

AMENDED AND RESTATED
LAKE AVENUE PLAZA
DEVELOPMENT AGREEMENT

THIS AGREEMENT, entered into this ____ day of July, 2019, (the “Effective Date”) by and between the CITY of DULUTH, a municipal corporation under the Laws of Minnesota, hereinafter referred to as “City”, and MINNESOTA POWER, A DIVISION OF ALLETE, INC., formerly known as Minnesota Power & Light Company, a Minnesota corporation, hereinafter referred to as “MP”. The City and MP are each referred to herein as a “Party” and, collectively, the “Parties”.

WITNESSETH:

WHEREAS, the Parties entered into that certain Lake Avenue Plaza Development Agreement, dated May 30, 1985 (the “Original Agreement”) and are desirous of updating the terms and conditions of the Original Agreement; and

WHEREAS, Lake Superior Plaza Company, a partnership under the Laws of Minnesota, was also a party to the Original Agreement, is no longer in business, and has no current interest in the Site; and

WHEREAS, MP is the owner of the real property described on Exhibit A (the “Site”) having received a deed from the City bearing a jurat dated November 27, 1989, which is currently unrecorded; and

WHEREAS, the parties have created, maintain and are also desirous of updating pedestrian plaza areas on the Superior Street levels of the parking areas’ roofs/decks (the “Plazas”) to enhance the pedestrian function of the area and to create an aesthetically attractive entrance into the Downtown from the Lake Avenue freeway bridge; and

WHEREAS, there are two Plazas separated by Lake Avenue; the Plazas are shown on the drawing attached as Exhibit A and identified as the “East Plaza” and the “West Plaza”, with the West Plaza being adjacent to the Lake Superior Plaza building owned by MP; and

WHEREAS, the Plazas serve a public purpose; and

WHEREAS, the public parking established on the Site under the Original Agreement has been supplanted by ample public parking now available in the vicinity of Lake Avenue and Superior Street; and

WHEREAS, as MP is a public utility that provides essential services, allowing for enhanced security at MP's corporate headquarters in the Lake Superior Plaza building serves a public purpose.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the Parties hereto agree as follows:

Article I – Plaza Improvements

The Parties intend to develop improvements upon the Plazas (the "Improvements") in conjunction with the City's work to resurface and reconstruct Superior Street.

Pursuant to the Original Agreement, the City (a) paid for architectural and engineering services relating to construction of Plaza/deck amenities in accordance with its agreement with the firm of Partners of Architectural Concern, A.I.A.; (b) constructed the Plazas pursuant to the plans and specifications prepared by the firm of Thomas & Vecchi, A.I.A., a copy of which set of plans and specifications are to be submitted to the Duluth City Counsel identified as Contract Document No. 14526, as modified and amended (hereinafter referred to as "Thomas & Vecchi plans and specifications"); and (c) constructed those amenities and landscaping on the Plazas as shown on the plans and specifications prepared by the firm of Partners or Architectural concern, A.I.A., a copy of which set of plans and specifications are to be on file in the office of the City Clerk as public Document No. 85-0523-01[*number illegible*], as modified and amended (hereinafter referred to as "PAC plans and specifications").

Pursuant to the Original Agreement, MP (a) paid for architectural and engineering services relating to the parking facilities and plaza deck structures

in accordance with its agreement with the firm of Thomas & Vecchi, A.I.A.; (b) made a significant payment to the City for construction of the Plazas; and (c) has continuously maintained and repaired the Plazas following their construction.

In the event that the Improvements contain modifications to either the Thomas & Vecchi plans and specifications or PAC plans and specifications, or both prior to their construction, the Party desiring such change shall submit to the other Party notice, as provided for in Article XI below, of the request for said change or changes together with plans and specifications for said change or changes. Upon receipt thereof, the Party receiving said notice shall have fifteen (15) days to approve or disapprove said plans in writing unless the Party submitting the plans shall agree to a longer time period in which case said longer time period shall apply. The approval of the Party receiving said notice shall not be unreasonably withheld but no such modifications shall be made unless (a) approved by such receiving Party or (b) the fifteen day period referenced above has expired without a response from the Party receiving said notice. The Parties agree that the Improvements will continue to allow vehicle access to the Plazas for permitted activities as approved by the City, subject to MP's reasonable safety and security requirements.

