

EXHIBIT 1

PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is entered into as of January 4, 2018, by and between Ecolibrium3, a non-profit corporation under the laws of the State of Minnesota ("Buyer") and the City of Duluth, a municipal corporation and political subdivision under the laws of the State of Minnesota ("City").

RECITALS

WHEREAS, City owns certain real property in St. Louis County, Minnesota, legally described as:

The East 1/2 of Lot 328, Block 37, DULUTH PROPER, SECOND DIVISION

together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

WHEREAS, Buyer's mission is to inspire and lead change in the community toward an equitable and sustainable future (the "Mission"). Through various programming, Buyer carries out its Mission by creating healthy, efficient, and resilient built environments; building partnerships and enabling participation in the community; and protecting the environment and advancing community sustainability (collectively, the "Services").

WHEREAS, upon completion of certain conditions precedent, Buyer wishes to purchase the Property from City for the purpose of housing its offices to advance its Mission and provide its Services.

WHEREAS, upon completion of certain conditions precedent, City wishes to sell the Property to Buyer pursuant to the authority granted in Duluth City Code Section 2-177.4.

In consideration of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, City and Buyer agree as follows:

1. Purchase. City agrees to sell to Buyer and Buyer agrees to purchase from City, on the terms and conditions set forth in this Agreement, all of City's right, title and interest in the Property.

2. Purchase Price, Closing and Restrictive Covenant.

(A) The purchase price for the Property, which City agrees to accept and Buyer agrees to pay, is \$3,596.00 (the "Purchase Price"), to be paid in cash at Closing (defined below). The closing on the purchase and sale shall occur within 90 days of the effective date of the Ordinance (defined below), at a time and location mutually agreeable to the parties (the "Closing"). In addition to the Purchase Price, as partial consideration for the Property Buyer agrees to permit the Duluth Police Department Citizen Patrol (which currently occupies the Property) to continue to maintain a desk and use the common areas (including bathrooms, conference rooms and similar spaces) within the building on the Property. There shall be no charge to the Duluth Police Department Citizen Patrol for the use of space within the building on the Property. This post-Closing requirement shall

survive the Closing and shall automatically terminate five years from the date of Closing. This post-Closing requirement shall be enforceable by City.

(B) Except as set forth in paragraph 9 below, City shall deliver possession of the Property on the date of Closing. On the date of Closing, Buyer shall pay the Purchase Price to City and City shall deliver a quitclaim deed to Buyer conveying City's interest in the Property to Buyer (the "Deed"). If the Closing has not occurred within 90 days of the effective date of the Ordinance, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of purchase agreement evidencing the cancellation of this Agreement; and (iii), except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

(C) The Deed shall include the following restrictive covenant in favor of City:

This deed is subject to the condition that title to the property shall automatically revert to the grantor in the event that any of the following conditions occur within 60 months of the date of this deed:

- (i) grantee ceases to exist as a legal entity in the State of Minnesota;*
- (ii) grantee stops providing its services in the City of Duluth, Minnesota, which services include creating healthy, efficient, and resilient built environments; building partnerships and enabling participation in the community; and protecting the environment and advancing community sustainability;*
- (iii) grantee attempts to transfer, sell, lease, sublease or otherwise convey any interest of grantee, legal or equitable, in the property; or*
- (iv) grantee shall make any assignment for the benefit of its creditors, or generally not be paying its debts as they become due, or a petition shall be filed by or against grantee under the United States Bankruptcy Code, or grantee shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of any part of the property.*

This restrictive covenant shall run with the land and be enforceable by grantor.

3. Contingencies to City's Obligation to Sell. City's obligation to close on the sale of the Property is contingent on the occurrence of the following (collectively, the "Contingencies"):

(A) City Council passing an ordinance approving the sale of the Property to Buyer under the terms and conditions set forth in this Agreement (the "Ordinance") on or before March 31, 2018; and

(B) if Buyer performs any Remodeling Work (defined below) prior to Closing as permitted by paragraph 9 below, Buyer delivering lien waivers in form acceptable to City dated the date of Closing from all contractors, subcontractors and material suppliers who have

performed work on the Property or provided materials for the Property through the date of Closing.

If the Contingencies are not satisfied within the required time periods set forth above, this Agreement shall automatically terminate and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

4. Utilities, Taxes and Costs. Utilities for the Property shall be prorated between Buyer and City as of the date Buyer takes possession of the Property or as of the date of Closing, whichever occurs first. Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, any title company costs, and any other costs and expenses required to effectuate the purchase and sale contemplated by this Agreement. The parties intend that City will not incur any out of pocket expenses in relation to the purchase and sale contemplated by this Agreement.

