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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff

DATE: June 19, 2015

RE: Review of Riverside Park/Land Exchange

In response to City Council's request, the Legislative Policy Division (LPD) reviewed the Land Exchange Agreement between the City of Detroit and Detroit International Bridge Company (DIBC), dated April 29, 2015. Central to the Agreement are two parcels of real property owned by the DIBC, a parcel of City-owned property, and the City's Riverside Park - all adjacent to the Ambassador Bridge. DIBC seeks land and air rights from the City for the purpose of constructing and operating a second privately owned international bridge spanning the Detroit River.¹

In exchange, DIBC is offering the immediate ownership of, and eventual access to, a parcel of land adjacent to the City's existing Riverside Park, a waterfront easement across the portion of Riverside Park that DIBC will acquire, funds (characterized as a "contribution" to the City) for

¹ As discussed in the City's FY 2014 CAFR (Comprehensive Annual Financial Report) at page 1-5, released June 17, 2015, a different bridge, the "New International Trade Crossing" (NITC), between Canada and Detroit has been approved. "Pursuant to an agreement between the Canadian federal government and the State of Michigan announced June 15, 2012, the Canadian federal government would fund bridge construction, land acquisition in Michigan, and the construction of ramps from Interstate 75. The Canadian contribution would be repaid from bridge tolls. On April 12, 2013, the U.S. State Department issued a Presidential permit to the State of Michigan for the new bridge. On May 22, 2013, the Canadian government allocated \$25 million to begin land acquisition on the Detroit side. The crossing, as proposed, would connect Detroit and Windsor by linking Interstate 75 and Interstate 94 in Michigan with the new Windsor-Essex Parkway connection to Highway 401 in Ontario. The bridge is tentatively scheduled for completion in 2020. The NITC is expected to provide an orderly flow of people and goods between the two countries." Should this new bridge contemplated by DIBC actually be constructed, it would be the third bridge and the fourth vehicular pathway from Detroit to Canada.

park improvements, and finally (but entirely unrelated to the bridge project or the legal transaction at issue), remediation of the long-term iconic blight at the DIBC owned Michigan Central Train Depot. The Agreement contemplates a fairly immediate “First Closing” followed by a “Second Closing” if certain conditions are met.

The following summary of the Agreement and general background information is provided for your information. More detailed background outlining a longer view of interaction with DIBC over the past decade is forthcoming from LPD information under separate cover.

I. The Agreement

The initial recitals in the Agreement acknowledge that DIBC owns riverfront property on which the “News Warehouse” stands.² The City owns nearby property (the currently closed Riverside Park) over which DIBC seeks air rights because “DIBC intends to develop, construct and operate a new span over and upon portions of the City-Owned Property and the Air-Rights Easement Property for the purpose of providing enhanced international bridge services to the City.” The recitals further state that “with the support and assistance of DIBC” the City intends to develop a park along the waterfront on the News Warehouse Property, for which purpose the DIBC will convey the property and make a private contribution to the City.³ The City agrees to grant DIBC an air rights easement over City property “for the construction and operation of the New Span.” DIBC will grant the City a waterfront easement for recreational purposes (presumably continuation of the river walk), over land acquired from the City.

Contract law requires that something of value be given by both parties to a contract/agreement that induces each of them to enter into the exchange, *e.g.* I pay you the dollar value of an item and in exchange, you give me the item. In legal terms, the “something of value” is “consideration” for the exchange and it is enforceable. The Agreement at issue is termed a “land exchange”, and the consideration from the City is a portion of Riverside Park, a significant air rights easement over a portion of Riverside Park, and a promise of cooperation, for up to the next 25 years, in securing necessary governmental approvals to allow DIBC to construct a second international bridge across the Detroit River. DIBC’s consideration is conveyance to the City of the News Warehouse Property, and a waterfront easement over the portion of Riverside Park conveyed to DIBC. The monetary “contribution” offered by DIBC to the City comes in the form of a gift – a contribution, but not payment for value obtained. Consequently, the enforcement of

² This property is adjacent to the City’s now closed Riverside Park. In connection with land use throughout this entire riverfront area, City officials must be ever mindful of the Agreement Relating to Springing Interest and Master Concession Agreement, initially entered into on or about June 21, 2005, between the City and the Ambassador Port Co., a subsidiary/affiliate of the DIBC and the Moroun family interests. Pursuant to the Master Concession Agreement and the powers of the Port Authority, care must be taken to avoid unaccountable private ownership and control over large areas of shoreline on the riverfront. LPD has not been able to identify any specific concerns about additional powers granted to the DIBC or any affiliate via the Master Concession Agreement with any direct connection or nexus to the land transactions at issue, but Council may wish to ask the Administration whether or not the interaction between the 2005 agreement and this land swap raises any additional issues.

³ The Agreement does not acknowledge the existence of Riverside Park or DIBC’s role in its closure.

the provision should any non-performance occur would be dubious. Likewise, the promise by DIBC to begin to remedy the blight at Michigan Central Train Depot is merely a show of good will and not legal consideration for this Agreement.

The specific terms of the Agreement are contained in the following twenty-seven enumerated sections:

1. The effective date of the Agreement shall be "five days after the City Council Resolution [approving the Agreement and authorizing execution, delivery and performance of the transactions contemplated] becomes effective under the City's Charter and ordinances."
2. **DIBC Conveyance to City.**
 - A. Within 15 days of the effective date, DIBC shall have prepared a "fee owner's title insurance policy" without standard exceptions⁴ insuring free and clear title to both the News Warehouse Property and the Air-Rights Easement Property, as well as a land title survey for both properties. The City grants DIBC and its contractors access to the Air-Rights Easement Property to accomplish these tasks, but requires DIBC to first request authorization from BSEED, obtain a right of entry letter, and fully restore the property to its condition prior to the entry.
 - B. Any objections to the surveys or title commitments must be made known within fifteen days of receipt. The necessary surveys and title searches, including complete title searches pertaining to all ownership interests and entities involved in the various railroad tracks and spurs that traverse the subject property should also be known and reviewed to the City's satisfaction before execution of the agreements at issue.
 - C. The closing of DIBC's conveyance of the News Warehouse Property to the City ("First Closing") shall take place five business days after resolution of any title defects. At the First Closing, DIBC shall execute and deliver: marketable title to the News Warehouse Property (including real estate transfer valuation affidavits), assignment of all other agreements the City deems necessary for access and utilities to service the property. However, the City will, pursuant to Section 2(G), immediately assign back to DIBC all rights to the remaining rental payments for the current lease of the property thereby creating a situation where DIBC has effective possession of both properties being exchanged.
 - D. City shall give, grant and convey to DIBC and its successors and assigns an easement for the air space above the Air-Rights Easement Property "for the purposes of constructing, repairing, replacing, inspecting, maintaining, operating and using the New Span and all activities incidental thereto (the 'Permitted Air Uses')". "DIBC shall not be entitled to exercise the Air Rights Easement unless and until the Second Closing has occurred. . . . DIBC shall be authorized to grant a license or lease to guests, customers, tenants, contractors, agents, licensees and/or

⁴ Council should seek explanation from the Law Department as to the extent and ramification of this clause.

permittees of DIBC to utilize the Air-Rights Easement Property for any of the Permitted Air Uses.”

- E. Required City approvals shall be granted, as a condition precedent to the First and Second Closings. Note that no further explanation of this requirement is offered. It appears the City is committing to grant approvals in advance of specific requests.
- F. DIBC shall pay all real estate, personal property taxes and assessments due against the News Warehouse Property as of the First Closing date. *NOTE: DIBC should be required to pay ALL taxes and assessments due with respect to any holdings located in the City before the City enters into an agreement, as required by the Home Rule Cities Act’s prohibition against entering into a contract with a debtor of the city. See, MCL 117.5(1)(f).*⁵
- G. After the execution date, DIBC shall not enter into, modify, or amend any lease for any part of the News Warehouse Property which would extend beyond July 31, 2018. As soon as possible after the effective date, DIBC shall negotiate for the relocation of all tenants or occupants of the News Warehouse Property. At the First Closing, DIBC assigns all right, title and interest in the Leases to the City, *however*, City then assigns any rights it has just acquired in remaining rental payments back to DIBC. DIBC will perform landlord functions and hold the City harmless. *Under this scenario, the City’s ownership rights in the land, that is the consideration for this transaction, are essentially withheld until at least 2018.*
- H. Within 120 days of the later of the following: the Second Closing or the termination of Leases on July 31, 2018 (*plus such additional time necessary to evict a holdover tenant under a Lease*), DIBC will demolish the improvements on the News Warehouse Property and remove footings and subsurface structures that would impede redevelopment. In consequence, the City will not have the use of the land until some time after 2018. A casual inspection of the land in and around the News Warehouse Property site shows multiple railroad tracks, some of which seem to actually be entering the facility on the property, raising the questions regarding the ownership of the railroad tracks themselves and whether any other entities have rights to this land? (See photo below.) *DIBC can only sell the right, title, and interest DIBC holds. Additionally, it is unclear whether because of ownership factors, the railroad tracks can be removed by either party.*

⁵ In response to questions asked of the administration in writing by Council Member Castañeda-López, dated June 3, 2015, the Administration states that all outstanding code violations attributable to the Moroun family interests have now been paid in full. However, there is no assertion whether or not the City has received all outstanding property or other tax receipts, on behalf of their interests and the DIBC. There should be a similar statement from the Administration regarding payment status of corporate and other taxes.



An additional concern is raised by this passage when it is considered along with Section 9 dealing with the conditions precedent to the Second Closing. Pursuant to Section 9, the Second Closing cannot occur prior to the fulfillment of section 2H, which requires the demolition of the News Warehouse Property. However, the demolition isn't required until, at the earliest, 120 days after the Second Closing. It would appear that DIBC would never be compelled to demolish the property, thus making the Second Closing unlikely. This inconsistency must be addressed.

I. DIBC warrants to the City that no remediation of hazardous materials is required “under the environmental cleanup criteria applicable to the News Warehouse Property as of the First Closing Date in light of the use of the News Warehouse Property immediately prior to the date thereof.” Any other necessary environmental remediation that becomes known prior to the First Closing may be grounds for DIBC to terminate the Agreement prior to the First Closing. Note that this warranty only addresses hazardous materials known prior to the First Closing and does not address any environmental concerns that may be found after the First Closing. This is of some concern: Tenants are currently engaging in an ongoing business in the News warehouse facility. It is unclear whether or not additional potential environmental hazards are being created or may be introduced during the period of this lease agreement. The facts are not clear in the documents; the City should certainly review the lease documents to determine whether or not the activities of the tenants pose additional environmental health concerns.

On June 6, 2015, the General Manager for Environmental Affairs of the Buildings, Safety Engineering and Environmental Department (BSEED) reported to the Law Department regarding environmental activities to date for the News Warehouse Property at 3801 W. Jefferson. The short two page BSEED memorandum briefly summarizes Phase I and II Environmental Site Assessment (ESA) activities regarding the site. Highlights of these incomplete, preliminary environmental assessments include:

- Soil sampling on March 31, 2015
- Phase I ESA dated May 19, 2015

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- Draft Phase II ESA, dated June 9, 2015, is being finalized in preparation of the Baseline Environmental Assessment (BEA) the City is preparing to submit to Michigan Department of Environmental Quality (MDEQ) for liability protection as an “innocent landowner”
- A 1,000 gallon gasoline Underground Storage Tank (UST) was installed inside the building in 1949 and closed in-place in 1987. Closure documentation regarding the environmental status of the tank is not available.
- The property was historically part of the Detroit River, and was reclaimed to support the existing development; origin and environmental status of the soils used to reclaim the land is unknown
- Western portion of the property was formerly occupied by Champion Fuel and coal yard
- Westerly adjacent site was formerly a junk/scrap yard, with USTs; MDEQ records indicate presence of fly ash and demolition debris used during the reclamation activity
- Limited Phase II ESA identified excess arsenic, chromium, lead, selenium, Polynuclear Aromatic Hydrocarbons (PNAs), zinc, Volatile Organic Compounds (VOCs) – although benzene is a known, naturally occurring toxic constituent of gasoline, in spite of the presence of one or more 1,000 gallon USTs, the report omits any mention of benzene, a known carcinogen and cause for other potential health and exposure hazards requiring careful remediation
- A Due Care Plan is being developed to propose limited engineering controls to mitigate any potential exposure to the public.

Nevertheless, the BSEED report concludes somewhat cryptically that this “contamination ... does not preclude the property from being acquired and redeveloped as a public park.” Based on the known and unknown risks apparent from the BSEED report, Council may wish to ask:

- Whether it would be more prudent to consummate the land swap after completion of the Phase II ESA, BEA and Due Care Plan, and if not, why not?
- What, if any public parks are known to have been redeveloped in the face of comparable environmental risks and challenges?
- Why was no benzene detected on land where UST’s containing gasoline were located for many years? Must the tank present on the site, and adjacent tanks, be removed, filled or otherwise further remediated to prevent or minimize the aforementioned hazards, particularly where the land upon which the tank rests is shore line fill and the building must be demolished to clear it for park land?
- Are there alternatives either a) for use of the property otherwise than as a public park, and/or b) for development of a public park on other land in the area that is less contaminated?
- What options would the City have if this exchange were approved before completion of the environmental assessments, and the levels of contamination and costs of remediation

are subsequently found to be higher than currently understood, estimated and assessed?
Would the City nevertheless proceed with park development?

- Have any of the following options⁶ been chosen in connection with this exchange:
 - require that the seller clean up the property prior to the sale;
 - reduce the cost of the property commensurate with the cost of remediation required; and/or
 - pursue acquisition and clean up alternatives that help control the City's environmental liability for the property?

3. Private Contribution by DIBC.

DIBC shall make a cash contribution to the City in the amount of Five Million Dollars, in two installments: Three Million Dollars shall be paid by wire transfer on the date of the First Closing. The second installment of Two Million Dollars shall be paid on the Second Closing date. *NOTE: By the terms of the Agreement, these "contributions" are not supported by any legal consideration; rather they are mere gifts and more likely to be determined to be unenforceable promises.*

4. City Conveyance to DIBC.

A. After the effective date, DIBC shall at its sole cost and expense, perform a survey and prepare legal descriptions for the purpose of the lot split of City-owned property.

B. The City shall submit such information as is necessary to accomplish the tax parcel reconfiguration. *Again, the issue of ownership of railroad tracks must be addressed.*

C. DIBC shall have title insurance prepared for the City-owned property.

D. The City shall have fifteen business days to make any objections to the condition of the property and the title.

E. The Second Closing conveying the City-owned property to DIBC and DIBC's grant of Waterfront Easement to the City shall be consummated after satisfaction of the conditions precedent in Section 9 of the Agreement. The City shall execute and deliver to DIBC the following: a quit claim deed to DIBC for the City-owned property, assignment of all other agreements necessary for access to utilities, and acknowledgement that DIBC can exercise the Air Rights Easement. DIBC shall execute and deliver the Waterfront Easement to the City.

F. Taxes and utilities due shall be apportioned between the parties and DIBC shall pay the cost of preparation of closing documents

⁶ Derived from the Wisconsin Department of Natural Resources Small Business Environmental Assistance Program: <http://dnr.wi.gov/files/pdf/pubs/am/am465.pdf>

- G. DIBC agrees that the lowest point of the deck of the new bridge shall not be lower than fifty feet above the surface of the City-owned property.
- H. DIBC agrees it will not place a facility or building on the City-owned property that interferes with the use and enjoyment of Riverside Park except activities that are conducted by DIBC and its contractors for the construction of the new span and for the operation of the existing bridge and the new span in the ordinary course of business, such as, a facility emitting noxious fumes, odors, or creates loud noise.
- I. After the Second Closing, DIBC shall not proceed with construction activities until it secures necessary approvals from the U.S. government.
5. **Grant of Waterfront Easement.**
DIBC shall grant a 100 foot wide easement to the City for a pedestrian walkway subject to DIBC's need for support or security of the new span. DIBC will assist the City in securing the property or an easement east of the existing bridge for a pedestrian walkway, as well.
6. **Governmental Approvals.**
Conveyance of the City-owned park property constitutes a "conversion" to non-recreational use under the Land and Water Conservation Fund Act (LWCFA) and/or the Michigan Resources and Environmental Protection Act, and the parties will cooperatively apply for approval, at DIBC's expense. *It is understood that, pursuant to the LWCFA the City is required to retain and use the park land in question for outdoor recreational use. However, the property may be converted for other uses with the permission of National Park Service of the United States Department of the Interior. Substitute land must be provided that is of at least equal fair market value and that offers reasonably equivalent recreational opportunities. The City acknowledges that the time involved to accomplish this may be longer than the three or more years currently anticipated. Federal law only permits such conversion under very limited circumstances. See, attached letter from the City's Law Department dated September 20, 2011.*
7. **Agreements, acknowledgements and expressions of belief.**
The parties acknowledge that the City's use of the properties to be received is recreational and the DIBC's proposed use of property and easement is for a new international bridge. The land and easement swaps are the exclusive consideration for these conveyances. *Again, the contribution of funds by the DIBC to the City is not enforceable.*

The parties believe that the News Warehouse Property is of more value and of equivalent or better usefulness for the use as recreational property and that it will meet the eligibility requirements for necessary approvals. The equivalent value of property being swapped for federally financed park land is a key factor in the conversion process.

DIBC agrees to install new windows throughout its long-blighted property at 2001 15th St., Detroit, a/k/a Michigan Central Train Depot, no later than December 31, 2015. *This*

provision of the Agreement is equally unenforceable as the contribution of funds. However, as the owner of this property which is subject to the City's blight remediation and dangerous building code sections, DIBC is already required to perform in the manner expressed in this Agreement. In consequence, DIBC's assent to comply with the law should save the City from the cost and energy to enforce compliance through the courts.

8. Reasonable Best Efforts.

At DIBC's expense, the parties shall use their reasonable best efforts to consummate the transactions contemplated by the Agreement, including the City's cooperation in efforts to obtain "all consents, waivers, approvals, authorizations and orders" from governmental authorities necessary to accomplish the transactions, including vigorous defense of lawsuits; "if requested by DIBC, commence⁷ or threaten to commence and pursue vigorously any action reasonably necessary to the consummation" of the transactions, etc.

LPD's understanding of this section is that the City will be in the position of advocating as vigorously as necessary for DIBC with respect to advancing this stage of DIBC's efforts to proceed with a new span. While the Agreement provides that all legal and other proceedings will be at DIBC's expense, the extent is undefined and unclear as to whether the City will be covered only for out of pocket expenses, or legal and other staff time as well. Section 8.B. states that the City's obligations terminate either after the Second Closing or on the 25th anniversary of the execution date if the Second Closing has not yet occurred. Thus, the City could potentially be obligated to support DIBC's efforts to construct a new span for the next 25 years, binding future City administrations, if this deal is consummated. Council may wish to ask if it is in the City's best interest to require the City to assume this role.

Further, the City may wish to, in the future, object to participating in legal proceedings if the City finds them to be futile, vexatious or not well-grounded in law. In such a case, the dispute between DIBC and the City shall be resolved through arbitration.

