

Exhibit 1

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “**Agreement**”) is made as of the date of approval of this Agreement by the City Council of the City of Duluth (the “**Effective Date**”), by and between the trustees of the RICHARD A. PETERSON REVOCABLE TRUST UNDER AGREEMENT DATED DECEMBER 30, 2008 (“**Seller**”) and the CITY OF DULUTH, a municipal corporation and political subdivision under the laws of the State of Minnesota (“**City**” or “**Buyer**”).

RECITALS

A. Seller is the owner of vacant real property in Duluth, St. Louis County, Minnesota legally described on the attached **Exhibit A** (the “**Real Property**”). Seller has agreed to convey the Property (as hereinafter defined) to City and City is desirous of purchasing the same.

B. Seller desires to sell and City desires to purchase the Property pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, and other good and valuable consideration, the receipt, sufficiency and mutuality of which are acknowledged, City and Seller agree as follows:

- 1.0 Property To Be Purchased. Subject to compliance with the terms and conditions of this Agreement, Seller shall sell to City and City shall purchase from Seller the following (collectively, the “**Property**”):
 - (a) the Real Property;
 - (b) all improvements located on the Real Property, if any; and
 - (c) All fixtures, fittings, and personal property owned by Seller and now or hereafter attached to, located at or placed in the improvements on the Property and used or useful in connection with the maintenance, management or operation thereof, if any.
- 2.0 Purchase Price. The purchase price to be paid by City for the purchase of the Property shall be Four Hundred Thousand and no/100 Dollars (\$400,000.00) (the “**Purchase Price**”), to be paid in cash at Closing (defined below), plus or minus pro-rations and adjustments as set forth in this Agreement.
- 3.0 Closing Date and Grant Financing Contingency. The closing of the purchase and sale contemplated by this Agreement (the “**Closing**”) shall occur on or before June 2, 2020 (the “**Closing Date**”) or such earlier date as may be agreed upon by the parties. The Closing shall take place at the office of First American Title Insurance Company-Consolidated Title & Abstract Company (“**Title**”) in Duluth, Minnesota, or at such other place as the parties shall mutually agree upon. Seller agrees to deliver possession of the Property to City on the Closing Date. City shall be entitled to walk through the Property on the Closing Date to ensure that the condition of the Property has not materially changed since the Effective Date. Notwithstanding anything in this Agreement to the contrary, City may terminate this Agreement in the event that it is unable to obtain the full amount of the grant funds it intends

to use to purchase the Property (the “**Grant Funds**”) on or before the Closing Date. Seller agrees to fully cooperate with City’s efforts to obtain the Grant Funds, including providing the information required by Minn. Stat. 97A.056, subd. 13(e).

4.0 Evidence of Title.

- (a) As soon as practicable after December 1, 2019, City shall order, at City’s sole cost and expense, a commitment from Title to issue an ALTA Owner’s Policy of Title Insurance (the “**Title Policy**”), in the amount of the Purchase Price, to insure City’s title to the Property, including copies of documents referenced in Schedule B (collectively, the “**Title Commitment**”). The Title Commitment shall have an effective date of no earlier than the Effective Date. The Title Commitment shall include affirmative coverages for appurtenant easements, if any.
- (b) As soon as practicable after December 1, 2019, City may order, at City’s sole cost and discretion, an ALTA/ACSM survey of the Property prepared by a registered land surveyor in form acceptable to City (the “**Survey**”). The Survey and the Title Commitment are referred to collectively in this Agreement as the “**Title Evidence.**”

