

EXHIBIT 1

ACCESS EASEMENT AGREEMENT

This ACCESS EASEMENT AGREEMENT (this “Agreement”) is made by and between CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (“City”) and DULUTH SEAWAY PORT AUTHORITY, a body politic and corporate, organized under the laws of the State of Minnesota (“Grantee”).

RECITALS

A. Grantee owns the real property in St. Louis County, Minnesota legally described on the attached Exhibit A (the “Property”).

B. Access to the Property is via a non-public, unpaved roadway (the “Roadway”), and City wishes to grant Grantee an access easement over and across the Roadway for the benefit of the Property at no cost to Grantee.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Subject to (i) the terms and conditions set forth in this Agreement, and (ii) all easements, conditions and restrictions of record, including but not limited to railroad rights of way, City grants and quitclaims to Grantee a perpetual, non-exclusive easement for ingress and egress purposes (the “Easement”) over, under and across the property legally described on the attached Exhibit B and depicted on the attached Exhibit C (the (“Easement Area”) for access to the Property. The Easement shall benefit the Property, shall extend to and bind the heirs, successors and assigns of Grantee and City and shall run with the land. The Easement is a private, non-exclusive grant limited by the terms of this Agreement and is not a public dedication of the use of the Easement Area.

2. Grantee shall be solely responsible for maintenance and operation of the Roadway, including snow and ice removal, and shall have the affirmative obligation to keep the Roadway in a safe and usable condition for all users. City shall have no obligation or duty to maintain, repair or replace any portion of the Roadway. All costs and expenses related to the maintenance and operation of the Roadway shall be paid by Grantee.

3. Grantee may, at its sole cost and expense, pave or otherwise improve or alter the Roadway only with advance written approval from City, which approval shall not be unreasonably withheld. Prior to commencing any paving, improvements or alterations to the Roadway, Grantee shall submit to City plans and specifications for the proposed work. All proposed work must be within the Easement Area. No work may begin on any approved project until all necessary permits are secured. All work within the Easement Area shall conform to all applicable laws and regulations, including the Duluth City Code. Not less than thirty (30) days prior to commencement of any paving, alteration or improvement to the Roadway, Grantee must provide City with proof of required insurance, including worker's compensation, in form acceptable to City's Claims Investigator and Adjuster.

4. City reserves the right to itself, its successors and assigns, to use the Easement Area for roadway purposes, for recreational trail purposes, and for any other use that does not interfere with Grantee's full enjoyment of the rights granted by this Agreement. City reserves the right to pave, improve or alter the Roadway at its own expense in its sole discretion. Grantee acknowledges that (i) the Easement Area (though not the Roadway) encroaches onto the publicly-dedicated right of way for recreational, walkway and trail purposes as set forth in the City of Duluth Ordinance No. 10624, recorded in the Office of the St. Louis County Recorder on August 5, 2019 as Document No. 1359996 and in the Office of the St. Louis County Registrar of Titles on August 5, 2019 as Document No. 1013208 (the "Trail ROW"), and (ii) the Easement shall be subordinate to the Trail ROW.

5. City makes no representations or warranties regarding its title to the Easement Area and shall have no obligation to defend Grantee's interest in the Easement, the Easement Area, or this Agreement in the event of a challenge to City's or Grantee's interest in the Easement Area.

6. City shall not be liable to Grantee for any injury or damage resulting from any defect in the construction or condition of the Roadway or the Easement Area nor for any damage that may result from the negligence of any other person whatsoever. To the fullest extent permitted by law, Grantee shall defend, indemnify, and hold City and its employees, officers and agents harmless from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney's fees and expenses, whether asserted by itself or any third party, including claims arising from the acts, omissions, negligence, or misconduct of Grantee or that of its agents, employees, invitees or contractors, or of Grantee's use or occupancy of the Easement Area. The obligations shall include, but not be limited to, the obligations to defend, indemnify, and hold harmless City in all matters where claims of liability against City are alleged to be or could be found to arise out of acts or omissions of Grantee, or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of Grantee, or arise out of or relate to Grantee's negligent, intentional, or wrongful acts or omissions, including breach of any duty in this easement document by Grantee. The obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. On ten days' written notice from City, Grantee will appear and defend all lawsuits against City growing out of such injuries or damages using counsel acceptable to City. The indemnification obligations set forth in this document shall survive the termination of this Agreement for any reason. Grantee shall not have the obligation to indemnify City for City's

intentional, willful or wanton acts. Grantee shall also indemnify City for any damage to the Easement Area or any of City's property caused by Grantee, its employees, agents, volunteers, participants, users or invitees.

