

EXHIBIT 1

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this “Easement Agreement”) is made and entered into as of this ____ day of _____, 2023, by and between St. Luke’s Hospital of Duluth, a Minnesota nonprofit corporation (“Grantor”) and the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (“Grantee”).

WHEREAS, Grantor is the owner of the real property located at 1012 E. 2nd St. in the City of Duluth, St. Louis County, Minnesota (the “Premises”), which Premises is legally described on Exhibit A attached hereto and incorporated herein; and

WHEREAS, Grantor receives hot water service (the “Hot Water Service”) from Grantee’s district heating system (the “District Energy System”) for heating and other purposes at the building located on the Premises (the “Building”); and

WHEREAS, in order for Grantee to expand the provision of Hot Water Service to the Premises, and enable the connection of the Building’s heating system to the District Energy System, certain piping, equipment and other appurtenances thereto owned by Grantee (collectively, the “Hot Water Extension”) are being (or have been) installed and/or constructed below and/or in the basement of the Building; and

WHEREAS, in order to facilitate the installation and construction of the Hot Water Extension, Grantor and Grantee have entered into that certain Agreement for Construction of Hot Water Extension Supporting Medical Entity East, Regional Exchange District Project, dated _____, 2023 (the “Development Agreement”); and

WHEREAS, the Hot Water Extension is being (or has been) constructed with State of Minnesota appropriation bond proceeds authorized under the Regional Exchange District legislation, Minnesota Laws 2019, 1st Special Session Chapter 6, Article 10, as amended by Section 1 of Laws of Minnesota 2021, 1st Special Session Chapter 9; and

WHEREAS, pursuant to the Development Agreement, and in accordance with the terms set forth herein, Grantor desires to grant Grantee a utility easement over the Premises and the

Building (collectively, the “Property”) in trust for the benefit of the public and at no cost to the Grantee.

NOW, THEREFORE, in consideration of the foregoing and the representations, covenants, and agreements of the parties set forth herein and other good and valuable consideration, the receipt and sufficiency of which each party acknowledges, Grantor and Grantee hereby represent, covenant, and agree as follows:

1. Easement Grant. Grantor does hereby grant and convey to Grantee, its successors and assigns, the following easement (the “Easement”):

A permanent nonexclusive easement in, under and through the Property for the purposes of accessing, inspecting (including reading of meters), operating, maintaining, repairing, replacing, reconstructing, or improving the Hot Water Extension.

Grantee shall have the right to enter onto such portions of the Property as are necessary or reasonably appropriate to allow Grantee to exercise its rights, and perform its obligations, hereunder; provided that, except during the continuance of an emergency, Grantee shall provide to Grantor reasonable notice prior to such entry. Grantor acknowledges that: (a) the Hot Water Extension will connect to the District Energy System located in adjacent rights-of-way, in connection with which it will cross the boundary line of the Premises; and (b) the District Energy System services properties in addition to the Property. Grantee shall use the Hot Water Extension only to serve the Property and other properties located on Grantor’s campus.

2. Grantee Obligations.

(a) Grantee, at its cost and expense, shall be responsible for the inspection, operation, maintenance, repair, reconstruction, and improvement (as applicable) of the Hot Water Extension. Grantor shall not be obligated to inspect, operate, maintain, repair, reconstruct, and/or improve the Hot Water Extension.

(b) In satisfying its obligations under Subsection 2(a), Grantee shall access, inspect, operate, maintain, repair, reconstruct, and/or improve the Hot Water Extension:

(i) in accordance with: (A) all standards established by Grantee or any applicable regulatory agency for the District Energy System and/or components thereof; (B) all requirements imposed by any policy of insurance required to be maintained (or actually maintained) by either party; and (C) all applicable laws; and

(ii) in a manner such that the Hot Water Extension: (A) is safe and in good working order; (B) does not pose any hazard to the Property; (C) does not increase the cost of, or cause the cancellation of, insurance maintained by Grantor; and (D) does not pose any hazard to Grantor and/or its agents, contractors, employees, invitees, or licensees (collectively, including Grantor, the “Grantor Parties”).

(c) Grantee promptly shall: (i) repair, in a good and workmanlike manner, any damage caused as a result of accessing, inspecting, operating, maintaining, repairing, reconstructing, and/or improving the Hot Water Extension; and (ii) cause the Property to be restored to the same condition as existed prior to such damage.

(d) Notwithstanding anything to the contrary set forth herein, any replacements or reconstructions of, or improvements of or to, the Hot Water Extension shall be subject to the reasonable approval of Grantor, and shall be made in accordance with plans approved by Grantor.

