

MINUTES

Board of Commissioners - Session 356

Virginia Port Authority
600 World Trade Center
Norfolk, Virginia – January 28, 2014

The Board of Commissioners (“Board”) of the Virginia Port Authority (“VPA”) held its regular meeting on January 28, 2014, in the VPA’s Conference Room located at 600 World Trade Center, Norfolk, Virginia. VPA Board Chairman Jeffrey D. Wassmer called the meeting to order at 9:00 a.m.

The following were then in attendance:

Commissioners:

Jeffrey D. Wassmer, Chairman
Scott R. Bergeron, Vice Chairman
Jennifer D. Aument
Martin J. Briley
Juliann J. Clemente
Craig P. Coy
Frank E. Laughon, Jr.
John N. Pullen
Kim Scheeler (non-voting member)
Robert M. Stanton
Ting Xu
Manju S. Ganeriwala, State Treasurer

Commissioners Absent:

James M. Boyd

VPA Staff:

Rodney W. Oliver, Interim Executive Director
Cathie France, Chief Public Affairs Officer
Russell Held, Senior Vice President, Business Development
Gregory Edwards, Vice President, Government Affairs
Wendy King, Vice President, Finance
Nina Malone, Vice President, Business Analysis & Sales Support
David James, Vice President, Contracts & Real Estate
Elizabeth Saxby, Director, Human Resources
Stephanie Allman, Economic Development Manager
Laura Godbolt, Development & Foreign Trade Zone Specialist
Carla Welsh, Manager, Creative Services
Joe Harris, Media/Public Relations Manager
Mike Brewer, VPA Port Police Chief
Jodie Love, Community Relations Manager
Bevan Calo, Web Designer/Social Media Coordinator
Debra J. McNulty, Clerk to the Board

Jodie Asbell, Deputy Clerk to the Board/Executive Assistant to Executive Director

Virginia International Terminals, LLC (“VIT”) Staff:

Joseph P. Ruddy, Chief Operations Officer

Thomas Capozzi, Chief Commercial Officer

Shawn Tibbetts, Senior Vice President, Operations & Maintenance

Matthew Barnes-Smith, Vice President, Financial Planning & Analytics

Mark Thorsen, Vice President, Chief Information Officer

Ron Babski, Director, Health, Safety & Environment

Guests:

The Honorable Aubrey L. Layne, Jr., Secretary of Transportation, Commonwealth of Virginia

James W. Noel, III, Assistant Attorney General, Transportation Section, Virginia Attorney
General’s Office

Evelyn S. Traub, Troutman Sanders LLP

Kathleen Stevens, Town of Onancock Harbormaster

Maria Goodman, Consultant

Robert McCabe, *The Virginian-Pilot*

INTRODUCTIONS

Chairman Wassmer thanked the VPA Board members for making arrangements to attend the committee meetings held the day before the full board session and welcomed feedback on the two-day schedule. The Chairman welcomed the new VPA Commissioner, Mr. Kim Scheeler, the nonvoting ex officio member representing the Port of Richmond.

Mr. Edwards introduced guests in attendance including Mr. McCabe with *The Virginian-Pilot*.

Mr. Babski conducted the safety briefing at this time.

Mr. Oliver introduced the VPA’s newest senior executive team member, Ms. Cathie France, the VPA Chief Public Affairs Officer.

At this time, Chairman Wassmer introduced the Secretary of Transportation, The Honorable Aubrey L. Layne, Jr., who was recently appointed by Governor McAuliffe. Secretary Layne emphasized the Port of Virginia’s importance to the Commonwealth. The Secretary said the operations of the port and the transportation facilities leading to and from the port are very important as a gateway for goods and services throughout the Commonwealth and world. He advised that his Secretariat would be coordinating the efforts of all of the transportation agencies in order to have unified representation.

Secretary Layne expressed his concerns, and that of the Governor, with regard to the financial state of the Port. The Secretary advised that he would be working closely with current management and the VPA’s new CEO/Executive Director, John Reinhart, going forward.

The Secretary instructed the Board to work with management and provide to him, financial projections for the remainder of FY14, by March 15, 2014; and by July 1, 2014, to prepare for him, an operations and facilities plan that efficiently utilizes port resources.

Secretary Layne then discussed Craney Island, Route 460, I-564, and the tolls as they relate to the Port's future.

I. APPROVAL OF MINUTES

Action: At the request of Chairman Wassmer, the minutes were unanimously approved, as distributed, for the meeting held on November 19, 2013.

II. REPORTS OF COMMITTEES

A. Executive Committee – Mr. Jeffrey D. Wassmer, VPA Chairman

Chairman Wassmer reported that he and Ms. France have been working with the General Assembly on VPA legislation. The Chairman announced that he attended the Elizabeth River Starts luncheon last week and reported that the Port was presented an award for Sustained Distinguished Performance for the 12th year in a row. The Chairman commended Ms. Heather Wood and Mr. Billy Goodson for their efforts.

B. Finance Committee – Mr. Craig P. Coy, Committee Chair

1. Report on Finance Committee meeting and progress report on metrics for Vision Forward

Mr. Coy reported that the Finance Committee met yesterday and reviewed the following: reorganization impacts and potential cost savings, Debt and Financial Management Guidelines with VPA's financial advisors from PFM Group, and dashboard reporting changes and expectations. Mr. Coy advised that the Finance Committee would be providing recommendations to the Board at the next meeting.

2. VPA/VIT Combined Financial Reports

Ms. King reviewed the consolidated income statement for the six months ended December 31, 2013. A copy of the presentation is attached hereto.

C. Growth Committee – Mr. John N. Pullen, Committee Chair

1. Report on Growth Committee meeting and progress report on metrics for Vision Forward

Mr. Pullen announced that the Growth Committee had planned to report on the progress of the metrics for Vision Forward, but that the report would be discussed at a later date.

2. Business Development/Marketing Report

Mr. Capozzi presented the following: 2014 Fiscal Year-to-Date (July-December) and Calendar Year-to-Date results, budgeted vs. actual container units for FY14 year-to-date; major U.S. East Coast Ports growth for CY13 (Jan-Nov) vs. CY12; CY13 Ocean Carrier Highlights and

economic development announcements. A copy of the presentation is attached hereto.

A brief discussion ensued among the Secretary, Chairman, and Mr. Capozzi with regard to rail incentives and growth at the terminals.

Mr. Capozzi concluded with a photo of the MV Cape Ray that was handled at NIT for containers destined for Syria to aid in the destruction of chemical weapons.

3. Consideration of Resolution 14-1, approving re-appropriation of existing Aid to Local Ports (ALP) Grant funds to the Town of Onancock for a fueling system at the Onancock Wharf

Mr. Held introduced the Town of Onancock's harbormaster, Ms. Stevens. Mr. Held explained that the Town plans to utilize remaining ALP funds in the amount of \$63,879, and redirect funds from their original dredging project award to the installation of fuel tanks and related equipment at the Onancock Town Wharf.

Action: Upon motion made by Ms. Clemente, seconded by Mr. Coy, the Board unanimously approved Resolution 14-1, approving re-appropriation of existing Aid to Local Ports Grant funds to the Town of Onancock.

D. Operations Committee – Mr. Robert M. Stanton, Committee Chair

1. Report on Operations Committee meeting and progress report on metrics for Vision Forward

Mr. Stanton reported that the Operation Committee reviewed the operations reorganization, and discussed preliminary operations metrics, the Navis N4 (terminal operating system) implementation and operation, intermodal projects, and capacity. Mr. Stanton advised that the N4 project "go-live" date is scheduled for March 28, 2014.

2. Security and Safety Reports

Chief Brewer reported that there were 17 facility security incidents that occurred in 2013, compared with 22 incidents in 2012. The Chief reviewed each type of violation and he affirmed that they were internal and that there were no external breaches of security.

Chief Brewer reported that the U.S. Coast Guard has a new cyber-security unit that will provide opportunities for liaison relations between local federal and state agencies and he described the program. Chief Brewer talked about the challenges of cyber-security threats throughout the world. He reported that the new director of the FBI, Mr. James Comey, has committed a continued and closer working relationship with increased training and resources to state and local agencies.

Chief Brewer reported that he and Mr. Thorsen are working on a security assessment tool to include cyber-security. Mr. Ruddy explained the importance of realigning VIT's Information Technology under security, especially with implementation of the N4 operating system.

Mr. Babski reviewed the safety leading indicators for the second quarter of FY2014 and he explained how the safety team tracks operational procedures and regulatory compliance, demonstrating results at NIT and APMT.

Mr. Ruddy announced that this is a new initiative and that the goal is to progress from the red category (<70%) to yellow by FY14 (70-90%) then green by FY15 (>90%).

Mr. Coy asked about Workers' Compensation costs and Mr. Babski offered to provide the information after the meeting. Mr. Ruddy also offered to provide loss reports from the insurance companies.

Mr. Babski invited Board members to attend one of the all-day safety classes that are held on Tuesdays and Fridays. He also mentioned the manager and supervisor training that is held from 9:00-5:00 on Tuesdays and Fridays.

Mr. Babski reviewed Lost Work Day (LWD) rates and announced that the Port of Virginia's LWDs rate is about half of the national average (5.1). He also reviewed Damage Claim Costs, which are currently on track and in line with the LWDs rate.

Mr. Babski also reviewed environmental performance at the four marine terminals and he reported several minor discrepancies that were remedied. Mr. Coy suggested including cost figures for the environmental report.

III. REPORT OF EXECUTIVE DIRECTOR

Chairman Wassmer announced the assignment of Commissioner Kim Scheeler to the Finance and Growth Committees and that a revised committee list was included in the agenda book.

1. Consideration of Resolution 14-2, freezing pension plan to new participants and establishing an enhanced Defined Contribution Plan for new employees

Mr. Oliver explained that the Board had heard several presentations over the last few months on the proposed new pension plan. He reported that this item was held over from the November 19th meeting in order for the Board to receive input and approval from Ms. Ganeriwala, who was absent from that meeting.

Mr. Oliver explained that the VPA proposes to freeze the existing Defined Benefit Plan and create an enhanced Deferred Compensation Plan for all new employees, effective April 1, 2014.

Ms. Ganeriwala mentioned that there have been no changes to VPA's existing retirement plan and said she had brought the subject up some time ago. She was of the opinion that the proposed plan was reasonable; however, she advised that the VPA defined benefit plan was too rich and that she had recommended the Board review changes that are consistent with the state.

A discussion ensued comparing VPA's plan with the Virginia Retirement System changes and new hires before April 1. Suggestions were made to revise the language in Resolution 14-2 to change the effective date of the plan to January 28, 2014, and to include a clause for the

incoming CEO/Executive Director in accordance with his employment agreement (see Resolution 13-18).

Mr. Oliver said the VPA plan is less rich than the current Virginia Retirement System (VRS) plan and that it is in line with other entities and other ports along the East Coast. The Chairman agreed with Ms. Ganeriwala in that the Board needed to review existing plans for both VPA and VIT and benchmark them against the state and other ports. Ms. Aument suggested that staff provide information expeditiously for review, possibly by the March 25, 2014 meeting.

2. State and Federal Legislative agendas and status

Ms. France reviewed the organizational alignment under the Public Affairs Division and presented on the following: Federal legislative initiatives, a General Assembly update that included Virginia Port Authority legislation, FY15-16 biennial budget requests, legislation of interest, and biennial budget amendments. A copy of the presentation is attached hereto.

Chairman Wassmer advised that federal and state legislative initiatives should first go through the Governor's Office for approval. Ms. France advised that she would be working with the Secretary's office and Governor's liaison office along with the VPA's current federal advocacy representative.

Ms. Aument asked for clarification on the \$10 million General Fund request for dredging and how it would affect the federal cost-share. A discussion ensued. Mr. Bergeron asked Mr. Oliver to request confirmation in writing from the Corps with regard to the federal cost-share.

Ms. France explained that VPA owes the U.S. Army Corps \$2.7 million and advised that she had requested a detailed accounting of the construction costs, which was provided to the Secretary and to the Senate Finance Committee.

The Secretary explained the purpose of SB513 and the creation of the Hampton Roads Accountability Commission including its tolling and bonding authority for regional projects.

Ms. France concluded with an explanation of budget amendments.

At this time, Mr. Briley provided an overview of language included in the 2014 Consolidated Appropriations Act. A discussion ensued.

IV. UNFINISHED BUSINESS

Chairman Wassmer cancelled the first closed session meeting on the agenda relating to Growth Committee metrics.

MOTION FOR CLOSED SESSION

At 12:12 p.m., Ms. Clemente read the following motion to go into closed session:

"I move that the VPA Board convene a closed meeting pursuant to the requirements of the Virginia Freedom of Information Act, Code §2.2-3711(A)(5), to discuss prospective businesses

or industries or the expansion of an existing business or industry; and pursuant to §2.2-3711(A)(38) and the provisions of §62.1-132.4, to discuss proprietary information furnished to the VPA in confidence.”

The motion was seconded by Ms. Aument.

END OF CLOSED SESSION

At 1:08 p.m., the Board came out of closed session and the following resolution was read by Mr. Bergeron:

“WHEREAS, the VPA Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, §2.2-3712 of the Code of Virginia requires a certification that such closed meeting was conducted in conformity with Virginia law; NOW, THEREFORE, BE IT RESOLVED, that the VPA Board certifies that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from open meeting requirements under this chapter were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered by the Board.”

The resolution was seconded by Ms. Ganeriwala and passed by a roll call vote of the Board as follows:

Ayes: 10 (Aument, Bergeron, Briley, Coy, Ganeriwala, Laughon, Pullen, Stanton, Wassmer, Xu)

Nays: 0

Absent During Vote: 2 (Boyd, Clemente)

Absent During Meeting: 1 (Boyd)

V. NEW BUSINESS

VI. OTHER BUSINESS, OPPORTUNITY FOR PUBLIC COMMENT, AND ADJOURNMENT

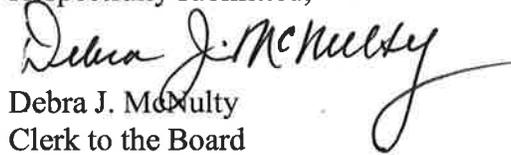
Revisions to Resolution 14-2 were presented for consideration by the Board.

Action: Upon motion made by Ms. Ganeriwala, seconded by Ms. Xu, the Board unanimously approved Resolution 14-2, freezing the pension plan to new participants and establishing an enhanced Defined Contribution Plan for new employees.

Chairman Wassmer announced that there would be no further closed sessions. The Chairman advised that the Board and management would be focusing on fiscal responsibility and the current status of the Port’s strategic planning for the facilities in accordance with the Secretary’s directive.

There being no further business and no public comments, the meeting adjourned at 1:15 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Debra J. McNulty". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Debra J. McNulty
Clerk to the Board

All open session presentations for this meeting have been posted to VPA's website at:
<http://www.portofvirginia.com/about/board-room.aspx>

**VIRGINIA PORT AUTHORITY
RESOLUTION 14-1**

**A RESOLUTION AUTHORIZING REAPPROPRIATION OF AID TO LOCAL
PORTS FUNDING (FY14) to the Town of Onancock.**

WHEREAS, in September 1986, the Virginia General Assembly established the Commonwealth Port Fund in order to support port capital needs of all ocean, river or tributary ports within the Commonwealth; and

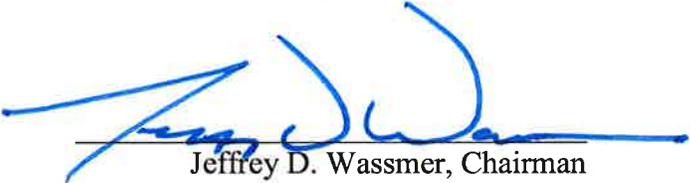
WHEREAS, the Board of Commissioners of the Virginia Port Authority adopted a Policy on Grants to Local Governments for Financial Assistance for Port Facilities (Aid to Local Ports Policy) on July 28, 1987, which Policy was last amended on November 29, 1995; and

WHEREAS, in accordance with the Aid to Local Ports Policy, the following entity has submitted a statement declaring the need for emergency funding;

Town of Onancock requests emergency re-appropriation from their original dredging project award to the installation of fuel tanks and related equipment at the Onancock Town Wharf. Previously, Onancock relied on a vendor to provide fueling services. The vendor is discontinuing oil sales and leaving the Onancock Wharf. Without the ability to provide fuel, the Town of Onancock will be unable to attract customers. The nearest fueling source is twenty miles north at Crisfield, MD and thirty-six miles to the south at Cape Charles, VA. The project is estimated to be completed before boating season begins in April 2014. The Town of Onancock has a balance estimated at \$63,879 and they desire to re-appropriate their total estimated balance toward the fueling project.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Virginia Port Authority that Aid to Local Ports funding may be re-appropriated for fuel tanks and related equipment at the Onancock Town Wharf.

PASSED AND ADOPTED this 28th of January 2014.



Jeffrey D. Wassmer, Chairman

Attest:



Debra J. McNulty, Clerk

RESOLUTION 14-2

FREEZING PENSION PLAN TO NEW PARTICIPANTS AND ESTABLISHING ENHANCED DEFINED CONTRIBUTION PLAN FOR NEW EMPLOYEES

WHEREAS, the Virginia Port Authority Defined Benefit Plan (Pension Plan) and a related trust provides a basic retirement benefit based on a formula set forth in the Pension Plan.

WHEREAS, the Virginia Port Authority Matching Plan (currently known as the Matching Plan) and a related trust provides a matching contribution by the Authority in the amount of 50% of the first 6% of compensation contributed by an employee to the Deferred Compensation Plan that becomes vested after 5 years of service.

WHEREAS, the Authority has determined the retirement benefit programs described above should be restructured in order to move toward normalizing the retirement benefits between the Authority and Virginia International Terminals, LLC.

WHEREAS, counsel for the Authority has drafted the Seventeenth Amendment to the Pension Plan to freeze participation and to provide that no new participants shall be admitted or readmitted after January 28, 2014 (with the exception of the CEO/Executive Director whose contract was executed prior to January 28, 2014).

