Scanner- Canon DR-M260	59.29	65765
601	494400	Water Administration and General	CITIES DIGITAL INC	Laserfiche Cloud	146.18	65765
101	415300	Administration & Finance	CITIES DIGITAL INC	Scanner- Canon DR-M260	118.58	65765
101	419100	Community Development	CITIES DIGITAL INC	Laserfiche Cloud	146.18	65765
602	494900	Sewer Administration and General	CITIES DIGITAL INC	Laserfiche Cloud	146.18	65765
101	431100	Street Department	CITIES DIGITAL INC	Scanner- Canon DR-M260	79.06	65765
101	424100	Building Inspection	CITIES DIGITAL INC	Laserfiche Cloud	48.73	65765
101	413100	Mayor	CITIES DIGITAL INC	Laserfiche Cloud	48.73	65765
101	431100	Street Department	CITIES DIGITAL INC	Laserfiche Cloud	194.91	65765
101	424100	Building Inspection	CITIES DIGITAL INC	Scanner- Canon DR-M260	19.76	65765
101	421100	Police Administration	CITIES DIGITAL INC	Laserfiche Cloud	1,071.97	65765

CITY OF HERMANTOWN, MN 04/16/2020-04/30/2020
Check # is between 65760 and 65808 or Check # is between -99946 and -99945

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Fund	Account	Department	Vendor Name	Description	Amount	Check #
101	413100	Mayor	CITIES DIGITAL INC	Scanner- Canon DR-M260	19.76	65765
101	419100	Community Development	CITIES DIGITAL INC	Scanner- Canon DR-M260	59.29	65765
101	415300	Administration & Finance	CITIES DIGITAL INC	Laserfiche Cloud	292.36	65765
601	494400	Water Administration and General	CITIES DIGITAL INC	Scanner- Canon DR-M260	59.29	65765
601	494300	Water Distribution	CITY OF DULUTH COMFORT SYSTEMS	March Water Charges	47,282.52	65766
101	431100	Street Department	CRYSTEEL TRUCK EQUIPMENT	Front/inner lift arm H4 plow	164.63	65767
101	415300	Administration & Finance	CUNNINGHAM, DANA	CPE Package	179.46	65768
101	431100	Street Department	CW TECHNOLOGY GROUP INC	KnowBe4 Campaign	62.88	65769
101	411100	Council	CW TECHNOLOGY GROUP INC	KnowBe4 Subscription	79.14	65769
101	421100	Police Administration	CW TECHNOLOGY GROUP INC	Sonic Wall	683.54	65769
101	413100	Mayor	CW TECHNOLOGY GROUP INC	KnowBe4 Subscription	19.78	65769
602	494900	Sewer Administration and General	CW TECHNOLOGY GROUP INC	KnowBe4 Subscription	59.35	65769
101	419100	Community Development	CW TECHNOLOGY GROUP INC	KnowBe4 Subscription	59.35	65769
601	494400	Water Administration and General	CW TECHNOLOGY GROUP INC	Setup rem acc Mulder,Maher,Cun	111.26	65769
101	424100	Building Inspection	CW TECHNOLOGY GROUP INC	KnowBe4 Subscription	19.78	65769
101	419901	City Hall & Police Building Maintenance	CW TECHNOLOGY GROUP INC	Sonic Wall	683.54	65769
101	431100	Street Department	CW TECHNOLOGY GROUP INC	KnowBe4 Subscription	79.14	65769
601	494400	Water Administration and General	CW TECHNOLOGY GROUP INC	KnowBe4 Campaign	47.16	65769
101	415300	Administration & Finance	CW TECHNOLOGY GROUP INC	KnowBe4 Campaign	94.33	65769
101	413100	Mayor	CW TECHNOLOGY GROUP INC	KnowBe4 Campaign	15.72	65769
101	415300	Administration & Finance	CW TECHNOLOGY GROUP INC	Set up Rem acc Wicklund	551.00	65769
101	431100	Street Department	CW TECHNOLOGY GROUP INC	Sonic Wall	956.96	65769
101	421100	Police Administration	CW TECHNOLOGY GROUP INC	KnowBe4 Campaign	282.99	65769
602	494900	Sewer Administration and General	CW TECHNOLOGY GROUP INC	Setup rem acc Mulder,Maher,Cun	111.26	65769
101	424100	Building Inspection	CW TECHNOLOGY GROUP INC	KnowBe4 Campaign	15.72	65769
101	415300	Administration & Finance	CW TECHNOLOGY GROUP INC	KnowBe4 Subscription	118.72	65769
101	421100	Police Administration	CW TECHNOLOGY GROUP INC	Hard Drive Destruction	32.00	65769
101	419100	Community Development	CW TECHNOLOGY GROUP INC	KnowBe4 Campaign	47.16	65769
101	452200	Community Building	CW TECHNOLOGY GROUP INC	Sonic Wall	956.96	65769
602	494900	Sewer Administration and General	CW TECHNOLOGY GROUP INC	KnowBe4 Campaign	47.16	65769
101	415300	Administration & Finance	CW TECHNOLOGY GROUP INC	Setup rem acc Mulder,Maher,Cun	519.23	65769
101	411100	Council	CW TECHNOLOGY GROUP INC	KnowBe4 Campaign	62.88	65769
101	421100	Police Administration	CW TECHNOLOGY GROUP INC	Server Recycle/Destruction	130.00	65769
601	494400	Water Administration and General	CW TECHNOLOGY GROUP INC	KnowBe4 Subscription	59.35	65769
101	421100	Police Administration	CW TECHNOLOGY GROUP INC	KnowBe4 Subscription	356.14	65769
101	419901	City Hall & Police Building Maintenance	DALCO	Urinal Screen	57.34	65770
101	422901	Firehall #1 Maple Grove Road	DALCO	Aerosol Disinfectant, Gloves	66.15	65770

CITY OF HERMANTOWN, MN 04/16/2020-04/30/2020
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Fund	Account	Department	Vendor Name	Description	Amount	Check #
101	419901	City Hall & Police Building Maintenance	DALCO	Aerosol Disinfectant, Gloves	132.31	65770
318	471000	Debt Service	EHLERS & ASSOCIATES INC	Arbitrage Reporting	5,000.00	65771
322	471000	Debt Service	EHLERS & ASSOCIATES INC	Arbitrage Reporting	5,000.00	65771
240	432510	Trunk Sewer Construction	EPC ENGINEERING & TESTING LLC	Preblast test Trk Sewer/Munger	539.00	65772
240	432510	Trunk Sewer Construction	EPC ENGINEERING & TESTING LLC	Conctruction Test Trk Sew/Munge	692.50	65772
230	465100	HEDA	F I SALTER REAL ESTATE, INC.	Appraisal 5028 Miller Trunk hw	3,000.00	65773
101	419901	City Hall & Police Building Maintenance	FURTHER	Monthly Participant Fees	2.95	65774
602	494900	Sewer Administration and General	FURTHER	Monthly Participant Fees	5.88	65774
101	421100	Police Administration	FURTHER	Monthly Participant Fees	38.15	65774
101	431100	Street Department	FURTHER	Monthly Participant Fees	4.75	65774
601	494400	Water Administration and General	FURTHER	Monthly Participant Fees	3.92	65774
101	415300	Administration & Finance	FURTHER	Monthly Participant Fees	11.60	65774
101	419100	Community Development	FURTHER	Monthly Participant Fees	0.95	65774
101	431901	City Garage	GREYSTONE CONSTRUCTION	Salt Shed Annual Maintenance	600.00	65775
101	431100	Street Department	HERMANTOWN HYDRAULICS	Front Fork fittings loader	26.97	65776
101	431100	Street Department	HERMANTOWN HYDRAULICS	Fittings on Loader	26.47	65776
101	411300	Ordinance, Public Notice and Proceedings	HERMANTOWN STAR LLC	Ordinace 2020-03	74.25	65777
101	431100	Street Department	KWIK TRIP EXTENDED NETWORK	Car Wash PW	54.96	65778
602	494500	Sewer Maintenance	KWIK TRIP EXTENDED NETWORK	Gas PW	126.22	65778
101	419901	City Hall & Police Building Maintenance	KWIK TRIP EXTENDED NETWORK	Gas PW	81.65	65778
101	431100	Street Department	KWIK TRIP EXTENDED NETWORK	Gas PW	332.27	65778
101	452100	Parks	KWIK TRIP EXTENDED NETWORK	Gas Park	40.17	65778
601	494300	Water Distribution	KWIK TRIP EXTENDED NETWORK	Gas PW	189.34	65778
101	421100	Police Administration	KWIK TRIP EXTENDED NETWORK	Car Wash PD	123.00	65778
101	421100	Police Administration	KWIK TRIP EXTENDED NETWORK	Gas PD	2,064.02	65778
475	431150	Street Improvements	LEPPALA, STEVEN J	Easement 2020 RIP 4749 Portlan	500.00	65779
601	494300	Water Distribution	MCCOY CONSTRUCTION & FORESTRY, INC	Breaker	19,415.00	65780
411	452200	Community Building	MCGOUGH CONSTRUCTION CO LLC	EWC #21	2,986.00	65781
411	452200	Community Building	MCGOUGH CONSTRUCTION CO LLC	EWC #21	37,220.00	65781
275	452200	Community Building	MEDIACOM	EWC- Cable TV	166.00	65782
275	452200	Community Building	MEDIACOM	EWC- Telephone	489.79	65782
101	431901	City Garage	MENARD INC	Outlet Parts at Main Shop	23.43	65783
101	431901	City Garage	MENARD INC	Racking	201.48	65783
101	431901	City Garage	MENARD INC	Light at old PD Shop	395.96	65783
101	431901	City Garage	MENARD INC	Racking for H2O Parts old PD	415.54	65783
101	431901	City Garage	MENARD INC	Racking Beam	8.98	65783
101	419901	City Hall & Police Building Maintenance	MENARD INC	Wall Repair and Baking Soda	13.72	65783

CITY OF HERMANTOWN, MN 04/16/2020-04/30/2020
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Fund	Account	Department	Vendor Name	Description	Amount	Check #
101	431901	City Garage	MENARD INC	Wire Nuts and Screws	11.97	65783
101	431901	City Garage	MENARD INC	Screws	49.39	65783
101	419901	City Hall & Police Building Maintenance	MN ENERGY RESOURCES CORP	Natural Gas -CH/PD	392.76	65784
101	422901	Firehall #1 Maple Grove Road	MN ENERGY RESOURCES CORP	Natural Gas -FH#1	1,287.85	65784
101	419901	City Hall & Police Building Maintenance	MN ENERGY RESOURCES CORP	Natural Gas -CH/PD	1,053.69	65784
101	431901	City Garage	MN ENERGY RESOURCES CORP	Natural Gas -Comm Bldg	113.67	65784
275	452200	Community Building	MN ENERGY RESOURCES CORP	Natural Gas - EWC	3,365.46	65784
101	422902	Firehall #2 Morris Thomas Road	MN POWER	Electricity - FH#2	90.20	65785
101	422903	Firehall #3 Midway Road	MN POWER	Electricity - FH#3	70.23	65785
101	431901	City Garage	MN POWER	Electricity - Lightning Dr	345.66	65785
605	431160	Street Lighting	MN POWER	Electricity- Street Lights	220.36	65785
101	452100	Parks	MN POWER	Electricity- Parks	191.17	65785
605	431160	Street Lighting	MN POWER	Electricity- Street Lights	324.60	65785
605	431160	Street Lighting	MN POWER	Electricity- Street Lights	343.17	65785
101	431901	City Garage	MN POWER	Electricity - 5255 Maple Gr	17.55	65785
101	422901	Firehall #1 Maple Grove Road	MN POWER	Electricity - CH/PD/FD	1,268.49	65785
602	494900	Sewer Administration and General	MN POWER	Electricity - Lightning Dr	138.26	65785
275	452200	Community Building	MN POWER	EWC- Electricity	7,659.18	65785
101	419901	City Hall & Police Building Maintenance	MN POWER	Electricity - CH/PD/FD	1,984.05	65785
601	494400	Water Administration and General	MN POWER	Electricity - Water	531.64	65785
101	452200	Community Building	MN POWER	Electricity- Comm Bldg	69.47	65785
605	431160	Street Lighting	MN POWER	Electricity- Traffic Lights	635.90	65785
605	431160	Street Lighting	MN POWER	Electricity- St Lights Roundab	18.11	65785
601	494400	Water Administration and General	MN POWER	Electricity - Lightning Dr	207.40	65785
605	431160	Street Lighting	MN POWER	Electricity- Overhead St Light	308.41	65785
605	431160	Street Lighting	MN POWER	Electricity- Street Lights	462.47	65785
602	494900	Sewer Administration and General	MN POWER	Electricity- Sewer	633.55	65785
101	452100	Parks	MN POWER	Electricity- Little League	17.96	65785
101	422901	Firehall #1 Maple Grove Road	MN TELECOMMUNICATIONS	Internet	131.04	65786
101	419901	City Hall & Police Building Maintenance	MN TELECOMMUNICATIONS	Internet	524.16	65786
230	465100	HEDA	NORTHSPAN GROUP INC	Stratecig Planning HEDA	2,000.00	65787
101	415300	Administration & Finance	PITNEY BOWES GLOBAL FINANCIAL SVCS	Quarterly Postage Meter Lease	269.13	65788
101	431100	Street Department	PRAXAIR DISTRIBUTION INC	Cylinder Rent/Safe Env fee	27.53	65789
101	421100	Police Administration	SHRED-N-GO INC	Shredding	77.73	65790
475	431150	Street Improvements	ST LOUIS COUNTY RECORDERS OFFICE	2020 RIP Easement LaPointe	46.00	65791
101	421100	Police Administration	STREICHER'S	Ammo	971.24	65792
602	432550	Sewer Lift Stations	TKDA	Ugstad Rd Lift Station Replace	2,105.64	65793

CITY OF HERMANTOWN, MN 04/16/2020-04/30/2020
 Check # is between 65760 and 65808 or Check # is between -99946 and -99945

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Fund	Account	Department	Vendor Name	Description	Amount	Check #
402	431150	Street Improvements	TKDA	Rd Reconstruction Project	1,023.75	65793
475	431150	Street Improvements	TKDA	Rd Reconstruction Project	381.92	65793
101	415300	Administration & Finance	TOSHIBA FINANCIAL SERVICES	Copier Lease/Toshiba	145.57	65794
240	432510	Trunk Sewer Construction	UTILITY SYSTEMS OF AMERICA, INC.	Trunk Sewer Spur/Munger Spur	455,588.49	65795
260	456101	Cable	WALDNER, LARS	Cable TV Coordinator	625.00	65796
602	494900	Sewer Administration and General	WICKLUND, JOE	Increase storage for web hosti	6.98	65797
101	415300	Administration & Finance	WICKLUND, JOE	Increase storage for web hosti	13.95	65797
101	419100	Community Development	WICKLUND, JOE	Increase storage for web hosti	6.98	65797
101	431100	Street Department	WICKLUND, JOE	Increase storage for web hosti	9.30	65797
101	413100	Mayor	WICKLUND, JOE	Increase storage for web hosti	2.33	65797
101	421100	Police Administration	WICKLUND, JOE	Increase storage for web hosti	51.15	65797
230	465100	HEDA	WICKLUND, JOE	Mileage to State Capital-tax	173.65	65797
101	424100	Building Inspection	WICKLUND, JOE	Increase storage for web hosti	2.33	65797
601	494400	Water Administration and General	WICKLUND, JOE	Increase storage for web hosti	6.98	65797
101	134000	Retiree Insurance/Telephone Reimb.	MN LIFE	Life Ins Inactives- May McMill	4.50	65805
101	134000	Retiree Insurance/Telephone Reimb.	NORTHEAST SERVICE COOPERATIVE	Health Insurance Inactives May	811.20	65806
101	421100	Police Administration	NORTHEAST SERVICE COOPERATIVE	Health Insurance Inactives May	1,324.80	65806

Totals: 165 records printed

628,596.70

Resolution No. 2020-54

RESOLUTION APPROVING PAY REQUEST NUMBER 22 & NUMBER 23 FOR THE ESSENTIA WELLNESS CENTER TO MCGOUGH CONSTRUCTION CO. LLC IN THE AMOUNT OF \$39,700

WHEREAS, the City of Hermantown has contracted with McGough Construction Co. LLC for construction management services for the Essentia Wellness Center (“Project”); and

WHEREAS, McGough Construction Co. LLC has performed a portion of the agreed upon work in said Project; and

WHEREAS, McGough Construction Co. LLC has submitted separate Pay Request No. 22 & No. 23 for Labor & Services, and Tax Exempt material as shown below, and

Pay App	Project Number	Item	Amount
Pay App 23	859801	Labor & Services	17,257
Pay App 22	859802	Tax Exempt Material	22,443
		Total	39,700

WHEREAS, the City will maintain an accumulated retainage as shown on the pay requests until the final work and documentation is completed,

WHEREAS, the necessary documentation for the pay request is on file and available for inspection.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota as follows:

1. Pay Request No. 22 & No. 23 is hereby approved.
2. The City is hereby authorized and directed to pay to McGough Construction Co LLC the sum of \$39,700 which is the amount represented on Pay Request No. 22 & No. 23 for both Labor & Services, and Tax Exempt material.

Councilor ____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor ____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution has been duly passed and adopted May 4, 2020.

APPLICATION AND CERTIFICATE FOR PAYMENT

Facsimile of AIA Document G702

TO : CITY OF HERMANTOWN
5105 Maple Grove Rd
Hermantown, MN 55811

Project: HERMANTOWN-ESSENTIA
HEALTH REGIONAL WELLNESS
TAX EXEMPT

Application Number: 22
Period from: 3/1/2020
to: 3/31/2020

ATTN: John Mulder
jmulder@hermantown.com

Contractor: McGough Construction Co, LLC
2737 Fairview Avenue North
St. Paul, MN 55113

Project Number: 100079.002/
859802
INVOICE NUMBER
Contract Date: 3/1/2018

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for Payment, as shown below, in connection with the Contract. Continuation Sheet, Facsimile of AIA Document G703, is attached.

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Change Orders previously approved by Owner			
TOTAL			
Number	Date Approved		
1		\$84,577	
2		\$4,755	
3		\$600,000	
TOTALS		689,332	\$0
Net Change by Change Orders		\$ 689,332	

The present status of the account for this Contract is as follows:

ORIGINAL CONTRACT SUM	<u>\$8,087,000</u>
Net change by Change Orders	<u>689,332</u>
CONTRACT SUM TO DATE	<u>\$8,776,332</u>
TOTAL COMPLETED & STORED TO DATE	<u>\$8,788,952</u>
RETAINAGE TO DATE	<u>\$0</u>
TOTAL EARNED LESS RETAINAGE	<u>\$8,788,952</u>
LESS PREVIOUS CERTIFICATES FOR PAYMENT	<u>8,766,509</u>
CURRENT PAYMENT DUE	<u>\$22,443</u>

The undersigned Contractor certifies that to the best of his knowledge, information & belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents that all amounts have been paid by him for Work for which previous Certificates for Payment were issued & payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: McGough Construction

By: Melissa Svoboda 3/31/2020
Melissa Svoboda, Project Accounting Supervisor



State of: MINNESOTA
Subscribed and sworn to before me this
Notary Public
My Commission expires: January 31, 2025

Andrea Rekow

CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations & the data comprising the above application, the Architect certifies to the Owner that the Work has progressed to the point indicated; that to the best of his knowledge, information & belief, the quality of the Work is in accordance with the Contract Documents, & that the Contractor is entitled to the AMOUNT CERTIFIED.

AMOUNT CERTIFIED..... \$22,443

ARCHITECT Pam D. King Date: 04/22/20

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor herein. Issuance, payment and acceptance of payment are without prejudice to any rights of Contractor under this Contract.

CONTINUATION SHEET

ATTACHMENT TO PAY APPLICATION

PROJECT:

HERMANTOWN-ESSENTIA HEALTH REGIONAL WELLNESS CENTER

APPLICATION NUMBER: 22

APPLICATION DATE: 3/1/2020

PERIOD TO: 3/31/2020

ARCHITECT'S PROJECT NO: 859802

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G		H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period		Total Completed And Stored To Date (D + E + F)	% (G/C)		
1	George Bougalis and Sons, Co.	543,747	543,747			543,747	100%		
2	Wells Concrete	932,279	932,279			932,279	100%		
3	Brent's Biffies								
4	A-1 Fence Company								
5	Home Mender, Inc.	366,822	366,822			366,822	100%		
6	The Jamar Company	529,478	522,198	7,280		529,478	100%		
7	Briese Iron Works, Inc.	629,326	629,327			629,327	100%	(1)	
8	St. Germain's Glass Inc.	257,843	242,836	15,007		257,843	100%		
9	Otis Elevator Company	77,965	77,965			77,965	100%	0	
10	A.G. O'Brien Plumbing and Heating Co.	29,800	29,800			29,800	100%		
11	Holden Electrical Co., Inc.	996,244	996,244			996,244	100%		
12	Northern Industrial Erectors, Inc.								
13	A.G. O'Brien Plumbing and Heating Co.	1,707,308	1,707,152	156		1,707,308	100%	(0)	
14	LHB (Survey Services)								
15	Olympic	191,542	191,542			191,542	100%		
16	Aqua Logic	979,331	979,331			979,331	100%		
17	Bedrock Flint	22,575	22,575			22,575	100%		
18	Universal Forest Products	168,764	168,764			168,764	100%		
19	Northern Door & Hardware	200,604	200,604			200,604	100%		
20	Johnsons Carpet	403,642	403,642			403,642	100%		
21	Intercon Group Inc.	124,142	124,142			124,142	100%		
22	Swanson & Youngdale Inc.	49,763	49,763			49,763	100%		
23	Twin City Acoustics Inc.	82,344	82,344			82,344	100%		
24	DoorCo Inc.	20,950	20,950			20,950	100%		
25	Anderson Ladd	114,420	114,420			114,420	100%		
26	Belganger Inc.	29,424	29,424			29,424	100%		
27	Hufcor, Inc.	37,083	37,083			37,083	100%		
28	Peterson Companies, Inc.	50,933	50,933			50,933	100%		
		8,546,329	8,523,886	22,443		8,546,329	100%	(1)	

CONTINUATION SHEET

ATTACHMENT TO PAY APPLICATION
PROJECT:

APPLICATION NUMBER: 22
APPLICATION DATE: 03/01/20
PERIOD TO: 3/31/2020
ARCHITECT'S PROJECT NO: 859802

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G		H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period		Total Completed And Stored To Date (D + E + F)	% (G/C)		
26	TriMark Hockenbergs	68,830	68,830			68,830	100%		
27	Bartley Sales Company, Inc.	149,308	149,308			149,308	100%		
28	Summit Signs	24,485	24,485			24,485	100%		
29	<i>Prime Construction</i>								
30	Approved COs (In above line items)	600,000							
31	TBD Labor/Equipment/TM Transfer	(612,620)						(612,620)	
34									
35									
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SUBTOTALS PAGE 3		8,776,332	8,766,509	22,443		8,788,952	100%	(612,620)	

01 - McGough Construction Co., LLC

JB - JOB BILLING DETAIL REPORT

Billing Contract Number: 100079.002
Contract Name: ESSENTIA WELLNESSCENTER / TAX EXEMPT
Draw Number: 22
Revision Number: 0

<u>Source Description</u>	<u>Reference Description</u>	<u>Post Date</u>	<u>Reference Code</u>	<u>Amount</u>
<i>Job Code: 100079.002</i>				
The Jamar Company	Essentia Health - Regional Wellness Center	03/31/2020	100079-0042-10	7,280.00
St Germain's Glass Inc	Essentia Health - Regional Wellness Center	03/31/2020	100079-0049-14	15,007.00
A G OBrien	Essentia Health - Regional Wellness Center	03/31/2020	100079-0056-13	156.00
Total for Vendors:				<u>22,443.00</u>
Total 100079.002 Costs:				<u>22,443.00</u>

APPLICATION AND CERTIFICATE FOR PAYMENT

Facsimile of AIA Document G702

TO : CITY OF HERMANTOWN
 5105 Maple Grove Rd
 Hermantown, MN 55811

Project: HERMANTOWN-ESSENTIA Application Number: 23
HEALTH REGIONAL Period from: 3/1/2020
to: 3/31/2020

ATTN: John Mulder
 jmulder@hermantown.com

Contractor: McGough Construction Co, LLC
 2737 Fairview Avenue Nor **Project Number: 100079.001/**
 St. Paul, MN 55113 **INVOICE NUMBER 859801**
Contract Date: 011068
 3/1/2018

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for Payment, as shown below, in connection with the Contract. Continuation Sheet, Facsimile of AIA Document G703, is attached.

The present status of the account for this Contract is as follows:

ORIGINAL CONTRACT SUM	\$13,903,890
Net change by Change Orders	(554,571)
CONTRACT SUM TO DATE	\$13,349,319
TOTAL COMPLETED & STORED TO DATE	12,581,250
RETAINAGE TO DATE	\$0
TOTAL EARNED LESS RETAINAGE	\$12,581,250
LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$12,563,993
CURRENT PAYMENT DUE	\$17,257

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Change Orders previous approved by Owner			
TOTAL			
Number	Date Approved		
1		\$42,364	
2		\$3,065	
3		(\$600,000)	
TOTALS		(554,571)	\$0
Net Change by Change Orders		\$ (554,571)	

The undersigned Contractor certifies that to the best of his knowledge 12563993.38 Application for Payment has been completed in accordance with the Contract Documents that all amounts have been paid by him for Work for which previous Certificates for Payment were issued & payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: McGough Construction

By: *Melissa Svoboda* 3/31/2020
 Melissa Svoboda, Project Accounting Supervisor



State of: MINNESOTA
 Subscribed and sworn to before me this
 Notary Public
 My Commission expires: January 31, 2025 *Andrea Rekow*

AMOUNT CERTIFIED..... \$17,257
ARCHITECT *Alan D. King* Date: 04/22/20

In accordance with the Contract Documents, based on on-site observations & the data comprising the above application, the Architect certifies to the Owner that the Work has progressed to the point indicated; that to the best of his knowledge, information & belief, the quality of the Work is in accordance with the Contract Documents, & that the Contractor is entitled to the AMOUNT CERTIFIED.

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor under this Contract.

CONTINUATION SHEET

ATTACHMENT TO PAY APPLICATION

APPLICATION NUMBER: 24

PROJECT:

APPLICATION DATE: 3/1/2020

HERMANTOWN-ESSENTIA HEALTH REGIONAL WELLNESS CNETER

PERIOD TO: 3/31/2020

A Item No.	B Description of Work	C Scheduled Value	D E		F Materials Presently Stored (Not In D or E)	G		H Balance To Finish (C - G)	I Retainage
			Work Completed			Total Completed And Stored To Date (D + E + F)	% (G/C)		
			From Previous Application (D + E)	This Period					
1	George Bougalis and Sons, Co.	1,808,425	1,808,425			1,808,425	100%		
2	Wells Concrete	472,968	472,969			472,969	100%	(1)	
3	Brent's Biffies	6,363	6,363			6,363	100%	(0)	
4	A-1 Fence Company	23,220	23,220			23,220	100%	0	
5	Home Mender, Inc.	868,311	868,311			868,311	100%		
6	The Jamar Company	927,712	920,952	6,760		927,712	100%		
7	Briese Iron Works, Inc.								
8	St. Germain's Glass Inc.	289,729	286,158	3,571		289,729	100%		
9	Otis Elevator Company	101,050	101,050			101,050	100%	(0)	
10	A.G. O'Brien Plumbing and Heating Co.	118,880	118,880			118,880	100%		
11	Holden Electrical Co., Inc.	860,410	860,410			860,410	100%		
12	Northern Industrial Erectors, Inc.	286,218	286,218			286,218	100%		
13	A.G. O'Brien Plumbing and Heating Co.	1,459,388	1,459,194	194		1,459,388	100%	0	
14	LHB (Survey Services)	5,530	5,530			5,530	100%		
15	Olympic	866,159	866,159			866,159	100%		
16	Aqua Logic	681,176	681,176			681,176	100%		
17	Bedrock Flint	84,364	84,364			84,364	100%		
18	Universal Forest Products	70,919	70,919			70,919	100%		
19	Johnsons Carpet	321,557	321,557			321,557	100%		
20	Intercon Group Inc.	293,579	292,659	920		293,579	100%		
21	Swanson & Youngdale, Inc.	141,172	141,172			141,172	100%		
23	Twin City Acoustics Inc.	58,840	58,840			58,840	100%		
24	DoorCo Inc.	5,000	5,000			5,000	100%		
25	Anderson Ladd	69,787	69,787			69,787	100%		
23	Belanger Inc.	3,900	3,900			3,900	100%		
24	Hufcor, Inc.	7,310	7,310			7,310	100%		
25	Peterson Companies, Inc.	88,385	88,385			88,385	100%		
Page-1 (Continued on Next Page)		9,920,352	9,908,908	11,445		9,920,353	100%	(1)	

CONTINUATION SHEET

ATTACHMENT TO PAY APPLICATION

APPLICATION NUMBER: 23

PROJECT:

APPLICATION DATE: 3/1/2020

HERMANTOWN-ESSENTIA HEALTH REGIONAL WELLNESS CENTER

PERIOD TO: 3/31/2020

A Item No.	B Description of Work	C Scheduled Value	D E Work Completed		F Materials Presently Stored (Not In D or E)	G Total Completed And Stored To Date (D + E + F)		H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period		% (G/C)			
26	TriMark Hockenbergs	9,670	9,670			9,670	100%		
27	Summit Signs	7,705	7,705			7,705	100%		
28	Prime Construction	39,676	39,676			39,676	100%		
29	TBD Tax - Exempt Transfer	589,448						589,448	
30									
31	McGOUGH								
32	Project Staff	743,699	739,070	3,828		742,898	100%	802	
33	Labor	325,478	318,763			318,763	98%	6,714	
34	Insurance & Taxes	133,762	133,493			133,493	100%	269	
35	Materials	180,358	178,358	1,605		179,963	100%	395	
36	Equip. Small Tools	100,672	100,672			100,672	100%	(0)	
37	Weather Conditons	146,754	146,754			146,754	100%	(0)	
38									
39	Builders Risk	16,914	16,914			16,914	100%		
40	Performance Bond	124,346	104,279	20,067		124,346	100%		
41	Subcontractor Default Insurance	167,765	167,765			167,765	100%		
42	General Liability Insurance	197,688	217,755	(20,067)		197,688	100%	0	
43									
44	Construction Contingency	500,000						500,000	
45	Construction Contingency Approved								
46	Potential Savings	261,125							
46	Approved COs	(600,000)						(600,000)	
46									
46	CM Fee	483,907	474,211	380		474,591	98%	9,316	
	Page-2	13,349,319	12,563,994	17,257		12,581,252	94%	506,942	

01 - McGough Construction Co., LLC JB - JOB BILLING DETAIL REPORT

Billing Contract Number: 100079.001
 Contract Name: ESSENTIA WELLNESSCENTER
 Draw Number: 23
 Revision Number: 0

<u>Source Description</u>	<u>Reference Description</u>	<u>Post Date</u>	<u>Reference Code</u>	<u>Amount</u>
<i>Job Code: 100079.001</i>				
2019 Invoice Accrual	Superior Diamond Con	12/31/2019		670.00
2019 Invoice Accrual	Superior Diamond Con	01/01/2020		-670.00
Northern Door & Hardware Inc	Door Hardware	02/27/2020	20-0690	1,605.00
Total for Vendors:				1,605.00
The Jamar Company	Essentia Health - Regional Wellness Center	03/31/2020	100079-0012-11	6,760.00
St Germain's Glass Inc	Essentia Health - Regional Wellness Center	03/31/2020	100079-0019-14	3,571.00
Intercon Group Inc	Essentia Health - Regional Wellness Center	03/31/2020	100079-0023-9.5	920.00
A G OBrien	Essentia Health - Regional Wellness Center	03/31/2020	100079-0029-15	194.00
Total for Vendors:				11,445.00
	OFWK20209	03/01/2020	OFWK20209	770.00
	OFWK202010	03/08/2020	OFWK202010	1,055.00
	OFWK202011	03/15/2020	OFWK202011	817.50
	OFWK202012	03/22/2020	OFWK202012	530.00
	OFWK202013	03/29/2020	OFWK202013	655.00
Total for McGough:				3,827.50
Total 100079.001 Costs:				16,877.50

01 - McGough Construction Co., LLC

Labor Detail Report

Page: 1 of 2
Date: Apr 14, 2020
Time: 10:08 AM CDT

Employee	Trade	Pay Period	Regular		Overtime		Other		Total Amount
			Hours	Rate	Hours	Rate	Hours	Rate	
Contract: 100079.001		ESSENTIA WELLNESSCENTER							
Job Code: 100079.001		ESSENTIA WELLNESSCENTER							
CHRISTINE M BARTA	Proj Coord	03/01/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
CHRISTINE M BARTA	Proj Coord	03/01/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JAKE G KLOCKE	Proj Eng	03/01/2020	3.00	45.00	0.00	0.00	0.00	0.00	135.00
JAKE G KLOCKE	Proj Eng	03/01/2020	2.00	45.00	0.00	0.00	0.00	0.00	90.00
JAKE G KLOCKE	Proj Eng	03/01/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JENNIFER L PETERSON	Asst Proj Mgr	03/01/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JENNIFER L PETERSON	Asst Proj Mgr	03/01/2020	0.50	45.00	0.00	0.00	0.00	0.00	22.50
JENNIFER L PETERSON	Asst Proj Mgr	03/01/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
PHILIP S JOHNSON	Proj Mgr	03/01/2020	1.50	85.00	0.00	0.00	0.00	0.00	127.50
PHILIP S JOHNSON	Proj Mgr	03/01/2020	2.00	85.00	0.00	0.00	0.00	0.00	170.00
Pay Period Total:			<u>14.00</u>		<u>0.00</u>		<u>0.00</u>		<u>770.00</u>
JAKE G KLOCKE	Proj Eng	03/08/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JAKE G KLOCKE	Proj Eng	03/08/2020	2.00	45.00	0.00	0.00	0.00	0.00	90.00
JAKE G KLOCKE	Proj Eng	03/08/2020	4.00	45.00	0.00	0.00	0.00	0.00	180.00
JAKE G KLOCKE	Proj Eng	03/08/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JAKE G KLOCKE	Proj Eng	03/08/2020	3.00	45.00	0.00	0.00	0.00	0.00	135.00
PATRIC J DRIESSEN	Proj Acct	03/08/2020	1.00	55.00	0.00	0.00	0.00	0.00	55.00
PATRIC J DRIESSEN	Proj Acct	03/08/2020	1.00	55.00	0.00	0.00	0.00	0.00	55.00
PATRIC J DRIESSEN	Proj Acct	03/08/2020	1.00	55.00	0.00	0.00	0.00	0.00	55.00
PATRIC J DRIESSEN	Proj Acct	03/08/2020	1.00	55.00	0.00	0.00	0.00	0.00	55.00
PHILIP S JOHNSON	Proj Mgr	03/08/2020	1.00	85.00	0.00	0.00	0.00	0.00	85.00
PHILIP S JOHNSON	Proj Mgr	03/08/2020	2.00	85.00	0.00	0.00	0.00	0.00	170.00
PHILIP S JOHNSON	Proj Mgr	03/08/2020	1.00	85.00	0.00	0.00	0.00	0.00	85.00
Pay Period Total:			<u>19.00</u>		<u>0.00</u>		<u>0.00</u>		<u>1,055.00</u>
CHRISTINE M BARTA	Proj Coord	03/15/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JAKE G KLOCKE	Proj Eng	03/15/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JAKE G KLOCKE	Proj Eng	03/15/2020	3.00	45.00	0.00	0.00	0.00	0.00	135.00
JAKE G KLOCKE	Proj Eng	03/15/2020	3.00	45.00	0.00	0.00	0.00	0.00	135.00
JAKE G KLOCKE	Proj Eng	03/15/2020	3.00	45.00	0.00	0.00	0.00	0.00	135.00
PATRIC J DRIESSEN	Proj Acct	03/15/2020	1.00	55.00	0.00	0.00	0.00	0.00	55.00
PATRIC J DRIESSEN	Proj Acct	03/15/2020	1.00	55.00	0.00	0.00	0.00	0.00	55.00
PHILIP S JOHNSON	Proj Mgr	03/15/2020	0.50	85.00	0.00	0.00	0.00	0.00	42.50
PHILIP S JOHNSON	Proj Mgr	03/15/2020	1.00	85.00	0.00	0.00	0.00	0.00	85.00

01 - McGough Construction Co., LLC

Labor Detail Report

Page: 2 of 2
Date: Apr 14, 2020
Time: 10:08 AM CDT

Employee	Trade	Pay Period	Regular		Overtime		Other		Total Amount
			Hours	Rate	Hours	Rate	Hours	Rate	
PHILIP S JOHNSON	Proj Mgr	03/15/2020	1.00	85.00	0.00	0.00	0.00	0.00	85.00
Pay Period Total:			<u>15.50</u>		<u>0.00</u>		<u>0.00</u>		<u>817.50</u>
JAKE G KLOCKE	Proj Eng	03/22/2020	2.00	45.00	0.00	0.00	0.00	0.00	90.00
JAKE G KLOCKE	Proj Eng	03/22/2020	3.00	45.00	0.00	0.00	0.00	0.00	135.00
JAKE G KLOCKE	Proj Eng	03/22/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JAKE G KLOCKE	Proj Eng	03/22/2020	2.00	45.00	0.00	0.00	0.00	0.00	90.00
PHILIP S JOHNSON	Proj Mgr	03/22/2020	2.00	85.00	0.00	0.00	0.00	0.00	170.00
Pay Period Total:			<u>10.00</u>		<u>0.00</u>		<u>0.00</u>		<u>530.00</u>
CHRISTINE M BARTA	Proj Coord	03/29/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JAKE G KLOCKE	Proj Eng	03/29/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JAKE G KLOCKE	Proj Eng	03/29/2020	1.00	45.00	0.00	0.00	0.00	0.00	45.00
JAKE G KLOCKE	Proj Eng	03/29/2020	2.00	45.00	0.00	0.00	0.00	0.00	90.00
JAKE G KLOCKE	Proj Eng	03/29/2020	2.00	45.00	0.00	0.00	0.00	0.00	90.00
PHILIP S JOHNSON	Proj Mgr	03/29/2020	2.00	85.00	0.00	0.00	0.00	0.00	170.00
PHILIP S JOHNSON	Proj Mgr	03/29/2020	2.00	85.00	0.00	0.00	0.00	0.00	170.00
Pay Period Total:			<u>11.00</u>		<u>0.00</u>		<u>0.00</u>		<u>655.00</u>
Contract 100079.001 Total:			<u>69.50</u>		<u>0.00</u>		<u>0.00</u>		<u>3,827.50</u>

Report Parameters:

Company Code: 01	Revision Number: 0	Run Date: Apr 14, 2020
Contract Code: 100079.001	Control Category: Z100	Run Time: 10:08 AM CDT
Draw Number: 23		Operator: PATRIC.DRIESSEN
		Report Code: JBBACKUPPY

TO: Mayor & City Council
FROM: John Mulder, City Administrator
DATE: April 28, 2020
SUBJECT: Information Security Policy



Meeting Date: 5/4/20
Agenda Item: 12-B **Resolution 2020-55**

REQUESTED ACTION

Approve an updated policy in the city handbook regarding information security

BACKGROUND

For years, the City has had a computer policy regarding the proper use of city owned computer equipment and the use of it by employees. The previous policy also addressed the use of e-mails and the internet. As the City has expanded the use of cell phones and Ipads, and greater use of different forms of communications such as texting and social media, it was necessary to update the policy. The new updated policy deals with the use of computer equipment, but also expectations for employees regarding use of data and social media.

This policy would apply to anyone who uses city provided equipment. A copy of the policy will be provided to all covered individuals.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Handbook Section

Resolution No. 2020-55

**RESOLUTION APPROVING AN AMENDMENT TO THE CITY HANDBOOK
REGARDING INFORMATION SECURITY POLICY**

WHEREAS, the City of Hermantown owns and requires employees to operate a vast variety of computer equipment, software, and electronic forms of communications; and

WHEREAS, the City Council of the City of Hermantown believes it is important to provide a security framework that will ensure the protection, confidentiality, integrity, and availability of the City of Hermantown (hereinafter referred to as “City”) information assets, physical assets, City information, and customer information (collectively, “City Assets”).

WHEREAS, it is important to communicate guidelines and expectations regarding this security framework to employees and other users of the City’s computer equipment and the information that is used and disseminated by electronic means; and

WHEREAS, City Staff has prepared a written policy to reflect the city’s current practices; and

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota, as follows:

1. The City Council approves the information security policy as shown on Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 4, 2020.

Handbook for the City of Hermantown		
Policy – Resolution 2020-55		X Procedure
Date Adopted	Title: Information Security Policy	Section: Personnel Management
Revision Dates:		Page: 1 of 10

City of Hermantown, Minnesota Information Security Policy

General Information

The purpose of this Information Security Program ("ISP") is to provide a security framework that will ensure the protection, confidentiality, integrity, and availability of the City of Hermantown (hereinafter referred to as "City") information assets, physical assets, City information, and customer information (collectively, "City Assets"). Standards and procedures related to this ISP will be developed and published separately.

City owned computers and related equipment used by City employees, elected officials, appointed commission members, administrative consultants, contractors, or third parties, referred to as ("ISP Parties") throughout this document, are property of the City and subject to these Information Security policies, standards, and practices. The City reserves the right to inspect, without notice, all data, emails, files, settings, or any other aspect of a City-owned computer or related system, including personal information created or maintained by ISP Parties. The City may conduct inspections on an as-needed basis as determined by City Administrator or Director of Finance & Administration.

Beyond this policy, the city's City Administrator or Director of Finance & Administration may distribute information regarding precautions and actions needed to protect City systems; all ISP Parties are responsible for reading and following the guidance and directives in these communications.

The City reserves the right to change these policies at any time with such prior notices, if any, as the City deems reasonable under the circumstances.

All ISP Parties and/or contractors that will work with the City's computers are responsible for reading and adhering to these policies. It is the responsibility of supervisors that each of the ISP Parties and/or contractors with computer access has received this document.

Personal Use

The City recognizes that some personal use of City-owned computers and related equipment has and will continue to occur. Some controls are necessary, however, to protect the City's equipment and computer network and to prevent abuse of this privilege.

Reasonable, incidental personal use of City computers and software (e.g., word processing, spreadsheets, email, Internet, etc.) is allowed but should never preempt or interfere with work. All use of City computers and software, including personal use, must adhere to provisions in this policy, including the following:

Handbook for the City of Hermantown		
Policy – Resolution 2020-55		X Procedure
Date Adopted	Title: Information Security Policy	Section: Personnel Management
Revision Dates:		Page: 2 of 10

- ISP Parties shall not connect personal peripheral tools or equipment (such as printers, digital cameras, disks, USB drives, or flash cards) to City-owned systems, without prior approval from CW Technology. If permission to connect these tools/peripherals is granted, the ISP Parties must follow the directions provided under Security/Network Access for protecting the City’s computer network.
- Personal files should not be stored on City computer equipment. This also applies to personal media files, including but not limited to mp3 files, wav files, movie files, iTunes files, or any other file created by copying a music CD, DVD, or files from the Internet. CW Technology staff will delete these types of files if found on the network, computers, or other City-owned equipment. Exceptions would be recordings for which the City has created, owns, purchased, or has a license.
- City equipment or technology shall not be used for personal business interests, for-profit ventures, political activities, or other uses deemed by the City Administrator or Director of Finance & Administration to be inconsistent with City activities. If there is any question about whether a use is appropriate, it should be forwarded to City Administrator or Director of Finance & Administration for a determination.

Hardware

In general, the City will provide the hardware required for an ISP Parties to perform his or her job duties. Requests for new or different equipment should be made to your supervisor, who will forward the request to the City Administrator or Director of Finance & Administration.

Only City staff may use City computer equipment. Use of City equipment by family members, friends, or others is strictly prohibited.

ISP Parties are responsible for the proper use and care of City-owned computer equipment. City computer equipment must be secured while off City premises; do not leave computer equipment in an unlocked vehicle or unattended at any offsite facility. Computer equipment should not be exposed to extreme temperature or humidity. If a computer is exposed to extreme heat, cold, or humidity, it should be allowed to achieve normal room temperature and humidity before being turned on.

Laptops, iPads & Mobile Phones

The City will not supply laptop computers based solely on the desire of ISP Parties to work offsite. Laptops will only be issued to ISP Parties who have a documented business need for a laptop.

iPads are provided to ISP Parties whose job performance requires or would be enhanced by their use. The City has ownership over all of the data on the device. There shall be no expectation of privacy. Detailed information concerning City owned iPads is public information, except when

Handbook for the City of Hermantown		
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otherwise classified by statute. The ISP Parties will turn in all City owned iPads upon termination.

Mobile phones are provided to ISP Parties whose job performance requires or would be enhanced by their use. Use of mobile phones for business purposes is at the discretion of each department head. Participating departments shall review and assign mobile phones and services consistent with their procedures and the policy and procedures herein. The scope of this policy covers both city owned mobile phones and service and ISP Parties owned mobile phones and service, including a reimbursement for eligible ISP Parties. The City may provide its ISP Parties, who acknowledge and agree to the terms in this policy, the opportunity to use mobile devices, whether owned by the City or ISP Parties (collectively, "BYOD Users"), for business purposes to access and use email and other authorized City systems and information (collectively, "City Data").

BYOD "Bring Your Own Device" means a computer, smart phone, tablet, or other device that is authorized to access City Data or is used to backup any such device and is owned by either the City or BYOD Users.

ISP Parties are expected to use mobile phones responsibly and in accordance with this policy and any applicable work rules. ISP Parties shall follow local and State regulations regarding mobile phone use while operating a motor vehicle.

The city owned mobile phones may be used for both City and personal business. The City has ownership over all of the data on the device. There shall be no expectation of privacy. Detailed information concerning City owned mobile phones is public information, except when otherwise classified by statute. The ISP Parties will turn in all City owned devices upon termination. When an ISP Parties terminates their relationship with the City, they MUST, prior to their final working day with the City, submit their City owned device (and any applicable passwords, if required) to the City in order to: (i) remove any and all City data from the device; and/or (ii) delete City data from any backup systems maintained by the ISP Parties.

The City may take appropriate actions, at its discretion, to safeguard City Data, including remotely wiping the device (which will return it to factory default settings and may result in the deletion of ALL of the ISP Parties' personal information maintained on the device) or seeking judicial intervention to compel submission of the device to inspection by the City.

Management ISP Parties, per the city's Management Compensation Plan, who use ISP Parties owned mobile phones to conduct City business may be eligible to receive a mobile phone reimbursement. The mobile phone reimbursement is intended to help defray the costs of City business on an ISP Parties owned "BYOD Users" phone. ISP Parties are limited to either a City issued device or a mobile phone reimbursement, but not both. The reimbursement is a fixed

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amount per month and will be remitted to the ISP Parties two times per year. Termination of employment will end participation.

Software

The City of Hermantown complies with all software copyright and terms of all software licenses. City ISP Parties and/or contractors may not duplicate licensed software or related documentation. Any such duplication may subject ISP Parties, contractors, and/or the City to both civil and criminal penalties under the US Copyright Act. Personal software may be installed only at the direction of the City Administrator or Director of Finance & Administration. City owned software may not be loaded onto external systems unless agreement allows such use and the City Administrator or Director of Finance & Administration approves.

At the request of the City, ISP Parties' MUST immediately surrender physical possession of their device (and any applicable passwords) to the City. BYOD Users do not have a right of privacy nor should they expect privacy while using a Personal Device to access City data. Any personal device is, at all times, subject to the City's right to access the personal device, with or without notice, to monitor, investigate, review, delete, collect data, remotely wipe data, and/or remotely disable the personal device at any time and for any reason. This may include the ability to view applications on the device and the ability to identify the location of the device through location-based services. The City will not be liable for the loss of any personal data arising from such actions. The City may also, at any time and without notice, collect information from a personal device for litigation or law enforcement purposes. By accepting this policy, the BYOD User consents to disclosing and monitoring of personal device usage, including the contents of any files or information maintained or passed through that Personal Device.

ISP Parties' shall indemnify and hold the City harmless from and against any and all claims, damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to or resulting from any non-compliance with the Terms and Conditions. The City is not responsible for any damages, loss of personal data or content, or any other costs or expenses incurred by the ISP Parties relating to the device.

In general, the City will provide the software required for an ISP Parties to perform his or her job duties. Requests for new or different software should be made to your supervisor.

ISP Parties shall not download or install any software on their computer without the prior approval of the City Administrator or Director of Finance & Administration. Exceptions to this include updates to software approved by CW Technology such as Microsoft updates, or other productivity software updates. CW Technology may, without notice, remove any unauthorized programs or software, equipment, downloads, or other resources.

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Electronic Mail: The City provides ISP Parties with an email address for work-related use. Some personal use of the City email system by ISP Parties is allowed, provided it does not interfere with an ISP Parties’ work and is consistent with all City policies.

ISP Parties emails (including those that are personal in nature) may be considered public data for both e-discovery and information requests and may not be protected by privacy laws. Email may also be monitored as directed by the City authorized staff and without notice to the ISP Parties.

As a matter of routine, the City will not monitor email or voice mail messages. However, the City, through its managers and supervisors reserves the right to review the contents of ISP Parties and/or contractor email and/or voice mail files. Also, ISP Parties may not intentionally intercept eavesdrop, record, alter, or receive other people’s emails or voice mail messages without proper authorization.

ISP Parties may not access work email addresses on their personal devices without prior approval of the department head.

ISP Parties must adhere to these email guidelines:

- Never transmit an email that you would not want your supervisor, other ISP Parties, members, city officials, or the media to read or publish (e.g., avoid gossip, personal information, swearing, etc.).
- Records of Internet access, such as sites visited, images reviewed, and email sent, may be recorded and monitored by us at any time with no expectation of privacy.
- Use caution or avoid corresponding by email on confidential communications (e.g., letters of reprimand, correspondence with attorneys, medical information).
- Do not open email attachments or links from an unknown sender. Delete junk or “spam” email without opening it if possible. Do not respond to unknown senders.
- Do not use harassing language (including sexually harassing language) or any other remarks, including insensitive language or derogatory, offensive, or insulting comments or jokes.
- To avoid any issues related to open meeting laws, any emailing by or to City Council members should never be a group email with more than 2 City Council members. Emailing to or by City Council members during a City Council meeting is strictly prohibited.

Texting & Instant Messaging: ISP Parties should use caution when using texting or other instant messaging applications. Texting should be limited to transitory discussions. (For example: “I am running late.” Or “I will meet you at ____.” To avoid any issues related to open meeting laws, any texting by or to City Council members should never be a group text with more than 2 City Council members. Texting to or by City Council members during a City Council meeting is strictly prohibited.

Texting on City owned mobile phones or on phones for which ISP Parties are reimbursed may become a matter of public record.

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ISP Parties are not allowed to use Instant Messaging as a mechanism for personal communication through the City’s computer network or when using City equipment, and are not allowed to download or install any other IM software package on their City computer.

Security

Passwords: ISP Parties are responsible for maintaining computer/network passwords and must adhere to these guidelines:

- Password requirements are determined by CW Technology.
- Passwords should not be shared or told to other staff. If it is necessary to access an ISP Parties’ computer when he or she is absent, contact your supervisor or the City Administrator or Director of Finance & Administration; CW Technology will not provide access to staff accounts without approval of the City Administrator or Director of Finance & Administration.
- ISP Parties should use reasonable care to store passwords in a secure location to prevent unauthorized use. For example: Post it notes on desk. Work passwords should not be identical to personal passwords.
- ISP Parties must change passwords as determined by CW Technology.

Network access: Non-City-owned computer equipment used in the City’s building should only use the wireless connection to the Internet. Non-City-owned equipment should not be connected to the City’s computer network via a network cable. Exceptions may be granted by City Administrator or Director of Finance & Administration. Non-City-owned computer equipment should only use the "Hermantown Public" Guest network only. The City's private WiFi network should never be accessed using any type of personal device.

Personal computer equipment may not be connected to the City’s network without prior approval of the City Administrator or Director of Finance & Administration. Personal equipment may be subject to password requirements or other electronic security measures as determined by the City Administrator or Director of Finance & Administration. The City supports self-expression, including the right to express oneself to others via Internet blogs, social web pages, posting on open forums, or speaking during public events. Online social networking sites and other online communication platforms and technologies, such as Facebook, LinkedIn, Twitter, YouTube and blogs, are primarily aimed at personal relationships and communications among individuals. While users may use these media to communicate with friends and family outside of work, users should be mindful that whatever users publish will be public for a long time, and is available to the City and vendors and customers to view.

Remote Access to the Network: Examples of remote access include, but are not limited to: Outlook Web Access (web mail), virtual private network (VPN), Windows Remote Desktop, and

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Windows Terminal Server connections. While connected to City computer resources remotely, all aspects of the City’s Computer Use Policy will apply, including the following:

- Remote access to the City’s network requires a request from a supervisor and approval from the City Administrator or the Director of Finance & Administration. Remote access privileges may be revoked at any time by an ISP Parties’ supervisor.
- If remote access is from a non-City-owned computer, updated anti-virus software must be installed and operational on the computer equipment, and all critical operating system updates must be installed prior to connecting to the City network remotely. Failure to comply could result in the termination of remote access privileges.
- Recreational use of remote connections to the City’s network is strictly forbidden. An example of this would be a family member utilizing the City’s network to visit websites.
- All transmittal of Company Sensitive Information and Personal Identifiable Information on public networks or wireless systems will be done using encryption technology. For instance, email encryption, PGP, VPN, secure file transfer, WPA2, and SSL can be used.

Internet

The following considerations apply to all uses of the Internet:

- Information found on the Internet and used for City work must be verified to be accurate and factually correct.
- Reasonable personal use of the Internet is permitted. ISP Parties may not at any time access inappropriate sites. Some examples of inappropriate sites include but are not limited to adult entertainment, sexually explicit material, or material advocating intolerance of other people, races, or religions. If you are unsure whether a site may include inappropriate information, you should not visit it. There may be reasons for law enforcement to research some of these sites for investigations. This research should be authorized through a supervisor. Since the City uses a firewall that blocks sites that are inappropriate, there may be instances of an appropriate website being blocked. If this occurs, contact the City Administrator or Director of Finance & Administration and efforts will be made to make that site available if the site is deemed appropriate by the supervisor and CW Technology staff.
- ISP Parties should not access a website or location where a fee is charged without prior approval of the supervisor. ISP Parties are responsible for such charges that are not pre-approved and shall reimburse the City in full for such charges.
- If an ISP Parties’ use of the Internet is compromising the integrity of the City’s network, CW Technology staff may temporarily restrict that ISP Parties’ access to the Internet. If CW Technology staff does restrict access, they will notify the ISP Parties, the ISP Parties’ supervisor and the City Administrator as soon as possible, and work with the ISP Parties and manager to rectify the situation.
- The City may monitor or restrict any ISP Parties’ use of the Internet without prior notice, as deemed appropriate by the ISP Parties’ supervisor.

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This policy provides awareness and notification of what we deem to be acceptable and unacceptable use of the Internet. It is necessary to make sure that the Internet is properly used to avoid distractions in the work environment, and to avoid certain risks including virus attacks, compromise of City network systems and services, and legal issues.

Internet/intranet/extranet access is granted expressly for ISP Parties and other approved users for the purpose of conducting approved business purposes. Authorized and unauthorized usage, personal or incidental use, is authorized for limited purposes and will be subject to the following guidelines:

- The use must not constitute a conflict of interest. Personal business or use for personal gain constitutes a conflict of interest.
- Personal use is on personal time (hours not charged to us) and must not interfere with our business or normal work activities, and not adversely affect performance of the ISP Parties, surrounding ISP Parties, the organization, or business functions.
- Illegal, obscene, pornographic, or offensive material must not be accessed, viewed, downloaded, or sent.
- Any access that could result in significant incremental cost, such as noticeable additional electronic mail traffic, large non-business-related file transfers, and the like are not permitted.
- Use must not involve any illegal or unethical activity (e.g., gambling, Warez sites containing pirated software, movies, games, or illegal hacking/cracking tools).
- The addition of any hardware that would allow additional access to the Internet is prohibited.
- Users should not bring personal computers or data storage devices (such as CDs/DVDs, external hard drives, USB or flash drives, iPods, or other data storage media) to connect them to our network.
- Downloading or sending unapproved software, computer viruses, malicious code, or any unauthorized attempts to access another person’s data or City’s intranet are prohibited.
- Users are responsible for determining the sensitivity and need for further encryption to secure City confidential or sensitive information prior to posting, transmitting or sending it via the Internet. If unsure, the user is responsible for contacting the City Administrator or Director of Finance & Administration for assistance.
- City websites or web servers are not to be used for posting non-business-related data or for the illegal distribution of data, such as software, games, movies, code or other inappropriate data.

Privacy and Monitoring. By using the Internet access provided by City, users agree to this policy and acknowledge that records of Internet access, such as sites visited, images reviewed, and email sent, may be recorded and monitored by us at any time with no expectation of privacy and that:

- Encrypted technology that meets our requirements will be employed.

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- We own the rights to all data and files in our computers, network, or other information systems, subject to applicable laws. Users may not access networks, servers, drives, folders, or files to which the user has not been granted authorization. Users may not destroy, delete, erase, or conceal files or other data, or otherwise make files or data unavailable or inaccessible. In addition, users may not access another ISP Parties’ computer, computer files, or electronic mail without authorization from their supervisor.
- We license the use of certain commercial software application programs from third parties for business purposes. Third parties retain the ownership and distribution rights to this software. Users may not use or distribute licensed software.
- By using our equipment or the Internet access provided by us, users consent to the monitoring of all network and information systems. We may use software that allows us to monitor messages, files, etc. stored, viewed, sent or received on City’s network. This includes, but is not limited to, electronic mail (“e-mail”) messages sent and received using our equipment or Internet access provided by us are not private and are subject to viewing, downloading, inspection, release, and archiving by us. We have the right to inspect files stored in private areas of the City network or on individual computers or storage media to assure compliance with our policies and applicable state and federal laws.

Data Retention

Electronic data should be stored and retained in accordance with the City’s records retention schedule.

Storing and Transferring Files: If you are unsure whether an email or other file is a government record for purposes of records retention laws or whether it is considered protected or private, check with your supervisor. If you are unsure how to create an appropriate file structure for saving and storing electronic information, contact the City Administrator.

