

MACK POINT REDEVELOPMENT

Second Amendment to PROJECT FUNDING AGREEMENT

SECOND AMENDMENT to PROJECT FUNDING AGREEMENT ("Amendment") made this 16 day of August, 2005 by and between the **MAINE PORT AUTHORITY**, a body both corporate and politic in the State of Maine established for the general purpose of acquiring, constructing and operating any kind of port terminal facility and railroad facility within the State of Maine pursuant to 23 M R S A § 4420, with its office located in Augusta, Maine (the "Authority" or "MePA"), and **SPRAGUE ENERGY CORP.**, a Delaware corporation, with principal offices at Two International Drive, Portsmouth, New Hampshire ("Sprague") and with a place of business at Mack Point, Searsport, Maine ("Mack Point")

WHEREAS, the Authority and Sprague entered into a certain Mack Point Redevelopment Project Funding Agreement dated August 5, 1999 as amended by a First Amendment to Project Funding Agreement dated 19 Dec 2002 (the "Project Agreement") and a License and Operating Agreement (the "License") dated November 8, 1999 for the purpose, among other things, of undertaking and effecting the redevelopment of certain marine and intermodal cargo transport, handling and storage facilities at Mack Point, and

WHEREAS, the Project Agreement and the Project defined therein are designed to provide the renewal, continued growth and viability of intermodal freight operations, marine-related transportation improvements, and cargo and commodity handling consistent with the goals and objectives of the three-port strategy of the Authority and the State of Maine, and

WHEREAS, the Project Agreement established a segregated fund held by the Authority and identified as the Liquid Cargo Pier Rehabilitation Fund more specifically described in Section V(A)(2) of the Project Agreement, and

WHEREAS, in order to accommodate the timely completion of certain Liquid Cargo Pier Improvements as contemplated under Section V(C) of the Project Agreement and in order to accommodate certain additional capital projects and capital improvements relating to the Project and the further development of Mack Point, the Authority and Sprague have agreed to amend and modify the scope, terms and conditions for disbursement and use of the Liquid Cargo Pier Rehabilitation Fund in accordance herewith,

NOW THEREFORE, for and in consideration of the foregoing, the mutual promises, agreements, covenants and undertakings herein set forth, and other good and valuable consideration, the Authority and Sprague hereby covenant and agree as follows

1. **Defined Terms.** All capitalized terms not otherwise defined herein shall have the meaning and definition ascribed to such terms in the Project Agreement

2. Amendments to Section IV, V, and VI. The following portions of Sections IV, V, and VI of the Project Agreement, shall be and hereby are amended to read as follows

IV. CONSTRUCTION & OPERATION OF DRY CARGO PIER

(\$14,200,000.00)

E License and Operating Agreement

(2) Sprague's obligation to pay the Authority monthly license payments consisting of Wharfage Fees totaling \$14,200,000.00 as provided in section VI below,

V. FINANCING OF SUBSEQUENT IMPROVEMENTS

FROM WHARFAGE FEES (\$2,250,000.00)

A Use of Early Wharfage Fee Payments In order to provide funding for additional improvements at Mack Point as provided in this Section V, the Wharfage Fees paid from commencement of payment of Wharfage Fees as provided in Section VI (D) - "Commencement of Wharfage Fee Payments", shall be allocated to certain segregated funds to be maintained by the Authority as follows

(1) Thirty-five percent (35%) of Wharfage Fees received shall be held in a fund held to pay the Authority's portion of costs for the construction of the west berth fender system (the "Fender System Fund") until \$250,000 has accrued in said Fund, unless there exist sufficient funds to construct a west fender system pursuant to Section IV (C) - "Items Excluded from Scope" above, or the Authority may provide for other funding to meet this obligation. After \$250,000 has accrued, the Authority may use later accruals of said 35% of Wharfage Fee payments for any lawful purpose in its discretion, and

