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TO: Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division

DATE: April 16, 2018

RE: Detroit Wayne County Port Authority and the Master Concession Agreement/Springing Interest Agreement and how it relates to Senate Bill 711

The Legislative Policy Division (LPD) has received a request from Council Member Janeé Ayers for a report summarizing the relationship between the Detroit Wayne County Port Authority's and the Ambassador Port Company under the Master Concession Agreement and how that relationship may be impacted by the proposed Senate Bill, No. 711. In response to this request LPD submits this report.

The Master Concession Agreement (MCA) is a document in which the operations, management, receipt of revenues, and actions taken regarding the development of the property owned by the Detroit Wayne County Port Authority (Authority) is under the near absolute control of Master Concessionaire (Ambassador Port Company). Representatives of the Authority has expressed their belief that proposed Senate Bill No. 711 (SB-711) will provide the Authority the ability to act in way that will assist maritime activities without being constrained by the terms and conditions of the MCA. The SB-711 provides changes to the Port Authority Act MCL120.101 et seq., which includes the following:

- Permit an authority to enter into public-private partnerships with other owners of property or port facilities within the authority's jurisdiction.
- Amend the definition of "port facility" to delete a requirement that facilities be owned by the port authority, and to include other property necessary to enhance maritime activities.

- Include in the definition of "project" activities related to public infrastructure, as well as other property necessary to achieve the purpose of the Act.
- Provide that projects and port facilities maintained by an authority could not include a bridge or a tunnel.
- Allow an authority to receive money from certain sources to finance a project (rather than a port facility).

The SB-711 changes the definition of what constitutes a "Port Facility" and allows the Authority to enter into public-private partnerships with other entities without the requirement of the Authority having to own or control the property or facility that is being expanded or enhanced. The Port Authority Act currently requires any action by the Authority to expand or enhance a Port Facility or engage in a project that enhances maritime activities be owned or controlled by the Authority. Under the MCA agreement, any of these activities under the ownership or control of the Authority is subject to the MCA terms and conditions which creates a chilling effect on other entities willingness to engage with the Authority. Any entity that participates with the Authority would be subject to the terms and conditions of the MCA. Thus limiting the Authority's capacity to fully exercise its ability.

LPD has reviewed the proposed SB-711 language and its impact on the Authority's ability to act outside of the MCA. The language of SB-711 would be effective in providing the Authority capabilities outside of the MCA only if projects undertaken with public-private partnerships or property owners does not include the Authority's ownership or control of the project; and any bonds or financing issued by the Authority are not encumbered, pledged or secured with revenues or interest of the Authority. If any of the projects undertaken by the Authority is secured by a pledge of Authority revenues, or any ownership interest of the Authority, under the MCA, the Master Concessionaire must give its consent.

While SB-711 is not a magic bullet, the bill may rescue the Authority from some of the burdensome terms and conditions of the MCA. LPD believes it will provide some relief and allow the Authority the ability to exercise some of its powers granted by law. However, given many of the aggressive terms carved out in the MCA for the benefit of the Master Concessionaire, it would not be a surprise if efforts are made to prevent passage of the SB-711. In addition, if SB-711 is signed into law, efforts of the Authority to steer clear of the obligations of the MCA may be challenged by the Master Concessionaire.

Summary of the Master Concession Agreement and Springing Interest Agreement Promissory Note

In 1966 the Detroit Port Development Corporation (DPDC) was incorporated as a non-profit entity to take over, operate, expand and maintain the port and terminal facilities of the Detroit Harbor Terminals, Inc. located at 4461 W. Jefferson along the Detroit River, in the city of Detroit. The DPDC had issued bonds to assist in the operation, expansion and maintenance of the port. Under the DPDC Articles of Incorporation, once the bonds were paid the title and interest

of the port and terminal facilities would be transferred to the City of Detroit. In 2005, the DPDC was in default of payment of its bonds and the City faced losing the port and terminal facilities due to foreclosure proceedings of DPDC by the bond holders. The amount of the indebtedness was \$2,103,000.41. To avert the foreclosure, the City entered into the following transactions:

- The parties would be the Ambassador Port Company (APC), the Authority and the City.
- APC would pay the bond indebtedness (\$2,103,000); the City would receive the title and interest in the property and transfer it to the Authority.
- The Authority would execute a Promissory Note for the repayment of the amount of the bond indebtedness (\$2,103,000), and enter into a Master Concession Agreement (MCA) with APC.
- The MCA between the APC and the Authority would govern all aspects of the operation, management, collection of revenue, capital expenditures, improvements and expansion of the entire port and terminal facilities owned and controlled by the Authority.
- The City would retain an interest all the Authority's property and facilities which would return to the City if there is a default in the MCA or if the property is no longer used as a port facility (Springing Interest)
- The city would enter into an agreement with APC that if the property and facilities revert back to the City, the MCA would continue between the City and APC (Springing Interest Agreement)

Simultaneous to the transfer of title of the property and facilities from the City to the Authority, the Master Concession Agreement (MCA) was executed between the Authority and the APC along with the Promissory Note for repayment of the \$2,103,000. In addition to the MCA, the City entered into an agreement with the APC called the Springing Interest Agreement (SIA) which would take effect if the property reverted back to the City from the Authority.

Springing Interest Agreement

The Springing Interest Agreement allows for the Master Concession Agreement to continue with the City in the event the City acquires the title to the port property and facilities.

The Authority's title in the port property and facilities is subject to a conditional limitation. If the MCA is terminated (other than by mutual agreement between the Authority and APC), due to a breach by the Authority or for failure of the property to continue to be used as a port facility, the title of the port property and facilities will automatically spring or go to the possession of the City. Thus a "Springing Interest" of the title.

The Springing Interest Agreement (SIA) between the City and APC provides in general that should the City acquire title and interest of the port property and facilities from the Authority, the City and APC will continue the terms of the Master Concession Agreement. The SIA provides that the City and APC can mutually terminate the MCA or renegotiate terms of a new MCA. If there is a sale of the port property and facilities the APC has a right of first refusal to match any offer made by the prospective purchaser. The term of the SIA is set to terminate 180 days after

the termination of the MCA, or 99 years 364 days from the date entered (coinciding with the first 25 years and three (3) twenty-five year renewal options of the MCA).

The Promissory Note

As previously indicated, the Authority executed a Promissory Note in the amount that was paid by APC to cover the bond indebtedness of the prior port facility owner. The payment was made in order to prevent the foreclosure of the port property and facilities that was held by the prior owner DPDC. When the debt on the bonds were paid, the City was entitled to receive title of the port property and facilities. The City then transferred the title of the port property and facilities to the Authority. The Authority and APC entered into the MCA. As part of the MCA terms, the Authority and the APC were required to execute a Promissory Note agreement under which the money paid by APC for the bond debt in the sum of \$2,103,000 would be part of the MCA. The Authority would repay the Promissory Note as outlined in the Note as follows:

- a) Maker (Authority) shall pay to the Payee (APC) fifty percent (50%) of all funds received by the Maker under Section 5.1 of the MCA within 10 days receipt of funds by the Maker. The 50% is derived from the 2½% the Authority receives at the end of each quarter from the gross receipts earned under the MCA.¹
- b) Under Section 5.2(c) of the MCA, the Principal amount owed on the Note is to be paid by application of the Capital Receipts.²

Under the aforementioned terms for repayment, pursuant to Section 5.1 of the MCA, the Authority is to pay 50% of all the funds it receives under the MCA. The Authority only receives 2½% of the gross receipts brought in under the MCA for each quarter. For example, if the gross receipts for the year is \$200,000 the quarterly receipts would be approximately \$50,000. Taking 2½% from the quarterly amount of \$50,000 would be \$1,250.00 (prior to receiving this \$1,250, any prior interest that is outstanding from the previous quarter as well as any default interest is deducted). The quarterly payment of 50% of the \$1,250 would be \$625.00. This is the amount that would be paid to APC on the Promissory Note. This amount must pay the interest that is accrued first.

Under Section 5.2(c) of the MCA the principal amount of the Promissory note is to be paid with “Capital Receipts” The order of payment to the principal of the Promissory Note is to come after the satisfaction of all amounts due and owing any loan or financing related to the Capital Receipts approved by the Master Concessionaire and after any accrued and unpaid interest on the Promissory Note, including any default interest. As a result the actual repayment of the principal owed on the Promissory Note has been nearly non-existent. The original note in 2005 was

¹ The Authority receives 2½% from gross receipts, (1) less the outstanding interest that has accrued during the preceding quarter on the Promissory Note at the Floating Rate; (2) any default interest on the Promissory Note; (3) any interest that accrued during the previous quarters but that was added to the principal because of insufficient gross receipts to pay accrued interest; (4) any amount due concessionaire under the MCA.

² Capital Receipts are defined in the MCA as: Net revenues earned by the Authority from the sale, transfer, assignment, grant of licenses/easements, or letting of the Premises, or Authority’s premises or other property that is a part of the Facility. The order of payment to the principal of the Promissory Note is to come after the satisfaction of all amounts due and owing any loan or financing related to the Capital Receipts approved by the Master Concessionaire and after any accrued and unpaid interest on the Promissory Note, including any default interest.

\$2,103,000; after ten years and \$1,656,593 in payments the current principal is \$2,018,919. According to the MCA, the interest rate should not be less than 6%, the rate as of September 30, 2017 was 6%.³

Relying only on the gross receipts and Capital Revenue currently generated under the MCA to pay off the Promissory Note puts the Authority in a position in which it may never repay the note during the term of the MCA including the options to extend.

Master Concession Agreement

As previously indicated, the Master Concession Agreement (MCA) was entered into simultaneous with the transfer of the title and interest of the port and terminal facilities from the City to the Authority. The parties to the MCA is the Detroit Wayne County Port Authority (Authority) and the Ambassador Port Company (APC)⁴. The initial term of the MCA began upon the full execution of the agreement in 2005 and would run until March 31, 2030. The MCA contains under Section 7.1 options to extend the terms of the agreement for three (3) consecutive 25 year terms at the sole and exclusive election of the Master Concessionaire (APC) upon 6 months written notice to the Authority. The options can be exercised only if at least \$2 million in “Capital Investment”⁵ has been made in the Premises by the Authority, Master Concessionaire, a Facility Operator or another party. In essence, with the initial terms and the extended options the MCA will run for 100 years or until the year 2105.