ISP Parties must adhere to these guidelines when transferring and storing electronic files:

- All electronic files must be stored on identified network drives and folder locations. The City will not back up documents stored on local computer hard drives, and holds no responsibility for recovery of documents on local computer hard drives should they fail. Files may be temporarily stored on a laptop hard drive when an ISP Parties is traveling/offsite; however, the files should be copied to the network as soon as possible.
- Electronic files, including emails and business-related materials created on an ISP Parties’ home or personal computer for City business, must be transferred to and stored in designated locations on the City’s network. City-related files should not be stored on an ISP Parties’ personal computer, unless otherwise defined in this policy.
- All removable storage media (e.g., CD-ROM, flash or USB drive, or other storage media) must be verified to be virus-free before being connected to City equipment.

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- Email that constitutes an official record of City business must be kept in accordance with all records retention requirements for the department and should be copied to the network for storage.
- Email that is simple correspondence and not an official record of City business should be deleted (from both the “Inbox” and the “Deleted” box) as soon as possible and should not be retained by ISP Parties for more than three months. The City will not retain emails longer than one year on the network or in network back-ups.
- Electronic files or emails that may be classified as protected or private information should be stored in a location on the City’s network that is properly secured.
- Any files considered private or confidential should not be stored anywhere other than the City’s network. If there is a need to take confidential information offsite, it must be stored on encrypted media; CW Technology can assist in the encryption of media.

TO: Mayor & City Council
FROM: Kevin Orme, Director of
Finance & Administration



DATE: April 28, 2020 **Meeting Date:** 5/4/20
SUBJECT: Bond Amending and **Agenda Item: 12-C** **Resolutions 2020-56**
Restating Resolution 2020-52

REQUESTED ACTION

Approve Resolution Amending and Restating Resolution 2020-52

BACKGROUND

The City awarded new bonds, Series 2020B with Resolution 2020-52. We have been informed by Fryberger, Buchanan, Smith & Frederick, P.A. that we need an administration modification to Resolution 2020-52. This resolution amends and restates in its entirety “Resolution 20-52 adopted on April 20, 2020, “Resolution Authorizing the Issuance, Sale and Delivery of \$3,915,000 General Obligation Sewage Disposal System Bonds, Series 2020B.” This is a technical fix required by our bond counsel so the approved Resolution will include the levy schedule.

SOURCE OF FUNDS (if applicable)

N/A

ATTACHMENTS

Resolution No. 2020-56

**RESOLUTION AMENDING AND RESTATING RESOLUTION 2020-52
RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF
\$3,915,000 GENERAL OBLIGATION SEWAGE DISPOSAL SYSTEM BONDS,
SERIES 2020B, AND AWARDING THE SALE THEREOF**

BE IT RESOLVED, by the City Council (the “City Council”) of the City of Hermantown, St. Louis County, Minnesota (the “Issuer”), as follows:

Section 1. Bond Purpose, Authorization and Award.

1.01 Statutory Authority. Pursuant to authority contained in Minnesota Statutes, Chapters 115 and 475, the Issuer is authorized to issue its general obligation bonds for the purpose of financing the cost of capital improvements to the Issuer’s sewer system (the “Project”).

1.02 Authorization.

A. The Issuer directs the issuance and sale of its \$3,915,000 General Obligation Disposal System Bonds, Series 2020B, of the Issuer dated as of the date of closing and delivery thereof (the “Bond”).

B. The principal of and interest on the Bond shall be paid primarily from ad valorem taxes and net revenues derived from the operation of the Issuer’s sewer system (the “Utility”).

1.03 Municipal Advisor. The Issuer has retained the services of Ehlers & Associates, Inc., as its municipal advisor.

1.04 Award of Sale. The Issuer has received an offer from Piper Sandler & Co. of Minneapolis, Minnesota (the “Purchaser”), to purchase the Bonds at a cash price of \$4,058,321.22, upon the terms and conditions hereafter specified in this Resolution. The City Council, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is accepted. The Mayor and the City Clerk are authorized and directed to execute on the part of the Issuer a contract for the sale of the Bonds in accordance with the Purchaser’s proposal, and to acknowledge receipt of the security given for the proposal, if any.

Section 2. Terms of the Bonds.

2.01 Date, Maturities and Interest Rates.

A. The Bonds to be issued hereunder shall be issued as fully-registered bonds designated “\$3,915,000 General Obligation Sewage Disposal System Bonds, Series 2020B,” dated the date of closing and delivery as the date of original issue, issued in the denominations of \$5,000, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward.

B. The Bonds shall mature on February 1 in the years and amounts stated below and shall bear interest from the most recent Interest Payment Date (as hereinafter defined) to which interest has been paid or duly provided for, or, if no interest has been paid or provided for, from the date of original issue until paid at the rates per annum set forth below opposite such years and amounts:

Year	Principal Amount	Interest Rate
2021	\$205,000	3.00%
2022	190,000	3.00%

Year	Principal Amount	Interest Rate
2023	195,000	3.00%
2024	200,000	3.00%
2025	205,000	3.00%
2026	210,000	3.00%
2027	220,000	3.00%
2028	225,000	3.00%
2029	230,000	3.00%
2030	240,000	2.00%
2031	240,000	2.00%
2032	245,000	2.00%
2033	250,000	2.00%
2034	255,000	2.00%
2036	530,000	2.00%
2037	275,000	2.00%

2.02 Interest Payment Dates; Record Date.

A. The Bonds shall bear interest at the annual rates stated therefor in Section 2.01. The interest shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an “Interest Payment Date”) commencing on August 1, 2020. Interest will be computed upon the basis of a 360-day year of twelve, 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board.

B. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the person in whose name each Bond is registered (the “Holder”) and in each case at the address shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not on a business day) of the calendar month next preceding the Interest Payment Date (the “Regular Record Date”). Any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the Holder thereof as of the Regular Record Date, and shall be payable to the person who is the Holder thereof at the close of business on a date fixed for the payment of such defaulted interest (the “Special Record Date”). The Special Record Date shall be fixed by the Bond Registrar whenever money becomes available for payment of the defaulted interest and notice of the Special Record Date shall be given by the Bond Registrar to the Holders not less than 10 days prior thereto. The term “Holder” shall also include those lawfully entitled to take actions on behalf of the beneficial owners of the Bonds for purposes of any consent or approvals given by Holders.

C. If the date for payment of the principal of, premium, if any, or interest on the Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of New York, New York, or the city where the principal office of the Bond Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

2.03 Redemption.

A. The Bonds maturing on and prior to February 1, 2030, shall not be subject to redemption and prepayment before maturity, but those maturing on and after such date and in subsequent years shall each be subject to redemption and prepayment at the option of the Issuer on February 1, 2029, and on any

day thereafter, in whole or in part and by lot as to the Bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

B. The Bond maturing on February 1, 2036, shall be subject to mandatory redemption prior to maturity pursuant to the requirements of this section at a redemption price equal to the stated principal amount thereof plus interest accrued thereon to the redemption date, without premium. The Bond Registrar, as designated below, shall select for redemption, by lot or other manner deemed fair, on February 1 in each of the following years the following stated principal amounts:

Year	Principal Amount
2035	\$260,000
2036	270,000

C. In the event of mandatory redemption described above, notice thereof identifying the portion of the Bonds to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) not more than 60 and not less than 30 days prior to the date fixed for redemption to the registered owner of each Bond or portion thereof to be redeemed at the address shown on the registration books kept by the Bond Registrar; provided however, that so long as the Bonds are registered in the name of Cede & Co., notice of redemption shall be given in accordance with the terms of the Representation Letter. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of Bonds not affected by such defect or failure. Bonds or portion thereof so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

D. If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the Issuer or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

Section 3. Registration; Global Book-Entry System.

3.01 Designation of Bond Registrar. The City Council appoints Bond Trust Services Corporation, as registrar, authenticating agent and transfer agent for the Bonds (such entity or its successors is herein referred to as the "Bond Registrar"), and shall do so until a successor Bond Registrar is duly appointed, all pursuant to a contract which the Issuer and the Bond Registrar shall execute which is consistent herewith and which the Mayor and City Clerk are authorized to execute and deliver. A successor Bond Registrar shall be a bank or trust company eligible for designation as bond registrar pursuant to Minnesota Statutes, Chapter 475. The terms of the appointment of the successor Bond Registrar and its duties shall be specified in a contract between the Issuer and such successor Bond Registrar that is consistent herewith and that the Mayor and City Clerk are authorized to execute and deliver. The Bond Registrar, which may act through an agent, shall also serve as paying agent until and unless a successor paying agent is duly appointed. The Bond Registrar shall pay principal and interest on the Bonds to the registered Holders (or record Holders) of the Bonds in the manner set forth herein. The Issuer agrees to pay the reasonable and customary charges for the services of such Bond Registrar.

3.02 Designation of Depository. DTC, a Securities and Exchange Commission designated depository, a limited purpose New York trust company, a member of the Federal Reserve System, and a “clearing corporation” within the meaning of the New York Uniform Commercial Code, is designated as the depository (the “Depository”) with respect to the Bonds.

3.03 Authentication of Bonds. No Bond shall be valid or obligatory for any purpose unless or until either (i) the Bond Registrar’s authentication certificate on such Bond, substantially set forth in Section 4.01 hereof, shall have been duly executed by an authorized representative of the Bond Registrar or (ii) the Bonds have been manually executed by at least one officer of the City. Authentication certificates on different Bonds need not be signed by the same representative. The Bond Registrar shall authenticate each Bond by execution of the Certificate of Authentication on the Bond and shall date each Bond in the space provided as of the date on which the Bond is registered. For purposes of delivering the original Bonds, the Bond Registrar shall insert as the date of registration the date of original issue. The executed Authentication Certificate or the manual signature of at least one officer of the City on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution.

3.04 Bond Register; Transfer; Exchange.

A. The Issuer shall cause to be kept by the Bond Registrar at its principal office, a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the Issuer shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the City Council.

B. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the Issuer shall execute, if required by law or this Resolution, and the Bond Registrar shall authenticate, if required by law or this Resolution, date (in the space designated Date of Registration) and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount having the same stated maturity and interest rate, as requested by the transferor; provided, however, that no Bond may be registered in blank or in the name of “bearer” or similar designation. Transfer of a Bond may be made on the Issuer’s books by the registered owner in person or by the registered owner’s attorney duly authorized in writing. Transfers shall be subject to reasonable regulations of the Issuer contained in any agreement with, or notice to, the Bond Registrar, including regulations which permit the Bond Registrar to close its transfer books between record dates and payment dates. The Issuer and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the first publication or the mailing (if there is no publication) of notice of redemption in the case of a proposed redemption of the Bonds.

C. Every Bond presented or surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, in form satisfactory to the Bond Registrar, duly executed by the registered owner thereof, with signature guaranteed, or by the registered Holder’s attorney duly authorized in writing, and shall include written instructions as to the details of the transfer of the Bond. When any Bond is presented to the Bond Registrar for transfer, the Bond Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Bond Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

D. At the option of the Holder, replacement Bonds may be exchanged for Bonds of any authorized denomination or denominations of a like aggregate principal amount and stated maturity, upon

surrender of the Bonds to be exchanged at the principal office of the Bond Registrar. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute (if required by law or this Resolution), and the Bond Registrar shall authenticate (if required by law or this Resolution), date (in the space designated Date of Registration) and deliver the replacement Bonds which the Holder making the exchange is entitled to receive. Bonds registered in the name of Cede & Co. may not be exchanged for Bonds of smaller denominations.

E. All Bonds surrendered upon any exchange or transfer provided for in this Resolution shall be promptly canceled by the Bond Registrar and thereafter disposed of as directed by the Issuer.

F. Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. All Bonds delivered in exchange for or upon transfer of Bonds shall be valid general obligations of the Issuer evidencing the same debt, shall be entitled to the same benefits under this Resolution as the Bonds surrendered for such exchange or transfer, and shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bonds.

G. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the transfer or exchange of any Bond and any legal or unusual costs regarding transfers and lost bonds.

H. Bonds registered in the name of Cede & Co. may not after their original delivery, be transferred or exchanged except in accordance with the terms and conditions of the Representation Letter and:

(i) upon exchange of a Bond after a partial redemption, if provided in Section 2.03 of this Resolution;

(ii) to any successor of the Depository (or its nominee) or any substitute depository (a "Substitute Depository") designated pursuant to clause (iii) below; provided that any successor of the Depository or any Substitute Depository must be both a "clearing corporation" as defined in the Minnesota Uniform Commercial Code, Minnesota Statutes, Section 336.8-102, and a qualified and registered "clearing agency" as provided in Section 17A of the Securities Exchange Act of 1934, as amended;

(iii) to a Substitute Depository designated by and acceptable to the Issuer upon (a) the determination by the Depository that the Bonds shall no longer be eligible for its depository services or (b) a determination by the Issuer that the Depository is no longer able to carry out its functions; provided that any Substitute Depository must be qualified to act as such, as provided in subclause (ii) above; or

(iv) in the event that (a) the Depository shall resign or discontinue its services for the Bonds or be declared no longer able to carry out its functions and the Issuer is unable to locate a Substitute Depository within two months following the resignation or discontinuance or determination of noneligibility, or (b) the Issuer determines in its sole discretion that (1) the continuation of the book-entry system described herein might adversely affect the interests of the beneficial owners of the Bonds, or (2) it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, then the Issuer shall notify the Holders of its determination and of the availability of replacement Bonds to Holders. The Issuer, the Bond Registrar and the Depository shall cooperate in providing Replacement Bonds to Holders

requesting the same and the registration, transfer and exchange of such Bonds shall thereafter be conducted as provided in Section 3 of this Resolution.

I. In the event of the designation of a Substitute Depository as authorized by clause H., the Bond Registrar, upon presentation of a Bond, shall register their transfer to the Substitute Depository, and the Substitute Depository shall be treated as the Depository for all purposes and functions under this Resolution. The Representation Letter shall not apply to the Substitute Depository unless the Issuer and the Substitute Depository so agree, and the execution of a similar agreement is authorized.

3.05 Persons Deemed Owners; Payment.

A. The Issuer and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and premium, if any, and interest (subject to the payment provisions in Section 2.02 above), on such Bond and for all other purposes whatsoever, whether or not such Bond shall be overdue, and neither the Issuer nor the Bond Registrar shall be affected by notice to the contrary.

B. For the purposes of all actions, consents and other matters affecting Holders of Bonds issued under this Resolution as from time to time supplemented, other than payments, redemptions, and purchases, the Issuer may (but shall not be obligated to) treat as the Holder of a Bond the beneficial owner of the Bond instead of the person in whose name the Bond is registered. For that purpose, the Issuer may ascertain the identity of the beneficial owner of the Bond by such means as the Bond Registrar in its sole discretion deems appropriate, including but not limited to a certificate from the Depository or other person in whose name the Bond is registered identifying such beneficial owner.

C. The principal of and interest on the Bonds shall be payable by the Bond Registrar in such funds as are legal tender for the payment of debts due the United States of America. The Issuer shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

3.06 Use of Global Book-Entry System.

A. There has been previously submitted to this City Council a form of Blanket Issuer Letter of Representations (the "Representation Letter") by the Issuer setting forth various matters relating to the Depository and its role with respect to the Bonds. The terms and conditions of the Representation Letter are ratified.

B. All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the Issuer on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

C. So long as DTC is the Depository or it or its nominee is the Holder of any Bonds, the Issuer shall comply with the provisions of the Representation Letter, as it may be amended or supplemented from time to time.

D. Additional matters with respect to, among other things, notices, consents and approvals by Holders and payments on the Bonds are set forth in the Representation Letter.

E. The provisions in the Representation Letter are incorporated herein by reference and made a part of this resolution, and if and to the extent any such provisions are inconsistent with the other provisions of this resolution, the provisions in the Representation Letter shall control.

3.07 Mutilated, Stolen or Destroyed Bonds. If a Bond becomes mutilated or is destroyed, stolen or lost, the Bond Registrar will deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of the mutilated Bond or in lieu of and in substitution for any Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Bond Registrar and the Issuer in connection therewith, including the cost of printing new Bonds; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Bond Registrar and the Issuer of evidence satisfactory to it and the Issuer that the Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Bond Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it and the Issuer and as provided by law, in which both the Issuer and the Bond Registrar must be named as obligees. Bonds so surrendered to the Bond Registrar will be canceled by the Bond Registrar and evidence of such cancellation must be given to the Issuer. If the mutilated, destroyed, stolen or lost Bond has already matured or been called for redemption in accordance with its terms, it is not necessary to issue a new Bond prior to payment.

Section 4. Form of the Bonds.

4.01 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

CITY OF HERMANTOWN
GENERAL OBLIGATION SEWAGE DISPOSAL SYSTEM REVENUE BOND,
SERIES 2020B

R-___ \$_____

<u>Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
___%	February 1, 20__	May 6, 2020	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

The City of Hermantown, St. Louis County, Minnesota (the “Issuer”), certifies that it is indebted and for value received, promises to pay to the registered owner specified above or on the Registration Certificate attached hereto, or registered assigns, in the manner hereinafter set forth, the principal amount specified above, on the maturity date specified above, and to pay interest thereon from the date of original issue set forth above, or from the most recent Interest Payment Date (defined below) to which interest has been paid or duly provided for, until the principal amount is paid, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an “Interest Payment Date”) commencing on August 1, 2020, at the rate per annum specified above, calculated on the basis of a 360-day year of twelve, 30-day months, until the principal amount is paid or has been provided for. This

Bond will bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or provided for, from the date of original issue hereof set forth above.

Payment. The principal of and premium, if any, on this Bond are payable by wire transfer (or other agreed means of payment) on each payment date no later than 12:00 noon (New York, New York time) upon presentation and surrender hereof at the office of Bond Trust Services Corporation, as registrar, paying agent, authenticating agent and transfer agent (the “Bond Registrar”), or at the office of such successor bond registrar as may be designated by the Issuer. Interest on this Bond will be paid on each Interest Payment Date (by 12:00 noon, New York, New York time) by wire transfer (or other agreed means of payment) to the person in whose name this Bond is registered (the “Holder” or “Bondholder”) on the registration books of the Issuer maintained by the Bond Registrar and at the address appearing thereon at the close of business on the 15th day of the calendar month next preceding such Interest Payment Date (the “Regular Record Date”). Any interest not so timely paid or duly provided for shall cease to be payable to the person who is the Holder hereof as of the Regular Record Date, and shall be payable to the person who is the Holder thereof at the close of business on a date fixed for the payment of the defaulted interest, and notice of the special record date shall be given by the Bond Registrar to the Holders not less than 10 days prior thereto. The Bond Registrar shall make all payments with respect to this Bond without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the Issuer to the extent of the payments so made. The principal of, premium, if any, and interest on this Bond are payable in lawful money of the United States of America. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the Issuer are irrevocably pledged.

Date of Payment Not Business Day. If the date for payment of the principal of, premium, if any, or interest on this Bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of New York, New York, or the city where the principal office of the Bond Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

Redemption. The Bonds maturing on and prior to February 1, 2030, shall not be subject to redemption before maturity, but those maturing on and after such date are each subject to redemption and prepayment at the option of the Issuer on February 1, 2029, and on any day thereafter, in whole or in part, and if in part at the option of the Issuer and in such manner as the Issuer shall determine and by lot as to Bonds maturing in the same year, at a price of par plus accrued interest to the date of redemption.

Mandatory Redemption. The Bond maturing in the year 2036 shall be subject to mandatory redemption prior to maturity pursuant to the requirements of the Resolution at a redemption price equal to the stated principal amount thereof plus interest accrued thereon to the redemption date, without premium.

Notice of and Selection of Bonds for Redemption. Not less than 30 nor more than 60 days prior to the date fixed for redemption and prepayment of any Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; provided,

however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, Jersey City, New Jersey (“DTC”), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations which has been executed by the Issuer (the “Representation Letter”).

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the Issuer or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant’s interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the Issuer shall deliver or cause to be delivered to the registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

Issuance; Purpose. This Bond is one of a series issued by the Issuer in the total aggregate amount of \$3,915,000, all of like original issue date and tenor, except as to number, maturity date, redemption privilege, denomination and interest rate, pursuant to: (i) the authority contained in Minnesota Statutes, Chapters 115 and 475; (ii) the Constitution of the State of Minnesota and all other laws thereunto enabling; and (iii) an authorizing resolution adopted by the governing body of the Issuer on May 4, 2020 (the “Resolution”), for the purpose of financing a portion of the cost of capital improvements to the Issuer’s sewer system (the “Utility”). The principal of and interest on the Bond shall be paid primarily from ad valorem taxes and net revenues derived from the operation of the Utility and other funds of the Issuer which are available for that purpose (the “Pledged Revenues”). The Pledged Revenues are sufficient to pay the interest on and principal of this Bond.

General Obligation. This Bond constitutes a general obligation of the Issuer, and to provide moneys for the prompt and full payment of the principal and interest when the same become due, the full faith and credit and taxing powers of the Issuer have been and are irrevocably pledged.

Denominations; Exchange. The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. The Issuer will, at the request of the registered owner, issue one or more new fully registered Bonds in the name of the registered owner in the aggregate principal amount equal to the unpaid principal balance of this Bond, and of like tenor except as to number and principal amount at the principal office of the Bond Registrar, but only in the manner and subject to the limitations provided in the Resolution and the Representation Letter. Reference is made to the Resolution for a description of the rights and duties of the Bond Registrar. Copies of the Resolution are on file in the principal office of the Bond Registrar.

Registration; Transfer. This Bond shall be registered in the name of the payee on the books of the Issuer by presenting this Bond for registration to the Bond Registrar, whose representative will endorse his or her name and note the date of registration opposite the name of the payee in the Registration Certificate attached hereto. Thereafter this Bond

may be transferred by delivery with an assignment duly executed by the Holder or the Holder's legal representative, and the Issuer and Bond Registrar may treat the Holder as the person exclusively entitled to exercise all the rights and powers of an owner until this Bond is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Bond Registrar, all subject to the terms and conditions provided in the Resolution and the Representation Letter and to reasonable regulations of the Issuer contained in any agreement with, or notice to, the Bond Registrar. Thereupon the Issuer shall execute (if required by law or the Resolution) and the Bond Registrar shall authenticate (if required by law or the Resolution) and deliver, in exchange for this Bond, one or more new fully registered Bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the principal amount of this Bond, of the same maturity, and bearing interest at the same rate.

Fees Upon Transfer or Loss. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the transfer or exchange of this Bond and any legal or unusual costs regarding transfers and lost Bonds. No service charge shall be made by the Issuer for any transfer or exchange hereinbefore referred to but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Treatment of Registered Owner. The Issuer and Bond Registrar may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes whatsoever, whether or not this Bond shall be overdue, and neither the Issuer nor the Bond Registrar shall be affected by notice to the contrary.

Authentication. This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until either (i) the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives or (ii) the Bond has been manually executed by at least one officer of the governing body of the Issuer.

Qualified Tax-Exempt Obligations. The Bonds of this issue have been designated by the Issuer as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, relating to the deduction of interest expenses allocable to the Bonds by financial institutions.

IT IS CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of Minnesota to be done, to happen and to be performed precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the Issuer enforceable in accordance with its terms, have been done, have happened and have been performed in regular and due form, time and manner as so required; that, if necessary for payment of principal of and interest on the Bonds of this issue, ad valorem taxes may be levied upon all taxable property in the Issuer without limitation as to rate or amount; and that the issuance of this Bond on the date of original issue hereof and the date of its actual original issuance and delivery, does not exceed any charter, constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Hermantown, St. Louis County, Minnesota, by its governing body, has caused this Bond to be executed in its name by the facsimile or manual signature of the Mayor and attested by the facsimile or manual signature of the City Clerk, the Issuer having no seal or said seal having been intentionally omitted as permitted by law.

ATTEST:

(form - no signature required)
City Clerk

(form - no signature required)
Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of the Bond registered in the name of the owner named above in the principal amount and maturity date stated above and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

BOND TRUST SERVICES CORPORATION
Bond Registrar

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Bond Trust Services Corporation of Roseville, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of the Bond Registrar in the name of the registered owner last noted below.

<u>Date</u>	<u>Registered Owner</u>	<u>Signature of Bond Registrar</u>
5/6/2020	Cede & Co. c/o The Depository Trust Company 570 Washington Blvd. Jersey City, NJ 07310 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____

(Name and Address of Assignee)

Social Security or Other
Identifying Number of Assignee

the within Bond and all rights thereunder and does irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Issuer or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

4.02 Preparation and Execution. The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk. The legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. shall be appended to each Bond. The corporate seal of the Issuer may be omitted from the Bonds as permitted by law. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery.

4.03 Delivery of the Bonds. Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the Issuer and the Purchaser. Printed or typewritten, and executed Bonds shall be furnished by the Issuer without cost to the Purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the City Clerk to the Purchaser upon receipt of the purchase price plus accrued interest.

Section 5. Covenants, Accounts and Tax Levies.

5.01 Covenants. The Issuer covenants and agrees with the holder of the Bond and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the Utility at the times and in the amounts required to pay the normal, reasonable, and current expenses of operating and maintaining the Utility, and also to produce net revenues which will be at least adequate at all times to pay the principal and interest due on the Bond and on all other obligations heretofore or hereafter issued and made payable from said net revenues, and will operate the Utility and segregate and account for the revenues thereof as provided in this section.

5.02 Funds, Accounts, Appropriations and Revenues.

A. Sewer Fund. The Issuer will place all charges for the use and availability of the sewer system, when collected, and all money received from the sale of any facilities or equipment of the sewer system in the Sewer Fund (the "Sewer Fund"). Except as provided in this Section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable, and current expenses of operating and maintaining the Utility, and to maintain such reasonable reserves for such expenses as the City Council shall determine to be necessary from time to time. Sums required to make such payments and maintain such reserves constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest when due on the Bond.

B. Fund. There is created a special fund to be designated the "2020B General Obligation Sewage Disposal System Bond Fund" (the "Fund") to be administered and maintained by the Finance Director as a bookkeeping account separate and apart from all other funds maintained in the official financial records of the Issuer. The Fund shall be maintained in the manner herein specified until the Bonds and the interest thereon have been fully paid. There shall be maintained in the Fund two separate accounts, to be designated the "Construction Fund" and "Debt Service Fund," respectively:

(i) *Construction Fund.* On receipt of the purchase price of the Bonds, the Issuer shall credit proceeds from the sale of the Bonds, less any accrued interest paid by the Purchaser upon closing and delivery of the Bonds (the "Accrued Interest") and less any capitalized interest funded from the proceeds of the Bonds ("Capitalized Interest"), to the Construction Fund. Proceeds from the Bonds on deposit in the Construction Fund, along with other monies of the Issuer available therefor, shall be used from time to time to pay, or reimburse the Issuer for payment of, the capital costs of the Project and costs of legal, financial advisory, and other professional services, printing and publication costs, and costs of issuance of the Bonds and interest due on the Bonds prior to completion of the Project, as such become due.

(ii) *Debt Service Fund.* The Accrued Interest, Capitalized Interest, and surplus funds are pledged and appropriated to the Debt Service Fund. The money in the Debt Service Fund shall be used for no purpose other than the payment of principal and interest on the Bonds when due. There is hereby pledged and appropriated the ad valorem taxes and net revenues of the Utility and interest on the forgoing in the amount necessary to pay the principal and interest on the Bonds. Prior to each Interest Payment Date, the Finance Director shall transfer from the Fund to the Debt Service Fund amounts of net revenues which will be sufficient for the payment of all interest and principal then due on the Bonds. If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Bonds, the Finance Director shall nevertheless provide sufficient money from any other funds of the Issuer which are available for that purpose and such other funds shall be reimbursed from such Debt Service Fund when the balances therein are sufficient.

C. Surplus Revenues. Surplus Utility revenues from time to time received in the Fund, in excess of payments due from and reserves required to be maintained in the Fund and in the Debt Service Fund, may be used for necessary capital expenditures for the improvement of the Utility, for the prepayment and redemption of notes and bonds issued pursuant to Section 444.075 of the Act, and for any other proper municipal purpose consistent with law and policies established by resolution of the Issuer.

D. Investments. Monies on deposit in the Fund and accounts therein may, at the discretion of the Issuer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit for payment of the principal and interest on the Bonds when due.

5.03 Tax Levy.

A. For the prompt and full payment of the principal and interest on the Bonds there is levied a direct annual ad valorem tax upon all taxable property in the Issuer which shall be spread upon the tax rolls and collected with and as part of other general property taxes in the Issuer. Said levies are for the years and in the amounts set forth in Attachment A hereto, which is incorporated by reference as though fully set forth herein.

B. The tax levies are such that if collected in full, they together with estimated collections of ad valorem taxes and net revenues and investment earnings herein pledged for payment of the Bonds, will produce at least five percent in excess of the amount needed to meet when due the principal and interest payments on the Bonds.

C. The tax levies shall be irrevocable so long as any amount of the Improvement Portion is outstanding and unpaid; provided, however, that on November 30 of each year, while Bonds remain outstanding, the City Council shall reduce or cancel the above levies to the extent of funds available in the Debt Service Account to pay principal and interest due during the ensuing year on the Bonds, and shall direct the County Auditor to reduce the levy for such calendar year by that amount.

Section 6. Tax Covenants.

6.01 General.

A. The Issuer covenants and agrees with the holders of the Bonds that the Issuer will (i) take all action on its part necessary to cause the interest on the Bonds to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

B. The Issuer covenants with the Holders from time to time of the Bonds that it will not take, or permit to be taken by any of its officers, employees or agents, any action which would cause the interest payable on the Bonds to become subject to taxation under the Internal Revenue Code; and that it will take, or it will cause its officers, employees or agents to take, all affirmative actions within its powers which may be necessary to insure that such interest will not become subject to taxation under the Code. The term "Internal Revenue Code" or "Code" as used herein includes the Internal Revenue Code of 1986, as amended, and all regulations, amended regulations and proposed regulations issued thereunder, as now existing, or as hereafter amended or proposed.

C. No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued and (ii) in addition to the above in an amount not greater than the lesser of five percent of the proceeds of the Bonds or \$100,000. To this effect any proceeds of the Bonds and any sums from time to time held in the Debt Service Account (or any other Issuer account which will be used to pay principal or interest to become due on the Bonds payable therefrom) in excess of amounts which under then applicable federal arbitrage restrictions may be invested without regard to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by said arbitrage regulations on such investments after taking into account any applicable “temporary periods” or “minor portion” made available under the federal arbitrage regulations. Money in those funds shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

6.02. Bank Qualification. In order to qualify the Bonds as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code, the Issuer makes the following factual statements and representations:

- A. the Bonds are not “private activity bonds” as defined in Section 141 of the Code;
- B. the Issuer designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;
- C. the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the Issuer (and all entities whose obligations will be aggregated with those of the Issuer) during the calendar year in which the Bonds are being issued will not exceed \$10,000,000; and
- D. not more than \$10,000,000 of obligations issued by the Issuer during the calendar year in which the Bonds are being issued have been designated for purposes of Section 265(b)(3) of the Code.

6.03 Arbitrage Certification. The Mayor and the City Clerk, being the officers of the Issuer charged with the responsibility for issuing the Bonds pursuant to this Resolution, are authorized and directed to execute and deliver to the Purchaser an arbitrage certification in order to satisfy the provisions of the Code and the regulations promulgated thereunder.

6.04 Opinion of Counsel. Notwithstanding any other provision of this section, any requirement imposed hereunder or under Section 5 hereof may be deemed inapplicable and of no force or effect if an opinion of counsel is rendered to the Issuer by nationally recognized Bond Counsel to the effect that the failure to impose such requirement will not adversely effect the tax exempt status of interest on the Bonds.

Section 7. Certificate of Proceedings; Miscellaneous.

7.01 Filing of Resolution; County Auditor Certificate. The City Clerk is directed to file a certified copy of this Resolution in the office of the County Auditor of St. Louis County, along with such other information as the County Auditor may require, and to obtain from the County Auditor a certificate stating that the Bonds herein authorized have been duly entered on the Auditor’s register and that the tax required by law for the payment of said Bonds has been levied.

7.02 Authentication of Transcript. The officers of the Issuer are authorized and directed to prepare and furnish to the Purchaser and to Bond Counsel certified copies of all proceedings and records of the Issuer relating to the authorization and issuance of the Bonds and to the financial condition and affairs of the Issuer and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the Issuer as to the correctness of facts recited therein and the actions stated therein to have been taken.

7.03 Offering Materials. The Official Statement relating to the Bonds, on file with the City Clerk and presented to this meeting, is approved and deemed final, and the furnishing thereof to prospective purchasers of the Bonds is ratified and confirmed, insofar as the same relates to the Bonds and the sale thereof. The Mayor and the City Clerk are authorized and directed to certify that they have examined the Official Statement prepared and circulated in connection with the issuance and sale of the Bonds and that to the best of their knowledge and belief the Official Statement is a complete and accurate representation of the facts and representations made therein as of the date of the Official Statement.

7.04 Absent or Disabled Officers. In the event of the absence or disability of the Mayor or the City Clerk, such officers or members of the City Council as in the opinion of the Issuer's attorney, may act in their behalf, shall without further act or authorization, execute and deliver the Bonds, and do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers.

Section 8. Defeasance. When all Bonds have been discharged as provided in this paragraph, all pledges, covenants and other rights granted by this Resolution to the registered holders of the Bonds shall, to the extent permitted by law, cease. The Issuer may discharge its obligations with respect to any Bonds which are due on any date by irrevocably depositing with the Bond Registrar on or before that date a sum sufficient for the payment thereof in full; or if any Bond should not be paid when due, it may nevertheless be discharged by depositing with the Bond Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The Issuer may also discharge its obligations with respect to any prepayable Bonds called for redemption on any date when they are prepayable according to their terms, by depositing with the Bond Registrar on or before that date a sum sufficient for the payment thereof in full, provided that notice of redemption thereof has been duly given. The Issuer may also at any time discharge its obligations with respect to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a suitable banking institution qualified by law as an escrow agent for this purpose, cash or securities described in Minnesota Statutes, Section 475.67, Subdivision 8, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without regard to sale and/or reinvestment, to pay all amounts to become due thereon to maturity or, if notice of redemption as herein required has been duly provided for, to such earlier redemption date.

Section 9. Continuing Disclosure. The City Council acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the Holders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the Mayor and the City Clerk are authorized and directed to execute a Continuing Disclosure Certificate substantially in the form of the Certificate currently on file in the office of the Issuer.

Section 10. Post-Issuance Tax Compliance. The Issuer has previously approved a Pre- and Post-Issuance Compliance Policy and Procedures which applies to qualifying obligations to provide for compliance with all applicable federal regulations for tax-exempt obligations or tax-advantaged obligations (collectively, the “Policy and Procedures”). The Issuer hereby ratifies the Policy and Procedures for the Bonds. The Finance Director continues to be designated to be responsible for post-issuance compliance in accordance with the Policy and Procedures.

Section 11. Resolution 20-52. This resolution amends and restates in its entirety “Resolution 20-52 adopted on April 20, 2020, “Resolution Authorizing the Issuance, Sale and Delivery of \$3,915,000 General Obligation Sewage Disposal System Bonds, Series 2020B.”

Adopted: May 4, 2020

Mayor

ATTEST:

City Clerk

M:\DOCS\09115\000070\ROL\18J798203.DOCX

ATTACHMENT A

**General Obligation Sewage Disposal System Bonds, Series 2020B
City of Hermantown, Minnesota**

Levy Year	Collection Year	Tax Levy
2020	2021	294,998
2021	2022	294,263
2022	2023	293,370
2023	2024	292,320
2024	2025	291,113
2025	2026	294,998
2026	2027	293,318
2027	2028	291,480
2028	2029	294,735
2029	2030	289,695
2030	2031	289,905
2031	2032	290,010
2032	2033	290,010
2033	2034	289,905
2034	2035	294,945
2035	2036	294,525

TO: Mayor & City Council
FROM: John Mulder, City Administrator



DATE: April 28, 2020 **Meeting Date:** 5/4/20

SUBJECT: Use & Operation Agreement **Agenda Item: 12-D** **Resolution 2020-57**
Duluth Area Family YMCA –
Essentia Wellness Center

REQUESTED ACTION

Approve Use & Operations agreement with the Duluth Area Family YMCA for the Essentia Wellness Center as approved by State of Minnesota Office of Management & Budget.

BACKGROUND

Attached is the proposed use and operations agreement with the Duluth Area Family YMCA for the Essentia Wellness Center. The basic premise is that the City will turn over the Essentia Wellness Center to the Y and they will operate it on behalf of the City. They will operate a full-service YMCA, and the Community Center & Common areas for the City. The City will not be subsidizing their operations of the facility.

On April 15, 2019, the City Council approved a Use and Operations Agreement with the Duluth Area Family YMCA subject to the approval by the State of Minnesota. That document was submitted to the State on July 10, 2019 along with the agreements with the School District and Essentia Health. After many discussions, meetings, phone calls, and e-mails with the State of Minnesota and then again with the staff at Duluth Area Family YMCA, the Use and Operations Agreement was revised and finally approved by the State of Minnesota on April 24, 2020.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Use and Operations Agreement

Resolution No. 2020-57

**RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK
TO EXECUTE AND DELIVER A USE AND OPERATION AGREEMENT
BETWEEN THE CITY OF HERMANTOWN AND DULUTH AREA FAMILY Y.M.C.A.
("YMCA") FOR THE ESSENTIA WELLNESS CENTER**

WHEREAS, the City of Hermantown ("City") and Duluth Area Family Y.M.C.A. ("YMCA") entered into a Use and Operation Agreement ("YMCA Use Agreement") with regard to the Essentia Wellness Center ("Project") dated July 18, 2019; and

WHEREAS, the YMCA Use Agreement was reviewed by the State of Minnesota Office of Management and Budget ("MMB"); and

WHEREAS, the MMB required that changes be made to the YMCA Use Agreement to satisfy the MMB's requirements for use of the State Grant Funds; and

WHEREAS, the YMCA Use Agreement was revised to reflect the requirements of the MMB ("2020 YMCA Use Agreement"); and

WHEREAS, the 2020 YMCA Use Agreement has been reviewed and approved by the MMB; and

WHEREAS, the 2020 YMCA Use Agreement is attached hereto as Exhibit A; and

WHEREAS, the City Administrator recommends approval of the 2020 MOU; and

WHEREAS, the City Council has duly considered the 2020 YMCA Use Agreement and believes that it is in the best interests of the City of Hermantown that the 2020 YMCA Use Agreement be approved.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota as follows:

1. The 2020 YMCA Use Agreement is hereby approved.
2. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the 2020 2020 YMCA Use Agreement substantially in the form of the one attached hereto as Exhibit A with such minor modifications thereto as are approved by the City Administrator and City Attorney.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 4, 2020.

EXHIBIT A

April 30, 2020

**USE AND OPERATION AGREEMENT
AMONGST
CITY OF HERMANTOWN
AND
DULUTH AREA FAMILY Y.M.C.A.**

Dated _____, 2020

**Relating to:
Essentia Wellness Center
4289 Ugstad Road
Hermantown, MN 55811**

This instrument was drafted by:
Steven C. Overom
Overom Law, PLLC
11 E. Superior Street
Suite 543
Duluth, MN 55802

USE AND OPERATION AGREEMENT

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USE AND OPERATIONS AGREEMENT

THIS USE AND OPERATIONS AGREEMENT is made effective as of the ____ day of _____, 2019 by and between the **City of Hermantown** (“City”) and **Duluth Area Family Y.M.C.A.** (“YMCA”) in order to fix the respective rights and duties of the City and YMCA in regard to the use and operation of the Essentia Wellness Center to be located at 4289 Ugstad Road in the City of Hermantown, Minnesota (“Project”) in response to the following situation:

A. City has constructed the Project in furtherance of the City’s program of public recreation and in furtherance of the City’s program to promote the health and wellness of the City, including the YMCA’s use of the Project for recreational uses and to promote health and wellness and a variety of other health and wellness related programming.

B. YMCA is willing to assume responsibility for the ongoing day-to-day operation of the Project following the completion of construction of the Project, subject to the limitations set forth herein.

C. Under the provisions contained in Minn. Stat. §§ 471.15-471.191 (the “Statutory Authority”) and specific language contained in 2017 Minn. Laws, First Special Session, Ch. 8, Art. 1, Sec. 20, (the “G.O. Bonding Legislation”), the State of Minnesota has allocated \$8,000,000 (the “G.O. Grant”) to be given to the City of Hermantown to prepare the middle school site on the Hermantown School District campus, including demolition of a portion of the middle school, and to design, construct a new addition to the middle school building and renovate the remaining existing building, furnish, and equip the facility as the Arrowhead Regional Health and Wellness Center also known as the Essentia Wellness Center.

D. City may enter into lease or management agreements under Minnesota Statutes, section 16A.695, for operation of the health and wellness center

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agrees as follows:

ARTICLE I Definitions and Exhibits

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement, have the meanings herein specified:

Agreement: This Use and Operation Agreement.

Budget: Means an estimate of income and expenditures for YMCA Operations for a calendar year.

Building: Shall mean the building or buildings in which the Essentia Exclusive Use Area, School Exclusive Use Area and YMCA Project Area are located.

Building Manager: Means the branch manager for the YMCA Operations.

CAM Charges: Shall mean charges determined in accordance with Section 3.1 of the Essentia Lease.

City Furniture, Fixtures and Equipment or City FF&E: The furniture, fixtures and equipment to be

acquired by the City and now or hereinafter made or used as a part of the Project.

City Representative: The City Administrator or any other person authorized to act on behalf of City under or with respect to this Agreement, as evidenced by a certificate confirming such authority executed by the Mayor and City Clerk.

Capital Maintenance and Repairs: The maintenance, repairs of the foundation, exterior walls, roof, windows, parking areas, sidewalks, plumbing, electrical, heating air conditioning, fire control, ventilating systems, outdoor lighting, pool mechanical elements, including pumps and filtration systems and any installed casework.

City's Statutory Authority: Means Minnesota Statutes §§ 412.211; 412.221, Subd. 3; 412.221, Subd. 32; 412.491; 471.15; 471.16; 471.17 and 471.191.

City Bonds: Means the tax exempt tax abatement bonds issued by the City to provide funds for paying costs of construction and equipping of the Project.

Code: The Internal Revenue Code of the United States of America.

Coffee Shop: The Coffee Shop means the approximate four hundred square foot (400') area designed for use as a coffee shop and refreshment center in the Project to be utilized and operated by the YMCA or a party with whom the YMCA may, from time to time, contract with subject to the terms of Section 22.2 hereof.

Common Area: The area of the Project identified on Exhibit A attached hereto consisting of interior hallways, entryways and other public areas, the Community Space and all exterior areas of the Project including parking areas, walkways, landscaped areas and other exterior portions of the Land.

Commissioner: The Commissioner means the Commissioner of Minnesota Management and Budget.

Community Space: The area of the Project identified on Exhibit B attached hereto consisting of two rooms that are available for use by City, School, Essentia, YMCA and members of the public subject to the provisions of this Agreement and the Naming Rights Agreement between City and Essentia.

Completion and Acceptance Certificate: A certificate signed by the Architect, Construction Manager and City certifying Final Completion of the Project.

Completion Date: The date upon which a Completion and Acceptance Certificate is issued with respect to the construction of the Project.

Construction Manager: Shall mean McGough Construction Co., LLC.

Consultant: Shall mean a nationally recognized consultant hired to evaluate the performance of the Project pursuant to Article XXIV or Section 25.2 and to recommend corrective measures, if necessary or warranted.

Essentia: Shall mean SMDC Medical Center, a Minnesota nonprofit corporation, a provider offering high quality, cost effective, integrated health care services.

Essentia Exclusive Use Area: Means the area identified on Exhibit C attached hereto as the

premises defined in the Essentia Lease for the exclusive use of Essentia.

Essentia Lease: Shall mean that certain lease between Essentia and City made effective contemporaneously with this Agreement.

Essentia Revenue: All amounts paid by Essentia to City under the Essentia Lease for rent or for CAM Charges.

Essentia Representative: The person authorized to act on behalf of Essentia under or with respect to this Agreement.

Fiscal Year: The calendar year.

Governmental Program: means an activity in the Project that is in furtherance of the City's program of public recreation and in furtherance of City's program to promote the health and wellness of the City pursuant to the City's Statutory Authority, including leasing the Essentia Exclusive Use Area to Essentia to provide integrated health care services, and including entering into the School Use Agreement and this Agreement.

Improvements: The Building and City FF&E and building additions and improvements constructed and installed on the Land for which the Completion and Acceptance Certificate is issued and any other improvements thereafter constructed or installed on the Land.

Inventory: means any consumable supplies and materials used in connection with the operation of the Project.

Land: The real property described in the attached Exhibit D attached hereto upon which the Project is to be constructed.

Naming Rights Agreement: That certain Essentia Wellness Center Naming Rights Agreement between City and Essentia made effective contemporaneously with this Agreement.

Oversight Committee: means the committee established and empowered by Article XXIII hereof to act on certain matters.

Parking Facilities: mean the loading areas, parking areas and driveways on the land servicing the Project.

Permissible Wellness Center Fund Expenditures: Wellness Center Fund money may only be utilized to:

1. Pay expenses directly related to securing contributions or payments to the Wellness Center Fund.
2. To create a reserve fund to provide money to pay ongoing operating expenses of the Project and expend funds in such reserve fund to pay ongoing operating expenses of the Project.
3. To create a reserve fund to provide money to pay for replacements and improvements to the Project and expend funds from such reserve fund to pay for replacements and improvements to the Project.

4. To pay project development costs incurred in connection with the construction or equipping of the Project.
5. To create a reserve to provide money to pay for scholarships for members of the YMCA at the Project and expend funds from such reserve fund to provide scholarships for members of the YMCA at the Project.
6. To pay YMCA Start-up Cost, subject to the provisions of Article IV hereof.

Project: The Improvements, City FF&E and all other assets now owned or hereinafter acquired by the City or on its behalf or by the YMCA related to the Essentia Wellness Center.

Routine Maintenance and Repairs: The maintenance and repairs necessary to keep the entire Project, other than the Essentia Exclusive Use Area which will be the responsibility of Essentia under the Essentia Lease, in good order and repair and first-class condition, including the following:

1. Janitorial services.
2. Routine cleaning.
3. Repair of all elements of the Project not included within Capital Maintenance and Repairs.
4. Replacement of light bulbs.
5. Replacement and repair of all City FF&E and all other furniture, fixtures and equipment utilized in connection with the Project.
6. Removal of any graffiti from any portion of the Project within seventy-two (72) hours.
7. Painting.
8. Window cleaning.
9. Repairs of scratched or dented walls, furniture and equipment.
10. Maintain, replace and repair the City FF&E, including cardio and weight equipment, lane lines and pool equipment.
11. Garbage and refuse removal.
12. Landscaping expenses, including, without limitation, irrigation, trimming, mowing, tilling, seeding and replacing plants.
13. Snow removal on driveways, parking areas, sidewalks and walkways.

School: Independent School District No. 700.

School Exclusive Use Area: Means the area described on Exhibit E attached hereto.

School Use Agreement: means that certain Use and Operations Agreement between School and City with respect to the Project

Start-up Cost: means the costs incurred by YMCA related to the start-up of the Project through the date hereof as described on Exhibit F attached hereto and any additional costs incurred by the YMCA related to the start-up of the Project in an amount not to exceed \$300,000.00.

State: The State of Minnesota.

State and Federal Law or Laws: The Constitution and laws of the State, and any or ordinance, rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

State Bond Financing: The grant of State Bonds in an amount of \$8,000,000.00 approved for the Project by the State.

State Bonds: Means the general obligation bonds authorized to be issued by the State under Article XI, Section 5(a) of the Minnesota Constitution to provide funds for the State Bond Financing.

Term of the Agreement or Agreement Term: The period during which this Agreement remains in effect as specified in Article V hereof.

Total Project Utility and Exterior Maintenance Costs: The total cost of all utilities utilized in the Project, including water, gas, sewer and electricity that are not separately metered and paid by Essentia or separately metered and paid by any other party, other than the YMCA, and all exterior maintenance costs related to the Project and garbage, snowplowing, landscaping, maintenance and lawn mowing.

Wellness Center Fund: The financial account or accounts into which all contributions, gifts or payments made to YMCA, City, Essentia, School or any other party for use or the benefit of the Project are deposited. These amounts shall not include any Essentia Revenues or any rent, revenues, or the receipt of any money collected by the City in connection with this Use and Operations Agreement, the School Use Agreement, the Essentia Lease, or the Naming Rights Agreement. This fund will be held in an account maintained by City that is managed by the Oversight Committee and is disbursed by direction of the Oversight Committee, but with such direction subject to the requirements of this Agreement.

YMCA: Duluth Area Family Y.M.C.A., a Minnesota non-profit corporation.

YMCA Operations: Means a full service YMCA and early childcare center, which may include infant care, to be conducted in the YMCA Project Area. YMCA Operations also include any other activity conducted on the Project by the YMCA, including the operation or leasing of a Coffee Shop and the management and scheduling of the use of the Community Space and Common Areas.

YMCA Project Area: Means the entire Project, excluding only the Essentia Exclusive Use Area and the School Exclusive Use Area.

YMCA Representative: Any person authorized to act on behalf of the YMCA under or with respect to this Agreement, as evidenced by a certificate covering such authority approved by the Board of Directors of the YMCA.

YMCA Total Excess Operating Revenue: Means the YMCA Total Project Operating Revenue less the YMCA Total Project Operating Costs

YMCA Total Project Operating Costs: All costs incurred by the YMCA in connection with the

operation of the YMCA Operations and the Project.

YMCA Total Project Operating Losses: Means YMCA Total Project Operating Costs less YMCA Total Excess Operating Revenue, if it is a negative number.

YMCA Total Project Operating Revenue: All amounts that YMCA receives as revenue in connection with the operation of the YMCA Operations and the Project.

Section 1.2. Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

- Exhibit A: Common Area.
- Exhibit B: Community Space Description.
- Exhibit C: Essentia Exclusive Use Area.
- Exhibit D: Land Description
- Exhibit E: School Exclusive Use Area.
- Exhibit F: Start-up Cost.
- Exhibit 7.6: Non-reimbursable Project Costs.

ARTICLE II

Representations, Covenants and Warranties

Section 2.1. Representations, Covenants and Warranties of City. City represents, covenants and warrants as follows:

2.1.1 City is a statutory City under the laws of the State.

2.1.2 City is authorized and empowered by Minnesota Statutes, including Minnesota Statutes §§471.15 to 471.91 pursuant to and Chapter 412, to establish, acquire, construct, operate and maintain the Project; to enter into this Agreement and perform the transactions contemplated hereby and thereby, and to carry out its obligations under this Agreement.

2.1.3 Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated hereby and thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which City is now a party or by which City or its property is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of City, or upon the Project.

2.1.4 The officers of City executing this Agreement have been duly authorized to execute and deliver this Agreement under the terms and provisions of a resolution of the City.

2.1.5 City will use its best efforts to cause the Project to be completed, subject to force majeure and subject to City obtaining full funding for the costs of the Project. The Project will be constructed in a

good and workmanlike manner, will meet all applicable building codes, and will be approved for occupancy and operation by all officials having jurisdiction over the Project before the YMCA commences its operations at the Project.

Section 2.2. Representations, Covenants and Warranties of YMCA. The YMCA represents, covenants and warrants as follows:

2.2.1 YMCA is a non-profit corporation duly organized, existing and in good standing under the laws of the State; and is an organization exempt from Federal income tax under Section 501 (c)(3) of the Code.

2.2.2 The YMCA has full and complete power to enter into this Agreement and to enter into and carry out the transactions contemplated hereby and thereby, and to carry out its obligations under this Agreement; is possessed of full power to perform its obligations under this Agreement and has duly authorized the execution and delivery of this Agreement.

2.2.3 Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated hereby and thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the YMCA is now a party or by which the YMCA or its property is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the YMCA, or upon the Project.

2.2.4 The officers of the YMCA executing this Agreement have been duly authorized to execute and deliver this Agreement under the terms and provisions of a resolution of Board of Directors or by other appropriate official action.

2.2.5 YMCA represents that it has not relied on any statements made by City or any of its officers, agents, elected officials or consultants in making its determination to proceed with this Agreement.

2.2.6 YMCA will establish a branch advisory council for the YMCA Operations at the Project. Membership will be determined by the YMCA.

2.2.7 YMCA will provide City with the number of new members (i.e. persons who are not currently members of the Duluth YMCA) of the YMCA at the Project, within one (1) year of the YMCA commencing YMCA Operations at the Project, and at the time any Budget is provided to the City.

Section 2.3. Bonding Legislation. City and YMCA acknowledge that, pursuant to the G.O. Bonding Legislation that provides that the costs to prepare the middle school site on the Hermantown School District campus, including demolition of a portion of the middle school, and to design, construct a new addition to the middle school building and renovate the remaining existing building, furnish, and equip the facility as the “Arrowhead Regional Health and Wellness Center” will be funded in part through the proceeds of a state grant in the amount of \$8,000,000 (“State Grant Proceeds”) from the State of Minnesota acting by and through its Department of Employment and Economic Development (the “State”) made to Lessor pursuant to the terms of a General Obligation Bond Proceeds Grant Agreement - Construction Grant dated _____ for the Arrowhead Regional Health and Wellness Center also known as the Essentia Wellness Center (the “Grant Agreement”).

ARTICLE III
Ownership of Project

The ownership of the Land, Project, City FF&E, Building Improvements and replacement of any of the foregoing shall at all times be vested in City subject only to the provisions of this Agreement.

It is specifically intended, understood and agreed by City and YMCA that this Agreement is not a Lease and the parties hereto agree that all interpretations and construction given to this Agreement shall be construed to accomplish the foregoing intent, understanding and agreement of the parties hereto.

ARTICLE IV
YMCA Start Up Funding; Annual Budget

YMCA has identified certain Start-up Cost on Exhibit F attached hereto. The total Start-up Cost charged by the YMCA will not exceed \$300,000.00.

The amount of \$235,830.00 shown on Exhibit F hereto shall be paid from the Wellness Center Fund to the extent unrestricted funds are available in the Wellness Center Fund. Any amount in excess of \$235,830.00 and less than \$300,000.00 may be payable, with approval of the Oversight Committee, from the Wellness Center Fund to the extent unrestricted funds are available in the Wellness Center Fund. Restricted funds are funds which have been given specific designation by donors related to the donated funds.

YMCA shall prepare an annual Budget for each calendar year beginning with the 2020 calendar year which shall cover all expected expenses and revenues related to the Project and identify prior year and projected YMCA Total Project Operating Costs, YMCA Total Project Operating Revenue, YMCA Excess Operating Revenue and YMCA Total Project Operating Losses. YMCA shall provide each Budget to the City on or before December 1 of each year beginning December 1, 2019 for calendar year 2020.

YMCA shall operate the Project in accordance with the Budget.

In addition, on or before December 1 of each year beginning December 1, 2019, Tenant shall submit to City a report of major activities that YMCA expects to provide at the YMCA Premises (defined in Section 8.1) during that year of the Term and a description of how such activities will satisfy the elements of the Governmental Program.

ARTICLE V
Term of Use and Operations Agreement

Section 5.1. Term of Agreement. This Agreement shall be and remain in effect with respect to the Project for a term commencing on the date hereof and continuing until December 31, 2039, unless earlier terminated pursuant to Section 5.2 hereof.

Section 5.2. Early Termination of Agreement. The Term of this Agreement will terminate prior to December 31, 2039, upon the occurrence of the first of the following events:

5.2.1 Exercise by a party of its rights to terminate this Agreement pursuant to Article XXV hereof upon a default by the other party.

5.2.2 The agreement of City and YMCA to terminate this Agreement.

5.2.3 At the option of either YMCA or City, YMCA or City may terminate the term of this Agreement upon termination of, or material financial modification to, the Essentia Lease that materially reduces Essentia Revenues. YMCA or City shall advise the other party of its intent to exercise the option granted it in this Section 5.2.3 and City and YMCA shall meet and negotiate in good faith to determine if modifications to this Agreement can be made that would mitigate the effects of the termination or material modification to the Essentia Lease. If the City and YMCA are unable to enter into an agreement to modify this Agreement within sixty (60) days, a Notice of Intent to Terminate is provided to the other party (“Notice of Intent to Terminate”). After a party provides a Notice of Intent to Terminate to the other party, then either YMCA or City, as the case may be, may terminate this Agreement upon one hundred eighty (180) days written notice to the other party.

5.2.4 At the option of the YMCA, the YMCA may terminate the term of this Agreement in the event (i) YMCA incurs YMCA Total Project Operating Losses for any calendar year \$50,000.00 or greater in each year for any two (2) consecutive calendar years, or (ii) YMCA incurs Total Project Operating Losses of \$180,000.00 in the aggregate in any five (5) consecutive calendar years. Provided, however, that the calculation of YMCA Total Project Operating Losses described above shall be reduced to the extent of any YMCA Total Excess Operating Revenue received by the YMCA in the three (3) calendar year period prior to the period used for measurement of YMCA Total Project Operating Losses under this section. The YMCA may exercise this termination option within one hundred eighty (180) days from delivery to the City by the YMCA of an Annual Statement described in Section 10.7.3 evidencing either of the loss thresholds described herein. Prior to exercising any right to terminate, as provided for herein, City and YMCA shall meet and discuss in good faith any modifications to this Agreement that either party might suggest. If a reasonable agreement is not agreed to within such sixty (60) day period, then YMCA may terminate this Agreement upon giving one-hundred eighty (180) days’ written notice to the City.

Section 5.3. Statutory Termination Notwithstanding any other provisions of this Agreement to the contrary, if the Governmental Program is terminated or changed in response to changes in state law in such a manner as to (a) cause this Agreement and the operation of the YMCA Premises (defined in Section 8.1) to be inconsistent with the changed Governmental Program or (b) to remove the statutory authority for the City to operate the Governmental Program, then this Agreement shall be terminated by ninety (90) days written notice to YMCA (“Termination Date”). Any termination pursuant to this Section will be deemed automatically rescinded and of no force or effect if within said ninety (90) day period YMCA conforms its operation to the changed Governmental Program. YMCA’s failure to cease operation of the YMCA Premises on the Termination Date shall be a default under this Agreement.

Section 5.4 Extended Terms. The term of this Agreement may be extended for such time as City and YMCA may from time to time agree, but only with the prior written consent of the Commissioner. Notwithstanding anything to the contrary contained herein, City is not required to renew this Agreement with YMCA, and may at that time, in its sole option and discretion (i) decide to self-operate the Governmental Program in the YMCA Premises (defined in Section 8.1), (ii) contract with some other entity to operate the Governmental Program in the YMCA Premises, or (iii) determine that the YMCA Premises are no longer needed or useful for the operation of the Governmental Program and sell its interest in the YMCA Premises.

