

EXHIBIT 2

ERIE PIER AGREEMENT

THIS ERIE PIER AGREEMENT is made this ____ day of _____, 2022 (the “Effective Date”) by and between the **City of Duluth**, a Minnesota municipal corporation (the “City”), and **Duluth Seaway Port Authority**, a body politic and corporate, organized under the laws of the State of Minnesota (“DSPA”) in response to the following situation:

A. Public Law 91-611, otherwise known as Section 123 of the 1970 River and Harbor Act, authorizes the US Army Corps of Engineers (“USACE”) to construct, operate, and maintain confined placement areas for dredged material in the Great Lakes region. This law provided for the construction of confined disposal facilities (“CDF”) specific to the region and required a local sponsor for the CDF, typically a city, county or state governmental agency. The local sponsor was required to provide all lands, easements, and rights of way to the USACE for the CDF site. The local sponsor was also required to provide 25% of the construction funds. This local cost share could, however, be waived if the United States Environmental Protection Agency certified that the area was in compliance with an approved water quality program. The local sponsor would receive title to the CDF after it was filled and capped and is responsible for long-term maintenance.

B. An agreement between the United States of America, the City, and DSPA dated April 25, 1978, under the authority of Section 123 of the 1970 River and Harbor Act, set in motion and laid the basic requirements for establishing a CDF site in the Duluth Harbor (the “USACE Agreement”). That site would become known as Erie Pier and is referred to in this Agreement as “Erie Pier” or the “Erie Pier CDF.” The 89-acre Erie Pier CDF for placement of dredged materials was constructed in 1978-79 to serve both the Wisconsin and Minnesota portions of the Duluth Harbor. Over 175,000 cubic yards of dredge material was placed in 1978 to support dike construction. The Erie Pier CDF construction was completed in 1979 with an estimated capacity of 1.1 million cubic yards and a 10-year life expectancy. The majority of the Erie Pier CDF property is believed to be owned by the City and the westernmost portion is owned by DSPA. Operation of the site and its dredged materials is managed by USACE.

C. The life of Erie Pier has been extended beyond its original ten years to over 40 years by raising the dikes, achieving better-than-expected settling and compaction rates, removing and reusing dredged material from Erie Pier through hydraulic sorting operations, and by directly placing material from the navigation channel at beneficial use sites (such as beach nourishment, remediation projects, and habitat restoration), the latter of which eliminated the need to place it at Erie Pier. These improvements have also increased the capacity from its original 1.1 million cubic yards to over 3.8 million cubic yards.

D. DSPA is working to beneficially use material from Erie Pier so that the Erie Pier CDF’s operational life is extended for as long as possible. DSPA holds a state permit from the Minnesota Pollution Control Agency (“MPCA”) that authorizes operation of the disposal system and beneficial use of material offsite. This permit has been used to facilitate beneficial use of sand material from DSPA’s portion of Erie Pier. More recently, USACE received funding to excavate and transport finer topsoil material from Erie Pier to beneficial use sites (the “Project”). All of the finer topsoil material to be beneficially used through the Project is located on that portion of Erie

Pier apparently owned by the City, which property is legally described on the attached Exhibit A (the “City Erie Pier Property”). There is no agreement allowing DSPA to take actions to facilitate material removal from the City Erie Pier Property. The Project will require negotiation of access agreements and liability releases to remove material from the City Erie Pier Property and place the material at new beneficial use sites. DSPA and USACE are currently evaluating six proposals requesting material at 12 sites ranging from 9 miles to 88 miles from Erie Pier. The total volume requested is 504,400 cubic yards with most proposers requesting additional material in the future. Transferring ownership of the City Erie Pier Property to DSPA allows DSPA to negotiate access and liability agreements with USACE and beneficial users. USACE funds for the Project must be obligated by March 2023. This means beneficial use sites identified, Project designed, publicly bid or seek proposals for the Project, contractor selection, obtain permits to transport material, negotiate agreements and sign contracts by March 2023.

E. MPCA considers the Erie Pier CDF a disposal system and requires the owner/operator to obtain a permit. The current permit, which is up for renewal in January 2023, states DSPA is the facility owner and therefore the permittee. This is inaccurate as the City owns the entire disposal area of the Erie Pier CDF, while DSPA only owns the adjacent dock where no disposal occurs. This issue could be resolved by transferring ownership of the City Erie Pier Property to DSPA.

