

10224. RESOLUTION 10-36 - ACCEPTANCE OF DECLARATION OF M/V TWIN CAPES AS SURPLUS PROPERTY, RATIFICATION OF EXECUTION OF INTERIM MARKETING SERVICES AGREEMENT, AUTHORIZATION OF EXCLUSIVE LISTING AGREEMENT FOR M/V TWIN CAPES AND/OR M/V CAPE MAY, AND AUTHORIZATION OF PURCHASE AGREEMENT(S) FOR M/V TWIN CAPES AND/OR M/V CAPE MAY

WHEREAS, The Delaware River and Bay Authority (the "Authority") is a bi-state agency created by Compact for the purpose of developing the areas in Delaware and New Jersey bordering the Delaware River and Bay for transportation, port and terminal purposes; and

WHEREAS, the Authority is the operator of the Cape May-Lewes Ferry and owns the M/V Twin Capes and the M/V Cape May; and

WHEREAS, the Budget and Finance Committee, at a meeting on July 2, 2007, following the recommendation of the then Acting CFO, authorized the then Acting CFO to declare the M/V Cape May surplus property in accordance with the Authority's Real Property and Tangible Assets Disposition Policy (the "Policy"); and

WHEREAS, the Budget and Finance Committee, at a meeting on June 28, 2010, following the recommendation of the Chief Financial Officer, authorized the Chief Financial Officer to declare the M/V Twin Capes surplus property in accordance with the Policy; and

WHEREAS, the Budget and Finance Committee then reviewed the Policy with respect to the purchase price for sale of the vessels and determined that a valuation be performed on both vessels, which would serve as a general guideline for setting price but also taking into account the current economic conditions and the highly unique nature of the assets in the Board's determination of fair market value; and

WHEREAS, following review of the Policy, the Budget and Finance Committee determined that such Policy as drafted was intended to address the disposition by the Authority of more common and generic tangible property in the ordinary course of business and was not appropriate for property of such a unique nature and significant and substantial value as the M/V Cape May and M/V Twin Capes; and

WHEREAS, the Budget and Finance Committee determined that, due to the unique nature and value of the property involved and the limited number of parties interested in the purchase of the M/V Cape May and M/V Twin Capes, the sale of such unique property as the M/V Cape May and M/V Twin Capes is not adequately dealt with through a nationally recognized, professional licensed and operated auction, and that use of such a public auction process in this instance would not be in the best interests of the Authority; and

WHEREAS, the Budget and Finance Committee determined that in order to obtain the maximum value for the M/V Cape May and M/V Twin Capes and to ensure the marketing of the M/V Cape May and M/V Twin Capes to as wide an audience as possible, the

disposition of M/V Cape May and M/V Twin Capes would best be handled through engaging the services of a maritime broker uniquely situated to market the M/V Cape May and M/V Twin Capes; and

WHEREAS, the Budget and Finance Committee, in both instances, recognizing the unique nature of the property involved, waived the requirement for sale of the M/V Cape May and M/V Twin Capes by a nationally recognized, professionally licensed and operated auction and instead recommended that the Authority obtain brokerage services and proceed with the sale of the M/V Cape May and the sale of the M/V Twin Capes to a qualified party making the highest offer; and

WHEREAS, the Authority previously accepted the declaration by the then Acting CFO of the M/V Cape May as surplus property and entered into an Exclusive Listing Agreement with Marcon International, Inc. ("Marcon") for the sale of M/V Cape May at regular commission rates (the "M/V Cape May Marcon Agreement"); and

WHEREAS, the Chief Financial Officer determined that the M/V Twin Capes is no longer necessary for Authority purposes and declared the M/V Twin Capes surplus property; and

WHEREAS, in light of the exigent circumstances surrounding the sale of the M/V Twin Capes and M/V Cape May, the Executive Director may enter into an interim marketing services agreement ("Interim Marketing Services Agreement") with Marcon for the possible sale of the M/V Twin Capes in connection with their existing efforts in the sale of the M/V Cape May, which Interim Marketing Services Agreement provides for compensation to Marcon on an hourly basis with a maximum compensation of \$24,500.00 in order to reasonably compensate Marcon for its expected services; and

WHEREAS, the Authority desires to sell the M/V Twin Capes and the M/V Cape May on an "as-is" basis; and

WHEREAS, the Authority desires to sell the M/V Twin Capes to a qualified party making the highest offer but for an aggregate purchase price of not less than that amount authorized in the Executive Session of the July 2010 Board of Commissioners' Meeting (the "M/V Twin Capes Minimum Purchase Price"); and