Section 5.5 Surrender of Project. Upon termination of the term of this Agreement, the possession of the Project shall be surrendered to City and YMCA shall execute and deliver whatever documents and agreements are necessary and appropriate to evidence such matters.

ARTICLE VI

School Use

Section 6.1 Use Agreement. City retains the right to use and assign its rights to the School Exclusive Use Area and City retains the right to the non-exclusive use of all Common Areas and the right to assign its non exclusive rights to use the Common Area rights. The non-exclusive use of the all Common Areas which includes the Community Space, exterior areas and parking in the Project is subject to availability and scheduling as determined in good faith by the YMCA and the provisions of Section 6.2. It is acknowledged that City or any assignees shall not pay rent or other charges for its use of the School Exclusive Use Area, Common Areas or Community Space.

Section 6.2 Common Areas and Community Space. City or any assignee shall be entitled to use the Common Areas and Community Space, subject to the provisions of Section 6.4 and 6.5 of this Agreement

Section 6.3 Exterior Access and Parking. City or its assignee will be entitled to the use of the parking and exterior areas of the Project, subject to the terms of Section 6.4 of this Agreement.

Section 6.4 Use Conflicts. In the event that there are any conflicts in the use of the Project by City or its assignee and YMCA, including interior and exterior use, including parking, and which cannot be resolved by City or its assignee and YMCA, such conflicts shall be resolved as follows:

6.4.1 By the then Building Manager of the Project after discussion with and mutual agreement of the City Representative or a representative of City's assignee and YMCA Representative.

6.4.2 If the Building Manager is unable to resolve conflicts among City or its assignees and YMCA, then the dispute shall be resolved by the Oversight Committee, subject to approval by City. The decision of the Oversight Committee as approved by City shall be final and binding on City or its assignees and YMCA.

Section 6.5 Use of School Exclusive Use Area. The use of by City or its assignees and will be in furtherance of the Governmental Program. The School Use will be in furtherance of the City's program of public recreation and programming to promote health and wellness of the City by providing public education and classes related to health and wellness.

Section 6.6 Additional Provisions. During the term of the Naming Rights Agreement, City or its assignees shall make reference to being located "at the Essentia Wellness Center" and in any Branding and Collateral materials, as that term is defined in the Naming Rights Agreement and use the Name and Logo and Project Materials, as these terms are defined in the Naming Rights Agreement, in all advertising and promotional material related to the Project. Any such references, usage, or similar activities shall be in compliance with the Naming Rights Agreement.

Section 6.7. Pedestrian Easement. City and its assignees shall have a non-exclusive easement across the Land to access the adjoining property owned by School.

Section 6.8 Buffer Area. YMCA will maintain a reasonable buffer area between the parking spaces in the Project and the adjoining property owned by City and its assignees .

Section 6.9 Amendments. No changes to this Article VI may be made without the consent of School.

ARTICLE VII

Essentia Use

Section 7.1. Essentia Lease. City will enter into the Essentia Lease that contains terms and provisions acceptable to Essentia and City.

Section 7.2 Common Areas and Community Space. Essentia shall have the exclusive use of the Essentia Exclusive Use Area and the non-exclusive use of the Common Area, Community Space and parking and exterior areas as set forth in this Agreement, the Naming Rights Agreement, and the Essentia Lease subject to availability and scheduling as determined in good faith by the YMCA and in accordance with the aforementioned documents, subject to the provisions of Section 7.5.

Section 7.3 Exterior Access and Parking. Essentia will be entitled to the use of the parking and exterior areas of the Project, subject to the terms Section 7.5 of this Agreement.

Section 7.4 Use of Project Facilities. The YMCA shall reasonably accommodate the need of Essentia to utilize facilities in the YMCA Project Area, including the therapy pool, running track, pool and fitness equipment, and staff break room(s).

Section 7.5 Use Conflicts. In the event that there are any conflicts in the use of the Project by Essentia and YMCA, including interior and exterior use, parking and uses identified in Section 7.4, which cannot be resolved by Essentia and YMCA, such conflicts shall be resolved as follows:

7.5.1 By the then Building Manager of the Project after discussion with and mutual agreement of the Essentia Representative and YMCA Representative.

7.5.2 If the Building Manager is unable to resolve conflicts among Essentia and YMCA, then by the Oversight Committee. The decision of the Oversight Committee shall be final and binding on Essentia and YMCA.

Section 7.6 Essentia Revenues. All Essentia Revenue shall be utilized by City to pay Total Project Utility and Exterior Maintenance Costs in an amount not to exceed the Essentia Revenue. YMCA shall pay any Total Project Utility and Exterior Maintenance Costs not paid from Essentia Revenue. Any Essentia Revenue not utilized to pay Total Project Utility and Exterior Maintenance Costs shall be utilized by City to pay other YMCA Total Project Operating Costs, such that the Essentia Revenue shall not be retained or accumulated, but shall be utilized solely to pay costs as set forth in this section. No Essentia Revenue shall be utilized to pay any marketing costs incurred by the YMCA. City shall create a separate fund within the City's accounting system into which all Essentia Revenue paid to the City will be credited and for which all Total Project Utility and Exterior Maintenance Costs and other YMCA Total Project Operating Costs paid by City from the Essentia Revenue are debited. City shall provide a report with regard to the revenue and costs described in this Section 7.6 upon completion of the City's audit for each year. Notwithstanding anything to the contrary contained herein, Essentia Revenues may not be utilized to pay any items identified on Exhibit 7.6 attached hereto that are included within the Total Project Utility and Exterior Maintenance Costs or YMCA Total Project Operating Costs.

Section 7.7 Amendment. No changes to this Article VII may be made without the consent of Essentia.

ARTICLE VIII
YMCA Use; YMCA Total Excess Operating Revenue

Section 8.1 Use by YMCA. YMCA shall not utilize the space dedicated as the School Exclusive Use Area or the Essentia Exclusive Use Area. YMCA shall have the right to non-exclusive use of the Common Areas, including the Community Space, parking and exterior areas, subject to availability and scheduling as determined in good faith by YMCA and subject to the provisions of Section 6.4, 7.5 and 9.2. YMCA shall have exclusive use of the YMCA Project Area, subject to the provisions of Section 7.4 hereof.

Section 8.2 YMCA Total Excess Operating Revenue. Subject to the provisions of Section 5.2.4 of this Agreement, if there is YMCA Total Excess Operating Revenue, the YMCA may use such YMCA Total Excess Operating Revenue for YMCA programs anywhere in the YMCA's geographic area, except that the YMCA shall donate ten percent (10%) of the YMCA Total Excess Operating Revenue to the Wellness Center Fund to be held and distributed pursuant to the terms of this Agreement.

Section 8.3 Additional Provisions. During the term of the Naming Rights Agreement, YMCA shall make reference to being located "at the Essentia Wellness Center" in any Branding or Collateral Materials, as those terms are defined in the Naming Rights Agreement, and use the Name, Logos and Project Marks, as those terms are defined in the Naming Rights Agreement in all advertising and promotional material related to the Project. Any such references, usage, or similar activities shall be in compliance with the Naming Rights Agreement. The provisions of Section 7.7 may not be amended without the consent of Essentia.

ARTICLE IX
City Use

Section 9.1 Use by City. City will have the right to use the Community Space and Common Areas, including the Community Space, parking and exterior areas, at no cost to City, subject to availability and scheduling as determined in good faith by the YMCA subject to the provisions of Section 9.2.

Section 9.2 Use Conflicts. In the event that there are any conflicts in the use by City of the Project and which cannot be resolved by City and YMCA, such conflicts shall be resolved as follows:

9.2.1 By the then Building Manager of the Project after discussion with and mutual agreement of the City Representative and YMCA Representative.

9.2.2 If the Building Manager is unable to resolve conflicts among City and YMCA, then the dispute shall be resolved by the Oversight Committee, subject to approval by City. The decision of the Oversight Committee as approved by City shall be final and binding on City and YMCA.

ARTICLE X
General Matters

Section 10.1. Operation. YMCA shall exercise due care in the use and operation of the YMCA Project Area and Common Areas and shall not use, operate or maintain the YMCA Project Area or Common Areas improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Agreement.

Section 10.2. Routine Maintenance and Repair of YMCA Project Area and Common Areas by the YMCA. To the extent not paid by Essentia Revenues, YMCA, shall, at its own expense, perform Routine Maintenance and Repair of the School Exclusive Use Area, YMCA Project Area and Common Areas.

Section 10.3. Capital Maintenance and Repair. City shall, at its own expense, perform Capital Maintenance and Repairs to the entire Project, including the YMCA Project Area.

Section 10.4. Staffing. YMCA will provide all staffing and management personnel required to properly operate the Project.

Section 10.5. City Rules and Regulations. All existing and future rules and regulations of City governing activities on City owned property and City buildings are applicable to the Land and the Project, provided, however, that such rules and regulations shall be non-discriminatory, necessary or desirable for the proper functioning of City and the furtherance of its purposes and shall not unreasonably deprive YMCA or its permitted successors and assigns from using the Project for purposes for which a facility of its nature is customarily used.

Section 10.6. YMCA's Additional Covenants. YMCA shall be responsible for the snowplowing and maintenance of the driveways and sidewalk and parking lots in the Project and on the Land. YMCA shall be solely responsible for the maintenance of the grounds and all exterior areas of the Project. The costs set forth in this Section shall be deemed Total Project Utility and Exterior Maintenance Costs.

Section 10.7. Management of the YMCA Operations. YMCA, during the terms hereof, agrees to provide management services with regard to the YMCA Operations. Such management services shall include the following:

10.7.1 Maintenance of books and accounts that reflect all records and expenditures incurred in connection with the management and operation of the YMCA Operations which books and accounts shall be available at all reasonable times to City for examination, and to Essentia and School upon request.

10.7.2 To set reasonable and fair rules regarding the use of the YMCA Operations.

10.7.3 Preparation of monthly and annual statements ("Annual Statements") of revenues and expenditures incurred and paid during each month or fiscal year for the operation of the YMCA Operations, to include a statement of the YMCA Total Operating Revenue, YMCA Total Project Operating Costs, YMCA Total Excess Operating Revenue and YMCA Total Project Operating Losses, which statement shall be provided to City within fifteen (15) days after the end of each month and within 120 days after the end of each calendar year.

10.7.4 All other services that are reasonably necessary for the proper operation and management of the YMCA Operations.

Section 10.8. Title. During the term of this Agreement, legal title to the Project, including any City FF&E, Inventory and Improvements and any and all repairs, replacements, substitutions and modifications to the Project providing any City FF&E, Inventory and Improvements shall be at all times be in City no matter who pays for any such items. Notwithstanding the above, any moveable or labeled fixtures, equipment, and/or inventory purchased by Essentia for use in the Essentia Exclusive Use Area, shall remain the property of Essentia.

Section 10.9. YMCA Waiver of Rights. In the event of any termination of this Agreement, so

far as permitted by law, the YMCA hereby expressly waives:

10.9.1 Any right to redeem, if any, under M.S.A. Statutes 504.02 and agrees that the provisions of said statute will in no way form a defense in any action by City to cancel and retake possession of the Project for the reasons provided in this Agreement. The YMCA further agrees that it shall be responsible for all reasonable costs and attorneys' fees actually incurred by City in enforcing its rights under this Agreement in court or otherwise or in retaking possession of the Project for breach of the terms by the YMCA.

10.9.2 Any notice of re-entry or of the institution of legal proceedings to that end.

10.9.3 Any right of redemption or re-entry or repossession or to restore the operation of this Agreement.

10.9.4 The benefits of any laws now or hereafter in force exemption property from liability for rent or for debt.

Section 10.10 Alterations and Improvements.

10.10.1 YMCA shall not make any alterations or improvements in or to the Project or any part thereof without the prior written consent of City; provided, however, that City's consent shall not be required if the alteration or improvement will not: (i) affect the structural components, facilities and/or systems serving the Project (including but not limited to foundation, bearing walls, footings, roof, HVAC, electrical, mechanical, or plumbing systems or signage); (ii) change the exterior appearance of any part of the Project; (iii) adversely affect the value of the Project; or (iv) exceed Ten Thousand Dollars (\$10,000) on a "per-project" basis.

10.10.2 If such alterations or improvements are expected to exceed Ten Thousand Dollars (\$10,000) on a "per-project" basis, affect the structural components, facilities and/or systems serving the Project, or change the exterior appearance of any part of the Project, or adversely affect the value of the Project, YMCA must obtain the written consent of City before commencing the alteration or improvement. City's consent may be conditioned, among other things, upon City being provided with and approving: (i) the plans and specifications for the proposed alteration or improvement; (ii) the identity, qualifications, and experience of the persons who will perform the work; and (iii) a deposit by YMCA of funds to pay for the costs of alterations. City reserves the right to require YMCA to bear the cost of any consultants who City considers it necessary to retain to determine the adequacy of the plans and specifications, the effect of the proposed alteration upon the Project, or to supervise construction from the standpoint of assuring that such alterations or improvements do not damage the structure or systems of any part of the Project.

10.10.3 City may condition its approval of any alteration or improvement on YMCA being required to remove the same at the end of the Term and reasonably restore the Project to its condition as existing before the alteration or improvement.

10.10.4 Any alteration or improvement by YMCA shall be done: (i) in compliance with applicable laws and codes; (ii) in strict conformance with the plans approved by City if City's consent is required; (iii) in a workmanlike fashion using only new, first-grade materials; (iv) in a manner intended to minimize potential interference with neighboring properties; (v) in conformance with reasonable directions from City; and (vi) in accordance with any competitive bidding rules applicable to the Project. Any alteration, addition or improvement made to the Project will at once become the property of City and will be surrendered to City upon expiration or earlier termination of this Agreement. Upon surrender of the Project, YMCA shall remove any alteration or improvements if, at the time City approved the alteration or improvement, City

conditioned its approval of the alteration or improvement on YMCA being required to remove it at the end of the Term.

10.10.5 YMCA shall provide a payment and performance bond covering any work to be performed by YMCA to the extent of such payment and performance bonds that are required by applicable law and, in any event, not permit any mechanic's or other lien to be levied against the Project; provided, however, that YMCA shall be permitted to contest a mechanics' lien in good faith, in which event YMCA shall provide City with security to protect City's interest in the Project. Any such security shall be in an amount at least one hundred ten percent (110%) of the amount of such lien and be in a form that is satisfactory to City. City may post the Project with appropriate notices of nonresponsibility, so as to give notice to laborers and suppliers that no mechanic's lien may attach to City's interest in the Project.

10.10.6 For alterations or improvements in excess of Ten Thousand Dollars (\$10,000), City reserves the right to impose any or all of the following requirements:

10.10.6.1 That YMCA's contractor provide City, prior to commencement of construction of the alteration or improvement, with: (i) a sworn statement (identifying all persons or entities who will provide equipment, labor or materials in connection with the work desired to be performed by the YMCA, the nature of the contribution to be made by that person or entity, and the amount each such contributor is to be paid for its contribution; (ii) a schedule for commencement and completion of the work; and (iii) providing a payment and performance bond that covers all work to be performed by such contractor or any subcontractor on the work.

10.10.6.2 The right to require YMCA to ensure that the performance of the alteration or improvement will not harm the Project, or the structure of any part of the Project, or its component systems.

10.10.7 In granting or withholding its approval to a proposed alteration or improvement, including approval of any work proposed by the YMCA, City shall not be considered to have expressed an opinion regarding: (i) compliance of the proposed work with applicable laws or codes; (ii) the safety or soundness of the work in question; (iii) whether special construction means or methods are necessary or advisable; (iv) whether there are inconsistencies between the plans, specifications, or other material provided to City by YMCA or YMCA's contractor that relate to the proposed work; (v) the existence of defects or other shortcomings in any plans, specification or other material; (vi) the financial strength, experience, or adequacy of the proposed contractor; or (vii) other similar matters or circumstances.

Section 10.11 Purpose of this Agreement. The purpose for which this Agreement is being entered is in order carry out the Governmental Program. This Agreement is being entered into in accordance with the provisions of the G.O. Bonding Legislation, Minnesota Statute Section 16A.695, and rules, regulations, and orders issued pursuant thereto in order to carry out this public purpose and it is the intent of the parties that YMCA shall implement the goals of City in serving the public purpose as herein provided.

Section 10.12 Liens. YMCA shall not, without the prior written consent of City and the Commissioner of Minnesota Management and Budget, create or allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the YMCA Premises, Project, or Land or City's ownership interest in the YMCA Premises, Project or Land or YMCA's interest in this Agreement.

ARTICLE X
Damage, Destruction And Condemnation; Use Of Net Proceeds

Section 11.1. Damage, Destruction and Condemnation. If the Project or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or title to or the temporary use of the Project or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the City shall have all of the rights with respect to the proceeds of any insurance or condemnation award described in this Section. All proceeds shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Project by the City or if the City elects not to repair or rebuild, all proceeds shall be retained by City.

ARTICLE XII
Insurance

Section 12.1. YMCA Insurance. YMCA shall obtain and maintain at its cost and expense:

12.1.1 Comprehensive general liability insurance that covers the services performed by YMCA for City with a combined single limit of liability of at least Two Million Dollars (\$2,000,000.00).

12.1.2 Worker's compensation insurance covering all of YMCA's employees with coverages and limits of coverage required by law.

12.1.3 In addition to the coverages listed above, YMCA shall maintain a professional liability insurance policy in the amount of \$2,000,000. Said policy need not name the City as an additional insured. It shall be YMCA's responsibility to pay any retention or deductible for the professional liability insurance. YMCA agrees to maintain the professional liability insurance for a minimum of two (2) years following termination of this Agreement.

Section 12.2 City Insurance. City shall obtain and maintain at the cost and expense of the YMCA:

12.2.1 Property insurance on the Project in an amount not less than the full insurable replacement cost of the Project insuring against loss or damage by such risks as are covered by the current ISO Special Form policy. City, at its option, may obtain such additional coverages or endorsements as City deems appropriate or necessary in its sole discretion. City may maintain such insurance in whole or in part under blanket policies.

12.2.2 Commercial general liability insurance against claims for bodily injury and property damage occurring at the Property in such amounts as City deems appropriate or necessary in its sole discretion.

Section 12.3 General Insurance Terms. YMCA certifies that YMCA is in compliance with all applicable worker's compensation laws, rules and regulations. Neither YMCA (if an individual) nor YMCA's employees and agents will be considered City employees. Any claims that may arise under any worker's compensation laws on behalf of any employee of YMCA and any claims made by any third party as a consequence of any act or omission on the part of YMCA or any employee of YMCA are in no way City's obligation or responsibility. By signing this Agreement, YMCA certifies that YMCA is in compliance with these laws and regulations.

The parties shall deliver to each other, concurrent with the execution of this Agreement, one or more certificate(s) of insurance evidencing that each party has the insurance required by this Agreement in full force and effect. Each party shall be named as additional insured under the parties' respective comprehensive general liability policies. The insurers will provide at least thirty (30) days prior written notice to each party, without fail, of any cancellation, non-renewal, or modification of any of the parties' comprehensive general liability policies or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to each party, without fail, of any cancellation of a party's comprehensive general liability policy or coverage evidenced by said certificate(s) for nonpayment of premium. The parties shall provide each other with appropriate endorsements to their respective comprehensive general liability policies reflecting the status of each party as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided each party by the insurance companies providing such insurance policies.

YMCA shall require any subcontractor permitted by City to perform work for YMCA on the Project to have in full force and effect the insurance coverage required of the YMCA under this Agreement before any subcontractor(s) begin(s) work on the Project. YMCA shall require any such subcontractor to provide to YMCA a Certificate of Insurance evidencing that such subcontractor has the insurance required by this Agreement in full force and effect. YMCA and City shall be named as additional insureds under such policies. The insurer will provide 30 day written notice to City and YMCA, without fail, of any cancellation, non-renewal, or modification of the subcontractor's comprehensive general liability policy or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to City and YMCA, without fail, of any cancellation of any of the subcontractor's comprehensive general liability policy or coverage evidenced by said certificate(s) for nonpayment of premium. City and YMCA shall also be provided with appropriate endorsements to subcontractor's comprehensive general liability policy reflecting the status of City and YMCA as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided City and YMCA by the insurance company providing subcontractor's comprehensive general liability policy.

Section 12.4 Liability Limits. The liability limits set forth in this Section may be changed by the City to reflect changes in the liability limits made by City in other contracts then being entered into by it.

ARTICLE XIII

Payment of Taxes and Utilities and other Costs

YMCA shall pay, before any fine, penalty, interest or cost may be added or become due or be imposed for nonpayment thereof, all taxes, assessments, water and sewer rents, rates and charges, charges for public utilities, levies, licenses and permit fees and other governmental charges which may be assessed against the Project that are levied through normal operations of the Project, following the completion of construction of the Project that are in excess of the amount of the Essentia Revenue that are paid by City from Essentia Revenue for Total Project Utility and Exterior Maintenance Costs. City's liability for the payment of Total Project Utility and Exterior Maintenance Costs shall be limited to the amount of Essentia Revenue.

If YMCA shall fail, refuse or neglect to make any of the payments required in this Article, then City may pay the same, and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of/or in connection with such payments, together with interest on all such amounts, at the rate of eight percent (8%) per annum, shall be repaid by

YMCA to City immediately upon demand by City.

ARTICLE XIV Mechanics' Liens

YMCA shall not have the power to subject nor shall it permit with whom it contracts to subject the Project to any mechanics' or materialmen's liens or other lien of any kind.

Article XV Operational Standards

YMCA shall operate the Project in accordance with the following operational standards:

Section 15.1. General. The YMCA Operations shall be operated as a traditional YMCA and as a member in good standing of YMCA of the USA in accordance with its mission; its core values of honesty, caring, respect and responsibility; and in compliance with its standing as an Internal Revenue Code §501(c)(3) charitable institution. YMCA shall provide public and membership activities that are traditionally considered YMCA programs.

Section 15.2. Early Childhood Care. YMCA shall operate an early childcare facility, which may include infant care, as part of the YMCA Operations.

Section 15.3. Fees. All fees charged by YMCA for use of the YMCA Operations shall be uniform, non-discriminatory and consistent with charges for such services made by the YMCA at all other branches of its operation and as are consistent with charges for early childhood services provided by other similar programs.

Section 15.4. Programs. YMCA shall within its sole and complete discretion establish the scheduling, supervision, recording, and reporting for program activities in the YMCA Operations. YMCA shall use its best efforts to schedule the YMCA Operations so as to establish and maintain balance between the need of YMCA to operate the YMCA Operations as a YMCA membership-based facility and the development of program membership services and activities that meet the budgetary targets of the YMCA Operations.

Section 15.5. Hours of Operation. YMCA shall operate the YMCA Operations substantially consistent with the hours of operation of its other branches.

Section 15.6. Marketing Plan. YMCA shall create, direct and implement an annual marketing plan for the YMCA Operations as part of the Budget. The marketing plan for the YMCA Operations shall include a market analysis, a summary of programs to include rates and strategies for achieving the budgeted financial goals and other marketing-related goals for the YMCA Operations. Essential Revenue shall not be utilized to create or implement the marketing plan required by this section.

Section 15.7. Repair, Replacement, Maintenance and Improvements. YMCA shall comply with all laws, regulations, ordinances relating to public entities for all purchases and make, execute or supervise all decisions concerning the routine day to day maintenance, repair and landscaping of the YMCA Operations.

Section 15.8. Personnel. Throughout the term of this Agreement, YMCA shall employ a

qualified person having experience in the management of a health and wellness center of this type who shall be available during normal business hours and be delegated sufficient authority to ensure competent performance and fulfillment of the responsibility of this Agreement and to accept serviceable notices provided for herein. The person employed by the YMCA pursuant to this Section 15.8 shall be designated as the Building Manager.

YMCA shall ensure all personnel are courteous and cooperative and present a neat, clean and professional appearance at all times. YMCA shall provide City with the name and telephone number of a management person who will be on call at all times for emergencies or other matters related to the operations under this Agreement.

YMCA shall comply with all applicable equal employment opportunity and non-discrimination laws, ordinances and regulations.

ARTICLE XVI State Grant Requirements

YMCA shall at all times ensure that the use and operation with the YMCA Project Area complies with the provisions of that Grant Agreement to be entered into between City and the State of Minnesota with regard to the State Bond Financing.

ARTICLE XVII Uses Prohibited

YMCA agrees that no use will be permitted on the YMCA Project Area that could result in a cancellation of any insurance policy covering the Project, improvements located on the Project, or affecting the Project's operation and management.

ARTICLE XVIII License/Sublicense/Assignments

YMCA may not enter into any leases or other agreements which grant any party any interest in the Land or Project. YMCA may not lease, license, sublicense or assign any of its management and operational duties under this Agreement without first obtaining the written consent of the City, which assignment may be approved, approved on conditions or withheld in the City's sole and absolute discretion. YMCA acknowledges that the State of Minnesota may also have to approve any lease, license, sublicense or assignment of any interest in the Land or Project.

ARTICLE XIX Waste and Nuisance Prohibited

YMCA shall not commit or suffer to be committed any waste or nuisance on the Project and further agrees to comply with all applicable laws affecting the Project and its operations.

ARTICLE XX
City Right of Entry

YMCA shall permit the City and its agents and employees to enter into and upon the YMCA Project Area for the purpose of inspecting the YMCA Project Area and fulfilling its obligations under this Agreement.

ARTICLE XXI
Abandonment of Management Duties

YMCA shall not abandon the Project at any time during the term of this Agreement.

ARTICLE XXII
Tax Covenants

Section 22.1. Preservation of Tax Exempt Status. YMCA shall at all times comply with the provisions of Rev. Proc. 2017-13 with respect to any use of the Project.

In addition, YMCA agrees that in order to preserve tax exempt status of the State Bonds and City Bonds, YMCA agrees as follows:

22.1.1 It will not use the Land or the Project or use or invest the G.O. Grant or any other sums treated as "bond proceeds" under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the Bonds to be classified as "arbitrage bonds" under Section 148 of the Code. Nothing in this Section 22.1.1 shall be construed as permitting or authorizing the YMCA to have any access to the G.O. Grant or any other sums treated as "bond proceeds". The City retains full ownership and dominium and control over the G.O. Grant and "bond proceeds".

22.1.2 It will, upon written request, provide the City all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the State Bonds or City Bonds.

22.1.3 It will, upon the occurrence of any act or omission by YMCA that could cause the interest on the State Bonds or City Bonds to no longer be tax-exempt and, upon direction from the City or the Commissioner of MMB, take such actions and furnish such documents as the City Finance Director or Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the State Bonds or City Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the State Bonds or City Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of this Agreement so that it complies with Rev. Proc. 2017-13, or (iii) changing the nature of the use of the Land or the Project so that none of the net proceeds of the State Bonds or City Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

22.1.4 It will not otherwise use any of or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the State Bonds or City Bonds, nor otherwise omit, take, or cause to be taken any action necessary to maintain such tax-exempt

status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 22.2. Use Contracts. YMCA may enter use contracts (“Use Contracts”) for the use of various portions of the Land or the Project; provided that each and every Use Contract that YMCA enters into must comply with the following requirements:

22.2.1 The purpose for which it was entered into must be in furtherance of the Governmental Program.

22.2.2 It must contain a provision setting forth the statutory authority under which YMCA is entering into such contract, and must comply with the substantive and procedural provisions of such statute.

22.2.3 It must contain a provision stating that it is being entered into in order for a third party to operate the Governmental Program and must describe such program.

22.2.4 It must contain a provision that will provide for oversight by the City. Such oversight may be accomplished by way of a provision that will require the third party to provide to the City a mutually agreed upon mechanism under which the City will annually determine that the third party is using the portion of the Land or the Project that is the subject of the Use Contract to operate the Governmental Program.

22.2.5 It must allow for termination by the City in the event of a default hereunder by the third party, or in the event that the Governmental Program is terminated or changed in a manner that precludes the operation of such program in the portion of the Land or the Project that is the subject of the Use Contract.

22.2.6 It must terminate upon the termination of the statutory authority under which the City is operating the Governmental Program.

22.2.7 It must require the third party to pay all costs of operation and maintenance of that portion of the Land and/or the Project that is the subject of the Use Contract, unless the City is authorized by law to pay such costs and agrees to pay such costs.

22.2.8 If City pays any monies to the third party under a Use Contract, such Use Contract must meet the requirements of Rev. Proc. 2017-13, so that such Use Contract does not result in "private business use" under Section 141(b) of the Code.

22.2.9 It must be approved in writing by the City, and any Use Contract that is not approved in writing by the City shall be null and void and of no force or effect.

22.2.10 It must contain a provision requiring that each and every party thereto shall, upon direction by the City Finance Director, take such actions and furnish such documents to the City Finance Director as the City Finance Director determines to be necessary to ensure that the interest to be paid on the State Bonds or City Bonds is exempt from federal income taxation.

22.2.11 It must contain a provision that prohibits the third party from creating or allowing, without the prior written consent of the City, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Land or the Project, or the third party's interest in the Use Contract.

22.2.12 YMCA must be authorized by applicable law to enter into the Use Contract and it must be approved by action of the Board of Directors of the YMCA.

ARTICLE XXIII Oversight Committee

Section 23.1. Oversight Committee. There will be six (6) members of the Oversight Committee, one (1) of whom will be the School Superintendent or his/her designee; one (1) of whom will be the City Administrator or his/her designee; one (1) of whom will be selected by the YMCA; one (1) of whom will be selected by Essentia; and two (2) of whom will be selected from the region served by the Project by the members selected by Essentia, School, YMCA and City.

Section 23.2. Bylaws. The Oversight Committee shall adopt Bylaws for the conduct of its activities in a form approved by YMCA, City and Essentia.

Section 23.3. Complaint Procedures. The Oversight Committee shall establish a procedure for obtaining and handling any complaints with respect to the Project and provide such procedures for approval by the City.

Section 23.4 Wellness Fund. The Oversight Committee shall be responsible for the Wellness Center Fund and have the authority to authorize disbursements of Wellness Center Fund money to pay Permissible Wellness Center Fund Expenditures. City and YMCA have determined that the Oversight Committee shall disburse Wellness Center Fund money to first pay the Start-up Cost specifically identified on Exhibit F up to an amount of \$235,830.00. In no event may the Oversight Committee disburse more than \$300,000.00 from the Wellness Center Fund to pay Start-up Cost. When the Oversight Committee determines that a proposed invoice for a bona fide Start-up Cost is appropriate, it will notify the City of its determination and City will promptly disburse funds from the Wellness Fund to pay approved Start-up Cost.

ARTICLE XXIV Annual Review

Section 24.1. Annual Review.

24.1.1 Project Tour. Annually between August 15 and August 31 of each year, beginning in 2020, representatives of the Oversight Committee will tour the Project. After such tour, the Oversight Committee shall develop a one year and a five year Replacement, Improvements and Upgrades Plan (“Replacement, Improvements and Upgrades Plan”) for the Project.

The Replacement, Improvements and Upgrades Plan will identify work that needs to be done in the next year and in the next five years to keep and maintain the Project in the condition that is required to maintain its status as a first class health and wellness center and that provides an estimate of the cost to accomplish each of the items set forth in the Replacement, Improvements and Upgrades Plan.

The Replacement, Improvements and Upgrades Plan shall be provided to the City on or before September 15 of each year for consideration by the City as part of its budgeting process.

24.1.2 Five Year Review. Beginning in 2025 and every five years thereafter, an independent consultant from Minnesota selected by and paid for as YMCA Total Project Operating Costs and shall

accompany the Oversight Committee on the Project tour described in Section 24.1.1. The independent consultant will assist the City in the preparation of the Replacement, Improvements and Upgrades Plan for the next year and next five years for such year.

ARTICLE XXV

Events of Default and Remedies

Section 25.1. Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Agreement, with respect to the Project, any one or more of the following events:

25.1.1 Failure by a party to observe and perform any covenant, condition or agreement on its part to be observed or performed, for a period of ninety (90) days after written notice specifying such failure and requesting that it be remedied has been given to the breaching party by the non-breaching party unless the non-breaching party shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the non-breaching party will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the breaching party within the applicable period and diligently pursued until the default is corrected.

25.1.2 The filing by the breaching party of a voluntary petition in bankruptcy, or failure by the breaching party promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of the breaching party to carry on its operations at the Project, or adjudication of the breaching party as bankrupt, or assignment by the breaching party for the benefit of creditors, or the entry by the breaching party into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the breaching party in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

Section 25.2. Remedies on Default. Whenever any event of default or referred to in Section 15.1 hereof shall have happened and be continuing with respect to the Project, the non-breaching party shall have the right, at its option and without any further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the breaching party under this Agreement and/or terminate this Agreement.

25.2.1 Upon the occurrence of any event of default and a failure to cure within the cure period provided in Section 25.1 hereof, the City may, in addition to any other rights or remedies available to it by law or in equity:

25.2.1.1 With or without terminating this Agreement exclude the YMCA from using the Project, provided, however, that if this Agreement has not been terminated, City shall reinstate the right to use the Project to the YMCA when the event of default is cured.

25.2.1.2 Employ a nationally recognized consultant ("Consultant") to make a written report evaluating the performance of the Project and recommending corrective measures, including the retention of a replacement of the current manager of the Project, if warranted. The cost of the Consultant shall be borne by the YMCA and the YMCA shall be obligated to pay for the cost of any corrective measures recommended by the Consultant.

25.2.1.3 Employ a nationally recognized aquatics consultant ("Aquatics Consultant")

to make a written report evaluating the aquatic center and recommending corrective measures, including the retention of a replacement of the current manager, if warranted. The cost of the Aquatics Consultant shall be borne by the YMCA and the YMCA shall be obligated to pay for the cost of any corrective measures recommended by the Aquatics Consultant.

Section 25.3. Delay Notice. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle any party to exercise any remedy reserved to it in this Agreement it shall not be necessary to give any notice, other than such notice as may be required in this Agreement.

Section 25.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 25.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XXVI Administrative Provisions

Section 26.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in certified or registered form with postage fully prepaid:

If to City: City of Hermantown
 5105 Maple Grove Road
 Hermantown, MN 55811
 Attn: City Administrator

If to YMCA: Duluth Area Family Y.M.C.A.
 302 W 1st Street
 Duluth, MN 55802
 Attn: Executive Director

The above-named persons, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 26.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon City and YMCA and their respective successors and assigns.

Section 26.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court or competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 26.4. Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified by written amendment authorized and executed by the City and YMCA. No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the Commissioner, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

Section 26.5. Further Assurances and Corrective Instruments. City and YMCA agree that they will, if necessary, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or for carrying out the expressed intention of this Agreement.

Section 26.6. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 26.7. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

Section 26.8. Authorized Officers. Whenever under the provisions of this Agreement the approval of the YMCA or City is required, to take some action at the request of the other, such approval of such request shall be given for the YMCA by the YMCA Representative or for City by the City Representative and any party hereto shall be authorized to rely upon any such approval or request.

Section 26.9. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

Section 26.10. Choice of Law. All matters relating to the validity, construction, performance or enforcement of this Agreement shall be determined in accordance with the laws of the State of Minnesota. Jurisdiction and venue for any proceedings in connection with this Agreement shall be in the District Court sitting in the City of Duluth, St. Louis County, Minnesota.

Section 26.11. Time of Essence. Time is of the essence with respect to all of the matters contained in this Agreement

Section 26.12. Government Data Practices Act. YMCA acknowledges that City is subject to the provisions of the Minnesota Government Data Practices Act.

YMCA must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by City in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by YMCA in accordance with this Agreement. The civil remedies of Minnesota Statutes § 13.08, apply to YMCA and City.

Minnesota Statutes, Chapter 13, provides that all government data are public unless otherwise classified. If YMCA receives a request to release the data referred to in this Section, YMCA must immediately notify City and consult with City as to how YMCA should respond to the request. YMCA's response shall comply with applicable law, including that the response is timely and, if YMCA denies access to the data, that YMCA's response references the statutory basis upon which YMCA relied. The foregoing provisions do not release or relieve the YMCA from any obligations it independently has to

comply with the Minnesota Government Data Practices Act.

Section 26.13. Audit. City shall have the unfettered right to audit the YMCA's books and records with respect to all components of the Project and the YMCA activities pursuant to this Agreement, including the determination of CAM Charges. Essentia may audit the books and records of the YMCA with respect to the CAM Charges.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, City has caused this Use and Operation Agreement to be executed in its name by its duly authorized officers as of the date first above written.

City of Hermantown

By _____
Its Mayor

And By _____
Its City Clerk

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, YMCA has caused this Use and Operation Agreement to be executed in its name by its duly authorized officers as of the date first above written.

Duluth Area Family Y.M.C.A.

By _____
Its _____

[END OF SIGNATURES]

EXHIBIT A
Common Area

EXHIBIT B
Community Space Description

EXHIBIT C
Essentia Exclusive Use Area

EXHIBIT D
Land Description

Parcel 1:

All that part of Lot 1, Block 16, Duluth Homestead's Subdivision Plat, St. Louis County, Minnesota, described as follows:

Commencing at the northwest corner of said Lot 1, block 16, Duluth Homestead's Subdivision Plat; thence south 89 degrees 38 minutes East, along the north line of said Lot 1, a distance of 673.91 feet, to the point of beginning; thence South 0 degrees 27 minutes West a distance of 250 feet; thence South 89 degrees 38 minutes East, along the south line of said Lot 1, a distance of 200 feet, more or less, to the east line of said Lot 1; thence North 0 degrees 27 minutes, along the east line of said Lot 1, a distance of 280 feet, more or less to the north line of said Lot 1; thence westerly along the north line of said Lot 1 to the point of beginning.

Parcel 2:

That part of Lot 2, Block 16, Duluth Homestead's Subdivision Plat, St. Louis County, Minnesota, described as follows:

Commencing at the northeast corner of Section 16, Township 50 North, Range 15 West, St. Louis County, Minnesota; thence along the east line of said Section 16, which has a bearing of South 00 degrees 26 minutes 22 seconds West (South 00 degrees 27 minutes West per Duluth Homestead's Subdivision Plat) a distance of 33.00 feet, to the easterly extension of the north line of said Lot 2, Block 16; thence North 89 degrees 38 minutes 00 seconds West, along said easterly extension, 33.00 feet to the northeast corner of said Lot 2, Block 16, said point being the point of beginning of the parcel herein described; thence South 00 degrees 26 minutes 22 seconds West, along the east line of said Lot 2, a distance of 250.00 feet; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 236.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 30.00 feet; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 151.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 250.00 feet, to the easterly extension of the south line of Lot 1, Block 16, Duluth Homestead's Subdivision Plat; thence North 89 degrees 38 minutes 00 seconds West, along said easterly extension, 343.00 feet, to the east line of said Lot 1, Block 16; thence North 00 degrees 26 minutes 22 seconds East, along said east line, 280.00 feet to a south line of Lot 1, Block 16; thence South 89 degrees 38 minutes 00 minutes East, along said south line, 325.00 feet, to the east line of said Lot 1, Block 16; thence North 00 degrees 26 minutes 22 seconds East, along said east line, 250.00 feet to the north line of said Lot 2, Block 16; thence South 89 degrees 38 minutes 00 seconds East, along said north line, 405.00 feet, to the point of beginning.

Parcel 3:

That part of Lot 2, Block 16, Duluth Homestead's Subdivision Plat, St. Louis County, Minnesota, described as follows:

Commencing at the northeast corner of Section 16, Township 50 North, Range 15 West, St. Louis County, Minnesota; thence along the east line of said Section 16, which has a bearing of South 00 degrees 26 minutes 22 seconds West (South 00 degrees 27 minutes West per Duluth Homestead's Subdivision Plat) a distance of 33.00 feet, to the easterly extension of the north line of said Lot 2, Block 16; thence North 89 degrees 38 minutes 00 seconds West, along said easterly extension, 33.00 feet to the northeast corner of said Lot 2, Block 16; thence South 00 degrees 26 minutes 22 seconds West, along the east of said Lot 2 a distance of 250.00 feet to the point of beginning of the parcel herein described; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 236.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 30.00 feet; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 151.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line

of Lot 2, Block 16, a distance of 250.00 feet, to the easterly extension of the south line of Lot 1, Block 16, Duluth Homestead's Subdivision Plat; thence South 89 degrees 38 minutes 00 seconds East, parallel with said north line of Lot 2, Block 16, a distance of 387.00 feet, to said east line of Lot 2, Block 16; thence North 00 degrees 26 minutes 22 seconds East, along said east line of Lot 2, Block 16, a distance of 280.00 feet to the point of beginning.

EXHIBIT E
School Exclusive Use Area Description

EXHIBIT F
Estimate of Start-up Cost

Branch Director	\$27,425.00
Membership Experience Director	\$9,150.00
Aquatics Director	\$6,100.00
Director of Healthy Living	\$6,100.00
Building Manager	\$1,225.00
Project Director/Youth Development Director	\$4,100.00
Development	\$6,200.00
Lead Membership Staff	\$1,700.00
Lead Aquatics Staff	\$830.00
Marketing Firm	\$75,000.00
Donor By Design (9 month contract)	\$52,000.00
Seer Analytics	\$4,000.00
Events	\$18,000.00
Office/Program Space	\$9,000.00
Initial Supplies	\$15,000.00
Total Estimate as of May 4, 2018	\$235,830.00
Not to Exceed Figure	\$300,00.00

EXHIBIT 7.6
Non-reimbursable Project Costs

The following project costs of the Project may not be paid or reimbursed with Essentia Revenues:

1. Food and lodging expenses for YMCA personnel.
2. Conferences and training for YMCA personnel.
3. Depreciation.
4. Any administrative fees payable to the City.
5. Amortization of capital expenditures.
6. Any project costs that are not allowed as an expense under Minn. Stat. §16A.695.

TO: Mayor & City Council
FROM: John Mulder, City Administrator



DATE: April 28, 2020

Meeting Date: 5/4/20

SUBJECT: Memorandum of
Understanding – School
District for EWC

Agenda Item: 12-E

Resolution 2020-58

REQUESTED ACTION

Approve the Memorandum of Understanding between the School District and the City or Hermantown for use of space in the Essentia Wellness Center as approved by State of Minnesota Office of Management & Budget.

BACKGROUND

The Hermantown School District has been a key partner in the development of the Essentia Wellness Center. Attached is a Memorandum of Understanding (MOU) that allows the school to have exclusive use of an office for community education and non-exclusive use of the community center and common area space for their programming free of charge. A diagram of the space is included as an exhibit to the agreement. Their use of the community and common areas is subject to scheduling by the Y. The proposed Memorandum of Understanding also provides the school to have a representative on the oversight committee.

On April 15, 2019, the City Council approved a MOU with the School District subject to the approval by the State of Minnesota. That document was submitted to the State on July 10, 2019 along with the agreements with the Duluth Area Family YMCA and Essentia Health. After many discussions, meetings, phone calls, and e-mails with the State of Minnesota and then again with the School Superintendent, the MOU was revised and finally approved by the State of Minnesota on April 29, 2020.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Memorandum of Understanding

Resolution No. 2020-58

**RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK
TO EXECUTE AND DELIVER A MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF HERMANTOWN AND INDEPENDENT SCHOOL DISTRICT #700
FOR THE ESSENTIA WELLNESS CENTER**

WHEREAS, the City of Hermantown (“City”) and Independent School district #700 entered into a Memorandum of Understanding with regard to the Essentia Wellness Center (“Project”) dated April 22, 2019; and

WHEREAS, the MOU was reviewed by the State of Minnesota Office of Management and Budget (“MMB”); and

WHEREAS, the MMB required that changes be made to the MOU to satisfy the MMB’s requirements for use of the State Grant Funds; and

WHEREAS, the MOU was revised to reflect the requirements of the MMB (“2020 MOU”); and

WHEREAS, the 2020 MOU has been reviewed and approved by the MMB; and

WHEREAS, the 2020 MOU is attached hereto as Exhibit A; and

WHEREAS, the City Administrator recommends approval of the 2020 MOU; and

WHEREAS, the City Council has duly considered the 2020 MOU and believes that it is in the best interests of the City of Hermantown that the 2020 MOU be approved.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota as follows:

1. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the 2020 MOU substantially in the form of the one attached hereto as Exhibit A with such minor modifications thereto as are approved by the City Administrator and City Attorney.
2. The City of Hermantown hereby memorializes its deep appreciation for the partnership with the School District and is committed to an ongoing, positive working relationship.
3. The City commits to work with the School District to resolve any issues that might arise with respect to the Project in a reasonable and amicable fashion.

Councilor ____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor ____ and, upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 4, 2020.

April 30, 2020

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

BETWEEN

CITY OF HERMANTOWN

AND

INDEPENDENT SCHOOL DISTRICT NO. 700

Dated _____, 2020

Relating to:

Essentia Wellness Center

4289 Ugstad Road

Hermantown, MN 55811

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING “MOU” is made effective as of the ____ day of _____, 2020 by and between the **City of Hermantown** (“City”) and **Independent School District No. 700** (“School”) in order to fix the respective rights and duties of the City and School in regard to the use and operation of the Essentia Wellness Center located at 4289 Ugstad Road in the City of Hermantown, Minnesota (“Project”) in response to the following situation:

A. City has developed the Project to provide for recreational uses and promote health and wellness and a variety of other programming.

B. School desires to use portions of the Project for School activities that provide for recreational use and promote health and wellness and other programming pursuant to the terms of this Agreement.

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agrees as follows:

ARTICLE I Definitions and Exhibits

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this MOU, have the meanings herein specified:

Common Area: The area of the Project identified on Exhibit A attached hereto consisting of the Community Center Space, interior hallways, entryways and other public areas and all exterior areas of the Project including parking areas, walkways and landscaped areas.

Community Center Space: The area of the Project identified on Exhibit A attached hereto consisting of two rooms that are available for use by City, School, Essentia, YMCA and members of the public subject to the provisions of this Agreement.

Governmental Program: means an activity in the Project that is in furtherance of the City’s program of public recreation and in furtherance of City’s program to promote the health and wellness of the City, including leasing space in the Project to Essentia to provide integrated health care services, and including entering into this MOU and an agreement with the Duluth Area Family Y.M.C.A.

School Exclusive Use Area: Means the area described on Exhibit A attached hereto.

ARTICLE II
Ownership of Project

The ownership of the Project and replacements of any part of the Project shall at all times be vested in City.

The City retained the right to the use the School Exclusive Use Area and Common Area pursuant to a Use and Operations Agreement between the City and the Duluth Area Family Y.M.C.A. dated _____, 2020 (“Use Agreement”). The City also retained the right to assign its use rights in the School Exclusive Use Area and Common Area.

It is specifically intended, understood and agreed by City and School that this MOU Is not a Lease and the parties hereto agree that all interpretations and construction given to this MOU shall be construed to accomplish the foregoing intent, understanding and agreement of the parties hereto.

ARTICLE III
Term of MOU

Section 3.1. Term of MOU. This MOU shall be and remain in effect with respect to the Project for a term commencing on the date hereof and continuing until terminated by the School. Notwithstanding the foregoing, the term shall expire on December 31, 2039.

Section 3.2. Surrender of Project. Upon termination of the term of this MOU, the possession of the School Exclusive Use Area shall be surrendered to City and School shall execute and deliver whatever documents and agreements are necessary and appropriate to terminate this MOU in all respects.

ARTICLE IV
School Use

Section 4.1 MOU. School shall have the exclusive use of the School Exclusive Use Area and non-exclusive use of the all Common Areas, including the Community Center Space in the Project subject to availability and scheduling as determined in good faith by the YMCA subject to the provisions of Section 4.6. It is acknowledged that School shall not pay rent for its use of the School Exclusive Use Area, Common Areas or Community Center Space.

Section 4.2 School Use. The School Use of the Project shall at all times be in furtherance of the Governmental Program.

Section 4.3 Common Areas and Community Center Space. School shall be entitled to use the Common Areas and Community Center Space as set forth in the MOU, subject to the provisions of Section 4.6 of this MOU

Section 4.4 Exterior Access and Parking. School will be entitled to the use of the parking and exterior areas of the Project as set forth in the MOU, subject to the terms of this MOU.

Section 4.5 Pedestrian Easement. School shall have a non-exclusive easement across the Project to access the adjoining property owned by School.

Section 4.6 Buffer Area. City will maintain and cause the YMCA to maintain a reasonable buffer area between the parking spaces in the Project and the adjoining property owned by the School.

Section 4.7 Use Conflicts. In the event that there are any conflicts in the use of the Project by School and YMCA, including interior and exterior use, including parking and which cannot be resolved by School and YMCA, such conflicts shall be resolved as follows:

4.7.1 By the then Building Manager of the Project after discussion with and mutual agreement of a School representative and YMCA representative.

4.7.2 If the Building Manager is unable to resolve conflicts among School and YMCA, then the dispute shall be resolved by the Oversight Committee, subject to approval by City. The decision of the Oversight Committee as approved by City shall be final and binding on School and YMCA.

Section 4.8 Capitalized Terms. All capitalized terms when used in this Agreement shall have the meanings given to them in the Use and Operations Agreement.

Section 4.9 Additional Provisions. During the term of the Naming Rights Agreement, School shall make reference to being located “at the Essentia Wellness Center” in any Branding and Collateral materials, as that term is defined in the Naming Rights Agreement and use the Name and Logo and Project Materials, as these terms are defined in the Naming Rights Agreement, in all advertising and promotional material related to the Project. Any such references, usage, or similar activities shall be in compliance with the Naming Rights Agreement.

Section 4.10 No changes to this Article IV may be made without the consent of School.

ARTICLE V General Matters

Section 5.1. Operation. School shall exercise due care in the use of the Project provided for by this MOU and shall not use any such areas improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Agreement.

Section 5.2. Routine Maintenance and Repair of School Premises by YMCA. YMCA, shall, at its own expense, perform Routine Maintenance and Repairs of the School Exclusive Use Area, the Common Areas and Community Center Space.

Section 5.3. Capital Maintenance and Repair. City shall, at its own expense, perform Capital Maintenance and Repairs to the entire Project, including the School Exclusive Use Area.

Section 5.4. City Rules and Regulations. All existing and future rules and regulations of City governing activities on City owned property and City buildings are applicable to the Land and the Project, provided, however, that such rules and regulations shall be non-discriminatory, necessary or desirable for the proper functioning of City and the furtherance of its purposes and shall not unreasonably deprive School or its permitted successors and assigns from using the Project for purposes

for which a facility of its nature is customarily used.

Section 5.5. Title. During the term of Agreement, legal title to the Project, including any Fixtures, Equipment, Inventory and Improvements paid for by the City now or hereafter made any and all repairs, replacements, substitutions and modifications to it shall be at all times be in City no matter who pays for any such items.

Section 5.9 Alterations and Improvements.

5.9.1 School shall not make any alterations or improvements in or to the Project or any part thereof without the prior written consent of City;.

5.9.2 City reserves the right to require School to bear the cost of any consultants who City considers it necessary to retain to determine the adequacy of the plans and specifications, the effect of the proposed alteration upon the Project, or to supervise construction from the standpoint of assuring that such alterations or improvements do not damage the structure or systems of any part of the Project.

5.9.3 City may condition its approval of any alteration or improvement on School being required to remove the same at the end of the Term and reasonably restore the Project to its condition as existing before the alteration or improvement.

ARTICLE VI
Insurance

Section 6.1. School Insurance. School shall obtain and maintain at its cost and expense:

6.1.1 Comprehensive general liability insurance that covers the School and City with a combined single limit of liability of at least Two Million Dollars (\$2,000,000.00).

6.1.2 Worker's compensation insurance covering all of School's employees with coverages and limits of coverage required by law.

ARTICLE VII
City Right of Entry

School shall permit the City and its agents and employees to enter into and upon the School Exclusive Use Area for the purpose of inspecting the School Exclusive Use Area and fulfilling its obligations under this Agreement.

ARTICLE VIII
Compliance with G.O. Compliance Legislation and the Commissioner's Order

School and City hereby agree to the provisions set forth in Exhibit VIII attached hereto.

**ARTICLE IX
Oversight Committee**

Section 9.1. Oversight Committee. There will be six (6) members of the Oversight Committee, one (1) of whom will be the School Superintendent or his/her designee; one (1) of whom will be the City Administrator or his/her designee; one (1) of whom will be selected by the YMCA; one (1) of whom will be selected by Essentia; and two (2) of whom will be selected from the region served by the Project by the members selected by Essentia, School, YMCA and City.

Section 9.2. Bylaws. The Oversight Committee shall adopt Bylaws for the conduct of its activities in a form approved by Essentia, School, YMCA, and City.

Section 9.3. Complaint Procedures. The Oversight Committee shall establish a procedure for obtaining and handling any complaints with respect to the Project and provide such procedures for approval by the City.

Section 9.4. Use Conflicts. In the event that there are any conflicts in the use of the Project by School and YMCA, including interior and exterior use, including parking, and which cannot be resolved by School and YMCA, such conflicts shall be resolved as follows:

9.4.1 By the then Building Manager of the Project after discussion with and mutual agreement of the representative of the School and YMCA Representative.

9.4.2 If the Building Manager is unable to resolve conflicts among School and YMCA, then the dispute shall be resolved by the Oversight Committee, subject to approval by City. The decision of the Oversight Committee as approved by City shall be final and binding on School and YMCA.

[SIGNATURES APPEAR ON NEXT PAGE]

April 30, 2020

IN WITNESS WHEREOF, City has caused this Use Agreement to be executed in its name by its duly authorized officers as of the date first above written.

City of Hermantown

By _____
Its Mayor

And By _____
Its City Clerk

IN WITNESS WHEREOF, School has caused this Use Agreement to be executed in its name by its duly authorized officers as of the date first above written.

Independent School District No. 700

By _____
Its _____

[END OF SIGNATURES]

EXHIBIT A
First Floor Layout of Essentia Wellness Center
Essentia Wellness Center
First Floor

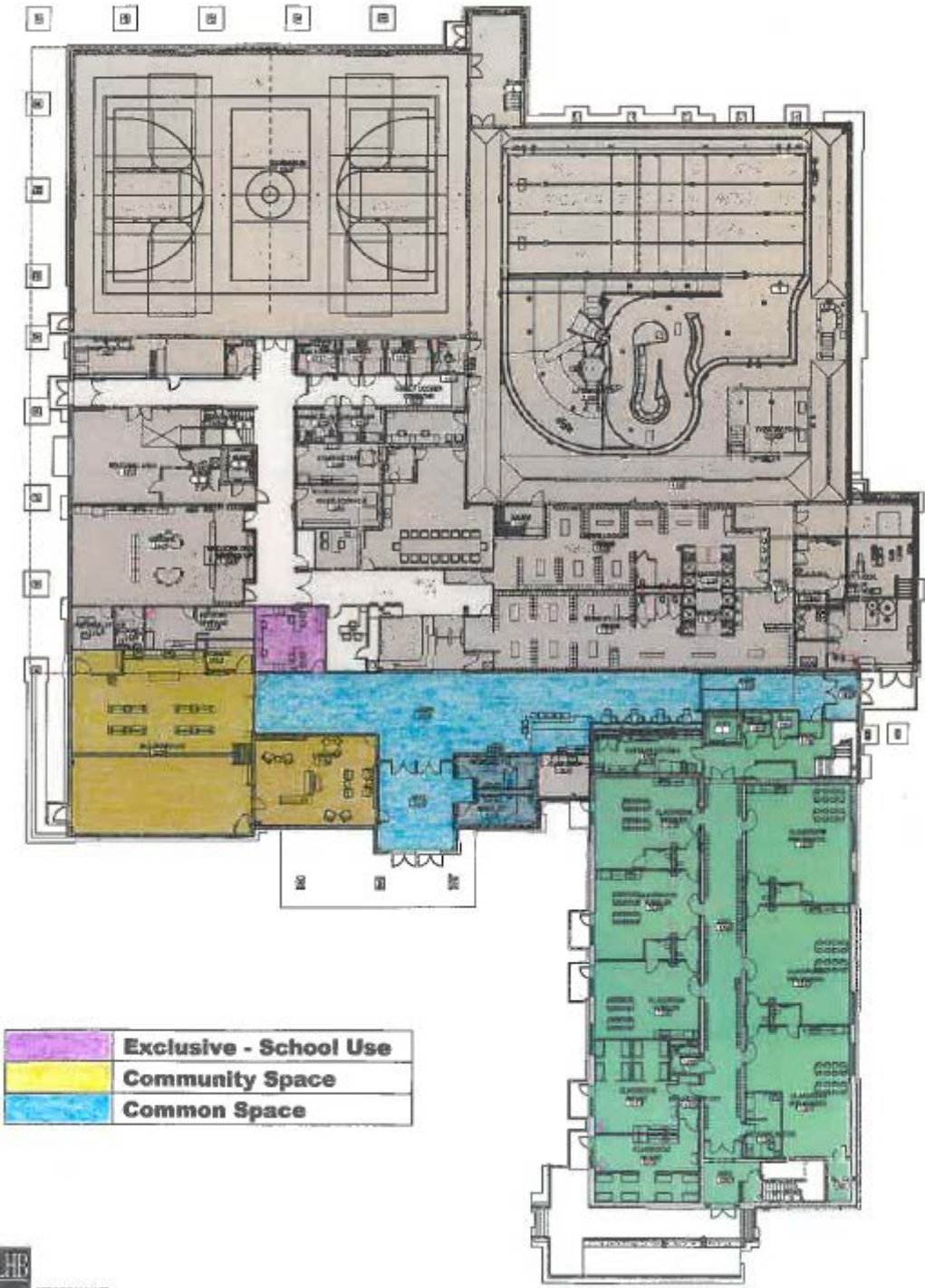


EXHIBIT VIII
Compliance with G.O. Compliance Legislation and the Commissioner's Order

The Project is being financed, in part, with the proceeds of state general obligation bonds authorized to be issued under Article XI, Section 5(a) of the Minnesota Constitution ("GO Bonds"). The following terms and provisions are requirements imposed by Minnesota Statutes § 16A.695 ("GO Compliance Law") and the "Fourth Order Amending Order of Commissioner of Finance Relating to Use and Sale of State Finance Bond Property" executed by the Commissioner of Minnesota Management and Budget ("Commissioner") and dated July 30, 2012, as amended ("Commissioner's Order"). School and City agree to all of the terms and provisions of this Exhibit VIII.