5. Title. Buyer may obtain, at Buyer's expense, a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to City with 10 days of receipt of the Title Commitment. At City's election, City may endeavor to fix any title defects prior to Closing, or may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If City fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If City declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to City within 5 days of receiving notice that City will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

6. Statutory Disclosures. City staff handling the sale of the Property on behalf of City have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

7. Buyer Representations. Buyer makes the following representations:

(A) Buyer is a non-profit corporation in good standing under the laws of the State of Minnesota, has the full power and authority to (i) enter into this Agreement and (ii) purchase the Property in accordance with this Agreement. No consent or authorization from any other person, entity or government agency is required for Buyer to enter into and perform Buyer's obligations under this Agreement except as has already been obtained. The execution of the Agreement will not constitute a breach or default under any agreement to which Buyer is bound.

(B) There is no suit, action, legal, administrative or other proceeding or inquiry pending or threatened against Buyer which could affect Buyer's ability to enter into and perform Buyer's obligations under this Agreement. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against Buyer, nor are any such proceedings contemplated by Buyer.

Each of the above representations is material and is relied upon by City. Each of the above representations shall be deemed to have been made as of the Closing and shall survive the Closing.

8. Inspection Contingency. Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 30 days from the date of this Agreement (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property and City shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of City's Director of Planning and Construction Services, or his or her designee. Buyer understands that all Site Inspections done on the Property prior to Closing shall be at the sole risk and expense of Buyer and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from City or any lien against the Property in relation to the Site Inspections. Buyer shall restore the Property to its present condition prior to the end of the Inspection Period (except to the extent that Buyer engages in permitted Remodeling Work, as permitted by paragraph 9 below). The Inspection License shall terminate automatically upon termination of this Agreement. If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to City within 3 days from the end of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

9. Occupancy License.

(A) Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license (the "Occupancy License") between the date of this Agreement and the date of Closing to enter onto the Property with all necessary tools, equipment, and other personal property for the purpose of: (i) performing remodeling work and otherwise improving the Property (the "Remodeling Work") and (ii) occupying the Property for the purpose of providing the Services. All tools, equipment, and other personal property stored on the Property pursuant to the Occupancy License shall be at Buyer's sole risk and City shall not be responsible for the security of or any damage to Buyer's personal property. The extent of the Remodeling Work that may be performed pursuant to the Occupancy License shall be in the sole discretion of City's Director of Planning and Construction Services, or his or her designee. Buyer understands that all Remodeling Work done on the Property prior to Closing shall be at the sole risk and expense of Buyer and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from City or any lien against the

Property in relation to the Remodeling Work. The Occupancy License shall be revocable by City at any time in City's sole discretion and shall terminate automatically upon termination of this Agreement. All Remodeling Work shall be performed in a professional manner and in compliance with all applicable laws and ordinances.

(B) Prior to performing any Remodeling Work, the following conditions must be met to the satisfaction of City:

(i) Buyer shall have obtained all permits or other permissions necessary to conduct the Remodeling Work; and

(ii) proof of the insurance policies required by paragraph 14 below, in form acceptable to City, must be provided to City.

(C) In the event that Buyer performs the Remodeling Work and the Closing does not occur for any reason:

(i) Buyer shall not be entitled to any reimbursement from City or lien on the Property in relation to the Remodeling Work, and all improvements to the Property and items left on the Property shall become the property of City unless City requests that Buyer remove the items, in which case Buyer shall promptly do so;

(ii) at City's election, Buyer shall perform any restoration work required by City, or shall reimburse City for the cost of restoring the Property to its condition prior to commencement of the Remodeling Work; and

(iii) Buyer shall immediately provide City with lien waivers, in form acceptable to City, from all contractors, subcontractors and material suppliers who have performed work on the Property or provided materials for the Remodeling Work, as evidenced by a sworn construction statement from Buyer or Buyer's general contractor.

10. Liens. Buyer shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Property or any part thereof which would materially or adversely affect City's interest in the Property or this Agreement, provided that if Buyer shall first notify City of its intention to do so and post such security as City reasonably deems necessary, Buyer may, in good faith, contest any such mechanic's or other liens filed or established as long as City does not deem its interest or rights in this Agreement or the Property to be subject to foreclosure by reason of such context.

11. Indemnity. Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless City, its officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property. Buyer agrees to assume the benefit and burden of the Property as of the date Buyer takes possession of the Property or as of the date of Closing, whichever occurs first. Promptly after receipt by City of notice of the commencement of any action with respect to which Buyer is required to indemnify City under this Agreement, City shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of

counsel satisfactory to City and the payment of expenses. In so far as such action shall relate to any alleged liability of City with respect to which indemnity may be sought against Buyer, City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 11 shall survive the Closing and cancellation of this Agreement for any reason.

12. No Representations by City. Without limitation, Buyer acknowledges that City has made no representations or warranties (whether express or implied, oral or written) regarding the Property, including but not limited to the value, quality or condition of the Property; the status of title to the Property; the suitability of the Property for any activity or use which Buyer may conduct; the compliance of the Property with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property for a particular purpose; and compliance by the Property with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that City has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 12 shall survive the Closing and cancellation of this Agreement for any reason.

