

UTILITY EASEMENT RELOCATION AND CONSTRUCTION AGREEMENT

THIS UTILITY EASEMENT RELOCATION AND CONSTRUCTION AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____, 2014, by and between the CITY OF MINNEAPOLIS, a Minnesota municipal corporation (the “City”), having its principal place of business at City Hall, Room 203, 350 South Fifth Street, Minneapolis, Minnesota 55415; and UPPER MIDWEST ORGAN PROCUREMENT ORGANIZATION, INC. (doing business as LIFESOURCE), a Minnesota nonprofit corporation (“Lifesource”), having its principal place of business at 2550 University Avenue West, Suite 315 South, St. Paul, Minnesota 55114.

RECITALS

1. The City is the owner of the real property located in the City of Minneapolis, County of Hennepin and State of Minnesota legally described on Exhibit A, which is attached hereto and incorporated herein (“City Property”).
2. The City has leased to Lifesource, the City Property under the terms of that certain “Lease Agreement Between the City of Minneapolis, as Lessor, and Upper Midwest Organ Procurement Organization, Inc., as Tenant,” dated October 1, 2013 (the “Lease Agreement”). Any capitalized terms used, but not defined herein shall have the meaning ascribed to them in the Lease Agreement.
3. Pursuant to the Lease Agreement, Lifesource agreed to construct the Facility, which construction obligations include the construction of public improvements consisting of water main, sanitary sewer line and storm sewer pipes (the “Improvements”).
4. The City currently maintains an existing easement (the “Existing Easement”) within vacated 23rd Avenue North as more particularly described in Lifesource’s Vacation Application #1615 on file with the City, which was approved by the City Council. In order to construct the Facility, Lifesource must relocate the Improvements located within the Existing Easement to a new easement area, and the City must release the Existing Easement by issuing and recording a resolution so indicating.
5. In order to facilitate the relocation of the Improvements, the City has declared and retained a perpetual, non-exclusive, utility and drainage easement over, under and across that part of the City Property under the terms of the Declaration of Drainage and Utility Easement, dated _____, 2014 (the “Declaration”) which easement area is legally described on Exhibit B (“Easement Area”).
6. Lifesource has agreed to relocate the Improvements from the Existing Easement to the Easement Area and to construct certain new Improvements within the Easement Area upon the terms and conditions of this Agreement. All such Improvements are and shall remain the property of the City.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, and their mutual promises, the parties hereto hereby agree as follows:

1. **Relocation of Existing Improvements.** Lifesource will cause its general contractor, Greiner Construction, Inc. (the “Contractor”) to relocate the Improvements currently located in the Existing Easement Area to the Easement Area.

2. **Construction of New Improvements.** Lifesource will cause Contractor to construct a storm sewer pipe (the “Storm Sewer Pipe”) within the Easement Area.

3. **Improvements to Conform With City Standards.** Lifesource will cause its Contractor, who has been retained to construct the Facility, to sever and cap the Improvements currently located in the Existing Easement and to construct, relocate and install of the Improvements in the Easement Area to conform to federal and state statutes and applicable City ordinances, the City’s Standard Supplemental Specifications for Construction and the State of Minnesota, Department of Transportation Standard Specifications for Construction. Lifesource has submitted to the City Engineer for review and approval all plans for the relocation and construction of the Improvements and construction of the Storm Sewer Pipe as part of that certain Scope of Services made a part of the January 23, 2014 agreement provided to the City by the Contractor (the “Plans”) and shall complete the severing and capping, relocation, reinstallation, reconnection and construction work to occur in conformance with the Plans and with all federal, state and City laws and requirements. The City has approved the Plans. Upon completion of the Scope of Services, Lifesource or the Contractor will deliver to the City a set of signed “record drawings” as provided in item 7 of the Plans.

4. **Obtain All Permits.** Lifesource shall, at its sole cost and expense, obtain all permits required to disconnect and cap the existing Improvements located in the Existing Easement and all permits required to relocate and construct the Improvements and the Storm Sewer Pipe in the Easement Area. The list of permits which Lifesource or its Contractor shall obtain and pay for are included as part of the Plans. Upon the request of Lifesource or its Contractor, the City will promptly review permit applications for which it is the issuing authority and issue permits should the permit application provide for the construction of Improvements and the Storm Sewer Pipe in accordance with the Plans.

5. **Cost to Relocate Existing Improvements and to Construct New Improvements.** Lifesource shall, at its sole cost and expense, finance and pay for the cost to excavate, disconnect and cap the Improvements located in the Existing Easement and excavate, relocate, reconnect, install and cover with clean fill the Improvements and the Storm Sewer Pipe in the Easement Area. The Contractor shall provide a payment bond and a performance bond as attached to the Plans as security for completion of the Improvements including the Storm Sewer Pipe. The Contractor will also pay for the City to “test and inspect” the Improvements upon their completion as provided in the Plans.

