

RESOLUTION OF THE CITY COUNCIL

No. 255

Approved June 12, 2006

IT IS HEREBY RESOLVED, That His Honor, the Mayor, is authorized to grant an exclusive easement in one or more documents, in a form satisfactory to the City Solicitor, in accordance with the Petition presented by ProvPort, Inc. (the "Petitioner"), to the meeting of the Providence City Council Committee on Public Works on, to wit: May 17, 2006, incorporating by reference Exhibits A and B, the Letter Agreement, and the easement attached thereto:

1. Lot 288 Easement Area: In consideration of the payment of One (\$1.00) Dollar), an exclusive easement to be used by ProvPort, Inc., in its operations of the Port of Providence and comprising approximately ninety three thousand six hundred and eight (93,608') square feet, more or less, to be further described in a form satisfactory to the City Solicitor.

2. The easement granted pursuant to this resolution shall be deemed to run with the land and shall be binding on and for the benefit of any successors in title and the easement shall be recorded by the Petitioner at its sole cost, in the Office of Land Records for the City of Providence.

3. Petitioner shall ensure the continuing integrity of any existing structures of any existing utility company in the Lot 288 Easement Area.

4. Petitioner shall execute an indemnification and hold-harmless agreement with the City of Providence in such a form satisfactory to the City Solicitor.

5. Petitioner recognizes the applicability of Sections 23-107, 23-108 and 23-190 of the Providence Code of Ordinances which read as follows:

23-107. Public work of city to take precedence over installation. No right of any person to maintain, use or operate any poles, wires, cables, conduits, ducts, pipes, manholes, handholes or other appliances or appurtenances in any street or other traveled way in the city, shall be in preference or hindrance of public work in the city, and should any of the same in any way interfere with the construction, alteration or repair of public work in any such street or way, whether done by the city directly or by

IN CITY COUNCIL
MAR 16 2006
FIRST READING
REFERRED TO COMMITTEE ON
PUBLIC WORKS
Ann M. Steen CLERK

THE COMMITTEE ON
PUBLIC WORKS
Approves Passage of
The Within Resolution
Ann M. Steen
5-17-06 Clerk

From the Clerk's Desk

any contractor for the city, such person shall at his own expense protect, alter or move any of the same so interfering to some other location in such street or way, or discontinue the use and operation thereof for the time being, as directed by the director of public works, without the city being liable for any damages suffered by such person thereby. The city shall notify such person a reasonable time in advance of any public work, which will interfere with any of the same or the use or operation thereof. In case such person shall fail to comply with any such direction of said director, the city may protect, alter or move the same, and recover the cost thereof from such person.

Sec. 23-108. Precedence of wires, apparatus of city signal service.

The wires, poles, posts, structures and supports of the telephone, fire alarm and police signal service maintained by the city shall at all times take precedence and right-of-way as to all other wires, poles, posts, structures and supports maintained or erected in the city; and no lineman or other person, either in erecting wires, poles, posts, structures or supports in any way whatsoever shall interfere with, or disturb, disarrange or change any wires maintained by the city, or any appurtenance thereof; and in every instance of removal of any of said wires, poles, posts, structures or supports for the accommodation of any other corporation or party, or to place the same beyond danger from the electric current of any other corporation or party, the expense incident to said removal shall be paid immediately by such other corporation or party.

Sec. 23-109. Indemnity of city against claims arising out of electrical installations. Every person erecting, maintaining or using electric wires or poles, fixtures or structures, for the support or conducting of the same shall indemnify and save harmless the city, its officers, agents and servants, from and against all lawful claims and demands for injuries to persons or property occasioned by the existence of such poles, wires, fixtures or structures, or the transmission of electric current by means thereof, or by the digging up, opening or keeping open of any street, highway, traveled way, public place or part thereof, which shall be or has been opened for the purpose of installing, constructing or repairing any underground conduit, duct, structure, appliance or appurtenance by or for such person, or by any failure of such person to restore and keep in sound and safe condition for the required time any ground opened or dug up in the prosecution of any of its work in any street, way or place. The city, city council, or the officers, agents or servants of the city, exercising the rights, powers or permission, and subject to the restrictions, respectively given and reserved herein, shall not be held liable by such person or corporation on account thereof, or by reason of any injury or damage caused thereby.

Petitioner, and its successors, agrees to comply with the same.