Section 8.C. requires full communication between the City and DIBC with respect to the legal proceedings described above.

9. Conditions Precedent to Second Closing.

The obligations to consummate the Second Closing depend on satisfaction of the following: i. Detroit City Council shall enact the resolution; ii. DIBC and the City shall have acquired the governmental approvals for the section 6 transactions (*park conversions, etc.*); iii. DIBC shall have paid the first installment of the contribution and be prepared to pay the second; iv. The conditions of 2.E. and H. shall be satisfied (*all required City approvals granted, and DIBC's demolition of improvements on News Warehouse Property, etc.* However, as aforementioned pursuant to section 2.II., *demolition of the improvements on the News Warehouse Property is not to occur until the later of termination of the Leases or the Second Closing.* These requirements are

⁷ The City shall not be obligated to initiate or participate in litigation opposing the New International Bridge Crossing.

inconsistent.). After the First Closing, regardless of whether the land exchange takes place, the City shall be entitled to retain, without liability or obligation to DIBC, the City owned property, the News Warehouse Property, and the initial Three Million Dollars.

10. Limitation of Liability.

DIBC waives and releases any money damage claims or demands against the City for any breach or alleged breach of the Agreement. However, DIBC shall have the right to seek injunctive relief, specific performance or other equitable remedy not cured within 60 days of written notice. The City shall have no obligation to undertake any activity that would result in the City being required to incur liabilities in excess of \$500,000.

11. Indemnity.

DIBC shall indemnify the City and its affiliates from claims, etc., relative to DIBC's performance under the Agreement, with the exception of environmental cleanup activities at the News Warehouse Property or the City-owned property necessitated by DIBC negligence.

12. Interference.

After the effective date, the City will not convey any other property in conflict with this transaction. The City may install a river walk subject to DIBC's full access to install support piers for the bridge.

13. Right to Grant License or Lease.

After the Second Closing, all rights granted to DIBC can be made available to third parties.

The remainder of the paragraphs are unexceptional. Section 16 indicates that the parties take the land being exchanged "AS IS". Section 18, despite the seemingly contrary language of Section 8 with respect to "best efforts", indicates that none of the provisions of the Agreement shall be deemed to create a partnership or joint venture between the parties.

II. Background

A. Historical Review of Riverside Park

Location: West Riverfront

Acreage: 19.9

Acquired: 1922, 1929, 1979

The area known as Riverside Park was originally part of the early French "ribbon farms," land granted to settlers in the early 1700s. A ribbon farm consisted of a narrow strip of land with river frontage of three hundred to nine hundred feet that then stretched back from the river one to three miles. The river frontage provided the farm with access to the river and transportation: the rear portions of the farm were generally woodlands. In 1808, the United States government fixed the boundaries of the original land claims of "ribbon farms," which became known as the "private claims." Riverside Park is composed of several smaller parks which were part of the

original ribbon farms of early Detroiters: Alexis Campau, Edward W. Voigt , Gabriel Godfroy and George B. Porter (Territorial Governor).

In 1922, the Public Lighting Department transferred land to the Department of Parks and Recreation for the purpose of establishing Riverside Park. In 1979, the City acquired additional land from the Michigan Consolidated Gas Company and expanded the Park. This expansion allowed for the construction of an athletic complex, a baseball field, basketball court, and picnic facilities. In 1984, a new boat launch and playfield were added to the park. With the addition of these facilities, Riverside Park expanded to 19.9 acres.

Riverside Park has over 2000 feet of shore; it has been the most popular fishing site in the Riverfront Park System. It is also the site of the world's only floating Post Office: The J.W. Wescott II, which provides mail services to passing Great Lakes freighters.

The Riverside Park site has been used as the Headquarters of the Detroit Fire Boat, the Dog Pound, a sewer pumping station, and a coal degasification facility.

B. Park Conversion Issues

According to communication from the Michigan Department of Natural Resources (DNR), Riverside Park is "encumbered in perpetuity" for public outdoor recreation connected to grant funding awarded to the City to acquire and develop Riverside Park. (See attached letter dated May 5, 2015 from DNR Director Keith Creagh) Per Director Creagh's correspondence with Mayor Duggan, "converting this land to a non-recreation use, or conveying any portion of it (including air rights), requires both state and federal approval."

More detailed information relative to the conversion process to non-recreational use, particularly with respect to Riverside Park, is contained in the attached September 20, 2011 letter from the City's Law Department to former Michigan State Representative Paul Opsommer.⁸ The Law Department's letter, prepared in response to former Rep. Opsommer's request for further information concerning legal impediments to the transfer of Riverside Park to DIBC, cites the Land and Water Conservation Fund Grants Manual for the proposition that property acquired/improved with LWCF funds, such as Riverside Park, may not be converted to non-recreational use, except under very narrow circumstances requiring a substitution of land of equivalent fair market value and "reasonably equivalent usefulness and location." (Sec. 16 U.S.C. 4601-8(6)(3).)

DIBC's unauthorized closure of the park, fencing of the park, conversion restrictions relative to federal and state law, as well as the City's Master Plan, will be addressed in another report forthcoming from LPD.

⁸ In 2013, it was reported that Mr. Opsommer became the "director of government affairs for CenTra Inc., the holding company that owns the Ambassador Bridge, Central Transport and other interests controlled by Grosse Pointe billionaire Manuel 'Matty' Moroun." See, <http://www.themorningsun.com/article/MS/20130202/news01/130209996>.

C. DIBC's History of Blight and Other Violations of City Code

The Michigan Central Train Depot, located at 2001 15th Street, Detroit, is owned by DIBC and is a now world-famous symbol of a blighted Detroit. It is unrelated to the construction of the second span, however initial cleanup of the site is built into the Agreement at section 7.M. The train station is only one of DIBC's most visible holdings. A June 3, 2015 memorandum from the Department of Administrative Hearings indicates that the DIBC and its subsidiaries have paid the City \$156,687.34 to cover all outstanding fees and fines. Additionally, a memo from the Law Department addresses the resolution of disputes with DIBC over street closures in the area of the Ambassador Bridge. This information supports some of the representations (payment of City taxes remains unaddressed) made by Michael Samhat, Vice President-Real Estate of DIBC.⁹

DIBC's history of negative dealings with the community in the area of the bridge is well known in the City. Commitments have been made by DIBC to the community on a variety of issues – job creation, blight remediation, environmental remediation – with a continuing lack of follow through. At the very least, some level of community engagement through community meetings, public hearings, etc., would be advisable before embarking on this complicated transaction.

Council Member Castañeda-López's 74 questions dated June 4, 2015, and partial responses to same are also attached.

Answers to Irvin Corley's five questions dated June 18, 2015, remain outstanding as well. See below:

1. Your 4th paragraph and 2nd footnote on page one of the cover letter basically indicates that the City will receive a \$3 million contribution, or "gift", for phase one of the project, and that the contribution will be used for improvements to the Riverside Park. Your 3rd paragraph on page two indicates that the City would receive an additional \$2 million contribution if the City Property is converted and phase 2 starts. After receipt of the contributions, who would be responsible for conducting the improvements to the Riverside Park, Recreation of General Services?

2. Since the contributions are gifts, the Administration needs to submit a Council letter to Council to be voted on as a part of the land exchange agreement approval process indicating the City's initial receipt of the \$3 million, and the potential/eventual receipt of the \$2 million, as gifts for improvements to the

⁹ In a 6/12/15 email to LPD, Mr. Samhat indicates as follows: "I very much respect the process and the work you are tasked with examining the Land Exchange Agreement. Realizing part of the process is reviewing the past and current relationship of all our related parties with the City of Detroit. I wanted to underscore the following.

- To my knowledge, no known open litigation between DIBC or affiliates and City of Detroit
- To date have paid all open fines
- All property taxes up to date
- Working with BSEED on our new 20 million dollar logistic center in I-94 Industrial Park (150+ new jobs)
- Very active in maintaining our properties and being compliant
- Staying on track with our commitments as it relates to Michigan Central Depot

Riverside Park. The Council letter should be signed off by Budget and Finance, and it should be accompanied with a resolution showing which appropriation in Recreation or General Services would receive the contributions for the future use of improving the Riverside Park. **This way, Council can track the usage of the gift monies in the appropriation.**

3. If Council approves this transaction, would the \$3 million contribution be used solely for improvements to the News Warehouse Property, which could not occur until the current DIBC tenant lease ends by July 2018; or would the contribution be used immediately for improvements to the existing Riverside Park area?

4. In the 2nd paragraph on page 2 of the cover letter attached below, would the News Warehouse Property help to provide "better recreational opportunities than it does now" after the City spends the \$3 million contribution to improve the News Warehouse Property?

5. Do you have an appraisal, or some type of valuation analysis, of the City Property and the News Warehouse Property? In addition, do you know how much the DIBC is receiving annually in lease revenue from the tenant of the warehouse on the News Warehouse Property that the City would not be receiving, even when the City would have title to the News Warehouse Property through July 2018? In other words, is the \$3 million contribution, and potential \$5 million, a reasonable compensation for this exchange transaction?

Attachments



DETROIT
CITY CLERK

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2015 JUN 23 10:48 AM
MEMORANDUM

To: Honorable City Council
Cc: David Whitaker, Esq.
From: Alexis Wiley
Date: June 19, 2015
Re: Response to Mr. Whitaker's analysis of Riverside Park Land Exchange

We appreciate Mr. Whitaker's thoughtful analysis of the Land Exchange Agreement (Agreement). As you know, the Administration views the Agreement as a unique opportunity to obtain both additional riverfront land for Riverside Park, and millions of dollars for the park's revitalization. Absent this Agreement, there is no source of funding to accomplish these goals.

This memo responds to the key concerns identified in Mr. Whitaker's memo ("Memo"):

1. Concern that DIBC's promises to pay are unenforceable.

The Memo expresses a concern as to the enforceability of DIBC's promises to pay \$3 million at the first closing and \$2 million at the second closing. We believe there is more than sufficient consideration to enforce payment of the gifts; including the parties' mutual promises, the grant of the air rights easement to DIBC and the ultimate transfer of title of real property to DIBC.

Moreover, regardless of the legal merits, as a practical matter the concerns are not reasonable. The first closing will be held promptly after City Council approval. If DIBC were to contest its obligation to pay, which is almost impossible to conceive, the first closing will not proceed and the City could either sue for enforcement or terminate the transaction. In the worst case scenario, the City retains the park as is and would be no worse off.

If DIBC were to contest its promise to pay the \$2 million at the second closing, the closing will not proceed. The City can sue to enforce the transaction. The reality, however, is that DIBC will then have already paid \$3 million at the first closing and conveyed to the City title to the News Warehouse property, but would still not have acquired the land just west of the bridge. Acquisition of that land is the entire purpose of DIBC entering into this Agreement. It is impossible to conceive that DIBC would act in such a fashion, even if there were a legal basis to do so.

2. City use of the News Warehouse property for the park.

The Memo expresses the following concern: although the City will acquire title to the News Warehouse property at the first closing, the City will not be able to use the property for the park until the building is demolished – which is 120 days after the later of the following, the



second closing or July 31, 2018 (the date DIBC's lease of the building to its tenant terminates). To understand this provision, one must remember that DIBC is providing the City in this transaction with a multi-million dollar piece of riverfront property (for which DIBC paid in excess of \$3 million, and which property is considerably larger than the property DIBC stands to receive in return), and \$5 million in cash.

DIBC was unwilling to give up rentals due from its tenant under the existing lease. Moreover, we do not understand how this arrangement "makes the second closing unlikely" as stated in the Memo. After the first closing, DIBC will have paid the City \$3 million and transferred to the City title to a \$3+ million piece of property. If DIBC does not proceed as required by the Agreement, DIBC will have given up more than \$6 million in property and cash, but will not have received title to the property just west of the bridge. Again, acquisition of that property is the reason DIBC is entering into this transaction. For those reasons, we do not share the concerns expressed in the Memo.

3. City has no obligation to support DIBC's efforts to construct a new span.

The Memo expresses the concern that the City will be obliged to advocate in support of DIBC's efforts to build a second span. That is not correct. The City is only obligated to advocate in support of the "Contemplated Transactions" which is carefully defined as follows: "(a) the land exchange * * * (b) payment of the Private Contribution, and (c) conveyance of the Air Rights Easement * * *." Agreement, section 8(A). In short, the City's obligation is limited to supporting the specific transactions identified in the Agreement – the land exchange, grant of the air rights easement and payment of the required monies. The City has no obligation to support DIBC's efforts to build a second span.

Indeed, to the contrary, section 4(I) states: "After the Second Closing, DIBC shall not proceed with construction activities until it has secured any necessary approvals from U.S. federal governmental agencies for construction of the New Bridge. In connection with the construction process, DIBC shall secure such construction permits and approvals as required by the appropriate governmental authorities having jurisdiction over the construction activities." In other words, after this transaction, DIBC will still need to obtain all necessary approvals from all appropriate governmental authorities in order to build a second span.

Finally, the Agreement makes clear that the City has no intention of interfering with the proposed new international trade crossing. Section 8(b) states: "* * * Nothing in section 8(b) of this Agreement shall obligate the City to initiate or participate in any litigation that opposes the bridge project commonly known as the New International Bridge Crossing (NITC)."

4. Environmental Assessments of News Warehouse site

In addition to reviewing DIBC's environmental assessment, BSEED commissioned an independent Phase I and Phase II environmental assessment of the News Warehouse site. On June 16, BSEED provided a summary memo of the environmental assessment report to Detroit



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MAYOR'S OFFICE

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City Council as it always does prior to property acquisition. As BSEED's summary indicates, the contamination discovered on the News Warehouse site is consistent with reclaimed land along the east and west riverfront. Parks along the east riverfront such as William Milliken State Park, Mt. Elliot Park, Chene Park and even Rouge Park demonstrated similar contamination prior to being developed as parks. The News Warehouse site is no different.

The LPD memo also expresses concerns over the former underground storage tank. The assessment did not detect any gasoline product within the vicinity of the former UST. All indications are that the tank was closed "in place," which minimizes a potential for a release to occur. We are not aware of other tanks. Tanks that are closed in place meet MDEQ standards for tank closure.

The memo also questions whether the activities of the tenants pose additional environmental health concerns. The Phase I environmental assessment requires an interview with the owner and operator of an existing facility as well as an internal site inspection. The interview and inspection indicate the site is used as an aluminum warehouse. Considering the usage, the probability of a release of hazardous materials is low.

A Baseline Environmental Assessment is being conducted to serve as the City's innocent landowner liability protection. Furthermore, a due care plan is being developed that will propose limited engineering controls such as additional soil, delineation barrier, etc. along with a maintenance plan to be used to mitigate any potential exposure to the public.

All environmental reports are being finalized and will be complete prior to the land transfer.

5. State of Michigan Conversion Process

The administration is aware that this transfer agreement will require MDNR approval. The City has requested and received MDNR approval for a number of transactions such as the sale of Atkinson playfield, parts of Chene Park and Mt. Elliott Park. Detroit City Council approved the conversions and the amended grant agreements in connection with their approval of the Coast Guard Exchange Agreement.

The Riverside Park Land Exchange agreement requires the city give up 3 acres of land in exchange for nearly 5 acres of land that will be incorporated into Riverside Park and up to \$5 million to fund park improvements. We believe the terms of the agreement more than merit state approval and will work closely with MDNR to obtain the necessary approval. The process involves both City Council public hearing of the conversion, DNR review and sought approval for the conversion of equal valued property exchange and final approval by City Council.

6. Usage of DIBC Contribution

Once City Council approves the agreement, the first \$3 million will be received by the Recreation Department to administer the funds for the improvements to the existing parcels of Riverside Park. The directors of General Services and Recreation will take part in a community meeting in Southwest Detroit June 25th to get community input in regards to the design of the park and will continue soliciting community input following Council approval. Initial plans for the first phase of park development include the construction of a new baseball diamond, soccer



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field and other amenities. All contracts will be competitively bid with an emphasis on Detroit based businesses and local hiring.

Once the City completes the conversion process and Detroit City Council authorizes the transfer of nearly 3 acres of land (following the receipt of the 4.8 acre News Warehouse site), the City will receive the final \$2 million which will be used to fund Phase II development. Phase II development will expand recreational space in Riverside Park by nearly 5 acres and create additional fishing access, picnic pavilions and more.



City of Detroit
COUNCILMAN SCOTT R. BENSON



MEMORANDUM

TO: Legislative Policy Division

FROM: Hon. Scott Benson, City Council District 3
VIA: Hon. Brenda Jones, City Council President

DATE: 3 July 2015

RE: INTERNATIONAL BRIDGE RESOLUTION

I am requesting the Legislative Policy Division amend the authorizing land exchange agreement resolution to include language that requires the administration to keep detailed records of staff time devoted to the park conversion work. In addition, that DIBC be invoiced at monthly intervals for all relevant staff time, costs and expenses.

I am also requesting LPD include language that indicates Council's desire to receive a revenue stream from any future bridge(s) or replacement bridge(s) with points of ingress and egress in Detroit, due to the deleterious impacts of approximately 20,000 vehicles transiting into Detroit at one point of ingress/egress. These negative impacts must be offset with a portion of the revenues collected by each car that transits a bridge into or from the City of Detroit.

If you have any questions please do not hesitate to contact my office at, 313-224-1198

SRB

2015 JUL -6 P 3 52

CITY CLERK
DETROIT

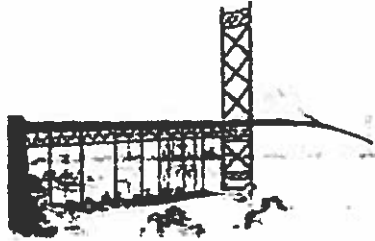
BY COUNCIL MEMBER

WHEREAS, the City of Detroit currently receives significant property tax revenue from the property where the Ambassador Bridge is located;

WHEREAS, the Detroit International Bridge Company (“DIBC”) intends to build a second bridge span adjacent to the existing bridge;

WHEREAS, such construction may result in significant additional property tax dollars benefiting the general fund and the City Council wishes to use such funds to improve the quality of life of those affected by the construction of the second bridge span and the residents of the City of Detroit generally;

NOW THEREFORE BE IT RESOLVED that the City Council intends to appropriate the incremental property tax associated with the second bridge span to provide infrastructure and street improvements and environmental mediation to the areas affected by the second bridge span, and other quality of life services to residents of the City of Detroit, including additional green space and parks amenities, public safety initiatives, and support for a sustainable water payment plan.



AMBASSADOR BRIDGE

DETROIT INTERNATIONAL BRIDGE COMPANY

P O BOX 32566 *Detroit, Michigan* 48232

July 10, 2015

The City of Detroit
Attn: Corporation Counsel Melvin Butch Hollowell
Coleman A. Young Municipal Center
2 Woodward Avenue, 5th Floor
Detroit, Michigan 48226

Re: Land Exchange Agreement dated as of April 29, 2015 entered into between the city of Detroit, a Michigan public corporate (the "City"), and Detroit International Bridge Company, a Michigan corporation ("DIBC").