F. The City desires to assign and convey to DSPA all of its right, title and interest to the City Erie Pier Property.

G. The City is authorized to convey the City Erie Pier Property to DSPA by Duluth City Code § 2-177.3 and Minnesota Statutes § 471.64.

H. DSPA is authorized to accept the conveyance of the City Erie Pier Property pursuant to Minnesota Statutes § 469.055, Subd. 6 and Minnesota Statutes § 471.64.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE I

Definitions

1.1. “Agreement” means this Erie Pier Agreement for the City Erie Pier Property, together with its exhibits, as amended or modified from time to time.

1.2. “City” means the City of Duluth, Minnesota.

1.3. “City Erie Pier Property” means the property legally described on Exhibit A attached hereto.

1.4. “DSPA” means the Duluth Seaway Port Authority.

1.5. “Party” or “Parties” means individually and collectively the City and DSPA.

1.6. “Right of Entry Agreements” means those certain Right-of Entry agreements by City and DSPA in favor of the United States of America dated October 10, 1978 and June 19, 1979.

1.7. “USACE” means the United States Army Corps of Engineers.

1.8. “USACE Agreement” means that certain agreement between the United States of America, the City and DSPA for Local Cooperation at Duluth Harbor, Minnesota dated April 25, 1978.

ARTICLE II

Erie Pier Agreement Closing Requirements

2.1. **Closing Date.** Subject to compliance with the terms and conditions of this Agreement, the City shall convey the City Erie Pier Property to DSPA for the purchase price of One and No/100 Dollars. The closing on the conveyance of the City Erie Pier Property to DSPA (the “Closing”) shall occur as soon as reasonably possible after the City’s Conditions to Closing contained in Section 2.3 are satisfied to the satisfaction to the City and the DSPA’s Conditions to Closing contained in Section 2.5 are satisfied to the satisfaction of the DSPA or waived by DSPA. 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. This Agreement shall continue in full force and effect until the Closing, provided that this Agreement shall terminate, unless it is extended by written agreement of City and DSPA, on December 31, 2023.

2.2. **Evidence of Title.** DSPA has ordered, at DSPA’s sole cost and expense, a commitment from Consolidated Abstract & Title Company Title to issue an ALTA Owner’s Policy of Title Insurance (“Title Policy”), to insure DSPA’s title to the City Erie Pier Property (the “Title Commitment”). DSPA shall be solely responsible for obtaining the Title Commitment and addressing any title issues presented by the Title Commitment to the satisfaction of DSPA. The City shall cooperate with DSPA in addressing any title issues, but shall not be required to expend any money or other resources of the City to address any title issues.

2.3. **City’s Conditions to Closing.** The Closing of the conveyance of the City Erie Pier Property contemplated by this Agreement and the obligation of the City to convey the City Erie Pier Property shall be subject to the following conditions:

2.3.1. **Representations.** DSPA’s representations in this Agreement shall be true at the time of Closing as though such representations were made at such time.

2.3.2. **Ordinance.** The City Council shall have adopted an ordinance approving the conveyance on the terms and conditions set forth in this Agreement (the “Council Contingency”). The Council Contingency may not be waived.

2.3.3. **Title.** The Title Commitment shall reflect that the City is the fee owner of the City Erie Pier Property or otherwise has an interest in the City Erie Pier Property to convey to DSPA.

2.3.4. **Performance by DSPA.** DSPA shall have performed all of its obligations under this Agreement.

2.3.5. **Subdivision.** DSPA shall have obtained, on or before the Closing, any necessary approvals to subdivide the City Erie Pier Property from adjacent land owned by the City. The City shall cooperate, at no expense to the City, with any applications and procedures necessary to obtain such approvals, including but not limited to, execution of any necessary documents as owner of the City Erie Pier Property; provided, however, that no such document shall impose any restriction or other encumbrance on adjacent land owned by the City.

2.4. **Representations By City.** City makes the following representations to DSPA:

2.4.1. Subject to final approval of the conveyance of the City Erie Pier Property by ordinance passed by the Duluth City Council, the individuals executing the documents as are contemplated or to be delivered by the City at Closing, and to bind the City thereto, have the requisite authority to do so; and the City has the full and complete authority to convey the City Erie Pier Property.

