File #: 15-058-O, **Version:** 1

AN ORDINANCE GRANTING A CONCURRENT USE PERMIT FOR UNDERGROUND UTILITIES IN THE RIGHT-OF-WAY OF FIFTH AVENUE EAST BETWEEN SECOND STREET AND FOURTH STREET (ESSENTIA HEALTH).

CITY PROPOSAL:
The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to Essentia Health, and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) Private underground utilities to provide emergency power generation and communications wiring for the Essentia campus, to include the following: two underground concrete duct banks, electrical conduit, and a 4" PVC sump drain in the right of way of 5th Avenue E, approximately between the E 3rd Street alley and just south of E 4th Street, as shown in the exhibits.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than $1,500,000 for bodily injuries and in an amount not less than $500,000 for property damage or $1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and

(c) The insurance policy shall be approved by the city attorney; and

(d) The policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(e) The city of Duluth shall be named as an additional insured; and

(f) The certificate shall also reference this ordinance by its ordinance number.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its

officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to hold harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public right of way or easement shall be limited to the designated area described in Section 1 above and further shown on the exhibits; and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

(c) Maintenance of the duct banks, conduit, and sump drain, and all other utilities in this right of way owned by permittee, will be the responsibility of the permittee, including performing locates when needed.

(d) Permittee shall provide the City with as-built information once improvements are installed.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(b) The failure of the permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This ordinance grants Essentia Health a concurrent use permit for right of way of 5th Avenue E, between the E 3rd Street alley and E 4th Street, for private underground

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utilities providing emergency power and communications.
On June 9, 2015, the planning commission held a public hearing on the proposal, and voted 8 yeas, 0 nays, and 0 abstentions to recommend that the city council approve the request for a concurrent use of streets.

Petition received: May 1, 2015
Action deadline: August 29, 2015

Applicant
Essentia Health
Attn: John Rice
502 E 2nd Street
Duluth, MN 55805

PL 15-076

City of Duluth

411 West First Street
Duluth, Minnesota 55802

Master

File Number: 15-058-O

File ID:	15-058-O	**Type:**	Ordinance	**Status:**	Passed
Version:	1	**Agenda Section:**		**Committee:**	Planning and Economic Development
				File Created:	07/09/2015
Subject:				**Final Action:**	07/27/2015

Title: AN ORDINANCE GRANTING A CONCURRENT USE PERMIT FOR UNDERGROUND UTILITIES IN THE RIGHT-OF-WAY OF FIFTH AVENUE EAST BETWEEN SECOND STREET AND FOURTH STREET (ESSENTIA HEALTH).

Internal Notes: From Jenn

Sponsors:		**Enactment Date:**	07/27/2015
Attachments:	Legal Description, Exhibit, Staff Report and Attachments	**Enactment Number:**	10395
Recommendation:		**Hearing Date:**	
Drafter:	cstafford@duluthmn.gov	**Effective Date:**	09/10/2015

Approval History

Version	Date	Approver	Action
1	07/10/2015	Keith Hamre	Approve
1	07/10/2015	Gunnar Johnson	Approve

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	07/20/2015	read for the first time				
	Action Text:	This Ordinance was read for the first time.					
	Notes:						
1	City Council	07/27/2015	adopted				Pass
	Action Text:	A motion was made that this Ordinance be adopted. The motion carried by the following vote:					
	Notes:						

Yea: 8 Councilor Filipovich, Councilor Fosle, Councilor Gardner, Councilor Hanson, Councilor Julsrud, Councilor Krug, Councilor Russ and Councilor Sipress

Absent: 1 President Larson

1 Mayor 07/27/2015 approved

Action Text: This Ordinance was approved.

Notes:

1 City Clerk 07/27/2015 attest

Action Text: This Ordinance was attest.

Notes:

1 City Council 08/31/2015