1. Public Ownership

1.1. The City of Hermantown is the fee owner of the Project

1.2. City's Statutory Authority for owning and operating the Facility and entering into this MOU is §§ 412.211; 412.221, Subd. 3; 412.221, Subd. 32; 412.491; 471.15; 471.16; 471.17 and 471.191 ("Statutory Authority")

2. Statutory Authority

2.1. See Section 1.2 above

3. Statutory Citation for Governmental Programs. Section 4.2 requires that the use be in furtherance of the Governmental Program. City is authorized to develop and implement the Governmental Program pursuant to its Statutory Authority.

4. Oversight by City. The School will, within thirty (30) days after the execution of the MOU, provide an initial program evaluation report to City and annual, on or before December 31 of each year, beginning in 2020, or more frequent, budgets to the City for the Governmental Program to be operated by School in the Project, which show program revenues and expenses, and that demonstrate that the School is using the Project for the Governmental Program.

5. Term. The Term of the MOU expires, if not sooner, on December 31, 2039.

6. Termination.

6.1. Events of Default Defined. The following shall be "events of default" under the MOU and the terms "events of default" and "default" shall mean, whenever they are used in the MOU or this Exhibit VIII, with respect to the Project, any one or more of the following events:

6.1.1. Failure by School to observe and perform any covenant, condition or agreement on its part to be observed or performed, for a period of ninety (90) days after written notice specifying such failure and requesting that it be remedied has been given to the School by the City unless the City shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the City will not unreasonably withhold its consent to an extension of

such time if corrective action is instituted by the School within the applicable period and diligently pursued until the default is corrected.

6.1.2. The filing by the School of a voluntary petition in bankruptcy, or failure by the School promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of the School to carry on its operations at the Project, or adjudication of the School as bankrupt, or assignment by the School for the benefit of creditors, or the entry by the School into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the School in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

6.2. Remedies on Default. Whenever any event of default referred to in Section 6.1 hereof shall have happened and be continuing with respect to the Project, the City shall have the right, at its option and without any further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the School under this Agreement and/or terminate this Agreement.

6.2.1. Upon the occurrence of any event of default and a failure to cure within the cure period provided in Section 6.1 hereof, the City may, in addition to any other rights or remedies available to it by law or in equity:

6.2.1.1. With or without terminating this Agreement exclude the School from using the Project, provided, however, that if this Agreement has not been terminated, City shall reinstate the right to use the Project to the School when the event of default is cured.

6.3. Delay Notice. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle City to exercise any remedy reserved to it in this Agreement it shall not be necessary to give any notice, other than such notice as may be required in this Agreement.

6.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

6.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by School and thereafter waived by City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

6.6. Statutory Termination. Notwithstanding any other provisions of the MOU or this Exhibit VIII to the contrary, if the Governmental Program is terminated or changed in response to changes in state law in such a manner as to (a) cause the MOU and the operation of the School Exclusive Area to be inconsistent with the changed Governmental Program or (b) to remove the statutory authority for the City to operate the Governmental Program, then the MOU shall be terminated

April 30, 2020

by ninety (90) days written notice to School ("Termination Date"), provided further that any termination pursuant to this Section will be deemed automatically rescinded and of no force or effect if within said ninety (90) day period School conforms its operation to the changed Governmental Program. School's failure to cease operation of the School Exclusive Area on the Termination Date shall be a default under the MOU.

7. **Cost of Operation of Facility.** The City will pay or cause to be paid all costs of the operation and maintenance of the Facility. The City is authorized to expend such funds pursuant to its Statutory Authority. The School will pay all costs of conducting its operation at the Project.
8. **Receipt of Monies/Compliance with Tax Code.** The City will not receive any monies from School. The School is a political subdivision of the State. School, upon direction from the Commissioner, must take such actions and furnish such documents as the Commissioner determines to be necessary to ensure that the interest to be paid on the GO Bonds is exempt from federal taxation.
9. **Sale of Project.** There are no provisions in the MOU prohibiting or requiring or conditioning the sale of the Project. School has no rights whatsoever with respect to ownership, sale or disposition of the Project.
10. **Reimbursement to Counterparty.** City is not obligated to make any payments to School.
11. **Commissioner Approval of Changes, Additions or Modifications.** Any changes, additions or modifications of the MOU must be agreed to, in writing, by the Commissioner.
12. **Capitalized Terms.** All capitalized terms when used in this Exhibit VIII shall have the meanings given to them in the MOU and the Use Agreement.

TO: Mayor & City Council
FROM: John Mulder, City Administrator



DATE: April 28, 2020

Meeting Date: 5/4/20

SUBJECT: Cooperative Agreement –
Sundby, and Swan Lake Rd.

Agenda Item: 12-F

Resolution 2020-59

REQUESTED ACTION

Approve a Cooperative Agreement with St. Louis County for Engineering services for the Sundby Road and Swan Lake Road improvements in 2021.

BACKGROUND

St. Louis County is planning on reclaim and overlay Airport Approach Road, Airbase Road, and their portion of Swan Lake Road in 2021. The City had determined that Bridge 88688 on the City's portion of Swan Lake Road needed replacement. (see attached map) The City and County discussed these projects and value of coordinating these efforts.

This Cooperative Agreement provides that the County would complete the necessary engineering for \$25,000. The County would perform all of the engineering, prepare bid documents, and perform construction engineering for the project.

The City would reimburse the County for that cost and cover the cost of reclaim and overlay for the City's portion of Swan Lake Road and Sundby Road as part of the City's 2021 Road improvement Plan. You may recall we discussed this at our March 16, 2020 Pre-agenda meeting.

It is estimated the City's portion of the project would total \$488,000 (this includes the \$25,000 for St. Louis County Engineering). These costs would be covered by a combination of Street Assessments (\$9,750 per parcel), Stormwater Funds, and Municipal State Aid. It is planned that there would be no direct City levy on the project.

SOURCE OF FUNDS (if applicable)

402-431150-550

ATTACHMENTS

Hermantown Section 12 Reclaim/Overlay Map
Cooperative Agreement

Resolution No. 2020-59

RESOLUTION APPROVING COOPERATIVE AGREEMENT WITH ST. LOUIS COUNTY TO PERFORM IMPROVEMENTS ON AIRBASE ROAD (CSAH 17) CP 0017-369575/SAP 069-617-005, SWAN LAKE ROAD CP 0000-533596/SAP 202-111-001 AND SUNDBY ROAD CP 0000-533597/SAP 202-112-001 WITHIN THE CITY OF HERMANTOWN CORPORATE LIMITS

WHEREAS, the County intends to undertake a reclaim and overlay project on Airbase Road (CSAH 17) CP 0017-369575/SP 069-617-005, scheduled for construction in 2021 (hereinafter the “County Project”); and

WHEREAS, the City of Hermantown intends to undertake a reclaim and overlay project on Swan Lake Road including the replacement of Bridge Number 88688 with Bridge Number 69K86, CP-0000-533596 / SAP 202-111-001, and intends to undertake a reclaim and overlay project on Sundby Road CP 0000-533597 / SAP 202-112-001 scheduled for construction in 2021 (hereinafter the “City Project”); and

WHEREAS, it is justified and mutually beneficial for the City and County to combine the County Project and City Project to mutually benefit from economies of scale, mobilization, and contract administration (hereinafter the “Project”); and

WHEREAS, the County will advertise, bid, and enter into a contract with the low bidder for construction of the County Project and City Project (hereinafter the “Contract”)

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota, as follows:

1. The Cooperative Agreement between St. Louis County and the City of Hermantown is hereby approved by the City of Hermantown.
2. The funds for the City Project will be paid from Fund 401-431150-550.

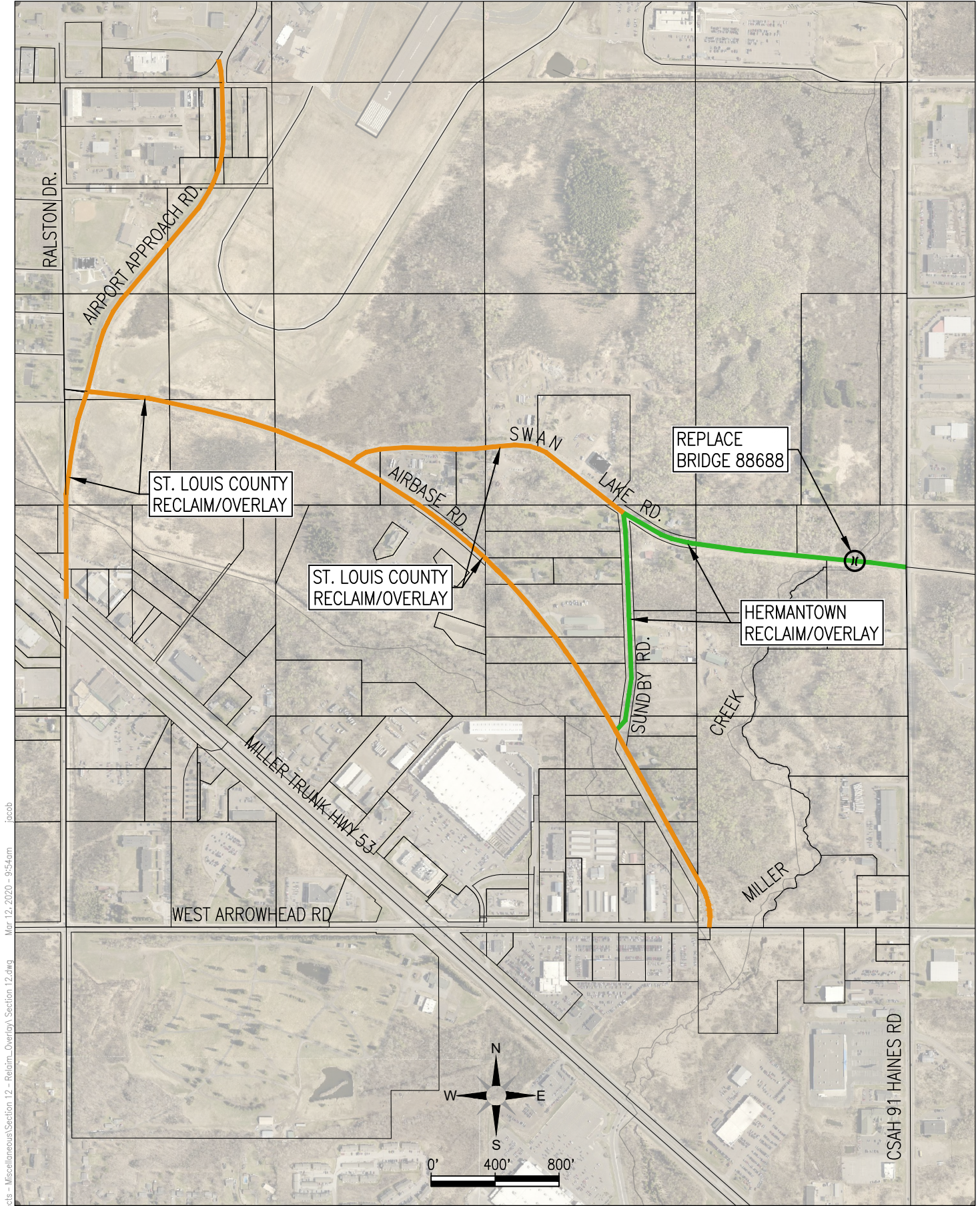
Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 4, 2020.



V:\City - Hermantown\Projects - Miscellaneous\Section 12 - Reclaim_Overlay\Section 12.dwg Mar 12, 2020 - 9:54am jacob


Northland
 Consulting Engineers L.L.P.
 102 South 21st. Ave. West Suite #1
 Duluth, Minnesota 55806
 Tele: 218.727.5995
 Fax: 218.727.7779
 www.nce-engineers.com

HERMANTOWN

SECTION 12 RECLAIM/OVERLAY

Sheet Title		Sheet # 1
RECLAIM/OVERLAY		
PROJECT:		
DATE:	03/12/20	
CHECKED:	DGB	
DRAWN:	JDO	

St. Louis County
Airbase Road, Swan Lake Road, and Sundby Road Construction
St. Louis County Proj. No. CP 0017-369575 / SAP 069-617-005
Hermantown Project No. CP 0000-533596 / SAP 202-111-001 (Swan Lake Road)
Hermantown Project No. CP 0000-533597 / SAP 202-112-001 (Sundby Road)

COOPERATIVE
AGREEMENT
BETWEEN
THE COUNTY OF ST. LOUIS
AND
THE CITY OF HERMANTOWN
TO

Perform improvements on Airbase Road (CSAH 17) / Swan Lake Road, and Sundby Road, in Hermantown, St. Louis County, Minnesota.

CP 0017-369575 / SAP 069-617-005

Prepared by the St. Louis County Highway Engineering Division

St. Louis County
Airbase Road, Swan Lake Road, and Sundby Road Construction
St. Louis County Proj. No. CP 0017-369575 / SAP 069-617-005
Hermantown Project No. CP 0000-533596 / SAP 202-111-001 (Swan Lake Road)
Hermantown Project No. CP 0000-533597 / SAP 202-112-001 (Sundby Road)

THIS AGREEMENT is made and entered into by and between the County of St. Louis, a duly organized county within the State of Minnesota, hereinafter referred to as the “County”, and the City of Hermantown, hereinafter referred to as the “City”, a municipal corporation of St. Louis County, Minnesota.

WHEREAS the County intends to undertake a reclaim and overlay project on Airbase Road, CP 0017-369575 / SAP 069-617-005 scheduled for construction in 2021 (hereinafter the “County Project”); and

WHEREAS, the City intends to undertake a reclaim and overlay project on Swan Lake Road including the replacement of Bridge Number 88688 with Bridge Number 69K86, CP 0000-533596 / SAP 202-111-001, and intends to undertake a reclaim and overlay project on Sundby Road CP 0000-533597 / SAP 202-112-001 scheduled for construction in 2021 (hereinafter the “City Project”); and

WHEREAS, it is justified and mutually beneficial for the City and County to combine the County Project and City Project to mutually benefit from economies of scale, mobilization, and contract administration (hereinafter the “Project”); and

WHEREAS, the County will advertise, bid, and enter into a contract with the low bidder for construction of the Project (hereinafter the “Contract”)

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The County shall prepare plans and specifications for the City Project and County Project. The County shall include the plans and specifications in the proposed bid package, from which the costs for the proposed City Project will be determined by the

St. Louis County
Airbase Road, Swan Lake Road, and Sundby Road Construction
St. Louis County Proj. No. CP 0017-369575 / SAP 069-617-005
Hermantown Project No. CP 0000-533596 / SAP 202-111-001 (Swan Lake Road)
Hermantown Project No. CP 0000-533597 / SAP 202-112-001 (Sundby Road)

bid prices in accordance with the terms of the Contract and upon written approval of such costs by the City. The County shall perform all construction engineering, staking, inspection, material certification and acceptance, and measurement of all items in accordance with State Aid standards. The City shall pay the County a Lump Sum fee of \$25,000 for the design, plan preparation, and construction administration.

2. The County and City shall perform, by contract, the construction work provided for in the Plan, with the construction costs of County Project covered by the County and the construction costs of the City Project covered by the City. The County, shall prepare bid documents by compiling pay items from the County Project and City Project, and shall award the contract for said projects to the lowest responsible bidder in accordance with current specifications. After contract letting, and prior to contract award, the County will provide the City with an abstract of all bids received. The City will promptly review bid information. The County must obtain the concurrence of the City prior to awarding the contract.

3. All further costs for change orders, work orders and supplemental agreements shall be covered by the respective owner of the work.

4. Any field changes related to the City Project shall be authorized by the City prior to the work occurring.

5. The County shall take all actions necessary to prepare the project for construction, including, but not limited to obtaining any and all applicable permits as required by law for the road and bridge construction.

6. The City shall obtain all necessary permanent and temporary easements

St. Louis County
Airbase Road, Swan Lake Road, and Sundby Road Construction
St. Louis County Proj. No. CP 0017-369575 / SAP 069-617-005
Hermantown Project No. CP 0000-533596 / SAP 202-111-001 (Swan Lake Road)
Hermantown Project No. CP 0000-533597 / SAP 202-112-001 (Sundby Road)

required for the City Project. The County will create easements and descriptions for the easements.

7. The City shall perform a Letter of Map Revision (LOMR), if required due to the work on the City Project.

8. In the event that the City takes any action that results in lost time or efficiency, or a delay of completion of the County's construction of the County roads, the City shall bear the full financial responsibility for any claims or causes of action arising therefrom.

9. Each party designates an Authorized Representative for the purpose of administering this Agreement. A party's authorized representative has the authority to give and receive notices, and to make any other decision required or permitted by this Agreement.

a. For the County:

Steve Krasaway, P.E.
Public Works Department / Resident Engineer
4787 Midway Road
Duluth, MN 55811
(218) 625-3841

b. For the City:

John Mulder
City Administrator
5105 Maple Grove Road
Hermantown, MN 55811
(218) 729-3600

St. Louis County
Airbase Road, Swan Lake Road, and Sundby Road Construction
St. Louis County Proj. No. CP 0017-369575 / SAP 069-617-005
Hermantown Project No. CP 0000-533596 / SAP 202-111-001 (Swan Lake Road)
Hermantown Project No. CP 0000-533597 / SAP 202-112-001 (Sundby Road)

jmulder@hermantownmn.com

10. The County will submit invoices to the City concurrently with copies of the payments made to the Contractor for the Project. The City shall pay the County invoices within 35 days of receipt. The City shall make final payment within 35 days of receipt of the final contract quantities for the Project.

11. This Agreement may be terminated only as follows:

- a. At any time by mutual agreement of the parties;
- b. By any party at any time upon 30 days notice in the event of default by a party, provided however that such termination shall not be effective if the defaulting party cures such default by end of the 30 day notice period. In the event of such termination, the County and City shall be entitled to pro-rata payment for work and services performed up to the effective date of such termination.

12. Each of the parties hereto hereby agrees that it shall defend, indemnify and save harmless the other party and all of their employees and agents from any and all claims, demands actions or causes of action of whatever nature or character arising out of or by reason of their negligent or intentional acts or omissions in the execution or performance of the work provided herein.

13. Any and all employees of the County, while engaged in the performance of any work or service which the County is specifically required to perform under this Agreement, shall be considered employees of the County, and not the City, and that any

St. Louis County
Airbase Road, Swan Lake Road, and Sundby Road Construction
St. Louis County Proj. No. CP 0017-369575 / SAP 069-617-005
Hermantown Project No. CP 0000-533596 / SAP 202-111-001 (Swan Lake Road)
Hermantown Project No. CP 0000-533597 / SAP 202-112-001 (Sundby Road)

and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any claims made by any third parties as a consequence of any act of said employees, shall be the sole obligation of the County.

14. Any and all employees of the City, while engaged in the performance of any work or service which the City is specifically required to perform under this Agreement, shall be considered employees of the City, and not the County, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any claims made by any third parties as a consequence of any act of said employees, shall be the sole obligation of the City.

15. To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Parties that they shall be deemed a "single governmental unit" for the purpose of liability, as set forth in Minnesota Statutes, Section 471.59, Subd. 1a.

COUNTY OF ST. LOUIS

Chair of the County Board

By _____
Public Works Director/Highway Engineer

Dated _____

APPROVED AS TO FORM AND EXECUTION:

County Auditor

By _____
Assistant County Attorney
Damion No.

St. Louis County
Airbase Road, Swan Lake Road, and Sundby Road Construction
St. Louis County Proj. No. CP 0017-369575 / SAP 069-617-005
Hermantown Project No. CP 0000-533596 / SAP 202-111-001 (Swan Lake Road)
Hermantown Project No. CP 0000-533597 / SAP 202-112-001 (Sundby Road)

CITY OF HERMANTOWN

COUNTERSIGNED:

Mayor

By _____
City Clerk

(City Seal)

TO: Mayor & City Council

FROM: Paul Senst, Public Works
Director

DATE: April 28, 2020

Meeting Date: 5/4/20

SUBJECT: Feasibility Study – 2021 Road Improvement Program
Agenda Item: 12-G
Resolution 2020-60



REQUESTED ACTION

Approve the preparation of a Preliminary Feasibility report for the 2021 road improvements.

BACKGROUND

As part of the 2021 Road Improvement Plan, we will be working in a cooperative agreement with St. Louis County on the Sundby and Swan Lake Roads. The cost of these improvements will be funded in part by individual property assessments under Chapter 429 of the MN Statutes. As part of this process and the 429 assessment process, we need to have a feasibility study performed by the City Engineer. This action would authorize the City Engineer to compile a feasibility report for this project that will be designed and constructed by St. Louis County's contractor upon their bidding process.

SOURCE OF FUNDS (if applicable)

402-431150-550

ATTACHMENTS

Resolution No. 2020-60

**RESOLUTION DIRECTING PREPARATION OF PRELIMINARY ENGINEERING
FEASIBILITY REPORT FOR 2021 ROAD
IMPROVEMENT PLAN (SUNDBY ROAD & SWAN LAKE ROAD)**

WHEREAS, the City Council of the City of Hermantown desires a Feasibility Report for the 2021 Road Improvement Plan; and

WHEREAS, Section 429.031 of the Minnesota Statutes requires that the City Council obtain a preliminary report from the City's consulting engineer before it establishes a date for a public hearing on such improvements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota, as follows:

1. The proposed improvement is hereby referred to Northland Consulting Engineers ("City Engineer") for study and the City Engineer is instructed to report to the Council with all convenient speed advising the Council in a preliminary way as to whether the proposed 2021 Road Improvement Plan is necessary, cost-effective and feasible and as to whether it should best be made as proposed or in connection with some other improvement and the estimated cost of the improvement as recommended.
2. The City reasonably expects to finance the Project from an issue of tax-exempt bonds. In advance of issuance of the bonds it will be necessary for the City to temporarily finance certain costs of the Project by using either working capital or cash reserves, which are needed for other purposes. The City reasonably expects to reimburse itself from the proceeds of the bonds within eighteen (18) months after the date the Project is paid from such working capital or cash reserves.
3. The cost of the preparation of the Feasibility Report will not exceed \$4,150.00 charged to 401-431130-550.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 4, 2020.

NCE CIVIL DESIGN FEE ESTIMATE WORKSHEET

Proposal No.: 20-8000	Title: Swan Lake & Sundby Road Feasibility Study
Date: 4/29/2020	Client: City of Hermantown - John Mulder, City Administrator

Activity	Estimated Hours					Extended Cost
	Principal	PE	Tech.	Clerical	Other	
Feasibility Study						
Preliminary Review and Assessment	2	6				\$ 1,040.00
City Council Public Meeting Presentation	2	2				\$ 520.00
Design Alternatives	1	6	8			\$ 1,550.00
Cost Estimates	1	1				\$ 260.00
Feasibility Report Conclusion & Recommendations	2	4				\$ 780.00
Feasibility Study Subtotal:	8	19	8	0	0	\$ 4,150.00

NCE RATES/HOUR	
Principal	\$ 130.00
PE	\$ 130.00
Technician	\$ 80.00
Clerical	\$ 50.00
Other	\$ -

NCE REIMBURSABLE EXPENSES		QTY.	EXTENDED COST
Mileage (per mile)	\$0.62		\$0.00
Bond Plan Copies (each)	\$3.00		\$0.00
Photocopies	\$0.15		\$0.00
Photographs (each)	\$3.00		\$0.00
TOTAL REIMBURSABLE EXPENSES:			\$0.00

Feasibility Study Fee:	\$ 4,150.00
Const. Engineering Fee:	\$ -
Contingency: 0%	\$ -
Total NCE Fee:	\$ 4,150.00
Sub-Consultant Fees:	\$ -
Reimbursable Expenses:	\$0.00
Total Estimate:	\$ 4,150.00

Assumptions:

- 1.) There is no formal boundary or topographic survey included as part of this proposal.
- 2.) There is no soil investigations as part of this proposal.
- 3.) There is no wetland work as part of this proposal.

TO: Mayor & City Council
FROM: John Mulder, City Administrator



DATE: April 28, 2020 **Meeting Date:** 5/4/20

SUBJECT: Trunk Sewer Spur & Munger Trail Spur – Sanitary Sewer Improvement District No. 448 **Agenda Item: 12-H** **Resolution 2020-61**

REQUESTED ACTION

Approve Pay Application #2 for the construction related to the Trunk Sewer Spur and Munger Trail Spur Project – Sanitary Sewer Improvement District No. 448.

BACKGROUND

Attached is Pay Application #2 for the work associated with the Hermantown Trunk Sewer Spur & Munger Trail Spur – Sanitary Sewer Improvement District No. 448 from Pay Application #1 through April 27, 2020. NCE and Utility Systems of America, Inc. (USA) have reviewed the project progress thus far and agreed upon quantities of work completed. The amount of Pay Application #2 is **\$30,045.81**. The City will hold a 5% retainage of the completed construction through the duration of the project. This retainage amount stands at **\$25,559.70** to date.

NCE has reviewed the quantities through construction inspection and discussions with Utility Systems of America, Inc. representatives. I recommend payment in the amount of **\$30,045.81** be authorized at the May 4, 2020 City Council Meeting.

SOURCE OF FUNDS (if applicable)

Sales Tax

ATTACHMENTS

Pay Application #2

Resolution No. 2020-61

RESOLUTION APPROVING PAY REQUEST NUMBER 2 FOR SEWER IMPROVEMENT DISTRICT NO. 448 TO UTILITY SYSTEMS OF AMERICA, INC. IN THE AMOUNT OF \$30,045.81

WHEREAS, the City of Hermantown has contracted with Utility Systems of America, Inc. for construction of Sewer Improvement District No. 448 (“Project”); and

WHEREAS, Utility Systems of America, Inc. has performed a portion of the agreed upon work in said Project; and

WHEREAS, Utility Systems of America, Inc. has submitted Pay Request No. 2 in the amount of \$30,045.81; and

WHEREAS, the City will maintain an accumulated retainage as shown on the pay requests until the final work and documentation is completed; and

WHEREAS, Northland Consulting Engineers LLP has approved such Pay Request No. 2 provided that \$25,559.70 accumulated as retainage of 5% be withheld pending final acceptance of the Project by the City of Hermantown.

WHEREAS, the necessary documentation for the pay request is on file and available for inspection.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota as follows:

1. Pay Request No. 2 is hereby approved.
2. The City is hereby authorized and directed to pay to Utility Systems of America, Inc. the sum of \$30,045.81 which is the amount represented on Pay Request No. 2.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution has been duly passed and adopted May 4, 2020.

April 28, 2020

John Mulder
City Administrator
City of Hermantown
5105 Maple Grove Road
Hermantown MN 55811

Re: Hermantown Trunk Sewer Spur & Munger Trail Spur – Sanitary Sewer Improvement District No. 448

Dear John:

Attached is Pay Application #2 for the work associated with the Hermantown Trunk Sewer Spur & Munger Trail Spur – Sanitary Sewer Improvement District No. 448 from Pay Application #1 through April 27, 2020. NCE and Utility Systems of America, Inc. (USA) have reviewed the project progress thus far and agreed upon quantities of work completed. The amount of Pay Application #2 is **\$30,045.81**. The City will hold a 5% retainage of the completed construction through the duration of the project. This retainage amount stands at **\$25,559.70** to date.

NCE has reviewed the quantities through construction inspection and discussions with Utility Systems of America, Inc. representatives. I recommend payment in the amount of **\$30,045.81** be authorized at the May 4, 2020 City Council Meeting.

Please contact me with any questions you may have.

Thank you,



David Bolf, P.E. – City Engineer
Northland Consulting Engineers
218-727-5995
david@nce-duluth.com

CC: Bonnie Engseth
Adam Zwak, P.E.
Jim Pucel, P.E.

Contractor's Application for Payment No.

2

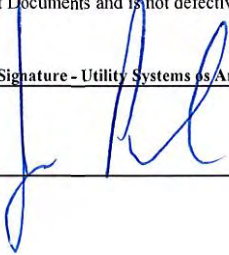
Application Period: March 4, 2020 to March 28, 2020		Application Date: 4/28/2020
To (Owner): City of Hermantown	From (Contractor): Utility Systems of America, Inc.	Via (Engineer): Northland Consulting Engineers, LLP
Project: Trunk Sewer Spur & Munger Trail Spur - Sanitary Sewer Improvement District No. 448	Contract: Trunk Sewer Spur & Munger Trail Spur - Sanitary Sewer Improvement District No. 448	
Owner's Contract No.: Sanitary Sewer Improvement District No. 448	Contractor's Project No.:	Engineer's Project No.: 16-808

**Application For Payment
Change Order Summary**

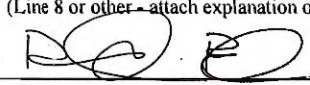
Approved Change Orders				
Number	Additions	Deductions		
			1. ORIGINAL CONTRACT PRICE.....	\$ \$4,209,784.30
			2. Net change by Change Orders.....	\$
			3. Current Contract Price (Line 1 ± 2).....	\$ \$4,209,784.30
			4. TOTAL COMPLETED AND STORED TO DATE	
			See attached Pay Application Summary.....	\$ \$511,194.00
			5. RETAINAGE:	
			a. 5% X \$392,659.25 Work Completed.....	\$ \$19,632.96
			b. 5% X \$118,534.75 Stored Material.....	\$ \$5,926.74
			c. Total Retainage (Line 5.a + Line 5.b).....	\$ \$25,559.70
			6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c).....	\$ \$485,634.30
			7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application).....	\$ \$455,588.49
			8. AMOUNT DUE THIS APPLICATION.....	\$ \$30,045.81
			9. BALANCE TO FINISH, PLUS RETAINAGE	
			(Line 3 - 4 + Line 5.c above).....	\$ \$3,724,150.00
TOTALS				
NET CHANGE BY CHANGE ORDERS				

Contractor's Certification
The undersigned Contractor certifies, to the best of its knowledge, the following:
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;
(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and
(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor Signature - Utility Systems of America

By:  Date: 4-29-20

Payment of: \$ 30,045.81
(Line 8 or other - attach explanation of the other amount)

is recommended by:  4/28/2020
David Bolf, P.E. - City Engineer (Date)



Pay Application #2 - 4/28/20
 Trunk Sewer Spur & Munger Trail Spur
 Sanitary Sewer District Improvement District No. 448

Item No.	Spec. Number	Item Description	Unit of Measure	Contract Total Quantities	USA Unit Price	Trunk Sewer Spur			Munger Trail Spur			Total Project	
						Contract Quantities	Completed Quantities	Completed Cost	Contract Quantities	Completed Quantities	Completed Cost	Completed Quantities	Completed Cost
BASE BID													
1	2021.501	MOBILIZATION	LS	1.00	\$ 434,000.00	0.80	0.20	\$ 86,800.00	0.20	0.10	\$ 43,400.00	0.30	\$ 130,200.00
2	2021.601	BLAST MONITORING/SURVEY	LS	1.00	\$ 45,000.00	1.00		\$ -			\$ -		\$ -
3	2031.601	FIELD OFFICE	LS	1.00	\$ 7,500.00	0.80	0.80	\$ 6,000.00	0.20	0.20	\$ 1,500.00	1.00	\$ 7,500.00
4	2051.601	MAINTENANCE AND RESTORATION OF HAUL ROADS	LS	1.00	\$ 1,000.00	0.80		\$ -	0.20		\$ -		\$ -
5	2101.501	CLEARING	ACRE	18.00	\$ 12,000.00	14.50	14.50	\$ 174,000.00	3.50	3.50	\$ 42,000.00	18.00	\$ 216,000.00
6	2101.506	GRUBBING	ACRE	18.00	\$ 1,500.00	14.50	6.60	\$ 9,900.00	3.50	2.10	\$ 3,150.00	8.70	\$ 13,050.00
7	2104.502	REMOVE CASTING	EACH	1	\$ 250.00	1		\$ -			\$ -		\$ -
8	2104.502	SALVAGE ELECTRICAL PEDESTAL AND SIGN	EACH	6	\$ 350.00	6		\$ -			\$ -		\$ -
9	2104.503	REMOVE CONCRETE CURB AND GUTTER	LF	20	\$ 5.00	20		\$ -			\$ -		\$ -
10	2104.503	REMOVE SEWER PIPE (SANITARY)	LF	10	\$ 5.00	10		\$ -			\$ -		\$ -
11	2104.503	SAWING BITUMINOUS PAVEMENT (FULL DEPTH)	LF	156	\$ 4.00	156		\$ -			\$ -		\$ -
12	2104.503	SAWING CONCRETE PAVEMENT (FULL DEPTH)	LF	170	\$ 7.00	170		\$ -			\$ -		\$ -
13	2104.509	REMOVE CONCRETE PAVEMENT	SY	852	\$ 9.00	852		\$ -			\$ -		\$ -
14	2104.509	REMOVE BITUMINOUS PAVEMENT	SY	343	\$ 4.00	227		\$ -	116		\$ -		\$ -
15	2104.518	REMOVE CONCRETE WALK	SF	630	\$ 1.00	630		\$ -			\$ -		\$ -
16	2104.601	REMOVE LIFT STATION	LS	1.00	\$ 20,000.00	1.00		\$ -			\$ -		\$ -
17	2104.602	REMOVE GREENHOUSES	EACH	8	\$ 1,000.00	8		\$ -			\$ -		\$ -
18	2106.504	GEOTEXTILE FABRIC TYPE 5 (NON-WOVEN)	SY	28,750	\$ 1.65	17,000		\$ -	11,750		\$ -		\$ -
19	2106.504	GEOTEXTILE FABRIC TYPE 5 (NON-WOVEN) (PATCHING)	SY	250	\$ 4.00	250		\$ -			\$ -		\$ -
20	2106.507	EXCAVATION - COMMON	CY	20,883	\$ 11.00	16,760		\$ -	3,923		\$ -		\$ -
21	2106.507	COMMON EMBANKMENT (CV)	CY	3,924	\$ 7.00	3,179		\$ -	745		\$ -		\$ -
22	2106.507	SELECT GRANULAR EMBANKMENT MOD 7% (CV)	CY	5,500	\$ 21.00	3,200		\$ -	2,300		\$ -		\$ -
23	2106.507	SELECT GRANULAR EMBANKMENT MOD 7% (CV) (PATCHING)	CY	100	\$ 22.00	100		\$ -			\$ -		\$ -
24	2106.601	DEWATERING	LS	1	\$ 50,000.00	0.80		\$ -	0.20		\$ -		\$ -
25	2106.601	TURF & WETLAND RESTORATION	LS	1	\$ 30,000.00	0.80		\$ -	0.20		\$ -		\$ -
26	2106.602	KEENE CREEK CROSSING	EACH	4	\$ 4,000.00	3		\$ -	1		\$ -		\$ -
27	2211.507	AGGREGATE BASE (CV) CLASS 5	CY	7,811	\$ 30.00	4,434		\$ -	3,177		\$ -		\$ -
28	2211.507	AGGREGATE BASE (CV) CLASS 5 (PATCHING)	CY	60	\$ 40.00	60		\$ -			\$ -		\$ -
29	2301.509	CONCRETE PAVEMENT 7" (MAPLE GROVE ESTATES)	SY	852	\$ 88.00	852		\$ -			\$ -		\$ -
30	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3:B)	TON	1,770	\$ 80.00			\$ -	1,770		\$ -		\$ -
31	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3:C) (PATCHING)	TON	35	\$ 154.00	35		\$ -			\$ -		\$ -
32	2360.509	TYPE SP 12.5 NON-WEARING COURSE MIXTURE (3:C) (PATCHING)	TON	32	\$ 154.00	32		\$ -			\$ -		\$ -
33	2412.503	3X6 PRECAST CONCRETE BOX CULVERT	LF	64	\$ 850.00	34		\$ -	30		\$ -		\$ -
34	2451.507	COARSE FILTER AGGREGATE (CV)	CY	1,045	\$ 24.00	1,045		\$ -			\$ -		\$ -
35	2451.507	GRANULAR BACKFILL (LV)	CY	6,275	\$ 14.00	6,275		\$ -			\$ -		\$ -
36	2451.507	STRUCTURE EXCAVATION, CLASS R	CY	4,825	\$ 52.00	4,825		\$ -			\$ -		\$ -
37	2501.502	12" CAS PIPE APRON	EACH	26	\$ 300.00	18		\$ -	8		\$ -		\$ -
38	2501.502	15" CAS PIPE APRON	EACH	45	\$ 325.00			\$ -	45		\$ -		\$ -
39	2501.503	12" CAS PIPE CULVERT	LF	328	\$ 50.00	230		\$ -	98		\$ -		\$ -
40	2501.503	15" CAS PIPE CULVERT	LF	590	\$ 53.00			\$ -	590		\$ -		\$ -
41	2503.503	8" PVC PIPE SEWER (SDR35)	LF	547	\$ 117.00	547		\$ -			\$ -		\$ -
42	2503.503	10" PVC PIPE SEWER (SDR35)	LF	5,651	\$ 119.00	5,651		\$ -			\$ -		\$ -
43	2503.503	10" PVC PIPE SEWER (SDR26)	LF	3,203	\$ 121.00	3,203		\$ -			\$ -		\$ -
44	2503.602	BENTONITE TRENCH DAM	EACH	74	\$ 1,900.00	74		\$ -			\$ -		\$ -
45	2503.602	CONNECT TO EXISTING SANITARY SEWER	EACH	3	\$ 1,500.00	3		\$ -			\$ -		\$ -
46	2503.602	PLUG AND ABANDON PIPE SEWER	EACH	6	\$ 500.00	6		\$ -			\$ -		\$ -
47	2503.603	TELEVIEW SANITARY SEWER	LF	9,401	\$ 2.50	9,401		\$ -			\$ -		\$ -
48	2504.604	3" POLYSTYRENE INSULATION	SY	135	\$ 50.00	135		\$ -			\$ -		\$ -
49	2506.502	CASTING ASSEMBLY	EACH	5	\$ 800.00	5		\$ -			\$ -		\$ -
50	2506.503	CONSTRUCT DRAINAGE STRUCTURE DESIGN 4007	LF	508	\$ 525.00	508		\$ -			\$ -		\$ -
51	2506.502	CASTING ASSEMBLY SPECIAL	EACH	33	\$ 800.00	33		\$ -			\$ -		\$ -

52	2506.602	MANHOLE FRAME SEAL (EXTERNAL)	EACH	38	\$ 250.00	38		\$ -	-		\$ -		\$ -
53	2506.603	CONSTRUCT 8" INSIDE DROP	LF	6	\$ 200.00	6		\$ -	-		\$ -		\$ -
54	2521.518	6" CONCRETE WALK	SF	630	\$ 9.25	630		\$ -	-		\$ -		\$ -
55	2531.503	CONCRETE CURB AND GUTTER, DESIGN B624	LF	20	\$ 55.00	20		\$ -	-		\$ -		\$ -
56	2545.602	INSTALL ELECTRICAL PEDESTAL AND SIGN	EACH	6	\$ 750.00	6		\$ -	-		\$ -		\$ -
57	2563.601	TRAFFIC CONTROL	LS	1.00	\$ 27,600.00	0.80	0.10	\$ 2,750.00	0.20		\$ -	0.10	\$ 2,750.00
58	2573.501	STABILIZED CONSTRUCTION EXIT	LS	1.00	\$ 1,000.00	0.80		\$ -	0.20		\$ -		\$ -
59	2573.502	STORM DRAIN INLET PROTECTION	EACH	37	\$ 300.00	27		\$ -	10		\$ -		\$ -
60	2573.503	FILTER BERM TYPE 4	LF	18,885	\$ 2.00	13,848		\$ -	5,047		\$ -		\$ -
61	2573.503	SILT FENCE, TYPE MS	LF	6,876	\$ 2.25	3,541	5,900	\$ 13,275.00	3,337	4,393	\$ 9,884.25	10,293	\$ 23,159.25
62	2573.503	SEDIMENT CONTROL LOG TYPE WOOD FIBER	LF	18,895	\$ 2.75	13,848		\$ -	5,047		\$ -		\$ -
63	2573.601	HERMANTOWN PUBLIC WORKS STORMWATER IMPROVEMENTS	LS	1.00	\$ 50,000.00	-		\$ -	1.00		\$ -		\$ -
64	2575.504	EROSION CONTROL BLANKETS CATEGORY 3N	SY	3,277	\$ 1.65	1,795		\$ -	1,482		\$ -		\$ -
65	2575.505	SEEDING	ACRE	16.75	\$ 60.00	14.00		\$ -	2.75		\$ -		\$ -
66	2575.508	SEED MIXTURE 36-311 (UPLAND)	LB	775	\$ 35.00	550		\$ -	225		\$ -		\$ -
67	2575.508	SEED MIXTURE 34-371 (WETLAND)	LB	575	\$ 75.00	450		\$ -	125		\$ -		\$ -
68	2575.605	MULCH MATERIAL TYPE 1	ACRE	16.75	\$ 700.00	14.00		\$ -	2.75		\$ -		\$ -
69	2582.503	4" DOUBLE SOLID LINE PAINT (YELLOW)	LF	71	\$ 12.00	71		\$ -	-		\$ -		\$ -
70	2582.503	4" SOLID LINE PAINT (WHITE)	LF	102	\$ 6.00	102		\$ -	-		\$ -		\$ -
71	2582.503	24" SOLID LINE PAINT (WHITE)	LF	50	\$ 14.00	-		\$ -	50		\$ -		\$ -
BID ALTERNATE #1 - MAINTENANCE ROAD PAVING													
72	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3,B)	TON	425	\$ 89.00	-		\$ -	425		\$ -		\$ -
BID ALTERNATE #2 - MAINTENANCE ROAD ALONG MAPLE GROVE													
73	2104.502	SALVAGE 24" RC PIPE APRON	EACH	1	\$ 400.00	-		\$ -	1		\$ -		\$ -
74	2104.502	SALVAGE LIGHT POLE AND BASE	EACH	1	\$ 600.00	-		\$ -	1		\$ -		\$ -
75	2104.502	SALVAGE SIGN	EACH	1	\$ 50.00	-		\$ -	1		\$ -		\$ -
76	2106.504	GEOTEXTILE FABRIC TYPE 5 (NON-WOVEN)	SY	700	\$ 3.00	-		\$ -	700		\$ -		\$ -
77	2106.507	EXCAVATION - COMMON	CY	250	\$ 25.00	-		\$ -	250		\$ -		\$ -
78	2106.507	SELECT GRANULAR EMBANKMENT MOD 7% (CV)	CY	150	\$ 30.00	-		\$ -	150		\$ -		\$ -
79	2211.507	AGGREGATE BASE (CV) CLASS 5	CY	175	\$ 32.00	-		\$ -	175		\$ -		\$ -
80	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3,B)	TON	68	\$ 83.00	-		\$ -	68		\$ -		\$ -
81	2501.503	24" RC PIPE SEWER DESIGN 3006	LF	10	\$ 120.00	-		\$ -	10		\$ -		\$ -
82	2501.602	INSTALL RC PIPE APRON	EACH	1	\$ 200.00	-		\$ -	1		\$ -		\$ -
83	2545.602	INSTALL LIGHT POLE	EACH	1	\$ 6,500.00	-		\$ -	1		\$ -		\$ -
84	2564.602	INSTALL SIGN	EACH	1	\$ 200.00	-		\$ -	1		\$ -		\$ -

TRUNK SEWER SPUR COST	MUNGER TRAIL SPUR COST	TOTAL AMOUNT EARNED
\$292,725.00	\$99,934.25	\$392,659.25

CONTRACT BREAKDOWN	
ORIGINAL TRUNK SEWER CONTRACT AMOUNT	\$3,441,999.00
ORIGINAL MUNGER TRAIL CONTRACT AMOUNT	\$767,785.30
TOTAL ORIGINAL CONTRACT AMOUNT	\$4,209,784.30
CURRENT CONTRACT AMOUNT	\$4,209,784.30

MATERIALS STORED/ON HAND	\$116,534.75
5% RETAINAGE	\$25,559.70
LESS PREVIOUS PAY APPS	\$455,588.49
PAY APPLICATION #2	\$30,045.81



Utility Systems Of America Inc
PO Box 706
Eveleth MN 55734-0706

Invoice: ST00018144
Invoice Date: 3/27/2020
Due Date: 4/27/2020
Forterra Order #: 6319296PM1
Customer PO #:
Customer #: 177300
Delivery Order #: DS0000469693

Ship To: Hermantown, MN - Trunk Sewer Spur and Munger

Structure #/Description	Bill of Lading	Pieces	Feet	Unit Retail	Retail Ext	Disc %	Net Unit Price	Ext Net Price
SA215								
48x3.0 BBL P2 Vt	DS0000469693	1.00	3.00	193.00	579.00	20%	154.40	463.20
48x2.8 MonoIn1/2 P2 Vt	DS0000469693	1.00	0.00	1,007.90	1,007.90	20%	806.32	806.32
48x4.0 Cone 27in Ecc P2	DS0000469693	1.00	4.00	158.00	632.00	20%	126.40	505.60
Gasket P2 48 inch	DS0000469693	2.00	0.00	0.00	0.00	20%	0.00	0.00
MH Connector NPC S406-14AW (OD 9.5-11.2)	DS0000469693	2.00	0.00	189.00	378.00	20%	151.20	302.40
SA216								
48x3.0 BBL P2 Vt	DS0000469693	1.00	3.00	193.00	579.00	20%	154.40	463.20
48x2.8 MonoIn1/2 P2 Vt	DS0000469693	1.00	0.00	1,007.90	1,007.90	20%	806.32	806.32
48x3.5 Cone 27in Ecc P2	DS0000469693	1.00	3.50	158.00	553.00	20%	126.40	442.40
Gasket P2 48 inch	DS0000469693	2.00	0.00	0.00	0.00	20%	0.00	0.00
MH Connector NPC S406-14AW (OD 9.5-11.2)	DS0000469693	2.00	0.00	189.00	378.00	20%	151.20	302.40
SA217								
48x5.0 BBL P2 Vt	DS0000469693	1.00	5.00	193.00	965.00	20%	154.40	772.00
48x4.0 Cone 27in Ecc P2	DS0000469693	1.00	4.00	158.00	632.00	20%	126.40	505.60
Gasket P2 48 inch	DS0000469693	1.00	0.00	0.00	0.00	20%	0.00	0.00
SA203								
48x2.8 MonoIn1/2 P2 Vt	DS0000469693	1.00	0.00	1,007.90	1,007.90	20%	806.32	806.32
Gasket P2 48 inch	DS0000469693	1.00	0.00	0.00	0.00	20%	0.00	0.00
MH Connector NPC S406-14AW (OD 9.5-11.2)	DS0000469693	2.00	0.00	189.00	378.00	20%	151.20	302.40

Invoices are due Net 30 Days	Retail Subtotal	8,097.70
Past Due Amounts are subject to 1 1/2% Finance Charge per month	Discount	1,619.54
Please make sure your account balance is brought current and in good standing.	Net Price	6,478.16
Product returns of standard items must be made within a 6 month period.	Freight Charge	0.00
Please contact me with any questions or should you need anything	Misc Charges	0.00
	Prepaid Amount	0.00
	MN State Sales Tax	6.875 % 445.37
	St. Louis MN County Sales Tax	0.500 % 32.39
	Net Total	\$6,955.92
John Sharp... John.Sharp@forterrabp.com or 763-694-3252	Due Date	4/27/2020

To ensure proper credit, please detach this portion and return with remittance

Forterra Pipe & Precast

REMIT TO: **Forterra Pipe & Precast**
P O Box 74008199
Chicago, IL 60674-8199

Utility Systems Of America
 Inc

Customer #: 177300

Invoice: ST00018144

Invoice Date: 3/27/2020

Due Date: 4/27/2020

Amount Due:

\$6,955.92

Amount Enclosed:

--

TO: Mayor & City Council
FROM: John Mulder, City Administrator



DATE: April 29, 2020 **Meeting Date:** 5/4/20
SUBJECT: Okerstrom Road Culverts **Agenda Item: 12-I** **Resolution 2020-62**

REQUESTED ACTION

Approve Change Order Number 2 to the contract with Dirt Inc. for the Okerstrom Road Culvert project.

BACKGROUND

The City awarded the bid to replace the culverts on Okerstrom Road to Dirt Inc on July 1, 2019 (Resolution 2019-113). However, at that time, we were still waiting for the DNR to issue the permit to work in the stream bed. Change Order Number 1 was approved on November 5, 2019 (Resolution 2019-185) that changed the construction completion date from September 2019 to September 2020.

The DNR finally issued the permit on April 28, 2020, but in doing so they required the City to increase the size of the culverts.

This change order reflects the costs of the change in the size of the culverts that will be placed as part of the project.

SOURCE OF FUNDS (if applicable)

603-441100-530

ATTACHMENTS

Change Order

Resolution No. 2020-62

RESOLUTION APPROVING CHANGE ORDER NO. 2 FOR OKERSTROM ROAD CULVERTS IMPROVEMENT PROJECT NO. 533 TO DIRT INC.

WHEREAS, the City of Hermantown has contracted with Dirt Inc. for construction of Okerstrom Road Culverts Improvement Project No. 533 (“Project:”); and

WHEREAS, Dirt Inc. has submitted Change Order No. 2 for:

1. Eliminate culvert 2, change location of culvert 3 adjacent to culvert 4, eliminate culvert 5, and add a new 9’ x 5’ box culvert at culvert 3’s location.
2. Increase contract amount by \$57,560.00 for the additional box culvert and materials.

WHEREAS, Dirt Inc. has recommended such Change Order No. 2, and

WHEREAS, Northland Consulting Engineers LLP has approved such Change Order No. 2.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota as follows:

1. Change Order No. 2 is hereby approved.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution has been duly passed and adopted May 4, 2020.

Date of Issuance: 4/28/2020	Effective Date: 5/4/2020
Owner: City of Hermantown	Owner's Contract No.:
Contractor: Dirt Inc.	Contractor's Project No.:
Engineer: Northland Consulting Engineers, LLP - David Bolf, P.E.	Engineer's Project No.: 18-8003
Project: Okerstrom Road Culvert Replacements	Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description: This change order eliminates culvert 2, changes location of culvert 3 adjacent to culvert 4, eliminates culvert 5, and adds a new 9'x5' box culvert at culvert 3's location.

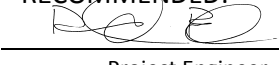
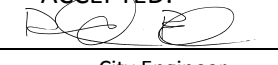
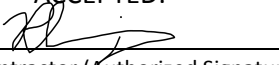
Changes to Contract as follows:

- Item #14 24" RC PIPE APRON**
2 EACH TO 0 EACH, DECREASE OF 2 EACH @ \$1,000.00 = (\$2,000.00)
- Item #15 36" RC PIPE APRON**
4 EACH TO 2 EACH, DECREASE OF 2 EACH @ \$1,400.00 = (\$2,800.00)
- Item #16 24" RC PIPE CULVERT**
40 LF TO 0 LF, DECREASE OF 40 LF @ \$90.00 = (\$3,600.00)
- Item #17 36" RC PIPE CULVERT**
56 LF TO 28 LF, DECREASE OF 28 LF @ \$180.00 = (\$5,040.00)
- Item #23 9x5 PRECAST CONCRETE BOX CULVERT (INCLUSIVE)** (INCLUDES ALL BEDDING, BACKFILL, GEOTEXTILE FABRIC, END SECTIONS, MATERIALS, EQUIPMENT, & LABOR)
0 LS TO 1 LS, INCREASE OF 1 LS @ \$71,000.00 = \$71,000.00

Total Increase = \$57,560.00

Attachments: Dirt Hermantown Culvert update with quote_4.28.2020
Revised plans dated 4/27/20

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ 98,882.00	Original Contract Times: <u>9/13/19</u>
Net amount of previously approved Change Orders: \$ 0	[Increase] [Decrease] from previously approved Change Orders No. <u>0</u> to No. <u>1</u> : Substantial Completion: <u>9/15/20</u>
Contract Price prior to this Change Order: \$ 98,882.00	Contract Times prior to this Change Order: Substantial Completion: <u>9/15/20</u> Ready for Final Payment: _____
Increase of this Change Order: \$ 57,560.00	Increase of this Change Order: Substantial Completion: <u>9/15/20</u> Ready for Final Payment: _____
Current Contract Price incorporating this Change Order: \$ 156,442.00	Contract Times with all approved Change Orders: Substantial Completion: <u>9/15/20</u> Ready for Final Payment: _____

<p>RECOMMENDED: By: <u></u> Project Engineer</p> <p>Name: <u>David Bolf, P.E.</u></p> <p>Date: <u>4/28/20</u></p>	<p>ACCEPTED: By: <u></u> City Engineer</p> <p>Name: <u>David Bolf, P.E.</u></p> <p>Date: <u>4/28/20</u></p>	<p>ACCEPTED: By: <u></u> Contractor (Authorized Signature)</p> <p>Name: <u>Rob Irving, Dirt Inc.</u></p> <p>Date: _____</p>
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Robert Irving, Owner/Operator | 218.348.2284 | robdirving@gmail.com | Northland Homes BC754264

4/28/20

David Bolf
Northland Consulting Engineers
City of Hermantown Culvert Project

Subject: Hermantown Culvert Project

The following are the updated costs from Dirt Inc. of the Hermantown Culvert Project:

1. Hancock quote# 20-3071: \$49,847.40
2. 2 days time to install culvert with equipment and labor: \$16,152.60
3. Cost to place salvage stream substrate, cost includes \$2500 additional 1 day crane rental charge for extended time to install stream bedding in culvert: \$5000.00 total

Please let me know if you have any further questions

Thank you,
Rob Irving

Dirt Inc
President
218.348.2284

Quote # 20-3071



County:St. Louis
City:Hermantown
State:MN
Project:Okerstrom Road 9' x 5' Box Culvert Replacement
Engineer:Northland Consulting Engineers
Bid Date:4/10/2020 12:00:00 PM

www.hancockconcrete.com
Prepared By: Gary Schmidgall
Phone: (507)263-3935

Email: gary.schmidgall@ Hancockconcrete.com

We are pleased to quote the following items for your consideration:

9 X 5 PC BOX CULVERT END SECTION

Product Name	Qty	Sales Price	Total Price
9 X 5 PC BOX END TYPE 1	2	7,085.10/ EA	14,170.20
15'4" X 3'2" X 1' DROPWALL	2	1,395.00/ EA	2,790.00
		Subtotal	16,960.20

9 X 5 PC BOX CULVERT

Product Name	Qty	Sales Price	Total Price
9 X 5 PC BOX CULVERT CL 1 (3,630 lbs/ft)	38	811.30/ FT	30,829.40
JOINT MASTIC 1" - PER FOOT	272	1.70/ FT	462.40
24" FILTER CLOTH - 4oz	210	1.30/ FT	273.00
1" ADJ U-TIE	24	55.10/ EA	1,322.40
		Subtotal	32,887.20

Total Quote \$ 49,847.40

- **WEIGHT:**
- **9' X 5' - 6' = 21,780 lbs. #1 Sect = 18,000 lbs.**

Sales tax is not included. Payment terms are NET 30 Days from Invoice Date. All past due accounts are subject to an interest charge based on 18% per annum.

Joint treatments are estimated and are sold by the box or roll. Prices are for material delivered to the job site or as near as truck can get under its own power.

BY YOUR EXECUTION OF THIS QUOTE OR ACCEPTANCE OF THE GOODS SET FORTH HEREON, PURCHASER ACKNOWLEDGES AND AGREES THAT IT HAS HAD THE OPPORTUNITY TO REVIEW THOSE TERMS AND CONDITIONS OF HANCOCK CONCRETE PRODUCTS, LLC AVAILABLE ONLINE AT HANCOCKCONCRETE.COM/TERMS, AND THE PARTIES INTEND TO BE BOUND BY SUCH TERMS AND CONDITIONS, WHICH ARE HEREBY INCORPORATED BY REFERENCE. A HARD COPY OF SUCH TERMS AND CONDITIONS WILL BE PROVIDED BY HANCOCK CONCRETE PRODUCTS, LLC TO PURCHASER UPON REQUEST.

Company Name: _____

Signature:  _____

Date: _____

Print Name: _____

TO: Mayor & City Council

FROM: Josh Bergstad, City Planner



DATE: April 27, 2020

Meeting Date: 5/4/20

SUBJECT: Preliminary and Final PUD for ATK Storage **Agenda Item: 12-J** **Resolution 2020-63**

REQUESTED ACTION

Approve a preliminary and final Planned Unit Development (PUD) for construction of two cold ministorage buildings located off 45xx Norway Pines Drive.

DESCRIPTION OF REQUEST

The applicant is proposing to construct two 160' by 60' cold ministorage buildings on a 6.5-acre lot in the Maple Hill subdivision with access off Norway Pines Place. The property is an existing lot of record that does not have road frontage so the applicant has secured easements from two neighboring property owners that will allow him to construct an access drive. The site will include a paved access drive and parking areas and a stormwater pond that is sized to accommodate additional development. Perimeter fencing of the buildings with an electronic security system and power gate at the site entrance that requires a gate code that will remain closed will provide site security. The buildings will be post frame construction with steel siding and roofing built on a concrete slab. There will be various sized units offered for rent on a monthly or annual basis.

This application is the start of a multi-phase development. Future phases that include climate-controlled garage condos for personal or small business use and an office space for ATK are likely to come forward in the next year. The site's stormwater and access drive have been designed for this additional development. The installation of private water and sanitary sewer will be involved in future phases. Some form of plat, a traditional plat or CIC plat, may also be required. Staff has reviewed the potential phasing and is comfortable that the site can accommodated additional development, however, this PUD application does not convey future development approval and only approves for the two 160' by 60' cold ministorage buildings. A site plan with possible future site elements is attached. The elements being approved are the two mini-storage building and the site work highlighted in red and labeled phase 1.

Dimensional and Performance Requirements

City Code allows a PUD to have standards that meet the City's goals for each proposed development. These standards include building height, density, roadway widths and setbacks. The City is applying the standard C-1 dimensional and performance requirements to the PUD.

Dimensional Requirements	C-1, Office and Light Industrial	Proposed Project
Area	2.5 Acres (3 Acres Airport C)	6.5 acres
Lot width	200'	670'
Front yard	35'	50'
Rear yard	40'	40'
Side yard	15'	15'
Building height	45'	18.5'

Elevation	1580' (Airport C Zone)	1509'
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The development will adhere to the General Performance Standards set forth in Section 525.04 of the Zoning Ordinance including that parking areas and drive aisles must be paved.

The applicant is not proposing to connect the cold ministorage buildings to utilities. Future development on the site will require water and sanitary sewer. Private utilities connecting into the City's main lines in Norway Pines Place are currently being considered. A wetland delineation was completed on the site in 2018. The project does not impact onsite wetlands. Future development is expected to impact wetlands. Wetland impacts will be addressed at the time of a future application.