WHEREAS, counsel for the Authority has drafted an amendment and restatement to the Matching Plan to accomplish the following:

- To change its name to the Virginia Port Authority Defined Contribution Plan;
- To continue the current level of employer matching contributions for employees who became participants before January 28, 2014;
- To provide that employees hired or rehired after January 28, 2014 shall be Enhanced Plan Participants subject to the following:
 - Employees hired or rehired after January 28, 2014 and before April 1, 2014 shall become Enhanced Plan Participants on April 1, 2014; and
 - Employees hired or rehired on or after April 1, 2014 shall become Enhanced Plan Participants effective as of the date of hire;
- To provide for an employer contribution for Enhanced Plan Participants in the amount of 4% of Compensation;
- To provide an employer matching contribution for Enhanced Plan Participants in the amount of 50% of the first 4% of Compensation contributed by such participant to the Deferred Compensation Plan;
- To provide that the 4% Employer Contribution and the Matching Contribution made for Enhanced Plan Participants will vest over a 2 to 5 year schedule in 25% increments; and
- To provide that no loans or withdrawals are permitted from the Plan for Enhanced Plan Participants.

NOW, THEREFORE, BE IT RESOLVED, that the Seventeenth Amendment to the Pension Plan is hereby adopted and approved.

BE IT FURTHER RESOLVED, that a copy of this resolution shall be attached to and maintained as a permanent record of the Pension Plan and the proper officers of the Authority are hereby directed to take all necessary and appropriate actions as may be required to execute the amendments, to communicate the plan changes and to submit the Pension Plan to the Internal Revenue Service when appropriate for their determination of the qualification of the Plan under Section 401 of the Code and the exemption of the trust thereunder under Section 501 of the Code, and to make any further amendments during the determination and ruling process which are found by counsel for the Authority to be advisable or as may be required by the Internal Revenue Service in order to secure such favorable determination (if found by counsel to be advisable).

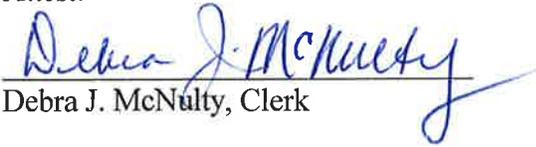
BE IT FURTHER RESOLVED, that the amendment and restatement to the Matching Plan, to be known going forward as the Virginia Port Authority Defined Contribution Plan is hereby approved to be effective January 28, 2014.

BE IT FURTHER RESOLVED, that a copy of this resolution shall be attached to and maintained as a permanent record of the Virginia Port Authority Defined Contribution Plan and the proper officers of the Authority are hereby directed to take all necessary and appropriate actions as may be required to execute the document, to communicate the plan to its participants and to submit the restatement of Virginia Port Authority Defined Contribution Plan to the Internal Revenue Service when appropriate for their determination of the qualification of the Plan under Section 401 of the Code and the exemption of the trust thereunder under Section 501 of the Code, and to make any amendments during the determination and ruling process which are found by counsel for the Authority to be advisable or as may be required by the Internal Revenue Service in order to secure such favorable determination (if found by counsel to be advisable).

BE IT STILL FURTHER RESOLVED that a copy of this Resolution be attached to the minutes of the Virginia Port Authority Board Meeting of January 28, 2014.


Jeffrey D. Wassmer
Chairman

Attest:


Debra J. McNulty, Clerk

**SEVENTEENTH AMENDMENT TO
VIRGINIA PORT AUTHORITY
DEFINED BENEFIT PENSION PLAN AND TRUST
(As Restated Effective July 1, 2000)**

Pursuant to authorization of the Board of Commissioners of the Virginia Port Authority, the Virginia Port Authority Defined Benefit Pension Plan and Trust (as restated effective July 1, 2000) dated October 12, 2000 (the "Plan") is hereby amended as follows, effective as of January 28, 2014 or as otherwise expressly provided herein:

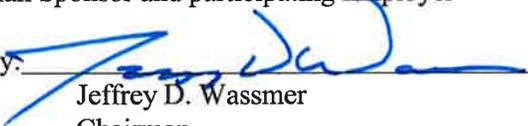
This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

1. A new subparagraph 1.17(e) is added to the Plan, effective January 28, 2014, to read as follows:

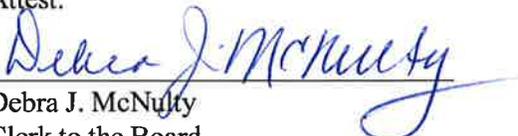
1.17(e) Notwithstanding the foregoing, no Employee hired or rehired after January 28, 2014 shall be an Eligible Employee, except that the CEO/Executive Director whose employment with the Employer commences on or about February 10, 2014 pursuant to an employment contract entered into prior to January 28, 2014, shall be an Eligible Employee.

IN WITNESS WHEREOF, Virginia Port Authority has caused its name to be signed to this Amendment by its duly authorized officer with its seal hereunto affixed and attested to by its Secretary or Assistant Secretary, and the Trustee has caused its name to be signed and seal hereunto affixed, as of the 28th day of January, 2014.

VIRGINIA PORT AUTHORITY,
Plan Sponsor and participating Employer

By:  (SEAL)
Jeffrey D. Wassmer
Chairman

Attest:


Debra J. McNulty
Clerk to the Board

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**VIRGINIA PORT AUTHORITY
DEFINED CONTRIBUTION PLAN**

(As Restated Effective January 28, 2014)

(Formerly the Virginia Port Authority Matching Plan)

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INTRODUCTION

Effective January 28, 2014, Virginia Port Authority amended, restated and renamed the Virginia Port Authority Matching Plan in the form of this Virginia Port Authority Defined Contribution Plan (the "Plan"), as contained herein. The purpose of this amendment and restatement is to add an enhanced defined contribution benefit for employees hired after January 28, 2014. The Plan is authorized by Section 51.1-126.4. of the Code of Virginia of 1950 (as amended) and Section 62.1-129.1. of the Code of Virginia of 1950 (as amended).

It is intended that this Plan shall be exempt from the requirements of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") as a governmental plan pursuant to Sections 3(32) and 4(b) (1) of ERISA. It is further intended that the Plan, together with the Trust Agreement, meet all of the requirements of Sections 401(a) and other applicable sections of the Internal Revenue Code of 1986, as amended, and the Plan shall be interpreted, wherever possible, to comply with the terms of the aforementioned laws, and all regulations and rulings issued thereunder.

ARTICLE I
DEFINITIONS

As used herein, unless otherwise required by the context, the following words and phrases shall have the meanings indicated:

- 1.01 Account means the sum of the balances in the following accounts of Participants under the Plan as of the most recent Valuation Date (or as otherwise provided herein):
- (a) “Enhanced Plan Base Account”: The account of a Enhanced Plan Participant attributable to the Employer’ Base Contribution made on his behalf, plus any earnings or losses thereon, as provided in Section 3.01.
 - (b) “Enhanced Plan Matching Account”: The account of an Enhanced Plan Participant attributable to the Employer’s Matching Contributions made on his behalf, plus any earnings or losses thereon, as provided in Section 3.02.
 - (c) “Matching Plan Matching Account”: The account of a Matching Plan Participant attributable to the Employer’s Matching Contributions made on his behalf, plus any earnings or losses thereon, as provided in Section 3.02.
 - (d) “Discretionary Account”: The account of a Participant attributable to the Employers Discretionary Contribution made on his behalf, plus any earnings or losses thereon, as provided in Section 3.03.
 - (e) “Rollover Account”: The account or accounts of a Participant in the Fund attributable to his Rollover Contributions, plus any earnings or losses thereon, as provided in Section 3.04.
- 1.02 Adjustment means the net increases and decreases in the market value of the Fund during a Plan Year or other period exclusive of any Contribution during such year or other period. Such increases and decreases shall be determined by the Plan Administrator, or its designee.
- 1.03 Annual Addition means for any Employee in any Limitation Year, the sum of (a) Contributions made by the Employer, (b) Contributions made by the Employee, (c) amounts forfeited by terminated Participant which may be reallocated to the participating Employee, (d) amounts allocated to an individual medical account as defined in IRC Section 415 (l)(2) which is part of a pension or annuity plan maintained by the Employer, (e) amounts derived from a contribution paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee under a welfare benefit fund as defined in IRC Section 419(e) maintained by the Employer, and (f) any other amounts defined as “annual additions” under IRC Section 415. Notwithstanding anything to the contrary herein, the following shall not be treated as “annual additions” for purposes hereof: catch-up contributions made pursuant IRC Section 414(v), Rollover Contributions and any other amounts which are excluded from being “annual additions” under IRC Section 415 shall not be considered Annual Additions for purposes hereof.
- 1.04 Beneficiary(ies) means any person designated by a Participant or Beneficiary(ies) or otherwise entitled to receive such benefits as may become payable hereunder after the death of such Participant or Beneficiary(ies) in accordance with Section 2.03.

- 1.05 Board means the Board of Commissioners of the Employer.
- 1.06 Break in Service means the twelve (12) consecutive month period beginning on the employee's Severance from Service Date and each anniversary thereon during which an employee fails to perform at least one (1) Hour of Service for the Employer. An employee who is absent from work for maternity or paternity reasons shall receive credit for Service to the first anniversary of such date. The period from the first anniversary of absence due to maternity or paternity reasons to the second anniversary of the date of such absence shall not be included in the determination of the Participant's Service, but the individual shall not be deemed to have terminated employment during such period. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.
- 1.07 Compensation for any Plan Year means base pay received by the Participant during the Plan Year. Base pay shall be determined as of July 1 of each Plan Year, and shall exclude any special items of pay such as overtime and bonuses, but shall include increase in base pay awarded during the Plan Year. Compensation shall include any amounts deferred pursuant to Sections 125 (flexible benefit plans); 132(f) (qualified transportation fringe benefit); 402(e)(3) (cash or deferred arrangements); or 402(h) (simplified employee plans).
- In no event shall Compensation taken into account hereunder during a Plan Year exceed the maximum amount that may be taken into account for such Plan Year under IRS Section 401(a)(17) as adjusted by statute or by the Secretary of Treasury or his delegate.
- 1.08 Contributions means Base Contributions, Matching Contributions, Discretionary Contributions and Rollover Contributions as provided herein by the Employer or Employee to the Trustee for the purpose of providing the benefits under this Plan.
- 1.09 Deferred Compensation means that portion of an Employee's Compensation which a Participant has elected to defer in accordance with the provisions of the Deferred Compensation Plan.
- 1.10 Deferred Compensation Plan means the Virginia Port Authority Deferred Compensation Plan.
- 1.11 Disability means the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. To meet this definition, a Participant must have a severe impairment, which makes the Participant unable to do his or her previous work or any other substantial gainful activity which exists in the national economy. The determination of the Disability of a Participant shall be made by the Employer. In making its determination, the Employer shall be guided by the disposition of the Participant's application, if any, for disability benefits under the Federal Old-Age, Survivors and Disability Insurance program.
- 1.12 Effective Date means August 1, 1998. The Effective Date of this restatement of the Plan is January 28, 2014.

- 1.13 Employee means any employee employed by the Employer, subject to the following:
- 1.13(a) The term "Employee" shall exclude any person who is a Leased Employee.
- 1.13(b) The term "Employee" shall exclude any employee who is a part of a collective bargaining unit for which benefits have been the subject of good faith negotiation unless and until the Employer and the collective bargaining unit representative for that unit through the process of good faith bargaining agree in writing for coverage hereunder.
- 1.13(c) The term "Employee" shall exclude any person who is classified by the Employer as an independent contractor.

When used with an initial lower case letter, the term "employee" shall mean a person employed by the Employer, as the context requires, without regard to the limitations contained in this Section.

- 1.14 Employer means Virginia Port Authority, an independent government authority, or any successor thereto.
- 1.15 Employment Date means the date an employee first performs an Hour of Service for the Employer. Hours of Service shall be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, which are incorporated herein by reference.
- 1.16 Enhanced Plan Participant means an Employee who becomes a Participant and who is hired or rehired after January 28, 2014.
- 1.17 Fund means the trust fund held by the Trustee to which Contributions are made and from which benefits are provided.
- 1.18 IRC means the Internal Revenue Code of 1986, as amended.
- 1.19 Limitation Year means the twelve (12) month period commencing July 1 and ending June 30.
- 1.20 Matching Plan Participant means an Employee who becomes a Participant and who was last hired before January 29, 2014.
- 1.21 Maximum Compensation means:
- 1.21(a) The total compensation from the Employer received by or made available to an Employee during any Plan Year or, for purposes of the limitations imposed by Section 415 of the Code, any Limitation Year:
- (i) Consisting of wages, salaries, earned income (in the case of self-employed individuals), and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and

reimbursements, or expense allowances under a nonaccountable plan (as described in Treas. Regs. Section 1.62-2(c)), and

- (ii) Including employee elective salary reduction or similar deferral contributions excluded from taxable compensation by reason of Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the Code (and elective deferrals or contributions under any other sections of the Code covered by Section 415(c)(3)(D) of the Code), but
- (iii) Excluding the following:
 - (A) Employer contributions (other than elective contributions described in Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b) of the Code) to a plan of deferred compensation (including a simplified employee pension described in Section 408(k) of the Code or a simple retirement account described in Section 408(p) of the Code, and whether or not qualified) to the extent such contributions are not includible in the employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified), amounts received during the year by an employee prior to severance from employment with the Employer pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income;
 - (B) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in Section 125 of the Code); and
 - (C) Other items of remuneration that are similar to any of the items listed in (A) through (C).

Any such total compensation in excess of the maximum amount that may be taken into account for such Plan Year under IRC Section 401(a)(17) as adjusted by statute or by the Secretary of Treasury or his delegate shall be disregarded hereunder for all purposes. Back pay, within the meaning of Treas. Regs. Section 1.415(c)-2(g)(8), shall be treated as compensation for the Plan Year or Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in Maximum Compensation.

1.21(b) Notwithstanding the foregoing, the following rules shall also apply in determining Maximum Compensation for Plan Years (or Limitation Years, as applicable):

- (i) Amounts earned but not paid during a Plan Year (or Limitation Year, as applicable) solely because of the timing of pay periods and pay dates shall not be included in Maximum Compensation for the Limitation Year (or Plan Year, as applicable) earned, but shall be included when paid.

- (ii) No amount paid after severance from employment shall be treated as Maximum Compensation other than a Participant's final regular paycheck or other than otherwise expressly provided herein.
- (iii) Amounts paid by the later of two and one-half (2-1/2) months after severance from employment or the end of the Plan Year (or Limitation Year, as applicable) that includes the date of severance from employment shall be included in Maximum Compensation for the Plan Year (or Limitation Year, as applicable) if such payments would have been paid to the Employee while the Employee continued in employment with the Employer absent the severance from employment and such amounts are regular compensation, commissions, bonuses or other similar compensation.
- (iv) The following compensation paid by the later of two and one-half (2-1/2) months after an employee's severance from employment with the Employer or the end of the Plan Year (or Limitation Year, as applicable) that includes the date of the employee's severance from employment with the Employer shall not be included in Maximum Compensation:
 - (A) A payment which is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment with the Employer had continued; and
 - (B) A payment which is received by the employee pursuant to a nonqualified unfunded deferred compensation plan and which would have been paid at the same time if employment with the Employer had continued, but only to the extent includible in gross income.

Any payments not described above as included in Maximum Compensation shall not be considered Maximum Compensation if paid after severance from employment, even if they are paid by the later of 2-1/2 months after the date of severance from employment or the end of the Plan Year (or Limitation Year, as applicable) that includes the date of severance from employment, except, if provided below, payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service described in section 3.05 to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service and compensation paid to a Participant who is permanently and totally disabled.

- (v) Maximum Compensation shall include amounts paid to an individual who does not currently perform services for the Employer by reason of Qualified Military Service described in section 3.04 to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service.
- (vi) Maximum Compensation shall not include post-severance compensation paid to any Participant who is permanently and totally disabled (as defined in Section 22(e)(3) of the Code).

- (vii) **Maximum Compensation** shall not include Deemed Section 125 Compensation. “Deemed Section 125 Compensation” is an amount that is excludable under Section 106 of the Code that is not available to a Participant in cash in lieu of group health coverage under a Section 125 of the Code arrangement solely because the Participant is unable to certify that he or she has other health coverage. Amounts are Deemed Section 125 Compensation only if the Employer does not request or otherwise collect information regarding the Participant’s other health coverage as part of the enrollment process for the health plan.
- 1.22 **Normal Retirement Age** means the later of age sixty-five (65) or five (5) years of participation in the Plan; provided however, in the case of a Participant who is employed by the Employer as a sworn law enforcement officer, the later of age sixty (60) or five (5) years of participation in the Plan.
- 1.23 **Normal Retirement Date** means the first day of the month coinciding with or next following the date on which a Participant attains his Normal Retirement Age.
- 1.24 **Participant** means any eligible Employee who becomes a Participant as provided in Article II. A Participant may be referred to as an Enhanced Plan Participant or a Matching Plan Participant.
- 1.25 **Participation Agreement** means the contract by which the Employee and Employer agree that the Employee participates in the Deferred Compensation Plan.
- 1.26 **Plan** means the Virginia Port Authority Defined Contribution Plan, as contained herein or as duly amended. Prior to January 28, 2014, the Plan was known as the Virginia Port Authority Matching Plan.
- 1.27 **Plan Administrator** means the Employer or designee.
- 1.28 **Plan Year** means each twelve (12) month period beginning on July 1 and ending on June 30.
- 1.29 **Reemployment Date** means the date, following a Break in Service, an Employee again performs an Hour of Service.
- 1.30 **Service** means, as of any date, the aggregate of an employee’s periods of Service. A period of Service is the number of full years and completed months of continuous employment required to be recognized under this Plan commencing on the employee’s Employment Date or any Reemployment Date subsequent thereto and ending on a Severance from Service Date.
- 1.31 **Severance from Service Date** means the earlier of (i) the date on which an employee quits, retires, is discharged or dies, provided he is not credited with an Hour of Service within twelve (12) months of such date; or (ii) the first anniversary of the date an employee’s absence from service (with or without pay) from the Employer began for any reason other than quitting, retiring, being discharged or dying, such as vacation, holiday, sickness, disability, leave of absence or layoff.
- 1.32 **Trust Agreement** means the agreement entered into between the Employer and the Trustee pursuant to Article VIII.
- 1.33 **Trustee** means such individual, individuals or financial institution, or a combination of them as shall be designated in the Trust Agreement to hold in trust any assets of the Plan for the purpose

of providing benefits under the Plan, and shall include any successor trustee to the trustee initially designated thereunder.

