

## 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. CONSTRCUTION & 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.

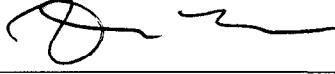
4 Effectiveness of Project Agreement. The parties hereby acknowledge and confirm that the Project Agreement remains in full force and effect, except as expressly modified by this Amendment.

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

Cheryl Martin Hunt  
Witness

**MAINE PORT AUTHORITY**

  
David A. Cole, Chair

**SPRAGUE ENERGY CORP.**

  
Burton S. Russell, Vice President

Mitchell Flynn  
Witness

## MACK POINT REDEVELOPMENT

### First Amendment to PROJECT FUNDING AGREEMENT

FIRST AMENDMENT to PROJECT FUNDING AGREEMENT and LICENSE AND OPERATING AGREEMENT ("Amendment") made this 19 day of December, 2002 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 (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 cargo 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, in order to accommodate the timely completion of the Irving Pipeline Relocation portion of the Project required under Article IV (A) of the Project Agreement, the Authority has agreed to loan and advance to Sprague additional funds necessary to pay and reimburse certain costs associated therewith, and

WHEREAS, consistent therewith, the Authority and Sprague have agreed to certain amendments, modifications and additions to the Project Agreement,

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        Section IV A **Irving Pipeline Relocation**, of the Project Agreement shall be amended to read as follows

Sprague agrees to complete the relocation of the Irving Oil Pipeline to the Sprague Pier at its expense within 45 days of being notified by the Authority to proceed with such pipeline relocation Unless Sprague is reimbursed for costs of this relocation as provided in this

subsection, Sprague will receive all Wharfage Fees on oil passing through said pipeline until completion of the Dry Cargo Pier as defined in Section IV(F) below. If, after bid opening for the contract encompassing the construction of the Dry Cargo Pier, there are sufficient Project Funds available (after including a construction contingency satisfactory to the Authority) to fund the reasonable costs of such pipeline relocation, then the Authority shall reimburse Sprague for such costs and the Authority shall receive all Wharfage Fees on oil passing through said pipeline. Should Sprague be required to pay the full cost of the Irving Pipeline Relocation, then the Authority agrees to loan to Sprague the sum of Two Hundred Thousand Dollars (\$200,000.00) which sum shall be used by Sprague solely for the purpose of paying or reimbursing Sprague, in part, its reasonable costs and expenses of the Irving Pipeline Relocation. This loan shall be made part of the Total Payment Obligation as defined in Section VI A, and shall be repaid as part of the license fee obligation in accordance with the terms of the License and Operating Agreement. This loan shall not affect Sprague's right to Wharfage Fees prior to completion of the Dry Cargo Pier.

3       Section VI A Total Payment Obligation, of the Project Agreement shall be amended to read as follows

Sprague agrees to pay the Authority up to \$16,200,000.00 in Wharfage Fees as provided herein (the "Total Payment Obligation"). This amount consists of (1) the \$2,000,000.00 BAR Acquisition Loan, the (2) \$12,200,000.00 license fee obligation provided in the License and Operating Agreement, and (3) the \$2,000,000.00 Liquid Cargo Pier Loan, to the extent that each may be actually disbursed or advanced by the Authority.

4       Section 15 Sprague's Payment Obligation, of the License and Operating Agreement shall be amended to read as follows

Under the terms of the Project Funding Agreement, Sprague has agreed to pay the Authority up to \$16,200,000.00 through the collection of Wharfage Fees from the operation of both the Authority's Dry Cargo Pier and Sprague's cargo pier at Mack Point.

5       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 and such facsimile signatures and transmissions may be used in place of original signatures and original documents.

6       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.

7       Disbursement of Pipeline Loan Within ten (10) business days of the date of this Amendment, the Authority shall disburse loan funds to Sprague in the sum of Two Hundred Thousands Dollars (\$200,000.00) which sum shall be used by Sprague solely for the purpose of paying or reimbursing Sprague, in part, its reasonable costs and expenses of the Irving Pipeline Relocation.

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

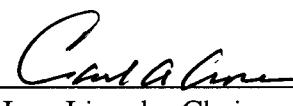
IN WITNESS WHEREOF, the parties have executed this First Amendment to Project Funding Agreement as of the day and date first above written.

**MAINE PORT AUTHORITY**



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Witness

By: 

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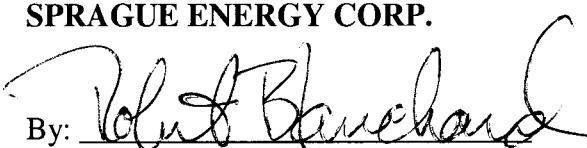
  
Carl Croce

**SPRAGUE ENERGY CORP.**



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Witness

By: 

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Robert Blanchard, Vice President

## LICENSE AND OPERATING AGREEMENT

This LICENSE AND OPERATING AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of November, 1999, by and between the **MAINE PORT AUTHORITY**, a body corporate and politic and an instrumentality of the State of Maine created pursuant to 23 M.R.S.A. §4420, with its office located in Augusta, Maine, its permitted successors and assigns ("Authority" or "Licensor"), and **SPRAGUE ENERGY CORP.**, a Delaware corporation, with principal offices at 2 International Drive, Suite 200, Portsmouth, NH, its legal representatives, successors and assigns ("Sprague" or "Licensee"), with a place of business at Mack Point, Searsport, Maine ("Mack Point").

### 1. BACKGROUND

1.1 **Project Funding Agreement.** Pursuant to a Project Funding Agreement entered into between Sprague and the Authority dated August 5, 1999 (the "Project Funding Agreement") for the purpose of redevelopment of marine cargo facilities at Mack Point for use by the commercial and industrial public as part of the State of Maine's goal to provide three strategic, publicly accessible deep water ports on the coast of Maine (the "Project"), the Authority has acquired from Sprague a Pier facility formerly owned and operated by the Bangor and Aroostook Railroad Company ("BAR") (the "BAR Pier"). This License and Operating Agreement must be read in conjunction with said Project Funding Agreement (which the parties agree shall survive the Closings) and all Closing Documents indicated in said Project Funding Agreement.

1.2 **BAR Acquisition Loan.** Pursuant to the Project Funding Agreement, the Authority has provided a loan to Sprague in the amount of \$2,000,000.00 (the "BAR Acquisition Loan") for the acquisition by Sprague from the BAR of certain real property adjacent to the BAR Pier located at Mack Point. The BAR Acquisition Loan is evidenced by a Promissory Note of even date herewith, in the original principal amount of \$2,000,000.00 and secured by a mortgage of the Headlands of even date (collectively, the "Acquisition Loan Documents").

1.3 **Pier Construction Project.** Under and subject to the terms of the Project Funding Agreement, the Authority has, among other things, agreed to demolish the BAR Pier and construct a new general purpose dry cargo pier (the "Dry Cargo Pier") generally within the present footprint of the BAR Pier for a cost not to exceed \$12,000,000.00 (the "Pier Construction Project").

1.4 **Public Purpose.** This License is entered into for the public purpose of making Mack Point available to the commercial and industrial public for marine transportation and cargo-handling purposes as part of the State of Maine's goal to provide three strategic, publicly accessible deep water ports on the coast of Maine.

1.5 **Sprague's Payment Obligation.** Under the terms of the Project Funding Agreement, Sprague has agreed to pay the Authority up to \$16,000,000.00 through the collection

of Wharfage Fees from the operation of both the Authority's Dry Cargo Pier and Sprague's cargo pier at Mack Point.

1.6 Operating License. The operating license granted by this Agreement (sometimes hereinafter referred to as the "Operating License") is granted by Lessor to Licensee for the purpose of assuring the operation and maintenance of the Dry Cargo Pier, also referred to hereinafter as the "Premises," by Licensee under and pursuant to the Project Funding Agreement.

## 2. DEFINITIONS

2.1. "Construction Period" means a period from the commencement of the Pier Construction Project until Dry Cargo Pier Completion as defined by Section IV(F) of the Project Agreement, during which time Lessor shall develop and construct the Pier Construction Project.

2.2. "Effective Date" means the date of execution of this Agreement.

2.3. "Hazardous Materials" means and includes asbestos, flammable materials, explosives, radioactive or nuclear substances, polychlorinated biphenyls, other carcinogens, oil and other petroleum products, radon gas, urea formaldehyde, chemicals, gases, solvents, pollutants or contaminants that could be a detriment or pose a danger to the environment or to the health or safety of any person, and any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such in any past, present or future federal, state or local laws, by-laws, rules, regulations, codes or ordinances or any judicial or administrative interpretation thereof.

2.4. "Hazardous Waste" means waste which has been or is in the future designated as hazardous waste by the State of Maine or which has been or is in the future, designated as hazardous waste under any present or future law or regulation by the United States Environmental Protection Agency, or its successors including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal or management of any Hazardous Materials, or otherwise regulating or providing for the protection of the environment, and further including, without limitation the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Public Health Service Act (42 U.S.C. §300(f) et seq.), the Pollution Prevention Act (42 U.S.C. §13101 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Federal Clean Water Act (33 U.S.C. §1251 et seq.), the Federal Clean Air Act (42 U.S.C. §7401 et seq.), the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, or any similar state or local law, or in any regulations promulgated pursuant thereto, or in any other applicable law except as stored, used and disposed of in accordance with such laws.

2.5. "Headlands" means certain parcels of land with improvements thereon as described in the mortgage from Licensee to Lessor of even date herewith and approximately shown on Exhibit

1 attached hereto and being near the head of the BAR Pier and on Station Avenue, said parcels also to be encumbered by an option given as security for Sprague's performance under this License and Operating Agreement.

2.6. "Operating License Term" means (a) the period from the Effective Date until the commencement of the Pier Construction Project (the "Interim Term"), and (b) the thirty (30) year period commencing on the Dry Cargo Pier Completion Date (the "30 Year Term"), during which Licensee shall hold and maintain the exclusive license, as granted herein, to operate and maintain the Premises. The Operating License Term shall not include the Construction Period except to the extent that the Licensor authorizes commercial, industrial or other cargo to be actually moved over or handled on said Premises.

2.7. "Operating License" means the license granted by this License and Operating Agreement entered into between Licensor and Licensee.

2.8. "Net Proceeds" means the gross proceeds from any insurance award with respect to which that term is used remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such gross proceeds and the distribution therefrom of any portion thereof attributable to Licensor's fee interest in the Premises.

2.9. "Pier Construction Project" means the permitting, design and construction by Licensor or its agents of the "Dry Cargo Pier" as set forth in the Construction Management Agreement of even date herewith between the Authority, Sprague and the Maine Department of Transportation (the "Department" or "MDOT").

2.10. "Premises" means the real estate, interests in real estate and other rights of Licensor at Mack Point, Searsport, Maine, in and to the BAR Pier (to be known as the "Dry Cargo Pier" after construction) as described in the Quitclaim Deed from the Licensee to the Licensor of even date herewith and approximately shown on the attached Exhibit 1, together with easements and other rights appurtenant thereto, all submerged, underwater and tidal lands and rights therein associated or used in connection therewith, the pier, all building and improvements, walkways, fender systems and dolphins, and all additions thereto and substitutions therefor.

2.11. "Project" shall have the same meaning as set forth in Section IA of the Project Funding Agreement.

All capitalized terms not otherwise specifically defined herein shall have the meaning and definition ascribed to them in the Project Funding Agreement.

### **3. DEMISING CLAUSE**

3.1. Interim License. Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor as of the date of execution of this Agreement an interim license (the "Interim License") and exclusive right to operate and maintain the Premises for all lawful purposes subject to the

terms hereof and the Project Funding Agreement and all Closing Documents referenced or indicated therein. Such Interim License shall be for the Interim Term and shall expire and terminate upon the commencement of the Construction Period.

3.2. 30 Year License. The Licensor hereby grants to the Licensee, and the Licensee accepts from the Licensor as of the Dry Cargo Completion Date, an exclusive license and exclusive right to operate and maintain the Premises for all lawful purposes during the Operating License Term subject to the terms and conditions hereof and of the Project Funding Agreement and all Closing Documents referenced or indicated therein.

#### **4. TERM; FEE PROVISIONS; RENEWAL TERMS**

4.1. Effective Date of Operating License; Duration of Operating License Term. This License and Operating Agreement shall become effective and commence on the Effective Date and shall terminate upon the expiration of the Operating License Term.

4.2. Delivery and Acceptance of Possession. The Licensor shall deliver to the Licensee possession of the Premises upon the commencement of the Interim License and upon the commencement of the 30 Year License free and clear of all liens, encumbrances, tenants, occupants and restrictions except as otherwise set forth or allowed under this Agreement or the Project Funding Agreement. The Licensee agrees to accept possession upon such delivery.

4.3. Fees for the Operating License Term. The Licensee shall pay fees during the term of this License based on the Wharfage Fees set forth in Section VI of the Project Funding Agreement. All such fees shall be applied by Licenser to the repayment of Licensee's Total Payment Obligations as set forth in Section VI of the Project Funding Agreement.

4.4. Cargo Volume Goals. Sprague shall use its best efforts to maximize the volume of cargo passing over the Mack Point Piers in accordance with the Cargo Volume Goals set forth in Exhibit 2 attached hereto.

4.5. Termination. Upon Licensee's payment in full of all of Licensee's Total Payment Obligations set forth in Section VI of the Project Funding Agreement, and subject to the option to purchase and other termination provisions therein, this Operating License shall be terminated, released and discharged to Licensee hereunder and the Operating License shall expire without need for further action by or instrument from any of the parties.

4.6. Direct Charges. Licensee shall pay directly for all telephone service and other utilities (for example, electricity, water, and gas or oil) which are separately metered to the Premises. Licensor shall not be responsible for damages or loss due to the interruption of these utilities which are not caused by any act or omission of Licensor.

## **5. CONSTRUCTION OF PROJECT**

Following the execution of this Operating License, Lessor shall permit, design, construct and develop the Dry Cargo Pier in accordance with the Construction Management Agreement between the parties hereto and the Maine Department of Transportation of even date herewith.

## **6. REPRESENTATIONS OF LICENSOR**

6.1 Exclusivity. Licensee, shall peaceably and quietly have, hold, and enjoy an exclusive license and rights to and for the Premises for the terms set forth herein without any manner of hindrance from Lessor or any person or entity claiming by, through, or under Lessor.

6.2 Authority. The Lessor represents and warrants that the Lessor has full power to enter into this Agreement and has been duly authorized to execute and deliver this Operating License. The Premises shall be owned by and in the name of the Lessor as provided in the Project Funding Agreement. All real and personal property of the Lessor is entitled to the privileges and exemptions of the property of the State of Maine as provided by 23 M.R.S.A. Section 4424.

6.3. Other Agreements. Etc. The Lessor represents and warrants that neither the execution of this Agreement, the delivery of this Operating License, the consummation of the transactions contemplated hereby, nor the fulfillment or compliance with the terms and conditions of this Operating License, conflict with or will result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessor is now a party, or by which it is bound or constitute a default under any of the foregoing, or conflict with the terms of any instrument or agreement by which the Licensee is bound, including its charter and other organizational documents and governing statutes.

## **7. REPRESENTATIONS BY LICENSEE**

7.1. Authority. The Licensee represents and warrants that the Licensee has full power to enter into this Agreement and has been duly authorized to execute and deliver this Operating License.

7.2. Other Agreements. Etc. The Licensee represents and warrants that neither the execution of this Agreement, the delivery of this Operating License, the consummation of the transactions contemplated hereby, nor the fulfillment or compliance with the terms and conditions of this Operating License, conflict with or will result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Licensee is now a party, or by which it is bound or constitute a default under any of the foregoing, or conflict with the terms of any instrument or agreement by which the Licensee is bound, including its charter and other organizational documents and governing statutes.

7.3. Use of Premises. The Licensee agrees to use the Premises only for the operation, maintenance and use of a commercial and industrial marine cargo terminal and other lawful uses approved by Lessor. Licensee agrees not to permit any nuisance in or on the Premises, nor to use or permit any use which is (a) contrary to or not ordinarily conducted within a commercial and industrial marine cargo terminal, or (b) contrary to law or ordinance. Licensee shall not permit any manner of use which will invalidate or increase insurance premiums for the Premises or buildings located thereon (unless Licensee pays for the entire cost of such increase), or any use that will materially and adversely affect the value of the Premises as a commercial and industrial marine cargo terminal. Licensee shall not permit any use of the Premises which shall create an unreasonable fire hazard, or be unlawful, improper, noisy or offensive or which constitutes a nuisance or which is contrary to any law, rule, regulation or requirement of any governmental authority or the fire insurance rating association having jurisdiction, or which is injurious to any person or property, or commit waste, whether voluntary or involuntary, or permit anyone else to do any of the foregoing.

## 8. MAINTENANCE, TAXES AND INSURANCE

8.1. Operating Expenses. Licensee shall pay all costs and other expenses of every kind or character, foreseen or unforeseen, arising out of or relating to the operation of the Premises. It is the purpose and intent of Lessor and Licensee that all costs, expenses and obligations of every kind and nature, relating to any buildings or improvements located on the Premises, which may arise or become due during the Operating License Term, including but not limited to local property taxes assessable with respect to any machinery, equipment, and other assets owned by Licensee thereon, shall be paid by Licensee. Lessor shall not be obligated to pay any expenses or obligations related to the Premises or buildings or improvements located thereon. Licensee shall pay absolutely net during the Operating License Term the payments and fees required hereunder, free of any deductions without abatement, deduction or set-off other than those herein expressly provided.

8.2. Maintenance of the Premises by Licensee. The Licensee agrees that it will, at its own cost and expense, (i) keep the Premises in a safe condition, and (ii) keep the Premises in good repair, ordinary wear and tear excepted, making from time to time all necessary repairs, renewals and replacements necessary therefor, including, without limitation, both interior and exterior, structural and non-structural improvements and components, including, without limitation, the heating, ventilating, air conditioning, plumbing, sewage, electric, sprinkler and lighting systems therein, the roof, structural supports, foundations, walls, floors, driveways, parking areas, grounds, all doors, door frames and door openers and all windows, window frames and plate glass, in good, clean and safe repair, order and condition, and will make all alterations, improvements, restoration, repairs, replacements or renovation thereto required by laws, rules, regulations or requirements of all governmental authorities and the fire insurance rating association having jurisdiction, all replacements to be of the same kind and quality as what is replaced, and (iii) make all repairs (whether interior, exterior, structural, non-structural, ordinary or extraordinary) made necessary by the actions or inactions of the Licensee, its agents, employees, customers or invitees. Licensee shall not be responsible for structural or other

material capital replacements absent further mutual agreement of the parties except to the extent of Net Proceeds and except to the extent that such replacements are made necessary by the actions or inactions of the Licensee, its agents, employees, customers or invitees.

