

**COMMONWEALTH OF THE BAHAMAS**

**New Providence**

**THIS MEMORANDUM OF UNDERSTANDING** (this "MOU") is made the 10<sup>th</sup> day of May A.D., 2010

**BETWEEN:**

**THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS** represented herein by **ANITA BERNARD**, Secretary to the National Economic Council, (the "**Government**");

**AND**

**APD LIMITED**, a company incorporated under the laws of the Commonwealth of The Bahamas and having its registered office in the Island of New Providence one of the Islands of the Commonwealth of The Bahamas ("**APD**")

**WHEREAS:**

**A.** As part of the Government's initiative to revitalize the City of Nassau and alleviate traffic congestion on Bay Street, it has been determined that there should no longer be any freight handling activities carried on at Downtown Bay Street and that all such freight, cargo and port handling activities, presently carried on at Downtown Bay Street on the Island of New Providence will be relocated to Arawak Cay.

**B.** The Government seeks to lower the cost of living for Bahamians by

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reducing the cost of imported goods.

C. The Government seeks to expand Bahamian ownership in the economy by creating new investment opportunities.

D. The Government seeks to broaden the ownership base in the shipping sector in The Bahamas.

E. The Government seeks to facilitate public and private sector collaboration.

F. To achieve the foregoing objectives, the Government has determined that the new port for freight handling activities will be situate on lands at Arawak Cay measuring 47.28 acres more particularly described and shown in the plan at Schedule 1 hereof. (the “**Arawak Cay Port**”).

G. The Government has also determined that an inland container terminal should be developed at Gladstone Road on lands owned by the Government and measuring 15 acres (the “**Gladstone Road Depot**”).

H. APD is a company which shall be jointly owned by the Government, a consortium of private sector business entities operating in The Bahamas, the names of which are set out in Schedule 2 (the “**Founding Private Sector Shareholders**”) and the Bahamian Public.

I. APD undertakes to design, develop, construct, manage, operate and maintain the Arawak Cay Port as a modern cargo port terminal and the Gladstone Road Depot as an inland container terminal (the “**Project**”) and to provide warehousing services.

**J.** APD has the skill, expertise and financial means to undertake the Project.

**K.** The Government is committed to private sector management of the Project on a commercially sound basis and has accepted in principle the proposal of APD as set out in the Business Plan which is attached hereto as Appendix 1.

**L.** The Parties hereto have agreed to enter into such leases, operating and other agreements as may be necessary to enable APD to carry out all its obligations hereunder contemplated.

**M.** The Government is satisfied that the Project is in the best interest of The Bahamas in general and, in particular, the island of New Providence and acknowledges that the development, operation and maintenance of modern port facilities is of vital economic importance to The Bahamas and, accordingly, has agreed to grant to APD certain incentives and concessions upon the terms and conditions hereinafter contained.

NOW THEREFORE in consideration of the premises and of the mutual terms, provisions and conditions herein set forth, and intending to be bound hereby, the Parties hereto agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 Unless the context otherwise indicates, the following words and expressions where used in this MOU have the meanings given to them below:

**affiliate** Bears the meaning contained in the Companies Act.

**Arawak Cay Port** The port to be developed on 47.28 acres of land on Arawak Cay

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more particularly described and shown in the plan at Schedule 1 hereof.

**break bulk cargo** Cargo that is loaded individually or secured to a pallet or skid and not in shipping or intermodal containers.

**Construction Contracts** Contracts made between APD and third parties for the construction of the Arawak Cay Port and the Gladstone Road Depot.

**depot** Any container terminal facility where cargo containers are transshipped between different transport vehicles including ships and land vehicles for onward transportation and being either a maritime container terminal or an inland container terminal or any commercial facility that is used for the stuffing and/or de-stuffing of containers or any Terminal.

**Depot Lands** All that piece or parcel of land consisting of 15 acres more or less situated at Gladstone Road in the Island of New Providence, which land will be more particularly described in the Depot Lease.

**Depot Lease** A forty-five (45) year lease of the Depot Lands by the Government to APD for use as an inland container terminal on the terms herein outlined and as further set forth in the said lease.

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<b>Company</b>	Any company through which the Founding Private Sector Shareholders will own the shares of APD. The Holding Company shall be subject to the restriction that no single shareholder may directly or indirectly own more than fifteen percent (15%) of its equity capital or control whether directly or indirectly more than fifteen percent (15%) of its voting shares.
<b>Group Member</b>	APD and any subsidiaries of APD, if any, from time to time;
<b>Holding Company Group</b>	(a) The Holding Company; (b) any shareholder in the Holding Company; (c) any direct or indirect parent company of the Holding Company and any subsidiary of the Holding Company; (d) any direct or indirect parent company of any shareholder in the Holding Company or any subsidiary of such parent company; or (e) any partner in any partnership having any interest, direct or indirect, in the Holding Company, other than any Group Member, in each case for the time being.
<b>IRR</b>	Internal Rate of Return, being the discount rate that makes the net present value of all cash flows from the Project equal to zero.
<b>Lands</b>	The Port Lands and the Depot Lands.
<b>Parties</b>	The parties to this MOU, being the Government and APD.
<b>Plan</b>	A Plan developed by APD and its consultants and to be approved by the Government setting out the description, timeline and budget

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for the Project which is attached hereto at Appendix 1.

**port** Any facility on a waterway (including any sufferance wharf) that is used for receiving and berthing ships and transferring cargo and persons to and from them but not including Potters Cay and any port used exclusively for receiving and shipping of products that are mined or manufactured in The Bahamas and are not containerised and any dock, pier, berth, or marina that is used for recreational boating facilities, facilities for aquatic entertainment and sports, or facilities for fishing or any commercial port that is used for the landing of cruise ship passengers.

**Port Controller** Bears the definition contained in section 2 of the Port Authorities Act (Chapter 269, Statute Law of the Bahamas, 2000).