The MCA applies to everything that the Authority has an interest in that is considered part of the Premises and Facility. The MCA incorporates by referenced in the agreement under Section 1.1, the fourth (4th) recital which provides:

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 hereof, the “Concession”) to a Master Concessionaire for the purpose of assisting the Authority with the operation of the Facility.

The incorporation of the third recital (“Whereas”) means that it is a binding part of the actual agreement. This provision indicates that the Authority has granted to the Master Concessionaire

³ According to the MCA, the Promissory Note bears interest at a rate of 300 basis points over the yield to maturity of five-year U.S. Treasury notes as published in a respected financial journal.

⁴ The Ambassador Port Company entered into a subconcession agreement with Nicolson Terminal and Dock Company (who owns and operates a port property in Ecorse, MI) as the subconcessionaire to conduct “Stevedoring Operations” at the Detroit Port Facility on behalf of APC. Stevedoring operations is the docking of vessels and the loading of cargo onto land transport, storage and warehousing of cargo.

⁵ 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.

(APC) the concession rights in the Premises⁶ and the Facility belonging to the Authority. This means that APC shall mean the exclusive right to operate and manage the Facility and to perform the Facility Work⁷ on the Authority's behalf pursuant to the terms and conditions of the MCA. This exclusive right of concession as to the facility depends on the MCA's definition of "Facility" which is set forth in the third (3rd) recital⁸.

The language in the third recital appears to indicate that a Facility includes the property defined as a Port Facility under the Port Authority Act, MCL 120.102(e), states in pertinent part that a "Port facility means those facilities owned by the port authority..." Under the MCA, included with the definition of Port Facility in the Port Authority Act, the MCA's definition of a Facility also includes the real and personal property of the Authority "when and if acquired and incorporated in the Facility". Therefore, any property that is currently owned by the Authority but any property that is subsequently owned or acquired by the Authority is subject the exclusive right of APC to operate, manage and perform Facility Work.

Under the terms set forth in the MCA, the exclusive concession rights are applicable to any and all property that becomes a part of the Facility or Premises. This would include any future expansion of the Facility or Premises as anticipated in the eighth (8th) recital, which provides:

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 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;

This language clearly indicates the MCA intended any future property that the Authority acquires as part of the Facility and Premises will be subject to the Master Concessionaire's exclusive Concession rights. Therefore, if the Authority was to exercise its rights under the current language of the Port Authority Act to issue Revenue Bonds for the cost, repair or expansion of the Facility would be subject to the control of the MCA and the exclusive rights of APC as the Master Concessionaire.

⁶ The first recital identifies the term Premises, as the 3.642 acre of land located at 4461 W. Jefferson and the 31.31 acres of land located at 4300, 4461 and 4500 W. Jefferson, Detroit Michigan

⁷ Facility Work, includes but is not limited to: presenting for approval a Master Plan; the negotiation of contracts for the provisions of materials, services, property sale or acquisition, borrowings, utilities, and other matters relating to performance of the Facility Work, without limitation, execution of any activities that are part of the approved Master Plan

⁸ The third recital provides: Whereas, The Authority was established for the purpose of developing and operating a "Port Facility" (as defined in Section 120.102 of the Port 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.

The current law provides under MCL 120.114(1), a Port Authority has the ability to issue “Revenue Bonds” for the purpose of:

[p]roviding funds for paying the cost of port facilities, or for paying the cost of an extension, enlargement, or improvement of a project then under the control of the authority.

As previously indicated under MCL 120.102(e), a Port Facility is a facility owned by the Authority, and Section 114(1) provides the revenue bonds can be used for paying the cost of port facilities or a project⁹ under the control of the Authority. As the law is currently written, the issuance of any bonds could only be used for the purpose of paying cost of a port facility or a project under the control of the Authority. The Detroit Wayne County Authority owns a Port Facility. The current law provides that revenue bonds can be issued by a port authority for projects taken with regard to a port facility. Therefore, under the current law the Detroit Wayne County Authority can only issue bonds for project relative to the port facility it owns which is controlled by the exclusive concession rights of APC under the MCA.

In addition to being hamstrung by the law’s current definition of “Port Facility” and “Project”, the MCA provides under Section 2.3(e):

The Authority shall not pledge, sell, assign, let, lien, option, mortgage, hypothecate, encumber, or otherwise convey interest 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.

This provision of the MCA prohibits the Authority issuing any bonds by pledging, selling, assigning, letting, providing a lien, option or mortgage interest or encumbrance or utilizing any revenues generated from the Facility or Premises as security for financing the bonds without the Master Concessionaire’s (APC) consent.

It is the Detroit Wayne County Port Authority’s position that the language under proposed Senate Bill No. 711 (SB-711) if passed will allow the Authority to take certain actions without being subject to the MCA.

Senate Bill No. 711

The proposed changes under SB-711, provides under Section 2(e) for the removal of the definition of Port Facilities the language that the facilities be owned by the port authority. It further adds the language that a Port Facility includes, but is not limited to:

[o]ther real or personal property necessary to enhance commercial or recreational maritime activities. Port Facilities shall not include a bridge or a tunnel, directly or indirectly.

⁹ MCL 120.102(f) provides “Project” means the acquisition, purchase, construction, reconstruction, rehabilitation, remodeling, improvement, enlargement, repair, condemnation, maintenance, or operation of port facilities.

Because the proposed language broadens the definition of a Port Facility to include “other real or personal property necessary to enhance commercial or recreational maritime activities” and no longer restricts the definition to port facilities be owned by a port authority. That definition will also apply under the MCA.¹⁰ The Concession rights only apply to the Premises and Facility owned and controlled by the Authority, any Port Facility as newly defined that is not acquired or incorporated by the Authority is not subject to the MCA.

In addition, SB-711 also proposes modification to the definition of “Project” under Section 2(f). Where the current definition of “Project” was limited to a port facility (owned by a port authority) the proposed language includes:

Public infrastructure, and other real and personal property necessary to achieve the purpose of this Act. Project shall not include a bridge or tunnel, directly or indirectly.

This language would allow for the Authority to take actions with other entities that own real and personal property, or public infrastructure that enhance the maritime and related industries in line with its public purpose. The proposed language in Section 2(k) provides the Authority can:

Enter into public-private partnerships with other owners or property or port facilities within the jurisdiction of the authority.

In addition to broadening the Authority’s ability to engage in public-private partnerships with owners of property regarding projects related to infra-structure and other real and personal property necessary to achieve the purpose of the statute, SB-711 also provides that an Authority may apply for, receive and accept from any Federal, state, or municipal agency, foundation, public or private agency, or individual, a grant or loan for the planning, construction, operation, or financing of a port facility to support a project.

As previously indicated with regard to the Authority issuing bonds to support a project that is secured by a pledge of Authority revenues or the encumbrance of an interest of the Authority, it will be subject to approval by the Master Concessionaire (APC) pursuant to Section 2.3(e). In addition, the Port Authority Act under MCL 120.116 provides that in securing the bonds the Authority “shall not convey or mortgage part or all of a project.” The propose SB-711 does not address this issue. As such, if the Authority wishes to issues revenue bonds it will have to determine a unique way of securing the bonds if it does not want to be subject to the MCA.

However, if the financing of a project can be accomplished by a grant, loan or bonds that are not secured by the Authority’s assets as set forth in the MCA and not secured by conveyance or mortgage of the Project to secure bonds as set forth by statute, the proposed SB-711 can be a useful instrument in freeing the Authority to operate to it true capacity.

If we can be of further assistance. Please call upon us.

¹⁰ Section 1.2 Prior Defined Terms indicate the Concessions shall be operated in accordance with applicable laws including “all existing and future applicable laws, rules, regulations, statutes...”

City of Detroit

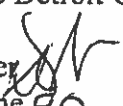



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TO: The Honorable Detroit City Council

FROM: David Whitaker 
Pamela Osborne 
Kerry Baitinger 
Lewis Smith 

DATE: March 17, 2006

RE: ANALYSIS OF THE DETROIT/WAYNE PORT AUTHORITY
MASTER CONCESSION AGREEMENT

Your Honorable Body asked the Research and Analysis Division (RAD) to review and analyze the Master Concession Agreement (Agreement) by and between the Detroit/Wayne County Port Authority and the Ambassador Port Company

The Detroit/Wayne County Port Authority is a public corporation as created pursuant to the 1978 PA 639, entitled "Hertel-Law-T. Stopczynski port authority act." Its five-member governing board is appointed as follows: one by the governor and two each by the City and County. Other entities involved in the Agreement are the Ambassador Port Company and the Nicholson Terminal and Port Company.¹

¹ Per the Seaports Press Review dated June 3, 2005, the Ambassador Port Company, a private corporation, is a subsidiary of the Central Transport. Central Transport offers direct service to 98% of major manufacturing and retail markets across North America. The Nicholson Terminal and Port Company is a private corporation will handle stevedoring and all dockside functions, with a history of handling port cargoes for over seventy years in the Metropolitan Detroit area. Curtis Hertel, Executive Director of the Detroit/Wayne County Port Authority said "This will be the first time in southeast Michigan that we'll be able to bring waterborne cargo, rail and trucks all together."

Legal issues, theories and analysis are largely determined by the facts. In this instance, not all of the facts and relevant documents are known and/or in RAD's possession. As new facts are revealed and additional documents are received, this could alter the analysis of the matter. First and foremost, RAD does not have a copy of several documents referenced in the Master Concession Agreement (Agreement). Those include 1. The "Remainder Agreement" allegedly signed between the City and the Ambassador Port Company, and 2. The "Development Plan" allegedly approved by the applicable governing bodies (including the City.) Those are critical documents needed to complete this legal analysis, as they could show to what extent the City authorized the Authority to enter into the Master Concession Agreement. Secondly, RAD only has an unsigned, undated Master Concession Agreement. Thirdly, RAD is not in possession of potentially other relevant documents, such as any agreement between the Authority and Nicholson Dock and Port Company.

Of special note, even though the copy of the Agreement is marked "confidential" on every page, it may not be a confidential document, especially if it is the official document acted upon and signed by the Detroit/Wayne County Port Authority Board of Directors as asserted by them. That transaction also would have had to happen in an open meeting pursuant to the Open Meetings Act, and would also be available through the Freedom of Information Act. This is significant, as it gives the opportunity for the public to review it and preserve and exercise their rights within any statutory time limitations.

RAD also looked at the above in the context of a recent resolution approved by Your Honorable Body on May 6, 2005, which assigned certain property rights subject to certain condition, which is attached.