8.3. Modifications of the Premises by Licensee. The Licensee may, with the prior written consent of the Lessor, at Licensee's own expense make from time to time any additions, modifications or improvements to the Premises desirable for the purposes allowed under this License that do not adversely affect the Premises or substantially reduce its value as a commercial and industrial marine cargo terminal. As a condition to receiving Lessor's consent to any changes, Licensee shall submit plans and specifications detailing such changes. Lessor shall have the right, prior to granting any consent, to review said changes and to require such reasonable additions, deletions or changes thereto as Lessor shall deem necessary to preserve and protect the Premises. All such additions, modifications and improvements so made by the Licensee shall become a part of the Premises at no cost to Lessor; provided, that any personal property, machinery, equipment, furniture or trade fixtures installed by the Licensee as part of the Premises without expense to the Lessor, may be removed by the Licensee at any time and from time to time while it is not in default under the Operating License and so long as said removal does not affect the use of the Premises for the purposes permitted under this Operating License; and provided further, that any damage to the Premises occasioned by such removal shall be repaired by the Licensee at its own expense. The Licensee will not permit any mechanic's lien, security interest or other encumbrance to remain against the Premises for labor or materials furnished in connection with any additions, modifications, improvements, repairs, renewals or replacements so made by it.

8.4. Business Equipment Taxes. The Licensee shall promptly pay as the same becomes due all taxes and governmental charges that may at any time be lawfully assessed or levied against the furnishings, equipment or other business property installed or brought by Licensee on the Premises. The Licensee agrees to waive its 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 Lessor. The parties hereto hereby acknowledge that the Maine Bureau of Revenue Services is a third party beneficiary to this waiver.

8.5. [Reserved]

8.6. Insurance Required. During the Operating License Term, Licensee will pay one hundred percent (100%) of the premiums necessary to maintain, and Licensee shall keep the Premises continually insured as herein set forth below.

- (a) Broad form fire and extended property insurance (including Business Income and Extra Expense coverage in an amount needed to satisfy one year of Licensee's Total Payment Obligations set forth in Section VI(A) of the Project Funding Agreement) in an amount equal to the full insurable current replacement value of the Premises, against loss or damage by fire, lightning, wave, wash and ice and other perils with uniform standard extended coverage endorsement limited only as may be provided in the standard form of

extended coverage endorsement at the time in use in Maine. All property insurance shall name the Licenser as an Additional Insured and Loss Payee;

- (b) Commercial General Liability insurance in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) annual aggregate covering liability for bodily injury, including death resulting therefrom, and liability for damage to property, including loss of use thereof, occurring on or in any way related to the Premises or any part thereof with the Licenser named as an Additional Insured. Such policy shall also include hazards of operations, independent contractors, and contractual liability coverage.
- (c) Pollution and Remediation Legal Liability insurance for the risk of discharge of pollutants in an amount not less than Forty Million Dollars (\$40,000,000.00) covering:
  - (a) bodily injury and property damage both on and off the Premises from pollution, including economic loss, (b) clean-up costs on and off the Premises; (c) liability for and financial responsibility in respect to pollution under all applicable federal and state statutes and regulations including, but not limited to the Oil Pollution Act of 1990, 33 USC §2700, et. seq. the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et. seq. (CERCLA), the Federal Water Pollution Prevention and Control Act, 33 UDV §1251 et seq. (FWPCA), and the Oil Discharge Prevention and Pollution Control Act, 38 M.R.S.A. §541 et seq. The Licenser shall be named as an Additional Insured under said policy.
- (d) Terminal Operator's Legal Liability insurance including without limitation coverage of Licensee's exposures as Wharfinger, Stevedore, and Warehouseman, respectively, with minimum limits of Five Million Dollars (\$5,000,000.00). Licenser shall be named as Additional Insured under said policy.
- (e) Licensee shall be solely responsible for any and all claims made by its employees under Maine's workers compensation laws and shall maintain appropriate insurance in respect to such claims in compliance with all applicable laws including coverage for claims under the United States Longshoreman's and Harbor Workers' Compensation Act. Licensee shall indemnify and hold harmless the Licenser for any claims of any employee at or arising in connection with operations at the Premises.

8.7. Additional Provisions Respecting Insurance. All insurance required in this Article shall be taken out and maintained in generally recognized responsible insurance companies qualified to do business in the State of Maine with each such policy, excepting workers compensation, naming Licenser as an additional insured. In the event that inflation or any other cause, in the Licenser's reasonable opinion, requires the aforesaid insurance coverages to be increased during the License and Operating Agreement, Licensee agrees to increase said limits to the levels reasonably required by Licenser. Licensee may insure to the required limits with such primary or excess limits as it deems appropriate. All aforesaid policies shall include a waiver of subrogation endorsement in favor of Licenser.

8.8. Neglect by Licensee. In the event the Licensee fails to keep the Premises in safe condition, or fails to keep the Premises in good repair and good operating condition as set forth in this Agreement, or fails to pay the insurance premiums as set forth in this Agreement, the Lessor may (but shall be under no obligation to) make the required repairs, renewals and replacements or pay such premiums; and all amounts so advanced therefor by the Lessor shall become additional rent due from the Licensee to the Lessor, which rent, together with interest from the date of payment by Lessor at a rate of eighteen percent (18%) per annum, Licensee agrees to pay to Lessor on demand. Failure to pay insurance premiums within 10 days of demand shall constitute default under this Agreement.

8.9. Certificate(s) of Insurance. A certificate or certificates of the insurer that such insurance as set forth in this Section is in force and effect shall be deposited with Lessor by Licensee, and prior to the expiration of any such policy, Licensee shall furnish Lessor with evidence that the policy has been renewed or replaced. All such policies shall provide that no policy shall be terminated, canceled or otherwise modified (including cancellation for nonpayment of premiums) unless thirty (30) days' prior written notice is given to Lessor.

## **9. DAMAGE AND DESTRUCTION**

In the case of damage or destruction of the Premises from any cause whether or not it is rendered untenable, Licensee shall rebuild the Premises to a condition as good or better than which existed prior to such damage or destruction to the extent of Net Proceeds from any insurance or third-party source. Regardless of the amount of any such damage or destruction, this Operating License shall be unaffected thereby and Licensee shall not be entitled to any diminution or abatement of any rent or its obligations hereunder. Any Net Proceeds received due to such damage or destruction shall be applied to repairs, rebuilding, restorations or alterations, and such repairs, rebuilding, restorations or alterations (including temporary repairs for the protection of property pending permanent repairs, rebuilding, restorations or alterations) shall be commenced within ninety (90) days after such damage or destruction and prosecuted to completion with reasonable diligence. Upon (i) completion of all work in a good and workmanlike manner and substantially in accordance with the plans and specifications therefore; (ii) receipt by Lessor of satisfactory evidence that the work has been completed and paid for in full; and (iii) that there are no mechanic's, laborer's, materialmen's or other liens, then any balance of Net Proceeds in excess of the cost of repair, rebuilding, restoration or alteration shall be paid to Licensee.

## **10. SPECIAL COVENANTS**

10.1. Limited Warranty of Condition or Suitability by the Lessor. Lessor makes no warranties or representations, either express or implied, to Licensee and Lessor hereby licenses the Premises to Licensee on an "AS IS" basis, and Licensee assumes the risk of the use and operation thereof. Notwithstanding the foregoing, Licensee shall have the benefit of such warranties, guaranties, performance and completion bonds, insurance proceeds and claims, permits and other assurances as may be available to Lessor from and against third parties and

other vendors engaged by or through Lessor in the permitting, design and construction of the premises and the improvements now or hereafter thereon.

10.2. Lessor's Right of Access to the Premises. The Licensee agrees that the Lessor, and its duly authorized agents, shall have the right at all reasonable times upon notice to Licensee to enter upon the Premises and to examine and inspect the Premises and buildings and improvements located thereon. The Licensee further agrees that the Lessor and its duly authorized agents shall have such rights of access to the Project as may be reasonably necessary for the proper maintenance of the Project in the event of failure by the Licensee to perform its obligations hereunder.

10.3. Release and Indemnification Covenants. Licensee agrees to defend, save harmless and indemnify Lessor from any liability for entry, loss, accident, expense or damage to any person or property and from any claims, actions, proceedings and expenses and costs in connection therewith (i) arising from the omission, fault, any act (whether willful or negligent or otherwise) occurring on or about the Premises or any misconduct of Licensee, (ii) any use of the Premises, or (iii) resulting from the failure of Licensee to perform and discharge its covenants and obligations under this Operating License, provided that this indemnity shall not include damages which result solely and exclusively from Lessor's negligent and intentional acts.

10.4. [Reserved]

10.5. Estopel Certificates. Licensee and Lessor further agree at any time and from time to time, upon not less than ten (10) days prior written request by the other, to execute, acknowledge and deliver a statement in writing certifying that this Operating License is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), that it has or does not have claims against the other arising under this Operating License and listing any such claims, that Licensee is in possession under this Operating License and the date to which the rental and other charges have been paid in advance, if any, it being intended that any such statement delivered to either party pursuant to this Section may be relied upon by any prospective purchaser, lender or assignee of any interest of said party hereunder.

10.6. Hazardous Waste and Materials. Licensee agrees that Licensee shall not use, permit or suffer the use, storage, treatment or release of Hazardous Waste or Hazardous Materials on or about the Premises except in conformance with applicable law and shall indemnify and hold Lessor harmless from and against any and all claims, losses, damages, liabilities, costs and expenses arising from: (i) any use of the Premises or the conduct of any business in or on the Premises, including, but not limited to, the storage, treatment or release of Hazardous Waste or Hazardous Materials by Licensee, its agents, employees, representatives or independent contractors; and (ii) any activities, work or things done, committed or suffered by Licensee in or about the Premises, including, but not limited to, the release of Hazardous Waste or Hazardous Materials while Licensee is in possession of the Premises; and (iii) any and all reasonable costs and expenses, reasonable attorneys' fees, and liabilities incurred by Lessor in the defense of any such claim or any action or proceeding brought thereon.

**11. PROHIBITION AGAINST ASSIGNMENT; SUBLICENSING AND MORTGAGING**

11.1. Assignment; Sublicensing. This Operating License, and all of Licensee's rights hereunder, may not be assigned in whole or in part under any circumstances, and may not be subleased by Licensee in whole or in part, without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. No assignment and no sublease, permitted or otherwise, shall relieve the Licensee from primary liability for any of its obligations hereunder, and in the event of any such attempted assignment or any such sublease, permitted or otherwise, the Licensee shall continue to remain primarily liable for the performance and observance of all obligations, covenants, warranties, representations and agreements on its part herein to be performed and observed by it to the same extent as though no assignment or sublease had been made.

11.2. Independent Break Bulk Vendor. Notwithstanding any other provision hereof, Licensee may enter into an Operating Agreement or sublicense with a vendor of Licensee's choice for the purpose of establishing break bulk cargo services (other than containerized cargo) at Mack Point.

11.3. Container Cargo Set Aside. Notwithstanding any other provision hereof, Licensee may enter into an agreement or sublicense for the purpose of establishing services for containerized cargo with a unionized stevedore, shipping company or other vendor as may be reasonably acceptable to Licensee, provided said vendor has demonstrated capability, experience and expertise in containerized cargo handling and marketing in the global marketplace.

**12. SECURITY - OPTION IN HEADLANDS**

12.1. Exercise of Option in Headlands. As security for the performance of its obligations and duties under this Agreement and the Project Funding Agreement, Licensee has executed and delivered to Lessor an option to purchase the Headlands (the "Headland Option") from Licensee for the sum of one dollar (\$1.00) upon the occurrence of, among other things, a default under this License and Operating Agreement if said default is not cured within any applicable grace period. The exercise of said option shall be in addition to all other rights and remedies available to Lessor under this Agreement. A copy of the Headlands Option is attached as Exhibit 3.

**13. EVENTS OF DEFAULT AND REMEDIES**

13.1. Events of Default Defined. The following shall be "Events of Default" under this Operating License and the terms "Events of Default" or "default" shall mean, whenever they are used in this Operating License, any one or more of the following events:

- (a) Failure to make any Wharfage Fee payment when due, unless such failure is cured by paying the overdue fees and all late fees and interest within thirty (30) days of written

demand;

- (b) Failure to make any other payment required of Licensee pursuant to the BAR Acquisition Loan, this License and Operating Agreement, the Liquid Cargo Pier Loan, and the related security instruments including, without limitation, taxes or any assessment which may result in a lien on the Dry Cargo Pier, the Headlands, or the Liquid Cargo Pier and such failure is not cured within 30 days of written demand;
- (c) Failure to pay the BAR Acquisition Loan in full by its maturity date.
- (d) Failure to pay the Liquid Cargo Pier Loan in full by its maturity date.
- (e) Failure to substantially complete the fit up necessary to commence operations on the Dry Cargo Pier within 90 days after the Dry Cargo Pier is complete, subject to extraordinary weather conditions and delays clearly beyond Licensee's control;
- (f) Failure to pay for costs of insurance premiums incurred by the Lessor due to neglect by the Licensee as provided in Section 8.8 above.
- (g) The breach by Licensee of any other material obligation under this Agreement (not identified in (a) or (b)); and such breach shall not have been cured within 60 days after the sending of notice identifying the breach from the Lessor to Licensee thereunder, provided that if such breach cannot with due diligence be cured within 60 days, the time within which such default may be cured shall be extended for such period of time reasonably necessary to cure the default with all due diligence;
- (h) A determination of the arbitrators pursuant to Exhibit 2 of this License (Exhibit 6 of the Project Funding Agreement) that Sprague is in default of its obligations to implement the Final Report and there shall be no further cure period;
- (i) Any default under any of the Closing documents under the Project Funding Agreement subject to the notice and cure periods set forth therein;
- (j) Except with the prior consent of the Lessor, (a) any sale of all or substantially all of Licensee's assets; or (b) any sale of all or substantially all of Licensee's assets at or relating to the Mack Point Project; or (c) any merger or consolidation in which Licensee is a participant corporation, or any vote by the shareholders of Licensee to approve such a merger or consolidation; or (d) the sale or removal without replacement of any asset material to the operation of either of the Mack Point Piers. In any such event such consent shall not be unreasonably withheld or delayed, but any transaction under a, b, c or d, such event shall be subject to assumption by Licensee's transferee hereunder;.

- (k) The filing by Licensee of a voluntary petition for relief under the United States Bankruptcy Code, as amended from time to time, or any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or the Company shall be adjudicated insolvent or bankrupt by decree of a court of competent jurisdiction; or Licensee shall petition or apply for or acquiesce in, or consent to the appointment of, any receiver or trustee; or for all or any part of its property; or Licensee shall make an assignment for the benefit of creditors; or Licensee shall admit in writing its inability to pay its debts as they mature;
- (l) Licensee shall cease business operations at the Mack Point Piers (other than as may be necessary or desirable for seasonal purposes or capital improvements); or Licensee's abandonment of or discontinuation of business at the Premises for a period in excess of sixty (60) consecutive days, whether or not accompanied by the non-payment of rent or the failure to perform its other duties and obligations hereunder.
- (m) There shall be filed against Licensee any involuntary petition for relief under the United States Bankruptcy Code, as amended from time to time, or there shall be commenced against Licensee any proceeding relating to Licensee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, and such petition or any such proceeding shall remain undismissed for a period of 90 days or Licensee by any act indicates its consent to, approval of, or acquiescence in, such petition or any such proceeding; or a receiver or trustee shall be appointed for Licensee or for all or a substantial part of the property of the Company and such receivership or trusteeship shall remain undischarged for a period of 90 days; or a writ of attachment, execution, or similar process shall be issued against any material part of Licensee's property or assets relating to the Mack Point Project and the same shall not be dismissed or bonded or reserved for within 60 days.

13.2. Remedies on Default. Upon the occurrence of an Event of Default, the Lessor shall have the option at its sole discretion to effect the following remedies: (a) terminate the License and Operating Agreement and re-enter and take possession of the Premises; (b) terminate Sprague's option in the Dry Cargo Pier, (c) exercise its Option in the Headlands, (d) foreclose any mortgage, and (e) pursue all other remedies provided herein or otherwise by law.

Should Lessor elect to re-enter and take possession as set forth in paragraph 13.2(a) above or should it take possession through legal proceedings, pursuant to any notice provided for by law or otherwise, it may terminate this Operating License and make such alterations, additions and repairs as may be necessary to relicense the Premises, and relicense the Premises or any part thereof for such term or terms and at such rates and upon such other terms and conditions as Lessor in its reasonable discretion deems advisable.

13.3. Self Help. If either party shall at any time default in the performance of any obligation under this Operating License, the other party shall have the right after reasonable advance notice to the defaulting party, but shall not be obligated, to perform such obligation notwithstanding the fact that no specific provision for such substituted performance is made in this Operating License with respect to such default. In performing such obligation, the curing party may make any payment of money or perform any other act. All sums so paid (together with interest at the rate of eighteen percent (18%) and all necessary incidental costs and expenses in connection with the performance of any such act), shall be payable immediately on demand. Either party may exercise the foregoing rights without waiving any other of its rights or releasing the defaulting party from any of its obligations under the Operating License.

13.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Licensor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement and Operating License, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Licensor to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

13.5. Agreement to Pay Attorneys' Fees and Expenses. In the event that either party should default under any of the provisions of this License and Operating Agreement and the non-defaulting party should employ attorneys or incur other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of the other, the defaulting party agrees that it will pay on demand to the prevailing party the reasonable fees of such attorneys and such other cost and expenses so incurred.

13.6. No Additional Waiver Implied by One Waiver. In the event any agreement, condition or representation contained in this Operating License should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

13.7. Nonrecourse Nature of Obligations. The obligations of the Licensee shall be limited to the Wharfage Fees payable hereunder together with the real and personal property pledged as security under the Project Funding Agreement. The Authority shall look solely to the Dry Cargo Pier, the Headlands, the collateral securing each obligation or the proceeds of such collateral, including insurance proceeds, in satisfaction of the obligations identified herein.

## **14. MISCELLANEOUS**

14.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when (a) mailed by registered or certified mail, postage prepaid, or (b) delivered by nationally recognized private courier or overnight delivery service, charges

prepaid, to the following addresses or to such other addresses as the parties shall, by like notice, notify one another:

If to the Licensee:

Sprague Energy Corp.

ATTN: Robert Blanchard, Vice President of Terminals  
Two International Drive, Suite 200  
Portsmouth, NH 03801  
Phone: (603) 430-7232  
Facsimile: (603) 430-5324

If to the Lessor:

Maine Port Authority

ATTN: John G. Melrose, Chair  
c/o Commissioner, Maine Department of Transportation  
16 State House Station  
Augusta, Maine 04333-0016  
Phone: (207) 287-2551  
Facsimile: (207) 287-8300

14.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lessor, the Licensee, and their respective permitted successors and assigns.

14.3. Severability. In the event any provision of this Operating License shall be held invalid or unenforceable by any court of competent jurisdiction or by any future legislative action, such holding or such action shall not invalidate or render unenforceable any other provision hereof.

14.4. Amendments, Changes and Modifications. This Operating License may be amended, changed, modified, altered or terminated only by an instrument in writing signed by the parties hereto.

