

EXHIBIT 1

FIRST AMENDMENT TO LAKE AVENUE PLAZA DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO LAKE AVENUE PLAZA DEVELOPMENT AGREEMENT (this “First Amendment”) is entered into this ____ day of _____, 2020 (the “Effective Date”), by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota (the “City”), and MINNESOTA POWER, a division of ALLETE, Inc., formerly known as Minnesota Power & Light Company, a Minnesota corporation (“MP”).

WHEREAS, on May 30, 1985, the City, MP, and Lake Superior Plaza Company, a Minnesota partnership, entered into the Lake Avenue Plaza Development Agreement, recorded on June 27, 1985 in the Office of the St. Louis County Recorder as Document No. 396174 (the “Development Agreement”) which, among other things provided for the development of the area legally described on Exhibit A to the Development Agreement (the “Original Site”); and

WHEREAS, Lake Superior Plaza Company no longer has any interest in the Original Site or any role in the development addressed in the Development Agreement, and to the best knowledge of the City and MP, Lake Superior Plaza Company no longer exists as an entity; and

WHEREAS, pursuant to the Development Agreement, the City acquired certain real estate, constructed the Parking Facility (defined below) and certain improvements on the Plaza Areas (defined below), which construction project is referred to in the Development Agreement as the “project” and in this First Amendment as the “Project”; and

WHEREAS, MP is the owner of the Site (defined below), a portion of which MP acquired from the City pursuant to an unrecorded Warranty Deed executed in 1989, as modified by the Corrective Quit Claim Deed dated _____, 1989 and recorded in the Office of the St. Louis County Recorder on _____, 2020 as Document No. _____; and

WHEREAS, MP granted the East Plaza Easement (defined below) and the West Plaza Easement (defined below) to the City, in trust for the benefit of the public, creating easements encumbering the Plaza Areas for public pedestrian passageway and plaza purposes, which replaced previous plaza easements in favor of the City, all of which have since been vacated; and

WHEREAS, MP granted the following additional easements to the City, which affect the Site and other property: Stormwater Utility Easement (defined below), Steam and Hot Water Utility Easement (defined below), and Street Easement (defined below); and

WHEREAS, the Parking Facility is attached to MP's corporate headquarters in the Lake Superior Plaza Building (defined below) and the West Plaza (defined below) is adjacent to the Lake Superior Plaza Building; and

WHEREAS, MP is a public utility that provides essential services to the public and allowing for enhanced security at MP's corporate headquarters in the Lake Superior Plaza Building serves a public purpose; and

WHEREAS, the City and MP wish to continue to provide for the use, improvement and maintenance of the Plaza Areas, and to modify certain rights and responsibilities set forth in the Development Agreement and therefore wish to amend the Development Agreement as set forth in this First Amendment; and

WHEREAS, capitalized terms used in this First Amendment, but not defined herein, shall have the definitions assigned to them in the Development Agreement; and

WHEREAS, the Development Agreement, as amended by this First Amendment shall be referred to in this First Amendment as this "Agreement."

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the receipt and sufficiency of which is acknowledged, the City and MP agree that the Development Agreement is amended as follows:

1. Exhibit A to the Development Agreement is amended and completely replaced with the attached Exhibit A. All other exhibits to the Development Agreement are deleted in their entireties.

2. Article I of the Development Agreement is amended and completely replaced with the following Article I:

Article I—Definitions.

The following terms shall be defined as follows:

A. *“this Agreement” or “this agreement” shall mean the Lake Avenue Plaza Development Agreement dated May 30, 1985, by and between the City, MP and LSP, recorded on June 27, 1985 in the Office of the St. Louis County Recorder as Document No. 396174, as subsequently amended from time to time.*

B. *“East Plaza” shall mean the real property legally described in Exhibit A to the East Plaza Easement (defined below).*

C. *“East Plaza Easement” shall mean the East Plaza Easement by and between MP and the City dated _____, 2020, recorded on _____, 2020 in the Office of the St. Louis County Recorder as Document No. _____.*

D. *“Lake Avenue Bridge” shall mean the Lake Avenue roadway bridge located between the East Plaza and the West Plaza (defined herein).*

E. *“Lake Superior Plaza Building” shall mean the building located at 30 W. Superior Street, Duluth, MN, which is the location of MP’s corporate headquarters.*