The salient components of the Master Concession Agreement are:

1. The Authority grants a concession to Ambassador Port Company (Concessionaire) in the Premises and Facility
 2. The Master Concessionaire is the Ambassador Port Company.
 3. The Authority is now the owner of 3.6425 acres at 4461 W. Jefferson Ave. and 31.31 acres at 4300, 4461 and 4500 W. Jefferson.
 4. The City retains a "deed for a remainder interest" in the Premises that will vest under certain limited conditions.
 5. In order for the Concession to be profitable to the Master Concessionaire, future expansion of the Facility outside of the Premises will be necessary.
 6. The expansions of properties are expected to be achieved by the Concessionaire loaning money to the Authority and the Authority issuing tax-exempt bonds.
 7. Currently the Premises are tax-exempt.
 8. In order to have financial success, the parties depend on continued tax-exempt status.
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9. The Authority issued a Promissory Note for \$2,078,748.70 to the Concessionaire
10. The "Remainder Agreement" entered into between the City and Concessionaire, would honor this Agreement and Promissory Note in case the Authority defaults.
11. Sec. 1 Definitions, "Concession" is defined as "the exclusive right to operate and manage the Facility and to perform the Facility Work on the Authority's behalf." Emphasis added.)
12. Sec. 2.1 Administration and Operation, "Facility Work" includes (partial list):
 - a. Recommend for Authority approval, a "Master Plan" for the development, construction, expansion, contraction, operation, maintenance and improvements to the Facility, including budgets and architectural drawings
 - b. Negotiate contracts for materials, property sale or acquisition, borrowing
 - c. Present a proposed operating budget to Authority
 - d. Recommend, at any time, pricing of products, services and other activities occurring at the Facility
 - e. Recommend, at any time, operational polities such as hours of operation, scope of services and rules for users of the Facility
 - f. Present amendments to the Master Plan, Pricing Schedule, the Budget and Operating Procedures, as the Concessionaire determines necessary
 - g. Manage all processes associated with modifying, developing, expanding, constructing, rehabilitating, improving, subleasing, maintaining, repairing or otherwise managing the physical condition of the Facility
 - h. Operate and manage all aspects of the Facility
 - i. Execute contracts as an independent contractor for services from the Facility Operator
 - j. Procuring and maintaining permits, licenses, and approvals for operation of and modification to the Facility.
13. "Floating Rate" is established, but can under certain conditions be determined by the Master Concessionaire.
14. "Gross Receipts" has many exceptions and conditions before being considered gross receipts, including but not limited excluding Capital Receipts.
15. "Refunding Amounts" means amounts payable by Facility Operator (Nicholson Dock and Port Company) to the Master Concessionaire. Such amounts include paying the Concessionaire a percentage of amounts generated by the Nicholson Dock and Port Company from the stevedoring operation at the port facility located south of the Premises (Ecorse Port).
16. Sec. 2.1 *Grant of Concession and Facility Work*. The Concessionaire can choose if it wants to do the Concession in exchange for the Concession and Concession Payment. The Concessionaire will perform the Facility Work (see list under item 12 above.)
17. Sec. 2.2 The Concessionaire shall use reasonable business judgment to maximize Concession Payments. This includes authorizing "the Facility Operator to perform Facility Work in a manner divergent from the Budget, the Master Plan, the Price Schedule or the Operating Procedures..."

18. *Sec. 2.3 The Authority's Oversight and Cooperation.* The Authority shall agree to the following:
- (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 the Concessionaire..."
 - (b) The Authority shall respond to all requests for approval within 30 days. Failure to deny request for approval within 30 days shall be deemed consent.
 - (c) The Authority shall execute such documents and grant approvals through third party performing acts on behalf of the Authority, as the Concessionaire reasonably requests.
 - (d) The Authority shall inform the Concessionaire of all potential defaults, breaches or threats, which will allow the Concessionaire to take any action on behalf of and at the expense of the Authority to sustain current or future leases, permits or easements
 - (e) The Authority shall not pledge, sell, assign, let, lien, option without the Ambassador Port Company's prior consent.
 - (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.
 - (g) If any state, federal, or local government agency issues any notices of violation or non-compliance or withdrawal or cessation, or any other citations to the Facility, the Authority shall immediately notify the Concessionaire and follow with written notification within 2 business days.
 - (h) The parties acknowledge that the Premises provided by the Authority is exempt from real estate taxes and that neither the Authority nor Concessionaire shall be responsible for the payment of any real estate, personal property, user or operations taxes.
 - (i) The Authority shall maintain an office on the Premises or Expansion Properties. 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.
19. *Sec. 2.4 Employment of Facility Operator.* The Concessionaire shall be entitled to replace Nicholson Terminal and Dock Company.
20. *Sec. 2.5 Waiver of Conflict* which reads in its entirety:

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. (Emphasis added.)

21. Sec. 4.1 *Construction and Improvements*. The Concessionaire may construct, demolish and maintain any facilities, improvements, and building on the Premises.
22. Sec. 4.3 *The Authority Funding for Construction or Improvements*. Upon request of the Concessionaire, the Authority shall use its bonding authority to approve the issuance of bonds.
23. Sec. 4.4 *Master Concessionaire Funding for Construction of Improvements*. The Concessionaire may use its own funds to construct Facility or Premises, which shall be deemed advances of the principal under the Promissory Note and added to the outstanding principal balance of the Promissory Note.
24. Sec. 4.5 *Authority Title Retention*. Whatever the Concessionaire builds or improves using Authority bonds, said real property shall be owned by the Authority.
25. Sec. 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 MCL Sec. 120.123 of the Port Authority Act. (That section, 23, requires the approval of the City of Detroit, Wayne County and the State of Michigan. RAD is not in possession of the plan as of the date of this memo, to verify if such a plan was approved and what it said.)
26. Sec. 7 *Term and Termination of Operating Agreement*. The Agreement shall be in effect for the Concession Term, which is from the effective date of the Agreement through March 31, 2030, subject to three successive 25-year extension options at the election of the Concessionaire.
27. Sec. 8.3 *Right of Master Concessionaire to Purchase*. 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."
28. Sec. 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 names 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.
29. Sections 11 and 12 regarding Assignments. Although Assignment to another party requires agreement, the Authority can not unreasonably deny the Concessionaire's request to assign its rights under the Agreement. Upon

- assignment, the Authority shall release the Concessionaire's obligations under the Agreement.
30. Sec 12.2. The Concessionaire shall have the right to subcontract all or a portion of its rights and duties under this Agreement to any Facility Operator.
 31. Sec. 13.2. If the Concessionaire defaults, the Authority can only sue for actual damages and not consequential or punitive damages.
 32. Sec.13.5. The Concessionaire can sue for any and all remedies available at law or in equity, including enforce its rights under the Remainder Agreement and cause the City to take possession of the Premises so as to terminate the Authority's interests in the Premises and the Facility.
 33. Sec. 15. The Authority shall not sell the Premises or any interest in the Premises without giving the Concessionaire the first right to purchase the property.
 34. Sec. 16. The 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 the Master Concessionaire, be subject to the terms and provisions of this Master Concession Agreement and incorporated into the Facility.
 35. Sec. 18.10(e) If the parties are unable to resolve their disputes within 30 days, either Party may initiate litigation. The exclusive venues are the Circuit Court for the County of Macomb and the Federal District Court for the Eastern District of Michigan.
 36. Sec. 18.12 *Perpetuities Savings Clause*. If any provision is invalid due to the rule against perpetuities, the Agreement shall last until the twenty-first anniversary of the death of the last survivor of the descendents of Joseph P. Kennedy, father of President John F. Kennedy.
 37. Sec. 18.13 Expenses of Enforcement. The losing party in litigation shall pay all attorney fees and actual expense incurred by the winning party.

The fundamental purpose of governing bodies such as a city or county or state creating new or expanding governmental agencies, is to benefit the public. The public non-profit corporations, like the Detroit/Wayne County Port Authority is bound to that standard, even in public/private agreements. Section 2.5, which is item 20 listed above, potentially conflicts with that mandate. Giving a "preference" to private enterprises, especially future sight-unseen proposals may run afoul of the equal protection provision of the U.S. Constitution, Fifth Amendment, Takings Clause.

In fact, the entire flavor of this Master Concession Agreement gives "preference" to one business entity for the benefit of paying off the \$2 million bonds. It also appears to render the Detroit/Wayne County Port Authority nearly constructively powerless to independently exercise its legal rights, duties and privileges. Section 4.4 (item 23 above) could relinquish control over the Authority's options to finance current and future debts. The Concessionaire could build a bridge then bill the Authority.

Several legal issues are addressed below as they relate to the Agreement.

Standards of Conduct and Ethics for Public Officers and Employees

MCL 15.341 et al. at Section 2 (3) requires a public officer to use personnel resources, property, and funds under the officer or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures. It also at (6) prohibits a public officer from rendering services for a private or public service that is incompatible or in conflict with the discharge of the officer's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties. In applying the above to the actions of the Authority to waive statutory rights and causes of action, would have a chilling effect on performing that public officer's duties independent of the Ambassador Port Company's interest.

Good Faith and Care by Directors and Officers of Nonprofit Corporations

Similarly, under the Nonprofit Corporation Act at MCL 450.2541, directors and officers are required to discharge their duties of that position in good faith and with that degree of diligence, care, and skill which an ordinary prudent person would exercise under similar circumstances. There are elements in the Agreement that would question whether the Board of Directors of the Authority fulfilled their duty under the law. Of course, this is a question of fact, and it alone, does not mandate that a contract be voided.

U.S. Constitution, Amendment XIV and 42 U.S.C.S. Sec. 1983 Equal Protection

This U.S. Constitutional provision generally protects those persons similarly situated who have a protected right that a public entity has deprived them of. It has a three-step process in making such a determination:

1. State action
2. Existence of a protected property right
3. Arbitrary or irrational deprivation of that interest

Obviously, without the full facts it would be difficult to know if this provision was violated by the Agreement. There is a basis for concern if the Ambassador Port Company is receiving a benefit or preference to other person's detriment and if the Authority did not act rationally in the Agreement terms.

Eminent Domain and Condemnation

In *Shizas v City of Detroit*, 333 Mich 44 (1952), the limit to the sovereign's prerogative to exercise its powers of condemnation based on eminent domain is that "private property may not be taken for other than public use." The court added that if private property is taken for public use, there must be just compensation. If private property is taken for private use, the property owner must consent. The Michigan Supreme Court case involved a dispute over whether the property bounded by Monroe, Bates and Farmer

streets could be condemned (taking private property) to build a city parking garage with up to 25% of the floor space to be leased by private retail businesses for the benefit of added revenue. In its analysis of, private use, it stated:

Where, however, the intention to confer a private use or benefit forms *the purpose, or a part of the purpose*, of the proceeding or taking, the power of eminent domain may not be exercised.