5.0 City's Objections to Title. Within thirty days after receiving the last of the Title Evidence, City shall make any written objections (the "**Objections**") to the form or content of the Title Evidence. Any matter disclosed by the Title Evidence and not objected to by City shall be a "**Permitted Exception.**" Seller shall use its best efforts to attempt to cure or satisfy the Objections within sixty days after receipt of the Objections, during which period the Closing will be postponed as necessary. If Seller fails to cure the Objections within such sixty day period, City will have the option to (a) terminate this Agreement (without either party being deemed at fault); or (b) waive the Objections and proceed to Closing (and all uncured Objections shall be deemed Permitted Exceptions). City shall exercise its option to terminate under this Section 5.0 by delivering written notice to Seller within ten days after the expiration of the 60-day period. If City fails to deliver notice of termination, City shall be deemed to have waived the Objections. City agrees that Seller need not remove liens, mortgages, deeds of trust, trust deeds, security interests or contract interests affecting the Property constituting Objections prior to Closing, provided that (i) Title shall, at Closing, be directed to disburse funds constituting the Purchase Price to liquidate the indebtedness secured or evidenced by such liens, mortgages, deeds of trust, security interests or contract interests; and (ii) the Title Policy shall insure over all liens, mortgages, deeds of trust, security interests and contract interests.

6.0 City’s Conditions To Closing. The Closing of the transaction contemplated by this Agreement and the obligation of City to purchase the Property shall be subject to the following conditions:

- (a) Documents. Within thirty days of the Effective Date, Seller shall deliver to City those documents listed on the attached **Exhibit B** which are in Seller’s reasonable control or possession. City shall have determined, on or before the Contingency Date (defined below), that it is satisfied, in its sole discretion, with its review and analysis of the documents listed on **Exhibit B** as well as any other documents deemed

necessary by City, including all agreements entered into by Seller regarding the Property.

- (b) Inspection. City shall have determined on or before the Contingency Date that it is satisfied, in its sole discretion, with the condition of the Property. From and after the Effective Date, City, and its agents, employees, contractors and invitees, may, following reasonable notice to and cooperation with Seller, enter upon the Property in order to perform testing and inspections as City may deem necessary including, without limitation, environmental testing and inspections, provided that neither City nor its agents shall engage in any intrusive testing without the prior written consent of Seller which consent shall not be unreasonably withheld, conditioned or delayed. To the extent permitted by law, City agrees to indemnify, defend and hold Seller harmless from and against any and all losses, claims, causes of action, liabilities and costs of defense incurred by Seller arising out of the actions of City, its agents, employees, contractors or invitees in the performance of its inspection of the Property and during any access to the Property. City and its agents shall comply with all applicable laws and regulations with respect to the inspection and access and shall refrain from interfering with Seller's use of the Property. City shall assume all liability for any damages to Property or injury to persons resulting from, arising out of or incurred in connection with any inspection or access to the Property by City or its agents.
- (c) Intentionally Omitted.
- (d) Appraisal. On or before the Contingency Date, City shall have received an appraisal of the Property in an amount equal to or greater than the Purchase Price. Seller acknowledges that if the appraisal values the Property at less than the Purchase Price, City will not be able to obtain the Grant Funds and City may terminate this Agreement pursuant to this Section.
- (e) Representations. Seller's representations in this Agreement shall be true at the time of Closing as though such representations were made at such time.
- (f) Title. Title to the Property shall have been accepted by City pursuant to the provisions of Section 5.0 of this Agreement and City shall have received the Title Policy, or a suitably marked up Title Commitment dated and initialed by Title, insuring City's title to the Real Property subject to the Permitted Exceptions and in form acceptable to City.

The contingency date shall be April 30, 2020 (the "**Contingency Date**"). If any of the conditions set forth at Sections 6.0 (a)-(d) have not been satisfied or waived prior to the Contingency Date, this Agreement may be terminated, at the option of City, by written notice from City to Seller delivered to Seller no later than the Contingency Date. If any of the conditions set forth at Sections 6.0(e) or (f) have not been satisfied or waived prior to the Closing Date, this Agreement may be terminated, at the option of City, by written notice from City to Seller delivered to Seller no later than the Closing Date. All of the contingencies

set forth in Section 6.0 of this Agreement are for the sole and exclusive benefit of City and City shall have the right to unilaterally waive any contingency by written notice to Seller.

6.1 Seller's Conditions To Closing. The Closing of the transaction contemplated by this Agreement and the obligation of Seller to sell the Property shall be subject to the following conditions:

- (a) Representations. City's representations in this Agreement shall be true at the time of Closing as though such representations were made at such time.
- (b) Performance by City. City shall have performed all of its obligations under this Agreement.