14.5. Execution Counterparts. This Operating License may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

14.6. Applicable Law. This Operating License shall be governed exclusively by the applicable laws of the State of Maine.

14.7. Surrender of the Premises. Except as otherwise provided in this Operating License, Licensee shall, upon the expiration or termination of this Operating License for any reason whatsoever, surrender the Premises to the Lessor in good order, condition and repair, except for reasonable wear and tear. All buildings and improvements then on the Premises including, without limitation, the heating, ventilating, air conditioning, plumbing, sewage, electric, sprinkler and lighting systems therein, the roof, structural supports, foundations, walls, floors, driveways, parking areas, grounds, all doors, door frames and door openers and all windows,

window frames and plate glass, in good, clean and safe repair, order and condition, and all alterations, improvements, restoration, repairs, replacements or renovation thereto shall upon any such expiration or termination become the property of Lessor, unless upon the request of Licensee, Licensee shall be required to remove the same.

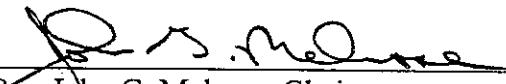
14.8. Exhibits and Schedules. Each exhibit and schedule attached to this Operating License shall be incorporated into and be a part of this Operating License.

IN WITNESS WHEREOF, the parties hereto have executed this Operating License all as of the date first above written.

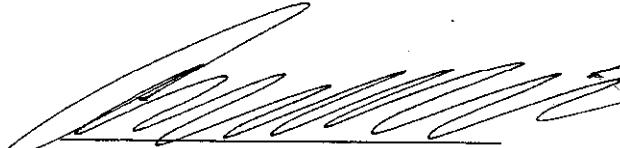
IN WITNESS WHEREOF the parties have executed this Agreement on the date first above written.

**MAINE PORT AUTHORITY, LICENSOR**

  
Witness

  
By: John G. Melrose, Chair

**SPRAGUE ENERGY CORP., LICENSEE**

  
Witness

  
Robert K. Blanchard  
Vice President of Terminals

EXHIBIT

1

(cont.)

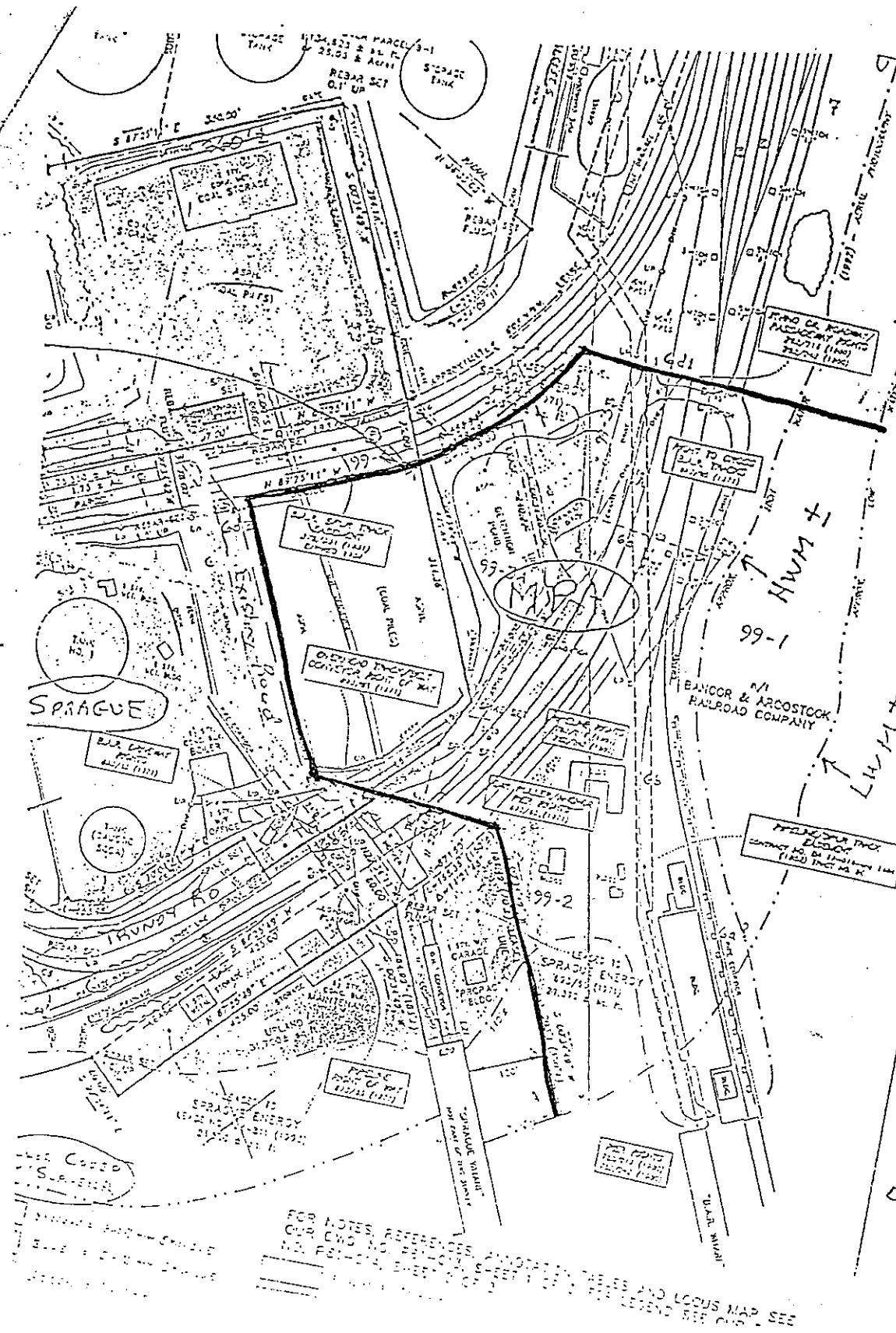
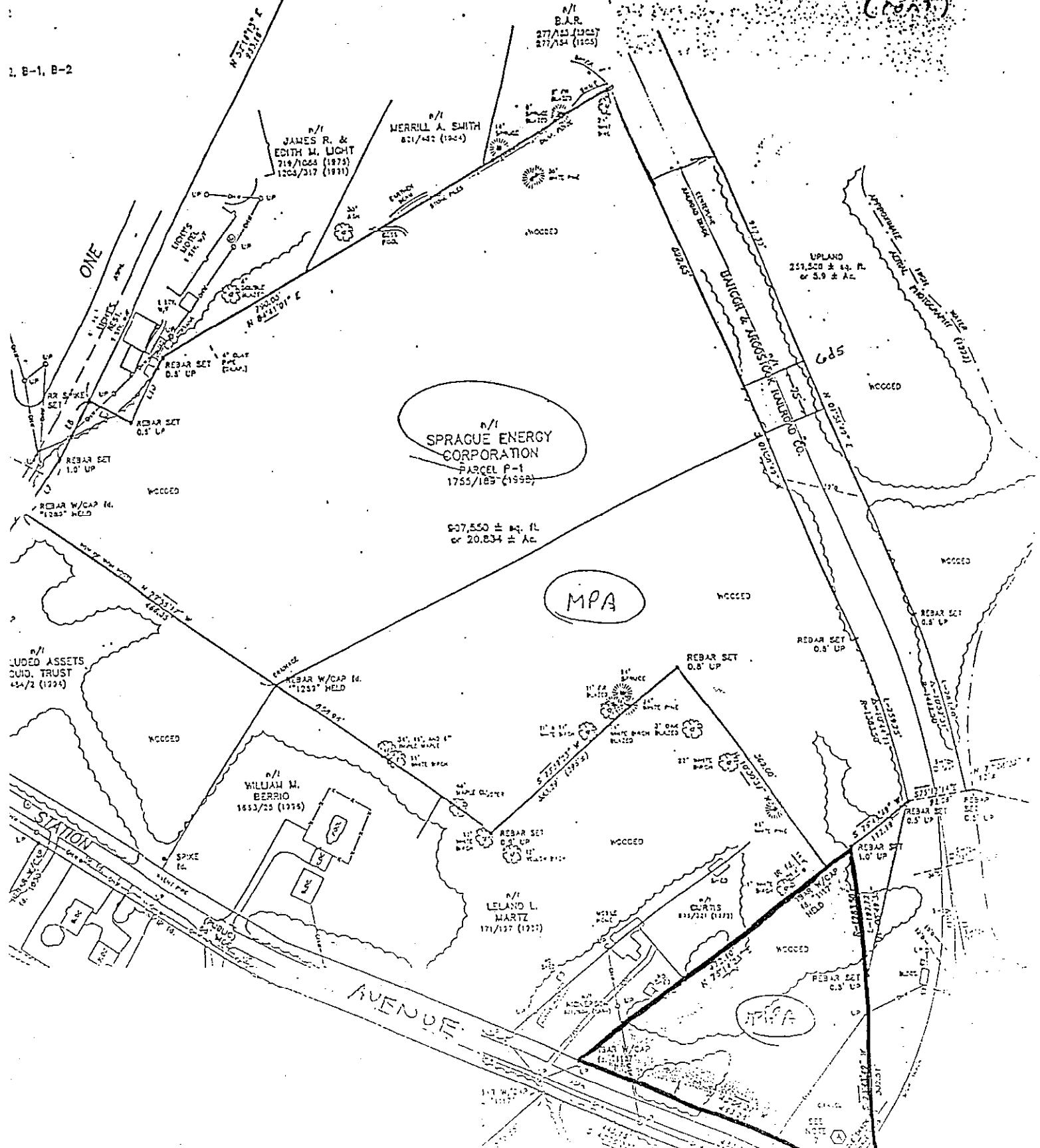


Exhibit 1

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2. B-1, B-2



**EXHIBIT 2****MACK POINT REDEVELOPMENT****LICENSE AND OPERATING AGREEMENT  
MAINE PORT AUTHORITY & SPRAGUE ENERGY CORP****CARGO VOLUME GOALS**

Sprague shall use its best efforts to maximize the volume of cargo passing over the Mack Point Piers and as follows:

1. Minimum Annual Cargo Volume Goal. During the thirty (30) year term of the Operating Agreement and License, the "Minimum Cargo Annual Volume Goal" shall be that volume of cargo necessary to generate aggregate annual Wharfage Fees from both the Liquid Cargo Pier and Dry Cargo Pier of \$450,000.
2. Corrective Recommendations. If, after five (5) years from the Dry Cargo Pier Completion Date, Sprague fails to reach the Minimum Cargo Volume Goal for any two (2) subsequent, consecutive calendar years, the Authority may study any and all aspects of Sprague's cargo operations at Mack Point for the purpose of making specific recommendations to increase cargo volume. The Authority may elect to retain an independent marine cargo consultant to perform such a study. Sprague shall allow the Authority and/or the consultant reasonable access to all information reasonably necessary to conduct such study. The Authority and/or the consultant shall consider all factors it deems relevant to cargo volume at Mack Point, including marketing strategies, operations, current or possible future cargo markets, and general global and local economic conditions. If the Authority so elects to retain a consultant, Sprague may object to the Authority's consultant selection based only upon substantial evidence of bias or incompetence. Upon completion of the study, the Authority shall deliver to Sprague a draft report containing specific recommendations to increase cargo volume at Mack Point, if any. Such report will be accompanied by the final consultant's study, if any. Sprague shall have sixty (60) days to comment on said report and recommendations. Thereafter, the Authority may issue a final report containing specific recommendations to increase cargo volume at Mack Point (the "Final Report").
3. Best Efforts to Implement Report/Arbitration. Sprague agrees to use its best efforts to implement the recommendations contained in the Final Report. If, after two (2) calendar years from the date of the Final Report, the Authority determines that Sprague is not using its best efforts, the Authority may choose to submit the matter to arbitration and will so notify Sprague ("Arbitration Notice"). Within sixty (60) days of receipt of the Arbitration Notice, the parties shall agree upon an arbitrator, discovery and hearing procedures, and schedule for arbitration. If the parties cannot so agree, the rules of the American Arbitration Association shall apply. The parties agree to use best efforts to proceed to an arbitration hearing within 180 days of the Arbitration Notice.

The arbitrator shall have the authority to determine whether the recommendations contained in the Final Report are a reasonable means to increase cargo volume and whether Sprague used its best efforts to implement said recommendations. In determining whether said recommendations are a reasonable means to increase cargo volume, the arbitrator shall consider the amount of capital investment required from Sprague relative to the projected increase in cargo volume and whether the capital investment required can be expected to earn a reasonable commercial after tax return to Sprague. In determining whether Sprague used its best efforts to implement said recommendations, the arbitrator may consider the general condition of the cargo industry and general global and local economic conditions.

If the arbitrator determines that some of the material recommendations contained in the Final Report are a reasonable means to increase cargo volume and that Sprague has not used its best efforts to implement said reasonable recommendations, then Sprague shall be in default of the Operating Agreement and License, absent cure within 45 days, and the Authority may pursue all remedies provided in this Project funding agreement and the Operating Agreement and License.

H/\$LEGAL-SHARED/BAVN/MACK POINT/CLOSING DOCUMENTS/LICENSE\_Cargo Volume Goals Exhibit

## **EXHIBIT 3**

### **OPTION TO PURCHASE REAL ESTATE MACK POINT HEADLANDS (Sprague to MePA)**

**SPRAGUE ENERGY CORP.**, a Delaware corporation, with principal offices at Two International Drive, Suite 200, Portsmouth, New Hampshire ("Sprague") and with a place of business at Mack Point, Searsport, Maine ("Mack Point") and the **MAINE PORT AUTHORITY**, a body corporate and politic and a public instrumentality of the State of Maine created pursuant to 23 M.R.S.A. §4420, with its office located in Augusta, Maine (the "Authority") hereby agree as follows:

#### **A. Background**

1. Sprague and the Authority entered into a License and Operating Agreement of even date herewith (the "License") under which Sprague received an exclusive license for the management, operation, maintenance and repair of a pier at Mack Point in Searsport, Maine formerly owned by the Bangor and Aroostook Railroad Company, to be known as the "Dry Cargo Pier", for a term anticipated to be approximately thirty years subject to the terms and conditions set forth in said License.
2. As security for the performance of its obligations and duties under said License, Sprague agreed to grant to the Authority an option to purchase certain real estate at Mack Point at the head of said pier, subject to the terms and conditions set forth herein.

#### **B. Grant of Option**

Sprague hereby grants to the Authority, the exclusive and irrevocable right to purchase certain parcels of land, easements, improvements thereon and appurtenances thereto described on the attached **Schedule A**, known as the "Headlands", on the terms and conditions set forth herein (the "Option"). For source of title, reference may be had to said **Schedule A**. In the event of exercise of this Option, Sprague agrees to accept one dollar as full and complete compensation.

#### **C. Term of Option**

Unless extended by mutual agreement, this Option shall be in full force and effect from the date hereof until the earlier of one of the following four dates: (1) passing of title after the Authority's exercise of this Option, (2) Sprague's exercise of its "Option to Purchase-Mack Point Pier," granted by the Authority contemporaneously herewith (3) thirty (30) years from the completion of construction of the Dry Cargo Pier as defined in the License, or (4) June 30, 2033 (the "Option Period").

#### **D. Terms and Conditions**

1. This Option may only be exercised by the Authority upon the occurrence of any one of the following events: (a) a default by Sprague under the License and the other documents referenced therein which is not cured within any applicable grace period; (b) Sprague's notification to the Authority of its intention to sell any part of the Headlands or Sprague's entering into a contract for sale of the Headlands to a third party purchaser; or (c) the termination or expiration of that certain "Option to Purchase - Mack Point Pier" granted by the Authority to Sprague of even date herewith to be recorded in the Waldo County Registry of Deeds.

2. The Authority may exercise this Option only by giving written notice to Sprague at its corporate offices, now in Portsmouth, N.H., by any commercially reasonable method of transmittal with confirmed receipt.

3. In the event that Sprague intends or contracts to sell the Headlands to a third party purchaser, Sprague must provide the Authority with at least 60 days prior written notice of any offer by Sprague to sell the Headlands, and the Authority must exercise this Option within 60 days of receipt of such notice.

4. In the event of the exercise of this Option by the Authority, Sprague shall have the right and maintain access to the Headlands and the Dry Cargo Pier for the purpose of handling cargos on terms at least as favorable as other users thereof. This provision shall survive closing under this Option.

5. Once the Authority has elected to exercise the Option granted hereunder, Sprague shall be bound to sell and the Authority shall be bound to buy the Headlands for the sum of One Dollar (\$1.00), and the Authority shall select a date for closing the transaction which shall be a day not less than thirty (30) no more than sixty (60) days from the receipt by Sprague of the Authority's written notice of its intention to exercise this Option.

6. If the Authority exercises to this Option, Sprague shall deliver the following to the Authority at the closing:

- (a) a Quitclaim Deed with Covenants for the Headlands, including all fixtures thereon along with full possession of the property, free of all tenants and other encumbrances; and
- (b) an assignment of all Sprague's right, title and interest in and to any permits or approvals granted to Sprague which touch and concern the Headlands in any manner whatsoever.

7. The Authority, its agents, employees and independent contractors shall (upon reasonable prior notice) be entitled to enter upon the Headlands during the Option Period to inspect or survey the same, including the performance of borings and soil tests, and for such further inspection or planning purposes as may be necessary; provided, however, that such entry shall not create a nuisance and that the Authority will place the property in the same condition prior to the entry.

8. In the event of a default by Sprague as to any matter contained herein, the Authority shall be entitled to specific performance in addition to all other applicable remedies.

9. This Option may not be assigned or otherwise transferred without the express written consent of Sprague being recorded in said Registry.

10. This Option shall be governed by the laws of the State of Maine.

11. This Option, or an executed memorandum hereof, shall be recorded in the Waldo County Registry of Deeds.

12. All capitalized terms not otherwise defined herein shall have the meanings and definitions ascribed to them in the License.

IN WITNESS HEREOF, the parties hereto have duly executed and delivered this Option this \_\_\_\_ day November, 1999.

**SPRAGUE ENERGY CORP.**

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Witness

Robert K. Blanchard  
Vice President of Terminals

**MAINE PORT AUTHORITY**

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Witness

By: John G. Melrose, Chair

STATE OF MAINE  
KENNEBEC, ss.

October \_\_\_, 1999

Thence personally appeared the above named Robert K. Blanchard, Vice President of Terminals of SPRAGUE ENERGY CORP. and John G. Melrose, Chair of the MAINE PORT AUTHORITY and severally acknowledged the foregoing instrument to be their free act and deed in his said capacity and the free act and deed of said entities.

Before me,

SCHEDULE A

Option from Sprague to MePA

Mack Point Headlands  
Searsport, Maine

Seven (7) certain parcels of land with appurtenances thereto in the TOWN OF SEARSPORT, County of Waldo, State of Maine at Mack Point, situated on or near Long Cove in the Penobscot Bay of the Atlantic Ocean, shown on the following plans: "Plan of Land Showing Proposed MePA Parcels at Mack Point", Sheet 1 of 1, prepared by James W. Sewall Company, Brian A. Norris, PLS #2272, dated November 3, 1999 to be recorded in the Waldo County Registry of Deeds (hereinafter MePA Plan) and three certain plan sheets entitled "Standard Boundary Survey Showing Proposed Parcels, Easements and Agreements for Conveyance at Mack Point", prepared for Sprague Energy Corp. by James W. Sewall Company, Brian A. Norris, PLS #2272, originally dated March 19, 1999 and revised to November 3, 1999 to be recorded in said Registry (hereinafter "Sprague Plans"), said parcels being more particularly described as follows.