The Court ruled that the City could not take the private property for the private use of having leases for retail businesses. The general rule applied was:

A statute authorizing a taking of private property for uses partly public and partly private is void, where the private use is so combined with the public use that the 2 cannot be separated.

In the recent Michigan Supreme Court case of *County of Wayne v Hathcock*, 471 Mich 445 (2004):

The transfer of condemned property to a private entity, seen through the eyes of an individual sophisticated in the law at the time of ratification of Michigan's 1963 Constitution, is appropriate in one of three contexts: (1) where public necessity of the extreme sort requires collective action; (2) where the property remains subject to public oversight after transfer to a private entity; and (3) where the property is selected because of facts of independent public significance, rather than the interests of the private entity to which the property is eventually transferred.

No one sophisticated in the law at the 1963 Michigan Constitution's ratification would have understood "public use" to permit the condemnation of properties for the construction of a business and technology park owned by private entities. Therefore, such condemnations are unconstitutional under Mich. Const. art. 10, § 2.

Every business, every productive unit in society, contributes in some way to the commonweal. To justify the exercise of eminent domain solely on the basis of the fact that the use of that property by a private entity seeking its own profit might contribute to the economy's health would render impotent Michigan's constitutional limitations on the government's power of eminent domain.

The Master Concession Agreement, which was entered into by the Port Authority, a public corporation, whose officers and employees are considered public servants, has so intertwined the private purpose of the Ambassador Port Company, a private corporation, as to provoke a possible violation of the Fourteenth Amendment of the U.S. Constitution, and Article 10 Section 2 of the Michigan Constitution (1963). If the same result were

applied as in the *Shizas* case, which was cited in the *Hathcock* case, the Agreement would be void.

One of the most troubling sides of the Agreement is the extensive degree of control the Ambassador Port Company has over the Authority's powers. Again, as illustrated in Section 4.5 (item 24 above), the Authority would be restricted in creating the finance package and real estate holdings as dictated by this Agreement (and the Ambassador Port Company). Even though the Ambassador Port Company owns the monetary benefits of the property, the tax-exempt status can enhance the profit margin. That tax advantage could conceivably be achieved though Sec. 4.6, if the Ambassador Port Company decides to transfer "any additional real property" to the Facility, with the right of reversion.

As a result the Agreement making part of its purpose to include private purposes, there is a mixture of purpose that could render certain powers granted to the Ambassador Port Company unconstitutional if implemented.

The Shipping Act of 1984 as modified by the Ocean Shipping Reform Act of 1998, has some jurisdiction over the port authority.

In Sec. 2(1) *Declaration of Policy*, the purpose of the act includes establishing "a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States..." The regulatory agency is the Federal Maritime Commission. The jurisdiction of the Act at Section 4(b), includes "Marine terminal operators and certain agreements that:

1. Discuss, fix, or regulate rates or other conditions of service; or
2. Engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

Prohibited acts under Section 10(d)(4)...Marine Terminal Operators includes:

- (4) No marine terminal operator may give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person. (Emphasis added.)

If the parties to the Agreement violated the above provision, the Commission can seek injunctive relief in a district court of the United States. Any person can file a complaint. The Agreement in general, when taken as a whole gives a preference to the Concessionaire's business. This is further though indirectly implied, in Section 2.5. **Waiver of Conflict.** Said section has the Authority understanding and acknowledging that the Concessionaire wants to incorporate its businesses into the Facility for the purpose of profits to current and future businesses. The Authority further agreed that any preference the Concessionaire give to it its own property over the Facility property can not be legally challenged by the Authority.

While the Authority may have waived its rights to sue, other persons who have standing are not precluded in claiming a breach of duty, should such preferential treatment be harmful to their interest.

Section 2.5 of the Agreement almost acknowledges the conflict of purposes between private profit and public purpose. When public property is used, it is to be used for a public purpose. Speculating on whether the parties would use public asset for anything else, at this point would be premature, but certainly bears watching.

Budgetary Authority

Legally, budget approval involving public funds and public property should be under the control of the legislative body. The Master Concession Agreement does require the Authorities' approval, which would technically, allow the Authority to exercise its rights. The question becomes, what if the Authority rejects the Concessionaire's requests. Then the Authority would have to prove that its denial was reasonable, while giving up claiming certain defenses to its actions. Furthermore, without the approval of the governing bodies, over some control over the expenditures so as not to spend more money than it has, prohibits the City from managing its affairs under the Michigan Constitution as discussed earlier in this memo under House Bill 5029.

Taxation

The Michigan Constitution Article IX *Finance and Taxation* has several sections that may be applicable. Sec. 18 State credit:

The credit of the state shall not be granted to, nor aid of any person, association or corporation, public or private, except as authorized in this constitution.

The Agreement not only appears to give a preference to the Ambassador Port Company, but also could be perceived as giving them credit in that advantage.

Tax-Exempt Status as a "Concessionaire"

The Authority and Ambassador Port Company have made it clear in their Agreement that they need to retain a tax-exempt status in their expansion endeavors in order to be successful and profitable. There are various ways that can be achieved, most notably in the MCL 211.181 *Taxation of lessees or users of tax-exempt property; exceptions*:

Sec. 1. (1) Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount

and to the same extent as though the lessee or used owned the real property.

(2) Subsection (1) does not apply to all of the following:

...(b) Property that is used as a **concession** at a public airport, park, market, or similar property and that it is available for use by the general public.

...(e) Real property located in a renaissance zone to the extent and for the duration provided pursuant to the Michigan renaissance zone act, Act. No. 376 of Public Acts of 1996, being sections 125.2681 to 125.2696 of the Michigan Compiled Laws...(Emphasis added.)

In a recent Michigan Court of Appeals case, *Service System Asso v City of Royal Oak*, 2005 Mich App Lexis 3044, decided December 6, 2005, in which a for-profit corporation provided food and catering services to the general public at the Detroit Zoological Park, "concession" was defined as:

To be a concession, the operation should be a "subsidiary business incidentally related to a public-oriented operation, rather than a privatized, self-contained operation."

The Court cited *Seymour v Dalton Twp*, 177 Mich. App. 403 (1989) where a concession was not found to exist because:

"Conspicuously absent" from the agreement were provisions characteristic of a concession, such as minimum hours, standards of service or oversight of operations by the city. This Court stated that the petitioner "had an unacceptable degree of discretion to run the gold course and related facilities as he saw fit, without the imposition of obligations directed toward the fulfillment of a public purpose."

The Ambassador Port Company appears to have received most of the powers and authority that the Port Authority, which is not characteristic of a "concession."

Based on that definition, it could be possible that the Agreement has not created or granted a "concession," and therefore not entitled to tax exemption under that provision. Yet the Agreement also says that the Ambassador Port Company is not responsible for taxes. If they are, the Authority may have gone beyond its authority in that regard. If they are required to pay taxes and don't under the Agreement, who pays? Certainly the Authority is not likely to have the authority to pay the Ambassador Port Company's taxes.

Other Tax Advantages

Section 8 (O) and (P) of H.B. 5029 provided for other finance and tax advantages by receiving the same rights, privileges, and powers granted an Authority in the *Brownfield*

Redevelopment Act, 1996, MCL 125.2651 to 125.2672 and the *Local Development Financing Act*, 1986 PA 281, MCL 125.2151 to 125.2174. This means that they can contract with other governmental entities to achieve their purposes. These public corporation financial and tax advantages could be used to compete against other for-profit enterprises that want may want to build a bridge or other economic development project. Again, if there is a commingling of public and private purpose, that reduced or tax exempt advantage could be jeopardized.

Preference and Prohibition against Competition

The Agreement when added to the proposed H.B. 5029 that limits the number of port authorities within a county and city, could effectively lock out and prevent the City of Detroit from establishing any additional Port Authorities for a public purpose, which the City currently has the right to do. This could bring into violation 12 USC 2, **Commerce and Trade, Chapter Monopolies and Combinations in Restraint of Trade**, which prohibits:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations...

Open Meetings Act

The Open Meetings Act at:

MCL 15.263(2) All decisions of a public body shall be made at a meeting open to the public. (3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public.

The Master Concession Agreement copy that RAD received is marked "confidential" on every page. If the decision by the Authority to select the Ambassador Port Authority as well as, the decision to enter into the Agreement, was no done in an open meeting, there may be violation of that Act. RAD is primarily mentioning this because of informal verbal inquiries as to when was the Agreement signed.

Public Policy Concerns

There may be other concerns that are "legal" but may be a public policy issue. For example, the Agreement states at Section 18.10 (e):

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.**" (Emphasis added.)

The Authority has agreed not to file in the Circuit Curt for the County of Wayne.

Scope of Authority of the Port Authority

Did the Authority have the authority under the present State law and City's actions? Two documents were referenced in the Master Concession Agreement, 1. The "Remainder Agreement" allegedly signed between the City and the Master Concessionaire, and 2. the "Development Plan." Those documents may be critical in answering that question.

Your Honorable Body approved a resolution granting an assignment to the Detroit/Wayne Port Authority on May 6, 2005. See attached. The Authority can only do what it is authorized to do under existing law. Many of the applicable laws were discussed above in this memo. In addition to those laws, the Authority must also comply with the limitations from the resolution/assignment. The agreement transferred certain properties with certain stipulations and with the right of the City to get the property back if certain conditions are not followed.

It is possible that the Authority went beyond its Authority based on the resolution and the Agreement for the following reasons:

- A. The Authority expressed their desire to acquire a concessionaire to operate the facilities. However, they appear to have gone beyond the legal definition for a concession, possibly obtaining the property under false pretense.

"Whereas...the Authority desires to acquire the Leased Premises and the real and personal property... and to grant a **concession** to operate the Port Facility to a master concessionaire for the purpose of assisting the Authority with the operation of the Port Facility."
(Emphasis added.)

- B. The assignment of the property was based on there not being any costs to the City. The Authority entered into an Agreement with The Ambassador Port Company that could cost the City directly and indirectly, based on the added liabilities. The Authority was not authorized to create the liens and liabilities against the City that is in the Agreement.