2.4.2. The City 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.

2.4.3. The City's staff handling the conveyance of the City Erie Pier Property on behalf of the City have no actual knowledge of any "wells" on the City Erie Pier Property within the meaning of Minn. Stat. §103I. This representation is intended to satisfy the requirements of the statute.

2.4.4. Solely for the purpose of satisfying the requirements of Minn. Stat. §115.55, the City's staff handling the conveyance of the City Erie Pier Property on behalf of the City have no actual knowledge that there is a "subsurface sewage treatment system" within the meaning of that statute on or serving the City Erie Pier Property.

2.4.5. The City's staff handling the conveyance of the City Erie Pier Property on behalf of the City have no actual knowledge that methamphetamine production has occurred on the City Erie Pier 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, DSPA acquires actual knowledge of events or circumstances which render a representation set forth in this Section inaccurate in any respect, and DSPA elects to close, DSPA shall be deemed to have waived and released any rights or remedies with respect to the representation. The representations made by the City in this Agreement shall survive the delivery of the Deed (defined below) for a period expiring on the date that is twelve (12) months

following the Closing (the “Survival Date”) and any action for a breach of the City’s representations must be made and filed by the Survival Date. DSPA shall not make or bring any claim for breach of the City’s representations unless the amount of such claim equals or exceeds \$5,000 and the full extent of the City’s liability for all representations shall not exceed \$5,000 in the aggregate. DSPA’s sole remedy after the delivery of the Deed for a breach of the City’s representations is an action for actual damages pursuant to this Section and DSPA waives all other causes of action and claims including, without limitation, any action to rescind this Agreement. Any DSPA claim for a breach of the City’s representations which is not made and filed by DSPA by the Survival Date shall, from and after the Survival Date, be deemed to have been waived by DSPA and rendered null and void and of no further force and effect.

2.5. DSPA’s Conditions to Closing. The Closing of the conveyance of the City Erie Pier Property contemplated by this Agreement and the obligation of DSPA to accept the City Erie Pier Property shall be subject to the following conditions:

2.5.1. The City’s representations in this Agreement shall be true at the time of Closing as though such representation were made at such time.

2.5.2. DSPA shall obtain, at its sole cost and expense, a Title Commitment that it determines in its sole discretion is acceptable to it.

2.5.3. DSPA shall obtain, at its sole cost and expense, a survey for the City Erie Pier Property that it determines in its sole discretion is acceptable to it.

2.5.4. DSPA shall obtain any consents and approvals that it deems necessary with regard to the conveyance of the City Erie Pier Property and Assignment and Assumption of Rights and Obligations, including from the USACE.

2.5.5. The DSPA Board of Commissioners shall approve this Agreement effectuating the terms hereof.

2.6. As Is Provisions. DSPA is accepting the City Erie Pier Property “AS IS” and “WHERE IS”, and with all faults, and except as expressly set forth in Section 2.4, the City makes no representations or warranties, whether express or implied, by operation of law or otherwise, with respect to the quality, physical condition or value of the City Erie Pier Property, the compliance of the City Erie Pier Property with applicable building or fire codes or other laws or regulations. DSPA agrees that the City is not liable or bound by any guarantees, promises, statements, representations or information pertaining to the City Erie Pier Property made or furnished by the City or any agent, officer, director, employee or other person representing or purporting to represent the City, except as and to the extent expressly set forth in Section 2.4. To the fullest extent allowed by Minnesota and Federal law, DSPA and the City agree as follows: DSPA expressly waives the requirement of any disclosure not expressly contained in this Agreement, and DSPA agrees to take the City Erie Pier Property “As Is” notwithstanding any matter set forth in any disclosure statement required by Minnesota law.