(2) Sixty-five percent (65%) of Wharfage Fees received shall be held in a fund to finance, the Liquid Cargo Pier Fund (LCP Fund), for the rehabilitation of Sprague's pier for improved liquid cargo handling and other capital improvement projects relating to Mack Point which may be approved by the Authority from time to time. After \$2,000,000 has accrued in and/or been distributed from the LCP Fund, the Authority may use later accruals of said 65% of Wharfage Fee payments for any lawful purpose in its discretion

The Authority may use all interest accruing on all funds for any lawful purpose in its discretion. The parties hereby acknowledge and confirm that as of April 30, 2005 (a) the Fender System Fund contained \$250,000, and (b) the Liquid Cargo Pier Rehabilitation Fund contained \$449,928.34

B West Berth Fender System If there are insufficient Project Funds to construct a west fender system pursuant to Section IV (C) - "Items Excluded from Scope" above, Sprague agrees that it will construct the west berth fender system to the Dry Cargo Pier, subject to the Authority's review and approval, at no cost to the Authority other than that the Authority will fund or reimburse to Sprague 50% of the costs of the construction of the West Berth Fender System up to a maximum of \$250,000 after that amount has accrued in the Fender System Fund, as provided for in Section V(A) - "Use of Early Wharfage Fees Payments" above Sprague agrees that it will commence such construction within two years of the date of written notice from the Authority that said Fund has reached \$250,000 or at such later date as the parties reasonably determine that sustained vessel traffic requires such installation If Sprague has not substantially completed construction of the West Berth Fender System by December 31, 2008, or entered into an extension on terms mutually agreeable to the parties, then the Authority will be released from any obligation to provide funding for the West Berth Fender System, and the Authority may thereafter use the Fender System Fund for any lawful purpose in its sole discretion If and when constructed the fender system shall become the property of the Authority upon completion as a Dry Cargo Pier Improvement subject to the options and other terms hereof

C Liquid Cargo Pier Improvements Subject to the following terms and conditions, the Authority hereby agrees to reimburse to Sprague, up to \$2,000,000 from the LCP Fund for rehabilitation of Sprague's pier to improve liquid cargo handling capabilities consistent with the conceptual scope attached as Exhibit 7 and for such other capital improvement projects relating to Mack Point as Sprague may identify and which the Authority may approve from time to time (collectively, the "Capital Improvements")

1 Conditions Precedent The Authority shall be obligated to make reimbursements (hereinafter, "LCP Reimbursements ") from the LCP Fund only if (a) Sprague provides a written request for a reimbursement in form and substance reasonably acceptable to the Authority identifying (i) the amount requested for LCP Reimbursements , and (ii) the scope of the Capital Improvements that were undertaken, (b) Sprague is not in default of the License and Operating Agreement or any other Closing Document, (c) the portion of the Wharfage Fees placed in the LCP Fund pursuant to Section V (A) - "Use of Early Wharfage Fees Payments" is sufficient to cover the amount of the requested LCP Reimbursements , (d) the aggregate of Sprague's actual LCP Reimbursements hereunder has not reached \$2,000,000, and (d) the Authority has approved the scope of work and the plans and specifications of the Capital Improvements (which approval shall not be unreasonably withheld or delayed)

2 Evidence of LCP Reimbursements Each LCP Reimbursements shall be evidenced by a memorandum executed by the Authority and Sprague acknowledging the amount actually reimbursed to Sprague hereunder Each such LCP Reimbursement Memorandum shall be attached hereto and incorporated

herein by reference LCP Reimbursements shall, at Sprague's request, be made to Sprague in lump sum installments on or about June 1 and December 1 of each year. Said amounts shall be used solely to reimburse Sprague, or pay outstanding invoices, for work actually performed, services actually provided or materials actually delivered relating to approved Capital Improvements.

3 Local Property Taxes Sprague acknowledges that it will be responsible for payment of all local property taxes assessed upon the Liquid Cargo Pier and all related real estate, fixtures and business equipment. Sprague further agrees to waive the right to claim, apply for, or receive any reimbursement on business property provided for by 36 M.R.S.A. §6651 or similar rebates with respect to any property purchased or financed with funds provided by the Authority. The parties acknowledge that the Maine Bureau of Revenue Services is a third party beneficiary to the provisions of this paragraph.