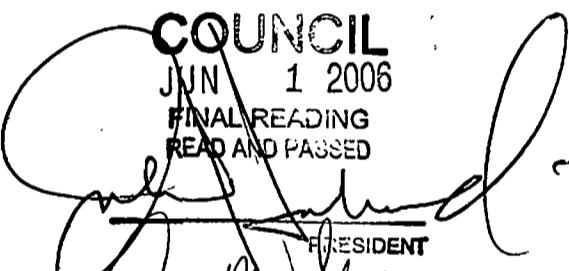
6. The easement shall be executed, delivered and accepted upon the express terms, covenants and conditions contained herein, which terms, covenants and conditions shall be binding upon and inure to the benefit of the City of Providence and Petitioner and their respective successors, heirs, legal representatives, and assigns, as the case may

be. The easement shall be governed by and construed in accordance with the laws of the State of Rhode Island. The easement may not be amended or modified except pursuant to a written instrument signed by all parties thereto.

7. Such other terms and conditions as may be reflected in the record and minutes of the meeting of the City Council Committee on Public Property and/or as may be reasonably deemed appropriate by the Mayor or the City Solicitor.

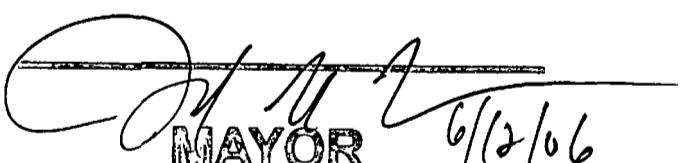
8. The easement shall be subject to a purchase option in favor of the City of Providence whereby the City of Providence may, for One (\$1.00) Dollar, acquire the easement granted herein upon the earlier of the payment of all outstanding finance indebtedness as contemplated between the parties under the 2006 Certificates of Participation or September 2036, as contemplated under the parties' agreements.

9. This resolution shall take effect upon its passage.

**IN CITY
COUNCIL**
JUN 1 2006
FINAL READING
READ AND PASSED

PRESIDENT

CLERK

APPROVED


MAYOR 6/12/06

WATERMAN ENGINEERING COMPANY

Proposed Easement Description
Settlement Area
Conveyed By The
City of Providence to ProvPort, Inc.

That certain tract or parcel of land situated southerly of Harborside Boulevard at the Port of Providence in the City of Providence, County of Providence and State of Rhode Island and Providence Plantations shown on a plan entitled "Settlement Plan Exclusive Easement Conveyed By The City Of Providence To ProvPort, Inc. Project No. P98.121 Scale: 1"=100' Date: Jan. 18, 2006 Waterman Engineering Company East Providence, Rhode Island" Said parcel is more particularly bounded and described as follows;

Beginning at a point in the Harbor Line of the Providence River, said point being the southeasterly corner of land now or formerly of ProvPort, Inc., the northeasterly corner of land now or formerly of the City of Providence and the northeasterly corner of the parcel herein described;

thence proceeding southeasterly, by and with the said Harbor Line of the Providence River, a distance of two hundred thirty three and 38/100 (233.38') feet, more or less to the southeasterly corner of the parcel herein described;

thence proceeding southwesterly, crossing the said City of Providence land, a distance of four hundred thirteen and 26/100 (413.26') feet, more or less to a corner;

thence proceeding northwesterly, crossing the said City of Providence land, a distance of eighty one and 19/100 (81.19') feet, more or less to a corner;

thence proceeding southwesterly, crossing the said City of Providence land, a distance of seven hundred ninety seven and 70/100 (797.70') feet, more or less to the most westerly corner of the parcel herein described, the northwesterly corner of the said City of Providence land and the southwesterly corner of the said ProvPort, Inc. land;

thence proceeding northeasterly, by and with the property line between the said City of Providence land and the said ProvPort, Inc. land, a distance of nine hundred sixty nine and 84/100 (969.84') feet, more or less to the said Harbor Line of the Providence River and the point and place of beginning;

Pertaining to a portion of:

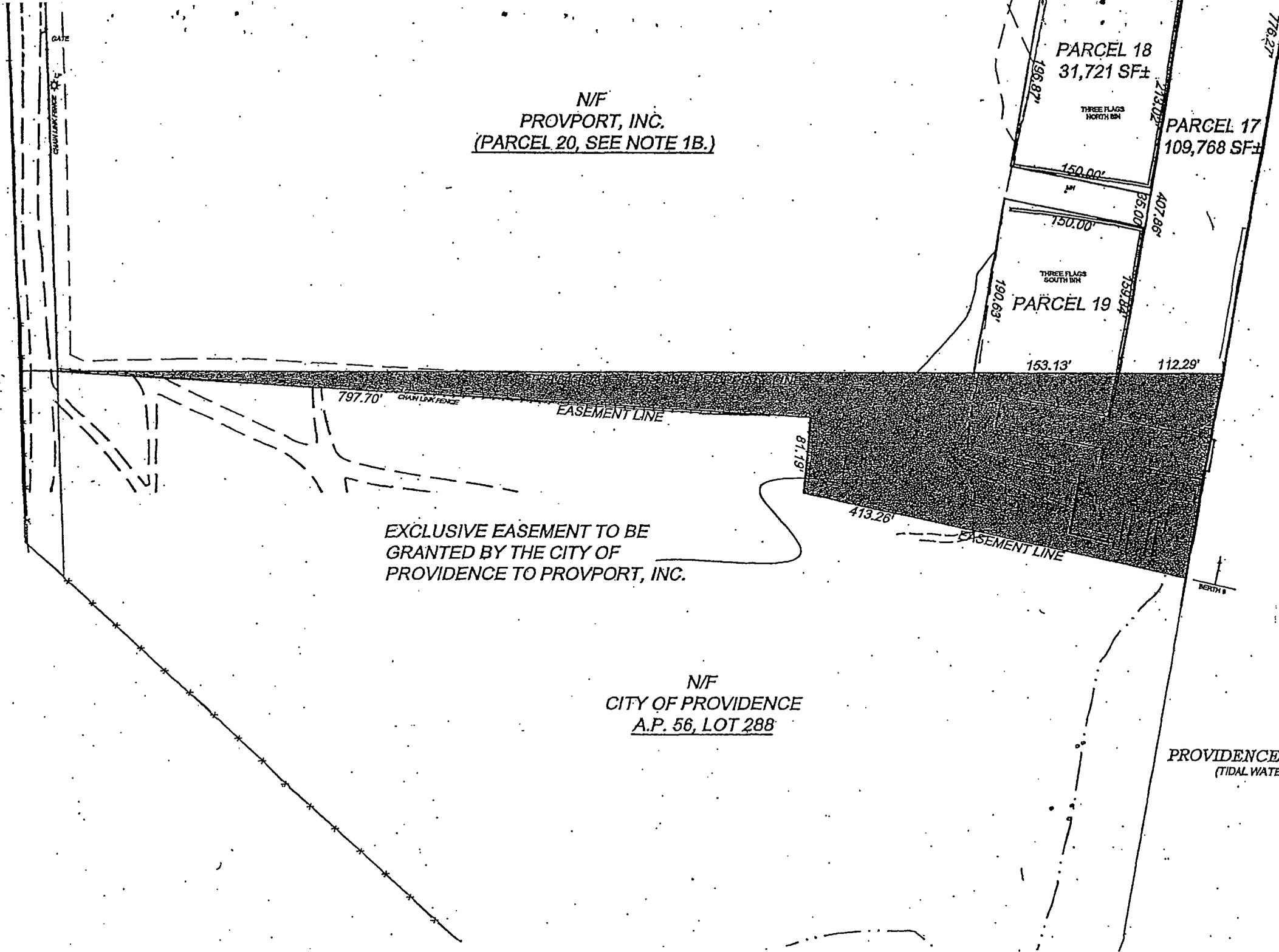
AP 56, LOT 288

Waterman Engineering Company

January 18, 2006

AP 56, Lot 288

Pertaining to a portion of:



N/F
PROVPORT, INC.
(PARCEL 20, SEE NOTE 1B.)

EXCLUSIVE EASEMENT TO BE
GRANTED BY THE CITY OF
PROVIDENCE TO PROVPORT, INC.

N/F
CITY OF PROVIDENCE
A.P. 56, LOT 288

EXHIBIT A CONTINUED
(ATTACHED TO LETTER AGREEMENT)

**CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

PETITION TO THE CITY COUNCIL

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE

The undersigned respectfully petitions your honorable body

In pursuit of the resolution of its claim against that certain parcel of land owned by the City of Providence being designated Providence Assessor's Plat 56, Lot 288, ProvPort, Inc., respectfully requests the establishment of an easement on a portion of said parcel for continued use in the operations of the Port of Providence ("Lot 288 Easement Area").

Any questions regarding these requests may be directed to:

Raymond L. Meador
President
ProvPort, Inc.
35 Terminal Road
Providence, RI 02905

Attached Drawings and Documents are incorporated by reference:

Exhibit A – Port of Providence
Exhibit B - Lot 288 Easement Area
Letter Agreement
Proposed Easement Agreement

Upon review and inspection, Lot 288 is owned by the City of Providence and is vacant, except for the proposed Lot 288 Easement Area that is currently behind a fence ordered installed by the United States Coast Guard and operationally part of the Port of Providence for decades being paved and housing wharfs, docks and crane(s). No portion of the Lot 288 Easement Area is publicly accessible being fenced around its perimeter on three (3) sides with the fourth side abutting Narragansett Bay. Petitioner shall ensure the continuing integrity of any existing structures of any existing utility company in the Lot 288 Easement Area, including Cox Communication, Narragansett Electric (National Grid), Verizon, Narragansett Bay Commission and/or Providence Water, which facilities the Petitioner shall ensure the continuing integrity of any existing utility structure(s)..