**PARCEL ONE: MePA Parcel 1A**

A certain parcel labeled "Proposed MePA Mortgage Parcel 1A" on said MePA plan and being described by metes and bounds as follows:

**BEGINNING** at a rebar set in the northwest corner of Parcel 99-1;

THENCE S 63-17-35 E along land now or formerly of Bangor & Aroostook Railroad (BAR) a distance of 115.00 feet to a rebar, said rebar being a point on line; thence continuing S 63-17-35 E along land now or formerly of BAR a distance of 130 feet, more or less, to the approximate low water line;

THENCE Southerly by said low water line to the northeast corner of the Proposed MePA Fee Parcel as shown on said MePA Plan;

THENCE S 89-25-11 W along the northerly line of said Proposed MePA Fee Parcel a distance of 134 feet, more or less, to a point on said low water line, said course being offset approximately 30 feet to the north of the northerly end of the BAR Wharf;

THENCE Northwesterly and westerly by said low water line to a point;

THENCE N 00-34-49 E a distance of 432 feet, more or less, to a point in the southerly boundary line of BAR;

THENCE Northeasterly along the lands of BAR a distance of 590.11 feet along a curve to the left having a radius of 889.66 feet to the **POINT OF BEGINNING.**

Said parcel containing approximately 273,500 feet or **6.2 acres, of which approximately 3.7 acres are upland.**

The BAR Wharf is not part of the parcel described herein.

Subject to and with the benefit of any and all existing rights, agreements, easements and leases including, but not limited to, the following:

Subject to a pipeline/spur track easement to the United States of America, Contract No. DA 19-016-eng 1486 (1952) Tract No. 9E.

Subject to pipeline rights to Irving Oil Corporation as described in deed, Book 782, Page 216 (1980) and deed, Book 782, Page 242 (1980).

Subject to pier and passageway rights to Irving Oil Corporation as described in deed, Book 782, Page 216 (1980) and deed, Book 782, Page 242 (1980).

Also subject to and/or with the benefit of any and all rights, agreements and easements as described in other documents to be recorded herewith and as recorded in a deed describing Parcel 99-1 and 99-2 from BAR to Sprague Energy Corporation.

Also subject to and with the benefit of any and all existing rights, easements and agreements including, but not limited to, those described in a Declaration of Cross Easements (particularly proposed Easements L and H1) by and between Sprague Energy Corporation and Bangor & Aroostook Railroad Company as recorded in the Waldo County Registry of Deeds on a near or even date herewith.

Meaning and intending to describe a portion of Parcel 99-1 and a portion of Parcel 99-2 as shown on said MePA Plan and the Sprague Plans.

### **PARCEL TWO: MePA Parcel 1B**

A certain parcel labeled "Proposed MePA Mortgage Parcel 1B" on said MePA plan and being described by metes and bounds as follows:

**BEGINNING** at a spike at the northwest corner of Parcel 99-3A on said MePA plan, said spike also being the southeast corner of Parcel 99-6 on said plan;

THENCE Northeasterly along land of BAR and along a curve to the left having a

radius of 556.94 feet a distance of 257.52 feet to a rebar;

THENCE S 63-17-35 E along land of BAR a distance of 85.95 feet to a rebar;

THENCE Southwesterly along land of BAR and along a curve to the right having a radius of 839.66 feet a distance of 600.33 feet to a rebar;

THENCE S 82-35-04 W along land of BAR a distance of 89.30 feet to a spike;

THENCE S 67-25-49 W a distance of 78.92 feet to a point;

THENCE N 00-34-49 E along land of Sprague Energy Corp. a distance of 442.98 feet to a point on the southerly boundary line of Parcel 99-6 as shown on said plans;

THENCE S 89-25-11 E along the southerly boundary line of Parcel 99-6 as shown on said plans a distance of 220.00 feet to the POINT OF BEGINNING.

Said parcel containing approximately 166,592 square feet or 3.824 acres.

Subject to and with the benefit of any and all existing rights, agreements, easements and leases including, but not limited to, the following:

Subject to a pipeline/spur track easement to the United States of America, Contract No. DA 19-016-eng 1486 (1952) Tract No. 9E.

Subject to pipeline rights to Irving Oil Corporation as described in deed, Book 782, Page 216 (1980) and deed, Book 782, Page 242 (1980).

Subject to pier and passageway rights to Irving Oil Corporation as described in deed, Book 782, Page 216 (1980) and deed, Book 782, Page 242 (1980).

Also subject to and/or with the benefit of any and all rights, agreements and easements as described in other documents to be recorded herewith and as recorded in a deed describing Parcel 99-3A and 99-3B from BAR to Sprague Energy Corporation.

Subject to and with the benefit of any and all existing rights, agreements and easements including, but not limited to, those described in a Declaration of Cross Easements (particularly proposed Easements L and H1) by and between Sprague Energy Corporation and Bangor & Aroostook Railroad Company as recorded in the Waldo County Registry of Deeds on a near or even date herewith.

Meaning and intending to describe a portion of Parcel 99-3A in its entirety, Parcel 99-3B in its

entirety and a portion of Parcel S-2, as described in deed, Book 1578, Page 59 (1995) and as shown on said Sprague Plans.

**PARCEL THREE: Crossing Rights - "L"**

The right of pedestrian and vehicular over BAR's right of way and tracks at any point between PARCEL ONE above (MePA Parcel 1A) and PARCEL TWO above (MePA Parcel 1B), and the right install, maintain and repair of above- or below-ground pipelines and utility services over or under BAR's right of way and tracks at any point between said two parcels, the area subject to these rights being more particularly described as follows:

**BEGINNING** at a rebar at the northwesterly corner of Parcel 99-1 shown on said MePA Plan and Sheet 3 of 3 of said Sprague Plans, said rebar being the northeast corner of the crossing area described herein;

THENCE Southwesterly along Parcel 99-1 and 99-2 and along a curve to the right having a radius of 889.66 feet a distance of 629.94 feet to a rebar;

THENCE S 69-42-00 W along Parcel 99-2 a distance of 146.58 feet to a spike;

THENCE S 67-25-49 W Parcel 99-2 a distance of 107.99 feet to a point;

THENCE N 19-55-49 W a distance of 67.26 feet to a spike, the northerly portion of said last course being along the terminus of Trundy Road, a public way;

THENCE N 67-25-49 E along land now or formerly of Sprague Energy Corp. a distance of 159.28 feet to a spike;

THENCE N 82-35-04 E along Parcel 99-3A a distance of 89.30 feet to a spike;

THENCE Northeasterly along Parcel 99-3A and Parcel 99-3B and along a curve to the left having a radius of 839.66 feet a distance of 600.33 feet to a rebar;

THENCE S 63-17-35 E a distance of 50.35 feet to the **POINT OF BEGINNING**.

The Crossing is subject to and with the benefit of any and all existing easements.

This parcel is subject to all terms, conditions, and provisions of that certain Private Crossing Agreement between Bangor & Aroostook Railroad Company and Sprague Energy Corp. regarding Crossing Agreement L of even date herewith to be recorded.

**PARCEL FOUR: Easement H-1**

Certain 30 foot wide easement for pedestrian and vehicular access over the asphalt and gravel drive from the easterly of the terminus of Trundy Road, a public way, to PARCEL TWO above (MePA Parcel 1B), said easement being shown as "H-1" on said MePA Plan and Sheet 3 of 3 of said Sprague Plans and being all that portion of the easement described in paragraph H-1 of Declaration of Cross Easements between Sprague Energy Corp. and Bangor & Aroostook Railroad Company of even date herewith to be recorded as is located outside of said PARCEL TWO above (MePA Parcel 1B). Said easement crosses land of Sprague Energy Corp. labeled "Parcel S-2" on said MePA Plan and Sheet 3 of 3 of said Sprague Plans. For source of title of Sprague Energy Corp. regarding said "Parcel S-2, see Book 1578, Page 59 (1995).

**PARCEL FIVE: MePA Parcel 2 - Station Avenue**

A certain parcel on the northeasterly side of Station Avenue labeled "Proposed MePA Mortgage Parcel 2" on Sheet 1 of 3 of said Sprague Plans, and being described by metes and bounds as follows:

**BEGINNING** at a "TBAR" in the northeasterly sideline of Station Avenue at land now or formerly of Nickerson, said TBAR also being the southwesterly corner of the parcel described herein;

THENCE N 76-14-23 E along lands now or formerly of Nickerson and Curtis a distance of 472.10 feet to a "TBAR";

THENCE N 74-08-12 E along land of Sprague Energy Corp. a distance of 46.91 feet to a rebar;

THENCE Southerly along land now or formerly of BAR and along a curve to the right having a radius of 1283.50 feet a distance of 197.72 feet to a rebar;

THENCE S 23-43-49 W along land now or formerly of BAR a distance of 302.51 feet to a rebar;

THENCE N 43-06-27 W along said northeasterly sideline of Station Avenue a distance of 463.28 feet to the **POINT OF BEGINNING**.

Said parcel containing 107,376 square feet, more or less, or **2.47 acres**, more or less.

Subject to and with the benefit of any and all existing rights, agreements, easements and leases including, but not limited to, those described in a Declaration of Cross Easements (particularly proposed Easement A) by and between Sprague Energy Corporation and Bangor & Aroostook Railroad Company even date herewith to be recorded.

Meaning and intending to convey the southerly portion of Parcel P-1. Said Parcel P-1 being shown on said plan and described in deed to Sprague Energy Corp. recorded in Book 1755, Page 189 (1998).

**PARCEL SIX:** Easement P-1

A 40-foot wide temporary easement and right of way for pedestrian and vehicular travel and the construction, operation, and maintenance of a paved access way over and across property of BAR, said easement being generally shown near the shore of Long Cove as "P1" on the MePA Plan and all three Sheets of the Sprague Plans.

Said easement commences at the northerly boundary of PARCEL ONE above (MePA Parcel 1A), runs in a general northeasterly direction, and then turns northerly and then northwesterly to the easterly boundary of PARCEL FIVE above (MePA Parcel 2), excepting the area identified on Sheet 1 of 3 of said Sprague Plans as "R", being a reference to the Private Crossing Agreement between Bangor & Aroostook Railroad Company and Sprague Energy Corp. regarding Crossing Agreement R of even date herewith to be recorded. The westerly side of this Easement P1 shall be located twelve (12) feet easterly of the centerline of the most easterly remaining BAR track running alongside Long Cove at the time the access drive is constructed, if at all, as more specifically provided in paragraph P of the Declaration of Cross Easements between Bangor & Aroostook Railroad Company and Sprague Energy Corp. of even date herewith to be recorded.

Also the right of pedestrian and vehicular over BAR's right of way and tracks at or near the area identified on Sheet 1 of 3 of said Sprague Plans as "R", said right being described in said Private Crossing Agreement between Bangor & Aroostook Railroad Company and Sprague Energy Corp. regarding Crossing Agreement R of even date herewith to be recorded, subject to all terms, conditions, and provisions of said Crossing Agreement R.

All rights granted in this PARCEL SIX shall expire July 1, 2002.

**PARCEL SEVEN:** Easement P-3

A fifty (50) foot wide easement from Trundy Road to Station Avenue across property of Sprague Energy Corp. (Parcel S-2 on said plans) to take effect on July 1, 2002, said easement being for pedestrian and vehicular travel and the construction, operation, and maintenance of a paved access way and all appurtenances thereto. Said easement is labeled "P3" on all three Sheets of said Sprague Plans shall be centered on the existing asphalt drive that runs from the Trundy Road through that portion of Parcel S-2 currently under lease to the United States of America (Defense Fuel), and then is shall be centered on a short portion of gravel road to the southerly line of land of the USA and/or Tymeson, and then shall run N 76-14-23 E along the land of Tymeson to the southwesterly line of Station Avenue.

All rebars referenced in this Schedule A are 5/8-inch iron rods with alloy caps stamped "J.W. Sewall Co., PLS 2272, Boundary".

Also hereby conveying all other easements or rights that Sprague Energy Corp. may have are necessary for the convenient use of the BAR Wharf, or its replacement, whether now existing or hereinafter installed, including all pipelines, access ways, utility services, and railroad access.

For source of title of this Grantor, reference may be had to the Quitclaim Deeds, Declaration of Cross Easements, Private Crossing Agreements, and other instruments from and with Bangor & Aroostook Railroad Company of even date herewith to be recorded and to deeds to Sprague Energy Corp. referenced herein above.

## MACK POINT REDEVELOPMENT

### PROJECT FUNDING AGREEMENT

AGREEMENT made this 5<sup>th</sup> day of August, 1999 by and between the **MAINE PORT AUTHORITY**, a body corporate and politic and a public instrumentality of the State of Maine created 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"). The parties hereby agree to undertake the redevelopment of a marine cargo facility at Mack Point for the purpose of making such facility available to the commercial and industrial public for marine transportation and cargo-handling purposes, subject to the terms and conditions set forth in this Agreement.

#### I. PROJECT OVERVIEW

A. General Description of Project & Roles. Subject to the terms and conditions of this Agreement, the Authority agrees to: (1) provide financing in the amount of \$2,000,000.00 for the acquisition by Sprague from Bangor and Aroostook Railroad ("BAR") of certain real estate at Mack Point as provided in Section II below, (2) acquire from Sprague the former BAR pier for \$2,000,000.00 as provided in Section III below, (3) demolish the former BAR pier and construct a new general purpose dry cargo pier generally within the present footprint of the BAR pier (the "Dry Cargo Pier") for a cost not to exceed \$12,000,000.00 as provided in Section IV below, and (4) fund one half the cost (up to \$250,000.00) of a west fender system on the Dry Cargo Pier and provide financing for a rehabilitation of the existing cargo pier owned and operated by Sprague at Mack Point to improve liquid cargo handling capabilities in an amount not to exceed \$2,000,000.00 with wharfage fees paid by Sprague to the Authority as provided in Section V below. Collectively, all said components are known as "the Project".

Subject to the terms and conditions of this Agreement, Sprague agrees to repay the BAR Acquisition Loan and the Liquid Cargo Pier Loan in the aggregate amount of \$ 4,000,000.00, act as Licensee/Operator of the Dry Cargo Pier, and pay license fees in the amount of \$12,000,000.00 as provided below.

B. Source and Limit of Public Investment. The source of funds to be disbursed or expended hereunder by the Authority for the components of the Project set forth in Sections II, III, and IV below (sometimes hereinafter referred to as the "Project Funds") are to be derived in substantial part from the issuance of State of Maine General Obligation Bonds as authorized in P & S 1997, c. 82, "An Act to Authorize Department of Transportation Bond Issues in the Amount of \$36,985,000 to Match Available Federal Funds for Improvements to Municipal and State Roads, State and Local Bridges, Airports, State Ferry Vessels and Terminals, and Rail and Marine Facilities." In no event will the Authority be obligated to expend Project Funds in excess of Sixteen Million Dollars (\$16,000,000.00) in the aggregate, including such funds as have been expended, or may be expended by the Maine Department of Transportation ("Department" or

"MDOT") for the components of the Project set forth in Sections II, III, and IV below, but excluding funds required under Section I, A(4) above. The source of funds for the improvements to Sprague's pier and for the west fender system of Dry Cargo Pier as set forth in Section V below shall be from the disbursement of Wharfage Fees actually paid by Sprague to the Authority as provided below (the "Liquid Cargo Pier Rehabilitation Fund" and the "Fender System Fund", respectively, as defined below). In no event will the Authority be obligated to expend or disburse funds in excess of \$ 2,250,000.00 for such Sprague Pier improvements and West Fender System. The Authority represents and warrants that, subject to the performance by Sprague of its obligations under this Agreement and the Closing Documents, funds are or will be available for the Project.

**II. FINANCING OF BAR TO SPRAGUE ACQUISITION**  
(\$ 2,000,000.00)

A. Loan. Subject to the following terms and conditions, the Authority shall make a loan to Sprague (sometimes referred to as "Borrower") in the amount of \$ 2,000,000.00 for the purpose of purchasing certain real estate and other rights and improvements at the head of the BAR and Sprague piers from BAR as described in the Purchase and Sale Agreement between BAR and Sprague dated June 30, 1999 and the Land Transfer & Cross Easement Agreement between BAR and Sprague also dated June 30, 1999, said real estate being all of parcel 99-1, and portions of parcel 99-2 and 99-3 as shown on a Standard Boundary Survey performed for Sprague by James W. Sewall Company originally dated March 19, 1999, to be known as the "BAR Acquisition Loan". Said loan amount shall be in immediately available funds to Sprague at the BAR to Sprague Closing by FedWire transfer to an account to be designated by Sprague prior to said Closing.

B. Loan Term. The BAR Acquisition Loan shall mature fifteen (15) years from the date of execution of the documents evidencing the Loan ("BAR Acquisition Loan Maturity").

C. Interest Rate. The interest rate on the BAR Acquisition Loan shall be Zero Percent (0%) until BAR Acquisition Loan Maturity (whether said maturity results from the passage of time or acceleration of the BAR Acquisition Loan after an Event of Default as defined in herein and in the Closing Documents) at which time interest shall accrue and be chargeable in an amount equal to the annual rate from time-to-time reported by the Wall Street Journal or its successor publication as the then highest "Prime Rate," plus Five Percent (5%) (the "Default Rate").

D. Payment Requirements. The BAR Acquisition Loan shall be repaid in monthly payments in the form of wharfage fees as provided in Section VI below.

E. Security - Mortgage on Headlands. The BAR Acquisition Loan shall be secured by a first priority mortgage on approximately 10 acres of land near the BAR Pier consisting of about 7 acres abutting and at the head of the pier and about 3 acres on Station Avenue about one half of a mile north of said pier, said land being approximately depicted on sketches attached as Exhibit 2 (the "Headlands Mortgage"). The description of said parcels and related rights are to be finalized by survey before the BAR to Sprague closing. Said secured parcel shall include all necessary

and convenient easements to use, maintain, repair and replace the fixtures, improvements, pipelines and utilities used in the operation of the BAR pier (later the Dry Cargo Pier), an easement for all purposes at least 50 feet in width running north along Long Cove from the 7 acre parcel at the BAR pier to Station Avenue, all necessary and convenient easements for pedestrian and vehicular (including commercial size and weight vehicles) access from Trundy Road to the BAR pier (later the Dry Cargo Pier), all necessary railroad crossings and easements related thereto, whether any of the same are now owned or hereafter acquired by Sprague, all as reasonably determined by the Authority (the "Headlands").