Whereas, in furtherance of the foregoing, an Assignment Agreement has been presented to the City Council for approval, to which the City will assign the Authority its right to obtain title to the Leased Premises upon payment of the bonds, **subject to the condition** that if the Leased 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 Leased Premises shall vest in the City or such other public entity as the City may designate, **without cost to the City or its taxpayer, and free and clear of any debts, liens or encumbrances or other liabilities.** (Emphasis added.)

- C. In the Assignment Agreement the City and Authority agreed to the following:
1. Property was transferred by quit-claim deed, subject to the condition that if the Leased Premises ceased to be used as a port authority, then the title shall vest in the City without cost to the City or its taxpayers, and free and clear of any debts, liens or encumbrances or other liabilities.
 2. The Authority agreed, at its expense to finance and implement the Project.
 3. The Authority agreed to pay to the City 40% of all net revenues it shall receive from the operation of the Leased Premises.
 4. After transfer of the Leased Premises to the Authority, the Authority will be solely responsible for all costs incurred after such transfer associated with the development, maintenance, insurance, and operation of the Port Facility.
 5. All instruments shall be conditioned upon and effective simultaneous with the Authority's entering into a binding concession agreement, the pay-off of the Bonds, the delivery of the quit-claim deed, and the execution and delivery of such other associated documents necessary to effectuate this Assignment Agreement.

Based on the terms of the Assignment agreement, the City is to incur no liability, but is to receive 40% of the net revenues from operation of the Leased Premises. Overall, the Authority did not appear to preserve the rights as it agreed to in the Assignment Agreement with the City.

It may be significant to know when and if all the documents required to be signed simultaneously occurred. And if not, there may also be an issue of validity and title ownership.

Summary

The Master Concession Agreement reviewed by RAD appears to have potential constitutional flaws. The Court is the final interpreter of the constitutions' application to State and local laws. It would be essential to gather all of the relevant facts, to determine the full extent of legal options. Many potential challenges to the Agreement are subject to the statutes of limitations, which vary depending on which law is at issue.

The Master Concession Agreement may have gone beyond the conditions of the City's assignment if it created additional costs, liens or liabilities for the City. The Master Concession Agreement may not be a "concession" at all with certain unintended tax consequences to the parties.

Absent all the relevant documents, RAD's analysis remains preliminary.

If you have further questions, please contact RAD.

Attachments

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 hereof 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 aforestated 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

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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. BRACKINELL, JR.</u>	Name: <u>DAN STAMPS</u>
Its: <u>CHAIRMAN</u>	Its: <u>DIRECTOR</u>

MASTER CONCESSION AGREEMENT

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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.

VANESSA BAKER
Notary Public, Wayne County, MI
My Commission Expires Jan. 7, 2008

My commission expires:
Vanessa Baker
NOTARY PUBLIC

STATE OF MICHIGAN

COUNTY OF WAYNE, to-wit:

The foregoing Agreement was acknowledged before me by DAW 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. Keyser
NOTARY PUBLIC

LINDA D. DeKEYSER
Notary Public, Macomb County, MI
Acting In Wayne County, MI
My Commission Expires December 16, 2008

CITY COUNCIL

(ADJOURNED SESSION)

(All Action of the City Council appearing herein is subject to reconsideration and/or approval of the Mayor.)

Detroit, Friday, May 6, 2005

Pursuant to adjournment, the City Council met at 1:30 P.M., and was called to order by the President Maryann Mahaffey.

Present — Council Members K. Cockrel, Jr., S. Cockrel, Collins, McPhail, Tinsley-Talabi, Watson, and President Mahaffey — 7.

There being a quorum present, the City Council was declared to be in session.

Taken from the Table

Council Member Watson, joined by Collins and Mahaffey, moved to take from the table, an ordinance to amend Chapter 18 of the 1984 Detroit City Code, Finance and Taxation, Article IX, Taxation Generally, by adding Division 8, Property Tax Education and Foreclosure Avoidance Program, consisting of Sections 18-9-121 through 18-9-130, which set forth the purpose of the Division, provide definitions of Agency of the City, City, County, Delinquent, City Council, Foreclosing Governmental Unit, Non-governmental entity, Non-profit Organization, Owner-occupied, Primary Residence, Qualified Representatives, and Tax Foreclosure; add an additional property tax notification procedure; create an informational brochure; establish community outreach and education programs; and require the promulgation of administrative rules and directives by the Finance Department to carry out the intent of this Ordinance laid on the table April 20, 2005 (J.C.C. p.), which motion prevailed.

The Ordinance was then placed on the order of third reading.

THIRD READING OF ORDINANCE.

The title to the Ordinance was read a third time.

The Ordinance was then read.

The question being "Shall this Ordinance Now Pass?"

The Ordinance was passed, a majority of the Council Members present voting therefore as follows:

Yeas — Council Members K. Cockrel, Jr., S. Cockrel, Collins, McPhail, Tinsley-Talabi, Watson, and President Mahaffey — 7.

Nays — None.

Title to the Ordinance was confirmed.

COMMUNICATIONS FROM Finance Department Purchasing Division

May 6, 2005

Honorable City Council:

The Purchasing Division of the Finance Department recommends a Contract with the following firms or persons:

2673890—Pumps and Motors, New and Remanufactured/Exchange for Automotive & Construction Equipment from May 1, 2005 through April 30, 2007 with option to renew for an additional two (2) one-year periods. RFO. #14843, 100% City Funds. Kirk's Automotive, Inc., 9330 Roselawn, Detroit, MI 48204. 5 Items Unit prices range from \$249.98/Each to \$655.00/Each (50% discount from Manufacturer's Price List) Lowest total bid. Estimated cost: \$174,000.00/Contract. DPW.

The approval of your Honorable Body is requested on the foregoing contract.

Respectfully submitted,
AUDREY P. JACKSON

Director

Finance Dept./Purchasing Div.

By Council Member Watson:

Resolved, That Contract #2673890 referred to in the foregoing communication, dated May 6, 2005 be and hereby is approved.

Adopted as follows:

Yeas — Council Members K. Cockrel, Jr., S. Cockrel, Collins, McPhail, Tinsley-Talabi, Watson, and President Mahaffey — 7.

Nays — None.

Mayor's Office

April 21, 2005

Honorable City Council:

Re: Detroit Port Development Corporation/Detroit Marine Terminals Site.

Attached for your consideration is an Assignment Agreement pursuant to which the City would direct the Detroit Port Development Corporation (the "Corporation") to transfer the Detroit Marine Terminals site to the Detroit/Wayne County Port Authority (the "Authority"). As is more fully explained in the Assignment Agreement, the Authority intends to bring in a new operator, return the site to normal operations, improve it and expand it.

As you are aware, Detroit Marine Terminals ("DMT") ceased operations at the site last year, defaulted on its obligations under its lease with the Corporation, causing a corresponding default under certain bonds issued by the Corporation. The matter is now the subject of litigation by the trustee for the bondholders against DMT and the Corporation. The City is not a party to the litigation because it is not responsible for repayment of the bonds, but the City does have the right to obtain title to the site once the bonds are paid off. Since the City is not in the business of

running a port, we are proposing that title be conveyed to the Authority subject to the condition that if the site 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 site would 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.

We believe that the public interest is served by putting the site in the hands of the public agency charged with port development so the property can be returned to productive use, creating jobs and spurring economic development. We would therefore urge that you adopt the attached resolution approving the Assignment Agreement and authorizing the transactions contemplated by it.

Respectfully submitted,
ANTHONY ADAMS, ESQ.
Deputy Mayor

By Council Member Tinsley-Talabi:

Whereas, This City Council, by resolution dated March 1, 1966, authorized the formation of the Detroit Port Development Corporation, a Michigan non-profit corporation (the "Corporation"), as a non-profit corporation organized and operating under Act No. 327 of the Michigan Public Acts of 1931, as amended, for the purposes of (a) acquiring certain port and terminal facilities located at 4461 West Jefferson Avenue along the Detroit River in the City of Detroit, Michigan, on land more particularly described in Exhibit A attached hereto (the "Leased Premises"), (b) improving and expanding such port and terminal facilities, (c) financing the acquisition of such port and terminal facilities and the improvement and expansion thereof, and (d) vesting the ownership of such port and terminal facilities, as improved and expanded, in the City, without cost to the City or its taxpayers, and free and clear of any debts, liens or encumbrances or other liabilities, upon payment of the bonds issued for financing the acquisition of the existing facilities and the improvements thereto; and

Whereas, Pursuant to its articles of incorporation and the resolution of this City Council, the Corporation (a) in 1966 acquired title to, and now is the owner of, the Leased Premises and the port and terminal facilities located thereon, (b) has improved and expanded such port and terminal facilities, and (c) has financed the acquisition of the Leased Premises and the improvement and expansion of the port and terminal facilities through the issuance of its revenue bonds (the "Bonds") pursuant to that certain Trust Agreement dated as of April 1, 1966, between the Corporation and Bank of the Commonwealth, as trustee, as supplemented by the Supplemental Trust

Agreement dated as of October 1, 1977 (the "Trust Agreement"), and

Whereas, Pursuant to the Order of the United States District Court for the Eastern District of Michigan, Southern Division, as part of the Corporation's plan of reorganization under Chapter X of the Bankruptcy Act, the Corporation as lessor and Detroit Marine Terminals, Inc., a Michigan corporation ("DMT"), as lessee entered into a Lease of the Leased Premises dated as of July 1, 1977, as amended by an Addendum made March 28, 1978 (the "Lease"), for the operation of port and terminal facilities and for other port and terminal oriented activities; and

Whereas, DMT has ceased operations at the Leased Premises and has defaulted under the Lease by, among other things, failing to make payments to the Corporation under the Lease; and

Whereas, The Corporation has likewise defaulted under the Trust Agreement by, among other things, failing to pay debt service on the Bonds; and

Whereas, U.S. Bank, N.A. ("Trustee"), successor in interest to Bank of the Commonwealth as trustee under the Trust Agreement, acting on behalf of the holders of the Bonds, has filed suit in United States District Court for the Eastern District of Michigan (the "Trustee Lawsuit") seeking, among other things, appointment of a receiver for the Leased Premises, and has threatened to foreclose on the Leased Premises; and

Whereas, The Detroit/Wayne County Port Authority, a public body corporate and politic (the "Authority") organized and existing under Act No. 639 of the Public Act of Michigan of 1978, as amended (the "Port Authority Act"), was established for the purpose of developing and operating a port facility as defined in the Port Authority Act; and

Whereas, In order to assure the continued and effective operation of the Leased Premises, the Authority desires to acquire the Leased Premises and the real and personal property associated therewith (together, the "Port Facility") and to grant a concession to operate the Port Facility to a master concessionaire for the purpose of assisting the Authority with the operation of the Port Facility (the "Project"); and

Whereas, In order to facilitate the acquisition of the Leased Premises by the Authority, the Authority has arranged that the master concessionaire pay off the Bonds, but if and only if title to the Leased Premises is transferred to the Authority and the Authority executes and delivers a master concession agreement; and

Whereas, It is in the public interest that the operation of the Leased Premises be restructured and the agreements implementing said restructuring be executed in order to ensure the effective and continued operation of the Leased Premises, and

Whereas, In furtherance going, an Assignment Agreement has been presented to this City Council for approval, pursuant to which the Authority assigns to the Authority its right, title and interest in the Leased Premises and the bonds without cost to the City or its taxpayers, and directs the Corporation to convey to the Authority the Leased Premises upon payment of the bonds, subject to the condition that if the Leased 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 Leased Premises would 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;

Now, Therefore, Be It Resolved by the City of Detroit City Council,

1. That the Assignment Agreement be approved, and the Authority attached hereto be approved (the "Assignment Agreement").