Dear Mr. Hollowell:

This letter memorializes the commitment of DIBC to specifically perform each of the following numbered paragraphs subject only to DIBC obtaining the government approvals necessary for the construction of a new bridge span (the "New Span"):

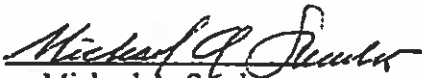
- 1.) Actively promote and support all efforts by the Detroit City Council to appropriate and use incremental property taxes associated with the New Span in order to provide (a) infrastructure and street improvements and environmental mediation to the areas affected by the Existing Bridge and the New Span, and (b) other quality of life services to residents of the City of Detroit, including additional green space and parks amenities, public safety initiatives, and support for a sustainable water payment plan;
- 2.) Regularly attend and actively participate in a workgroup to be formed, in furtherance of community involvement and community benefits, in order address detrimental effects, maximize beneficial

effects, and produce additional revenue sources or income streams for the community, arising from or in connection with the construction and operation of the New Span; and

- 3.) Maximize opportunities for and utilize local businesses and residents in connection with the construction and operation of the New Span.

By signing this letter, the undersigned represents and warrants that he has the full power and authority to execute this document.

DETROIT INTERNATIONAL BRIDGE COMPANY,
a Michigan corporation

By: 
Name: Michael A. Samhat
Its: Vice President – Real Estate

CITY OF DETROIT

By: 
Name: Melvin Butch Hollowell
Its: Corporation Counsel



City of Detroit

COUNCILMAN SCOTT H. BENSON

MEMORANDUM

TO: Law Department

FROM: Scott Benson, City Council District 3

DATE: 7 July, 2015

RE: Clarity regarding the land exchange agreement between the City of Detroit and Detroit International Bridge Company

My office is requesting that the Law Department produce the Master Concession and Springing Interest Agreement related to the proposed land exchange agreement between the City of Detroit and the Detroit International Bridge Company currently being considered by the Planning and Economic Development subcommittee.

Please reach out to my office at 313-224-1198 with any questions.

SRB

MASTER CONCESSION AGREEMENT

by and between

THE DETROIT/WAYNE COUNTY PORT AUTHORITY

and

THE AMBASSADOR PORT COMPANY

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MASTER CONCESSION AGREEMENT

THIS AGREEMENT is made and effective this 27th day of June, 2005 (this "Agreement") by and between The Detroit/Wayne County Port Authority (the "Authority"), a Michigan public body corporate and politic, and the Ambassador Port Company, a Michigan corporation ("Master Concessionaire"). Collectively, the Authority and Master Concessionaire are referred to as the "Parties".

WITNESSETH:

WHEREAS, the Authority is the owner of certain real property consisting of approximately 3.6425 acres of improved land commonly known as 4461 West Jefferson Avenue, Detroit, Michigan, along the Detroit River (the "Smaller Parcel") and real property consisting of approximately 31.31 acres located at, and commonly known as, 4300, 4461, and 4500 West Jefferson Avenue, Detroit, Michigan (the "Larger Parcel"). Collectively, the Smaller Parcel and Larger Parcel are referred to as the "Premises";

WHEREAS, the Authority is a statutorily established entity funded by the State of Michigan, Wayne County and the City of Detroit (the "City"), in part through the issuance of tax-exempt bonds;

WHEREAS, the Authority was established for the purpose of developing and operating a "Port Facility" (as defined in Section 120.102 of the Port the Authority Act MCL 120, et seq.) in the City and intends to develop, maintain, expand and otherwise operate a Port Facility (including the real and personal property associated therewith, the "Facility") at the Premises and in the areas around the Premises when and if acquired and incorporated in the Facility;

WHEREAS, subject to the Authority's oversight, the Authority desires to grant a concession in the Premises and the Facility (as more particularly defined in Section 1.2 herein the "Concession") to a Master Concessionaire for the purpose of assisting the Authority with the operation of the Facility;

WHEREAS, subject to the terms and conditions of this Agreement, Master Concessionaire desires to accept the Concession;

WHEREAS, Master Concessionaire believes that in order for the Concession to be profitable to Master Concessionaire and achieve the Concession Purpose (as defined herein), future expansion of the Facility to include areas outside of the Premises will be necessary;

WHEREAS, both Parties expect that the Facility will continue to expand to include other properties proximate to the Premises ("Expansion Properties") and by the investment of private and public funds in the Facility (including possible borrowings from Master Concessionaire or from Master Concessionaire's affiliates or the issuance by the Authority of tax exempt bonds) and that concurrently with the addition of Expansion Properties to the Facility, the Concession and the definition of Premises shall expand to include any Expansion Properties;

WHEREAS, the Authority has received an exemption from real estate taxes for the Premises from the Tax Assessor for the City;

WHEREAS, the Parties believe that the financial success of the Facility depends on the Authority continuing to maintain the exemption of the Premises from real estate taxes and obtaining additional real estate tax exemptions for any Expansion Properties;

WHEREAS, concurrently with the execution of this Agreement, the Authority has executed a Promissory Note (the "Promissory Note") in favor of Master Concessionaire in the original principal amount of Two Million Ninety-Seven Thousand, Eight Hundred Sixty Three Dollars and Thirty Three Cents (\$2,097,863.33) which includes a provision for the possible advance of future amounts by Master Concessionaire for the purposes of paying certain expenses relating to the expansion, maintenance, operation and improvement of the Facility;

WHEREAS, concurrently with the Authority's acquisition of its interest in the Premises, the City received a deed for a remainder interest in the Premises that will vest if at any time this agreement is terminated for any reason other than Master Concessionaire's default on Master Concessionaire's obligations hereunder, including, without limitation, as a result of a breach by the Authority of its obligations hereunder or failure to pay amounts due under the Promissory Note; and

WHEREAS, as provided for in the Remainder Agreement (the "Remainder Agreement") entered into between the City and Master Concessionaire concurrently herewith, and approved by the Authority, the City has agreed to enforce its remainder interest in the Premises if the occasion so arises and following termination of the Authority's interest in the Premises, to either honor this Agreement and the Promissory Note as the City's obligation or enter into replacement agreements therefore with Master Concessionaire.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

1.1 Incorporation of Recitals. The foregoing Recitals are incorporated herein and this Agreement shall be interpreted in accordance therewith.

1.2 Prior Defined Terms. All capitalized terms as used in this Agreement, unless otherwise defined, shall have the same meaning stated below:

"*Applicable Laws*" shall mean all existing and future applicable laws, rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any governmental authority, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction; (a) pertaining to the construction of improvements on the Premises or relating to the Facility or the use, occupancy, ownership or operation of the Facility, (b) in any way limiting the use or enjoyment of the Facility, including

without limitation, Environmental Laws, Wetlands Regulations, Wildlife Protection Acts, Archeological Protection Acts, all building, zoning and fire codes and all permits, certificates of occupancy, licenses, authorizations and regulations relating to the Premises or the Facility, (c) governing the Authority, acts of the Authority or the Authority's agents, employees, contractors, or concessionaires; and (d) otherwise relating to the Facility, the Premises and the use of the Premises as a Port Facility.

"*Archeological Protection Acts*" shall mean all Applicable Laws relating to the regulation, maintenance or preservation of archeological conditions.

"*Authority*" shall have the meaning specified in the introductory clause hereof.

"*Authority Defaults*" shall mean any breach of a representation or warranty of the Authority, any failure of the Authority to perform obligations, make payments, or satisfy covenants provided for herein, a termination or modification of this Agreement imposed by reason of a change in Applicable Law relating to the Authority's statutory powers or obligations, any default by the Authority under the Promissory Note or any additional circumstances and events specified as constituting Authority Defaults hereunder.

"*Baseline Assessment*" that certain draft Baseline Environmental Assessment dated August 20, 2003, prepared by Conestoga-Rovers & Associates, supplemented by the Draft Review of Environmental Conditions dated September 14, 2004 prepared by Freudenthal & Elkowitz Consulting Group, Inc.

"*Bona Fide Offer*" shall have the meaning specified in Section 15 of this Agreement.

"*Bonds*" shall mean those certain outstanding bonds of the Detroit Port Development Corporation. Detroit Port Development Corporation Modified First Mortgage Revenue Bonds, captioned Series A.

"*Budget*" shall mean the operating budget for the Facility as approved by the Authority for each year of the Concession Term.

"*Business Day*" shall mean any day other than Saturday, Sunday or any other day that federally chartered banks located in Michigan are closed for business.

"*Capital Receipts*" shall mean net revenues (after payment of transfer taxes, conveyance fees, brokerage commissions, sale expenses including attorneys' fees, recording costs, title insurance fees, due diligence expenses and other customary seller costs) earned by the Authority in connection with the sale, transfer, assignment, grant of licenses or easements or the letting of the Premises or the Authority's interest in the Premises, and any improvements, equipment or other personal property included as part of the Facility.

"*City*" shall have the meaning specified in the second (2nd) recital hereto.

"*Concession*" shall mean the exclusive right to operate and manage the Facility and to perform the Facility Work on the Authority's behalf pursuant to the terms and conditions hereof.

"*Concession Payments*" shall mean the amounts payable to Master Concessionaire pursuant to Section 5.1 hereof.

"*Concession Purpose*" shall mean the purpose for which the Authority was formed which was in part, to acquire, improve, enlarge, extend, operate, maintain and finance port districts in the City.

"*Concession Term*" shall mean a period commencing on the effective date of this Agreement and ending on June 26, 2030 as such period shall be shortened or extended pursuant to the terms hereof.

"*Default Rate*" shall mean an annual rate of interest equal to six hundred (600) basis points in excess of the Floating Rate, but no greater than the maximum allowed by law.

"*Detroit Port Development Corporation*" or "*DPDC*" shall mean the issuer of the bonds.

"*Environmental Laws*" shall mean all federal, state and local laws, statutes, ordinances, codes and regulations relating to environmental protection including those so defined in or regulated under any of the following: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act, a/k/a the Clean Water Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act) and the Michigan Natural Resources and Environmental Protection Act (NEPRA) 1994 PA 451.

"*Event of Default*" shall mean the continuation of a Master Concessionaire Default in the case of Master Concessionaire, or an Authority Default, in the case of the Authority, beyond applicable cure periods, if any.

"*Expansion Properties*" shall have the meaning specified in the seventh (7th) recital hereto.

"*Facility*" shall have the meaning specified in the third (3rd) recital hereto.

"*Facility Operation Agreement*" shall mean that certain Facility Operation Agreement by and between Master Concessionaire and Facility Operator dated June 27, 2005 and any other agreement between Master Concessionaire and any Facility Operator pursuant to which Master Concessionaire subcontracts for the performance of all or part of the Concession.

"*Facility Operation Standard*" shall mean the standard by which each Facility Operator shall operate the Facility, which shall mean: (a) in accordance with reasonable business judgment; (b) in accordance with the Concession Purpose; (c) in a manner that will not result in the Authority being personally liable to third parties in excess of the Gross Receipts payable to the Authority pursuant to Section 5.1 and Capital Receipts payable to the Authority pursuant to Section 5.2 that the Authority can reasonably expect to receive from the operation of the Facility;

and (d) with a general goal of paying all creditors to the Facility, keeping the Facility in operation and providing some residual return to the Authority.

"*Facility Operator*" shall mean Nicholson Terminal & Dock Company and any other party designated by Master Concessionaire and approved by the Authority to perform the obligations relating to the Concession. At any given time there may be more than one Facility Operator.

"*Facility Work*" shall have the meaning specified in Section 2.1 hereof.

"*First Offer*" shall have the meaning specified in Section 15 hereof.

"*Floating Rate*" shall mean three hundred (300) basis points over the yield to maturity on United States Treasury Notes having a remaining term to maturity as near as possible to five (5) years as such yield is published in The Wall Street Journal (or any successor thereto) on the day of determination, but in no event shall the total be less than six percent (6%) per annum, nor greater than the maximum allowed by law. If at any time during the Concession Term the rate on five (5) year United States Treasury Notes is no longer published, the Floating Rate shall be determined by using a comparable index reasonably selected by Master Concessionaire with such index adjusted upwards or downward so that the rate on such substitute index is equivalent to the Floating Rate on the last day that the Floating Rate was established using five (5) year United States Treasury Notes (or any successor index). For example, if five (5) year United States Treasury Notes were yielding five percent (5%) and the selected substitute index is the London Interbank Offered Rate which at the time was yielding four percent (4%), then so long as the London Interbank Offered Rate was used as the substitute rate, the Floating Rate would be four hundred (400) basis points over the London Interbank Offered Rate.

"*Gross Receipts*" shall mean all revenues other than Capital Receipts derived by the Authority, Master Concessionaire, any Facility Operator, and any subtenant or licensee of the Facility (without duplication of any amounts already included in the definition of Gross Receipts) from operations relating to the Facility, including, but not limited to, use fees, any Refunding Amounts and any revenues from the sale of goods or services made on or about, or otherwise originating from, the Premises from any source whatsoever; adjusted by the deduction of the following, provided that separate records are maintained for such deductions: (a) credits and refunds to customers for merchandise or services purchased from the Facility; (b) amounts of any separately stated federal, state and local sales or use taxes imposed upon a Facility Operator's customers and collected by a Facility Operator; or (c) charges paid to a Facility Operator by its customers for the mailing of purchased items but only to the extent of the actual mailing cost thereof. Gross Receipts shall include all mail or telephone orders filled at or from the Premises, all deposits not refunded to purchasers, and all orders taken in and from the Premises, whether or not such orders are filled elsewhere.

No deduction shall be made from Gross Receipts by reason of any credit loss sustained or financing discount that may be applicable by reason of the acceptance or use of credit cards or by reason of any other credit arrangements. If any charge customarily made by a Facility Operator for goods and services is not assessed, charged or collected for any reason, then the amount of

that Facility Operator's customary charge therefor shall nevertheless be included in determining Gross Receipts.

Gross Receipts shall be computed and audited in accordance with the provisions of this Agreement.

In the event of any conflict between the provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control, and the provisions of this Agreement shall not be limited by such principles or standards.

"*Hazardous Cargo*" shall mean Hazardous Materials and any other materials, such as waste, arms, explosives, and similar products, that present unusual safety or health risks in connection with their storage, transportation or disposal or that are subject to reporting, permitting or other governmental laws, ordinances or regulations relating to their storage, shipping, or disposal by reason of their potential negative impacts on the health or physical welfare of people, animals or plants.

"*Hazardous Materials*" shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws, and includes asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum products, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

"*Larger Parcel*" shall have the meaning specified in the first (1st) recital hereto.

"*Master Concessionaire Default*" shall mean any breach of a representation or warranty of Master Concessionaire, any failure of Master Concessionaire to perform obligations and covenants provided for herein, and any additional circumstances and events specified as constituting Master Concessionaire Defaults hereunder.

"*Master Plan*" shall mean the plan for the physical future of the Facility as described in Section 2.1 hereof.

"*Operating Procedures*" shall mean the procedures for operation of the Facility as approved by the Authority from time to time.

"*Oversight Expenses*" shall have the meaning specified in Section 5.1 of this Agreement.

"*Plan Submittal Date*" shall mean January 15 of each year of the Concession Term or the next Business Day thereafter.

"*Port Facility*" shall have the meaning specified in the third (3rd) recital hereto.

"*Premises*" shall have the meaning specified in the first (1st) recital hereto and is legally described in Exhibit A.

"*Pricing Schedule*" shall mean the pricing list and Use Fees for products, services and other activities at the Facility as approved by the Authority for each year of the Concession Term as specified in Section 2.1 hereof.

"*Promissory Note*" shall have the meaning specified in the tenth (10th) recital hereto.

"*Remainder Agreement*" shall have the meaning specified in the twelfth (12th) recital hereto.

"*Refunding Amounts*" shall mean all amounts payable by any Facility Operator to Master Concessionaire as consideration for Master Concessionaire's entry into the Facility Operation Agreement, including without limitation, Nicholson Dock and Port Company's agreement to pay to Master Concessionaire a percentage of amounts generated by Nicholson Dock and Port Company from the stevedoring operation at the port facility (the "Ecorse Port") located south of the Premises legally described in Exhibit B.

"*Smaller Parcel*" shall have the meaning specified in the first (1st) recital hereto.

"*Use Fees*" shall mean the fees, tariffs or charges imposed by Master Concessionaire or Facility Operator on users of the Facility and other activities relating to the Facility that generate Gross Receipts.

"*Wetlands Regulations*" shall mean all Applicable Laws relating to the regulation, preservation, maintenance and creation of wetlands areas.

"*Wildlife Protection Acts*" shall mean the Endangered Species Act of 1973, as provided for in 16 USCS §§ 1531 et seq., as amended from time to time, together with any other federal, state or local wildlife, vegetation or habitat protection acts.

2. Administration and Operation.

2.1 Grant of Concession and Facility Work. Subject to the oversight rights of the Authority provided for herein, for the Concession Term the Authority hereby grants the Concession to Master Concessionaire for the Concession Purpose. Master Concessionaire shall have the exclusive right to exercise the Concession. In exchange for the grant of the Concession and the right to receive the Concession Payment, Master Concessionaire agrees to perform the following "Facility Work":

a. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Concession Term, present and recommend for approval by the Authority a master plan (the "Master Plan") including all supplements and amendments detailing directions to Master Concessionaire for the development, construction, expansion, contraction, operation, maintenance and improvements to the Facility, including maps, profiles and other data and descriptions necessary to set forth the location and character of the work to be approved by the Authority and undertaken by Master Concessionaire on the Authority's behalf; including supplemental budgets, construction schedules, architectural

drawings and plans and specifications for improvements when eventually completed and as filed with and approved by the Authority after the Plan Submittal Date;

b. to negotiate contracts for provision of materials, services, property sale or acquisition, borrowings, utilities and other matters relating to the performance of the Facility Work including, without limitation, execution of any activities that are part of the approved Master Plan;

c. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Concession Term, present a proposed operating budget for the Facility for the upcoming calendar year in substantially the form and containing the information detailed in the budget approved concurrently herewith (the "Budget") to the Authority for the Authority's review and approval;

d. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before Plan Submittal Date of each year of the Concession Term recommend pricing of products, services and other activities occurring at the Facility in substantially the form and containing the information detailed in the pricing schedule approved concurrently herewith (the "Pricing Schedule") to the Authority for the Authority's review and approval;

e. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Concession Term, recommend to the Authority for the Authority's review and approval, operational policies for the Facility for the upcoming year including hours of operation, scope of services to be provided, rules for users of the Facility and such other general operational matters as to which Master Concessionaire would like to have the Authority's guidance in substantially the form and containing the information detailed in the operating procedures approved concurrently herewith ("Operating Procedures");

f. present to the Authority, as and when Master Concessionaire reasonably determines necessary amendments to the Master Plan, the Pricing Schedule, the Budget, the Operating Procedures or other items relating to the Facility and approved by the Authority, but requiring modification by reason of subsequent events, new information or operational experience;

g. manage all processes associated with modifying, developing, expanding, constructing, rehabilitating, improving, subleasing, maintaining, repairing or otherwise managing the physical condition of the Facility in accordance with the Master Plan and the Facility Operation Standard, including without limitation, dredging ship channels, turning basins and filling and grading land therefor;

h. operate and manage all aspects of the Facility in accordance with the provisions of this Agreement, the Master Plan, the Pricing Schedule, the Budget, the Operating Procedures, and the Concession Purpose and otherwise in accordance with Applicable Laws and the Facility Operation Standard;

i. in conjunction with the Facility Operator, executing contracts as an independent contractor for the provision of services at the Facility, the purchase and sale of goods and services relating to the Facility, and otherwise relating to the operation and maintenance of the Facility and the performance of the other aspects of the Facility Work;

j. in conjunction with the Facility Operator, procuring and maintaining permits, licenses, and approvals for operation of and modification to the Facility.