RECOMMENDATION:

Staff recommends approval of the Preliminary and Final PUD, based on the findings of this report and the following conditions

1. The proposed project meets the intent of the C-1, Office and Light Industrial Zoning District and the overall goals and policies of the Zoning Ordinance.
2. The proposed project meets the Comprehensive Plan for commercial and light industrial development and standards of a Planned Unit Development by providing public benefit through improved business and commercial development enhancing the local economy and strengthening the tax base and supporting mixed-use development.
3. The Planned Unit Development is hereby approved is hereby expressly subject to the following conditions:
 - 3.1 That the Project will be constructed as described in the plans accompanying the Application and the conditions contained herein. Only Phase 1 is being approved at this time.
 - 3.2 The Zoning Administrator of the City of Hermantown shall be notified at least five (5) days in advance of the commencement of the work authorized hereunder and shall be notified of its completion within five (5) days thereafter.
 - 3.3 No change shall be made in the Project without written permission being previously obtained from the City of Hermantown.
 - 3.4 Property Owner shall grant access to the site at all reasonable times during and after construction to authorized representatives of the City of Hermantown for inspection of the Project to see that the terms of this permit are met.
 - 3.5 Property Owner is initially and continually in compliance with all of the ordinances and regulations of the City of Hermantown.
 - 3.6 Trees and brush cannot be burned on the property, but may be chipped and shredded.
 - 3.7 An MPCA Stormwater Permit and erosion control measures must be in place prior to the start of operations.

- 3.8 No residential use/dwellings are allowed within the extents of the overall PUD.
- 3.9 The Property Owner shall take measures to control erosion that has the potential to damage adjacent land, and control sedimentation that has the potential to leave the site.
- 4 Property Owner to submit preliminary and final construction documents (stormwater, roadway, etc.) according to City standards and coordinated with the City Engineer as part of the Final PUD process. The Applicant shall provide the City with a letter of credit, cash escrow, or other financial instrument acceptable to the City Attorney in the amount of 125% of an actual bid cost or estimate approved by the City Engineer for constructing the required permanent stormwater improvements.
 - 5 The Applicant shall install perimeter fencing, electronic security gate, and electronic surveillance system acceptable to the Chief of Police per 525.03.3.1. The Property Owner shall provide the City with a letter of credit, cash escrow, or other financial instrument acceptable to the City Attorney in the amount of 125% of an actual bid cost or estimate approved by the City Engineer for installing the required fencing, gate, and electronic surveillance.
 - 6 The Property Owner shall pay a park dedication fee \$7,150 calculated at the rate \$1,100 per acre for the 6.5 recorded acres for PIN# 395-0091-00140 in lieu of dedicated park land.
 - 7 This PUD does not convey any approvals or entitlements for additional zoning and development permits on PIN# 395-0091-00140 and 395-0091-00030. Further development of these lots will require new applications to amend the PUD and additional conditions as approved by the Council may be applied to this approval and future approvals. The approval made by this resolution extends only to the Phase 1 Project as defined in this resolution.
 - 8 The City, at its discretion, may require a 505 Plat or CIC Plat if an amended PUD is applied for.
 - 9 The property Owner shall sign a consent form assenting to all conditions of this approval.
 - 10 The Property Owner shall pay an administrative fine of \$750 per violation of any condition of this approval.

ATTACHMENTS

- Location Map
- Site Plan

Resolution No. 2020-63

RESOLUTION APPROVING PRELIMINARY AND FINAL PLANNED UNIT DEVELOPMENT FOR ATK STORAGE

WHEREAS, ATK Enterprises (Applicant) has submitted a complete application (Application) for a preliminary and final Planned Unit Development (PUD) to allow construction of two 160' by 60' cold mini storage warehouses on the property assigned Parcel Identification Number 395-0091-00140; and

WHEREAS, the Hermantown Planning and Zoning Commission held a public hearing on the preliminary and final PUD on March 21, 2020 following notice as required by the City's Zoning Code; and

WHEREAS, following the public hearing on the preliminary and final PUD, the Hermantown Planning Commission recommend on a unanimous vote that the City Council approve the preliminary and final PUD; and

WHEREAS, the City Council has duly considered this matter and believes that it is in the best interests of the City of Hermantown that the preliminary and final PUD be approved, subject to certain conditions being met.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota, as follows:

1. The proposed project meets the intent of the C-1, Office and Light Industrial Zoning District and the overall goals and policies of the Zoning Ordinance.
2. The proposed project meets the Comprehensive Plan for commercial and light industrial development and standards of a Planned Unit Development by providing public benefit through improved business and commercial development enhancing the local economy and strengthening the tax base and supporting mixed-use development.
3. The Planned Unit Development is hereby approved is hereby expressly subject to the following conditions:
 - 3.1 That the Project will be constructed as described in the plans accompanying the Application and the conditions contained herein. Only Phase 1 is being approved at this time.
 - 3.2 The Zoning Administrator of the City of Hermantown shall be notified at least five (5) days in advance of the commencement of the work authorized hereunder and shall be notified of its completion within five (5) days thereafter.
 - 3.3 No change shall be made in the Project without written permission being previously obtained from the City of Hermantown.
 - 3.4 Property Owner shall grant access to the site at all reasonable times during and after construction to authorized representatives of the City of Hermantown for inspection of the Project to see that the terms of this permit are met.

- 3.5 Property Owner is initially and continually in compliance with all of the ordinances and regulations of the City of Hermantown.
 - 3.6 Trees and brush cannot be burned on the property, but may be chipped and shredded.
 - 3.7 An MPCA Stormwater Permit and erosion control measures must be in place prior to the start of operations.
 - 3.8 No residential use/dwellings are allowed within the extents of the overall PUD.
 - 3.9 The Property Owner shall take measures to control erosion that has the potential to damage adjacent land, and control sedimentation that has the potential to leave the site.
- 4 Property Owner to submit preliminary and final construction documents (stormwater, roadway, etc.) according to City standards and coordinated with the City Engineer as part of the Final PUD process. The Applicant shall provide the City with a letter of credit, cash escrow, or other financial instrument acceptable to the City Attorney in the amount of 125% of an actual bid cost or estimate approved by the City Engineer for constructing the required permanent stormwater improvements.
 - 5 The Applicant shall install perimeter fencing, electronic security gate, and electronic surveillance system acceptable to the Chief of Police per 525.03.3.1. The Property Owner shall provide the City with a letter of credit, cash escrow, or other financial instrument acceptable to the City Attorney in the amount of 125% of an actual bid cost or estimate approved by the City Engineer for installing the required fencing, gate, and electronic surveillance.
 - 6 The Property Owner shall pay a park dedication fee \$7,150 calculated at the rate \$1,100 per acre for the 6.5 recorded acres for PIN# 395-0091-00140 in lieu of dedicated park land.
 - 7 This PUD does not convey any approvals or entitlements for additional zoning and development permits on PIN# 395-0091-00140 and 395-0091-00030. Further development of these lots will require new applications to amend the PUD and additional conditions as approved by the Council may be applied to this approval and future approvals. The approval made by this resolution extends only to the Phase 1 Project as defined in this resolution.
 - 8 The City, at its discretion, may require a 505 Plat or CIC Plat if an amended PUD is applied for.
 - 9 The property Owner shall sign a consent form assenting to all conditions of this approval.
 - 10 The Property Owner shall pay an administrative fine of \$750 per violation of any condition of this approval.

Councilor ____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolutions was seconded by Councilor ____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 4, 2020.

Location Map



Call 48 Hours before digging
GOPHER STATE ONE CALL
 Twin Cities Area 651-454-0002
 MN. Toll Free 1-800-252-1166



Engineering
 Land Surveying
 Site Development

JPJ ENGINEERING, INC
 425 Grant Street
 Hibbing, MN 55746
 (218) 262-5528
 5670 Miller Trunk Hwy
 Duluth, MN 55811
 (218) 720-6219
 www.jpjeng.com

ATK ENTERPRISES, INC.
 HERMANTOWN, MINNESOTA

OVERALL
 SITE PLAN

REVISION DATE:	DESCRIPTION:

SURVEYED
 DESIGNED
 DRAWN
 CHECKED

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Minnesota.

PRELIMINARY

JOHN P. JANNICK, P.E.

DATE _____ LIC. NO. 19907

PROJECT NO.

PHASE 2
 APPROX. START DATE: TBD
 SEWER EXTENSION AND WATER MAIN
 TO BE CONSTRUCTED IN PHASE 2

1260 SF
 WETLAND IMPACT
 TO BE IMPACTED IN PHASE 4

PHASE 4
 APPROX. START DATE: TBD

1960 SF WETLAND IMPACT
 TO BE IMPACTED IN PHASE 2

40.0' REAR SETBACK

40.0' REAR

15.0'
 SIDE
 SETBACK

FUTURE PROPOSED HEATED
 CONDO BLDG 202'X61'
 FFE 1482.50

FUTURE HEATED
 CONDO BLDG 123'X61'
 FFE 1458.00

PROPOSED COLD
 STORAGE BLDG 160'X61'
 FFE 1483.50

FUTURE PROPOSED
 BLDG 104'X40'
 FFE 1483.00

PROPOSED COLD
 STORAGE BLDG 160'X61'
 FFE 1484.00

PROPOSED
 STORMWATER
 POND

4145 SF
 FUTURE
 WETLAND
 IMPACT

35.0' FRONT SETBACK

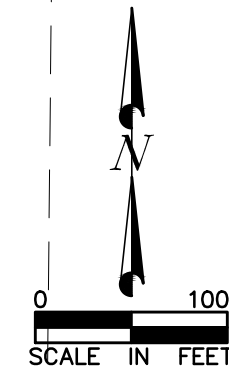
ACCESS GATE

PHASE 3 BUILDING ONLY
 APPROX. START DATE: TBD

PHASE 1
 APPROX. START DATE: SPRING OF 2020

MH 103
 RIM 1479.28
 N INV 1470.08
 S INV 1469.98

MH 102
 RIM 1473.18
 N INV 1462.73
 S INV 1462.68



Apr 18, 2020 11:05am C:\ATK Enterprises\20-697 Storage Bldgs-Site Plan\dwg\300\20-697_sit4.dwg

TO: Mayor & City Council
FROM: John Mulder, City Administrator



DATE: April 30, 2020 **Meeting Date:** 5/4/20

SUBJECT: Essentia Wellness Center - **Agenda Item: 12-K** **Resolution 2020-64**
 Naming Rights Agreement

REQUESTED ACTION

Approve and amended and re-stated naming rights agreement with Essentia Health for the Essentia Wellness Center

BACKGROUND

On March 18, 2019, the City approved a Naming Rights Agreement with Essentia Health for the Essential Wellness Center (Resolution 2019-40). That agreement needed to have approval by the State of Minnesota Office of Management and Budget. That document was submitted to the State on July 10, 2019.

After many discussions, meetings, phone calls, and e-mails with the State of Minnesota and then again with the staff at Essentia, the agreement has been revised and we expect final approval within the next week.

None of the major terms changed, and Essentia has moved in, operated, and paid the Naming Rights Fee to the City.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Amended and Restated Naming Rights Agreement

Resolution No. 2020-64

**RESOLUTION AUTHORIZING AND DIRECTING THE
MAYOR AND CITY CLERK TO EXECUTE AND DELIVER AN AMENDED AND RESTATED
NAMING RIGHTS AGREEMENT BETWEEN SMDC MEDICAL CENTER D/B/A ESSENTIA
HEALTH WELLNESS CENTER
AND THE CITY OF HERMANTOWN**

WHEREAS, the City of Hermantown (“City”) constructed a community health and wellness center located at 4307 Ugstad Road in Hermantown, Minnesota known as the Essentia Wellness Center (“Project”); and

WHEREAS, the State of Minnesota has allocated \$8,000,000 in grant monies (“G.O. Grant”) to assist with the construction of the Project; and

WHEREAS, the G.O. Grant is proceeds of state general obligations bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

WHEREAS, the City and SMDC Medical Center d/b/a Essentia Health Wellness Center (“Essentia”) entered into a Lease Agreement and an Amended and Restated Lease with the City in connection with the Project and to provide clinical services, wellness programming and communication health education consistent with the terms of the Lease Agreement; and

WHEREAS, Essentia entered into a Letter of Intent with the City on September 3, 2015 in which the parties agreed to allow Essentia the rights to name the Project; and

WHEREAS, the City granted rights to name the Project pursuant to the terms of the Naming Rights Agreement dated effective May 16, 2019; and

WHEREAS, the City and Essentia desire to amend and restate the Naming Rights Agreement to reflect the requirements of the G.O. Grant; and

WHEREAS, a proposed Amended and Restated Naming Rights Agreement (“Amended and Restated Naming Rights Agreement”) is attached hereto as Exhibit A; and

WHEREAS, the City Administrator recommends the approval of the Amended and Restated Naming Rights Agreement; and

WHEREAS, the City Council of the City of Hermantown has duly considered this matter and believes that it is in the best interests of the City of Hermantown to enter into the proposed Amended and Restated Naming Rights Agreement with Essentia.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota as follows:

1. The Amended and Restated Naming Rights Agreement substantially in the form of the one attached hereto as Exhibit A is hereby approved with such minor modifications thereto as are approved by the City Administrator and City Attorney.

2. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such Amended and Restated Naming Rights Agreement on behalf of the City of Hermantown.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 4, 2020.

EXHIBIT A

APRIL 30, 2020

**AMENDED AND RESTATED
ESSENTIA WELLNESS CENTER
NAMING RIGHTS AGREEMENT**

THIS AMENDED AND RESTATED NAMING RIGHTS AGREEMENT (“Agreement”) is made and entered into as of this ____ day of _____, 2020 (“Effective Date”) by and between **St. Mary’s Duluth Clinic Health System, d/b/a Essentia Health East**, on behalf of itself and its affiliated entities, located at 502 East Second Street, Duluth, MN 55805 (“Essentia”), and the **City of Hermantown**, located at 5105 Maple Grove Road, Hermantown, MN 55811 (“City”). Both Essentia and City are hereinafter referred to individually as “party” and collectively as “parties.”

RECITALS

- A. The City and Essentia entered in a Naming Rights Agreement dated effective May 16, 2019 (“Original Agreement”).
- B. City has requested that the Original Agreement be revised to reflect the terms of the G.O. Grant from the State of Minnesota that has been allocated to the Project.
- C. Essentia is willing to agree to the request made by City.
- D. City and Tenant desire to amend and restate the terms of the Original Agreement as provided for in this Amended and Restated Naming Rights Agreement.

NOW, THEREFORE, in consideration of these Recitals, hereby incorporated into this Agreement, the following mutual promises, and all other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

The terms of the Original Agreement are hereby amended and restated in their entirety to read as follows:

RECITALS

- AA. The City renovated a portion of an existing building (“Former School Building”) and developed a newly constructed space (“New Building”) and related exterior areas (“Exterior Areas”), including parking and green spaces, at 4289 Ugstad Road in the City of Hermantown, Minnesota, all of which is herein collectively referred to as the “Project” with an anticipated completion date of October 1, 2019.
- BB. Under the provisions contained in Minn. Stat. §§ 471.15-471.191 (the “Statutory Authority”) and specific language contained in 2017 Minn. Laws, First Special Session, Ch. 8, Art. 1, Sec. 20, (the “G.O. Bonding Legislation”), the State of Minnesota has allocated \$8,000,000 (the “G.O. Grant”) to be given to the City of Hermantown to prepare the middle school site on the Hermantown School District campus, including demolition of a portion of the middle school, and to design, construct a new addition to the middle school building and renovate the remaining

existing building, furnish, and equip the facility as the Arrowhead Regional Health and Wellness Center also known as the Essentia Wellness Center.

- CC. Essentia will be a tenant in the Project and will provide clinical services, wellness programming, and community health education to residents of the City and surrounding communities consistent with requirements of the Government Program contained in this Agreement and the Essentia Lease.
- DD. The Duluth Area Family Y.M.C.A, a Minnesota nonprofit corporation, (“YMCA”) will use and manage the Project on behalf of the City pursuant to the Use and Operations Agreement by and between City and the YMCA, made effective contemporaneously with this Agreement, and as it may be from time-to-time amended (“Use and Operations Agreement”).
- EE. City and Essentia entered into a Letter of Intent dated September 3, 2015, and now desire to enter into this Agreement to grant exclusive naming rights for the Project to Essentia, including such ancillary benefits, in consideration of Essentia paying the Naming Rights Fee as set forth herein.

ARTICLE I -- AGREEMENT

1. **Definitions.** As used in this Agreement, the following terms will have the following meanings:
 - 1.1. **“Branding and Collateral Materials”** means the material provided and/or used by the Parties and their respective designees to support the brand exposure of the Project Marks, as specifically set forth in Section 2.4.1 of this Agreement and any subsequent substitutions, additions, or modifications thereto as mutually agreed upon by the Parties.
 - 1.2. **“City”** means the municipal government of the City of Hermantown, St. Louis County, Minnesota, including without limitation the City Council and City Administrator.
 - 1.3. **“City’s Statutory Authority”** means Minnesota Statutes §§ 412.211; 412.221, Subd. 3; 412.221, Subd. 32; 412.491; 471.15; 471.16; 471.17 and 471.191.
 - 1.4. **“Commencement Date”** means the date the Term of this Agreement begins, which shall be the same date as the Completion Date.
 - 1.5. **“Completion Date”** means the date that a certificate of occupancy is issued by the City for any portion of the Project and Essentia is able to commence operations.
 - 1.6. **“Designations”** means the marketing slogans which may be used by the Parties in connection with the Agreement, as specifically set forth in Exhibit 8 of this Agreement.
 - 1.7. **“Effective Date”** means the date that this Agreement is executed by the City and Essentia.
 - 1.8. **“Essentia Lease”** means that certain lease between Essentia and City entered into contemporaneously with this Agreement.

- 1.9. **“Governmental Program”** means an activity that is pursuant to the City’s Statutory Authority and in furtherance of the City’s program of public recreation and in furtherance of City’s program to promote the health and wellness of the City and regional communities. The Permitted Use as set forth in the Essentia Lease is deemed by the City to meet the requirements of this program.
 - 1.10. **“Name”** means the Essentia Wellness Center which is the official word, term, or phrase by which the Project will be called as of the Effective Date or as amended or changed in accordance with this Agreement.
 - 1.11. **“Naming Rights”** means the exclusive license to name the Project and all other rights granted to Essentia under the terms of this Agreement.
 - 1.12. **“Project”** means the Former School Building, New Building and Exterior Areas located at 4289 Ugstad Road, Hermantown, Minnesota, owned by the City, and operated by the Project Manager.
 - 1.13. **“Project Manager”** presently means the YMCA, but also means any other person or the entity that may be designated by City to oversee the management and operation of the Project on behalf of the City that is not engaged in the same Permitted Use as Essentia.
 - 1.14. **“Project Marks”** means the Project Name, Logos, and/or any stylized form or combination thereof.
 - 1.15. **“Use and Operations Agreement”** means that certain Use and Operations Agreement between the City and YMCA made effective contemporaneously with this Agreement.
2. **Naming Rights and Ancillary Benefits.**
- 2.1. **Project Name.** During the Term of this Agreement, City hereby grants to Essentia the exclusive license to name the Project pursuant to the terms hereunder. As of the Effective Date, the official name of the Project will be the **“Essentia Wellness Center”**, unless amended or changed in accordance with this Agreement, and the Project shall be referred to as the **“Essentia Wellness Center”** whenever referenced. The Parties will meet in good faith to determine appropriate guidelines for usage of the Name.
 - 2.2. **Project Logos.** During the Term of this Agreement, the Parties agree that Essentia will develop a graphic design incorporating the Name to be used as the primary logo associated with the Project (“Primary Logo”). Essentia may develop derivative graphic designs related to the Primary Logo to be used periodically for ancillary marketing and promotional purposes pursuant to this Agreement (“Secondary Logos”) (collectively, the “Logos”).
 - 2.3. **Essentia Signage and Exposure.** In connection to the Naming Rights granted to Essentia hereunder, Essentia will be entitled to have certain signage or other forms of exposure of the Project Marks in, on, or around the Project (the **“Essentia Signage”**); provided Essentia Signage shall substantially consist of the Project Marks and be consistent with Essentia Trademark Guidelines color palette and nomenclature. The appearance and location of all Essentia Signage is subject to approval by the City, whose approval shall not be unreasonably withheld or delayed.

2.3.1. Signs.

2.3.1.1. *Exterior Signage.* Signs located on the Project's exterior, including without limitation, the entrances, any digital signage marquee, and rooftop, will display the Project Marks as more fully described in Exhibit 1, attached.

2.3.1.2. *Interior Signage.* Signs located within the Project, including, without limitation, various fixed and digital signage will display the Project Marks as more fully described in Exhibit 2 attached.

2.3.1.3. *Temporary Signage.* The Parties agree to work together and cooperate in good faith in connection with the design, approval, preparation, production, mounting, and installing of the Project Signs. The City agrees to use commercially reasonable efforts to have all Project Signs prepared, produced, mounted, and installed no later than the Completion Date. Notwithstanding the foregoing, if Project Signs, including, without limitation, the Exterior Signage, are not fully prepared, produced, mounted, and installed, as of the Completion Date, City shall display temporary "museum banner" signage that is a reasonable temporary substitute for uninstalled portions of the Exterior Signage, subject to the prior approval of the City and Essentia (the "Temporary Signage") and subject to compliance with any applicable sign ordinance, laws or regulations.

2.3.2. Municipal Signs. After the Completion Date, Essentia and City will use commercially reasonable efforts to cause any existing public roadway signs referencing the Project and controlled by the City (the "City Street Signs") to identify the Project by the Project Marks as described in Exhibit 3. The City shall be responsible for the cost, maintenance, repair, and replacement of the City Street Signs installed hereunder in the same manner the City maintains, repairs, and replaces City Street Signs in its normal course of business.

2.4. Project Branding, Promotion, and Publicity.

2.4.1. Branding and Collateral Materials. In connection to the Naming Rights granted to Essentia hereunder, the City agrees to support the brand exposure of the Project Marks through the following branding channels (the "Branding and Collateral Materials") and include the requirement in leases with other tenants of the Project or such other agreements allowing operations by a non-City entity within the Project to make reference to being located "at the Essentia Wellness Center" in such materials:

2.4.1.1. *Website and Digital Media.* After the Completion Date, City will use commercially reasonable efforts to register and establish a new domain name and other associated usernames and handles, as mutually agreed upon by City and Essentia, for any official promotional website (the "Website"), Facebook page, Twitter account, and other social media outlets for the promotion of the Project (the "Digital Media Outlets"). The City will maintain or cause to be maintained all Digital Media Outlets during the Term of this Agreement, and the content of such Digital Media Outlets will display the Project Marks and include Project-specific web pages providing relevant Project information, as determined by City and subject to the reasonable approval of Essentia.

2.4.1.2. *Printed Materials.* After the Completion Date, the City, at City's cost, will cause the Project Marks to be incorporated and used in any print materials for the Project, including, without limitation, letterhead, directories, press materials, and promotional materials.

2.4.1.3. *Internet Visibility.* The City will make commercially reasonable efforts to cause the Project to be identified by the Project Name, including registering and/or changing the Name on all major search-related and mapping sites/apps (i.e. Google, Bing, Waze) and internet city guides (i.e. Yelp, City Search, etc.)

2.4.2. Publicity and Promotion

2.4.2.1. *Event Promotion.* The Parties agree that each will make commercially reasonable efforts during the Term to: (i) identify the Project by the Project Marks in all written and oral references to the Project and with respect to any event scheduled by each party to take place at the Project, including, without limitation, all official documents, press releases and other public announcements.

2.4.2.2. *Third Party Media.* The Parties agree that each will make commercially reasonable efforts during the Term to cause the media and other third parties, including, without limitation, news outlets, web, radio, and television broadcasters, service providers, advertisers, promoters and sponsors to identify the Project by the Project Marks; provided that any failure of such third parties to refer to the Project by the Project Marks will not be considered a breach of this Agreement by the Parties.

2.4.2.3. *Tenants.* City shall use commercially reasonable efforts in rental, lease, and use agreements to require tenants/operators in the Project to use the Name and Logo, as well as identifying the Project by the Project Marks, in all advertising and promotional materials.

2.4.2.4. *Promotional Campaign.* City and Essentia will cooperate in jointly planning a mutually agreeable and mutually conducted public relations campaign to announce the Name and Logo of the Project as of the Effective Date.

2.4.3. Essentia Cooperation and Assistance. Essentia will provide reasonable assistance to City, as requested by City, to assist City with performing its obligations under this Section 2.4.

2.5. [RESERVED].

2.6. Exclusivity.

2.6.1. Exclusive Rights. In addition to the Naming Rights granted hereunder, City agrees not to offer, grant, or sell the right to name any subordinate portion of the Project (the "Subordinate Naming Rights") or to place any permanent/temporary signs about the Project to any third party whose: i) primary business falls within the Business Category defined in Section 2.6.2; ii) engages in business activities or offers products or services that are competitive with one or more of Essentia's products or services; or iii), who otherwise could be reasonably identified by Essentia or City to be a direct competitor of Essentia. In

the event City wishes to sell Subordinate Naming Rights to any third party in the Business Category as defined in Section 2.6.2, City agrees to submit to Essentia the identity of the third party for Essentia's prior written approval, which may be withheld by Essentia in its sole discretion. The use and operation of the Project as a traditional YMCA, pursuant to the Use and Operations Agreement and exterior and interior signs in on or around the buildings that make up the Project approved by the City and Essentia pursuant to Section 2.6.3, does not violate the terms of this Section 2.6.1.

2.6.2. Business Category. For purposes of this Naming Rights Agreement, Essentia shall be considered to be engaged in Healthcare, Rehabilitation, Wellness, and such other related services (the "Business Category"). The Parties acknowledge that the Business Category may evolve during the Term, subject to the prior written approval by the City. The activities conducted by Essentia on the Project shall always be in furtherance of the Governmental Program no matter what Business Category name is used.

2.6.3. YMCA Naming. Essentia has approved and agreed to the use of the YMCA name and logo on the exterior and interior of the buildings that make up the Project as depicted in Exhibits 1 and 2 attached hereto. The use of the YMCA name and logo on the buildings that make up the Project and otherwise with respect to the Project may be revised from time-to-time by YMCA with the consent of City and Essentia.

2.7. Other Naming Rights. City intends, subject to the limitations set forth in Section 2.6.1 of this Agreement, to offer naming rights directly or through the YMCA to donors to the Project for activities relating to the Project or for component parts of the Project outside of the premises defined in the Essentia Lease. Essentia understands that the fundraising for the Project may be assisted by the grant of naming rights for activities related to the Project and the component parts of the Project, for example, for the YMCA portion of the Project, or individual rooms within the Project. No naming rights will be granted, however, without the prior approval of Essentia and City.

3. Additional Essentia Rights

3.1. Meeting Space Use; Common Areas; Therapy Pool. In addition to the rights and benefits granted in Section 2 above, during the term of this Agreement, Essentia shall be entitled to the use of meeting room(s) to host events and/or wellness activities, which are the Common Areas and the Community Space as those terms are defined in the YMCA Use and Operations Agreement and as shown on Exhibit 4 ("Common Space") hereof. Essentia shall annually submit a list of up to six (6) anchor events that Essentia will have use of the Common Space with proposed dates that will not be unreasonably withheld and will be accommodated as closely as possible by the parties and the Project Manager. The use and additional scheduling of the Common Space shall be subject to the Use and Operations Agreement, including the provisions relating to the Oversight Committee. In consideration of the Naming Rights Fee paid under this Agreement, the City shall require the Project Manager to reasonably accommodate the need of Essentia to utilize facilities in the YMCA Project Area, including the therapy pool, running track, pool and fitness equipment, and staff break room(s). Essentia's use of the other portions of the Project may be more fully described in the Use and Operations Agreement and Essentia Lease. In consideration of the Naming Rights Fee paid by Essentia and as provided for in the Lease and Use and Operations Agreement, Essentia will not be required to pay event costs for use of the Common Space or other portions of the project, with the exception of any extraordinary costs incurred due to Essentia's use (i.e. catering, staffing requirements, fee for cleaning costs if area

left in unsatisfactory condition). Essentia will also be obligated to CAM Charges as set forth in the Lease between Essentia and City (“Essentia Lease”) made effective contemporaneously with this Agreement.

3.2. Healthy Lifestyle Messaging. City shall cooperate with the integration of healthy lifestyle messaging within the Project and the grounds. City’s efforts shall include, but need not be limited to the establishment and reasonable efforts to enforce policies banning smoking and vaping in or around the Project and reduction of access to sugar-sweetened beverages and provision of healthier beverage options.

4. **Term.** The Term of this Naming Rights Agreement will begin on the Commencement Date of this Agreement and will continue to such date that is twenty (20) years from the Commencement Date (the “Expiration Date”), unless extended or terminated in accordance with the terms hereof (wholly, the “Term”).

4.1 Option to Extend. If the Essentia Lease is not terminated pursuant to the terms of the Essentia Lease and if Essentia is not in default of this Agreement, then Essentia will have the Option to extend the term of this Agreement (the “Option”) for an additional period of ten (10) years (the “Extension Term”). City will provide Essentia with written notice of its Option twelve (12) months prior to the Expiration Date and Essentia will have until one hundred eighty (180) days prior to the Expiration Date to give notice to the City of its decision to exercise the Option hereunder (the “Option Period”). In the event Essentia does not give notice to the City of its decision to exercise the Option within the Option Period, Essentia will be deemed to have conclusively declined its Option to extend the Term hereof, and the City will be free to enter into negotiations with third parties regarding the purchase of the Naming Rights following the Expiration Date of this Agreement. Notwithstanding anything to the contrary contained herein, City is not required to renew this Naming Rights Agreement with Essentia, and may at that time, in its sole option and discretion (i) decide to self-operate the Governmental Program (defined in Section 17.3 of the Essentia Lease) in the Premises defined in the Essentia Lease, (ii) contract with some other entity to operate the Governmental Program in the Premises defined in the Essentia Lease, or (iii) determine that the Premises defined in the Essentia Lease are no longer needed or useful for the operation of the Governmental Program and sell its interest in the Premises.

4.2 Right of First Negotiation. In the event that Essentia is not in default of this Agreement and declines its Option to extend the term hereof, and City intends to solicit and receive third-party offers for the purchase of the Naming Rights, Essentia will have the exclusive right to negotiate in good faith with City with respect to the purchase of the Naming Rights following the Expiration Date (the “Right of First Negotiation”). At the conclusion of the Option Period, City will provide Essentia with written notice of Essentia’s Right of First Negotiation, which it shall have for a period of ninety (90) days from the date of notice (the “Negotiating Period”). In the event the parties do not reach an agreement for the purchase of the Naming Rights during the Negotiating Period, City will be free to solicit, receive and negotiate third-party offers regarding the purchase of the Naming Rights following the Expiration Date of this Agreement.

4.3 Termination of Essentia Lease.

4.3.1 Upon termination of the Essentia Lease prior to the Expiration Date, then the parties shall proceed as follows:

Step 1: If Essentia elects to exercise the termination option under Section 5 of the Basic Terms of the Essentia Lease or upon a statutory termination under Section 10.1 of this Agreement, proceed to Step 2.

Step 2: City shall have one (1) year to market and obtain a bona fide written lease proposal from a third-party that is not in Essentia’s Business Category. Essentia shall have a continuing right of first refusal to enter into a new lease for the proposed fair market value rate contained in the written lease proposal and using the terms contained in the Essentia Lease as the basis for any new lease agreement provided that the rent is subject to the provisions of Section 4.3 of the Basic Terms of the Essentia Lease. Essentia shall have sixty (60) days to exercise the above right of first refusal for each bona fide offer. In the event that City is unable to locate a third-party and successfully enter into a binding lease as described in this Step 2, then the parties shall proceed to Step 3. In the event that (i) City is able to obtain a third-party written proposal meeting the qualifications above, (ii) Essentia elects not to exercise its right of first refusal, and (iii) City and third-party successfully enter into a binding lease on the same terms in the written proposal, then the terms and provisions of this Naming Rights Agreement shall continue in effect during the term of the lease with the third party.

Step 3: City shall have one (1) year to be able to market and obtain a bona fide written lease proposal from a third-party that may conflict with Essentia’s Business Category. Essentia shall have a continuing right of first refusal to enter into a new lease for the proposed fair market value rate contained in the written lease proposal, subject to the provisions of Section 4.3 of the Basic Terms of the Essentia Lease, and using the terms contained in the Lease as the basis for any new lease agreement. Essentia shall have sixty (60) days to exercise the above right of first refusal for each bona fide offer. In the event that (i) City is able to obtain a third-party written proposal meeting the qualifications above, (ii) Essentia elects not to exercise its right of first refusal, and (iii) City and third-party successfully enter into a binding lease on the same terms in the written proposal, then the City shall pay Essentia \$1,000,000.00. In such event, Essentia would have no further rights under this Agreement. In such event, City shall remove all Essentia signage at City’s expense.

City and Essentia shall act reasonably and in good faith in connection with the implementation of the provisions of this Lease, including, specifically, the provisions of this Section 4.3

5 **Fees and Costs.**

5.1 **Naming Rights Fee.** In consideration of the Naming Rights, Ancillary Benefits, and Additional Essentia Rights granted by City in this Agreement, Essentia agrees to pay a Naming Rights Fee in the manner set forth below:

<u>Term</u>	<u>Naming Rights Fee</u>	<u>Payment Date</u>

Initial Term	\$2,000,000.00	\$1,000,000.00 on the Effective Date and \$1,000,000.00 on the Completion Date

5.2 Dedication of Naming Rights Fee. City agrees to restrict the funds paid to it for the Naming Rights Fee to pay principal, interest, redemption premiums and other expenses when due on debt related to the Project other than state bonds of the Project.

5.3 Costs and Expenses.

5.3.1 Project Marks. Essentia will be responsible for all costs and expenses associated with the development of the Project Marks, including costs for any third-party designer services used in the development of the Project Marks and any related artwork and/or style manuals for the approved forms of the Project Marks.

5.3.2 Project Signage.

5.3.2.1 *Production and Installation.* City will be responsible for paying all costs and expenses associated with the initial preparation, production, mounting, and/or installation of all Project Signage provided hereunder (the “Initial Project Signage Costs”).

5.3.2.2 *Maintenance and Replacement.* Following the initial preparation, production, mounting, and installation, the City will be responsible for providing necessary power to any Project Signage and paying the costs and expenses associated with the routine and preventative repair and maintenance of all Project Signage.

5.3.2.3 *Essentia Exclusive Use Area Signage.* Notwithstanding the foregoing, Essentia shall be obligated to pay for the production, installation, maintenance, replacement and any licenses or permits relating to the signage it desires to install in the Essentia Exclusive Use Area.

5.3.2.4 *Licenses and Permits.* City will be responsible for obtaining, at its sole cost and expense, any and all licenses and permits required in connection with providing the Project Signage under this Agreement.

5.3.3 Subsequent Name Change. In the event Essentia or its successor or assignee changes or causes the change of the Project Name, Logos, and/or Project Marks in accordance with the terms hereof, Essentia agrees to pay, or cause its successor or assignee to pay, all costs and expenses associated therewith, including, without limitation, the cost and expense of: (i) removing, destroying, and/or discarding Essentia Signage reflecting the prior Project Marks; (ii) preparing, producing, replacing, mounting and/or installing new or altered Essentia Signage to reflect the name change; (iii) removing, destroying, and/or discarding merchandise, equipment or other collateral materials related to the Project branding, promotion, and publicity displaying the prior Project Marks, and (iv) preparing, producing, replacing, and/or distributing merchandise, equipment, or other

collateral materials related to the Project branding, promotion, and publicity reflecting the name change.

6 **Intellectual Property and Ownership.**

6.1 Project Marks.

6.1.1 Ownership of Project Marks. The Parties agree that Essentia shall own all right, title, and interest in the Project Marks, including, without limitation, the trademarks and copyrights associated therewith.

6.1.2 License to Use Venue Marks. Essentia hereby grants to City a limited, non-exclusive, royalty-free, personal, non-transferable license only to use the Project Marks, as depicted in Exhibit 5, attached, and as hereafter changed, amended, or created hereunder and as otherwise agreed upon in a signed writing, solely for the purposes related to performance under this Agreement and subject to Essentia approval. Essentia reserves all rights in the Project Marks and the City shall have no rights to the Project Marks other than those expressly granted hereunder. City shall not sublicense any of the rights to the Project Marks set forth in this Agreement without written permission of Essentia.

6.2 Independent Marks. Except as to the Project Marks or as expressly provided in this Agreement, Essentia and City, will retain all ownership, right and title in their respective trademarks, service marks, trade names, insignia, symbols, logos, decorative designs or the like (collectively, the “Independent Marks,” and individually, a “Mark”), and neither party shall use any Mark which is owned by, or licensed or sublicensed to, the other party without the owning party’s prior written consent. Each party agrees that any use of the other party’s Marks under this Agreement will inure to the benefit of and be on behalf of the owning party and will terminate upon the expiration or prior termination of this Agreement. Except as expressly provided herein, the Parties will not have any rights or interest in any other party’s Independent Marks without prior written consent.

6.2.1 City’s License. Essentia grants to City a revocable, non-exclusive, non-transferable license during the Term of this Agreement to use only the Essentia Mark(s), as depicted in Exhibit 6, attached, subject to Essentia review and approval and solely for the purposes related to the performance of this Agreement. Essentia grants City no other right title, or license to the Essentia Marks or any other Essentia protectable marks and proprietary rights. City agrees to permit duly authorized representatives of Essentia to audit the uses of Essentia Marks for the purpose of ascertaining or determining compliance with the provisions of this license and the Agreement. When using Essentia Marks under this Agreement, City will undertake to comply substantially with all laws pertaining to trademarks and logos. In the event that the Essentia Marks are changed following the Effective Date of this Agreement, Essentia agrees to grant City the same or substantially similar license to use the Essentia Marks as granted herein.

6.2.2 Essentia’s License. City grants to Essentia a revocable, non-exclusive, non-transferable license during the Term of this Agreement to use the City Mark(s), as depicted in Exhibit 7, attached, subject to City’s review and approval and solely for the purposes

related to the performance of this Agreement. City grants Essentia no other right title, or license to the City Marks or any other City protectable marks and proprietary rights. Essentia agrees to permit duly authorized representatives of City to audit the uses of City Marks for the purpose of ascertaining or determining compliance with the provisions of this license and the Agreement. When using City Marks under this Agreement, Essentia will undertake to comply substantially with all laws pertaining to trademarks and logos. In the event that the City Marks are changed following the Effective Date of this Agreement, City agrees to grant Essentia the same or substantially similar license to use the City Marks as granted herein.

6.2.3 Essentia and City agree to promptly notify each other of any unauthorized Use of the other party's Marks of which it has actual knowledge. The owning party shall have the sole right and discretion to bring proceedings alleging infringement of its Marks or unfair competition related thereto; provided, however that each party agrees to provide the owning party, with its reasonable cooperation and assistance with respect to any such infringement proceeding.

7 **Confidentiality and Communications.**

7.1 **Confidential and Proprietary Information.** Each party acknowledges that, through the course of performance of this Agreement, each party may have access to information which relates to the other party's business, gives the other party a competitive advantage, and/or is a "trade secret," including, but not limited to: (i) planning data and marketing strategies; (ii) financial results and business conditions; (iii) business agreements and negotiations; (iv) documentation; (v) training materials; (vi) surveys, data, drawings; (vii) procedures and processes "know how"; and (viii) any information that is not generally known to the public (the "Confidential Information"). City and Essentia, subject to the provisions of Section 7.3, agree to keep all Confidential Information in strict confidence and will not use or disclose, directly or indirectly, both during and after the Term of this Agreement, any such Confidential Information, except as may be necessary in the regular course of performance hereunder or as required under this Agreement. Each party specifically acknowledges that Confidential Information derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from the disclosure or use of Confidential Information, that reasonable efforts have been put forth by the owning party to maintain the secrecy of Confidential Information, that Confidential Information is and will remain the sole property of the owning party, and that any physical or mental retention and/or use of Confidential Information during or after the expiration or termination of this Agreement (except in the regular course of performance hereunder or as otherwise required under this Agreement) will constitute a misappropriation of Confidential Information. Notwithstanding the foregoing, the Parties may disclose Confidential Information as required by law or court order, provided such disclosure is limited to the information specifically required to be disclosed. If either is required to disclose any Confidential Information, the disclosing party agrees to promptly notify and cooperate with the owning party to permit the owning party to take any appropriate action it deems necessary to protect its interests thereunder. Each party's obligations under this provision will survive the expiration or termination of this indefinitely and will remain in full force and effect regardless of any actual or alleged breach of this Agreement by either party, unless and until such Confidential Information has become, through no fault of non-owning party, generally known to the public.

7.2 **Public Statements.** Each party agrees that it will not directly or indirectly make or encourage the making of any defamatory or disparaging statements about the other, or any statements that could

reasonably be expected to impact negatively on the name, business, or reputation of either party. The parties agree to consult and cooperate with each other with respect to the timing, content, and form of any media statements, press releases or other public disclosures (the “Public Statements”) made by either party related to performance under this Naming Rights Agreement. Each party further agrees that any such Public Statement will be made in furtherance of the good faith performance of this Naming Rights Agreement and the contractual relationship of the parties.

7.3 Data Practices. Essentia acknowledges that City is subject to the provisions of the Minnesota Government Data Practices Act. Essentia must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by City in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Essentia in accordance with this Agreement. The civil remedies of Minnesota Statutes § 13.08, apply to Essentia and City. Minnesota Statutes, Chapter 13, provides that all government data are public unless otherwise classified. If Essentia receives a request to release the data referred to in this Section, Essentia must immediately notify City and consult with City as to how Essentia should respond to the request. Essentia’s response shall comply with applicable law, including that the response is timely and, if Essentia denies access to the data, that Essentia’s response references the statutory basis upon which Essentia relied. Essentia does not have a duty to provide public data to the public if the public data is available from City. The City will notify Essentia promptly upon receipt of any Minnesota Data Practices Act request for documents related to this Agreement. If Essentia has any objections to the release of any documents subject to a request for access to data, Essentia shall notify City immediately of such objection and the parties will cooperate in determining how to handle the request within the parameters of the law.

8 Representations and Warranties.

8.1 Governmental Program. Essentia and City hereby acknowledge and agree as follows:

8.1.1 This Agreement is deemed to be in furtherance of the Governmental Program.

8.1.2 This Agreement was entered into pursuant to the City’s Statutory Authority.

8.1.3 Essentia shall advise City in writing if Essentia proposes adding any activities to be conducted in the Project that are not in furtherance of the Governmental Program. After any such notice is given to City by Essentia, City and Essentia will meet and review the proposed activities to determine if they are in furtherance of the Governmental Program. Any additional activities proposed by Essentia that are not in furtherance of the Governmental Program are not allowed unless consented to by City in writing after the meeting between City and Essentia described above takes place.

8.2 Compliance. This Agreement is subject to the terms of, and each party hereby warrants and certifies that it will comply with, all applicable laws, statutes, rules regulations, decisions, and orders in the performance of this Agreement.

8.3 Books and Records. Each party will maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to this Agreement for a minimum period of five (5) years from the expiration or termination of this

Agreement. Upon written request of either party, the parties agree that the records or documents maintained pursuant to this Agreement will be made available for inspection or audit at any time during regular business hours.

8.4 Cooperation. The parties agree to cooperate in the performance of each of their obligations under this Agreement, including, but not limited to, obtaining, agreeing to, distributing and/or enforcing any waivers, rules and regulations, licenses and permits, and other required certifications related to the benefits granted hereunder.

8.5 Non-Infringement. Each party hereby warrants that, in the course of performance under this Agreement, it will not violate or infringe upon any proprietary rights of any third party, including without limitation, confidential relationship, trade secrets, patent, trademark, or copyright rights.

8.6 City Representations. The City acknowledges, represents, and warrants the following:

8.6.1 The City owns the right to name the Project, and the naming of the Project as contemplated by this Agreement is in accord with all applicable laws, regulations, and ordinances of the City including the City's Statutory Authority;

8.6.2 This Agreement and all documents delivered pursuant hereto have been duly authorized, and when executed and delivered by the parties, will be a legal, valid, binding, and enforceable obligation of the City; do not violate any provision of any agreement or judicial order to which the City is a party or subject; and no other consents or actions of any third parties, entities or governmental bodies or agencies is required to give effect to this Agreement of the actions of the City and Essentia taken hereunder;

8.6.3 The City does not obtain any rights in the Project Marks or any other Essentia Marks;

8.6.4 The City approves and agrees to the naming rights provision and all other terms and conditions of this Naming Rights Agreement;

8.6.5 As of the Effective Date, the City Agrees to use all reasonable efforts to cause new promotional materials, press releases, and announcements related to and made by the City, including, without limitation, any City-related website, to refer to the Project by the Name specified hereunder.

8.7 Authority. Each party represents and warrants that it has the full right and authority from all necessary sources to enter into and fully perform this Agreement in accordance with its terms. In addition, each individual representing the parties in signing this Agreement (the "Undersigned") is duly authorized to bind his or her respective party to the terms contained herein, all parties are entitled to rely on the representations of the Undersigned without any duty of investigation, and this Agreement will be binding and enforceable upon execution by the Undersigned.

9 Limitation of Liability.

9.1 Limitation of Liability. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL THE PARTIES BE LIABLE TO ONE ANOTHER OR ANY OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY LOSS, DAMAGE, COST, OR EXPENSE, INCLUDING, WITHOUT LIMITATION, LOSS OF GOODWILL, LOSS OF BUSINESS

PROFITS, COMPUTER FAILURE OR MALFUNCTION, DATA LOSS, OR LOST PROFITS AND OPPORTUNITY COSTS. THE FOREGOING LIMITATION WILL NOT APPLY TO DAMAGES AWARDED WITH RESPECT TO THIRD PARTY CLAIMS FOR WHICH THE PARTIES HAVE AN OBLIGATION TO INDEMNIFY UNDER THE AGREEMENT OR LIQUIDATED DAMAGES.

9.2 Insurance. During the Term of this Agreement, the City and Essentia each agrees to maintain at its own expense commercial general liability and commercial automobile liability insurance with limits in at least the amount of the then statutory tort liability limits applicable to City. Upon written request from any party, each party agrees to furnish to the requesting party a Certificate of Insurance evidencing such coverage.

10 Default and Termination.

10.1 Statutory Termination. Notwithstanding any other provisions of this Agreement to the contrary, if the Governmental Program is terminated or changed in response to changes in state law in such a manner as to (a) cause this Agreement and the operation of the Project to be inconsistent with the changed Governmental Program or (b) to remove the statutory authority for the City to operate the Governmental Program, then this Agreement shall be terminated by ninety (90) days written notice to Essentia ("Termination Date"), provided further that any termination pursuant to this Section will be deemed automatically rescinded and of no force or effect if within said ninety (90) day period Essentia is able to conform its operation to the changed Governmental Program.

10.2 Default. The occurrence of any one or more of the following events or actions will constitute a breach of this Agreement (the "Default") by the acting or relevant party (the "Defaulting Party").

10.2.1 Corporate Cessation. The cessation of a party to conduct business, or if a party is subject to any attachment, execution, or other judicial seizure or sale of any substantial portion of its assets, which is not discharged or revoked within ten (10) days thereof;

10.2.2 Bankruptcy or insolvency. The failure of a party to pay its debts as they come due; filing, or having filed against it, a petition or other request for relief under federal or state bankruptcy or insolvency laws which is not discharged, dismissed, or withdrawn within sixty (60) days of filing; or applying for or consenting to the appointment of a receiver for all or a substantial portion of its assets;

10.2.3 Misrepresentation. The making of any representation or warranty by any party in this Agreement that it knows or should have known was materially false as of the Effective Date;

10.2.4 Other Material Breach. The breach of any other material covenant, agreement, representation or warranty made under this Agreement, if such breach has not been waived in writing and has not been cured by breaching party within thirty (30) days following receipt of written notice specifying the nature of such breach, or, as agreed by the parties, if not capable of being cured within such thirty (30) day period.

- 10.2.5 Failure to Cease Operation. Essentia's failure to cease operation of the Project on the Termination Date defined under section 10.1 shall be a default under this Agreement.
- 10.3 Right to Terminate. In the event of a Default as set forth herein, the party not in Default (the "Non-Defaulting Party") will have the right to terminate this Agreement upon written notice to the Defaulting Party. Upon termination of this Agreement in accordance with this provision the parties agree to immediately cease using or displaying the Project Marks, and the Defaulting Party will be liable to the Non-Defaulting Party for the payment of all costs and expenses incurred by the Non-Defaulting Party in removing, destroying, discarding and/or replacing all signs, materials, or other uses of the Project Marks under this Agreement.
- 10.4 Remedies. The parties acknowledge and agree that the nature of entering into and granting the rights and benefits under this Agreement involves a complex and time-consuming legal, political, and corporate process and, in the event of a Default resulting in early termination of this Agreement, the Non-Defaulting Party will incur considerable cost and expense in effectuating a change of the Project Marks, soliciting and entering into a subsequent agreement with a third party, and/or negative impacts on the rights granted in exchange for the Naming Rights Fee. Therefore, in the event of a Default resulting in the early termination of this Agreement, in addition to all other rights or remedies available to the parties at law or in equity, the party in default agrees to pay all reasonable costs and expenses in effectuating a change of the Project Marks and, in the event of default by City or Statutory Termination pursuant to Section 10.1, an equitable lump sum payment no greater than the amount of the Naming Rights Fee reflecting the loss of the rights granted in exchange for the Naming Rights Fee.
- 10.5 Contemporaneous Condition. If despite the parties' compliance with their obligations under this Agreement: (i) the City fails to approve this Agreement; (ii) the parties fail to enter into the Essentia Lease for the Essentia Exclusive Use Area within the Project prior to the Completion Date; (iii) the City fails to construct the Project in accordance with the final plans agreed upon by the parties or deliver possession of a Project approved for occupancy for the contemplated uses by Essentia; or (iv) City and YMCA fail to enter into the Use and Operations Agreement containing terms and provisions relating to the use and operation of the Project by Essentia approved by Essentia by the Completion Date, City and/or Essentia will have the right to terminate this Agreement upon written notice thereof and, upon such termination, the City shall return any funds paid by Essentia for the Naming Rights and the parties from that point shall have no further obligations hereunder except as provided by those terms and conditions expressly set forth as surviving the Term. The parties acknowledge and agree that this Naming Rights Agreement and the following contemporaneous agreements are integral to each other: (i) Essentia Lease; and (ii) Use and Operations Agreement allowing the Additional Essentia Rights in Article 3 of this Agreement (collectively the "Operative Agreements"). It is the intent of the parties for this Agreement to take effect and be enforceable only if and when the Operative Agreements are executed by the respective parties.
- 10.6 Force Majeure. Unless otherwise provided in this Agreement, if performance under this Agreement is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the parties, including, but not limited to, fire, flood, epidemic, earthquake, explosion, act of God or public enemy, riot or civil disturbance, strike, labor dispute, war, terrorist threat or activity, any government law, order, or regulation, or order of any court or jurisdiction (a "Force Majeure"), the restricted party will not be in breach hereof and the performance or obligation of such party will be excused for a period of time equal to the period

during which the Force Majeure prevents such performance. In such event, the parties will make reasonable efforts to determine sufficient actions allowing the restricted party to satisfy its obligations hereunder. The financial condition, default, breach, or intentional or negligent act or omission of this Agreement by the party seeking excuse from performance will not constitute a Force Majeure.

10.7 Project Damage. If a Force Majeure results in damage or destruction of the Project to the extent that services and/or events at the Project must be cancelled or rescheduled, and repair or reconstruction of the Project will take longer than ninety (90) days from the time City becomes or should have become aware of such destruction (the “Discovery Date”), then: (a) if City gives Essentia notice no more than twenty (20) days following the Discovery Date that the Project will be repaired and restored within one hundred eighty (180) days from the Discovery Date (the “Repair Assurance”), Essentia will have no right to terminate this Agreement, provided Essentia will be credited or refunded for the time period covered from the date of any damage or destruction until the first date services and/or events resume upon repair and restoration of the Project; however (b) if City fails to give Essentia such Repair Assurance as set forth herein, Essentia may terminate this Agreement upon written notice to City.

11 General Terms.

11.1 Notices. All Notices must be in writing and must be sent by personal delivery, by nationally recognized overnight express delivery service, or by U.S. registered or certified mail (return receipt requested, postage prepaid), to the addresses specified above or at such other place as either party may designate to the other party by written notice given in accordance with this section. Such notices shall be deemed received (a) as of the date of delivery, if delivered by hand by 4:00 p.m. Central time on a Business Day (if hand delivered after said time, any such notice shall be deemed received as of the first Business Day after delivery), (b) as of the next Business Day, if tendered to an overnight express delivery service by the applicable deadline for overnight service, or (c) as of the fifth Business Day after mailing, if sent by regular mail. For any such notices to Essentia, a copy should be sent to: Office of General Counsel, Essentia Health, 502 East Second Street, Duluth, MN 55805.

11.2 Relationship of Parties. The parties are independent contractors and nothing contained herein will be interpreted, construed or applied in practice, in any way, as creating or establishing a partnership, agency, joint venture, or employment relationship among the parties. Each party is solely responsible for the payment of all state, federal, and local taxes and complying with all laws, regulations, and/or requirements related to its business, and each party reserves the sole and exclusive right and authority to handle, decide, supervise, manage, and control, the financial and other policies related to its business and purpose.

11.3 Governing Law. This Agreement is governed by, and must be interpreted under, the internal laws of the State of Minnesota. Jurisdiction and venue for any proceedings shall be in the State District Court sitting in St. Louis County and in Duluth, Minnesota.

11.4 Waiver and Amendment. No modification, amendment or waiver of any provision of this Agreement will be binding or valid unless in writing and executed by all parties. No failure to enforce any provision of this Agreement will be construed as a waiver or thereafter prevent any party from enforcing the same or any other provision of this Agreement. No amendment, modification, or waiver of any condition, provision, or term of this Naming Rights Agreement

shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the Commissioner of Minnesota Management and Budget, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

- 11.5 Equal Bargaining Power. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, there will be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.
- 11.6 Captions and Interpretation. The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms or provisions of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.
- 11.7 Severability. If any portion of this Agreement is judged to be illegal, invalid, or unenforceable, such portion will be given effect to the maximum extent possible by narrowing, or enforcing in part, such portion to the minimum extent necessary to make it enforceable. Any such invalidity or unenforceability will not in any way affect the validity or enforceability of the remainder of this Agreement which will continue in full force and effect.
- 11.8 Assignment. Except in the normal course of performance under this Agreement involving the parties' engagement of subcontractors or sublicensees to provide specific services related hereto, the parties shall not assign or otherwise transfer any of their respective rights and obligations under this Agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld; provided, however, that the parties shall not be required to provide such consent unless and until the assignee or transferee shall agree in writing to be bound by each and every term, covenant, and obligation of the assigning party hereunder. In the event that this Agreement is assigned in accordance with this section, and, as a result, Essentia or its assignee or transferee proposes to change the Name, Logo, and/or Project Marks, the parties agree that Essentia or its assignee or transferee will be responsible for all reasonable costs and expenses directly related to such proposed name change.
- 11.9 Counterparts. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement, and will be binding when one or more counterparts have been signed by each of the parties and delivered, either manually or electronically, to the other party, it being understood that all parties need not sign the same counterpart.
- 11.10 Entire Understanding. This Agreement, including all Exhibits referred to herein, constitutes the entire understanding between the parties and supersedes all prior or contemporaneous negotiations, discussions, understandings and agreements, whether written or oral.
- 11.11 Definitions. Capitalized terms when used herein that are not identified herein shall have the meanings given to them in the Essentia Lease and Use and Operations Agreement, if applicable, and the context is consistent with the application of such definitions.

11.12 Survival on Termination. Upon expiration or termination of this Agreement, the obligations which by their nature are intended to survive expiration or termination of the Agreement shall survive.

12 Oversight Essentia shall comply with all of the requirements of Section 17.5.3 of the Essentia Lease, including without limitation the reporting, meeting, and financial data requirements described in Section 17.5.3.

IN WITNESS WHEREOF, the parties have executed this agreement as of the Effective Date set forth above.

