

Exhibit 1

AMENDMENT NUMBER 1
TO
THE AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CITY OF DULUTH, MINNESOTA
AND
THE SEAWAY PORT AUTHORITY OF DULUTH
FOR LOCAL COOPERATION AT
DULUTH HARBOR, MINNESOTA

THIS AMENDMENT is entered into this ____ day of _____, 2025, by and between the Department of the Army (hereinafter the “Government” and interchangeable with the “United States of America”), represented by the District Commander for Detroit District (hereinafter the “District Commander” and interchangeable with “District Engineer” and “Contracting Officer” as defined in the Agreement), and the Duluth Seaway Port Authority (hereinafter the “Authority”), represented by its Executive Director, and the City of Duluth, Minnesota (hereinafter the “City”), represented by the Mayor.

WITNESSETH, THAT:

WHEREAS, construction of the Erie Pier Confined Disposal Facility (hereinafter “Project”, as defined in paragraph 8 of the Local Cooperation Agreement between the parties dated April 25, 1978 (hereinafter the “Agreement” or the “LCA”) as amended herein) was authorized by Section 123 of the Rivers and Harbor Act of 1970 (Public Law 91-611), as amended (hereinafter “Section 123”);

WHEREAS, Section 123, as amended, specified the cost-sharing requirements applicable to the Project;

WHEREAS, the Government, Authority and City entered into the LCA to provide for the construction, operation and maintenance of the Project pursuant to Section 123;

WHEREAS, construction of the Project was completed in 1979, and the Government is currently operating and maintaining the Project as the facility is still being used for disposal purposes;

WHEREAS, in a letter from the City to the Government, dated January 10, 2024, the City requested to be released from the LCA;

WHEREAS the Authority wishes to continue serving as the non-Federal sponsor for the Project and assume all obligations of the City within the LCA;

WHEREAS, the Authority hereby represents that it has the authority and capability to furnish the non-Federal cooperation required by Federal law authorizing the Project and by other applicable law;

WHEREAS, the City and the Authority have acquired and furnished to the Government all necessary lands, easements, and rights-of-way required for the operation and maintenance of the Project;

WHEREAS, the Government, the Authority, and the City desire to amend the LCA to reflect the following: (i) releasing the City from the LCA; (ii) the Authority's assumption of all the City's obligations under the LCA; and (iii) adding additional terms and conditions to the LCA terms to reflect current laws, regulations, and policies as well as current Project conditions; and

WHEREAS, the Government, the City, and the Authority have the full authority and capability to perform in accordance with the terms of this Amendment Number 1 and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C.1962d-5b), provides that this Amendment and the underlying Agreement to this Amendment shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. The Agreement title is replaced with the following:

“LOCAL COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE DULUTH SEAWAY PORT AUTHORITY
FOR
DULUTH HARBOR, MINNESOTA”

2. The following provisions are added to the end of the Agreement:

“8. DEFINITIONS

a. The term “Project” means the constructed contained disposal facility at Duluth Superior Harbor, Duluth, Minnesota, as originally described in the Revised Letter Report, dated August 1976 and approved by the District Commander for the St. Paul District on November 24, 1976, and is synonymous with following phrases used in this Agreement:

i. Contained Spoil Disposal Facility at Duluth Harbor, Minnesota, as authorized by Section 123 of Public Law 91-611, approved 31 December 1970, substantially in accordance with the Revised Letter Report dated August 1976 and approved 24 November 1976; and

ii. Contained Spoil Disposal Facility.

b. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the

Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

c. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and dredged material placement facilities. Acquisition of real property interests may require the performance of relocations and removal of obstructions.

d. The term “dredged material placement facilities” means the improvements required on real property interests to enable the placement of dredged or excavated material during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

9. OBLIGATIONS OF THE PARTIES

a. The Authority shall ensure that the local service facilities are constructed, operated, and maintained, at no cost to the Government, and that all applicable licenses and permits necessary for construction, operation, and maintenance of such work are obtained.

b. The Government, as it determines necessary and subject to the availability of funds, shall operate and maintain the Project using funds appropriated by the Congress and, if applicable funds provided by the Authority. The operation and maintenance will generally consist of routine maintenance and management of dredged material in the facility and/or to facilitate beneficial use of dredged material. Routine maintenance includes monitoring, inspecting, mowing, clearing, grubbing, road grading, removing debris, controlling invasive species such as purple loosestrife, controlling drainage and improving the site such as repairing berms and excavating settling ponds. Routine management includes completing site surveys to estimate volumes available for beneficial use of dredge material, physical and sediment testing to assess dredged material suitability for use and coordinating with stakeholders utilizing dredged material from the Project. The Government shall cease operation and maintenance of the Project upon completion of the facility’s use for disposal purposes.