F. Documents. The BAR Acquisition Loan shall be evidenced by a commercial promissory note, the Headlands Mortgage, and other appropriate instruments to be executed by Sprague to the Authority in form and substance reasonably acceptable to both parties including those documents listed on **Exhibit 3** (the "Closing Documents"). The note and the Headlands Mortgage shall contain a "due on sale" clause, shall be assumable only with the Authority's consent as provided herein, and shall contain a corporate power of sale provision regarding foreclosure.

G. BAR to Sprague Closing. All documents shall be executed or delivered at the Closing of the BAR to Sprague acquisition. The parties shall use their best efforts to have all conditions precedent fulfilled within the time frames identified and all documentation completed so that the BAR to Sprague Closing may take place on or before August 26, 1999 at 10:00 A.M. at the offices of counsel to Sprague, in Bangor, Maine, or such other time and location as may be mutually agreed, but in no event later than November 1, 1999 TIME BEING OF THE ESSENCE.

H. BAR Commitments. Prior to the BAR to Sprague closing, Sprague must deliver to the Authority an agreement acceptable to the Authority that binds BAR to provide for the transportation and disposal of all non-asbestos demolition debris from the demolition of the former BAR pier in compliance with all applicable environmental laws, regulations, permits, a performance bond or other equivalent assurances (as determined by the Authority) assuring performance by BAR of said transportation and disposal, and such other commitments from BAR as may be provided elsewhere herein.

I. Conditions Precedent. The Authority's obligation to make the BAR Acquisition Loan and the terms of said Loan are subject to all conditions set forth in this Agreement including all General Provisions set forth in Section VII below and all Special Conditions attached as **Exhibit 4**.

### **III. PURCHASE BY AUTHORITY FROM SPRAGUE OF THE BAR PIER** (\$ 2,000,000.00)

A. Conveyance. At the Sprague to MePA Closing, Sprague will sell, transfer and convey to the Authority good and marketable title to the former BAR Pier and all headlands located within 50 feet of the said BAR pier and all associated rights in submerged lands with such covenants, conditions, easements and encumbrances that the Authority deems reasonably acceptable prior to

closing. Said conveyance shall be subject to the right of Irving Oil Company to relocate its pipelines to the former BAR Pier (later Dry Cargo Pier) and Headlands as set forth in a certain lease between BAR and Irving Oil Corporation dated August 1, 1972, provided, however, that such relocation shall be at no cost to the Authority and shall be undertaken in a manner acceptable to the Authority.

B. Purchase Price. In consideration of said conveyance, the Authority shall pay Sprague \$2,000,000.00 to be paid in immediately available funds to Sprague at the Sprague to MePA Closing (the "Acquisition Cost"), by FedWire transfer to an account to be designated by Sprague prior to the Closing.

C. Submerged Land Rights. The Authority shall, as soon as practicable prior to the Closing, apply to and obtain from the State of Maine and any agency thereof with appropriate jurisdiction, a new, reissued or extended Submerged Land Lease granting, issuing or otherwise extending to the Authority such rights to use and maintain the submerged, underwater and tidal lands associated with and used in connection with the Dry Cargo Pier (the "Submerged Land Rights") for a term of at least thirty (30) years from the date of the Sprague to MePA Closing. Said Submerged Land Lease shall contain such terms and conditions as may be required to effect, preserve, undertake and authorize all purposes and transactions contemplated by the Mack Point Project and the operation, maintenance, use, repair, renovation and replacement of the Dry Cargo Pier as contemplated herein. Said Submerged Land Lease shall contain a provision reasonably acceptable to Sprague authorizing the transfer and assignment thereof without further application or approval. Sprague agrees to cooperate and coordinate the cooperation of BAR to obtain such Lease.

D. Interim Operation. All agreements that may affect the ownership, use, control or operation of the BAR pier from and after the date of the BAR to Sprague Closing shall be subject to the approval of the Authority (which approval shall not be unreasonably withheld or delayed).

E. Documents. At the Sprague to MePA Closing, the following documents shall be executed: (1) Quit Claim Deed & Bill of Sale, (2) License and Operating Agreement, (3) an option from Sprague to MePA regarding the Headlands securing Sprague's obligations under the License and Operating Agreement as provided in Section IV(F) - "Security - Option in Headlands" below, (4) an Owner's Title Policy covering the BAR Pier, (5) a Construction Management Agreement between MePA, Sprague, and MDOT governing the demolition of the former BAR Pier, and the design, permitting and construction of the Dry Cargo Pier, (6) an environmental indemnification agreement covering the Headlands and the BAR Pier, (7) an option from MePA to Sprague regarding the BAR pier or Dry Cargo Pier and all related property and Submerged Land Rights, and (8) other appropriate instruments to be executed by the parties in form and substance reasonably acceptable to both parties including those documents listed on Exhibit 3 (the "Closing Documents").

F. Security - Option in Headlands. The option from Sprague to the Authority in the Headlands shall provide that the Authority may exercise said option only after (1) a default under the License or any Closing Document which is not cured within any applicable grace period, and (2)

Completion of the Dry Cargo Pier. Said option shall be in addition to the Authority's independent right to foreclose the Headlands Mortgage. The option shall further provide that the Authority may exercise the option (a) upon any proposed sale by Sprague of the Headlands, or (b) if Sprague fails to exercise its option to purchase the Dry Cargo Pier as provided herein. The option shall further provide that Sprague must provide the Authority with at least 60 days prior written notice of any offer by Sprague to sell the Headlands and that the Authority must exercise its option within 60 days of receipt of such notice from Sprague. In the event of any exercise of the option, Sprague shall have and maintain access to the Headlands and Dry Cargo Pier for the purpose of handling cargoes on terms at least as favorable as other users thereof. The option shall be in a form suitable for recording in the Waldo County Registry of Deeds.

G. Sprague to MePA Closing. All documents shall be executed or delivered at the Closing of the Sprague to MePA acquisition. The parties shall use their best efforts to have all conditions precedent fulfilled within the time frames identified and all documentation completed so that the Sprague to MePA Closing may take place at 3:00 P.M. on the date of the BAR to Sprague Closing, at the offices of the Authority in Augusta, Maine, or such other time and location as may be mutually agreed, but in no event later than November 1, 1999, TIME BEING OF THE ESSENCE.

H. Conditions Precedent. The Authority's obligation to purchase the former BAR pier from Sprague is subject to all conditions in this Agreement including all General Provisions set forth in Section VII below and all Special Conditions attached as Exhibit 4.

#### **IV. CONSTRUCTION & OPERATION OF DRY CARGO PIER**

(\$ 12,000,000.00)

A. Irving Pipeline Relocation. Sprague agrees to complete the relocation of the Irving Oil Pipeline to the Sprague Pier at its expense within 45 days of being notified by the Authority to proceed with such pipeline relocation. Unless Sprague is reimbursed for costs of this relocation as provided in this subsection A below, Sprague shall receive all Wharfage Fees on oil passing through said pipeline until Completion of the Dry Cargo Pier as defined in Section IV(F) below. If, after bid opening for the contract encompassing the construction of the Dry Cargo Pier, there are sufficient Project Funds available (after including a construction contingency satisfactory to the Authority) to fund the reasonable costs of such pipeline relocation, then the Authority shall reimburse Sprague for such costs and the Authority shall receive all Wharfage Fees on oil passing through said pipeline.

B. Conceptual Scope of Dry Cargo Pier Improvements. The parties and MDOT intend to demolish the former BAR pier and construct a general purpose dry cargo pier generally within the present footprint of the said BAR pier as provided in this Section IV (the "Dry Cargo Pier Improvements"). The conceptual scope of said Improvements is set forth in subsection A of the attached Exhibit 5. The Dry Cargo Pier is intended to be an intermodal marine transportation and cargo-handling facility operated under the auspices of, and subject to the direction of, the

Authority for the use of the commercial and industrial public as part of the State of Maine's goal to provide three strategic, publicly accessible deep-water ports on the coast of Maine.

**C. Items Excluded from Scope.** The Dry Cargo Pier Improvements do not include, without limitation: (a) the transportation and disposal of non-asbestos demolition debris, which is to be completed by BAR at its expense, (b) the relocation of the Irving Pipeline, which is to be undertaken by Sprague (except as otherwise provided below), (c) the construction of the West Berth Fender System of the Dry Cargo Pier, which may be undertaken with Wharfage Fees paid by Sprague to the Authority pursuant to Section V(B) below, and (d) the Stern Line Mooring Dolphin. Provided however, that if upon completion of the Dry Cargo Pier Improvements, the Authority and the Department determine that there are sufficient Project Funds available (after including a construction contingency satisfactory to the Authority), the Authority will, in consultation with Sprague, undertake one or more of items (c) and (d) with Project Funds with priority in the order listed. These and additional items excluded from scope are set forth in subsection B of said **Exhibit 5**. Notwithstanding the foregoing, the design and permitting of items (c) and (d) shall be paid for by Project Funds.

**D. Public Investment Limitation / Budget Management.** The Authority and the Department will have no obligation to expend more than Twelve Million Dollars (\$12,000,000.00) to complete the Dry Cargo Pier Improvements. The Construction Management Agreement will provide for approvals by Sprague and the Authority during design, at bid award, and for major changes during construction to aid in managing the budget.

**E. License and Operating Agreement.** At the Sprague to MePA Closing, the Authority and Sprague shall enter into a License and Operating Agreement providing for the following: (1) Sprague's exclusive license for the management, operation, use, maintenance and repair of the former BAR Pier and the Dry Cargo Pier from the Sprague to MePA Closing until the 30<sup>th</sup> anniversary of the Dry Cargo Pier Completion Date as defined in Section IV, F below, (2) Sprague's obligation to pay the Authority monthly license payments consisting of Wharfage Fees totaling \$ 12,000,000.00 as provided in section VI below, (3) Sprague's obligation to use its best efforts to maximize the volume of cargo passing over the Mack Point Piers as set forth in the attached **Exhibit 6**, (4) Sprague's responsibility for any local property taxes assessable with respect to any machinery, equipment, and other assets owned by Sprague thereon, (5) Sprague's agreement 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 this provision of this paragraph 5), (6) Sprague's obligation to obtain and maintain policies of insurance as provided in paragraph 7 of the Special Conditions attached as **Exhibit 4**, and (7) all other terms and conditions set forth in this Agreement including all General Provisions set forth in Section VII below and all Special Conditions attached as **Exhibit 4**. The License and Operating Agreement shall be secured as provided in Section III (F) above. The BAR Pier (later the Dry Cargo Pier) shall be owned by and in the name of the MePA as provided in this Agreement. All real and personal property of

the MePA is entitled to the privileges and exemptions of the property of the State as provided by 23 M.R.S.A. §4424.

F. Completion. Completion of the Dry Cargo Pier is deemed to occur when the Authority reasonably determines that the Dry Cargo Pier, as constructed, (1) conforms to the Final Plans and Bid specifications and (2) is capable of receiving its first ship for the purpose of off-loading dry cargo ("Dry Cargo Pier Completion"). The Authority shall provide Sprague with at least thirty (30) days prior written notice of the Authority's projected Dry Cargo Pier Completion and, as of the date of said notice, provide Sprague access thereto for the purpose of installation of Sprague's equipment, machinery and fixtures for the operation of the Dry Cargo Pier. The parties shall use their best efforts to effect Dry Cargo Pier Completion on or before June 30, 2003.

G. No Construction of Dry Cargo Pier. In the event of circumstances beyond the control of the Authority which prevent the Authority from completing the Dry Cargo Pier Improvements after the BAR to Sprague Closing, Sprague will remain obligated to repay the \$2,000,000.00 BAR Acquisition Loan, except that repayment shall be made exclusively from the Wharfage Fees derived from the Irving Oil Pipeline and the BAR Acquisition Loan Maturity shall be modified and extended as necessary until said loan is repaid. In this event, Sprague would continue to operate, maintain, and manage the BAR pier until repayment of the BAR Acquisition Loan. Sprague may exercise its option to purchase the BAR Pier provided by Section VI (I) - "Option to Purchase BAR or Dry Cargo Pier", at a price equal to the BAR Acquisition Loan less Wharfage Fees paid to the date of exercise of said option, plus an additional sum to be reasonably negotiated by the parties to take into account the amount expended on and the value of Dry Cargo Pier Improvements actually completed.

## **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. After \$250,000 has so accrued, the Authority may use 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 held to finance, through the funding of the Liquid Cargo Pier Loan, the rehabilitation of Sprague's pier for improved liquid cargo handling (the "Liquid Cargo Pier Rehabilitation Fund"), until \$2,000,000 has accrued in the Liquid Cargo Pier Rehabilitation Fund. After \$ 2,000,000 has accrued in the Liquid Cargo Pier Rehabilitation Fund, the Authority may use 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.

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 said Fund reaches \$ 250,000. 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 loan and Sprague agrees to borrow up to \$ 2,000,000 from the Liquid Cargo Pier Rehabilitation Fund for rehabilitation of Sprague's pier to improve liquid cargo handling capabilities. The rehabilitation shall be consistent with the conceptual scope attached as Exhibit 7 (the "Liquid Cargo Pier Loan").

1. Conditions Precedent. The Authority shall be obligated to make the Liquid Cargo Pier Loan only if: (a) the BAR Acquisition Loan has been repaid in full; (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 Liquid Cargo Pier Rehabilitation Fund pursuant to Section V (A) - "Use of Early Wharfage Fees Payments" above has reached \$ 2,000,000; (d) Sprague's request for said Loan is made within two years of the date said Fund reached \$ 2,000,000; and (d) the Authority has approved the scope of work and the plans and specifications of the Liquid Cargo Pier Improvements to be financed with the Liquid Cargo Pier Loan (which approval shall not be unreasonably withheld or delayed).
2. Loan Term. The Liquid Cargo Pier Loan shall mature in fifteen (15) years from its closing ("Loan Maturity").
3. Interest Rate. The interest rate on the Liquid Cargo Pier Loan shall be Zero Percent (0%) until Loan Maturity (whether said maturity results from the passage of time or acceleration of the Liquid Cargo Pier Loan after an Event of Default as defined in the Closing Documents) at which time interest shall be the Default Rate specified in Section II(C).

4. Payment Requirements. Monthly payments on the Liquid Cargo Pier Loan shall be in the form of Wharfage Fees payable as set forth in Section VI below.

5. Security. The Liquid Cargo Pier Loan will be secured by a first priority mortgage and security interest in Sprague's Liquid Cargo Pier, including all fixtures, improvements and accessions thereto and thereon and all necessary and convenient easements to maintain, repair and replace the pipelines and utilities thereto, and all necessary and convenient easements for pedestrian and vehicular (including commercial size and weight vehicles) access from Trundy Road, whether any of the same are now owned or hereafter acquired.

6. Documents. The Liquid Cargo Pier Loan shall be evidenced by the terms of a Construction Loan Agreement, the securing mortgage, and other appropriate instruments to be executed by the parties in form and substance reasonably acceptable to both parties including those documents listed on Exhibit 3 (the "Closing Documents"). The note and mortgage shall contain a "due on sale" clause, shall be assumable only with the Authority's consent, and shall contain a corporate power of sale provision regarding foreclosure.

7. 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.

8. Charges to Loan Proceeds. Sprague acknowledges that portions of the Liquid Cargo Pier Loan proceeds will 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 or the Finance Authority of Maine related to loan origination, disbursement, and servicing, and (d) other mutually agreeable related costs. No origination, processing, application or legal fees in excess of 1% of the loan amount shall be charged to Sprague for the Liquid Cargo Pier Loan unless specifically approved prior to Closing.

## **VI. SPRAGUE PAYMENT OBLIGATIONS**

A. Total Payment Obligation. Sprague agrees to pay the Authority up to \$16,000,000.00 in Wharfage Fees as provided herein (the "Total Payment Obligation"). This amount consists of (1) the \$2,000,000.00 BAR Acquisition Loan, the (2) the \$12,000,000.00 license fee obligation provided in the License and Operating Agreement, and (3) the \$2,000,000.00 Liquid Cargo Pier Loan, to the extent that each may be actually disbursed or advanced by the Authority.

B. Nonrecourse Nature of Obligations. The obligation of Sprague under the BAR Acquisition Loan, the License and Operating Agreement, and the Liquid Cargo Pier Loan shall be limited to the Wharfage Fees payable thereunder together with the collateral securing each obligation and 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 security in satisfaction of the obligations identified herein.

C. Rate Schedule for Wharfage Fees. The rate schedule of Wharfage Fees is attached as Exhibit 8. Wharfage Fees shall be subject to adjustment by mutual agreement of the parties as of each five (5) year anniversary of the Completion of the Dry Cargo Pier. Said agreement shall not be unreasonably withheld. Adjustments, if any, shall take into account prevailing, historical and anticipated costs of handling liquid cargo and dry cargo at the Mack Point Piers and competing facilities both within and without the State of Maine; it being the intention of the parties to maintain competitive rates in order to maximize liquid cargo and dry cargo handling capacity and marketability at the Mack Point Piers. In no event shall any adjustment result in Wharfage Fees lower than the Rate Schedule originally attached as Exhibit 8.

D. Commencement of Wharfage Fee Payments. Wharfage Fee payment obligations regarding Irving Oil commence upon Completion of the Dry Cargo Pier as provided in Section IV(F) above, unless there exist sufficient funds to undertake relocation of the Irving Pipeline as provided in Section IV(A) above, in which case wharfage fee payment obligations regarding Irving Oil will commence upon completion of said pipeline relocation. In any case, wharfage fee payment obligations regarding all liquid or dry cargo passing over either Mack Point Piers will commence upon Completion of the Dry Cargo Pier.

E. Payment Schedule / Formalities / Audit. Payments shall be made on the fifteenth (15<sup>th</sup>) day of each month (the "Payment Date") for the immediately preceding calendar month. Each monthly payment shall include a Wharfage Fees - Monthly Payment Summary Sheet in a form satisfactory to the Authority , signed and certified as to accuracy by Sprague, together with vessel bills of lading which shall be subject to audit by the Authority. Sprague agrees to provide all information requested pursuant to such an audit.

F. Late Fee. The Authority may charge a late fee of Five Percent (5%) of the payment due for any Wharfage Fee payment which is fifteen (15) days or more past due.

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, until the origination of the Liquid Cargo Pier Loan, all Wharfage Fees shall be applied towards repayment of Sprague's \$ 12,000,000.00 obligation under the License and Operating Agreement.

Third, upon origination of the Liquid Cargo Pier Loan, the application of Wharfage Fees towards Sprague's payment obligation under the License and Operating Agreement shall be suspended and all Wharfage Fees shall be applied towards repayment of the Liquid Cargo Pier Loan until it is fully repaid. Lastly, upon repayment of the Liquid Cargo Pier Loan in full, the application of all Wharfage Fees towards repayment of Sprague's \$ 12,000,000.00 obligation under the License and Operating Agreement shall resume and continue until the earlier of payment in full of the \$12,000,000.00 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 repayment in full of the Liquid Cargo Pier Loan, the liens, encumbrances and other security and collateral held for and with respect to Liquid Cargo Pier Loan only, shall be terminated, discharged and released. Upon the repayment in full of the BAR Acquisition Loan, the obligation to pay license fees under the License and Operating Agreement, and the Liquid Cargo Pier Loan, the Authority will terminate, discharge, and release all liens, encumbrances and other security and collateral held with respect to each obligation.

