

**AN ORDINANCE AUTHORIZING THE CITY TO TRANSFER A PAYMENT RECEIVED FROM THE DIAMOND STATE PORT CORPORATION TO AN ESCROW FUND SECURING CERTAIN GENERAL OBLIGATION BONDS OF THE CITY; AND AUTHORIZING OTHER NECESSARY ACTION.**

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**#4590**

**Sponsor:**

**Council  
Member  
Guy**

**WHEREAS**, the City of Wilmington (the “City”) and the Diamond State Port Corporation, a Delaware corporation created in the Department of State of the State of Delaware (“Diamond State”), have heretofore entered into a Port of Wilmington Acquisition Agreement, dated as of September 1, 1995, as amended and supplemented (as so amended and supplemented, the “Agreement”) pursuant to which the Diamond State acquired the Port of Wilmington (the “Port”) from the City; and

**WHEREAS**, under the Agreement, Diamond State agreed to execute and deliver to the City various promissory notes, which notes obligate Diamond State to pay to the City amounts which represent debt service paid by the City with respect to portions of various issues of general obligation bonds which had previously been issued by the City to finance capital improvements to the Port (collectively, the “Port Debt”), including the City’s General Obligation Bonds, Series of 2010A (the “2010A Bonds”) which refunded certain of the Port Debt; and

**WHEREAS**, Diamond State has entered into a Lease and Concession Agreement (the “Concession Agreement”), with GT USA Wilmington, LLC, a Delaware limited liability company (“GT USA”), pursuant to which Diamond State has transferred to GT USA the right to commercially operate the Port; and

**WHEREAS**, the commencement of the Concession Agreement is conditioned upon, among other things, the satisfaction of the City’s mortgages presently encumbering the Port; and

**WHEREAS**, in return for the right to commercially operate the Port, GT USA has committed to, among other things, make an initial payment to Diamond State, and Diamond State has determined to transfer a portion of such payment to the City in the approximate amount of \$2,600,000 (the “City Payment”) in order to fully discharge the Port Debt, and to allow the City to satisfy its mortgages encumbering the Port; and

**WHEREAS**, the City has determined to apply the City Payment to defease certain of the 2010A Bonds by transferring the City Payment into an escrow fund (the “Escrow Fund”) held by Wilmington Trust, National Association, as escrow agent (the “Escrow Agent”) pursuant to a Pledge and Escrow Agreement (the “Escrow Agreement”) between the City and the Escrow Agent.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** Authorization of Transfer of City Payment. The City hereby authorizes the City Treasurer to transfer the City Payment from the City’s General Fund to the Escrow Agent for deposit in the Escrow Fund for the purpose of defeasing a portion of the City’s 2010A Bonds.

**SECTION 2.** Authorization of Escrow Agreement. The City is hereby authorized to enter into the Escrow Agreement in form and substance as determined by the City’s Treasurer, pursuant to which the City Payment will be held and invested by the Escrow Agent until it is applied to pay certain of the 2010A Bonds.

**SECTION 3.** Further Act. The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and record all such

documents, and otherwise carry out the intent of this Ordinance in the name of and on behalf of the City.

**SECTION 4. Effective Date.** This Ordinance shall be deemed effective as of its date of passage by City Council and approval by the Mayor.

First Reading..... November 1, 2018  
Second Reading..... November 1, 2018  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

Attest: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance authorizes the transfer of the payment received by the City from Diamond State Port Corporation in connection with a Lease and Concession Agreement covering the Port, into an escrow fund to defease debt of the City.