13. No Assignment. The parties acknowledge that City is relying upon the qualifications and identity of Buyer to use the Property to house its offices to advance its Mission and provide its Services for a period no less than 60 months after the date of Closing. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder. If any assignment of Buyer's rights or obligations under this Agreement is approved by City, any such assignee shall explicitly assume the obligations of Buyer under this Agreement and Buyer shall remain principally liable for the performance of Buyer's obligations under this Agreement.

14. Insurance. In the event Buyer wishes to access the Property prior to Closing pursuant to the Occupancy License, Buyer shall first purchase and maintain, or cause to be purchased and maintained, such insurance as will protect Buyer and City against risk of loss or damage to the Property and any other property permanently located or exclusively used at the Property and against claims which may arise or result from the operations conducted in connection with the Remodeling Work and construction of improvements on the Property. Such coverages shall be maintained in favor of City through either the date of Closing or termination of this Agreement, whichever occurs first. Such coverages shall include but shall not necessarily be limited to the following:

(A) *Insurance During Pre-Closing Occupancy.* Buyer, prior to entering on the Property pursuant to the Occupancy License, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not

less than the limits of coverage or liability indicated during the period of construction as follows:

(i) **Property Insurance.** Buyer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Property, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Property, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed One Thousand and No/100ths Dollars (\$1,000.00) per occurrence. Such insurance shall be written in the names of Buyer, City, any subtenant and contractor, as their interest may appear. All contractors, subcontractors, and suppliers and Buyer shall waive all rights against City for damages caused by fire or insured perils.

(ii) **Public Liability Insurance.** Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than Two Million and No/100ths Dollars (\$2,000,000.00) in aggregate for personal injury, bodily injury and death, and for property damage. If per person limits are specified, they shall be for not less than One Million Five Hundred and No/100ths Dollars (\$1,500,000.00) per person and be for the same coverages. Any general contractor shall also require such liability coverage of all subcontractors unless they are insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions;
- f. Worker's Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers' liability coverage shall be maintained in limits of One Hundred Thousand and No/100ths Dollars (\$100,000.00) per employee.

(B) *Requirements for All Insurance.* All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota. The insurance requirements set forth in this paragraph may be met by means of primary coverage or excess coverage.

(C) *Certifications.* Buyer shall be required to supply to City written certifications of insurance as required by City requiring the insurer to give City thirty (30) days' written notice prior to cancellation or modification of said insurance.

15. Miscellaneous. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and

contemporaneous agreements, representations, and understandings between the parties regarding the Property. There are no oral agreements that change this Agreement and no waiver of any of its terms shall be effective unless in a writing executed by the parties. Time is of the essence in all terms of this Agreement. This Agreement binds and benefits the parties and their successors in interest. This Agreement shall be construed under the laws of the state of Minnesota. The representations, warranties, agreements, and obligations of the parties shall survive the Closing. Amendments to this Agreement must be in writing and must be executed by the same officers as executed this Agreement, except that City's Director of Planning and Construction Services is authorized, in his or her discretion, to sign amendments solely to extend timelines set forth in this Agreement up to a maximum of 120 days.

16. Waiver. The failure of either party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

17. Default and Remedies.

(A) *General Events of Default.* The following shall be deemed to be general events of default by Buyer under the terms and conditions of this Agreement to which the remedies set forth in subparagraph (B) below shall be applicable as otherwise set forth in this Agreement.

(i) Buyer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Buyer pursuant to this Agreement and such failure shall continue for a period of twenty calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Buyer of such default or, in the event that such default shall be incapable of cure during said twenty day period, shall have failed to commence to cure said default within twenty days of the date of said notice and to diligently pursue the same to completion.

(ii) Any liens are placed on the Property due to the action or inaction of Buyer which effect or encumber City's interest in the Property or this Agreement.

(iii) Buyer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to Buyer or its business; or Buyer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Buyer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within thirty (30) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Buyer's properties or fails to have dismissed or vacated within thirty (30) days after the appointment without the consent or acquiescence of Buyer or any trustee, receiver or liquidator of any material part of Buyer's properties.

(B) *General Remedies.* Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Buyer:

(i) Seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by City as a result of Buyer's default.

(ii) Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Buyer's violation of the terms and conditions of this Agreement or to compel Buyer's performance of its obligations hereunder.

(iii) Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

(C) *Non-Waiver.* The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

(D) *Remedies Cumulative.* Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

(E) *Attorneys' Fees.* In the event that either party is in default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

18. Notices. Notices sent pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City

City of Duluth

Attn: Property and Facilities Manager

1532 W. Michigan Street

Duluth, MN 55806

Buyer

Ecolibrium3

Attn: Executive Director

2304 W. Superior Street

Duluth, MN 55806

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below.

Dated: January 4, 2018.

BUYER:

ECOLIBRIUM3

By: Jodi Slick

Printed Name: Jodi Slick

Its: CEO

SELLER:

CITY OF DULUTH

By: _____
Its Mayor

Attest: _____
Its City Clerk

Date Attested: _____

Countersigned:

By: _____
Its Auditor

Approved as to form:

By: _____
Its City Attorney