While each Party is constructing its Improvements, it shall maintain a current set of plans developed pursuant to the process identified above (the "Plans"). Upon completion of the Improvements, each Party shall provide to the other Party the "as built" Plans for the Improvements completed by that Party.

The Parties agree that in the course of making such Improvements, the City shall remove the stairwell installed by the City on the East Plaza (the stairwell is further referenced in Article VI below).

Article II – Financing of Improvements

A. Construction, Architectural and Engineering Costs

Unless otherwise agreed by the Parties, payment of construction, architectural and engineering costs of the Improvements shall be as described above in Article I.

B. Internal costs

The parties agree to bear their own “in house” costs, “soft” costs and all other internal administrative costs incurred in the planning and implementing of this project.

Article III – Insurance Obligations

City will insure, or cause to be insured, the Site and improvements constructed thereon 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 for the Improvements is completed.

Article IV – Encumbrances on Site

The Deed contains certain encumbrances on the Site. The Parties agree to take whatever steps are necessary to vacate the Deed’s reservation of “easements for public pedestrian plaza purposes at and above the Superior Street elevation” so that the encumbrances on the Site created by the City are only those stated below:

- 1) MP’s grant of easements to the City for Plaza purposes as attached as Exhibit B.
- 2) MP shall record the deed referenced in the third “WHEREAS” clause above within a reasonable time following receipt of a recordable deed from the City. The parties agree that said deed may be varied from that so referenced by providing for the retention by and to the City of that portion of the street easement for Superior Street between the south end of the Lake Avenue Bridge as under the jurisdiction of the State of Minnesota and the remainder of the Superior Street easement.
- 3) MP shall grant to the City, at no cost to the City, an easement over that portion of the easement for Superior Street as originally platted in the Plat of DULUTH PROPER First Division lying on the northerly side of the Plazas, which was inadvertently conveyed to MP in the deed referenced in Paragraph 2 above.
- 4) MP shall grant to the City such utility easements as necessary for the continued operation and maintenance of City utilities located on the Site

and access thereto. Such easements shall include (a) an easement for the storm sewer line and (b) an easement or easements for District Energy System utility lines. MP and the City shall collaboratively determine the width, depth, height and location of such easements. The Parties acknowledge that said easements and access shall not unreasonably hamper the use of that portion of the Site used for MP's private parking purposes but with the understanding that temporary disruption of the parking usage in the vicinity of said utilities will be permissible to the extent necessary to effectuate necessary construction, reconstruction, repair, maintenance, and replacement of any such utility. The easement for the storm sewer line shall provide that MP will be responsible for the costs of any parking ramp floor surface repair the need for which is occasioned by such work.

- 5) MP will grant such easements and rights of access to the State as reasonably necessary to maintain and operate that portion of the Lake Avenue bridge going over and through the Site and its use as a matter of right by the general public as a public street or highway providing access from Superior Street to Interstate Highway 35 and to Canal Park Drive, upon the request therefore by the State of Minnesota.
- 6) reservation to the State of Minnesota in trust for the taxing districts concerned of minerals and mineral rights in those portions of the Site, the title to which may have at any time heretofore been forfeited to the State of Minnesota for nonpayment of general property taxes.
- 7) the right of the public to have access to the Plaza decks which is handicapped accessible as provided for in the Americans with Disabilities Act and vehicular access to said decks with the approval of the City, subject to MP's reasonable safety and security requirements.
- 8) 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 of the Site.

