

CHAPTER 2019-53

No. 521 AN ORDINANCE IN AMENDMENT OF CHAPTER 2016-8, NO. 99, DATED MARCH 23, 2016, ESTABLISHING A TAX STABILIZATION AGREEMENT FOR MCINNIS USA, INC.

Approved December 13, 2019

Be it ordained by the City of Providence:

WHEREAS, McInnis USA, Inc., or its designated affiliate, ("McInnis"), is the lessee of certain real estate located in the City of Providence at 39 New York Avenue, Providence, RI, Plat 56, Lot 351, an industrial building owned by ProvPort, Inc., a Rhode Island non-profit corporation, located within the Port of Providence that has been tax exempt while under the ownership of ProvPort, Inc. (the "Project"); and

WHEREAS; McInnis has rehabilitated the Project returning it to a productive marine related industrial property opening a new facility in the City of Providence and plans on expanding the Project with new construction in 2019; and

WHEREAS, McInnis's long term leasing of the Project shall return the property to the tax rolls of the City of Providence for the duration of the Lease; and

WHEREAS, the City of Providence envisions that the Project will generate jobs within the City of Providence as well as protect, preserve and showcase the increasing level of industrial and marine related business taking place within the Port of Providence; and

WHEREAS, the Project is anticipated to enhance the tax base of the City of Providence by fostering the increase in tax revenue through real estate and tangible tax payments which shall inure to the City by virtue of McInnis's relocation to the City of Providence; and

WHEREAS, Rhode Island General Laws § 44-3-9 ("Act") authorizes, subject to certain enumerated conditions, the city council of a city for a period not to exceed twenty (20) years, to exempt and determine an amount of taxes to be paid on account of real and tangible property used for commercial and residential purposes, notwithstanding the valuation of the real estate, tangible property or the rate of tax; and

WHEREAS, this Tax Stabilization Agreement (the "Ordinance") has been determined by the City Council of the City of Providence to be fair, equitable and acceptable to the City; and

WHEREAS, it is in the best interest of the residents of the City of Providence to grant this Tax Stabilization Agreement in order to induce the relocation of McInnis to the City of Providence;

Be It Ordained by the City of Providence:

Section 1. That the findings set forth in the preceding recitals are hereby made and confirmed.

Section 2. Definitions. The following terms shall have the meanings set forth herein:

(a) "Assessment" shall mean the value placed upon the improvements made by the Owner by the City of Providence Tax Assessor.

(b) "Commencement Date" shall be the effective date of this Ordinance.

- (c) "Tangible Property" means any and all tangible personal property including, but not limited to all fixtures, furniture, equipment, furnishings, vehicles, computer hardware and software, informational systems and other physical property utilized in the business of the Project Site Owner.
- (d) "Project Site" means all of the real estate and buildings and improvements thereto located at City of Providence Assessor's Plat 56, Lot 351.
- (e) "Project Site Owner" means an entity with the right and interest in and to the Project Site (or portions thereof), including, without limitation, lessees and successors to units and/or sub-units of the Project Site.
- (f) "Project Taxable Property" means collectively, the Project Site and all Real Property Improvements and Tangible Property thereon.
- (g) "Real Property Improvements" means any structures or improvements including but not limited to buildings, parking lots/structures and related improvements to be constructed and developed on the Project Site.
- (h) "Stabilized Tax Payments" shall mean the payment of taxes pursuant to the schedules of payments detailed in Section 5 below.
- (i) "Termination Date" means the 15th anniversary of the December 31 in which the Project Site is first assessed pursuant to the schedule set forth in Section 5 below.

Section 3. Grant of Tax Stabilization Agreement. The City of Providence, in accordance with the General Laws of the State of Rhode Island and the Code of Ordinances for the City of Providence, is hereby authorized to grant and does grant the schedule of Incentivized Tax Payments pursuant to Section 5.

