

## RESOLUTION 16-8

### RESOLUTION AUTHORIZING THE VIRGINIA PORT AUTHORITY'S LONG-TERM LEASE OF THE MARINE TERMINAL OWNED BY VIRGINIA INTERNATIONAL GATEWAY, INC., THE DEVELOPMENT AND FINANCING OF THE PHASE II EXPANSION PROJECT AND RELATED MATTERS

The Virginia Port Authority (the "Authority"), a body corporate and a political subdivision of the Commonwealth of Virginia, has been established pursuant to Chapter 10, Title 62.1 of the Code of Virginia of 1950, as amended (the "Act").

Pursuant to the Act, the Authority is empowered to rent, lease, buy, own, acquire, construct, reconstruct, and dispose of harbors, seaports, port facilities and such property, whether real or personal, as it may find necessary or convenient and issue revenue bonds therefore without pledging the faith and credit of the Commonwealth.

Pursuant to the Act, it is the duty of the Authority, on behalf of the Commonwealth, to foster and stimulate the commerce of the ports of the Commonwealth and related facilities by serving as the United States Eastern Seaboard gateway for the global import and export of freight throughout the world, to promote the shipment of freight through the maritime and inland ports, to seek to secure necessary improvements of navigable tidal waters within the Commonwealth, and in general to perform any act or function that may be useful in developing, improving, or increasing the commerce, both foreign and domestic, of all maritime and inland ports of the Commonwealth and related facilities.

Virginia International Gateway, Inc., a Virginia corporation ("VIG"), owns a container cargo marine terminal (the "Terminal") on 230 acres of land, having an address of 1000 Virginia International Gateway Boulevard, Portsmouth, Virginia 23703. The Terminal was opened in September, 2007 and utilizes a 3200 foot long pier with a depth of 55 feet. Currently, there are eight cranes on the Terminal. The Terminal also includes 46 acres of undeveloped land and additional river frontage which may be improved to increase the Terminal's container cargo capacity.

The Authority currently leases the Terminal from VIG pursuant to a Deed of Facilities Lease Agreement, dated July 6, 2010 (the "Current Lease"), which has a term that expires on June 30, 2030.

VIG has expressed an interest in entering into an Amended and Restated Deed of Facilities Lease Agreement, dated of even date herewith, with the Authority (the "Restated Lease") which would provide for, among other things, (a) the extension of the term of the Current Lease to December 31, 2065, (b) the development and financing of the 46 acres of undeveloped land and additional river frontage to increase the Terminal's container cargo capacity (the "Phase II Expansion Project"), and (c) the grant to the Authority of an option to

purchase the Terminal from VIG at the end of the term of the Restated Lease, and the Authority has investigated the merits and risks of such Restated Lease.

As part of the overall plan of finance for the development of the Phase II Expansion Project, VIG has expressed an interest in entering into a Construction Authority Agreement (the "CAA") and an Installment Sale Contract (the "ISC"), both dated of even date herewith, with the Authority which provide for the development and financing of the Phase II Expansion Project and the acquisition and financing of various equipment and other assets to be located on the Terminal, and the Authority has investigated the merits and risks of the CAA and the ISC.

In connection with the extension of the term of the Current Lease, it is necessary for the Authority to enter into the following additional transaction documents:

1. Amendment No. 1 to Environmental Agreement, by and between VIG, the Authority, and Virginia International Terminals, LLC ("VIT"), dated of even date herewith (the "Environmental Agreement");
2. Amended and Restated Easement Agreement, by and among VIG, the Authority and VIT, dated of even date herewith (the "Easement Agreement");
3. Amendment No. 1 to Confidential License Agreement, by and between VIG and the Authority, dated of even date herewith (the "License Agreement");
4. Amended and Restated Memorandum of Deed of Facilities Lease Agreement, by and between VIG and the Authority, dated of even date herewith (the "Memorandum"); and
5. Amended and Restated Subordination, Non-Disturbance, Attornment Agreement, by and among the Authority, VIT, VIG and MUFG Union Bank, N.A., to be dated the date of its execution and delivery (the "SNDA").

In connection with the extension of the term of the Current Lease, it is necessary for VIT to enter into an Amended and Restated Facilities Maintenance and Lease Compliance Agreement with VIG, dated of even date herewith (the "FMA"), the Easement Agreement, the Environmental Agreement and the SNDA.

There has been presented to the Authority's Board of Commissioners (the "Board") (a) the Restated Lease, including the Exhibits and Schedules attached thereto, (b) the CAA, including the Exhibits and Schedules attached thereto, (c) the ISC, including the Exhibits and Schedules attached thereto, (d) the Environmental Agreement, (e) the Easement Agreement, (f) the License Agreement, (g) the Memorandum and (h) the SNDA (collectively, the "VPA Restated Lease Documents") and the FMA.

The Board has duly reviewed and considered the forms of the VPA Restated Lease Documents and the FMA and has determined that all are in acceptable form. The Board has found and determined that the extension of the term of the Current Lease and the development

and financing of the Phase II Expansion Project on the terms contemplated by the VPA Restated Lease Documents and the FMA are in conformity with the purposes of the Authority set forth in the Act and are in the public interest and otherwise beneficial to the Commonwealth of Virginia.

NOW THEREFORE, IT IS RESOLVED by the Board of Commissioners of the Virginia Port Authority, as follows:

Section 1. Approval of Lease. The form of the VPA Restated Lease Documents and the FMA presented at this meeting and the execution and delivery of the VPA Restated Lease Documents by the Authority are hereby authorized. The Executive Director shall obtain the approvals of the Attorney General's Office, the Secretary of Finance, the Secretary of Transportation and the Governor, as necessary, prior to, or concurrently with, approving and executing the VPA Restated Lease Documents on behalf of the Authority. The Authority authorizes the execution and delivery of the FMA, the Easement Agreement, the Environmental Agreement and the SNDA by the Chief Operations Officer of VIT.

Section 2. Approval of Other Documents. The Board hereby authorizes the Executive Director to approve the form and content of, and to execute and deliver, all Transaction Documents, as that term is defined in the Restated Lease, to which the Authority is a party, on behalf of the Authority, the execution of such Transaction Documents by the Executive Director to be conclusive evidence of his approval of the form and content thereof. The Board hereby further authorizes the Executive Director to execute and deliver any ancillary documents on the Commencement Date, as that term is defined in the Restated Lease, which he deems necessary to cause the Commencement Date under the Restated Lease to occur on a timely basis.

Section 3. Ratification; Further Action. The actions previously taken by the officers and staff of the Authority are hereby ratified and confirmed. The officers and staff of the Authority, any of whom may act, are hereby authorized to take such actions, and deliver such additional documents and certificates, as they may in their discretion deem necessary or proper in connection with the transactions contemplated by the VPA Restated Lease Documents and the FMA.

Section 4. Other Definitions. All terms not otherwise defined herein, shall have the meanings given to them in the Restated Lease.

Section 5. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 21st day of September, 2016.

---

John G. Milliken  
Chairman

ATTEST:

---

Debra J. McNulty  
Clerk

31954048v.1