Article V – Maintenance of Plaza Improvements

A. General Maintenance and Operation

Except as provided in Article V.B. below, MP agrees that it will maintain and repair the Plaza Improvements as shown on the Plans in a first-class, clean and attractive manner a term of Twenty-five (25) Years from the date of execution of this Amended and Restated Agreement or the useful life of the parking facility located underneath the Plazas, if less than such twenty-five (25) years. If at the end of said Twenty-five (25) Year period the Plazas and the parking facilities thereunder continue to be used for their respective purposes, the parties hereby commit to enter into good faith negotiations for the continued maintenance and operation of the Plazas as public pedestrian plazas, taking into account the patterns of use of the Plazas 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 downtown. In the event that the useful life of the parking facility extends beyond such twenty-five year period, the City and MP shall discuss MP's continuing maintenance obligation for a period of time consistent with the useful life of the parking facility not to exceed an additional twenty-five (25) years conditioned on then current and contemplated allowable uses of the Plazas and the maintenance costs being substantially similar to those existing on the Effective Date of this Agreement. In the event that the parking facility is demolished, any new structure built on the Site will have a public plaza area of a similar nature on the Superior Street level. City will have the right of prior review and approval of the design of such new public plaza area; provided however that City shall not unreasonably withhold such approval. MP will provide all labor and materials reasonably available which are necessary for routine maintenance and repair. MP will provide all electrical service necessary to the operation of the aforesaid Improvements, except for electrical service for City's street lights to be placed on the Plazas. MP will also provide water service necessary for maintenance and operation of the Improvements, and will, not by way of limitation, provide necessary draining services for the water-related improvements shown on the Plans. In the event that MP shall fail to so maintain or repair such improvements within ten (10) days of notice from city to MP of its failure to carry out these obligations, the City may enter upon the Plazas, cause such necessary maintenance or repair work to be done and collect the cost of the same, together with its overhead

and cost of collection, from MP by assessment or otherwise. It is understood that the Plazas shall be available for permitting any special uses or functions thereon. It is also understood that MP shall not be responsible for crowd control or damages resulting from any City permitted special uses or functions occurring on the Plazas.

MP agrees to hold City harmless from liability resulting from or caused by acts or omissions of MP's employees or agents in performance of maintenance, replacement or repair obligations as provided by this Agreement.

B. City's Maintenance Obligation

City will be responsible for the maintenance, replacement or repair of any sculptures, bell or clock towers, street lights, street lighting electrical systems, fountain structures, fountain mechanical equipment or fountain pump equipment which may, from time to time, be placed on either of the Plazas. City will also be responsible for the maintenance, replacement or repair of any bell or clock tower structure, clock equipment or sculpture which may, from time to time, be placed on either of the plaza decks by the City. It is understood that MP shall perform routine clean-up of such fountain, bell or clock tower or other Improvements however as part of its general maintenance obligation on the Plazas. In the event that City shall fail to so maintain, replace or repair such Improvements within ten (10) days' notice from MP to City of its failure to carry out these obligations, then MP may enter upon the Plazas, cause such necessary maintenance, replacement or repair work to be done and collect the cost of same together with its overhead and cost of collection from city by claim, litigation or otherwise.

City agrees to hold MP harmless from liability or claims of liability resulting from or caused by acts or omissions of City's employees or agents in performance of maintenance, replacement or repair obligations as provided by this Agreement.

MP will have the right of prior review and approval of the design of any such sculptures, bell or clock towers, fountains or other Improvements which the City may, from time to time, wish to place on either plaza deck area; provided however that MP shall not unreasonably withhold its consent.

Article VI – Changes in Plaza Improvements

Parties hereto acknowledge that either City or MP may at any time after the completion of construction request changes in the landscaping and amenities shown on the Plans. Any Party may request such change at any time by sending notice of said request to the other Party. Accompanying said notice shall be architectural plans in at least the “design-development” state showing the proposed changes and a statement of proposed maintenance obligations for such changes. In the case of City, any such change shall be subject to approval by the City in the form of a duly authorized resolution. In the case of MP, approval shall be evidenced by written executive approval on behalf of MP. Without the approval of the other party, no change from such Plans shall be permitted. In any event, the Party proposing the change shall be responsible for all costs for any such change except as the other Party may affirmatively agree to contribute to the costs thereof.

It is acknowledged that the stairs on the East Plaza shown on the PAC plans and specifications have been included in the project by the City without any control by MP, and that City is responsible for liability resulting from any defects in design of such stairs.