DSPA ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 2.4, THE CITY HAS NOT MADE, DOES NOT MAKE AND

SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO:

(A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE CITY ERIE PIER PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY;

(B) THE INCOME TO BE DERIVED FROM THE CITY ERIE PIER PROPERTY;

(C) THE SUITABILITY OF THE CITY ERIE PIER PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH DSPA MAY CONDUCT THEREON;

(D) THE COMPLIANCE OF OR BY THE CITY ERIE PIER PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCE OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY OR ANY FRANCHISE LICENSE OR AGREEMENT OR ANY GRANT OR SIMILAR AGREEMENT;

(E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CITY ERIE PIER PROPERTY;

(F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE CITY ERIE PIER PROPERTY;

(G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE CITY ERIE PIER PROPERTY;

(H) THE AVAILABILITY OF WATER OR OTHER RESOURCES OR UTILITIES;
OR

(I) ANY OTHER MATTER WITH RESPECT TO THE CITY ERIE PIER PROPERTY, AND SPECIFICALLY, THAT THE CITY HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION OR POLLUTION RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING SOLID WASTE, AND INCLUDING THE DISPOSAL, RELEASE OR EXISTENCE, IN OR ON THE CITY ERIE PIER PROPERTY, OF ANY HAZARDOUS SUBSTANCE.

2.7. **Representations by DSPA.** DSPA makes the following representations to the City:

2.7.1. The individuals executing this Agreement on behalf of DSPA have the requisite authority to execute this Agreement and such other documents as are

contemplated or to be delivered by DSPA, and to bind DSPA thereto; and DSPA has the full and complete authority to acquire the City Erie Pier Property.

2.7.2. DSPA 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 DSPA and not the responsibility of City under this Agreement.

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

2.8. **Independent Investigation.** The consummation of this transaction shall constitute DSPA's acknowledgment that DSPA has independently inspected and investigated the City Erie Pier Property and has made and entered into this Agreement based upon such inspection and investigation and its own examination of the condition of the City Erie Pier Property. Upon Closing, DSPA shall assume the risk that adverse matters, including but not limited to construction defects and adverse physical and environmental conditions and the suitability or unsuitability of the City Erie Pier Property for DSPA's intended uses, may not have been revealed by DSPA's investigations. DSPA, upon Closing, shall be deemed to have waived, relinquished and released the City and its employees, agents, elected officials, and attorneys (collectively, the "**Seller-Related Parties**") from and against, and covenanted not to sue any of the foregoing with regard to, any and all claims, demands, causes of action (including causes of action in tort or under any environmental law), losses, damages, liabilities (whether based on strict liability or otherwise), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, which DSPA might have asserted or alleged against the City and/or the Seller-Related Parties at any time (including without limitation to the extent covered by or that would be covered by [as opposed to paid] by insurance) by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental laws), the suitability of the City Erie Pier Property for any purposes contemplated by DSPA and any and all other acts, omissions, events, circumstances or matters regarding the City Erie Pier Property. The foregoing shall not be interpreted to waive any claim of DSPA with respect to any breach by the City of any express representations made by the City in Section 2.4 that expressly survive Closing pursuant to this Agreement.

2.9. **DSPA's Efforts Are for DSPA's Benefit Only.** DSPA acknowledges that all actions taken or to be taken and all expenses or payments made or to be made and all obligations entered into or incurred or to be entered into or incurred by or on behalf of or at the direction or request of DSPA relating to this Agreement or DSPA's acquisition of the City Erie Pier Property or DSPA's use, possible use or intended use of the City Erie Pier Property are, have been and shall be solely for DSPA's benefit and not for the benefit of or with the intention of benefitting the City. This includes, without limitation, those relating to (i) DSPA's due diligence, (ii) DSPA's efforts to seek any governmental, quasi-governmental or other approval or entitlement, including, without limitation, any subdivision approval, zoning change, license, permit, approval, consent, utility reservation, water allocation or other entitlement of any kind or nature whatsoever ("Approval"), (iii) the preparation of any drawings, plans, specifications, surveys or architectural or engineering renderings (collectively, "Plans"), (iv) any third party report, study, survey, or analysis, including,

without limitation, any survey, environmental investigation or report, soil report or traffic report (collectively, “Reports”) or (v) any claims, damages, costs, expenses, liabilities, and losses incidental to or arising out of relating thereto.

2.10. **Survival.** The provisions of this Erie Pier Agreement shall survive the Closing.