**port facilities** Facilities for the performance of the following activities:

- (i) docking and mooring of vessels;
- (ii) receiving, shipping, assembling, distributing, moving, loading and/or unloading of (a) break-bulk cargo (b) incidental containers on predominantly non container or ro-ro type vessels; and (c) inbound and outbound containerized vessels;
- (iii) activities and uses incidental thereto including the storing and warehousing of break bulk cargo at the Gladstone Road Depot PROVIDED THAT provision may be made for the construction of two (2) single-storey warehouses, which together total no more than

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25,000 square feet, at the Western End of the Port Lands to facilitate break-bulk operation by certain Founding Private Sector Shareholders;

- (iv) the transferring of cargo and containers from and between vessels, trucks and other means of transportation/ conveyance.

**Port Lands** All that piece or parcel of land consisting of 47.28 acres more or less situated on the eastern side of Arawak Cay and including all of the straight linear bulkhead of the Cay being the land more particularly described in Schedule 1 and to be leased to APD by the Government.

**Port Lease** A forty-five (45) year lease of the Port Lands by the Government to APD for use as a port on the terms herein outlined and as further set forth in a lease to be agreed between the Parties.

**Project** The design, development, construction, financing, management, operation and maintenance of the Arawak Cay Port as a modern, cargo port terminal and the Gladstone Road Depot as a multi-operator inland container terminal.

**Project Schedule** The timeline for implementation of the Project, which is attached hereto as Appendix 2.

**quarter** Three months in any fiscal year, commencing 1 January, 1 April, 1 July and 1 October and “quarterly” shall be construed

accordingly.

**Regulatory Approvals**

Any licences, consents or permits required to be granted by any governmental, regulatory authority, or agency for the carrying out of the Project or the performance by APD of its obligations under this MOU.

**Seabed**

All that piece or parcel of land being the area of the seabed at Arawak Cay that is more particularly described in Schedule 3.

**Substantial Completion**

Shall be deemed to have occurred at such time as all works necessary for the operation of the Arawak Cay Port and the Gladstone Road Depot, as contemplated in the Project Schedule, are duly completed and evidenced by (i) the issuance of performance certificates or taking over certificates, as the case may be, pursuant to the Construction Contracts and (ii) any certificates of occupancy.

**TEU**

Twenty-foot Equivalent Unit.

**Term**

Forty-five (45) years, commencing on the execution of the Port Lease and the Depot Lease.

**Terminal**

Any depot where duty not paid cargo may be stored and or staged prior to the payment of Bahamas Customs Duties and Fees.

1.3 Unless the context otherwise requires, references in this MOU to:

1.3.1 any of the masculine, feminine and neuter genders shall include other

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genders;

- 1.3.2 the singular shall include the plural and vice versa;
- 1.3.3 a person shall include a reference to any natural person, body corporate, unincorporated association, partnership, firm and trust;
- 1.3.4 any statute or statutory provision shall be deemed to include any instrument, order, regulation or direction made or issued under it and shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;
- 1.3.5 The words “other”, “include” and “including” do not connote limitation in any way.

1.4 The headings in this MOU are for convenience only and shall not affect its meaning. References to a clause, Schedule or Appendix are (unless otherwise stated) to a clause of and Schedule or Appendix to this MOU. The Schedules and Appendices form part of this MOU and shall have the same force and effect as if expressly set out in the body of this MOU.

## 2. **CONDITIONS PRECEDENT**

2.1 The obligations of the Parties under this MOU are subject to fulfilment of the following conditions precedent:

2.1.1 the completion of a Traffic Management Study (including the design of alternate access to the Arawak Cay Port) to be commissioned by the Ministry of Public Works and Transport at APD’s expense;

2.1.2 the commissioning and submission by APD of an Economic Impact Study to assess, inter alia, the potential impact of the Project, upon the cost of imported goods and the generation or creation of business and

new employment opportunities;

2.1.3 the agreement of the Plan by both the Government and APD.

2.2 Prior to commissioning of the studies referred to in clause 2.1, APD shall obtain the Government's approval of any person it proposes will carry out each study referred to at Clause 2.1 above, provided that such approval shall not be unreasonably denied or delayed. Government shall, if requested by APD, provide APD with copies of any previous studies carried out by or on behalf of the Government which APD or its advisors consider to be of relevance for the purpose of carrying out the studies listed in clause 2.1.

2.3 Subject to clause 2.1 hereof, the Government undertakes to cause the relevant regulatory agencies to consider and make a determination and, subject to APD complying with the laws of The Bahamas, the subsequent grant of all required Regulatory Approvals.

2.4 Upon fulfilment of the conditions precedent set forth on clause 2.1, the Government shall subscribe for shares in APD in accordance with its obligations as set forth in clause 4.1.

### 3. **OBLIGATIONS OF APD**

3.1 Subject to fulfilment of the Conditions Precedent, APD shall:

3.1.1 design, develop and construct on the Port Lands, port facilities adequate to facilitate containerized cargo, and ro-ro traffic with an initial capacity of 75,000 TEUs. Containers landed at the Arawak Cay Port shall be transported to and off loaded at the Gladstone Road Depot as soon as reasonably possible save and except for those containers which are delivered directly to the

premises of an importer pursuant to clause 3.1.2 hereof. APD shall ensure that container storage at the Arawak Cay Port is minimised.

- 3.1.2 design, develop and construct container terminal facilities on the Depot Lands to be used for the storage, stuffing/destuffing and other handling of containers landed at the Arawak Cay Port which are not intended for direct delivery to the premises of an importer;
- 3.1.3 undertake the Project at an estimated cost of sixty-five million dollars (\$65,000,000.00), which cost shall be financed in the manner outlined in the Plan;
- 3.1.4 undertake and substantially complete the Project by 27 June 2011 or within two hundred and ninety-four (294) days of procurement of the materials set forth in the list attached hereto at Appendix 3;
- 3.1.5 as of the date of Substantial Completion, operate and manage the Arawak Cay Port and the Gladstone Road Depot with due diligence, care and skill;
- 3.1.6 manage the operating times of the Arawak Cay Port to ensure maximum efficiency of operations and to implement the agreed recommendations of the Traffic Management Study;
- 3.1.7. APD agrees that in planning operational timing logistics, it will maximize the number of container hauling trucks leaving and entering the Arawak Cay Port during the hours of 7pm to 6am so as to minimize

traffic congestion on public roadways during daylight hours;