If the conditions set forth at 6.1(a) and (b) have not been satisfied or waived prior to the Closing Date, this Agreement may be terminated, at the option of Seller, by written notice from Seller to City delivered to City no later than the Closing Date. All of the contingencies set forth in Section 6.1 of this Agreement are for the sole and exclusive benefit of Seller and Seller shall have the right to unilaterally waive any contingency by written notice to City.

7.0 Representations By Seller. Seller makes the following representations to City:

- (a) The individuals executing this Agreement on behalf of Seller have the requisite authority to execute this Agreement and such other documents as are contemplated or to be delivered by Seller, and to bind Seller thereto; and Seller has the full and complete authority to sell the Property.
- (b) Seller is not a foreign person, foreign partnership, foreign trust or foreign estate as those terms are defined in Section 1445 of the Internal Revenue Code.
- (c) There have been no bankruptcy or dissolution proceedings involving Seller during the time Seller has had any interest in the Property, there are no unsatisfied judgments or state or federal tax liens of record against Seller, and there have been no labor or materials furnished to the Property for which payment has not been paid.
- (d) To Seller's knowledge, there are no unrecorded mortgages, contracts, purchase agreements, options, rights of first refusal, leases, easements or other agreements or interests relating to the Property.
- (e) There are no persons in possession of the Property other than Seller and the tenants, if any, identified to City as required by Exhibit B.
- (f) Seller has not received notice of any new public improvement project(s), the cost of which a governmental entity may assess against the Property.
- (g) To Seller's knowledge, the Property is not in violation of any statute, law, ordinance or regulation, and there is no action, litigation, governmental investigation,

condemnation or administrative proceeding of any kind pending or, to Seller's best knowledge, threatened, against or involving any portion of the Property.

- (h) To Seller's knowledge, Seller is not in default in the performance of any of Seller's obligations under any easement agreement, covenant, condition, restriction, or other instrument or agreement relating to the Property.
- (i) Seller does not know of any "wells" on the Real Property within the meaning of Minn. Stat. §103I. This representation is intended to satisfy the requirements of the statute.
- (j) There are not now, nor to Seller's knowledge have there ever been underground or above ground storage tanks of any size or type located on the Property nor any Hazardous Substances (defined below) located on the Property in violation of applicable governmental requirements, and the Property has not been used in connection with the generation, disposal, storage, treatment or transportation of Hazardous Substances in violation of applicable governmental requirements. To Seller's knowledge, no activity has been undertaken on the Property that would cause or contribute to the discharge of Hazardous Substances or of fluids into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions that would require a permit under any federal or state law or local ordinance. For purposes of this Agreement, the term "**Hazardous Substances**" includes but is not limited to substances defined as "hazardous substances," "toxic substances," "hazardous wastes" "pollutants" or contaminants" under federal or Minnesota law. The term "hazardous substance" shall also include asbestos, polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and synthetic gas).
- (k) Solely for the purpose of satisfying the requirements of Minn. Stat. §115.55, Seller certifies that there is no "subsurface sewage treatment system" within the meaning of that statute on or serving the Property.
- (l) To the best of Seller's knowledge, methamphetamine production has not occurred on the Property.

The foregoing representations shall be accurate on the Effective Date and on the date of Closing. If, at any time prior to the Closing, Seller acquires actual knowledge of events or circumstances which render the representations and warranties set forth in this section inaccurate in any respect, Seller shall immediately notify City in writing and City shall have right to terminate this Agreement. Seller will indemnify City, its successors and assigns, against and will hold City, its successors and assigns harmless from, any loss, liability, costs, expenses or damages, including reasonable attorney's fees, that City incurs because of Seller's breach of any of the above representations, the inaccuracy of any of the above representations when made or remade, or Seller's failure to notify City, before the Closing, if the representations set forth above become inaccurate and Seller actually knows of such

inaccuracy. The representations, warranties and indemnification set forth above shall survive the Closing of this transaction and Seller's delivery of the Deed.