**ST. MARY'S DULUTH CLINIC HEALTH CITY OF HERMANTOWN
SYSTEM, DBA ESSENTIA HEALTH EAST**

By: _____

Print name: _____

Title: _____

By: _____

Print name: _____

Title: _____

By: _____

Print name: _____

Title: _____

EXHIBIT 1

EXTERIOR SIGNAGE

[COVER PAGE – ATTACHMENT(S) TO FOLLOW]

** The contents of this exhibit are intended to be a mock-up and therefore such contents are representative of desired design but not to scale.*

EXHIBIT 2

INTERIOR SIGNAGE

[COVER PAGE – ATTACHMENT(S) TO FOLLOW]

EXHIBIT 3

MUNICIPAL SIGNAGE

[COVER PAGE – ATTACHMENT(S) TO FOLLOW]

Designs to be finalized at a future date and added to Agreement by amendment

EXHIBIT 4

COMMON SPACE

[COVER PAGE – ATTACHMENT(S) TO FOLLOW]

Exhibit 2 page 1
Essentia Wellness Center
First Floor

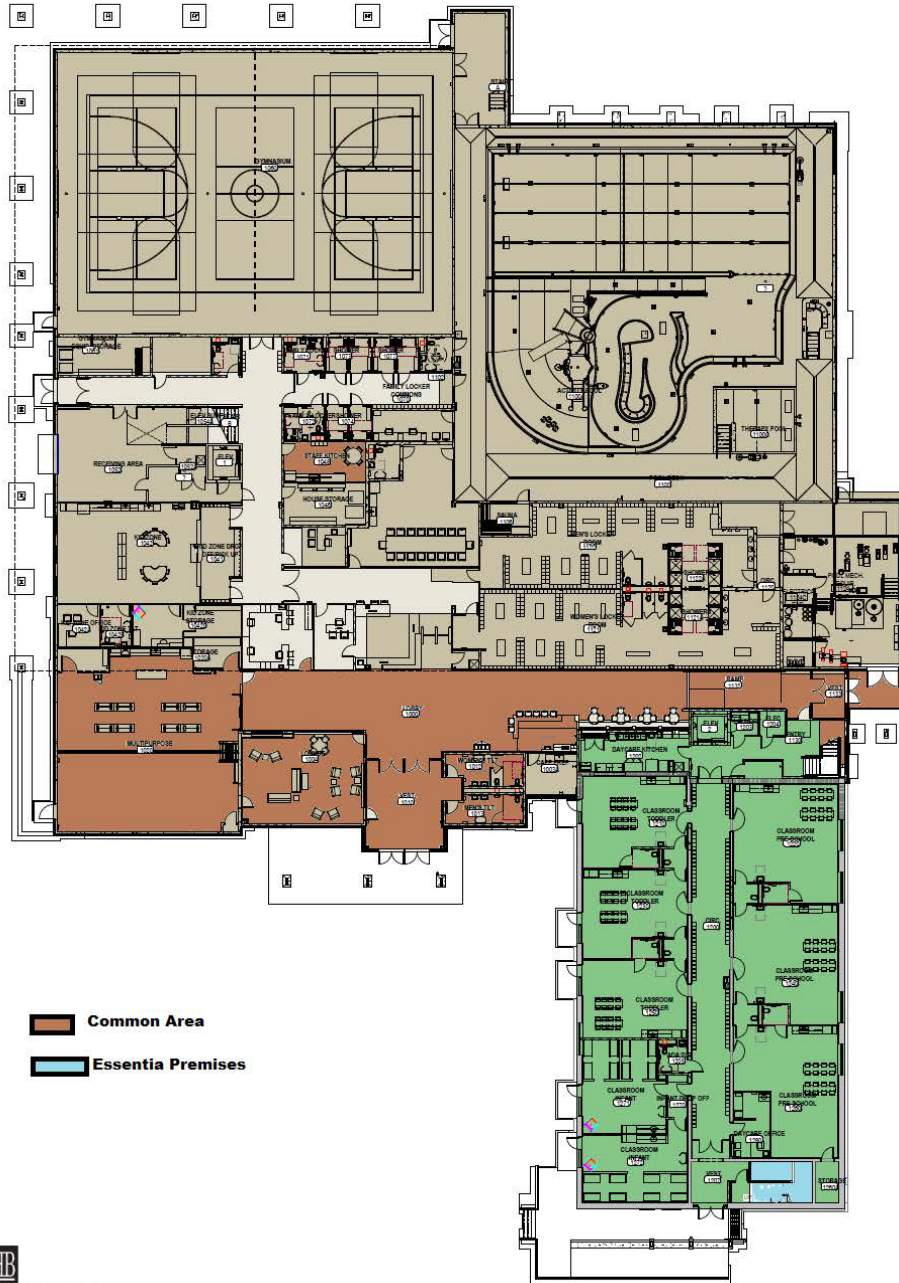


EXHIBIT 5
PROJECT MARKS
[RESERVED]

EXHIBIT 6

ESSENTIA MARKS

[RESERVED]

EXHIBIT 7
CITY MARKS

[RESERVED]

EXHIBIT 8
DESIGNATIONS
[RESERVED]

TO: Mayor & City Council
FROM: John Mulder, City Administrator



DATE: April 30, 2020

Meeting Date: 5/4/20

SUBJECT: Essentia Wellness Center –
Lease Agreement

Agenda Item: 12-L

Resolution 2020-65

REQUESTED ACTION

Approve and amended and re-stated lease agreement with Essentia Health for space at the Essentia Wellness Center

BACKGROUND

On March 18, 2019, the City approved a Lease Agreement with Essentia Health (Resolution 2019-41). That agreement needed to have approval by the State of Minnesota Office of Management and Budget. That document was submitted to the State on July 10, 2019.

After many discussions, meetings, phone calls, and e-mails with the State of Minnesota and then again with the staff at Essentia, the agreement has been revised and we expect final approval within the next week.

The biggest change was the term of the lease. Previously, the term was for 10 years with two 5-year extensions. The amended and re-stated lease is for 20 years with options to terminate after 10 and 15 years.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Amended and Restated Essentia Lease

Resolution No. 2020-65

RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER AN AMENDED AND RESTATED LEASE AGREEMENT BETWEEN THE CITY OF HERMANTOWN AND ESSENTIA HEALTH

WHEREAS, the City of Hermantown (“City”) constructed a community health and wellness center located at 4307 Ugstad Road in Hermantown, Minnesota known as the Essentia Wellness Center (“Project”); and

WHEREAS, the State of Minnesota has allocated \$8,000,000 in grant monies (“G.O. Grant”) to assist with the construction of the Project; and

WHEREAS, the G.O. Grant is proceeds of state general obligations bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

WHEREAS, the City leased a portion of the Essentia Wellness Center to Essentia Health (“Essentia”) pursuant to a Lease Agreement dated effective May 16, 2019; and

WHEREAS, the City and Essentia desire to amend and restate the Lease Agreement to reflect the requirements of the G.O. Grant; and

WHEREAS, a proposed Amended and Restated Lease Agreement (“Amended and Restated Lease”) is attached hereto as Exhibit A; and

WHEREAS, the City Administrator recommends the approval of the Amended and Restated Lease; and

WHEREAS, the City Council of the City of Hermantown has duly considered this matter and believes that it is in the best interests of the City of Hermantown to enter into the proposed Amended and Restated Lease with Essentia.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota as follows:

1. The Amended and Restated Lease substantially in the form of the one attached hereto as Exhibit A is hereby approved with such minor modifications thereto as are approved by the City Administrator and City Attorney.

2. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such Amended and Restated Lease on behalf of the City of Hermantown.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 4, 2020.

EXHIBIT A

**AMENDED AND RESTATED
LEASE AGREEMENT**

THIS AMENDED AND RESTATED LEASE is made and entered into effective as of the ____ day of _____, 2020 (the “Effective Date”) by and between City of Hermantown (“Landlord” or “City”), and The Duluth Clinic, Ltd., d/b/a Essentia Health Wellness Clinic Hermantown (“Tenant” or “Essentia”). Both Landlord and Tenant are hereinafter referred to individually as “party” and collectively as “parties” in response to the following situation:

RECITALS

A. Landlord and Tenant entered into a Lease Agreement dated effective May 16, 2019 (“Original Lease”).

B. Landlord has requested that the Lease Agreement be revised to reflect the terms of the G.O. Grant from the State of Minnesota that has been allocated to the Project.

C. Tenant is willing to agree to the request made by Landlord.

D. Landlord and Tenant desire to amend and restate the terms of the Original Lease as provided for in this Amended and Restated Lease Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

The terms of the Original lease are hereby amended and restated in their entirety to read as follows:

DEFINITIONS

Except as otherwise specifically defined in this Lease, the capitalized terms used in this Lease have the meanings ascribed to them in Exhibit 1.

EXHIBIT OUTLINE

<u>Exhibit 1</u>	Definitions
<u>Exhibit 2</u>	Legal Description; Premises; Common Areas
<u>Exhibit 1.2.3.1</u>	Essentia December 2018 Re-Design
<u>Exhibit 3</u>	CAM Charges
<u>Exhibit 4</u>	Project Rules

BASIC TERMS

The following Basic Terms are governed by the particular sections in this Lease pertaining to the following information:

1. **Premises:** The entire second floor, consisting of 9,824 rentable square feet (the “Premises”) of the Building located at 4289 Ugstad Road, Hermantown, Minnesota 55811 commonly known as the “Essentia Wellness Center”. The Premises are depicted on the attached Exhibit 2. It is agreed that the parties intend for the Premises to be measured according to ANSI/BOMA Z65.1-2017 standards upon completion of construction of the Premises. Tenant will have the right to remeasure the Premises at any time before or during the Term to confirm acceptance with this standard.
2. **Lease Term:** Two Hundred Forty (240) full calendar months commencing on the Commencement Date (“Term”).
3. **Commencement Date:** The commencement date is anticipated by Landlord to be October 1, 2019. It is agreed that the parties intend to adjust the commencement date, as needed, to reflect the actual date substantial completion of the Premises is achieved and a certificate of occupancy of the Premises has been delivered along with possession of the Premises that allows Tenant to make its intended use of the Premises without interruption.
4. **Basic Rent:**
 - 4.1 **Rent.** Subject to any adjustments to the rentable square footage, Tenant shall pay to the Landlord annual rent of Two Hundred Sixteen Thousand One Hundred and Twenty-eight and No/100 Dollars (\$216,128.00) based on a rate of Twenty-two and No/100 Dollars (\$22.00) per square foot during the Term. The annual rent shall be payable in equal monthly installments in lawful money of the United States with the first payment due on the Commencement Date hereof and subsequent payments on or before the 1st day of each month throughout the Term. Landlord and Tenant will prorate, on a per diem basis, rent for any partial month within the Term. The rent shall be payable at such place as Landlord shall, from time to time, designate in writing to Tenant.
 - 4.2 **Adjustment.** Subject to the cap in Section 4.3 of the Basic Terms of this Lease below, the annual rent shall be increased on January 1, 2025 and on each subsequent January 1 during the Term by two and one-quarter percent (2.25%) over the annual rent for the preceding year.
 - 4.3 **Cap.** Notwithstanding any provisions to the contrary contained herein, the rent payable by Tenant under Article 2 hereof shall never exceed the amounts permitted to be paid from Essentia Revenues under Section 7.6 of the Use and Operations Agreement. Within 30 days of the completion of the City’s audit each year, the City’s authorized representative shall certify to the Commissioner of Minnesota Management and Budget that all Essentia Revenues received in the prior year did not exceed the cap established in this paragraph. Notwithstanding anything to the contrary in this Lease, the rent payable by Essentia under Article 2 hereof and Additional Rent payable under Section 4.1 or Section 5 shall never be used for any Capital Maintenance and Repairs that the Landlord will amortize.
5. **Termination Options:** Tenant shall have the option to terminate this Lease at the end of the first one hundred twenty (120) months of this Lease and thereafter at the end of the next sixty (60) months of the Term of this Lease by providing Landlord written notice of its intent to exercise such option at least one hundred eighty (180) days prior to the expiration of the one hundred twentieth (120th) month or one hundred eightieth (180th) month, as the case may be. If the option to terminate is not exercised, Tenant may request that the Basic Rent, including any adjustments, for the remainder of the Term of the Lease be reevaluated based on a good faith effort by Landlord and Tenant at least ninety (90) days prior to the one hundred twentieth (120th) month or one hundred

eightieth (180th) month, as the case may be. If Landlord and Tenant are unable to agree upon the Basic Rent by such time, Tenant shall have the option to either: (i) elect to exercise its option to terminate this Lease, or (ii) elect an appraisal process to determine the market rent. If the appraisal process is elected, both Landlord and Tenant shall appoint a real estate appraiser within thirty (30) days who is a member of the American Institute of Real Estate Appraisers (or its equivalent) to assist in the determination of market rent. The two appraisers shall appoint a third appraiser who is also a member of the American Institute of Real Estate Appraisers (or its equivalent). The Basic Rent for the remainder of the Term at that interval shall be determined by the agreement of any two of such three appraisers, which determination shall be made not later than thirty (30) days prior to the end of the one hundred twentieth (120th) month or one hundred eightieth (180th) month, as the case may be. Landlord and Tenant shall each bear the costs and fees of their respective appraisers and shall share equally the cost of the third appraiser. Any rent determined under this Section 5 is subject to the provisions of Section 4.3.

6. **Address of Landlord for Rent Payment and Notices:** The City of Hermantown
5015 Maple Grove Road
Hermantown, Minnesota 55811
- With a copy to:** Attn: City Administrator

Steven C. Overom
Overom Law, PLLC
11 E. Superior Street
Suite 543
Duluth, MN 55802

7. **Address of Tenant for Notices:** Essentia Health
502 East 2nd Street
Duluth, MN 55805
Attn: Scot Ramsey

With a copy to: Office of General Counsel
Essentia Health
502 East 2nd Street
Duluth, MN 55805

8. **Permitted Use:** Tenant shall use the Premises for general medical office purpose, clinical services, wellness programming and community health education (including such purposes reasonably related thereto).

9. **Acknowledgement of State Grant.** Under the provisions contained in Laws of Minnesota 2017, 1st Special Session, Chapter 8, Article 1, Section 20, Subdivision 11, the State of Minnesota has allocated \$8,000,000.00 (the "G.O. Grant"), which is to be given to Landlord as a grant to assist it demolition of a portion of the middle school, and to design, construct a new addition to the middle school building and renovate the remaining existing building, furnish, and equip the facility as the Arrowhead Regional Health and Wellness Center as authorized by such legislation. Landlord and Tenant acknowledge that the costs of design and construction of the Project and Premises will be funded in part through the proceeds of a state grant in the amount of \$8,000,000 from the State of Minnesota acting by and through its Department of Employment and Economic Development made to Landlord pursuant to the terms of a General Obligation Bond Proceeds Grant Agreement - Construction Grant for the Arrowhead Regional Health and Wellness Center now known as the Essentia Wellness Center ("Grant Agreement"). Landlord agrees to comply with all terms and

conditions of the Grant Agreement (unless Landlord's failure to comply is the result of Tenant's failure to comply with the terms and conditions of this lease) and Tenant agrees to cooperate fully with Landlord in so complying.

**ARTICLE 1
CONSTRUCTION OF PREMISES, LEASE OF PREMISES AND LEASE TERM**

- 1.1 Premises.** In consideration of the mutual covenants this Lease describes, and subject to the terms, covenants and conditions set forth in this Lease, Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord. The rentable area of the Premises is the rentable area specified in the Basic Terms. Notwithstanding to the contrary, any moveable or labeled fixtures, equipment, and/or inventory purchased by Essentia for use in the Premises, shall remain the property of Essentia.
- 1.2 Construction, Delivery and Commencement.**
- 1.2.1 Landlord to Construct the Project and Premises.** Landlord shall, at its own cost and expense, complete the construction of the Project and Premises subject to the provision of Section 1.2.3.
- 1.2.2 Possession.** Upon substantial completion (as defined below) by Landlord of Landlord's Work, if any, in the Premises and the issuance of a certificate of occupancy for the Premises, Landlord shall notify Tenant in writing. Landlord's delivery of such notice shall constitute delivery of possession of the Premises, although Landlord reserves the right to thereafter enter upon the Premises to the extent reasonably necessary to fully complete Landlord's Work, if any. As used herein, "substantial completion" means completion of Landlord's Work to such extent that Tenant may reasonably commence its Permitted Use in the Premises without undue interference with the balance of the Landlord's Work, if any, to be performed by Landlord in the Premises, or undue interference by Landlord with Tenant's construction activities, if any.
- 1.2.3 Tenant's Work.** Prior to commencement of any Tenant's Work, Tenant shall notify Landlord in writing of the date Tenant will commence construction and shall deliver to Landlord certificates of insurance evidencing the existence of insurance as required by the provisions of this Lease. Based upon the nature of Tenant's Work, Tenant's contractor shall commence the construction of Tenant's Work upon a mutually agreed upon schedule during the performance of Landlord's Work or promptly following Landlord's delivery of the notice of substantial completion of Landlord's Work. Tenant shall diligently pursue completion of Tenant's Work under the provisions of Article 8 of this Lease. Tenant shall comply with any project labor agreement that is applicable to Tenant's Work. Tenant shall be responsible for the following items ("Tenant's Work") with respect to the Premises:
- 1.2.3.1** The architect fees related to the re-design of a portion of the Premises as described on Exhibit 1.2.3.1 attached hereto ("Essentia December 2018 Re-Design") in the amount of \$27,365.
- 1.2.3.2** The construction cost increase related to the Essentia December 2018 Re-Design over the construction costs prior to the Essentia December 2018 Re-Design in the amount of \$29,820.

- 1.2.3.3 The cost of materials and installation from the low voltage wiring, cabling and related equipment required by Tenant for the Premises and approved by Tenant in writing.
- 1.2.3.4 The cost of materials and installation of Essentia Furniture, Fixtures and Equipment approved by Tenant in writing.

1.3 Quiet Enjoyment. Subject to the terms of this Lease, Landlord covenants that if Tenant timely (a) pays all Rent and other charges provided for herein, (b) performs all of its obligations provided for herein, and (c) observes all of the other provisions hereof, then Tenant shall at all times during the Term peaceably and quietly have, hold and enjoy the Premises, without interruption or disturbance by Landlord, or anyone claiming through or under Landlord.

ARTICLE 2 RENT

- 2.1 **Basic Rent.** Tenant will pay Basic Rent in monthly installments to Landlord, in advance, without offset or deduction, commencing on the Commencement Date and continuing on the first day of each and every calendar month after the Commencement Date during the Term. Tenant will make all Basic Rent payments to Landlord at the address specified in the Basic Terms or at such other place or in such manner as Landlord may from time to time designate in writing. Landlord and Tenant will prorate, on a per diem basis, Basic Rent for any partial month within the Term.
- 2.2 **Additional Rent.** Article 3 of this Lease requires Tenant to pay Additional Rent consisting of CAM Charges, Property Taxes on the Premises, and certain Tenant obligations specifically set forth in this Lease. A listing of the Additional Rent items and estimated amounts is as set forth in Exhibit 3. Tenant will pay any Additional Rent described in this Lease that is not included in CAM Charges and Property Taxes under Article 3 within 30 days after receiving Landlord's invoice for such Additional Rent with reference to the specific provision of this Lease making Tenant responsible for such amount(s). Tenant will make all Additional Rent payments to the same location and, except as set forth in the preceding sentence, in the same manner as Tenant's payments of Basic Rent.
- 2.3 **Premises Operating Expenses.** Tenant shall pay all Premises Operating Expenses with respect to the Premises. Tenant shall apply for and have all separately metered utilities for the Premises placed in Tenant's name. Any utilities not metered separately shall be calculated by Landlord and invoiced to Tenant. The Premises Operating Expenses shall include the cost of Routine Maintenance and Repair as defined in Exhibit 1 attached hereto.

ARTICLE 3 ADDITIONAL RENT

- 3.1 **Common Area Maintenance (CAM) Charges.**
 - 3.1.1 **Common Areas.** Tenant is responsible for its pro rata share (estimated to be 13% with a final percentage determined by dividing the square footage of the Premises by the square footage of the Project and subject to the provisions of this section 3.1) of Project Operating Expenses, as defined in Sections 3.3, 3.4 and 3.5 for the Common Area calculated as follows: the square footage of the Premises (9,824 s.f.) divided by the square footage of the Project less the square footage of the Premises (62,176 s.f.) ("Common Area Denominator"). For the purposes of this Section 3.1.1 and Section 3.1.2, the parties may reasonably re-determine Tenant's pro rata share according to Item 1 of the Basic Terms

and from time to time to reflect final measurement upon completion of the Project, reconfigurations, additions or modifications of the Project and Premises, and disproportionate use by other tenants if any. For the avoidance of doubt, Tenant's pro rata share of Project Operating Expenses under this Section 3.1.1 would be calculated as follows [assuming the following for explanatory purposes: (i) annual total Project Operating Expenses of \$557,579.00; (ii) exterior costs of \$37,087.00; (iii) total Common Area Denominator (62,176 s.f.); (iv) total square footage of Common Area shown in Exhibit 2 as 8,000 s.f; (v) total square footage of Tenant Premises as 9,824 s.f; and (v) Tenant pro rata share percentage of 13%]

Step 1 (Determine cost per square foot of Project) \$557,579.00 (annual Project Operating Expenses as shown on Exhibit 3 attached hereto) minus the exterior costs determined pursuant to Section 3.1.2 of \$37,087.00 divided by 62,176 (Common Area Denominator) = **\$8.37** (cost per square foot of Common Area Denominator portion of the Project)

Step 2 (Determine Common area share of total annual Project Operating Expenses) \$8.37 (cost per square foot of the Common Area Denominator portion of the Project) multiplied by 8,000 (Common Area square footage) = \$66,960.00 (Common Area share of total annual Project Operating Expenses)

Step 3 (Determine annual share of Common Area Operating Expenses of Tenant) \$66,960.00 (Common Area share of total annual Project Operating Expenses) multiplied by .13 (Tenant's pro rata share percentage) = **\$8,705.00** (Annual share of Common Area Operating Expenses of Tenant to be paid monthly in the amount of **\$725.00** during the term of this Lease.)

3.1.2 Exterior Costs. Tenant is responsible for its pro rata share (13% estimated at this time subject to the provisions of this section 3.1) of the operating expenses described in Section 3.3.4, 3.3.5, 3.3.8 and 3.3.9 that are directly related to the exterior areas of the Project estimated to be \$37,087.00 (including 15% YMCA administration costs) as shown on Exhibit 3 attached hereto [calculated as follows: the square footage of the Premises, (9,824 square feet) divided by the square footage of the Project (72,000 square feet)]. One-twelfth of Tenant's share of CAM Charges for exterior costs determined under this Section 3.1.2 estimated to be \$4,821.00 in total and \$402.00 per month shall be paid monthly during the Term.

3.2 Property Taxes. Property Taxes shall mean the aggregate amount of all real estate taxes, assessments (whether they be general or special), sewer rents and charges, transit taxes, taxes based upon the receipt of rent and any other federal, state or local governmental charge, (but not including income or franchise taxes, capital stock, inheritance, estate, gift, or any other taxes imposed upon the Premises). Property Taxes for any calendar year shall be Property Taxes which are due for payment or paid in such year, rather than Property Taxes which are assessed or become a lien during such year. Tenant shall pay before penalty attaches all Property Taxes related to the Premises.

3.3 Project Operating Expenses shall mean all ordinary costs, fees disbursements and expenses paid or incurred by or on behalf of Landlord in the normal conduct of operation, ownership, maintenance, insurance, management, non-capital replacement and repair of the Building (except as set forth in this Article 3) including, without limitation:

- 3.3.1** Commercially reasonable premiums for property, casualty, liability, rent interruption or other types of insurance carried by Landlord.
- 3.3.2** The total charges of any independent contractors or property managers engaged in the operation, repair, care, and maintenance of any portion of the Building provided such charges are reasonably allocated to its specific efforts on the Building and such contractors are providing services that benefit all Building tenants.
- 3.3.3** Cleaning expenses including, without limitation, window cleaning, and garbage and refuse removal.
- 3.3.4** Landscaping expenses including, without limitation, irrigating, trimming, mowing, fertilizing, seeding, and replacing plants.
- 3.3.5** Snow removal on driveways, parking areas, sidewalks and walkways.
- 3.3.6** Heating, ventilating, air conditioning and steam/utilities expenses, including fuel, gas, electricity, water, sewer, telephone and other services, but only to the extent that the charges for the same are not separately metered and paid directly by Tenant.
- 3.3.7** Subject to the provisions of Section 3.3.12 below, the cost of maintaining, operating, repairing and replacing components of equipment or machinery that benefit all Building tenants including, without limitation, heating, refrigeration, ventilation, electrical, plumbing, mechanical, elevator, escalator, sprinklers, fire/life safety, security and energy management systems, including service contracts, maintenance contracts, supplies and parts; provided, all such permitted capital expenditures (together with reasonable financing charges) shall be amortized for purposes of this Lease over their useful lives.
- 3.3.8** Other items of repair or maintenance of the Building.
- 3.3.9** The costs of providing security for and supervising the Building commensurate with similar facilities.
- 3.3.10** The cost of the rental of any machinery or equipment and the cost of supplies used in the maintenance and operation of the Building
- 3.3.11** Reasonable audit fees and the cost of accounting services incurred in (1) the preparation of statements referred to in this Lease and financial statements, and (2) the computation of the CAM Charges by Tenants of the Building.
- 3.3.12** Capital expenditures made to comply with any laws or other governmental requirements enacted after the Commencement Date provided, all such permitted capital expenditures (together with reasonable financing charges) shall be amortized for purposes of this Lease over their useful lives for the period applicable to the remainder of the present lease Term.
- 3.3.13** Reasonable legal fees and expenses directly related to the operation and management of the Building (but excluding legal expenses set forth in section 3.3.14, including those related to property tax reduction per Section 3.2 above.
- 3.3.14** Salaries, wages and other amounts paid or payable for maintenance staff and other

employees of the YMCA for work directly involved in the maintenance and operation of the Building according to the personnel list and allocations in Exhibit 3, including contributions and premiums towards fringe benefits, unemployment, disability and worker's compensation insurance, pension plan contributions and similar premiums and contributions and the total charges of any independent contracts engaged in the operation, repair, care, maintenance and cleaning of any portion of the Building.

- 3.4** Project Operating Expenses shall not include any expense or cost which under generally accepted accounting principles and practices consistently applied would not be considered an operating expense of the Building.
- 3.5** Furthermore, Project Operating Expenses shall not include expenditures for any of the following:
- 3.5.1** Costs (including permit, license and inspection fees) incurred in renovating, improving, decorating, painting or redecorating vacant space or space for tenants;
 - 3.5.2** Landlord's cost of electricity or other services sold or provided to tenants, other than Tenant, for which Landlord is to be reimbursed as a charge over the rent and additional rent payable under the lease with that tenant;
 - 3.5.3** Costs incurred because another tenant violated the terms of its lease;
 - 3.5.4** Overhead and profit paid to subsidiaries or affiliates of Landlord for management or other services on or to the Building or for supplies or other materials, to the extent that the costs of the services, supplies or materials exceed the reasonable and customary costs of the services, supplies or materials had they not been provided by a subsidiary or affiliate;
 - 3.5.5** Repairs or other work needed because of fire, windstorm, or other casualty or cause insured against by Landlord, to the extent such work is covered by an insurance policy held by Landlord;
 - 3.5.6** Costs of correcting defects of the Project infrastructure or inadequacy of the initial design of the Project;
 - 3.5.7** Any costs, fines, or penalties incurred because Landlord violated a governmental rule or authority;
 - 3.5.8** Penalties incurred because Landlord was late in making any payment for which Landlord was responsible, such as (but not limited to) taxes or payments under an equipment lease;
 - 3.5.9** Advertising and promotional expenses;
 - 3.5.10** Costs of correcting or repairing defects in the Project and/or any associated parking facilities, and/or equipment or the replacement of defective equipment, to the extent all of the foregoing costs are covered by warranties of manufacturers, suppliers of contractors, or are otherwise borne by parties other than Landlord;
 - 3.5.11** Compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord;
 - 3.5.12** Contributions to any so-called "reserve" fund or the like;

- 3.5.13 Legal and other expenses incurred in negotiating or enforcing the terms of any tenant lease;
 - 3.5.14 Expenses for restoration of the Project required as a result of condemnation;
 - 3.5.15 Costs for sculpture, paintings or other works of art;
 - 3.5.16 Any expenses for which Landlord receives reimbursement from any tenant or any other party (other than pursuant to a general sharing of costs such as Property Taxes or Operating Expenses);
 - 3.5.17 Legal fees, space planners' fees, brokers' commissions, and other related costs incurred by Landlord in connection with leasing space and negotiating leases in the Project.
 - 3.5.18 Costs associated with the operation of the entity that constitutes Landlord (such as Landlord's general administrative overhead) as the same is distinguished from the costs of operation of the Project;
 - 3.5.19 Costs of capital expenses or improvements, except as expressly permitted in Section 3.3.12;
 - 3.5.20 Depreciation on the Project; other "non-cash" expense items or amortization, except for amortization charges permitted in Section 3.3.12 hereof;
 - 3.5.21 Payment of principal and/or interest on debt or amortization payments and the costs of expenses associated with obtaining any mortgage or mortgages executed by Landlord covering the Project, rental concessions or negative cash flow guaranties, and rental payments under any ground or underlying leases or lease;
 - 3.5.22 Contributions to charitable organizations;
 - 3.5.23 Rentals and other related expenses incurred in leasing air conditioning systems, elevators, or other equipment ordinarily considered to be of a capital nature, and except for security or emergency HVAC equipment;
 - 3.5.24 Costs incurred in removing the property of former tenants or occupants of the Project;
 - 3.5.25 Consulting costs and expenses incurred by Landlord except and to the extent the same relate directly to the management or operation of the Project;
 - 3.5.26 Costs or fees relating to the defense of Landlord's title to or interest in the Project, or any part thereof.
 - 3.5.27 Costs related to specialty services or maintenance to specialty equipment which benefits some, but not all, tenants of the Building, such as repair, maintenance, or services provided to members or visitors of the YMCA, with the exception of the Therapy Pool space.
- 3.6 Estimate of CAM Charges.** Prior to September 1 of each year of the Term, the Landlord at its option may make a good faith estimate of the Tenant's proportionate share of CAM Charges for such upcoming calendar year and, upon thirty (30) days' written notice to the Tenant, require the monthly payment of an amount equal to 1/12 of such estimate. If for any calendar year the Tenant's proportionate share of CAM Charges collected for the prior calendar year as a result of the

Landlord's estimate exceeds the Tenant's proportionate share of CAM Charges actually due during such prior calendar year, as determined based upon the Landlord's statement described above, then the Landlord shall immediately refund to the Tenant any overpayment. Likewise, the Tenant shall pay to the Landlord, any underpayment with respect to the prior calendar year as described above. Within thirty (30) days of the end of each calendar year, Landlord agrees to provide the Commissioner of the Department of Management and Budget, his or her successor or assigns, a reconciliation of the rent received and the actual CAM Charges for the then just-completed calendar year.

- 3.7 Audit.** Tenant shall have an unfettered right to audit Landlord's books and records with respect to CAM Charges and any other amounts payable by Tenant as Additional Rent hereunder. Tenant will be responsible to pay for such audit and any fees and/or expense associated with said audit. Should the audit reveal a discrepancy in the actual CAM Charges or Additional Rent versus what Tenant paid the Landlord, the parties will reconcile the difference within thirty (30) days of written notice. Should the discrepancy result in an overpayment by Tenant of 5% or more of its total CAM Charges or Additional Rent, Landlord shall be responsible for the costs of Tenant's audit.

ARTICLE 4 USE

- 4.1 Permitted Use.** Tenant shall use the Premises only for the use specified in Item 8 of the Basic Terms (the "Permitted Use"), and not for any other purpose. Tenant will not use the Property or knowingly permit the Premises to be used in violation of any Laws or in any manner that would (a) cause injury or damage to the Premises or to the person or property of any other tenant in the Building; (b) cause substantial diminution in the value or usefulness of all or any part of the Premises or Project (reasonable wear and tear excepted); or (c) constitute waste or a public or private nuisance. Tenant will obtain and maintain, at Tenant's sole cost and expense, all permits and approvals required under the Laws for Tenant's use of the Premises.
- 4.2 Laws and Project Rules.** This Lease is subject and subordinate to all Laws. Tenant shall at all times comply with the lawful rules and regulations for the Project set forth in Exhibit 4 (the "Project Rules"), and with any reasonable additions thereto and modifications thereof adopted from time to time by Landlord of which Tenant has been given at least 15 days' prior written notice, and each such rule or regulation shall be deemed to be a covenant of this Lease to be performed and observed by Tenant. Landlord will enforce the Project Rules against the occupants of the Project in a nonarbitrary and nondiscriminatory manner. In the event of any conflict between the Project Rules and this Lease, this Lease shall control.
- 4.3 Common Areas.** Landlord grants Tenant the non-exclusive right, together with all other occupants of the Building and their agents, employees and invitees, to use the Common Areas during the Term, subject to all Laws. Landlord, at Landlord's sole and absolute discretion (but subject to Section 9.3 below), may make changes to the Common Area. Landlord's rights regarding the Common Area include without limitation the right to: (a) restrain unauthorized persons from using the Common Area; (b) place permanent or temporary kiosks, displays, carts or stands in the Common Area and lease the same to others; (c) temporarily close any portion of the Common Area (i) for repairs, improvements or Alterations, (ii) to discourage unauthorized use, (iii) to prevent dedication or prescriptive rights, or (iv) for any other reason that Landlord reasonably deems necessary; (d) change the shape and size of the Common Area; (e) add, eliminate or change the location of any improvements located in the Common Area; and (f) impose and revise Project Rules concerning use of the Common Area.

- 4.4 Signs.** Exterior and interior signage shall be installed as set forth in the Naming Rights Agreement between Landlord and Tenant entered into contemporaneously with this Agreement. Tenant may install additional signage not set forth in the Naming Rights Agreement only after written approval of said signage by the Landlord, which shall not be unreasonably withheld.
- 4.5 Continuous Operation.** Tenant acknowledges that the Project is an independent enterprise, and that the success of the Project is dependent upon the continued operation of Tenant's business in the Premises. Tenant shall continuously, actively, and diligently use the entire Premises (other than such minor proration thereof as are reasonably required for storage purposes) for the Permitted Use throughout the Term and shall not cease continuous operation for a period greater than thirty (30) days.
- 4.6 YMCA Space.** Essentia is granted certain rights with respect to the use of the Project outside of the Premises pursuant to Article VII of the Use and Operations Agreement. No changes shall be made by Landlord to the provisions of the Use and Operations Agreement without the consent of Essentia.

ARTICLE 5 HAZARDOUS MATERIALS

- 5.1 Compliance with Hazardous Materials Laws.** Tenant will not cause any Hazardous Material to be brought upon, kept or used on the Premises or Project in quantities reportable under any Hazardous Materials Law, or in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law. Tenant, at its sole cost and expense, will comply with all Hazardous Materials Laws and prudent industry practice relating to the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Premises or Project required for Tenant's use of the Premises and will notify Landlord of any and all Hazardous Materials Tenant brings upon, keeps or uses on the Premises or Project (other than small quantities of office cleaning or other office supplies and such supplies as are customarily used by a Tenant in the ordinary course of Tenant's Permitted Use). On or before the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, will completely remove from the Premises (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Tenant causes to be present in, on, under or about the Premises or Project. Tenant will not take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Premises or Project, nor enter into any settlement agreement, consent decree or other compromise with respect to any Claims relating to or in any way connected with Hazardous Materials in, on, under or about the Premises or Project, without first notifying Landlord of Tenant's intention to do so and affording Landlord reasonable opportunity to investigate, appear, intervene and otherwise assert and protect Landlord's interest in the Premises or Project.
- 5.2 Notice of Actions.** Tenant will notify Landlord of any of the following actions affecting Landlord, Tenant, or the property that result from or in any way relate to Tenant's use of the Premises or Project immediately after receiving notice of the same: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law; (b) any claim made or threatened by any person relating to damage, contribution, liability, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Material; and (c) any reports made by any person, including Tenant, to any environmental agency relating to any Hazardous Material, including any complaints, notices, warnings or asserted violations. Tenant will also deliver to Landlord, as promptly as possible and in any event within five Business Days after Tenant first receives or sends the same, copies of all

Claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Project or Tenant's use of the Premises or Project. Upon Landlord's written request, Tenant will deliver to Landlord documentation acceptable to Landlord reflecting the legal and proper disposal of all Hazardous Materials removed or to be removed from the Premises or Project. All such documentation will list Tenant or its agent as a responsible party and will not attribute responsibility for any such Hazardous Materials to Landlord, except for such Hazardous Materials before Tenant took possession of the Premises or Project or which are present within the Premises or Project because of the action or inaction of Landlord or any of its other tenants or their employees, agents or guests.

- 5.3 Disclosure and Warning Obligations.** Tenant acknowledges and agrees to adhere to all reporting and warning obligations required under Hazardous Materials Laws resulting from or in any way relating to Tenant's use of the Premises or Project. If Hazardous Materials Laws require the Landlord to report or warn of Hazardous Materials on the Premises or Project, Tenant agrees to provide such information when requested by Landlord and shall cooperate with Landlord in fulfilling its obligation.

ARTICLE 6 UTILITIES AND SERVICES

- 6.1 Utilities.** Landlord will provide the means for continuous, code compliant delivery of utilities and services consistent with what is customarily provided to first-class medical office buildings. Tenant shall pay for all submetered electricity and utilities used at the Premises including but not limited to electricity, water, gas, sewage and heat/air conditioning.
- 6.2 ADA Access.** Subject to Section 7.3, Landlord will provide ADA compliant access to the Premises, including provision of code and ADA compliant elevators providing access to the second floor.
- 6.3 ADA Restrooms.** Subject to Section 7.3, Landlord will provide Tenant uninterrupted access to ADA compliant restrooms on the second floor of the Premises in compliance with all laws and codes.

ARTICLE 7 MAINTENANCE AND REPAIR

- 7.1 Landlord's Obligations.** Except as otherwise provided in this Lease, Landlord will repair and maintain the following in good order, condition and repair (including any necessary replacements): (a) the roof, footings, foundation, the structural integrity of exterior and interior load-bearing walls of the Building, and window components (excluding glass breakage within the Premises); (b) the HVAC, plumbing, electrical and mechanical systems, provided that the cost of such repair, and maintenance shall be prorated pursuant to Section 3.1 of this Lease. Notwithstanding the above, the replacement of major mechanical systems shall be a subsection (a) Landlord obligation and shall be amortized for purposes of this Lease over the useful life of the major repair or replacement. For the avoidance of doubt and consistent with Section 10.3 of the Use and Operations Agreement between the City and the YMCA and subject to Section 4.3 of the Basic Terms, the City shall, at its own expense, perform Capital Maintenance and Repairs without pro rata share by Tenant for such costs outside of the Premises or Common Areas unless such costs benefit all Building tenants. Nothing in this Section 7.1 shall limit the requirements detailed in Section 4.3 of the Basic Terms

of this Lease and this Section 7.1 is subject to Section 4.3 of the Basic Terms of this Lease.

7.2 Tenant's Obligations.

7.2.1 Maintenance of Premises. Landlord is not required to make non-capital repairs or maintain the Premises (or to make any Alterations to the Premises), except as otherwise specifically provided in this Lease. Upon the Commencement Date, Landlord will ensure the Building and all systems serving the Premises and Common Area are in proper working, code-compliant order and in compliance with all laws. Except as specifically set forth in Section 7.1, Tenant is solely responsible for the Routine Maintenance and Repair of the Premises. Except as specifically set forth elsewhere in this Lease, Tenant at its sole cost and expense will keep and maintain the Premises (including without limitation all non-structural interior portions; lighting systems; interior surfaces of exterior walls; interior moldings, partitions, window glass, doors and ceilings) in good order, condition and repair, reasonable wear and tear and damage from insured casualties excepted. Tenant's repairs will be at least equal in quality and workmanship to the original work and Tenant will make the repairs in accordance with all Laws. Tenant will keep the Premises in a neat and sanitary condition and will not commit any nuisance or waste in, on or about the Premises or the Project.

7.2.2 Alterations Required by Laws. If any governmental authority requires any Alteration to the Building or the Premises as a result of Tenant's particular use of the Premises, or as a result of any Alteration to the Premises made by or on behalf of Tenant, or if Tenant's particular use of the Premises subjects Landlord or the Property to any obligation under any Laws, then Tenant will pay the cost of all such Alterations or the cost of compliance, as the case may be. If any such Alterations are Structural Alterations, then Landlord will make the Structural Alterations; provided, however, that Landlord may require Tenant to deposit with Landlord an amount sufficient to pay the cost of the Structural Alterations (including, without limitation, reasonable overhead and administrative costs) or make such other payment arrangements mutually agreed upon between the parties. If the Alterations are not Structural Alterations, Tenant will make the Alterations at Tenant's sole cost and expense in accordance with Article 8.

7.3 Reciprocal Covenant on ADA. Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable) any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Building or the Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Building or Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of any Building or the Premises. Except as provided below in this paragraph, Landlord shall be responsible for ensuring that the Building and the Premises comply with the ADA throughout the Lease Term. Landlord warrants that upon the Commencement Date, the Project and Premises will be delivered in compliance with the ADA. If Tenant's actions cause the Premises to become out of compliance with the ADA, Tenant shall be responsible for bringing the Premises back into compliance with the ADA.

ARTICLE 7 CHANGES AND ALTERATIONS

8.1 Landlord Approval. After conclusion of all construction of the Project, Tenant will not make any Structural Alterations to the Premises without first advising Landlord. Tenant will not make any

Alterations in excess of \$20,000.00 (with such amount increasing annually by 3%) without Landlord's prior written consent, which consent Landlord shall not unreasonably withhold; provided, however, that Landlord may condition its consent in its reasonable discretion. Along with any request for Landlord's consent, Tenant will deliver to Landlord complete plans and specifications for the Alterations, and will identify any prospective contractors for the Alterations. If Landlord approves the proposed Alterations, Tenant, before commencing the Alterations or delivering (or accepting delivery of) any materials to be used in connection with the Alterations, will deliver to Landlord for Landlord's reasonable approval proof of insurance required by Section 8.2, copies of all necessary permits and licenses, and such other information relating to the Alterations as Landlord reasonably requests. Tenant will not commence the Alterations before Landlord, in Landlord's reasonable discretion, approves the foregoing deliveries. Tenant will construct all approved Alterations or cause all approved Alterations to be constructed (a) promptly by a licensed and properly bonded contractor, (b) in a good and workmanlike manner, (c) in compliance with all Laws, (d) in accordance with all orders, rules and regulations of the Board of Fire Underwriters having jurisdiction over the Premises and any other body exercising similar functions, and (e) in full compliance with all of Landlord's rules and regulations applicable to third party contractors, subcontractors and suppliers performing work at the Project.

8.2 Tenant's Responsibility for Cost and Insurance. Tenant will pay the cost and expenses of all Alterations, and for any painting, restoring or repairing of the Premises or the Project the Alterations occasion. Prior to commencing the Alterations, Tenant will deliver the following to Landlord in form and amount reasonably satisfactory to Landlord: (a) payment, performance and demolition (if applicable) bonds or adequate insurance covering the same risks, if requested by Landlord; (b) evidence that Tenant and each of Tenant's contractors have in force liability insurance insuring against construction related risks, in at least the form, amounts and coverages required of Tenant under Article 10; and (c) evidence that Tenant has sufficient financial resources to pay for the cost of Alterations. The insurance policies described in the preceding sentence shall name Landlord (and, if requested by Landlord, Landlord's lender) as additional insureds and Landlord shall be named as a co-obligee under any payment and performance bond.

8.3 Construction Obligations and Ownership. Landlord may inspect construction of the Alterations. Immediately after completing the Alterations, Tenant will furnish Landlord with contractor affidavits, full and final notarized lien waivers and receipted bills covering all labor and materials expended and used in connection with the Alterations. Tenant will remove any Alterations Tenant constructs in violation of this Article 8 within thirty days after Landlord's written request and in any event prior to the expiration or earlier termination of this Lease. All Alterations Tenant makes or installs [including all telephone, computer and other wiring and cabling located within the walls of and outside the Premises, but excluding Tenant's (i) movable trade fixtures (including Tenant labeled affixed medical equipment), (ii) furniture and equipment] become the property of Landlord upon installation and, unless Landlord requires Tenant to remove the Alterations (which removal requirement may be exercised by Landlord at the time Landlord consents to such Alterations, or at the termination of the Lease), Tenant will surrender the Alterations to Landlord upon the expiration or earlier termination of this Lease at no cost to Landlord.

8.4 Liens. Tenant will keep the Premises free from any mechanics', materialmen's, designers' or other liens arising out of any work performed, materials furnished or obligations incurred by or for Tenant or any person or entity claiming by, through or under Tenant. Tenant will notify Landlord in writing at least 30 days prior to commencing any Alterations in order to provide Landlord the opportunity to record and post notices of non-responsibility or such other protective notices available to Landlord under the Laws. If any such liens are filed and Tenant, within 15 days after such filing, does not release the same of record or provide Landlord with a bond or other surety

satisfactory to Landlord protecting Landlord and the Premises against such liens, Landlord may, without waiving its rights and remedies based upon such breach by Tenant and without releasing Tenant from any obligation under this Lease, cause such liens to be released by any means Landlord deems proper, including, but not limited to, paying the claim giving rise to the lien or posting security to cause the discharge of the lien. In such event, Tenant will reimburse Landlord, as Additional Rent, for all direct costs of Landlord in discharging such liens (including, without limitation, reasonable attorneys' fees and costs).

ARTICLE 9 RIGHTS RESERVED BY LANDLORD

- 9.1 Landlord's Entry.** Landlord and its authorized representatives may at all reasonable times and upon reasonable notice to Tenant enter the Premises to: (a) inspect the Premises; (b) exercise and perform Landlord's rights and obligations under this Lease; (c) post notices of non-responsibility or other protective notices available under the laws; (d) show the Premises to current or prospective mortgagees, or to prospective purchasers of the Property; or (e) during the last 12 months of the Term, show the Premises to prospective tenants. Landlord, in the event of any emergency, may enter the Premises at any time without notice to Tenant. Notwithstanding the above, and in consideration of Protected Health Information ("PHI"), as defined under the Health Insurance Portability and Accountability Act of 1996 and any subsequent modifications thereto, being stored on the Premises, Landlord agrees prior to entering an area identified by Tenant and/or signage as containing PHI to (1) enter only when Landlord is accompanied by an authorized Tenant representative, (2) follow all Tenant procedures and protocols for the protection of PHI while on the Premises, and (3) in the event of entrance due to emergency circumstances, indemnify Tenant for claims of patients due to acts or omissions of Landlord, including its contractors, agents, and assigns. Landlord's entry into the Premises is not to be construed as a forcible or unlawful entry into, or detainer of, the Premises or as an eviction of Tenant from all or any part of the Premises. Subject to Section 9.3 below, Tenant will also permit Landlord (or its designees) to erect, install, use, maintain, replace and repair pipes, cables, conduits, plumbing and vents, and telephone, electric and other wires and other items, in, to and through the Premises if Landlord reasonably determines that such activities are necessary for properly operating and maintaining the Project.
- 9.2 Control of Project.** Landlord reserves all rights with respect to the Project and Premises not specifically granted to Tenant under this Lease, including, without limitation, the right to: (a) change the name or street address of the Project; (b) designate and approve all types of signs, window coverings, internal lighting and other aspects of the Premises and Project and its contents that may be visible from the exterior of the Premises subject to the Naming Rights Agreement; (c) grant any party the exclusive right to conduct any business or render any service in the Project, provided such exclusive right does not prohibit Tenant from using the Premises for the Permitted Use and subject to the Naming Rights Agreement; (d) close the Project after regular business hours in accordance with such rules and regulations as Landlord may prescribe from time to time for security purposes; (e) install, operate and maintain security systems that monitor persons entering or leaving the Project; (f) install and maintain pipes, ducts, conduits, wires and structural elements in the Premises that serve other parts or other tenants of the Project; and (g) retain and receive master keys or pass keys to the Premises and all doors in the Premises. Notwithstanding the foregoing, or the provision of any security-related services by Landlord, Landlord is not responsible for the security of persons or property in the Premises or otherwise on the Project, and Landlord is not liable in any way whatsoever for any breach of security except to the extent directly caused by the gross negligence or willful misconduct of Landlord or its agents.
- 9.3 Interference with Tenant's Business.** With respect to any provision of this Lease which entitles

or requires Landlord to make improvements, alterations or repairs to the Premises, the Project or the Common Area, Landlord agrees that such work shall not materially interfere with Tenant's use and enjoyment of the Premises. Landlord shall endeavor, when reasonably possible, to perform any such work so as to minimize disruption to Tenant's business. Landlord shall not permit the rental of any part of the Project to any entity operating a business competitive with Tenant.

ARTICLE 10 INSURANCE AND LIABILITY

10.1 Tenant's Insurance Obligations. Tenant, at all times during the Term and during any early occupancy period, at Tenant's sole cost and expense, will maintain the insurance, or a reasonable equivalent under a program of self-insurance, this Section 10.1 describes.

10.1.1 Liability Insurance. Tenant shall maintain commercial general liability insurance (providing coverage at least as broad as the current ISO commercial general liability form) with respect to the Premises and the Tenant's activities in the Premises and upon and about the Project with minimum limits at least in the amounts set forth in Minn. Stat. Section 466.04. If such insurance is on a claims-made basis, coverage shall be maintained for a period of not less than 3 years after the end of the contract. Such insurance must include the following specific coverage provisions or endorsements: (a) naming Landlord and any Lender as additional insureds; and (b) waiving the insurer's subrogation rights against all Landlord Parties. Tenant shall provide Landlord with at least ten (10) Business Days prior notice of modification, cancellation, non-renewal or expiration.

10.1.2 Other Insurance. Tenant shall also maintain such other insurance as may be required by any Laws (including without limitation any necessary worker's compensation insurance), or as may reasonably be required by Landlord from time to time. If insurance obligations generally required of tenants in similar space in similar buildings in the area in which the Project is located increase or otherwise change, then Landlord may likewise increase or otherwise change Tenant's insurance obligations under this Lease.

10.1.3 Miscellaneous Insurance Provisions. To the extent not covered by a self-insurance program, all of Tenant's insurance will be written by companies rated at least "Best A-VIII and otherwise reasonably satisfactory to Landlord. Tenant will deliver evidence of insurance reasonably satisfactory to Landlord, (a) on or before the Commencement Date (and prior to any earlier occupancy by Tenant), (b) prior to the expiration of any current policy or certificate, and (c) at such other times as Landlord may reasonably request. If Landlord allows Tenant to provide evidence of liability insurance by certificate, then Tenant will deliver an ACORD Form 25 certificate and will attach or cause to be attached to the certificate copies of any endorsements this Section 10.1 requires. Tenant's insurance must permit releases of liability and provide for waiver of subrogation as provided in Section 10.3. Tenant acknowledges and agrees that Landlord's establishment of minimum insurance requirements is not a representation by Landlord that such limits are sufficient and does not limit Tenant's liability under this Lease in any manner.

10.1.4 Tenant's Failure to Insure. Notwithstanding any contrary language in this Lease and any notice and cure rights this Lease provides Tenant, if Tenant fails to provide Landlord with evidence of insurance as required under this Section 10.1, and if such failure continues for more than five (5) Business Days after Tenant's receipt of Landlord's written notice of such failure, then Landlord may assume that Tenant is not maintaining the insurance

Section 10.1 requires Tenant to maintain and Landlord may (but is not obligated to) without further demand upon Tenant or notice to Tenant and without giving Tenant any cure right or waiving or releasing Tenant from any obligation contained in this Lease, obtain such insurance for Landlord's benefit. In such event, Tenant will pay to Landlord, as Additional Rent, all costs and expenses Landlord incurs obtaining such insurance. Landlord's exercise of its rights under this section does not relieve Tenant from any default under this Lease.

10.2 Landlord's Insurance Obligations. Landlord will (except for the optional coverages and endorsements this Section 10.2 may describe) at all times during the Term maintain the insurance this Section 10.2 describes.

10.2.1 Property Insurance. Property insurance on the Building in an amount not less than the full insurable replacement cost of the Project insuring against loss or damage by such risks as are covered by the current ISO Special Form policy. Landlord, at its option, may obtain such additional coverages or endorsements as Landlord deems appropriate or necessary in its sole discretion, including without limitation insurance covering foundation, grading, excavation and debris removal costs; business income and rents insurance; earthquake insurance; terrorism insurance; and flood insurance. Landlord may maintain such insurance in whole or in part under blanket policies. Tenant acknowledges and agrees that Landlord's property insurance will not cover or be applicable to any property of Tenant within the Premises or otherwise located at the Project.

10.2.2 Liability Insurance. Commercial general liability insurance against claims for bodily injury and property damage occurring at the Project in such amounts as Landlord deems appropriate or necessary in its sole discretion. Such liability insurance will only protect Landlord (and, at Landlord's sole option, Landlord's lender and some or all of the Landlord Parties).

10.2.3 Deductible. Tenant acknowledges that Landlord's insurance may include deductible limits, that such deductible amounts reduce the insurance premiums chargeable as Operating Expenses under the Lease, and that, notwithstanding the waiver set forth in Section 10.3, such deductible amounts shall either (i) be considered Operating Expenses to be included in the calculations of the CAM Charges under the Lease, or, (ii) if any loss covered by Landlord's insurance resulted from Tenant's negligent or intentional act or omission, be considered the sole responsibility of Tenant hereunder to the extent of Tenant's fault.

10.3 Mutual Waiver of Subrogation. Subject only to Section 10.2.3 above, each party hereby waives any and every right or cause of action for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible), which loss or damage is actually covered by an insurance policy maintained by such party, but only to the extent that such loss or damage is covered under any such insurance policy.

ARTICLE 11 DAMAGE OR DESTRUCTION

11.1 Tenant's Notice of Casualty. If the Premises or any part thereof shall be damaged by fire or any other casualty, Tenant shall give immediate written notice thereof to Landlord.

11.2 Tenatable Within 180 Days. Except as provided in Section 11.4, if a casualty renders the whole

or any material part of the Premises untenable and Landlord determines in its sole but reasonable discretion that it can make the Premises tenantable within 180 days after the date of the casualty, then Landlord will notify Tenant within 20 Business Days after the date of the casualty that Landlord will repair and restore the Project and the Premises as required by Section 11.6. Notwithstanding anything to the contrary contained herein, in the event that such restoration of the Premises is not substantially completed within 180 days from the date of the casualty, and provided that such delay in substantial completion results from a cause other than Tenant Delay or Force Majeure, then Tenant shall have the right to terminate this Lease by delivering 30 days' written notice to Landlord.

- 11.3 Not Tenantable Within 180 Days.** If a casualty renders the whole or any material part of the Premises untenable and Landlord reasonably determines in its sole discretion that it cannot make the Premises tenantable within 180 days after the date of the casualty, then Landlord will so notify Tenant within 20 Business Days after the date of the casualty and may, in such notice, terminate this Lease effective on the date of Landlord's notice. If Landlord does not terminate this Lease as provided in this section, Tenant may terminate this Lease by notifying Landlord within 30 days after Tenant's receipt of Landlord's notice, which termination will be effective 30 days after Landlord's receipt of Tenant's notice.
- 11.4 Project Substantially Damaged.** Notwithstanding Section 11.2, if the Project is damaged or destroyed by casualty (regardless whether the Premises is affected) and either (a) fewer than nine months remain in the Term, or (b) the damage reduces the value of the improvements on the Project by more than 50% (as determined by an independent, qualified professional), then, regardless of whether Landlord determines in its reasonable discretion that it can make the Project tenantable within 180 days after the date of the casualty, either party may, by providing written notice, terminate this Lease effective on the date of the notice.
- 11.5 Insufficient Proceeds.** Notwithstanding any contrary language in this Article 11, if this Article 11 obligates Landlord to repair damage to the Premises or Project caused by casualty, and if Landlord does not receive sufficient insurance proceeds (excluding any deficiency caused by the amount of any policy deductible) to repair all of the damage, or if the lender under any Mortgage does not release to Landlord sufficient insurance proceeds to repair all of the damage, then Landlord, at Landlord's option, by notifying Tenant within 45 days after the casualty, may terminate this Lease effective on the date of Landlord's notice.
- 11.6 Landlord's Repair Obligations.** If this Lease is not terminated under Sections 11.3 through 11.5 following a casualty, then Landlord shall repair and restore the Premises and the Project to as near their condition prior to the casualty as is reasonably possible with all commercially reasonable diligence and speed (subject to delays caused by Tenant Delay or Force Majeure). In such case, this Lease shall remain in full force and effect, but Basic Rent and Tenant's share of CAM Charges for the period during which the Premises are untenable shall abate pro rata (based upon the rentable area of the untenable portion of the Premises as compared with the rentable area of the entire Premises). In no event is Landlord obligated to repair or restore any Alterations that are not covered by Landlord's insurance, any special equipment or improvements installed by Tenant, or any personal property (or other property) of Tenant. Landlord will, if necessary, equitably adjust Tenant's share of CAM Charges percentage to account for any reduction in the rentable area of the Premises or Project resulting from a casualty.
- 11.7 Rent Apportionment Upon Termination.** If either party terminates this Lease under this Article 11, then Landlord will apportion Basic Rent and Tenant's share of CAM Charges on a per diem basis and Tenant will pay the Basic Rent and Tenant's share of CAM Charges to (a) the date of the

casualty if the event renders the Premises completely untenable or (b) if the event does not render the Premises completely untenable for Tenant's Permitted Use, the effective date of such termination (provided that if a portion of the Premises is rendered untenable, but the remaining portion is tenable, then Tenant's obligation to pay Basic Rent and Tenant's share of CAM Charges abates pro rata based upon the rentable area of the untenable portion of the Premises divided by the rentable area of the entire Premises from the date of the casualty and Tenant will pay the unabated portion of the Rent to the date of such termination).

- 11.8 Exclusive Casualty Remedy.** The provisions of this Article 11 are Tenant's sole and exclusive rights and remedies in the event of a casualty.

ARTICLE 12 CONDEMNATION

- 12.1 Termination of Lease.** If a Condemning Authority desires to effect a Taking of all or any material part of the Property, then Landlord will notify Tenant. If Landlord and Tenant both reasonably conclude that the Taking will render the Premises unsuitable for Tenant's intended purposes, then Landlord and Tenant will document such determination, and this Lease will terminate as of the date the Condemning Authority takes possession of the portion of the Property taken. Tenant will pay Rent to the date of termination. If a Condemning Authority takes all or any material part of the Project, or if a Taking reduces the value of the Project by 50% or more (as reasonably determined by an independent, qualified professional), regardless whether the Premises is affected, then Landlord, at Landlord's option, by notifying Tenant prior to the date the Condemning Authority takes possession of the portion of the Property taken, may terminate this Lease effective on the date the Condemning Authority takes possession of the portion of the Property taken.
- 12.2 Landlord's Repair Obligations.** If this Lease does not terminate with respect to the entire Premises under Section 12.1 and the Taking includes a portion of the Premises, then this Lease shall automatically terminate as to the portion of the Premises taken as of the date the Condemning Authority takes possession of the portion taken and Landlord will, at its sole cost and expense, restore the remaining portion of the Premises to a complete architectural unit with all commercially reasonable diligence and speed within 90 days and will reduce the Basic Rent for the period after the date the Condemning Authority takes possession of the portion of the Premises taken to a sum equal to the product of the Basic Rent provided for in this Lease multiplied by a fraction, the numerator of which is the rentable area of the Premises after the Taking and after Landlord restores the Premises to a complete architectural unit, and the denominator of which is the rentable area of the Premises prior to the Taking. Landlord will also equitably adjust Tenant's Share of CAM Charges percentage for the same period to account for the reduction in the rentable area of the Premises or the Project resulting from the Taking. Tenant's obligation to pay Basic Rent and Tenant's Share of CAM Charges will abate on a proportionate basis with respect to that portion of the Premises remaining after the Taking that Tenant is unable to use during Landlord's restoration for the period of time that Tenant is unable to use such portion of the Premises.
- 12.3 Tenant's Participation.** Except only as specifically set forth in the last sentence of this Section, Landlord is entitled to receive and keep all damages, awards or payments resulting from or paid on account of a Taking. Tenant has no right to receive any award for its interest in this Lease or for loss of leasehold (including without limitation any award for the unexpired portion of the Term), and Tenant hereby assigns to Landlord any interest of Tenant in any such award. Tenant may only provide in any condemnation proceedings, and may only receive from the Condemning Authority; (a) any separate award for damages to or condemnation of Tenant's movable trade fixtures and equipment, and (b) any separate award for relocation expenses.