Article VII – MP Private Parking

It is agreed that the parking facilities constructed on the Site shall be MP’s private parking facilities and shall not be open to the general public. The City hereby releases any interest in may have in the parking facilities.

Article VIII – Additional Consideration

A. Termination of Easements.

The City agrees that as of the Effective Date, the Lake Superior Plaza Easements are terminated. The Lake Superior Plaza Easements are as identified in the following deeds from City to the Lake Superior Plaza Company: warranty deed dated June 2, 1977, and recorded in the office of the St. Louis County Recorder on June 3, 1977 as document number 253496; and quit claim deed dated June 2, 1977, and recorded in the office of the St.

Louis County Recorder on June 3, 1977 as document number 253497 (the “1977 Deeds”).

The Lake Superior Plaza Easements were created through an easement reservation contained within the 1977 Deeds as follows:

Reserving and retaining unto the party of the first part a perpetual easement for public pedestrian passageway purposes over that portion of the premises herein next described and the right of the party of the first part by and through its City Council to regulate such public passage. Such perpetual easement as so reserved shall affect only those corridors, gallery space, vertical access facilities, and plaza within the improvements to be constructed upon said premises as are shown shaded in gray on Sheets A5, A8, A9 and A29 of the construction plans for such improvements as are appended hereto and are collectively referred to and identified as Attachment “A”.

Further, the City agrees that the agreement referenced in the 1977 Deeds as the “Contract for Sale of Land for Private Redevelopment on file in the office of the City Clerk of the City of Duluth as Public Document No. 66531, (the “Contract for Sale”) as may have been amended,” is of no further force or effect. The City acknowledges that all obligations of the Lake Superior Plaza Company have been satisfied or are hereby waived and the City has no continuing interest in the property transferred by the 1977 Deeds.

B. Skywalk Bridge Stairway.

There is a skywalk bridge that crosses Superior Street and connects the Lake Superior Plaza building to the McDonald building (the “Skywalk Bridge”). MP agrees to construct a stairway to allow for public ingress and egress between the Skywalk Bridge and Superior Street. The location of the stairway is yet to be determined and agreed upon between the Parties. If the stairway is constructed inside of the Lake Superior Plaza building, MP will grant necessary easement to allow for public access and use of the stairway for the purpose of public pedestrian passageway between Superior Street and the Skywalk Bridge.

Article IX – Force Majeure

Under the terms of this Agreement, neither City nor MP shall be considered in default or in breach of any of its terms with respect to the timing of commencement or completion of construction, or the availability of Site for construction in the event of a delay in the performance of its obligations due to unforeseen causes beyond its reasonable control and without its fault and negligence including, but not restricted to, acts of God, acts of the public enemy, acts of the federal government, acts of another party, fires, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes.

Article X – Applicable Law

This Agreement, together with all of its Articles, terms and provisions is made in the State of Minnesota, and shall be construed and interpreted according to the Laws of the State of Minnesota.

Article XI – 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
City Clerk's Office
Room 102 City Hall
Duluth MN 55802

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

Article XII – Entire Agreement

This Agreement and its exhibits contain the entire agreement between the Parties relative to the subject matter hereof. This Agreement 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 of this Agreement. The recitals set forth at the beginning of this Agreement are fully incorporated herein by this reference.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above shown.

CITY OF DULUTH

MINNESOTA POWER,
A DIVISION OF ALLETE, INC.

[NAME]
[TITLE]

[NAME]
[TITLE]

ATTEST:

[TITLE]

COUNTERSIGNED:

[TITLE]

APPROVED:

[TITLE]

This instrument was drafted by:

Minnesota Power, a division of ALLETE, Inc.
30 West Superior Street
Duluth, MN 55802

STATE OF MINNESOTA)

) SS:

COUNTY OF ST. LOUIS)

On this _____ day of June, 2019, the foregoing Amended and Restated Plaza
Development Agreement was acknowledged before me by
_____ of Minnesota Power, a division of
ALLETE, Inc., a Minnesota corporation, on behalf of the corporation.

NOTARIAL STAMP OR SEAL

Exhibits

Exhibit A: Site Description and Drawing of East Plaza and West Plaza

Exhibit B: Plaza Easements