

**DESTINATION MEDICAL CENTER CORPORATION  
(DMCC)**

**SPECIAL BOARD MEETING**

**Wednesday, February 19, 2014  
12:30-2:30 p.m.**

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Adoption of Agenda
- IV. DMCC Articles and Bylaws
  - A. Resolution A: Approval of Amended and Restated Articles of Incorporation
  - B. Resolution B: Approval of Bylaws
- V. DMCC Agreements
  - A. Resolution C: Approval of Agreement for Destination Medical Center Services Between DMCC and EDA
  - B. Resolution D: Approval of Agreement for DMCC Funding and Support Between DMCC and City of Rochester
- VI. DMCC/City of Rochester Annual Report to Legislature
  - A. Resolution E: Ratification and Acceptance
- VII. Adjournment

**DESTINATION MEDICAL CENTER CORPORATION**

**RESOLUTION NO. \_\_\_\_-2014**

**Approving Amended and Restated Articles of Incorporation  
and Authorizing Transmittal to City of Rochester**

BACKGROUND RECITALS

A. In order to implement the destination medical center initiative, the Minnesota Legislature enacted Minnesota Laws, Chapter 143, Article 10 (the "Act"). The Act provided that the City of Rochester, Minnesota (the "City") must establish a Destination Medical Center Corporation ("DMCC") as a nonprofit corporation under Minnesota Statutes Chapter 317A to provide the City with expertise in preparing and implementing a development plan to establish the City as a destination medical center. The City filed the initial Articles of Incorporation establishing the DMCC on July 23, 2013.

B. The purpose of the DMCC, as set forth in the Act, is to benefit the City, and more broadly Olmsted County and the State of Minnesota by researching, preparing and implementing a master development plan, including facilitating public infrastructure projects and a variety of development and redevelopment projects, all to promote and provide for the establishment of the City, the County and the State as a world destination medical center, and further, to assist the patients, caregivers, residents, employees and visitors in fully experiencing the City as a premier destination medical center, while providing extended economic development and opportunities for the City, the County and the State.

C. Once constituted, the DMCC Board engaged the City in discussions to seek amendments to the Articles to more broadly align the Articles with the goals and objectives of the Act.

D. The DMCC desires to amend the original Articles with the Amended and Restated Articles of Incorporation attached as Exhibit A.

RESOLUTION

**NOW, THEREFORE, BE IT RESOLVED**, by the Destination Medical Center Corporation Board of Directors that the Amended and Restated Articles of Incorporation are approved.

**BE IT FURTHER RESOLVED** that the DMCC Chair and Treasurer are authorized to submit the Amended and Restated Articles of Incorporation to the City of Rochester for its approval, and to take whatever steps may be necessary or appropriate to effectuate the Amended and Restated Articles of Incorporation.

**BE IT FURTHER RESOLVED** that the DMCC Board requests concurrence and implementation of the Amended and Restated Articles of Incorporation by the City of Rochester.

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**  
**OF**  
**DESTINATION MEDICAL CENTER CORPORATION**

Destination Medical Center Corporation, a corporation organized and existing pursuant to the provisions of the Minnesota Nonprofit Corporation Act, Minnesota Statutes 317A, acting through the Chair of its Board of Directors, hereby files these Articles of Amendment amending and restating its Articles of Incorporation by deleting them in their entirety and inserting in lieu thereof the following:

**ARTICLE I**  
**Name**

The name of the Corporation is Destination Medical Center Corporation (the “**Corporation**”).

**ARTICLE II**  
**Purpose and Activities**

The Corporation was established by the City of Rochester (the “**City**”) pursuant to Minnesota Statutes Section 469.41, subdivision 1, and is organized and shall be operated exclusively for charitable purposes within the meaning of Sections 170(c) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”). The purpose of this Corporation, as set forth in Minnesota Laws 2013, Chapter 143, Article 10, is to benefit the City, and more broadly, Olmsted County (the “**County**”) and the State of Minnesota (the “**State**”) by researching, preparing and implementing a master development plan, including facilitating public infrastructure projects and a variety of development and redevelopment projects, all to promote and provide for the establishment of the City, the County, and the State as a world destination medical center; and further, to assist the patients, caregivers, residents, employees and visitors in fully experiencing the City as a premier destination medical center, while providing extended economic development and opportunities for the City, the region and the State.

In carrying out the purposes enumerated in this Article II, the Corporation shall lessen the burdens of government by providing the City with expertise in preparing and implementing the development plan to establish the City, the County, and the State as a destination medical center; perform certain essential government functions, within the meaning of Code Section 115, including stimulating economic growth and reducing unemployment; and do any and all other acts and things and exercise any and all other rights and powers which may be reasonably necessary, incidental, desirable or expedient in the accomplishment of such purposes.

**ARTICLE III**  
**Powers**

The Corporation shall have those powers which are required by, and are consistent with, the provisions of Minnesota Statutes Sections 469.40 to 469.67 and the purposes enumerated in Article II above. Within those limitations, the Corporation may act on its own behalf or as the agent, trustee or representative of others; acquire or receive property of every kind by any legal means; hold, manage, use and dispose of any property and the income generated by it to further any of the purposes of the Corporation; lease, mortgage or encumber any such property; and exercise any other powers conferred on the Corporation by Minnesota Statutes Chapter 317A and by any future laws amendatory thereof and supplementary thereto.

**ARTICLE IV**  
**Restrictions**

Notwithstanding any other provisions of these Articles of Incorporation (“**Articles**”), the restrictions in this Article shall govern the activities of the Corporation.

The Corporation shall not engage in any activity which may not be carried on by (a) an organization which is exempt from federal income taxation under Section 501(a) of the Code by virtue of being described in Section 501(c)(3) of the Code, or (b) an organization contributions to which are deductible under Section 170(c) of the Code.

The Corporation shall not directly or indirectly afford pecuniary gain, dividends or other pecuniary remuneration, incidentally or otherwise, to its directors or officers, and no part of the net earnings of the Corporation shall inure directly or indirectly to the benefit of any private individual, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and goods received, to provide indemnification and pay premiums for insurance protection without reimbursement to the full extent permitted or required by applicable law, and to make payments and distributions in furtherance of the purposes set forth in Article II of these Articles.

The Corporation shall not, as a substantial part of its activities, attempt to influence legislation by propaganda or otherwise. The Corporation shall neither directly nor indirectly participate in or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office, whether by the publishing or distributing of statements or otherwise.

Except as permitted by applicable law, the Corporation shall not lend any of its assets to any officer, director, or member of the Corporation or guarantee to any other person the payment of a loan by any officer, director, or member of the Corporation.

**ARTICLE V**  
**Registered Office**

The Corporation's registered office in the State shall be located at 201 4th Street SE, Rochester, Minnesota 55904.

**ARTICLE VI**  
**Board of Directors**

The management and direction of the business and affairs of the Corporation shall be vested in a Board of Directors. As authorized by Minnesota Statutes Section 317A.201, the Board of Directors shall be composed of eight directors appointed as provided in Minnesota Statutes Section 469.41, subdivision 2. Specifically, the composition of the Board of Directors shall be as follows:

- (a) The Mayor of the City, or the Mayor's designee, subject to approval by the Common Council;
- (b) The Common Council President, or the Common Council President's designee, subject to approval by the Common Council;
- (c) The Chair or another member of the County Board of Olmsted County, appointed by the County Board;
- (d) A representative of Mayo Clinic appointed by Mayo Clinic; and
- (e) Four directors appointed by the Governor of Minnesota, subject to confirmation by the Minnesota Senate.

The Bylaws of the Corporation shall specify the terms of office, powers and duties of the directors of the Corporation, the time and place of their meetings, and such other regulations relating to the Board of Directors as may be desired.

**ARTICLE VII**  
**No Personal Liability**

The officers, directors, and members of the Corporation shall not be personally liable for the payment of any debts or obligations of the Corporation, nor shall any property of any officer, director, or member be subject to the payment of the debts or obligations of the Corporation.

**ARTICLE VIII**  
**Beneficiary Organizations**

Because the Corporation is created to promote the establishment of the City and, more broadly, the County and the State as a world destination medical center, the Corporation shall have three beneficiary organizations: the City, the County, and the State.

For the avoidance of doubt, the City, as a beneficiary organization, enjoys the following rights and powers:

1. Approval of the Development Plan, pursuant to Minnesota Statutes Sections 469.40, subdivision 6, and 469.43, subdivision 1;
2. All projects presented to the Corporation for approval are subject to the planning, zoning, sanitary, and building laws, ordinances, regulations, and land use plans that apply to the City;
3. Approval of public infrastructure projects including budget authority for each specific public infrastructure project proposed to it by the Corporation under Minnesota Statutes, Section 469.41, subdivision 13;
4. Approval of any modification to the Development Plan, pursuant to Minnesota Statutes Sections 469.43, subdivision 4;
5. Exercising the powers of a port authority for the purposes of implementing the Development Plan, pursuant to Minnesota Statutes Sections 469.44, subdivision 1;
6. Ability to issue general obligation bonds, revenue bonds, or other obligations, as it determines appropriate, to finance public infrastructure projects, pursuant to Minnesota Statutes Sections 469.44, subdivision 3;
7. Certain taxing and tax abatement authority, pursuant to Minnesota Statutes Sections 469.45;
8. Eligibility to receive certain State transit and infrastructure aid, as well as County transit proceeds, pursuant to Minnesota Statutes Sections 469.446 and 469.47;
9. Approval of incurrence of long-term debt by the Corporation; and
10. Approval of an annual DMCC funding request, provided that the DMCC must provide a detailed annual operating budget, work plan, and five year capital improvement plan to the City.

The Bylaws of the Corporation shall specify the additional powers and duties of the Corporation, consistent with Laws of Minnesota, Chapter 143 (2013-2014 Regular Session), Article 10.

**ARTICLE IX**  
**Amendments**

Articles. The Corporation may alter, amend or restate the Corporation's Articles, subject to the approval of the City. The Corporation's process for altering, amending or restating the Articles is set forth in this Article IX.

Bylaws. The Corporation's Bylaws may be altered, amended, repealed or restated by the Board of Directors, as set forth in this Article IX.

Process. Any number of amendments or an entire revision or restatement of the Articles or Bylaws, may be voted upon at a meeting of the Board of Directors where due notice of the proposed amendment has been given and shall be adopted upon the affirmative vote of not less than two-thirds (2/3) of all directors entitled to vote upon the proposed amendment or revision.

**ARTICLE X**  
**Dissolution**

The Corporation may be dissolved in accordance with the laws of the State of Minnesota. Upon dissolution of the Corporation, the Board or the officers acting under the direction of the Board, shall distribute the assets of the Corporation in the following order of priority: (1) assets received and held for a special use or purpose in accordance with the uses and purposes for which the assets have been received and held; (2) costs and expenses of the dissolution proceedings, including attorney fees and disbursements, and (3) debts, obligations, and liabilities of the Corporation. Any property remaining after the payment of its debts shall be transferred to the City, County, or State for exclusively public purposes. No provision of these Articles shall be construed to affect the disposition of property held by the Corporation upon trust or other condition, and upon dissolution of the Corporation, such property shall be transferred in accordance with the trust or condition imposed with respect to it.

IN WITNESS WHEREOF, we hereby certify that the foregoing Restated Articles of Incorporation were duly approved by the Common Council, at a meeting duly noticed for and held on \_\_\_\_\_, 2014, and duly proposed by the Directors of the Corporation and duly adopted by a majority of the directors voting thereon, pursuant to Minnesota Statutes Chapter 317A at a meeting duly noticed for and held on \_\_\_\_\_, 2014.

\_\_\_\_\_  
Tina Smith, Chair

\_\_\_\_\_  
Lisa Clarke, Secretary

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF OLMSTED    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by Tina Smith, Chair, and Lisa Clarke, Secretary, on behalf of the Corporation.

\_\_\_\_\_  
Notary Public

**B.**

**DESTINATION MEDICAL CENTER CORPORATION**

**RESOLUTION NO. \_\_\_\_-2014**

**Approving Bylaws**

BACKGROUND RECITALS

A. The Destination Medical Center Corporation (“DMCC”) was established as a nonprofit corporation under Minnesota Statutes Chapter 317A by the City of Rochester, Minnesota, pursuant to Minnesota Laws, Chapter 143, Article 10 (the “Act”).

B. Pursuant to Minnesota Statutes Chapter 317A, a corporation may, but not need to, have bylaws. In general, bylaws may contain any provisions relating to the management or regulation of the affairs of the corporation consistent with the law or with the adopted Articles of Incorporation.

C. The DMCC desires to adopt Bylaws attached hereto as Exhibit A.

RESOLUTION

**NOW, THEREFORE, BE IT RESOLVED**, by the Destination Medical Center Corporation Board of Directors that the Bylaws are approved.



**BYLAWS**  
**OF**  
**DESTINATION MEDICAL CENTER CORPORATION**

Effective: \_\_\_\_\_

**CONTENTS**

**ARTICLE I.....1**

**Offices..... 1**

        Section 1. Registered Office ..... 1

        Section 2. Principal Office ..... 1

        Section 3. Other Offices ..... 1

**ARTICLE II.....1**

**Board of Directors..... 1**

        Section 1. General Powers ..... 1

        Section 2. Number and Composition ..... 1

        Section 3. Qualifications ..... 2

        Section 4. Appointment and Term of Office ..... 2

        Section 5. Vacancy ..... 2

        Section 6. Removal of Directors ..... 3

        Section 7. Resignation ..... 3

        Section 8. Status as Public Official ..... 3

        Section 9. Compensation ..... 3

        Section 10. Fiduciary Duties of Directors ..... 4

**ARTICLE III.....4**

**Meetings of the Board of Directors..... 4**

        Section 1. Open Meeting Law; Data Practices ..... 4

        Section 2. Place and Time of Meetings ..... 4

        Section 3. Regular Meetings ..... 5

        Section 4. Special Meetings ..... 5

        Section 5. Emergency Meetings ..... 5

        Section 6. Notice of Meeting ..... 5

        Section 7. Closing a Meeting ..... 7

        Section 8. Quorum and Voting ..... 7

        Section 9. Minutes ..... 7

        Section 10. Public Copies of Directors' Materials ..... 7

        Section 11. Rules of Procedure ..... 8

        Section 12. Remote Communications for Board Meetings ..... 8

**ARTICLE IV.....8**

**Officers..... 8**

        Section 1. Number and Election ..... 8

        Section 2. Removal and Vacancies ..... 8

        Section 3. Chair of the Board of Directors ..... 8

        Section 4. Secretary ..... 8

        Section 5. Treasurer ..... 9

        Section 6. Assistant Treasurer ..... 9

        Section 7. Executive Director ..... 9

**ARTICLE V .....10**

**Committees ..... 10**

        Section 1. Committees ..... 10

        Section 2. *Ex Officio* Member ..... 10

        Section 4. Executive Committee ..... 10

        Section 5. Committee Procedures ..... 11

**ARTICLE VI.....11**

<b>Fiscal Matters .....</b>	<b>11</b>
<b>Section 1. Accounting Year .....</b>	11
<b>Section 2. Annual Budget; Financial Management; Financial Statements .....</b>	11
<b>Section 3. Contracts .....</b>	11
<b>Section 4. Loans .....</b>	12
<b>Section 5. Checks, Drafts, Etc. ....</b>	12
<b>Section 6. Deposits .....</b>	12
<b>Section 7. Maintenance of Records; Audit .....</b>	12
<b>Section 8. Corporate Seal .....</b>	12
<b>Section 9. Indemnification .....</b>	12
<b>ARTICLE VII .....</b>	<b>12</b>
<b>Director Conflict of Interest .....</b>	12
<b>ARTICLE VIII .....</b>	<b>13</b>
<b>Amendments .....</b>	13

**BYLAWS**  
**OF**  
**DESTINATION MEDICAL CENTER CORPORATION**

**ARTICLE I**

**Offices**

**Section 1. Registered Office.** The registered office of Destination Medical Center Corporation (the “**Corporation**”) in the State of Minnesota shall be as stated in the Articles of Incorporation of the Corporation (the “**Articles**”), or such other place within the State as the Board of Directors may designate from time to time.

**Section 2. Principal Office.** The principal office of the Corporation shall be at 201 4th Street Southeast, Rochester, Minnesota 55904, or at such other place as the Board of Directors shall designate from time to time. The business of the Corporation shall be transacted from the principal office, and the records of the Corporation shall be kept there.

**Section 3. Other Offices.** The Corporation may have such other offices within and without the State of Minnesota as the Board of Directors may determine.

**ARTICLE II**

**Board of Directors**

**Section 1. General Powers.** The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors. In addition to the powers conferred upon the Board of Directors by these Bylaws, the Board of Directors may exercise all powers of the Corporation and perform all acts that are not inconsistent with the provisions of Minnesota Statutes Sections 469.40 through 469.47 and not otherwise prohibited to it by law, by the Articles, or by these Bylaws, all as may be amended.

**Section 2. Number and Composition.** As required by the Articles of the Corporation and Minnesota Statutes Section 469.41, subdivision 2, the Board of Directors of the Corporation shall be composed of eight (8) members (each, a “**Director**”), as follows:

(a) The Mayor of the City of Rochester (the “**City**”) or the Mayor’s designee, subject to approval by the City Council;

(b) The City Council President or the President’s designee, subject to approval by the City Council;

(c) The Chair or another member of the County Board of Olmsted County (the “County”) appointed by the County Board;

(d) A representative of Mayo Clinic appointed by Mayo Clinic; and

(e) Four (4) Directors appointed by the Governor of Minnesota, subject to confirmation by the Minnesota Senate.

**Section 3. Qualifications.** Directors may only be natural persons and a majority of Directors must be adults. Each Director shall demonstrate his or her willingness to accept responsibility for governance and his or her availability to participate actively in governance activities. Except for the Director appointed by Mayo Clinic, a Director must not be a director, officer, or employee of Mayo Clinic, or any Mayo Clinic subsidiary or affiliated entity. No Director may serve as a lobbyist, as defined under Minnesota Statutes Section 10A.01, subdivision 21. No vacancy in the number of or classifications of Directors (including appointees or designees of the Mayor of the City, the City Council, the Olmsted County Board, Mayo Clinic, or the Governor of Minnesota) on the Board of Directors shall, by itself, render any Board action void or voidable.

**Section 4. Appointment and Term of Office.** Directors appointed pursuant to Section 2, paragraphs (a) through (c) of this Article III shall each serve for a term coterminous with the term of office of the elected official who either serves as the Director or designates the Director, as applicable. Such Directors may be reappointed. The Director appointed by Mayo Clinic pursuant to Section 2, paragraph (d) of this Article III shall serve at the pleasure of Mayo Clinic. Two (2) of the Directors first appointed by the Governor pursuant to Section 2, paragraph (e) of this Article III shall serve until the first Tuesday after the first Monday in January 2017; and two (2) of the Directors first appointed by the Governor shall serve until the first Tuesday after the first Monday in January 2020. Thereafter, the Directors appointed by the Governor shall serve six-year terms.

**Section 5. Vacancy.** The office of a Director shall become vacant upon a Director’s removal pursuant to Section 6 of this Article III or upon the occurrence of any of the following events before the expiration of the term of the Director’s office:

(a) the death of the Director or, as applicable, the elected official who designated the Director;

(b) the resignation of the Director or, with respect to an elected official who designated the Director or who is serving as Director, the resignation of the elected official from the office held;

(c) the removal of the Director or, with respect to an elected official who designated the Director or who is serving as Director, the removal of the elected official from the office held;

(d) with respect to an elected official who designated the Director or who is serving as Director, the elected official’s ceasing to be an inhabitant of the state, or, if the

office is local, ceasing to be an inhabitant of the district, county, or city for which the incumbent was elected or appointed, or within which the duties of the office are required to be discharged;

(e) the conviction of the Director or the elected official who designated the Director of any infamous crime or, as applicable, of any offense involving a violation of the official oath;

(f) with respect to an elected official who designated the Director or who is serving as Director, the elected official's refusal or neglect to take the oath of office, or to give or renew the official bond, or to deposit or file such oath or bond within the time prescribed;

(g) with respect to an elected official who designated the Director or who is serving as Director, the decision of a competent tribunal declaring the elected official's election or appointment void.

A vacancy in the office of a Director shall be filled by the appointing authority that appointed such Director for the balance of the term in the same manner as the regular appointment.

#### **Section 6. Removal of Directors.**

(a) By the Board of Directors. A Director of the Corporation may be removed by the Board of Directors for inefficiency, neglect of duty, or misconduct in office. A Director may be removed by the Board of Directors only after a hearing of the Board. A copy of the charges must be given to the Director at least ten (10) days before the hearing. The Director must be given an opportunity to be heard in person or through representation of counsel at the hearing. When written charges have been submitted against a Director, the Board may temporarily suspend the Director. If the Board finds that those charges have not been substantiated, the Director must be immediately reinstated. If a Director is removed, a record of the proceedings, together with the charges and findings, must be filed with the office of the appointing authority.

(b) By the Appointing Authority. A Director may be removed with or without cause by the appointing authority that appointed such Director by giving written notice of the removal to the Director being removed and to the Secretary of the Corporation. Such removal shall be effective upon delivery, unless a later date is specified in the notice.

**Section 7. Resignation.** Any Director may resign at any time by giving written notice of such resignation to the Secretary of the Corporation. Such resignation shall be effective upon delivery, unless a later date is specified in the notice.

**Section 8. Status as Public Official.** A Director of the Corporation is a public official, as defined in Minnesota Statutes Section 10A.01, subdivision 35.

**Section 9. Compensation.** Directors shall be compensated as provided in Minnesota Statutes Section 15.0575, subdivision 3. For the purposes of this Section 9, the Director

appointed by Mayo Clinic shall be treated as if an employee of a political subdivision. All money paid for compensation or reimbursement must be paid out of the Corporation's budget.

**Section 10. Fiduciary Duties of Directors.** A Director shall discharge the duties of the position of Director in good faith, in a manner the Director reasonably believes to be in the best interests of the Corporation, and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a Director of the Corporation.

In discharging his or her duties, a Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) one or more officers, employees, or agents of the Corporation, or the Agency (defined in Article V, Section 3), whom the Director reasonably believes to be reliable and competent in the matters presented;
- (b) counsel, public accountants, or other persons as to matters that the Director reasonably believes are within the person's professional or expert competence; or
- (c) a committee of the Board upon which the Director does not serve, as to matters within its designated authority, if the Director reasonably believes the committee to merit confidence.

A Director may not rely on such information, reports, or statements if the Director has actual knowledge concerning the matter in question that makes the reliance unwarranted.

A Director is not considered to be a trustee with respect to the Corporation or with respect to property held or administered by the Corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

### **ARTICLE III**

#### **Meetings of the Board of Directors**

**Section 1. Open Meeting Law; Data Practices.** Meetings of the Board of Directors of the Corporation and any committee or subcommittee of the Board of Directors are subject to the Minnesota Open Meeting Law, Minnesota Statutes Chapter 13D. The Corporation is a government entity for purposes of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

**Section 2. Place and Time of Meetings.** Within the limitations set forth in this Article III, the Board of Directors may hold its regular, special, and emergency meetings at such times and at such places as determined by the Chair of the Board of the Corporation, or his or her designee, unless the Board of Directors determines otherwise; provided, all meetings will customarily be held within the City of Rochester unless special circumstances require another location.

**Section 3. Regular Meetings.** The Board of Directors shall hold regular meetings pursuant to a schedule determined by the Chair of the Board, or his or her designee. At each regular meeting, the Board of Directors shall conduct such business as may properly come before the Board. A schedule of the regular meetings of the Corporation shall be kept on file at its primary offices. If the Corporation decides to hold a regular meeting at a time or place different from the time or place stated in its schedule of regular meetings, it shall give the same notice of the meeting that is provided for a special meeting of the Corporation.

**Section 4. Special Meetings.** Special meetings of the Board of Directors may be called by: (a) the Chair of the Board, or (b) upon written request of any two (2) or more Directors of the Corporation. A person entitled to call a special meeting of the Board of Directors may make a written request to the Secretary to call the meeting. The Secretary shall give or cause to be given notice of the meeting in the manner provided in Section 6, below. If the Secretary fails to give notice of the meeting within three (3) days from the day on which the request was received by the Secretary, the person or persons who requested the special meeting may fix the time and place of meeting, and give notice thereof.

**Section 5. Emergency Meetings.** An “emergency” meeting is a special meeting called because of circumstances that, in the judgment of the Board of Directors, require immediate consideration by the Board. The Board of Directors may hold emergency meetings under the circumstances and in accordance with the procedures described in Minnesota Statutes Section 13D.04, subdivision 3.

**Section 6. Notice of Meeting.**

(a) To Directors. Not less than five (5) days’ written notice of a regular meeting and three (3) days’ written notice of a special meeting of the Board of Directors, excluding the day of the meeting, shall be given to all Directors. Notice of an emergency meeting shall be given as soon as possible. No notice of any meeting need state the purpose of the meeting except as may be specifically required by these Bylaws or otherwise required by law, including without limitation the Minnesota Open Meeting Law.

Notice shall be delivered personally, sent by facsimile communication, sent by electronic mail, posted on an electronic network together with a separate notice to the Director of the specific posting, mailed, first class, postage prepaid, or such other methods as are fair and reasonable as determined in the sole discretion of the Secretary of the Corporation. Whenever written notice to Directors provides less than five (5) days’ advance written notice of the meeting, excluding the date of the meeting, reasonable effort shall be made to notify Directors by telephone of the meeting at the time of giving written notice, but the failure to contact any Director(s) by telephone shall not affect the validity of the meeting or any action taken at such meeting.

Notwithstanding the foregoing, and except as otherwise provided by the Minnesota Open Meeting Law, no written notice of any meeting of the Board of



Directors is required if the date, time, and place of the meeting was announced at a previous meeting of the Board. Any Director may waive notice of any meeting of the Board of Directors in writing before, at, or after a meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, unless he or she objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting. The waiver shall be filed with the person who has been designated to act as secretary of the meeting, who shall enter the waiver upon the records of the meeting. If a Director receives actual notice of a meeting of the Board of Directors at least 24 hours before the meeting, all notice requirements of this Section 6(a) are satisfied with respect to that Director, regardless of the method of receipt of notice.

(b) To the Public. A regular meeting of the Board of Directors of the Corporation held pursuant to the schedule of regular meetings kept at the primary offices of the Corporation does not require additional notice to the public; however, the Corporation shall post an agenda for all such meetings on its principal bulletin board, or if the Corporation has no principal bulletin board, on the door of its usual meeting room, prior to the regularly scheduled meeting. The failure to include an agenda item in the posted agenda shall not prevent action from being taken with respect to such item.

