

RESOLUTION 15D-26

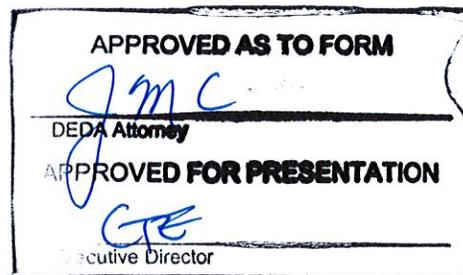
**RESOLUTION AUTHORIZING A FOURTH AMENDMENT
TO THE BUILDING IN DULUTH 2011 CONDITIONAL
GRANT AGREEMENT WITH OLD CITY HALL, LLC**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Fourth Amendment to the Building in Duluth 2011 Conditional Grant Agreement, substantially in the form of that attached hereto (DEDA Contract No. 11 860 627⁴), 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 24th day of June, 2015.

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 extend the term of the agreement to August 31, 2015.

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

THIS FOURTH AMENDMENT is entered into this ____ day of _____, 2015, 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; 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, and a Third Amendment dated September 4, 2014 and filed on October 7, 2014 as Document No. 949750 in the Office of the St. Louis County Recorder and as Document No. 1247092 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 V B, Renovation of the Lange Motor Building, is hereby amended as follows:

On or before October 1, 2014, Developer shall cause the commencement of the Lange Motor Building Project in conformance with the plans approved pursuant to this Agreement. Said renovation work shall be completed not later than ~~July 1~~August 31, 2015.

2. 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~~ 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, and as further amended by Exhibit A-4, Fourth 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.

3. 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~~August 31, 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~~August 31, 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."

4. 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~~August 31, 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 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 4~~August 31, 2015 and the denominator of which is 12.

5. Upon execution of this Fourth Amendment by all parties, Developer shall record this Fourth 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 Fourth Amendment showing the date and document numbers of record, or a duly certified copy of the filed original.
6. Except as provided in this Fourth 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-4

FOURTH AMENDMENT TO
ESCROW AND DISBURSEMENT AGREEMENT

This FOURTH AMENDMENT TO ESCROW AND DISBURSEMENT AGREEMENT dated _____ 2015, 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, by Second Amendment to Escrow and Disbursement Agreement dated July 24, 2013, and by Third Amendment to Escrow and Disbursement Agreement dated September 3, 2014 (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. Recital E is hereby amended as follows:

E. The Lange Motor Building Project is to commence on or before July 1, 2014, and be completed on or before ~~July 1~~ August 31, 2015. Monies may be disbursed from the escrow account as initial funds to reimburse Developer for the Lange Motor Building Project.

2. Except as specifically amended pursuant to this Fourth Amendment, the Escrow Agreement remains in full force and effect. In the event of a conflict between the provisions of this Fourth Amendment and the provisions of the Escrow Agreement, the provisions of this Fourth 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
410 City Hall
Duluth, MN 55802
(218) 730-5490

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