7.1 Representations by City. City makes the following representations to Seller:

- (a) The individuals executing this Agreement on behalf of City have the requisite authority to execute this Agreement and such other documents as are contemplated or to be delivered by City, and to bind City thereto; and City has the full and complete authority to purchase the Property.
- (b) City shall promptly pay when due any and all charges for engineering, surveying or other studies, reports, assessments or investigations which are commissioned or requested by City and not the responsibility of Seller under this Agreement.

The representations contained in this Section shall be true and correct on the Effective Date and the Closing Date.

8.0 Real Estate Taxes and Special Assessments. Seller and City shall pay the real estate taxes and special assessments as follows:

- (a) At or before Closing, Seller shall pay all real estate taxes and special assessments payable therewith and any penalties and interest thereon due and payable with respect to the Property in all years prior to the year of Closing, including all deferred taxes attributable to years prior to the year of Closing.
- (b) City and Seller shall prorate the real estate taxes and special assessments payable therewith due and payable in the year of Closing, on a per diem basis using a calendar year, to the date of the Closing.
- (c) City shall pay all real estate taxes and special assessments payable therewith due and payable in the years following the year of Closing.

9.0 Closing Documents. At or prior to Closing, the parties shall execute and deliver the following:

- (d) A trustee's deed (the "**Deed**"), in substantially the form of the Minnesota Uniform Conveyancing Blank, subject to the Permitted Exceptions.
- (e) Certificate of Trust and Affidavit of Trustee by Seller, in form acceptable to Title, authorizing the conveyance of the Property to City;
- (f) Resolution by City, in form acceptable to Title, authorizing the acquisition of the Property by City;
- (g) Any documents reasonably required by Title;

- (h) A certificate (or statutory statement on the Deed) signed by Seller warranting that there are no “Wells” on the Property within the meaning of Minn. Stat. Section 103I, or if there are “Wells”, a Well Certificate in the form required by law;
- (i) If the Property contains or contained a storage tank, an affidavit with respect thereto, if required by Minn. Stat. Sec. 116.48; and
- (j) All other documents required by this Agreement to effectuate the provisions of this Agreement.

10.0 Closing Costs. The following costs and expenses shall be paid in connection with the Closing:

- (a) Seller shall pay the cost of:
 - (i) Recording fees for Seller’s Certificate of Trust and Affidavit of Trustee supporting the sale of the Property to City and all releases and satisfactions of existing mortgages or liens;
 - (ii) All expenses, including recording fees, to correct any Objections that Seller undertakes pursuant to Section 5.0 above;
 - (iii) Proration as of the Closing Date of all utilities and operating expenses and rents, if any;
 - (iv) Proration as of the Closing Date of real property taxes and installments of special assessments, as specified in Section 8.0 above;
 - (v) Any other item allocated to or assumed by Seller in this Agreement; and
 - (vi) All attorneys’ fees and expenses incurred by Seller.
- (b) City shall pay the cost of:
 - (i) All fees associated with the issuance of the Title Commitment, including state and federal tax lien, judgment and bankruptcy searches;
 - (ii) The premium for any Title Policy it chooses to purchase;
 - (iii) All state deed taxes and/or transfer taxes on deeds;
 - (iv) Any surveys, reports or inspection reports obtained by City;
 - (v) Recording fees for recording the Deed in favor of City and City’s resolution authorizing acquisition of the Property;
 - (vi) Title’s closing fee;

- (vii) Proration as of the Closing Date of real property taxes and installments of special assessments as provided in Section 8.0 above;
- (viii) Proration as of the Closing Date of all utilities and operating expenses and rents, if any;
- (ix) Any other item allocated to or assumed by City in this Agreement; and
- (x) All attorneys' fees and expenses incurred by City.