- 12.4 Exclusive Taking Remedy.** The provisions of this Article 12 are Tenant's sole and exclusive rights and remedies in the event of a Taking. To the extent permitted by the Laws, Tenant waives the benefits of any Law that provides Tenant any abatement or termination rights or any right to receive any payment or award (by virtue of a Taking) not specifically described in this Article 12.

ARTICLE 13 TRANSFERS

13.1 Restrictions on Transfers.

13.1.1 General Prohibition. Except as set forth in Section 13.1.2, Tenant will not cause or suffer a Transfer without first obtaining Landlord's written consent, which consent Landlord may grant, withhold, or condition in its sole but reasonable discretion. If Landlord consents to the Transfer, then Landlord may impose on Tenant or the transferee such conditions as Landlord deems appropriate in its sole but reasonable discretion. Tenant's request for Landlord's consent to a Transfer must describe in detail the parties and the terms and portion of the Premises affected. Tenant will, in connection with requesting Landlord's consent, provide Landlord with a copy of any and all documents and information regarding the proposed Transfer and the proposed transferee as Landlord reasonably requests. Landlord will notify Tenant of Landlord's election to consent or withhold consent within 30 days after receiving Tenant's written request for consent to the Transfer. Tenant acknowledges and agrees that no Transfer will release Tenant from any liability or obligation under this Lease, and that Tenant shall remain liable to Landlord after such a Transfer as a principal and not as a surety or guarantor, and that the collection or acceptance of rent from any such assignee, transferee, subtenant or occupant shall not constitute a waiver or release of Tenant under any provision of the Lease. Any attempted Transfer in violation of this Lease is null and void and constitutes a breach of this Lease. Tenant acknowledges and agrees that Landlord's refusal to consent to a Transfer shall be deemed not to have been unreasonably withheld if (a) the proposed transferee is not of a type and quality consistent with the first-class nature of the Project, (b) the presence of the proposed transferee in the Premises would cause Landlord to be in violation of any other lease, or would trigger termination rights by any other tenant, (c) the proposed transferee does not have the financial capacity and credit worthiness to undertake and perform the obligations of this Lease, (d) the space to be assigned or sublet is not configured to allow appropriate means of ingress and egress, (e) the Commissioner of Minnesota Management and Budget does not consent to a Transfer involving the sale, mortgage, encumbrance or other disposal of any interest of this Lease or the Premises, or (f) the proposed transferee is unable or unwilling to carry out the Governmental Program (defined in Section 17.3). Tenant also acknowledges that the State of Minnesota may have the right to approve any Transfer and that, whenever that is the case, Landlord shall have the absolute right to withhold its consent to a Transfer if the State of Minnesota withholds its consent thereto.

13.1.2 Transfers to Affiliates. Provided that Tenant is not in default in the performance of its obligations under this Lease, Tenant may cause a Transfer to an Affiliate if: (a) Tenant notifies Landlord at least 30 days prior to such Transfer; and (b) the transferee assumes and agrees in a writing reasonably acceptable to Landlord to perform Tenant's obligations under this Lease and to observe all terms and conditions of this Lease. Tenant acknowledges and agrees that a Transfer to an Affiliate under this Section 13.1.2 will not release Tenant from any liability or obligation under this Lease, and that Tenant shall remain liable to Landlord after such a Transfer as a principal and not as a surety or

guarantor.

- 13.2 Costs.** Tenant will pay to Landlord, as Additional Rent, all costs and expenses Landlord actually incurs in connection with any Transfer, including without limitation reasonable attorneys' fees and other third-party expenses.

ARTICLE 14 DEFAULTS; REMEDIES

- 14.1. Events of Default.** The occurrence of any of the following constitutes an "Event of Default" by Tenant under this Lease:
- 14.1.1 Failure to Pay Rent.** Tenants fails to pay as and when due (a) Basic Rent, or(b) any other undisputed Additional Rent amount, and such failure continues for 10 days after Landlord notifies Tenant in writing of such failure.
- 14.1.2 Failure to Perform.** Tenant breaches or fails to perform any of Tenant's non-monetary obligations under this Lease and the breach or failure continues for a period of 30 days after Landlord notifies Tenant of such breach or failure in writing; provided, however, that if Tenant cannot reasonably cure its breach or failure within said 30 day period, then Tenant's breach or failure is not an Event of Default if Tenant promptly commences to cure its breach or failure and thereafter diligently pursues the cure and effects the cure within a period of time that does not exceed 90 days after the date that Landlord notified Tenant of the breach or failure. Notwithstanding any contrary language in this Section 14.1.2, Tenant is not entitled to any notice or cure period before an incurable breach of this Lease (or failure) becomes an Event of Default.
- 14.1.3 Misrepresentation.** The existence of any material misrepresentation or omission in any financial statements, correspondence or other information provided to Landlord by or on behalf of Tenant in connection with: (a) Tenant's negotiation or execution of this Lease; (b) Landlord's evaluation of Tenant as a prospective tenant at the Project; (c) any proposed or attempted Transfer; or (d) any consent or approval requested by Tenant under this Lease.
- 14.1.4 Other Defaults.** (a) Tenant makes a general assignment or general arrangement for the benefit of creditors; (b) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Tenant; (c) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Tenant and is not dismissed within 60 days; (d) a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within 30 days; or (e) substantially all of Tenant's assets located at the Premises or Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure not discharged within 30 days. If a court of competent jurisdiction determines that any act described in this section does not constitute an Event of Default, and the court appoints a trustee to take possession of the Premises (or if Tenant remains a debtor in possession of the Premises) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord is entitled to receive, as the amount of Rent otherwise payable by Tenant under this Lease.
- 14.1.5 Notice Requirements.** The notices required by this Section 14.1 are intended to satisfy any and all notice requirements imposed by the Laws and are not in addition to any such requirements.

14.2 Remedies. Upon the occurrence of any Event of Default, Landlord, at any time and from time to time, and without preventing Landlord from exercising any other right or remedy, may exercise any one or more of the following remedies:

14.2.1 Termination of Tenant's Possession; Re-entry and Reletting Right. Terminate Tenant's right to possess the Premises by any lawful means with or without terminating this Lease, in which event Tenant will immediately surrender possession of the Premises to Landlord. Unless Landlord specifically states that it is terminating this Lease, Landlord's termination of Tenant's right to possess the Premises is not to be construed as an election by Landlord to terminate this Lease or Tenant's obligations and liabilities under this Lease. In such event, this Lease continues in full force and effect (except for Tenant's right to possess the Premises) and Tenant continues to be obligated for and must pay all Rent as and when due under this Lease. If Landlord terminates Tenant's right to possess the Premises, Landlord is not obligated to but may re-enter the Premises and remove all persons and property from the Premises, subject to requirements in Section 9.1 regarding areas containing PHI. Landlord may store any property Landlord removes from the Premises in a public warehouse or elsewhere at the cost and for the account of Tenant. Upon such re-entry, Landlord shall make all reasonable efforts to relet all or any part of the Premises to a third party or parties for Tenant's account. Tenant is immediately liable to Landlord for all Re-entry Costs and must pay Landlord the same within 10 days after Landlord's notice to Tenant. Landlord may relet the Premises for a period shorter or longer than the remaining Term. If Landlord relets all or any part of the Premises, Tenant will continue to pay Rent when due under this Lease and Landlord will refund to Tenant the Net Rent Landlord actually receives from the reletting up to a maximum amount equal to the Rent paid by Tenant that came due after Landlord's reletting. If the Net Rent Landlord actually receives from reletting exceeds such Rent, Landlord will apply the excess sum to future Rent due under this Lease.

14.2.2 Termination of Lease. Terminate this Lease effective on the date Landlord specifies in its termination notice to Tenant. Upon termination, Tenant will immediately surrender possession of the Premises to Landlord. If Landlord terminates this Lease, Landlord may recover from Tenant and Tenant will pay to Landlord on demand all damages Landlord incurs by reason of Tenant's default, including, without limitation: (a) all Rent due and payable as it becomes due under this Lease, subject to the same relet provisions set forth in 14.2.1; (b) any amount necessary to compensate Landlord for any detriment directly caused to Landlord by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would likely result from Tenant's failure to perform, including but not limited to any Re-entry Costs; (c) an amount equal to the difference between the present worth, as of the effective date of the termination, of the Basic Rent for the balance of the Term remaining after the effective date of the termination (assuming no termination) and the present worth, as of the effective date of the termination, of a fair market Rent for the Premises for the same period (as Landlord reasonably determines the fair market Rent, or an independent third-party appraiser meeting the qualifications found in Item 5 in the Basic Terms); and (d) Tenant's share of CAM Charges subject to equitable adjustment and to the extent Landlord is not otherwise reimbursed for such Expenses. For purposes of this section, Landlord will utilize the Discount Rate to compute present worth. Nothing in this section shall limit or prejudice Landlord's right to prove and obtain damages in an amount equal to the maximum amount allowed by the Laws, regardless whether such damages are greater than the amounts set forth in this section.

- 14.2.3 Self Help.** Perform the obligation on Tenant's behalf without waiving Landlord's rights under this Lease at law or in equity, and without releasing Tenant from any obligation under this Lease. Tenant shall pay to Landlord, as Additional Rent, all sums that Landlord pays and all obligations that Landlord incurs on Tenant's behalf under this section.
- 14.2.4 Statutory Termination.** Notwithstanding any other provisions of this Lease to the contrary, if the Governmental Program is terminated or changed in response to changes in state law in such a manner as to (a) cause this Lease and the operation of the Leased Premises to be inconsistent with the changed Governmental Program or (b) to remove the statutory authority for the Landlord to operate the Governmental Program, then this Lease shall be terminated by ninety (90) days written notice to Tenant ("Termination Date"), and provided further that any termination pursuant to this Section will be deemed automatically rescinded and of no force or effect if within said ninety (90) day period Tenant conforms its operation to the changed Governmental Program. Tenant's failure to cease operation of the Leased Premises on the Termination Date shall be a default under this Lease.
- 14.2.5 Other Remedies.** Any other right or remedy available to Landlord under this Lease, under the Laws and/or in equity.
- 14.3 Landlord's Default.** If Landlord defaults in the performance of any of its obligations under this Lease, Tenant will notify Landlord of the default and Landlord will have 30 days after receiving such notice to cure the default. If Landlord is not reasonably able to cure the default within a 30-day period, Landlord will have an additional reasonable period of time to cure the default as long as Landlord promptly commences the cure and thereafter diligently pursues the cure to completion. If Landlord has not commenced repair or maintenance required to be performed by Landlord hereunder within 30 days after written notice thereof from Tenant, then Tenant shall have the right, but not the obligation, to make such repairs and Landlord shall reimburse Tenant for the reasonable and actual cost thereof within 30 days after receipt of a bill therefore from Tenant. In the event of an emergency, Tenant may (but shall not be obligated to) perform such repairs which would otherwise be Landlord's obligation hereunder which may be reasonably necessary, after having given Landlord such notice, if any, as may be practicable under the circumstances. Notwithstanding anything to the contrary set forth hereinabove, Tenant shall not be required to perform any repairs which would otherwise be Landlord's obligation hereunder. The sole remedies of Tenant shall be with respect to Landlord's ownership interests, including revenues, from the Project. Nothing in this Lease shall give rise to any right by Tenant to recovering against any other assets of Landlord and Landlord shall have no liability to pay any amounts due Tenant from any other revenues or assets of Landlord and the full faith and credit of Landlord is NOT pledged or provided by Landlord with respect to any of its obligations.
- 14.4 No Waiver.** Except as specifically set forth in this Lease, no failure by Landlord or Tenant to insist upon the other party's performance of any of the terms of this Lease or to exercise any right or remedy upon a breach thereof, constitutes a waiver of any such breach or of any breach or default by the other party in its performance of its obligations under this Lease. No acceptance by Landlord of full or partial Rent from Tenant or any third party during the continuance of any breach or default by Tenant of Tenant's performance of its obligations under this Lease constitutes Landlord's waiver of any such breach or default. Except as specifically set forth in this Lease, none of the terms of this Lease to be kept, observed or performed by a party to this Lease, and no breach thereof, are waived, altered or modified except by a written instrument executed by the other party. One or more waivers by a party to this Lease are not to be construed as a waiver of a subsequent breach of the same covenant, term or condition.

ARTICLE 15
CREDITORS; ESTOPPEL CERTIFICATES

- 15.1 Subordination.** Provided Tenant is issued a commercially reasonable non-disturbance agreement by the holder of such lien, this Lease, all rights of Tenant in this Lease, and all interest or estate of Tenant in the Property, is subject and subordinate to the lien of any Mortgage. Tenant, within 15 days of Landlord's demand, will execute and deliver to Landlord any document reasonably required to confirm the self-effectuating subordination of this Lease as provided in this Section to the lien of any Mortgage. If Tenant does not timely deliver the properly signed document to Landlord, and if such failure continues for more than ten (10) Business Days after Tenant's receipt of a written notice from Landlord of such failure, then such failure shall constitute an Event of Default under this Lease. Notwithstanding the subordination to any future Mortgage provided for in this section, as long as Tenant is not in default in the payment of Rent or the performance and observance of any covenant, condition, provision, term or agreement to be performed and observed by Tenant under this Lease beyond any applicable grace or cure period this Lease provides Tenant, the holder of the Mortgage shall not by virtue of such subordination under this section be entitled to disturb Tenant's right of possession of the Property under this Lease. Landlord acknowledges and agrees that the lien of any existing or future Mortgage will not cover Tenant's moveable trade fixtures or personal property located in or on the Premises.
- 15.2 Attornment.** If the holder of any Mortgage at a foreclosure sale (or by deed in lieu of foreclosure) or any other transferee acquires Landlord's interest in this Lease, the Premises or the Property, then Tenant will attorn to the transferee of or successor to Landlord's interest in this Lease, the Premises or the Property (as the case may be) and recognize such transferee or successor as landlord under this Lease, provided that any such purchaser at a foreclosure sale or transferee under a deed in lieu of foreclosure shall not be (a) bound by any payment of Rent more than one month in advance, (b) liable for damages for any breach, act or omission of any prior landlord, or (c) subject to any offsets or defenses which Tenant might have against any prior landlord. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord's interest.
- 15.3 Mortgage Protection Clause.** Provided that Landlord or the holder of a Mortgage has previously notified Tenant of the notice address of the holder of the Mortgage, Tenant shall give the holder of the Mortgage, by registered mail, a copy of any notice of default that Tenant serves on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, then Tenant will also provide written notice of such failure to the holder of the Mortgage, and such holder will have an additional 30 days after receipt of such notice within which to cure the default (but shall not be obligated to cure the default). If the default cannot be cured within the additional 30-day period, then the holder will have such additional time as may be reasonably necessary to effect the cure if, within the 30-day period, the holder has promptly commenced and is diligently pursuing in good faith the cure (including without limitation commencing foreclosure proceedings if necessary to effect the cure).
- 15.4 Estoppel Certificates.**
- 15.4.1 Contents.** Upon Landlord's written request, Tenant will execute, acknowledge and deliver to Landlord a written statement in form satisfactory to Landlord certifying to the best of Tenant's knowledge: (a) that this Lease is unmodified and in full force and effect (or, if there have been any modifications, that the Lease is in full force and effect as modified, and stating the modifications); (b) that this Lease has not been canceled or terminated; (c) the last date of payment of Rent and the time period covered by such payment; (d) whether

there are then existing any breaches or defaults by Landlord under this Lease known to Tenant and, if so, specifying the same; (e) specifying any existing claims or defenses in favor of Tenant against the enforcement of this Lease; (f) that Tenant has accepted the Premises; (g) that Tenant has no option to purchase the Premises or any part of the Property; and (h) such other factual statements as Landlord, or any lender, prospective lender, investor or purchaser may reasonably request. Tenant will deliver the properly signed statements to Landlord within fifteen (15) days after receipt of Landlord's request. Landlord may give any such statement by Tenant to any lender, prospective lender, investor or purchaser of all or any part of the Property, and any such party may conclusively rely upon such statement as true and correct.

15.4.2 Failure to Deliver. If Tenant does not timely deliver the properly signed statement referenced in Section 15.4.1 to Landlord, and if such failure continues for more than fifteen (15) Business Days after Tenant's receipt of written notice from Landlord of such failure, then Landlord and any lender, prospective lender, or purchaser may conclusively presume and rely, except as otherwise represented by Landlord, to the best of Tenant's knowledge (a) that the terms and provisions of this Lease have not been changed; (b) that this Lease has not been canceled or terminated; (c) that not more than one (1) month's Rent has been paid in advance; (d) that Tenant has accepted the Premises; (e) that Tenant has no option to purchase the Property or any part of the Property; and (f) that Landlord is not in default in the performance of any of its obligations under this Lease. In such event, Tenant is estopped from denying the truth of such facts.

ARTICLE 16 SURRENDER; HOLDING OVER

16.1 Surrender of Premises. Tenant will surrender the Premises to Landlord at the expiration or earlier termination of this Lease in good order, condition and repair (reasonable wear and tear, permitted Alterations and damage by casualty or condemnation excepted), and will surrender all keys to the Premises to Landlord at the place then fixed for Tenant's payment of Basic Rent or as Landlord otherwise directs. Tenant will also inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises or on the Project. Tenant will at such time remove all of its property from the Premises and, if Landlord required as a condition of its consent, all specified Alterations carried out by Tenant in the Premises. Tenant will promptly repair any damage to the Premises caused by such removal. If Tenant does not surrender the Premises in accordance with this section, Tenant will indemnify, defend, protect and hold harmless Landlord from and against any claim resulting from Tenant's delay in so surrendering the Premises, including, without limitation, any Claim made by any succeeding occupant founded on such delay. All property of Tenant not removed on or before the last day of the Term is deemed abandoned. If Tenant fails to remove all of Tenant's property from the Premises upon termination of this Lease, then Tenant shall be deemed to have appointed Landlord as Tenant's agent to remove, at Tenant's sole cost and expense, all of Tenant's property from the Premises upon termination of this Lease and to cause its transportation and storage for Tenant's benefit, all at the sole cost and risk of Tenant, and Landlord will not be liable for damage, theft, misappropriation or loss thereof or in any manner in respect thereto.

16.2 Holding Over. If Tenant possesses the Premises after the Term expires (or after this Lease is otherwise terminated) without executing a new lease but with Landlord's written consent, then Tenant is deemed to be occupying the Premises as a tenant from month-to-month, subject to all provisions, conditions and obligations of this Lease applicable to a month-to-month tenancy, except that (a) subject to the cap in Section 4.3 of the Basic Terms of this Lease, Basic Rent for each month during the holdover period shall be equal to 125% of the Basic Rent for the month immediately

preceding the commencement of the holdover period, and (b) either Landlord or Tenant may terminate the month-to-month tenancy at any time upon thirty (30) days' prior written notice to the other party. If Tenant possesses the Premises after the Term, expires (or is otherwise terminated) without executing a new lease and without Landlord's written consent, then Tenant is deemed to be occupying the Premises without claim of right (but subject to all terms and conditions of this Lease) and, in addition to Tenant's liability for failing to surrender possession of the Premises as provided in Section 16.1, Tenant shall also pay, subject to the cap in Section 4.3 of the Basic Terms of this Lease, to Landlord a monthly rent in an amount equal to 150% of the Basic Rent for the last month of the expired Term.

ARTICLE 17 ADDITIONAL PROVISIONS

- 17.1 Parking Facilities.** Tenant's lease of the Premises shall also include the non-exclusive right for it and its invitees use of the Parking Facilities at the Project and the exclusive use of such parking spaces as shown on Exhibit 2 within the Common Area and close proximity to Tenant's entrance during Tenant's hours of operation (8:00AM – 5:00PM) to accommodate safety and ambulation needs of its patients. The exclusive use of such parking spaces shall be at no additional cost to Tenant, except for the following: a) costs for placing signs and/or other markings representing the exclusive use, b) costs of maintaining such signs and/or markings, and c) costs to remove such signs and/or markings to restore the exclusive spaces to general use. Landlord and Tenant agree that, except where caused by Landlord's intentional misconduct, Landlord will not be responsible for any loss, theft or damage to vehicles, or the contents thereof, parked or left in the parking areas of the Project and Tenant agrees to so advise its employees who may use such parking areas. The parking areas shall include those areas designated by Landlord, in its sole discretion, as either restricted or unrestricted parking areas. Any restricted parking areas shall be used only by separate license agreement with Landlord. Tenant further agrees not to use or permit its employees, visitors or invitees to use the parking areas for overnight parking of vehicles; provided, however, upon prior notice to Landlord's property manager, Tenant's employees may from time to time when traveling for business purposes leave their vehicles parked overnight in an area designated by such property manager.
- 17.2 Departure of YMCA.** In the event that the space occupied by the YMCA has been vacated and remains vacant for a period of one (1) year or more, Tenant shall have the right to terminate this Lease. Prior to exercising any right to terminate, as provided herein, Landlord and Tenant shall meet and discuss in good faith any modifications to this Lease that either party may suggest. If a reasonable agreement is not agreed to within sixty (60) days, then Tenant may then terminate this Lease upon give one hundred eighty (180) days notice to the City. In the event that Tenant should elect to exercise this right to terminate, Tenant shall vacate in the manner described in Section 16.1 or as mutually agreed to by the parties.
- 17.3 Right of First Refusal.** Provided this Lease is in full force and effect and has not otherwise expired or been terminated in accordance with the terms hereof, and further provided that Tenant is not then in default beyond any applicable notice and cure period provided for hereunder, Tenant shall have an ongoing right of first refusal (the "Right of First Refusal") to lease any available space in the Project which is offered by Landlord for lease to third party tenants after the date of this Lease and prior to the expiration or sooner termination of the Term of this Lease (as such term may be extended as provided herein) (the "Additional Space") in accordance with the provisions set forth below. If Landlord receives a bona fide offer (the "Offer") from a third party to lease the Additional Space, and the Offer is acceptable to Landlord, Landlord shall, prior to acceptance of the Offer, provide Tenant with the terms of the Offer in writing (the "Offer Notice"). Tenant shall respond

to Landlord in writing within ten (10) business days after Tenant's receipt of the Offer Notice as to Tenant's decision either to lease the Additional Space or to waive its rights hereunder. Time is of the essence of this provision. Tenant's failure to notify Landlord within such time shall be deemed an immediate waiver of Tenant's rights to lease such Additional Space. If Tenant timely notifies Landlord that it desires to lease the Additional Space covered by the Offer Notice, Landlord shall thereupon lease the Additional Space to Tenant (and Tenant shall accept such Additional Space) for the remainder of the Term of this Lease (as such term may be extended as provided herein) upon the same terms and conditions as contained in this Lease, except that the base rent payable for such Additional Space shall be equal to the then current Base Rent payable hereunder for the Premises (subject to future adjustments) and Landlord shall provide Tenant an improvement allowance in an amount equal to a prorated portion of the Allowance (as hereinafter defined) based upon the then remaining Term of this Lease. If Tenant properly exercises its right to lease the Additional Space, the parties shall promptly thereafter execute an amendment to the Lease to include the Additional Space, subject to the prior written approval of the Commissioner of Minnesota Management and Budget. If Tenant fails to timely and properly notify Landlord that Tenant desires to lease the Additional Space which is the subject of an Offer Notice, Landlord may lease such Additional Space to the third party identified in the Offer Notice and on substantially the same terms as set forth in the Offer Notice. Thereafter, Landlord may not lease such Additional Space to a third party without first offering such Additional Space to Tenant in accordance with the terms of this Section 17.3.

17.4 Preservation of Tax Exempt Status. Tenant shall at all times comply with the provisions of Revenue Procedures 2017-13 with respect to any use of the Project. In addition, Tenant agrees that in order to preserve tax exempt status of the Bonds, the Tenant agrees as follows:

17.4.1 It will not use the Land or the Project, or use or invest any sums treated as "bond proceeds" under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

17.4.2 It will, upon written request, provide authorized representatives of the Landlord access to necessary information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the Bonds. Landlord agrees to take all reasonable steps to preserve the confidentiality of such information and to consult with nationally recognized bond counsel to determine what information is necessary to meet these requirements.

17.4.3 It will, upon the occurrence of any act or omission by the Tenant that could cause the interest on the Bonds to no longer be tax-exempt and, upon direction from the City or the Commissioner of MMB, take such actions and furnish such documents as the City Finance Director or Commissioner of MMB determines to be necessary after consulting with nationally recognized bond counsel to ensure that the interest to be paid on the Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of this Lease so that it complies with Revenue Procedure 2017-13, or (iii) changing the nature of the use of the Land or the Project so that none of the net proceeds of the Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or

supersede the foregoing.

17.4.4 It will not otherwise use any of or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the Bonds, nor otherwise omit, take, or cause to be taken any action determined by nationally recognized bond counsel to be necessary to maintain such tax-exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

17.5 Government Program. Tenant and City hereby acknowledge and agree as follows:

17.5.1 The Permitted Use of Tenant in the Premises is deemed to be in furtherance of the City's program of promoting community health and wellness pursuant to the City's Statutory Authority ("Governmental Program").

17.5.2 This Lease was entered into pursuant to the authority provided by Chapter 412 of the Minnesota Statutes.

17.5.3 Tenant shall advise City in writing if Tenant proposes adding any activities to be conducted on the Premises that are not a Permitted Use. After any such notice is given to City by Tenant, City and Tenant will meet and review the proposed activities to determine if they are in furtherance of the Governmental Program. Any additional activities proposed by Tenant that are not a Permitted Use are not allowed unless consented to by Landlord in writing after the meeting between Landlord and Tenant described above takes place. In addition to the foregoing, the Tenant shall:

17.5.3.1 provide an annual report between August 15 and August 31 of each year beginning in 2020 of major activities that Tenant provides on the Premises and a description of how such activities satisfy the elements of the Governmental Program;

17.5.3.2 provide a financial report that provides evidence that Tenant has the financial capacity to provide the Governmental Program in the upcoming year; and

17.5.3.3 attend an annual meeting between August 15 and August 31 of each year beginning in 2020 with City to present the annual reports required by Section 17.5.3.1 and Section 17.5.3.2 to the City.

17.6 Liens. Tenant shall not, without the prior written consent of Landlord and the Commissioner of Minnesota Management and Budget, create or allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased Premises, Landlord's ownership interest in the Leased Premises, or Tenant's interest in the Lease.

17.7 Binding Effect. The provisions of Section 17.4, 17.5 and 17.6 shall be binding upon any successor or assign of tenant.

**ARTICLE 18
MISCELLANEOUS PROVISIONS**

- 18.1 Notices.** All Notices must be in writing and must be sent by personal delivery, by nationally recognized overnight express delivery service, or by U.S. registered or certified mail (return receipt requested, postage prepaid), to the addresses specified in the Basic Terms or at such other place as either party may designate to the other party by written notice given in accordance with this section. Such notices shall be deemed received (a) as of the date of delivery, if delivered by hand by 4:00 p.m. Central time on a Business Day (if hand delivered after said time, any such notice shall be deemed received as of the first Business Day after delivery), (b) as of the next Business Day, if tendered to an overnight express delivery service by the applicable deadline for overnight service, or (c) as of the fifth Business Day after mailing, if sent by regular mail. For any such notices to Tenant, a copy should be sent to: Office of General Counsel, Essentia Health, 502 East Second Street, Duluth, MN 55805.
- 18.2 Transfer of Landlord's Interest.** If Landlord transfers any interest in the Premises for any reason other than collateral security purposes, then the Landlord is automatically relieved of all obligations on the part of Landlord accruing under this Lease from and after the date of the Transfer, except for those obligations which, by their express terms or nature and context are intended to survive transfer of Landlord's interests (including the indemnity and insurance obligations that Landlord and Tenant have to one another under this Lease). Landlord shall also deliver to the transferee any funds the transferor holds in which Tenant has an interest. Transferee shall be obligated to utilize any rent and CAM Charges payable hereunder to make payments as required by Section 7.6 of the Use Agreement.
- 18.3 Successors.** The covenants and agreements contained in this Lease bind and inure to the benefit of Landlord, its successors and assigns, bind Tenant and its successors and assigns and inure to the benefit of Tenant and its permitted successors and assigns.
- 18.4 Captions and Interpretation.** The captions of the articles and sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular includes the plural and the plural includes the singular.
- 18.5 Relationship of Parties.** This Lease does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between Landlord and Tenant other than that of landlord and tenant.
- 18.6 Entire Agreement; Amendment.** The Basic Terms and all exhibits, addenda and schedules attached to this Lease are incorporated into this Lease as though fully set forth in this Lease and together with this Lease contain the entire agreement between the parties with respect to the improvement and leasing of the Premises. All preliminary and contemporaneous negotiations, including, without limitation, any letters of intent or other proposals and any drafts and related correspondence, are merged into and superseded by this Lease. No subsequent alteration, amendment, change or addition to this Lease (other than to the Project Rules) is binding on Landlord or Tenant unless it is in writing and signed by the party to be charged with performance. No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the Commissioner of Minnesota Management and Budget, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall

not affect or impair any right arising from any subsequent default.

- 18.7 Severability.** If any covenant, condition, provision, term or agreement of this Lease is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Lease, will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.
- 18.8 Survival.** All of Tenant's obligations under this Lease (together with interest on payment obligations at the Maximum Rate) accruing prior to expiration or other termination of this Lease survive the expiration or other termination of this Lease. Further, all of Tenant's release, indemnification, defense and hold harmless obligations under this Lease survive the expiration or other termination of this Lease, without limitation, and all of Landlord's release, indemnification, defense and hold harmless obligations under this Lease survive the expiration or other termination of this Lease, without limitation.
- 18.9 Attorneys' Fees.** If either Landlord or Tenant commences any litigation or judicial action to determine or enforce any of the provisions of this Lease, the prevailing party in any such litigation or judicial action is entitled to recover all of its costs and expenses (including, but not limited to, reasonable attorneys' fees, costs and expenditures) from the non-prevailing party.
- 18.10 Governing Law.** This Lease is governed by, and must be interpreted under, the internal laws of the State of Minnesota. Jurisdiction and venue for any proceedings shall be in the State District Court sitting in St. Louis County and in Duluth, Minnesota.
- 18.11 Time is of the Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.
- 18.12 Joint and Several Liability.** All parties signing this Lease as Tenant are jointly and severally liable for performing all of Tenant's obligations under this Lease.
- 18.14 Authority.** Landlord and Tenant and each individual signing this Lease on behalf of either Landlord or Tenant represents and warrants that they are duly authorized to sign on behalf of and to bind said party and that this Lease is a duly authorized obligation of said party.
- 18.14 Force Majeure.** If a party is delayed or prevented from performing any act required in this Lease (excluding, however, the payment of money) by reason of Force Majeure, then the party's performance of such act is excused for the period of delay caused by Force Majeure, and the period of the performance of any such act will be extended for a period equivalent to such period.
- 18.15 No Recording.** Tenant will not record this Lease or a Memorandum of this Lease without Landlord's prior written consent, which consent Landlord may grant or withhold in its sole and absolute discretion.
- 18.16 Construction of Lease and Terms.** All provisions of this Lease, whether covenants or conditions, are deemed both covenants and conditions. The terms and provisions of this Lease represent the results of negotiations between Landlord and Tenant, each of which are sophisticated parties and each of which has been represented or been given the opportunity to be represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Lease must be interpreted and construed in accordance with their usual and customary meanings, and Landlord and Tenant each waive the application of any rule of law that ambiguous or conflicting terms or provisions

contained in this Lease are to be interpreted or construed against the party who prepared the executed Lease or any earlier draft of the same. Landlord’s submission of this instrument to Tenant for examination or signature by Tenant does not constitute a reservation of or an option to lease and is not effective as a lease or otherwise until Landlord and Tenant both execute and deliver this Lease.

18.17 Government Data Practices. Tenant acknowledges that Landlord is subject to the provisions of the Minnesota Government Data Practices Act. Tenant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by Landlord in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Tenant in accordance with this Agreement. The civil remedies of Minnesota Statutes §13.08, apply to Tenant and Landlord. Minnesota Statutes, Chapter 13, provides that all government data are public unless otherwise classified. If Tenant receives a request to release the data referred to in this Section, Tenant must immediately notify Landlord and consult with Landlord as to how Tenant should respond to the request. Tenant’s response shall comply with applicable law, including that the response is timely and, if Tenant denies access to the data, that Tenant’s response references the statutory basis upon which Tenant relied. Tenant does not have a duty to provide public data to the public if the public data is available from Landlord.

Landlord and Tenant have each caused this Lease to be executed and delivered by its duly authorized representative to be effective as of the Effective Date.

TENANT:
THE DULUTH CLINIC, LTD,
DBA ESSENTIA HEALTH WELLNESS CLINIC
HERMANTOWN

LANDLORD:
THE CITY OF HERMANTOWN

BY: _____
Its: _____

By: _____
Its: Mayor

And by _____
Its City Clerk

EXHIBIT 1
DEFINITIONS

Note: If there are any inconsistencies between the language of these definitions and the terms of the Lease, the terms of the Lease shall govern.

“Additional Rent” means any charge, fee or expense (other than Basic Rent, however denoted, that is payable by Tenant under this Lease.

“Affiliate” means any person or entity that, directly or indirectly, controls, is controlled by or is under common control with Tenant. For purposes of this definition, “control” means possessing the power to direct or cause the direction of the management and policies of the entity.

“Alteration” means any change, alteration, addition or improvement to the Premises or Project.

“Bankruptcy Code” means the United States Bankruptcy Code as the same now exists and as the same may be amended, including any and all rules and regulations issued pursuant to or in connection with the United States Bankruptcy Code now in force or in effect after the Effective Date.

“Basic Rent” means the basic rent amounts specified in the Basic Terms.

“Bonds” means any general obligation bonds authorized to be issued by the State of Minnesota under Article XI, Section 5(a) of the Minnesota Constitution to provide a grant to City for the Project or any bonds issued by City for purposes of providing funds.

“Building” means the building(s) now existing on the Land and in process of being constructed as part of the Project.

“Business Days” means any day other than Saturday, Sunday or a legal holiday in the State.

“CAM Charges” mean charges determined in accordance with Section 3.1.

“Capital Maintenance and Repairs” mean the maintenance and repair and replacement of the foundation, exterior walls, roof, windows, parking areas, sidewalks, plumbing, electrical, heating, air-conditioning, fire control, ventilating systems, outdoor lighting, pool mechanical elements, including pumps and filtration systems, and any installed casework all as more specifically described in Article 3 of this Lease.

“City” means Hermantown, Minnesota.

“City’s Statutory Authority” means Minnesota Statutes §§ 412.211; 412.221, Subd. 3; 412.221, Subd. 32; 412.491; 471.15; 471.16; 471.17 and 471.191.

“Claims” means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys’ fees and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under the Lease.

“Commencement Date” means the Commencement Date specified in the Basic Terms.

“Commissioner” means the Commissioner of Minnesota Management and Budget.

“Common Area” means the area of the Project identified on Exhibit 2 attached hereto consisting of interior hallways, entryways and other public areas, the Community Space and all exterior areas of the Project including parking areas, walkways, landscaped areas and other exterior portions of the Land.

“Community Space” means the area of the Project identified on Exhibit 2 attached hereto and subject to the provisions of the Use and Operations Agreement.

“Condemning Authority” means any person or entity with a statutory or other power of eminent domain.

“County” means St. Louis County.

“Effective Date” the date which the Lease is made and entered into as of the date of the last signature.

“Essentia Furniture, Fixtures and Equipment” means the furniture, fixtures and equipment purchased by Essentia for installation and/or use in the Premises.

“Event of Default” means the occurrence of any of the event specified in Article 14 of the Lease, or of any other events specifically identified in the Lease as an “Event of Default.”

“First Extension Term” shall mean the first extension term of the Lease, if exercised, which will commence on the tenth anniversary of the Commencement Date and expire on the fifteenth anniversary of the Commencement Date.

“Force Majeure” means acts of God, strikes, lockouts, inability to procure materials (despite commercially reasonable pursuit of such materials), governmental laws or regulations, casualty, orders or directives of any legislative, administrative, or judicial body or any governmental department, inability to obtain any governmental licenses, permissions or authorities (dispute commercially reasonable pursuit of such licenses, permissions or authorities), and other similar causes beyond Landlord’s reasonable control.

“Governmental Program” means an activity in the Project that is in furtherance of the City’s program of public recreation and in furtherance of City’s program to promote the health and wellness of the City by providing and operating a health and wellness center for the public pursuant to Minn. Stat. §§471.15 through 471.91 and Minn. Stat. §412.221, subd. 32, including Essentia’s Permitted Uses as described in Item 8 of the Basic Terms.

“Hazardous Materials” means any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “solid waste” or words of similar import in any federal, states or local statute, law, ordinance or regulation now existing or existing on or after the Effective Date as the same may be interpreted by government offices and agencies.

“Hazardous Materials Laws” means any federal, state or local statutes, laws, ordinances or regulations now existing or existing after the Effective Date that control, classify, regulate, list or define Hazardous Materials.

“Initial Lease Term” shall mean the Initial Lease Term as defined in Item 2 of the Basic Terms.

“Land” means the parcel(s) of land on which the Project is located and legally described on Exhibit 2 attached hereto. In the event the Project is part of a designated complex, then “Land” shall also mean all associated parcels of land owned by Landlord, all easements appurtenant thereto, and all access drives serving the complex. Subject to the terms and conditions of any applicable Permitted Encumbrances, and such other restrictions as Landlord may impose during the Lease Term, Tenant will have the nonexclusive right to use the described access-ways within the Project, as the same may exist from time to time.

“Landlord” means the City.

“Laws” means any law, regulation, rule, order, statute or ordinance of any governmental or private entity in effect on or after the Effective Date and applicable to the Property or the use or occupancy of the Project, including, without limitation, Hazardous Materials Laws, Building Rules and permitted Encumbrances.

“Lease” means this Lease Agreement, as the same may be amended or modified after the Effective Date.

“Maximum Rate” means interest at a rate equal to the lesser of (a) 18% per annum or (b) the maximum interest rate permitted by law.

“Mortgage” means any mortgage, deed of trust, security interest or other security document of like nature that at any time may encumber all or any part of the Property and any replacements, renewals, amendments, modifications, extensions or refinancing thereof, and each advance (including future advances) made under any such instrument.

“Naming Rights Agreement” means that certain Essentia Wellness Center Naming Rights Agreement between City and Essentia entered into contemporaneously with the Lease.

“Net Rent” means all rental Landlord actually receives from any reletting of all or any part of the Premises, less any indebtedness from Tenant to Landlord other than Rent (which indebtedness is paid first to Landlord) and less the Re-entry Costs (which costs are paid second to Landlord).

“Notices” means all notices, demands or requests that may be or are required to be given, demanded or requested by either party to the other as provided in the Lease.

“Parking Facilities” mean the loading areas, parking areas and driveways on the land servicing the Project and as shown in Exhibit 2.

“Permitted Encumbrances” means all mortgages, liens, easements, declarations, encumbrances, covenants, conditions, reservations, restrictions and other matters now or after the Effective Date affecting title to the Property and as further defined in the Lease.

“Permitted Use” shall mean the uses Tenant may use the Premises as defined in Item 8 of the Basic Terms.

“Premises” means the Premises specified Item 1 of the Basic Terms of this Lease.

“Premises Operating Expense” means the operating expenses required to be paid by Tenant for the Premises described in Section 2.3 hereof.

“Project” means, collectively, the Land, Building (including the Premises) and all other improvements on the Land.

“Project Operating Expenses” means these expenses described in Article 3 of the Lease hereof.

“Project Rules” are the rules that the Lease is subject and subordinate to as set forth on Exhibit 4 of the Lease.

“Property Manager” or “Building Manager” means the Building Manager as defined in the Use and Operations Agreement entered into contemporaneously with this Lease or any other person Landlord may appoint from time-to-time to manage the Project.

“Property Taxes” means those taxes identified in Article 3, Section 3.2 of the Lease.

“Re-entry Costs” means all costs and expenses Landlord incurs re-entering or reletting all or any part of the Premises, including, without limitation, all costs and expenses Landlord incurs (a) maintaining or preserving the Premises after an Event of Default; (b) recovering possession of the Premises, removing persons and property from the Premises (including, without limitation, court costs and reasonable attorney’s fees) and storing such property; (c) reletting, renovating or altering the Premises; and (d) real estate commissions, advertising expenses and similar expenses paid or payable in connection with reletting all or any part of the Premises. “Re-entry Costs” also includes the value of free rent and other concessions Landlord gives in connection with re-entering or reletting all or any part of the Premises.

“Rent” means, collectively, Base Rent and Additional Rent payable by Tenant.

“Routine Maintenance and Repairs” means the maintenance, repair and replacements necessary to keep the Premises in good order and repair and first-class condition as set forth in Section 7.2.1, including the following:

1. Janitorial services.
2. Routine cleaning.
3. Repair of all elements of the Premises not included within Capital Maintenance and Repairs.
4. Replacement of light bulbs.
5. Removal of any graffiti from any portion of the Premises within seventy-two (72) hours.
6. Painting.
7. Window cleaning.
8. Repairs of scratched or dented walls, furniture and equipment.
9. Garbage and refuse removal.

“State” means the State of Minnesota.

“Structural Alterations” means any Alterations involving the structural, mechanical, electrical, plumbing, fire/life safety or heating, ventilating and air conditioning systems of the Building.

“Taking” means the exercise by a Condemning Authority or its power of eminent domain on all or any

part of the Property, either by accepting a deed in lieu of condemnation or by any other manner.

“Tenant” means the tenant identified in the Lease and such tenant’s permitted successors and assigns. In any provision relating to the conduct, acts or omissions of “Tenant” means the tenant identified in the Lease and such tenant’s agents, employees, contractors, invitees, successors, assigns and others using the Premises or on the Property with Tenant’s expressed or implied permission.

“Tenant Delays” means any delays caused or contributed to by Tenant.

“Tenant’s Work” shall mean any work performed by Tenant, including all low voltage equipment and cabling connections, and Essentia Furniture, Fixtures and Equipment and the other items described in Section 1.2.3.

“Term” means the Lease Term set forth in Item 2 of the Basic Terms.

“Transfer” means an assignment, mortgage, pledge, transfer, sublease or other encumbrance or conveyance (voluntarily, by operation of law or otherwise) of this Lease or the Premises or any interest in this Lease or the Premises. The term “Transfer” also includes any assignment, mortgage, pledge, transfer or other encumbering or disposal (voluntarily, by operation of law or otherwise) of any ownership interest in Tenant that results or could result in a change of control of Tenant.

“Use and Operations Agreement” means that certain Use and Operations Agreement between Landlord and YMCA made effective contemporaneously with this Lease with respect to the Project.

“YMCA” means the Duluth Area Family Y.M.C.A.

April 30, 2020

EXHIBIT 1.2.3.1
ESSENTIA DECEMBER 2018 RE-DESIGN
[COVER PAGE – ATTACHMENT TO FOLLOW]

1702



LHB, Inc.
21 West Superior Street, Suite 500
Duluth, MN 55802 | 218.727.8446

City of Hermantown
Attn: John Mulder
5105 Maple Grove Road
Hermantown, MN 55811

April 11, 2019
Invoice No: 140462.01 - 4

Project 140462.01 [Redacted] Clinic Redesign Add Service
Professional Services from February 23, 2019 to March 29, 2019

Fee				
Total Fee	27,365.00			
Percent Complete	100.00	Total Earned	27,365.00	
		Previous Fee Billing	24,628.50	
		Current Fee Billing	2,736.50	
		Total Fee	2,736.50	
		Total this Invoice	\$2,736.50	

Outstanding Invoices

Number	Date	Balance
3	3/11/2019	8,209.50
Total		8,209.50

Billings to Date

	Current	Prior	Total
Fee	2,736.50	24,628.50	27,365.00
Totals	2,736.50	24,628.50	27,365.00

Net Due 30 days from Invoice Date

City of Hermantown

Description: EWG - Redesign
Add Service

Code: 411-419100-319

Approved By: SM 5/13/19

**Essentia Wellness Center
COST CHANGE PROPOSAL #5
04/23/19**

Description: Proposal Request #24 - Essentia Redesign

Funding Source:	Insurances:
<input type="checkbox"/> Construction Contingency	<input type="checkbox"/> Subcontract default Insurance
<input checked="" type="checkbox"/> Contract Change	<input type="checkbox"/> Performance and Payment Bond
<input type="checkbox"/> Construction Contingency - Used for a Contract Change	

Item	Description	Quantity	Unit	Labor and Taxable Materials		Tax Exempt Materials	
				Cost/Unit	Totals	Unit Price	Totals
Construction							
1	McGough Supervision						
3	PE	4	EA	45	\$180		\$0
7	Northern Door & Hardware	1	LS	0	\$0	952	\$952
10	Johnson Carpet	1	LS	-260	-\$260	3,824	\$3,824
13	Holden Electric	1	LS	2,383	\$2,383	238	\$238
16	Northern Industrial Erectors	1	LS	-465	-\$465	0	\$0
19	Home Menders Inc.	1	LS	-2,314	-\$2,314	-685	-\$685
22	Olympic Companies	1	LS	1,725	\$1,725	180	\$180
25	Custom Caseworks	1	LS	1,404	\$1,404	3,002	\$3,002
28	A.G. O'Brien	1	LS	9,274	\$9,274	7,080	\$7,080
31	Bougalis and Sons	1	LS	-704	-\$704	0	\$0
34	Intercon Group	1	LS	2,043	\$2,043	238	\$238
36	Bartley Sales	1	LS	0	\$0	565	\$565
Subtotal Construction Cost Change					\$13,267		\$15,395
Miscellaneous Items							
	Subcontractor Default insurance	1.00%	%		\$133		
	General Liability insurance	0.95%	%		\$274		
Subtotal Construction & Misc. Cost Change					\$13,673		\$15,395
Fees & Contingency							
	Construction Contingency	0.00%	%		\$0		\$0
	Construction & Purchasing Agent Fee	2.25%	%		\$645		\$0
	Performance and Payment Bond	0.75%	%		\$107		
Total Construction Cost					\$14,425		\$15,395
Total							\$29,820

Owner: McGough Construction

Date:

Architect:

Date:



April 30, 2020

EXHIBIT 2
LEGAL DESCRIPTION; PREMISES; COMMON AREA
[COVER PAGE – ATTACHMENT TO FOLLOW]

Exhibit 2 page 1
Essentia Wellness Center
First Floor

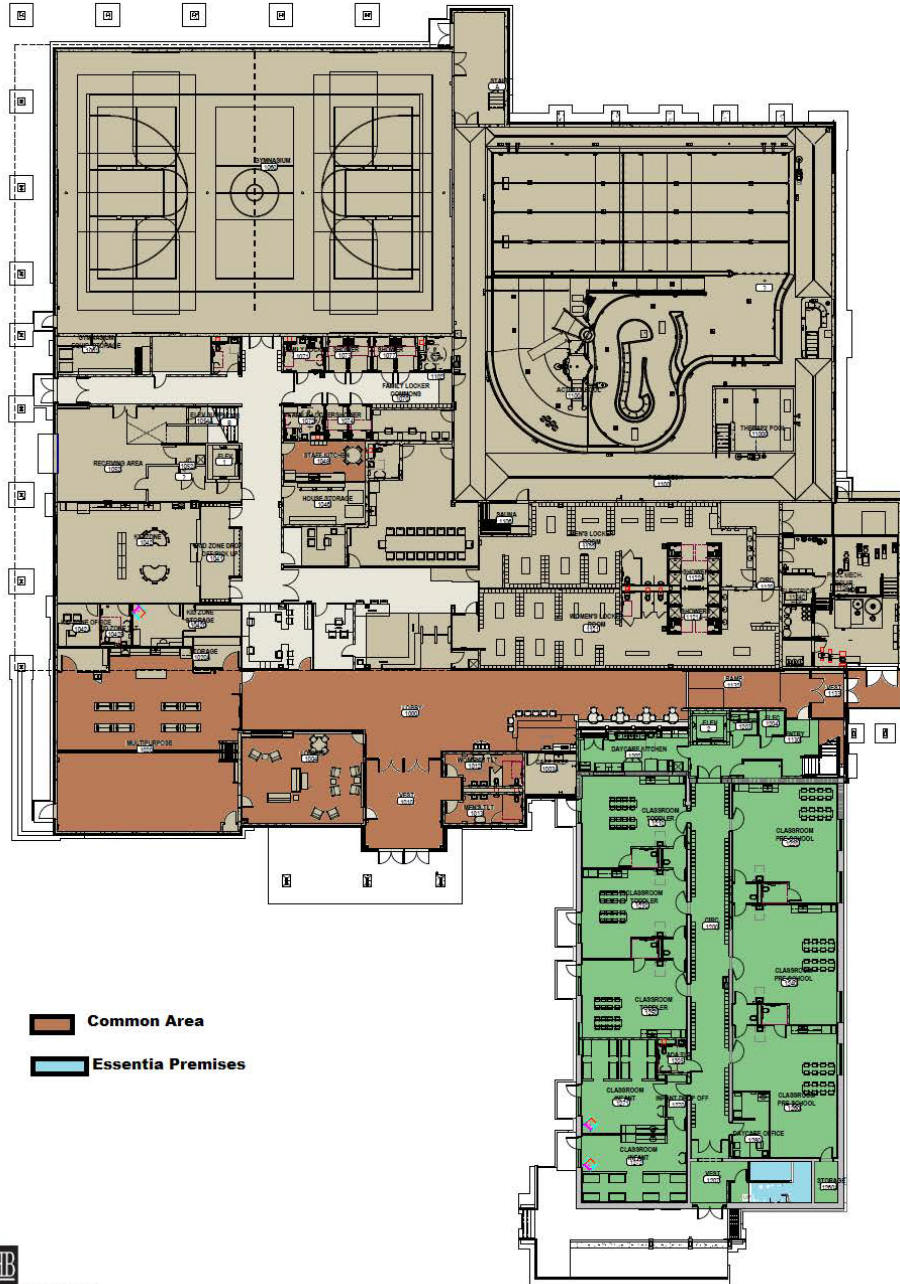
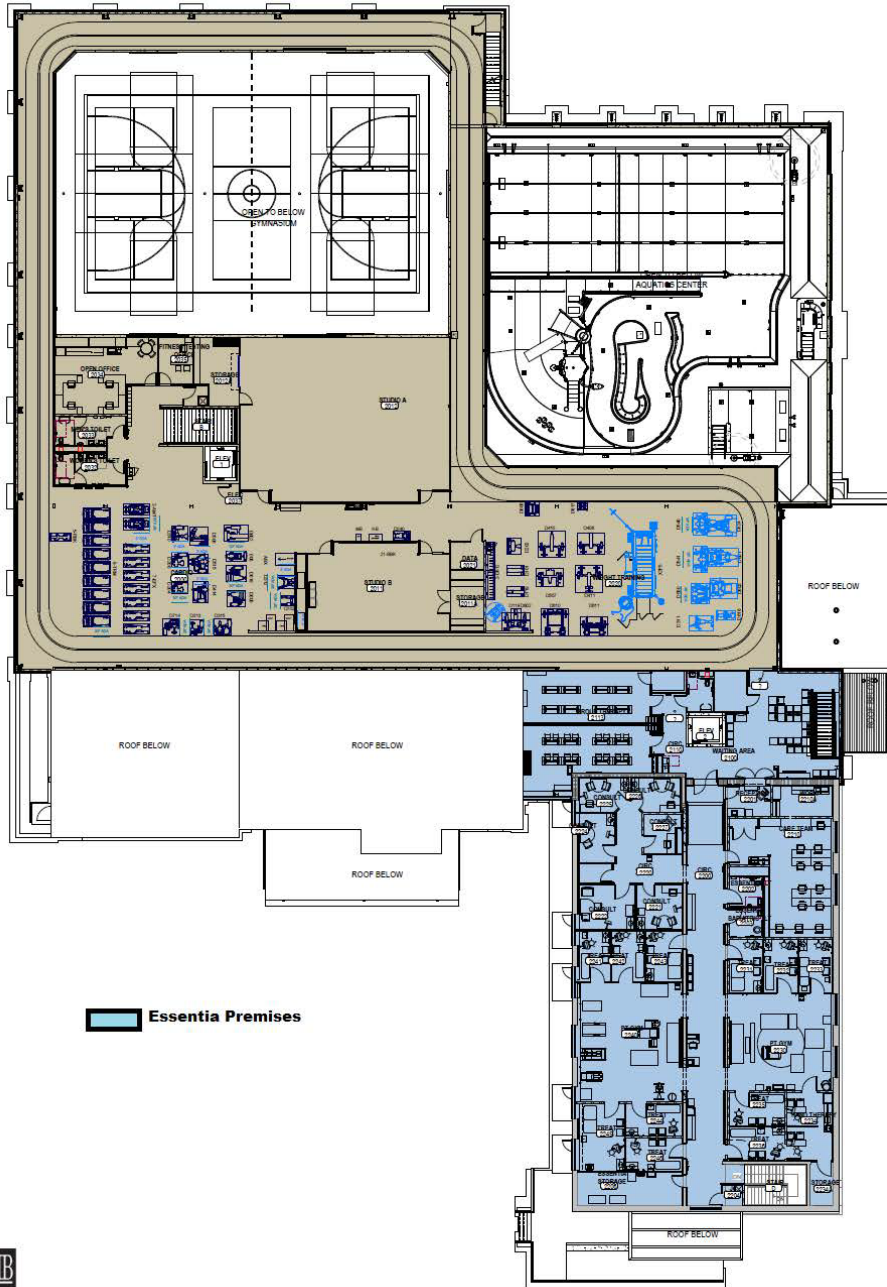


Exhibit 2 page 2

Essentia Wellness Center Second Floor





PERFORMANCE
DRIVEN DESIGN.

Essentia Wellness Center

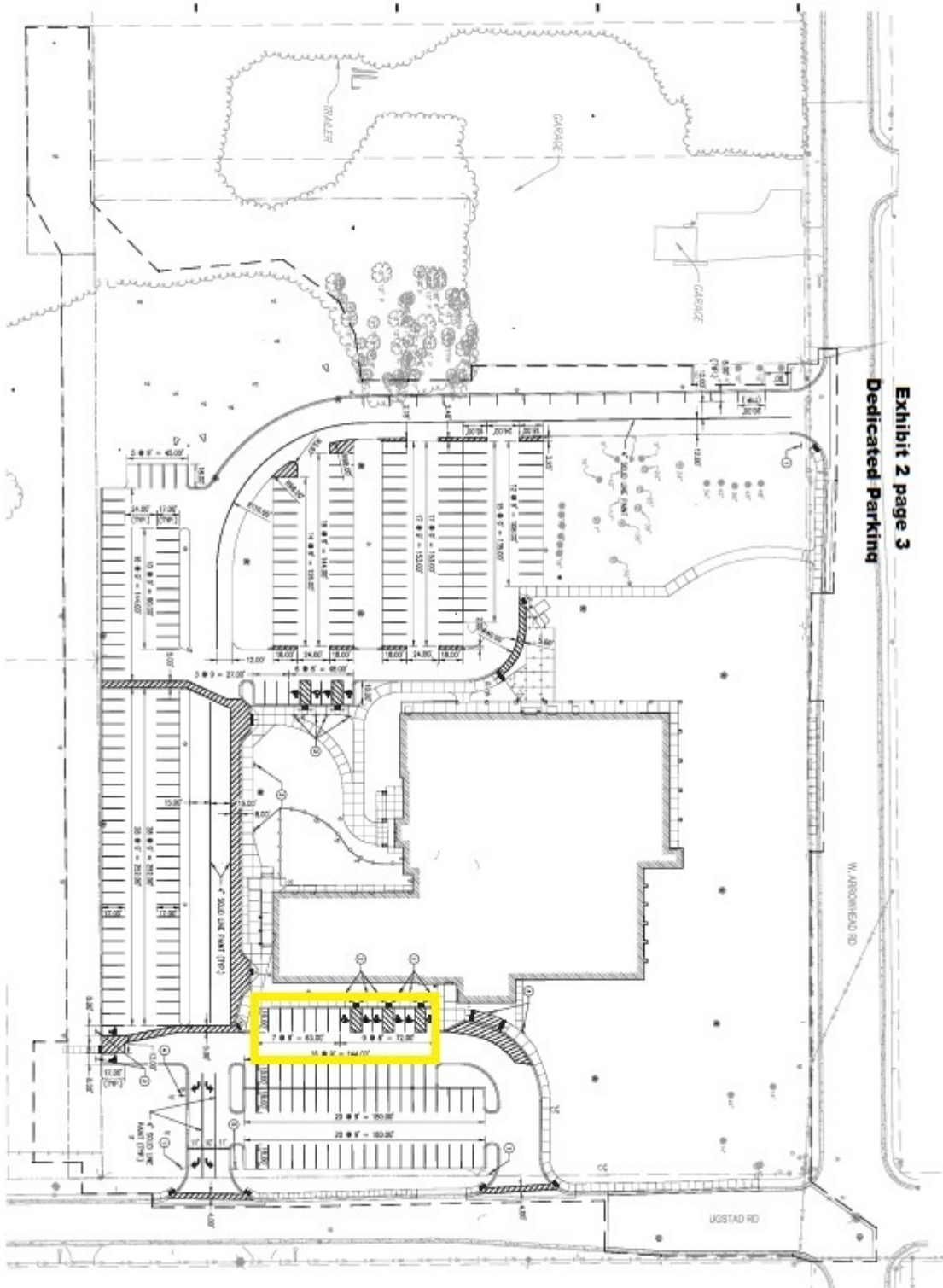


Exhibit 2 page 3
Dedicated Parking

**EXHIBIT 3
CAM CHARGE ESTIMATES**

Draft 3/15/2019-JMK										
Maintenance (42)										
					Year 1	Year 2	Year 3	Year 4	Year 5	
Building Manager Salary/Benefits					7313	29550	29835	30432	31040	
Custodial \$18/hour, 20 hours/week					5148	20592	21004	21424	21852	
Maintenance					0	0	0	0	0	
						0	0	0	0	
Total Salaries/Benefits					12461	50142	50839	51856	52892	
Contract Services Y2 62,000 sq feet x 2\$2.30					35650	142600	146878	151284.3	155822.9	
Maintenance Supplies					5250	21000	21420	21848.4	22285.37	
Housekeeping & Laundry Supplies					3250	13000	13260	13525.2	13795.7	
Telephone					105	210	214.2	218.484	222.8537	
Utilities (water, Gas, Electric, Sewer): 62,000 square feet x \$2.90/square foot (Yr2)					44950	179800	183396	187063.9	190805.2	
Maintenance & Repairs					2500	10000	10200	10404	10612.08	
Maintenance Services (Tradesmen)					0	10000	18000	18000	18000	
Maintenance Contract Services					2725	5450	5559	5670.18	5783.384	
Pool Maintenance & Supplies					2250	4500	4590	4681.8	4775.436	
Lawn and hard surface maintenance, snow removal, landscaping etc.					5150	32250	38610	39750	42925	
Food & Lodging					0	600	612	624.24	636.7248	
Insurance					4500	15000	15300	15606	15918.12	
Conferences & Training					0	300	306	312.12	318.3624	
Miscellaneous					0	0	0	0	0	
Department Total					118791	484852	509184.2	520844.7	534793.3	
Administrative Costs (15%)					17818.65	72727.8	76377.63	78126.7	80218	
Total Costs					136609.7	557579.8	585561.8	598971.4	615011.3	
Assumptions										
Maintenance cleaning contract has been calculated at \$2.30/square foot for years 1 and 2 3% increase in following years										
Utilities are calculated 62,00 square foot x \$2.90 square foot										
Snow removal is calculated based 90 snow removal days at \$250 per day										
Lawn care is calculated on 18 cutting at \$250 each.										
Landscaping has been calculated at a flat rate of \$2500 per year										

**EXHIBIT 4
PROJECT RULES**

1. Wherever in these Building Rules the word “Tenant” occurs, it is understood and agreed that it shall also mean Tenant’s assigns, employees, agents, invitees, and visitors. Wherever the word “Landlord” occurs, it is understood and agreed that it shall also mean Landlord’s assigns, employees, and agents.
2. Tenant shall not bring into the Property any inflammables (including without limitation gasoline, kerosene, naphtha and benzene), explosives, or any other article of intrinsically dangerous nature.
3. Tenant shall not obstruct sidewalks, entrances, passages, corridors, vestibules, halls, or stairways in and about the Property which are used in common with other tenants and their servants, employees, customers, guests and invitees, and which are not a part of the Premises of Tenant. Tenant shall not place objects against glass partitions or doors or windows which would be unsightly from the Building corridors or from the exterior of the Building and will promptly remove any such objects upon notice from Landlord.
4. Tenant acknowledges and agrees that the Building is “smoke free” and “vaping free,” and that no smoking of tobacco products or use of vaping products shall be allowed within the Building.
5. No vehicles (including bicycles) or animals are allowed in the Building.
6. Canvassing, soliciting, and peddling in the Building is prohibited.
7. Vending machines shall not be installed without Landlord’s prior written consent.
8. Tenant is solely responsible for protecting the Premises and Tenant’s property from theft and robbery. All entrance doors to the Premises shall be locked when the Premises are not in use.
9. No locks or similar devices shall be attached to any door or window, except as provided by Landlord or otherwise approved in writing by Landlord. Landlord’s consent to the installation of any additional locks or similar devices may be conditioned upon (among other things), Tenant providing Landlord with keys to all such additional locks. Upon termination of this Lease or of the Tenant’s possession, the Tenant shall surrender all keys of the Premises and shall provide to Landlord all combination locks on safes, cabinets and vaults.
10. Tenant shall not waste electricity, water, heat or air conditioning, and shall cooperate fully with Landlord to insure the most effective and efficient operation of the Building’s mechanical systems. No electric circuits for any purpose shall be brought into the Premises without Landlord’s prior written consent.
11. All loading, unloading, receiving or delivery of goods, supplies or disposal of garbage or refuse shall be made only through entryways provided for such purposes and indicated by Landlord. Tenant shall be responsible for any damage to the Building or the Property of its employees or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles. All heavy equipment and heavy articles shall be carried in or out of the Premises only at such time and in such manner as shall be prescribed in writing by Landlord, and Landlord shall in all cases have the right to specify the proper position of any such heavy equipment or articles, which shall only be used by Tenant in a manner

which will not interfere with or cause damage to the Premises or the Building in which they are located, or to the other tenants of the Building.