Name Raymond L. Meador, President

Address Provport, Inc. 35 Terminal Road, Providence, RI 02905

Phone No. _____

ProvPort, Inc. by:

Its attorney

Signature: _____



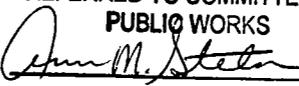
IN CITY COUNCIL
MAR 16 2006
FIRST READING
REFERRED TO COMMITTEE ON
PUBLIC WORKS
 CLERK

EXHIBIT A

Legal Description

Description of a certain portion of A.P. 56 Lot 288
Providence, Rhode Island

That certain tract or parcel of land situated southerly of Harborside Boulevard at the Port of Providence in the City of Providence, County of Providence and State of Rhode Island and Providence Plantations shown on a plan entitled "Settlement Plan Exclusive Easement Conveyed By The City Of Providence To ProvPort, Inc. Project No. P98.121 Scale: 1"=100' Date: Jan. 18, 2006 Waterman Engineering Company East Providence, Rhode Island" Said parcel is more particularly bounded and described as follows;

Beginning at a point in the Harbor Line of the Providence River, said point being the southeasterly corner of land now or formerly of ProvPort, Inc., the northeasterly corner of land now or formerly of the City of Providence and the northeasterly corner of the parcel herein described;

thence proceeding southeasterly, by and with the said Harbor Line of the Providence River, a distance of two hundred thirty three and 38/100 (233.38') feet, more or less to the southeasterly corner of the parcel herein described;

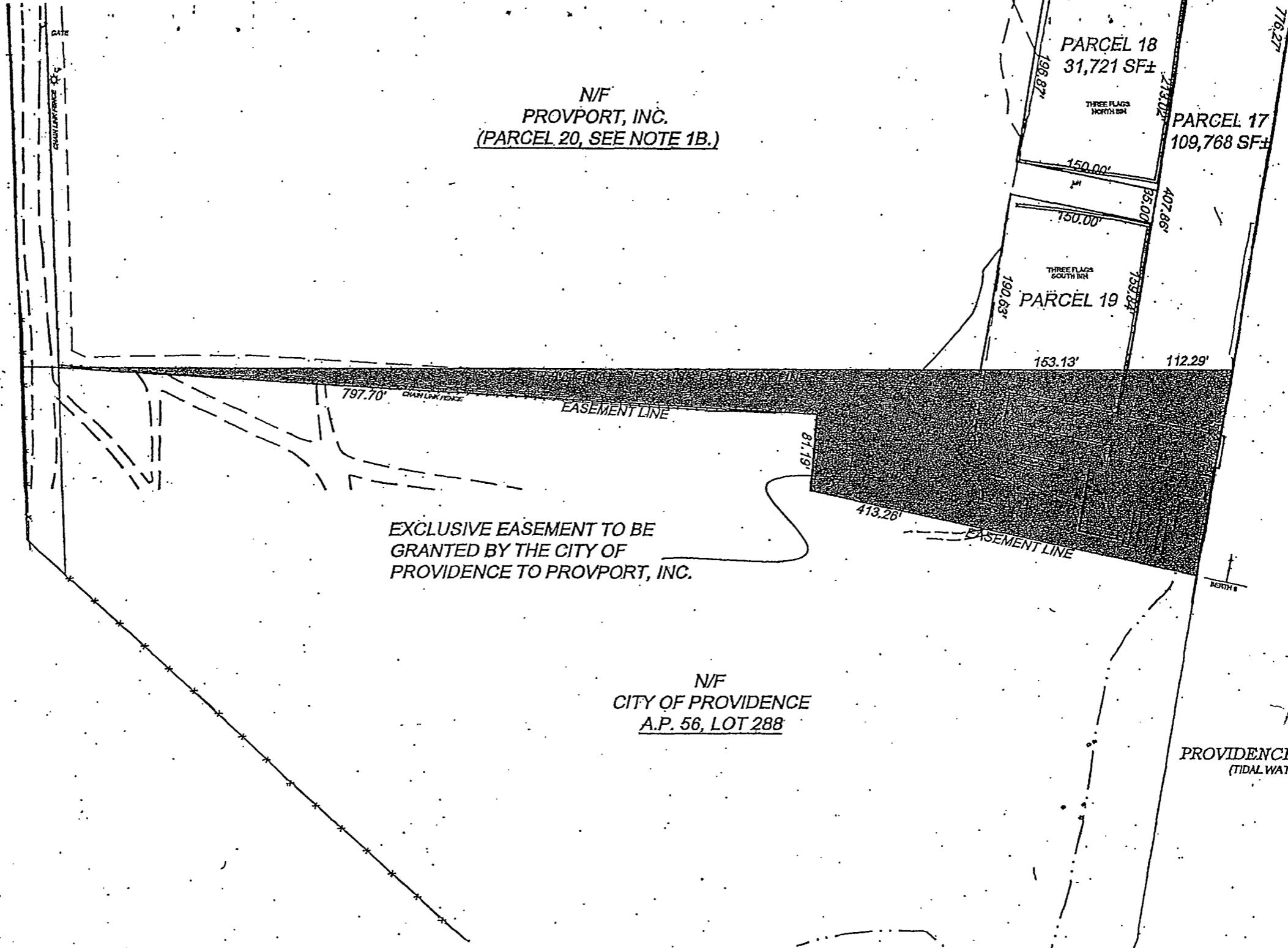
thence proceeding southwesterly, crossing the said City of Providence land, a distance of four hundred thirteen and 26/100 (413.26') feet, more or less to a corner;