7. This Agreement shall be governed by the laws of the State of Minnesota, and all terms, conditions, and covenants herein shall be interpreted in accordance therewith. This Agreement, including its exhibits, constitutes the entire agreement between the parties as to the Easement, and supersedes all prior written and oral agreements and negotiations between the parties relating to the Easement.

[Remainder of this page is intentionally left blank.]

CITY OF DULUTH

By: _____
Roger J. Reinert, Mayor

By: _____
Ian B. Johnson, City Clerk

STATE OF MINNESOTA)
) SS
COUNTY OF SAINT LOUIS)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2024, by Roger J. Reinert, the Mayor of the City of Duluth, a municipal corporation and political subdivision organized and existing under the laws of the State of Minnesota.

Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF SAINT LOUIS)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2024, by Ian B. Johnson, the Clerk of the City of Duluth, a municipal corporation and political subdivision organized and existing under the laws of the State of Minnesota.

Notary Public

EXHIBIT A
Legal Description of the Property

All of the land or land covered with water in or adjacent to ERIE PIER on the Plat of ONEOTA, located within the following described boundary: Commencing at a point on the center line of St. Paul Avenue (now 44th Avenue West) projected in a straight line SE'ly, which is 789 feet, measured on said center line, from the SE'ly line of First Street (now Oneota Street), which is the point of beginning; thence continuing SE'ly along the center line of said St. Paul Avenue (now 44th Avenue West), projected SE'ly in a straight line to a point where it intersects the Government dock line in St. Louis Bay; thence SW'ly along said Government dock line to a point where it intersects the center line of Brook Avenue (now 45th Avenue West), as projected; thence NW'ly along the said center line of said Brook Avenue as projected for a distance of 510 feet to a point; thence deflect to the right 92 degrees, 18 minutes, 0 seconds in a NE'ly direction for a distance of 280 feet to a point; thence deflect to the left 93 degrees, 5 minutes, 17 seconds in a NW'ly direction to a point located on a line parallel to and distant 789 feet SE'ly from the SE'ly line of said First Street (now Oneota Street); thence running NE'ly parallel with the SE'ly line of First Street (now Oneota Street) to the point of beginning

AND

All riparian rights adjacent and appurtenant to Philadelphia Pier in ONEOTA

AND

All riparian rights adjacent and appurtenant to Pittsburgh Pier in ONEOTA

AND

All riparian rights adjacent and appurtenant to Ontario Pier in ONEOTA

AND

A tract of land in the recorded plat of ONETA, bounded by the following four described lines:

On the northwest by a line drawn parallel with and distant 630 feet southeasterly from the southeasterly line of Oneota Street;

On the southwest by the prolongation of the center line of 41st Avenue West;

On the northeast by the prolongation of the center line of 40th Avenue West;
and

On the southeast by the established dock line of the Harbor of Duluth.

EXCEPT all those parts of Lots 31-34, inclusive, lying southeasterly of a line parallel with and distant six hundred thirty (630) feet southeasterly from the southeasterly line of Oneota Street, New York Pier, ONEOTA, according to the recorded plat thereof.

INCLUDING all riparian rights.

SUBJECT TO railroad right of way and easements, conditions and restrictions of record.

St. Louis County, Minnesota



Building a Better World
for All of Us®

EXHIBIT B

Duluth Seaway Port Authority
Legal Land Description
Erie Pier, Duluth, Minnesota
SEH No.: DUSPA 173420

Proposed Easement Description:


A 37.00 foot wide strip of land over, under, and across those parts of New York Pier and Philadelphia Pier, ONEOTA, according to the recorded plat thereof, Saint Louis County, Minnesota, being 12.00 feet right and 25.00 feet left of the following described line:

