

RESOLUTION 14D-38

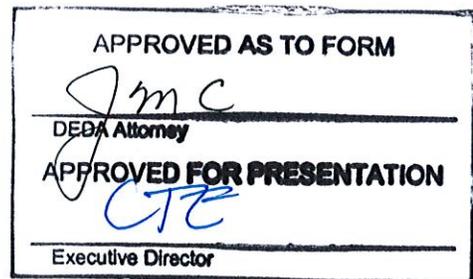
**RESOLUTION AUTHORIZING A THIRD AMENDMENT
TO THE BUILDING IN DULUTH 2011 CONDITIONAL
GRANT AGREEMENT WITH OLD CITY HALL, LLC**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Third Amendment to the Building in Duluth 2011 Conditional Grant Agreement, substantially in the form of that attached hereto (DEDA Contract No. 11 860 627³), with Old City Hall, LLC pertaining to the renovation of a portion of the exterior of the Lange Motor Building.

Approved by the Duluth Economic Development Authority this 27th day of August, 2014.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to amend the Building in Duluth 2011 Conditional Grant Agreement with Old City Hall, LLC to remove the requirements of the Lange Motor Building needing the approval of the US Department of Interior for historical renovation. DEDA's Executive Director will, however, continue to have approval over the plans and specifications for the project. Additionally, the number of jobs to be created in the original agreement between the Old City Hall and Lange Motor Building will stay the same (12 FTE's) but will be amended to included regular jobs in addition to construction jobs.

**BUILDING IN DULUTH 2011
CONDITIONAL GRANT AGREEMENT
OLD CITY HALL, LLC
THIRD AMENDMENT**

THIS THIRD AMENDMENT is entered into this _____ day of _____, 2014, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, whose address is 402 City Hall, 411 West First Street, Duluth, MN 55802 (hereinafter referred to as "DEDA") and OLD CITY HALL, LLC, a Minnesota limited liability company, whose address is 132 East Superior Street, Duluth, MN 55802 (hereinafter referred to as "Developer").

WHEREAS, DEDA and Developer entered into a Building in Duluth 2011 Conditional Grant Agreement dated June 27, 2011 and filed on July 12, 2011 as Document No. 1164854 in the Office of the St. Louis County Recorder and as Document No. 902118 in the Office of the St. Louis County Registrar of Titles; a First Amendment to the Building in Duluth 2011 Agreement dated December 19, 2012 and filed on February 11, 2014 as Document No. 1232806 in the Office of the St. Louis County Recorder and as Document No. 941562 in the Office of the St. Louis County Registrar of Titles; and a Second Amendment dated July 24, 2013 and filed on February

11, 2014 as Document No. 1232807 in the Office of the St. Louis County Recorder and as Document No. 941563 in the Office of the St. Louis County Registrar of Titles (hereinafter together the "Development Agreement") pursuant to which DEDA agreed to provide financial assistance to Developer and Developer agreed to the historic renovation of the Old City Hall Building and the Lange Motor Building; and

WHEREAS, the parties desire to amend the Development Agreement as set forth herein.

NOW, THEREFORE, the parties, in consideration hereto mutually agree as follows:

1. ARTICLE I L, Lange Motor Building Project, is amended as follows:

Lange Motor Building Project shall mean ~~historic~~ renovation of a portion of the exterior of the Lange Motor Building to U.S. Department of Interior Standards for Rehabilitation, specifically the Superior Street and Michigan Street facades, the cost of ~~historic~~ renovation of said facades which is estimated to be at least \$350,000.

2. ARTICLE IV A, Plans, Specifications and Elevations, is hereby amended to delete reference to the Standards for Rehabilitation with respect to the Lange Motor Building Project.

3. ARTICLE V B, Renovation of the Lange Motor Building, is hereby amended as follows:

On or before ~~October 1~~July 4, 2014, Developer shall cause the commencement of the Lange Motor Building Project in conformance with ~~the Standards for Rehabilitation and the plans approved pursuant to this Agreement~~. Said renovation work shall be completed not later than July 1, 2015.