For a special meeting, except an emergency meeting or a special meeting for which a notice requirement is otherwise expressly established by statute, the Corporation shall post written notice of the date, time, place, and purpose of the meeting, as well as an agenda for the meeting, on the principal bulletin board of the Corporation, or if the Corporation has no principal bulletin board, on the door of its usual meeting room. The failure to include an agenda item in the posted agenda shall not prevent action from being taken with respect to such item. The notice shall also be mailed or otherwise delivered to each person who has filed a written request for notice of special meetings with the public body. This notice shall be posted and mailed or delivered at least three days before the date of the meeting. As an alternative to mailing or otherwise delivering notice to persons who have filed a written request for notice of special meetings, the Corporation may publish the notice once, at least three (3) days before the meeting, in a qualified newspaper of general circulation within the area of the Corporation's authority.

For an emergency meeting, the Corporation shall make good faith efforts to provide notice of the meeting to each news medium that has filed a written request for notice if the request includes the news medium's telephone number. Notice of the emergency meeting shall be given by telephone or by any other method used to notify the Directors of the Corporation. Notice shall include the subject of the meeting. Posted or published notice of an emergency meeting is not required.

If a person receives actual notice of a meeting of the Corporation at least 24 hours before the meeting, all notice requirements of this Section 6(b) are satisfied with respect to that person, regardless of the method of receipt of notice.

(c) Closed Meetings. The notice requirements of this Section 6 apply to closed meetings.

**Section 7. Closing a Meeting.** The Board may close a meeting to evaluate the performance of an individual who is subject to its authority, including but not limited to employees of the Corporation, or as otherwise permitted by Minnesota Statutes Section 13D.05, subdivision 3. If a meeting is closed to evaluate the performance of an individual, before closing the meeting, the Chair shall identify the individual to be evaluated and at the next open meeting, the Chair shall summarize the Board's conclusions regarding the evaluation; provided, however, that the meeting must be open at the request of the individual who is the subject of the meeting. The Board shall close a meeting if expressly required by law or to discuss information that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults, active investigation data as defined in Minnesota Statutes Section 13.82, or any other data classified as not public if required by Minnesota Statutes Section 13D.05, subdivision 2(a). The Board shall also close a meeting for preliminary consideration of allegations or charges against an individual subject to its authority; provided, however, that if the Board determines discipline may be warranted as a result of such allegations or charges, further meetings related to such allegations or charges shall be open, and all meetings related to such allegations or charges shall be open at the request of the person who is the subject of such allegations or charges. Before closing a meeting, the Board shall state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.

**Section 8. Quorum and Voting.** The presence of six (6) Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but the Directors present at any meeting, although less than a quorum, may adjourn the meeting from time to time. Participation in a meeting by remote communication pursuant to Section 12 below, if permitted by the Minnesota Open Meeting Law, constitutes presence at a meeting. At any meeting of the Board of Directors, except as otherwise provided in the Articles or these Bylaws, each Director present at the meeting shall be entitled to cast one (1) vote on any question coming before the meeting. Except as otherwise provided in these Bylaws, a majority vote of the Directors present at any meeting at which a quorum is established, shall be sufficient to transact any business. Proxy voting is not permitted.

**Section 9. Minutes.** The minutes of meetings of the Board shall record all votes taken at the meeting. The minutes shall record the vote of each Director on appropriations of money, except for payment of judgments and amounts fixed by statute. Minutes of Board meetings shall be open to the public during all normal business hours where records of the Corporation are kept.

**Section 10. Public Copies of Directors' Materials.** Unless a meeting is closed pursuant to Section 7, at least one copy of any printed materials relating to the agenda items of the meeting prepared or distributed by or at the direction of the Corporation or its employees and distributed at, before or available during the meeting to all Directors shall be available in the meeting room for inspection by the public while the Board considers their subject matter. This Section 10 does not apply to materials classified by law as other than public, or to materials relating to the agenda items of a closed meeting.

**Section 11. Rules of Procedure.** The Board of Directors may adopt or establish rules of procedure for conducting meetings provided such rules are not inconsistent with the Articles, these Bylaws, or Minnesota law. In the absence of Board action, the meetings shall be conducted in accordance with Roberts Rules of Order, Newly Revised.

**Section 12. Remote Communications for Board Meetings.** If permitted by the relevant provisions of the Minnesota Open Meeting Law (Minnesota Statutes Sections 13D.015, 13D.02, 13D.021, as amended or replaced), one or more Directors may participate in a meeting of the Board of Directors by means of an interactive video conference, telephone conference, or other electronic means, in each case through which that Director, other Directors so participating, and all Directors present at the meeting can hear one another, and can hear all discussion and testimony.

## **ARTICLE IV**

### **Officers**

**Section 1. Number and Election.** The Corporation shall have the following officers: (a) a Chair of the Board; (b) a Secretary; (c) a Treasurer; and (d) an Assistant Treasurer. Subject to these Bylaws, the Board of Directors may also elect or appoint a Vice Chair, an Executive Director, and one or more additional officers or assistant officers as it may deem convenient or necessary. Except as provided in these Bylaws and consistent with Minnesota Statutes Section 469.42, the Board of Directors shall fix the powers and duties of all officers. An officer shall hold office until his or her successor shall have been elected or until his or her prior death, resignation or removal from office as hereinafter provided.

**Section 2. Removal and Vacancies.** Any officer appointed by the Board of Directors shall hold office at the discretion of the Board of Directors and may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the Directors present. Any vacancy in an office of the Corporation appointed by the Board of Directors shall be filled by action of the Board of Directors. Any officer appointed by the Chair of the Board shall hold office at the discretion of the Chair of the Board and may be removed at any time, with or without cause, by the Chair of the Board. Any vacancy in an office of the Corporation appointed by the Chair of the Board shall be filled by the Chair of the Board.

**Section 3. Chair of the Board.** The Chair of the Board shall be elected annually by the Board of Directors from among the Directors appointed by the Governor and shall hold office at the discretion of the Board. The Chair of the Board shall preside or appoint a designee to preside at meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors from time to time. In the event of vacancy in the office of Executive Director, the Chair of the Board shall exercise the duties of the Executive Director.

**Section 4. Secretary.** The Secretary shall be appointed by the Chair of the Board, and shall hold office at the discretion of the Chair of the Board. The Secretary may, but need not, be a Director of the Corporation. The Secretary shall be responsible for ensuring that all actions and the minutes of all proceedings of the Board of Directors are recorded in a book to be kept for that

purpose, and shall be responsible for all documents and records of the Corporation, except those connected with the office of the Treasurer. The Secretary shall give or cause to be given any required notice of meetings of the Board of Directors in accordance with law and these Bylaws, and shall mail to all Directors within thirty (30) days after each meeting copies of all said actions and minutes of said proceedings, and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

**Section 5. Treasurer.** The Treasurer shall be elected annually by the Board of Directors from among the Directors and shall hold office at the discretion of the Board. The Treasurer shall receive and be responsible for Corporation money; shall be responsible for the acts of the Assistant Treasurer; shall disburse Corporation money by check or electronic procedures; shall keep an account of the source of all receipts, and of the nature, purpose, and authority of all disbursements; and shall file the Corporation's detailed financial statement with its Secretary at least once a year. Further, unless provided otherwise by a resolution adopted by the Board of Directors, the Treasurer shall ensure accurate financial records for the Corporation are kept; shall ensure that all moneys, drafts, and checks in the name of and to the credit of the Corporation are deposited in such banks and depositories as the Board of Directors shall designate from time to time; shall ensure that all notes, checks, and drafts received by the Corporation as ordered by the Board of Directors, are endorsed for deposit, making proper vouchers therefore; shall oversee the disbursement of corporate funds and checks and drafts in the name of the Corporation as ordered by the Board of Directors; shall render to the Chair of the Board and the Board of Directors, whenever requested, an account of all such officer's transactions as Treasurer and of the financial condition of the Corporation; and shall perform such other duties as may be prescribed by the Board of Directors from time to time. The Board of Directors may delegate the responsibilities of the Treasurer to the Assistant Treasurer of the Corporation, provided, however, that such individual(s) shall be subject to the oversight and control of the Treasurer. The Treasurer shall at all times retain the ultimate responsibility for the financial affairs of the Corporation.

**Section 6. Assistant Treasurer.** The Assistant Treasurer shall be appointed by the Chair of the Board, and shall hold office at the discretion of the Chair of the Board. The Assistant Treasurer may, but need not, be a Director of the Corporation. The Assistant Treasurer has the powers and duties of the Treasurer if the Treasurer is absent or incapacitated.

**Section 7. Vice Chair.** The Vice Chair, if any, shall be appointed by the Board of Directors and shall hold office at the discretion of the Board. In the event that the Chair is not available, the Vice Chair shall preside at meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors from time to time.

**Section 8. Executive Director.** The Executive Director, if any, shall be appointed by the Board of Directors and shall hold office at the discretion of the Board. The Executive Director shall not be a Director of the Corporation. Unless provided otherwise by a resolution adopted by the Board of Directors, the Executive Director shall have general active management of the business of the Corporation, shall see that all orders and resolutions of the Board of Directors are carried into effect, shall sign and deliver in the name of the Corporation any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the Corporation,

except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the Articles, these Bylaws, or the Board of Directors to some other officer or agent of the Corporation, may maintain records of and certify proceedings of the Board of Directors, and shall perform such other duties as may from time to time be prescribed by the Board of Directors. The Executive Director shall have the general powers and duties generally vested in the office of a president of a nonprofit corporation and shall have such other powers and perform such other duties as the Board of Directors may prescribe from time to time.

## ARTICLE V

### Committees

**Section 1. Committees.** The Board of Directors may establish one or more committees of the Board or advisory committees, as may be specified in resolutions approved by the affirmative vote of a majority of all Directors. Committees of the Board shall have the authority of the Board of Directors in the management of the business of the Corporation to the extent provided in resolutions approved by a majority of all Directors. All committees, however, shall at all times be subject to the direction and control of the Board of Directors. Committee members must be natural persons.

**Section 2. Ex Officio Member.** The Chair of the Board shall be an *ex officio* member, without voting rights, of each committee of the Corporation.

**Section 3. Advisory Committee.** The Board may appoint an advisory committee to ensure effective communication and coordination among the Board, the City, and the Destination Medical Center Economic Development Agency (as defined in Minnesota Statutes, Section 469.40, subd. 9, hereinafter referred to as the “**Agency**”) in the preparation of the development plan described in Minnesota Statutes Section 469.43; to facilitate the implementation of the goals, objectives, strategies, and projects included in the development plan; and to provide guidance and input to the Board of Directors on any such other matters as requested by the Board or Chair of the Board from time to time.

**Section 4. Executive Committee.** The Executive Committee shall be a committee of the Board. The Chair, the Treasurer, and such other persons, if any, elected by the Board of Directors by resolution shall constitute the Executive Committee of the Board of Directors of the Corporation. The majority of the members of the Executive Committee shall be Directors. The Executive Committee shall act only during intervals between meetings of the Board of Directors and shall at all times be subject to the control and direction of the Board of Directors. During such intervals and subject to such control and direction, the Executive Committee shall have and may exercise all of the authority and powers of the Board of Directors in the management of the affairs of the Corporation, subject to such limitations as the Board of Directors may impose. Notwithstanding the foregoing sentence, the Executive Committee may not approve: (a) amendments to the Articles or Bylaws; (b) the development plan described in Minnesota Statutes Section 469.43; (c) project proposals as provided in Minnesota Statutes Section 469.41,

subdivision 13; (d) annual reports required by Minnesota Statutes Section 469.43, subdivision 8; or (e) requests for bond financing of projects pursuant to Minnesota Statutes Section 469.44, subdivision 8.

**Section 5. Committee Procedures.** Committees of the Board are subject to and shall comply with the Minnesota Open Meeting Law to the same extent as the Board of Directors of the Corporation, and the provisions of these Bylaws shall apply to such committees and members thereof to the same extent they apply to the Board of Directors and Directors, including, without limitation, the provisions with respect to meetings and notice thereof, and voting, except that a quorum of a committee of the Board shall be established by the presence, in person or by remote communication, of a majority of the members of the committee. Advisory committees shall adopt such procedures as deemed appropriate by each such advisory committee, except as otherwise specifically provided in these Bylaws or resolutions of the Board of Directors. Each committee shall keep regular minutes of its proceedings and report to the Board of Directors.

## **ARTICLE VI**

### **Fiscal Matters**

**Section 1. Accounting Year.** The accounting year of the Corporation shall be the calendar year.

**Section 2. Annual Budget; Financial Management; Financial Statements.** The Board of Directors shall cause to be prepared and shall approve an annual operating budget for each accounting year. Any amendment to the annual operating budget shall be approved by the Board of Directors in the same manner as the adoption of the annual operating budget. The Board of Directors may establish rules and procedures by resolution to be followed in handling and accounting for Corporation monies and property. At the close of each accounting year, the Corporation shall prepare or cause to be prepared financial statements containing a balance sheet and a full and correct statement of the financial affairs of the Corporation for the fiscal year, all in accordance with generally accepted accounting principles.

**Section 3. Contracts.** The Corporation may contract for the services of the Agency, financial advisors, other consultants, agents, public accountants, legal counsel, and other persons needed to perform its duties and exercise its powers. The Corporation may contract with the City or County to provide administrative, clerical, and accounting services to the Corporation. Financial support of the Corporation by the City as provided in Section 469.44, subdivision 2, shall be pursuant to agreement with the City.

The Corporation must contract with the Agency for the services enumerated in Minnesota Statutes Section 469.43, subdivision 6, paragraph (a). The requirement to contract with the Agency does not limit the Corporation's authority to contract with other providers for the services.

The Board of Directors may authorize such officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be either general or confined to specific instances. Contracts and other instruments entered into in the ordinary course of business and within an

approved budget may be executed by the Executive Director, if any, or, in the absence of the Executive Director or pursuant to a delegation by the Executive Director, by such officer designated to act in the place of or in the absence of the Executive Director, without specific Board of Directors authorization.

**Section 4. Loans.** No loans shall be contracted on behalf of the Corporation, and no evidence of indebtedness other than checks, drafts or other orders for payment of money issued in the ordinary course of business shall be issued in its name unless authorized by the Board of Directors of the Corporation. Such authorization and approval may be general or confined to specific instances.

**Section 5. Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall be determined by the Board of Directors or by the Executive Director, if any, or Treasurer, upon delegation by the Board of Directors.

**Section 6. Deposits.** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors or the Executive Director, if any, or Treasurer, upon delegation by the Board of Directors, may select.

**Section 7. Maintenance of Records; Audit.** The Corporation shall keep at its registered office correct and complete copies of its Articles and Bylaws, books of account, voting records, and minutes of meetings of the Board of Directors, and committees having any of the authority of the Board of Directors for the last six (6) years. All such other records shall be open to inspection upon the demand of any member of the Board of Directors of the Corporation, or as otherwise required by the Minnesota Government Data Practices Act. The City, in its capacity as the member of the Corporation, shall cause the books and records of account of the Corporation to be audited by the City's auditors at such times as it may deem necessary or appropriate.

**Section 8. Corporate Seal.** The Corporation shall have no corporate seal.

**Section 9. Immunity; Indemnification.** The Corporation is subject to governmental immunity, as provided under Minnesota Statutes Section 466.01 or Minnesota Statutes Section 3.732. The Corporation shall indemnify and defend its Directors and officers against any third-party claim for damages by reason of the present or former official capacity of such person, provided that such person (a) was acting in the performance of the duties of the position; and (b) was not guilty of malfeasance in office, willful neglect of duty, or bad faith.

## **ARTICLE VII**

### **Director Conflict of Interest**

Members of the Board of Directors of the Corporation shall comply with Minnesota Statutes Sections 10A.07, 317A.255 and 469.41, subdivision 9, or any successor statutes, with

regard to Director conflicts of interest; and shall follow such procedures with respect to conflicts of interest as are consistent with the Corporation's status as a Minnesota nonprofit corporation under Section 317A.255 and as an organization described in Code Section 501(c)(3). The Corporation may adopt a policy or policies that comply with the foregoing requirements.

## **ARTICLE VIII**

### **Amendments**

These Bylaws may be altered, amended or restated as set forth in the Articles.

## **CERTIFICATION**

The undersigned, as Secretary of Destination Medical Center Corporation, a Minnesota nonprofit corporation, hereby certifies that the foregoing Bylaws of the Corporation were adopted by the City as the beneficiary organization of the corporation on the \_\_\_\_ day of \_\_\_\_\_, 2013 and by resolution of the Board of Directors at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

---

Secretary



**DESTINATION MEDICAL CENTER CORPORATION****RESOLUTION NO. \_\_-2014****Approving the Form of Agreement for DMCC Destination Medical Center Services  
By and Between Destination Medical Center Corporation and  
Destination Medical Center Economic Development Agency  
and Authorizing the Chair of DMCC to Execute the Agreement**BACKGROUND RECITALS

A. Minnesota Laws, Chapter 143, Article 10 (the "Act") provides that the Destination Medical Center Corporation ("DMCC") must contract with the Destination Medical Center Economic Development Agency (the "EDA") for services enumerated in the Act, specifically enumerated in Minnesota Statutes Section 469.43, subdivision 6, paragraph (a).

B. The DMCC and EDA have negotiated an agreement setting forth the duties, responsibilities and services to be performed by each party, the form of which is attached as Exhibit A.

C. The DMCC desires to enter into this agreement, in order to fulfill the terms of the Act and to begin implementation of the Destination Medical Center initiative.

RESOLUTION

**NOW, THEREFORE, BE IT RESOLVED**, by the Destination Medical Center Corporation Board of Directors that the Agreement for Destination Medical Center Services, By and Between Destination Medical Center Corporation and Destination Medical Center Economic Development Agency, dated February 1, 2014, in substantially the form of Exhibit A, on file with the DMCC, be approved; and authorizes the Chair to execute such agreements substantially in the form on file with the DMCC hereof, with such necessary and appropriate variations, omissions, and insertions as are not materially inconsistent with such form as the Chair in her discretion shall determine, provided that the execution thereof by the Chair shall be conclusive evidence of such determination; and authorizes the Chair or her designee to take all such actions as are necessary to fulfill DMCC's rights and obligations thereunder.

---

**AGREEMENT  
FOR  
DESTINATION MEDICAL CENTER SERVICES**

**BY AND BETWEEN**

**DESTINATION MEDICAL CENTER CORPORATION**

**AND**

**DESTINATION MEDICAL CENTER  
ECONOMIC DEVELOPMENT AGENCY**

**DATED AS OF: FEBRUARY 1, 2014**

---

## TABLE OF CONTENTS

1.	Term of Agreement.....	1
2.	Scope of Services .....	2
	2.1. Retention of the EDA.....	2
	2.2. Budget for the Work.....	2
	2.3. EDA Responsibility .....	2
	2.4. EDA Other Activities.....	3
	2.5. Change of Scope of Work.....	3
	2.6. Subconsultants .....	3
	2.7. Compliance with Laws .....	4
	2.8. Cooperation .....	4
	2.9. DMCC's Contact.....	5
	2.10. Agreement Subject to Execution of Other Agreements .....	5
3.	Compensation and Terms of Payment.....	5
	3.1. Compensation .....	5
	3.2. Reimbursable Expenses.....	5
	3.3. Payment Process.....	5
	3.4. Payment of Subconsultants .....	6
4.	General Terms and Conditions.....	6
	4.1. Suspension for Nonpayment .....	6
	4.2. Suspension for Material Breach .....	7
	4.3. Termination .....	7
	4.4. Damages .....	8
	4.5. Force Majeure .....	8
5.	Disputes .....	8
	5.1. Informal Resolution Efforts .....	8
	5.2. Mediation Rules .....	8
	5.3. Mediation as Condition Precedent .....	9
	5.4. Forum Selection; Waiver of Jury Trial .....	9
6.	Representations and Warranties.....	9
	6.1. Representations, Warranties, and Covenants of the EDA.....	9
	6.2. Representations, Warranties, and Covenants of DMCC .....	10
7.	General Terms and Conditions.....	11
	7.1. Choice of Law.....	11
	7.2. Entire Agreement, and Amendment .....	11
	7.3. Indemnification .....	11
	7.4. Defense of Third Party Claims and Actions .....	12
	7.5. Amendment Process.....	12
	7.6. Audit and Retention of Books and Records .....	12
	7.7. Data, Information .....	13
	7.8. Ownership of Works, Intellectual Property Rights .....	13
	7.9. Potential Conflict of Interest.....	14
	7.10. Insurance .....	14
	7.11. Independent Contractor.....	14
	7.12. Equal Employment Opportunity; Affirmative Action; Nondiscrimination..	15

7.13.	Notices .....	15
7.14.	Non-Waiver .....	16
7.15.	Severability .....	17
7.16.	Exhibits .....	17
7.17.	Headings.....	17
7.18.	Jointly Drafted .....	17
7.19.	Signatures .....	17
7.20.	Third Party Beneficiaries.....	17

**EXHIBITS**

<b>EXHIBIT A</b>	<b>SCOPE OF WORK</b>
<b>EXHIBIT B</b>	<b>KEY CONSULTANTS</b>
<b>EXHIBIT C</b>	<b>REIMBURSEABLE EXPENSES</b>
<b>EXHIBIT D</b>	<b>INSURANCE REQUIREMENTS</b>
<b>EXHIBIT E</b>	<b>MASTER APPLICATION FOR PAYMENT</b>

DRAFT

AGREEMENT  
FOR  
DESTINATION MEDICAL CENTER  
SERVICES

**THIS AGREEMENT FOR DESTINATION MEDICAL CENTER SERVICES** ("Agreement") is entered into as of February 1, 2014 (the "Effective Date") by and between the Destination Medical Center Corporation, a non-profit corporation organized under the laws of the state of Minnesota (the "DMCC"), and the Destination Medical Center Economic Development Agency, a non-profit corporation organized under Chapter 317A of Minnesota Statutes (the "EDA") (each a "Party" and collectively, the "Parties").

**BACKGROUND RECITALS**

- A. Pursuant to Laws of Minnesota, Chapter 143 (2013-2014 Regular Session), Article 10 (the "DMC Law"), the State of Minnesota authorized up to Five Hundred Eighty Five Million Dollars (\$585,000,000.00) of public funding and incentives for public infrastructure projects that will support private investment by Mayo Clinic ("Mayo") and other private developers in the City of Rochester, Minnesota (the "City"), and surrounding communities over the next 20 years.
- B. The DMC Law authorized establishment of the DMCC to provide expertise in preparing and implementing the development plan (the "Development Plan"), pursuant to which public infrastructure projects will be approved, to establish the State of Minnesota and the City as a destination medical center (the "DMC").
- C. Mayo is required to establish the EDA under the DMC Law to provide experience and expertise in developing and marketing the DMC.
- D. Pursuant to the DMC Law, the EDA is required to provide certain enumerated services to assist the DMCC (the "Required Services") as defined herein, and the DMCC is required to engage the EDA to perform the Required Services.
- E. The Parties desire to enter into this Agreement whereby the EDA shall provide the DMCC with its experience and expertise in preparing the Development Plan, developing and marketing the DMC, and providing services to assist the DMCC in implementing the goals, objectives and strategies in the adopted Development Plan under the DMC Law.
- F. The DMCC is contemporaneously entering an agreement with the City to provide support and funding according to the DMC Law.

In consideration of the foregoing Recitals and the mutual covenants contained in this Agreement, the DMCC and the EDA agree as follows:

**AGREEMENT**

- 1. Term of Agreement.** This Agreement is effective on the Effective Date and shall remain in effect until the earlier of (i) December 31, 2049, and (ii) December 31 of the year in which all bonds and notes issued to finance a project undertaken pursuant to the adopted Development

Plan are defeased (the "Term") unless otherwise terminated as provided herein. The EDA shall have a continuing obligation, after the Term, to comply with any provision of this Agreement that is specifically designated as surviving the completion, expiration, suspension, or termination of this Agreement herein, including Sections 4.5, 5, 7.1, 7.3, and 7.8. Provided, however, that before the completion, expiration, suspension, or termination of this Agreement, the EDA shall obtain insurance on an occurrence basis or that otherwise provides "tail" coverage as provided in Exhibit D.

## **2. Scope of Services.**

**2.1. Retention of the EDA.** The services required to be provided by the EDA pursuant to the DMC Law are described in this Section 2 and in Exhibit A to this Agreement (the "Required Services"). In addition to the Required Services, the DMCC may from time to time request the EDA to provide certain additional services, which, if authorized in writing by the DMCC and accepted by the EDA, shall constitute the "Additional Services." The Required Services and the Additional Services collectively constitute the "Work."

**2.2. Budget for the Work.** The EDA shall prepare an annual budget for the Work for the DMCC review and approval (as so approved for each applicable budget period by the DMCC, the "Budget"). The EDA shall perform the Work strictly in accordance with the Budget and shall have no obligation to undertake Work not reflected in or fully funded by the Budget. The initial Budget has been approved by the DMCC as of January 30, 2014. For each future budget period, on or before August 1<sup>st</sup> of each year of this Agreement, the EDA shall submit to the DMCC a proposed budget, as well as a plan for the Work to be performed or supplied by the EDA under this Agreement as required by the DMC Law (the "Work Plan") for the period for which such budget shall be in effect. The DMCC shall consider the Work Plan in adopting each Budget. The annual budget shall not include any amounts for damages, interest (except as provided in Section 3.4) or losses incurred by the EDA as a result of EDA's acts or omissions under this Agreement covered by insurance other than deductibles nor any amounts due the City for EDA indemnification of the City under this Agreement. In the event that (i) the Parties agree upon Additional Services that exceed the Budget, or (ii) the EDA believes that the Required Services exceed the Budget due to circumstances beyond the control of the Parties, or (iii) the cost of performing completed phases or portions of Work under the Work Plan is materially lower than the Budget, the EDA shall seek approval of DMCC of an amended budget ("Amended Budget"). Amendments, if any, shall not be required more frequently than quarterly. Limitations on the scope of Work, other than as provided in this Agreement, may be noted in the Budget.