F. *“Parking Facility” shall mean MP’s parking facility located substantially underneath the Plaza Areas and the Lake Avenue Bridge, the entrance of which is located on Michigan Street.*

G. *“Plans” shall mean, collectively, the Thomas & Vecchi Plans (defined below) and the PAC Plans (defined below).*

H. *“Plaza Areas” shall mean, collectively, the East Plaza and the West Plaza (defined herein).*

I. *“the project” or “the “Project” shall mean the City’s construction of the Parking Facility (defined above) and certain improvements on the Plaza Areas (defined above); and*

J. *“Site” shall mean the Plaza Areas and the Lake Avenue Bridge, which are collectively legally described on the attached Exhibit A.*

K. *“Steam and Hot Water Utility Easement” shall mean the Steam and Hot Water Utility Easement by and between MP and the City dated _____, 2020, recorded on _____, 2020 in the Office of the St. Louis County Recorder as Document No. _____.*

L. “Street Easement” shall mean the Street Easement by MP in favor of the City dated _____, 2020, recorded on _____, 2020 in the Office of the St. Louis County Recorder as Document No. _____.

M. “Stormwater Utility Easement” shall mean the Stormwater Utility Easement by and between MP and the City dated _____, 2020, recorded on _____, 2020 in the Office of the St. Louis County Recorder as Document No. _____.

N. “Utility and Infrastructure Easements” shall mean, collectively, the Steam and Hot Water Utility Easement, the Street Easement and the Stormwater Utility Easement.

O. “West Plaza” shall mean the real property legally described in Exhibit A to the West Plaza Easement (defined below).

P. “West Plaza Easement” shall mean the West Plaza Easement by and between MP and the City dated _____, 2020, recorded on _____, 2020 in the Office of the St. Louis County Recorder as Document No. _____.

3. Article II of the Development Agreement is amended and completely replaced with the following Article II:

Article II – Construction of Project.

The City previously completed construction of the Project, and subsequent modifications to the Plaza Areas, including the following:

- (i) the Parking Facility and certain improvements to the Plaza Areas, substantially in the form of plans and specifications prepared by Thomas & Vecchi, A.I.A., a copy of which are contained in City Contract No. 14526 (the “Thomas & Vecchi Plans”).
- (ii) certain amenities and landscaping improvements within the Plaza Areas, substantially in the form of plans and specifications prepared by Partners of Architectural Concern, A.I.A., a copy of which are on file in the office of the City Clerk as Public Document No. 85-0523-01 [number illegible] (the “PAC Plans”).
- (iii) removal of the stairwell previously installed by the City on the East Plaza.

4. Article III of the Development Agreement is amended and completely replaced with the following Article III:

Article III – Internal Costs.

Except as specifically provided in this Agreement, each party shall bear its own “in house” costs, “soft” costs and all other internal administrative costs incurred in the administration and implementation of this Agreement.

5. Article IV of the Development Agreement is amended and completely replaced with the following Article IV:

Article IV – Insurance Obligations.

When the City is undertaking a Proposed Improvement (defined below), the City will insure, or cause to be insured, the Plaza Areas, to protect the parties against losses resulting from casualty, general public liability, property damage, and contractual liability until such time as the City’s construction work on the Plaza Areas is completed.

6. Article V and Article VI of the Development Agreement are deleted in their entirety.

7. Article VII of the Development Agreement is amended and completely replaced with the following Article VII:

Article VII – Maintenance and Operation of Plaza Areas.

A. MP’s Maintenance, Repair and Operational Obligations.

1. *Except as provided in Article VII.B. below, MP shall maintain and repair the Plaza Areas as shown on the Plans, in the manner required by this Article VII, until May 31, 2045 (the “Twenty-five Year Period”). If, at the end of the Twenty-five Year Period, the Plaza Areas and the Parking Facility continue to be used for their respective purposes, MP and the City commit to enter into good faith negotiations for the continued maintenance and operation of the Plaza Areas, taking into account the patterns of use of the Plaza Areas and their importance to MP as an integral part of MP’s headquarters presence in Duluth’s downtown and to the City as a major entry point from I-35 to the City’s downtown.*