13. Tenant, its servants, employees, customers, invitees and guests shall, when using the common parking facilities, if any, in and around the Building, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between the designated lines. Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked or parked in a “no parking” zone. All vehicles shall be parked at the sole risk of the owner, and Landlord assumes no responsibility for any damage to or loss of vehicles. No vehicles shall be parked overnight.
14. At all times (a) persons may enter the Property only in accordance with these Building Rules, (b) all entries into and departures from the Property will take place through such one or more entrances as Landlord shall from time to time designate; provided, however, anything herein to the contrary notwithstanding, Landlord shall not be liable for any lack of security in respect to the Property whatsoever. Landlord will normally not enforce clauses (a) and (b) above during regular business hours, but it reserves the right to do so or not to do so at any time at its sole discretion. In case of emergency, Landlord reserves the right to prevent access to the Property during the continuance of the same by closing the doors or otherwise, for the safety of the tenants or the protection of the Property and the property therein. Landlord shall in no case be liable for damages for any error or other action taken in good faith with regard to the admission to or exclusion from the Property of any person.
15. Tenant shall observe faithfully and comply strictly with the foregoing rules and regulations and such other and further appropriate rules and regulations as Landlord may from time to time adopt. Landlord reserves the right at any time and from time to time to rescind, alter or waive, in whole or in part, any of these Building Rules when it is deemed necessary, desirable, or proper, in Landlord’s judgment, for its best interest or for the best interest of the tenants of the Property.

TO: Mayor & City Council

FROM: Dept Head



DATE: April 30, 2020

Meeting Date: 5/4/20

SUBJECT: Grant Agreement – Essentia
Wellness Center

Agenda Item: 12-M

Resolution 2020-66

REQUESTED ACTION

Approve grant agreement with MN Dept of Employment and Economic Development for the State G.O. Bond Proceeds of \$8 Million

BACKGROUND

As you know, we have been trying to finalize all of the agreements related to the use and operations of the Essentia Wellness Center. Those agreements have either been approved or should be approved within the next week. Given that the City has completed the project, this grant agreement is called an “End Grant”. There are still some minor conditions that the City will have to make such as providing signed copies of the agreements, showing that the City has all of the matching funds and a few other procedural items. The City will be able to make one draw request of the entire \$8 million once the grant agreement has been approved.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Grant Agreement

Resolution No. 2020-66

RESOLUTION APPROVING GENERAL OBLIGATION BOND PROCEEDS GRANT AGREEMENT-END GRANT FOR THE ESSENTIA WELLNESS CENTER BETWEEN THE CITY OF HERMANTOWN AND MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

WHEREAS, under the provisions contained in Minn. Laws 2017, 1st Special Session, Ch. 8, Art. 1, Sec. 20, Subd. 11, (the “G.O. Bonding Legislation”) the State of Minnesota (“State”) has allocated \$8,000,000 (the “G.O. Grant”) to assist the City of Hermantown (“City”) in the preparation of the middle school site on the Hermantown School District campus, including demolition of a portion of the middle school, and to design, construct a new addition to the middle school building and renovate the remaining existing building, furnish, and equip the facility as the Arrowhead Regional Health and Wellness Center n/k/a Essentia Wellness Center (“Project”); and

WHEREAS, the monies allocated to fund the grant to the City are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

WHEREAS, the State and City desire to set forth herein the provisions relating to the G.O. Grant to the City and the development of the Project; and

WHEREAS, a proposed General Obligation Proceeds Grant Agreement – End Grant (“Grant Agreement”) in the form of the one attached hereto as Exhibit A has been provided to the City; and

WHEREAS, the City Administrator has recommended approval of the Grant Agreement; and

WHEREAS, the City Council of the City of Hermantown has duly considered this matter and believes that it is in the best interests of the City of Hermantown to enter into the proposed Grant Agreement with the State.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota, as follows:

1. That the Grant Agreement is hereby approved.
2. That the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Grant Agreement for the Essentia Wellness Center Project substantially in the form as the one attached hereto as Exhibit A with such minor modifications thereto as are approved by the City administrator and the City Attorney.
3. That the Mayor and City Clerk have signatory authority to enter into an agreement with the State of Minnesota.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 4, 2020.

EXHIBIT A

General Obligation Bond Proceeds

Grant Agreement - End Grant

for the

Arrowhead Regional Health and Wellness Center

n/k/a Essentia Wellness Center

Project

SPAP-17-0016-P-FY17

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Attachment IV – JOBS REPORTING

General Obligation Bond Proceeds

Grant Agreement – End Grant

for the

Arrowhead Regional Health and Wellness Center

n/k/a Essentia Wellness Center

Project

THIS AGREEMENT shall be effective as of May 31, 2017, and is between City of Hermantown, a Statutory City (the “Public Entity”), and Department of Employment and Economic Development (the “State Entity”).

RECITALS

A. Under the provisions contained in Minn. Stat. § 469, the Public Entity has been given the authority to demolish, design, construct, renovate, furnish and equip; and

B. Under the provisions contained in Minn. Laws 2017, 1st Special Session, Ch. 8, Art. 1, Sec. 20, Subd. 11, (the “G.O. Bonding Legislation”) the State of Minnesota has allocated \$8,000,000 (the “G.O. Grant”), which is to be given to the Public Entity as a grant to assist it in the preparation of the middle school site on the Hermantown School District campus, including demolition of a portion of the middle school, and to design, construct a new addition to the middle school building and renovate the remaining existing building, furnish, and equip the facility as the Arrowhead Regional Health and Wellness Center n/k/a Essentia Wellness Center as authorized by such legislation; and

C. Under the provisions contained in Minn. Laws 2017, 1st Special Session, Ch. 8, Art. 1, Sec. 20, Subd. 11, the Public Entity has been given the authority to prepare the middle school site on the Hermantown School District campus, including demolition of a portion of the middle school, and to design, construct a new addition to the middle school building and renovate the remaining existing building, furnish, and equip the facility as the Arrowhead Regional Health and Wellness Center n/k/a Essentia Wellness Center; and

D. At all times relevant to the development of the Facility, the Facility has been known as the Essentia Wellness Center; and

E. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

F. The Public Entity’s receipt and use of the G.O. Grant to acquire an ownership interest in and/or improve real property (the “Real Property”) and, if applicable, structures situated thereon (the “Facility”) will cause the Public Entity’s ownership interest in all of such real property and structures

to become “state bond financed property”, as such term is used in Minn. Stat. § 16A.695 (the “G.O. Compliance Legislation”) and in that certain “Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended (the “Commissioner’s Order”), even though such funds may only be a portion of the funds being used to acquire such ownership interest and/or improve such real property and structures and that such funds may be used to only acquire such ownership interest and/or improve a part of such real property and structures.

G. This Agreement is dated as of May 31, 2017, but its terms reflect the actual circumstances existing as of its date of execution.

H. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Public Entity, and the operation of the Real Property and, if applicable, Facility.

IN CONSIDERATION of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

Article I DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

“Agreement” - means this General Obligation Bond Proceeds Grant Agreement - End Grant for the Arrowhead Regional Health and Wellness Center n/k/a Essentia Wellness Center Project, as such exists on its original date and any amendments, modifications or restatements thereof.

“Approved Debt” – means public or private debt of the Public Entity that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will be used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner of MMB is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

“Code” - means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Commissioner of MMB” - means the commissioner of Minnesota Management and Budget, and any designated representatives thereof.

“Commissioner’s Order” - means the “Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended.

“Counterparty” - means any entity with which the Public Entity contracts under a Use Contract. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property, and if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Declaration” - means a declaration, or declarations, in the form contained in **Attachment I** to this Agreement and all amendments thereto, indicating that the Public Entity’s ownership interest in the Real Property and, if applicable, Facility is bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

“Event of Default” - means one or more of those events delineated in Section 2.07.

“Facility”, if applicable, - means Essentia Wellness Center, which is located, and was constructed, on the Real Property and all equipment that is a part thereof that was purchased with the proceeds of the G.O. Grant.

“Fair Market Value” – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

“G.O. Bonding Legislation” – means the legislation delineated in Recital B of this agreement as the G.O. Bonding Legislation.

“G.O. Bonds” - means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the G.O. Grant and any bonds issued to refund or replace such bonds.

“G.O. Compliance Legislation” - means Minn. Stat. § 16A.695, as it may be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

“G.O. Grant” - means a grant of monies from the State Entity to the Public Entity in the amount identified as the “G.O. Grant” in Recital B to this Agreement, as the amount thereof may be modified under the provisions contained herein.

“Governmental Program” – means the operation of the Real Property and, if applicable, Facility for the purpose specified and identified in Recital C of this Agreement as the Governmental Program.

“Initial Acquisition and Betterment Costs” – means the cost to acquire the Public Entity’s ownership interest in the Real Property and, if applicable, Facility if the Public Entity does not already possess the required ownership interest, and the costs of betterments of the Real Property and, if applicable, Facility; provided, however, the Commissioner of MMB is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount.

“Leased/Easement Premises” - means the real estate and structures, if any, that are leased to the Public Entity under a Real Property/Facility Lease or granted to the Public Entity under an easement. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both, is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Lessor/Grantor” – means the fee owner/lessor or grantor of the Leased/Easement Premises. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both, is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Outstanding Balance of the G.O. Grant” – means the portion of the G.O. Grant that has been disbursed to or on behalf of the Public Entity minus any portion thereof previously paid back to the Commissioner of MMB.

“Ownership Value”, if any – means the value, if any, of the Public Entity’s ownership interest in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity’s execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the Commissioner of MMB. The parties hereto agree and acknowledge that such value is \$25,673,697 or ____ Not Applicable; provided, however, the Commissioner of MMB is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank “Not Applicable” is not checked, a rebuttable presumption that the Ownership Value is \$0.00 shall be created. *(The blank “Not Applicable” should only be selected and checked when a portion of the funds delineated in **Attachment III** attached hereto are to be used to acquire the Public Entity’s ownership interest in the Real Property and, if applicable, Facility, and in such event the value of such ownership interest should be shown in **Attachment III** and not in this definition for Ownership Value).*

“Project” – means the Public Entity’s acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of the activities denoted in Section 2.03. *(If the Public Entity is not using any portion of the G.O. Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in **Attachment III** hereto and instead shall be included in the definition for Ownership Value under this Section.)*

“Public Entity” - means the entity identified as the “Public Entity” in the lead-in paragraph of this Agreement.

“Real Property” - means the real property located in the County of St. Louis County, State of Minnesota, legally described in **Attachment II** to this Agreement.

“Real Property/Facility Lease” - means a long term lease of the Real Property, the Facility, if applicable, or both by the Public Entity as lessee thereunder. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both, is a leasehold interest under a lease. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“State Entity” - means the entity identified as the “State Entity” in the lead-in paragraph of this Agreement.

“Subsequent Betterment Costs” – means the costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term is used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the State Entity and the Commissioner of MMB.

“Use Contract” - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the Real Property and/or, if applicable, Facility. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property, and/or if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Useful Life of the Real Property and, if applicable, Facility” – means the term set forth in Section 2.05.V, which was derived as follows: (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments for Facilities that are to be constructed or bettered.

Article II GRANT

Section 2.01 Grant of Monies. The State Entity shall make and issue the G.O. Grant to the Public Entity and disburse the proceeds in accordance with the provisions of this Agreement. The G.O. Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the State Entity or the Commissioner of MMB under certain circumstances.

Section 2.02 Public Ownership. The Public Entity acknowledges and agrees that the G.O. Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Property and, if applicable, Facility must be owned by one or more public entities. Such ownership may be in the form of fee ownership, a Real Property/Facility Lease, or an easement. In order to establish that this public ownership requirement is satisfied, the Public Entity represents and warrants to the State Entity that it has, or will acquire, the following ownership interests in the Real Property and, if applicable, Facility, and, in addition, that it possess, or will possess, all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, Facility in the manner specified in Section 2.04:

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property.

Fee simple ownership of the Real Property.

A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.

(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

An easement for the Real Property that complies with the requirements contained in Section 2.06.

(If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

Ownership Interest in, if applicable, the Facility.

Fee simple ownership of the Facility.

A Real Property/Facility Lease for the Facility that complies with all of the requirements contained in Section 2.06.

(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

Not applicable because there is no Facility.

Section 2.03 Use of Grant Proceeds. The Public Entity shall use the G.O. Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities, and may not use the G.O. Grant for any other purpose.

(Check all appropriate boxes.)

- Acquisition of fee simple title to the Real Property.
 - Acquisition of a leasehold interest in the Real Property.
 - Acquisition of an easement for the Real Property.
 - Improvement of the Real Property.
 - Acquisition of fee simple title to the Facility.
 - Acquisition of a leasehold interest in the Facility.
 - Construction of the Facility.
 - Renovation of the Facility.
 - Demolish, Design, Furnish, and Equip.
- (Describe other or additional purposes.)

Section 2.04 Operation of the Real Property and Facility. The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used, for those purposes required by the Governmental Program, or for such other purposes and uses as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

The Public Entity may enter into Use Contracts with Counterparties for the operation of all or any portion of the Real Property and, if applicable, Facility; provided that all such Use Contracts must have been approved, in writing, by the Commissioner of MMB and fully comply with all of the provisions contained in Sections 3.01, 3.02 and 3.03.

The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a statement, sworn to before a notary public, to such effect to the State Entity and the Commissioner of MMB.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than

forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

In lieu of the foregoing, the Public Entity may require that the Counterparty include the following provision in the Use Contract:

“This Agreement is made with respect to the Essentia Wellness Center. The Essentia Wellness Center was financed in part by a Grant provided by the State of Minnesota. The Essentia Wellness Center was developed in furtherance of the City of Hermantown’s (“City”) program to promote health and wellness in the City and regional committees (“Governmental Program”). Minnesota Statutes § 16A.695, Subd. 2(b) requires that the City provide for oversight of the Governmental Program by the City. City has determined to satisfy its oversight responsibility by establishing an Oversight Committee comprised of six (6) members, one (1) of whom will be the School Superintendent or his/her designee; one (1) of whom will be the City Administrator or his/her designee; one (1) of whom will be selected by the YMCA; one (1) of whom will be selected by Essentia; and two (2) of whom will be selected from the region served by the Project by the members selected by Essentia, School, YMCA and City.

The Oversight Committee will meet at least annually in the month of October of each year beginning in October 2020 to review the services and programming provided by the School, City, YMCA and Essentia in the Essentia Wellness Center and review budgets which include revenues and expenses of School, City, YMCA and Essentia related to its portion of the Governmental Program constituting the Essentia Wellness Center. The purpose of the review is to consider whether the parties’ activities and finances are in furtherance of the Governmental Program. After such review, the Oversight Committee will prepare a report with regard to the furtherance of the Governmental Program by the parties and recommendations for any changes to further implement the Governmental Program.”

Section 2.05 Public Entity Representations and Warranties. The Public Entity further covenants with, and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. It has legal authority to use the G.O. Grant for the purpose or purposes described in Recital B of this Agreement.

C. It has legal authority to operate the Governmental Program.

D. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration, and all other documents referred to herein.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the G.O. Grant, and all of the information it has submitted or will submit to the State Entity or Commissioner of MMB relating to the G.O. Grant or the disbursement of any of the G.O. Grant is and will be true and correct.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, Facility, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

J. The contemplated use of the Real Property and, if applicable, Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project has been completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been obtained.

N. It will operate, maintain, and manage the Real Property and, if applicable, Facility or cause the Real Property and, if applicable, Facility, to be operated, maintained and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, Facility.

O. It will fully enforce the terms and conditions contained in any Use Contract.

P. It has complied with the matching funds requirement, if any, contained in Section 7.23.

Q. It will not, without the prior written consent of the State Entity and the Commissioner of MMB, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Public Entity's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the Real Property and, if applicable, Facility in the manner specified in Section 2.04, and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

R. It reasonably expects to possess the ownership interest in the Real Property and, if applicable, Facility described Section 2.02 for the entire Useful Life of the Real Property and, if applicable, Facility, and it does not expect to sell such ownership interest.

S. It does not reasonably expect to receive payments under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract or to pay the principal, interest, redemption premiums, and other expenses on any Approved Debt.

T. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the G.O. Grant to complete and fully pay for the Project.

U. It has or will promptly record a fully executed Declaration with the appropriate governmental office and deliver a copy thereof to the State Entity and to Minnesota Management and Budget (attention: Capital Projects Manager) that contains all of the recording information.

V. The Useful Life of the Real Property and, if applicable, Facility is 40 years.

W. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the State Entity or the Commissioner of MMB.

Section 2.06 Ownership by Leasehold or Easement. *This Section shall only apply if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a Real Property/Facility Lease or an easement. For all other circumstances this Section is not needed and should be ignored and treated as if it were left blank, and any reference to this Section in this Agreement shall be ignored and treated as if the reference did not exist.*

A. A Real Property/Facility Lease or easement must comply with the following provisions.

1. It must be in form and contents acceptable to the Commissioner of MMB, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the Commissioner of MMB.

2. It must be for a term that is equal to or greater than 125% of the Useful Life of the Real Property and, if applicable, Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. Any payments to be made under it by the Public Entity, whether designated as rent or in any other manner, must be by way of a single lump sum payment that is due and payable on the date that it is first made and entered into.

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

7. It must contain a provision that prohibits the Lessor/Grantor from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased/Easement Premises or the Lessor's/Grantor's interest in the Real Property/Facility Lease or easement, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease or easement and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease or easement as if such holder had been an original Lessor/Grantor under the Real Property/Facility Lease or easement.

8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms, conditions and provisions contained in the Real Property/Facility Lease or easement.

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Public Entity's ownership interest in the Real Property/Facility Lease or easement. Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.

10. It must allow for a transfer thereof in the event that the lessee under the Real Property/Lease or grantee under the easement makes the necessary determination to sell its interest therein, and allow such interest to be transferred to the purchaser of such interest.

11. It must contain a provision that prohibits and prevents the sale of the underlying fee interest in the Real Property and, if applicable, Facility without first obtaining the written consent of the Commissioner of MMB.

12 The Public Entity must be the lessee under the Real Property/Lease or grantee under the easement.

B. The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease or easement that are not inconsistent with or contrary to the requirements contained in this Section.

C. The expiration of the term of a Real Property/Facility Lease or easement shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the G.O. Grant, and upon such expiration the Public Entity's ownership interest in the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D. The Public Entity shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease or easement, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/Facility Lease or easement or a short form or memorandum thereof.

Section 2.07 Event(s) of Default. The following events shall, unless waived in writing by the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the State Entity or the Commissioner of MMB giving the Public Entity 30 days written notice of such event and the Public Entity's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months unless otherwise consented to, in writing, by the State Entity and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the G.O. Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Public Entity fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

C. If the Public Entity fails to fully comply with any provision, term, condition, covenant, or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the G.O. Bonding Legislation.

D. If the Public Entity fails to provide and expend the full amount of the matching funds, if any, required under Section 7.23 for the Project.

E. If the Public Entity fails to record the Declaration and deliver copies thereof as set forth in Section 2.05.U.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon either the State Entity or the Commissioner of MMB giving the Public Entity written notice of such event.

Section 2.08 Remedies. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the State Entity, the State Entity or the Commissioner of MMB may enforce any or all of the following remedies.

A. The State Entity may refrain from disbursing the G.O. Grant; provided, however, the State Entity may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default involves a failure to comply with any of the provisions contained herein other than the provisions contained in Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the G.O. Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner of MMB.

C. If the Event of Default involves a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Public Entity pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner of MMB.

D. Either the State Entity or the Commissioner of MMB, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the State Entity or the Commissioner of MMB would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained in this Agreement within 30 days of demand by the Commissioner of MMB, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of the State Entity and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 Notification of Event of Default. The Public Entity shall furnish to the State Entity and the Commissioner of MMB, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would

constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.10 Survival of Event of Default. This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.12 and at the end of its term in accordance with the provisions contained in Section 2.11.

Section 2.11 Term of Grant Agreement. This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Real Property and, if applicable, Facility is first used for the operation of the Governmental Program after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property and, if applicable, Facility from the effect of this Agreement and the Declaration.

Section 2.12 Modification and/or Early Termination of Grant. If the full amount of the G.O. Grant has not been disbursed on or before the date that is 5 years from the effective date of this Agreement, or such later date to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the G.O. Grant shall terminate. In such event, (i) if none of the G.O. Grant has been disbursed by such date then the State Entity's obligation to fund any portion of the G.O. Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the G.O. Grant has been disbursed by such date then the State Entity shall have no further obligation to provide any additional funding for the G.O. Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the G.O. Grant that was actually disbursed as of such date.

This Agreement shall also terminate and no longer be of any force or effect upon the Public Entity's sale of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of MMB in compliance with the provisions contained in Section 4.02, or upon the termination of Public Entity's ownership interest in the Real Property and, if applicable, Facility if such ownership interest is by way of an easement or under a Real Property/Facility Lease. Upon such termination the State Entity shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the Public Entity's ownership interest in the Real Property and, if applicable, Facility, from the effect of this Agreement and the Declaration.

Section 2.13 Excess Funds. If the full amount of the G.O. Grant and any matching funds referred to in Section 7.23 are not needed to complete the Project, then, unless language in the G.O. Bonding Legislation indicates otherwise, the G.O. Grant shall be reduced by the amount not needed.

Article III USE CONTRACTS

This Article III and its contents is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate any portion of the Real Property, and if applicable, Facility. For all other circumstances this Article III and its contents are not needed and should be ignored and treated as if it were left blank, and any reference to this Article III, its contents, and the term Use Contract in this Agreement shall be ignored and treated as if the references did not exist.

Section 3.01 General Provisions. If the Public Entity has statutory authority to enter into a Use Contract, then it may enter into Use Contracts for various portions of the Real Property and, if applicable, Facility; provided that each and every Use Contract that the Public Entity enters into must comply with the following requirements:

A. The purpose for which it was entered into must be to operate the Governmental Program in the Real Property and, if applicable, Facility.

B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into such contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the Governmental Program and must describe such program.

D. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity: (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the Governmental Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the Governmental Program (from all sources) by the Counterparty will equal or exceed

expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the Public Entity will annually determine that the Counterparty is using the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract to operate the Governmental Program.

E. It must allow for termination by the Public Entity in the event of a default thereunder by the Counterparty, or in the event that the Governmental Program is terminated or changed in a manner that precludes the operation of such program in the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.

F. It must terminate upon the termination of the statutory authority under which the Public Entity is operating the Governmental Program.

G. It must require the Counterparty to pay all costs of operation and maintenance of that portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, unless the Public Entity is authorized by law to pay such costs and agrees to pay such costs.

H. If the Public Entity pays monies to a Counterparty under a Use Contract, such Use Contract must meet the requirements of Rev. Proc. 97-13, 1997-1 CB 632, so that such Use Contract does not result in “private business use” under Section 141(b) of the Code.

I. It must be approved, in writing, by the Commissioner of MMB, and any Use Contract that is not approved, in writing, by the Commissioner of MMB shall be null and void and of no force or effect.

J. It must contain a provision requiring that each and every party thereto shall, upon direction by the Commissioner of MMB, take such actions and furnish such documents to the Commissioner of MMB as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, the Public Entity’s ownership interest in the Real Property or, if applicable, Facility, or the

Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

L. If the amount of the G.O. Grant exceeds \$200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66, as it may be amended, modified or replaced from time to time, for the term of the Use Contract.

M. It must contain a provision that clearly states that the Public Entity is not required to renew the Use Contract beyond the original term thereof and that the Public Entity may, at its sole option and discretion, allow the Use Contract to expire at the end of its original term and thereafter directly operate the Governmental Program in the Real Property and, if applicable, Facility or contract with some other entity to operate the Governmental Program in the Real Property and, if applicable, Facility.

Section 3.02 Initial Term and Renewal. The initial term for a Use Contract may not exceed the lesser of (i) 50% of the Useful Life of the Real Property and, if applicable, Facility for the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, or (ii) the shortest term of the Public Entity's ownership interest in the Real Property and, if applicable, Facility.

A Use Contract may allow for renewals beyond its initial term on the conditions that (a) the term of any renewal may not exceed the initial term, (b) the Public Entity must make a determination that renewal will continue to carry out the Governmental Program and that the Counterparty is suited and able to perform the functions contained in Use Contract that is to be renewed, (c) the Use Contract may not include any provisions that would require, either directly or indirectly, the Public Entity to either make the determination referred to in this Section or to renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal term, and (d) no such renewal may occur prior to the date that is 6 months prior to the date on which the Use Contract is scheduled to terminate. Provided, however, notwithstanding anything to the contrary contained herein the Public Entity's voluntary agreement to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the

Public Entity does not renew a Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Public Entity to renew such Use Contract.

Section 3.03 Reimbursement of Counterparty. A Use Contract may but need not contain, at the sole option and discretion of the Public Entity, a provision that requires the Public Entity to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty. If agreed to by the Public Entity, such reimbursement shall be on terms and conditions agreed to by the Public Entity and the Counterparty.

Section 3.04 Receipt of Monies Under a Use Contract. The Public Entity does not anticipate the receipt of any funds under a Use Contract, provided, however, if the Public Entity does receive any monies under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner of MMB. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner of MMB shall be determined by the Commissioner of MMB, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the G.O. Grant and the denominator of which is sum of the G.O. Grant and the Approved Debt.

Article IV SALE

Section 4.01 Sale. The Public Entity shall not sell any part of its ownership interest in the Real Property and, if applicable, Facility unless all of the following provisions have been complied with fully.

A. The Public Entity determines, by official action, that such ownership interest is no longer usable or needed for the operation of the Governmental Program, which such determination may be based on a determination that the portion of the Real Property or, if applicable, Facility to which such ownership interest applies is no longer suitable or financially feasible for such purpose.

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

D. The written consent of the Commissioner of MMB has been obtained.

The acquisition of the Public Entity's ownership interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's ownership interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates such portion of the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

The Public Entity may participate in any public auction of its ownership interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the Governmental Program.

Section 4.02 Proceeds of a Sale. Upon the sale of the Public Entity's ownership interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale and such other costs that are approved, in writing, by the Commissioner of MMB, but not including the repayment of any debt associated with the Public Entity's ownership interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of MMB in an amount equal to the Outstanding Balance of the G.O. Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the G.O. Grant then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 4.02.A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) reimburse the Public Entity for its Ownership Value, and (iii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution (such as the State Entity under Section 4.02.A and the holders of Approved Debt paid under this Section 4.02.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of

the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing, and if such entities cannot agree by an appropriately issued court order.

C. The remaining portion, after the distributions specified in Sections 4.02.A and B, shall be divided and distributed to the State Entity, the Public Entity, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such funds, in proportion to the contributions that the State Entity, the Public Entity, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to the State Entity shall be made to the Commissioner of MMB, and the Public Entity may direct its distribution to be made to any other entity including, but not limited to, a Counterparty.

All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner of MMB, and no such disbursements shall be made without such consent.

The Public Entity shall not be required to pay or reimburse the State Entity or the Commissioner of MMB for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the G.O. Grant.

Article V
COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION
AND THE COMMISSIONER'S ORDER

Section 5.01 State Bond Financed Property. The Public Entity and the State Entity acknowledge and agree that the Public Entity's ownership interest in the Real Property and, if applicable, Facility is, or when acquired by the Public Entity will be, "state bond financed property", as such term is used in the G.O. Compliance Legislation and the Commissioner's Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Public Entity's ownership interest in the Real Property and, if applicable, Facility and any Use Contracts relating thereto.

Section 5.02 Preservation of Tax Exempt Status. In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or, if applicable, Facility, or use or invest the G.O. Grant or any other sums treated as “bond proceeds” under Section 148 of the Code including “investment proceeds,” “invested sinking funds,” and “replacement proceeds,” in such a manner as to cause the G.O. Bonds to be classified as “arbitrage bonds” under Section 148 of the Code.

B. It will deposit into and hold all of the G.O. Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner of MMB all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the G.O. Bonds.

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty, that could cause the interest on the G.O. Bonds to no longer be tax exempt and upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the G.O. Bonds as a “qualified bond” within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an “unrelated trade or business” or for any “private business use” (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the G.O. Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor omit to take any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 Changes to G.O. Compliance Legislation or the Commissioner’s Order. In the event that the G.O. Compliance Legislation or the Commissioner’s Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity’s ownership interest in the Real Property or, if applicable, Facility is exempt from the G.O. Compliance Legislation and the

Commissioner's Order, then upon written request by the Public Entity the State Entity shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Public Entity's ownership interest in the Real Property and, if applicable, Facility from the G.O. Compliance Legislation or the Commissioner's Order.

Article VI

DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 Disbursement of Grant. Upon compliance with all of the conditions delineated in Section 6.02, the State Entity shall disburse the G.O. Grant to the Public Entity in one lump sum. Under no circumstance shall the State Entity be required to disburse funds in excess of the amount requested by the Public Entity under the provisions contained in Section 6.02.A even if the amount requested is less than the amount of the G.O. Grant delineated in Section 1.01. If the amount of G.O. Grant that the State Entity disburses hereunder to the Public Entity is less than the amount of the G.O. Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the G.O. Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to disburse any of the G.O. Grant shall terminate as of the date specified in such Section even if the entire G.O. Grant has not been disbursed by such date.

The G.O. Grant shall only be for expenses that (i) are for those items of a capital nature for the Project, (ii) accrued no earlier than the effective date of the legislation that appropriated the funds that are used to fund the G.O. Grant, or (iii) have otherwise been consented to, in writing, by the State Entity and the Commissioner of MMB.

Section 6.02 Conditions Precedent to Disbursement of Grant. The obligation of the State Entity to disburse the G.O. Grant to the Public Entity is subject to the following conditions precedent:

A. The State Entity shall have received a request for disbursement of the G.O. Grant specifying the amount of funds being requested, which such amount shall not exceed the amount of the G.O. Grant delineated in Section 1.01.

B. The State Entity shall have received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Public Entity has legal authority to and has taken all actions necessary to enter into this Agreement and the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Public Entity.

D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has fully and completely paid for the Project and all other expenses that may occur in conjunction therewith.

E. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity is in compliance with the matching funds requirements, if any, contained in Section 7.23 and that all of such matching funds, if any, have been expended for the Project.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Public Entity possesses the ownership interest delineated in Section 2.02.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, Facility and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and, if required by law, have been duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Project was completed in a manner that will allow the Real Property and, if applicable, Facility to be operated in the manner specified in Section 2.04, which requirement may be satisfied by a certificate of occupancy or such other equivalent document from the municipality in which the Real Property is located.

K. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has the ability and a plan to fund the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04.

L. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the insurance requirements under Section 7.01 have been satisfied.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, of compliance with the provisions and requirements specified in Section 7.10 and all additional applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that: (i) the predesign package referred to in Section 7.10.B has, if required, been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 7.10.C have, if required, received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota Senate Capital Investment Committee have, if required, been notified pursuant to Section 7.10.G.

N. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

O. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require.

Article VII

MISCELLANEOUS

Section 7.01 Insurance. The Public Entity shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof (i) by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Public Entity, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the State Entity under which the State Entity and the Public Entity are named as loss payees. If damages which are covered by such required insurance occur, then the Public Entity shall, at its sole option and discretion, either: (y) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (z) sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

If the Public Entity elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the Real Property and Facility. If the Public Entity elects to sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

The State Entity agrees to and will assign or pay over to the Public Entity all insurance proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes thereon as to the use of such insurance proceeds.

If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property and, if applicable, Facility, then the Public Entity shall have the State Entity named as an additional named insured therein.

The Public Entity may require a Counterparty to provide and maintain any or all of the insurance required under this Section; provided that the Public Entity continues to be responsible for the providing of such insurance in the event that the Counterparty fails to provide or maintain such insurance.

At the written request of either the State Entity or the Commissioner of MMB, the Public Entity shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Public Entity regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Public Entity fails to provide and maintain the insurance required under this Section, then the State Entity may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature, and any funds expended by the State Entity to obtain or maintain such insurance shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365-day year. Provided, however, nothing contained herein, including but not limited to this Section, shall require the State Entity to obtain or maintain such insurance, and the State Entity's decision to not obtain or maintain such insurance shall not lessen the Public Entity's duty to obtain and maintain such insurance.

Section 7.02 Condemnation. If after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility, and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its ownership interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As recipient of any of condemnation awards or proceeds referred to herein, the State Entity agrees to and will disclaim, assign or pay over to the Public Entity all of such condemnation awards or proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes upon the Public Entity as to the use of such condemnation awards or proceeds.

Section 7.03 Use, Maintenance, Repair and Alterations. The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's ownership interest in the Real Property and, if applicable, Facility, is a leasehold interest, (vi) comply with the provisions of any easement if its ownership interest in the Real Property and, if applicable, Facility is by way of such easement, and (vii) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use contract.

The Public Entity shall not, without the written consent of the State Entity and the Commissioner of MMB, (a) permit or suffer the use of any of the Real Property or, if applicable, Facility, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Real Property or, if applicable, Facility, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property or, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the Governmental Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or, if applicable, Facility, (d) abandon the Real Property or, if applicable, Facility, (e) commit or permit any waste or deterioration of the Real Property or, if applicable, Facility, (f) remove any fixtures or personal property from the Real Property or, if applicable, Facility, that was paid for with the proceeds of the G.O. Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the State Entity may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public

Entity irrevocably authorizes and empowers the State Entity to enter upon the Real Property and, if applicable, Facility, to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or funds expended by the State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the State Entity to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

Section 7.04 Records Keeping and Reporting. The Public Entity shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and, if applicable, Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Public Entity shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and, if applicable, Facility for a period of 6 years from the date such operation is initiated.

Section 7.05 Inspections by State Entity. Upon reasonable request by the State Entity and without interfering with the normal use of the Real Property and, if applicable, Facility, the Public Entity shall allow, and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, Facility to allow the State Entity to inspect the Real Property and, if applicable, Facility.

Section 7.06 Data Practices. The Public Entity agrees with respect to any data that it possesses regarding the G.O. Grant, the Project, or the operation of the Real Property and, if applicable, Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.07 Non-Discrimination. The Public Entity agrees to not engage in discriminatory employment practices regarding the Project, or operation or management of the Real Property and, if applicable, Facility, and it shall, with respect to such activities, fully comply with all of the provisions

contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.08 Worker's Compensation. The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181, subd. 2 and 176.182, as they may be amended, modified or replaced from time to time, with respect to the Project and the operation or management of the Real Property and, if applicable, Facility.

Section 7.09 Antitrust Claims. The Public Entity hereby assigns to the State Entity and the Commissioner of MMB all claims it may have for overcharges as to goods or services provided with respect to the Project, and operation or management of the Real Property and, if applicable, Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 7.10 Review of Plans and Cost Estimates. The Public Entity agrees to comply with all applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Public Entity agrees to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Public Entity shall provide all information that the State Entity may request in order for the State Entity to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project the Public Entity shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to

complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota State Senate Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Public Entity must notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees of any significant changes to the program plan and cost estimates referred to in Section 7.10.C.

E. The program plan and cost estimates referred to in Section 7.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20, as they may be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the G.O. Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Public Entity shall just notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees that the work to be performed is ready to begin.

H. The Project must be: (i) substantially completed in accordance with the program plan and cost estimates referred to in Section 7.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 7.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 7.10.C.

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, parking structures, park and ride facilities, bus rapid transit stations, light rail lines, passenger rail projects, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, trails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04, as it may be amended, modified or replaced from time to time, ice centers, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

Section 7.11 Prevailing Wages. The Public Entity agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the Governmental Program on or in the Real Property and, if applicable, Facility. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the Governmental Program on or in the Real Property and, if applicable, Facility.

Section 7.12 Liability. The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Public Entity is a “municipality” as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

Section 7.13 Indemnification by the Public Entity. The Public Entity shall bear all loss, expense (including attorneys’ fees), and damage in connection with the Project and operation of the Real Property and, if applicable, Facility, and agrees to indemnify and hold harmless the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the State Entity, the Commissioner of MMB, or the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Project or operation of the Real

Property and, if applicable, Facility, whether or not due to any act of omission or commission, including negligence of the Public Entity or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner of MMB, or the State of Minnesota, their employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

The Public Entity's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusions from coverage in any insurance policy.

Section 7.14 Relationship of the Parties. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Public Entity, the State Entity, or the Commissioner of MMB, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee of the State Entity, the Commissioner of MMB, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property and, if applicable, Facility.

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with the State Entity, the Commissioner of MMB, or the State of Minnesota, and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of the State Entity, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the State Entity, the Commissioner of MMB, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 7.15 Notices. In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity at:

City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811
Attention: John Mulder

To the State Entity at:

Department of Employment and Economic Development
332 Minnesota Street
Suite E200
Saint Paul, MN 55101
Attention: Ryan Bloomberg

To the Commissioner of MMB at:

Minnesota Department of Management and Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

Section 7.16 Binding Effect and Assignment or Modification. This Agreement and the Declaration shall be binding upon and inure to the benefit of the Public Entity and the State Entity, and their respective successors and assigns. Provided, however, that neither the Public Entity nor the State Entity may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Public Entity or the State Entity unless such change or modification is in writing and signed by an authorized official of the party or against which such change or modification is to be imposed.

Section 7.17 Waiver. Neither the failure by the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 7.18 Entire Agreement. This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Public Entity and the State Entity, and there are no other agreements, either oral or written, between the Public Entity and the State Entity on the subject matter hereof.

Section 7.19 Choice of Law and Venue. All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 7.20 Severability. If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.21 Time of Essence. Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.22 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.23 Matching Funds. The Public Entity must obtain and supply the following matching funds, if any, for the Project:

This appropriation is not available until at least an equal amount is committed to the project from non-state sources.

Any matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to pay for the Project. The Public Entity shall supply to the Commissioner of MMB whatever documentation the Commissioner of MMB may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner of MMB.

Section 7.24 Source and Use of Funds. The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down among the following categories:

- (i) State funds including the G.O. Grant, identifying the source and amount of such funds.
- (ii) Matching funds, identifying the source and amount of such funds.
- (iii) Other funds supplied by the Public Entity, identifying the source and amount of such funds.
- (iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.
- (v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

Previously paid project expenses that are to be reimbursed and paid from proceeds of the G.O. Grant may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner of MMB.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Public Entity must provide to the State Entity and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

The Public Entity shall also supply whatever other information and documentation that the State Entity or the Commissioner of MMB may request to support or explain any of the information contained in **Attachment III**.

The value of the Public Entity's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment III** if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

The funds shown in **Attachment III** and to be supplied for the Project may, subject to any limitations contained in the G.O. Bonding Legislation, be provided by either the Public Entity or a Counterparty under a Use Contract.

Section 7.25 Third-Party Beneficiary. The Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 7.26 Public Entity Tasks. Any tasks that this Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 7.27 State Entity and Commissioner Required Acts and Approvals. The State Entity and the Commissioner of MMB shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

Section 7.28 Applicability to Real Property and Facility. This Agreement applies to the Public Entity's ownership interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing in conjunction with the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Public Entity's ownership interest in the Real Property.

Section 7.29 E-Verification. The Public Entity agrees and acknowledges that it is aware of Minn. Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such statute and impose a similar requirement in any Use Contract to which it is a party.

Section 7.30 Jobs Reporting Requirements. Pursuant to Minn. Stat. § 16A.633, Subd. 4, the Public Entity shall collect, maintain and, upon completion of the Project, provide the information indicated in **Attachment IV** of this Agreement, to the Commissioner of MMB. The information must include, but is not limited to, the following: the number and types of jobs created by the Project, whether the jobs are new or retained, where the jobs are located and the pay ranges of the jobs.

Section 7.31 Additional Requirements. The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

American-Made Steel. Minnesota Laws 2014, Chapter 294, Article 2, Section 22, requires public entities receiving an appropriation of public money for a project in that act to ensure those facilities are built with American-made steel, to the extent practicable. The Public Entity shall comply with this requirement, and shall furnish any documentation pursuant thereto reasonably requested by the State Entity.

[THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement End Grant for the Arrowhead Regional Health and Wellness Center n/k/a Essentia Wellness Center Project on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

_____ City of Hermantown _____,

a _____ Statutory City _____

By: _____

_____ Wayne Boucher _____

Its: _____ Mayor _____

Dated: _____, _____

And: _____

_____ Bonnie Engseth _____

Its: _____ City Clerk _____

Dated: _____, _____

STATE ENTITY:

Department of Employment and Economic Development,

By: _____

Its: _____ Deputy Commissioner _____

Dated: _____, _____

ENCUMBERED:

Department of Employment and Economic Development,

By: _____

Date Encumbered

Attachment I to Grant Agreement

State of Minnesota

General Obligation Bond Financed

DECLARATION

The undersigned has the following interest in the real property located in the County of St. Louis, State of Minnesota that is legally described in **Exhibit A** attached and all facilities situated thereon (collectively, the “Restricted Property”):

(Check the appropriate box.)

- a fee simple title,
 a lease, or
 an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain General Obligation Bonds Proceeds Grant Agreement – End Grant for the Arrowhead Regional Health and Wellness Center n/k/a Essentia Wellness Center between the City of Hermantown and the Department of Employment and Economic Development, dated May 31, 2017.

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget, at which time it shall be released therefrom by way of a written release in recordable form signed by both the Commissioner of Department of Employment and Economic Development and the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota Management and Budget.

IN TESTIMONY WHEREOF, the Public Entity has executed this Declaration on the day and date indicated immediately below the respective signatures.

PUBLIC ENTITY:

CITY OF HERMANTOWN

By: _____

Wayne Boucher, Its Mayor

Dated: _____, _____

By: _____

Bonnie Engseth, Its City Clerk

Dated: _____, _____

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Wayne Boucher and by Bonnie Engseth, respectively the Mayor and City Clerk of the City of Hermantown, a public body corporate and politic and a municipal corporation under the laws of the State of Minnesota.

Exhibit A to Declaration

LEGAL DESCRIPTION OF RESTRICTED PROPERTY

Parcel 1:

All that part of Lot 1, Block 16, Duluth Homestead's Subdivision Plat, St. Louis County, Minnesota, described as follows:

Commencing at the northwest corner of said Lot 1, block 16, Duluth Homestead's Subdivision Plat; thence south 89 degrees 38 minutes East, along the north line of said Lot 1, a distance of 673.91 feet, to the point of beginning; thence South 0 degrees 27 minutes West a distance of 250 feet; thence South 89 degrees 38 minutes East, along the south line of said Lot 1, a distance of 200 feet, more or less, to the east line of said Lot 1; thence North 0 degrees 27 minutes, along the east line of said Lot 1, a distance of 280 feet, more or less to the north line of said Lot 1; thence westerly along the north line of said Lot 1 to the point of beginning.

Parcel 2:

That part of Lot 2, Block 16, Duluth Homestead's Subdivision Plat, St. Louis County, Minnesota, described as follows:

Commencing at the northeast corner of Section 16, Township 50 North, Range 15 West, St. Louis County, Minnesota; thence along the east line of said Section 16, which has a bearing of South 00 degrees 26 minutes 22 seconds West (South 00 degrees 27 minutes West per Duluth Homestead's Subdivision Plat) a distance of 33.00 feet, to the easterly extension of the north line of said Lot 2, Block 16; thence North 89 degrees 38 minutes 00 seconds West, along said easterly extension, 33.00 feet to the northeast corner of said Lot 2, Block 16, said point being the point of beginning of the parcel herein described; thence South 00 degrees 26 minutes 22 seconds West, along the east line of said Lot 2, a distance of 250.00 feet; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 236.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 30.00 feet; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 151.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 250.00 feet, to the easterly extension of the south line of Lot 1, Block 16, Duluth Homestead's Subdivision Plat; thence North 89 degrees 38 minutes 00 seconds West, along said easterly extension, 343.00 feet, to the east line of said Lot 1, Block 16; thence North 00 degrees 26 minutes 22 seconds East, along said east line, 280.00 feet to a south line of Lot 1, Block 16; thence South 89 degrees 38 minutes 00 seconds East, along said south line, 325.00 feet, to the east line of said Lot 1, Block 16; thence North 00 degrees 26 minutes 22 seconds East, along said east line, 250.00 feet to the north line of said Lot 2, Block 16; thence South 89 degrees 38 minutes 00 seconds East, along said north line, 405.00 feet, to the point of beginning.

Parcel 3:

That part of Lot 2, Block 16, Duluth Homestead's Subdivision Plat, St. Louis County, Minnesota, described as follows:

Commencing at the northeast corner of Section 16, Township 50 North, Range 15 West, St. Louis County, Minnesota; thence along the east line of said Section 16, which has a bearing of South 00 degrees 26 minutes 22 seconds West (South 00 degrees 27 minutes West per Duluth Homestead's Subdivision Plat) a distance of 33.00 feet, to the easterly extension of the north line of said Lot 2, Block 16; thence North 89 degrees 38 minutes 00 seconds West, along said 7 easterly extension, 33.00 feet to the northeast corner of said Lot 2, Block 16; thence South 00 degrees 26 minutes 22 seconds West, along the east of said Lot 2 a distance of 250.00 feet to the point of beginning of the parcel herein described; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 236.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 30.00 feet; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 151.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 250.00 feet, to the easterly extension of the south line of Lot 1, Block 16, Duluth Homestead's Subdivision Plat; thence South 89 degrees 38 minutes 00 seconds East, parallel with said north line of Lot 2, Block 16, a distance of 387.00 feet, to said east line of Lot 2, Block 16; thence North 00 degrees 26 minutes 22 seconds East, along said east line of Lot 2, Block 16, a distance of 280.00 feet to the point of beginning.

Attachment II to Grant Agreement

LEGAL DESCRIPTION OF REAL PROPERTY

Parcel 1:

All that part of Lot 1, Block 16, Duluth Homestead's Subdivision Plat, St. Louis County, Minnesota, described as follows:

Commencing at the northwest corner of said Lot 1, block 16, Duluth Homestead's Subdivision Plat; thence south 89 degrees 38 minutes East, along the north line of said Lot 1, a distance of 673.91 feet, to the point of beginning; thence South 0 degrees 27 minutes West a distance of 250 feet; thence South 89 degrees 38 minutes East, along the south line of said Lot 1, a distance of 200 feet, more or less, to the east line of said Lot 1; thence North 0 degrees 27 minutes, along the east line of said Lot 1, a distance of 280 feet, more or less to the north line of said Lot 1; thence westerly along the north line of said Lot 1 to the point of beginning.

Parcel 2:

That part of Lot 2, Block 16, Duluth Homestead's Subdivision Plat, St. Louis County, Minnesota, described as follows:

Commencing at the northeast corner of Section 16, Township 50 North, Range 15 West, St. Louis County, Minnesota; thence along the east line of said Section 16, which has a bearing of South 00 degrees 26 minutes 22 seconds West (South 00 degrees 27 minutes West per Duluth Homestead's Subdivision Plat) a distance of 33.00 feet, to the easterly extension of the north line of said Lot 2, Block 16; thence North 89 degrees 38 minutes 00 seconds West, along said easterly extension, 33.00 feet to the northeast corner of said Lot 2, Block 16, said point being the point of beginning of the parcel herein described; thence South 00 degrees 26 minutes 22 seconds West, along the east line of said Lot 2, a distance of 250.00 feet; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 236.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 30.00 feet; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 151.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 250.00 feet, to the easterly extension of the south line of Lot 1, Block 16, Duluth Homestead's Subdivision Plat; thence North 89 degrees 38 minutes 00 seconds West, along said easterly extension, 343.00 feet, to the east line of said Lot 1, Block 16; thence North 00 degrees 26 minutes 22 seconds East, along said east line, 280.00 feet to a south line of Lot 1, Block 16; thence South 89 degrees 38 minutes 00 seconds East, along said south line, 325.00 feet, to the east line of said Lot 1, Block 16; thence North 00 degrees 26 minutes 22 seconds East, along said east line, 250.00 feet to the north line of said Lot 2, Block 16; thence South 89 degrees 38 minutes 00 seconds East, along said north line, 405.00 feet, to the point of beginning.

Parcel 3:

That part of Lot 2, Block 16, Duluth Homestead's Subdivision Plat, St. Louis County, Minnesota, described as follows:

Commencing at the northeast corner of Section 16, Township 50 North, Range 15 West, St. Louis County, Minnesota; thence along the east line of said Section 16, which has a bearing of South 00 degrees 26 minutes 22 seconds West (South 00 degrees 27 minutes West per Duluth Homestead's Subdivision Plat) a distance of 33.00 feet, to the easterly extension of the north line of said Lot 2, Block 16; thence North 89 degrees 38 minutes 00 seconds West, along said 7 easterly extension, 33.00 feet to the northeast corner of said Lot 2, Block 16; thence South 00 degrees 26 minutes 22 seconds West, along the east of said Lot 2 a distance of 250.00 feet to the point of beginning of the parcel herein described; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 236.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 30.00 feet; thence North 89 degrees 38 minutes 00 seconds West, parallel with said north line of Lot 2, Block 16, a distance of 151.00 feet; thence South 00 degrees 26 minutes 22 seconds West, parallel with said east line of Lot 2, Block 16, a distance of 250.00 feet, to the easterly extension of the south line of Lot 1, Block 16, Duluth Homestead's Subdivision Plat; thence South 89 degrees 38 minutes 00 seconds East, parallel with said north line of Lot 2, Block 16, a distance of 387.00 feet, to said east line of Lot 2, Block 16; thence North 00 degrees 26 minutes 22 seconds East, along said east line of Lot 2, Block 16, a distance of 280.00 feet to the point of beginning.

Attachment III to Grant Agreement

SOURCE AND USE OF FUNDS FOR THE PROJECT

Source of Funds

Use of Funds

<u>Identify Source of Funds</u>	<u>Amount</u>	<u>Identify Items</u>	<u>Amount</u>
State G.O. Funds		Ownership Acquisition	
G.O. Grant	\$8,000,000	and Other Items Paid for	
		with G.O. Grant Funds	
Other State Funds		Purchase of Ownership	\$ _____
_____	\$ _____	Interest	
_____	\$ _____	Other Items of a Capital	
_____	\$ _____	Nature:	
Subtotal	\$8,000,000	Building Abatement/	\$200,000
		Demo	
Matching Funds		Design/ Soft Costs	\$1,000,000
City Bonds – Financed by	\$16,000,000	Construction/	\$6,500,000
Sales Tax		Related Costs	
Subtotal	\$16,000,000	Furniture/ Fixtures/	\$300,000
		Equipment	
Other Public Entity Funds		Subtotal	\$8,000,000
_____	\$ _____		
_____	\$ _____	Items Paid for with	
Subtotal		Non- G.O. Grant Funds	

		Building Abatement/ Demo	Included in Construction Costs
Loans		Design/ Soft Costs	\$4,347,344
_____	\$ _____	Construction/ Related Costs	\$12,943,990
_____	\$ _____	Furniture/ Fixtures/ Equipment	\$382,363
Subtotal	\$ _____	Subtotal	\$17,673,697
		** Costs at substantial Completion	
Other Funds			
Essentia Naming Rights	\$2,000,000		
Subtotal	\$2,000,000		
Prepaid Project Expenses			
_____	\$ _____		
_____	\$ _____		
Subtotal	\$ _____		
TOTAL FUNDS	\$26,000,000	TOTAL PROJECT COSTS	\$25,673,697

Attachment IV to Grant Agreement

JOBS REPORTING

(a) Pursuant to Minn. Stat. Sec. 16A.633, subd. 4, State Entity is required to report the number of jobs created or retained by the Project. To enable State Entity to comply with Minn. Stat. Sec. 16A.633, subd. 4, the Public Entity is required to report the number of jobs created or retained by the Project to State Entity as set forth below.

(b) The Public Entity shall require all of its contractors to report the information below to the Public Entity. The Public Entity shall then report to State Entity. Information can be recorded by State Entity in an Excel document that can be downloaded into the report by Minnesota Management and Budget. Each report must contain the following:

- (1) The name of the Project.
- (2) The State Entity's contract number, if applicable.
- (3) Reporting period. The appropriate biennium is to be selected.
- (4) The Agency Number. This will complete the next column with Agency Name.
- (5) Legal Citation for the Authorization.
- (6) Department ID responsible for the Project.
- (7) The Appropriation for the Project.
- (8) The Appropriation Amount.
- (9) Project Start Date.
- (10) Project Completion Date.
- (11) The County where the Project is located or, if it is located in more than one county, where it is primarily located.
- (12) Funding Source for Project. The selection will be Trunk Highway Bonds, General Obligation Bonds or General Fund.
- (13) Job Type. Jobs should be classified as either (i) engineering/professional, (ii) construction, or (iii) other. Manager and supervisor jobs shall be classified as category (i), (ii) or (iii) based on the nature of the work those individuals spent the majority of their time overseeing.
- (14) Hourly Wages. Jobs should be classified according to the hourly pay ranges below. Overhead or indirect costs or the value of pensions or other benefits should not be included in wages.
 - (i) less than \$10.00,
 - (ii) \$10.01 to \$15.00,
 - (iii) \$15.01 to \$20.00,

- (iv) \$20.01 to \$25.00,
- (v) \$25.01 to \$30.00,
- (vi) \$30.01 to \$35.00,
- (vii) \$35.01 to \$40.00, or
- (viii) more than \$40.00.

(15) Jobs.

- a. Jobs should be classified as either (i) jobs created or (ii) jobs retained; they will not be counted as both. A “job created” is a new position created and filled, or an existing unfilled position that is filled, because of the Project. A “job retained” means a job at a specific wage level that existed prior to beginning the Project that would have been lost but for the Project. Only jobs in Minnesota should be counted.
- b. Jobs should be expressed in “full-time equivalents” (FTE). In calculating an FTE, the number of hours worked during the Reporting Period should be divided by 2,080 (the number of hours representing a full work schedule in a Reporting Period). Jobs should be reported regardless of when the Project or an individual’s employment began or ended. Jobs are to be calculated based on hours worked in the current Reporting Period only, so that reporting is not cumulative.
- c. Jobs should not be separated into full-time, part-time, temporary, seasonal, etc. Instead, all hours should be totaled and converted into FTEs as indicated above.

(c) Each contractor will report its workforce and the workforce of its subcontractors active during the Reporting Period. This includes employees actively engaged in the Project who work on the jobsite, in the Project office, in the home office or telecommute from home or other alternative office location. This includes, but is not limited to, any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the Project. This does not include material suppliers such as steel, culverts, guardrail and tool suppliers. Only hours that relate to time spent on the Project should be reported.

(d) The Public Entity must incorporate these reporting requirements into its contracts with its contractors (in part so that contractors can add the requirements to their contracts with subcontractors and impose deadlines on reporting by subcontractors).

(e) To distinguish the jobs reported by contractors that were funded by the Grant, the Public Entity must multiply the job numbers reported by each contractor in each category above by the

percentage of total Project costs funded by the Grant (e.g., if the Grant was 40% of total Project costs, the Public Entity should multiply the jobs numbers given in each category by 40% to arrive at the number of jobs funded by the Grant) and it is those numbers that should be reported to State Entity.