

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (this “**Agreement**”) is entered into as of March ____, 2023, but and between the CITY OF DETROIT, a Michigan municipal corporation (the “**City**”) acting by and through its General Services Department (“**GSD**”), and the DETROIT/WAYNE COUNTY PORT AUTHORITY, a Michigan public body corporate and politic (the “**Port Authority**”), and shall be effective as of the Effective Date (as defined herein).

RECITALS:

- A. The Port Authority oversees and promotes commercial and recreational activities along thirty two (32) miles of the Detroit River from Lake St. Clair to the Wayne/Monroe County border.
- B. Riverfront Holdings Inc. owns and operates certain real property located at 300 E. Atwater Street, Detroit, Michigan 48226 (the “**Property**”).
- C. The Port Authority desires to perform certain improvements to the Property to improve capacity for the Detroit riverfront to handle the docking of cruise ships and other vessels at a total cost of approximately four hundred forty thousand dollars (\$440,000) (the “**Improvements**”), as more specifically described in that certain Proposal dated November 16, 2022, and those certain drawings dated October 25, 2022, prepared by E.C. Korneffel Co. (the “**Plans and Specifications**”).
- D. The City expects to materially benefit from increased traffic and tourism from cruise ships and other vessels docking at the Property and is willing to contribute a total of one hundred fifty thousand dollars (\$150,000) (the “**City Contribution**”) towards the cost of Improvements.
- E. The City and the Port Authority desire to enter into this Agreement to set forth the terms pursuant to which the City will provide the City Contribution and the Port Authority will utilize the City Contribution to construct the Improvements.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the benefits to accrue to the parties and the public, and for other good and valuable consideration, the receipt of which is hereby acknowledge, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into this Agreement as material terms of this agreement.
2. Effective Date; Effect of Agreement. For the purposes of this Agreement, the “**Effective Date**” shall be the last to occur of (a) the execution of this Agreement by a duly authorized representative of the City and by the Port Authority, and (b) the adoption of a resolution

by the Detroit City Council approving of the City Contribution and the Mayor of Detroit's approval of such resolution. This Agreement shall be of no force or effect and may not in any way be enforced against the City, unless and until this Agreement has been fully executed by the duly authorized representative of the City pursuant to the resolution of the Detroit City Council as approved by the Mayor of the City of Detroit, and approved by the City of Detroit Law Department. To be effective, any amendments or modifications must likewise be duly authorized by resolution of the City Council as approved by the Mayor, and be approved by the Law Department.

3. Conditions Precedent to Funding of City Contribution. The following shall be conditions precedent to the City's obligation to pay the City Contribution to the Port Authority (collectively, the "**Conditions Precedent**");

a. The Port Authority shall have provided to the City evidence that Riverfront Holdings, Inc. shall have approved the construction and installation of the Improvements on the Property and granted the Port Authority an easements for, a long-term lease, an irrevocable license, or other appropriate legal authority and permission to construct, operate, maintain and use the Improvements for the purpose of docking cruise ships and other vessels at the Property.

b. The Port Authority shall have provided to the City evidence that the Wayne County Commission shall have approved a contribution by the Charter County of Wayne towards the Improvements in the amount of one hundred fifty thousand dollars (\$150,000) (the "**County Contribution**");

c. The Port Authority shall have provided to the City evidence that upon receipt of the City Contribution and the County Contribution the Port Authority will have sufficient funds immediately available to complete the Improvements in accordance with the Plans and Specifications.

d. The Port Authority shall have provided to the City evidence that the Port Authority has received all permits and approvals which are required to construct the Improvements from the City, the Army Corps of Engineers, the U.S. Coast Guard, the Michigan Department of Environment, Great Lakes and Energy, and any other authority having jurisdiction over the Property and the immediately adjacent waterway.

4. Funding of City Contribution. Within fifteen (15) days after the occurrence of the later of (a) the Effective Date, or (b) the satisfaction of each of the Conditions Precedent, the City shall pay the City Contribution to the Port Authority.

5. Use of the City Contribution. The Port Authority shall use the City Contribution solely to pay for the actual, out-of-pocket costs to construct the Improvements. For purposes of this Agreement, the City Contribution shall be deemed to be spent pari-pasu with the County Contribution after the Port Authority's use of funds which are allocated to the Improvements other

than the City Contribution and the County Contribution. In the event that the actual cost of the Improvements is less than four hundred forty thousand dollars (\$440,000), the Port Authority shall refund to the City one-half of the difference between the actual costs of the Improvements and four hundred forty thousand dollars (\$440,000).