thence proceeding northwesterly, crossing the said City of Providence land, a distance of eighty one and 19/100 (81.19') feet, more or less to a corner;

thence proceeding southwesterly, crossing the said City of Providence land, a distance of seven hundred ninety seven and 70/100 (797.70') feet, more or less to the most westerly corner of the parcel herein described, the northwesterly corner of the said City of Providence land and the southwesterly corner of the said ProvPort, Inc. land;

thence proceeding northeasterly, by and with the property line between the said City of Providence land and the said ProvPort, Inc. land, a distance of nine hundred sixty nine and 84/100 (969.84') feet, more or less to the said Harbor Line of the Providence River and the point and place of beginning;

Pertaining to a portion of:
AP 56, Lot 288



N/F
PROVPORT, INC.
(PARCEL 20, SEE NOTE 1B.)

EXCLUSIVE EASEMENT TO BE
GRANTED BY THE CITY OF
PROVIDENCE TO PROVPORT, INC.

N/F
CITY OF PROVIDENCE
A.P. 56, LOT 288

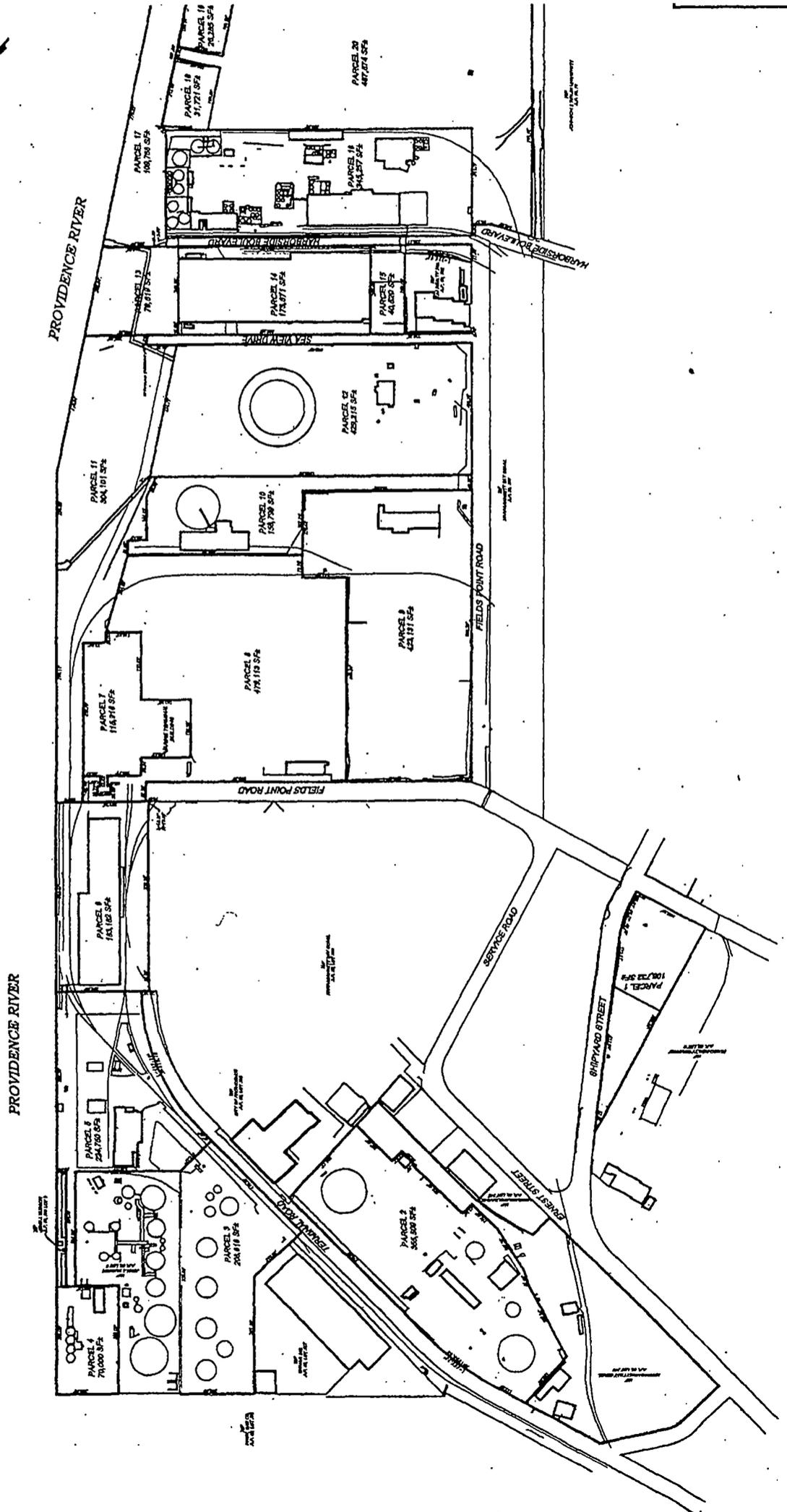
PROVIDENCE RIVER
(TIDAL WATERS)