4 Charges to LCP Fund Sprague acknowledges that portions of the LCP Funds may be used to pay for (a) a consultant to be retained by the Authority to confirm progress reports provided by Sprague during the construction process for the purpose of authorizing construction progress disbursements on behalf of the Authority, (b) title updates and obtaining lien waivers for disbursements, (c) expenses incurred by the Authority related to disbursement, and servicing (hereinafter the Authority's Administrative Fee), and (d) other mutually agreeable related costs. The Authority's Administrative Fee will be 1.0% of each LCP Reimbursement unless otherwise approved in advance by Sprague. Any charges to the LCP Fund for items under a), b) and/or d) will be approved in advance by Sprague, which approval shall not be unreasonably withheld.

5 Time to Completion If Sprague has not substantially completed rehabilitation of the Liquid Cargo Pier or other approved developments for which LCP Funds are being held by the Authority by December 31, 2010, or entered into an extension on terms mutually agreeable to the parties, then the Authority will be released from any obligation to provide further funding from the LCP Fund, and the Authority may thereafter use any remaining LCP Funds for any lawful purpose in its sole discretion.

VI. SPRAGUE PAYMENT OBLIGATIONS

A Total Payment Obligation Sprague agrees to pay the Authority \$16,200,000.00 in Wharfage Fees as provided herein (the "Total Payment Obligation"). This amount consists of the \$2,000,000.00 BAR Acquisition Loan, the (2) the \$14,200,000.00 license fee obligation provided in the License and Operating Agreement to the extent that each may be actually disbursed by the Authority.

B Nonrecourse Nature of Obligations The obligation of Sprague under the BAR Acquisition Loan, and the License and Operating Agreement, shall be limited to

the option in the Headlands granted to the Authority by Sprague. The liability of Sprague hereunder shall at all times be limited to the BAR Pier (later the Dry Cargo Pier) and the Sprague Pier (the Liquid Cargo Pier), collectively known as the "Mack Point Piers" and the real and personal property pledged as security hereunder. The Authority shall look solely to the Mack Point Piers, the Headlands, and the collateral securing each obligation, such as security in satisfaction of the obligations identified herein.

G Order of Satisfaction of Payment Obligations. Wharfage fees shall be used to satisfy Sprague's Total Payment Obligation in the following order of priority: First, all Wharfage fees shall be applied to the \$2,000,000.00 BAR Acquisition Loan until it is fully repaid. Second, all Wharfage Fees shall be applied towards repayment of Sprague's \$14,200,000.00 until the earlier of payment in full of the \$14,200,000.00 license fee obligation or expiration of the 30 year term of said License and Operating Agreement.

H Right to Prepay Obligations. Sprague shall have the option at any time to prepay in whole or in part the Total Payment Obligation without penalty. Upon the payment in full of the BAR Acquisition Loan and the obligation to pay license fees under the License and Operating Agreement, the Authority will terminate, discharge, and release all liens, encumbrances and other security and collateral held with respect to each obligation.

J Action Required Near Expiration of License and Operating Agreement

(1) exercise its option to purchase the Dry Cargo Pier for an amount equal to the Total Payment Obligation advanced by the Authority up to \$16,200,000.00 minus the aggregate of the Wharfage Fees made to the Authority,


3. Counterparts. This Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original and all collectively but one and the same instrument. This Amendment may be executed and/or transmitted by facsimile or electronic means and such facsimile or electronic signatures and transmissions may be used in place of original signatures and original documents.

4 Effectiveness of Project Agreement. The parties hereby acknowledge and confirm that the Project Agreement remains in full force and effect, except as expressly modified by this Amendment.

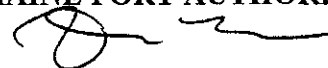
5 Miscellaneous. This Amendment shall be construed in accordance with Maine law.

IN WITNESS WHEREOF the parties have executed this Amendment on the date first above written



Witness


Witness

MAINE PORT AUTHORITY


David A. Cole, Chair

SPRAGUE ENERGY CORP.


Burton S. Russell, Vice President