Section 4. Term. The term of this Ordinance shall be a period commencing upon the Commencement Date and terminating on the Termination Date.

Section 5. Tax Exemption and Stabilization Plan.

- (a) Real Property Tax Payments – Real Property Tax Payments due for the first three (3) years of the Term shall be due and payable in the agreed upon amount of \$50,000.00. In the fourth tax year after the Commencement Date, full taxes shall begin phasing in. Beginning in the fourth tax year after the Commencement Date, the assessor shall issue a bill for a percentage of the then current full value assessment as follows:

Year	Assessed Value	Real Estate Tax Payment
Year 4	\$5,000,000.00	8.33% of Full Taxes Due
Year 5	\$5,000,000.00	16.66% of Full Taxes Due
Year 6	\$5,000,000.00	24.99% of Full Taxes Due
Year 7	Then Current Assessed Value	33.32% of Full Taxes Due
Year 8	Then Current Assessed Value	41.65% of Full Taxes Due
Year 9	Then Current Assessed Value	49.98% of Full Taxes Due
Year 10	Then Current Assessed Value	58.31% of Full Taxes Due
Year 11	Then Current Assessed Value	66.64% of Full Taxes Due
Year 12	Then Current Assessed Value	74.97% of Full Taxes Due
Year 13	Then Current Assessed Value	83.30% of Full Taxes Due
Year 14	Then Current Assessed Value	91.63% of Full Taxes Due
Year 15	Then Current Assessed Value	95% of Full Taxes Due

Tax Payments for years four through six of the Term shall be calculated based upon an agreed upon assessed value of \$5,000,000.00 and a real property tax rate of \$36.75 per \$1000.00. Tax Payments in years seven through the remainder of the Term of this Ordinance shall be calculated based on the then current valuation of the property and then current applicable real property tax rates. Following the conclusion of fifteen full years, Project Site Owner will be paying the full current assessment.

(b) Tangible Property Tax Payments – No Tangible Property Tax Payments will be due for the first three (3) years of the Term. In the fourth year after the Commencement Date through the end of the fifteenth year after the Commencement Date the Assessor shall issue a bill according to the schedule contained below:

Year	Tangible Property Value	Percentage of Full Taxes Due	Tangible Property Tax Payment Due
Year 4	\$8,000,000.00	8.33% of Full Taxes Due	\$37,185.12
Year 5	\$7,200,000.00	16.66% of Full Taxes Due	\$66,933.22
Year 6	\$6,480,000.00	24.99% of Full Taxes Due	\$90,359.84
Year 7	\$5,832,000.00	33.32% of Full Taxes Due	\$108,431.80
Year 8	\$5,248,800.00	41.65% of Full Taxes Due	\$121,985.78
Year 9	\$4,723,920.00	49.98% of Full Taxes Due	\$131,744.64
Year 10	\$4,251,528.00	58.31% of Full Taxes Due	\$138,331.88
Year 11	\$4,251,528.00	66.64% of Full Taxes Due	\$158,093.57
Year 12	\$4,251,528.00	74.97% of Full Taxes Due	\$177,855.27
Year 13	\$4,251,528.00	83.30% of Full Taxes Due	\$197,616.97
Year 14	\$4,251,528.00	91.63% of Full Taxes Due	\$217,378.66
Year 15	\$4,251,528.00	95% of Full Taxes Due	\$225,373.49

The valuation and depreciation of Tangible Property contained in the above schedule is hereby agreed to and all Tangible Property Tax Payments during the Term of this Ordinance shall be due in the amounts contained above. Following the conclusion of fifteen full years, Project Site Owner will be paying the full current assessment. In the event that during the Term of this Ordinance Project Site Owner installs Tangible Property at the Project Site that exceeds a value of Nine Million Five Hundred Thousand Dollars (\$9,500,000) (the "\$9.5M Cap"), Project Site Owner shall pay tangible property taxes on such amount of tangible property value that exceeds the \$9.5M Cap in the ordinary course.