3.1.8 contract with The Bahamas Electricity Corporation, the Water & Sewerage Corporation, The Bahamas Telecommunications Company and any other relevant utility companies or other service provider licensed to operate within the Commonwealth of The Bahamas for the provision of utilities for the Project;

3.1.9 maximize the employment of Bahamians in all stages of the development of the Project;

3.1.10 commission and submit to the Government an Environmental Impact Assessment (including an assessment of the noise to be generated by the Project) and an Environmental Management Plan which shall be subject to the approval by the Ministry of the Environment. In the event that work on the Project has commenced prior to final approval of the Environmental Impact Assessment and the Environmental Management Plan, APD agrees that it shall remedy, correct and make good any deficiencies in the works so that the same shall be in accordance with the reasonable requirements of the Ministry of the Environment;

3.1.11 meet all environmental requirements of the Government agencies, in relation to all aspects of the development and operation of the Project and shall comply with all monitoring mechanisms;

3.1.12 install and provide adequate and appropriate security systems for the protection of property and assets within the Arawak Cay Port and

Gladstone Road Depot and maintain compliance with standards imposed by Government regulation and the International Ship and Port Facility Security (ISPS) Code;

3.1.13 minimize disruption to the “Down Home Fish Fry” during construction and operation of the Arawak Cay Port;

3.1.14 enhance the aesthetics resulting from the proposed development;

3.1.15 cause the Lands to be surveyed;

3.1.16 provide, at its sole expense, suitable office accommodations at the Arawak Cay Port for such officers and employees of the Government as the Government may station thereon for security of the port and the collection of customs duties. In connection therewith APD shall at its sole expense cause plans for such office accommodations to be prepared which shall be subject to the approval of the Government such approval not to be unreasonably withheld or delayed.

3.2 The Parties acknowledge and agree that notwithstanding that no freight activities shall be permitted on Downtown Bay Street, the existing port at Potters Cay will continue to operate as a domestic “break bulk” terminal for the handling of “duty paid” cargo.

3.3. The Parties acknowledge and agree that there shall be no cement mixing at the Arawak Cay Port. Any silos located at the Port shall be used for storage purposes only and to facilitate removal of existing storage barge from Downtown Nassau.

4. **COMPANY STRUCTURE AND OWNERSHIP**

4.1 The share capital of APD shall be subscribed as follows:

4.1.1. Forty per cent (40%) by the Government;

4.1.2. Forty per cent (40%) by the Founding Private Sector Shareholders whether held directly or indirectly through the Holding Company;

4.1.3. The remaining twenty-percent (20%) shall be offered for sale to the general public.

4.2 Subscriptions for shares in APD, including all subscriptions for shares made by the Government, shall be made in cash.

4.3 The affairs of APD shall be managed by a board of directors of such number not exceeding seven (7) directors. The Founding Private Sector Shareholders shall collectively have the right to appoint the majority of the members (not exceeding four (4)) of the board of directors of APD including its Chairman, PROVIDED THAT the appointment of the Chairman shall be subject to the prior written approval of the Government. The Government shall appoint the remaining members of the board of directors of APD, including its Deputy Chairman. It is the intention of APD and the Government that the rights set forth in this clause shall continue in place after completion of the sale of shares to the general public referred to in clause 4.1.3.

4.4 So long as the Government holds at least 40% of APD's issued share capital, no action or decision shall be taken by the board of directors of APD in relation to any of the matters specified in clause 4.5 (the "**Reserved Matters**") unless the Government's prior approval in writing has been obtained, such approval not to

be unreasonably denied.

4.5. The Reserved Matters are:

4.5.1 Memorandum and Articles

adopting or altering the Memorandum and Articles or other constitutional documents of any Group Member;

4.5.2 Changes in share capital

making or agreeing to make any change to any Group Member's authorised or issued share capital (whether by consolidating, sub-dividing, purchasing, redeeming, cancelling, allotting or issuing any shares), or granting any option over, or issuing any instrument carrying rights of conversion into, any shares of the relevant company;

4.5.3 Borrowings

any Group Member incurring any financial indebtedness which would result in the secure debt exceeding an amount being equal to 3 times EBITDA or a debt service coverage ratio that is less than 1.25 times (or such other amount or ratio as may be agreed in writing from time to time);

4.5.4 Loans

any Group Member making any loan or advance (other than normal trade credit) to any other person other than in the ordinary course of business;

4.5.5 Disposals

any Group Member selling, transferring, leasing, assigning or otherwise disposing of (whether in a single transaction or series of transactions) a material part of the undertaking, property and/or assets of any Group Member (or any

interest therein), or agreeing so to do except for sub leases made in the ordinary course of business in relation to the Arawak Cay Port and or the Gladstone Road Depot;

4.5.6 Charges

without prejudice to the generality of clause 4.5.5 any Group Member creating or agreeing to create any encumbrance over all or a material part of any such Group Member's undertaking, property or assets, or giving any guarantees or indemnities for any purpose other than as security in respect of any financial indebtedness which is not otherwise prohibited by the terms of this MOU;

4.5.7 Contracts outside the ordinary course

any Group Member entering into any contract, liability or commitment which:

- (a) is unusual or onerous or outside the ordinary course of business of such company for the time being; or
  - (b) is otherwise than at commercial arm's length terms,
- unless such contract, liability or commitment satisfies such authorisation criteria as the Parties may approve from time to time as part of the procedures for entering into contracts;

4.5.8 Transactions with Group or affiliates

any proposed contract, transaction or arrangement or series of connected contracts, transactions or arrangements (other than any contracts for the provision of goods or services being on arm's length terms under which Group Members collectively do not incur liabilities in any twelve month period exceeding in the aggregate B\$5,000,000) between:

- (a) on the one hand, any Group Member; and
- (b) on the other hand:

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- (i) the Holding Company Group;
- (ii) any director of the Holding Company Group; and/or
- (iii) any affiliate of the Holding Company Group, or any director or employee of any such affiliate;

unless the award of such contract, transaction or arrangement or series of connected contracts, transactions or arrangements as aforesaid is made in compliance with any procedure governing the award of contracts that may be agreed between the Parties from time to time.