6. Construction of the Improvements.

a. The Port Authority shall construct the Improvements, or cause the Improvements to be constructed, by no later than June 30, 2023 (the “**Improvement Completion Date**”). All Improvements shall be constructed in a good and workmanlike manner and in accordance with the Plans and Specifications. The Port Authority shall not make any changes to the Plans and Specifications without the prior written consent of the City (which consent shall be in writing and signed by the Director of GSD or an authorized designee), which consent shall not be unreasonably withheld, conditioned or delayed.

b. The approval and execution of this Agreement by the City shall not be deemed to be the grant or authorization of any approvals required for building permits, use permits, certificates of occupancy, zoning approvals and variances, and other permits whether required by the City of Detroit Building, Safety Engineering, and Environment Department or other City departments and/or agencies or otherwise. The Port Authority shall be responsible for applying for and obtaining all permits and approvals necessary to allow for the construction and use of the Improvements.

c. Construction of all Improvements shall be performed at such times and in such a manner as to not unreasonably interfere with the use of Heart Plaza or the Detroit Riverwalk on or adjacent to the Property by the City or members of the public.

7. Books and Records. The Port Authority shall maintain full and complete books, ledgers, journals, accounts, documents, and records related to the Improvements for a period of at least three (3) years after completion of construction of the Improvements. Within fifteen (15) days of the end of each calendar month from the Effective Date until the date the Improvements are completed, the Port Authority will deliver to the City a written statement detailing the Improvements performed to-date, the cost of such Improvements on a line-item basis, and the total estimated remaining cost to complete the Improvements. The Port Authority shall deliver to the City copies of any contracts entered into by the Port Authority for construction of the Improvements. The City shall have the right to audit the Port Authority’s books, ledgers, journals, accounts, documents, and records related to the Improvements upon twenty-four (24) hours prior notice and during regular business hours. Nothing contained herein shall be construed or permitted to operate as any restriction upon the power granted to the City Council by the City Charter to audit all accounts chargeable against the City. Pursuant hereto, the City shall have the right to examine and audit all books, records, documents, and other such supporting data of the Port Authority with respect to the Improvements as the City may deem necessary.

8. Event of Default; Remedies. If the Port Authority fails to perform any of its obligations under this Agreement, including but not limited to completing the Improvements by the Improvement Completion Date, and fails to cure such failure within the cure period provided herein, then such failure shall constitute an “**Event of Default**” hereunder. The Port authority’s cure period to remedy a failure by the Port Authority hereunder shall be thirty (30) days from the date of the City’s delivery of notice of such failure to the Port Authority, provided that if such failure is not capable of being cured within such thirty (30) day period, then the cure period shall be extended for such longer period necessary to cure such failure, not to exceed ninety (90) days, if the Port authority commences such cure within the original thirty (30) day period and diligently pursues such cure to completion. Upon the occurrence of an Event of Default, (a) at the election of the City in its sole discretion, the Port Authority shall refund the City Contribution to the City, and (b) the City shall have the right to pursue such other rights and remedies as may be available at law or in equity.

9. Indemnity. The Port Authority agrees to and shall indemnify and save harmless the City, its agents and employees against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including without limitation, fees and expenses of attorneys, whether inside or outside counsel, expert witnesses and other consultants) that may be imposed upon, incurred by or asserted against the City by reason of any of the following occurring during the term of this Agreement:

a. any negligent or tortious act or omission of the Port Authority or its contractors resulting in personal injury, bodily injury, sickness, disease or death, or injury to any person or destruction of tangible property including the loss of use therefrom; or

b. any failure by the Port Authority or its contractors to perform their obligations under this Agreement.

10. Relationship of the Parties. The relationship of the Port Authority and the City is and shall continue to be that of independent parties. No liabilities or benefits arising out of a contract of hire or employer/employee relationship, such as employee benefits, retirement benefits or liabilities, pension rights or liabilities, holiday pay, sick pay, vacation pay, personal injury or property insurance rights or liabilities, or such other rights, provisions or liabilities, either express or implied, shall arise or accrue to either party as a result of this Agreement. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto; it being understood and agreed that none of the provisions contained herein, nor any acts of the parties herein, shall be deemed to create any such relationship between the parties.