- 1.34 Valuation Date means each business day subsequent to the Effective Date, as of which the Fund is valued at fair market value. From time to time, the Plan Administrator may value the Fund as of any other date it deems desirable.

ARTICLE II ELIGIBILITY AND PARTICIPATION

- 2.01 Eligibility – Each Employee who was a Participant on the day before the Effective Date of this Restatement of the Plan shall continue to be a Participant in the Plan at such time. Each Employee who is not then a Participant shall become a Participant on the first day of the month following his completion of one (1) Hour of Service for the Employer. Notwithstanding the foregoing Employees hired or rehired after January 28, 2014 and before April, 1, 2014 shall become Participants on April 1, 2014.
- 2.02 Participation - Each person who becomes a Participant shall remain a Participant until his termination of employment.
- 2.03 Beneficiary Designation - The Participant shall file with the Plan Administrator a written Beneficiary Designation designating the person or persons who shall receive the benefits payable under this Plan in the event of the Participant's death. The form for this purpose shall be provided by the Plan Administrator. It shall not be binding on the Employer until it is signed, filed with the Plan Administrator by the Participant, and accepted by the Plan Administrator. If the Participant dies without an accepted Beneficiary form on file, the payments shall be made to the properly appointed fiduciary of the Participant's probate estate. However, if a fiduciary has not qualified within one hundred twenty (120) days after the Participant's death, the payment shall be made first to a surviving spouse and, if there is none, second, to a surviving child or children, and if there are none, third, to a surviving parent or parents, and if there are none, fourth, to the Participant's estate.

ARTICLE III CONTRIBUTIONS AND INVESTMENT FUND ELECTION

- 3.01 Base Contributions –
- 3.01(a) Contribution - As of each payroll period subsequent to the Effective Date, the Employer shall make a Base Contribution to the Fund equal to four percent (4%) of an Enhanced Plan Participant's Compensation for such period.
- 3.01(b) Allocation - The Base Contribution shall be allocated to the Enhanced Plan Base Account of an Enhanced Plan Participant.
- 3.02 Matching Contributions –
- 3.02(a) Contribution - As of each payroll period subsequent to the Effective Date, the Employer shall make a Matching Contribution to the Fund equal to:
- (i) With respect to an Enhanced Plan Participant, fifty percent (50%) of the Deferred Compensation which does not exceed four percent (4%) of

eligible Compensation of such Participant deferred into the Deferred Compensation Plan, or

- (ii) With respect to a Matching Plan Participant, fifty percent (50%) of the Deferred Compensation which does not exceed six percent (6%) of eligible Compensation of such Participant deferred into the Deferred Compensation Plan.
- (iii) Deferred Compensation shall include “designated Roth Contributions” as that term is defined in the Deferred Compensation Plan.

3.02(b) Allocation - The Matching Contribution made on behalf of an Enhanced Plan Participant shall be allocated to the Enhanced Plan Matching Account of such Participant. The Matching Contribution made on behalf of a Matching Plan Participant shall be allocated to the Matching Plan Matching Account of such Participant.

3.02(c) Forfeitures - Notwithstanding the foregoing, a Participant who (i) was enrolled in the Deferred Compensation Plan pursuant to the deemed deferred compensation election provisions under the terms of such plan and (ii) elects within 90 days after the date the first deemed elective deferral is made to such plan to receive a withdrawal of the amount of elective deferrals (and the earnings attributable thereto) made with respect to payroll periods beginning before the effective date of the election, shall forfeit the Matching Contribution made with respect to such withdrawn contributions and any earnings attributable thereto. Forfeitures shall be used by the Plan in accordance with section 6.03.

3.03 Discretionary Contributions -

3.03 (a) Contributions - The Employer may contribute to the Fund from time to time additional Discretionary Contributions to be allocated on behalf of each Participant eligible to receive an allocation hereunder.

3.03(b) Allocation - In the event the Employer makes Discretionary Contributions to the Fund, the allocable share of such Discretionary Contributions shall be credited to the Discretionary Account as of the next preceding Valuation Date to the Discretionary Account of each Participant who is in the employ of the Employer. Discretionary Contributions will be allocated among the accounts of eligible Participants in the ratio in which the Participant’s Compensation bears to the aggregate Compensation of all such Participants for the twelve (12) month period ending on the last day of the Plan Year.

3.04 Rollover Contributions -

3.04 (a) Contributions - The Plan will accept as a Rollover Contribution by Participant contribution, or by direct rollover an eligible rollover distribution or as otherwise stated below from the following types of plans:

- (i) A qualified plan described in IRC Section 401(a) or 403(a), excluding after-tax employee contributions;

- (ii) An annuity contract described in IRC Section 403(b), excluding after-tax employee contributions;
- (iii) An eligible plan under IRC Section 457 (b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivisions of a states, and
- (iv) An individual retirement account or annuity described in IRC Section 408(a) or 408(b), but only portion of the distribution that is eligible to be rolled over and would otherwise be includible in gross income.

The Plan Administrator shall determine the rules under which such rollovers will be accepted and the procedure to be followed. Any subsequent distributions of a Rollover Contribution shall be subject to the terms of Articles V and VII.

3.04 (b) Allocation - An Employee's Rollover Contributions shall be credited at fair market value to the Rollover Account as of the date made and such amounts shall be fully vested at all times. Such amounts shall share in the Adjustment of the Fund.

3.05 Special Rules for Reemployed Veterans.

3.05(a) Notwithstanding any other provision of the Plan, the following special rules shall apply in order to provide Make up Contributions to the Plan on behalf of Reemployed Veterans:

- (i) Make up Contributions shall be made to the Plan by the Employer on behalf of a Reemployed Veteran, and allocated to the appropriate Account of the affected Participant, in such amount and such manner and at such time or times as is required by USERRA. In accordance with the requirements of USERRA, the Plan Administrator may establish procedures for determining the proper timing and ordering of Make-up Contributions and other contributions made under the Plan and for determining the time periods during which Make-up Contributions may be made when a Reemployed Veteran has multiple periods of Qualified Military Service.
- (ii) Make up Contributions with respect to a Reemployed Veteran shall not be subject to any otherwise applicable contribution limits under IRC Sections 402(g), 402(h), 403(b), 408, 415, or 457 as applied with respect to the Plan Year or taxable year, as applicable to the relevant IRC section, in which the contribution is made. A Make up Contribution shall not be taken into account in applying the contribution limits to any other contribution made during the Plan Year or taxable year, as applicable to the relevant IRC section. Make up Contributions shall not exceed the aggregate amount of contributions that would have been permitted under the Plan contribution limits for the Plan Year or taxable year, as applicable to the relevant IRC section, to which the contribution relates had the Reemployed Veteran continued to be employed by the Employer during the period of his Qualified Military Service.

- (iii) Qualified Military Service of a Reemployed Veteran shall be counted as service for purposes of participation, vesting and benefit accrual under the Plan. Additionally, the time period between the end of the Reemployed Veteran's Qualified Military Service and his return to the Employer (including the time period spent recovering from an injury or illness as required under USERRA) shall be counted as service for purposes of participation vesting and benefit accrual under the Plan.
- (iv) A Reemployed Veteran shall be entitled to Base Contributions for the period of his Qualified Military Service regardless of whether he timely makes contributions to the Deferred Compensation Plan following his return to the Employer's service.
- (v) A Reemployed Veteran shall be entitled to Matching Contributions that are contingent on elective deferrals or employee contributions for the period of his Qualified Military Service only if he timely makes those contributions following his return to the Employer's service as provided in the Deferred Compensation Plan.

3.05(b) To the extent required by USERRA or IRC Section 401(a)(37) for purposes of determining vesting in Accounts and entitlement to death benefits under the Plan, in the event a Participant ceases to be an Employee in order to perform Qualified Military Service and dies while performing Qualified Military Service, the Participant's death shall be considered to have occurred while he was an Employee and, if he ceased to be an Eligible Employee in order to perform Qualified Military Service, while he was an Eligible Employee so that his Beneficiaries are entitled to any additional benefits provided under the Plan (other than contributions relating to the period of Qualified Military Service unless otherwise expressly provided), including without limitation any additional or enhanced vesting or death benefits, had the Participant resumed employment with the Employer and then terminated employment on account of death. If any benefit is due by reason of this subsection and the Participant's otherwise non-vested Accrued Benefit has been forfeited, the additional account balance that is due shall be restored out of forfeitures under the Plan or, if none, by a special contribution by the Employer.

3.05(c) To the extent permitted by USERRA or IRC Section 401(a)(37) for purposes of determining the Accounts of an Employee in Qualified Military Service, in the event a Participant ceases to be an Employee in order to perform Qualified Military Service and dies while performing Qualified Military Service, the Participant shall be considered to have returned to work on the day before his death in order to receive the Make-up Contribution under the Plan relating to the period of Qualified Military Service.

3.05(d) For purposes of the Plan, Compensation (but only to the extent the Differential Wage Payments to the individual in question, if an Employee, would otherwise be included in Compensation) and Maximum Compensation includes Differential Wage Payments and a person receiving a Differential Wage Payment from an Employer shall be considered an Employee of that Employer. A "Differential Wage Payment" is any payment which is made to an individual by an Employer with respect to any period during which the individual is performing Qualified Military Service while on active duty for a period of more than thirty (30) days

and which represents all or a portion of the wages the individual would have received from an Employer if the individual were performing services for the Employer.

3.05(e) For purposes of this section, the following terms have the following meanings:

- (i) “Make up Contributions” means the contributions which are required to be made to the Plan for a Reemployed Veteran pursuant to USERRA and IRC Section 414(u). These contributions generally are the contributions by the Employer that would have accrued to the Reemployed Veteran under the Plan, but for his absence due to his Qualified Military Service. Neither the Make up Contribution obligation nor this paragraph requires that any earnings be credited to the account of a Reemployed Veteran with respect to any Make up Contribution before such contribution is actually made.
- (ii) “Qualified Military Service” means any service in the uniformed services (as defined under USERRA) by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service and to the Employer.
- (iii) “Reemployed Veteran” means a person who is or, but for his Qualified Military Service, would have been a Participant at some time during his Qualified Military Service and who is entitled to the restoration benefits and protections of USERRA with respect to his Qualified Military Service and the Plan.
- (iv) “USERRA” means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and the final regulations and any other applicable guidance issued thereunder.

ARTICLE IV ALLOCATION OF ADJUSTMENT AND MAXIMUM ADDITIONS

4.01 Allocation of Adjustment - The Employer or its designee shall determine the investment earnings of Participants’ Accounts for the period elapsed since the last preceding Valuation Date. Such adjustment shall be allocated as of the applicable Valuation Date to the Accounts of all Participants who maintain a credit balance in their Account, in relation to that portion of their Account attributable to their Base Account, Matching Account, Discretionary Account and Rollover Account. All interest, dividends, expense deductions, investment gains or losses, whether realized or unrealized, applicable to each Participant Account shall be credited or debited to the Account as of each business day. Credits to the Participant’s Account shall be subject to the Participant’s then effective investment preference. All reports to the Participant shall be based on the net fair market value of the assets as of the reporting date in accordance with the investment preference elected by the Participant.

The Employer shall ensure that each Participant’s allocation is properly credited or debited, as the case may be, to his Account.

4.02 Equitable Allocations - The Plan Administrator shall establish accounting procedures for the purpose of making the allocations, valuations and adjustments to Participants’ Accounts provided

for in this Article IV. Should the Plan Administrator determine that the strict application of its accounting procedures will not result in an equitable and non-discriminatory allocation among the Accounts of Participants, or other circumstances arise which are not covered hereunder, it may modify its procedures for the purpose of achieving an equitable and non-discriminatory allocation in accordance with the general concepts of the Plan and the provisions of this Article IV.

Further, notwithstanding anything contained herein to the contrary, in order to administer the Plan in an equitable and nondiscriminatory manner, the Plan Administrator may choose an alternate date to value Participants' accounts for all purposes including distributions from the Plan, transfers among funds within the Plan, loans and any other transactions needing a specific valuation date, provided the change in such alternate valuation date is prospective and within sixty (60) days after the date the Plan would otherwise value Accounts and provided further that the Plan has at least one (1) Valuation Date per Plan Year.

4.03 Maximum Additions -

4.03(a) Notwithstanding any other provision of the Plan, the sum of all Annual Additions allocated to the accounts of any Participant for any Limitation Year may not exceed the lesser of:

- (i) \$40,000 (referred to herein as the "Dollar Limitation"), or
- (ii) One hundred percent (100%) of such Participant's non-deferred Maximum Compensation for such Limitation Year,

which limitations are jointly referred to herein as the "415 Limitations". The compensation limit referred to in clause (ii) of this subsection shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

4.03(b) In determining the Dollar Limitation:

- (i) The Dollar Limitation shall be automatically adjusted by the adjustment factor prescribed by the Secretary of the Treasury or his delegate under IRC Section 415(d), from time to time, to reflect any annual cost of living adjustments and any such adjustment (which with the original Dollar Limitation is sometimes referred to herein as the "adjusted Dollar Limitation") shall be effective for the Limitation Year which ends with or within the calendar year for which such increase is effective. For Limitation Years beginning after December 31, 2002, the adjustment shall be in \$1,000 increments on the basis of a base period of the calendar quarter beginning July 1, 2001.
- (ii) If any Limitation Year is a period of less than twelve (12) months, then the Dollar Limitation for such Limitation Year shall be prorated by multiplying then the Dollar Limitation for such Limitation Year by a fraction, the numerator of which is the number of months in such Limitation Year and the denominator of which is twelve (12).

- 4.03(c) For purposes hereof, the rules of Section 415 of the Code are incorporated by reference for purposes of determining “Annual Additions” and applying the “415 Limitations”.
- 4.03(d) In the event a Participant is covered by one or more Defined Contribution Plans maintained by the Employer of any affiliate of the Employer, the maximum Annual Additions as noted above shall be decreased as determined necessary by the Employer, following the reduction of such other Defined Contribution Plans, to ensure that all such plans will remain qualified under the IRC.
- 4.03(e) If the Administrator determines that the amount of a Participant’s Annual Additions exceed the limitations set forth herein, the excess Annual Additions shall be corrected as permitted under the Internal Revenue Service’s Employee Plans Compliance Resolution System (“EPCRS”), including any successor system or program thereto, or pursuant to any other available guidance from the Internal Revenue Service or U. S. Department of the Treasury. All contributions by the Employer for such Plan Year which are excess Annual Additions or which are forfeited and not reallocated shall be retained as an undesignated account on the books of the Fund for allocation among the accounts of the Participants as a part of the Employer’s contribution next due for the next following Plan Year. Any such amounts so used shall be treated for allocation purposes of the Plan as a part of the contribution by the Employer. The undesignated special account maintained pursuant to this section shall be adjusted at each Valuation Date for its share of net increase or decrease in value of the Fund, and such account shall be held in such Fund divisions as the Administrator shall direct. Notwithstanding any other provisions of the Plan, no contributions by the Employer which would constitute amounts subject to the 415 Limitations of section 4.03 for a Plan Year may be made to the Plan until any balance at the beginning of such Plan Year in the undesignated account maintained pursuant to this subsection 4.03(e) has been allocated among the accounts of Participants.
- 4.04 Defined Contribution Plan - For purposes of Sections 4.03 and 4.04 and Article XI, “Defined Contribution Plan” means a plan which is established and qualified under IRC Section 401 or 403(a), unless the rules of IRC Section 515(c)(4)(C) have been elected, which provides for an Account for each participant therein and for benefits based solely on the amount contributed to each participant’s account and any income and expenses or gains or losses (both realized and unrealized) which may be allocated to such accounts.

ARTICLE V DISTRIBUTIONS

5.01 Time of Payment.

- 5.01(a) Except as provided in clause (ii) below, the Participant’s Account shall become payable to the Participant, if then alive, or otherwise to his Beneficiary, at the time elected by the Participant. Such time may be:
- (i) No earlier than his severance from employment with the Employer; and
 - (ii) No later than the April 1 (sometimes referred to as the “Required Beginning Date”) following the calendar year in which occurs the later

of the date the Participant attains the age seventy and one-half (70-1/2), or the date the Participant retires from the service of the Employer or otherwise ceases to be employed by the Employer. If the Participant has not begun payments by the Required Beginning Date, payments will automatically commence at that time.

If the Participant has not elected to receive or begin to receive a distribution of his Account by the latest time permitted above, the Plan Administrator shall direct the Trustee to distribute the Participant's Account in accordance with Section 5.04. While such amount is being held in his Account, it shall continue to share in the Adjustment of the Fund.

- 5.01(b) The Account of a Participant who is deceased before such Account commences to be paid to him shall become payable to his Beneficiary at the time elected by such Beneficiary. Such payments may commence as soon as possible after the date of the Participant's death but no later than the time described in clauses (ii) or (iii) of subsection 5.01(d). If the Beneficiary has not begun payments by the date described in clauses (ii) or (iii) of subsection 5.01(d), payments will automatically commence at the applicable latest time.
- 5.01(c) With respect to a qualified domestic relations order approved by the Plan pursuant to section 11.06, unless the qualified domestic relations order is more restrictive or the Alternate Payee requests a lump sum payment earlier, an "alternate payee" may make an election regarding the "alternate payee's" distribution commencement date within the same time frame and in the same manner as the Participant to whom the Account is attributable. If no election is made the default distribution commencement date described in clause (ii) of subsection 5.01(a) shall apply.
- 5.01(d) Notwithstanding the foregoing provisions of this section, a Participant, or the Beneficiary of a Participant who dies before his Account becomes payable, may elect a later date on which such Account shall become payable. Such later date shall not be later than:
- (i) In the case of an election by a Participant, the latest time for payment under clause (ii) of subsection 5.01(a);
 - (ii) In the case of an election by a Beneficiary who is the Participant's spouse, the later of:
 - (A) The end of the fifth (5th) calendar year following the calendar year in which the Participant's death occurs, or
 - (B) The end of the calendar year in which the Participant would have attained the age of seventy and one-half (70-1/2); and
 - (iii) In the case of an election by a Beneficiary who is not the Participant's spouse, the end of the fifth (5th) calendar year following the calendar year in which the Participant's death occurs.

Such election shall be in writing, executed and filed with the Plan Administrator at least thirty (30) days (or such shorter period as the Plan

Administrator may permit on a uniform and non-discriminatory basis) before the date such Account otherwise becomes payable, and it shall set forth and shall be conditioned upon the payment of such Account in a form provided herein. Any such election may be revoked or modified at any time.