**2.3. EDA Responsibility.** During the Term, the EDA shall perform the Work in accordance with this Agreement. The EDA shall select the means, method, and manner of performing the Work, subject to the terms and conditions of the Agreement. The EDA shall furnish the labor, services, supplies, materials, and equipment required to complete the Work, and shall use EDA's best efforts, skill, judgment, and abilities, all in accordance with the terms of this Agreement, to perform the Work and to supervise the labor and services provided by the Subconsultants (as defined in Section 2.6 hereof), which Subconsultants shall be required to adhere to the generally accepted practices of similar professionals performing similar services as are performed for the EDA and the DMCC. If the EDA observes or otherwise becomes aware of

any fault or defect in the work of its Subconsultants, the EDA shall take reasonable, prompt and appropriate steps to protect the DMCC's interest and to remedy the noncompliance, and shall notify the DMCC of the actions taken. The EDA shall communicate to the DMCC all facts relating to the Work that may affect the DMCC's rights or interests. The EDA agrees to perform the Work in a manner consistent with the Master Project Schedule to the extent reasonably practicable. The Parties recognize and agree that the EDA is an independent contractor to the DMCC under the terms and conditions of this Agreement. Any and all personnel of the EDA or of the Subconsultants engaged in the performance of the Work under this Agreement shall not be considered employees of the DMCC. The EDA shall be solely responsible for workers' compensation obligations, withholding taxes, and unemployment insurance and other employer obligations with respect to such persons working for the EDA. In performing the Work, the EDA shall act in the best interest of and for the benefit of the DMCC and consistent with the DMC Law. The EDA shall exercise reasonable care and diligence in performing the Work. In performing the Work, the EDA shall be subject to the oversight and direction of the DMCC, as provided in this Agreement.

**2.4. EDA Other Activities.** The Parties acknowledge that the EDA is expected to undertake additional activities for its own account or on behalf of entities other than the DMCC, and that such activities are separate from and in no way constitute part of the Work under this Agreement. All activities funded from sources of revenue other than reimbursement by the DMCC pursuant to this Agreement shall not be subject to this Agreement. Such other activities of the EDA shall not be inconsistent with this Agreement, the DMC Law, or create any conflict of interest to the EDA's duties or responsibilities to the DMCC.

**2.5. Change of Scope of Work.** The DMCC shall have the right from time to time during the term of this Agreement to make changes to the Work, provided that such changes shall always be consistent with the DMC Law. The DMCC and the EDA shall agree to such modifications by a written agreement signed by both Parties. To the extent any modifications to the Work are material, the EDA's compensation shall be equitably adjusted in such written agreement.

**2.6. Subconsultants.** The EDA shall provide a team of professionals at all times that shall have sufficient capacity, skill, and experience to perform the Work, whether by its employees or by any Subconsultants, as later defined. The EDA shall have the right to contract with subcontractors, consultants, suppliers, and other entities ("Subconsultants") to assist with the planning and performance of the Work. As the project management component of the Work, the EDA shall oversee and be responsible for the Work performed by the Subconsultants consistent with this Agreement, including Section 2.3. The EDA shall require the Subconsultants to comply with all applicable terms and conditions of this Agreement. The EDA shall have complete discretion over the selection and hiring of Subconsultants who are not Key Consultants (as hereinafter defined). The DMCC may only object to any Subconsultant for good cause, and the EDA shall replace such Subconsultant when practicable. The EDA shall require that each contract between the EDA and its Subconsultants (a) name the DMCC as a third party beneficiary of such agreement, and (b) provide that the Subconsultant is not a third party beneficiary of this Agreement. The Subconsultants shall not be deemed agents of the DMCC.

**2.6.1. Key Consultants.** For those Subconsultants that the EDA and DMCC Board Chairs agree are of material significance or interest to the community (the “Key Consultants”), the EDA will solicit proposals through a request for proposals (“RFP”) template approved by the DMCC, and review proposals, interview candidates, and present to the DMCC either recommendations for approval or recommendations for qualified candidates for further negotiation with the EDA. The EDA will then enter agreements with such approved or qualified proposers that it determines are best qualified, responsive to the RFP, and satisfy the Budget. The DMCC’s consent on the EDA’s recommendations as to Key Consultants shall not be unreasonably withheld. An initial listing of the professional disciplines applicable for Key Consultants is attached hereto as Exhibit B.

**2.6.2. Replacement of Subconsultants.** If either Party desires to replace a Key Consultant, the EDA shall use the process described in Section 2.6.1 to select a replacement, unless mutually agreed otherwise by the Parties.

**2.7. Compliance with Laws.** The EDA shall perform, and require the Subconsultants to perform, the Work in compliance in all material respects with all applicable federal, state, and local: laws, regulations, codes, and DMCC’s applicable policies and standards provided by DMCC, which the DMCC shall promptly provide to the EDA (collectively, “Applicable Laws”). The EDA shall maintain, and shall require that the Subconsultants, if any, maintain any and all required governmental licenses, certificates, approvals, and permits that are required to perform the Work. The EDA agrees to maintain in full force and effect such required licenses, certificates, approvals, and permits throughout the Term. If the EDA becomes aware of any noncompliance with Applicable Law in performance of the Work, the EDA shall promptly take reasonable and appropriate steps to remedy the noncompliance, and shall notify the DMCC of the actions taken.

**2.8. Cooperation.** The EDA shall perform the Work in cooperation with the DMCC and its representatives and DMCC Consultants (as defined herein); the City governing body and its representatives and consultants; Mayo; and the Olmsted County, Minnesota governing body (the “County”) and its representatives and consultants.

**2.8.1** The Parties agree to cooperate as needed and make good faith efforts to achieve the goals of the DMC Law within the Budget and project schedule. The Parties each agree to exercise their rights and perform all of their obligations under this Agreement so as to enable each to exercise its respective rights and perform its respective obligations under the DMC Law. The Parties will cooperate and use their best efforts to enable the City to receive all funding to support the DMC that the City is eligible to receive under the DMC Law. The Parties shall cooperate with each other, to carry out their responsibilities with respect to the DMC Law.

**2.8.2** All decisions made by the DMCC associated with the Work to be performed hereunder shall be communicated through the DMCC’s Chairperson or Chairperson’s designee to the entities listed above. The Parties acknowledge that the DMCC may contract for the services of financial advisors, other consultants, agents, public accountants, legal counsel, and other persons needed to perform its duties and exercise its powers (the “DMCC Consultants”) within the approved budget. The DMCC shall determine and oversee the scope of services by such DMCC Consultants. In performing the Work, the EDA shall not oversee or be



liable for the actions of the DMCC Consultants, or the other consultants retained by the City, Mayo, or the County.

**2.9. DMCC's Contact.** The Parties shall consult with one another prior to and with respect to material decisions which are required to be made by the DMCC under the DMC Law and the adopted Development Plan.

**2.10. Agreement Subject to Execution of Other Agreements.** This Agreement does not take effect until the DMCC and the City shall have executed and delivered the Agreement for DMCC Funding and Support ("City Agreement"). The EDA hereby acknowledges receipt of the City Agreement.

### **3. Compensation and Terms of Payment.**

**3.1. Compensation.** Compensation for all Work performed or supplied by the EDA under this Agreement ("Costs of the Work") shall be as provided in the Budget or Amended Budget. The EDA shall be compensated for the Costs of Work according to the terms of this Agreement.

**3.2. Reimbursable Expenses.** The EDA shall account for and submit ordinary, necessary, and reasonable expenses incurred by the EDA and Subconsultants in performing the Work (the "Reimbursable Expenses"). Reimbursable Expenses shall be billed at actual cost, without any markup. Reimbursable Expenses shall not duplicate any fees for services, and shall not include any expenses related to alcohol. Individual Reimbursable Expenses above the amount of \$5,000 shall require advance approval of the DMCC. Reimbursable Expenses may include the items listed in Exhibit C.

**3.3. Payment Process.** The EDA shall deliver the Master Application for Payment ("MAP") to the DMCC by the tenth day of each month. The MAP shall be in a form approved by EDA, DMCC and the City, the initial form of which is attached hereto as Exhibit E. In addition to the MAP, the EDA shall include all documentation reasonably specified by DMCC or the City including, but not limited to, underlying invoices to show any Costs of the Work incurred by the EDA or the Subconsultants in the immediately preceding month, and conditional lien waivers. The EDA's submission of Subconsultant costs shall reflect the actual costs of the Subconsultants, inclusive of permitted reimbursable costs which shall be invoiced, without any markup. Furthermore, the EDA shall allocate costs between administrative and project costs in accordance with the procedures in the City Agreement. DMCC approval or rejection of the MAP shall be made within 5 business days of receipt by the DMCC, or such time as mutually agreed by the Parties. The DMCC's rejection of a MAP or any portion thereof shall be specified in writing in reasonable detail by the DMCC. Upon the rejection of a MAP or any portion thereof, the EDA shall use reasonable efforts to deliver within three (3) business days either a revised MAP or such further support for a MAP as the DMCC may request. Following DMCC approval of a MAP, and acceptance of services rendered, the DMCC shall submit the MAP and all supporting documentation to the City for approval and payment. All MAPs provided to the City shall be consistent with the approved DMCC funding request or approved DMCC capital costs funding. City approval or rejection of the MAP shall be made within 5 business days of receipt by the City, or such time as is mutually agreed by the Parties. The City's rejection of a

MAP or any portion thereof shall be specified in writing addressed to the DMCC and to EDA in reasonable detail by the City. Upon the rejection of a MAP or any portion thereof by the City, the EDA (or DMCC, if appropriate) shall use reasonable efforts to deliver within three (3) business days either a revised MAP or such further support for a MAP as the City may request. Payment of approved MAPS shall be made by the City from DMCC's Bank Account to the EDA's account (which shall be a bank account owned by EDA and controlled by the EDA's board and officers) according to the City's typical practices (subject to bank and city holidays): if a monthly MAP is approved by the City by 12:00 pm noon on Friday, the payment will be made by the Automated Clearing House ("ACH") process the following Friday, unless mutually agreed by the Parties. The EDA acknowledges that the City's preference is to use the ACH process for payment to vendors. Absent the ACH process, the City's practice is to process checks for payment one time per month. The EDA shall complete all payments to Subconsultants as provided in Section 3.4.

**3.4. Payment of Subconsultants.** The EDA shall complete all payments to Subconsultants and others under each respective approved MAP within fifteen (15) calendar days (or such shorter period as required by law) of the EDA receiving funds from the City or the DMCC for each respective MAP. The EDA shall pay interest as provided in the respective contracts with the Subconsultant(s) to the Subconsultant(s) on an undisputed amount not paid on time by the EDA; provided, however, such interest shall be reimbursable from DMCC in a future MAP if DMCC or the City contributed to the delay in payment by EDA to the Subconsultant. In the event that the EDA determines that there is a reasonable basis to withhold or delay a payment to a particular Subconsultant or third party under a MAP for which EDA has received payment, the EDA shall promptly notify the DMCC and the City. The EDA shall contemporaneously make a specific recommendation regarding the timing for completing the withheld or delayed payment, including any related conditions precedent (e.g., Subconsultant submitting additional documentation or revising specific Work). Either the DMCC or the City may provide specific written direction regarding any withheld or delayed payment and the EDA shall comply to the extent reasonably practical, including returning funds to the City for credit to the DMCC account if the City and the DMCC both so direct. The EDA shall promptly investigate and respond to any claim of nonpayment by a Subconsultant performing the Work, and shall indemnify and defend the DMCC and the City against any claim for nonpayment for which the EDA has received payment from the DMCC or the City. At the time of receipt of payment, the EDA and each Subconsultant shall execute and deliver a waiver of lien rights, in a form mutually agreeable to the Parties, covering the Work for which payment has been made. Upon completing payments under a MAP, the EDA shall provide to the DMCC and to the City such related information and regular reports as the DMCC or the City reasonably specify from time to time in writing. All related EDA records are subject to review and audit by the DMCC or by the City under Section 7.6 of this Agreement

#### **4. General Terms and Conditions.**

**4.1. Suspension for Nonpayment.** If the EDA is not paid in accordance with this Agreement, such failure shall be considered substantial nonperformance and, at the EDA's option, cause for suspension of performance of the Work under this Agreement. If the EDA elects to suspend services, the EDA shall give thirty (30) days' written notice to the DMCC before suspending services, and shall perform, at DMCC's request, direction, and expense,

windup of the Work Plan then in effect that is reasonably necessary to prevent prejudice to the DMCC. If the EDA suspends services, the EDA shall have no liability to DMCC to the extent of any delay or damage caused to the DMCC because of such suspension of services, except to the extent the DMCC withheld payment for causes permitted by this Agreement, or the suspension by EDA was otherwise not warranted. The EDA shall have no obligation to resume services unless and until EDA shall be paid all sums due prior to suspension and any reasonable expenses incurred by the EDA as a direct result of the interruption and resumption of the EDA's Work (if such suspension was warranted) and if appropriate, the EDA's compensation for the remaining services shall be equitably adjusted.

**4.2. Suspension for Material Breach.** The EDA may suspend its performance under this Agreement upon thirty (30) days' written notice for reasons of a material breach of this Agreement by the DMCC. The DMCC may suspend its performance under this Agreement upon thirty (30) days' written notice for reasons of a material breach of this Agreement by the EDA. In the event that this Agreement is suspended, the Parties shall resolve any dispute arising out of or related to such material breach as provided in Section 5 of this Agreement, and the DMCC shall compensate the EDA for Work performed prior to the date of suspension and any Reimbursable Expenses then due. Such suspension shall cease upon the cure or successful resolution of such material breach, or as otherwise agreed by the Parties. The DMCC reserves the right to suspend and reinstate execution of the whole or any part of the Work without invalidating the provisions of the Agreement. The DMCC will issue to the EDA written orders for suspension or reinstatement of Work. In such event, the DMCC shall be responsible for the costs which the EDA reasonably incurs in accordance with this Agreement before the suspension, unless such costs are the subject of a dispute, in which case the parties will address the disputed costs under Section 5.

**4.3. Termination.** This Agreement shall not be subject to termination unless (i) the Parties mutually agree to such termination in writing, which agreement shall include a provision setting out the obligations of the Parties with respect to reasonably wrapping up the Work Plan then in effect; (ii) a material act of fraud is committed by either Party; (iii) either Party provides written notice of material breach to the other Party, specifying the nature of the material violation of the terms of the Agreement, if such violation is not corrected within ninety (90) days after the date of notice, or within such a reasonable time as may be required to cure the violation (provided the acts to cure the violation are commenced within ninety (90) days and thereafter diligently pursued to completion); (iv) a court of competent jurisdiction determines that the Party against whom termination is sought has committed a material breach or default; (v) subject to the prohibitions in the Minnesota Constitution, Article I, Section 11, a change in the DMC Law expressly requires the dissolution of the DMCC or the termination of this Agreement, or effectively abandons the establishment of the DMC or deprives the DMCC of its powers and duties in respect of the establishment of the DMC from that contemplated by the DMC Law as of the date hereof, or if the DMC Law is terminated or repealed; (vi) the State Infrastructure Aid Agreement between the City and the Commissioner of Employment and Economic Development ("DEED Agreement") is not executed by September 30, 2014 or is terminated; or (vii) in the event of a failure to certify expenditures under Minnesota Statutes, Section 469.47, subdivision 2. Provided, however, that termination under Section 4.3(iii) or (iv) shall not take effect until adjournment of the first regular session, (or special session in which the DMC Law is considered), of the Minnesota Legislature which is held following the provision of notice of

breach. Work performed prior to the date of termination shall be in accordance with the terms and conditions of this Agreement.

**4.4. Damages.** The EDA shall not be relieved of liability to the DMCC for damages sustained by the DMCC by virtue of any material breach of this Agreement by the EDA. Following notice from the DMCC of the claimed material breach and damage, the Parties shall attempt to resolve the dispute in good faith according to the provisions in Section 5. Provided, however, that the obligation of either Party to pay any damages, liabilities, obligations, losses or expenses in any manner whatsoever pursuant to this Agreement, including any indemnity obligations of the respective Party, shall not exceed the amount of insurance limits provided by each respective Party hereunder. To the fullest extent permitted by law, neither Party shall be liable to the other Party for claims, suits, actions or causes of action for incidental, indirect, special, punitive, multiple or consequential damages connected with or resulting from performance or non-performance of this Agreement.

**4.5. Force Majeure.** Notwithstanding any other provision of this Agreement, to the extent either Party is prevented by force majeure (meaning any cause beyond the control of the Party affected, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, which, in any of the foregoing cases, by exercise of due diligence such Party could not reasonably have been expected to avoid) from carrying out, in whole or part, its obligations under the Agreement and such Party (the "Claiming Party") gives notice and details of the force majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due with respect to performance before the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch, and shall make commercially reasonable efforts to avoid the adverse impacts thereof and to resolve the event or occurrence once it has occurred in order to resume performance. As soon as the Claiming Party is able to resume performance of its obligations excused as a result of the occurrence of force majeure, such Claiming Party shall give prompt notice thereof to the other Party.

## **5. Disputes.**

**5.1. Informal Resolution Efforts.** In the event that a dispute arises between the Parties as to the interpretation or performance of this Agreement, then upon written request of either Party, representatives with settlement authority for each Party shall meet in person within thirty (30) days of the receipt of such written request, and confer in good faith to resolve the dispute (the "Informal Resolution Period").

**5.2. Mediation Rules.** Disputes unable to be resolved under Section 5.1 shall be submitted to mediation within thirty (30) days of the written request of one Party, or upon such time as mutually agreed by the Parties. The Parties may agree on one mediator, whose costs will be borne by the Parties equally. The mediation meeting shall not exceed eight (8) hours. The Parties may agree to extend the time allowed for mediation under this Agreement.

**5.3. Mediation as Condition Precedent.** For any dispute, mediation under this Section 5 is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys' fees, expert witness costs and cost of suit, through mediation only. If the Parties are unable to resolve the dispute through mediation, either Party may bring disputes to a State Court sitting in Olmsted County, Minnesota (Third Judicial District).

**5.4. Forum Selection; Waiver of Jury Trial.** Any disagreement, dispute or claim between the Parties relating to, arising out of or in connection with this Agreement, or the relationship between the Parties, shall be subject to the exclusive jurisdiction of the State Court sitting in Olmsted County, Minnesota (Third Judicial District), and both Parties expressly consent to such exclusive jurisdiction, including personal jurisdiction, and agree that venue in such court is proper. THE DMCC AND THE EDA HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE BETWEEN THEM AND ACKNOWLEDGE THAT ANY DISPUTE BETWEEN THEM SHALL BE TRIED TO THAT COURT.

## **6. Representations and Warranties.**

**6.1. Representations, Warranties, and Covenants of the EDA.** The EDA represents, warrants, and covenants as follows:

**6.1.1.** The EDA has legal authority to enter into, execute, deliver and perform this Agreement, and has taken all actions necessary for its execution and delivery. The EDA has obtained all necessary consents (if any) for the execution, delivery and performance (as of the date hereof) of this Agreement by the EDA.

**6.1.2.** This Agreement, and all other documents to which the EDA is party referred to herein, are, or upon due execution and delivery will be, the legal, valid and binding obligations of the EDA enforceable against the EDA in accordance with their respective terms.

**6.1.3.** The EDA is duly organized, validly existing and in good standing under Minnesota Statutes Chapter 317A. The EDA will comply with all of the provisions and requirements contained in and imposed by the DMC Law and Minnesota Statutes Chapter 317A and will maintain its corporate existence in good standing under Minnesota Statutes Chapter 317A. The EDA will seek recognition as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") as an organization exempt from federal income taxation under Code Section 501(a) and as a public charity described in Code Section 509(a)(1), and, assuming such recognition is granted, the EDA will maintain such status throughout the term of this Agreement.

**6.1.4.** The EDA will comply in all material respects with all of the provisions and requirements contained in and imposed by Applicable Laws.

**6.1.5.** The EDA will comply with all of the terms, conditions, covenants, and warranties in this Agreement and all other documents referred to herein to which the EDA is party.

**6.1.6.** The EDA is not in violation of any provision of the DMC Law or material violation of any other laws of the State of Minnesota, and there are no actions, suits or proceedings pending, or to the EDA's knowledge threatened, before any judicial body or governmental authority against the EDA relating to the DMC Law or this Agreement.

**6.1.7.** The EDA is not in default with respect to any order, injunction, decree or writ of any court or any governmental authority which would impair the EDA's ability to enter into or perform this Agreement or exercise any rights or perform any obligations on the part of the EDA under the DMC Law.

**6.1.8.** Neither the execution and delivery of this Agreement nor compliance with any of the terms, conditions, covenants, or warranties herein is prevented by, is a breach of, or will result in a breach of any agreement or instrument to which the EDA is a party or by which it is bound.

**6.1.9.** The EDA is not currently debarred or suspended by any federal or state agency from doing business with the federal or state government entity, and the EDA shall notify the DMCC if it or any Subconsultant becomes debarred or suspended during the Term.

**6.2. Representations, Warranties, and Covenants of DMCC.** The DMCC represents, warrants, and covenants as follows:

**6.2.1.** The DMCC has legal authority to enter into, execute, deliver and perform this Agreement, and has taken all actions necessary for its execution and delivery. The DMCC has obtained all necessary consents (if any) for the execution, delivery and performance (as of the date hereof) of this Agreement by the DMCC.

**6.2.2.** This Agreement, and all other documents to which the DMCC is party referred to herein, are, or upon due execution and delivery will be, the legal, valid and binding obligations of the DMCC, enforceable against the DMCC in accordance with their respective terms.

**6.2.3.** The DMCC is duly organized, validly existing, and in good standing under Minnesota Statutes Chapter 317A. The DMCC will comply with all of the provisions and requirements contained in and imposed by the DMC Law and Minnesota Statutes Chapter 317A and will maintain its corporate existence in good standing under Minnesota Statutes Chapter 317A. The DMCC will seek recognition as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") as an organization exempt from federal income taxation under Code Section 501(a) and as a public charity described in Code Section 509(a)(1), and, assuming such recognition is granted, the DMCC will maintain such status throughout the term of this Agreement.

**6.2.4.** The DMCC will comply in all material respects with all of the provisions and requirements contained in and imposed by Applicable Laws.

**6.2.5.** The DMCC is not in violation of any provision of the DMC Law or material violation of any other laws of the State of Minnesota, and there are no actions, suits or

proceedings pending, or to the DMCC's knowledge threatened, before any judicial body or governmental authority against the DMCC relating to the DMC Law or this Agreement.

**6.2.6.** The DMCC is not in default with respect to any order, injunction, decree or writ of any court or any governmental authority which would impair the DMCC's ability to enter into or perform this Agreement or exercise any rights or perform any obligations on the part of the DMCC under the DMC Law.

**6.2.7.** Neither the execution and delivery of this Agreement nor compliance with any of the terms, conditions, covenants, or warranties herein is prevented by, is a breach of, or will result in a breach of any agreement or instrument to which the DMCC is a party or by which it is bound.

## **7. General Terms and Conditions.**

**7.1. Choice of Law.** This Agreement shall be governed by and construed under Minnesota law (without regard for choice of law considerations).

**7.2. Entire Agreement, and Amendment.** This Agreement constitutes the entire agreement and understanding of the Parties and replaces any prior or contemporaneous agreement, whether written or oral. All exhibits, attachments, and recitals referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement. Any changes or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the Parties as an amendment to this Agreement.

### **7.3. Indemnification.**

**7.3.1.** To the fullest extent permitted by law, and subject to the limitation of Section 4.5, the EDA agrees to release, defend (with counsel reasonably acceptable to the DMCC), indemnify, and hold harmless the DMCC, and the City, and their respective officials and employees, from and against all third party claims, including costs, expenses, and attorneys' fees ("Third Party Claims") that arise as a result of the willful misconduct, negligent acts, errors, and/or omissions of the EDA or Subconsultants in the performance of the Work.

**7.3.2.** Subject to the limitations imposed by Minnesota law and Section 4.5, the DMCC agrees to release, defend (with counsel reasonably acceptable to the EDA), indemnify, and hold harmless EDA and its officials and employees, from and against all Third Party Claims that arise solely and directly as a result of the willful misconduct, or negligent acts or omissions of the DMCC in the performance of the DMCC's obligations under this Agreement.

**7.3.3.** The EDA shall require in its agreement with each Subconsultant that the Subconsultant indemnify, hold harmless, and defend the EDA, the City, the DMCC, and their respective officials, officers, agents, and employees, from and against all damages to the extent caused by wrongful or negligent acts, errors or omissions, or intentionally tortious actions on the part of that Subconsultant. Such obligation shall not be construed to negate, abridge or reduce any other rights or obligations of indemnity otherwise available to the DMCC and its officials and employees under this Agreement or Applicable Law.

**7.3.4.** The EDA shall promptly notify the DMCC of any Third Party Claim brought against the EDA, its employees, officers, agents or Subconsultants that arises out of the Work. The EDA shall also notify the DMCC whenever the EDA has a reasonable basis for believing that the EDA, the Subconsultants, or the DMCC may become the subject of a Third Party Claim arising out of and/or related to the Work. Failure to provide the notices required by this Section is a material violation of the terms and conditions of this Agreement.

**7.4. Defense of Third Party Claims and Actions.** In the event of a claim against either Party by a third party arising from the Work performed under this Agreement, the Parties agree to cooperate in maintaining a joint defense, and further agree to enter into a Joint Cooperation and Defense Agreement, in a mutually agreeable form. The Joint Cooperation and Defense Agreement shall specifically provide that any claims or counterclaims by the DMCC and the EDA against each other arising out of: (1) this Agreement; or (2) any judgment, award or settlement in connection with a Third Party Claim brought by a Third Party Claimant, shall be preserved for the duration of that Third Party Claim. After resolution of the Third Party Claim, either Party hereto shall be entitled to pursue its claim against the other party to this Agreement in accordance with the dispute resolution procedures set forth in Section 5 hereof. Each Party shall bear its own legal costs and other expenses in connection with any such subsequent action.

**7.5. Amendment Process.** The Parties acknowledge that to fulfill the purposes of the DMC Law it is preferable to enter a long-term Agreement. The Parties also acknowledge the need for flexibility and adaptability as events unfold over the course of this Agreement, which may not be anticipated at the time of the effective date of this Agreement. The Parties agree to promptly and in good faith meet and consider the request of either Party to amend the Agreement to provide the necessary flexibility to achieve the goals of the DMC Law.

**7.6. Audit and Retention of Books and Records.**

**7.6.1.** The EDA shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management of its services under this Agreement; the accounting and control systems shall be reasonably satisfactory to the DMCC.

**7.6.2.** Subject to the requirements of Minnesota Statutes, Section 469.43, subdivision 7, the DMCC and/or its accountants, auditors, and agents, the City, and the State Auditor shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") the EDA's information, materials, records or data ("Records") strictly as necessary to certify (i) the nature and extent of the services furnished pursuant to this Agreement and (ii) that the payment for services and related disbursements under this Agreement complies with all state laws, regulations, the terms of this Agreement, the terms of the City Agreement, and the terms of the DEED Agreement. In those situations when the EDA's Records have been generated from computerized data, the EDA agrees to provide the DMCC with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

**7.6.3.** The EDA shall preserve the Records for a period of seven years after final payment, or for such longer period as required by law as advised by the DMCC, provided, however, that if a dispute is asserted during said seven year period, the EDA shall retain all such



Records until the dispute has been resolved. Within 15 days of the Term of this Agreement, or upon earlier request, the EDA shall return all Records and Works to the DMCC.