4. ARTICLE VI, Reimbursement to Developer, is hereby amended to add a second paragraph as follows:

Notwithstanding anything contained in this Article, it is agreed that upon presentation to Arrowhead of a certificate of Developer to which is attached an invoice or billing from one of the contractors on the Lange Motor Building Project specifying a bill for materials

and labor, and upon prior written approval of the Executive Director, Arrowhead Abstract shall prepare a check payable to the contractor for the amount of the invoice representing materials only, provided that such payment shall not represent more than 50% of the total of contractor's contract which shall also be attached to the certificate provided by Developer. Once this check is prepared, it shall be available to the contractor immediately upon evidence of delivery of the materials to the Lange Motor Building Project site as evidenced by a certificate, delivery receipt and/or picture showing delivery being provided to Arrowhead Abstract. A lien waiver for the materials shall thereafter be immediately provided to Arrowhead Abstract.

5. The third Paragraph of Article VII, Historic Tax Credits, is hereby amended as follows:

The escrow agreement shall be substantially in the form of that attached hereto as Exhibit A as amended by Exhibit A-1, First Amendment to Escrow and Disbursement Agreement and ~~as further amended by Exhibit A-2, Second Amendment to Escrow and Disbursement Agreement and as further amended by Exhibit A-3, Third Amendment to Escrow and Disbursement Agreement.~~ The Executive Director shall be a signatory to the escrow agreement. All disbursements from the escrow account shall require the prior written approval of the Executive Director.

6. The last sentence of the first paragraph of ARTICLE VIII, Mortgage Lien, is hereby amended as follows:

~~DEDA may, in its sole discretion and through the written consent of the~~ Notwithstanding any other provision in this Agreement to the contrary, the Executive Director, is authorized decide to subordinate the Mortgage Lien to liens of other parties when the Executive Director determines that DEDA's underlying interest is adequately protected.

7. ARTICLE XI A, Business Subsidy Goal, is hereby amended as follows:

DEDA finds that the public purpose of tax increment assistance to be provided pursuant to this Agreement is the renovation of Buildings which will: 1) contribute to the economic diversity of the City by supporting the existing industries of retail sales as well as tourism and service (Old City Hall Building); 2) enhance the quality of life of City residents by investing in neglected business areas and redeveloping blighted areas; 3) result in the creation of new jobs, and 3) increase the tax base. Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Developer agrees that on or before December 31, 2012, it shall have completed the Old City Hall Project and that on or before July 1, 2015, it shall have completed the Lange Motor Building Project in accordance with this Agreement and shall have caused to be created a total of 12 FTE jobs which may be a combination of construction jobs and regular jobs in the State on or before July 1, 2015, as verified by Developer and/or Developer's construction contractor(s) or subcontractors (the "Business Subsidy Goal"). The wages for the regular jobs created shall be paid at a rate, including benefits not mandated by law, that on an annualized basis is, at minimum, equal to at least 110 percent of the federal poverty level for a family of four or the living wage as set forth in Section 2-137 of the Duluth City Code, whichever is greater. The wages for the construction jobs shall be paid at the wage rates as set forth in Section 2-25 of the Duluth City Code, commonly known as "Little Davis-Bacon."

8. ARTICLE XI C, Special Event of Default if Business Subsidy Goals Not Met, is hereby amended as follows:

Developer agrees that if the Business Subsidy Goal of (i) the Old City Hall Project is not met by December 31, 2012, or (ii) the Lange Motor Building Project is not met by July 1, 2015, as determined in the sole discretion of DEDA, Developer shall repay all sums paid to Developer plus Interest compounded semiannually. If the Business Subsidy Goal of causing the

~~creation of creating~~ 12 FTE regular and/or construction jobs is not met or only met in part as determined in the sole discretion of DEDA's Executive, Developer agrees to repay all or a portion of the sums paid to Developer plus the Interest compounded semiannually. The amount to be repaid by Developer shall be determined by multiplying the sums paid to Developer by a fraction, the numerator of which is 12 minus the number of regular/construction jobs created on or before July 1, 2015 ~~during the construction period~~ and the denominator of which is 12.