2.2 Scope of Discretion in the Performance of Facility Work. In connection with the performance of the Facility Work, Master Concessionaire shall exercise reasonable business judgment consistent with the objectives of maximizing Concession Payments. From time to time Master Concessionaire may authorize a Facility Operator to perform Facility Work in a manner divergent from the Budget, the Master Plan, the Price Schedule or the Operating Procedures but only in those specific instances where Master Concessionaire determines, in Master Concessionaire's reasonable business judgment, that such actions conform to the Facility Operation Standard and are either special one time events or will be included in the next Budget, Master Plan, Price Schedule or the Operating Procedures, to be presented to the Authority for approval on the next Plan Submittal Date.

2.3 The Authority's Oversight and Cooperation. The Authority shall cooperate with Master Concessionaire in connection with Master Concessionaire's performance of the Facility Work and agrees to the following for purposes of facilitating the Facility Work:

a. The Authority shall not unreasonably withhold the Authority's consent to any Budget, Master Plan, Price Schedule, Operating Procedures or other proposals or requests of Master Concessionaire relating to the exercise of the Concession, with reasonableness determined by the following criteria and in the following order: (1) consistency with Applicable Law and the Concession Purpose; (2) not imposing financial obligations on the Authority of a recourse which will unreasonably reduce the Authority's net income (after all expenses and taxes, if any) from the operation of the Facility; (3) not imposing financial obligations on the Authority that cannot reasonably be satisfied out of Gross Receipts and Capital Receipts that the Authority can reasonably expect to receive pursuant to Section 5.1 and 5.2 during the Concession Term; and (4) reasonably consistent with the Facility Operation Standard.

b. The Authority shall respond to all requests for approval of the Master Plan, Budget, Pricing Schedule, Operating Procedures and any requested modifications thereto within thirty (30) days of Master Concessionaire's request, subject to the understanding that the Authority's failure to deny any request for approval in writing within such thirty (30) day period shall be deemed consent to the extent permitted by Applicable Laws.

c. The Authority shall execute such documents and grant such approvals as Master Concessionaire shall reasonably request to allow Master Concessionaire and each Facility Operator to exercise the Concession to the extent that

such powers can be designated to a third party performing acts on behalf of the Authority pursuant to Applicable Laws and Section 2.3(a) above. To the extent that such powers cannot be designated to a third party, the Authority shall undertake such acts as shall be reasonably requested by Master Concessionaire to allow Master Concessionaire to exercise the Concession in a manner consistent with this Agreement.

d. The Authority shall keep the Master Concessionaire informed of all potential defaults or breaches, or threats or notifications of default or breaches of agreements or contracts impacting the Facility or Premises or any current or future leases, permits, licenses or easements relating to the Facility or Premises; and to allow the Master Concessionaire to take any action necessary on behalf of, and at the expense of, the Authority in order to sustain any current or future leases, permits, licenses or easements relating to the Facility or to carry out the purpose of this Agreement.

e. The Authority shall not pledge, sell, assign, let, lien, option, mortgage, hypothecate, encumber, or otherwise convey interests in the Premises, the Facility, revenues generated from the Facility or the Authority's interest in the Premises at any time during the Concession Term without Master Concessionaire's prior consent, such consent to be granted or denied in Master Concessionaire's sole discretion.

f. If, for any reason, the Authority refuses to approve modifications to the Master Plan, Budget, the Pricing Schedule or the Operating Procedures, the foregoing shall continue in effect unmodified (and renewed for the next year) until such matter is resolved pursuant to Section 18.10 herein.

g. If any state, federal, or local governmental agency issues any written or unwritten notices of violation or non-compliance, orders of withdrawal or cessation, or any other citations relating to the Facility, the Authority shall immediately notify Master Concessionaire of the governmental action, and follow any non-written notification with written notification within two (2) Business Days.

h. The parties acknowledge that the Premises provided by the Authority is exempt from real estate taxes, and that they have entered into this Agreement based on the assumption that neither the Authority nor Master Concessionaire shall be responsible for the payment of any real estate, personal property, user or operations taxes relating to the Premises or the Facility.

i. In order to exercise its oversight obligations, the Authority is required to maintain an office on the Premises or the Expansion Properties. The location and operation of the Authority's office shall not interfere with the Facility Work and the Concession. All expenses related to the operation of the Authority's office shall be borne by the Authority.

2.4 Employment of Facility Operator. The Authority confirms that it has reviewed the Facility Operation Agreement with Nicholson Terminal and Dock Company and hereby approves of Master Concessionaire's entry into that Facility Operation Agreement pursuant to which Nicholson Terminal and Dock Company, as a Facility Operator will agree to

perform certain aspects of the Facility Work. From time to time, Master Concessionaire shall be entitled to replace Nicholson Terminal and Dock Company, as a Facility Operator in accordance with the terms and conditions of the Facility Operation Agreement with Nicholson Terminal and Dock Company. The Authority shall be entitled to approve or disapprove of any substitute or new Facility Operator proposed by Master Concessionaire, such approval not to be unreasonably withheld. If the Authority fails to deny approval in writing of any Facility Operator proposed by Master Concessionaire within thirty (30) days of Master Concessionaire's request, such consent shall be deemed granted to the extent that such an assumption is permissible under Applicable Law.

2.5 Waiver of Conflict. The Authority understands and acknowledges that Master Concessionaire or its affiliates owns real property in and around the Premises that Master Concessionaire is interested in incorporating into the operations of the Facility and has agreed to perform the Facilities Work in part for the purpose of maximizing the value of such other properties and the profits to current and future businesses operating thereon. Preference shown to such other properties owned by Master Concessionaire or its affiliates over the Facility shall not constitute a breach of any duty of Master Concessionaire hereunder or a breach of the Facility Operation Standard. The Authority, hereby waives any claim for breach of fiduciary duty or other cause of action in connection with any actions taken by Master Concessionaire or any Facility Operator whereby other property owned or controlled by them receives disproportionate benefit to the Facility.

3. The Authority Requirements in Connection With Operation of Port.

3.1 Facility Open to the Public. Master Concessionaire shall at all times operate the Facility as a public Port Facility with open access to all users, as approved by the Port Authority.

3.2 Hours of Operation. Master Concessionaire shall provide services at such times as are convenient for the public, are customary to the operations of a Port Facility and have been approved by the Port Authority as part of the Operating Procedures.

3.3 Standards of Service. Master Concessionaire shall maintain and operate, or cause a Facility Operator to maintain and operate, the Facility and otherwise perform the Facility Work in a reasonably safe manner and with a reasonable standard of care necessary to make the Facility generally available for public use, consistent with the plans approved by the Port Authority.

3.4 Safety and Security Rules. Master Concessionaire and each Facility Operator shall advise and instruct their employees and agents to abide by and observe the safety and security rules for their operations, work and services specified in the approved Operating Procedures. Master Concessionaire or a Facility Operator will file all necessary reports and other documents relating to the ownership, occupation, maintenance, expansion, sale or operation of the Facility, with all applicable governmental authorities when required to do so by Applicable Laws with copies provided to the Authority as appropriate.

3.5 Port Security. Master Concessionaire shall file or cause to be filed such reports and undertake such actions as shall be required under applicable law for purposes of causing the Premises and the operations of the Facility to comply with Applicable Laws relating to securing the Facility from terrorist activities, vandals and criminal acts. Notwithstanding the foregoing, the parties understand and agree that such acts are the result of the actions of third parties and outside the control of either the Authority or Master Concessionaire. Master Concessionaire shall have no liability to the Authority by reason of the occurrence of such third party actions.

3.6 Government Reports. The Authority shall assist in procuring all federal, state, county and City permits, licenses, authorizations and other governmental consents necessary for the Authority, Master Concessionaire and each Facility Operator to maintain and operate the Facility as a Port Facility.

3.7 Prior Non-Compliance with Laws. Master Concessionaire, the Facility Operator(s) and their agents, employees, vendors and concessionaires shall not be responsible for any noncompliance with Applicable Laws, rules, regulations, specifications, approved operational plans, and ordinances of the host municipality, the State of Michigan and any other applicable federal laws prior to the date of this Agreement.

3.8 Procurement of Licenses and Permits. Except as the Parties otherwise agree, Master Concessionaire and any Facility Operator shall procure, pay for and maintain, in its own name or in the name of a Facility Operator, all federal, state, and/or local governmental identification numbers, license(s), plans(s), and permit(s) necessary, convenient, and/or incidental to do the Facility Work and to keep the Facility operating. Master Concessionaire and each Facility Operator or contractors shall comply and abide with all of the terms and conditions of said licenses, plans, and permits.

3.9 Environmental Compliance. Each Facility Operator shall be responsible for compliance with Environmental Laws for the Facility (or the portion of the Facility that they are operating) after the effective date of this Agreement except to the extent that responsibility for compliance has been retained by the Authority. Except to the extent that Master Concessionaire acts as a Facility Operator, Master Concessionaire shall not, by reason of this Agreement, assume any liability for Hazardous Materials at the Facility or any breach of Environmental Laws relating to the Facility or operations thereon.

3.10 Hazardous Cargo. Each Facility Operator shall be responsible for all federal and state authority reporting and compliance related to the handling of Hazardous Cargo at the Facility pursuant to that Facility Operator's Facility Operation Agreement.

3.11 Conduct of Operations/Independent Contractor Status. Each Facility Operator shall perform, render and carry out at all times the Facility Work as independent contractors. Each Facility Operator shall, at all times, have and exercise exclusive direction and control of the Facility Work allocated to them pursuant to each Facility Operation Agreement and exercise exclusive control over its individual work force and labor relations. While Master Concessionaire and/or the Facility Operator may, from time to time, receive advisory communications pertaining to the operation of the Facility from the Authority, compliance by a

Facility Operator with such communications shall not effect their status as an independent contractor.

3.12 Right of Entry. The Authority shall, upon reasonable notice to Master Concessionaire and the Facility Operator operating on the applicable portion of the Facility, retain entry and inspection privileges to the Facility. The Authority shall coordinate with Master Concessionaire and the applicable Facility Operator to arrange a mutually agreeable time so as to minimize any interference to Master Concessionaire's operations or the operations of the Facility Operator.

3.13 Protection of Authority's Title in Premises. Master Concessionaire shall not suffer or permit the Premises, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might impair the Authority's title to the Premises or any portion thereof, or in such manner as may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

3.14 Uses Prohibited. Master Concessionaire shall comply with all legal requirements with respect to the Premises and the Facility. Master Concessionaire shall use the Premises and Facility in a manner that will not cause a cancellation of any insurance policy covering the Premises and Facility, or any part thereof.

3.15 Waste and Nuisance Prohibited. During the Concession Term, Master Concessionaire shall comply with all Applicable Laws affecting the Premises, the breach of which might result in any penalty to the Authority, or forfeiture of the Authority's interest in the Premises, or restriction against the Authority's interest in the Premises or the Authority's or City's adjoining land.

4. Construction and Improvements.

4.1 Construction of Improvements. Consistent with the Master Plan approved by the Authority and as part of the Facility Work, Master Concessionaire may construct, demolish and maintain any facilities, improvements, and buildings on the Premises reasonably necessary for the operation of the Facility. Master Concessionaire or its agent shall be responsible for obtaining any required building or other permits for such work. Such items shall be approved or objected to in accordance with the standards, process and procedures for approval of the Master Plan set out in Section 2.1, with the exception of the requirement that they be submitted by the Plan Submittal Date.

4.2 Submission of Plans for Modifications. Master Concessionaire agrees to submit to the Authority, in advance, all plans respecting any material modifications of or additions to the Premises and/or Facility, as part of the Master Plan. Any and all significant modifications and/or alterations to the Premises and/or Facility shall require the written consent of the Authority. Construction budgets, construction schedules, plans and specifications and architectural drawings shall be subject to written approval of the Authority and incorporated into the Master Plan as necessary, but shall not be required as a condition to submittal of the Master Plan as of the Plan Submittal Date.

4.3 The Authority Funding for Construction or Improvements. Upon coordination with, or at the request of, Master Concessionaire, the Authority shall reasonably cooperate to use its bonding authority to authorize the issuance of bonds to provide for the construction of improvements and to otherwise further develop, or to expand the Facility or Premises. Expansion of the Facility to include Expansion Properties shall only occur in accordance with the Master Plan and by means of a written supplement to this Agreement under which Master Concessionaire and the Authority agree on the terms and conditions on which the Expansion Properties are to be incorporated into the Facility.

4.4 Master Concessionaire Funding for Construction or Improvements. Master Concessionaire, may, using its own private funds, construct improvements and further develop or expand the Facility or Premises in accordance with the Master Plan. Should Master Concessionaire with the approval of the Port Authority use its own private funds to construct improvements, further develop, or expand the Facility or Premises on real estate it does not own, all such costs shall be deemed advances of principal under the Promissory Note and added to the outstanding principal balance of the Promissory Note. From time to time as requested by Master Concessionaire, the Authority shall confirm such advances and execute and allonge to the Promissory Note confirming the increased principal amount thereof.

4.5 Authority Title Retention. The Authority shall own the title to any real estate parcels and Facility improvements that are constructed on property acquired using proceeds obtained from the issuance of the Authority authorized bonds.

4.6 Master Concessionaire Real Estate. Pursuant to the Master Plan and as otherwise provided for in this Agreement, Master Concessionaire may, from time to time, contribute Expansion Properties to the Facility by conveying such real estate to the Authority. The Authority shall own any additional real estate added to the Facility as an Expansion Property in fee simple determinable, subject to the possibility of reversion to Master Concessionaire if at any time the Master Concession Agreement terminates.

5. Application of Revenues Derived from the Facility.

5.1 Payment for Concession Services. Although the Authority's primary purpose for entering into this Agreement is to cause a dormant Port Facility to resume operations, the parties acknowledge and agree that the Authority will need to be compensated for the out of pocket and administrative costs that the Authority will incur in connection with the ongoing oversight and administration required of the Authority under the terms of this Agreement ("Oversight Expenses"). The parties further acknowledge and agree that the actual dollar value of Oversight Expenses is difficult to determine because of the length of the Concession Term and the nature of the Oversight Expenses as administrative expenses and not necessarily out of pocket expenses. Therefore, the parties stipulate that Master Concessionaire shall reimburse the Authority for Oversight Expenses as follows and without modification during the Concession Term.

a. On the behalf of the Authority, Master Concessionaire shall require each Facility Operator to collect, and provide written confirmation of the receipt of, all Gross Receipts earned in connection with the Facility.

b. In order to compensate the Authority for its Oversight Expenses, on or before the thirtieth (30th) day following the end of each calendar quarter, Master Concessionaire shall pay the Authority two and one-half percent (2 1/2%) of the Gross Receipts received in that expired quarter, less the following deductions to be applied in the following order:

- (1) All outstanding interest that shall have accrued during the preceding quarter on the Promissory Note at the Floating Rate;
- (2) any default interest due on the Promissory Note;
- (3) any interest that accrued during prior quarters but that was added to the principal amount of the Promissory Note by reason of there being insufficient Gross Receipts available to pay the accrued interest; and
- (4) any amount due Master Concessionaire from the Authority under the terms of this Agreement.

5.2 Collection and Distribution of Capital Receipts. On behalf of the Authority, Master Concessionaire shall collect or require the Facility Operator(s) to collect all Capital Receipts earned in connection with the Facility. Concurrently with the collection of Capital Receipts, Master Concessionaire shall apply Capital Receipts in the following order:

- a. First, to satisfy all amounts due and owing under any loan or other financing related to the Capital Receipt and consented to in writing by Master Concessionaire;
- b. Second, to pay Master Concessionaire any accrued but unpaid interest outstanding under the Promissory Note, including default interest;
- c. Third, to satisfy the outstanding principal balance under the Promissory Note;
- d. Fourth, to pay any amounts then due any Facility Operator(s);
- e. Fifth, to pay any other amounts then due Master Concessionaire hereunder;
- f. With all residual Capital Receipts payable to the Authority.

5.3 Other Payments.

- a. The Authority has the right to pay all or part of the outstanding principal balance of the Promissory Note at any time.

b. The Master Concessionaire will reimburse the Authority's unamortized bond issuance costs and costs related to completing this transaction, the total not to exceed Four-Hundred Thousand Dollars (\$400,000.00). Within ten (10) days of the execution of this Agreement, the Authority will present to the Master Concessionaire an itemized list of claimed costs, with appropriate justification, as requested. Within thirty (30) days of the receipt of the Authority's justified claim, the Master Concessionaire will make payment. Any disputes concerning this reimbursement will be resolved in accordance with Section 18.10 of this Agreement.

6. Warranties and Representations.

6.1 Warranty of Qualifications. Master Concessionaire represents and warrants to the Authority that Master Concessionaire is qualified and capable, and has adequate financial resources, to fulfill and perform its obligations under this Operating Agreement.

6.2 General Warranty by the Authority. Recognizing that the Parties have not had possession of the Premises nor have they had the opportunity to conduct a comprehensive due diligence, they nevertheless warrant that they are unaware of the Premises presently being the subject of:

- a. any administrative action, notice of violation, cessation order or action in any quasi-judicial or judicial body of competent jurisdiction;
- b. any final order, writ, judgment, injunction, decree, determination, award or other final order or applicable decision of any quasi-judicial, judicial, or government entity which restricts or affects the operation of the Facility;
- c. any investigation into the violation of any Applicable Law; or
- d. any other potential civil action which might have a material effect on Master Concessionaire's financial interests as a Facility Operator.

6.3 Warranty by the Parties of Environmental Conditions. The Baseline Assessment evaluated and documented the environmental conditions of the Larger Parcel of property. Within forty-five (45) days of the effective date of this Agreement, the Master Concessionaire shall cause the completion of a final baseline assessment for the entire Facility. Until a baseline assessment that incorporates the Smaller Parcel is completed, the Smaller Parcel will not be included in the operation of the Facility. The Parties covenant, represent and warrant that to the best of their knowledge, except as provided in the Baseline Assessment:

- a. the Facility operating on the Larger Parcel does not violate any applicable federal, state, or local law, statute, ordinance, rule, regulation, order, notice requirement or other Applicable Law pertaining to the collection, transportation, storage, treatment, discharge, release, processing, handling, or disposal of Hazardous Materials.
- b. no written notice has been served on the Authority from any person or governmental entity regarding any existing, pending investigation or inquiry

nor are there any threatened investigations or inquiries related to violations under any Applicable Laws, or any claims for corrective action, remedial obligations or contribution for removal costs or damages under any Applicable Laws or the designation of the Authority as a potentially responsible party under Applicable Laws.

c. there have been no releases of Hazardous Materials generated, stored, treated or disposed of on the Larger Parcel or on property adjacent to or proximate to the Premises.