5.01(e) Notwithstanding the foregoing provisions of this section, payment may be delayed for a reasonable period in the event the recipient cannot be located or is not competent to receive the benefit payment, there is a dispute as to the proper recipient of such benefit payment, additional time is needed to complete the Plan valuation adjustments and allocations, or additional time is necessary to properly explain the recipient's options.

5.01(f) Notwithstanding the foregoing, if the vested portion of the Participant's Account is not greater than five thousand dollars (\$5,000), the Plan Administrator shall direct that a single lump sum be made to the Participant or if applicable the Beneficiary as soon as reasonably possible following the Participant's termination of employment, death or retirement. Such lump sum payment shall be subject to applicable rollover provisions.

5.02 Form of Payment When Participant Is the Initial Recipient.

5.02(a) The Participant shall elect in writing the form in which such Account is to be paid to him from the forms of distribution available under the applicable Plan investments or that is otherwise provided by the Plan Administrator. Payments continuing after a Participant's death shall be made to his Beneficiary. If the Participant elects a periodic installment, such installments shall not extend over a term certain not extending beyond:

- (i) The life expectancy of the Participant, or
- (ii) The joint life and last survivor expectancy of the Participant and his designated Beneficiary.

5.02(b) With respect to a qualified domestic relations order approved by the Plan pursuant to section 11.06, unless the qualified domestic relations order is more restrictive or the Alternate Payee requests a lump sum payment earlier, an "alternate payee" may make an election regarding the "alternate payee's" form of distribution within the same time frame and in the same manner as the Participant to whom the Account is attributable. If no election is made the default form of distribution described in subsection 5.02(b) shall apply.

5.03 Form of Payment When Beneficiary Is the Initial Recipient.

5.03(a) In the event of a Participant's death before his Account commences to be paid to him, the Participant's Account payable pursuant to Section 5.01 shall be paid to his Beneficiary in the applicable manner described in this section. Payments continuing after a Beneficiary's death shall be made to the successor Beneficiary.

5.03(b) The Beneficiary shall elect in writing the form in which such Account is to be paid to him from the forms of distribution available under the applicable Plan investments or that is otherwise provided by the Plan Administrator. If the Beneficiary elects a periodic installment, such installments shall not extend over

a term certain not extending beyond the end of the fifth (5th) calendar year following the calendar year in which the Participant's death occurs unless:

- (i) Such term certain does not extend beyond the life expectancy of the Beneficiary and the Beneficiary is an individual, and
- (ii) Such installments commence not later than (A) the end of the first (1st) calendar year following the calendar year in which the Participant's death occurs in the case such individual Beneficiary is not the Participant's spouse or (B) the later of the end of the calendar year in which the Participant would have attained the age of seventy and one-half (70-1/2) or the end of the first (1st) calendar year following the calendar year in which the Participant's death occurs in the case such individual Beneficiary is the Participant's spouse.

5.03(c) If the Beneficiary fails to elect a form of distribution, the Beneficiary shall receive a cash lump sum of the amount or the cash value of the Participant's Account, subject to applicable rollover rights.

5.04 Minimum Distribution.

5.04(a) General Rules.

- (i) Precedence. The requirements of this section will take precedence over any inconsistent provisions of the Plan.
- (ii) Requirements of Treasury Regulations Incorporated. All distributions required under this section will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code.

5.04(b) Time and Manner of Distribution.

- (i) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (A) If the Participant's surviving spouse is the Participant's sole Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2), if later.
 - (B) If the Participant's surviving spouse is not the Participant's sole Beneficiary, then distributions to the Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

- (C) If there is no Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (D) If the Participant's surviving spouse is the Participant's sole Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this clause 5.04(b)(ii), other than subclause 5.04(b)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of this clause 5.04(b)(ii) and subsection 5.04(d), unless clause (ii)(A) of subsection 5.04(b) applies, distributions are considered to begin on the Participant's Required Beginning Date. If clause (ii)(D) of subsection 5.04(b) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under clause (ii)(A) of subsection 5.04(b). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under clause (ii)(A) of subsection 5.04(b)), the date distributions are considered to begin is the date distributions actually commence.

- (iii) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with subsections 5.04(c) and 5.04(d). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations.

5.04(c) Required Minimum Distributions During Participant's Lifetime.

- (i) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
 - (A) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
 - (B) if the Participant's sole Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's

attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

- (ii) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this subsection 5.04(c) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

5.04(d) Required Minimum Distributions After Participant's Death.

- (i) Death On or After Date Distributions Begin.
 - (A) Participant Survived by Beneficiary. If the Participant dies on or after the date distributions begin and there is a Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Beneficiary, determined as follows:
 - (I) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (II) If the Participant's surviving spouse is the Participant's sole Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (III) If the Participant's surviving spouse is not the Participant's sole Beneficiary, the Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
 - (B) No Beneficiary. If the Participant dies on or after the date distributions begin and there is no Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the

Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (ii) Death Before Date Distributions Begin.
 - (A) Participant Survived by Beneficiary. If the Participant dies before the date distributions begin and there is a Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Beneficiary, determined as provided in clause (d)(i) of subsection 5.04(b).
 - (B) No Beneficiary. If the Participant dies before the date distributions begin and there is no Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under clause (ii)(A) of subsection 5.04(b), this subsection 5.04(d)(ii) will apply as if the surviving spouse were the Participant.

5.04(e) Definitions. For purposes of this section, the follow terms shall have the meaning set forth below:

- (i) "Beneficiary" shall mean the individual who is designated as the Beneficiary under the Plan in accordance with Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.
- (ii) "Distribution Calendar Year" shall mean a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under subsection 5.04(b)(ii). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the

Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

- (iii) "Life Expectancy" shall mean the life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.
- (iv) "Participant's Account Balance" shall mean the account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.
- (v) "Required Beginning Date" shall mean the applicable date provided under Section 401(a)(9)(C) of the Code.

5.05 Advance on or Acceleration of Deferred Payment or Change to Periodic Installments. If distribution of a Participant's Account has been deferred or is being made from the Fund in the form of periodic installments, payment of all or part of any such remaining Account may be made to the Participant or to the Beneficiary entitled to benefits prior to the scheduled time for payment upon written application delivered to the Plan Administrator. If distribution of a Participant's Account is being made from the Fund in the form of periodic installments, payment of all or part of any such remaining Account may be delayed or decreased upon written application delivered to the Plan Administrator, provided the requirements of section 5.02(a) or 5.03(b) continue to be met following the change in payment. A Participant or Beneficiary may make up to two (2) changes or withdrawals in any calendar year without incurring a charge. An administrative fee may be applied to changes or withdrawals in excess of two (2).

5.06 Plan to Plan Direct Rollover as a Distribution Option.

- 5.06(a) Notwithstanding any contrary provision of the Plan, but subject to any de minimis or other exceptions or limitations provided for under IRC Section 401(a)(31):
 - (i) Any prospective recipient (whether a Participant, a surviving spouse, a current or former spouse who is an alternate payee under a qualified domestic relations order or any other person eligible to make a rollover) of a distribution from the Plan which constitutes an "eligible rollover distribution" (to the extent otherwise includible in the recipient's gross income) may direct the Trustee to pay the distribution directly to an "eligible retirement plan"; and
 - (ii) If the entire non forfeitable balance held in the Account of a Participant who has not attained the later of his Normal Retirement Age or the age of sixty-two (62) exceeds \$1,000 but does not exceed \$5,000 or any other maximum amount under IRC Section 401(a)(31)(B) (determined under IRC Section 411(a)(11) at the time of the distribution) and the Participant does not either consent in writing to a distribution to him (as opposed to a

rollover to an “eligible retirement plan”) or direct in writing the distribution be made to a specified “eligible retirement plan” or plans, then any “eligible rollover distribution” to him shall be made by the Trustee’s paying the distribution directly to an “eligible retirement plan” which is an individual retirement plan in a direct rollover to the individual retirement plan on behalf of the recipient (an “automatic rollover”). This clause does not apply to payment made to a person who is not a Participant: and;

- (iii) Any non-spouse designated Beneficiary within the meaning of Section 401(a)(9)(E) of the Code who is a prospective recipient of an “eligible rollover distribution” from the Plan may direct the Trustee to pay the distribution directly to an “inherited IRA.”

5.06(b) For purposes hereof, the following terms have the meanings assigned to them in IRC Section 401(a)(31) and, to the extent not inconsistent therewith, shall have the following meanings:

- (i) The term “eligible retirement plan” means:
 - (A) A defined contribution plan which is either an individual retirement account described in IRC Section 408(a), an individual retirement annuity described in IRC Section 408(b) (other than an endowment contract), an annuity plan described in IRC Section 403(a), or a qualified trust described in IRC Section 401(a), that accepts the prospective recipient’s eligible rollover distribution.
 - (B) An eligible retirement plan shall also mean an annuity contract described in IRC Section 403(b) and an eligible plan under IRC Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.
 - (C) The definition of eligible retirement plan applicable to a Participant shall also apply in the case of a distribution to a Participant’s surviving spouse and to a Participant’s spouse or former spouse who is the alternate payee under a QDRO.
 - (D) An individual retirement plan described in section 408A of the Code (sometimes referred to as a Roth IRA) provided that for tax years beginning before January 1, 2010, the recipient does not have modified adjusted gross income in excess of \$100,000 and is not married filing a separate return, both as determined under Section 408A(c)(3)(B) of the Code.
 - (E) In the case of an eligible rollover distribution payable to a non-spouse designated Beneficiary within the meaning of Section 401(a)(9)(E) of the Code, an “eligible retirement plan” means only an “inherited” IRA.
- (ii) The term “eligible rollover distribution” means any distribution other than any of the following:

- (A) A distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made either for the life (or life expectancy) of the recipient or the joint lives (or joint life expectancies) of the recipient and his beneficiary who is an individual or for a specified period of ten (10) or more years.
- (B) A distribution to the extent it is required under the minimum distribution requirement of Section 401(a)(9) of the Code.
- (C) Any amount that is distributed on account of hardship (whether or not subject to the withdrawal restrictions of Section 401(k)(2)(B)(i)(IV) of the Code).
- (D) Any other amount which is not considered an eligible rollover distribution for purposes of Section 402(c)(4) of the Code with respect to the Plan.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred and earnings thereon, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Such portion may also be paid to an annuity contract described in Section 403(b) of the Code or a qualified defined benefit plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred and earnings thereon, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (iii) The term “inherited IRA” means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract) or an individual retirement plan described in section 408A of the Code (sometimes referred to as a Roth IRA) established for the purpose of receiving the distribution where the individual retirement account or annuity or Roth IRA is treated as an inherited individual retirement account or annuity within the meaning of Section 408(d)(3)(C) or, as applicable, Section 409A(d)(3)(B) of the Code.

- 5.06(c) Any such direction shall be filed with the Administrator in such form and at such time as the Administrator may require and shall adequately specify the eligible retirement plan to which the payment shall be made.
- 5.06(d) The Trustee shall make payment as directed only if the proposed transferee plan will accept the payment.

- 5.06(e) Any such plan to plan transfer shall be considered a distribution option under this Plan and shall be subject to all the usual distribution rules of this Plan (including but not limited to the requirement an advance explanation of the option).
- 5.06(f) The Administrator is authorized in its discretion, applied on a uniform and non discriminatory basis, to apply any discretionary de minimis or other discretionary exceptions or limitations provided for under IRC Section 401(a)(31) in effecting or declining to effect plan to plan transfers hereunder.
- 5.06(g) Within a reasonable time before the benefit payment date of a prospective recipient of an eligible rollover distribution from the Plan, the Administrator shall provide the prospective recipient with a written explanation of the rollover and tax rules required by IRC Section 402(f). In addition, where the prospective distribution is described in clause (ii) of subparagraph 5.06(a), the Administrator shall provide the written notice to the prospective recipient required by Sections 401(a)(31)(B)(i) of the Code (either separately or at the time the notice under Section 402(f) of the Code is provided) that the automatic rollover to an individual retirement plan pursuant to clause (ii) of subsection 5.06(a) may be transferred to another individual retirement plan.
- 5.06(h) In the case of an automatic rollover described in clause (ii) of subsection 5.06(a):
- (i) Unless otherwise determined by the Plan Sponsor by written agreement with another Plan fiduciary, the Administrator shall determine the individual retirement plan to receive the automatic rollover and the initial investment under the individual retirement plan in which the automatic rollover is invested;
 - (ii) The automatic rollover shall be made to an individual retirement plan within the meaning of Section 7701(a)(37) of the Code;
 - (iii) In connection with the automatic rollover, the Administrator shall enter into a written agreement with the individual retirement plan provider that provides:
 - (A) The rolled-over funds shall be invested in an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity;
 - (B) For purposes of clause (iii)(A) of this subsection, the investment product selected for the rolled-over funds shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan;
 - (C) The investment product selected for the rolled-over funds shall be offered by a state or federally regulated financial institution, which shall be either (I) a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, (II) a credit union, the member accounts of which are insured within the meaning of Section 101(7) of the Federal Credit Union Act, (III) an insurance company, the products of which are

protected by State guaranty associations, or (IV) an investment company registered under the Investment Company Act of 1940;

- (D) All fees and expenses attendant to an individual retirement plan, including investments of the individual retirement plan (e.g., establishment charges, maintenance fees, investment expenses, termination costs and surrender charges) shall not exceed the fees and expenses charged by the individual retirement plan provider for comparable individual retirement plans established for reasons other than the receipt of a rollover distribution subject to the provisions of Section 401(a)(31)(B) of the Code; and
 - (E) The recipient on whose behalf the Plan makes an automatic rollover shall have the right to enforce the terms of the contractual agreement establishing the individual retirement plan, with regard to his rolled-over funds, against the individual retirement plan provider, and.
- (iv) Participants shall be furnished a description of the Plan's automatic rollover provisions effectuating the requirements of IRC Section 401(a)(31)(B), including an explanation that the mandatory distribution in the form of an automatic rollover will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity, a statement indicating how fees and expenses attendant to the individual retirement plan will be allocated (i.e., the extent to which expenses will be borne by the account holder alone or shared with the distributing Plan or Plan Sponsor), and the name, address and phone number of a plan contact (to the extent not otherwise provided in the description) for further information concerning the Plan's automatic rollover provisions, the individual retirement plan provider and the fees and expenses attendant to the individual retirement plan.

It is intended that the automatic rollover provisions of the Plan satisfy the safe harbor therefore provided in Section 51.1-124.30.F of the Code of Virginia, and such provisions shall be interpreted and administered in accordance therewith.

5.07 Notice and Election Procedures Regarding Payment.

- 5.07(a) Any election authorized and any designation of a date of payment by a Participant or Beneficiary shall be in writing, shall clearly indicate the election or designation being made, and shall be filed with the Plan Administrator and in accordance with the procedures provided in the following subsections to this section.
- 5.07(b) Within a reasonable time before a Participant's Account is to be paid to him, the Plan Administrator shall by mail or personal delivery provide the Participant with a written explanation of:
- (i) The terms and conditions of the applicable forms of payment, including the financial effects of the applicable forms of payment.

- (ii) The Participant's right to delay receipt of his Account until such later date allowed under section 5.01, including the right to modify or revoke any election thereunder.
- (iii) The Participant's right to obtain an advance on or acceleration of payment of his Account or to change any periodic installments as provided under section 5.05.

5.07(c) Within a reasonable time before the Account of a Participant who died prior to commencement of payment of his Account is to be paid, the Plan Administrator shall by mail or personal delivery provide the Participant's Beneficiary with a written explanation of:

- (i) The terms and conditions of the applicable forms of payment.
- (ii) The Beneficiary's right to delay receipt of the Participant's Account until such later date allowed under section 5.01, including the right to modify or revoke any election thereunder.
- (iii) The Beneficiary's right to obtain an advance on or acceleration of payment of the Participant's Account or to change any periodic installments under section 5.05.

5.08 Benefit Determination and Payment Procedure.

5.08(a) The Plan Administrator shall make all determinations concerning eligibility for benefits under the Plan, the time or terms of payment, and the forms or manner of payment to the Participant or the Participant's Beneficiary, in the event of the death of a Participant. The Plan Administrator shall promptly notify the Trustee of each such determination that benefit payments are due or should cease to be made and provide to the Trustee all other information necessary to allow the Trustees to carry out said determination, whereupon the Trustee shall pay or cease to pay such benefits in accordance with the Plan Administrator's determination.

5.08(b) In making the determinations described in subsection 5.08(a), the Plan Administrator shall take into account the terms of any qualified domestic relations order pursuant to section 11.06 received with respect to the Account of the Participant or any Death Benefit with respect to the Participant. The time and form of payment with respect to such qualified domestic relations order and the time and form of payment chosen by the Participant or his Beneficiary or required by the Plan shall not be altered by the terms of the qualified domestic relations order. The Plan Administrator shall make all determinations regarding benefit payments to be made pursuant to a qualified domestic relations order. Any benefit payments which may be subject to the terms of a domestic relations order received by the Plan Administrator shall be suspended during the period the Plan Administrator is considering whether the order is a qualified domestic relations order. In the event that benefits are in pay status at the time that a domestic relations order is received, the Plan Administrator shall promptly notify the Trustee of the amount, if any, of the benefit payments that must be suspended for the period required by the Plan Administrator to determine the status of the order. Upon the completion of the Plan Administrator's review or other

determination of the status of the order, the Plan Administrator shall promptly notify the Trustee of the time benefit payments are to commence and of the identity of, and the amount and form of benefits to be paid to, the person or persons to whom payment is to be made.

5.08(c) To the extent the payment provisions of the Plan are inconsistent with and violative of the requirements of Section 401(a)(9) of the Code, the provisions of Section 401(a)(9) of the Code are hereby incorporated by reference and shall control.

5.09 Payments to Minors and Incompetents - In case any person entitled to receive payment under the Plan shall be a minor, the Plan Administrator in its discretion, may dispose of such amount in any one or more of the following ways:

- (a) By payment thereof directly to such minor;
- (b) By application thereof for the benefit of the minor; or
- (c) By payment thereof to either parent of the minor or to any adult person with whom such minor may at the time be living or to any person who shall be legally qualified and shall be acting as guardian of the person or the property of such minor; provided only that the parent or adult person to whom any amount shall be paid shall have advised the Plan Administrator in writing that he will hold or use such amount for the benefit of such minor.

