

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2005-60**No. 586****AN ORDINANCE**

IN AMENDMENT OF ORDINANCE NO. 85,
CHAPTER 1997-18 ENTITLED: AN ORDINANCE TO ADOPT THE
PROVPORT, INC. TAX EXEMPTION AGREEMENT, AS AMENDED

EFFECTIVE ~~XXXXXX~~ December 25, 2005***Be it ordained by the City of Providence:***

WHEREAS, The City Council, pursuant to the General Laws of the State of Rhode Island, as amended, has the authority to exempt property used for commercial purposes from the payment of property tax if the granting of the exemption meets certain conditions set forth in said sections of the General Laws of the State of Rhode Island and the Code of Ordinances of the City of Providence ("City"); and

WHEREAS, On July 7, 1994, this Council approved a resolution authorizing the sale of various lots on Assessor's Map 56, commonly referred to as the Port of Providence ("Port") to an entity then called Public Asset Management, Inc., which ultimately formed ProvPort, Inc. ("ProvPort"), a non-profit corporation organized under the laws of the State of Rhode Island; and

WHEREAS, The sale of the Port was conducted under an advertised Request for Proposal process initiated by the City in May 1994, which Request for Proposal contemplated direct assistance by the City in the financing of port improvements in the amount of \$3,000,000; and

WHEREAS, The purchase proposal of Public Asset Management (subsequently known as ProvPort) allowed for the payment to the City of \$16,555,000.00 for all of the land and improvements advertised in the Request for Proposal for the sale of the Port; and

WHEREAS, An integral part of the purchase proposal, included as the Plan of Finance, was the adoption of a tax exemption agreement from the City for a thirty year period; and

WHEREAS, The purchase proposal also included a pledge of revenue sharing in the form of an in-lieu tax payment following the completion of certain capital investments totaling \$3,400,000.00, and increased for rising construction costs over time; and

No.

CHAPTER
AN ORDINANCE

IN CITY COUNCIL
OCT. 6 2005
FIRST READING
REFERRED TO COMMITTEE ON
FINANCE

Craig E. B. [Signature]
CLERK

THE COMMITTEE ON

Finance
Recommends
Alan M. [Signature]

10-27-05 *Schedule*
11-15-05 *P. Hry. held*

THE COMMITTEE ON
FINANCE

Approves Passage of
The Within Ordinance

Alan M. [Signature]
11-15-05
Clerk

Councilman Sports (By Request)

WHEREAS, ProvPort had completed capital improvements by September 1, 2004 which will be in excess of \$3,400,000.00; and

WHEREAS, On September 28, 1994, ProvPort closed the purchase transaction for the Port and paid to the City \$16,555,000.00; and

WHEREAS, Subsequent to the closing, on February 26, 1997, the City granted a ten year exemption on the real and personal property and the improvements owned or leased by ProvPort, in keeping with the conditions of the acceptance of the original bid amount and to assist in the financing of certain capital improvements, as well as the payment of debt service; and

WHEREAS, Pursuant to Ordinance Chapter 2005-38, No. 348, the City Council granted an extension of the exemption of taxes to ProvPort for a second ten (10) year period and entered into the 2004 ProvPort Tax Exemption Agreement, which, among other things, provides for ProvPort to make in-lieu payments to the City based on a percentage of gross revenues; and

WHEREAS, ProvPort has proposed to amend the 2004 ProvPort Tax Exemption Agreement to provide that ProvPort may prepay the in-lieu tax payments to be paid under the 2004 ProvPort Tax Exemption Agreement.

NOW, THEREFORE, be it ordained by the City of Providence:

Section 1. The City Council of the City of Providence hereby adopts the ProvPort, Inc. 2004 Tax Exemption Agreement, as amended, in the form attached hereto.

Section 2. All other provisions of Ordinance Chapter 2005-38, No. 348 shall remain in full force and effect.

Section 3. This ordinance shall be effective upon its approval by the Mayor after its passage.

IN CITY COUNCIL
DEC 1 2005
FIRST READING
READ AND PASSED
Gaige E. Bushcraft **CLERK**
Justus

IN CITY COUNCIL
DEC 15 2005
FINAL READING
READ AND PASSED
Robert A. Young
ACTING PRESIDENT
Gaige E. Bushcraft **CLERK**
Justus

Effective without the
Mayor's Signature:

Michael R. Clement
Michael R. Clement
City Clerk

THE 2004 PROVPORT TAX EXEMPTION AGREEMENT, AS AMENDED

I. PROJECT SUMMARY

Justification: At the closing of the sale of the Port of Providence, the sum of \$16,555,000 was paid to the City by ProvPort. As a part of its Plan of Finance, Public Asset Management, Inc., presented, and the City of Providence accepted, the necessity of maintaining a Tax Exemption Agreement during the 30 year term of the financing. The original Tax Exemption Agreement is scheduled to expire on September, 2004. The 2004 ProvPort Tax Exemption Agreement (the "Tax Agreement") continues that commitment on the part of the City of Providence.