11.0 Title To Be Delivered. Seller agrees to convey marketable fee simple title in the Property to City at Closing subject only to:

- (a) Reservations of minerals or mineral rights by the State of Minnesota, if any;
- (b) Building, zoning and subdivision laws, ordinances and State and Federal regulations which do not interfere with present improvements; and,
- (c) Any Permitted Exceptions, as defined in Section 5.0 above.

12.0 Commission. Seller and City represent and warrant to each other that they have not engaged the services of any broker in connection with the sale and purchase contemplated by this Agreement. Seller and City shall each indemnify and hold the other harmless of any claim made by any broker or sales agent or similar party for a commission due or alleged to be due under the terms of any brokerage agreement entered into by said party. This provision shall survive Closing and delivery of the Deed.

13.0 Risk of Loss. If there is any loss or damage to the Property between the date of this Agreement and the date of Closing, the risk of loss shall be on Seller. If the Property is destroyed or damaged prior to the Closing, City may cancel this Agreement upon written notice to Seller and in such event, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

14.0 Condemnation. If, prior to the Closing Date, a public or private entity with the power of eminent domain commences condemnation proceedings against all or any part of the Property, Seller will promptly notify City, and City may, at City's sole option, terminate this Agreement. Notwithstanding the foregoing, City will have no right to terminate this Agreement if the condemnation is for a right-of-way or utility easement and such condemnation does not materially and adversely affect City's intended use of the Property. City will have until the earlier of (a) the Closing Date; or (b) the date twenty (20) days from City's receipt of Seller's notice to City to exercise City's termination right. If City does not terminate this Agreement pursuant to this Section 14.0, the parties will fully perform their obligations under this Agreement, with no reduction in the Purchase Price, and Seller will assign to City, on the Closing Date, all of Seller's right, title and interest in any award made or to be made in the condemnation proceedings. Seller will not designate counsel, appear or otherwise act with respect to any such condemnation proceedings without City's prior

written consent unless City fails to respond within seven (7) days to a request for such written consent.

15.0 Operation Prior to Closing. Between the Effective Date and Closing Date, Seller shall operate and maintain the Property in the same manner as it is being operated on the date hereof and in accordance with prudent and reasonable standards. Seller shall execute no contracts, leases, or other agreements regarding the Property which extend beyond the Closing Date without the prior written consent of City, which consent may be withheld by City at its sole discretion. Seller shall not pledge or transfer any interest in or encumber or permit the encumbrance of the Property with any lien, easement, interest or agreement from and after the Effective Date without the prior written consent of City, which may be withheld in City's sole and absolute discretion.

16.0 Default.

(a) If City defaults in the performance of City's obligations under this Agreement due to no fault of Seller, then Seller may, as its sole and exclusive remedy, terminate this Agreement in accordance with Minnesota Statutes Section 559.21.

(b) If Seller defaults in the performance of Seller's obligations under this Agreement due to no fault of City, then City may, after at least thirty days prior written notice to Seller and Seller's failure to cure the default within said notice period, either (i) declare this Agreement terminated and may seek and recover actual (but not consequential) damages from Seller, or (ii) City may elect to seek specific performance of this Agreement.

(c) Notwithstanding anything in this Section 16 to the contrary, any action by City for specific performance or damages must be commenced no later than 180 days after the date City discovers or becomes aware of Seller's default.

(d) The limitation set forth in the preceding sentence shall not apply to claims for indemnification or contribution specifically provided for in this Agreement.

(e) This section shall survive Closing and delivery of the Deed.

17.0 Assignment. Neither Seller or City may assign its interest in this Agreement.

18.0 As-Is. Except as expressly set forth in this Agreement, City warrants and acknowledges to and agrees with Seller that City is purchasing the Property in its "As-Is, Where Is" condition "with all faults" as of the Closing Date and specifically and expressly without any warranties, representations or guarantees, either express or implied, as to its condition, fitness for any particular purpose, merchantability, or any other warranty of any kind, nature, or type whatsoever from or on behalf of Seller. Seller will continue to maintain the Property through the Closing Date.

19.0 Miscellaneous.

(a) Time of Essence. Time is of the essence of this Agreement.