3. Insurance. Grantor shall continue to maintain its customary policies of casualty and liability insurance with respect to the Property, and Grantee shall be named as an additional insured on the policy of liability insurance maintained by Grantor. Grantor shall provide certificates of insurance to evidence said coverage to Grantee upon request. Grantee, or its assigns, shall maintain policies of casualty and liability insurance with respect to the Hot Water Extension and the exercise of its rights under this Easement Agreement with coverages consistent with those customarily maintained by Grantee in connection with the District Energy System and the facilities comprising a portion thereof or connecting thereto, and Grantor shall be named as an additional insured on the policy of liability insurance maintained by Grantee, or its assigns. Grantee shall provide certificates of insurance to evidence said coverage to Grantor upon request. In lieu of the above-required insurance policies and at Grantee's sole discretion, Grantee may maintain equivalent self-insurance, and provide proof thereof to Grantor upon request.

4. Events of Default. If: (a) either party fails to perform any obligation to be performed by it pursuant to this Easement Agreement; and (b) such failure continues for 30 days after receipt of written notice from the other party; then such failure shall constitute an "Event of Default"; provided that, if such failure is of a nature that it cannot be cured within 30 days despite the exercise of reasonable diligence, then such failure shall not constitute an Event of Default so long as the failing party commences to cure such failure within 15 days after receipt of the above-referenced notice and diligently pursues such cure to completion.

5. Remedies. During the continuance of an Event of Default by a party, the other party's remedy shall be limited to the institution of an action in equity to compel specific performance by, or obtain an injunction against action by, the defaulting party. If the defaulting party fails to comply with an order for specific performance or an injunction, then the non-defaulting party's remedies shall also include a right to initiate an action in law and equity to recover such amounts and any damages (not including consequential or punitive damages) caused by the defaulting party's failure to comply with an order for specific performance or an injunction. An Event of Default by a party shall not be grounds for termination of this Easement Agreement by the other party.

6. Indemnification. To the fullest extent permitted by law:

(a) Grantee shall indemnify, defend, and hold harmless the Grantor Parties from and against any and all damages, losses, claims, demands, suits, and liabilities, including, without limitation, those involving injury to or death of any person and/or damage to property (the "Claims") arising from, or in connection with:

(i) Grantee and/or its agents, contractors, employees, invitees, or licensees (collectively, including Grantee, the “Grantee Parties”) accessing, inspecting operating, maintaining, repairing, reconstructing, and/or improving the Hot Water Extension, or otherwise exercising its easement rights hereunder; or (ii) any default by Grantee hereunder; provided that the foregoing indemnification obligation shall not apply to Claims arising solely from or as a result of the acts or omissions of any Grantor Party.

(b) Grantor shall indemnify, defend, and hold harmless the Grantee Parties from and against any and all Claims arising from, or in connection with: (i) Grantor Parties use or maintenance of the Property; or (ii), any default by Grantor hereunder; provided that the foregoing indemnification obligation shall not apply to Claims arising solely from or as a result of the acts or omissions of any Grantee Party.

7. Encumbrances. After the date hereof, Grantor may not create or allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies, and that is not being actively contested to attach to the Easement, Grantor’s ownership interest in the Easement, or Grantee’s interest in the Easement, without prior written consent of the Commissioner of Minnesota Management and Budget (the “Commissioner”). Notwithstanding the foregoing, this Section shall not operate to prohibit a lien or encumbrance against Grantor’s fee interest in the Property (or any part thereof), if the enforcement thereof would not disturb or otherwise negatively affect Grantee’s interest in the Easement and/or its rights under this Easement Agreement.

8. Sale. In the event that Grantee determines that the Easement is no longer: (a) usable or needed for the District Energy System; or (b) required by any applicable agreement or authority; then Grantee shall sell its interest in the Easement on the conditions that: (a) such sale is for fair market value upon terms authorized by law and approved by the Commissioner in their reasonable discretion; (b) Grantor has a right of first refusal in connection with which it has a period of 60 days after receipt of notice from Grantee of such an intended sale to elect in writing to purchase the Easement for fair market value and upon such approved terms; and (c) Grantor has approval rights over the purchaser of the Easement (the “Easement Purchaser”), which approval shall not be withheld unreasonably if: (i) the proposed Easement Purchaser is an agency, board, or instrumentality of Grantee; (ii) the sale to the Easement Purchaser will not result in any material change in the operation of the Hot Water Extension or receipt of the Hot Water Service; (iii) the Easement Purchaser in writing assumes and agrees to perform all obligations of Grantee under this Easement Agreement and the Development Agreement; (iv) Grantor is satisfied that the Easement Purchaser will be able to perform all such obligations; and (v) all parties whose consent is required for such sale have provided such consent in writing. For purposes of this Easement Agreement, “fair market value” shall mean (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that any and all mortgage liens or encumbrances on the Easement (as opposed to the Property) being sold, which negatively affect the value of the Easement, will be released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice with the provision that any and all mortgage liens or encumbrances on the Easement (as opposed to the Property), which negatively affect the value of the Easement, will be released at the time of acquisition by such purchaser. Grantee shall pay the

cost of the appraisal. Notwithstanding the foregoing, the parties may agree to an alternative appraisal process at the time of sale, subject to the Commissioner's approval.

9. Retained Rights. Grantor reserves the right to use the Property for any purpose that does not interfere unreasonably with the rights of Grantee under this Easement Agreement.