In the event that it shall be found that a person entitled to receive payment under the Plan is physically or mentally incapable of personally receiving and giving valid receipt for any payment due (unless prior claim therefor shall have been made by a duly qualified committee or other legal representative), such payment may be made to the spouse, son, daughter, parent, brother, sister or other person deemed by the Plan Administrator to have incurred expense for such person otherwise entitled to payment.

Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

5.10 Distribution of Benefit When Distributee Cannot Be Located. The Plan Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a Participant or Participant's spouse or a Participant's Beneficiary entitled to benefits under the Plan, including the mailing by certified mail of a notice to the last known address shown on the Employer's, the Plan Administrator's or the Trustee's records. If the Plan Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trustee shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

ARTICLE VI VESTING

6.01 Termination of Employment - Upon termination of employment for any reason, other than retirement, death or Disability, a Participant shall be entitled to a benefit equal to the vested portion of the value of his Account determined as of the next following Valuation Date following such termination of employment.

6.01(a) A Participant shall at all times be one hundred percent (100%) vested in his Account upon attaining his Normal Retirement Age or upon becoming Disabled.

6.01(b) If a Matching Plan Participant has not attained his Normal Retirement Age or become Disabled at date of termination, he shall be vested in his Matching Account and Discretionary Account in accordance with the following table:

<u>Years of Service</u>	<u>Non forfeitable Percentage</u>
Less than 5 years	0%
5 years or more	100%

6.01(c) If an Enhanced Matching Plan Participant has not attained his Normal Retirement Age or become Disabled at date of termination, he shall be vested in his Base Account, Matching Account and Discretionary Account in accordance with the following table:

<u>Years of Service</u>	<u>Non forfeitable Percentage</u>
Less than 2 years	0%
2 years	25%
3 years	50%
4 years	75%
5 years or more.....	100%

6.02 Time of Forfeiture. Upon termination of employment of a Participant, the non-vested portion of the Participant's Account shall be held in the Participant's Account until the December 31 Valuation Date following his termination of employment at which time it shall be deemed a forfeiture.

Notwithstanding the foregoing, a Participant shall forfeit his entire Base Account Matching Account and Discretionary Account if he is convicted of a felony and it is determined by his Employer that the felony arose from misconduct occurring on or after July 1, 2011, in any position as an Employee. Such forfeiture shall occur following the conclusion of the administrative process as set forth in Section 51.1-124.13 of the Code of Virginia. The Administrator may delay distribution to a Participant for a reasonable period to allow for the administrative process if notified by the Employer that a determination that a felony charge arising from misconduct described above is sought. Forfeitures shall be used by the Plan in accordance with this Section 6.03. If the Participant is or becomes a Participant in service after such forfeiture, the Participant shall be entitled to benefits based solely on contributions occurring after the forfeiture.

6.03 Use of Forfeitures. Forfeitures shall be reallocated to the remaining active Participants' Accounts in the following manner:

- (a) Forfeitures from an Enhanced Plan Participant's Base Account shall be allocated to the remaining Participant's Enhanced Plan Base Account in proportion to their Compensation.
- (b) Forfeitures from an Enhanced Plan Participant's Matching Account shall be allocated to the remaining Participant's Enhanced Plan Matching Account in proportion to their Deferred Compensation.

- (c) Forfeitures from a Matching Plan Participant's Matching Account shall be allocated to the remaining Participant's Matching Plan Matching Account in proportion to their Deferred Compensation.
- (d) Forfeitures from a Participant's Discretionary Account shall be allocated to the remaining Participant's Discretionary Account in the same manner as the Discretionary Contribution that gave rise to the forfeiture.

ARTICLE VII
WITHDRAWALS AND LOANS

- 7.01 Withdrawal from Rollover Account - Upon written notice to the Plan Administrator or its designee, a Participant may request a withdrawal of all or a portion of the value of his Rollover Account. The withdrawal shall be made on a pro-rata basis from the investment Funds. Payment of such amount shall be in a lump sum as soon as reasonably possible following the date the Plan Administrator or its designee receives the withdrawal request. Amounts withdrawn pursuant to this Section may not be repaid to the Fund.
- 7.02 Unforeseeable Emergency Distributions - Notwithstanding any other provisions contained herein, in the case of an "Unforeseeable Emergency", a Matching Plan Participant may apply to the Plan Administrator to withdraw, in whole or in part, the vested portion of his or her Account, that amount necessary to meet the emergency situation constituting the Unforeseeable Emergency. Such amount may be withdrawn, subject to the approval of the Employer, prior to Retirement or any other termination of employment with the Employer. If the application for withdrawal is approved by the Plan Administrator, the withdrawal shall be affected within thirty (30) days following such approval.

Any remaining benefits to which the Matching Plan Participant may be entitled following an Unforeseeable Emergency Distribution shall be paid upon Retirement, termination of employment, Disability or death in accordance with Section 5.04.

For purposes of this section 7.02, an "Unforeseeable Emergency" is a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in IRC §152(2)) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an Unforeseeable Emergency will depend on the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved: (1) through reimbursement or compensation by insurance or otherwise; (2) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or (3) by cessation of deferrals under the Plan. Examples of what are not considered to be Unforeseeable Emergencies include the need to send a child to college or the desire to purchase a home.

- 7.03 Loans - Upon written application of a Matching Plan Participant, the Plan Administrator, or its designee, may direct that a loan from the Fund be made to the Participant. In order to apply for a loan, a Matching Plan Participant shall complete a loan application form provided by the Plan Administrator or its designee and provide any additional documentation or financial information which the loan request form or Plan Administrator requests. The application for a loan, approval or denial of the loan and the resulting loan must be made in accordance with the following requirements:

- 7.03(a) Loans shall be made available to Matching Plan Participants in a uniform and nondiscriminatory manner with all Matching Plan Participants in similar circumstances being treated alike. In no event shall any discretionary power in granting or refusing a loan be applied so as to discriminate in favor of any highly compensated employee. Loans shall not be available to Participants who are not Employees of the Employer or to Enhanced Plan Participants.
- 7.03(b) In approving or denying a loan request by a Participant, consideration shall only be given to the factors which would be considered in a normal commercial setting by an entity in the business of making similar types of loans and may be based on, but not limited to, the Participant's creditworthiness and financial need.
- 7.03(c) Upon receipt of a completed loan application, the Plan Administrator or its designee shall review the application and notify the Participant in a reasonable period of time whether the loan has been approved or denied.
- 7.03(d) The maximum permissible loan available in any Plan Year from all plans of the Employer shall not exceed the lesser of
- (i) fifty thousand dollars (\$ 50,000) reduced by the excess (if any) of:
 - (A) the highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan was made, over
 - (B) the outstanding balance of loans from the Plan on the date on which such loan was made, or
 - (ii) fifty percent (50%) of the vested portion of the Account the Participant would have been entitled to receive pursuant to the provisions of Section 6.01, assuming the Participant terminated on the day the loan was approved by the Plan Administrator or its designee.
- The minimum amount of loan shall be the amount specified in Section 7.03 (q).
- 7.03(e) Any loan made pursuant to this Section must generally be repaid within a period not to exceed five (5) years. However, the Plan Administrator shall grant a loan, the purpose of which is the acquisition of the primary residence of the Participant, in which case such loan shall be paid over a reasonable period of time not to exceed fifteen (15) years. In no event shall the Plan Administrator hold the mortgage of any such primary residence. The period of repayment for any loan shall be arrived at by mutual agreement between the Plan Administrator or its designee and the Participant. The initial minimum loan repayment period shall not be less than one year. Except as may be provided in regulations, each loan to which this Section applies must provide for a substantially level amortization of the loan with payments being made not less frequently than quarterly.
- 7.03(f) The method and timing for repayment of any loan hereunder shall be determined at the time the loan is made and a copy of such payment schedule shall be maintained with the promissory note. Repayment of any loan shall be by payroll

deduction, by personal check, or with Plan Administrator consent by a lump sum prepayments.

- 7.03(g) Interest on any loan hereunder shall be based on a reasonable rate as determined by the Plan Administrator or its designee. A loan shall be considered to bear a reasonable rate of interest if such rate is commensurate with the interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances. The interest rate, once fixed, shall remain in effect for the duration of the loan.
- 7.03(h) All loans shall be evidenced by a promissory note and such note shall be held as an asset of the Fund in a segregated account applicable to the Participant to whom the loan is granted. The loan shall be collateralized with up to fifty percent (50%) of the Participant's vested Account to the extent the value of his Account equals the outstanding balance on the loan. The Plan Administrator may require such additional collateral as it deems necessary depending on the type of loan being made. The type of additional collateral shall be determined on the same basis as would be used in a normal commercial setting by an entity in the business of making similar loans.
- 7.03(i) All payments by a Participant representing interest shall be considered as investment income of the Fund applicable to the Participant.
- 7.03(j) All payments by a Participant representing principal and interest shall be used to reduce the outstanding balance of the loan and credited along with any interest payment to the investment fund as may be chosen by the Participant with respect to future Contributions to the Plan.
- 7.03(k) The withdrawal from the Participant's Account to provide the loan shall be made on a pro-rata basis from the investment funds.
- 7.03(l) No distribution shall be made to or by any Participant or Beneficiary of a Participant unless and until all unpaid loans, including accrued interest thereon, have been liquidated. In the event of the death, retirement or termination of employment of a Participant prior to the time the loan is repaid, or failure to comply with any terms of the loan, the loan shall be considered to be in default and the balance of such loan shall become due and payable with such repayment being satisfied (i) by satisfying the indebtedness from the amount held in the Participant's Account before making payments to the Participant or his Beneficiary, (ii) by an adjustment to any outstanding payroll due to the Participant, (iii) by the sale, foreclosure or disposal of any collateral which was required to secure the loan in addition to the Participant's Account and, lastly, (iv) from any other assets of the Participant.
- 7.03(m) Notwithstanding the occurrence of a deemed distribution, the Plan Administrator is specifically authorized to withhold foreclosing on a loan which is in default until the Plan provides for an otherwise permissible distributable event. For each year or portion thereof that a loan shall be in default and not yet foreclosed upon shall be considered a deemed distribution to the Participant and reported to the Participant and the Internal Revenue Service as such in the year so credited.

- 7.03(n) No loan shall be granted to a Participant unless the Participant consents, in writing, that in the event of default of the loan, the outstanding loan balance shall be deemed a taxable distribution to the Participant. Such written consent shall be of the type and manner intended to satisfy the requirements of IRC Section 411 (a)(II).
- 7.03(o) Participants with an outstanding loan balance who enter Qualified Military Service as defined in Section 3.04 may elect to suspend loan payments during the period of such Qualified Military Service as permitted under IRC Section 414(u) (4).
- 7.03(p) No more than one (1) Plan loan may be outstanding at any time.
- 7.03(q) No loan shall be granted for less than one thousand dollars (\$1,000).
- 7.04 No Withdrawals or Loans by Enhanced Plan Participants. Except as permitted under Section 7.01, Enhanced Plan Participants are not permitted to take loans or hardship withdrawals from the Plan.

ARTICLE VIII FUNDING

- 8.01 Contributions - Contributions by the Employer as provided in Article III shall be paid over to the Trustee. All Contributions by the Employer shall be irrevocable, except as herein provided, and may be used only for the exclusive benefit of Participants and their Beneficiaries.
- 8.02 Fund - The Employer, in order to establish a Fund for the payment of benefits under the Plan, will enter into an agreement with the Trustee under which Contributions will be held, invested and applied to provide the benefits provided by the Plan. The Trust Agreement is incorporated by reference as a part of the Plan, and the rights of all persons hereunder are subject to its terms. The Trust Agreement shall contain such powers and reservations as to investment, reinvestment, control and disbursement of the funds, and such other provisions not inconsistent with the provisions of the Plan and its nature and purposes as shall be agreed upon and set forth herein.

In accordance with the terms of the Trust Agreement, the Trustee shall accept and receive all sums of money paid to it from time to time by the Employer, and shall hold, invest, reinvest and administer such moneys and the increment, increase, earnings and income thereof as a Fund for the exclusive benefit of Participants and Beneficiaries or the payment of reasonable expenses of administering the Plan.

- 8.03 Direction of Investment of Contributions - Upon commencing participation, each Participant shall have the right to direct that the entire amount of the Contributions being allocated to his Account during a Plan Year be invested in the investment Fund(s) approved by the Employer. Investment Fund elections shall be made on forms provided by the Plan Administrator, or through its designee, and each Participant shall be provided with appropriate forms or procedures at the time he becomes a Participant.

Any such election shall become effective as of the date the Participant commences participation in the Plan or as of the date the Employee makes a Rollover Contribution and shall continue to apply in subsequent Plan Years unless the Participant properly initiates a change in the direction of investment of Contributions in accordance with Section 8.04.

Without undue delay, the Plan Administrator shall forward appropriate directions it receives to the Trustee for execution and the Trustee shall carry out such directions as expeditiously as possible.

- 8.04 Change in Direction of Investment of Account and/or Contributions - Each Participant shall have the right by a request to the Plan Administrator, or its designee, to change his option concerning the investment Funds in which his Account balance and/or the Contributions allocated to his Account are to be invested. Any such change shall be applicable as soon as possible following the date the change is received by the Trustee and shall continue to apply in subsequent Plan Years until the Participant properly initiates another change.

The availability of any alternative investment Fund(s) shall be in the sole discretion of the Employer.

ARTICLE IX FIDUCIARIES AND PLAN ADMINISTRATION

- 9.01 Employer - The Employer establishes and maintains the Plan for the benefit of its Employees and, of necessity, retains control of the operation and administration of the Plan. In accordance with specific provisions of the Plan, the Employer has delegated, as herein indicated, certain of these rights and obligations to the recordkeeper, Plan Administrator, and the Trustee and these parties shall be solely responsible for these, and only these, delegated rights and obligations.

The Employer shall supply such full and timely information for all matters relating to the Plan as (a) the Plan Administrator, (b) the Trustee, and/or (c) the accountant engaged on behalf of the Plan by the Employer may require for the effective discharge of their respective duties.

- 9.02 Plan Administrator - The Employer shall appoint a Plan Administrator to hold office at the pleasure of the Employer. No compensation shall be paid the Plan Administrator from the Fund for service as such.

In accordance with the provisions hereof, the Plan Administrator has been delegated certain administrative functions relating to the Plan with all powers necessary to enable it properly to carry out such duties. The Plan Administrator shall have no power in any way to modify, alter, add to or subtract from, any provisions of the Plan.

The Plan Administrator shall have powers and discretionary authority to construe the Plan, and to determine all questions that may arise thereunder relating to (a) the eligibility of individuals to participate in the Plan, (b) the amount of benefits to which any Participant or Beneficiary may become entitled hereunder, and (c) any situation not specifically covered by the provisions of the Plan. All disbursements by the Trustee, except for the ordinary expenses of administration of the Fund or the reimbursement of reasonable expenses at the direction of the Employer as provided herein, shall be made upon, and in accordance with, the written directions of the Plan Administrator. When the Plan Administrator is required in the performance of its duties hereunder to administer or construe, or to reach a determination, under any of the provisions of the Plan, it shall do so in a uniform, equitable and non-discriminatory basis.

- 9.03 Trustee - The Employer shall appoint a Trustee to serve at the pleasure of the Employer. In conjunction with the adoption of this Plan, and from time to time thereafter as determined by the Employer, the Board may select one (I) or more mutual funds held through a Trust Agreement to serve as a funding agent for the purpose of receiving and investing Contributions. The mutual

fund accounts offered by those mutual funds held in Trust must conform to the provisions of this Plan as well as providing investment plans that conform to IRC Section 401 (a) and regulations issued thereunder.

- 9.04 Claims for Benefits - All claims for benefits under the Plan shall be submitted to the Plan Administrator, or its designee, which shall have the responsibility for determining the eligibility of any Participant or Beneficiary for benefits. All claims for benefits shall be made in writing and shall set forth the facts which such Participant or Beneficiary believes to be sufficient to entitle him to the benefit claimed. The Plan Administrator, or its designee, may adopt forms for the submission of claims for benefits in which case all claims for benefits shall be filed on such forms. The Plan Administrator, or its designee, shall provide Participants and Beneficiaries with all such forms.

Upon receipt by the Plan Administrator, or its designee, of a claim for benefits, it shall determine all facts which are necessary to establish the right of an applicant to benefits under the provisions of the Plan and the amount thereof as herein provided. The Plan Administrator shall approve, deny and investigate all questionable claims. Upon request, the Plan Administrator will afford any applicant the right of a hearing with respect to any finding of fact or determination related to any claim for benefits under the Plan. In the event any claim for benefits is denied, the Participant or Beneficiary shall be notified of such decision in accordance with the provisions of Section 9.05.

- 9.05 Claims Procedures - Upon receipt by the Plan Administrator, or its designee, of such an application, it shall determine all facts which are necessary to establish the right of an applicant to benefits under the provisions of the Plan and the amount thereof as herein provided. Upon request, the Plan Administrator will afford the applicant the right of a hearing with respect to any finding of fact or determination. The applicant shall be notified in writing of any adverse decision with respect to his claim.

- 9.06 Records - All acts and determinations of the Plan Administrator shall be duly recorded by the secretary thereof and all such records, together with such other documents as may be necessary in exercising its duties under the Plan shall be preserved in the custody of such secretary. Such records and documents shall at all times be open for inspection and for the purpose of making copies by any person designated by the Employer. The Plan Administrator shall provide such timely information, resulting from the application of its responsibilities under the Plan, as needed by the Insurer or Trustee for the effective discharge of their respective duties.

- 9.07 Missing Persons - The Plan Administrator shall direct the Employer to make a reasonable effort to locate all Participants or Beneficiaries entitled to benefits under the Plan; however, notwithstanding any provision in the Plan to the contrary, if after a period of three (3) years from the date such benefit is due, any such Participant or Beneficiary has not been located, his rights under the Plan shall be forfeited. Before this provision becomes operative, the Employer shall send a certified letter to such Participant or Beneficiary at his last known address advising him that his interest or benefits under the Plan shall be forfeited and used to reduce Employer Contributions. However, if a Participant or Beneficiary subsequently makes a valid claim with respect to such forfeited benefits, his right to benefits shall be reinstated and the Employer shall make a special contribution to do so.