I. Option to Purchase BAR or Dry Cargo Pier. At the Sprague to MePA Closing, the Authority shall grant Sprague an option to purchase the BAR or Dry Cargo Pier and all related fixtures, improvements, additions, accessions, and rights thereon and thereto held by the Authority. Said option shall be exercisable at a price equal to the Total Payment Obligation, less Wharfage Fees paid to the date of exercise of said option, except as provided in Section IV (G) - "No Construction of Dry Cargo Pier". The option shall expire upon the expiration of the License and Operating Agreement, except as provided in said Section IV (G), whereby it shall expire one year after repayment of the BAR Acquisition Loan. It is the intention of the parties hereunder that if Sprague exercises this option, Sprague shall own in fee simple, without any continuing lien or encumbrance of or caused by the Authority, the BAR or Dry Cargo Pier as then constructed and existing, together with all Submerged Land Rights arising out of or relating thereto. The option shall be in a form suitable for recording in the Waldo County Registry of Deeds.

J. Action Required Near Expiration of License and Operating Agreement. If Sprague has yet to exercise its option to purchase the Dry Cargo Pier six months before the end of the 30 year term of the License and Operating Agreement, then within six (6) months of Sprague's receipt of written notice from the Authority, Sprague must provide written notice to the Authority that it intends to do one of the following: (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 \$16,000,000.00 minus the aggregate of the Wharfage Fee payments made to the Authority; or (2) decline to exercise its option to purchase the Dry Cargo Pier. Absent Sprague's compliance herewith, Sprague shall thereafter be conclusively presumed to have so declined if it fails to provide such notice of its intention. If Sprague declines or fails to exercise its option or is presumed to have

done so, then the Authority will retain title to the Dry Cargo Pier and may exercise its option to purchase the Headlands.

K. Default. A default under any of the Closing Documents shall be a default under all of said Closing Documents. For example, a default under the promissory note related to the BAR Acquisition Loan shall be a default under the License and Operating Agreement and a default under the License and Operating Agreement shall be a default of the BAR Acquisition Loan and the Liquid Cargo Pier Loan.

Each of the following is an Event of Default under each of the Closing Documents.

1. Failure to make any Wharfage Fee payment when due, unless such failure is cured by paying the overdue fees and all late fees and interest within thirty (30) days of written demand;
2. Failure to make any other payment required of Sprague pursuant to the BAR Acquisition Loan, the License and Operating Agreement, the Liquid Cargo Pier Loan, and the related security instruments including, without limitation, taxes or any assessment which may result in a lien on the Dry Cargo Pier, the Headlands, or the Liquid Cargo Pier and such failure is not cured within 30 days of written demand;
3. Failure to pay the BAR Acquisition Loan in full by its maturity date.
4. Failure to pay the Liquid Cargo Pier Loan in full by its maturity date.
5. Failure to substantially complete the fit up necessary to commence operations on the Dry Cargo Pier within 90 days after the Authority has determined that the Dry Cargo Pier is complete, subject to extraordinary weather conditions and delays clearly beyond Sprague's control;
6. The breach by Sprague of any other material obligation under the Loan Agreement (not identified in (1) or (2)), and such breach shall not have been cured within 60 days after the sending of notice identifying the breach from the Authority to Sprague, provided that if such breach cannot with due diligence be cured within 60 days, the time within which such default may be cured shall be extended for such period of time reasonably necessary to cure the default with all due diligence;
7. A determination of the arbitrators pursuant to Exhibit 6 that Sprague is in default of its obligations to implement the Final Report and there shall be no further cure period;

8. Any default under any of the Closing documents subject to the notice and cure periods set forth therein;
9. Except with the prior consent of the Authority, (a) any sale of all or substantially all of Sprague's assets; or (b) any sale of all or substantially all of Sprague's assets at or relating to the Mack Point Project; or (c) any merger or consolidation in which Sprague is a participant corporation, or any vote by the shareholders of Sprague to approve such a merger or consolidation; or (d) the sale or removal without replacement of any asset material to the operation of either of the Mack Point Piers. In any such event such consent shall not be unreasonably withheld or delayed, but any transaction under a, b, c or d, such event shall be subject to assumption by Sprague's transferee hereunder;
10. The filing by Sprague of a voluntary petition for relief under the United States Bankruptcy Code, as amended from time to time, or any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or the Company shall be adjudicated insolvent or bankrupt by decree of a court of competent jurisdiction; or Sprague shall petition or apply for or acquiesce in, or consent to the appointment of, any receiver or trustee; or for all or any part of its property; or Sprague shall make an assignment for the benefit of creditors; or Sprague shall admit in writing its inability to pay its debts as they mature;
11. Sprague shall cease business operations at the Mack Point Piers (other than as may be necessary or desirable for seasonal purposes or capital improvements); or
12. There shall be filed against Sprague any involuntary petition for relief under the United States Bankruptcy Code, as amended from time to time, or there shall be commenced against Sprague any proceeding relating to Sprague under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, and such petition or any such proceeding shall remain undismissed for a period of 90 days or Sprague by any act indicates its consent to, approval of, or acquiescence in, such petition or any such proceeding; or a receiver or trustee shall be appointed for Sprague or for all or a substantial part of the property of the Company and such receivership or trusteeship shall remain undischarged for a period of 90 days; or a writ of attachment, execution, or similar process shall be issued against any material part of Sprague's property or assets relating to the Mack Point Project and the same shall not be dismissed or bonded or reserved for within 60 days.

Remedies for Default. Upon the occurrence of an Event of Default, the Authority shall have the option at its sole discretion to effect the following remedies: (a) terminate the License and Operating Agreement, (b) terminate Sprague's option in the Dry Cargo Pier,

(c) exercise its option in the Headlands, (d) foreclose any mortgage, and (e) pursue all other remedies provided herein or otherwise by law.

## VII. GENERAL CONDITIONS

A. Conditions Precedent. The fulfillment by the Authority of its obligations hereunder is subject to full and complete compliance by Sprague with the following conditions to the satisfaction of the Authority:

1. Title Searches. Sprague shall supply the Authority with complete, current UCC-11 search reports and real estate title reports or title insurance binders, certified or issued to the Authority. The title shall show no liens, security interests or other encumbrances, exceptions or exclusions in any property to be conveyed or mortgaged to the Authority other than those granted in connection with the Loan or the License and Operating Agreement, except as may be specifically approved by the Authority;
2. Surveys. Current and final Standard Boundary Surveys with surveyor's seals certified to the Authority showing the location of all relevant parcels and encumbrances, including all existing color-coded surveyor's worksheets.
3. Leases. Licenses and Agreements. All agreements of any type that adversely or materially affect the use and enjoyment of any property to be conveyed or mortgaged to the Authority, including without limitation, leases, licenses, wharfage rate agreements, and the agreements between the BAR and (i) Irving Oil, (ii) Defense Fuels, and (iii) ITO, shall be provided;
4. BAR Documents. All documents, existing and proposed, relating to the conveyance of the Dry Cargo Pier and related property to Sprague, including without limitation, the purchase and sale agreement, deeds, leases, licenses, agreements regarding BAR's provision of rail service to Sprague, hazardous material indemnifications, and all side agreements or letters;
5. Financial Statements. The three most recent years' unaudited financial statements of Sprague and the three most recent years' audited financial statements of Sprague's parent, Axel Johnson Inc.;
6. Annual Reports. The most recent annual reports of Sprague (if any) and its parent, Axel Johnson Inc.;
7. Business Plan. Sprague's business plan for the Dry Cargo Pier and the Liquid Cargo Pier and related facilities at Mack Point, including all related projections and marketing studies; and

8. Tax Assessments. Current tax assessments from the Town of Searsport, including appraised value, mil rate and annual taxes assessed on both the Dry Cargo Pier and the Liquid Cargo Pier.

All of the foregoing materials and submissions shall be subject to, and received and maintained under, the provisions of 10 MRSA Section 975-A to the fullest extent applicable. Each of the foregoing must be received in form and substance satisfactory to the Authority. This Agreement will be subject to termination if Sprague fails to provide the foregoing prior to August 18, 1999, or within ten (10) days of the date of execution hereof.

B. Closing Requirements. Each of the following must be provided at or prior to Closing:

1. Title insurance policy issued to the Authority with survey and mechanic's lien and all other standard exceptions deleted for real property to be conveyed to the Authority or on which the Authority will receive a mortgage, including such endorsements as required by the Authority and excepting only those encumbrances which are acceptable to the Authority.
2. Sprague shall certify to the Authority that, to the best of Sprague's knowledge, the Mack Point Piers as currently operating comply with all applicable federal, state and local laws and ordinances, and has received all applicable and necessary governmental approvals, licenses and permits, and that Sprague knows of no event of default by Sprague under any instrument, document or agreement executed by Sprague in connection with the Loan or the License and Operating Agreement, or any event or condition which with the passage of time or the giving of notice, or both, could constitute an event of default, or which would constitute an event of default, under any of the Closing documents.
3. Sprague shall certify to the Authority, and provide such evidence as may be reasonably requested by the Authority, that no material adverse change in Sprague or its financial condition has occurred since the date of this Agreement.
4. Each party shall provide the other with an acceptable opinion of counsel opining that the Closing documents are legal, valid and binding obligations of said party, enforceable in accordance with their terms. Each party shall also provide the other with an acceptable opinion of counsel regarding said party's legal existence, the existence and validity of said party's organizational documents and resolutions of its Board of Directors or other governing authority authorizing execution of all Closing documents and all other documents related to the transactions described therein.
5. Sprague shall provide an agreement reasonably acceptable to the Authority that binds BAR to provide for the transportation and disposal of all non-asbestos demolition debris from the demolition of the former BAR pier in compliance with all applicable environmental laws, regulations, permits and such other commitments from BAR as may be provided elsewhere herein. See Section II (J) - "BAR Commitments".

6. **Special Conditions.** Sprague shall comply with all Special Conditions set forth on the attached Exhibit 4 to the reasonable satisfaction of the Authority.

C. **Termination of Agreement.** This Agreement may be terminated, by either party, under any of the following circumstances:

1. Any of the conditions precedent set forth above shall not have been satisfied and complied with as of the date specified after written notice thereof and ten days opportunity to cure.
2. Any party to this Agreement breaches its obligations or agreements hereunder or notifies any other party that it does not intend to proceed further with the implementation, operation or financing of the Project as contemplated by this Agreement after written notice thereof and ten days opportunity to cure.
3. An appeal is taken by any person or entity from any action or failure to act on the part of the Authority or Sprague with respect to the Project, or any other legal action or proceeding is commenced challenging the issuance of any bonds used to fund the Project, or the matters contemplated by this Agreement, and such appeal, action or proceeding is not dismissed with prejudice or finally disposed of by a court of competent jurisdiction on or prior to the Closing Date. In the event of any such termination, no party shall have any further obligations to the other hereunder.
4. There is a material adverse change in the Project, the Project location or the financial condition of Sprague.

D. **Expiration of Agreement.** The obligation of the Authority to proceed pursuant to this Agreement shall expire, and the Authority shall have no further obligation hereunder, at 5:00 p.m. on November 8, 1999 unless extended by written agreement of all the parties to this Agreement upon such terms and conditions as they may agree.

E. **Closings.** The parties shall use their best efforts to have all conditions precedent fulfilled within the time frames identified and all documentation completed so that the Closings may take place at the time and places specified above.

F. **Fees and Charges.** The costs of a \$2,000,000.00 title insurance lenders policy on the Headlands and a \$2,000,000.00 owners policy on the BAR Pier (later the Dry Cargo Pier) shall be split equally between the Authority and Sprague. Each party shall pay all of its own fees and expenses with respect to this Agreement and the transactions contemplated hereby, except as provided in subsections of this section.

G. **Sprague's Covenants.** Sprague agrees that between the date of this Agreement and the Date of the Closings, it will:

1. Diligently pursue the Project.

2. Maintain, repair and (as appropriate) operate all property intended as collateral for the Loan, consistent with the Sprague's ordinary course of business and past practices.
3. Maintain the controlling interests of Sprague unchanged from that presented in the application to the Authority.
4. Notify the Authority promptly upon acquiring knowledge of any event or condition which constitutes or may with the passage of time constitute a breach of this Agreement, or which would be a material adverse change in the Project or the financial condition of Sprague.
5. Maintain in full force and effect policies of insurance (or self-insurance programs) adequate to protect against hazard losses, liability claims and workers compensation claims, which policies and programs shall in all respects be reasonably satisfactory to the Authority.
6. Refrain from selling or leasing all of or any interest in any property of the Headlands or its pier to be used for liquid cargo and related rights without the Authority's prior written approval, provided that sale, removal or replacement of collateral in the ordinary course of business or in conformance with this agreement is permitted if such collateral is not material to Sprague's operations and financial condition, or is replaced by functionally equivalent collateral and the Authority will have a first priority security interest in such replacement collateral.
7. Refrain from transferring any interest in or rights under this Agreement, without the Authority's prior written consent.

H. Private Development. The Authority and Sprague each acknowledge that certain land-side improvements (the "Private Development") are planned by Sprague in conjunction with the Mack Point Project and the Authority hereby agrees to use good faith efforts to assist Sprague in obtaining all approvals, permits and consents required for said Private Development.

I. Railroad Agreements. The Authority hereby acknowledges that Sprague and the BAR shall enter into at least the following agreements with respect to the BAR's continued railroad operations containing such terms and conditions as necessary for the successful creation and operation of a viable port facility at Mack Point. Such agreements shall include (a) a Relocation Agreement for the relocation of the BAR's fuel handling operations to the Sprague Pier on a temporary or permanent basis, and (b) a warehouse siding agreement for the extension or renovation of the BAR's "F Track," so-called, to and for servicing of a break bulk warehouse to be constructed by Sprague as a Private Development (the "Warehouse Siding Agreement"). All such agreements shall be acceptable to Sprague and the Authority and may be contained in one or more agreements, documents or instruments.

J. Oral Statements Not Enforceable. Under Maine law, no promise, contract, or agreement to lend money, extend credit, forbear from collection of a debt, or make any other accommodation for the repayment of a debt for more than \$250,000 may be enforced in court against the Authority unless the promise, contract or agreement is in writing and signed by the Authority. The parties hereby agree that no oral representations or agreements related to the undertaking to make the Loan exist, and that, regardless of the size of the Loan, Sprague cannot enforce any

oral promise unless it is contained in this Agreement or a Loan document signed by the Authority, nor can any change, forbearance, or other accommodation relating to the Loan, this Agreement or any other Loan document be enforced, unless it is in writing signed by the Authority. Sprague also understands that all future promises, contracts, or agreements of the Authority relating to any other transaction between Sprague and the Authority cannot be enforced in court unless they are in writing signed by the Authority. Sprague further agrees that the requirement of a writing described in this paragraph shall apply to this Agreement, the loans of credit described herein, any extension, modification, renewal, forbearance, or other accommodation relating to the transactions contemplated by this Agreement, and to any other credit relationship between Sprague and the Authority, (whether existing now or created in the future) whether or not the amount involved exceeds \$250,000.

K. Counterparts. This Agreement 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.

L. Modification; Entire Agreement. This Agreement contains and embraces the entire agreement between the parties hereto and it nor any part of it may be changed, altered, amended, modified, limited or extended orally or by agreement between the parties hereto unless such agreement be expressed in writing and signed by the parties.

M. Paragraph Headings. The headings at the beginning of each of the paragraphs hereof are solely for the purposes of convenience and identification and are not to be deemed or construed to be part of this Agreement.

N. Severability. If any term, clause or provision of this Agreement is judged to be invalid and/or unenforceable, the validity and/or enforceability of any other term, clause or provision in this Agreement shall not be affected thereby and the parties shall use their good faith efforts to fully effect the transactions and terms contemplated herein.

O. Additional Documents. The parties hereto mutually agree to undertake such activities and execute such other and additional contracts, instruments and other written documents (including modifications to or revisions of this Agreement) as may be reasonably requested in order to assure compliance with all of the terms, provisions and conditions of this Agreement.

P. Miscellaneous. This Agreement shall be construed in accordance with Maine law, shall be effective when duly executed by the parties named below, shall be binding upon and inure to the benefit of the successors and assigns of the parties, and shall not be modified except by written agreement executed by each of the parties hereto.

August 5, 1999

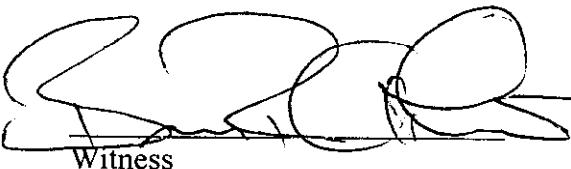
IN WITNESS WHEREOF the parties have executed this Agreement on the date first above written.

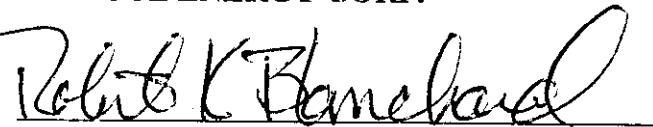
**MAINE PORT AUTHORITY**

  
Witness

  
John G. Melrose, Chair

**SPRAGUE ENERGY CORP.**

  
Witness

  
Robert K. Blanchard  
Vice President of Terminals

August 5, 1999

**EXHIBIT 1**

**MACK POINT REDEVELOPMENT**

**PROJECT FUNDING AGREEMENT**  
**MAINE PORT AUTHORITY & SPRAGUE ENERGY CORP**

There is no Exhibit 1 to the Agreement.