**7.6.4.** The EDA shall require all Subconsultants to comply with the provisions of this Section 7.6 by insertion of the requirements hereof in a written agreement with the EDA.

**7.7. Data, Information.**

**7.7.1.** The Parties acknowledge that the DMCC is subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act"). The EDA shall abide by the provisions of the Act as so required by law. If and to the extent that the EDA or a Subconsultant creates, collects, receives, stores, uses, maintains or disseminates data because it performs government functions of the DMCC under this Agreement, then the EDA or Subconsultant must comply with the requirements of the Act as if it were a government entity, and may be held liable under the Act for noncompliance. The DMCC shall designate the data to be provided by the EDA as and when required to respond to any data requests. The DMCC shall also provide the EDA with a copy of its data retention policy as soon as such policy has been approved or subsequently amended by all necessary authorities. The EDA agrees to promptly notify the DMCC if it becomes aware of any data requests, potential claims, or identified facts giving rise to potential claims, under the Act. The EDA will require that its agreements with Subconsultants complies with this Section and the Act.

**7.7.2.** The Parties acknowledge and agree that, subject to the obligations of the DMCC and the EDA under the Data Practices Act, any Confidential Information (as defined herein) properly marked as "Confidential Information" that is disclosed to the Parties, their agents, employees, contractors or consultants pursuant to this Agreement shall be used only for the purposes contemplated in this Agreement, shall be kept confidential and in conformance with all state and federal laws relating to data privacy including, without limitation, the Minnesota Government Data Practices Act, and shall remain the property of the disclosing Party. The term "Confidential Information" means any technical, strategy, business, or customer information (whether in the form of documents, materials, computer media, verbal communication or otherwise) gained, obtained, derived, produced, generated, or otherwise acquired by either Party, its agents, employees, contractors, and consultants with respect to DMC (i) that is marked or designated as "confidential" or "proprietary," or (ii) that, by the nature of the information or the circumstances surrounding its disclosure and pursuant to Minnesota law, ought, in good faith, to be treated as confidential, including, without limitation, trade secret information. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, (2) that the Party can show (by contemporaneous written records) that the Party had it in its possession before the Effective Date and before disclosure by the other Party, or (3) is required by Applicable Law or court order to be disclosed. Within 15 days of the Term of this Agreement, or upon earlier request, each Party shall return or certify the destruction of all Confidential Information provided to such Party by the other Party.

**7.8. Ownership of Works, Intellectual Property Rights.** The term "Works" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, inventions, and discoveries, and works of any similar nature (whether or not eligible for

copyright, trademark, patent or other proprietary rights), which are to be prepared for the DMCC and delivered under this Agreement. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by the DMCC. The EDA agrees that all copyrightable Works shall be considered a "work made for hire" and that the DMCC is the author of and owns all rights in and to the Works, and agrees that if the Works may not be considered a work made for hire under 17 U.S.C., Sections 101 and 201(b), the EDA shall without further compensation, assign all rights that the EDA may have in the Works to the DMCC. The EDA waives any and all statutory moral rights in the Works which the EDA may have arising under 17 U.S.C., Section 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of moral right. The EDA shall, without further compensation but at no cost incurred by the EDA, disclose information to the DMCC and execute such documents as may be reasonably necessary to assist the DMCC in securing and enforcing rights in the Works and related proprietary rights. The Works do not include the operating systems and software involving the financial management for the Work that may be provided by the EDA.

**7.8.1** The EDA will require that its agreements with Subconsultants assign ownership of, or licensing, of work product created in performing the Work to the DMCC, unless mutually agreed in writing with the DMCC.

**7.9. Potential Conflict of Interest.** The EDA shall disclose to the DMCC the existence, nature, and all material facts regarding any financial interest its employees or contractors, including Subconsultants, have in any project (as defined in Minnesota Statutes Section 469.40, subdivision 10) submitted to the DMCC for approval and any financial interest its employees or contractors, including Subconsultants, have in the destination medical center development. For purposes of this Section 7.9, "Contractors" includes affiliates of the contractors or members or shareholders with an ownership interest of more than twenty (20) percent in the contractor.

**7.10. Insurance.** The EDA shall maintain, during the Term, insurance coverage for commercial general liability, errors and omissions liability, automobile liability, and workers' compensation in forms and amounts substantially in accordance with the insurance coverages set forth in Exhibit D. It is agreed that the EDA will include all costs of required insurance coverage hereunder in the annual EDA budget and EDA's insurance obligations are contingent upon DMCC approval of the Budget. The Parties acknowledge that the DMCC does not initially intend to engage employees or rent or own any real property. In the event that the DMCC engages employees or rents or owns any real property, then the DMCC shall obtain such insurance as the DMCC reasonably determines to be appropriate under the circumstances. The DMCC shall maintain, during the Term, Errors and Omissions Liability (or Professional Liability) Insurance in the amount of at least Two Million Dollars (\$2,000,000.00) Each Claim and, if applicable, Annual Aggregate. The Parties shall review insurance requirements under this Section and Exhibit D every five years and revise the requirements as mutually agreed to be appropriate.

**7.11. Independent Contractor.** EDA SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OF DMCC. NEITHER EDA NOR ANY AGENT, SUBCONSULTANT, OR EMPLOYEE OF

EDA SHALL BE OR SHALL BE DEEMED TO BE AN EMPLOYEE OF DMCC. EDA SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX ON ANY MONIES PAID PURSUANT TO THIS AGREEMENT. EDA ACKNOWLEDGES THAT EDA AND ITS EMPLOYEES ARE NOT ENTITLED TO TAX WITHHOLDING, WORKER'S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR ANY EMPLOYEE BENEFITS, STATUTORY OR OTHERWISE. EDA SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND DMCC TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. Under no circumstances does Work performed under this Agreement create any partnership or joint venture relationship between the Parties.

**7.12. Equal Employment Opportunity; Affirmative Action; Nondiscrimination.** EDA shall comply with all Applicable Laws, regulations and special requirements of the laws of the State of Minnesota including, without limitation, Minnesota Statutes, Section 469.44, subdivision 7 regarding equal employment opportunity and affirmative action programs. Furthermore, the EDA agrees not to discriminate against any employees or applicants for employment because of race, color, creed, age, sex, sexual orientation, national origin, religion, marital status, disability, military service, genetic information, status with regard to public assistance, and any other classification protected by federal, state, and local laws. This provision shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training. The EDA also agrees not to engage in any acts of reprisal or retaliation against any employee who, in good faith, reports an allegation of discrimination or participates in any investigation of such a report.

**7.13. Notices.** Any notice provided for in or permitted under this Agreement shall be made in writing, and may be given or served by (i) delivering the same in person or by facsimile transmission to the party to be notified, or (ii) depositing the same in the United States mail, postage prepaid, registered, or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, or (iii) by depositing same with a reputable overnight courier service. If notice is deposited in the United States mail pursuant to clause (ii) of this Section, it will be effective from and after the day it is received by the addressee or receipt thereof is refused by the addressee, unless such day is not a business day, and then it shall be deemed received on the next business day. Notice given in any other manner shall be effective only if and when received by the party to be notified unless the day it is received is not a business day, and then it shall be deemed received on the next business day. For the purpose of notice, the address of the party shall be, until changed as hereinafter provided for, as follows:

If to the DMCC: Destination Medical Center Corporation  
Attn: Chairperson  
201 4th St. SE.  
Rochester, Minnesota 55904  
Fax No.: (507) 328-2000

With a copy to: McGrann Shea Carnival Straughn & Lamb, Chtd.  
Attn: Kathleen Lamb  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402  
Fax No.: (612) 339-2386

If to the EDA: Destination Medical Center Economic Development Agency  
Attn: Executive Director  
200 First Street S.W.  
Rochester, MN 55905  
Fax No.: (507) 284-0929

With a copy to: Mayo Clinic Chief Legal Officer  
200 First Street S.W.  
Rochester, MN 55905  
Fax No.: (507) 284-0929

or to such other address as a Party may from time to time designate by notice given pursuant to this Section 7.13.

Each Party shall have the right from time to time to specify additional parties to whom notice hereunder must be given by delivering to the other party fifteen (15) days' written notice thereof setting forth the address of such additional party or parties; provided, however, that no Party shall have the right to designate more than three (3) such additional parties.

**7.14. Non-Waiver.** No action taken pursuant to or related to this Agreement, including, without limitation, any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement in this Agreement. A Party's exercise of or failure to exercise any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

**7.15. Severability.** If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**7.16. Exhibits.** In the event of a conflict between the terms of this Agreement and an exhibit hereto, the terms of this Agreement shall govern.

**7.17. Headings.** Headings are provided for the convenience of the parties only and do not form part of the Agreement.

**7.18. Jointly Drafted.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party had been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

**7.19. Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. A facsimile signature will constitute an original and binding signature of a party.

**7.20. Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto and, to the extent provided herein, their respective affiliates, successors and permitted assigns, and no provision of this Agreement shall be deemed to confer upon other persons any remedy, claim, liability, reimbursement, cause of action or other right. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against the EDA or the DMCC.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the Parties hereto have caused their names to be hereunto subscribed by their officers thereunto duly authorized, intending thereby that this Agreement shall be effective as of the Effective Date.

**DMCC:**

**DESTINATION MEDICAL CENTER  
CORPORATION**

**EDA:**

**DESTINATION MEDICAL CENTER  
ECONOMIC DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Tina Flint Smith, Chair

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DRAFT

[SIGNATURE PAGE TO AGREEMENT FOR  
DESTINATION MEDICAL CENTER SERVICES]

## EXHIBIT A

### SCOPE OF SERVICES

#### Required Services

A. Statutory Duties. The EDA shall perform the Required Services enumerated in the DMC law, Minnesota Statutes Section 469.43, subd. 6, as may be amended, namely:

1. Facilitating private investment through development of a comprehensive marketing program to global interests. The marketing program shall advertise and promote the DMC globally, including advertising, web/social media campaigns, promotional materials, promotions, conventions and similar activities.
2. Developing detailed underwriting criteria for review and approval of development proposals by the DMCC, and updating such criteria on a periodic basis.
3. Drafting and implementing the Development Plan, including soliciting and evaluating proposals for development consistent with the underwriting criteria, and making recommendations to the DMCC and the City regarding those proposals.
4. Providing transactional services in connection with approved projects.
5. Developing patient, visitor and community outreach programs for a destination medical center development district.
6. Working with the DMCC to acquire and facilitate the sale, lease or other transactions involving land and real property, including facilitating funding applications from private development interests for review and approval by the DMCC and City.
7. Seeking financial support for the DMCC, the City and a project.
8. Partnering with other development agencies and organizations, the City, and the County in joint efforts to promote economic development and establish a destination medical center.
9. Supporting and administering the planning and development activities required to implement the Development Plan, including managing the process and activities of the EDA and Subconsultants to prepare the Development Plan. The services shall include the Work necessary to facilitate research, planning, programming, financial modeling, economic-fiscal impact analysis, tax and financial analysis and developing, business, marketing, service and operational strategies among other activities to deliver a work product with content substantially similar to the content approved for the Development Plan by the DMCC Board. After the Development Plan is adopted, these services shall include managing the process

and activities required to update and/or amend the Development Plan in the future for approval by the DMCC and City.

10. Preparing and supporting the marketing and promotion of the medical center development district.
  - a. Develop and implement regional, national, global marketing strategies and programs
  - b. Oversee development of marketing & collateral materials
  - c. Develop & coordinate web, social media, apps, & electronic media
  - d. Develop & manage brand & standards
  - e. Solicit interest and facilitate discussions with potential businesses in the district
11. Preparing and implementing a program for community and public relations in support of the medical center development district, including
  - a. Develop and manage communications strategy
  - b. Respond to media inquiries
  - c. Coordinate community communications and PR with City, County, State, and DMCC
12. Assisting the DMCC or the City and others in applications for federal grants, tax credits and other sources of funding to aid both private and public development.
13. Making other general advisory recommendations to the DMCC and the City, as requested.

B. Project Management. The Required Services shall include project management duties in the overall planning, management, coordination and monitoring of the activities and undertakings in connection with the Required Services (the "Project"). The scope of Work of the EDA in managing the Project may vary over time. Initially, the Parties contemplate that the Project management duties will include the following services:

1. The EDA shall coordinate and manage the Project, focusing on the goals of maintaining the approved Budget and the approved Master Project Schedule for the Project, in a manner consistent with good project management practices.
2. The EDA shall manage and direct Subconsultants performing the Work, and monitor their performance and progress.
3. The EDA shall coordinate with, and work in a collaborative manner with, the City, the County, Mayo, DMCC, and other regional planning groups as appropriate to facilitate the planning and execution of the Project, including cooperating to enable the City to receive all funding to support the DMC that the City is eligible to receive under the DMC Law.



4. The EDA shall hold and manage the contracts of the Subconsultants, and shall monitor compliance with Applicable Law, the approved Budget, the approved Master Project Schedule, insurance requirements, applicable women and minority-owned business requirements, and licensing requirements.

C. Information and Recommendations. The EDA shall provide regular and thorough updates to the DMCC on the status of the Project and all aspects of decisions required to be made by the DMCC. Such information shall be presented at regularly-scheduled meetings with the DMCC or as otherwise directed by the DMCC.

1. The EDA shall advise the DMCC on all matters that a professional, being familiar with the scope of services outlined herein, might normally be consulted about in connection with a similar project, including, but not limited to, maintenance of the Budget and the Master Project Schedule.
2. The EDA shall provide recommendations to the DMCC on critical Project decisions (1) in writing; (2) stating advantages and disadvantages of the proposed course of actions; (3) evaluating alternatives; and (4) containing sufficient detail to enable the DMCC to make informed decisions with respect thereto. All significant decisions regarding the Project shall be made by the DMCC, in its sole and absolute discretion.
3. The EDA shall oversee Work on the Project in an effort to identify, at the earliest point in time reasonably possible, any circumstances reasonably likely to impact the Master Project Schedule and/or the Budget.
4. Except in an emergency situation (in connection with which the EDA should advise the DMCC immediately by whatever means is most reasonable under the circumstances), the EDA shall advise the DMCC primarily (but not exclusively) in written reports of the types indicated in the monthly progress report, which form shall be mutually acceptable to the Parties, and during regularly-scheduled DMCC meetings, regarding any situations that threaten or could threaten the Budget and/or the Master Project Schedule including, but not limited to, cost overruns, delays, time extensions, acceleration and/or any other disruption of the Work. In an emergency situation, the EDA shall advise the DMCC immediately of the situation, and shall not wait until the next regularly scheduled DMCC meeting to do so.

D. Project Budget Management. The EDA shall manage the Budget for the Project, including monitoring and updating the Budget for the DMCC, on a monthly basis, or more frequently upon the DMCC's reasonable request. The EDA and Subconsultants shall identify and present possibilities for cost savings over the course of the Project, and shall confer with the DMCC periodically in order to determine whether there are any areas where costs may be reduced.

E. Accounting. The EDA shall manage the accounting, processing of invoices, payments and reporting (collectively “Accounting”) for the Subconsultants. The scope of the Accounting includes all contracts that are executed on the Project, including payments to the EDA and Subconsultants, to the extent costs and payments are attributable to the Budget.

1. The EDA shall review invoices, submit master payment applications, and disburse payments in accordance with the agreed to process outlined in this Agreement.
2. The EDA shall prepare a progress report monthly, or more frequently upon the DMCC’s reasonable request, based on information available to the EDA.
3. The EDA shall review, comment upon, and otherwise assist the DMCC Treasurer, Assistant Treasurer, State agencies and/or the City in review of accounting records and/or audits.

F. Project Reporting. The EDA shall be responsible for reporting on Project activities and tracking said activities against adopted Project milestones and objectives.

1. The EDA will provide a monthly update of activities in a format satisfactory to the DMCC. The EDA shall prepare annual reports and/or updates to the DMCC Board and others, as requested.
2. The EDA shall act as the Secretary to the DMCC, and shall be responsible for:
  - a. Posting meeting notices and meeting materials on DMCC and EDA websites, and facilitating postings with the City and other public entities as appropriate.
  - b. In consultation with the DMCC Chairperson or her designee, preparing agendas for DMCC Board meetings and preparing information to present at meeting, or facilitating presentations by third parties.
  - c. Preparing meeting minutes.
3. The EDA shall provide on-going tracking of Project funding and investment, including:
  - a. Tracking and assisting the DMCC and Mayo on the annual certification of private investment in the approved areas for investment (the “DMC Development District”).
  - b. Tracking and reporting on Project funding expenditures against the adopted Development Plan.

- c. Tracking and reporting on economic-fiscal impacts resulting in the DMC Development District in the approved format outlined in the Development Plan.
- d. Tracking and reporting on workforce development requirements established for the Project.
- e. Using all reasonable efforts to assure that Mayo submits its annual certification as required under Minnesota Statutes, Section 469.47, subdivision 2.
- f. Peer review of funding requests, project financing and construction progress and payment requests against industry standard norms and reports to the DMCC and the City.
- g. Auditing of DMC funding expenditures to ensure compliance with funding request and conditions of approval, with reports to DMCC and the City.
- h. Preparing the annual DMCC budget, annual DMCC funding request to the City, and the five-year capital improvement plan identifying public infrastructure projects approved under the Development Plan.
- i. Other reporting as requested by the DMCC.

## II. Additional Services

A. Additional Services are outside the scope of the Required Services under Section 2.1.

B. Before commencing the performance of any service for which the EDA intends to seek Additional Services compensation, the EDA shall provide the DMCC with a written proposal describing: (1) the proposed scope of the Additional Service; (2) its anticipated impact (if any) on the Master Project Schedule; and (3) the proposed fee (if a fixed fee) or the estimated fee (if on an hourly basis). The EDA shall not perform any Additional Service without the prior written consent of the DMCC.

C. The EDA represents, and the Parties agree that the following services are not necessary to fulfill the EDA's Required Services:

1. Planning, development, construction of land, buildings and/or improvements.
2. Planning, procurement and the management of installation for furniture, fixtures, and equipment and OFE for real property or improvements.
3. Providing environmental services or hazardous materials remediation.
4. Environmental and Regulatory Permitting / Approvals.

5. Building Permitting/Approvals
6. Management and/or operations of facilities or improvements.
7. Property accounting and/or asset management.

III. Excluded Services

The following services shall be excluded from the EDA's Work:

1. Filing and/or holding record documents for the Project
2. Acting as Assistant Treasurer to the DMCC Treasurer

DRAFT

**EXHIBIT B**  
**KEY CONSULTANTS**

**Section 1: Key Consultants**

Master Planner

Transportation Planner

Infrastructure Planner

Economic and Fiscal Consultant

Market Analyst

DRAFT

**EXHIBIT C**  
**REIMBURSEABLE EXPENSES**

Reimbursable Expenses, as set forth in Section 3.2, may include the following items:

1. Long-distance telephone services, dedicated data and communication services, teleconferences, project Web sites, and extranets;
2. Postage, handling and delivery of instruments of service as requested by the DMCC;
3. Costs related to the marketing of the DMC incurred by the EDA;
4. Costs of community and public relations associated with the Work;
5. Actual cost without markup of out-of-town travel and subsistence cost;
6. DMCC-requested printing, reproductions, drawings, and plots;
7. Transportation costs for local travel such as public transportation or reimbursable mileage expenses;
8. Costs of specialized software specifically approved by DMCC in writing and the costs of adapting, including costs of customizations of security/access, modules, screens, reports, of such software to the DMCC's information systems in order to support the requests of the DMCC;
9. Renderings, models, mockups, graphics, professional photography, and presentation materials (i.e., computer studies, videos, brochures, or cds); and
10. Legal services as requested in writing by the DMCC (if any).

## EXHIBIT D

### INSURANCE COVERAGE REQUIREMENTS

EDA agrees to provide and maintain at all times during the term of this Agreement, such insurance coverages as are set forth in this Exhibit D.

a. Workers' Compensation. Workers' Compensation insurance in compliance with all applicable law. Such policy (or, if applicable, separate policy) shall provide Employer's Liability coverage with limits of at least \$1,000,000 for each coverage provided thereunder.

b. General Liability. Commercial General Liability Insurance, providing coverage on an "occurrence," rather than on a "claims made" basis, under a policy form that provides coverage at least as broad in all material respects as that provided under a standard Insurance Services Office ("ISO") form CG 00 01. Such policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Agreement), and Independent Contractors liability. EDA agrees to maintain at all times specified above a combined general liability policy limit of at least \$8,000,000 Each Occurrence and, if applicable, Aggregate, applying to liability for Bodily Injury and Property Damage, and a combined limit of at least the same amount applying to liability for Personal Injury and Advertising Injury.

c. Automobile Liability. Automobile Liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, maintenance or use of all owned, nonowned and hired automobiles and other motor vehicles utilized by EDA in connection with its performance under this Agreement. Such insurance shall be provided on a policy form that provides coverage that is at least as broad in all material respects as the coverage afforded under a standard ISO form CA 00 01, and shall provide a total liability limit for combined Bodily Injury and/or Property Damage in the amount of at least Two Million Dollars (\$2,000,000.00) per accident. Such policy shall include coverage for motor vehicle liability assumed under contract.

d. Errors and Omissions Liability. Errors & Omissions Liability (or Professional Liability) Insurance in the amount of at least Eight Million Dollars (\$8,000,000.00) Each Claim and, if applicable, Annual Aggregate, covering EDA's liability for negligent acts, errors or omissions in the performance of professional services under this Agreement. EDA's Errors & Omissions Liability Insurance may afford coverage on an occurrence basis or on a claims-made basis, provided, however, that if such insurance is provided on a claims-made basis, any policy Retroactive Date shall be on or prior to the effective date of this Agreement. However, EDA acknowledges and agrees that under claims-made coverage changes in insurers or in insurance policy forms could result in the impairment of the liability insurance protection intended for the DMCC hereunder. EDA therefore agrees that it will not seek or voluntarily accept any such change in its Errors and Omissions Liability Insurance coverage for a period of at least two (2) years following its last act of performance under this Agreement if such impairment of the protection for the DMCC could result. For avoidance of doubt it is understood and agreed that

EDA may comply with the immediately preceding sentence by exercising its rights under an "Extended Reporting Period" ("tail coverage") or similar claims-made policy option, provided that if a two (2) year Extended Reporting Period option cannot, through the exercise of reasonable commercial efforts, be negotiated for an additional premium of 175% or less of the annual policy premium then EDA shall be deemed to be in compliance with this provision if it obtains an Extended Reporting Period for an additional premium not to exceed 175% of the annual policy premium; provided further, that in such event the duration of such Extended Reporting Period is at least one (1) year.

e. Pollution Liability. The Parties anticipate that EDA's performance under this Agreement will not involve the storage, use, handling, generation, release, or disposal of any Hazardous Materials. EDA shall promptly notify the DMCC if its performance under this Agreement so involves Hazardous Materials. In that event, EDA shall maintain Pollution Liability Insurance in a form and with coverage limits reasonably acceptable to the DMCC. As used herein, the term "Hazardous Materials" shall mean and include any hazardous or toxic materials, substances or wastes as designated under any federal, state or local statute, regulation, ordinance, order or ruling, or which are regulated by any local governmental authority, any agency of the State of Minnesota, or any agency of the United States Government.

f. Limits. The minimum liability insurance required hereunder may be satisfied by the limits afforded under EDA's primary insurance policy(ies), or by such policy(ies) in combination with the limits afforded by an Umbrella or Excess Liability Policy (or policies); provided, however, that the coverage afforded under any such Umbrella or Excess Liability Policy is in all material respects at least as broad as that afforded by the underlying policy(ies), and further, that the DMCC is included as an Additional Insured thereunder, as set forth below.

g. Additional Insureds and Severability of Interests. EDA's Commercial General Liability, Errors & Omissions, and Automobile Liability insurance policies shall include the DMCC and the City as Additional Insureds thereunder. Each such policy shall waive or otherwise prohibit insurer subrogation against the DMCC or the City. Each such policy shall also include a severability of interests (or "separation of insureds") provision.

h. Primary Insurance. With respect to liability arising out of EDA's performance under this Agreement, all insurance required of EDA hereunder shall respond on a primary (not excess or contributory) basis with respect to any similar insurance maintained by the DMCC or any other party required to be included as an Additional Insured hereunder. Notwithstanding the foregoing, such requirement for primary insurance shall not apply to the extent EDA's failure to comply is the result of language in the DMCC's insurance policy(ies) or, as applicable, self-insurance program documents, that cause such policy(ies) or program to respond on other than an excess insurance basis relative to the response of EDA's policy(ies).

i. Responsibility for Liability Insurance Coverages and Limits. It is understood and agreed that the liability insurance coverages and limits required under this Agreement are minimum requirements only and that (a) EDA will independently determine whether such coverages and limits are adequate to protect its interests, and (b) the DMCC will have no responsibility or liability whatsoever to EDA for the inadequacy of any such coverages or limits to protect EDA's interests. Neither EDA's compliance nor its failure to comply with these



insurance requirements will diminish or otherwise affect EDA's indemnification obligations as set forth in the Agreement.

j. Insurers. All policies of insurance required hereunder shall be issued by financially responsible insurers, and all such insurers must be acceptable to the DMCC. Such acceptance by the DMCC shall not be unreasonably withheld, delayed or conditioned.

k. Evidence of Insurance. Before commencing any performance under this Agreement, EDA shall provide the DMCC with evidence that the insurance coverage required hereunder is in full force and effect. In the event that any such insurance renews or is terminated during the course of EDA's performance, EDA shall promptly provide the DMCC with evidence that such coverage will be renewed or replaced upon termination with insurance that complies with these provisions. Such evidence of insurance shall be in the form of a standard Certificate of Insurance or other form of evidence of insurance reasonably acceptable to the DMCC, and shall contain sufficient information to allow the DMCC to determine whether there is full compliance with these provisions, including, but not limited to, Additional Insured. The EDA shall provide at least 30 days' written notice to the DMCC prior to the effective date of policy cancellation.

l. Copies. Upon receipt of the written request of the DMCC, EDA shall promptly provide the DMCC with full and complete copies of EDA's required insurance policies; provided, however, that EDA may delete or obscure from such copies such premium, rating, or other similar information that EDA reasonably considers to be proprietary.

m. Evidence of Insurance. If EDA fails to furnish evidence of insurance as required herein, the DMCC may withhold payment(s) otherwise due to EDA, and pursue any other right or remedy allowed under this Agreement, common law, equity, statute, or other law.

n. Insurance Terms. Insurance terms not otherwise defined herein shall be interpreted consistent with customary U.S. insurance industry usage.