ARTICLE X
AMENDMENT AND TERMINATION OF THE PLAN

- 10.01 Amendment of the Plan - The Board of the Plan Sponsor may amend the Plan at any time, consistent with the Enabling Statute, provided that no such amendment shall reduce, suspend or terminate the Accrued Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such amendment. To the extent required by the exclusive benefit, any amendment of the Plan shall not be effective to the extent that the amendment has the effect of causing any Plan assets to be diverted to or inure to the benefit of the Employer, or to be used for any purpose other than providing Accrued Benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.

Notwithstanding the foregoing, the Plan Sponsor hereby delegates to the Administrator the right to modify, alter, or amend the Plan in whole or in part to make any technical modification, alteration or amendment which in the opinion of counsel for the Plan Sponsor is required by law and is deemed advisable by the Administrator and to make any other modification, alteration or amendment which does not, in the Administrator's view, substantially increase costs, contributions or benefits and does not materially affect the eligibility, vesting or benefit accrual or allocation provisions of the Plan.

- 10.02 Termination of the Plan - The Employer expects to continue the Plan indefinitely, but continuance is not assumed as a contractual obligation. The Employer reserves the right at any time by action of its Board of Commissioners to terminate the Plan. If the Employer terminates or partially terminates the Plan or discontinues its Contributions at any time, each Participant affected thereby shall be fully vested in his Account. In the event of termination of the Plan by the Employer, the Plan Administrator shall value the Fund as of the date of termination. The Accounts of the Participants and Beneficiaries affected by the termination, as determined by the Plan Administrator, shall continue to be administered as a part of the Fund or distributed to such Participants or Beneficiaries pursuant to Section 5.04.

ARTICLE XI
MISCELLANEOUS

- 11.01 Governing Law - The Plan shall be construed, regulated and administered according to the laws of the Commonwealth of Virginia, except in those areas preempted by the laws of the United States of America.
- 11.02 Construction - The headings and subheadings in the Plan have been inserted for convenience of reference only and shall not affect the construction of the provisions hereof. In any necessary construction, the masculine shall include the feminine and the singular the plural, and vice versa.
- 11.03 Expenses - The expenses of administering the Fund and the Plan may be paid from the assets of the Plan unless the Employer elects to pay such expenses.
- 11.04 Participant's Rights; Acquittance - No Participant in the Plan shall acquire any right to be retained in the Employer's employ by virtue of the Plan, nor, upon his dismissal, or upon his voluntary termination of employment, shall he have any right or interest in and to the Fund other than as specifically provided herein. The Employer shall not be liable for the payment of any benefit provided for herein; all benefits hereunder shall be payable only from the Fund.

- 11.05 Nonalienation - None of the benefits, payments, proceeds, or distributions under this Plan shall be subject to the claim of any creditor of the Participant or to the claim of any creditor of any Beneficiary hereunder or to any legal process by any creditor of such Participant or of any such Beneficiary; and neither such Participant or any such Beneficiary shall have any right to alienate, commute, anticipate, or assign any of the benefits, payments, proceeds or distributions under this Plan.
- 11.06 Qualified Domestic Relations Order - Notwithstanding Section 11.05, all rights and benefits provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under a qualified domestic relations order.

No benefits shall be paid to an alternate payee until the Plan Administrator has established that such order is a qualified domestic relations order. Reasonable written procedures shall be established to determine the qualified status of domestic relations order and to administer distributions pursuant to qualified domestic relations orders.

- 11.07 Mistake of Fact - Notwithstanding anything herein to the contrary, there shall be returned to the Employer any Contribution which was made as follows:

11.07(a) By a mistake of fact, as determined by the Internal Revenue Service or in such other manner as the Internal Revenue Service may permit;

11.07(b) Prior to the receipt of initial qualification, if the Plan received an adverse determination with respect to its initial qualification and the application for determination was made by the time prescribed by law; or

The return of any Contribution as hereinbefore provided shall be made within one (1) year after the payment of the Contribution, the denial of the initial qualification or the disallowance of the deduction (to the extent disallowed), whichever is applicable. Any Contribution returned due to a mistake of fact under paragraph (a) or disallowance of a tax deduction under paragraph (c) shall be reduced by its share of the losses and expenses of the Fund, but shall not be increased by income or gains of the Fund, provided that the return of such Contribution shall not be permitted to cause the balance of the Account of any Participant to be less than the balance that would have been in his Account had such Contribution not been made. Any Contribution returned to the Employer due to denial of initial qualification under paragraph (b) shall be equal to the entire assets of the Plan attributable to Contributions by the Employer.

- 11.08 Counterparts - The Plan and the Trust Agreement may be executed in any number of counterparts, each of which shall constitute but one and the same instrument and may be sufficiently evidenced by any one counterpart.
- 11.09 Notification of Account Balance - After the close of each Plan Year or more frequently as determined by the Plan Administrator, the Employer or its designee shall notify, or cause to be notified, each Participant of the amount of his share in investment earnings and Contributions for the Plan Year (or other period) just completed, and the new balance of his Account.
- 11.10 Purpose of the Plan - The purpose of this Plan, which shall be qualified as a profit sharing plan under applicable governmental rules, is to provide incentive and retirement security for eligible employees.

ARTICLE XII
ADOPTION OF THE RESTATEMENT

As evidence of its adoption of the Plan, Virginia Port Authority has caused this instrument to be signed by its Chairman, on January 28, 2014, to be effective as of January 28, 2014.

VIRGINIA PORT AUTHORITY

By: 

Jeffrey D. Wassmer

Chairman

Attest:


Debra J. McNulty

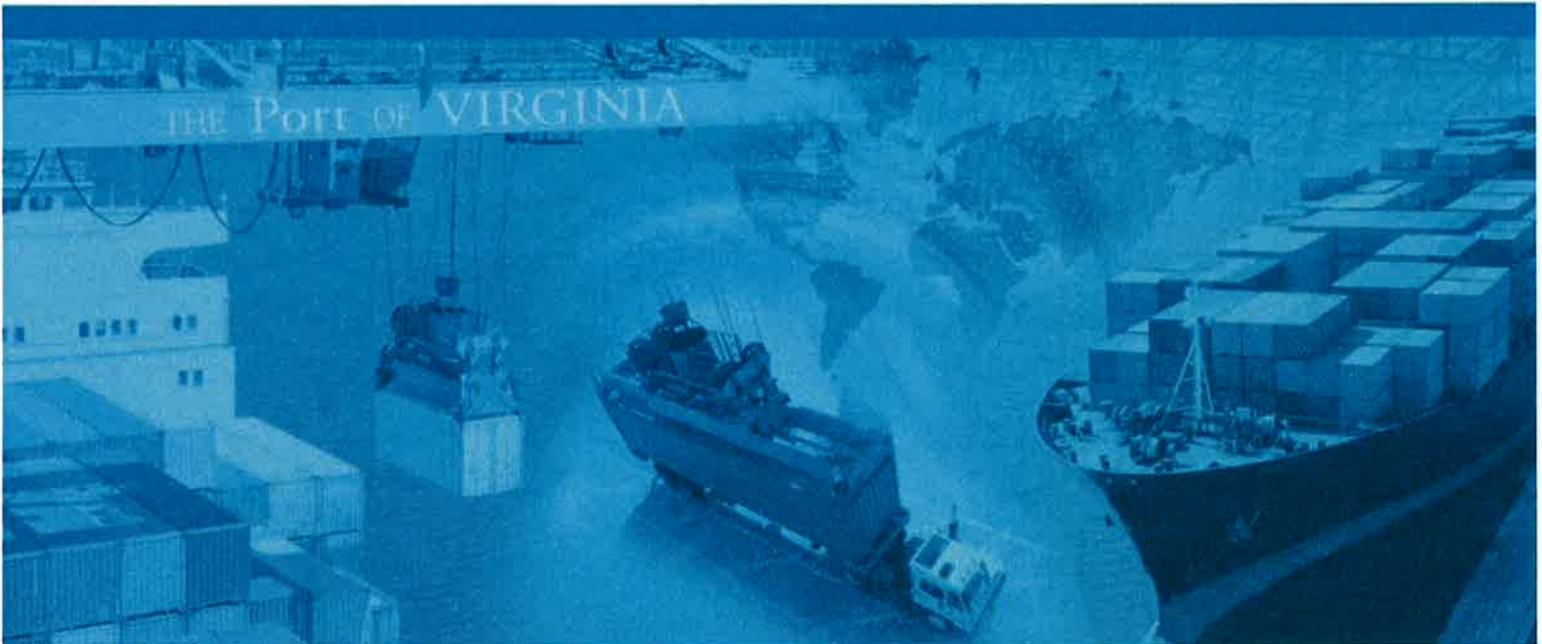
Clerk to the Board



December 2013 Financial Report

Board of Commissioners

January 28, 2014



**PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE MONTH ENDED
DECEMBER 31, 2013**

	<u>Actual</u>	<u>Budget</u>	<u>\$ Variance</u>	<u>% Variance</u>
Operating Revenues	\$ 27,545,473	\$ 31,898,411	\$ (4,352,938)	-13.6%

- ***Actual container volume was 104,210 vs. 110,224 budget, a 5.5% decrease***
- ***Accordingly, operating revenue was 13.6% below budget***

**PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE MONTH ENDED
DECEMBER 31, 2013**

	Actual	Budget	\$ Variance	% Variance
Operating Revenues	\$ 27,545,473	\$ 31,898,411	\$ (4,352,938)	-13.6%
Operating Expenses:				
Terminal operations	13,978,817	14,095,768	116,951	0.8%
Terminal maintenance	4,589,337	4,982,031	392,694	7.9%
General and administrative	3,514,665	3,728,379	213,714	5.7%
Facility Rental	4,270,837	4,178,072	(92,765)	-2.2%
Depreciation and amortization	3,951,007	3,948,331	(2,676)	-0.1%
Total operating expenses	30,304,663	30,932,581	627,918	2.0%

- ***Total operating expense was \$628 thousand under budget***
- ***Terminal operations expense was down for the month due to lower volume***
- ***Terminal maintenance and General and Administrative expense were below budget***
- ***Facility rental expense was higher than budget due to a change in estimate***
- ***Remaining operating expenses were relatively flat in total***

**PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE MONTH ENDED
DECEMBER 31, 2013**

	Actual	Budget	\$ Variance	% Variance
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Total operating expenses	30,304,663	30,932,581	627,918	2.0%
Operating income (loss)	(2,759,190)	965,829	(3,725,019)	-385.7%

- ***The lower than budgeted revenue was slightly offset by lower than budgeted operating expenses resulting in an operating loss of \$3.7 million below budget for the month of December***

**PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE MONTH ENDED
DECEMBER 31, 2013**

	Actual	Budget	\$ Variance	% Variance
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Depreciation and amortization	3,951,007	3,948,331	(2,676)	-0.1%
Total operating expenses	30,304,663	30,932,581	627,918	2.0%
Operating income (loss)	(2,759,190)	965,829	(3,725,019)	-385.7%
Non-operating revenues (expenses)	(1,269,875)	(1,614,612)	344,737	21.4%
Capital contributions and transfers	3,070,854	3,244,518	(173,664)	5.4%

- ***Non-operating expenses consist primarily of interest expense which is lower than budget due to bond refundings and the negotiation of lower interest rates on MELPs and interest on investments***
- ***Capital contributions consist primarily of Commonwealth Port Fund Revenue and was 5.4% lower than budget***

**PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE MONTH ENDED
DECEMBER 31, 2013**

	Actual	Budget	\$ Variance	% Variance
Operating Revenues	\$ 27,545,473	\$ 31,898,411	\$ (4,352,938)	-13.6%
Operating Expenses:				
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Non-operating revenues (expenses)	(1,269,875)	(1,614,612)	344,737	21.4%
Capital contributions and transfers	3,070,854	3,244,518	(173,664)	5.4%
Increase (decrease) in Net Assets	\$ (958,211)	\$ 2,595,736	\$ (3,553,947)	-136.9%

- ***The overall results show a decrease in Net Assets of \$958 thousand which is \$3.6 million below budget***

**PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE SIX MONTHS ENDED
DECEMBER 31, 2013**

	<u>Actual</u>	<u>Budget</u>	<u>\$ Variance</u>	<u>% Variance</u>
Operating Revenues	\$ 175,862,553	\$ 184,762,494	\$ (8,899,941)	-4.8%

- ***Actual container volume was 669,746 vs. 671,854 budget, a 0.3% decrease***
- ***Continued shift in volume mix towards rail and additional incentives contributed to lower than budgeted revenue***

PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE SIX MONTHS ENDED
DECEMBER 31, 2013

	Actual	Budget	\$ Variance	% Variance
Operating Revenues	\$ 175,862,553	\$ 184,762,494	\$ (8,899,941)	-4.8%
Operating Expenses:				
Terminal operations	85,470,662	81,667,427	(3,803,235)	-4.7%
Terminal maintenance	28,651,379	29,622,357	970,978	3.3%
General and administrative	22,439,060	22,269,017	(170,043)	-0.8%
Facility Rental	26,166,932	25,068,432	(1,098,500)	-4.4%
Depreciation and amortization	23,688,339	23,665,253	(23,086)	-0.1%
Total operating expenses	186,416,372	182,292,486	(4,123,886)	-2.3%

- ***Terminal operations expense was \$3.8 million over budget mostly due to rail mix and higher than budgeted premium pay***
- ***General and administrative expense was slightly higher than budget due primarily to a one time unbudgeted expense***
- ***Facility rental expense was higher than budget due to a change in estimate***
- ***Lower than budgeted terminal maintenance expense partially offset the increases in expenses***

PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE SIX MONTHS ENDED
DECEMBER 31, 2013

	Actual	Budget	\$ Variance	% Variance
Operating Revenues	\$ 175,862,553	\$ 184,762,494	\$ (8,899,941)	-4.8%
Operating Expenses:				
Terminal operations	85,470,662	81,667,427	(3,803,235)	-4.7%
Terminal maintenance	28,651,379	29,622,357	970,978	3.3%
General and administrative	22,439,060	22,269,017	(170,043)	-0.8%
Facility Rental	26,166,932	25,068,432	(1,098,500)	-4.4%
Depreciation and amortization	23,688,339	23,665,253	(23,086)	-0.1%
Total operating expenses	186,416,372	182,292,486	(4,123,886)	-2.3%
Operating income (loss)	(10,553,819)	2,470,008	(13,023,827)	-527.3%

- ***The combination of lower than budgeted revenue and higher than budgeted expenses have resulted in an operating loss of \$13.0 million below budget***

PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE SIX MONTHS ENDED
DECEMBER 31, 2013

	Actual	Budget	\$ Variance	% Variance
Operating Revenues	\$ 175,862,553	\$ 184,762,494	\$ (8,899,941)	-4.8%
Operating Expenses:				
Terminal operations	85,470,662	81,667,427	(3,803,235)	-4.7%
Terminal maintenance	28,651,379	29,622,357	970,978	3.3%
General and administrative	22,439,060	22,269,017	(170,043)	-0.8%
Facility Rental	26,166,932	25,068,432	(1,098,500)	-4.4%
Depreciation and amortization	23,688,339	23,665,253	(23,086)	-0.1%
Total operating expenses	186,416,372	182,292,486	(4,123,886)	-2.3%
Operating income (loss)	(10,553,819)	2,470,008	(13,023,827)	-527.3%
Non-operating revenues (expenses)	(7,455,110)	(7,939,441)	484,331	6.1%
Capital contributions and transfers	18,240,365	19,467,108	(1,226,743)	-6.3%

- ***Non-operating expenses consist primarily of interest expense which is lower than budget due to bond refundings and negotiation of lower interest rates on MELPs***
- ***Capital contributions consist primarily of Commonwealth Port Fund Revenue which is currently approximately \$1.2 million below budget***

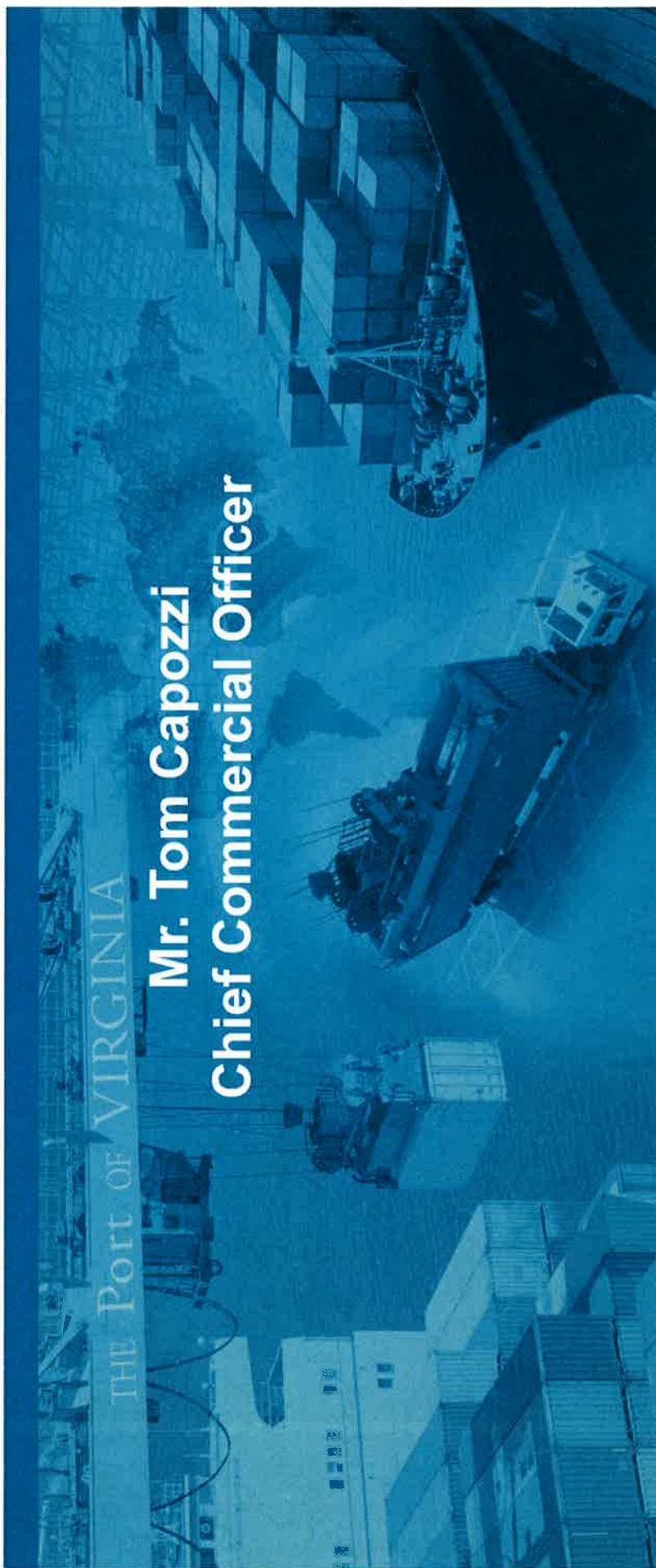
PORT OF VIRGINIA
CONSOLIDATED INCOME STATEMENT FOR THE SIX MONTHS ENDED
DECEMBER 31, 2013