WHEREAS, the Authority desires to sell the M/V Cape May to a qualified party making the highest offer but for an aggregate purchase price of not less than that amount authorized in the Executive Session of the July 2010 Board of Commissioners' Meeting (the "M/V Cape May Minimum Purchase Price" and together with the M/V Twin Capes Minimum Purchase Price, each a "Minimum Purchase Price"); and

WHEREAS, the Authority was previously contacted directly by a potential buyer out of Florida for the purchase of the M/V Twin Capes and the M/V Cape May for ultimate resale by the Florida buyer of the Vessels into Canada (the "Killian/Canadian Buyer"); and

WHEREAS, in the event the transaction with the Killian/Canadian Buyer moves forward, the Authority desires to enter into an exclusive brokerage agreement with Marcon for the sale of M/V Cape May and M/V Twin Capes to the Killian/Canadian Buyer at a reduced commission; and

WHEREAS, Marcon's commission on the sale of the M/V Twin Capes and the M/V Cape May to the Killian/Canadian Buyer shall be 5% of the first \$1,000,000 of the aggregate purchase price and 1% of the remainder of the aggregate purchase price; and

WHEREAS, in the event that Marcon locates a qualified purchaser (other than the Killian/Canadian Buyer) for the purchase of solely the M/V Cape May, the Authority has previously entered into the M/V Cape May Marcon Agreement which would apply to such sale; and

WHEREAS, in the event that Marcon locates a qualified purchaser (other than the Killian/Canadian Buyer) for the purchase of solely the M/V Twin Capes or a new qualified purchaser (other than the Killian/Canadian Buyer) for the joint purchase of the M/V Twin Capes and the M/V Cape May, the Authority desires to enter into an exclusive brokerage agreement with Marcon for the sale of M/V Twin Capes or the joint sale of M/V Cape May and M/V Twin Capes, as applicable, to a qualified buyer (other than the Killian/Canadian Buyer) at Marcon's regular commission; and

WHEREAS, Marcon's regular commission on the sale of the M/V Twin Capes or the joint sale of the M/V Twin Capes and the M/V Cape May to a new qualified buyer (other than Killian/Canadian Buyer) shall be no greater than 5% of the first \$1,000,000 of the aggregate purchase price and 2.5% of the remainder of the aggregate purchase price; and

NOW, THEREFORE, BE IT RESOLVED, that (i) the declaration of the M/V Twin Capes as surplus property is hereby accepted and the M/V Twin Capes shall be sold, along with the M/V Cape May, to a qualified party(ies) making the highest offer but in no event less than the applicable Minimum Purchase Price, (ii) all actions heretofore taken by the Executive Director or any designee of the Executive Director within the scope of the foregoing resolutions (including, execution of an Interim Services Agreement by the Executive Director, if applicable) are hereby approved, ratified and confirmed in all respects; (iii) should the deal with the Killian/Canadian Buyer move forward or should Marcon locate a qualified purchaser (other than the Killian/Canadian Buyer) for the M/V Twin Capes and/or M/V Cape May, the Chairman, Vice Chairman and Executive Director are authorized to finalize the terms and conditions of an exclusive brokerage agreement with Marcon for the sale of the M/V Twin Capes and/or the M/V Cape May at the regular commission (in the event of a purchaser other than the Killian/Canadian Buyer) or the joint sale of the M/V Cape May and M/V Twin Capes to the Killian/Canadian Buyer at a reduced commission and, with the advice and consent of counsel, to execute and deliver such exclusive brokerage agreement and (iv) should a qualified purchaser(s) be located and willing to purchase the M/V Twin Capes and/or M/V Cape May for at least the applicable Minimum Purchase Price, the Chairman, Vice Chairman and Executive Director are hereby authorized to finalize the terms and conditions of the sale and purchase agreement(s) ("Purchase Agreement(s)") with the qualified party(ies) making the highest offer and, with the advice and

consent of counsel, to execute and deliver such Purchase Agreement(s) and any other letters, bills of sale or other documents which the Chairman, Vice Chairman and Executive Director shall deem necessary and/or appropriate in connection with finalizing the sale of the M/V Twin Capes and/or the M/V Cape May.

A motion to approve Resolution 10-36 was made by Commissioner Van Sant, seconded by Commissioner Lowe, and approved by a voice vote of 10-0.