2. *Any extension of MP’s maintenance and operation obligations regarding the Plaza Areas shall be evidenced by an amendment to this Agreement, which shall be recorded in the real estate records of St. Louis County, Minnesota. If the parties do not agree to extend MP’s maintenance and operation obligations regarding the Plaza Areas, the City shall be responsible to maintain and operate the Plaza Areas upon expiration of the Twenty-five Year Period.*

3. *MP shall, at its sole expense, maintain and repair the Plaza Areas in good order and condition and state of repair, and will provide all labor and materials that are necessary for routine maintenance and repair as required in Section VII.A.1. above. MP's general maintenance obligation shall include routine clean-up of the Plaza Areas, including any fountain, sculpture, bell or clock tower located on the Plaza Areas. MP will provide all electrical service necessary for the operation of the Plaza Areas, except for electrical service to the City's street lights placed within the Plaza Areas. MP will provide water service necessary for maintenance and operation of the Plaza Areas, and will, not by way of limitation, provide necessary draining services for the water-related improvements located on the Plaza Areas.*

4. *In the event MP shall fail to maintain and repair the Plaza Areas as required by this Agreement within ten (10) days of notice from the City to MP of its failure to carry out its obligations, the City may enter upon the Plaza Areas, cause such necessary maintenance or repair work to be done and collect the cost of the same, together with overhead costs and cost of collection, from MP by assessment or otherwise.*

5. *MP agrees to defend, indemnify, and hold the City and its officers, agents, servants and employees harmless from liability resulting from or caused by acts or omissions of MP's employees, servants, volunteers, agents, contractors, invitees, and licensees in performance of maintenance, replacement or repair obligations as provided by this Agreement.*

6. *In the event the Parking Facility is demolished or destroyed, in whole or in part, and such demolition or destruction causes the damage or destruction of the Plaza Areas, any improvements built on the Site shall include public plaza areas on the Superior Street level of the Plaza Areas of a similar nature and size as the Plaza Areas that existed prior to the demolition or destruction. In accordance with the procedure outlined in Article VIII below for Proposed Improvements, the City shall have the right of prior review and approval of the design of such new public plaza area; provided, however, that the City shall not unreasonably withhold such approval.*

B. City's Maintenance, Repair and Operational Obligations.

1. *The City shall, at its sole expense, maintain, repair and replace any existing or future sculptures, bell or clock towers, street lights, street lighting electrical systems, fountain structures, fountain mechanical equipment, fountain pump equipment, and the water line (described in the East Plaza Easement) which may, from time to time, be placed on or installed within the Plaza Areas. In the event the City fails to maintain, replace or repair the Plaza Areas as required by this Agreement within ten (10) days' notice from MP to the City of its failure to carry out its obligations, MP may enter upon the Plaza Areas, cause such necessary maintenance, replacement or repair work to be done and collect the cost of the same, together with overhead costs and cost of collection, from the City by claim, litigation or otherwise.*

2. *The City agrees to defend, indemnify, and hold MP and its officers, agents, servants and employees harmless from liability resulting from or caused by acts or omissions of the City's employees, servants, volunteers, agents, contractors, invitees, and licensees in performance of maintenance, replacement or repair obligations as provided by this Agreement.*

C. *Special Events.*

The City may schedule and shall be responsible for permitting any special, recreational and/or community events, programs, uses and functions within the Plaza Areas in accordance with its regular permitting process (each an "Event"). MP shall not be responsible for crowd control and damages resulting from an Event.

8. Article VIII of the Development Agreement is amended and completely replaced with the following Article VIII:

Article VIII. Future Modifications to the Plaza Areas.

A. *In the event the City or MP desire to modify the Plaza Areas, then, prior to any modification, the party desiring such modification shall submit to the other party written notice of the proposed modification (the "Proposed Improvement"), together with (i) plans and specifications for the Proposed Improvement in at least the "design-development" state, and (ii) a statement of proposed maintenance obligations for the Proposed Improvement. Upon receipt of the notice, the party receiving the notice shall have sixty (60) days to approve or reject the Proposed Improvement in writing, unless the party submitting the Proposed Improvement shall agree in writing to a longer time period, in which case said longer time period shall apply. The approval of the party receiving notice of the Proposed Improvement shall not be unreasonably withheld. Neither party shall commence construction of a Proposed Improvement unless (a) approved by the other party to this Agreement, or (b) the sixty (60) day period referenced above has expired without a response from the other party. In the event that construction of a Proposed Improvement necessitates an amendment to this Agreement, including but not limited to Article VII, the parties shall enter into an amendment to this Agreement prior to commencement of construction of the Proposed Improvement, and such amendment shall be recorded in the Office of the St. Louis County Recorder.*