2. That the Chief Financial Officer be and is hereby authorized to execute all documents necessary or convenient to the consummation of the Assignment Agreement as described above, pursuant to the Assignment Agreement, in accordance with the Assignment Agreement.

3. That the Assignment Agreement and other documents referred to in the preceding paragraph be confirmed when executed by the Chief Financial Officer and approved by the Board of Detroit Corporation Counsel.

EXHIBIT A

PARCEL I:

All that portion of Private Claim 583 lying South of the South line of Jefferson Avenue, City of Detroit, Michigan.

PARCEL II:

All that portion of Private Claim 583 lying South of the South line of Wabash Railway right of way and the North line of Jefferson Avenue, excepting therefrom a parcel on the Northwest corner of the parcel owned by United States America, and Lots 15, 16, 17, 18, 19, 20, 21, 22 and vacated alley adjoining the parcel through 18, Subdivision of Private Claim 563 for heirs of J.B. Campau, Liber 1 on Pages 94 and 95 of Wayne County Records.

PARCEL III:

The West 555 88 feet of Private Claim 563, fronting on Jefferson Avenue, South of the South line of Jefferson Avenue.

PARCEL IV:

Lots 1 to 11 inclusive, of Private Claim 563 for heirs of J.B. Campau, as recorded in Liber

Whereas, in furtherance of the foregoing, an Assignment Agreement has been presented to this City Council for approval, pursuant to which the City will assign to the Authority its right to obtain title to the Leased Premises upon payment of the bonds without cost to the City or its taxpayers, and direct that the Corporation convey to the Authority title to the Leased Premises upon payment of the bonds, subject to the condition that if the Leased 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 Leased 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;

Now, Therefore, Be It Resolved by the City of Detroit City Council, as follows:

1. That the Assignment Agreement, by and among the Corporation, the City and the Authority attached hereto as Exhibit B (the "Assignment Agreement") is hereby approved.

2. That the Chief Financial Officer is hereby authorized to execute and deliver documents necessary or convenient for the consummation of the transactions described above, pursuant to and in accordance with the Assignment Agreement.

3. That the Assignment Agreement and other documents referred to in the preceding paragraph be considered confirmed when executed by the Chief Financial Officer and approved by the City of Detroit Corporation Counsel as to form.

EXHIBIT A

PARCEL I:

All that portion of Private Claims 47 and 583 lying South of the South line of Jefferson Avenue, City of Detroit, Wayne County, Michigan.

PARCEL II:

All that portion of Private Claim 583 lying South of the South line of the Wabash Railway right of way and North of the North line of Jefferson Avenue, excepting therefrom a parcel 25 feet square on the Northwest corner of said parcel owned by United States of America, and Lots 15, 16, 17, 18, 21 and 22 and vacated alley adjoining Lots 15 through 18, Subdivision of Private Claim 563 for heirs of J. B. Campau recorded in Liber 1 on Pages 94 and 95 of Plats, Wayne County Records.

PARCEL III:

The West 555.88 feet of Private Claim 77, fronting on Jefferson Avenue lying South of the South line of Jefferson Avenue.

PARCEL IV:

Lots 1 to 11 inclusive, subdivision of Private Claim 563 for heirs of J. B. Campau, as recorded in Liber 1 on Pages

94 and 95 of Plats, Wayne County Records.

PARCEL V:

Also, that part of Lots 6 to 10 inclusive of Riverside Subdivision described as follows: South 1.22 feet on West line being South 23.72 feet on East line of Lot 10, south 23.72 feet on West line being South 56.45 feet on East line of Lot 9, South 56.45 feet on West line being South 102.67 feet on East line of Lot 8 and Lots 6 and 7 excepting triangular part of Lot 7 being North 15.83 feet on West line and being West 6.20 feet on North line, also East 43.80 feet of West 193.10 feet on South line being East 31.83 feet of West 182.62 feet on North line of vacated alley lying North and adjacent said lots, also West 1/2 of vacated North and South alley excepting 220.21 feet thereof, Riverside Liber 1, Page 191, of Plats, Wayne County Records. Also part of Private Claim 47, City of Detroit, being a strip of land 20 feet wide lying West and adjacent West line of said North and South alley measuring 457.33 feet Northerly along center line of said strip from North line of East and West alley to point of curve; thence continuing along center line of said strip on a 330 feet radius curve to left on 150 feet; thence continuing along center line of said strip on a 135 feet radius curve to left to intersection of South line Wabash Right of Way Railroad with East line of McKinstry Avenue, which strip is to be used for railway purposes and subject to the right of the adjoining owners to share in such use.

EXHIBIT B

ASSIGNMENT AGREEMENT

This Assignment Agreement is dated this ___ day of April, 2005, by and among the Detroit Port Development Corporation, a Michigan non-profit corporation (the "Corporation"), the City of Detroit, a Michigan municipal corporation (the "City"), and the Detroit/Wayne County Port Authority, a public body corporate and politic (the "Authority").

Whereas, The City Council, by resolution dated March 1, 1966, authorized the formation of the Corporation as a non-profit corporation organized and operating under Act No. 327 of the Michigan Public Acts of 1931, as amended, for the purposes of (a) acquiring certain port and terminal facilities located at 4461 West Jefferson Avenue along the Detroit River in the City of Detroit, Michigan, on land more particularly described in Exhibit A attached hereto (the "Leased Premises"), (b) improving and expanding such port and terminal facilities, (c) financing the acquisition of such port and terminal facilities and the improvement and expansion thereof, and (d) vesting the ownership of such port and terminal facilities, as improved and expanded, in the City, without cost to the City or its taxpayers, and

free and clear of any debts, liens or encumbrances or other liabilities, upon payment of the bonds issued for financing the acquisition of the existing facilities and the improvements thereto; and

Whereas, Pursuant to its articles of incorporation and the resolution of the City Council, the Corporation (a) in 1966 acquired title to, and now is the owner of, the Leased Premises and the port and terminal facilities located thereon, (b) has improved and expanded such port and terminal facilities, and (c) has financed the acquisition of the Leased Premises and the improvement and expansion of the port and terminal facilities through the issuance of its revenue bonds (the "Bonds") pursuant to that certain Trust Agreement dated as of April 1, 1966, between the Corporation and Bank of Commonwealth, as trustee, as supplemented by the Supplemental Trust Agreement dated as of October 1, 1977 (the "Trust Agreement"); and

Whereas, Pursuant to the Order of the United States District Court for the Eastern District of Michigan, Southern Division, as part of the Corporation's plan of reorganization under Chapter X of the Bankruptcy Act, the Corporation as lessor and Detroit Marine Terminals, Inc., a Michigan corporation ("DMT"), as lessee entered into a Lease of the Leased Premises dated as of July 1, 1977, as amended by an Addendum made March 28, 1978 (the "Lease"), for the operation of port and terminal facilities and for other port and terminal oriented activities; and

Whereas, DMT has ceased operations at the Leased Premises and has defaulted under the Lease by, among other things, failing to make payments to the Corporation under the Lease; and

Whereas, The Corporation has likewise defaulted under the Trust Agreement by, among other things, failing to pay debt service on the Bonds; and

Whereas, U.S. Bank, N.A. ("Trustee"), successor in interest to Bank of the Commonwealth as trustee under the Trust Agreement, acting on behalf of the holders of the Bonds, has filed suit in United States District Court for the Eastern District of Michigan (the "Trustee Lawsuit") seeking, among other things, appointment of a receiver for the Leased Premises, and has threatened to foreclose on the Leased Premises; and

Whereas, The Authority, a Michigan public body corporate and politic organized and existing under Act No. 639 of the Public Acts of Michigan of 1978, as amended (the "Port Authority Act"), was established for the purpose of developing and operating a port facility as defined in the Port Authority Act; and

Whereas, in order to assure the continued and effective operation of the Leased Premises, the Authority desires to acquire

the Leased Premises and the real and personal property associated therewith (together, the "Port Facility") and to grant a concession to operate the Port Facility to a master concessionaire for the purpose of assisting the Authority with the operation of the Port Facility (the "Project"); and

Whereas, In order to facilitate the acquisition of the Leased Premises by the Authority, the Authority has arranged that the master concessionaire pay off the Bonds, but if and only if title to the Leased Premises is transferred to the Authority and the Authority executes and delivers a master concession agreement; and

Whereas, It is in the public interest that the operation of the Leased Premises be restructured and the agreements implementing said restructuring be executed in order to ensure the effective and continued operation of the Leased Premises upon the terms and conditions herein set forth;

Now Therefore, the Corporation, the City and the Authority agree as follows:

1. Upon payment of the Bonds and if so directed by the City, the Corporation hereby agrees to transfer all its right, title and interest in the Leased Premises to the Authority by quit-claim deed, subject to the condition that if the Leased 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 Leased 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.

2. Subject to review and acceptance of the state of title and dismissal of the Trustee Lawsuit, the Authority agrees to accept the quit-claim deed to the Leased Premises from the Corporation and shall at its expense finance and implement the Project. The Authority further agrees as follows:

A. As consideration for this Assignment Agreement, the Authority agrees to pay to the City forty percent (40%) of all net revenues it shall receive from the operation of the Leased Premises and shall execute and deliver at closing such further documents or instruments as may be required to give effect to this provision.

B. All closing costs incurred by the Corporation or the City in connection with the conveyance of the Leased Premises to the Authority, including but not limited to any commissions, survey and title expenses, appraisal fees, and recording fees, shall upon prior advice and approval be paid or caused to be paid by the Authority.