EXHIBIT A CONTINUED
(ATTACHED TO EASEMENT AGREEMENT)

ProvPortEasementAgreement05.18.06

EXHIBIT B

Port of Providence





Department of Law

February 6, 2006

Raymond L. Meador
President
ProvPort, Inc.
35 Terminal Road
Providence, RI 02905

RE: ProvPort, Inc. vs. City of Providence, CA 04 - 5224

Dear Mr. Meador,

Pursuant to the parties' discussion, ProvPort and the City of Providence agree to enter an order in the above-entitled matter which provides:

1. ProvPort shall forever forego its assertion of ownership of and/or operational rights to AP 56, Lot 288 (see attached Exhibit A setting forth said Lot 288 and the Port of Providence, so-called) in the City of Providence upon the granting to it by the City of Providence an exclusive easement to use that portion of Lot 288 required for the operations of the Port of Providence, such portion being delineated on Exhibit A attached hereto ("Easement"), which Easement may be purchased by the City of Providence for \$1.00 upon the earlier of the payment of all outstanding bond indebtedness as contemplated between the parties (2006 Certificates of Participation) or September 2036, as contemplated under the parties' agreements, said easement being petitioned before the Providence City Council; and, the above entitled case shall be dismissed with prejudice, with each party bearing its own its costs.
2. For so long as ProvPort is the owner/operator of the Port of Providence, so-called, the City of Providence shall use the portion of Lot 288 not subject to the Easement ("Remainder of Lot 288") in a manner consistent with fairground purposes such as festivals and/or other public events of all descriptions, provided that the City of Providence shall provide oversight over such event in conjunction with an event organizer who/which has been granted a permit through the normal permitting process of the City of Providence, which permit shall

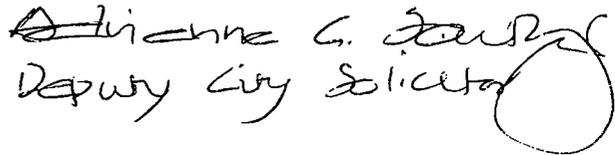
require the event organizer to provide security for the event, to notify ProvPort, in writing, of the particulars of said event and to acknowledge, in writing, the operations of the ProvPort and its tenants. Further, said organizer shall apply for a "Facilities Security Plan" permit from the United States Coast Guard, if required.