	Actual	Budget	\$ Variance	% Variance
Operating Revenues	\$ 175,862,553	\$ 184,762,494	\$ (8,899,941)	-4.8%
Operating Expenses:				
Terminal operations	85,470,662	81,667,427	(3,803,235)	-4.7%
Terminal maintenance	28,651,379	29,622,357	970,978	3.3%
General and administrative	22,439,060	22,269,017	(170,043)	-0.8%
Facility Rental	26,166,932	25,068,432	(1,098,500)	-4.4%
Depreciation and amortization	23,688,339	23,665,253	(23,086)	-0.1%
Total operating expenses	186,416,372	182,292,486	(4,123,886)	-2.3%
Operating income (loss)	(10,553,819)	2,470,008	(13,023,827)	-527.3%
Non-operating revenues (expenses)	(7,455,110)	(7,939,441)	484,331	6.1%
Capital contributions and transfers	18,240,365	19,467,108	(1,226,743)	-6.3%
Increase (decrease) in Net Assets	\$ 231,436	\$ 13,997,675	\$ (13,766,239)	-98.3%

- ***The overall result is an increase in Net Assets of \$231 thousand which is \$13.8 million below budget***



Commercial Update
Board of Commissioners
Session 356
January 2014



Mr. Tom Capozzi
Chief Commercial Officer

2014 Fiscal Year, July-December

FY2014 **FY2013** **%Change**

Total TEUs	1,169,257	1,111,160	+5.2
Export TEUs	618,963	594,595	+4.1
Import TEUs	550,294	516,565	+6.5
B/B Tonnage	172,287	184,382	-6.6
Vehicles	15,198	21,554	-29.5
Total Rail Containers	226,003	206,056	+9.7
VIP Containers	17,508	16,866	+3.8
Total Barge Containers	24,575	29,985	-18.0
Truck Containers	419,168	401,570	+4.4

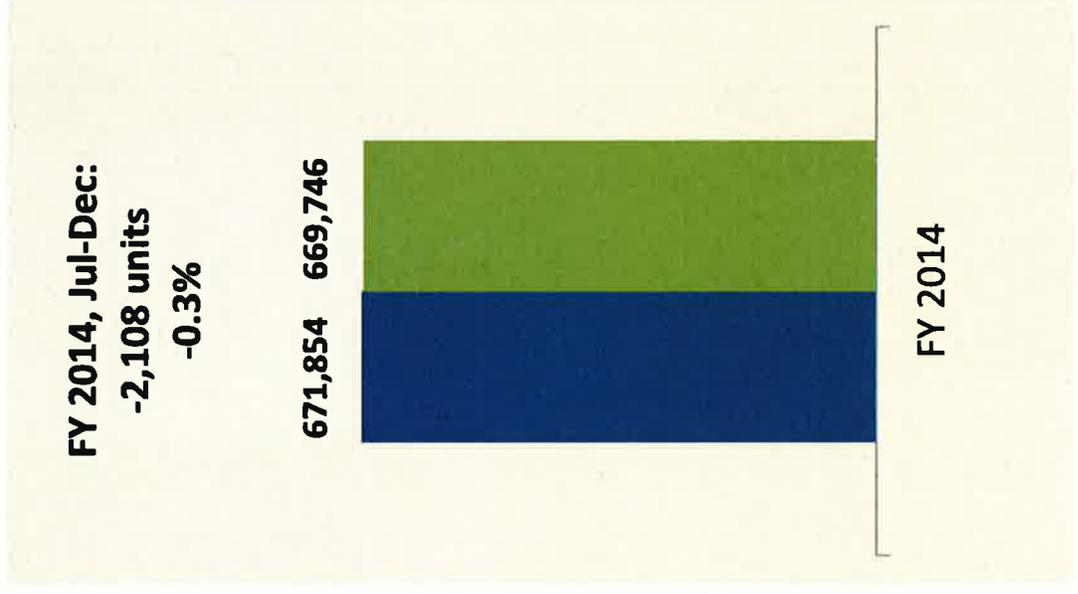
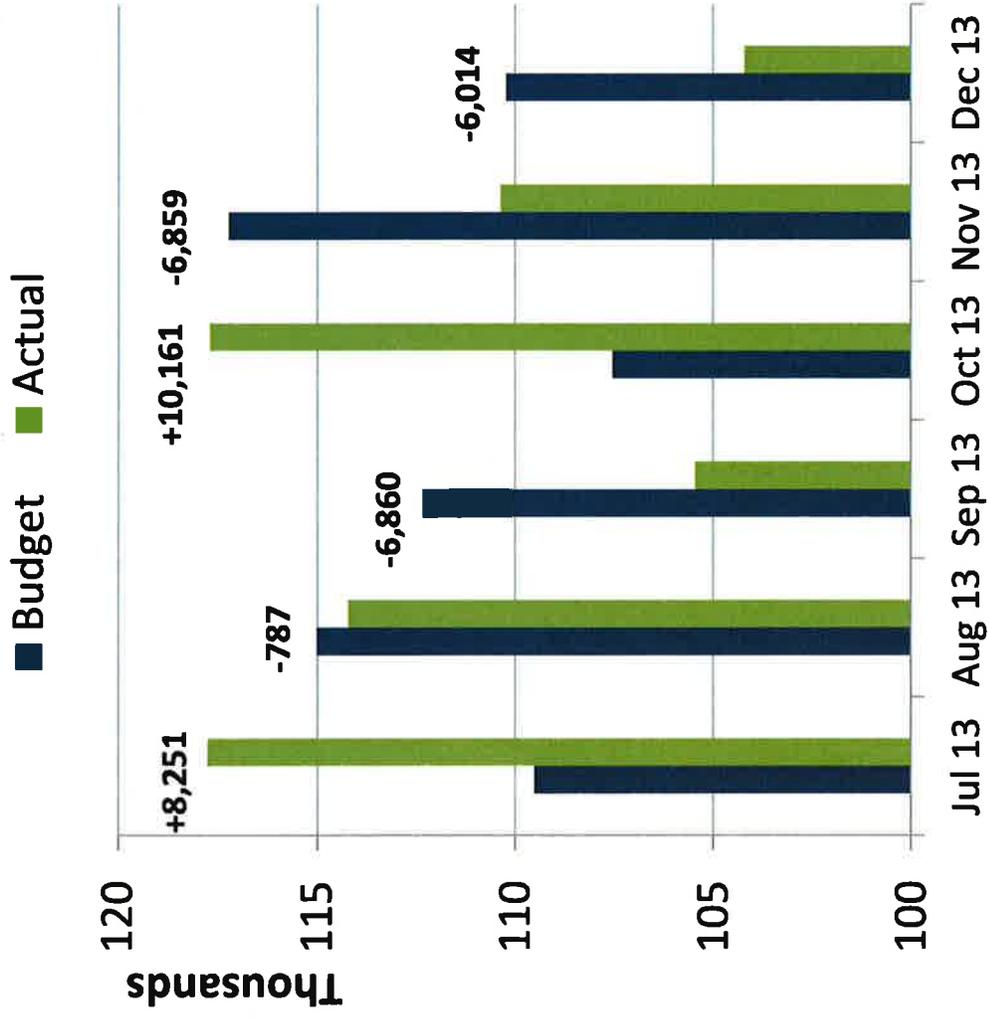
Source: Terminal Statistics

2013 Calendar Year, January-December
CY 2013 CY 2012 %Change

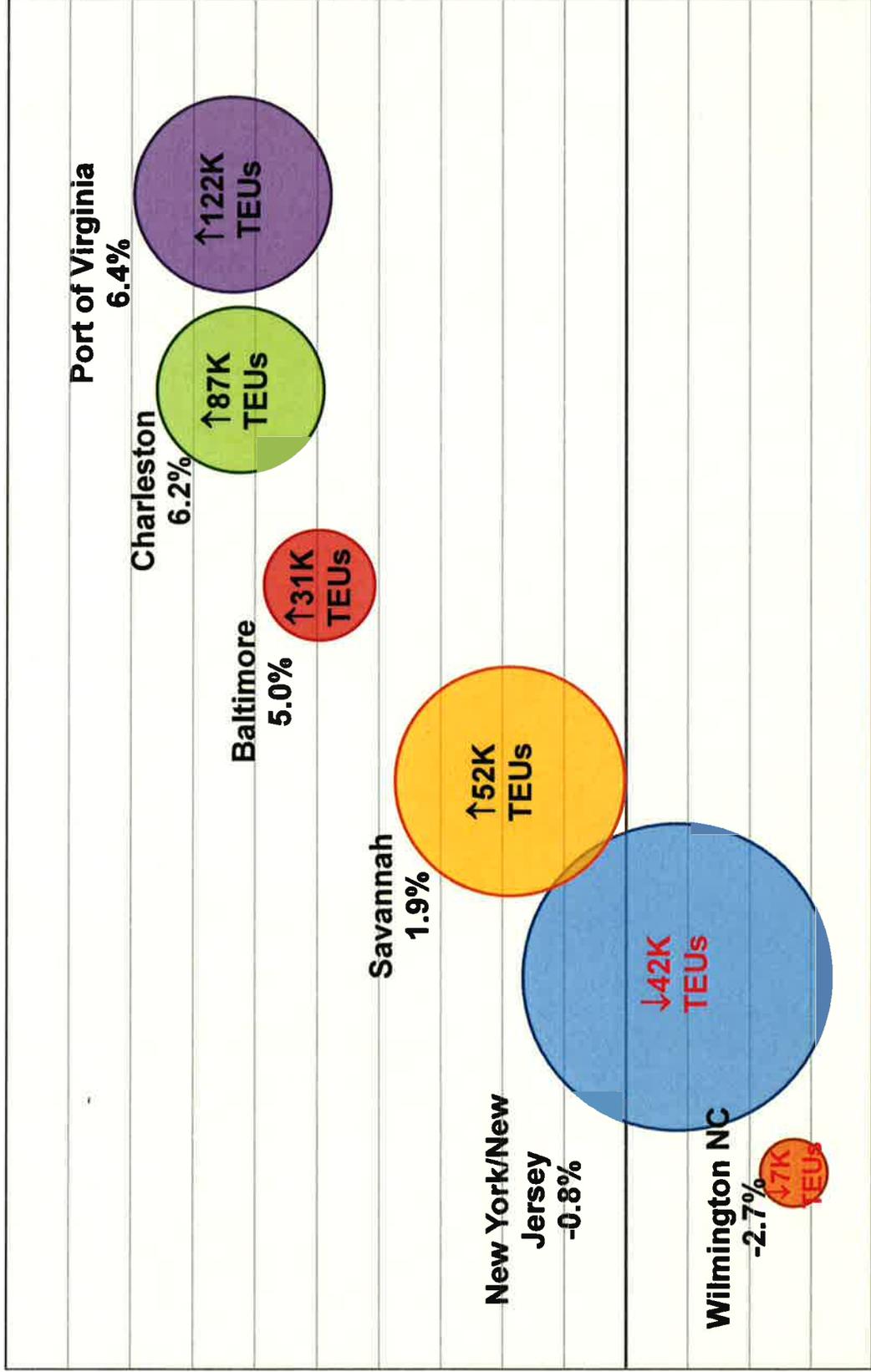
Total TEUs	2,223,532	2,105,887	+5.6
Export TEUs	1,187,231	1,132,376	+4.8
Import TEUs	1,036,301	973,511	+6.4
B/B Tonnage	336,060	372,144	-9.7
Vehicles	28,178	40,031	-29.6
Total Rail Containers	430,894	385,804	+11.7
VIP Containers	32,179	34,306	-6.2
Total Barge Containers	48,104	54,659	-12.0
Truck Containers	795,913	769,359	+3.5

Source: Terminal Statistics

Container Units Budgeted vs. Actual, FY 2014

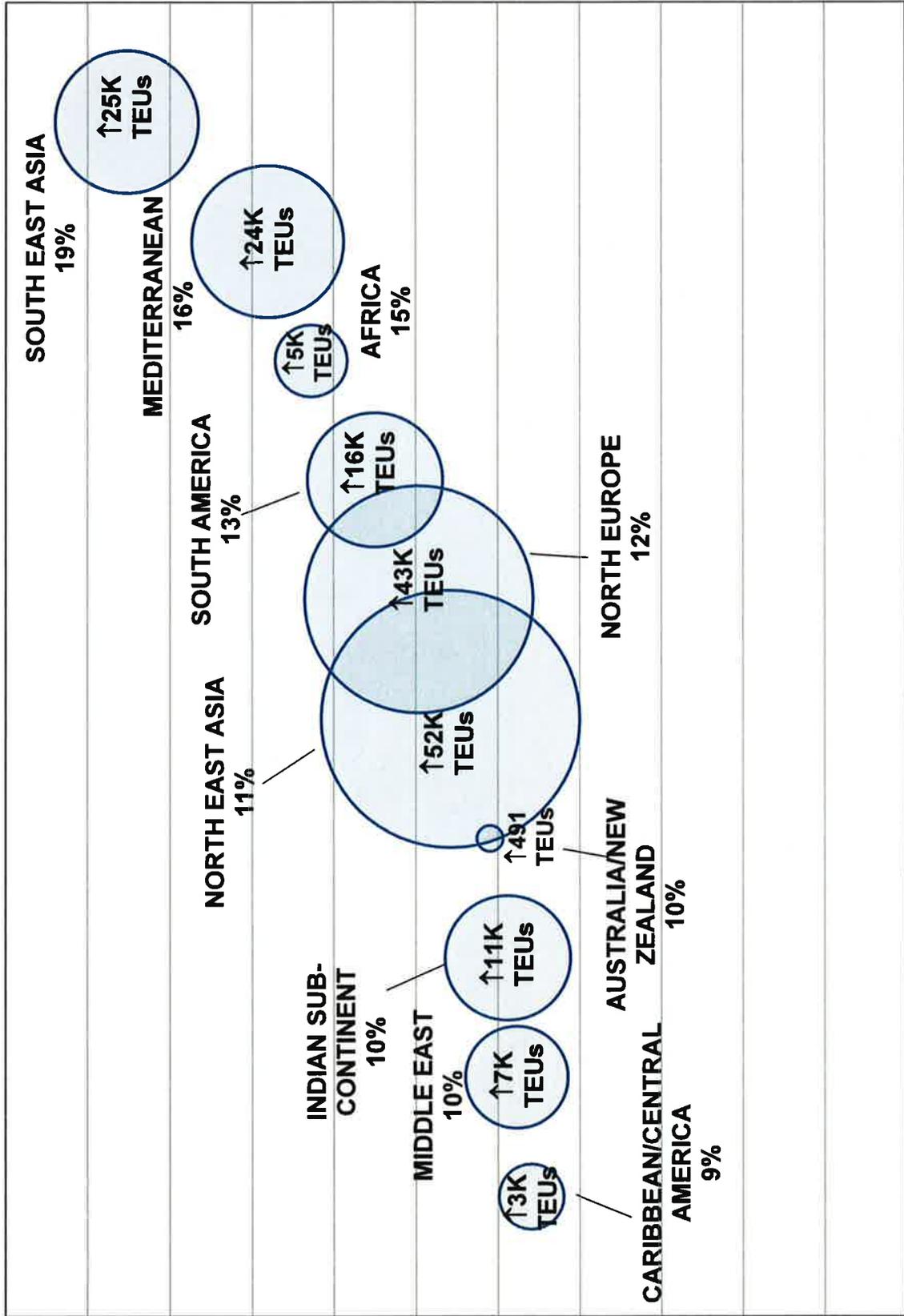


Major USEC Ports Growth
Growth: Jan-Nov, 2013 vs. 2012;
Size: CY 2013 YTD Total TEUS; Source: AAPA



2013 vs 2012 Growth

Port of Virginia Growth by Tradelane
Growth: Jan-Nov, 2013 vs. 2012;
Size: Jan-Nov 2013 Loaded TEUs; Source: PIERS



2013 vs 2012 Growth



THE PORT OF
VIRGINIA

CY13 Ocean Carrier Highlights

- 2 New Ocean Carrier Services
 - G6 CEC service
 - Last-out
 - 7,500 TEU vessels
 - Zim ZCP
- G6 Asia Service Realignment
 - POV gets 5 of 6 calls
 - POV gets 2 last-out and 1 first-in