#### 4.5.9 Levying of Fees and Charges

the imposition of the fees and charges set out in Clause 5.1.6 save for such increases as are required to maintain a minimum IRR of ten percent (10%) or are consistent with a tariff amendment model developed pursuant to clause 5.1.7.

#### 4.5.10 Winding-up etc

the taking of any corporate action, legal proceedings or other procedure or step in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, liquidation, administration or reorganisation (by way of a voluntary arrangement, scheme of arrangement or otherwise) of any Group Member;
- (b) a composition, compromise, assignment or arrangement with, or for the benefit of, any creditor of any Group Member; or
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Group Member or any of its assets which shall include any shares held by any Group Member, or any other insolvency procedure in respect of any Group Member;

4.6 Method of approval by the Government

4.6.1. For the purposes of this MOU, the consent or approval of Government to a Reserved Matter will only be deemed to have been given in respect of such matter where a document confirming such consent or approval, signed by the Financial Secretary of the Ministry of Finance (or his duly designated representative provided that such designation has been communicated to APD pursuant to clause 15 herein), is delivered to APD at its registered office with a copy thereof to its Chairman.

4.6.2 Consent or refusal to any Reserved Matter shall be delivered in accordance with clause 4.6.1 within twenty (20) business days after receipt by the Government of the relevant Reserved Matter request and in the absence of any communication from Government after twenty (20) business days of delivery of same, the Reserved Matter request shall be deemed to have been approved.

4.7 Annual Audits

The accounts and operations of APD shall be subject to annual audits by an independent accounting firm appointed by resolution of the shareholders, and the auditor so appointed shall review and report on APD's compliance with the provisions of sub clause 4.5.

5. **OBLIGATIONS OF THE GOVERNMENT**

5.1 Leases

The Government hereby agrees to lease the Port Lands and the Depot Lands to APD for the Term subject to the following terms and conditions:

5.1.1 Upon the Port Lease becoming effective but prior to Substantial

Completion, APD shall pay an annual rent of Forty Bahamian Dollars (B\$40.00) per TEU, for the Lands. Such rent shall be paid quarterly in arrears within fourteen (14) days of the end of each quarter.

5.1.2 Upon Substantial Completion (the Port Lease having become effective), APD shall pay an annual rent of either two million Bahamian dollars (B\$2,000,000.00) (the “**Minimum Rent**”) or Forty Bahamian Dollars (B\$40.00) per TEU, whichever is the greater, for the Lands. The Minimum Rent shall be payable quarterly in advance during the Term and any adjustments based on the rent per TEU shall be made within fourteen (14) days of the end of each quarter and shall thereupon be paid. The rent shall be subject to annual increases based on increases in the cost of living as reflected in the All Bahamas Consumer Price Index published by the Central Bank of The Bahamas for the preceding year.

5.1.3 Provided there shall then be no subsisting material breach of any of APD’s obligations under the Port Lease or the Depot Lease, APD shall have the option to renew the said leases or any of them after the expiration of the Term for a further term of forty-five (45) years to commence on the day after the Term expires on the same terms and conditions but at an annual Rent to be agreed between the Parties. If the Parties are unable to agree, then by two appraisers one to be appointed by each Party hereto and failing agreement by such two appraisers, a third appraiser shall be appointed by the original two appraisers and the decision of the third appraiser shall be final. The appraisers shall determine the question so referred to them by ascertaining the annual rack fixed rent value of the Arawak Cay Port or the Gladstone Road Depot at the date of the notice to renew the Term that is to say the annual

fixed rent at which the subject premises might reasonably be expected to let without premium in the open market as between a willing landlord and a willing tenant but disregarding (a) any effect on rent of the fact that APD or any person deriving title under it has been in occupation of the premises; (b) any goodwill attached to the premises since the commencement of the Term by reason of the carrying on thereat of the business of APD or of any person deriving title under it; and (c) any effect on rent of any improvement carried out by APD or any person deriving title under it and the amount so calculated shall be the fixed rent payable.

5.1.4 In the event that the Port Lease and/or the Depot Lease are not renewed, the Government agrees to grant APD a five (5) year “winding up extension” to allow for the orderly closure and/or relocation of the business activities of the Arawak Cay Port and/or Gladstone Road Depot.

5.1.5 APD shall have the right to enter into sub-leases, licences and operating agreements and to establish facility usage fees and lease rates with any user on such terms and conditions as APD may agree with such user.

5.1.6 Subject to clause 4.5.9, APD’s board of directors shall have the right to set tariffs and charges for the following:

- (a) demurrage charges on carriers’ equipment landed at New Providence and Paradise Island;
- (b) security fees for the Arawak Cay Port and the Gladstone Road Depot;
- (c) gate fees for the Arawak Cay Port and the Gladstone Road Depot;
- (d) landing fees for the Arawak Cay Port;

- (e) utility charges for the Arawak Cay Port and the Gladstone Road Depot; and
- (f) charges for detention and storage of cargo and containers.

5.1.7 The Government acknowledges that APD must provide a competitive return to the investing public if it is to raise necessary funding and encourage broad public participation; the Government agrees to allow APD to make such adjustments to fees and tariffs as may be required from time to time to maintain an IRR of no less than 10% . In the interest of ensuring that the port business does not place an unacceptable financial burden on the consumer and that the port charges and tariffs remain reasonable and acceptable throughout the Term the Parties agree to appoint an independent professional accounting firm to develop a tariff amendment model which will guide increases to the rates and tariffs required to achieve and sustain commercial feasibility or to maintain the international competitiveness of the Arawak Cay Port.

5.1.8 The Port Lease may be terminated by the Government for any of the following events of default:

- (i) if APD persistently operates the Arawak Cay Port in a manner that is hazardous to individuals or to the environment;
- (ii) if APD commits persistent material breach of international security standards; or
- (iii) if an encumbrancer takes possession of, or a liquidator, administrator, receiver, manager or other similar officer is appointed of, the whole or a substantial part of APD's undertaking, property, assets or revenues and the same is not discharged, released or satisfied (as the case may be) within thirty

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(30) business days of such possession or appointment (as the case may be) or an order is made or an effective resolution is passed for its winding-up, or it is otherwise dissolved.