August 5, 1999

**EXHIBIT 2**

**MACK POINT REDEVELOPMENT  
PROJECT FUNDING AGREEMENT  
MAINE PORT AUTHORITY & SPRAGUE ENERGY CORP**

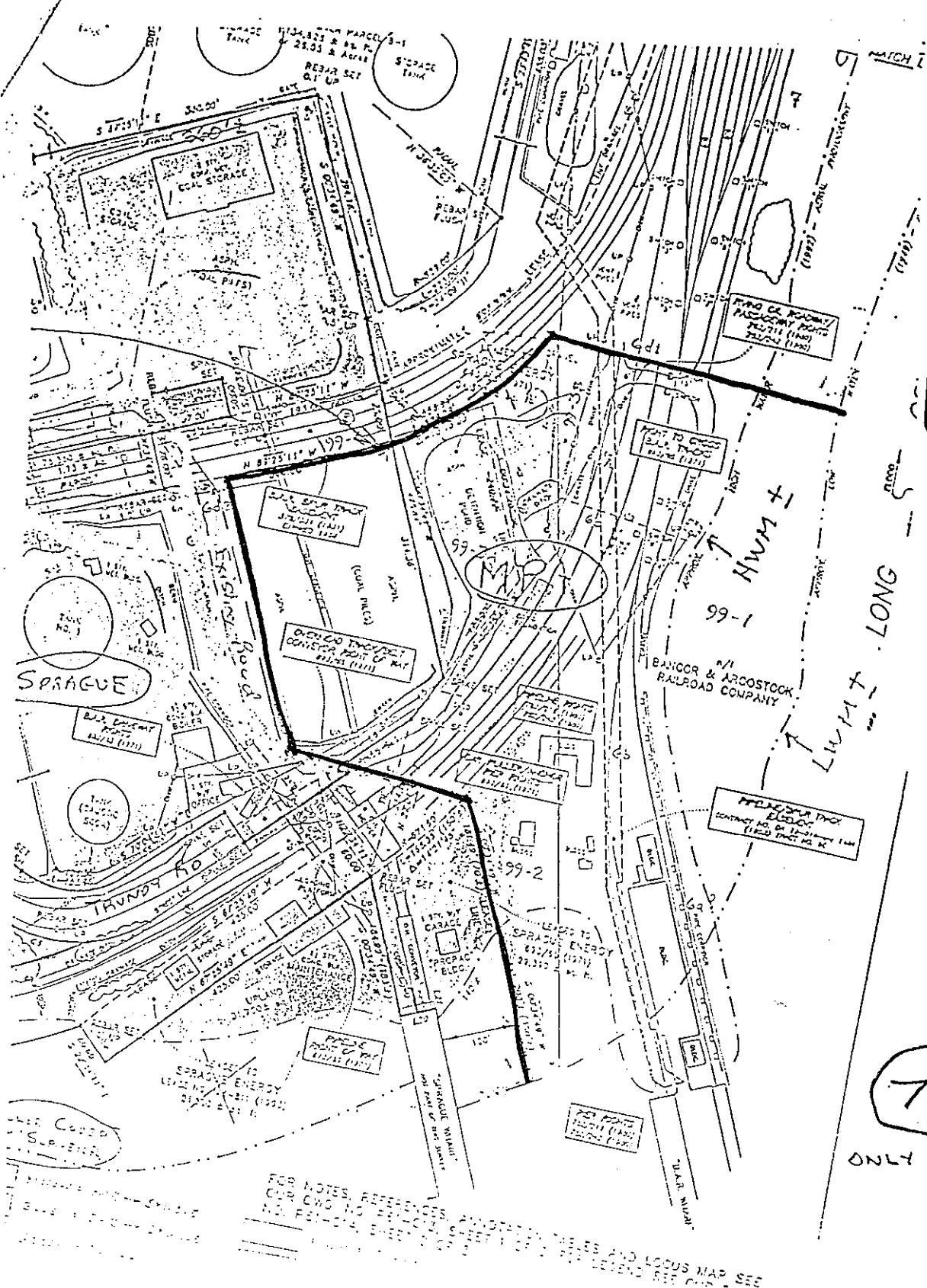
**APPROXIMATE SKETCHES OF HEADLANDS**

**Boundaries and description to be finalized prior to closing.**

**EXHIBIT**

**2**

(cont.)



MPA Mortgage

Sprague

B.A.R.

RR X-ing  
Current  
Proposal

RR X-  
Nex...  
ing



August 5, 1999

## **EXHIBIT 3**

**MACK POINT REDEVELOPMENT**  
**PROJECT FUNDING AGREEMENT**  
**MAINE PORT AUTHORITY & SPRAGUE ENERGY CORP**

**CLOSING DOCUMENTS**

As of the date of this Agreement, the Closing documents shall include the following documents, agreements and materials, each of which shall be subject to the reasonable approval of the parties and their respective counsel.

**Closing #1 - BAR to Sprague Acquisition**

**Financing Documents for "BAR Acquisition Loan"**  
Anticipated in August 1999

Commercial Promissory Note & Loan Agreement  
Documents Securing BAR Acquisition Loan

Mortgage in Headlands  
UCC-1  
UCC-3

Mortgagee Title Policy covering Headlands

**Closing #2 - Sprague to MePA Conveyance of Former BAR Pier**  
Anticipated in August 1999

Quit Claim Deed & Bill of Sale  
License and Operating Agreement  
Documents Securing BAR Acquisition Loan and License and Operating Agreement  
Option - Sprague to MePA on Headlands  
Collateral Assignment of License and Operating Agreement  
Owner's Title Policy covering BAR Pier  
Construction Management Agreement (MePA, Sprague, MDOT)  
Environmental Indemnification Agreement (Sprague to MePA) covering Closing #1 and #2  
Option - MePA to Sprague on BAR Pier

**Closing #3 - Liquid Cargo Pier Loan**  
Anticipated in Year 2007+

Construction Loan Agreement  
Mortgage in Sprague Pier  
UCC-1  
UCC-3  
Mortgagee Title Policy on Sprague Pier

**EXHIBIT 4**

**MACK POINT REDEVELOPMENT  
PROJECT FUNDING AGREEMENT  
MAINE PORT AUTHORITY & SPRAGUE ENERGY CORP**

**SPECIAL CONDITIONS**

1. Sprague will provide environmental indemnification to the Authority reasonably acceptable to both parties, for all environmental concerns which may have accrued prior to the Closing Date, whether known or unknown, or which may hereafter accrue. Such indemnification shall exclude matters resulting solely from the demolition and disposal of the piers, pilings, fixtures and other portions of the Dry Cargo Pier all of which matters shall be the responsibility of the Department under the Construction Management Agreement.

2. Sprague may not, prior to the Closing, issue stock, change its corporate structure or ownership in any manner, dispose of all or substantially all of its assets, or consolidate with or merge into another corporation without the prior written consent of the Authority.

3. Sprague shall not mortgage, sell, pledge, assign or do any other act which would result in a lien or encumbrance or transfer of any Project assets, whether real or personal property, serving as security to the Headlands Loan, the Liquid Cargo Pier Loan and/or License and Operating Agreement without the prior written consent of the Authority.

4. Title insurance in an amount satisfactory to the Authority shall be available at the request of the Authority on the property to be mortgaged, leased or conveyed to the Authority hereunder.

5. Sprague shall provide annual unaudited financial statements prepared by Sprague's regularly employed certified public accountant or Chief Financial Officer and the annual report and audited financial statements of Axel Johnson, annually within 120 days of the end of its fiscal year end. The financial statements shall include balance sheets, profit and loss statements, and income statements. This condition shall continue in effect for the term of the Loan and the License and Operating Agreement.

6. Sprague must notify the Authority of any claim, proceedings or litigation pending against Sprague which may have a material adverse effect on the Mack Point Project or the Sprague's operations under the License and Operating Agreement throughout the term thereof and must certify prior to Closing the nature, status, and existence of any actions, suits, proceedings or investigations pending against or affecting Sprague or any properties or rights of Sprague which may have a material adverse effect on the Sprague or the Sprague's Mack Point assets or operations.

7. Sprague shall obtain and maintain in full force and effect during the term of the License and Operating Agreement on the Dry Cargo Pier and during the term of the Liquid

August 5, 1999

Cargo Pier Loan on the Liquid Cargo Pier, policies of insurance (or programs of self-insurance) adequate to protect against hazard losses, liability claims and workers compensation claims, naming the Authority as loss payee on the hazard policies and co-insureds on the liability policy, which policies and programs shall in all respects be reasonably satisfactory to the Authority.

8. Sprague may not apply for any Business Equipment Tax Rebate or any similar tax rebate for equipment purchased or financed with funds provided by the Authority.

9. Sprague shall pay all costs and expenses of administration, enforcement and collection of the Headlands Loan, the Liquid Cargo Pier Loan and payments due under the License and Operating Agreement against Sprague upon default by Sprague, including reasonable attorneys fees, shall operate and maintain collateral at its own expense and shall pay all costs of filing and recording and perfecting security interests.

10. Sprague shall, upon reasonable advance request of the Authority (whether prior to or following Closing), certify to the Authority that: (a) Sprague has taken such steps as it has deemed appropriate to assess the technical and business effects of the calendar change from December 31, 1999 to January 1, 2000 (the "Year 2000 Problem") on its relevant computer-controlled systems, including but not limited to Sprague's in-house systems, external systems and system interdependencies; (b) Sprague has made such due diligence inquiries of its vendors and suppliers as it has deemed appropriate concerning the readiness of their computer-controlled systems, including but not limited to system interdependencies, to conduct business with Sprague without interruption due to the Year 2000 Problem; and (c) based on such assessment and inquiries, and except as disclosed to the Authority, Sprague's performance of its obligations under this Agreement and with respect to the Project will not be materially adversely affected by the Year 2000 Problem. This Paragraph 11 and each and every certification pursuant hereto is a Year 2000 Statement and Readiness Disclosure under the Year 2000 Information and Readiness Disclosure Act, entitled to the protections afforded by such Act.

11. The Authority may include such additional terms and conditions in the Closing documents as it deems reasonably necessary or desirable in order to protect the Authority's position subject to Sprague's reasonable approval.

August 5, 1999

**EXHIBIT 5**

**MACK POINT REDEVELOPMENT**

**PROJECT FUNDING AGREEMENT  
MAINE PORT AUTHORITY & SPRAGUE ENERGY CORP**

**CONCEPTUAL SCOPE AND BUDGET - DRY CARGO PIER**

## **EXHIBIT 5**

## CONCEPTUAL SCOPE

# **CONSTRUCTION OF DRY CARGO PIER**

## A. Items Included Within Scope, Funds Permitting

Item	<u>Est. Cost</u>
1. Demolition of Pier (not including BAR transport & disposal = \$500,000)	\$1,200,000
2. Demo - Bldgs & RR Tracks	550,000
3. New Pier (100 ft x 540 ft)	6,210,000
4. Trestle (9,000 sq. ft.)	900,000
5. East Fender System (550 ft)	550,000
6. Electrical Work	400,000
7. Bollards & Cleats	150,000
8. Dredging & Disposal (26,000 cy)	<u>364,000</u>
Total - Conceptual Construction Estimate	\$10,324,000
9. Construction Contingencies (7%)	723,000
10. Engineering (Design - 800,000) (CE - 385,000)	<u>1,185,000</u>
<b>Total - Estimated Cost</b>	<b>\$12,232,000</b>

## **B. Items Excluded From Scope**

Item	<u>Est. Cost</u>
1. BAR Demolition Transport & Disposal	\$500,000
2. Irving Fuel Line Relocation - including electrical work	740,000
3. West Fender System	500,000
4. Mooring Dolphin & Walkway	600,000
5. Capstans (3)	240,000
6. RR Track on Pier	200,000
7. Headland Improvements	
a. Paving	150,000
b. Storm drains	170,000
c. Slope protection	<u>30,000</u>
Total - Conceptual Construction Estimate	\$3,130,000
6. Construction Contingency (7%)	219,000
7. Engineering (Design-4.8% & CE-3.5%)	<u>260,000</u>
Total - Estimated Cost of Items Excluded From Scope	\$3,609,000

**EXHIBIT 6**

**MACK POINT REDEVELOPMENT  
PROJECT FUNDING AGREEMENT  
MAINE PORT AUTHORITY & SPRAGUE ENERGY CORP**

**CARGO VOLUME GOALS**

The License and Operations Agreement shall contain a provision regarding cargo volume that provides that Sprague shall use its best efforts to maximize the volume of cargo passing over the Mack Point Piers and as follows:

1. Minimum Annual Cargo Volume Goal. During the thirty (30) year term of the License and Operating Agreement, the "Minimum Cargo Annual Volume Goal" shall be that volume of cargo necessary to generate aggregate annual Wharfage Fees from both the Liquid Cargo Pier and Dry Cargo Pier of \$450,000.
2. Corrective Recommendations. If, after five (5) years from the Dry Cargo Pier Completion Date, Sprague fails to reach the Minimum Cargo Volume Goal for any two (2) subsequent, consecutive calendar years, the Authority may study any and all aspects of Sprague's cargo operations at Mack Point for the purpose of making specific recommendations to increase cargo volume. The Authority may elect to retain an independent marine cargo consultant to perform such a study. Sprague shall allow the Authority and/or the consultant reasonable access to all information reasonably necessary to conduct such study. The Authority and/or the consultant shall consider all factors it deems relevant to cargo volume at Mack Point, including marketing strategies, operations, current or possible future cargo markets, and general global and local economic conditions. If the Authority so elects to retain a consultant, Sprague may object to the Authority's consultant selection based only upon substantial evidence of bias or incompetence. Upon completion of the study, the Authority shall deliver to Sprague a draft report containing specific recommendations to increase cargo volume at Mack Point, if any. Such report will be accompanied by the final consultant's study, if any. Sprague shall have sixty (60) days to comment on said report and recommendations. Thereafter, the Authority may issue a final report containing specific recommendations to increase cargo volume at Mack Point (the "Final Report").
3. Best Efforts to Implement Report/Arbitration. Sprague agrees to use its best efforts to implement the recommendations contained in the Final Report. If, after two (2) calendar years from the date of the Final Report, the Authority determines that Sprague is not using its best efforts, the Authority may choose to submit the matter to arbitration and will so notify Sprague ("Arbitration Notice"). Within sixty (60) days of receipt of the Arbitration Notice, the parties shall agree upon an arbitrator, discovery and hearing procedures, and schedule for arbitration. If the parties cannot so agree, the rules of the American Arbitration Association shall apply. The parties agree to use best efforts to proceed to an arbitration hearing within 180 days of the Arbitration Notice.

August 5, 1999

The arbitrator shall have the authority to determine whether the recommendations contained in the Final Report are a reasonable means to increase cargo volume and whether Sprague used its best efforts to implement said recommendations. In determining whether said recommendations are a reasonable means to increase cargo volume, the arbitrator shall consider the amount of capital investment required from Sprague relative to the projected increase in cargo volume and whether the capital investment required can be expected to earn a reasonable commercial after tax return to Sprague. In determining whether Sprague used its best efforts to implement said recommendations, the arbitrator may consider the general condition of the cargo industry and general global and local economic conditions.

If the arbitrator determines that some of the material recommendations contained in the Final Report are a reasonable means to increase cargo volume and that Sprague has not used its best efforts to implement said reasonable recommendations, then Sprague shall be in default of the License and Operating Agreement, absent cure within 45 days, and the Authority may pursue all remedies provided in this Project funding agreement and the License and Operating Agreement.

August 5, 1999

**EXHIBIT 7**

**MACK POINT REDEVELOPMENT**

**PROJECT FUNDING AGREEMENT  
MAINE PORT AUTHORITY & SPRAGUE ENERGY CORP**

**CONCEPTUAL SCOPE - ANTICIPATED ITEMS OF WORK**

**REHABILITATION OF SPRAGUE'S PIER**

**EXHIBIT 7**

#### **A. Anticipated Items of Work**

7/16/99

### **Actual Scope To Be Approved By Authority**

<u>Item</u>	<u>Est. Costs</u>
1. Limited Demolition (for construction of dolphins only)	\$50,000
2. Mooring Dolphins (2)	800,000
3. Bollards & Cleats	20,000
4. Hose Handling Platform	400,000
5. On Shore Mooring	100,000
6. Capstan	80,000
7. Non Pipeline related Electrical Work (lighting, towers)	200,000
8. Dredging & Disposal (9,000 cy)	110,000
9. Fire Protection	<u>70,000</u>
 Total - Conceptual Construction Estimate	\$1,830,000
 6. Construction Contingency (7%)	128,000
7. Engineering (Design - 5%, CE - 3.5%)	<u>156,000</u>
 <b>Total - Estimated Cost of Base Project by MDOT</b>	<b>\$2,114,000</b>

**EXHIBIT 8**

**MACK POINT REDEVELOPMENT  
PROJECT FUNDING AGREEMENT  
MAINE PORT AUTHORITY & SPRAGUE ENERGY CORP**

**WHARFAGE FEES - INITIAL RATE SCHEDULE**

**Wharfage Rates per Unit of Cargo**

Year	Petroleum	Bulk	Breakbulk	Containers (TEU)	
	(barrel)	(metric ton)	(metric ton)	Full	Empty
1-3	\$0.030	\$0.500	\$1.000	\$12.000	\$6.000
4-6	\$0.032	\$0.530	\$1.060	\$12.720	\$6.360
7-9	\$0.034	\$0.562	\$1.124	\$13.838	\$6.742
10-12	\$0.036	\$0.596	\$1.191	\$14.292	\$7.146
13-15	\$0.038	\$0.631	\$1.262	\$15.150	\$7.575
16-18	\$0.040	\$0.669	\$1.338	\$16.059	\$8.029
19-20	\$0.043	\$0.709	\$1.419	\$17.022	\$8.511

To be reviewed every five (5) years by the parties to assess applicability to market conditions and industry standards.

The Authority may request that the parties negotiate market rates on any type of cargo not mentioned above, which may be handled at the facility.

Year 1 commences upon the Dry Cargo Pier Completion Date, but shall be applicable if Wharfage Fees are otherwise chargeable prior to said date.

January 2, 2002



Robert Blanchard  
Vice President - Terminals  
Sprague Energy  
Two International Drive  
Portsmouth, NH 03801-6809

Dear Bob:

As a follow-up to our conversation on December 21, 2001, I would like to confirm the course of action we agreed to regarding the Irving Pipeline Relocation project.

As discussed, Sprague will follow through with its current efforts to complete the relocation of the Irving Pipeline from the former BAR pier to the Sprague pier, as required in the Project Funding Agreement dated August 5, 1999. Sprague recognizes that the timely completion of this effort is critical to the schedule for demolition of the former BAR pier and subsequent construction of new facilities.

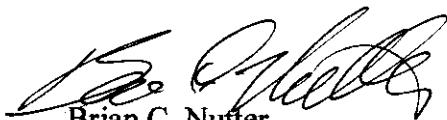
Sprague will provide the funding for this effort as required by the Project Funding Agreement. Sprague will also exert all reasonable efforts to obtain funding support for this project from the Bangor and Aroostook Railroad (BAR), based on existing agreements between Sprague and the BAR. Sprague will keep the Authority informed of its efforts in this regard.

If, after 180 days following the completion of the Irving Pipeline relocation project, Sprague, having exercised reasonable due diligence, has not been successful in obtaining funding support or the likelihood of funding support from the BAR, then the Authority will consider a loan to Sprague of \$200,000 towards the cost of the Irving Pipeline relocation. These funds would be added to the Sprague repayment obligation raising that total obligation to \$16,200,000. These adjustments would be on the same terms as other funding under the Project Funding Agreement and would be documented as reasonably required by the Authority through, among other things, an amendment to the Project Funding Agreement. All such documentation must be entered into prior to any transfer of funds from the Authority.

If this letter accurately reflects your understanding of the course of action we agreed upon, please counter-sign both this letter and the enclosed duplicate original and return one original of the letters as Sprague's acknowledgement and agreement to proceed in accordance with the general terms stated herein.

If you have any questions, please feel free to contact me at your convenience.