6.4 Warranty re: Master Plan.

The Authority represents and warrants its Development Plan was duly adopted and approved by all applicable governmental authorities after notice and hearing in accordance with Section 120.123 of the Port the Authority Act, MCL §120.123.

7. Term and Termination of Operating Agreement.

7.1 Term of this Agreement. This Agreement shall be in effect for the Concession Term. The Concession Term shall be subject to three (3) successive twenty-five (25) year extension options to be exercised at the election of Master Concessionaire by delivery to the Authority of at least six (6) months prior written notice of Master Concessionaire's election to extend. Each extension option may only be subject to exercise if, during the Concession Term and each twenty-five (25) year extension period, at least Two Million Dollars (\$2,000,000.00) in "Capital Investment" has been made in the Premises by the Authority, Master Concessionaire, a Facility Operator or other party. Capital Investment shall mean the cost, as noted in third party invoices, of physical improvements made to the Premises (including any Expansion Properties). The following costs may be included in Capital Investment: all hard costs of physical improvements including labor and materials as well as soft costs, including design, engineering, architectural and legal expenses, permitting costs, impact fees, licensing costs, plan review fees, all other governmental expenses, fees and costs associated with the physical improvement of the Premises including any Expansion Properties, interest payable to third parties and attributable to construction periods, oversight fees payable to any third party construction or site manager and other fees and expenses that would typically be funded by a construction lender financing comparable physical improvements. Capital Investment shall only include costs relating to physical improvements that will remain on the Premises or Expansion Properties following the termination of the Master Concession Agreement.

7.2 Return of the Facility. Master Concessionaire shall, upon the termination of this Agreement, leave intact, undisturbed, and in good repair, less normal wear and tear, all fixtures, improvements, and installations, as well as all items comprising the same, pertaining to the Facility paid for by the Authority on the Authority property. Master Concessionaire agrees to remove all of its personal property from the Facility within sixty (60) calendar days from the date of the termination of this Agreement.

8. Insurance.

8.1 Liability Insurance.

a. Master Concessionaire shall cause each Facility Operator to purchase liability insurance (any auto, including owned autos, non-owned autos and hired autos), and commercial general liability insurance protecting the Facility Operator, Master Concessionaire, and the Authority from and against any and all liabilities arising out of or relating to the Facility Operator's use or occupancy of, or the conduct of operations on, the Premises or in connection with the Facility. Limits of liability thereunder shall be in such reasonable amounts as the Authority shall approve as part of each Facility Operation Agreement. The policy shall be in a form and with a company or companies reasonably acceptable to Master Concessionaire and the Authority and with contractual liability coverage for the Facility Operator's covenants to and indemnification of Master Concessionaire and the Authority under the Facility Operation Agreement, if any. This insurance shall provide that it is the primary insurance with respect to any other valid and collectible insurance Master Concessionaire or the Authority may possess, including any self-insured retention or deductible Master Concessionaire or the Authority may have, and that any such other insurance Master Concessionaire or the Authority do possess shall be considered excess insurance only.

b. If the nature of the Facility Operator's use of the Premises or business operations on the Premises or in connection with the Facility are such as to place any or all of the Facility Operator's employees under the coverage of workers' compensation or similar statutes, Master Concessionaire shall also cause the Facility Operator to purchase workers' compensation or similar insurance with a company or companies acceptable to Master Concessionaire and the Authority affording the required statutory coverage and containing the requisite statutory limits.

c. The declarations page(s) from all insurance policies obtained by Facility Operator in accordance with the provisions of this Agreement shall be furnished to Master Concessionaire and the Authority at least fifteen (15) days prior to the commencement of any construction or installation on the Premises, whichever first occurs, and at least thirty (30) days prior to the expiration or termination of the coverage provided under any prior policy. Such declarations page(s) shall indicate that Master Concessionaire and the Authority as additional insured parties. Each declarations page shall indicate that such insurance coverage will not be reduced or canceled without having first given at least thirty (30) days' prior written notice to Master Concessionaire and the Authority.

8.2 Property Insurance.

a. Master Concessionaire shall cause each Facility Operator, at the Facility Operator's sole cost and expense, to obtain and maintain in effect through the term of this Agreement, for the benefit of Facility Operator, Master Concessionaire, the Authority, their lenders from time to time, and the trustee of certain of the Authority's outstanding revenue bonds, as their interests may appear, property insurance on all

improvements, furnishings, fixtures, trade fixtures, signs, equipment and other personal property hereafter installed on the Premises or incorporated into the Facility, on a replacement cost basis, in such form and with such company or companies as Master Concessionaire shall approve, with a deductible which does not exceed five percent (5%) of such replacement cost.

b. At least fifteen (15) days prior to the commencement of any construction or installation on the Premises and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided by Facility Operator under this Agreement, Master Concessionaire shall cause each Facility Operator to furnish Master Concessionaire and the Authority the declarations page(s) from the insurance policy or policies evidencing such coverage, and such declarations page(s) shall indicate that Facility Operator, Master Concessionaire, the Authority, their lenders from time to time, and the trustee of any of Authority's outstanding revenue bonds are named as loss payees as their interests may appear, and that the policy or policies will not be canceled or reduced without thirty (30) days' prior written notice thereof to Master Concessionaire and the Authority.

c. Master Concessionaire shall require that each Facility Operator, on behalf of itself and its insurance carrier(s), waives any and all rights of recovery which Facility Operator may have against Master Concessionaire or the Authority for any loss of or damage to property each may suffer as a result of any fire or other peril normally insured against under a policy of property insurance.

8.3 Right of Master Concessionaire or Authority to Purchase. Master Concessionaire shall cause each Facility Operator to pay all of the premiums for insurance required to be maintained hereunder and to deliver proof of such insurance to the Authority. Upon the failure of Master Concessionaire to cause a Facility Operator to obtain such insurance in the names and in the amounts herein called for, to pay the premiums therefor, or to deliver proof of insurance to the Authority, the Authority shall be entitled, but shall have no obligation, to obtain such insurance and pay the premiums therefor, which premiums shall be repayable to the Authority upon written demand therefor. However, before taking such action, if commercially available, the Authority will consult with Master Concessionaire and identify the perceived inadequacies of Master Concessionaire's or any Facility Operator's insurance coverage. In no event shall Master Concessionaire or any Facility Operator be liable to the Authority for damages in excess of the insurance premiums that the Authority pays to purchase replacement insurance. If insurance is not maintained by Master Concessionaire or the Facility Operator, such failure shall not constitute an independent cause of action and shall not result in liability of Master Concessionaire to the Authority or any other party for uninsured damages that may occur.

8.4 Survival of Provisions.

The provisions of this Section 8 shall survive the expiration or earlier termination of this Agreement.

8.5 Blanket Insurance Policies. Notwithstanding anything to the contrary contained in this Article, Master Concessionaire's obligations to carry or to cause a Facility

Operator to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Master Concessionaire or its Facility Operator(s), as long as the coverage afforded the Authority shall not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Agreement by reason of the use of such blanket policy of insurance, and all other requirements of this Article shall be satisfied.

8.6 Waiver of Subrogation. The Authority and Master Concessionaire waive all rights against each other, and against any of their respective officers, employees, agents, successors and assigns and any other parties named as insureds or additional insureds in such policies, on account of any loss or damage caused by risks covered by insurance under this Article to the extent such party is covered by that insurance. The Authority and Master Concessionaire intend that the required policies of insurance shall protect all the parties insured and provide primary and exclusive coverage for the losses and damages caused by risks covered by insurance under this Article. Each insurance policy carried by the Authority, Master Concessionaire and each Facility Operator shall provide that the insurance company waives its right of recovery by way of subrogation against the Authority, Master Concessionaire or the Facility Operator and their respective officers, employees, agents, successors and assigns in accordance with this paragraph.

9. Repairs and Destruction of Improvements.

9.1 Maintenance of Improvements. Master Concessionaire shall, without any expense to the Authority, cause the Premises and Facility to be kept and maintained, including without limitation, all structural, nonstructural, interior and exterior portions thereof, in good, sanitary and neat order, condition and repair. Master Concessionaire shall, except as specifically provided herein, restore, repair, replace or rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever. Master Concessionaire shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises and Facility or the other improvements thereon, or any activity or condition on or in such Premises.

9.2 Damage to and Destruction of Improvements. The damage, destruction, or partial destruction of any building or any other improvements which are on the Premises shall not release or diminish Master Concessionaire's obligations hereunder, except as hereinafter expressly provided. In case of damage to or destruction of buildings or other improvements on the Premises, Master Concessionaire shall, at its expense, subject to the availability of adequate insurance proceeds, promptly repair and restore the same to a condition as good as that which existed prior to such damage or destruction. Without limiting such obligations of Master Concessionaire, it is agreed that, so long as Master Concessionaire is not then in default hereunder, and subject to the rights of any mortgagee of the Premises, the proceeds of any insurance covering such damage or destruction shall be made available to Master Concessionaire for such repair or replacement.

10. Master Concessionaire's Duty to Keep Premises Free of Liens. Except as provided in this Agreement, Master Concessionaire shall keep the Premises, and every part thereof, the buildings and any other improvements at any time located thereon free and clear of

any and all construction liens for or arising out of or in connection with work or construction by, for or permitted by Master Concessionaire on or about the Premises, and any obligations of any kind incurred by Master Concessionaire, and at all times shall promptly and fully pay and discharge any and all claims on which any such lien may or could be based, and shall indemnify the Authority and all of the Premises, against all such liens and claims of liens and suits or other proceedings pertaining thereto. Notwithstanding the foregoing, Master Concessionaire may contest any such lien in good faith and may permit same to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom; provided that if the Authority so requires, Master Concessionaire shall deposit with an escrow agent, cash or a cash equivalent surety bond in form and substance satisfactory to the Authority, in an amount sufficient to satisfy such lien, including any interest and penalties thereon.

11. Prohibition of Involuntary Assignment; Effect of Bankruptcy or Insolvency.

11.1 Prohibition of Involuntary Assignment: Neither this Agreement, nor the estate of the Authority or Master Concessionaire, nor any interest of the Authority or Master Concessionaire hereunder in the Premises or any improvements thereon, shall be subject to involuntary assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempt at involuntary assignment, transfer or sale shall be void and of no effect.

11.2 Effect of Bankruptcy, Insolvency, Etc. Without limiting the generality of the provisions of the preceding Section, the Authority and Master Concessionaire agree that the following events shall constitute an Event of Default by the bankrupt party:

- a. if any proceedings under federal bankruptcy law shall be commenced by or against either Party and if commenced against either Party, shall not be dismissed within sixty (60) days; or
- b. if either Party becomes insolvent or makes an assignment for the benefit of its creditors; or
- c. if a receiver is appointed in any proceeding or action to which either Party is a party, with authority to take possession or control of all or any part of the Premises or the business conducted thereon, and such receiver is not discharged within a period of thirty (30) days after his appointment; or
- d. if any involuntary assignment prohibited by the provisions of the preceding Section shall occur.

12. Assignment and Transfer by Master Concessionaire.

12.1 Prior Consent by the Authority to Assignment and Transfer of this Agreement. Master Concessionaire shall not assign or transfer this Agreement, without the prior written consent of the Authority, which consent shall not be unreasonably withheld. Consent to an assignment or transfer shall not be deemed to be a consent to any subsequent assignment or transfer. In connection with any approved assignment or transfer of this Agreement, the Authority shall release Master Concessionaire from its obligations under this Agreement to the

extent of such assignment or transfer. Following an approved Assignment, all references therein to the Master Concessionaire shall mean the assignee entity. If Master Concessionaire assigns its rights under this Agreement without the consent of the Authority, the sole impact shall be that Master Concessionaire shall continue to be liable hereunder for all obligations of Master Concessionaire hereunder.

12.2 Master Concessionaire's Right to Subcontract. Notwithstanding the foregoing, and subject to the limited approval rights specified in Section 2.4 hereof, Master Concessionaire shall be entitled to subcontract all or a portion of its rights or duties under this Agreement to any Facility Operator.

13. Default.

13.1 Event of Default by Master Concessionaire. In addition to any other Master Concessionaire Defaults or Events of Default specified herein, the following shall constitute Master Concessionaire Defaults:

a. Master Concessionaire fails to make any payment on the due date thereof in accordance with this Agreement and fails to cure such delinquency within fifteen (15) days after written notice thereof has been received by Master Concessionaire; or

b. Master Concessionaire breaches any covenant of this Agreement other than the covenant for the payment of Oversight Expenses and fails to cure such breach within thirty (30) days after written notice thereof has been given by the Authority to Master Concessionaire.

13.2 Authority Rights and Remedies Pursuant to an Event of Default by Master Concessionaire. Following an Event of Default by Master Concessionaire, the Authority shall be entitled to exercise the following, and only the following, rights and remedies:

a. Pursue a claim for actual damages, but expressly excluding consequential damages, punitive damages or other monetary damages, in excess of actual damages, and subject to the additional condition that such damages shall be payable solely from future amounts due Master Concessionaire from the related Facility Operator hereof and without offset against any amounts otherwise due from Master Concessionaire or any other Facility Operator to the Authority hereunder;

b. Enforce the obligations of Master Concessionaire by means of the equitable remedies of specific performance and injunction, but subject to the condition that such equitable remedies shall not be exercised in such a manner inconsistent with the objective of keeping the Facility open as a Port Facility available for use by the general public and operated by a Facility Operator, nor shall such remedies be caused so as to cause a breach by Master Concessionaire of any Master Concessionaire's obligations under any Facility Operating Agreement;

c. If, in addition to an Event of Default, Master Concessionaire is declared bankrupt or ceases to exist, the Authority may terminate this Agreement; and

d. Notwithstanding the provisions of this Section 13.2, recover reasonable attorneys' fees and enforcement expenses in accordance with Section 18.13 below.

13.3 The Authority's Right to Perform. Upon the occurrence of an Event of Default caused by the continuation of a Master Concessionaire Default, the Authority may, but shall not be required to, do or perform or cause to be done or performed such act or thing, entering upon the Premises for such purposes, if the Authority shall elect, and the Authority shall not be held liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to Master Concessionaire on account thereof, except as a result of the Authority's, its agents', or employees' negligent acts or omissions in the performance of such act. Any act or thing done by the Authority pursuant to the provisions of this Section shall not be construed as a waiver of any such default by Master Concessionaire, or as a waiver of any covenant, term or condition herein contained, or of the requirement of performance thereof, or of any other right or remedy of the Authority, hereunder or otherwise. However, the Authority shall not be entitled to recover from Master Concessionaire any amounts expended in connection with the exercise by Authority of the rights specified in this Section 13.3 in excess of those amounts recoverable pursuant to Section 13.2(a) above.

13.4 Event of Default by the Authority. In addition to any other Authority Defaults or Events of Default specified herein, the following shall constitute Authority Defaults:

a. The Authority fails to perform a required duty or obligation as stated in this Agreement and fails to cure such delinquency within fifteen (15) days after written notice thereof has been given by Master Concessionaire to the Authority; or

b. The Authority breaches any representation or warranty of the Authority hereunder.

13.5 Remedies for Master Concessionaire Pursuant to an Authority Event of Default. If an Authority Default continues beyond applicable cure periods, Master Concessionaire shall be entitled to any and all remedies available at law or in equity provided that Master Concessionaire's right to recover monetary damages shall be limited to the Authority's rights and interests in: (a) the Facility; (b) the Premises; (c) the Gross Receipts; (d) the Capital Receipts; (e) any personal property located thereon or related to the Premises and the Facility; (f) any deposits, bonds or other security posted by the Authority and relating to the Facility or work being performed in connection with the Facility or leases or subleases of the Facility; and (g) any a right of offset against any other amounts due the Authority pursuant to this Agreement. In addition, the Master Concessionaire shall be entitled to enforce its rights under the Remainder Agreement and cause the City to take possession of the Premises so as to terminate the Authority's interest in the Premises and the Facility.

13.6 Waiver. The waiver by either Party of, or the failure of that Party to take action with respect to, any breach of any term, covenant or condition herein contained shall not

be deemed to be a waiver of such term, covenant or condition, or of subsequent breach of the same, or of any other term, covenant or condition herein contained. The subsequent performance or acceptance of payment hereunder by a Party shall not be deemed a release of any term, covenant or condition of this Agreement, other than the failure of that Party to perform or pay the particular performance or payment so accepted, regardless of that Party's knowledge of such preceding breach at the time of acceptance of such performance or payment.

13.7 Default Interest. Amounts due and unpaid hereunder by either of the Parties to the other and delinquent for more than thirty (30) days, shall accrue interest at the Default Rate, compounding monthly, until paid in full.

14. Effect of Eminent Domain.

14.1 Effect of Total Condemnation. If the entire Premises and Facility shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, or shall with the consent of Master Concessionaire, be conveyed by the Authority to any public or quasi-public authority under a threat of such appropriation or taking, this Agreement shall terminate and expire as of the date of such taking or conveyance, payment shall be prorated to such date, and Master Concessionaire and the Authority shall thereupon be released from any liability thereafter accruing hereunder. All proceeds with respect to the Premises shall be divided between the Authority and Master Concessionaire as Capital Receipts to the extent that such proceeds relate to property owned by the Authority, or paid one hundred percent (100%) to Master Concessionaire to the extent that such proceeds relate to property in which Master Concessionaire has a reversionary interest.

14.2 Effect of Partial Condemnation. If the taking consists of less than the whole of the Premises or Facility, there will be no termination of this Agreement if Master Concessionaire determines, in its sole discretion, that its operation on the Premises can continue in substantially the same manner as before the taking. If Master Concessionaire determines that it cannot continue to operate on the Premises as herein required, either the Authority or Master Concessionaire may terminate this Agreement, and if this Agreement is terminated, the proceeds will be applied in the same way as under the preceding Section. If this Agreement is not terminated, then Master Concessionaire shall continue operations to the extent possible, and consistent with this Agreement, identify replacement improvements to be constructed by Master Concessionaire at the expense of the Authority. Subject to the rights of any mortgagee of the Premises, the proceeds of the partial condemnation shall be used first to pay for such construction, and any excess will go to the Authority and Master Concessionaire as their interests may appear as specified in the preceding paragraph.