2.11. **Real Estate Taxes and Special Assessments.** The City Erie Pier Property is currently tax-exempt and DSPA and City do not expect there to be any current or past due taxes or assessments outstanding as of the Closing. In the event that there are any current or past due taxes or assessments outstanding as of the Closing, DSPA shall pay them at Closing as a part of the Closing Costs. DSPA shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years.

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

2.12.1. A Quit Claim Deed executed by City in the form attached as Exhibit B (the “Deed”);

2.12.2. Ordinance by the City, in form acceptable to Title, authorizing the conveyance of the City Erie Pier Property to DSPA;

2.12.3. Resolution or other document by DSPA, in form acceptable to Title, authorizing the acquisition of the City Erie Pier Property by DSPA;

2.12.4. A Quit Claim Assignment and Assumption of Rights and Obligations executed by both City and DSPA in the form attached hereto as Exhibit C (“Assignment of Rights”).

2.12.5. A certificate (or statutory statement on the Deed) signed by the City warranting that there are no “Wells” on the City Erie Pier Property within the meaning of Minn. Stat. Chapter 103I, or if there are “Wells”, a Well Certificate in the form required by law; and

2.12.6. All other documents required by this Agreement to effectuate the provisions of this Agreement.

2.13. **Closing Costs.** It is the intention of the parties that the City shall not incur any out of pocket costs relating to this Agreement or the Closing. All costs and expenses in connection with the Closing shall be paid by DSPA, including but not limited to the following:

2.13.1. All fees associated with the issuance of the Title Commitment, including state and federal tax lien, judgment and bankruptcy searches;

2.13.2. All state deed taxes and/or transfer taxes on deeds;

2.13.3. All recording fees, including but not limited to fees to record the Deed, the City's ordinance authorizing the conveyance of the City Erie Pier Property to DSPA, and all releases and satisfactions of existing mortgages or liens;

2.13.4. All expenses charged by Title, including the entire cost of any Closing fee and any Title Policy DSPA chooses to purchase;

2.13.5. All attorneys' fees and expenses incurred by DSPA; and

2.13.6. Any surveys, Plans, Approvals or reports of any kind obtained by DSPA.

2.14. **Commission.** The City and DSPA represent and warrant to each other that they have not engaged the services of any broker in connection with the conveyance contemplated by this Agreement. The City and DSPA 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 Purchase Agreement entered into by said party.

2.15. **Risk of Loss.** If there is any loss or damage to the City Erie Pier Property between the date of this Agreement and the date of Closing, the risk of loss shall be on the City. If the City Erie Pier Property is destroyed or damaged prior to the Closing, DSPA may cancel this Agreement upon written notice to the City 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.

2.16. **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 City Erie Pier Property, the City will promptly notify DSPA, and DSPA may, at DSPA's sole option, terminate this Agreement. Notwithstanding the foregoing, DSPA 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 DSPA's intended use of the City Erie Pier Property. DSPA will have until the earlier of (a) the Closing Date; or (b) the date twenty (20) days from DSPA's receipt of the City's notice to DSPA to exercise DSPA's termination right. If DSPA does not terminate this Agreement pursuant to this Section 2.16, the parties will fully perform their obligations under this Agreement and the City will assign to DSPA, on the Closing Date, all of the City's right, title and interest in any award made or to be made in the condemnation proceedings. The City will not designate counsel, appear or otherwise act with respect to any such condemnation proceedings without DSPA's prior written consent unless DSPA fails to respond within seven (7) days to a request for such written consent.

ARTICLE III Operations and Maintenance

From and after the conveyance of the City Erie Pier Property pursuant to the Deed and the Assignment and Assumption of Rights and Obligations in accordance with Article II hereof, DSPA shall be solely responsible for the ongoing operations and maintenance of the City Erie Pier

Property and performance of any obligations of the City under the USACE Agreement and the Right of Entry Agreements.

ARTICLE IV

Notices

All notices required or permitted to be given hereunder shall be in writing and addressed as follows:

If to City:

City of Duluth
1532 West Michigan Street
Duluth, MN 55806

Attn: Property and Facilities Manager

Email: *hmartinsen@dulthmn.gov*

If to DSPA:

Duluth Seaway Port Authority
802 Garfield Avenue
Duluth, MN 55802
Attn: Deb DeLuca, Executive Director

Email: *ddeluca@duluthport.com*

With a copy to:

Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue
Suite 101
Duluth, MN 55802

Email: *soverom@overomlaw.com*

A Party may change its address for notices by giving notice to the other Party. Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of the Parties.