**EXHIBIT E  
MASTER APPLICATION FOR PAYMENT**

**MASTER APPLICATION FOR PAYMENT (Form 4020)**

From: [INSERT]	Application No.: 1	Please Remit To:
To (Owner): [INSERT]	Application Date: January 1, 2014	Acct Name
[INSERT]	Project No: 40000-00	Acct No:
[INSERT]	Project Name: Project Template	Bank:
Attention: [INSERT]		Routing

**PROJECT MANAGER:**

Submitted in accordance with the Contract Documents for approval by the Owner.

Signed By:

[INSERT]  
January 1, 2014

Date:

Name: [INSERT]

**STATEMENT OF PROJECT:**

ORIGINAL MASTER PROJECT BUDGET ..... \$ -

CURRENT MASTER PROJECT BUDGET ..... \$ -

TOTAL COMPLETED & STORED TO DATE ..... \$ -

RETAINAGE TO DATE ..... \$ -

TOTAL COMPLETED LESS RETAINAGE ..... \$ -

LESS PREVIOUS REQUESTS ..... \$ -

CURRENT AMOUNT DUE (A + B) ..... \$ -

CURRENT PAYMENTS DUE (A) ..... \$ -

DIRECT OWNER PURCHASES DUE (B) ..... \$ -

<b>SOURCES OF FUNDS:</b>	Current Application	
	\$ -	
	\$ -	
	\$ -	
	\$ -	
	\$ -	
CURRENT SOURCES OF FUNDS	\$ -	
<b>USES OF FUNDS:</b>	Current Application	
40 - Development Costs	\$ -	
50 - Financing Costs	\$ -	
60 - Other Project Costs	\$ -	
90 - Project Contingency	\$ -	
CURRENT USES OF FUNDS	\$ -	

**APPROVALS:**

[INSERT] \_\_\_\_\_ Date

[INSERT] \_\_\_\_\_ Date

PROJECT TEMPLATE

DETAIL SOURCES AND USES REPORT #1 January 1, 2014

Division	Description	Final Projected Cost	Previous Billings	Current Billing	Total Billed To Date	Balance to Complete
<b>SOURCES OF FUNDS</b>						
			\$0.00	\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>USES OF FUNDS</b>						
40-00-000	Development Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
50-00-000	Financing Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
60-00-000	Other Project Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
90-00-000	Project Contingency	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>Total Uses of Funds</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>



PROJECT TEMPLATE

MASTER APPLICATION FOR PAYMENT DETAIL #1

January 1, 2014

Division	Description	Vendor	Contract No.	Work Obligated To Date					Retainage				
				Previous Billing	Current Work in Place	Direct Owner Purchase	Total Work to Date	Percent Complete	Previous Retainage	Current Retainage	Total Retainage		
40-00-000	DEVELOPMENT COSTS												
40-00-000	Development Costs			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Subtotal			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
50-00-000	FURNISHING COSTS												
50-00-000	Furnishing Costs			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Subtotal			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
60-00-000	OTHER PROJECT COSTS												
60-00-000	Other Project Costs			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Subtotal			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
80-00-000	PROJECT CONTINGENCY												
80-00-000	Project Contingency			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Subtotal			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	PROJECT TOTAL			\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

	Current Work in Place	Direct Owner Purchase	Total Contract Work
Current Work in Place	\$0.00	\$0.00	\$0.00
Less: Current Retainage Held	\$0.00	\$0.00	\$0.00
Net Amount Due	\$0.00	\$0.00	\$0.00



**PROJECT TEMPLATE**

**INVOICE SUMMARY REPORT #1** **January 1, 2014**

Vendor Name	Description	Invoice No	Invoice Date	Invoice Amount	Retainage Held	Amount Due	Approval
				\$0.00	\$0.00	\$0.00	
<b>GRAND TOTAL</b>							

DRAFT

**DESTINATION MEDICAL CENTER CORPORATION**

**RESOLUTION NO. \_\_-2014**

**Approving the Form of Agreement for DMCC Funding and Support by and  
Between the Destination Medical Center Corporation and the  
City of Rochester, Minnesota, and Authorizing the Chair of DMCC  
to Execute the Agreement**

BACKGROUND RECITALS

A. Minnesota Laws, Chapter 143, Article 10 (the "Act") sets forth the duties and responsibilities to be performed by the Destination Medical Center Corporation ("DMCC") and the City of Rochester, Minnesota (the "City") to support the Destination Medical Center initiative on behalf of the City, Olmsted County, the State of Minnesota and Mayo Clinic.

B. The DMCC general counsel and City staff have negotiated an agreement setting forth the duties, responsibilities and services to be performed by each party, the form of which is attached as Exhibit A.

C. The DMCC desires to enter into this agreement, in order to fulfill the terms of the Act and to begin implementation of the Destination Medical Center initiative with the City.

RESOLUTION

**NOW, THEREFORE, BE IT RESOLVED**, by the Destination Medical Center Corporation Board of Directors that the Agreement for Destination Medical Center Funding and Support, By and Between Destination Medical Center Corporation and the City of Rochester, Minnesota, dated February 1, 2014, in substantially the form of Exhibit A, on file with the DMCC, be approved, and authorizes the Chair to execute such agreements substantially in the form on file with the DMCC hereof, with such necessary and appropriate variations, omissions, and insertions as are not materially inconsistent with such form as the Chair in her discretion shall determine, provided that the execution thereof by the Chair shall be conclusive evidence of such determination; and authorizes the Chair or her designee to take all such actions as are necessary to fulfill DMCC's rights and obligations thereunder.

---

**AGREEMENT  
FOR  
DMCC FUNDING AND SUPPORT**

**BY AND BETWEEN**

**DESTINATION MEDICAL CENTER CORPORATION**

**AND**

**CITY OF ROCHESTER, MINNESOTA**

**DATED AS OF: FEBRUARY 1, 2014**

---



## TABLE OF CONTENTS

<b>1.</b>	<b>Definitions</b>	<b>1</b>
<b>2.</b>	<b>Cooperation to Achieve DMC Goals</b>	<b>4</b>
<b>3.</b>	<b>Support</b>	<b>4</b>
3.1.	City Employees or Consultants	4
3.2.	City Facilities, Equipment, Technology or Systems	5
3.3.	Fiscal Agent	5
3.4.	Work Plan Documents	6
3.5.	Compensation	6
3.6.	Alternative Funding Sources	6
3.7.	City Contracts	6
3.8.	City Projects	7
<b>4.</b>	<b>DMCC Funding</b>	<b>7</b>
4.1.	DMCC Funding Request	7
4.2.	Funding of DMCC Capital Costs	8
4.3.	City Consideration of DMCC Funding Requests	8
4.4.	Pre-Payments of DMCC Annual Costs; Additional DMCC Funding Request	9
4.5.	Sources of City Funds	9
4.6.	Disbursement into DMCC Bank Account	9
4.7.	Disbursements from DMCC Bank Account	10
4.8.	Additional Documents	11
4.9.	Agreed Maximum Amount for Purposes of City General State Aid Matching Requirement	11
4.10.	City Approvals	12
<b>5.</b>	<b>Accounting and Records</b>	<b>12</b>
5.1.	Accounting and Tax Services; Annual Budget	12
5.2.	Annual Audit	12
5.3.	EDA Agreement	13
5.4.	Annual Development Report	13
5.5.	Certification of Expenditures	13
5.6.	Maximum State Aid Determination	13



<b>6.</b>	<b>Policies and Procedures Relating to Conduit Bonds .....</b>	<b>13</b>
<b>7.</b>	<b>Agreement Subject to Execution of Other Agreements .....</b>	<b>13</b>
<b>8.</b>	<b>Enforcement of EDA Agreement.....</b>	<b>14</b>
<b>9.</b>	<b>Advisory Committee .....</b>	<b>14</b>
<b>10.</b>	<b>[RESERVED] .....</b>	<b>14</b>
<b>11.</b>	<b>Suspension for Material Breach .....</b>	<b>14</b>
<b>12.</b>	<b>Alternative Dispute Resolution; Mediation .....</b>	<b>15</b>
<b>13.</b>	<b>Remedies .....</b>	<b>15</b>
	13.1 Specific Performance .....	15
	13.2 Other Remedies.....	15
	13.3 Limitation of Certain Damages.....	15
<b>14.</b>	<b>Termination .....</b>	<b>15</b>
<b>15.</b>	<b>Representations, Warranties and Covenants .....</b>	<b>16</b>
	15.1. Representations, Warranties and Covenants of the City.....	16
	15.2. Representations, Warranties and Covenants of DMCC.....	17
<b>16.</b>	<b>General Terms and Conditions.....</b>	<b>18</b>
	16.1. Amendment.....	18
	16.2. Data Practices; Open Meeting Law .....	18
	16.3. Liability .....	19
	16.4. Notices .....	19
	16.5. Binding Effect; Waiver .....	19
	16.6. Term of Agreement; Survival of Remedies .....	19
	16.7. Disposition of Assets .....	19
	16.8. Governing Law .....	20
	16.9 Counterparts.....	20
	16.10. Time .....	20
	16.11. Assignment .....	20
	16.12. Entire Agreement.....	20
	16.13. No Presumption Against Drafter .....	20
	16.14. No Joint Venture or Partnership .....	20
	16.15. Agreement for the Benefit of Parties Only .....	20

16.16. Compliance with Applicable Laws.....	20
Exhibit A City Facilities, Equipment, Technology and Systems .....	A-1
Exhibit B Annual Budget for 2014.....	B-1
Exhibit C Control Agreement.....	C-1
Exhibit D Form of Master Application for Payment.....	D-1

## AGREEMENT FOR DMCC FUNDING AND SUPPORT

This Agreement for DMCC Funding and Support (this "Agreement") is made and entered into as of this 1<sup>st</sup> day of February, 2014, (the "Effective Date") by and between the City of Rochester, Minnesota, a Minnesota municipal corporation, hereinafter referred to as the "City," and Destination Medical Center Corporation, a Minnesota nonprofit corporation, hereinafter referred to as "DMCC."

### WITNESSETH:

WHEREAS, Minnesota Laws 2013, Chapter 143, Article 10 (the "DMC Act" or the "Act"), contemplates the establishment of the City and more broadly, Olmsted County and the State of Minnesota, as a destination medical center; and

WHEREAS, the DMC Act confers certain powers and imposes certain obligations upon the DMCC and the City in connection with preparing and implementing a development plan to establish the City and more broadly, Olmsted County and the State of Minnesota, as a destination medical center; and

WHEREAS, the DMC Act authorizes the DMCC to contract with the City for provision by the City of administrative, clerical, and accounting services to the DMCC; and

WHEREAS, the DMC Act requires the City to provide financial and administrative support, and office and other space, to the DMCC; and

WHEREAS, the DMC Act authorizes the City to appropriate City funds to the DMCC for the DMCC's work; and

WHEREAS, the DMCC has no taxing power and does not anticipate receiving revenues from its activities under the Act, and the City and the DMCC expect that the City will be a primary source of funding and support for DMCC and its activities; and

WHEREAS, in furtherance of the DMC Act the City and the DMCC have determined that it is necessary and appropriate to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing clauses, the mutual undertakings and agreements hereafter set forth, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the following meaning:

1.1. "Advisory Committee" means the committee established pursuant to Section 9.

1.2. "Agreement" means this Agreement for DMCC Funding and Support.

- 1.3. **“Annual Budget”** is defined in Section 4.1.2.
- 1.4. **“City”** means the City of Rochester, Minnesota, a Minnesota municipal corporation.
- 1.5. **“City Administrator”** means the appointed city administrator of the City.
- 1.6. **“City Council”** means the Common Council of the City.
- 1.7. **“Conduit Bonds”** means bonds or other similar obligations which may be issued by the City or the City’s economic development authority pursuant to Section 469.44, subdivision 8, of the DMC Act.
- 1.8. **“DMC Act”** means Laws of Minnesota 2013, Chapter 143, Article 10 (Sections 3 through 10 of which are codified as Minnesota Statutes, Sections 469.40 through 469.47), as enacted or hereafter amended.
- 1.9. **“DMCC”** means the Destination Medical Center Corporation, a Minnesota nonprofit corporation organized under Minnesota Statutes Chapter 317A, created by the City pursuant to and in accordance with the DMC Act.
- 1.10. **“DMCC Annual Costs”** means all: (i) operating and administrative costs of the DMCC that are included in the DMCC Funding Request provided to the City as set forth in Section 4.1 and that include but are not limited to, compensation and benefits of employees or consultants; office expenses; insurance for DMCC operations; legal and accounting expenses; and other normal and customary costs and expenses necessary or appropriate for the DMCC to exercise its powers and fulfill its obligations under the DMC Act, including but not limited to carrying out the public purposes and otherwise performing the DMCC’s functions under the DMC Act and Minnesota Statutes Chapter 317A, (ii) non-capital costs incurred by the DMCC included in the DMCC Funding Request that are incurred in connection with Projects, (iii) amounts payable by the DMCC to the EDA pursuant to the EDA Agreement, which may include non-capital costs incurred in connection with Projects, and (iv) Support Costs incurred by the City. DMCC Annual Costs do not include DMCC Capital Costs but may include non-capital costs that are attributable to Projects.
- 1.11. **“DMCC Capital Costs”** means all costs properly chargeable to a capital account related to a Public Infrastructure Project in the Development Plan incurred by the EDA or the DMCC, including, but not limited to, the purchase of land, buildings, construction, and equipment.
- 1.12. **“DMCC Bank Account”** means the separate bank account owned by DMCC in which the City has a security interest as set forth in Section 4.6.2 and which serves as the cash account of the DMCC Fund.
- 1.13. **“DMCC Fund”** means a separate agency account in the City’s fund accounting system that is held in the DMCC’s name, maintaining the books and records of the DMCC, to

account for and track all revenues, interest, expenses, and capital expenditures of the DMCC, the cash account of which represents the balance of the DMCC Bank Account, so that complete and independent income statements, balance sheets and project reports for the DMCC will be available to the DMCC and the City.

**1.14. “DMCC Funding Request”** has the meaning provided in Section 4.1.

**1.15. “DMCC Funding”** means public funds provided to pay the DMCC Funding Request and DMCC Capital Costs.

**1.16. “Destination Medical Center”** or **“DMC”** means the destination medical center described in and authorized by the DMC Act.

**1.17. “Development Plan”** shall have the meaning assigned to it in Section 469.43 of the DMC Act.

**1.18. “EDA”** means the Destination Medical Center Economic Development Agency, a Minnesota nonprofit corporation organized under Minnesota Statutes Chapter 317A, created by the medical business entity pursuant to the DMC Act as the nonprofit economic development agency described in the DMC Act.

**1.19. “EDA Agreement”** means the Agreement for Destination Medical Center Services, dated as of February 1, 2014, by and between the DMCC and the EDA.

**1.20. “Expenditures”** shall have the meaning assigned to it in Section 469.47, subdivision 1(d) of the Act to account for private investments made by the medical business entity and other private investments under the Act.

**1.21. “Fiscal Agent”** means an agent appointed by DMCC to undertake the responsibilities and provide the services to DMCC generally described in Section 3.3.

**1.22. “Five-Year Capital Plan”** means the five-year capital projects plan identifying Public Infrastructure Projects approved under the Development Plan, submitted by the DMCC to the City for its approval as provided in Section 4.2.

**1.23. “MGDPA”** is the Minnesota Government Data Practices Act codified at Chapter 13 of the Minnesota Statutes or as hereafter amended.

**1.24. “Open Meeting Law”** is the Minnesota Open Meeting Law codified at Chapter 13D of the Minnesota Statutes or as hereafter amended.

**1.25. “Party”** or **“Parties”** means one or both of the parties to this Agreement (the City and/or the DMCC).

**1.26. “Project”** shall have the meaning given such term in the DMC Act, Section 469.40, subdivision 10.

**1.27. “Public Infrastructure Project”** shall have the meaning given such term in the DMC Act, Section 469.40, subdivision 11, provided that Public Infrastructure Projects identified in the Development Plan must be approved by the City.

**1.28. “Support”** means administrative, clerical, and accounting services, office and other space, equipment and other technical support, including staff support for the Advisory Committee, provided by the City to the DMCC directly or through consultants or contractors hired by the City to provide operational and administrative support for the DMCC.

**1.29. “Support Costs”** means the actual or reasonably imputed costs to the City of providing Support, including reasonable associated overhead, as determined in accordance with Section 3. Support Costs are a component of DMCC Annual Costs.

**1.30. “Work Plan Documents”** means a detailed work plan for DMCC which sets out anticipated activities, timeline, and objectives for a given period of time, and which has been approved by DMCC. The Work Plan Documents shall include or take into account work to be done by the EDA under the EDA Agreement.

Other capitalized terms used in this Agreement but not defined herein shall have the meanings given them in the DMC Act.

**2. Cooperation to Achieve DMC Goals.** The City and the DMCC agree to cooperate as needed and make good faith efforts to achieve the goals of the DMC Act within the funding and the time frames agreed to by the Parties. The City and the DMCC agree to exercise their rights and perform all of their obligations under this Agreement so as to enable each to exercise its respective rights and perform its respective obligations under the DMC Act. The DMCC and the City will cooperate and make good faith efforts to enable the City to receive all funding to support the DMC that the City is eligible to receive under the DMC Act. The City and the DMCC will cooperate with the consultants of each respective Party, as well as the EDA and the County, as the applicable Party deems appropriate, in good faith, in performing each Party’s respective obligations under this Agreement. The City and the DMCC shall, to the extent permitted and unless otherwise governed by this Agreement, share information, provide consultation opportunities, and otherwise cooperate with each other, to carry out their responsibilities with respect to the DMC Act.

**3. Support.** The City agrees to provide the following Support to DMCC. The City and DMCC will confer periodically regarding the amount and character of the Support.

**3.1. City Employees or Consultants.** Upon request by the Chair of the DMCC, which request may be made informally, the City Administrator will designate and make available one or more City employees or consultants as are approved by the City Administrator and determined to be reasonably necessary to assist the DMCC in properly constituting itself and carrying out its administration and operations.

**3.1.1.** The Parties acknowledge that the City has initially designated, and by resolution the DMCC has appointed, the City's Finance Director to serve as the Assistant Treasurer of DMCC. The duties of the DMCC Assistant Treasurer are expected to include, among others responsibilities as may be determined by DMCC, providing support for the DMCC Treasurer, and coordinating the activities of the Fiscal Agent as more fully set out in Section 3.3.

**3.1.2.** Other City employees and consultants may be designated and made available by the City to assist DMCC, as mutually determined by the Parties from time to time.

**3.1.3.** The City will also designate and make available applicable City staff to serve on, and provide staffing services to, the Advisory Committee, as more fully described in Section 9.

**3.1.4.** Unless otherwise agreed to in writing by the Parties, any employees or consultants of the City who provide assistance to the DMCC pursuant to this Agreement remain employees or consultants of the City for all purposes and are subject to the same terms and conditions of employment or consulting as apply to their employment or consulting with the City, including but not limited to any salary, benefits, expenses or compensation or reimbursement of any kind; worker's compensation, if any; payroll taxes, if any; work rules, civil service or contractual provisions of any kind; any supervision and/or reporting requirements; and liability of any kind.

**3.2. City Facilities, Equipment, Technology or Systems.** The City will provide meeting space and facilities suitable for DMCC Board meetings, and additional office space, storage space, related facilities, equipment, technology and systems as are reasonably necessary to accommodate the administrative requirements of the DMCC, as requested by the DMCC and agreed to by the City Administrator. Unless otherwise agreed in writing by DMCC, the facilities, equipment, technology and systems will be made available at the registered office of DMCC.

**3.2.1.** The City facilities, equipment, technology and systems which will be designated and made available by the City, as of the date of this Agreement, are identified in Exhibit A.

**3.2.2.** Upon request by the Chair of the DMCC, which request may be made informally, the City Administrator may permit the DMCC to have the use or benefit of other City facilities, equipment, technology, or systems necessary and appropriate to carrying out the activities of the DMCC. The City retains all ownership rights in such facilities, equipment, technology or systems.

**3.3. Fiscal Agent.** DMCC hereby appoints the City as the Fiscal Agent for DMCC. The City agrees that the responsibilities which the City will undertake and the services which the City will provide in the capacity of Fiscal Agent for DMCC include (i) providing accounting and disbursement services for DMCC; (ii) establishing the DMCC Fund and assisting in establishing the DMCC Bank Account; (iii) maintaining records for the DMCC Fund and DMCC Bank Account; (iv) upon the request of DMCC, assisting with investment of DMCC funds; and (v) transferring sufficient funds to the DMCC Fund and DMCC Bank Account to disburse monies

approved pursuant to Section 4. The City and DMCC may agree in writing for additional or other responsibilities or services to be undertaken or provided by the City acting as Fiscal Agent.

**3.3.1.** Funds will be disbursed from the DMCC Bank Account only upon due authorization (and, if necessary, signatures) of authorized DMCC officers as more fully set out in Section 4.

**3.3.2.** If the City is in breach of the Agreement, the DMCC may appoint a different or additional Fiscal Agent in the sole discretion of the DMCC by providing 60 days advance written notice to the City. If the City is not in breach of the Agreement, the DMCC may appoint a different or additional Fiscal Agent only with the consent of the City.

**3.3.3.** During any period of this Agreement in which the City has not been requested by DMCC to assist in the investment of DMCC funds under Section 3.3(iv), DMCC shall invest the assets transferred to the DMCC Bank Account consistent with the provisions of Minnesota Statutes Chapter 118A. Further, during any period in which the City is not investing DMCC funds, the Annual Budget shall not include funds to make-up investment losses experienced by DMCC.

**3.3.4.** In serving as the Fiscal Agent to the DMCC pursuant to this Agreement, the DMCC agrees that the City is acting for such purposes entirely in a ministerial capacity at the direction and control of the DMCC.

**3.4** **Work Plan Documents.** The City will cooperate with the DMCC and the EDA in developing Work Plan Documents.

**3.5.** **Compensation.** The DMCC is not required to reimburse or compensate the City for Support or other assistance provided under this Section except as otherwise may be agreed in writing by the Parties and in no such case shall such reimbursement or compensation be in excess of fair market value.

**3.6.** **Alternative Funding Sources.** The Parties acknowledge and agree that the DMCC may be eligible to receive funding from sources other than as provided in the DMC Act from time to time, which may be transferred or deposited directly into the DMCC Bank Account.

**3.6.1.** In the event that funds from sources other than as provided in the DMC Act become available to the DMCC, then the City may request that the DMCC reimburse the City for Support or other assistance provided under this Section for the portion of such Support that has not reduced the City's required qualifying local matching contribution under Section 469.47, subdivision 4 of the DMC Act. DMCC approval of such City request for reimbursement shall not be unreasonably withheld. Any such reimbursement shall be no more than fair market value.

**3.7.** **City Contracts.** As set forth in the DMC Act, for all Public Infrastructure Projects, the City must make every effort to hire and cause the construction manager and any subcontractors to employ women and members of minority communities. Goals for construction



contracts must be established in the manner required under the city's minority and women-owned business enterprises utilization plan.

**3.8 City Projects.** The City will incur capital and non-capital costs in connection with Public Infrastructure Projects and the City may provide services to the DMCC, EDA, or third parties in connection with Projects such as consulting, engineering or other services directly by City staff, consultants or subcontractors, which may be paid outside of the processes set forth in this Agreement. The City may present such costs to the Department of Employment and Economic Development ("DEED") as qualifying local matching contributions under Minnesota Statutes Section 469.47, Subd. 4.

**4. DMCC Funding.** As further described in this section 4, the DMCC shall cause to be prepared on an annual basis the DMCC Funding Request and Five-Year Capital Plan, as accompanied by the Annual Budget, Work Plan Documents, the DMCC Annual Costs, and the DMCC Capital Costs. The City agrees to make payments during the term of this Agreement consistent with this Section.

**4.1. DMCC Funding Request.** The DMCC shall annually prepare a DMCC Funding Request for approval by the City, specifying the amount of DMCC Annual Costs requested to be paid by the City. The DMCC Funding Request shall be accompanied by the Annual Budget (as described in Section 4.1.2) and shall be made by September 1<sup>st</sup> of each calendar year, commencing with budget year 2015, and such submissions shall recur annually through the years before the expiration of the term of this Agreement.

**4.1.1. Scope of DMCC Funding Request.** The DMCC Funding Request shall include DMCC Annual Costs but not DMCC Capital Costs. The DMCC Funding Request shall allocate the amounts requested (including amounts paid under the EDA Agreement) between (i) operating and administrative costs, and (ii) Project costs. Unless agreed otherwise by the City, the DMCC Funding Request shall not include any amounts for damages, interest (except as such interest is stated as being reimbursable in Section 3.4 of the EDA Agreement), or losses incurred by DMCC or EDA as a result of DMCC's or EDA's acts or omissions, other than insurance deductibles, nor any amounts due to the City for DMCC or EDA indemnification of the City under the EDA Agreement. Funding of the DMCC Annual Costs shall be made as set forth in Section 4.3. [UNDER REVIEW]

**4.1.2. Annual Budget.** The DMCC shall annually adopt a budget (the "Annual Budget"). The Annual Budget must show the DMCC's assets (including reserves) and liabilities, anticipated receipts and expenditures for the next calendar year, anticipated Support, and whether the DMCC intends in the ensuing calendar year to incur any long-term debt, mortgage or encumber any of its assets, purchase or acquire all or substantially all of the assets of another entity, or lend money to or guarantee obligations of another person or entity. The City agrees to provide information to DMCC as to anticipated Support for inclusion in the Annual Budget. The Annual Budget shall be provided to the City and shall be accompanied by the Work Plan Documents as approved by DMCC for the applicable period (which period shall be included in, but may be shorter than the period over which the Annual Budget extends) as well as the detailed budget information reviewed by DMCC Board of Directors in its approval. The DMCC has

approved the Annual Budget for calendar year 2014, attached hereto as Exhibit B, which constitutes the DMCC Funding Request for 2014; the City acknowledges receipt and approval thereof.

**4.2. Funding of DMCC Capital Costs.** Starting with budget year 2015, the DMCC shall annually adopt a Five-Year Capital Plan of Public Infrastructure Projects identified in the Development Plan, and identify the DMCC Capital Costs, and shall provide it to the City for approval, which approval shall not be unreasonably withheld. The DMCC may request that the City approve funding, in whole or in part of the DMCC Capital Costs, according to the process in this section. Upon submission and approval of a Five-Year Capital Plan, the City Council may provide preliminary approval of estimated DMCC Capital Costs identified in year one of such Plan. Preliminary year-one approval does not signify approval of any DMCC Capital Costs identified in years 2 through 5 of the Five-Year Capital Plan. Final City approval of the actual appropriation of funds for DMCC Capital Costs identified in the first year of a Five-Year Capital Plan will be provided upon a later specific approval of each Public Infrastructure Project by the DMCC Board and the Mayor and City Council, subject to the availability of funds for the Public Infrastructure Project and a determination that the City has the capacity to bond for the Public Infrastructure Project, if needed, as determined solely by the City. The City's final approval of a multiple-year Public Infrastructure Project shall include the funding schedule for such project and the subsequent draws consistent with that schedule shall not require additional approval.