3. ProvPort will continue to maintain its existing perimeter fencing along the southern boundary of the easement. Any enhancements to the Remainder of Lot 288 shall be the responsibility of the City of Providence.
4. For so long as ProvPort is the owner/operator of the Port of Providence, so-called, the City of Providence will maintain its existing fencing along the westerly boundary of the Remainder of Lot 288 and shall install and maintain a gate for ingress/egress to the Remainder of Lot 288 from Save the Bay Way, so-called. Said gate is to remain locked except when personnel of the City of Providence and/or its agents and/or permittees are on the site supervising activities on the site.
5. The City of Providence shall install and maintain "No Parking" signs on both sides of the Save the Bay Way.
6. For so long as ProvPort is the owner/operator of the Port of Providence, so-called, the City of Providence shall not permit boats to be launched and/or to be docked from and along the coastline of the Remainder of Lot 288.
7. For so long as ProvPort is the owner/operator of the Port of Providence, so-called, no permanent structure may be erected on the Remainder of Lot 288 without the prior written consent of ProvPort, which consent shall not be unreasonably withheld, except that the City of Providence may erect a permanent utility, maintenance and/or male/female bathroom facility, each with two (2) stalls.
8. In the event that the City of Providence shall receive a bona fide offer to lease the Remainder of Lot 288 for a term greater than one (1) year and/or to purchase same, ProvPort shall have the right of first refusal to match said offer, including similar terms and conditions for the benefit of the City of Providence, accepted by the City of Providence subject to said right. In order for any election on said right of first refusal by ProvPort to be effective, ProvPort must within sixty (60) days of receipt of written notice from the City of Providence setting forth the offer in all particulars provide written notice of its intent to match said offer. Said notice to be sent to the Director of Public Property, with copies to be sent to the Director of Finance and the City Solicitor, City of Providence.

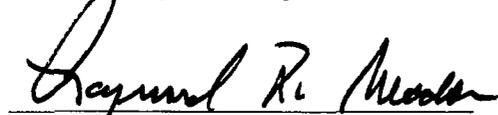
9. In the event that the 2006 Certificates of Participation, as envisioned by the parties, does not close, then, this agreement, in its entirety, shall be null and void. Further, the parties agree, that in the event that this agreement is rendered null and void, its existence or non-existence shall not be used in the above-entitled litigation for any and all purpose(s).
10. It is understood that the Lot 288 easement Area shall be treated in the same manner as the Port of Providence property subject to any and all agreements between ProvPort and the City of Providence.

If you are in agreement with this understanding, please sign below and return a fully executed agreement to me. Thank you.

Sincerely,


Adrienne G. Joubert
Deputy City Solicitor

Acknowledged and agreed to:


Raymond L. Meador
President
Prov Port, Inc.

EASEMENT AGREEMENT

CITY OF PROVIDENCE, RHODE ISLAND TO PROVPORT, INC.

This Easement Agreement is made and entered into as of this _____ day of _____, 2006, by and between the City of Providence, Rhode Island, a municipal government formed under the laws of the State of Rhode Island, having an address of City Clerk's Office, City of Providence, Providence City Hall, Providence, Rhode Island 2903 (hereinafter referred to as "City") and ProvPort, Inc., a not-for-profit corporation organized and existing under the laws of the State of Rhode Island, having an address of 35 Terminal Road, Providence, Rhode Island 02905 (hereinafter referred to as "ProvPort" or "Grantee").

WHEREAS, ProvPort is the owner of that those parcels of land collectively identified as the Port of Providence, including Providence Tax Assessor's Plat 56, Lot 297 (hereinafter referred to as "Lot 297");

WHEREAS, the City owns a parcel of land which abuts Lot 297, which parcel is identified as Providence Tax Assessor's Plat 56, Lot 288 (hereinafter referred to as the "Lot 288");

WHEREAS, ProvPort has asserted a right to have title to the whole of Lot 288 transferred to it but requires only a portion of Lot 288 for its exclusive use in its Port of Providence operations; and,

WHEREAS, the City is desirous of supporting the Port of Providence operations and resolving ProvPort's claim to Lot 288; and,

WHEREAS, upon petition, the City Council of the City of Providence, with the recommendation of the Providence City Council Committee on Public Works, resolved by virtue of Providence City Council Resolution No. *[Need this information]* , adopted *[When]* , 2006, to grant an exclusive easement to the Grantee upon certain conditions.

NOW, THEREFORE, for and in consideration of the sum of One and 00/100 (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree and the City does hereby grant to the Grantee the easements and license described as follows:

1. Easement Area. The City hereby grants to the Grantee, its successors and assigns, the exclusive right and easement for its use in connection with its Port of Providence operations a portion of said Lot 288, all as is more particularly described on Exhibit A, labeled "Lot 288 Easement Area", attached hereto and incorporated herein by reference, said Lot 288 Easement Area containing ninety three thousand six hundred and eight (93,608') square feet, more or less. The easement described as Lot 288 Easement Area is granted to the Grantee for the benefit of the land and improvements owned by the Grantee and more particularly described in Exhibit B, being the Port of Providence and including Lot 297, attached hereto and incorporated herein by reference.

2. Applicable Provisions of the Providence Code of Ordinances. The parties recognize the applicability of the Providence Code of Ordinances, particularly Sections 23-107, 23-108 and 23-109. The parties and each of their successors and assigns agree to comply with all such ordinances.