10. Notices. All notices or other communications pursuant or with respect to this Easement Agreement shall be in writing, and shall be deemed to have been delivered either: (a) if hand delivered, on the date of delivery; (b) if sent by reputable overnight carrier, one day after being deposited with such carrier; or (c) if sent by U.S. Mail, prepaid and by registered or certified mail, return receipt requested, three days after being deposited with the U.S. Mail; in each case to the applicable party as follows:

In the case of Grantor: St. Luke's Hospital of Duluth, Minnesota, 920 East First Street, Duluth, MN 55805, Attention: President/CEO; or

In the case of Grantee: City of Duluth, 411 West First Street, Room 120 City Hall, Duluth, MN 55802, Attn: Chief Financial Officer.

Either party may change its notice address by delivery of written notice to the other party in accordance with this Section.

11. Grant Agreement. Whenever there shall exist a conflict between the provisions of this Easement Agreement and that certain Grant Agreement by and between Grantee and the State of Minnesota, Department of Employment and Economic Development dated June 24, 2019 (the "Grant Agreement"), the Grant Agreement shall prevail.

12. Amendments. No amendment, modification, or waiver of any condition, provision, or term of this Easement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the Commissioner, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

13. Miscellaneous. The Easement shall extend to and bind the successors and assigns of Grantor and Grantee and shall run with the land. This Easement Agreement shall be governed by the laws of the State of Minnesota, and all terms, conditions and covenants herein shall be interpreted in accordance therewith. Each of Grantor and Grantee represents to the other that the individuals executing this Easement Agreement on behalf of Grantor or Grantee, respectively, have the requisite authority to execute this Easement Agreement, and to bind Grantor or Grantee, respectively, hereto.

[Reminder of page intentionally left blank; signature pages follow.]

IN WITNESS whereof, the parties have each caused this Easement Agreement to be executed effective as of the date first written above.

GRANTOR:

ST. LUKE'S HOSPITAL OF DULUTH

By: _____

Its: _____

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____ the _____ of ST. LUKE'S HOSPITAL OF DULUTH, a Minnesota nonprofit corporation, on behalf of the corporation.

Notary Public

EXHIBIT A

**EASEMENT AGREEMENT
Premises Legal Description**

The following lands in St. Louis County, Minnesota:

That tract of land in PORTLAND DIVISION OF DULUTH, enclosed within the following described boundary lines, to-wit:

- (a) The center line of Tenth Avenue East, as such avenue was dedicated by the original plat of said Portland Division of Duluth, which plat was filed for record in the office of the Register of Deeds of said County, on April 23, 1870, in Book A of Plats, on page 91 thereof.
- (b) The extended E'ly side line of Lot 4, Block 40, Portland Division of Duluth,
- (c) A line drawn parallel to and 55 feet distant in a N'ly direction from the center line of the alleyway in the rear of said Block 40,
- (d) The extended center line of the alleyway between Block 40 and Block 36, Portland Division of Duluth.

AND

Lots 5 and 6, Block 40, PORTLAND DIVISION OF DULUTH

AND

The tract of land enclosed within four boundary lines in PORTLAND DIVISION OF DULUTH, which four boundary lines are as follows:

- 1. The center line of East Second Street;
- 2. The W'ly line as extended, of Lot 7, in Block 40;
- 3. The center line of the alley between Block 40 and Block 36; and
- 4. The E'ly line as extended, of Lot 8, in said Block 40

AND

Lots 9 and 10, Block 40, PORTLAND DIVISION OF DULUTH

AND

The northwest 18.00 feet of the following described lands:

All that part of Block 36 in PORTLAND DIVISION OF DULUTH, according to the plat thereof, on file and of record in the office of the Register of Deeds, in Book A of Plats, page 91, included within the following described boundaries, to-wit: The extended centerline of East First Street; the centerline of Tenth Avenue East; the extended centerline of the alley between said Block 36 and Block 40; and a line drawn parallel with and 10 feet distant Easterly from the Westerly line of Lot 10 in said Block 36. All assuming First Street to run East and West.

AND

That tract of land in PORTLAND DIVISION OF DULUTH enclosed by the boundary lines hereinafter described to-wit: (a) The original centerline of East First Street as such street was dedicated by the original plat of said Portland Division of Duluth, which plat was filed for record in the office of the Register of Deeds on April 3, 1870 in Book A of Plats on page 91 thereof (b) The extended centerline of the alley between Blocks 36 and 40 in said Portland Division of Duluth (c) An extended line parallel with and distant 15 feet W'ly from the E'ly line of Lot 10 in said Block 36, Portland Division of Duluth (d) The E'ly line of Lot 11 in said Block 36, Portland Division of Duluth

AND also the alley lying between said Blocks 36 and 40, lying: (i) west of a line extending from the northeast corner of Lot 10, said Block 36, to the southeast corner of Lot 10, said Block 40 and (ii) east of a line extending from the northwest corner of Lot 1, said Block 36, to the southwest corner of Lot 1, said Block 40, Portland Division of Duluth.