**4.3. City Consideration of DMCC Funding Request.** The City agrees that the City Administrator will include, in the annual City budget proposal submitted for consideration by the City Council, the amount of DMCC Funding Request submitted by the DMCC. The City also agrees that the City Administrator will include such Support requested by DMCC and Support Costs in the annual City budget proposal to the City Council for its approval. The City agrees that the City Council will consider the DMCC Funding Request in light of the DMCC's responsibilities under the DMC Act, the applicable Work Plan Documents, DMCC budget needs, including assets (including reasonable reserves) and liabilities, anticipated receipts, Support, and other available DMCC resources. By approving the DMCC Funding Request, the City Finance Director shall be deemed to be authorized by the City Council to make regular and timely payments to the DMCC Bank Account of the amounts set forth in such Funding Request as necessary from amounts legally available to the City, as provided in Section 4.6.

**4.3.1. Approval of Less Than Full Amount of DMCC Funding Request.** Although the City will not reject any individual line or amount contained within the DMCC Funding Request, if the City Council determines that the DMCC funding should be less than the amount set forth in the DMCC Funding Request, the City Council shall state its reasons in writing and provide an opportunity for the DMCC to respond. If, after such response, there is still not agreement, the Chair of the DMCC and the City Administrator shall meet and confer, and attempt to reach agreement. Additional recommendations may be submitted by the Chair of the DMCC and the City Administrator by February 1 of the following year to the City Council and the DMCC for consideration. At the request of the DMCC, the City may provide a loan for working capital to the DMCC under the terms of a working capital loan agreement of up to six months of the DMCC Annual Costs from any legally available source.

**4.4. Pre-Payments of DMCC Annual Costs; Additional DMCC Funding Request.**

At the request of the DMCC, and in the City's sole discretion, the City may prepay or supplement payments or make any other payments to the DMCC at any time during the year as permitted by law. In addition, during any Annual Budget period the DMCC may submit to the City an additional DMCC Funding Request above the amount previously approved by the City for such period. Such additional DMCC Funding Request must be accompanied by (i) an amended or supplemental Annual Budget for the remaining period in question; and (ii) (A) Work Plan Documents reasonably demonstrating the need for such additional DMCC Funding Request, or (B) other information reasonably demonstrating that DMCC does not have, or reasonably anticipates that within the Annual Budget period in question the DMCC will not have, sufficient funds to meet DMCC Annual Costs, or other DMCC costs and expenses during such period. The City agrees to consider in good faith, and to not unreasonably withhold its approval of the requested additional DMCC Funding Request submitted by the DMCC and to provide the requested additional DMCC Funding so long as the subject matter or items giving rise to the request for increased DMCC Funding as reflected in clauses (ii) (A) or (B) were contained in the Annual Budget submitted to the City under Section 4.1.2 above; provided, however, that the City and DMCC shall generally follow the procedures provided for in Section 4.3.1 above in the case of a non-budgeted contract in excess of One Hundred Thousand Dollars (\$100,000.00).

**4.5. Sources of City Funds.** The City may pay DMCC Annual Costs, DMCC Capital Costs, and Support Costs, and provide Support from any legally available source of City funds, but shall not be required to make a payment or appropriation from a particular source, fund or account except to the extent required by the Act.

**4.6. Disbursement into DMCC Bank Account.** The funds authorized under an approved DMCC Funding Request will be provided by the City to the DMCC Bank Account in accordance with Section 4.7 in amounts sufficient to timely satisfy the obligations of the DMCC. The City pledges and assures the DMCC that the requested funding for DMCC Annual Costs included in approved DMCC Funding Requests will be available at such times and in such amounts as needed by the DMCC. Payment to the EDA and its subconsultants is governed by Section 4.7.1. The City will provide written confirmation of each transfer into the DMCC Fund, and corresponding bank confirmation of deposit to the DMCC Bank Account, to the DMCC within three (3) business days after each transfer.

**4.6.1. Property of DMCC.** Upon payment of funds to the DMCC Bank Account such funds shall become and remain the property of the DMCC for use in accordance with the terms of this Agreement, and the City may not return such funds to the City without the advance written approval of the DMCC, except in accordance with Section 4.6.2.

**4.6.2. Security Interest; Control Agreement.** In the event of a material breach or event of default by the DMCC in performing its obligations under this Agreement, to secure the City's right, title, and interest in the DMCC Funding amounts credited by the City to the DMCC Bank Account and held therein, the DMCC hereby grants to the City a continuing security interest in, lien on, and right of set-off against, and hereby pledges and assigns to the City, the DMCC's rights in, to and under the DMCC Funding which the City has credited to the DMCC Bank Account, together with all earnings thereon and proceeds thereof and which are actually on hand in the DMCC Bank Account from time to time. The security interest shall not

include funds received from sources other than the City. The City shall have all rights and remedies of a secured party under Article 9 of the Minnesota Uniform Commercial Code (“UCC”) in respect of the DMCC Funding credited by the City to and held in the DMCC Bank Account. The DMCC warrants and represents that no security interest exists in favor of any other person with respect to such property and no financing statement is on file, nor has any security interest otherwise been perfected or purportedly so, in favor of any other person with respect to such property, and the DMCC will not grant, create, permit or suffer any such security interest or perfection thereof. To evidence and perfect the security interest of City in the DMCC Funding held in the DMCC Bank Account and in the moneys in respect thereof held by the Depository, the City, DMCC, and the Depository shall enter into a Control Agreement, dated as of the date hereof, substantially in the form of Exhibit C. The DMCC agrees to preserve and protect the priority of the security interest, including taking all actions which City may reasonably request to keep and maintain the Control Agreement in force and effect as a first priority lien. The DMCC further authorizes the City to file UCC financing statements relating to the security interest granted herein without the City’s signature.

**4.6.3. Assistant Treasurer to Maintain Books and Records.** So long as the Assistant Treasurer of the DMCC is a City officer or employee, the Assistant Treasurer shall maintain and allow the DMCC reasonable access to all records of the DMCC Fund, as well as all records provided to the Assistant Treasurer by the banking institution holding the DMCC Bank Account, and the City’s written confirmation of each transfer into the DMCC Bank Account.

**4.6.4. DMCC Assistance with Records.** The DMCC agrees to provide complete, accurate, relevant and necessary information to the City to assist the City in meeting the City’s accounting and record-keeping obligations relating to all funds provided by the City to the DMCC.

**4.7. Disbursements from DMCC Bank Account.** Upon City Council approval of the DMCC Funding Request, and for so long as the Assistant Treasurer of the DMCC is a City officer or employee, the DMCC may approve and directly submit to the Assistant Treasurer requests by the DMCC for disbursements from the DMCC Bank Account for payment of DMCC Annual Costs, consistent with the approved DMCC Funding Request, without additional approval by the Mayor and City Council. The DMCC will advise the Assistant Treasurer from time to time of the identities of the officers or designees of DMCC who may authorize drawings on the DMCC Bank Account. The Assistant Treasurer shall facilitate authorized disbursements from the DMCC Bank Account (including, if necessary, preparation of checks for signature by authorized DMCC officers or designees) consistent with the procedures set forth in this Section. The City’s preference is to use the Automated Clearing House (ACH) process. Absent the ACH process, the City’s practice is to process checks for payment one time per month.

**4.7.1. EDA Costs.** As provided in the EDA Agreement, Section 3.3, the EDA shall prepare, by the tenth day of each month, a Master Application for Payment (“MAP”), with all documentation reasonably specified by DMCC or the City including, but not limited to, underlying invoices to show any Costs of the Work incurred by the EDA or its subconsultants in the immediately preceding month, and conditional lien waivers, all as defined in the EDA Agreement. The MAP shall be in a form approved by the EDA, DMCC, and the City,

the initial form of which is attached hereto as Exhibit D. Upon the DMCC approval of a MAP and the services rendered under the EDA Agreement, the DMCC shall submit the approved MAP and all supporting documentation to the City for approval and payment. All MAPs provided to the City shall be consistent with the approved DMCC Funding Request or approved DMCC Capital Costs. City approval or rejection of the MAP shall be made within 5 business days of receipt by the City, or such time as is mutually agreed by the Parties. The City's rejection of a MAP or any portion thereof shall be specified in writing addressed to the DMCC and to EDA in reasonable detail by the City. Upon the rejection of a MAP or any portion thereof by the City, the EDA (or DMCC, if appropriate) shall use reasonable efforts to deliver within three (3) business days either a revised MAP or such further support for a MAP as the City may request. Payment of approved MAPs shall be made by the City from DMCC's Bank Account and into the EDA's account (which shall be a bank account owned by EDA and controlled by the EDA's board and officers) according to the City's typical practices (subject to bank and city holidays): if a monthly MAP is approved by the City by 5:00 pm on Friday, the ACH payment will be made by the following Friday, unless mutually agreed by the Parties. The EDA is responsible for making all disbursements to its subconsultants from such funds. The City shall have no responsibility to any subconsultants or contractors of the EDA. The DMCC shall be responsible for ensuring that the EDA submits all tax filings and returns as necessary, including but not limited to Form 1099's to all of the EDA's subconsultants.

**4.7.2. DMCC Costs.** In the event that a MAP prepared by the EDA in section 4.7.1 includes costs incurred by the DMCC, the process outlined in Section 4.7.1 shall be followed, and approved costs shall be paid into the DMCC Bank Account within five (5) days after the City's approval of a monthly MAP, unless mutually agreed by the Parties. In the event that disbursements to the DMCC and its contractors and subcontractors are not covered by a MAP, they shall be based upon invoices, other written requests for payment, or standing orders, that have been approved by the DMCC Board or the Board's authorized representatives, and that are consistent with the approved DMCC Funding Request. The City shall have no direct responsibility to any contractors or subcontractors of the DMCC. The DMCC shall be responsible for all tax filings and returns as necessary, including but not limited to Form 1099's to all of the DMCC contractors or subcontractors.

**4.7.3. City Costs.** In the event that a MAP prepared by the EDA in section 4.7.1 includes costs incurred by the City, the process outlined in Section 4.7.1 shall be followed, and approved costs shall be paid into the City's account within five (5) days after the City's approval of a monthly MAP, unless mutually agreed by the Parties. The City is responsible for making all disbursements to its contractors and subcontractors from such funds and the DMCC shall have no responsibility to any contractors or subcontractors of the City. The City shall be responsible for all tax filings and returns as necessary, including but not limited to Form 1099's to all of the City's contractors or subcontractors.

**4.8. Additional Documents.** The Parties agree to prepare and execute such additional documents as are reasonably necessary to implement the transfer of funds and associated rights described in this Section 4, promptly and in good faith.

**4.9. Agreed Maximum Amount for Purposes of City General State Aid Matching Requirement.** For purposes of Section 469.47, subdivision 4, of the DMC Act, but for no other

purpose of this Agreement or otherwise, the maximum amount of payments made by the City for operating and administrative costs of DMCC (including DMCC Funding and Support Costs), one-half of which will count against the City's One Hundred Twenty Eight Million Dollars (\$128,000,000.00) matching requirement for General State Infrastructure Aid, shall be agreed to by the Parties within five years of the effective date of this Agreement. The DMCC will cooperate with the City regarding determination of amounts of DMCC Funding and Support Costs for this purpose.

**4.10. City Approvals.** Except for the right of the City to approve the level of DMCC Funding and Support, the City agrees that, other than in the case of non-budgeted contracts entered into over One Hundred Thousand Dollars (\$100,000.00), the City will not have the right to approve individual contracts or agreements entered into by DMCC, so long as consistent with Section 469.43, Subdivision 3, of the Act, with the Annual Budget, and with the DMCC Funding Request (or amendments or supplements thereof) approved by the City. The City will act in good faith and consistent with its cooperation in Section 2 in considering any DMCC Funding Request, DMCC request for Support, Five-Year Capital Plan, DMCC Capital Costs, or similar approval requested of the City, and shall not be arbitrary or unreasonable in withholding its consent.

## **5. Accounting and Records.**

**5.1. Accounting and Tax Services; Annual Budget.** So long as the Assistant Treasurer of DMCC is a City officer or employee, the Assistant Treasurer shall (i) maintain proper financial books and records of the DMCC; (ii) be responsible for retaining professional services to prepare for signature by authorized DMCC officers Form 990 and related or similar returns and information on behalf of DMCC, and submitting such returns to the Internal Revenue Service on behalf of DMCC; (iii) assist the DMCC, with the cooperation of the EDA, to prepare a draft of the proposed Annual Budget for consideration by the DMCC governing body; and (iv) file annual charitable organization or charitable trust reports with the Minnesota Attorney General and file Annual Business Renewals with the Minnesota Secretary of State. The Assistant Treasurer, if a City officer or employee, is not responsible for preparing or filing the IRS Form 1023 Application for Recognition of Tax-Exempt Status on behalf of the DMCC, but shall, upon request, cooperate in gathering information held by the City which may assist the DMCC in filing this application.

**5.2. Annual Audit.** The DMCC will cause to be conducted an annual external audit by a firm of independent certified public accountants selected by the DMCC, and provide such audit to the City. The cost of the annual audit shall be included in the DMCC Annual Budget. The Assistant Treasurer shall cooperate with and facilitate the external annual audits. During any period in which the City is not serving as Fiscal Agent under Section 3.3, the City shall have the right to audit the books and records of DMCC, whether held directly or kept on its behalf by a third party, upon the City's request, and at the City's sole cost and expense. The DMCC shall provide all requested business records to the City at DMCC's offices during regular business hours, or at such other place and time as is reasonably requested by the City.

**5.3. EDA Agreement.** The DMCC and the City shall cooperate from time to time regarding their mutual audit rights and certifications with respect to the EDA under Section 469.43, subdivision 7 of the Act. During the DMCC's corporate existence, the DMCC will maintain records relating to the EDA Agreement so as to comply with Section 469.43, subdivision 7, of the Act. So long as the Assistant Treasurer of DMCC is a City officer or employee, the Assistant Treasurer shall be charged with the responsibility of keeping such records for the DMCC. The City shall preserve such records for a period of seven years after final payment, or for such longer period as required by law as advised by the DMCC, provided, however, that if a dispute is asserted during said seven year period, the City shall retain all such records until the dispute has been resolved. Within 15 days of the Term of this Agreement, or upon earlier request, the City shall return all records to the DMCC.

**5.4. Annual Development Report.** The City and DMCC will cooperate regarding submission of the annual report by February 15 of each year mandated by Section 469.43, subdivision 8, of the Act.

**5.5. Certification of Expenditures.** The City will provide all information available to or reasonably obtainable by the City, and cooperate with DMCC to enable the DMCC to timely certify Expenditures by individuals and entities to the Commissioner of DEED in accordance with Section 469.47, subdivision 2, of the Act by April 1 of each year.

**5.6. Maximum State Aid Determination.** The City and the DMCC shall cooperate and coordinate their consultations with the Commissioners of DEED and Minnesota Management and Budget ("MMB") regarding the determination of total General State Infrastructure Aid under Section 469.47, subdivision 3, clause (d), of the Act.

**6. Policies and Procedures Relating to Conduit Bonds.** The City and DMCC shall develop policies and procedures for issuance by the City or the applicable City authority of Conduit Bonds at the request of DMCC or the EDA. The policies and procedures should be normal and customary for municipal bonds issued by a city, and should consider and address the possibility of limited availability of State volume cap for certain Conduit Bonds requested to provide tax-exempt financing for certain Projects and should provide an appropriate coordinating role for DMCC in case of requests by EDA for issuance of such Conduit Bonds. Any delay or rejection of a request for issuance of conduit bonds shall not be deemed a rejection of Public Infrastructure Projects otherwise approved by the DMCC.

**7. Agreement Subject to Execution of Other Agreements.** This Agreement does not take effect until the DMCC and the EDA shall have executed and delivered the EDA Agreement. This Agreement may be terminated as set forth in Section 14(f) if the City and the Commissioner of DEED have not executed the State Infrastructure Aid Agreement ("DEED Agreement") on or before September 30, 2014. Further, DMCC and the City agree to amend this Agreement as may be reasonably necessary to conform its terms to the DEED Agreement and/or EDA Agreement. If such amendment reasonably requested by the City or DMCC is not agreed to within sixty (60) days of such request, such failure shall be considered a breach under Section 14(c).

**8. Enforcement of EDA Agreement.** The DMCC agrees that, as between the City and the DMCC, the DMCC is responsible for ensuring that the activities of the EDA pursuant to the EDA Agreement are consistent with the terms of that agreement and the DMC Act. If the City provides written notice to the DMCC that the EDA is in material breach with the terms of the EDA Agreement, including EDA failure to indemnify the City as required under Section 7.3 of the EDA Agreement, the notice shall specify the nature of the material breach. If the DMCC fails to take action within such reasonable time as may be required to ensure EDA compliance, the City may suspend its payment of DMCC Funding to the DMCC Fund and DMCC Bank Account of any amounts designated for the EDA that are identified by the City as being in controversy, whether annual or capital amounts, until the EDA has fully complied with the terms of the EDA Agreement. The Parties shall attempt to resolve any dispute in good faith according to the provisions in Section 12. The DMCC's failure to enforce the EDA Agreement shall be considered to be a material breach of this Agreement by DMCC giving rise to the City's rights under Sections 11 and 14 of this Agreement.

**9. Advisory Committee.** The City and DMCC will cooperate to establish and maintain an advisory committee to assure effective and timely communication and coordination among the City, DMCC, EDA, and Olmsted County. The City, DMCC, EDA, and Olmsted County will participate on the committee through their respective representatives, as the member entities shall determine. The advisory committee shall facilitate the preparation of the Development Plan; and shall facilitate the implementation of the goals, objectives, and strategies in the Development Plan as described in Minnesota Statutes Section 469.43, subdivision 6.

10. [RESERVED]

**11. Suspension for Material Breach.** The City may suspend its performance under this Agreement upon thirty (30) days' written notice for reasons of a material breach of this Agreement by the DMCC, which for purposes of this section only, is defined as: (i) payment by the DMCC, EDA or any other agent, contractor, employee or subcontractor of the EDA or the DMCC that is not permitted by a City-approved DMCC Funding Request, Five-Year Capital Plan, or the Development Plan; (ii) failure to submit a Development Plan to the City for approval by December 31, 2015, or such later date mutually agreed by the Parties; (iii) failure to enter into the EDA Agreement for the EDA to provide the services set forth in Section 469.43 by June 30, 2014; (iv) the DMCC violates Article VIII of the DMCC Amended and Restated Articles of Incorporation, or (v) failure of the DMCC to certify expenditures under Minnesota Statutes, Section 469.47, subdivision 2.

**11.1.** The DMCC may suspend its performance under this Agreement upon thirty (30) days' written notice for reasons of a material breach of this Agreement by the City, which for purposes of this section only, is defined as: (i) failure of the City to make transfers into the DMCC Fund and payments to DMCC Bank Account, as provided in Sections 4.6 and 4.7; and (ii) failure of the City to maintain financial records as required under this Agreement.

**11.2.** In the event that this Agreement is suspended, the Parties shall resolve any dispute arising out of or related to such material breach as provided in Section 12 of this Agreement, and the City shall compensate the DMCC for expenses incurred prior to the date of suspension unless



such expenses are the subject of the material breach. Such suspension shall cease upon the cure or successful resolution of such material breach, or as otherwise agreed by the Parties.

**12. Alternative Dispute Resolution; Mediation.** In case of any dispute, disagreement, controversy, or claim between the Parties arising from this Agreement, it shall be a condition precedent to the giving of any notice (other than notice under Section 11), the taking of any action or the commencement of any proceeding that the Parties first attempt to resolve the matter through alternative dispute resolution or mediation, as follows:

**12.1.** In the event that a dispute arises between the Parties as to the interpretation or performance of this Agreement, then upon written request of either Party, representatives with settlement authority for each Party shall meet in person and confer in good faith to resolve the dispute. If the Parties are unable to resolve the dispute, they shall make every effort to settle the dispute through mediation or other alternative dispute resolution mutually agreed upon by the Parties.

**12.2.** Disputes unable to be resolved under Section 12.1 above shall be submitted to mediation within thirty (30) days of the written request of one Party, or upon such time as mutually agreed by the Parties. The Parties may agree on one mediator. The mediation meeting shall not exceed twelve (12) hours. The Parties may agree to extend the time allowed for mediation under this Agreement. The costs of mediation shall be borne by the Parties equally.

**13. Remedies.**

**13.1. Specific Performance.** In the event that the DMCC is not in breach of this Agreement and the EDA is not in breach of the EDA Agreement, and it is determined by a court of competent jurisdiction that the City is in breach of this Agreement by failure to transfer funds to the DMC Fund as provided under Section 4, the City hereby expressly consents to an order for specific performance if such an order is sought by the DMCC, and the City agrees not to contest the availability or appropriateness of such remedy. In the event that the City is not in breach of this Agreement, or the DEED Agreement, and it is determined by a court of competent jurisdiction that the DMCC is in breach of this Agreement, the DMCC hereby expressly consents to an order for specific performance if such an order is sought by the City, and the DMCC agrees not to contest the availability or appropriateness of such remedy, including but not limited to exercise of the City's rights under the Control Agreement.

**13.2. Other Remedies.** The above remedy shall be in addition to any other right or remedy available to either Party under this Agreement, law, statute, rule, and/or equity.

**13.3. Limitation of Certain Damages.** To the fullest extent permitted by law, neither Party shall be liable to the other Party for claims, suits, actions, or causes of action for punitive or consequential damages arising from performance or non-performance of this Agreement.

**14. Termination.** This Agreement may be terminated:

**a.** by either Party, subject to the prohibitions in the Minnesota Constitution, Article I, Section 11, if a change in the DMC Law expressly requires the dissolution of the DMCC or the

termination of this Agreement, or effectively abandons the establishment of the DMC or deprives the DMCC of its powers and duties in respect of the establishment of the DMC from that contemplated by the DMC Act as of the date hereof, or if the DMC Law is terminated or repealed.

b. by either Party, in the event that a court of competent jurisdiction determines that the Party against whom termination is sought has committed a material breach or default;

c. by either Party, for material breach, upon written notice to the other Party specifying the nature of the material violation of the terms of the Agreement, if such violation is not corrected within ninety (90) days after the date of notice, or within such a reasonable time as may be required to cure the violation (provided the acts to cure the violation are commenced within ninety (90) days and thereafter diligently pursued to completion); provided, however, that the termination shall not take effect until adjournment of the first regular session or special session that considers the DMC Act of the Minnesota Legislature which is held following the provision of notice of breach.

d. by either Party, if a material act of fraud or misconduct is committed.

e. by mutual agreement of the Parties.

f. by either Party, if the DEED Agreement is not executed by September 30, 2014 or is terminated.

g. by either Party, in the event of a failure to certify expenditures under Minnesota Statutes, Section 469.47, subdivision 2.

**14.1** Upon termination, the DMCC will wind down its activities under this Agreement, and the following provisions shall apply: (1) the DMCC agrees to repay to the City any remaining DMCC Funding provided by the City under this Agreement and which DMCC actually has on hand, less any reasonable wind-down expenses and obligations reasonably and necessarily incurred; (2) the DMCC agrees that the City may terminate any Support, except for reasonable and necessary Support for winding down; and (3) any property interests granted by the City under this Agreement or acquired by the DMCC with funds provided under this Agreement shall revert to the City.

## **15. Representations, Warranties and Covenants.**

**15.1. Representations, Warranties and Covenants of the City.** The City represents, warrants and covenants as follows:

**15.1.1.** The City has legal authority to enter into, execute, deliver and perform this Agreement, and has taken all actions necessary for its execution and delivery. The City has obtained all necessary consents (if any) for the execution, delivery and performance (as of the date hereof) of this Agreement by the City.

**15.1.2.** The City has legal authority to appropriate and expend City funds for the purposes and in the manner described in this Agreement. The City will use good faith efforts, and reasonably expects to supply, or cause to be supplied, to DMCC the DMCC Funding, including the DMCC Annual Costs and the DMCC Capital Costs, throughout the term of this Agreement, in accordance with the terms and provisions hereof.

**15.1.3.** This Agreement, and all other documents to which the City is party referred to herein, are, or upon due execution and delivery will be, the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.

**15.1.4.** The City will comply with all of the provisions and requirements contained in and imposed by the DMC Act.

**15.1.5.** The City will comply with all of the terms, conditions, covenants, and warranties in this Agreement and all other documents referred to herein to which the City is party.

**15.1.6.** The City is not in violation of any provision of the DMC Act or material violation of any other laws of the State of Minnesota, and there are no actions, suits or proceedings pending, or to the City's knowledge threatened, before any judicial body or governmental authority against the City relating to the DMC Act or this Agreement.

**15.1.7.** The City is not in default with respect to any order, injunction, decree or writ of any court or any governmental authority which would impair the City's ability to enter into or perform this Agreement or exercise any rights or perform any obligations on the part of the City under the DMC Act.

**15.1.8.** Neither the execution and delivery of this Agreement nor compliance with any of the terms, conditions, covenants, or warranties herein is prevented by, is a breach of, or will result in a breach of any agreement or instrument to which the City is a party or by which it is bound.

**15.1.9.** The City has duly created DMCC under the DMC Act and Minnesota Statutes Chapter 317A as the "Destination Medical Center Corporation" required to be established by the City under the DMC Act.

**15.2. Representations, Warranties and Covenants of DMCC.** The DMCC represents, warrants and covenants as follows:

**15.2.1.** The DMCC has legal authority to enter into, execute, deliver and perform this Agreement, and has taken all actions necessary for its execution and delivery. The DMCC has obtained all necessary consents (if any) for the execution, delivery and performance (as of the date hereof) of this Agreement by the DMCC.

**15.2.2.** The DMCC has legal authority to receive and expend City funds for the purposes and in the manner described in this Agreement.

**15.2.3.** This Agreement, and all other documents to which the DMCC is party referred to herein, are, or upon due execution and delivery will be, the legal, valid and binding obligations of the DMCC, enforceable against the DMCC in accordance with their respective terms.

**15.2.4.** The DMCC will comply with all of the provisions and requirements contained in and imposed by the DMC Act, including, without limitation, the duty to certify expenditures under Section 469.47, subdivision 2, and Minnesota Statutes Chapter 317A. The DMCC will maintain its corporate existence in good standing under Minnesota Statutes Chapter 317A. The DMCC will seek recognition as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") as an organization exempt from federal income taxation under Code Section 501(a) and as a public charity described in Code Section 509(a)(1), and, assuming such recognition is granted, the DMCC will maintain such status throughout the term of this Agreement.

**15.2.5.** The DMCC will comply with all of the terms, conditions, covenants, and warranties in this Agreement and all other documents referred to herein to which the DMCC is party.