15. Right of First Refusal. The Authority shall not sell the Premises or any interest in the Premises during the Concession Term except in accordance with this Section. Should the Authority receive from a bona fide, arm's-length purchaser not affiliated in any way with the Authority, a bona fide written offer ("Bona Fide Offer") to purchase all or any part of the Premises and should the Authority desire to accept the Bona Fide Offer, it shall first make a written offer (the "First Offer") to sell the Premises to Master Concessionaire at the price and upon the terms and conditions set forth in the Bona Fide Offer. The First Offer shall be accompanied by a copy of the Bona Fide Offer. Master Concessionaire may accept the First

Offer by service of notice of acceptance to the Authority on or before the thirtieth (30th) day next following delivery of the First Offer to Master Concessionaire plus any earnest money delivered therewith. Failure of Master Concessionaire to respond during said thirty (30) day period shall be deemed a conclusive waiver of Master Concessionaire's right to accept the First Offer. If the First Offer is accepted, the purchase and sale shall be closed at the principal office of the Authority on the date set forth in the Bona Fide Offer or at such other place, time and date as the Authority and the Master Concessionaire may mutually agree upon, by payment of the Purchase Price against conveyance of the Premises subject to the terms of the First Offer. If Master Concessionaire fails to fully and timely accept the First Offer as herein provided, the Authority may make the bona fide sale of the Premises to the bona fide prospective purchaser making the Bona Fide Offer in accordance with the terms thereof; provided, however, that if the Authority fails to consummate the sale of the Premises in accordance with the Bona Fide Offer, Master Concessionaire's right of first refusal described in this Section shall remain in full force and effect. Master Concessionaire shall be entitled to require the Authority to execute a memorandum of this right of First Offer in recordable form and record that right of First Offer against the Premises.

16. Port Authority Activities. For the purpose of giving Master Concessionaire comfort that the Port Authority will remain solvent and that the Authority will spend adequate resources, both in man-hours and bonding capability, on the success of the Facility, the Port Authority agrees that any freight handling or storage Port Facility, intermodal rail loading and unloading facility, truck loading terminal, or other comparable transportation facility located in Wayne County under the control, authority or supervision of the Port Authority will, at the election of Master Concessionaire, be subject to the terms and provisions of this Master Concession Agreement and incorporated into the Facility.

17. Tax Treatment. It is recognized that Master Concessionaire and the Authority are sophisticated entities and are advised by experienced legal counsel. It is the intent of Master Concessionaire and the Authority that for federal income tax purposes the transaction described in this Agreement is to be treated as a concession agreement and not as a capital lease between the Authority and the Master Concessionaire. Ownership of the Premises and the buildings, docks and other permanent improvements thereon shall reside in the Authority. The following items are expressly agreed to not constitute real property and ownership, thereof shall not transfer to the Authority by reason of their being incorporated into the Facility: furniture, trade fixtures, cranes, and other machinery for loading and unloading ships. The Authority and Master Concessionaire agree that, to the extent permitted by Applicable Laws, each shall file all tax returns in conformity with the foregoing intentions. The parties acknowledge and agree that (a) neither has made any representations or warranties to the other concerning the tax, accounting or legal characteristics of the transaction detailed in this Agreement and (b) each have obtained and relied upon such tax, accounting and legal advice concerning this Agreement and the transactions described herein and therein as they deem appropriate. The Authority and Master Concessionaire covenant not to challenge the characterization of the transaction created pursuant to this Agreement as anything other than as outlined above. Each party expressly acknowledges that the parties intend that the transactions described herein not be construed as a joint venture or partnership transaction. Each party acknowledges that neither the Authority nor Master

Concessionaire would have entered into the transactions contemplated hereby and thereby if a joint venture or partnership were being created.

18. Miscellaneous.

18.1 Execution of this Agreement. This Agreement and any modifications, supplements or amendments thereto shall be valid only when it is executed by duly authorized agents of each Party.

18.2 Collection of Prior Accounts Receivable. Any accounts receivables which have outstanding balances at the time this Agreement takes effect for work performed at the Facility will constitute Gross Receipts.

18.3 Applicable Law. This Agreement shall be governed and construed by the substantive laws of the State of Michigan. In the event any provision(s) of this Agreement shall be adjudged invalid by a court or arbitrator having competent jurisdiction over the Parties, the invalid provision(s) shall be deleted from this Agreement and this Agreement shall be construed as to give effect to the remaining provisions.

18.4 Notices. All notices provided for herein shall be in writing and shall be tendered by U.S. Certified Mail to the receiving Party hereto at:

If to Master Concessionaire: Ambassador Port Company
12225 Stephens
Warren, MI 48089

With a copy to: Foley & Lardner LLP
500 Woodward Avenue, Suite 2700
Detroit, MI 48226
Attn: George Ash, Esq.

If to the Authority: Detroit/Wayne County Port Authority
8109 E. Jefferson Avenue
Detroit, MI 48214
Attn: Executive Director

With a copy to: Lewis & Munday, P.C.
2490 First National Building
660 Woodward Avenue
Detroit, MI 48226
Attn: David Baker Lewis, Esq.

In the case of a change in the mailing address of any Party hereto, the Party so changing its mailing address shall give notice thereof to the other Party hereto, and in the absence of any such notice of change of mailing address executed in accordance with this paragraph, notice given to

the respective aforesaid mailing addresses shall be deemed sufficient for all purposes of this Agreement.

18.5 Captions. The captions appearing in this Agreement are for identification purposes only and shall not be construed as affecting in any way the meaning of the provisions hereof.

18.6 Attachments. All attachments are an integral part of this Agreement and set forth the entire understanding of the Parties in respect of the transactions contemplated. These documents supersede all prior agreements, arrangements, and understandings of the Parties concerning this Agreement and the operation of the Facility.

18.7 Modifications to this Agreement. This Agreement shall not be amended, modified, or altered, in whole or in part, except by mutual written agreement of the Parties hereto, properly executed by the same. No evidence of any such amendment, modification, or alteration of this Agreement shall be received in any controversy arising out of or pursuant to same except if it is in writing and executed in accordance with this subsection.

18.8 Successors and Assigns. This Agreement shall inure to the sole and exclusive benefit of and be of full and binding effect upon the Parties hereto and their respective successors and assigns. Nothing set forth in this Agreement, expressed, implied, or otherwise, is intended or shall be construed to confer upon or give to any person or entity other than the Parties hereto, and their respective successors and assigns, any right, remedy, benefit, cause of action, and/or chose in action under or by reason of this Agreement.

18.9 Force Majeure. Master Concessionaire shall be not liable for its failure to perform in whole or in part due to contingencies which have a material effect on its contractual performance, including, but not limited to, strikes, riots, war, fire, acts of God, compliance with any law, regulation, or order, whether valid or invalid of any other governmental body or any instrumentality thereof, whether now existing or hereafter created, or a delay in payment from the Facility Operator, as long as the Master Concessionaire diligently pursues such payment from the Facility Operator.

18.10 Dispute Resolution Procedures. All disputes arising under this Agreement shall be resolved pursuant to the procedures set forth in this paragraph 18.10 unless otherwise agreed by the Parties in writing.

a. Nothing in this paragraph shall be construed as limiting or delaying Master Concessionaire's right to seek injunctive relief from a court.

b. Except as set forth in subparagraph (a) above, neither Party shall initiate litigation under this Agreement without first following the dispute resolution procedure set forth herein.

c. In the event of a dispute arising under this Agreement, the aggrieved Party shall provide the other Party with written notice of a dispute. The Parties

agree to negotiate in good faith for a period of ten (10) days following receipt of the notice of a dispute.

d. If the Parties are unable to resolve the dispute(s) through good faith negotiations, then the Parties agree to submit the dispute to non-binding mediation with a third- Party mediator to be mutually agreed upon by the Parties. Each Party agrees to pay one half of the mediator's costs and fees. Five (5) days prior to the initial mediation session, each Party shall submit a written summary of its position regarding the dispute(s) to the mediator and the other Party. The mediation session(s) shall take place in the City, State of Michigan. If by the end of the mediation session, the Parties are not able to come to an accord, each party shall submit to the mediator a proposed final solution to the dispute. The mediator shall determine the proposed solution that most closely represents the proper outcome based on the mediator's application of the terms and conditions of this Agreement to the facts and circumstances at issue. If the Parties are not able to reach an accord, the mediator shall not be entitled to modify either proposed solution offered by the Parties. The parties agree that in any litigation, the proposed solution selected by the mediator shall be presumptively correct absent gross negligence or bad faith on the part of the mediator or the existence of material facts not known to the Parties and presented to the mediator at the time of the mediation.

e. If the Parties are unable to resolve the dispute(s) within thirty (30) days of the initial mediation session, then either Party may initiate litigation. The Federal District Court for the Eastern District of Michigan and the Circuit Court for the County of Macomb shall be the exclusive venues for litigating disputes arising under this Agreement. Each Party agrees to submit to the personal jurisdiction of the Federal District Court for the Eastern District of Michigan and/or the Circuit Court for the County of Macomb.

18.11 Remedies Cumulative. All remedies hereinbefore and hereinafter conferred on the Authority and Master Concessionaire shall be deemed cumulative, and no one remedy shall be exclusive of another or of any other remedy conferred by law.

18.12 Perpetuities Savings Clause. If any right of the Authority or Master Concessionaire provided for in this Agreement would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one years less one day after the date of death of the last survivor of the descendants living on the date of this Agreement of Joseph P. Kennedy, father of President John F. Kennedy and Ambassador to the Court of Saint James, but if any such rights, privileges and options shall be or become valid under Applicable Law for a period subsequent to the twenty-first anniversary of the death of the last such survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross, exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue



in effect, but only if such non-termination and extension shall then be valid under Applicable Law until such time as the same shall under Applicable Law cease to be valid.

18.13 Expenses of Enforcement. Master Concessionaire or the Authority shall pay all reasonable attorneys' fees and actual expenses incurred by the other Party in enforcing any provisions of this Agreement, caused by a defaulting Party hereunder, upon written demand therefor made by the non-defaulting Party.

IN TESTIMONY WHEREOF, the Parties have caused their respective corporate signatures to be subscribed by their respective duly authorized officers; these presents being executed in duplicate copies, each of which shall be considered as an original, this the date first above written.

DETROIT/WAYNE COUNTY PORT
AUTHORITY

THE AMBASSADOR PORT COMPANY

By: 	By: 
Name: <u>ARTHUR B. BLACKWELL</u>	Name: <u>DAN STAMPFER</u>
Its: <u>CHAIRMAN</u>	Its: <u>DIRECTOR</u>

MASTER CONCESSION AGREEMENT

PORT OF DETROIT
FINAL 5/17/05- CONFIDENTIAL

STATE OF MICHIGAN

COUNTY OF Wayne, to-wit:

The foregoing Agreement was acknowledged before me by Arthur B. Blackwell, who holds the position of Chairman at DWCPA, a Michigan corporation, for and on behalf of said corporation, this 24th day of May, 2005.

My commission expires: My Commission Expires Jan. 7, 2008
Vanessa Baker
NOTARY PUBLIC

STATE OF MICHIGAN

COUNTY OF WAYNE, to-wit:

The foregoing Agreement was acknowledged before me by JAN STAMPER, who holds the position of DIRECTOR at the Authority, a Michigan corporation, for and on behalf of said corporation, this 21 day of JUNE, 2005.

My commission expires: _____
Linda D. DeKeyser
NOTARY PUBLIC

LINDA D. DeKEYSER
Notary Public, Macomb County, MI
Acting In Wayne County, MI
My Commission Expires December 15, 2008

**AGREEMENT RELATING TO SPRINGING INTEREST AND
MASTER CONCESSION AGREEMENT**

by and between

THE CITY OF DETROIT

and

THE AMBASSADOR PORT COMPANY

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**AGREEMENT RELATING TO SPRINGING INTEREST AND
MASTER CONCESSION AGREEMENT**

THIS AGREEMENT RELATING TO SPRINGING INTEREST AND MASTER CONCESSION AGREEMENT (this "Agreement") is effective as of the 7th day of July, 2005, by and among the City of Detroit (the "City") and Ambassador Port Company ("Master Concessionaire").

WITNESSETH:

WHEREAS, the Detroit/Wayne County Port Authority, a Michigan public body corporate and politic (the "Authority") is the owner of a fee simple defeasible interest in certain real property consisting of approximately 3.6425 acres of improved land commonly known as 4461 West Jefferson Avenue, Detroit, Michigan, along the Detroit River and certain other contiguous real property consisting of approximately 31.31 acres located at, and commonly known as, 4300, 4461, and 4500 West Jefferson Avenue, Detroit, Michigan (collectively, the "Premises");

WHEREAS, the Authority is a statutorily established entity funded by the State of Michigan, Wayne County and the City, in part through the issuance of tax-exempt bonds;

WHEREAS, the Authority was established for the purpose of developing and operating a "Port Facility" (as defined in Section 120.102 of the Port the Authority Act MCL 120, et seq.) in the City and intends to develop, maintain, expand and otherwise operate a Port Facility (including the real and personal property associated therewith, the "Facility") at the Premises and in the areas around the Premises when and if acquired and incorporated in the Facility;

WHEREAS, subject to the Authority's oversight and pursuant to a Master Concession Agreement between the Authority and Master Concessionaire dated of even date herewith (the "Master Concession Agreement"), the Authority has granted a concession (the "Concession") in the Premises and the Facility to Master Concessionaire for the purpose of assisting the Authority with the operation of the Facility;

WHEREAS, the parties expect that the Facility will continue to expand to include other properties proximate to the Premises ("Expansion Properties") and by the investment of private and public funds in the Facility (including possible borrowings from Master Concessionaire or from Master Concessionaire's affiliates or the issuance by the Authority of tax exempt bonds) and that concurrently with the addition of Expansion Properties to the Facility, the Concession and the definition of Premises shall expand to include any Expansion Properties;

WHEREAS, the Authority has received an exemption from real estate taxes for the Premises from the Tax Assessor for the City;

WHEREAS, the parties believe that the financial success of the Facility depends on the continued exemption of the Premises from real estate taxes and obtaining additional real estate tax exemptions for any Expansion Properties;

WHEREAS, concurrently with the execution of this Agreement, the Authority has executed a Promissory Note (the "Promissory Note") in favor of Master Concessionaire in the original principal amount of Two Million One Hundred Three Thousand Dollars and Forty One Cents (\$2,103,000.41) which includes a provision for the possible advance of future amounts by Master Concessionaire for the purposes of paying certain expenses relating to the expansion, maintenance, operation and improvement of the Facility;

WHEREAS, the Authority's fee interest in the Premises is subject to a conditional limitation that if the Master Concession Agreement is terminated, other than by mutual agreement of Master Concessionaire and the Authority; the occurrence of an Event of Default, as defined in the Master Concession Agreement, by the Authority; or if at any time the Property is no longer used as a Port Facility, then without further action on the part of any party, fee simple title to the Premises shall vest in the City (such interest of the City in the Premises being defined herein as the "Springing Interest"); and

WHEREAS, the City and Master Concessionaire desire to agree on terms pursuant to which the City and Master Concessionaire shall honor the terms of the Master Concession Agreement if the City succeeds to ownership of the Premises pursuant to the Springing Interest or otherwise.

NOW THEREFORE, in consideration of the premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each being legally advised and intending to be legally bound hereby, hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein and this Agreement shall be interpreted in accordance therewith.

2. **Capitalized Terms.** All capitalized terms as used in this Agreement, unless otherwise defined, shall have the same meaning stated below:

"*Applicable Laws*" shall mean all existing and future applicable laws, rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any governmental authority, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction.

"*Authority*" shall have the meaning specified in the Recitals.

"*Bona Fide Offer*" shall have the meaning specified in Section 4 of this Agreement.

"*Business Day*" shall mean any day other than Saturday, Sunday or any other day that federally chartered banks located in Michigan are closed for business.

"*City*" shall have the meaning specified in the introductory clause hereof.

"*Concession*" shall mean Master Concessionaire's exclusive right to operate and manage the Facility and to perform the Facility Work on the Authority's behalf pursuant to the terms and Master Concession Agreement.

"*Event of Default*" shall mean the continuation of a default by Master Concessionaire or the City pursuant to the terms hereof beyond applicable cure periods, if any.

"*Expansion Properties*" shall have the meaning specified in the Recitals hereto.

"*Facility*" shall have the meaning specified in the Recitals hereto.

"*First Offer*" shall have the meaning specified in Section 4 hereof.

"*Party*" shall each of the parties hereto or both parties when used in the plural form.

"*Port Facility*" shall have the meaning specified in the third (3rd) recital hereto.

"Premises" shall have the meaning specified in the first (1st) recital hereto and is legally described in Exhibit A.

"Promissory Note" shall have the meaning specified in the tenth (10th) recital hereto.

"Springing Interest" shall have the meaning specified in the Recitals hereto.

"Term" A period beginning on the date hereof and ending up the earlier to occur of (a) one hundred eighty (180) days following the date of termination of the Master Concession Agreement by (i) mutual agreement of Master Concessionaire and the Authority; (ii) Master Concessionaire following the Authority's default under the Master Concession Agreement or (iii) reason of the Authority's rejection of the Master Concession Agreement in connection with a bankruptcy proceeding; (b) the maximum time period permitted under 14(h) hereof; (c) the date that Master Concessionaire purchases the Premises or the Springing Interest pursuant to Section 4 hereof; (d) the date that Master Concessionaire elects in writing for the City to assume the Authority's obligations under the Master Concession Agreement pursuant to Section 3(b); (e) the date that the City and Master Concessionaire execute a Replacement Master Concession Agreement pursuant to Section 3(c) hereof; or (f) ninety-nine (99) years, 364 days from the date hereof.

3. **Continuation of Concession, Attornment and Non-Disturbance.** If at any time during the Term the City succeeds to the Authority's interest in the Premises, pursuant to the Springing Interest or otherwise, the City shall immediately notify Master Concessionaire in writing. If the Master Concession Agreement has not earlier terminated by mutual agreement of Master Concessionaire and the Authority, then the City and the Master Concessionaire may mutually agree to terminate the Master Concession Agreement, or mutually agree to renegotiate the Master Concession Agreement. Absent such mutual agreement, the Master Concession Agreement shall continue, without cost to the City or its taxpayers, subject to the condition that if the Premises should ever cease to be used as a public port facility as that term is used in the Port Authority Act, then title to the Premises shall vest in the City or such other public entity as the City may designate, without cost to the City or its taxpayers, and free and clear of any debts, liens or encumbrances or other liabilities.

4. **Right of First Refusal.** The City shall not sell the Premises or any interest in the Premises (including the Springing Interest) during the Term hereof or during the term of the Master Concession Agreement or any Replacement Master Concession Agreement, except in accordance with this Section.

(a) If, prior to the time that the City succeeds to the Authority's interest in the Premises, the City receive from a bona fide, arm's-length purchaser not affiliated in any way with the Authority or the City, a bona fide written offer ("Bona Fide Offer") to purchase all or any part of the City's interest in the Premises (including the Springing Interest) and should the City desire to accept the Bona Fide Offer, the City shall first make a written offer (the "First Offer") to sell the City's interest in the Premises to Master Concessionaire at the price and upon the terms and conditions set forth in the Bona Fide Offer. The First Offer shall be accompanied by a copy of the Bona Fide Offer.