C. After transfer of the Leased Premises to the Authority, the Authority will be solely responsible for all costs incurred after such transfer associated with the development, maintenance, insur-

ance; and operation of the Port Facility. D. The Authority shall take such steps as are necessary to establish a baseline environmental assessment (BEA) in accordance with the requirements of Section 20126(c) of Act 451, Public Act 1994-001, as amended, known as the Natural Resources Environmental Protection Act.

3. Subject to City Council approval, the City shall assign to the Authority the right to receive title to the Leased Premises upon payment of the Bonds. The Authority shall direct the Corporation to execute and deliver to the Authority the documents described in Section 1 above.

4. The parties shall promptly execute and deliver the instruments necessary to effect the transfer of the Leased Premises pursuant to the Assignment Agreement and shall execute and deliver such further documents and instruments as may be necessary to give effect to this Assignment Agreement. The Assignment Agreement shall be executed at a closing to be held at a time mutually agreed by the parties. The instruments shall be conditional upon the Authority's entering into a binding agreement with the City for the delivery of the quit-claim deed and the execution and delivery of the documents necessary to effectuate this Assignment Agreement.

5. The parties acknowledge that this Assignment Agreement is not intended to be binding upon the City. The City Council has approved this Assignment Agreement and authorized the execution and delivery of the documents and instruments by this Assignment Agreement. The City is a party.

In Witness Whereof, the parties have set their hands and seals this 5th day of May, 1994.

DETROIT PORT DEVELOPMENT CORPORATION, a Michigan non-profit corporation

By: Anthony Adams, its President

And

By: Ruth A. Carter, its Vice President

CITY OF DETROIT, a Michigan municipal corporation

By: Sean Werdlow, its Chief of Staff

Officer

DETROIT/WAYNE COUNTY AUTHORITY, a public body corporate

By: Curtis Hertel, its Executive Director

And

By: John Stoker, its Chief of Staff

Officer

ance, and operation of the Port Facility.
 D. The Authority shall take the property as is. The Authority shall obtain its own baseline environmental assessment (BEA) in accordance with Section 20126(c) of Act 451, Public Acts of Michigan, 1994, as amended, commonly known as the Natural Resources and Environmental Protection Act.

3. Subject to City Council approval, the City shall assign to the Authority its right to receive title to the Leased Premises upon payment of the Bonds, and shall direct the Corporation to convey the Leased Premises to the Authority as described in Section 1 above.

4. The parties shall proceed expeditiously to effect the transfer of the Leased Premises pursuant to the terms of this Assignment Agreement and shall execute and deliver such further documents or instruments as may be necessary to give effect to this Assignment Agreement. The transactions envisioned by this Assignment Agreement shall be consummated at a closing to be held at a time and place mutually agreed by the parties, and all instruments shall be conditioned upon and effective simultaneous with the Authority's entering into a binding concession agreement, the pay-off of the Bonds, the delivery of the quit-claim deed, and the execution and delivery of such other associated documents necessary to effectuate this Assignment Agreement.

5. The parties acknowledge that this Assignment Agreement is not and is not intended to be binding upon the City until the City Council has approved this Assignment Agreement and has authorized the execution and delivery of those documents and instruments envisioned by this Assignment Agreement to which the City is a party.

In Witness Whereof, the parties hereto have set their hands and seals as of the day and date first above written:

DETROIT PORT DEVELOPMENT CORPORATION,
 a Michigan non-profit corporation

By: _____
 Anthony Adams, its President

And
 By: _____
 Ruth A. Carter, its Vice-President

CITY OF DETROIT,
 a Michigan municipal corporation

By: _____
 Sean Werdlow, its Chief Financial Officer

DETROIT/WAYNE COUNTY PORT AUTHORITY,
 a public body corporate and politic

By: _____
 Curtis Hertel, its Executive Director

And
 By: _____
 John Stoker, its Chief Financial Officer

Adopted as follows:

Yeas — Council Members K. Cockrel, Jr., S. Cockrel, Collins, Everett, McPhail, Tinsley-Talabi, and Watson — 6.

Nays — Council President Mahaffey —

1. *WAIVER OF RECONSIDERATION (No. 1) per motions before adjournment.

STATEMENT BY COUNCIL PRESIDENT MARYANN MAHAFFEY IN OPPOSITION TO THE RESOLUTION AUTHORIZING THE DETROIT PORT DEVELOPMENT CORPORATION TO TRANSFER THE DETROIT MARINE TERMINALS SITE TO THE DETROIT/WAYNE COUNTY PORT AUTHORITY

On May 6, 2005, I voted against the resolution authorizing the Detroit Port Development Corporation to transfer the Detroit Marine Terminals site to the Detroit/Wayne County Port Authority.

I am very much in support of the reopening of the Detroit Marine Terminals site as a port in the City of Detroit. The City of Detroit needs a fully operating port so that it can take advantage of the economic development possibilities achievable through shipping on the Detroit River.

As much as I am in support of reopening the port, I have concerns about the agreement that the Detroit/Wayne County Port Authority has negotiated to operate the port and the process by which this agreement was reached. Upon approval of the aforementioned resolution by the City Council and the Mayor, the Detroit/Wayne County Port Authority will enter into an agreement with a master concessionaire that will give to the concessionaire a 15 year concession to operate the port with 3 consecutive 25 year options that the concessionaire may elect to renew. It is my opinion that allowing a private business entity to operate a public facility for 90 years is too long. By approving this transfer, the City of Detroit is very limited its authority over the port and there is little opportunity to renegotiate the agreement prior to 2097.

Secondly, I am concerned that Detroit-based businesses and/or minority-owned businesses were not invited to be considered as an operator of the port. As the deal is currently structured, the master concessionaire acts as an investor and broker for the port by contracting with an entity whose core business in shipping. It seems that there may have been Detroit-based businesses and/or minority-owned businesses that may have been able to fulfill this position.

Thirdly, I am concerned that the Detroit/Wayne County Port Authority may now sell public land to a private entity without the input of City of Detroit residents and that the master concessionaire, instead of the City of Detroit, has the first right of refusal for any potential sale. It is my sin-

cere hope that the Detroit/Wayne County Port Authority will seek input from City of Detroit residents and businesses in any further actions it takes related to this port.

Because a court case has been filed with respect to the default on the bonds for the port facility, City Council needed to act quickly to prevent the foreclosure on the port due to the default on the bonds. Unfortunately, because City Council was not presented with the details of the master concessionaire agreement until just prior to the vote although it had been approved earlier, a full investigation of this document was not possible.

Lastly, I would like to commend my colleague Council Member Barbara-Rose Collins for negotiating a direct economic benefit for the City of Detroit where none was presented previously. Her initiative has resulted in the City of Detroit receiving 40% of revenues received by the Detroit/Wayne County Port Authority for the Detroit Marine Terminals site. It is important that whenever the City of Detroit is engaged in a transfer of public assets that will lead directly to the generation of revenues in for-profit activity that the City of Detroit seek a direct financial benefit.

Finance Department
April 14, 2005

Honorable City Council:
Re: Amended and Restated Resolution authorizing publication of Notice of Intent, filing an application with the Michigan Department of Treasury, authorizing issuance and sale of Capital Improvement Bonds, refunding of currently outstanding Capital Improvement Bonds, and authorizing interests rate exchange agreements.

The resolution authorizes the issuance of capital improvement bonds to finance the costs of an 800 MHz Radio Communication System.

Given the City's current financial condition, it is desirable of issuing bonds to finance the project and refinancing of previously issued capital improvement bonds. While various financing alternatives were considered, it is determined that the most cost effective option for financing is through the issuance of Capital Improvement Bonds.

The attached resolution has been prepared by bond counsel and its adoption is requested, with a waiver of reconsideration, at your next formal session.

Respectfully submitted,
SEAN K. WERDLOW
Financial Director

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DETROIT, COUNTY OF WAYNE, STATE OF MICHIGAN, AUTHORIZING THE ISSUANCE BY THE CITY OF DETROIT OF NOT TO EXCEED \$87,500,000 GENERAL

OBLIGATION CAPITAL IMPROVEMENT BONDS (LIMITED TAX), SERIES 2005-A FOR THE PURPOSE OF PAYING A PORTION OF THE COSTS OF AN 800 MHz RADIO COMMUNICATION SYSTEM PROJECT OF THE CITY OF DETROIT, AND NOT TO EXCEED \$13,500,000 GENERAL OBLIGATION CAPITAL IMPROVEMENT REFUNDING BONDS (LIMITED TAX), SERIES 2005-B FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION (LIMITED TAX) BONDS, OF THE CITY OF DETROIT; AUTHORIZING THE PUBLICATION OF A NOTICE OF INTENT TO ISSUE SAID BONDS; AUTHORIZING INTEREST RATE EXCHANGE, SWAP, HEDGE OR SIMILAR AGREEMENTS RELATED TO THE BONDS HEREIN AUTHORIZED OR ANY OTHER OUTSTANDING GENERAL OBLIGATION LIMITED TAX BONDS OF THE CITY OF DETROIT; AND AUTHORIZING AND DELEGATING TO THE FINANCE DIRECTOR THE AUTHORITY TO MAKE CERTAIN DETERMINATIONS AND TO TAKE CERTAIN ACTIONS IN CONNECTION WITH THE SALE AND DELIVERY OF SAID BONDS AND TO NEGOTIATE ONE OR MORE INTEREST RATE EXCHANGE, SWAP, HEDGE OR SIMILAR AGREEMENTS.

By Council Member Tinsley-Talabi:
WHEREAS, The City of Detroit, County of Wayne, State of Michigan (the "City") desires to issue one or more series of capital improvement bonds pursuant to the authorization of the City Charter, Act 279, Public Acts of Michigan, 909, as amended ("Act 279") and Act 34, Public Acts of Michigan, 2001, as amended ("Act 34") to finance the acquisition, construction and equipping of several 800 MHz radio frequency towers and related communication facilities within the City (the "800 MHz Radio Project" or the "Project"); and

WHEREAS, Pursuant to Act 34, the City is authorized to issue municipal securities to pay the cost of capital improvement items such as the Projects after publishing a notice of its intention to do so in a newspaper of general circulation within the City and providing a period during which electors of the City may file a petition requesting a referendum on the issuance of such municipal securities; and -

WHEREAS, The City Council deems it advisable and necessary at this time to authorize the issuance of one or more series of certain general obligation capital improvement limited tax bonds of the City (the "Series 2005-A Bonds"), in an amount not to exceed \$87,500,000 and bearing interest at fixed and/or variable rates of interest as determined by the Finance Director of the City (the "Finance Director")

**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 aforesated 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 STAMPER
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

PROMISSORY NOTE

\$2,103,000.41

July 7, 2005

This note is the Promissory Note referenced in that certain Master Concession Agreement (the "Master Concession Agreement") between and among The Detroit/Wayne County Port Authority, a Michigan public body corporate and politic (the "Maker"), and the Ambassador Port Company, a Michigan corporation (the "Payee"), dated as of approximate even date herewith, which Master Concession Agreement is hereby incorporated herein by reference.