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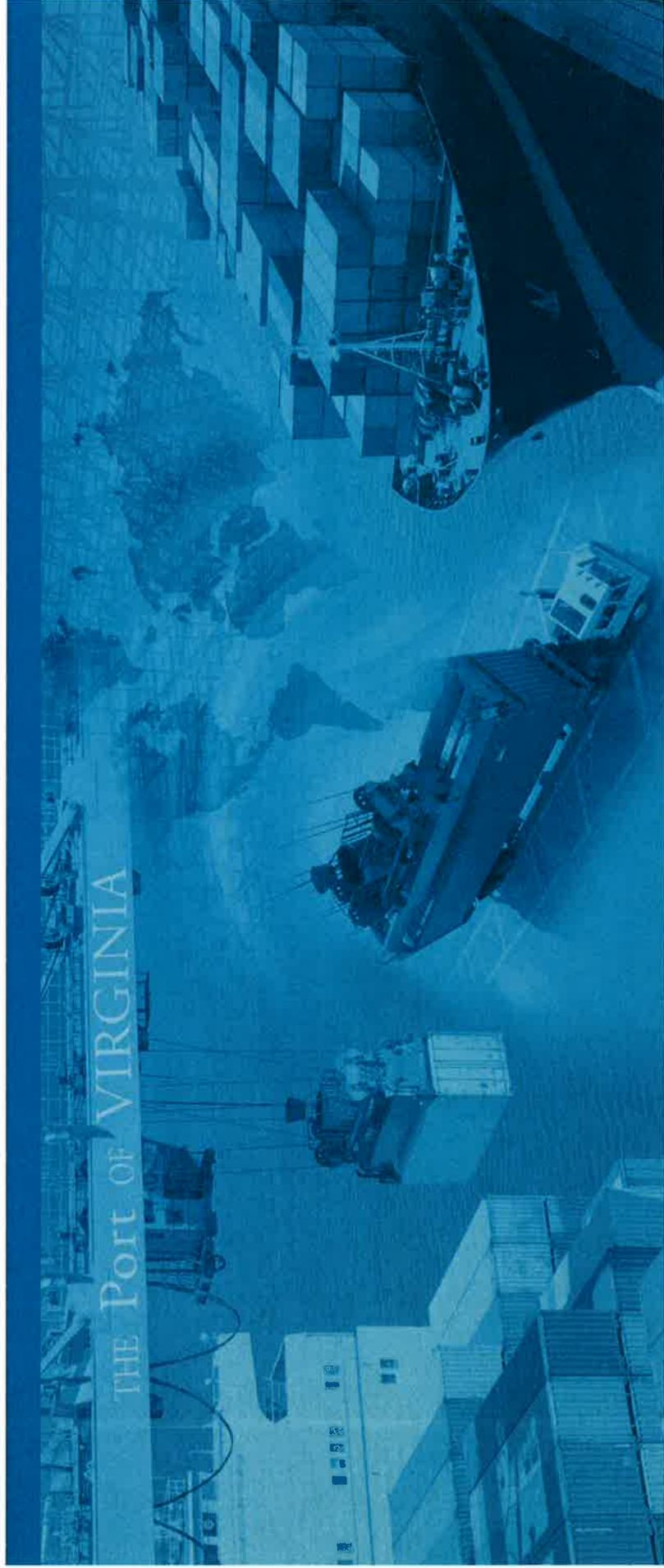
Cargo Growth Drivers

	TEUS
• Exports	
– Soybeans	+12,709
– Wood pulp	+ 7,290
– Field seeds/bulbs	+ 4,489
– Woodenware	+ 3,554
– Auto parts	+ 3,310
• Imports	
– Furniture	+ 5,518
– Plastics	+ 3,391
– Fabrics/Cotton	+ 2,559
– Grocery Products	+ 2,552
– Fruits	+ 2,270

Jan-Sep, 2013 vs 2012 Growth



Economic Development Announcements





New Ridge

- Chinese furniture manufacturer and IKEA supplier Liaoyang Ningfeng Woodenware Co. Ltd. will invest \$2.1 million to establish its first U.S. operations, New Ridge LLC, in Smyth County, VA
- The new venture will create 125 jobs in the area
- Virginia successfully completed against Kentucky, Tennessee and West Virginia



辽阳宁峰木业有限公司
LIAOYANG NING FENG WOODENWARE CO.,LTD.



THE PORT OF
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Zeyuan Flooring

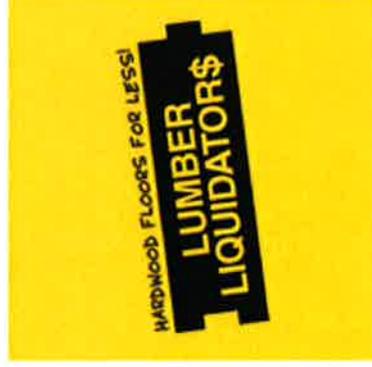
- A Chinese floor manufacturer will invest \$15 million to open a 40,000 square foot flooring factory in Danville, VA
- Zeyuan Flooring International Corp. is opening its first U.S. manufacturing facility and is expected to create 100 jobs over three years
- Products will be exported to Canada, Europe and other countries, and sold throughout the U.S.



THE PORT OF
VIRGINIA

Lumber Liquidators

- Lumber Liquidators, the largest specialty retailer of hardwood flooring in North America, will invest more than \$60 million in expanding its presence in Virginia
- The company plans to create 250 jobs in Virginia during the next three years through the augmentation of its corporate and manufacturing operations. The company is also consolidating its East Coast distribution operations in Henrico County that will allow for the retention of 500 jobs in Virginia





CY 2013 Announcements



DAIKIN MCQUAY™



NEW BREED LOGISTICS



KL AUSNER



DESMI



LIEBHERR

Bassett
bassettfurniture.com

Canon



辽阳宁峰木业有限公司
LIAOYANG MING FENG WOODWARE CO., LTD.



THE PORT OF
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CY 2013 Totals

Total Announcements: 42

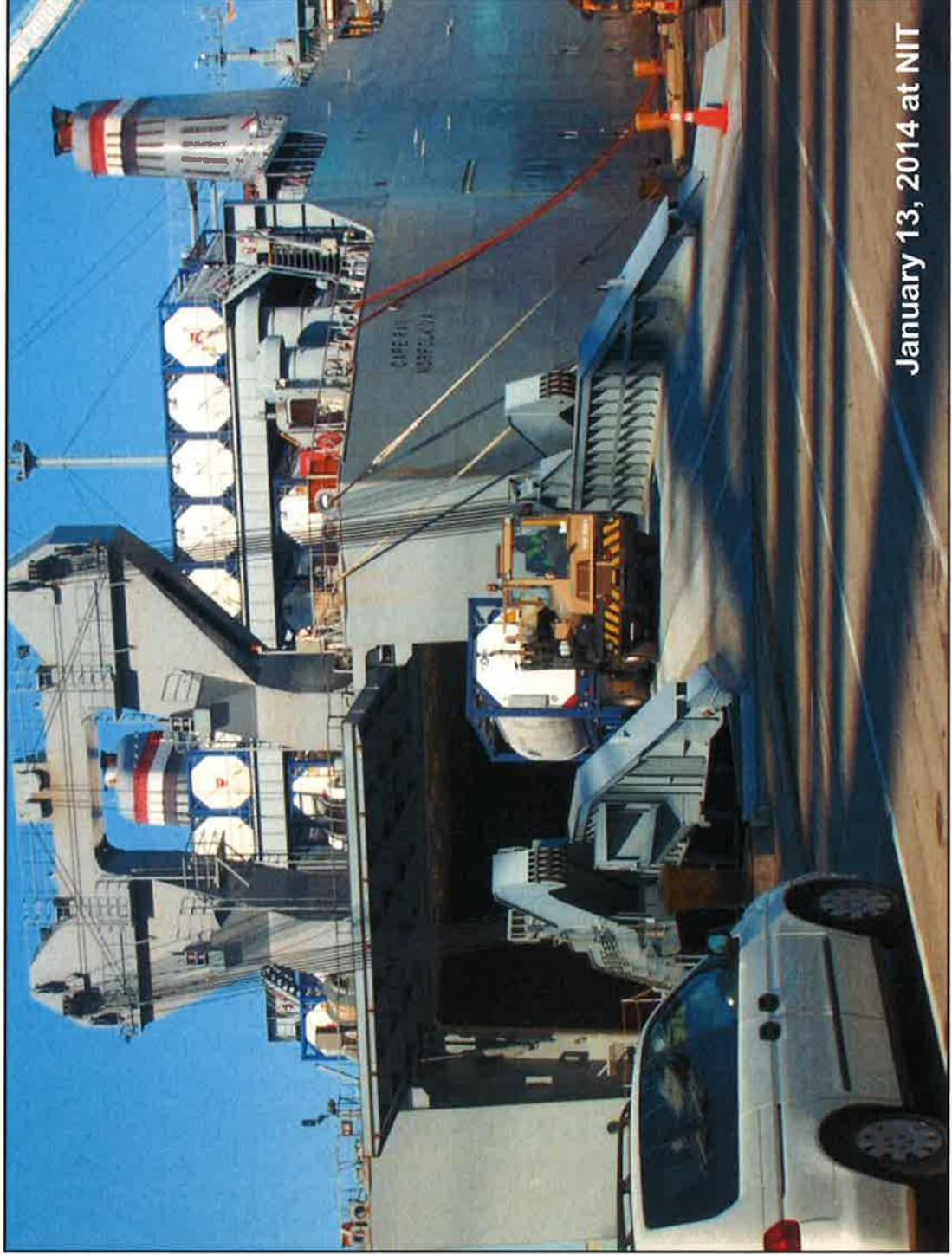
Total Square Feet: Over 4.6 million

Total Jobs Created: Over 4,099

Total Investment: Over \$1.2 billion



MV Cape Ray

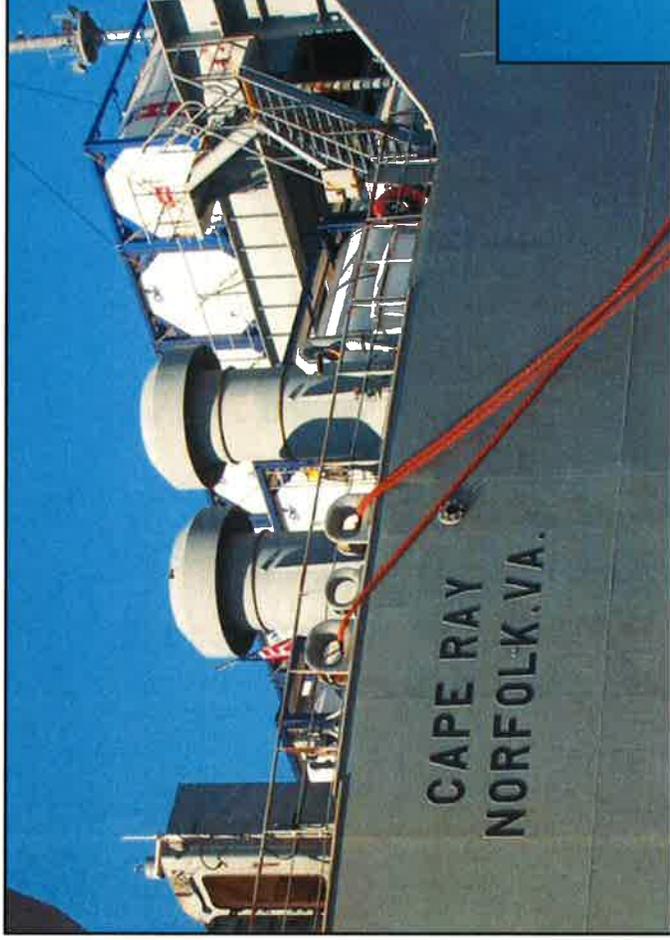


January 13, 2014 at NIT



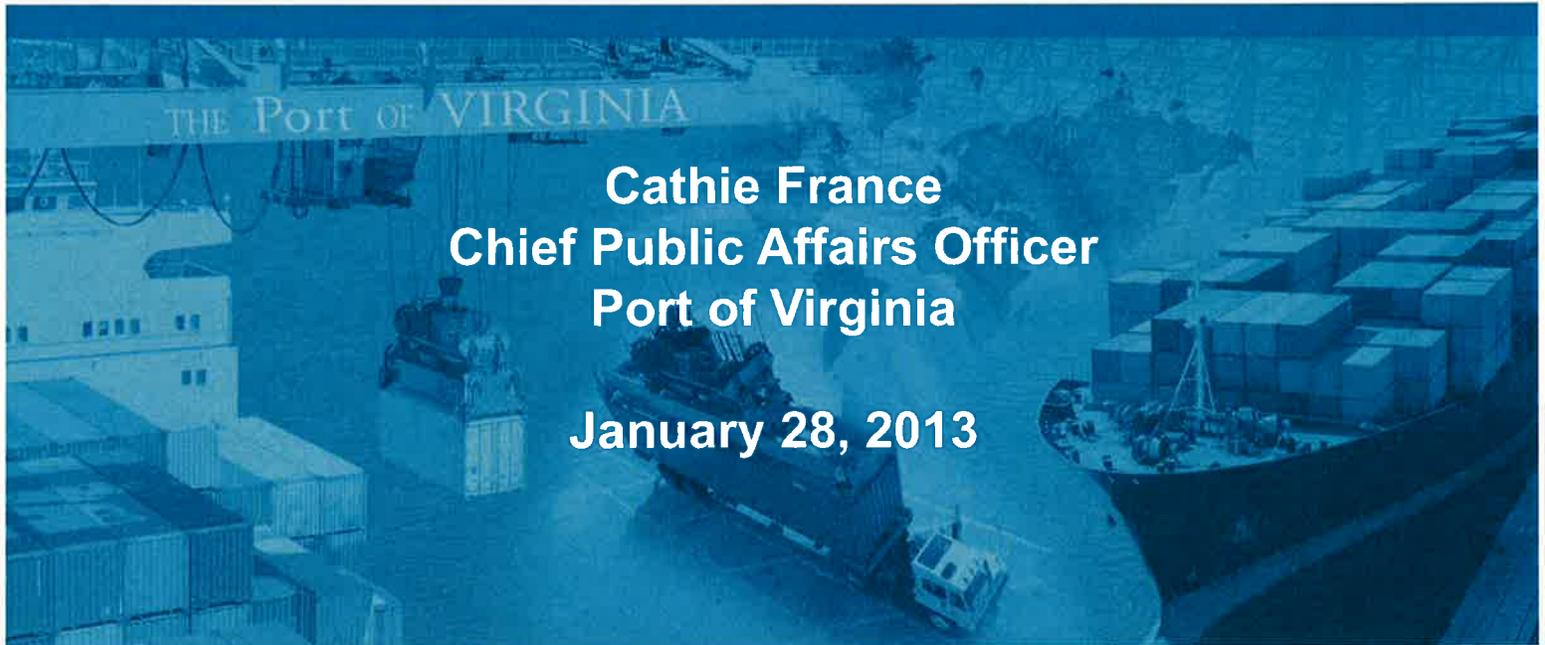
MV Cape Ray

- Worked at NIT
- Headed for Syria
- Will destroy chemical weapons

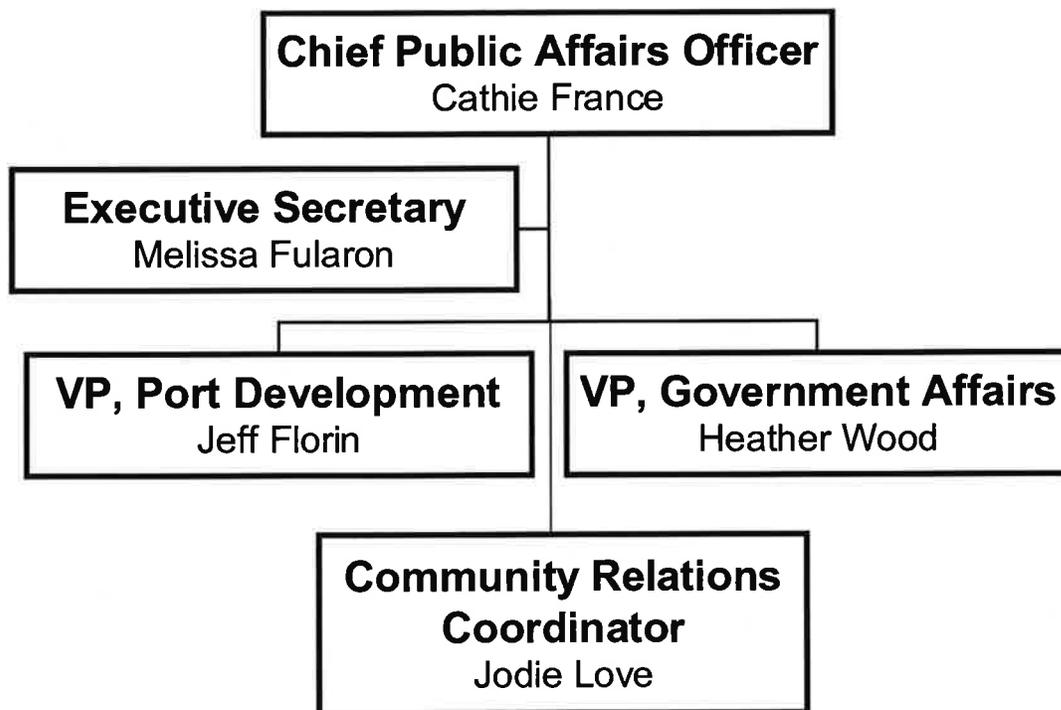




Legislative Update



Organizational Alignment: Public Affairs





Federal Legislative Initiatives

- **WRRDA bill**
 - **land transfer for the CIEE project**
- **FY14/15 Federal appropriations**
 - **USACE share of CIEE**
 - **Strategy focused on the Administration**
- **Port of Virginia Gateway**
 - **Multimodal improvements from Suffolk to CIEE**
 - **Highway reauthorization bill**



General Assembly Update Port of Virginia Legislation

- **HB 672: Port of Virginia Economic & Infrastructure Development Grant**
 - Expands zone to all localities within the Commonwealth
- **HB 873: Port of Virginia Tax Credit Program**
 - Revisions to facilitate administration of tax credit program
 - “Qualified Cargo” includes all cargo types moved through Port facilities
 - Equalizes required volume increase at 5% among all credits
 - Balances funding among all credits.



General Assembly Update FY15-16 Biennial Budget

➤ **FY15-16 Budget requests**

- **\$10M for 55', 50' & 45' channel deepening projects**
 - **\$6.5M in Governor's budget**
- **Appropriation language for terminal operating equipment, \$37M**
- **\$105.5 million special fund (terminal revenue) bond issue for NIT expansion**
 - **Authorized in 2013 Acts of Assembly**
 - **Revised language for clarification of use**



General Assembly Update Legislation of Interest

- **SJ 69: Master Rail Plan 2014**
 - OIPI to prepare in conjunction w/ DRPT & VPA
- **SB 513: HR Transportation Accountability Commission created**
 - Manage regional transportation planning in HR
 - Prioritization & approval of projects
 - VPA, VDOT & DRPT - nonvoting ex-officio members
- **HB 876: VPA Board of Commissioners**
 - Adds 1 member w/ maritime shipping experience from 3 or more nominations from VMA
 - Board member may be removed for malfeasance, neglect of duty



General Assembly Update

FY15-16 Biennial Budget Amendments

- **Joannou: budget amendment to increase PILOT and reduce Port Administrative funds by \$50,000 annually**
- **Peace: rail crossing projects managed by the VPA shall not be required to have a non-public match**
- **Peace: VEDP shall convene a Task Force to coordinate international trade missions**