c. The Authority hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon real property interests that the Authority now or hereafter owns or controls for the purpose of Government operation and maintenance of the Project. In addition, the Government shall have the full authority and right to operate and maintain or manage dredged material placement facilities including the right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government. The Authority shall not place or authorize placement of material in the dredged material placement facilities unless the Government authorizes the placement under 33 U.S.C. 2326a(b) or 33 U.S.C. 1341(c), whichever is applicable. The Authority shall not otherwise modify or improve the dredged material placement facilities unless the Government approves the modification or improvement under 33 U.S.C. 408. No maintenance by the Government in such event shall operate to relieve

the Authority of its responsibility to meet its obligations as set forth in this Agreement or to preclude the Government from pursuing any other remedy at law or equity.

d. The Authority shall not use Federal program funds to meet any of its obligations under this Agreement unless the funds are not expressly prohibited from such use and the Federal agency providing the funds verifies in writing that the funds are otherwise eligible to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

10. REAL PROPERTY INTERESTS

The Authority shall acquire the real property interests and provide the Government with authorization for entry thereto. The Authority shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purpose of the Project and, in accordance with paragraph 14.a., that the real property interests are investigated and that HTRW does not exist in, on, or under the real property interests.

11. HAZARDOUS, TOXIC AND RADIOACTIVE WASTE (HTRW)

a. The Authority shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

b. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Authority and the Government shall provide written notice to each other within fifteen (15) calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Authority shall not proceed with the acquisition of such real property interests until the parties agree that the Authority should proceed. If HTRW is discovered after acquisition of the real property interests, no further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

c. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

i. Should the parties initiate or continue construction, the Authority shall be solely responsible, as between the Government and the Authority, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Authority shall pay such costs without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Authority has completed the required cleanup and response actions.

ii. In the event the parties cannot reach agreement on how to proceed or the Authority fails to discharge its responsibilities under this paragraph upon direction by the Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Authority responsible for such costs without credit or reimbursement by the Government.

d. In the event of a HTRW discovery, the Authority and the Government shall initiate consultation with each other within fifteen (15) calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as required by applicable law. Any decision made pursuant to this paragraph shall not relieve any third party from any HTRW liability that may arise under applicable law.

e. To the maximum extent practicable, the Government and Authority shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

12. DISPUTE RESOLUTION

As a condition precedent to the Government or the Authority bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

13. MAINTENANCE OF RECORDS AND AUDITS

a. The Government and the Authority shall develop procedures for the maintenance by the Authority of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Authority shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

b. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations.

c. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Authority to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Authority's request, provide to the Authority or independent auditors any such information necessary to enable an audit of the Authority's activities under this Agreement. The Authority shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

14. RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Authority each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

15. NOTICES

a. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Authority:

Executive Director
Duluth Seaway Port Authority
802 Garfield Ave, Duluth, MN 55802

If to the Government:

District Commander
U.S. Army Corps of Engineers, Detroit District
477 Michigan Avenue
Detroit, MI 48226

b. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

16. CONFIDENTIALITY

To the extent permitted by the laws governing each party, the Government and the Authority agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

17. THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

18. RELEASE AND ASSUMPTION AND HOLD AND SAVE

a. As of the effective date of Amendment Number 1 to this Agreement, the City is released from all rights, responsibilities, and obligations under this Agreement except as provided in paragraph 18.c.

b. As of the effective date of Amendment Number 1 to this Agreement, all rights, responsibilities, and obligations of the City shall be deemed transferred to and assumed in full by the Authority.

c. The City is released from its obligation to the Government contained in paragraph 1.b. of the Agreement but only for damages that occur after the effective date of Amendment Number 1 to this Agreement.

d. The Authority shall hold and save the Government harmless for all damages or claims for damages concerning the Project that relate to events that occurred prior to and after the date of execution of Amendment Number 1 to this Agreement, except for damages due to the fault or negligence of the Government and its contractors.”

3. All other terms and conditions of this Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

DULUTH SEAWAY PORT AUTHORITY

BY: _____
WALLACE W. BANDEFF
Lieutenant Colonel, U.S. Army
District Commander

BY: _____
KEVIN BEARDSLEY
Executive Director

DATE: _____

DATE: _____

CITY OF DULUTH, MINNESOTA

BY: _____
ROGER J. REINERT
Mayor

ATTEST: _____
ALYSSA DENHAM
City Clerk

DATE: _____

DATE: _____

BY: _____
JOSH BAILEY
City Auditor

BY: _____
TERRI LEHR
City Attorney

DATE: _____

DATE: _____