PROVIDED THAT in the case of a breach or default pursuant to clause 5.1.8 (i) or 5.1.8 (ii) the Government shall give written notice of such breach or default to APD and APD shall have a period of three months (3) after receipt of such written notice to remedy any default or breach. The Government agrees that if within the stipulated period APD shall commence in good faith to cure the default or breach and shall proceed to complete such cure within a reasonable period the Government shall not terminate the Port Lease on the ground of such breach or default.

5.1.9 If prior to expiration of the Port Lease and/or the Depot Lease, the Government mandates the relocation of the Arawak Cay Port or the Gladstone Road Depot, the Government will reimburse to APD all its reasonable relocation costs.

5.1.10 Upon any relocation of the Arawak Cay Port or the Gladstone Road Depot mandated by the Government or carried out at the request of the Government during the Term, the Government shall compensate APD for all buildings, leasehold improvements and immovable equipment at the Arawak Cay Port, and/or Gladstone Road Depot, as the case may be, at the greater of their net book value or fair market value.

5.1.11 APD agrees that during the Term and any renewal thereof it shall not, without the Government's consent, engage in operating, managing or investing in any other port business for the island of New Providence.

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5.1.12 The Government agrees that it shall itself, not for a period of twenty (20) years from the date of Substantial Completion of the Arawak Cay Port, establish any other port or Terminal within New Providence or Paradise Island and shall not lease to any third party any Government lands within New Providence or Paradise Island for the establishment of any other port or Terminal.

5.2 Seabed Licence

Further, the Government shall grant APD a licence, upon the standard terms and conditions, over the Seabed for the Term and any renewal thereof for the purposes of manoeuvring, berthing and stevedoring of commercial vessels.

5.3 Port Administration

APD shall have the right to grant permission for vessels to enter the Seabed and to regulate the berthing, mooring and scheduling of vessels calling at the Arawak Cay Port. In conducting such functions, APD agrees to cooperate fully with the Port Controller with a view to maximizing efficiency.

5.4 Customs Port Designation

Pursuant to section 6 of the Customs Management Act, the Government shall designate the Arawak Cay Port a Customs Port of Entry for containers, bulk and break bulk cargo and vehicles and shall (subject to APD complying with any applicable conditions) maintain such designation for the Term.

5.5 Bonded Warehouse

The Government shall approve a bonded warehouse or warehouses at the Arawak Cay Port and /or the Gladstone Road Depot.

5.6 Port Fees

APD shall pay such fees to the Government as are stipulated by law.

5.7 Dredging

5.7.1 The Government shall ensure that on or before the date of Substantial Completion of the Arawak Cay Port, the shipping channel, berth face, breakwater and turning basin are of a sufficient depth and width to accommodate all ships of such size and numbers as the Plan contemplates will be calling at the Arawak Cay Port.

5.7.2 The Government shall make available at no charge to APD any material dredged by APD that is needed for the development of the Arawak Cay Port and the Gladstone Road Depot.

5.8 Navigational Aids

APD shall supply and install all navigational aids that may be required at the Arawak Cay Port pursuant to any regulation or in order to satisfy international standards.

5.9 Exclusive Control

APD shall have the sole possession of, and exclusive operational control of the Arawak Cay Port and the Gladstone Road Depot including their construction, equipping, manning, and internal operations during the Term.

5.10 Water & Sewerage Corporation

The Parties acknowledge and agree that:

(i) APD shall secure final agreement between itself and the Water and

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Sewerage Corporation (the “**Corporation**”) regarding the relocation of the Water and Sewerage Reservoir presently located on the Port Lands, including timelines by which the same will be achieved. APD shall provide the Government with evidence of the same;

- (ii) the lease of the Port Lands shall not become effective until all water reservoirs currently in use by the Corporation on the Port Lands have been re-accommodated provided that pending such relocation APD, its servants, agents, independent contractors and consultants shall nevertheless have the unrestricted right to enter on the remainder of the Port Lands and carry out such works as are required for the carrying out of the Project;
- (iii) in the event that APD deems it necessary that loading and unloading of water barges servicing the Corporation at the Port Lands should be rescheduled to night-time operations so as not to disrupt the efficient operations of the Arawak Cay Port, any increase of operational expenses to the Corporation shall be borne exclusively by APD. For planning purpose, the Corporation shall provide APD in advance with a good faith estimate of such increase.

#### 5.11 Exclusivity Period

The Government agrees that for a period of twenty (20) years from the date of Substantial Completion it shall not establish or permit to be established in the Islands of New Providence and Paradise Island or within 20 miles of the shoreline of New Providence, any other port (including any sufferance wharf) for landing of containerized, bulk or Break Bulk Cargo or vehicles or any other Terminal. Nothing contained in this clause shall apply to the port at Clifton Pier used for the loading and unloading of fuels, petroleum products, asphalt and cement or any rights or privileges relating thereto.

5.12 Non-Discrimination

The Government agrees that it shall not during the Term grant to any third party any right or licence to operate a port or depot within New Providence or Paradise Island on terms that are more favourable to such third party than the terms applicable to APD pursuant to this MOU or any other agreement signed pursuant to the provisions of this MOU. Such terms shall include but not be limited to:

- (i) any concession by way of exemption from or rebate of tax or user fees of any kind whatsoever;
- (ii) any technical or other assistance from Government or any office or agency of Government;
- (iii) the requirement for compliance with ISPS standards and procedures; and
- (iv) the provision of infrastructure improvements and utilities by the Government or any agency of Government.

In the event that Government grants any treatment to such port or depot that is more favourable than that accorded to APD, Government shall forthwith agree and provide comparable benefits to APD.

5.13 Customs Procedures

The Government agrees that it shall upgrade Customs procedures, regulations and information technology capabilities to provide for the seamless flow of information between terminal operators and the Customs Department and to allow the Customs Department to review shipments prior to cargo arriving at the Arawak Cay Port.

**6. CONCESSIONS AND INCENTIVES**

6.1. The Government hereby agrees that APD (and any contractor employed by APD and any terminal operator at the Arawak Cay Port or the Gladstone Road Depot) shall be permitted to import all materials and equipment to be used in the construction, equipping, furnishing, completing, opening and operation of the Project free from all customs duty and excise tax and that the Government shall take such steps as may be necessary to give effect to this provision. The items subject to such relief shall include the items set out in the list attached hereto as Appendix 3.