Commencing at a found City of Duluth monument located on the centerline of Grand Avenue (platted as Sixth Street, HAZLEWOOD ADDITION TO ONEOTA, according to the recorded plat thereof, Saint Louis County, Minnesota) and 3.41 feet northeasterly of the centerline of 40th Avenue West (platted as Collingwood Avenue), thence South 43 degrees 47 minutes 28 seconds West, along said centerline of Grand Avenue, a distance of 3.41 feet to the centerline intersection of said Grand Avenue and 40th Avenue West; thence South 46 degrees 10 minutes 45 seconds East, along the centerline of said 40th Avenue West, a distance of 1898.22 feet; thence South 42 degrees 33 minutes 48 seconds West a distance of 40.01 feet to the northeasterly line of Lot 8, said New York Pier, and the POINT OF BEGINNING; thence continuing South 42 degrees 33 minutes 48 seconds West a distance of 419.98 feet; thence South 44 degrees 34 minutes 05 seconds West a distance of 147.98 feet to the beginning of a tangential curve, concave to the east, having a radius of 110.00 feet and a central angle of 90 degrees 44 minutes 50 seconds; thence southerly along said curve a distance of 174.22 feet; thence South 46 degrees 10 minutes 45 seconds East, tangent to the previously described curve, a distance of 504.10 feet to the southeasterly line of said Philadelphia Pier, and there terminating, EXCEPT lands within 41st Avenue West (platted as Michigan Avenue), according to said plat of ONEOTA.

The sidelines of said strip of land shall be shortened or prolonged so as to terminate on the said southeasterly line of Philadelphia Pier, and the said northeasterly line of Lot 8, said New York Pier.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.



Chris A. Larsen, PLS
Minnesota License No. 45848

June 6, 2024
Date

\\cihl-filepr-02\Departments\PUBLICADMIN\Architec\P&FM\Property Services\Land & Property\Erie Pier\Conveyance to Port Authority\Easement\DSPA Easement Description (final).docx

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 418 West Superior Street, Suite 200, P.O. Box 229, Duluth, MN 55801-0229

218.279.3000 | 888.722.0547 | 888.908.8166 fax | sehinc.com

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EXHIBIT C



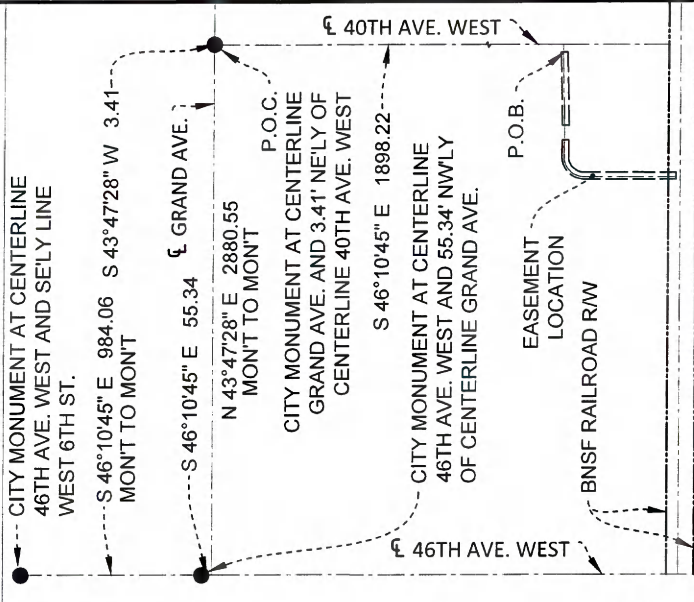
ORIENTATION OF THIS BEARING SYSTEM IS BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM, NAD83 (1996 ADJ)

I hereby certify that this exhibit has been checked and approved this 2NP day of July, 2024.

Signature: *[Signature]* City Engineer

Printed Name: CLAYTON W. KAT Date: 7-2-24

EASEMENT AREA = 0.98 AC. (42,745 S.F.) SURVEY CONTROL 1" = 1000'



SEH
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 DULUTH, MN 55802-1512
 www.sehinc.com

I HEREBY CERTIFY THAT THIS SURVEY, PLAN, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

CHRIS A. LARSEN, L.S.
 DATE 6-6-2024 LICENSE NO. 45848

EASEMENT EXHIBIT FOR: DULUTH SEAWAY PORT AUTHORITY DULUTH, MINNESOTA

EASEMENT
 SEH Project DUSPA 173420
 Drawn By KLA
 Surveyed By JAH
 Checked By CAL