All submittals or notices which either Party is required or authorized to give under the terms of this Agreement shall be deemed to have been sufficiently given if given by (i) hand delivery, (ii) registered or certified mail, or (iii) a nationally recognized overnight delivery service for next business day delivery, addressed to the Parties' addresses above, unless otherwise specified elsewhere.

ARTICLE V

Miscellaneous

5.1. No Rights or Benefits to Third Parties. The Parties do not intend to create rights in, or to grant remedies to, any third-party as a beneficiary of this Agreement or to create any duty

to, or standard of care on behalf of, any third-party by any covenant, obligation or undertaking established in this Agreement. There are no incidental third-party beneficiaries to this Agreement.

5.2. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota of the United States of America, exclusive of its choice of law provisions, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts sitting in St. Louis County, Minnesota, and waive any objections to such location based on jurisdiction, venue or inconvenient forum.

5.3. **Construction of Agreement.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring a Party by virtue of the authorship of any of the provisions of this Agreement.

5.4. **Severability.** If any provision of this Agreement is declared void, or otherwise unenforceable by a court or other tribunal of competent jurisdiction, such provision shall be deemed to be severed from this Agreement to the limited extent required and this Agreement shall otherwise remain in full force and effect.

5.5. **Force Majeure.** Other than as expressly provided elsewhere in this Agreement, no Party shall have any liability for delays in performance to the extent caused by acts of nature, acts of war or the public enemy, strikes, picketing, lockouts or other labor disturbances, fires, floods, earthquake or other force or violence of the elements (including adverse weather), or any other contingency beyond the reasonable control of the party affected thereby. In the event of any such occurrence of force majeure, the time for the Party's performance affected thereby shall be extended for such period as reasonably required under the circumstances.

5.6. **Entire Agreement and Amendment.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof. No modification, amendment or waiver may be made to the terms of this Agreement without the written consent of both Parties. The City's Chief Administrative Officer is authorized, in their discretion, to sign amendments solely to extend timelines set forth in this Agreement up to a maximum of 120 days.

5.7. **Counterparts.** This Agreement may be executed in any number of counterparts and by each Party hereto 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.

5.8. **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.

5.9. **Time of Essence.** Time is of the essence of this Agreement.

5.10. Default.

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

5.10.2. If the City defaults in the performance of the City's obligations under this Agreement due to no fault of DSPA, then DSPA may, after at least thirty (30) days prior written notice to the City and the City's failure to cure the default within said notice period, either (i) declare this Agreement terminated, or (ii) DSPA may elect to seek specific performance of this Agreement. Termination and specific performance pursuant to this Section are the sole and exclusive remedies afforded to DSPA and in no event shall the City be liable for any actual, general, specific, punitive, incidental, speculative, consequential or other damages of any kind or nature.

5.10.3. Notwithstanding anything in this Section 5.10 to the contrary, any action by DSPA for specific performance must be commenced no later than thirty (30) days after the date DSPA discovers or becomes aware of the City's default.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first written above.

CITY:
City of Duluth

DSPA:
Duluth Seaway Port Authority

By: _____
Its Mayor

By: _____
Deb DeLuca, Executive Director

And By: _____
Its City Clerk

Countersigned:

By _____
Its City Auditor

Approved as to form:

City Attorney

EXHIBIT A
Legal Description

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 ONEOTA, 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

EXHIBIT B
Quit Claim Deed

(Top 3 inches reserved for recording data)

QUIT CLAIM DEED

Business Entity to Business Entity

eCRV number: N/A

DEED TAX DUE: \$1.65*

DATE: _____, 2022

FOR VALUABLE CONSIDERATION, **City of Duluth**, a Minnesota municipal corporation, ("**Grantor**") hereby conveys and quitclaims to **Duluth Seaway Port Authority**, a body politic and corporate, organized under the laws of the State of Minnesota, ("**Grantee**") real property in St. Louis County, Minnesota, legally described as follows:

See Exhibit A attached hereto.