Sincerely,



Brian C. Nutter  
Administrator



Robert Blanchard  
Vice President - Terminals  
Sprague Energy

Cc: Board of Directors  
Toni Kemmerle, MDOT  
Scott Bursey, FAME  
Beth Bordowitz, FAME



ROBERT K. BLANCHARD  
VICE PRESIDENT, TERMINALS

March 12, 2001

Mr. Brian Nutter  
Ports and Marine Program Manager  
MAINE DEPARTMENT OF TRANSPORTATION  
16 State House Station  
Augusta, Maine 04333-0016

Dear Brian,

Enclosed are 5 signed copies of the Maine Port Authority / Sprague letter agreement.  
Please send an executed copy back for Sprague's files.

I suggest we get together soon to work towards agreement on lease terms and conditions so that both Sprague and MePA fully understand their respective obligations prior to the transfer of title to MePA.

I'll be in touch.

Sincerely,

RKB:ptr

**LETTER OF AGREEMENT**  
Between  
**MAINE PORT AUTHORITY**  
and  
**SPRAGUE ENERGY CORP.**

**Background**

The Maine Port Authority, (MePA) is a "body both corporate and politic in the State established for the general purpose of acquiring, constructing and operating any kind of port terminal facility and railroad facility within the State", 23 M.R.S.A. § 4420, with its office located in Augusta, Maine. Sprague Energy Corp. (Sprague), is a Delaware corporation, with principal offices at Two International Drive, Portsmouth, New Hampshire. Both parties have a place of business at Mack Point, in Searsport, Maine (Mack Point) and have entered into agreements for the redevelopment, operation, and promotion of Mack Point for marine transportation and cargo-handling purposes.

MePA and Sprague have identified the redevelopment of Mack Point as necessary to the renewal, continued growth, and viability of statewide intermodal freight operations, marine-related transportation improvements, and cargo and commodity handling. Such redevelopment is consistent with the goals and objectives of the three-port strategy of the State and provides a realistic and achievable means to assure competitive, cost-effective and efficient intermodal freight operations, marine-related transportation improvements, cargo and commodity handling and terminal operations in the State of Maine.

The US Government currently leases property from Sprague and has developed such property for the storage and handling of petroleum products (Defense Fuel Terminal). This lease will terminate in June 2002 and does not include a renewal clause. The US Government has determined that continued operation of this Defense Fuel Farm is not in its best interest. MePA and Sprague have an interest in retaining control of the Defense Fuel Terminal for long term growth and development at Mack Point.

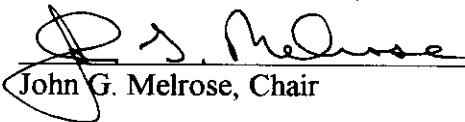
**Agreement**

In consideration of the foregoing, the MePA and Sprague agree as follows:

1. MePA and Sprague will work with the Maine Department of Transportation, the Governor, and the Maine Congressional Delegation for the transfer of title of the Defense Fuel Terminal to MePA in as expeditious and timely a manner as possible.
2. MePA and Sprague will negotiate a lease arrangement acceptable to both parties with terms to be negotiated which will authorize Sprague to act as operator of the Defense Fuel Terminal, and will require Sprague to provide for all maintenance, operational costs, insurance, and environmental compliance of the Defense Fuel Terminal.
3. The Authority and Sprague will cooperate on marketing for the Defense Fuel Terminal in a manner that promotes the overall strategic growth of the port.
4. The Authority and Sprague concur that the US Department of Energy testing laboratory located at the Defense Fuel Terminal will be allowed to extend its lease of current facilities.

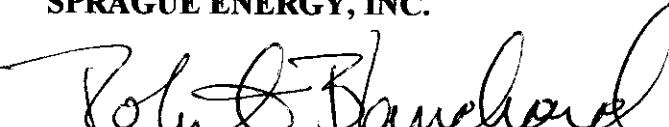
This Agreement executed this 16<sup>th</sup> day of March, 2001.

**MAINE PORT AUTHORITY**

  
John G. Melrose

Witness

**SPRAGUE ENERGY, INC.**

  
Robert Blanchard, VP Terminals

Witness

  
Paulette Rose

**MARSH USA INC.**
**CERTIFICATE OF INSURANCE**

 CERTIFICATE NUMBER  
 NYC-000640084-00

PRODUCER  
 MARSH USA, INC.  
 ATTN: VERONICA JOHNSON  
 (P) 212-345-8614 (F) 212-345-3695/6  
 1166 AVENUE OF THE AMERICAS, 41ST FLOOR  
 NEW YORK, NY 10036

025806-LEXA-CAS-

INSURED  
 SPRAGUE ENERGY CORP.  
 TWO INTERNATIONAL DRIVE, SUITE 200  
 PORTSMOUTH, NH 03801

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

**COMPANIES AFFORDING COVERAGE**

 COMPANY  
**A** ZURICH AMERICAN INS. CO.

 COMPANY  
**B**

 COMPANY  
**C**

 COMPANY  
**D**
**COVERS**

This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

0

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	GLO 6516297-11	04/01/02	04/01/03	GENERAL AGGREGATE	\$ 2,000,000
	X COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	\$ 2,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 1,000,000
	OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 1,000,000
					MED EXP (Any one person)	\$ 1,000
A	AUTOMOBILE LIABILITY	BAP 6516296-11 MA 6516312-11 TAP 6516311-11	04/01/02 04/01/02 04/01/02	04/01/03 04/01/03 04/01/03	COMBINED SINGLE LIMIT	\$ 2,000,000
A	X ANY AUTO				BODILY INJURY (Per person)	\$
A	ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	HIRED AUTOS					
	NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	ANY AUTO				OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	\$
					AGGREGATE	\$
A	EXCESS LIABILITY	AUC 272664-04	04/01/02	04/01/03	EACH OCCURRENCE	\$ 5,000,000
A	X UMBRELLA FORM				AGGREGATE	\$ 5,000,000
	OTHER THAN UMBRELLA FORM					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				X WC STATUTORY LIMITS	OTH ER
A	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input checked="" type="checkbox"/> EXCL	WC 6756088-11 WC 6516131-11	04/01/02 04/01/02	04/01/03 04/01/03	EL EACH ACCIDENT	\$ 1,000,000
	OTHER				EL DISEASE-POLICY LIMIT	\$ 5,000,000
					EL DISEASE-EACH EMPLOYEE	\$ 1,000,000

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (LIMITS MAY BE SUBJECT TO DEDUCTIBLES OR RETENTIONS)**

The Certificate Holder is added as additional insured but only for liabilities arising out of the activities of the insured.

**CERTIFICATE HOLDER**

The Maine Port Authority  
 Attn: Brian Nutter  
 16 State House Station  
 Augusta, ME 04333-0016

**CANCELLATION**

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL **30** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES.

MARSH USA INC.

By: Edward J. Basso

MM1(9/99)

VALID AS OF: 04/08/02

## MARSH USA INC.

## CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER  
NYC-000640084-00

PRODUCER  
MARSH USA, INC.  
ATTN: VERONICA JOHNSON  
(P) 212-345-8614 (F) 212-345-3695/6  
1166 AVENUE OF THE AMERICAS, 41ST FLOOR  
NEW YORK, NY 10036

025806-LEXA-CAS-

INSURED  
SPRAGUE ENERGY CORP.  
TWO INTERNATIONAL DRIVE, SUITE 200  
PORTSMOUTH, NH 03801

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS  
NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE  
POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE  
AFFORDED BY THE POLICIES DESCRIBED HEREIN.

## COMPANIES AFFORDING COVERAGE

COMPANY  
A ZURICH AMERICAN INS. CO.

COMPANY  
B

COMPANY  
C

COMPANY  
D

## COVERAGES

This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

0

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	GLO 6516297-11	04/01/02	04/01/03	GENERAL AGGREGATE	\$ 2,000,000
	X COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	\$ 2,000,000
	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 1,000,000
	OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 1,000,000
					MED EXP (Any one person)	\$ 1,000
A	AUTOMOBILE LIABILITY	BAP 6516296-11 MA 6516312-11 TAP 6516311-11	04/01/02 04/01/02 04/01/02	04/01/03 04/01/03 04/01/03	COMBINED SINGLE LIMIT	\$ 1,000,000
A	X ANY AUTO				BODILY INJURY (Per person)	\$
A	ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	Hired AUTOS					
	NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	ANY AUTO				OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	\$
					AGGREGATE	\$
A	EXCESS LIABILITY	AUC 272664-04	04/01/02	04/01/03	EACH OCCURRENCE	\$ 5,000,000
	X UMBRELLA FORM				AGGREGATE	\$ 5,000,000
	OTHER THAN UMBRELLA FORM					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				X WC STATUTORY LIMITS	OTHER
A	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input checked="" type="checkbox"/> EXCL	WC 6756088-11 WC 6516131-11	04/01/02 04/01/02	04/01/03 04/01/03	EL EACH ACCIDENT	\$ 1,000,000
	OTHER				EL DISEASE-POLICY LIMIT	\$ 5,000,000
					EL DISEASE-EACH EMPLOYEE	\$ 1,000,000

## DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (LIMITS MAY BE SUBJECT TO DEDUCTIBLES OR RETENTIONS)

The Certificate Holder is added as additional insured but only for liabilities arising out of the activities of the insured.

## CERTIFICATE HOLDER

The Maine Port Authority  
Attn: Brian Nutter  
16 State House Station  
Augusta, ME 04333-0016

## CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF,  
THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE  
CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR  
LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES.

MARSH USA INC.  
BY: Edward J. Basso

MM1(9/99)

VALID AS OF: 03/29/02

## MARSH USA INC.

## CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER  
NYC-000640084-00

PRODUCER  
Marsh USA Inc.  
1166 Avenue of the Americas  
New York, NY 10036-2774

025806-CAS-

## INSURED

SPRAGUE ENERGY CORP.  
A SUBSIDIARY OF  
LEXA INTERNATIONAL CORPORATION  
300 ATLANTIC STREET  
STAMFORD, CT 06901

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS  
NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE  
POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE  
AFFORDED BY THE POLICIES DESCRIBED HEREIN.

## COMPANIES AFFORDING COVERAGE

## COMPANY

A ZURICH AMERICAN INS. CO.

## COMPANY

B

## COMPANY

C

## COMPANY

D

## COVERAGES

This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

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CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	GLO 6516297-10	04/01/01	04/01/02	GENERAL AGGREGATE	\$ 2,000,000
	X COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	\$ 2,000,000
	<input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 1,000,000
	OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 1,000,000
					MED EXP (Any one person)	\$ 1,000
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	\$
	ANY AUTO				BODILY INJURY (Per person)	\$
	ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	HIRED AUTOS					
	NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	ANY AUTO				OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	\$
					AGGREGATE	\$
A	EXCESS LIABILITY	AMC 27266402	04/01/01	04/01/02	EACH OCCURRENCE	\$ 5,000,000
	X UMBRELLA FORM				AGGREGATE	\$ 5,000,000
	OTHER THAN UMBRELLA FORM					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTHER
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL				EL EACH ACCIDENT	\$
					EL DISEASE-POLICY LIMIT	\$
					EL DISEASE-EACH EMPLOYEE	\$
	OTHER					

## DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (LIMITS MAY BE SUBJECT TO DEDUCTIBLES OR RETENTIONS)

The Certificate Holder is added as additional insured but only for liabilities arising out of the activities of the insured.

## CERTIFICATE HOLDER

The Maine Port Authority  
Attn: Brian Nutter  
16 State House Station  
Augusta, ME 04330-0016

## CANCELLATION

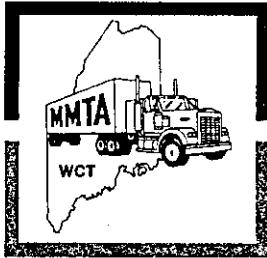
SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES.

MARSH USA INC.  
by: Doug O'Brien

MM1(6/99)

VALID AS OF: 03/27/01

RE



## MMTA WORKERS' COMPENSATION TRUST

142 WHITTEN ROAD P.O. BOX 5198 AUGUSTA, MAINE 04332-5198 PH. (207) 623-1807 FAX (207) 622-6804

### CERTIFICATE OF PARTICIPATION

Certificate Holder:

The Maine Port Authority  
Attn: Brian Nutter  
16 State House Station  
Augusta, ME 04333-0016

MEMBER:

**AXEL JOHNSON, INC.**  
**POLICY # AX0001C**

**COVERAGE PERIOD:**

**JANUARY 1, 1999 THRU DECEMBER 31, 1999**

### COVERAGE LIMITS PER OCCURRENCE

**WORKERS' COMPENSATION - STATUORY LIMITS**  
(Excluding discrimination as set forth in MRSA Title 39-A, Sections 218 and 353)

**EMPLOYERS LIABILITY - \$2,000,000**

\* USL & H Coverage (if any)

**CANCELLATION CLAUSE:**

**TEN (10) DAYS WRITTEN NOTICE**

A handwritten signature in black ink that reads "Brian D. Parke".

**BRIAN D. PARKE, TRUST ADMINISTRATOR**

# CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER  
0033003-01694

PRODUCER

Marsh USA Inc.  
1166 Avenue of the Americas  
New York, NY 10036-2774

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

## COMPANIES AFFORDING COVERAGE

COMPANY

**A** ZURICH AMERICAN INS. CO.

COMPANY

**B**

COMPANY

**C**

COMPANY

**D**

INSURED

SPRAGUE ENERGY CORP.  
A SUBSIDIARY OF  
LEXA INTERNATIONAL CORPORATION  
300 ATLANTIC STREET  
STAMFORD, CT 06901

COVERAGES

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CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY  <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY  <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  OWNER'S & CONTRACTOR'S PROT	GLO 651629709	4/01/00	4/01/01	GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 1,000,000
					MED EXP (Any one person)	\$ 1,000
	AUTOMOBILE LIABILITY  ANY AUTO  ALL OWNED AUTOS  SCHEDULED AUTOS  HIRED AUTOS  NON-OWNED AUTOS				COMBINED SINGLE LIMIT	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE	\$
	GARAGE LIABILITY  ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	\$
					AGGREGATE	\$
A	EXCESS LIABILITY  <input checked="" type="checkbox"/> UMBRELLA FORM  OTHER THAN UMBRELLA FORM	AMC 27266401	4/01/00	4/01/01	EACH OCCURRENCE	\$ 10,000,000
					AGGREGATE	\$ 10,000,000
						\$
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY  THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input checked="" type="checkbox"/> EXCL				WC STATUTORY LIMITS	OTHR
					EL EACH ACCIDENT	\$
					EL DISEASE - POLICY LIMIT	\$
					EL DISEASE - EA EMPLOYEE	\$
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL ITEMS

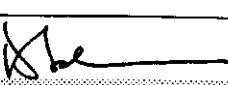
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CERTIFICATE HOLDER

The Maine Port Authority  
Attn: Brian Nutter  
16 State House Station  
Augusta, ME 04333-0016

CANCELLATION

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Marsh USA Inc.  
BY:  


# CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER  
0033003-01694

PRODUCER

Marsh USA Inc.  
1166 Avenue of the Americas  
New York, NY 10036-2774

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INSURED

SPRAGUE ENERGY CORP.  
A SUBSIDIARY OF  
LEXA INTERNATIONAL CORPORATION  
300 ATLANTIC STREET  
STAMFORD, CT 06901

## COMPANIES AFFORDING COVERAGE

COMPANY

**A** ZURICH AMERICAN INS. CO.

COMPANY

**B**

COMPANY

**C**

COMPANY

**D**

## COVERAGES

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CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	GLO 651629709	4/01/00	4/01/01	GENERAL AGGREGATE	\$ 2,000,000
	X COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	\$ 2,000,000
	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 1,000,000
	OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 1,000,000
					MED EXP (Any one person)	\$ 1,000
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	\$
	ANY AUTO				BODILY INJURY (Per person)	\$
	ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	HIRED AUTOS					
	NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	ANY AUTO				OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	\$
					AGGREGATE	\$
A	EXCESS LIABILITY	AMC 27266401	4/01/00	4/01/01	EACH OCCURRENCE	\$ 10,000,000
	X UMBRELLA FORM				AGGREGATE	\$ 10,000,000
	OTHER THAN UMBRELLA FORM					\$
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTH ER
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE:	<input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL			EL EACH ACCIDENT	\$
	OTHER				EL DISEASE - POLICY LIMIT	\$
					EL DISEASE - EA EMPLOYEE	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL ITEMS

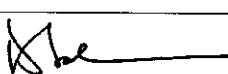
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CERTIFICATE HOLDER

The Maine Port Authority  
Attn: Brian Nutter  
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Augusta, ME 04333-0016

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Marsh USA Inc.  
BY:  


JHMM1 (2/98)

VALID AS OF: 4/03/00

**The St Paul**  
*Surety*

**GENERAL FORM STATUS INQUIRY**

5/08/2000

Bond No: 400JZ5903

**TO:** MAINE PORT AUTHORITY AND MAIN DEPT.OF  
TRANSPORTATION  
STATE HOUSE STATION 16  
AUGUSTA, ME 04333

Contract Surety

**CONTRACTOR.....:** Bangor & Aroostock Railroad Co.

**CONTRACT DESCRIPTION..:** DISPOSAL OF DEMOLITION DEBRIS FROM PIER AT MACK  
POINT, SEARSPORT, MAINE (PERFORMANCE/COMPLETION)

**OWNER:** MAINE PORT AUTHORITY AND MAIN DEPT.OF

**CONTRACT PRICE:** \$500,000      **BOND AMOUNT:** \$500,000      **EFFECTIVE DATE:** 11/08/99

It is understood that this information is furnished for the confidential use of the Surety, and is merely an expression of opinion, and in furnishing this information, no guaranty or warranty of accuracy or correctness is made; Nor is responsibility assumed as a result of reliance on such information.

TRISH GERRY  
Attorney-in-Fact

- \*\*\*\*\*
1. IF CONTRACT COMPLETED.....: APPROXIMATE COMPLETION DATE \_\_\_\_\_  
APPROXIMATE ACCEPTANCE DATE \_\_\_\_\_  
FINAL CONTRACT PRICE \$ \_\_\_\_\_
2. IF CONTRACT UNCOMPLETED...: PROBABLE COMPLETION DATE \_\_\_\_\_  
APPROXIMATE % OR \$ AMOUNT OF CONTRACT COMPLETED \_\_\_\_\_  
DO YOU KNOW OF ANY UNPAID BILLS FOR LABOR OR MATERIALS? YES \_\_\_\_\_ NO X
3. REMARKS: Anticipate Awarding Demolition contract by August 2000  
with about a nine month project window
- \*\*\*\*\*

SIGNATURE.....: Brian C. Nutter DATE 5/15/2000

PRINT NAME & TITLE.: Brian C. Nutter, Ports & Marine, Program Manager

\*\*\*\*\*  
PLEASE RETURN ORIGINAL TO:

St. Paul Surety

BOSTON BRANCH OFFICE

124 GROVE ST 3RD FLOOR

FRANKLIN OAKS OFFICE PK

FRANKLIN, MA 02038

(508) 553-0700

DIARY DATE: 10/08/2000