Section 6. Payment of Taxes and Revenue Reporting.

(a) Stabilized Tax Payments due to the City, pursuant to the schedule listed in Section 5, may be made in either a lump sum during the first quarter of the applicable tax year or in equal quarterly installments. If the quarterly payments are to be made, they shall be due on the same dates that quarterly taxes are due for all other taxpayers in the City.

(b) The liability for the Stabilized Tax Payments due and owing under this Ordinance shall constitute an obligation of the Project Site Owner, and the City shall be granted by Project Site Owner, a first lien on the Project Taxable Properties, which lien shall be of the same priority and entitle the City to the same foreclosure remedies as the lien and foreclosure remedies provided under the applicable laws and ordinances with respect to real property and personal property taxes. The City agrees to provide Notice to Project Site Owner prior to exercising any foreclosure or other remedies available and Project Site Owner shall have ninety (90) days to cure any alleged default under this Ordinance from the date upon which Notice of any alleged default is received from the City. Said Notice shall include, with specificity, the nature of any alleged default, and the actions which the City believes to be reasonably necessary to cure any alleged default under this Ordinance.

(c) It is understood that the Stabilized Tax Payments made hereunder are deemed by the City to be tax payments, and Project Site Owner shall be entitled to all of the rights and privileges of a taxpayer in the City, including, without limitation, the right to challenge and appeal any assessment and/or reassessment. It is further understood and agreed that the City's sole and exclusive recourse to Project Site Owner is limited to the City's first lien on the Project Taxable Properties, however, nothing herein shall be construed to limit the right of the City to foreclose or take any other judicial proceeding available at law for the collection of taxes.

(d) Stabilized Tax Payments not made by Project Site Owner as they become due shall be subject to any and all penalties allowed under Rhode Island General Laws. Failure to receive a tax bill reflecting the payments pursuant to Section 5 shall not relieve Project Site Owner of its obligation to make Stabilized Tax Payments herein. If for any reason Project Site Owner does not receive an appropriate tax bill, Project Site Owner shall have the responsibility and obligation to make reasonable inquiries to the City in order to have such a proper tax bill issued and thereafter to make payment of the same no later than the due dates provided herein. Stabilized Tax Payments shall be made by Project Site Owner directly to the City of Providence Tax Collector's Office.

Section 7. Effect of Failure to Make Payments. The real property and tangible property taxes payable to the City for the Project Site during the term of this Ordinance shall be based upon the schedules set forth in Section 5. This Ordinance is further conditioned upon Project Site Owner, whether now or in the future, remaining current on tax payments pursuant to Section 5. Failure to make said timely Stabilized Tax Payments may, at the discretion of the City of Providence following the Notice and the 90-day cure period set forth in Section 6(b), render this Ordinance null and void.

Section 8. Transfers. As long as Project Site Owner or any successor or assignee owns or operates the Project Site, it will continue to pay Stabilized Tax Payments for the Project Site pursuant to this Ordinance.

(a) Project Site Owner or any successor or assignee, acknowledges and agrees that the Project Site will be subject to taxation pursuant to the terms of this Ordinance and thereafter subject to taxation pursuant to Rhode Island General Laws and the ordinances of the City of Providence. Project Site Owner, or any successor or assignee, agrees that the exemption and conditions under this Ordinance shall run with the land.

(b) If the lease of the Project Site is terminated during the Term of this Ordinance this Agreement may terminate at the discretion of the City of Providence following the Notice and the 90-day cure period set forth in Section 6(b).

(c) Stabilized payments shall be an obligation of the Project Site Owner during the tax stabilization term as defined in Section 4 above and in accordance with the tax stabilization plan outlined in Sections 5 & 6 above, without regard for any transfer of the property. The Project Site Owner agrees to provide prior written notice to the City of Providence of any transfer of the Property so that the City of Providence may make a determination, in its sole discretion, as to whether or not stabilization under this Agreement will continue. Moreover, the Project Site Owner agrees not to transfer the property to a tax exempt entity for a term no less than the period of stabilization pursuant to this agreement.