Check here if all or part of the described real property is Registered (Torrens) ☒

together with all hereditaments and appurtenances belonging thereto., and subject to the following:

Grantee, for itself and its successors and assigns, agrees that Grantee has had the opportunity to inspect the Property and is not relying on any representations or warranties, express or implied, of any kind whatsoever from Grantor as to any matters concerning the Property, including, but not limited to, the physical condition of the Property and any defects thereof, zoning status, tax consequences of this transaction, utilities, operating history or projections, valuation, governmental approvals, the presence of any Hazardous Substances in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks, transformers, and asbestos or lead containing structures or materials in, on or under the Property, the condition of title to the Property and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property. Grantee acknowledges that Hazardous Substances may be on, at, under, or emanating from and in proximity to the Property which may or may not be in violation of Environmental Laws and that Grantee's investigation may not have disclosed all such Hazardous Substances or violations or the extent thereof. AS SUCH, GRANTEE ACCEPTS AND IS AWARE THAT GRANTEE IS ACQUIRING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO, ASSOCIATED WITH, OR ARISING FROM THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND THAT GRANTEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM GRANTOR AS TO ANY MATTERS CONCERNING THE PROPERTY.

Grantee agrees not to sue or to assert any claim or cause of action against Grantor arising out of the presence, release, or threatened release of a Hazardous Substance or a pollutant or contaminant occurring on or in the Property pursuant to any right of contribution or indemnification provided by any state or federal statutory or common law including, but not limited to Environmental Laws and any other federal, state, local governmental statute, regulation or ordinance, the subject of which is the protection of human health, safety, natural resources, or the environment now in existence or hereafter enacted. Except as provided for in previous agreements between the Grantor and Grantee, Grantor agrees not to sue or to assert any claim or cause of action against Grantee arising out of the release of a Hazardous Substance or pollutant or contaminant occurring on or in the Property except pursuant to any right of contribution or indemnification provided by any state or federal statutory or common law including, but not limited to Environmental Laws and any other federal, state, local governmental statute, regulation or ordinance, the subject of which is the protection of human health, safety, natural resources, or the environment now in existence or hereafter enacted.

In the event of a claim or lawsuit under state or federal statutory or common law arising from contamination of the Property in any manner by a Hazardous Substance or a pollutant or contaminant, Grantee will defend (with counsel acceptable to Grantor), indemnify and hold harmless Grantor. If Grantee causes or permits the release or threatened release of any Hazardous Substance or pollutant or contaminant on or in the Property, Grantee shall promptly, at no expense to Grantor, take any and all actions necessary to return the Property to a condition that is in accordance with all applicable federal, state, and local laws and regulations.

Nothing in the above paragraphs shall modify or superseded the limitations in the then-applicable provisions of Chapter 466, Tort Liability, Political Subdivisions, of the Minnesota Statutes.

As used in the paragraphs above:

- “Claims” means any and all present, past, or future liabilities, suits, claims, cross claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney’s fees, consultant’s fees, costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);

- “Environmental Laws” means all federal, state and local laws, statutes, ordinances, regulations, standards, rules, policies, common law rule and other-binding and non-binding governmental requirements in effect on the date hereof or adopted or modified after the date of this agreement, and any judicial or administrative interpretation thereof having the force and effect of law, including, without limitation, any applicable judicial or administrative order, consent decree, judgment, order or requirement conferring rights or imposing duties at common law (including without limitation the common law respecting nuisance and tortious liability) relating in any way to the environment, natural resources, plants and animals, and human health and safety, including without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq.; Minn. Stat. § 115B.01, et seq. (2014); the Federal Water Pollution Control Act, 33 U.S.C. §1201, et seq.; the Clean Water Act, 33 U.S.C. §1321, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Toxic Substances Control Act, 33 U.S.C. §1251, et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136, et seq.; the Atomic Energy Act, 42 U.S.C. §2011, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101, et seq.; the Endangered Species Act, 7 U.S.C. §136; 16 U.S.C. §460 et seq.; and any similar or comparable state or local law; and

- “Hazardous Substance” means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity,

polychlorinated biphenyl or any other chemical, element, compound, chemical mixture, substance or material listed or identified in or regulated by any Environmental Law.