3. Pertinent Rights. In addition to the foregoing, the City does hereby grant to the Grantee the right and easement to service and maintain the area comprising the Lot 288 Easement Area, as well as the exclusive right to the City's rights, if any, to the adjacent water access to the Lot 288 Easement Area.

4. Easement Maintenance; Insurance. The Grantee shall at its sole cost and expense, reasonably maintain and repair the Lot 288 Easement Area. Such maintenance and repair obligation shall be made and undertaken in order that each such maintenance area shall be maintained in reasonably good order, condition and repair. In addition, Grantee shall be responsible to maintain liability insurance covering the Lot 288 Easement Area on terms and in amounts which are reasonable and customary from time to time for public access areas of such nature, as determined in consultation with the Director of Planning, City of Providence, naming the City of Providence as additional insured.

5. Existing Utility Areas. Grantee shall maintain the continuing integrity of existing structures of any existing utility company easement within the Lot 288 Easement Area.

6. Option to Purchase. The City shall have the option to re-purchase the Lot 288 Easement Area for the sum of One and 00/100 Dollar (\$1.00) upon its exercise of a similar right to acquire the Port of Property in its entirety upon the earlier of the payment of all outstanding finance indebtedness as contemplated between the parties (2006 Certificates of Participation) or September 2036, as contemplated under the parties' agreements.

7. Notices. All notices and demands ("Notice") required or permitted to be given under this Agreement must be in writing and mailed by certified mail, return receipt requested, postage prepaid to the applicable address of the parties. Any Notice to the City shall be addressed to Director, Department of Planning, City of Providence, at the address set forth in the introductory paragraph hereof. Any Notice to ProvPort, Inc., shall be sent to 35 Terminal Road, Providence, Rhode Island 02905. Any party entitled to receive Notice shall be entitled to designate a different Notice address by giving notice and conformity with the provisions of this paragraph designated 7.

8. Condemnation. In the event of a condemnation or a sale to a taking authority in lieu thereof concerning all or any portion of the Lot 288 Easement Area, the entire award or purchase price paid for such taking shall be allocated through agreement of the parties with any dispute to be resolved through binding arbitration under Rhode Island General Laws.

9. Binding Effect, Appurtenant Easements and Covenants. The terms of this Agreement and all covenants and easements granted by this Agreement shall constitute covenants and easements running with, and appurtenant to, the land affected thereby. All terms, covenants and easements shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns to the extent they have an interest in the benefited or burdened land.

10. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Lot 288 Easement Area or of any building or portion thereof to the general public, or for any public use or purpose whatsoever except as may be specifically set forth herein to the contrary. Except as herein specifically provided, no rights or privileges of any party shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.

11. No Third Party Rights. It is specifically understood and agreed that the only parties who may enforce the terms and conditions of this instrument are the parties hereto and their successors or assigns.

12. Indemnity. Grantee shall indemnify, defend, and hold harmless the City from and against all claims, costs, expenses and liability (including reasonable attorney's fees), including any action or proceedings brought and/or arising from, or a result of the injury to, or death of any person, or damage to the property of any person or entity which shall occur, or be alleged to have occurred, as a result of any negligent act or omission of the Grantee.

13. Governing Law. This instrument shall be governed and construed under the laws of the State of Rhode Island.

14. Negation of Partnership. None of the terms or provisions hereof shall be deemed to create a partnership between or among the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. Each party shall be considered a separate entity, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instruments signed by the party to be charged.

15. Severability. The invalidation of any of the provisions contained herein, or of the application thereof to any person by judgment or court order, shall in no event affect any of the provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

16. Termination and Amendments. This Agreement may be terminated or amended by, and only by, a written agreement which shall be deemed effective only when recorded with the Office of Land of Land Records of the City of Providence and executed by the City and the Grantee or upon the exercise by the City of its limited right to re-purchase as set forth herein.

The consideration for this conveyance of this easement is such that no revenue stamps are required.

IN WITNESS WHEREOF, parties hereto have executed this Easement Agreement as of the _____ day of _____, 2006.

CITY OF PROVIDENCE

By: _____
Name:
Title:

PROVPORT, INC.

By: _____
Name:
Title:

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence on the _____ day of _____, 2006, before me personally appeared _____ of CITY OF PROVIDENCE, to me known and known by me to be the person executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in said capacity and the free act and deed of CITY OF PROVIDENCE.

Notary Public
My Commission Expires: _____

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In _____ on the _____ day of _____, 2006, before me personally appeared RAYMOND L. MEADOR, President of PROVPORT, INC., to me known and known by me to be the person executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in said capacity and the free act and deed of PROVPORT, INC.

Notary Public
My Commission Expires: _____