Section 9. Employment and Contracts.

(a) Construction.

- i. MBE/WBE. Project Site Owner shall make a good faith effort to award to Minority Business Enterprises as defined in Rhode Island General Laws, Section 31-14.1 ("MBE Act") no less than 10% of the dollar value of the construction costs for the Project (as determined in accordance with the rules and regulations promulgated pursuant to MBE Act). Project Site Owner shall make a good faith effort to award to Women Business Enterprises (WBE's) no less than 10% of the dollar value of the construction costs for the Project (as determined in accordance with Section 21-52 of the Code of Ordinances of the City of Providence). Project Site Owner will request the City MBE/WBE office and its Supplier Diversity Director to establish a list of qualified MBE/WBE companies in order to satisfy its MBE/WBE construction goals. In this manner, the City will assist Project Site Owner in meeting said goals. The process of participating with the MBE/WBE office and its Supplier Diversity Director shall begin upon passage in order to develop a designated MBE/WBE subcontractor list which will encourage MBE/WBE participation and joint ventures with other members with the construction industry. Work performed in 2019 or later shall be subject to these provisions contained herein but the requirement shall be for 15% of the dollar value of the construction costs associated with work performed in the second phase of the Project.
- ii. Apprenticeship. Project Site Owner shall ensure that one hundred percent (100%) of the hours worked on the Project shall be performed by trade construction subcontractors who have or are affiliated with an apprenticeship program as defined in 29 C.F.R. § 29 et seq., unless otherwise provided below.

Project Site Owner shall make a requirement in the contracts between its Construction Manager and General Contractor and their subcontractors who have apprenticeship programs as defined in 29 C.F.R. § 29 that not less than ten percent (10%) of the total hours worked by the subcontractors' employees on the project are completed by apprentices registered in the aforementioned apprenticeship programs. Work performed in 2019 or later shall be subject to these provisions contained herein but the requirement shall be for 15% of the hours worked by the subcontractors' employees on the Project in the second phase of the Project.

Project Site Owner shall as part of its contracts between its Construction Manager and General Contractor and their subcontractors require that the subcontractors submit to the Department of Planning and Development quarterly verification reports to ensure compliance with this section.

Project Site Owner, its Construction Manager or General Contractor or other authorized person/entity may petition the City of Providence Department of Planning and Development to adjust the apprenticeship work hour requirements to a lower percentage upon a showing that:

- a. compliance is not feasible because a trade or field does not have an apprenticeship program or cannot produce members from its program capable of performing the scope of work within the contract; or
 - b. compliance is not feasible because it would involve a risk or danger to human health and safety or the public at large; or
 - c. compliance is not feasible because it would create a significant economic hardship; or
 - d. compliance is not feasible for any other reason which is justifiable and demonstrates good cause.
- iii. Internal Revenue Service reporting. Except as provided under Rhode Island General Laws § 28-42-8, any person performing services at the Project Site shall annually receive either a W-2 statement or an IRS Form 1099.
- iv. First Source List. Pursuant to the City of Providence First Source Ordinance, the Project Site Owner shall enter into a First Source Agreement covering the hiring of employees necessary to complete the proposed Project and throughout the term of this Agreement. Project Site Owner shall work in conjunction with the Director of First Source Providence to develop the First Source Agreement.
- iv. "Buy Providence" Initiative. Project Site Owner will use good faith efforts to ensure that construction materials are purchased from economically competitive and qualified vendors located in the City of Providence. In furtherance of this effort, Project Site Owner will work with the City to develop a list of Providence vendors and subcontractors in order to create a preferred vendor list of qualified and economically competitive vendors for the construction of the Project. In order to further that effort, Project Site Owner will hold seminars upon passage of this Ordinance, with the Providence MBE/WBE office, the Supplier Diversity Director, the Director of First Source Providence and the Providence Chamber of Commerce to inform the local economy of the Project Site Owner's development plans in order to maximize the opportunities for Providence businesses to work with Project Site Owner in providing on-going services, equipment and materials. To be clear, nothing in the foregoing shall be construed so as to obligate Project Site Owner to purchase construction materials from any vendor that has not provided the lowest qualified bid in connection with the provision of such materials, as reasonably determined by Project Site Owner.