B. *While a party is constructing a Proposed Improvement, it shall maintain a current set of plans and specifications developed pursuant to the process identified above (the "Modification Plans"). Upon completion of a Proposed Improvement, the party constructing the Proposed Improvement shall provide the other party with the "as built" plans for the Proposed Improvement.*

C. *In the case of the City, approval of any Proposed Improvement shall be evidenced by a duly authorized resolution of the City Council, or such other applicable approval process as may be applicable at that time.*

D. *In the case of MP, approval of any Proposed Improvement shall be evidenced by written executive approval on behalf of MP, or such other approval as may be applicable at that time.*

E. *Unless otherwise agreed by the parties in writing, payment of all costs, including but not limited to construction, architectural and engineering costs, of a Proposed Improvement shall be by the party making the Proposed Improvement.*

9. Article IX of the Development Agreement is amended and completely replaced with the following Article IX:

Article IX – Parking Facility.

The parties acknowledge that the Parking Facility is MP's private parking facility and shall not be open to the general public. The City releases any interest it may have in the Parking Facility, except those interests set forth in the Stormwater Utility Easement and the Steam and Hot Water Utility Easement.

10. Article X of the Development Agreement amended and completely replaced with the following Article X:

Article X – No Vehicular Parking Allowed on Plaza Areas.

No vehicular parking of any kind whatsoever may occur on or within the Plaza Areas, except for those vehicles used in conjunction with an Event that is properly permitted pursuant to Article VII.C. above.

11. Article XI and Article XII of the Development Agreement are not modified by this First Amendment and remain in full force and effect.

12. Article XIII of the Development Agreement is amended completely replaced with the following Article XIII:

Article XIII – Notices

Any notice, demand or other communication under this Agreement by either party to the other party shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, to:

In the case of the City: *City of Duluth*
 Attn: City Clerk
 411 W. First Street, Room 318
 Duluth, MN 55802

In the case of MP: *Minnesota Power, a division of ALLETE, Inc.*
 Attention: Real Estate Services
 30 West Superior Street
 Duluth, MN 55802

13. The following Articles XIV, XV, and XVI are added to the Development Agreement:

Article XIV– Compliance with Law

The parties shall comply with any law, ordinance or government regulation including but not limited to building and zoning ordinances restricting, regulating or prohibiting the occupancy, use, enjoyment, improvement or subdivision on the Plaza Areas.

Article XV– Plaza Easements

In addition to the rights and obligations set forth in this Agreement, the City and MP shall also have such rights and obligations as set forth in the East Plaza Easement, the West Plaza Easement, and the Utility and Infrastructure Easements.

Article XVI– Agreement Runs with the Land

This Agreement shall extend to and bind the successors and assigns of the City and MP and shall run with the land.

14. The recitals set forth at the beginning of this First Amendment are true and correct and are fully incorporated into the Development Agreement by this reference.

15. As of the Effective Date, the Development Agreement, as amended by this First Amendment, supersedes any prior understandings, oral or written agreements, representations and warranties, and any course of conduct and dealing between the parties with respect to the subject matter hereof. In the event of any conflict between the Development Agreement and this First Amendment, the terms of this First Amendment shall govern.

[Remainder of this page is intentionally left blank.]

CITY OF DULUTH

By: _____
Its Mayor

By: _____
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by Emily Larson and Chelsea Helmer, Mayor and City Clerk, respectively, of the City of Duluth,
a Minnesota municipal corporation.

Notarial Stamp or Seal

Notary Public

This instrument was drafted by:
Minnesota Power, a division of ALLETE, Inc.
30 West Superior Street
Duluth, MN 55802

**EXHIBIT A
TO
FIRST AMENDMENT TO
LAKE AVENUE PLAZA DEVELOPMENT AGREEMENT**

LOT 6, BLOCK 4, CENTRAL DIVISION OF DULUTH, ST. LOUIS COUNTY,
MINNESOTA, EXCEPT THE WESTERLY 30.00 FEET THEREOF.

AND

LOT 4, BLOCK 4 OF CENTRAL DIVISION OF DULUTH, ST. LOUIS COUNTY,
MINNESOTA.