(b) Master Concessionaire may accept the First Offer by service of notice of acceptance to the City on or before the thirtieth (30th) day next following delivery of the First Offer to Master Concessionaire plus any earnest money delivered therewith. Failure of Master

Concessionaire to respond during said thirty (30) day period shall be deemed a conclusive waiver of Master Concessionaire's right to accept the First Offer.

(c) If the First Offer is accepted, the purchase and sale shall be closed at the principal office of the City on the date set forth in the Bona Fide Offer or at such other place, time and date as the City and the Master Concessionaire may mutually agree upon, by payment of the Purchase Price against conveyance of the City's interest in the Premises subject to the terms of the First Offer.

(d) If Master Concessionaire fails to fully and timely accept the First Offer as herein provided, the City may sell the City's interest in the Premises to the bona fide prospective purchaser making the Bona Fide Offer in accordance with the terms thereof. The successor to the City's interest shall take title subject to the City's obligations under this Agreement, including the obligations to honor the Master Concession Agreement and the right of Master Concessionaire to apply amounts payable under the Master Concession Agreement to the holder of the Authority's or City's interest in the Premises to satisfy the Promissory Note.

(e) If the City fails to consummate the sale of the City's interest in accordance with the Bona Fide Offer, Master Concessionaire's right of first refusal described in this Section and other rights provided for in this Agreement shall remain in full force and effect.

(f) If the City succeeds to the Authority's interest in the Premises, either pursuant to the Springing Interest or otherwise, the Authority's interest in the Premises shall be subject to Master Concessionaire's right of first offer in the Premises pursuant to the terms of the Master Concession Agreement or Replacement Concession Agreement.

(g) Master Concessionaire shall be entitled to require the City to execute a memorandum of this right of first offer and of Master Concessionaire's rights under this Agreement in recordable form and record that memorandum against the Premises.

5. **Conflicts with Terms of Master Concession Agreement.** In the event of a conflict between the Master Concession Agreement and this Agreement, then as between Master Concessionaire and the City, the terms of this Agreement shall govern. This Agreement shall remain in full force and effect and shall not be further modified or amended without the prior written consent of the City and Master Concessionaire.

6. **Modification of Master Concession Agreement.** The Master Concession Agreement may be modified or amended without the prior written consent of the City. However, no modification to the Master Concession Agreement shall modify the terms of this Agreement.

7. **Assignment by the City.** The rights and obligations of the City hereunder are personal rights and obligations of the City and will reside with the City notwithstanding any sale of the Premises. Moreover, such rights and obligations shall run with the Premises and shall be binding on any successor in interest to the Springing Interest or to the City's rights in the Premises.

8. **Assignment by Master Concessionaire.** Master Concessionaire shall be entitled to assign this Agreement and Master Concessionaire's rights hereunder to any assignee, lender, or other successor in interest to Master Concessionaire's rights and privileges under the Master Concession Agreement or in the Premises. Such an assignment shall be effective upon delivery to the City of notice of such assignment.

9. **No Assumption by the City of Liability With Respect to Premises.**

(a) Except as otherwise provided herein, this Agreement shall not operate to place responsibility for the control, care, maintenance, or repair of the Premises or the Facility upon the City or to make the City responsible or liable to Master Concessionaire, the Authority or any third party for any waste committed on the Premises by any tenant, or any other person; for any dangerous or defective condition of the Premises; for any environmental contamination or unlawful condition existing at the Premises, or for any negligence in the management, upkeep, repair, or control of the Premises.

(b) It is understood and agreed that nothing contained in this Agreement shall prejudice or be construed to prejudice the right of the City to institute, prosecute, and compromise any action which it may deem advisable to protect its Springing Interest.

(c) Except to the extent required by Applicable Law, the City shall not be liable to any tenant or to any other third party for any refunds or other sums due such tenant or third party under any lease, or other agreement relating to the Premises.

(d) Except with respect to amounts payable to the City under the Master Concession Agreement or a Substitute Master Concession Agreement, the City shall not be personally liable for any amounts due and outstanding under the Promissory Note or from the Authority to Master Concessionaire under the Master Concession Agreement.

10. **Taxes.** The City hereby confirms that the Authority is currently a tax exempt entity and that the Premises, as subject to the Master Concession Agreement, is exempt from real property taxes and assessments. If the City succeeds to the Authority's interest in the Premises, the City covenants to preserve the tax exempt status of the Premises and to not take actions that would be reasonably likely to result in the Premises being subject to real property taxes and assessments.

11. **Duration.** This Agreement shall continue in full force and effect for the entire Term.

12. **Expansion Properties.** This Agreement shall bind the City and Master Concessionaire with respect to any Expansion Property acquired by the Authority and subject to the Springing interest or a comparable right of the City in and to such Expansion Property.

13. **Right to Cure.** Prior to commencing judicial proceedings against the Authority for a default by the Authority under the Promissory Note, Master Concessionaire shall first notify the City in writing as to the cause of the default and afford the City thirty (30) days in which to cure such default by the Authority.

14. **Miscellaneous.**

(a) **Execution of this Agreement.** This Agreement and any modifications, supplements or amendments thereto shall be valid only when it is executed by duly authorized agents of each Party.

(b) **Applicable Law.** This Agreement shall be governed and construed by the substantive laws of the State of Michigan. In the event any provision(s) of this Agreement shall be adjudged invalid by a court or arbitrator having competent jurisdiction over the Parties, the invalid provision(s) shall be deleted from this Agreement and this Agreement shall be construed as to give effect to the remaining provisions.

(c) Notices. All notices provided for herein shall be in writing and shall be tendered by U.S. Certified Mail to the receiving Party hereto at:

If to Master Concessionaire:	Ambassador Port Company 12225 Stephens Warren, MI 48089
With a copy to:	Foley & Lardner LLP 500 Woodward Avenue, Suite 2700 Detroit, MI 48226 Attn: George Ash, Esq.
If to the City:	The City of Detroit Legal Department Detroit, MI 48226

In the case of a change in the mailing address of any Party hereto, the Party so changing its mailing address shall give notice thereof to the other Party hereto, and in the absence of any such notice of change of mailing address executed in accordance with this paragraph, notice given to the respective aforesaid mailing addresses shall be deemed sufficient for all purposes of this Agreement.

(d) Modifications to this Agreement. This Agreement shall not be amended, modified, or altered, in whole or in part, except by mutual written agreement of the Parties hereto, properly executed by the same. No evidence of any such amendment, modification, or alteration of this Agreement shall be received in any controversy arising out of or pursuant to same except if it is in writing and executed in accordance with this subsection.

(e) Successors and Assigns. This Agreement shall inure to the sole and exclusive benefit of and be of full and binding effect upon the Parties hereto and their respective successors and assigns. Nothing set forth in this Agreement, expressed, implied, or otherwise, is intended or shall be construed to confer upon or give to any person or entity other than the Parties hereto, and their respective successors and assigns, any right, remedy, benefit, cause of action, and/or chose in action under or by reason of this Agreement.

(f) Dispute Resolution Procedures.

(i) All disputes arising under this Agreement shall be resolved pursuant to the procedures set forth in this paragraph 14(f) unless otherwise agreed by the Parties in writing.

(ii) Nothing in this paragraph shall be construed as limiting or delaying Master Concessionaire's right to seek injunctive relief from a court.

(iii) Except as set forth in subparagraph (a) above, neither Party shall initiate litigation under this Agreement without first following the dispute resolution procedure set forth herein.

(iv) In the event of a dispute arising under this Agreement, the aggrieved Party shall provide the other Party with written notice of a dispute. The Parties agree to

negotiate in good faith for a period of ten (10) days following receipt of the notice of a dispute.

(v) If the Parties are unable to resolve the dispute(s) through good faith negotiations, then the Parties agree to submit the dispute to non-binding mediation with a third-Party mediator to be mutually agreed upon by the Parties. Each Party agrees to pay one half of the mediator's costs and fees. Five (5) days prior to the initial mediation session, each Party shall submit a written summary of its position regarding the dispute(s) to the mediator and the other Party. The mediation session(s) shall take place in the City, state of Michigan. If by the end of the mediation session, the Parties are not able to come to an accord, each party shall submit to the mediator a proposed final solution to the dispute. The mediator shall determine the proposed solution that most closely represents the proper outcome based on the mediator's application of the terms and conditions of this Agreement to the facts and circumstances at issue. If the Parties are not able to reach an accord, the mediator shall not be entitled to modify either proposed solution offered by the Parties. The parties agree that in any litigation, the proposed solution selected by the mediator shall be presumptively correct absent gross negligence or bad faith on the part of the mediator or the existence of material facts not known to the Parties and presented to the mediator at the time of the mediation.

(vi) If the Parties are unable to resolve the dispute(s) within thirty (30) days of the initial mediation session, then either Party may initiate litigation. The Federal District Court for the Eastern District of Michigan and the Circuit Court for the County of Wayne shall be the exclusive venues for litigating disputes arising under this Agreement. Each Party agrees to submit to the personal jurisdiction of the Federal District Court for the Eastern District of Michigan and/or the Circuit Court for the County of Wayne.


(g) Remedies Cumulative. All remedies hereinbefore and hereinafter conferred on the City and Master Concessionaire shall be deemed cumulative, and no one remedy shall be exclusive of another or of any other remedy conferred by law.

(h) Perpetuities Savings Clause. If any right of the City or Master Concessionaire provided for in this Agreement would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one years less one day after the date of death of the last survivor of the descendants living on the date of this Agreement of Joseph P. Kennedy, father of President John F. Kennedy and Ambassador to the Court of Saint James, but if any such rights, privileges and options shall be or become valid under Applicable Law for a period subsequent to the twenty-first anniversary of the death of the last such survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross, exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue in effect, but only if such non-termination and extension shall then be valid under Applicable Law until such time as the same shall under Applicable Law cease to be valid.


(i) Expenses of Enforcement. Master Concessionaire or the City shall pay all reasonable attorneys' fees and actual expenses incurred by the other Party in enforcing any provisions of this Agreement, caused by a defaulting Party hereunder, upon written demand therefor made by the non-defaulting Party.

IN TESTIMONY WHEREOF, the Parties have caused their respective corporate signatures to be subscribed by their respective duly authorized officers; these presents being executed in duplicate copies, each of which shall be considered as an original, this the date first above written.

CITY OF DETROIT

By: 
Name: Anthony Adams
Its: Deputy Mayor

THE AMBASSADOR PORT
COMPANY

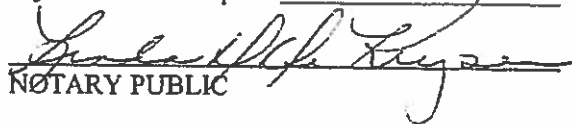
By: 
Name: DAN STAMER
Its: DIRECTOR

STATE OF MICHIGAN

COUNTY OF WAYNE, to-wit:

The foregoing Agreement was acknowledged before me by DAN STAMPER, who holds the position of DIRECTOR at _____, a Michigan corporation, for and on behalf of said corporation, this 21 day of JUNE, 2005.

My commission expires: _____


NOTARY PUBLIC

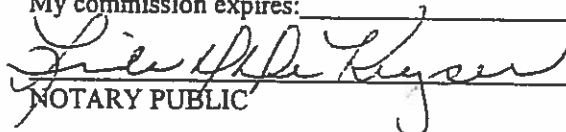
LINDA D. DeKEYSER
Notary Public, Macomb County, MI
Acting In Wayne County, MI
My Commission Expires December 15, 2008

STATE OF MICHIGAN

COUNTY OF WAYNE, to-wit:

The foregoing Agreement was acknowledged before me by ANTHONY ADAMS, who holds the position of DEPUTY MAYOR at the City, a Michigan corporation, for and on behalf of said corporation, this 17TH day of JUNE, 2005.

My commission expires: _____


NOTARY PUBLIC

LINDA D. DeKEYSER
Notary Public, Macomb County, MI
Acting In Wayne County, MI
My Commission Expires December 15, 2008

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City of Detroit

CITY COUNCIL

MARY SHEFFIELD
COUNCIL MEMBER
DISTRICT 5

MEMORANDUM

TO: Aliyah Sabree, Mayor's Office
FROM: Council Member Mary Sheffield, Chair, Neighborhoods and Community Services Committee
THRU: Gabe Leland, Chair, Planning and Economic Development Committee
DATE: July 9, 2015
RE: Riverside Park Land Exchange Questions

Please provide answers to the following questions concerning the proposed Riverside Park Land Exchange Agreement between the City of Detroit and the Detroit International Bridge Company:

- 1) How many other times will council have the opportunity (contingent upon approval of this transaction) to potentially hold the second span for more negotiations and or community engagement? (Title, zoning, permits)
- 2) How long do you anticipate the conversion of approved use from park to industrial to take? Not just state but also federal?
- 3) Please explain in detail the exact plan for the second span and existing bridge. Will the new span operate simultaneously with the existing bridge? Will the existing bridge be shut down? Also please provide any studies or data that support the need for a second span.
- 4) Please explain how the enforceability related to the transfer of funds has been resolved. Please submit what was suggested by LPD (P.13 of LPD report #2) regarding the submissions of a letter including an appropriation number for tracking of funds received.

5) Please provide documents that addresses the question of ownership of the railroad tracks at the News Warehouse building.

6) How much is the DIBC receiving annually in lease revenue from the tenant of the warehouse property?

7) How much tax revenue will be lost as a result of the News Warehouse Site being converted into park land?

8) How much revenue would a potential TIF generate annually on the city land that is being transferred? This is not an additional revenue stream simply redirecting money. Is the bridge company willing to add any contingencies to have further discussions about a possible revenue stream or an additional payment if in fact the bridge is approved? Or possible language that will ensure more community engagement?

9) Are there any pending lawsuits between the City of Detroit and the DIBC? If so, will the bridge company drop all litigation?

10) How much money has the city spent in litigation with the DIBC? Can we be compensated for this amount?

Thank you, in advance, for your time and effort in meeting this request.


Cc: Honorable Colleagues
Legislative Policy Division



CITY OF DETROIT
MAYOR'S OFFICE

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVE., SUITE 1126
DETROIT, MICHIGAN 48226
PHONE 313•224•3400
FAX 313•224•4128
WWW.DETROITMI.GOV

MEMORANDUM

To: Council Member Mary Sheffield
Thru: Council Member Gabe Leland, Chair, Planning and Economic
Development Committee
From: Aliyah Sabree, Mayor's Office 
Date: July 13, 2015
Re: Riverside Park Land Exchange Questions

Provided below are responses to questions submitted on July 9th in regards to Riverside Park:

1. **How many other times will council have the opportunity (contingent upon approval of this transaction to potentially hold the second span for more negotiations or community engagement? (Title, zoning, permits)**

Assuming the present resolution is passed without additional conditions, and the terms of in the proposed Land Exchange Agreement are unchanged, the following additional approvals and authorizations of the Detroit City Council will be necessary:

Acceptance and Uses of the Private Contribution.

- In anticipation of the first Closing, the City Council will be asked to approve the acceptance of the Private Contribution and the appropriation of \$3 million for improvements to Riverside Park.
- The Recreation Department will meet with the community to ascertain its desires regarding the improvements to be made to Riverside Park.

Conversion application.

The application to the Michigan Department of Natural Resources (MDNR) for conversion of the 3 acres may be made only with the support of the City Council.

- The City Council may vote only after a public meeting for presentation, explanation, and comment of the proposed conversion. This public meeting may take place only after at least 30 days' notice.



- The City Council may pass a resolution in support of the conversion only after at least 7 days' notice to the public of the vote.

Grant Agreement Amendments.

- If the conversion of the 3 acre parcel is approved by the MDNR, and - upon application by the MDNR - is also approved by the National Park Service, then the City Council will be asked to approve the amendments to the MDNR grant agreements.

Master Plan Amendment.

In accordance with the Home Rule Cities Act, no part of Riverside Park may be sold transferred to DIBC unless and until the City's Master Plan of Policies is amended. The Master Plan designation of the 3 acre portion of Riverside Park subject to the land exchange may be amended only if the conversion is approved by the MDNR and the NPS, and the grant agreement amendments are approved by the City Council.

- A Master Plan amendment requires a public hearing after no less than 42 days' notice
- The City Council may by resolution amend the City's Master Plan only after the public hearing.

Other Approvals.

Only after all the events, public hearings, votes, and approvals described above have occurred may the land exchange be consummated.

These steps are of course in addition to (1) City Council approval of any contracts relating to park improvements, and (2) any other actions required for street closures, alley vacations, site plan approvals, zoning ordinance amendments, etc., for any new bridge.

2. **How long do you anticipate the conversion of approved use from park to industrial to take? Not just state but also federal?**

A reasonable estimation of how long after a conversion application is submitted before the City would be notified of the MDNR's and NPS's determinations can be provided only after consultation with the MDNR. Meetings between the Recreation Departments and the MDNR will be scheduled as soon as practical after approval of the Land Exchange Agreement.



- 3. Please explain in detail the exact plan for the second span and existing bridge. Will the new span operate simultaneously with the existing bridge? Will the existing Bridge be shut down? Also please provide any studies or data that support the need for a second span.**

The Ambassador Bridge construction started in 1927 and it was opened in 1929 (86 years old). The desire to construct a new span is to shift traffic from existing bridge to the new span. While we do not have expectations of increased traffic count, the need for a new bridge is to secure and maintain our existing business. The future and utilization of the Ambassador Bridge will depend on many factors, those factors cannot be fully evaluated until the new span is completed and operational.

- 4. Please explain how the enforceability related to the transfer of funds has been resolved. Please submit what was suggested by LPD regarding the submissions of a letter including an appropriation number for tracking of funds received.**

In anticipation of the first Closing, the City Council will be asked to approve the acceptance of the Private Contribution and the appropriation of \$3 million for improvements to Riverside Park.

The payment of the First Installment of the Private Contribution is a condition precedent to the Second Closing. That is, if DIBC has not paid the initial \$3 million at the first Closing, and is not prepared to fund the Second Installment at the Second Closing, then the Second Closing will not take place. In such event, DIBC will not receive title to the 3 acre parcel of Riverside Park and may not exercise any rights under the Air Rights Easement.

- 5. Please provide documents that address the question of the ownership of the railroad tracks at the News Warehouse building.**

The title information is attached. The railroad tracks were installed at the request of DIBC. Upon demolition of the news warehouse, the railroad tracks will be removed as well, at no cost to the City of Detroit.

- 6. How much is the DIBC receiving annually in lease revenue from the tenant of the warehouse property?**

The base rent is \$270,000 annually.



7. **How much tax revenue will be lost as a result of the News Warehouse Site being converted into park land?**

\$54,000/year

8. **How much revenue would a potential TIF generate annually on the city land that is being transferred? This is not an additional revenue stream simply redirecting money. Is the bridge company willing to add any contingencies to have further discussions about a possible revenue stream or an additional payment if in fact the bridge is approved? Or possible language that will ensure more community engagement?**

The exact cost is being analyzed right now, however, DIBC and affiliated companies pay about \$3 million in property taxes per year. That amount does not include the Detroit income tax generated by its approximately 800 employees who live and work in Detroit and the approximately 200 employees who live in Detroit but work in DIBC's suburban facilities.