**15.2.6.** The DMCC is not in violation of any provision of the DMC Act or material violation of any other laws of the State of Minnesota, and there are no actions, suits or proceedings pending, or to the DMCC's knowledge threatened, before any judicial body or governmental authority against the DMCC relating to the DMC Act or this Agreement.

**15.2.7.** The DMCC is not in default with respect to any order, injunction, decree or writ of any court or any governmental authority which would impair the DMCC's ability to enter into or perform this Agreement or exercise any rights or perform any obligations on the part of the DMCC under the DMC Act.

**15.2.8.** Neither the execution and delivery of this Agreement nor compliance with any of the terms, conditions, covenants, or warranties herein is prevented by, is a breach of, or will result in a breach of any agreement or instrument to which the DMCC is a party or by which it is bound.

## **16. General Terms and Conditions.**

**16.1. Amendment.** This Agreement may be amended only by mutual agreement of the DMCC and the City as reflected in written amendments signed by authorized representatives of the DMCC and the City.

**16.2. Data Practices; Open Meeting Law.** The DMCC and the City agree to consult with each other to the extent practicable prior to responding to a request under the MGDPA or similar laws or rules for data, or with respect to potential issues presented by application of the Open Meeting Law, arising out of this Agreement.

**16.3. Liability.** Except as may otherwise be agreed to in writing between the Parties, the DMCC and the City are each responsible for their own acts or omissions relating to this Agreement. The City is self-insured pursuant to Minnesota law. The DMCC shall procure sufficient insurance to cover any losses or damages it may incur with respect to the matters covered by this Agreement [and/or, to the extent agreed to by the City, may insure through the City's insurance program]. Nothing in this Agreement limits or waives the rights or limits provided to the City or the DMCC in Minnesota Statutes Chapter 466, and it is intended in this Agreement that unless explicitly provided otherwise, the Parties shall each have the maximum benefits and rights accorded to each of them as a "municipality" as that term is defined in Chapter 466.

**16.4. Notices.** Notices provided under this Agreement shall be as follows:

To City:

Attn: City Administrator  
City of Rochester  
201 4th St. SE.  
Rochester, Minnesota 55904  
Fax No.: 507-328-2000

To DMCC:

Destination Medical Center Corporation  
Attn: Chairperson  
201 4th St. SE.  
Rochester, Minnesota 55904  
Fax No.: 507-328-2000

With a copy to:

McGrann Shea Carnival Straughn & Lamb, Chtd.  
Attn: Kathleen Lamb  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402  
Fax No.: 612-339-2386

**16.5. Binding Effect; Waiver.** The provisions of this Agreement shall inure to the benefit of and be binding upon the City and the DMCC and their respective successors or permitted assigns. No delay on the part of either Party in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege constitute such waiver nor exhaust the same, which shall be continuing.

**16.6. Term of Agreement; Survival of Remedies.** Except as otherwise provided, this Agreement is effective on the Effective Date upon approval by the governing bodies of the City and the DMCC and shall remain in effect until the earlier of: (i) a termination under Section 14, or (ii) December 31, 2049.

**16.7. Disposition of Assets.** The DMCC shall not sell, lease or otherwise voluntarily dispose of all or substantially all of its assets, or dissolve, without the advance written approval of the City.

**16.8. Governing Law.** This Agreement and the attachments are to be construed and enforced according to and governed by the laws of the State of Minnesota.

**16.9. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all Parties shall be deemed an original.

**16.10. Time.** Time is of the essence in the performance of this Agreement.

**16.11. Assignment.** Neither Party may assign this Agreement or any of the rights, duties or obligations thereunder without the advance written consent of the other Party.

**16.12. Entire Agreement.** This Agreement contains the entire agreement of the Parties hereto on the matters covered herein. No other agreement, statement or promise made by any Party or by any employee, officer or agent of any Party hereto that is not in writing and signed by all the Parties to this Agreement shall be binding.

**16.13. No Presumption Against Drafter.** This Agreement has been negotiated at arm's length and between Parties sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

**16.14. No Joint Venture or Partnership.** It is agreed that nothing in this Agreement shall be deemed or construed as creating a joint venture or partnership or any similar legal relationship between the Parties.

**16.15. Agreement for the Benefit of Parties Only.** This Agreement is for the benefit of the signing Parties only. There are no third party rights created by this Agreement and there are no third party beneficiaries entitled to the benefits of this Agreement. Nothing in this Agreement entitles or provides any basis for any person or entity that is not a Party to this Agreement to bring or join any action or assert any claim, defense or counterclaim arising out of or in reliance upon any of the provisions herein or the acts or omissions of the City or DMCC in the performance of the rights and obligations set forth herein.

**16.16. Compliance with Applicable Laws.** It is the intent of the City and the DMCC that this Agreement, and all of the rights and obligations hereunder, be interpreted, construed and executed so as to be in conformance with all applicable laws and regulations, including but not limited to the Act.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

The DMCC and the City having duly authorized this Agreement, the Parties hereto agree to be bound by the provisions herein set forth.

**CITY OF ROCHESTER**

By: \_\_\_\_\_  
Ardell F. Brede,  
Mayor

By: \_\_\_\_\_  
Aaron Reaves,  
City Clerk

**DESTINATION MEDICAL CENTER CORPORATION**

By: \_\_\_\_\_  
Tina Flint Smith,  
Chair

[SIGNATURE PAGE TO AGREEMENT FOR DMCC FUNDING AND SUPPORT]

## EXHIBIT A

### CITY FACILITIES, EQUIPMENT, TECHNOLOGY AND SYSTEMS

#### 1. City Facilities

##### City Meeting Rooms

- Council Chambers as needed and requested
- City Hall Room 104 as needed and requested
- City Hall 3<sup>rd</sup> Floor Conference Rooms as needed and requested
- Mayo Civic Center Meeting Rooms as needed and requested
- Library meeting rooms as needed and requested

##### Meeting Equipment

- Screen for presentations
- Laptop for presentations
- Projector for presentations
- Video and/or audio recording equipment

#### 2. Equipment

- Telephone, Fax, Copy Service available to DMCC Board and staff as needed through City Administrator's Office.
- Geographic Information System for Engineering and Planning Studies

#### 3. Records Storage/Filing

Filing and Storage of records and minutes through the City Clerk's Department.

#### 4. Webpage Service

- Webpage posting of DMCC notices and information on the City of Rochester webpage rochestermn.gov
- IT services for posting of notices

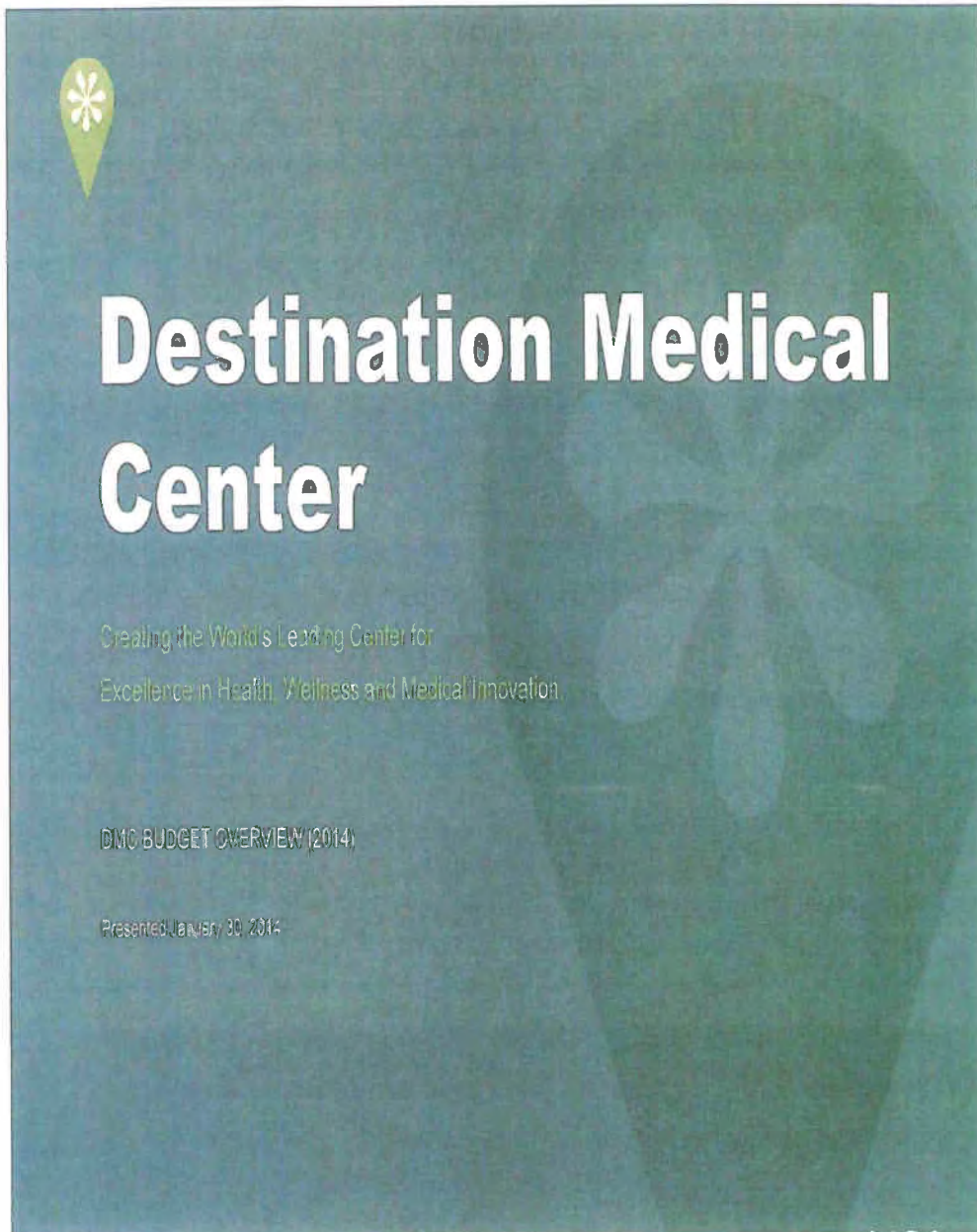
#### 5. Finance Department – Electronic/Equipment Services

- Oracle – JD Edwards Enterprise 1 (currently version 9.1) full enterprise fund accounting system with accounts payable, accounts receivable, project accounting
  - Metafile or replacement imaging system for pdf copies of all source documents tied to individual account transactions
  - Banking services including ACH payment disbursements, wire transfers if necessary, monthly account reconciliation
  - Virtual servers, NAS Data Drives, all mirrored live and hot-swappable at remote location in the event of data room disaster recovery situation
- 
- Redundant fiber data networks to internet and to hot swappable remote site PCI and BCA level data security compliance and regular testing



**EXHIBIT B**

**ANNUAL BUDGET FOR 2014**



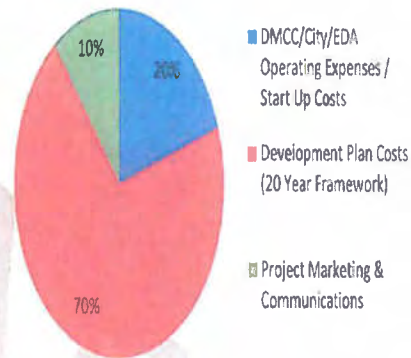


# PROPOSED DMC BUDGET (2014)

### BUDGET OVERVIEW – KEY DRIVERS

- The 2014 budget is approximately \$8 million
- This budget is higher in this first year because it includes the costs associated with:
  - Initiating the project / finalizing structures
  - Costs to complete the Development Plan
    - Comprehensive strategic business plan
    - 20-year planning framework
    - A \$5 billion economic development strategy
    - Identify projects / funding priorities to achieve near-term and short-term goals
  - Costs to develop brand, marketing & communications strategies to:
    - Attract private investment in the market
    - Retain and grow new business/companies
      - Focus on growing opportunities for targeted business
- The operating budget for future years will be established as part of the Development Plan.

Budget Overview (2014)







**PROPOSED DMC BUDGET**  
BUDGET

DRAFT - FOR REVIEW OR COMMENT

The following includes the proposed budget for the completion of work in the 2014 calendar year.

ORGANIZATIONAL EXPENSES	BUDGET YE 2014
<b>Destination Medical Center Corporation</b>	
General Expenses (Board Per Diem, Reimbursable, etc.)	\$146,000
Professional Services	\$400,000
City Expenses	\$340,000
<b>Economic Development Agency</b>	
Payroll, Staff, Administration & Benefits	\$460,000
General Expenses	\$382,000
Subtotal Organizational Expenses	<u>\$1,728,000</u>
THIRD PARTY COSTS (RELATED TO DEVELOPMENT PLAN AND PROJECT START UP)	BUDGET YE 2014
Planning Services, Architecture, Engineering	\$2,431,000
Development & Legal Services	\$2,100,000
Financial, Accounting & Investment Services	\$675,000
Economic Analysis, Market Research, Reports	\$351,000
Communications, Marketing & PR	\$545,000
Public Relations & Communications	\$245,000
Other Professional Services & Project Costs	\$100,000
Reimbursable Expenses	<u>\$30,000</u>
Subtotal Third Party Costs & Reimbursable	\$6,477,000
<b>TOTAL BUDGET</b>	<b><u>\$8,205,000</u></b>



DRAFT - FOR REVIEW OR COMMENT

### **BUDGET OVERSIGHT AND PAYMENT PROCESS:**

The oversight and management of the DMC budget will be coordinated between the DMCC, City of Rochester and EDA. The process will include:

- The EDA will manage its operations and the Development Plan consultants. Budget oversight includes:
  - The EDA will not have direct access to DMC funds or financing accounts
  - The EDA will be required to provide detailed monthly progress reports and payment applications to the DMCC Treasurer and City of Rochester
  - The EDA will be required to provide updates on the project and budgetary process to DMCC Board
  
- The DMCC and City will manage / oversee other funding / financings in an approved process:
  - DMCC/City budgets and payments will be managed by the DMCC Treasurer and City
  - Project financings will be managed by the City and DMCC Treasurer (and others if required)
  
- During implementation, the EDA, City and County will continue to coordinate work.

**EXHIBIT C**  
**CONTROL AGREEMENT**

The Wells Fargo logo, consisting of the words "WELLS" and "FARGO" stacked vertically in white, uppercase letters on a black rectangular background.

DEPOSIT ACCOUNT CONTROL AGREEMENT

(Access Restricted after Notice)

This **Deposit Account Control Agreement** (the “Agreement”), dated as of the date specified on the initial signature page of this Agreement, is entered into by and among \_\_\_\_\_ (“Company”), \_\_\_\_\_ (“Secured Party”) and **Wells Fargo Bank, National Association** (“Bank”), and sets forth the rights of Secured Party and the obligations of Bank with respect to the deposit accounts of Company at Bank identified at the end of this Agreement as the Collateral Accounts (each hereinafter referred to individually as a “Collateral Account” and collectively as the “Collateral Accounts”). Each account designated as a Collateral Account includes, for purposes of this Agreement, and without the necessity of separately listing subaccount numbers, all subaccounts presently existing or hereafter established for deposit reporting purposes and integrated with the Collateral Account by an arrangement in which deposits made through subaccounts are posted only to the Collateral Account. Each Collateral Account operated as a “Multi-Currency Account” is a deposit account maintained with Bank’s Cayman Islands Branch, which may be denominated in foreign currency.

- 1. Secured Party’s Interest in Collateral Accounts.** Secured Party represents that it is either (i) a lender who has extended credit to Company and has been granted a security interest in the Collateral Accounts or (ii) such a lender and the agent for a group of such lenders. Company hereby confirms the security interest granted by Company to Secured Party in all of Company’s right, title and interest in and to the Collateral Accounts and all sums now or hereafter on deposit in or payable or withdrawable from the Collateral Accounts (the “Collateral Account Funds”). In furtherance of the intentions of the parties hereto, this Agreement constitutes written notice by Secured Party to Bank and Bank’s Cayman Islands Branch of Secured Party’s security interest in the Collateral Accounts.
- 2. Secured Party Control.** Bank, Secured Party and Company each agree that Bank will comply with instructions given to Bank by Secured Party directing disposition of funds in the Collateral Accounts (“Disposition Instructions”) without further consent by Company. Except as otherwise required by law, Bank will not agree with any third party to comply with instructions for disposition of funds in the Collateral Accounts originated by such third party.
- 3. Company Access to Collateral Accounts.** Notwithstanding the provisions of the “Secured Party Control” section of this Agreement, Secured Party agrees that Company will be allowed access to the Collateral Accounts and Collateral Account Funds until Bank receives, and has had a reasonable opportunity to act on, written notice from

Secured Party directing that Company no longer have access to any Collateral Accounts or Collateral Account Funds (an "Access Termination Notice"). Company irrevocably authorizes Bank to comply with any Access Termination Notice and/or Disposition Instructions even if Company objects to them in any way, and agrees that Bank may pay any and all Collateral Account Funds to Secured Party in response to any Disposition Instructions. Company further agrees that after Bank receives an Access Termination Notice, Company will not have access to any Collateral Accounts or Collateral Account Funds.

- 4. Transfers in Response to Disposition Instructions.** Notwithstanding the provisions of the "Secured Party Control" section of this Agreement, unless Bank separately agrees in writing to the contrary, Bank will have no obligation to disburse funds in response to Disposition Instructions other than by automatic standing wire. Bank agrees that on each Business Day after it receives and has had a reasonable opportunity to act on an Access Termination Notice and corresponding Disposition Instructions it will transfer to the account specified at the end of this Agreement as the Destination Account or, if no account is specified, to such account as Secured Party specifies in the Access Termination Notice (in either case, the "Destination Account") the full amount of the collected and available balance in the Collateral Accounts at the beginning of such Business Day. Any disposition of funds which Bank makes in response to Disposition Instructions is subject to Bank's standard policies, procedures and documentation governing the type of disposition made; provided, however, that in no circumstances will any such disposition require Company's consent. To the extent any Collateral Account is a certificate of deposit or time deposit, Bank will be entitled to deduct any applicable early withdrawal penalty prior to disbursing funds from such account in response to Disposition Instructions. To the extent Secured Party requests that funds be transferred from any Collateral Account in a currency different from the currency denomination of the Collateral Account, the funds transfer will be made after currency conversion at Bank's then current buying rate for exchange applicable to the new currency.
- 5. Lockboxes.** To the extent items deposited to a Collateral Account have been received in one or more post office lockboxes maintained for Company by Bank (each a "Lockbox") and processed by Bank for deposit, Company acknowledges that Company has granted Secured Party a security interest in all such items (the "Remittances"). Company agrees that after Bank receives an Access Termination Notice, Company will have no further right or ability to instruct Bank regarding the receipt, processing or deposit of Remittances, and that Secured Party alone will have the right and ability to so instruct Bank. Company and Secured Party acknowledge and agree that Bank's operation of each Lockbox, and the receipt, retrieval, processing and deposit of Remittances, will at all times be governed by Bank's Master Agreement for Treasury Management Services or other applicable treasury management services agreement, and by Bank's applicable standard lockbox Service Description.
- 6. Balance Reports and Bank Statements.** Bank agrees, at the request of Secured Party on any day on which Bank is open to conduct its regular banking business, other than a Saturday, Sunday or public holiday (each a "Business Day"), to make available to

Secured Party a report (“Balance Report”) showing the opening available balance in the Collateral Accounts as of the beginning of such Business Day, by a transmission method determined by Bank, in Bank’s sole discretion. Company expressly consents to this transmission of information. After Bank receives an Access Termination Notice, Bank will, on receiving a written request from Secured Party, send to Secured Party by United States mail, at the address indicated for Secured Party after its signature to this Agreement, duplicate copies of all periodic statements on the Collateral Accounts which are subsequently sent to Company.

**7. Returned Items.** Secured Party and Company understand and agree that the face amount (“Returned Item Amount”) of each Returned Item will be paid by Bank debiting the Collateral Account to which the Returned Item was originally credited, without prior notice to Secured Party or Company. As used in this Agreement, the term “Returned Item” means (i) any item deposited to a Collateral Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to timeliness of the return or the occurrence or timeliness of any drawee’s notice of non-payment; (ii) any item subject to a claim against Bank of breach of transfer or presentment warranty under the Uniform Commercial Code (as adopted in the applicable state) or Regulation CC (12 C.F.R. §229), as in effect from time to time; (iii) any automated clearing house (“ACH”) entry credited to a Collateral Account and returned unpaid or subject to an adjustment entry under applicable clearing house rules, whether for insufficient funds or for any other reason, and without regard to timeliness of the return or adjustment; (iv) any credit to a Collateral Account from a merchant card transaction, against which a contractual demand for chargeback has been made; and (v) any credit to a Collateral Account made in error. Company agrees to pay all Returned Item Amounts immediately on demand, without setoff or counterclaim, to the extent there are not sufficient funds in the applicable Collateral Account to cover the Returned Item Amounts on the day Bank attempts to debit them from the Collateral Account. After Bank receives an Access Termination Notice, Secured Party agrees to pay all Returned Item Amounts within fifteen (15) calendar days after demand, without setoff or counterclaim, to the extent that (i) the Returned Item Amounts are not paid in full by Company within five (5) calendar days after demand on Company by Bank, and (ii) Secured Party has received proceeds from the corresponding Returned Items under this Agreement.

**8. Settlement Items.** Secured Party and Company understand and agree that the face amount (“Settlement Item Amount”) of each Settlement Item will be paid by Bank debiting the applicable Collateral Account, without prior notice to Secured Party or Company. As used in this Agreement, the term “Settlement Item” means (i) each check or other payment order drawn on or payable against any controlled disbursement account or other deposit account at any time linked to any Collateral Account by a zero balance account connection or other automated funding mechanism (each a “Linked Account”), which Bank cashes or exchanges for a cashier’s check or official check in the ordinary course of business prior to receiving an Access Termination Notice and having had a reasonable opportunity to act on it, and which is presented for settlement against the Collateral Account (after having been presented against the Linked Account) after Bank receives the Access Termination Notice, (ii) each check or other payment order drawn on



or payable against a Collateral Account, which, on the Business Day Bank receives an Access Termination Notice, Bank cashes or exchanges for a cashier's check or official check in the ordinary course of business after Bank's cutoff time for posting, (iii) each ACH credit entry initiated by Bank, as originating depository financial institution, on behalf of Company, as originator, prior to Bank having received an Access Termination Notice and having had a reasonable opportunity to act on it, which ACH credit entry settles after Bank receives an Access Termination Notice, and (iv) any other payment order drawn on or payable against a Collateral Account or any Linked Account, which Bank has paid or funded prior to receiving an Access Termination Notice and having had a reasonable opportunity to act on it, and which is first presented for settlement against the Collateral Account in the ordinary course of business after Bank receives the Access Termination Notice and has transferred Collateral Account Funds to Secured Party under this Agreement. Company agrees to pay all Settlement Item Amounts immediately on demand, without setoff or counterclaim, to the extent there are not sufficient funds in the applicable Collateral Account to cover the Settlement Item Amounts on the day they are to be debited from the Collateral Account. Secured Party agrees to pay all Settlement Item Amounts within fifteen (15) calendar days after demand, without setoff or counterclaim, to the extent that (i) the Settlement Item Amounts are not paid in full by Company within five (5) calendar days after demand on Company by Bank, and (ii) Secured Party has received Collateral Account Funds under this Agreement.

- 9. Bank Fees.** Company agrees to pay all Bank's fees and charges for the maintenance and administration of the Collateral Accounts and for the treasury management and other account services provided with respect to the Collateral Accounts and any Lockboxes (collectively "Bank Fees"), including, but not limited to, the fees for (a) Balance Reports provided on the Collateral Accounts, (b) funds transfer services received with respect to the Collateral Accounts, (c) lockbox processing services, (d) Returned Items, (e) funds advanced to cover overdrafts in the Collateral Accounts (but without Bank being in any way obligated to make any such advances), and (f) duplicate bank statements. The Bank Fees will be paid by Bank debiting one or more of the Collateral Accounts on the Business Day that the Bank Fees are due, without notice to Secured Party or Company. If there are not sufficient funds in the Collateral Accounts to cover fully the Bank Fees on the Business Day Bank attempts to debit them from the Collateral Accounts, such shortfall or the amount of such Bank Fees will be paid by Company to Bank, without setoff or counterclaim, within five (5) calendar days after demand from Bank. Secured Party agrees to pay any Bank Fees which accrue after Bank receives an Access Termination Notice, within fifteen (15) calendar days after demand, without setoff or counterclaim, to the extent such Bank Fees are not paid in full by Company within five (5) calendar days after demand on Company by Bank.
- 10. Account Documentation.** Except as specifically provided in this Agreement, Secured Party and Company agree that the Collateral Accounts will be subject to, and Bank's operation of the Collateral Accounts will be in accordance with, the terms of Bank's applicable deposit account agreement governing the Collateral Accounts ("Account Agreement"). In addition to the Account Agreement, each Collateral Account operated as a "Multi-Currency Account" will be governed by Bank's Master Agreement for

Treasury Management Services or other applicable treasury management services agreement, and by Bank's Multi-Currency Account Service Description in effect from time to time. All documentation referenced in this Agreement as governing any Collateral Account or the processing of any Remittances is hereinafter collectively referred to as the "Account Documentation".

- 11. Partial Subordination of Bank's Rights.** Bank hereby subordinates to the security interest of Secured Party in the Collateral Accounts (i) any security interest which Bank may have or acquire in the Collateral Accounts, and (ii) any right which Bank may have or acquire to set off or otherwise apply any Collateral Account Funds against the payment of any indebtedness from time to time owing to Bank from Company, except for debits to the Collateral Accounts permitted under this Agreement for the payment of Returned Item Amounts, Settlement Item Amounts or Bank Fees.
- 12. Bankruptcy Notice; Effect of Filing.** If Bank at any time receives notice of the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company, Bank will continue to comply with its obligations under this Agreement, except to the extent that any action required of Bank under this Agreement is prohibited under applicable bankruptcy laws or regulations or is stayed pursuant to the automatic stay imposed under the United States Bankruptcy Code or by order of any court or agency. With respect to any obligation of Secured Party hereunder which requires prior demand on Company, the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company will automatically eliminate the necessity of such demand on Company by Bank, and will immediately entitle Bank to make demand on Secured Party with the same effect as if demand had been made on Company and the time for Company's performance had expired.
- 13. Legal Process, Legal Notices and Court Orders.** Bank will comply with any legal process, legal notice or court order it receives in relation to a Collateral Account if Bank determines in its sole discretion that the legal process, legal notice or court order is legally binding on it.
- 14. Indemnification.** Company will indemnify, defend and hold harmless Bank, its officers, directors, employees, and agents (collectively, the "Indemnified Parties") from and against any and all claims, demands, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) (collectively "Losses and Liabilities") Bank may suffer or incur as a result of or in connection with (a) Bank complying with any binding legal process, legal notice or court order referred to in the immediately preceding section of this Agreement, (b) Bank following any instruction or request of Secured Party, including but not limited to any Access Termination Notice or Disposition Instructions, or (c) Bank complying with its obligations under this Agreement, except to the extent such Losses and Liabilities are caused by Bank's gross negligence or willful misconduct. To the extent such obligations of indemnity are not satisfied by Company within five (5) days after demand on Company by Bank, Secured Party will indemnify, defend and hold harmless Bank and the other Indemnified Parties against any and all Losses and Liabilities Bank may suffer or incur as a result of or in connection with Bank following

any instruction or request of Secured Party, except to the extent such Losses and Liabilities are caused by Bank's gross negligence or willful misconduct.