AND

THAT PART OF VACATED LAKE AVENUE AND LOT A, BLOCK 3, CENTRAL
DIVISION OF DULUTH, ST. LOUIS COUNTY, MINNESOTA, LYING WESTERLY OF
THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE MOST NORTHERLY
CORNER OF LOT 4, BLOCK 4, CENTRAL DIVISION OF DULUTH; THENCE NORTH 41
DEGREES 37 MINUTES 06 SECONDS EAST ALONG THE NORTHEASTERLY
EXTENSION OF THE NORTHWESTERLY LINE OF SAID BLOCK 4, A DISTANCE OF
13.53 FEET; THENCE EASTERLY A DISTANCE OF 36.13 FEET ALONG A TANGENTIAL
CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 23.00 FEET AND A
CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 17 SECONDS; THENCE SOUTH 48
DEGREES 22 MINUTES 37 SECONDS EAST, A DISTANCE OF 57.16 FEET; THENCE
SOUTH 37 DEGREES 34 MINUTES 36 SECONDS EAST, A DISTANCE OF 35.52 FEET TO
THE SOUTHEASTERLY LINE OF SAID LOT A AND SAID LINE THERE TERMINATING.

AND

THAT PART OF VACATED LAKE AVENUE LYING SOUTHERLY OF THE
NORTHWESTERLY LINE OF BLOCKS 3 AND 4 EXTENDED, CENTRAL DIVISION OF
DULUTH, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA AND EASTERLY OF
LINE "A" DESCRIBED BELOW.

AND

THOSE PARTS OF LOTS A AND 2, BLOCK 3, CENTRAL DIVISION OF DULUTH, CITY
OF DULUTH, ST. LOUIS COUNTY, MINNESOTA LYING EASTERLY OF LINE "A" AND
WESTERLY OF LINE "B" DESCRIBED BELOW.

LINE "A"

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 4, BLOCK 4, CENTRAL
DIVISION OF DULUTH; THENCE NORTH 41 DEGREES 37 MINUTES 06 SECONDS
EAST ALONG THE NORTHEASTERLY EXTENSION OF SAID BLOCK 4, A DISTANCE

OF 13.53 FEET; THENCE EASTERLY A DISTANCE OF 36.13 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 23.00 FEET AND A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 17 SECONDS; THENCE SOUTH 48 DEGREES 22 MINUTES 37 SECONDS EAST, A DISTANCE OF 57.16 FEET; THENCE SOUTH 37 DEGREES 34 MINUTES 36 SECONDS EAST, A DISTANCE OF 35.52 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT A AND SAID LINE THERE TERMINATING.

LINE "B"

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 2, BLOCK 3, CENTRAL DIVISION OF DULUTH; THENCE SOUTH 41 DEGREES 37 MINUTES 23 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 2, A DISTANCE OF 14.16 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 38.52 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 23.00 FEET AND A CENTRAL ANGLE OF 95 DEGREES 58 MINUTES 01 SECONDS; THENCE SOUTH 54 DEGREES 20 MINUTES 38 SECONDS EAST, A DISTANCE OF 36.41 FEET; THENCE SOUTH 52 DEGREES 32 MINUTES 54 SECONDS EAST, A DISTANCE OF 53.60 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 2 AND SAID LINE THERE TERMINATING.

AND

THE WEST ONE-HALF (W 1/2) OF LOT 4, BLOCK 3, CENTRAL DIVISION OF DULUTH, ST. LOUIS COUNTY, MINNESOTA.

AND

THAT PART OF LOT 2, BLOCK 3, CENTRAL DIVISION OF DULUTH, ST. LOUIS COUNTY, MINNESOTA LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 2, BLOCK 3, CENTRAL DIVISION OF DULUTH; THENCE SOUTH 41 DEGREES 37 MINUTES 23 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 2, A DISTANCE OF 14.16 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 38.52 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 23.00 FEET AND A CENTRAL ANGLE OF 95 DEGREES 58 MINUTES 01 SECONDS; THENCE SOUTH 54 DEGREES 20 MINUTES 38 SECONDS EAST, A DISTANCE OF 36.41 FEET; THENCE SOUTH 52 DEGREES 32 MINUTES 54 SECONDS EAST, A DISTANCE OF 53.60 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 2 AND SAID LINE THERE TERMINATING.