9. **Are there any pending lawsuits between the City of Detroit and the DIBC? If so, will the bridge company drop all litigation?**

There is no pending litigation between the City of Detroit and DIBC.

10. **How much money has the city spent in litigation with the DIBC? Can we be compensated for this amount?**

The City does not have a true accounting of costs associated with the 2001 and 2008 litigation. Those cases have since been closed.



**First American Title Insurance Company
National Commercial Services
1650 West Big Beaver Road, Suite 156
Troy, MI 48084**

September 19, 2006

Todd White
Crown Enterprises
12225 Stephens
Warren, MI 48089
Phone: (586)939-7000
Fax: (586)755-9348

Order Number: NCS-221459-MICH

Property: 3801 West Jefferson, Detroit, MI

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

Customer First!

First American Title Insurance Company

InterTitle Inc.

INFORMATION

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

This Information is not part of the title Insurance commitment.

**YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.
If you have any questions about the Commitment,
please contact the issuing office.**

COMMITMENT FOR TITLE INSURANCE

Issued by

InterTitle Inc.

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-1.

The Exceptions in Schedule B-2.

The Conditions.

This Commitment is not valid without Schedule A and Sections 1 and 2 of Schedule B.

SCHEDULE A
Date of Recording

1. ~~Commitment Date: July 21, 2006 REVISION 1 at 7:30 A.M.~~

2. Policy or Policies to be issued:	Amount
(A) ALTA Standard Coverage Owners Policy	\$3,145,000.00

Proposed Insured:

Detroit International Bridge Company

(B) ALTA Standard Coverage Loan Policy	\$None
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Proposed Insured:

None, its successors and/or assigns, as their interests may appear.

3. (A) The estate or interest in the land described in this Commitment is:

Fee Simple

(B) Title to said estate or interest at the date hereof is vested in:

~~The Evening News Association, a Michigan Corporation, pursuant to deed recorded in Liber 12601, Page 288 (as to Parcel 1), and Detroit Newspaper Agency, a Michigan general partnership consisting of Detroit Free Press, Inc., a Michigan Corporation and The Detroit News, Inc., a Michigan Corporation, pursuant to deed recorded in Liber 24437, Page 432 (as to Parcel 2)~~

2) Detroit International Bridge Company

4. The land referred to in this Commitment is situated in the City of Detroit, State of Michigan, County of Wayne, and described as follows:

Parcel 1:

A parcel of land situated Southerly of and adjoining the Southerly line of West Jefferson Avenue, Northerly of and adjoining the United States Harbor line, being a part of P.C.'s 77 and 78, City of Detroit, Wayne County, Michigan, and being more particularly described as follows: Beginning at a point on the Southerly line of West Jefferson Avenue, at this date 50.00 feet wide, said point being 125.00 feet distant (measured at right angles) Easterly from the dividing line between P.C.'s 77 and 78; thence South 47°18'25" East, 278.40 feet to a point; thence South 27°31'25" East along the Westerly line of a land parcel as described in an agreement recorded in Liber 3399 of Deeds on Page 204, Wayne County Records, 131.35 feet distant to the extreme Southwest corner of a concrete dock; thence continuing along said Westerly line on a course South 47°24'43" East 3.17 feet to a point on the United States Harbor Line in the Detroit River; thence along the Harbor Line on a course South 41°53'29" West, 364.54 feet to a point; thence North 27°58'25" West, 350.26 feet to a point on the Southerly line of West Jefferson Avenue; thence along the Southerly line of West Jefferson Avenue on a course North 58°58'35" East, 0.37 feet to a point of curve; thence continuing along said Southerly line on a curve to the left, said curve

9-22-06
Robin Brewer
First American Title Insurance Company
First American Title

having a radius of 179.75 feet, 123.24 feet distant measured along the arc of said curve to a point; thence continuing along said Southerly line on a curve North 19°41'35" East, 186.87 feet to the place of beginning.

Parcel 2:

All that part of the West 1/2 of Private Claim 78, lying between Woodbridge Street (otherwise known as River Road and later by West Jefferson Avenue), and the channel of the Detroit River, except the West 125 feet thereof, the Westerly boundary line of the above described premises being more particularly described as follows: Beginning at that point on the Southerly line of Jefferson Avenue, which measured along the course of a perpendicular erected from the Private Claim line between Private Claims 77 and 78, lies exactly 125 feet Easterly from such private claim line; thence South along a line, whose true bearing is South 47°18'25" East and which passes through a point which is exactly 119.86 feet Southerly from the U.S. Lake Survey Station Newvard measured along a course which is perpendicular to the U.S. Lake Survey Triangulation Line between Stations Newvard and Church, to a point 278.4 feet distant along said line from said starting point on Jefferson Avenue; thence from such point on a course, South 27°31'25" East 131.35 feet to the extreme Southwesterly corner of a concrete dock, said Southwesterly corner being 156.97 feet distant Southwesterly from the U.S. Lake Survey Station Newvard on a line whose true bearing is South 40°27'20" West; thence to the International boundary line between the United States of America and the Dominion of Canada on a course whose true bearing is South 47°18'25" East. The true bearing of the Southerly line of Jefferson Avenue at and near the point where the above-described line commences is North 19°41'35" East, Jefferson Avenue at and near such point being 50 feet in width.

The assessed legal description of said Parcels 1 and 2 is as follows:

That part of PC 77 and 78 described as follows: Beginning at a point on the Southerly line of Jefferson Avenue 50 feet wide and West line of West Grand Blvd; thence South 27°56'30" East 556.10 feet along the West line of West Grand Blvd to the US Harbor Line; thence Westerly 506.48 feet along said Harbor line; thence North 27°58'25" West 350.26 feet to South line of Jefferson Avenue; thence North 58°58'35" East 0.37 feet; thence on a curve left 123.24 feet, radius 179.75 feet; thence North 19°41'35" East 186.87 feet; thence North 19°42' East 307.87 feet to Point of Beginning.

SCHEDULE B

SECTION ONE REQUIREMENTS

The following requirements must be met:

- (A) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (B) Pay us the premiums, fees and charges for the policy.
- (C) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (D) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (E) Releases(s) or Reconveyance(s) of Item(s):

The following additional requirements must be met:

1. Record Quit Claim Deed from The Detroit News, Inc., f/k/a The Evening News Association, a Michigan Corporation to Gannett Company, Inc. (as to Parcel 1)
2. Submit to the Company a Resolution by the Board of Directors or Shareholders of The Detroit News, Inc., authorizing the sale and directing the proper officers to execute the deed on behalf of the Corporation.
3. Submit to the Company evidence of good standing of The Detroit News, Inc., a Michigan Corporation issued by the appropriate office of its state of domicile.
4. Record Quit Claim Deed from Detroit Newspaper Agency, a Michigan general partnership consisting of Detroit Free Press, Inc., a Michigan Corporation and The Detroit News, Inc., a Michigan Corporation to Gannett Company, Inc.. (as to Parcel 2)
5. Submit to the Company a Resolution by the Board of Directors or Shareholders of Detroit Newspaper Agency, a Michigan general partnership consisting of Detroit Free Press, Inc., a Michigan Corporation and The Detroit News, Inc., a Michigan Corporation, authorizing the sale and directing the proper officers to execute the deed on behalf of the Corporation.

data
RS

6. Submit to the Company evidence of good standing of Detroit Newspaper Agency, a Michigan general partnership consisting of Detroit Free Press, Inc., a Michigan Corporation and The Detroit News, Inc., a Michigan Corporation issued by the appropriate office of its state of domicile.
7. Record Warranty Deed from Gannett Company, Inc. to Detroit International Bridge Company.
8. Submit to the Company a Resolution by the Board of Directors or Shareholders of Gannett Company, Inc., authorizing the sale and directing the proper officers to execute the deed on behalf of the Corporation. *delete RB*
9. Submit to the Company evidence of good standing of Gannett Company, Inc., a Corporation issued by the appropriate office of its state of domicile.
10. Submit ALTA/ACSM land title survey or other survey satisfactory to the Company by an approved surveyor. Additional Exceptions may be made for easements, parties in possession of the land, encroachments, overlaps, boundary line discrepancies, and other matters which may be disclosed by the survey. (this requirement is waived if the land is a lot in a recorded subdivision and the improvement is a one-to-four family residential structure which was constructed more than 18 months ago.)
11. Pay unpaid taxes and assessments unless shown as paid:
2006 Summer Taxes in the amount of \$25,804.26 are ~~DUE~~ *PAID*
2005 Winter Taxes in the amount of \$7,308.74 are PAID
Tax Parcel Identification:
Property Address: 3801 West Jefferson *RB*
Tax Parcel No.: Ward: 14 Item: 000001-3
Special Assessments: NONE

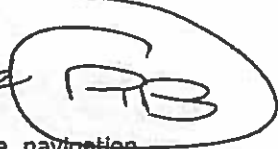
The amounts shown as unpaid do not include collection fees, penalties, interest, sewer/water service charges. Please verify before closing.
NOTICE: If taxes, assessment or water/sewer are to be paid at time of closing, an original tax and water bill must be presented.

SCHEDULE B

SECTION TWO

EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction. The printed exceptions and exclusions from the coverage of the policy or policies are set forth in Exhibit A attached. Copies of the policy forms should be read. They are available from the office which issued this Commitment.

1. Rights of tenants ~~under~~ unrecorded leases. *deleted* 
2. Rights of the United States, State of Michigan and the public for commerce, navigation, recreation and fishery, in any portion of the land bordering on or comprising the bed of the Detroit River.
3. The nature, extent or lack of riparian rights, or the riparian rights of riparian owners and the public, in and to the use of waters of the Detroit River .

CONDITIONS

1. DEFINITIONS

(a)"Mortgage" means mortgage, deed of trust or other security instrument.

(b)"Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

2. LATER DEFECTS

The Exceptions in Schedule B - Section Two may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section One are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section One

or

eliminate with our written consent any Exceptions shown in Schedule B - Section Two.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.

Privacy Policy

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
(a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
(c) resulting in no loss or damage to the insured claimant;
(d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
(i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
(ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
(iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
(a) to timely record the instrument of transfer; or
(b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
(a) created, suffered, assumed or agreed to by the insured claimant;
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
(c) resulting in no loss or damage to the insured claimant;
(d) attaching or created subsequent to Date of Policy; or
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
(i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
(ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
(a) to timely record the instrument of transfer; or
(b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

ALIYAH SABREE - Re: Budget impact from Riverside Park Project

From: ALIYAH SABREE
To: Irvin Corley
Date: 7/13/2015 5:59 PM
Subject: Re: Budget impact from Riverside Park Project
Cc: Anne Marie Langan; Lakisha Barclift; Brenda Jones; George Cushingberr...

Irv,

Below are responses to your questions regarding the budget impact from Riverside Park. If you have any questions, please let me know.

1. Your 4th paragraph and 2nd footnote on page one of the cover letter basically indicates that the City will receive a \$3 million contribution, or "gift", for phase one of the project, and that the contribution will be used for improvements to the Riverside Park. Your 3rd paragraph on page two indicates that the City would receive an additional \$2 million contribution if the City Property is converted and phase 2 starts. After receipt of the contributions, who would be responsible for conducting the improvements to the Riverside Park, Recreation or General Services?

Once City Council approves the agreement, \$3 million will be received by the Recreation Department to administer the funds for the improvements to the existing parcels of Riverside Park. General Services will assist in the community input meeting and design of the park. Purchasing will advertise the scope of work, evaluate bid responses with Recreation and General Services input, award contract to proceed with work.

2. Since the contributions are gifts, the Administration needs to submit a Council letter to Council to be voted on as a part of the land exchange agreement approval process indicating the City's initial receipt of the \$3 million, and the eventual receipt of the \$2 million, as gifts for improvements to the Riverside Park. The Council letter should be signed off by Budget and Finance, and it should be accompanied with a resolution showing which appropriation in Recreation or General Services would receive the contributions for the future use of improving the Riverside Park. This way, Council can track the usage of the gift monies in the appropriation.

Will provide cover letter differentiating the receipt of the \$3 million and the eventual receipt of the \$2 million with sign offs and correct appropriation

3. If Council approves this transaction, would the \$3 million contribution be used solely for improvements to the News Warehouse Property, which could not occur until the current DIBC tenant lease ends by July 2018; or would the contribution be used immediately for improvements to the existing Riverside Park area?

The \$3 million would be used to improve Parcels 1&2 at Riverside Park. Improvements include restoration of baseball diamond, soccer field and amenities at the largest parcel. The \$2 million, if conversion is approved will be utilized for the larger parcel and former News Warehouse site.

4. In the 2nd paragraph on page 2 of the cover letter attached below, would the News Warehouse Property help to provide "better recreational opportunities than it does now" after the City spends the \$3 million contribution to improve the News Warehouse Property?

Acquiring the site of the News Warehouse will provide the opportunity to expand recreational space including installing possible fitness equipment, fishing pier access, picnic pavilion, etc.

5. Do you have an appraisal, or some type of valuation analysis, of the City Property and the News Warehouse Property? In addition, do you know how much the DIBC is receiving annually in lease revenue from the tenant of the warehouse on the News Warehouse Property that the City would not be receiving, even the City would have title to the News Warehouse Property? In other words, is the \$3 million contribution, and potential \$5 million, a reasonable compensation for this exchange transaction?

No appraisal. Annually, the DIBC is receiving \$270,000.

Aliyah S. Sabree, Esq.
Mayor's Office, Liaison to City Council
2 Woodward Avenue - Suite 1126
Detroit, MI 48226
Desk: [313.224.1163](tel:313.224.1163)
Cell: [313.515.1113](tel:313.515.1113)
sabreea@detroitmi.gov

Mike Duggan, Mayor

>>> Irvin Corley 6/18/2015 1:34 PM >>>

Alicia, President Pro Tem Cushingberry is requesting a budget impact analysis from the Riverside Park Project. Attached below is your cover letter to Council on this transaction. I have the following questions/requests:

1. Your 4th paragraph and 2nd footnote on page one of the cover letter basically indicates that the City will receive a \$3 million contribution, or "gift", for phase one of the project, and that the contribution will be used for improvements to the Riverside Park. Your 3rd paragraph on page two indicates that the City would receive an additional \$2 million contribution if the City Property is converted and phase 2 starts. After receipt of the contributions, who would be responsible for conducting the improvements to the Riverside Park, Recreation of General Services?

2. Since the contributions are gifts, the Administration needs to submit a Council letter to Council to be voted on as a part of the land exchange agreement approval process indicating the City's initial receipt of the \$3 million, and the eventual receipt of the \$2 million, as gifts for improvements to the Riverside Park. The Council letter should be signed off by Budget and Finance, and it should be accompanied with a

resolution showing which appropriation in Recreation or General Services would receive the contributions for the future use of improving the Riverside Park. **This way, Council can track the usage of the gift monies in the appropriation.**

3. If Council approves this transaction, would the \$3 million contribution be used solely for improvements to the News Warehouse Property, which could not occur until the current DIBC tenant lease ends by July 2018; or would the contribution be used immediately for improvements to the existing Riverside Park area?

4. In the 2nd paragraph on page 2 of the cover letter attached below, would the News Warehouse Property help to provide "better recreational opportunities than it does now" after the City spends the \$3 million contribution to improve the News Warehouse Property?

5. Do you have an appraisal, or some type of valuation analysis, of the City Property and the News Warehouse Property? In addition, do you know how much the DIBC is receiving annually in lease revenue from the tenant of the warehouse on the News Warehouse Property that the City would not be receiving, even the City would have title to the News Warehouse Property? In other words, is the \$3 million contribution, and potential \$5 million, a reasonable compensation for this exchange transaction?

Thanks for your responses to these questions! Irv

Irvin Corley, Jr.
Executive Policy Manager
Detroit City Council Legislative Policy Division
Coleman A. Young Municipal Center
2 Woodward, Ste. 208
Detroit, MI 48226

[\(313\) 224-1722](tel:(313)224-1722) (work)

[\(313\) 224-2783](tel:(313)224-2783) (fax)

irvin@detroitmi.gov (email address)



CITY OF DETROIT

Office of Grants Management

Tracking No:
REC 0043

TO: Mayor's Office
FROM: Office of Grants Management
DATE: July 14, 2015
RE: Gift Acceptance Letter

This memo serves as notification of a gift to Recreation department. We are working with Budget and Finance to set up approved appropriations for the funds.

Approval Status:

Please review and approve as acknowledgment of the grant award for submission to Council.

- Approve
- Deny
- Need more information

Signature:

 Mayor's Office

7/14/15

 Date

Return to Office of Grants Management within 2-4 days of receipt.



CITY OF DETROIT
OFFICE OF THE CHIEF FINANCIAL OFFICER
GRANTS MANAGEMENT

COLMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE, SUITE 1012
DETROIT, MICHIGAN 48226
PHONE: 313 • 628-2158
FAX: 313 • 224 • 0542
WWW.DETROITMI.GOV

July 14, 2015

The Honorable Detroit City Council
ATTN: City Clerk Office
200 Coleman A. Young Municipal Center
Detroit MI 48226

**RE: Request to Accept and Appropriate Detroit International Bridge Company
Riverside Park Improvement Gift**

The Detroit International Bridge Company has awarded the City of Detroit Recreation Department FY 2016 with \$3,000,000 and 4.8 acres of land and the eventual receipt of \$2,000,000 for a total of \$5,000,000 to improve Riverside Park. A match is not required for this gift.

If approval is granted to accept and appropriate this funding, William Gambill, Associate Director of Transportation and Public Spaces, will be the fiduciary agent for the gift. The cost center is 398580 and the appropriation number is 14106. I respectfully ask your approval to accept and appropriate funding in accordance with the attached resolution.

Sincerely,

Nichelle Hughley
Director, Office of Grants Management

Enclosure

CC: William Gambill, Associate Director of Transportation and Public Spaces

APPROVED	
	JUL 14 2015
	BUDGET DIRECTOR
	JUL 14 2015
	FINANCE DIRECTOR

RESOLUTION

Council Member _____

WHEREAS, the Recreation Department is requesting authorization to accept a gift of 4.8 acres of land and an amount of \$3,000,000 and eventual receipt of \$2,000,000 for a total of \$5,000,000 from Detroit International Bridge Company in order to improve Riverside Park,

THEREFORE, BE IT RESOLVED that the Director for the Office of Grants Management is hereby authorized to accept on behalf of the City of Detroit the gift of \$3,000,000 and 4.8 acres of land and eventual receipt of \$2,000,000 for a total of \$5,000,000 from the Detroit International Bridge Company, and

BE IT FURTHER RESOLVED, that the Budget Director is authorized to establish Appropriation number 14106 in the amount of \$3,000,000 from Detroit International Bridge Company for the purpose of improving Riverside Park.