The Tax Agreement is also deemed to be necessary to attract new and/or additional private investment at ProvPort. ProvPort is currently in negotiations with several new tenants ~~by waiving the tax on land thus encouraging the private investment in personnel, plant, equipment, inventory, and operations.~~ The land, improvements and equipment contemplated by the new tenants under new leases will be taxed separately by the City of Providence. ~~ProvPort also~~ Tenants under existing leases, with the exception of Univar, under its existing lease, shall also pay annual property taxes for land, improvements and equipment and will be taxed separately by the City of Providence. During the term of its existing lease which is renewable through March 31, 2018, Univar shall not pay property taxes on the land occupied under lease with ProvPort but shall pay taxes on improvements and equipment. ProvPort will, beginning in fiscal year 2005~~4~~, ~~will also make an annual payment, prorated as defined within the Agreement,~~ in lieu of taxes based on a percentage of revenues, as set forth herein.

Tax Exemption Area: All real and personal property and improvements that is owned by ProvPort now or during the term of this agreement, including real and personal property and improvements, whether occupied and used by ProvPort that is owned by ProvPort, Inc. and located in the City of Providence.

Projected Contributions to the City: Under the ~~profit~~ revenue sharing plan attached the City will receive a minimum payment of \$100,000 per year. ~~In addition the City will receive a percentage of the gross income of ProvPort. It is estimated that for fiscal year 2005 the profit sharing, in lieu payment to the City will approximate \$120,000 as an in-lieu tax payment. The in-lieu tax payment/profit sharing payment will be based on gross revenues of ProvPort.~~ In addition, ProvPort will continue its payment of \$24,000 per year to the Neighborhood Improvement Fund.

No taxes will be due and payable on land by ProvPort tenants during the tax year ending December 31, 2004, Year One of the amended and extended Tax Exemption Agreement. In Year Two through Year Ten, however, ProvPort lessees shall pay property taxes based on the newly created tax parcels which are approved by the Department of Planning and Development and recorded by the City Recorder of Deeds. These property taxes shall be billed directly to the ProvPort tenants, and are payable by those tenants unless and until the tax parcel on which the tenant resides is vacated. It shall be the duty of ProvPort to notify the City Assessor of any incoming or outgoing tenants so that taxes can be appropriately prorated and the integrity of the tax process can be assured.

Future taxes from private capital cannot be estimated. However, it should be noted that over \$15 million has been invested at ProvPort by other private interests since September 2004.

II. IN-LIEU TAX PAYMENTS

ProvPort, in conjunction with the City of Providence, agrees to an in-lieu tax payment based on a percentage of gross revenues. The annual payment would be subject to the formula and policies that follow:

A. Formula

<u>Gross Operating Revenues</u>	<u>Percentage</u>
\$0 to \$3.3 million	\$100,000
\$3.3 million to \$4.3 million	4%
\$4.3 million to \$5.3 million	5%
\$5.3 million and above	6%

B. Policies

1. The Percentage would apply to Gross Operating Revenues which would consist of all dockage, wharfage, lease income, trackage, fees for service, interest earnings, storage, and miscellaneous income derived from operations.
2. Gross Operating Revenues would not include restricted income such as federal grants, condemnation awards, insurance awards, contributions, and any other income restricted for a particular purpose or use.
3. The applicable percentage would apply incrementally to the Gross Operating Revenues. For example, at \$2.9 million, the percentage would be 3.3% with a minimum of \$100,000. In that instance, the minimum amount due would apply (\$100,000). At \$3.8 million, the City would receive \$100,000 for the first \$3.3 million, plus 4% of the difference between \$3.8 million and \$3.3 million (\$3.8 million minus \$3.3 million = \$0.5 million times 4% = \$20,000). Under this example the total in-lieu payment would be \$120,000 plus the \$24,000 due the Neighborhood Improvement Fund for a total payment to the City of \$144,000.
4. Monies from projected settlement with Metals Recycling, for the period prior to July 1, 2003, would not be considered within the definition of Gross Operating Revenues.
5. In the event that the Board determines that an emergency requiring extraordinary capital or operating expenditures exists or that the payment in-lieu of taxes would jeopardize a scheduled transfer into the Debt Service Payment Fund, the Board may vote to suspend the payment in-lieu of taxes within a particular fiscal year.
6. In the event of an emergency situation, the monies due the City would accrue and be repaid over a five fiscal years beginning once full transfer to the Debt Service Payment Fund are accomplished by ProvPort. The repayment schedule shall be at a level amortization rate over the five year period. In the event that the emergency situation extends beyond one year, the repayment of the subsequent year would also be based on a separate five year, level, amortization schedule.
7. Beginning with the budget for fiscal year 2005, a payment in-lieu of taxes to the City would be budgeted within ProvPort's Annual