(b) Permanent Employment. In conjunction with its efforts pursuant to this Section and its ongoing efforts to provide equal employment opportunity without regard to race, color, religion, natural origin, sex, age or handicap, Project Site Owner shall liaise with the City and with the Director of First Source Providence to assist in the recruitment of qualified minority, women, and handicap applicants as well as those on the First Source List for all of its employment positions.

(c) Reporting. During the construction phase of the Project, Project Site Owner shall annually report to the City Council on its progress in complying with the provisions of this Ordinance, including but not limited to, Section 9. To be clear, the terms of this Section 9 shall apply to Project Site Owner and its Real Property Improvements at the Project Site, but shall not be deemed to apply to the tenants of the Project Site and/or the businesses conducted thereon.

Section 10. Agreement to Establish Fund to be Held in Trust by the Treasurer of the City of Providence. Upon passage of this Ordinance, the Developer and/or Project Site Owner shall contribute to a Trust Fund established by the City of Providence, of which the Treasurer shall be a trustee. The Fund shall be identified as the "City Council Parks and Recreation Fund." The City Council shall establish regulations pertaining to the disbursement of funds.

- (a) Payments to the Fund. The Developer and/ or Project Site Owner shall make annual payments to the Fund in the amount of five (5) percent of the total estimated abated taxes for the term of the tax stabilization, for as long as this Ordinance is in full force and effect, including any extensions should they be granted. Said annual payments will be payable on the anniversary of the Commencement Date in each subsequent tax year. If, for any reason, this Ordinance is retroactively revoked, the payments to the fund shall remain and will not be forfeited due to a default. In addition, should the Project Site Owner default under this agreement in any way, including but not limited to, the property being transferred in violation of Section 8 above, said payments under this Section shall be due and owing in full at the time of said default and/or violation.
- (b) Investment and Distribution of the Fund. The trust fund will be invested by the Board of Investment, and an annual distribution of the investment shall be used to provide funds to the Department of Parks and to the Department of Recreation for capital improvements in neighborhood parks and recreation centers. Said annual distribution shall not supplant any funds that are provided to the Department of Parks and the Department of Recreation through the operating budget process. The amount of the distribution shall not exceed 4 (four) percent. Distributions may never exceed the earnings in the year of distribution or reduce the corpus of the fund. The first payment from the fund shall begin in the fifth year after the establishment of the tax stabilization agreement.

Section 11. Resolution of Calculation Disputes. Project Site Owner and the City of Providence agree that McInnis retains the right to appeal the valuation or calculation of the taxes assessed from time to time.

Section 12. Severability. If any one section of this Ordinance is found to be unenforceable, then the other provisions herein shall continue to have the same force and effect as if the unenforceable provision were not passed as part of this Ordinance.

Section 13. Applicable Law. This agreement shall be construed under the laws of the State of Rhode Island.

Section 14. Effective Date. This Ordinance shall become effective immediately upon its passage by the City Council and approval by the Mayor.

IN CITY COUNCIL
NOV 21 2019
FIRST READING
READ AND PASSED
Jin L. Martineau CLERK
ACTING

IN CITY
COUNCIL
DEC 05 2019
FINAL READING
READ AND PASSED
Sabrina Mates PRESIDENT
Shawn Selman CLERK

I HEREBY APPROVE.

[Signature]
Mayor
Date: 12/13/19