6.2. APD and any contractor employed by APD and any terminal operator at the Arawak Cay Port or the Gladstone Road Depot shall comply with any stipulations of law that may apply to such concessions.

7. **EMPLOYMENT**

7.1 Recognizing that there exist qualified Bahamian engineering and construction companies and accepting that the proposed design and construction will require the involvement of major international construction companies and sub-contractors, APD shall ensure that only those international firms that either complement and/or provide technology, knowledge or services that are not currently available in The Bahamas will be engaged in the Project. Additionally it shall be a primary mandate of APD that the employment of Bahamians in maximized.

7.2 For the construction periods of the Project, APD shall publicize and offer both employment opportunities and equal opportunities for qualified Bahamian contractors to participate in the bidding process for the Project.

7.3 While it is agreed that APD will maximize the employment of Bahamians in all

RAW  
SD

stages of the development of the Project, the Government recognizes that the timely completion of the Project, and the successful operation of the Project to the highest international standards, might necessitate the employment of non-Bahamians.

**8. INFRASTRUCTURE IMPROVEMENTS**

The Government acknowledges that the existence of proper access roads to and from the Arawak Cay Port is a priority issue and agrees that it will implement the agreed recommendations of the Traffic Management Study.

**9. ASSIGNMENT**

9.1 APD may not assign or transfer all or any part of its rights, benefits or obligations under this MOU without the prior written consent of the Government, such consent not to be unreasonably denied or delayed provided that any assignee shall be at least 60% beneficially owned by Bahamians.

9.2 None of the restrictions set out in this clause shall apply to any assignment by APD to a wholly-owned subsidiary or to a company under its control; provided however that APD shall notify the Government in writing within 14 days of any such assignment.

**10. FURTHER ASSURANCE**

The Parties to this MOU will do all acts and things and sign and execute all documents and deeds requisite for the purpose of implementing the Project, in such form and to such effect as the other Party may reasonably require.

**11. MUTUAL WARRANTY AND ACKNOWLEDGMENT**

11.1 Each of the Parties warrants its power and authority to enter into this MOU,

and that this MOU constitutes the legal and binding agreement of such Party, enforceable against such Party in accordance with its terms.

11.2 The Parties hereto agree that they will work together in a spirit of mutual cooperation and good faith towards the timely completion of the Project, and will cooperate with each other to allow reasonable monitoring of compliance with the terms of this MOU; provided that such monitoring shall not place an unreasonable burden on either Party or unreasonably hinder or delay the development of the Project.

11.3 Either Party, upon receipt of a specific request in writing from the other, shall provide such information as the requesting Party shall reasonably require enabling such Party to monitor compliance by the other with the relevant terms of this MOU.

12. **SEVERANCE**

If any provision of this MOU is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of the Parties the provision may be severed from this MOU and the remaining provisions of this MOU shall remain in full force and effect.

13. **FORCE MAJEURE**

If for any reason outside the control of either Party, including such events as war, industrial action, hurricanes, flood, Acts of God, terrorist activities, freight embargoes, civil commotion, or any significant adverse change in economic conditions or in the financial markets, any provision of this MOU or any



agreement entered into pursuant hereto becomes commercially impracticable, then for the duration of such condition APD shall be excused from so performing, and the incentives granted pursuant to this MOU shall be extended for a reasonable period of time not less than the duration of such condition.

**14. NO DEROGATION**

Nothing in this MOU shall derogate from the provisions of any other law.

**15. NOTICES**

15.1 Any notice or other communication that either party gives under this MOU shall be made in writing and given either by hand, first class recorded postal delivery or facsimile transmission. Notice given by hand shall be effective immediately, notice given by recorded postal delivery shall be effective four working days after the date of posting, notice given by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded. Any notice given under this MOU shall not be validly served if sent by electronic mail, by text messaging via mobile telephone or other electronic means other than fax.

15.2 Addresses for notices

The addresses and fax numbers of the Parties are:

Government

Address: Ministry of Finance  
Cecil Wallace-Whitfield Centre  
Cable Beach  
PO Box N-3017  
Nassau, New Providence  
The Bahamas

DW  
SD

For the attention of: Financial Secretary

Fax number: 327-1618

APD

Address: APD Limited  
C/O H&J Corporate Services Ltd.  
Ocean centre  
Montagu Foreshore  
East Bay Street  
P.O. Box SS 19084  
Nassau, new Providence  
The Bahamas

With a copy to APD Limited  
C/O Tropical Shipping,  
John Alfred Dock  
East Bay Street  
P.O. Box N-8183  
Nassau, New Providence

For the attention of: Mr. James Mosko, Chairman

Fax number: 323-7072

**16. GOVERNING LAW AND JURISDICTION**

16.1 This MOU and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the Commonwealth of The Bahamas.

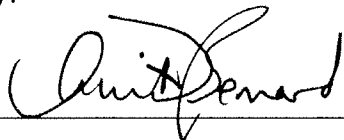
16.2 The courts of the said Commonwealth shall have exclusive jurisdiction in relation to all disputes or questions relating to this MOU and the Parties hereby irrevocably submit to the jurisdiction of the said courts.

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*del* *SB*

**THE GOVERNMENT OF THE  
COMMONWEALTH OF THE BAHAMAS**

By:



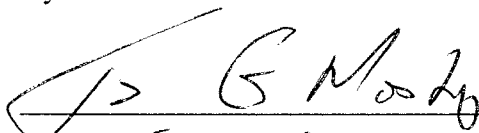
Name: Anita Bernard

in the presence of:



**APD LIMITED**

By:



Name: JAMES G. MOSKO

Title: DIRECTOR

In the presence of:





**Schedule 1**

**Description of Port Lands**

**AREA = 47.28 ACRES**

ALL that certain parcel of land (together) containing by admeasurement FORTY Seven and Twenty Eight Hundredth (47.28) of an Acre thereabouts being the parcel numbered on a plan on record in the Department of Lands and Surveys as Plan 5231 NP of Nassau situate on Arawak Cay in the Island of New Providence in the Commonwealth of The Bahamas ABUTTING AND BOUNDING towards the **NORTH** by the sea towards the **EAST** partly by the sea and partly on other portions of Arawak Cay towards the **SOUTH** on other portions of Arawak Cay and partly by the Bahamas Water and Sewerage (Reservoir) and towards the **WEST** on other portions of Arawak Cay or however else the same may abut and bound which said lot piece or parcel of land is/are more particularly delineated and shown coloured pink on the plan of the area hereto annexed and marked "A".