Budget. The annual amount budgeted would be based on projected year end for Gross Operating Revenues.

8. Following the Board's acceptance of ProvPort's annual independent financial audit, the Board would reconcile the annual payment obligation to the City. (As an addendum to the annual financial statement, the auditor would state the Gross Operating Revenues as they comply with this Agreement and state the amount paid to the City.)
9. Payments would be in six equal monthly payments beginning on July 1st; provided, however, that ProvPort shall have the right to prepay the in-lieu tax payments. In the event that such a prepayment is undertaken, the methodology defined in Exhibit A will be employed.
10. In the event that a tax treaty is not extended by the City of Providence, there would be no distribution and no accrual of an obligation to make an in-lieu payment to the City of Providence.
11. The payment in-lieu of taxes would not replace the Neighborhood Improvement Fund currently budgeted by ProvPort.
12. ~~The profit sharing formula amounts generated through the application of Section II, A shall be off set by the payment made by Univar through the end of its lease.~~

C. This Tax Exemption Agreement is for the time period from September 24, 2004 through September 23, 2014.

IV. NEED FOR IMPROVEMENTS AND CONTRIBUTIONS TO CITY

The real and personal property and capital improvements owned by ProvPort, Inc. that are eligible for tax exemption are needed to maintain existing tenants and attract future tenants to the Port. It is expected that such activities will preserve and enhance the profitability of the Port, thereby enhancing the positions of ProvPort and the City under the Trust Agreements and increasing the amounts paid to the City under the payment in-lieu of taxes section of this Agreement and enhancing the position of the parties signing that certain Trust Agreement among ProvPort, U.S. Bank, the Providence Redevelopment Agency and the City dated May 1, 2003. For these reasons this tax exemption is deemed to be in the public interest.

ATTEST:

PROVPORT, INC.

By _____
Title _____

By _____
Title _____

ATTEST:

THE CITY OF PROVIDENCE,
RHODE ISLAND

By _____
Title _____

By _____
Title _____

EXHIBIT AMETHODOLOGY FOR COMPUTING THE
ADVANCE PAYMENT OF PROVPORT'S
IN-LIEU TAX PAYMENT

1. The payment of the in-lieu tax for fiscal year 2004 has been paid by ProvPort and accepted by the City of Providence.
2. The estimated in-lieu tax/revenue sharing payments for fiscal years 2005 and forward are listed within Attachment One.
3. During the annual independent audit of ProvPort's operations, the independent auditor will verify as to the actual in-lieu tax payment based on the formula detailed within the text of the Tax Agreement. In the event that the amount due the City of Providence is in excess of the amount shown within Attachment One, ProvPort shall pay to the City of Providence the amount of the underpayment by ProvPort. In the event that the amount shown on Attachment One is more than the amount shown on Attachment One, the City of Providence shall pay, subject to appropriation by the Providence City Council, to ProvPort the amount of the overpayment by ProvPort.
4. Payments from ProvPort to the City of Providence shall be paid on the September 1 following the acceptance of the annual financial report of the independent auditor by the ProvPort Board of Directors. Payments from the City of Providence shall be paid, subject to appropriation by the Providence City Council, on the September 1 following the acceptance of the annual financial report of the independent auditor by the ProvPort Board of Directors.

ATTACHMENT ONE
PROJECTED IN-LIEU TAX/REVENUE SHARING PAYMENTS
FISCAL YEAR 2005 THROUGH
FISCAL YEAR 2014

<u>FISCAL</u>	<u>PROJECTED</u>
<u>YEAR</u>	<u>IN-LIEU</u>
	<u>TAX PAYMENT</u>
2005	\$167,694
2006	158,000
2007	158,000
2008	162,740
2009	162,740
2010	162,740
2011	167,622
2012	167,622
2013	167,622
2014	172,651