6. **Facility Costs.** The parties acknowledge that all costs incurred by Lifesource in connection with this Agreement may be considered to be Facility Costs under the Lease Agreement.

7. **Release of Existing Easement.** Within thirty (30) days after completion of the Scope of Services and the inspection and acceptance of the Improvements by the City, the City shall record a duly acknowledged resolution releasing the Existing Easement. The City shall also deliver a copy of the resolution to Lifesource and record the Declaration. The recording costs shall also be considered Facility Costs under the Lease Agreement.

8. **No Modification or Amendment of Lease Agreement.** The Lease Agreement is not otherwise amended by the terms of this Agreement.

9. **Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other will be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

- (a) In the case of Lifesource, is addressed to or delivered personally to Lifesource at Upper Midwest Organ Procurement Organization, Inc., 2550 University Avenue West, Suite 315 South, St. Paul, Minnesota 55114, Attn: Peter Farstad;
- (b) In the Case of the City, is addressed to or delivered personally to the City at City Hall, Room 203, 350 South Fifth Street, Minneapolis, Minnesota 55415, Attn: Director, Department of Public Works;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

10. **Miscellaneous.**

- (a) **Governing Law.** This Agreement shall be construed and enforced according to and governed by the laws of the State of Minnesota.
- (b) **Time.** Time is of the essence in the performance of this Agreement.
- (c) **Counterparts.** This Agreement shall be executed in five (5) counterparts, each of which shall constitute one and the same instrument.
- (d) **Indemnification by Lifesource or its Contractor.** Lifesource and the Contractor will defend, protect, indemnify and hold the City harmless as provided under the terms of the Lease Agreement.
- (e) **Approvals.** As directed by Lifesource, the Contractor has contracted with and agreed to have the City inspect and test the Improvements upon their completion as memorialized in a letter dated January 21, 2014 and made a

part of the Plans. The City will conduct all testing and inspection duties in a prompt and reasonable manner. Wherever in this Agreement any other forms of consent, satisfaction or approval of the City or of Lifesource is required, necessary or requested, such consents, satisfaction or approval may not be unreasonably withheld or unduly delayed.

- (f) Assignability. The assignability of this Agreement shall be governed by the terms of the Lease Agreement.
- (g) Term of Agreement. This Agreement shall terminate upon the City's recording of the resolution releasing the Existing Easement.
- (h) Warranty. Lifesource will cause the Contractor to warrant that the Improvements will be constructed and installed in accordance with the Plans and that the Improvements will perform and function without defects, leaks or other imperfections that affect their intended use for a period of one year measured from the date the Improvements are tested and accepted by the City. The City will prepare and deliver a written letter of acceptance to Lifesource.

(Signature pages follow.)

EXHIBIT A

LEGAL DESCRIPTION OF CITY PROPERTY

Parcel 1

Lot 1, Block 1, JADT Addition, according to the plat thereof, on file and of record, Hennepin County, Minnesota.

Parcel 2 That part of Lot 2, Block 1, North Washington Industrial Center, lying Easterly of the Westerly 250 feet and Northerly of the Southerly 180 feet thereof, Hennepin County, Minnesota.

Parcel 3

The Westerly 250.00 feet of Lot 2, Block 1, North Washington Industrial Center, together with easement for ingress and egress over the South 10.00 feet of Lot 1, Block 1 JADT Addition, Hennepin County, Minnesota.

EXHIBIT B

LEGAL DESCRIPTION OF THE EASEMENT AREA

That part of the above described Parcel 1 lying easterly and southwesterly of the following described line:

Beginning at the southwest corner of said Parcel 1; thence on an assumed bearing of North 00 degrees 05 minutes 31 seconds West, along the westerly line of said Parcel 1 a distance of 34.89 feet; thence North 29 degrees 32 minutes 33 seconds East, a distance 254.01 feet to the northeasterly line of said Parcel 1; thence South 52 degrees 31 minutes 21 seconds East, along said northeasterly line a distance of 345.48 feet to the easterly line of said Parcel 1 and said line there terminating;

AND which lies westerly and northeasterly of the following described line:

Commencing at the southwest corner of said Parcel 1; thence on an assumed bearing of South 89 degrees 54 minutes 31 seconds East, along the southerly line of said Parcel 1 a distance of 34.74 feet to the point of beginning of the line to be described; thence North 29 degrees 32 minutes 33 seconds East, a distance of 212.67 feet; thence South 52 degrees 30 minutes 07 seconds East, a distance of 205.89 feet; thence South 47 degrees 42 minutes 02 seconds East, a distance of 68.98 feet; thence South 01 degree 39 minutes 13 seconds East, a distance of 11.33 feet; thence South 46 degrees 39 minutes 13 seconds East, a distance of 3.58 feet to said southerly line and said line there terminating.

Together with the east 130.00 feet of the west 150.00 feet of the north 20.00 feet of the above described Parcel 2.