**Schedule 2**

**Founding Private Sector Shareholders**

Arawak Stevedoring Limited  
Bahamas Ferries Ltd.  
Bahamas Hot Mix Company Limited  
Bahamas Marine Construction Company Limited  
Bahamas Sea Lane Company Limited  
Bethell Estates Limited  
Betty K Agencies Limited  
Blue Flag Limited  
C.C. Enterprises Bahamas Limited  
Container Terminals Limited  
Crowley Caribbean Services, LLC  
Inter Island Feeder Services Ltd.  
Island Terminal Services Limited  
MSC Bahamas Limited  
Paradise Island Ready Mix Limited  
Sea Truck Ltd.  
Seaboard Marine Bahamas Limited  
The Mail Boat Company Ltd.  
Tycoon Managements Limited  
Vakis Limited



**Schedule 3**

**Seabed Area**

**AREA = 27.88 ACRES**

ALL that certain parcel of land (together) containing by admeasurement Twenty Seven and Eighty Eight Hundredth (27.88) Acres thereabouts being the parcel numbered "Crown Seabed" on a plan on record in the Department of Lands and Surveys as Plan numbered 5229 NP of New Providence situate at Arawak Cay in the Settlement of Nassau in the Island of New Providence in the Commonwealth of The Bahamas ABUTTING AND BOUNDING towards the **NORTH** by the sea towards the **EAST** by the sea towards the **SOUTH** partly by the sea and partly by Arawak Cay and on the **WEST** by the sea or however else the same may abut and bound which said parcel of land is/are more particularly delineated and shown coloured pink on the plan of the area hereto annexed and marked "A".



**Appendix 2**  
**Project Schedule**



ID	Task Name	Duration	Start	Finish	April	May	June	July	August	September	October	November	December	January	February	March	April	May	June	July
1	Preconstruction Items	6 days	Mon 6/23/10	Tue 6/29/10	B	M	E													
-	Notice To Proceed	1 day	Mon 6/29/10	Tue 6/29/10																
3	Submittals and PO's	5 days	Tue 6/29/10	Tue 7/6/10																
4	Procurement Of Material	40 days	Tue 6/29/10	Tue 7/27/10																
5	Procurement of Materials	40 days	Tue 6/29/10	Tue 7/27/10																
6	Work Planning	1 day	Tue 6/29/10	Wed 6/29/10																
7	General Conditions Duration	294 days	Tue 6/29/10	Mon 6/27/11																
8	Mobilization	22 days	Tue 7/6/10	Thu 7/27/10																
9	Construction Duration	294 days	Tue 6/29/10	Mon 6/27/11																
10	Main Dredging up to Temp Mooring	207 days	Thu 7/22/10	Mon 6/29/11																
11	Remainder of Dredging&Dredging up	35 days	Mon 6/29/10	Mon 6/27/11																
12	Clearing&Grubbing	26 days	Thu 7/22/10	Fri 8/27/10																
13	Fabricate New Reservoir Water Tank	66 days	Tue 6/29/10	Wed 8/11/10																
14	Construct Foundation and Erect Tank	66 days	Wed 6/29/10	Thu 11/11/10																
15	Pump Water from Existing Reservoir to New Tank	5 days	Thu 11/11/10	Thu 11/18/10																
16	Demolish Existing Reservoir	66 days	Thu 11/18/10	Fri 2/10/11																
17	East RO RO Pipe Pile	18 days	Thu 8/6/10	Tue 8/31/10																
18	East RO RO Conc Cap	12 days	Tue 8/31/10	Thu 9/16/10																

Project: ArwakaBasinSchedule  
 Date: Mon 4/27/10

Task: Project Guide Critical Task

Split: Progress

Milestone: Summary

External Task: External Task

External Milestone: External Milestone

Deadline: Deadline

Handwritten initials/signature.

ID	Task Name	Duration	Start	Finish	Avail	May	June	July	August	September	October	November	December	January	February	March	April	May	June	July
19	East RO RO PC Deck Sections	4 days	Tue 9/14/10	Mon 9/20/10																
20	East RO RO CIP Deck	21 days	Wed 9/15/10	Thu 10/14/10																
21	Temporary Bracing Piles	30 days	Thu 9/9/10	Thu 9/16/10																
22	Boilard Pipe Piles	17 days	Thu 9/16/10	Mon 10/11/10																
23	Main BH Sheet Pile	55 days	Mon 10/11/10	Mon 12/27/10																
24	Install Tiesack, Tie Rods, & Wires	65 days	Mon 1/18/10	Mon 3/7/11																
25	Sheet Pile backfill	17 days	Tue 12/14/10	Wed 3/16/11																
26	Crane Bearing Piles	70 days	Fr 8/6/10	Fr 11/12/10																
27	Drainage and Utilities Assoc With Marine Work	60 days	Fr 8/27/10	Fr 1/5/10																
28	Bulkhead Conc Cap	144 days	Mon 11/22/10	Fr 6/10/11																
29	Boilard's Fenders	11 days	Mon 8/6/11	Tue 6/21/11																
30	Grader/Prep for Wharf Apron & Crane Runway	8 days	Fr 8/27/10	Wed 11/24/10																
31	Crane Runway	20 days	Mon 10/25/10	Mon 11/22/10																
32	Wharf Apron	60 days	Mon 3/28/11	Mon 6/20/11																
33	West RO RO Pipe Pile	35 days	Mon 12/27/10	Mon 2/14/11																
34	West RO RO Conc Cap	28 days	Tue 2/1/11	Fr 3/11/11																
35	West RO RO PC Deck Sections	4 days	Fr 2/11/11	Tue 3/15/11																
36	West RO RO CIP Deck	21 days	Wed 3/23/11	Wed 3/30/11																

Project: ArwadBasinSchedule  
 Date: Mon 4/12/10

Task: Project Queue: Critical Task

Skit: Progress

Missions: Summary

Project Summary: External Tasks

External Milestones: Deadline

**Appendix 3**

**List of Items that may be Imported Duty Free by APD and by any contractor employed by APD and any terminal operator at the Arawak Cay Port or the Gladstone Road Depot**



**ARAWAK CAY PORT DEVELOPMENT PROJECT**

May 5th, 2010

**Equipment imported to build Port - Bonded (to be re-exported)**

		<u>QTY</u>
D-30-32 Diesel Hammer	135,000 ea	1
9310 American 225 ton Crane	600,000 ea	1
ICE 6680-80t Vibro Hammer	210,000 ea	1
LLS 150 x 52 Barge	500,000 ea	2

**ARAWAK CAY**

20,000 sq. ft. Steel Engineered building with a 20ft eve.