- 15. Bank's Responsibility.** This Agreement does not create any obligations of Bank, and Bank makes no express or implied representations or warranties with respect to its obligations under this Agreement, except for those expressly set forth herein. In particular, Bank need not investigate whether Secured Party is entitled under Secured Party's agreements with Company to give an Access Termination Notice or Disposition Instructions. Bank may rely on any and all notices and communications it believes are given by the appropriate party. Bank will not be liable to Company, Secured Party or any other party for any Losses and Liabilities caused by (i) circumstances beyond Bank's reasonable control (including, without limitation, computer malfunctions, interruptions of communication facilities, labor difficulties, acts of God, wars, or terrorist attacks) or (ii) any other circumstances, except to the extent that such Losses and Liabilities are directly caused by Bank's gross negligence or willful misconduct. In no event will Bank be liable for any indirect, special, consequential or punitive damages, whether or not the likelihood of such damages was known to Bank, and regardless of the form of the claim or action, or the legal theory on which it is based. Any action against Bank by Company or Secured Party under or related to this Agreement must be brought within twelve (12) months after the cause of action accrues.
- 16. Termination.** This Agreement may be terminated by Secured Party or Bank at any time by either of them giving thirty (30) calendar days prior written notice of such termination to the other parties to this Agreement at their contact addresses specified after their signatures to this Agreement; provided, however, that this Agreement may be terminated immediately upon written notice (i) from Bank to Company and Secured Party should Company or Secured Party fail to make any payment when due to Bank from Company or Secured Party under the terms of this Agreement, or (ii) from Secured Party to Bank on termination or release of Secured Party's security interest in the Collateral Accounts; provided that any notice from Secured Party under clause (ii) of this sentence must contain Secured Party's acknowledgement of the termination or release of its security interest in the Collateral Accounts. Company's and Secured Party's respective obligations to report errors in funds transfers and bank statements and to pay Returned Item Amounts, Settlement Item Amounts, and Bank Fees, as well as the indemnifications made, and the limitations on the liability of Bank accepted, by Company and Secured Party under this Agreement will continue after the termination of this Agreement with respect to all the circumstances to which they are applicable, existing or occurring before such termination, and any liability of any party to this Agreement, as determined under the provisions of this Agreement, with respect to acts or omissions of such party prior to such termination will also survive such termination. Upon any termination of this Agreement which occurs after Bank has received an Access Termination Notice and has had a reasonable opportunity to act on it, (i) Bank will transfer all collected and available balances in the Collateral Accounts on the date of such termination in accordance with Secured Party's written instructions, and (ii) Bank will close any Lockbox and forward any mail received at the Lockbox unopened to such address as is communicated to Bank by Secured Party under the notice provisions of this Agreement for a period of three (3)

months after the effective termination date, unless otherwise arranged between Secured Party and Bank, provided that Bank's fees with respect to such disposition must be prepaid directly to Bank at the time of termination by cashier's check payable to Bank or other payment method acceptable to Bank in its sole discretion.

- 17. Modifications, Amendments, and Waivers.** This Agreement may not be modified or amended, or any provision thereof waived, except in a writing signed by all the parties to this Agreement.
- 18. Notices.** All notices from one party to another must be in writing, must be delivered to Company, Secured Party and/or Bank at their contact addresses specified after their signatures to this Agreement, or any other address of any party communicated to the other parties in writing, and will be effective on receipt. Any notice sent by a party to this Agreement to another party must also be sent to all other parties to this Agreement. Bank is authorized by Company and Secured Party to act on any instructions or notices received by Bank if (a) such instructions or notices purport to be made in the name of Secured Party, (b) Bank reasonably believes that they are so made, and (c) they do not conflict with the terms of this Agreement as such terms may be amended from time to time, unless such conflicting instructions or notices are supported by a court order.
- 19. Successors and Assigns.** Neither Company nor Secured Party may assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Bank, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Secured Party may transfer its rights and duties under this Agreement to (i) a transferee to which, by contract or operation of law, Secured Party transfers substantially all of its rights and duties under the financing or other arrangements between Secured Party and Company, or (ii) if Secured Party is acting as a representative in whose favor a security interest is created or provided for, a transferee that is a successor representative; provided that as between Bank and Secured Party, Secured Party will not be released from its obligations under this Agreement unless and until Bank receives any such transferee's binding written agreement to assume all of Secured Party's obligations hereunder. Bank may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Secured Party, which consent will not be unreasonably withheld or delayed; provided, however, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting Bank.
- 20. Governing Law.** This Agreement will be governed by and be construed in accordance with the laws of the state in which the office of Bank that maintains the Collateral Accounts is located, without regard to conflict of laws principles. This state will also be deemed to be Bank's jurisdiction, for purposes of Article 9 of the Uniform Commercial Code as it applies to this Agreement.
- 21. Severability.** To the extent that the terms of this Agreement are inconsistent with, or prohibited or unenforceable under, any applicable law or regulation, they will be deemed ineffective only to the extent of such prohibition or unenforceability, and will be deemed

modified and applied in a manner consistent with such law or regulation. Any provision of this Agreement which is deemed unenforceable or invalid in any jurisdiction will not affect the enforceability or validity of the remaining provisions of this Agreement or the same provision in any other jurisdiction.

- 22. Counterparts.** This Agreement may be executed in any number of counterparts each of which will be an original with the same effect as if the signatures were on the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or electronic image scan transmission (such as a “pdf” file) will be effective as delivery of a manually executed counterpart of the Agreement.
- 23. Entire Agreement.** This Agreement, together with the Account Documentation, contains the entire and only agreement among all the parties to this Agreement and between Bank and Company, on the one hand, and Bank and Secured Party, on the other hand, with respect to (a) the interest of Secured Party in the Collateral Accounts and Collateral Account Funds, and (b) Bank’s obligations to Secured Party in connection with the Collateral Accounts and Collateral Account Funds.

[SIGNATURE PAGES FOLLOW]

This Agreement has been signed by the duly authorized officers or representatives of Company, Secured Party and Bank on the date specified below.

**Date:** \_\_\_\_\_, 20\_\_\_\_

**Collateral Account Numbers:**

**Destination Account Number:**

**Bank of Destination Account:**

\_\_\_\_\_  
\_\_\_\_\_  
**[Insert bank name and bank ABA number]**  
\_\_\_\_\_

**[COMPANY]**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Address for Notices:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[SECURED PARTY]**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Address for Notices:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[SIGNATURE PAGES CONTINUE]**

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Address for Notices:**

\_\_\_\_\_

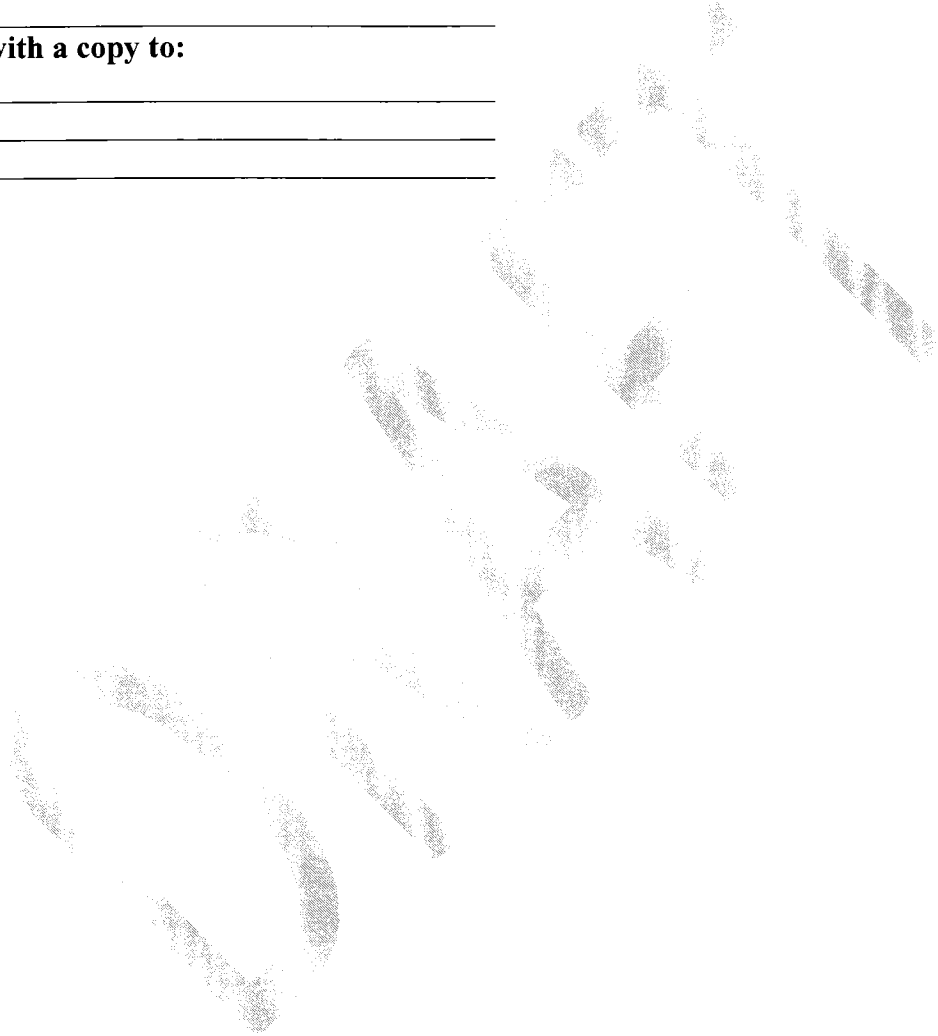
\_\_\_\_\_

**with a copy to:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**EXHIBIT D**

**MASTER APPLICATION FOR PAYMENT**

**MASTER APPLICATION FOR PAYMENT (Form 4020)**

<b>From:</b> [INSERT]	<b>Application No.:</b> 1	<b>Please Remit To:</b>	
<b>To (Owner):</b> [INSERT]	<b>Application Date:</b> January 1, 2014	<b>Acct Name:</b>	
[INSERT]	<b>Project No.:</b> 40000-00	<b>Acct No.:</b>	
[INSERT]	<b>Project Name:</b> Project Template	<b>Bank:</b>	
<b>Attention:</b> [INSERT]		<b>Routing:</b>	

**PROJECT MANAGER:**

Submitted in accordance with the Contract Documents for approval by the Owner.

Signed By: \_\_\_\_\_

Date: [INSERT] January 1, 2014

Name: [INSERT]

**STATEMENT OF PROJECT:**

ORIGINAL MASTER PROJECT BUDGET	\$
CURRENT MASTER PROJECT BUDGET	\$
TOTAL COMPLETED & STORED TO DATE	\$
RETAINAGE TO DATE	\$
TOTAL COMPLETED LESS RETAINAGE	\$
LESS PREVIOUS REQUESTS	\$
CURRENT AMOUNT DUE (A + B)	\$
CURRENT PAYMENTS DUE (A)	\$
DIRECT OWNER PURCHASES DUE (B)	\$

<b>SOURCES OF FUNDS:</b>	
Current Application	-
\$	-
\$	-
\$	-
\$	-
\$	-
CURRENT SOURCES OF FUNDS	\$
<b>USES OF FUNDS:</b>	
40 - Development Costs	-
50 - Financing Costs	-
60 - Other Project Costs	-
90 - Project Contingency	-
CURRENT USES OF FUNDS	\$

**APPROVALS:**

[INSERT]	Date
[INSERT]	Date



PROJECT TEMPLATE

DETAIL SOURCES AND USES REPORT #1 January 1, 2014

Division	Description	Final Projected Cost	Previous Billings	Current Billing	Total Billed To Date	Balance to Complete
<b>SOURCES OF FUNDS</b>						
			\$0.00	\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>USES OF FUNDS</b>						
40-00-000	Development Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
50-00-000	Financing Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
60-00-000	Other Project Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
90-00-000	Project Contingency	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>Total Uses of Funds</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00



PROJECT TEMPLATE

MASTER APPLICATION FOR PAYMENT DETAIL #1

January 1, 2014

Division	Description	Vendor	Contract No	Work Completed To Date				Retainage					
				Previous Billing	Current Work in Place	Direct Owner Purchase	Total Work to Date	Percent Complete	Previous Retainage	Current Retainage	Total Retainage		
40-00-000	DEVELOPMENT COSTS												
	Development Costs			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Subtotal			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
50-00-000	FINANCING COSTS												
	Financing Costs			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Subtotal			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
80-00-000	OTHER PROJECT COSTS												
	Other Project Costs			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Subtotal			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
90-00-000	PROJECT CONTINGENCY												
	Project Contingency			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Subtotal			\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	PROJECT TOTAL			\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

	Current Work in Place	Direct Owner Purchase	Total Current Work
Current Work in Place	\$0.00	\$0.00	\$0.00
Less Current Retainage Held	\$0.00	\$0.00	\$0.00
Net Amount Due	\$0.00	\$0.00	\$0.00

**PROJECT TEMPLATE**

**INVOICE SUMMARY REPORT #1** **January 1, 2014**

Vendor Name	Description	Invoice No	Invoice Date	Invoice Amount	Retainage Held	Amount Due	Approval
				\$0.00	\$0.00	\$0.00	
<b>GRAND TOTAL</b>							

DRAFT

**DESTINATION MEDICAL CENTER CORPORATION**

**RESOLUTION NO. \_\_-2014**

**Ratifying and Accepting Report to the Legislature Pursuant to Statute**

BACKGROUND RECITALS

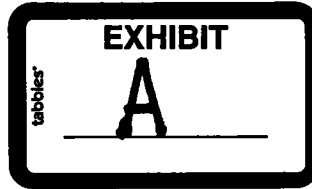
A. Minnesota Laws, Chapter 143, Article 10 (the “Act”) provides that by February 15<sup>th</sup> of each year, the Destination Medical Center Corporation (“DMCC”) and the City of Rochester (the “City”) must jointly submit a report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over local and state government operations, economic development, and taxes and to the Commissioners of Revenue and employment and economic development, and Olmsted County. The DMCC and the City must also submit the report as provided in Minnesota Statutes Section 3.195. The report must include the following specific elements:

- (1) the development plan and any proposed changes to the development plan;
- (2) progress of projects identified in the development plan;
- (3) actual costs and financing sources, including the amount paid with state aid under section 469.47, and required local contributions of projects completed in the previous two years by the corporation, city, county, and the medical business entity;
- (4) estimated costs and financing sources for projects to be stated in the next two years by the corporation, city, county, and the medical business entity; and
- (5) debt service schedules for all outstanding obligations of the city for debt issued for projects identified in the plan.

B. The DMCC and the City prepared and timely submitted the report, due on February 15, 2014, and attached here as Exhibit A.

RESOLUTION

**NOW, THEREFORE, BE IT RESOLVED**, by the Destination Medical Center Corporation Board of Directors that the attached report to the Legislature required by the Act, is hereby accepted and ratifies its prior submission by the Chair of DMCC.



February 14, 2014

The Honorable Sandra L. Pappas  
Chair, State and Local Government Committee  
Minnesota State Senate  
120 Capitol  
75 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1606

The Honorable Michael Nelson  
Chair, Government Operations Committee  
Minnesota House of Representatives  
565 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable Dan Hall  
State and Local Government Committee  
Minnesota State Senate  
103 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable Joyce Peppin  
Government Operations Committee  
Minnesota House of Representatives  
281 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable David Tomassoni  
Chair, Environment, Economic Development  
and Agriculture Division  
Minnesota State Senate  
317 Capitol  
75 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1606

The Honorable Tim Mahoney  
Chair, Jobs and Economic Development  
Finance and Policy  
Minnesota House of Representatives  
591 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable Bill Ingebrigtsen  
Environment, Economic Development and  
Agriculture Committee  
Minnesota State Senate  
143 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable Bob Gunther  
Jobs and Economic Development  
Finance and Policy  
Minnesota House of Representatives  
277 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable Richard Cohen  
Chair, Finance Committee  
Minnesota State Senate  
121 Capitol  
75 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1606

The Honorable Ann Lenczewski  
Chair, Taxes Committee  
Minnesota House of Representatives  
509 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

February 14, 2014  
Page 2

The Honorable Michelle Fischbach  
Finance Committee  
Minnesota State Senate  
15 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable Greg Davids  
Taxes Committee  
Minnesota House of Representatives  
283 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable Rod Skoe  
Chair, Taxes Committee  
Minnesota State Senate  
235 Capitol  
75 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1606

Commissioner Katie Clark Sieben  
Minnesota Department of Employment and  
Economic Development  
1<sup>st</sup> National Bank Building  
332 Minnesota Street, Suite E200  
St. Paul, MN 55101-1351

The Honorable Julianne Ortman  
Taxes Committee  
Minnesota State Senate  
119 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable Matt Flynn  
Chair, Olmsted County  
Board of Commissioners  
151 4th St SE  
Rochester, MN 55904

Commissioner Myron Frans  
Minnesota Department of Revenue  
600 North Robert Street  
St. Paul, MN 55101

Re: Destination Medical Center  
February 15, 2014 Report

Dear Senators, Representatives, Commissioners and Chairs:

Pursuant to 2013 Minnesota Laws, Chapter 143, Article 10 (the "Act"), the Destination Medical Center Corporation (the "DMCC") and the City of Rochester (the "City") must jointly submit a report by February 15<sup>th</sup> of each year with respect to the status of the Destination Medical Center initiative.

On behalf of the DMCC and the City, we are pleased to submit this first report, setting forth the progress that has been made since the enactment of the Act.

I. Establishment of the DMCC, Officers

On June 17, 2013, the City gave effect to the Act by adopting a resolution indicating local approval and timely filing it pursuant to Minnesota Statutes Section 645.021, subdivisions 2 and 3.

As required by the Act, the City filed Articles of Incorporation establishing the DMCC as a non-profit corporation in the State of Minnesota on July 23, 2013.

The Act set forth the process for appointing the eight members of DMCC, and specified the appointing authority. Members of the DMCC were timely appointed by the specified appointing authority as follows:

Governor Mark Dayton: Four Members:

Jim Campbell, Retired, Former CEO of Wells Fargo, Minnesota.  
Susan Park Rani, President, Rani Engineering  
R.T. Rybak, Executive Director, Generation Next; Former Mayor of Minneapolis  
Tina Flint Smith, Chair, Destination Medical Center Corporation  
Former Chief of Staff to Governor Dayton

City of Rochester: Two Members

Ardell Brede, Mayor  
Ed Hruska, Rochester City Council

County of Olmsted: One Member

Jim Bier, Olmsted County Board of Commissioners  
Treasurer, Destination Medical Center Corporation

Mayo Clinic: One Member

William George, Professor of Management Practice, Harvard Business School  
Member, Mayo Clinic Board of Trustees  
Former Chair and CEO, Medtronic Corporation

The first meeting of the DMCC Board was convened by Governor Dayton on August 10, 2013. The Act provided that the Board must elect a Chair from among the Governor's appointees. Ms. Smith was elected unanimously to the office of Chair. Jim Bier was subsequently elected to the office of Treasurer.

II. Establishment of the Economic Development Agency

The Act also required the Mayo Clinic ("Mayo") establish a non-profit economic development agency (the "EDA") to provide experience and expertise in developing and marketing the Destination Medical Center. The Act also set forth the characteristics of the members of the governing board of the EDA: it must be comprised of members of the medical community, City and County.

Mayo filed the Articles of Incorporation to establish the EDA on July 18, 2013. The members of the EDA Board of Directors are:

Patricia Simmons, M.D., Chair

Jerry Bell, former President of the Minnesota Twins

Lisa Clarke, Executive Director, EDA; Community Engagement Division  
Chair, Mayo Clinic Department of Public Affairs

Gary Smith, Olmsted County Resident  
President, Rochester Area Economic Development, Inc. (RAEDI)

Wendy Wood, Rochester Resident  
Senior Investment Manager at University of Minnesota Foundation Investment  
Advisors

Srilatta Zaheer, Ph.D.  
Dean, University of Minnesota Carlson School of Management

III. Destination Medical Center Activities to Date

A. Development Plan Process.

The DMCC, working collaboratively with the City, Olmsted County, the EDA and Mayo, has made a strong start in implementing the Act.

In September 2013, the DMCC established specific goals and objectives for the Destination Medical Center initiative and the Development Plan. Simply put, the goals for the project are to create a comprehensive strategic plan, and over the life of the project, to leverage \$585 million in eligible public funds in order to attract \$5 billion in private investment, create 35,000-45,000 new jobs, generate \$7.5 billion to \$8.5 billion in net new tax revenue, and achieve the highest quality patient, visitor and resident experience.

The creation of the Development Plan is the first step to accomplish these goals. It will be the strategic framework for the project, establishing a comprehensive business and economic development strategy. As described in the Act, the Development Plan must address several items, including land use, transportation and infrastructure planning, market research, funding priorities, business and economic development and market strategies.

To procure the required expertise for the Development Plan, the DMCC authorized the EDA to initiate a request for proposal process in the following areas: master planner, transportation planner, infrastructure planner, market consultant and economic fiscal consultant. The EDA issued the requests for proposals, received and reviewed the responses, and conducted interviews. Representatives of the EDA, DMCC, City and County participated in the interviews. Upon receiving the recommendations from the EDA, the DMCC approved a short list of respondents as qualified. The EDA is in the process of negotiating final terms with the successful respondents and the work is anticipated to begin in March 2014.

B. Financial Matters.

The DMCC approved its 2014 funding request and transmitted it to the City, along with the 2014 budget and workplan. The next step is for the City to consider the DMCC funding request, which is scheduled for February 19<sup>th</sup>. The DMCC has appointed Dale Martinson to act



as Assistant Treasurer to the DMCC. Mr. Martinson is the Director of Finance and Information Technology for the City. In addition, the City will act as fiscal agent for the DMCC.

On July 23, 2013, Olmsted County approved a wheelage tax and ¼% sales tax to support the County's portion of funding contemplated by the Act.

C. Community Outreach.

Ensuring that the community is a full participant in the Destination Medical Center initiative is a paramount concern. In November, the DMCC approved a community outreach plan for the Development Plan phase of the work that will be fully implemented throughout the year, and encourages maximum public engagement and participation. For the first part of 2014, the community outreach planning will involve establishing a design framework, and identifying and creating an inventory of resources and planning efforts in eight core focus areas. More than 80 residents have volunteered for teams that will develop a framework to gather information, opinions and suggestions. To date, there have been 200 meetings or public forums, events on social media and other outreach efforts. Over 100 volunteer ambassadors have been recruited to assist with outreach in the community. Information on the next public forum, scheduled to occur in late March or April, will be available on the DMCC website.

D. WMBE/Small Business Utilization.

The DMCC and City are committed to increasing opportunities for the growth of employment and WMBE/Small Business utilization. The Development Plan will have a specific focus on this priority, and will include strategies to ensure increased opportunities and growth.

In addition, the Act provides that for all public infrastructure projects, the City must make every effort to hire and cause the construction manager and any subcontractors to employ women and members of minority communities, and must establish goals for construction projects. The City is currently working on its plan to comply with the Act.

E. Websites.

The DMCC has established a website: [www.dmcccorporation.org](http://www.dmcccorporation.org). The website contains the regular meeting schedule, meeting agendas, minutes and other information on DMCC activities. The EDA has also created a website: [www.dmcmn.org](http://www.dmcmn.org) which contains general information on the project, including information about the community outreach process. The City's website, [www.rochestermn.gov](http://www.rochestermn.gov), also has a link to the DMCC website.

F. DEED Agreement, Transit Aid Agreement.

In order to qualify for general State infrastructure aid, the Act requires that the City and the Commissioner of Department of Employment and Economic Development enter into an agreement that will govern the State funding. The City has taken the lead role in negotiating and drafting the agreement with DEED as well as an agreement with the County, and those discussions are underway.

IV. Specific Elements Required to Be Included in the Report

The Act requires that certain elements be included in this annual report. Some of what is presented here has been referenced above.

A. "The Development Plan and any proposed changes to the Development Plan."

As noted above, the primary work of the EDA in 2014 will be to prepare the Development Plan for submission to the DMCC and to the City. The draft Development Plan is anticipated to be submitted for consideration and approval in early 2015.

B. "Progress of projects identified in the Development Plan".

Because the work to prepare the Development Plan is just getting underway, there are no projects yet identified or approved in the Development Plan.

C. "Actual costs and financing sources, including the amount paid under Minnesota Statutes Section 469.47, and required local contributions of projects completed in the previous two years by the DMCC, City, Olmsted County and Mayo."

As noted above, because the Development Plan is just getting underway, there is nothing to report under this section.

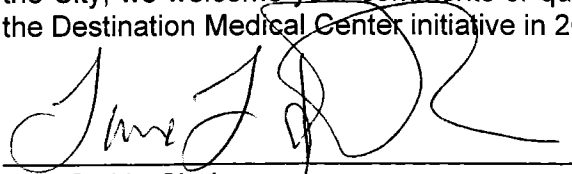
D. "Estimated costs and financing sources for projects to be started in the next two years by the DMCC, City, Olmsted County and Mayo."

Mayo Clinic has announced its first expansion related to the Destination Medical Center initiative: a \$72 million expansion of the St. Mary's campus. In addition, there has been significant third party interest from developers and other entities considering investment opportunities in Rochester. The Act requires that an annual certification of private investment by Mayo or other private investors be made to DEED by April 1 of each year.

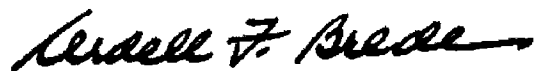
E. "Debt service schedules for all outstanding obligations of the City for debt issued for projects identified in the plan."

As noted above, because the Development Plan is just getting underway, no projects have been identified or approved in the Development Plan.

Thank you for your consideration of this annual report. On behalf of both the DMCC and the City, we welcome your comments or questions. We look forward to substantial progress on the Destination Medical Center initiative in 2014.



Tina Smith, Chair  
Destination Medical Center Corporation



Ardell Brede, Mayor  
City of Rochester