11. Notices. All notices, requests, demands or other communications required to be provided by any party under this Agreement shall be in writing and shall be deemed given hereunder (a) upon personal delivery, (b) upon depositing any such notice with postage prepaid in a United States mailbox if sent via certified mail, return receipt requested, provided a duplicate

copy of such notice is also sent via electronic mail, (c) upon depositing any such notice in the custody of a nationally recognized overnight delivery service, provided a duplicate copy of such notice is also sent via electronic mail, or (d) upon delivery via electronic mail if the recipient of such communication acknowledges receipt thereof. Notices may be given by and/or to counsel for the parties. Notices shall be deemed properly addressed if sent to the following addresses:

If to the City: City of Detroit, General Services Department
Attention: Director
115 Erskine
Detroit, Michigan 48226
Email: perkinsc@detroitmi.gov

with a copy to: Corporation Counsel
City of Detroit, Law Department
2 Woodward Avenue, Suite 500
Detroit, Michigan 48226
Attention: Bryan L. Coe, Esq.
Email: bryan.coe@detroitmi.gov

If to the Port Authority: Detroit/Wayne County Port Authority
130 Atwater Street
Detroit, Michigan 48226
Attention: Mark Schrupp, Director
Email: mschrupp@portdetroit.com

Either party to this Agreement may change its address for the receipt of notices at any time by giving Notice thereof to the other as herein provided. Any notice given by a party hereunder must be signed by an authorized representative of such party.

12. Miscellaneous.

a. If any one or more provisions of this Agreement or in any instrument or other document delivered pursuant to this Agreement or the application thereof to any person or circumstance shall to any extent be declared or determined to be invalid or unenforceable, the validity, legality and enforceability of the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

b. This Agreement shall be binding upon the parties hereto and each of their respective successors or assigns. No party may assign this Agreement or such party's rights and obligations hereunder without the prior written consent of the other party.

c. This instrument, including the exhibits hereto, contains the entire agreement between the parties regarding the subject matter hereof and all prior negotiations and agreements are merged herein.

d. No Amendment to this Agreement shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed and acknowledged by duly authorized representatives of both parties. To be effective against the City, the Amendment must be authorized as set forth in Section 2 of this Agreement.

e. The headings of the Sections and other subdivisions in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.

f. All actions arising under this Agreement shall be governed by, subject to, and construed according to the laws of the State of Michigan, without reference to conflict of law principles. The Port Authority agrees, consents and submits to the personal jurisdiction of any competent court in Wayne County, Michigan for any action brought against it arising out of this Agreement. The Port Authority agrees that it will not commence any action against the City because of any matter whatsoever arising out of or relating to the validity, construction interpretation and enforcement of this Agreement, in any courts other than those in the County of Wayne, State of Michigan.

g. In the event of enforced delay in the performance by either party of obligations under this Agreement due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other party, fires, floods, epidemics, or severe weather, the time for performance of such obligations shall be extended for the period of the enforced delays; provided that the party seeking the benefit of the provisions of this Section shall within ten (10) days after the beginning of such enforced delay, have first notified the other party in writing of the causes thereof and requested an extension for the period of the enforced delay.

h. This Agreement may be executed in counterparts each of which shall be deemed to be an original document but together shall constitute one instrument. Executed copies of this Agreement may be delivered between the parties via electronic means including electronic mail. The parties intend that this Agreement may be executed by either or both of the parties by means of the affixing of a digital signature or by other electronic means, in accordance with the Michigan Uniform Electronic Transactions Act (MCL 450.831 *et seq.*).

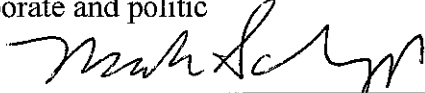
[Signature page follows.]

[SIGNATURE PAGE TO AGREEMENT TO FUNDING AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

PORT AUTHORITY:

DETROIT/WAYNE COUNTY PORT
AUTHORITY, a Michigan public body
corporate and politic

By: 
Print: Mark Schrupp
Its: Executive Director

CITY:

CITY OF DETROIT,
a Michigan municipal corporation

By: _____
Name: _____
Its: _____

Approved as to form by Corporation
Counsel pursuant to §7.5-206 of the 2012
Charter of the City of Detroit.

Corporation Counsel