These covenants shall run with the land and be binding upon Grantee, its assigns and other successors in title or interest of Grantee.

Check applicable box:

- ☒ The Seller certifies that the Seller does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- ☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

GRANTOR:

City of Duluth

By: _____
Emily Larson
Its Mayor

By: _____
Ian B. Johnson
Its City Clerk

**Total consideration for this transfer is \$500.00 or less.*

State of Minnesota, County of St. Louis County

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Emily Larson the Mayor of the City of Duluth and on behalf of the City of Duluth.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

State of Minnesota, County of St. Louis County

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Ian B. Johnson, the City Clerk of the City of Duluth and on behalf of the City of Duluth.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

GRANTEE

By: _____
Deb DeLuca
Its Executive Director

State of Minnesota, County of St. Louis County

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Deb DeLuca, the Executive Director of the Duluth Seaway Port Authority and on behalf of the Duluth Seaway Port Authority.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue
Suite 101
Duluth, MN 55802

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN
THIS INSTRUMENT SHOULD BE SENT TO:
Duluth Seaway Port Authority
802 Garfield Avenue
Duluth, MN 55802

EXHIBIT A
Legal Description

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

EXHIBIT C
Quit Claim Assignment and Assumption of Rights and Obligations

QUIT CLAIM ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS

THIS QUIT CLAIM ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS (“Assignment”) is made as of the _____ day of _____, 2022 (“Effective Date”) by and between **City of Duluth**, a Minnesota municipal corporation, (“Assignor”) and **Duluth Seaway Port Authority**, a body politic and corporate, organized under the laws of the State of Minnesota (“Assignee”).

RECITALS

WHEREAS, Assignor and Assignee have entered into the Erie Pier Agreement (“Erie Pier Agreement”) dated _____, 2022 with respect to the sale of the property described on Exhibit A attached hereto (the “Property”) by Assignor to Assignee.

WHEREAS, Assignor has certain rights and obligations under the Agreement made amongst the United States of America, Assignor and Assignee for Local Cooperation at Duluth Harbor, Minnesota dated April 25, 1978 (the “USACE Agreement”).

WHEREAS, Assignor is a party to the Right of Entry Agreement made by Assignor and Assignee in favor of the United States of America dated October 10, 1978 and the Supplement Right of Entry Agreement made by Assignor and Assignee in favor of the United States of America dated June 19, 1979 (collectively, the “Right of Entry Agreements”).

WHEREAS, as set forth in the Erie Pier Agreement, Assignor desires to assign its rights and obligations under the USACE Agreement and the Right of Entry Agreements to Assignee and Assignee wishes to accept and assume such rights and obligations.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Assignment and Assumption of Rights and Obligations.

1.1. **Assignment.** As of the Effective Date, Assignor hereby assigns to Assignee all of its rights and obligations, if any, under the USACE Agreement and the Right of Entry Agreements pursuant to the Erie Pier Agreement.

1.2. **Acceptance and Assumption.** As of the Effective Date, Assignee accepts and assumes all of the rights and obligations of Assignor, if any, under the USACE Agreement and the Right of Entry Agreements pursuant to the Erie Pier Agreement.

1.3. **Validity, Reaffirmation and Incorporation.** Assignor and Assignee hereby acknowledge the validity of the Erie Pier Agreement and all documents and agreements referenced in the Erie Pier Agreement which are binding obligations of the parties thereof, all of which are reaffirmed by Assignor and Assignee in their entirety. Except for the specific assignments and assumptions contemplated within this Assignment, there is no change or modification to the terms of the Erie Pier Agreement.

1.4. **Execution.** This Assignment may be executed in separate counterparts, with facsimile or electronic copies of signature pages deemed effective as originals.

2. **Effective Date.** This Assignment shall be effective as the date stated above.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the date first above written.

ASSIGNOR:

City of Duluth

By: _____
Its Mayor

ASSIGNEE:

Duluth Seaway Port Authority

By: _____
Deb DeLuca, Executive Director

And By: _____
Its City Clerk

Countersigned:

By _____
Its City Auditor

Approved as to form:

City Attorney

THIS DOCUMENT WAS DRAFTED BY:
Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue
Suite 101
Duluth, MN 55802

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St. Louis County, Minnesota