- (b) Governing Law. This Agreement is made and executed under and in all respect to be governed by the laws of the State of Minnesota. Any dispute that may arise between the parties arising out of this Agreement shall be adjudicated before a court located in St. Louis County, Minnesota and the parties irrevocably submit to the exclusive jurisdiction of the federal and state courts of the State of Minnesota located in St. Louis County with respect to any action or legal proceeding commenced by any party.
- (c) Notices. The mailing addresses for notice purposes of Seller and City are as follows (or to such other respective addresses as may be designated by notice given in accordance with provisions of this Section):

If to Seller: Wendy Pickar, Successor Trustee
Richard A. Peterson Revocable Trust
2320 Springvale Rd
Duluth, MN 55811

With a copy to:

R. Craft Dryer
Dryer Reed Peterson Bray Storaasli & Knutson
200 Sellwood Bldg.
202 W. Superior St.
Duluth, MN 55802

If to City: City of Duluth
Attn: Property and Facilities Manager
1532 West Michigan Street
Duluth, MN 55806

Any notice, request, demand or other communication permitted or required under this Agreement shall be in writing and shall be deemed duly delivered when delivered personally or when deposited in the United States mails, First Class, postage prepaid or delivered to a reputable courier addressed to the party for whom it is intended at the address specified above or at such other address as either party shall notify the other of in writing as provided above.

- (d) Amendment. Amendments to this Agreement must be in writing and must be executed by the same officers as executed this Agreement, except that City's Chief Administrative Officer 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.
- (e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties.
- (f) Headings. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof.

- (g) Invalidity. If for any reason any portion or paragraph of this Agreement shall be declared void or unenforceable by any court of law at equity, it shall only affect such particular portion or paragraph of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.
- (h) Counterparts/Facsimile/E-Mail Signatures. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Agreement. Facsimile and E-mail signatures shall be binding on the transmitting party and shall have the same force and effect as if the original signature had been delivered.
- (i) Waiver. The failure of either party to enforce any provision of this 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.

[Remainder of this page is intentionally left blank.]

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

**TRUSTEES OF THE RICHARD A.
PETERSON REVOCABLE TRUST DATED
DECEMBER 30, 2008**

By  Trustee
Wendy Pickar

CITY OF DULUTH

By _____
Its Mayor

Attest: _____
Its City Clerk

Date Attested: _____, 2019

Countersigned:
By: _____
Its Auditor

Approved as to form:

By: _____
Its City Attorney

EXHIBIT A
Legal Description

All that part of the North Half of the Northeast Quarter (N ½ of NE ¼), Section Six (6), Township Forty-nine (49), Range Fourteen (14) West of the Fourth Principal Meridian lying Northerly of a One Hundred foot (100') parcel of land for extension of the boulevard as described in Book of Deeds 623, Page 497.

AND

All that part of the North Half of the Northeast Quarter (N ½ of NE ¼), Section Six (6), Township Forty-nine (49), Range Fourteen (14) West of the Fourth Principal Meridian lying Southerly of a One Hundred foot (100') parcel of land for extension of the boulevard as described in Book of Deeds 623, Page 497 and lying within the Westerly Four Hundred Twenty-five and 75/100ths feet (W'ly 425.75) feet of the North Half of Northeast Quarter (N ½ of NE ¼)

EXHIBIT B
Section 6.0(a) Documents

1. Copies of all tenant leases and occupancy agreements, and amendments thereto, as well as any other correspondence or agreement incident or related thereto which affect the obligations of Seller and the affected tenant with respect to such lease.
2. All phase I and phase II reports and other environmental reports, including operating and management plans pertaining to any environmental conditions.
3. All engineering reports, architectural reports, maintenance reports (including HVAC and roof), soil studies, CAD drawings, and other technical reports related to the Property, or other Property condition reports.
4. Copies of other reports regarding hazardous substances located at the Property including but not limited to asbestos, formaldehyde, PCBs, oil or oil byproducts.
5. Any inspections, studies, reports or surveys regarding the physical condition of the Property.
6. Seller's existing surveys for the Property.