240,000

2

**Gladstone Road Depot**

20,000 sq. ft. Steel Engineered building with a 24ft eve.

2,400,000

1

**Equipment needed to operate the Port**

<u>Equipment Type</u>	<u>Make/Class</u>	<u>US Cost Estimate</u>	<u>QTY</u>
Jockey Port Trucks	Ottawa YT 50	\$90,000 ea	1
Jockey Port Trucks	Capacity	\$89,000 ea	12
Tractor head "street" Trucks	Freightliner	\$100,000 ea	8
Tractor head "street" Trucks	B5.9-C	\$75,000 ea	3
Customized Maintenance Truck	TBD	\$80,000 ea	1
Customized Fuel Truck	TBD	\$80,000 ea	3
Truck	Ford F450	\$40,000 ea	3
Fork Lifts 5,000lb Capacity Propane	Toyota/Mitsubishi	\$42,000 ea	18
Forklift 9,000lb Capacity Propane	Toyota/Mitsubishi	\$35,000 ea	8
Forklift 9,000lb Capacity Diesel	Toyota/Mitsubishi	\$35,000 ea	5
Forklift 13,000lb Capacity Diesel	Toyota/Mitsubishi	\$42,000 ea	5
Fork Lifts 30,000lb Capacity	Taylor	\$140,000 ea	6
Top Loader 40,000lb Capacity	Taylor	\$480,000 ea	5
Reach Stackler	Terex	\$525,000 ea	2
Crane	Manitowoc	\$1,300,000 ea	2
Crane (2-5 years out)	Gottwald	\$3,400,000 ea	1
Power Generator	John Deer	\$44,000 ea	1
Power Generator	Taylor	\$15,000 ea	2
Spreader Bar	Earls	\$280,000 ea	5



Arawak Cay Port Development Project		5/5/2010
List of Dutable Permanent Material	Qty	Estimated Value of Duty
8,000,000 Gallon Steel Tank	1 ea	\$613,757
24" pipe 3/8" wall x 59ft long	3,422 ft	\$54,512
AZ37-700x60ft long sheets pile	2,700 tons	\$1,919,058
AZ37 Coating	148,165 sft	\$133,349
Tieback Hardware	1,100 ea	\$4,950
Comers AZ-Delta 13	120 ft	\$3,510
Comers AZ-OM18	60 ft	\$2,160
AZ 14-770 x 10ft long TB sheets	261 tons	\$211,553
Dbl C12x30 wales	4,938 ft	\$233,321
2.5" Tie Rod Assembly	357 ea	\$160,425
Tie Rod Wrap	357 ea	\$4,813
12" dia x 3/8" x 40ft Steel Pipe	20,640 ft	\$231,271
12" dia Boot	516 ea	\$9,288
12" dia dbr	516 ea	\$4,644
Rebar GR 60 black	191,665 lbs	\$25,875
Accessories	191,665 lbs	\$1,294
Rebar Hangers	538 ea	\$12,105
Bollard 100 ton	31 ea	\$41,850
Safety ladder	28 ea	\$38,936
6x12 Foam Filled	28 ea	\$233,100
Rebar GR 60 black	159,822 lbs	\$21,576
Accessories	159,822 lbs	\$1,079
Poured EJ & Dowelrods	5,699 ft	\$16,747
60# crane rail w/conc chairs	9,353 ft	\$101,018
Pipe fill plate	640 ea	\$5,760
Rebar GR 60 black	547,856 lbs	\$73,961
Accessories	547,856 lbs	\$3,698
Poured EJ & Dowelrods	8,572 ft	\$25,189
Saw cut poured sealant	6,968 ft	\$6,271

Rebar GR 60 black	32,130	\$4,338
36" dia x 1/2" x 35ft	1,365	\$68,071
36" Coating	1,365	\$7,371
Rebar GR 60 black	40,555 lbs	\$5,475
12" PC Deck Planks	4,162 sft	\$35,588
Rebar GR 60 black	33,890 lbs	\$4,575
Conc Barrier	138 ft	\$43,155
60# crane rail w/conc chairs	441 ft	\$47,623
Armored Joint	101 ft	\$11,362
Rebar GR 60 black	27,735 lbs	\$3,744
36" dia x 1/2" x 27ft	405 ft	\$20,197
36" Coating	405 ft	\$2,187
Rebar GR 60 black	18,763 lbs	\$2,533
14" PSPC Deck Planks	1,932 sft	\$34,776
Rebar GR 60 black	16,800 lbs	\$2,268
60# crane rail w/conc chairs	100 ft	\$1,080
Arch Fender	7 ea	\$15,750
Conc Barrier	108 ft	\$34,020
48" dia x .75 wall x 60ft	450 ft	\$42,525
Tire Stops	27 ea	\$2,430
24" Pipe w/4" horn	9 ea	\$8,505
Braces to BH	12 ea	\$19,440
F&I Standard Fence	5009 ft	\$16,229
F&I Standard Fenced w/Barbed Wire	4455 ft	\$18,043
F&I Site Drainage Wells	5 ea	\$9,000
Oil Water Sep(OWS)	1 ea	\$18,000
Site Grading	1 ea	\$18,000
RCP connecting OWS	1 ea	\$54,000
<b>Total Estimated Duty</b>		<b>\$4,745,355</b>