For value received, the Maker hereby promises to pay to the order of the Payee, at the principal office of Payee in Warren, Michigan or such place as the Payee may from time to time designate, the original principal sum of Two Million One Hundred Three Thousand and 41/100 Dollars (\$2,103,000.41) plus any additional sums deemed principal advances under this note as provided for herein or in the Master Concession Agreement.

The Maker agrees that it will execute amendments and/or restatements of this note increasing the principal amount payable hereunder as provided for in the Master Concession Agreement including, but not limited to, Section 4.4 therein. The principal amount of this note is payable as follows:

a. The Maker shall pay to the Payee Fifty Percent (50%) of all funds received by the Maker under Section 5.1 of the Master Concession Agreement within ten (10) days receipt of same by the Maker. Failure to make such payments by the Maker shall constitute an Event of Default under this note and the Master Concession Agreement on the 10th day following notice of same by the Payee.

b. Pursuant to Section 5.2(c) of the Master Concession Agreement, principal amounts owing on this note may be satisfied by the application of Capital Receipts, as defined and provided for therein.

c. In addition to the foregoing, the Maker may repay all principal amounts owing on this note without penalty for prepayment.

The unpaid principal balance hereof shall bear interest at a rate equal to the Floating Rate, as applicable and as defined in the Master Concession Agreement. Interest shall be calculated for the actual number of days elapsed, using a daily rate determined by dividing the annual rate by 360. Interest owing on this note shall be satisfied as provided for in Section 5.1 and 5.2 of the Master Concession Agreement (i.e. setoff from Gross Receipts, as defined in the Master Concession Agreement, and Capital Receipts payable to the Maker). In the event that the amounts payable to the Maker under Sections 5.1 and 5.2 of the Master Concession Agreement are insufficient to satisfy all interest on this note that is due and owing as of the time such payments are due to the Maker under those Sections, all of such interest shall be added to the principal amount owing on this note.

Amounts due and unpaid hereunder delinquent for more than thirty (30) days shall accrue interest at the Default Rate, as defined in the Master Concession Agreement, compounding monthly until paid in full. All amounts payable on this note shall be payable in lawful money of the United States of America. Payee's receipt of any payment after the occurrence of an event of default shall not constitute a waiver of such default or of any of Payee's rights and remedies. Except (i) in the event the Maker files for protection under state or federal insolvency laws or (ii) as otherwise provided in the Master Concession Agreement, the obligations under this note may not be accelerated.

Without affecting the liability of any maker, indorser, surety or guarantor, the holder may, from time to time and without notice, renew or extend the time for payment, accept partial payments, release or impair any collateral security for payment of this note, or agree not to sue any party liable on it.

This note is governed by the internal laws of the State of Michigan, except to the extent superseded by federal law.

The Detroit/Wayne County Port Authority

By: *[Signature]*

Name:

Its: *EXECUTIVE DIRECTOR*

SENATE BILL No. 711

December 5, 2017, Introduced by Senators STAMAS, BRANDENBURG, EMMONS, ROBERTSON, GREEN, CONYERS, CASPERSON and SCHMIDT and referred to the Committee on Economic Development and International Investment.

A bill to amend 1978 PA 639, entitled "Hertel-Law-T. Stopczynski port authority act," by amending sections 2, 8, and 9 (MCL 120.102, 120.108, and 120.109).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 (a) "Authority" means a port authority created under this act
- 3 and may also include the area within the jurisdiction of an
- 4 authority.
- 5 (b) "Constituent unit" means a city or county requesting the
- 6 incorporation of an authority.
- 7 (c) "Governing body of the city" means the city council or
- 8 city commission of a city requesting incorporation of an authority

1 created under this act.

2 (d) "Governing body of the county" means the county board of
3 commissioners of a county participating in an authority created
4 under this act.

5 (e) "Port facilities" means those facilities ~~owned by the port~~
6 ~~authority such as:~~ **THAT INCLUDE, BUT ARE NOT LIMITED TO:** seawall
7 jetties; piers; wharves; docks; boat landings; marinas; warehouses;
8 storehouses; elevators; grain bins; cold storage plants; terminal
9 icing plants; bunkers; oil tanks; ferries; canals; locks; ~~bridges,~~
10 ~~tunnels,~~ seaways; conveyors; modern appliances for the economical
11 handling, storage, and transportation of freight and handling of
12 passenger traffic; transfer and terminal facilities required for
13 the efficient operation and development of ports and harbors; other
14 harbor improvements; ~~ex-~~improvements, enlargements, remodeling, or
15 extensions of any of these buildings or structures; **AND OTHER REAL**
16 **OR PERSONAL PROPERTY NECESSARY TO ENHANCE COMMERCIAL OR**
17 **RECREATIONAL MARITIME ACTIVITIES. PORT FACILITIES SHALL NOT INCLUDE**
18 **A BRIDGE OR A TUNNEL, DIRECTLY OR INDIRECTLY.**

19 (f) "Project" means the acquisition, purchase, construction,
20 reconstruction, rehabilitation, remodeling, improvement,
21 enlargement, repair, condemnation, maintenance, or operation of
22 port facilities, **PUBLIC INFRASTRUCTURE, AND OTHER REAL AND PERSONAL**
23 **PROPERTY NECESSARY TO ACHIEVE THE PURPOSE OF THIS ACT. PROJECT**
24 **SHALL NOT INCLUDE A BRIDGE OR A TUNNEL, DIRECTLY OR INDIRECTLY.**

25 ~~Sec. 8. (1) An authority may:~~

26 (a) Adopt, amend, and repeal bylaws for the regulation of its
27 affairs and the conduct of its business.

1 (b) Sue and be sued on the same basis as the state; and adopt
2 and register with the secretary of state an official seal and alter
3 that seal at its pleasure.

4 (c) Maintain offices at a place or places, either within or
5 without its jurisdiction as it may determine.

6 (d) Acquire, construct, reconstruct, rehabilitate, improve,
7 maintain, lease as lessor or as lessee, repair, or operate port
8 facilities AND OTHER PROPERTY IT MAY ACQUIRE OR HOLD within its
9 territorial jurisdiction, including, BUT NOT LIMITED TO, the
10 dredging of ship channels and turning basins and the filling and
11 grading of land therefor. An authority may operate a leased
12 facility, owned by the authority, if the lessee defaults and a new
13 lease is negotiated or competitively bid.

14 (e) Designate the location and character of the port
15 facilities which the authority may hold or own or over which it is
16 authorized to act and regulate all matters related to the location
17 and character of those port facilities.

18 (f) Acquire, hold, and dispose of real and personal property.

19 (g) Make directly, or through the hiring of expert
20 consultants, investigations and surveys of whatever nature,
21 including studies of business conditions, freight rates, port
22 services, physical surveys of the conditions of channels and
23 structures, and the necessity for additional port facilities for
24 the development and improvement of commerce and recreation and for
25 the more expeditious handling of that commerce and recreation, and
26 make studies, surveys, and estimates, as necessary for the
27 execution of its powers under this act.

1 (h) Promulgate all necessary rules to fulfill the purposes of
2 this act.

3 (i) Issue its bonds, notes, or other evidences of indebtedness
4 as provided in this act.

5 (j) Fix and revise from time to time and charge and collect
6 rates, fees, rentals, or other charges for the use of a facility
7 owned by the authority.

8 (K) ENTER INTO PUBLIC-PRIVATE PARTNERSHIPS WITH OTHER OWNERS
9 OR PROPERTY OR PORT FACILITIES WITHIN THE JURISDICTION OF THE
10 AUTHORITY.

11 (2) NOTHING IN THIS ACT SHALL LIMIT THE PROPERTY RIGHTS OF ANY
12 PERSON THAT OWNS PROPERTY OR PORT FACILITIES WITHIN THE
13 JURISDICTION OF THE AUTHORITY.

14 (3) THE POWERS GRANTED UNDER THIS ACT ARE IN ADDITION TO THOSE
15 POWERS GRANTED BY CHARTER OR OTHER STATUTE.

16 Sec. 9. An authority may:

17 (a) Appear in its own behalf before boards, commissions,
18 departments, or other agencies of the federal government or of any
19 state or international conferences and before committees of the
20 congress of the United States and the state legislature in all
21 matters relating to the design, establishment, construction,
22 extension, operation, improvement, repair, or maintenance of a
23 project operated, ~~and~~ maintained, FINANCED, OR SUPPORTED by the
24 authority under this act, and appear before any federal or state
25 agencies in matters relating to transportation rates, port services
26 and charges, demurrage, switching, wharfage, towage, pilotage,
27 differentials, discriminations, labor relations, trade practices,

1 river and harbor improvements, aids to navigation, permits for
2 structures in navigable waters, and all other matters affecting the
3 physical development of, and the business interest of, the
4 authority and those it serves.

5 (b) Make application for, receive and accept from any federal,
6 state, or municipal agency, foundation, public or private agency,
7 or individual, a grant or loan for, or in aid of, the planning,
8 construction, operation, or financing of a ~~port facility~~; **PROJECT**;
9 and receive and accept contributions from any source of money,
10 property, labor, or other things of value, to be held, used, and
11 applied for the purposes for which the grant or contribution may be
12 made.

13 (c) Appoint an executive director who shall be the chief
14 ~~administrative~~ **EXECUTIVE** officer of the authority, and to whom the
15 authority may delegate any of its administrative powers and
16 authorizations. During employment the executive director shall not
17 have a financial interest in port facilities or projects over which
18 the authority has jurisdiction or power or authorization to act.

19 (d) Employ personnel as is necessary and employ the services
20 of private consultants and engineers, legal counsel, accountants,
21 construction and financial experts, and other agents for rendering
22 professional and technical assistance and advice as may be
23 necessary, and whose compensation, including the executive
24 director, ~~shall be~~ **IS** determined by the authority.