9. Upon execution of this Amendment by all parties, Developer shall record this Third Amendment in the office of the St. Louis County Recorder and/or the Registrar of Titles (as applicable) and shall pay all costs associated therewith. Upon recording, Developer shall immediately submit to DEDA an executed original of this Third Amendment showing the date and document numbers of record, or a duly certified copy of the filed original.
10. Except as provided in this Third Amendment, all terms and conditions of the Agreement shall remain in force and effect.

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

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

OLD CITY HALL, LLC

By _____
Its President

By _____
Its Chief Financial Officer

By _____
Its Secretary

EXHIBIT A-3

THIRD AMENDMENT TO
ESCROW AND DISBURSEMENT AGREEMENT

The THIRD AMENDMENT TO ESCROW AND DISBURSEMENT AGREEMENT dated _____, is by and among the DULUTH ECONOMIC DEVELOPMENT AUTHORITY ("DEDA"), OLD CITY HALL, LLC ("Developer"), and ARROWHEAD ABSTRACT & TITLE COMPANY. Capitalized terms used in this Amendment but not defined herein shall have the meanings ascribed to them in the Agreement.

Whereas, on June 2, 2011, the parties entered into an Escrow and Disbursement Agreement (DEDA Contract No. 11 860 628) which was amended by First Amendment to Escrow and Disbursement Agreement dated December 19, 2012 and by Second Amendment to Escrow and Disbursement Agreement dated July 24, 2013 (hereafter together the "Escrow Agreement") related to the Building in Duluth 2011 Conditional Grant Agreement between DEDA and Developer as amended (hereafter the "BID Agreement"); and

WHEREAS, the parties desire to further amend the Escrow Agreement to delete references to historic renovation.

NOW, THEREFORE, the parties agree as follows:

1. Paragraph 3.2 (c) is hereby amended to delete the reference to an historic consultant.
2. Paragraph 3.4 (a) related to a pre-construction budget for costs of an architect and historic consultant necessary to obtain the approval of the National Parks Service/U.S. Department of Interior and State Historic Preservation Office is hereby deleted in its entirety.
3. Paragraph 3.4 (f) related to proof of renovation in accordance with the Standards for Rehabilitation is deleted in its entirety.
4. Paragraph 3.5 (d) also related to proof of renovation in accordance with the Standards for Rehabilitation is deleted in its entirety.
5. A new paragraph, Paragraph 4.2 A is added to read:

Notwithstanding anything contained in Paragraphs 3 and 4 hereof, it is agreed that upon presentation to Arrowhead of a certificate of Developer to which is attached an invoice or billing from one of the

contractors on the Lange Motor Building Project specifying a bill for materials and labor, and upon prior written approval of the Executive Director, Arrowhead shall prepare a check payable to the contractor for the amount of the invoice representing materials only, provided that such payment shall not represent more than 50% of the total of contractor's contract which shall also be attached to the certificate provided by Developer. Once this check is prepared, it shall be available to the contractor immediately upon evidence of delivery of the materials to the Lange Motor Building Project site as evidenced by a certificate, delivery receipt and/or picture showing delivery being provided to Arrowhead. A lien waiver for the materials shall thereafter be immediately provided to Arrowhead.

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

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

OLD CITY HALL, LLC

By _____
Its Executive Director

By _____
Its Chief Financial Officer

ARROWHEAD ABSTRACT & TITLE

By _____
Its President

This instrument was drafted by:
Joan M. Christensen
Attorney for DEDA
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Duluth, MN 55802
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