



VIRGINIA PORT AUTHORITY
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MEMORANDUM OF BOARD ACTION

To: Virginia Port Authority Board of Commissioners
From: John G. Milliken, Chairman of the Board of Commissioners
Faith B. Power, Chair of the Finance and Audit Committee
Date: March 25, 2019
Subject: Action taken pursuant to Bylaws Section 3.4.1: The Executive Director's authority to execute an Amendment to the Master Equipment Lease Agreement

Legal Authority:

The Virginia Port Authority (the "Authority"), a body corporate and a political subdivision of the Commonwealth of Virginia, was 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.

Section 3.4.1 of the Authority's Bylaws, amended and restated as of November 1, 2016, permits the Executive Director to enter into contracts, agreements or arrangements on the Authority's behalf in excess of \$2,500,000 without the written consent of the Board if the Executive Director has obtained the prior written consent of the Chairman of the Board and the Chairman of the Finance and Audit Committee.

The Authority acting by its Board of Commissioners (the "Board") has heretofore adopted Resolution No. 17-12 (the "Master Lease Resolution"), authorizing a Master Lease Financing Agreement (the "Master Lease") with Banc of America Public Capital Corp (the "Lessor") to implement a financing plan to finance the acquisition of up to \$37,000,000 in terminal operating equipment.

Action(s) Taken:

- The Authority has previously financed terminal operating equipment under a Master Lease in two separate financings in the aggregate principal amount of \$29,937,422.90, leaving a remaining balance of \$7,062,577.10 for additional equipment financings.
- The Authority desires to finance the acquisition of additional terminal operating equipment under the Master Lease with a total estimated cost in excess of the remaining balance, making it necessary to increase the amount of acquisition financing available by an additional \$30,000,000 and extend the term for an additional year to September 30, 2021.
- In furtherance of the proposed Master Lease Amendment, a TEFRA Hearing was duly noticed for February 14, 2019. There was no public comment.

- On February 15, 2019, pursuant to the Authority's Bylaws, Section 3.4.1, the Chairman of the Board and the Chairman of the Finance and Audit Committee executed Certificates of Approval and Consent delegating to the Executive Director the authority to approve the documentation required to evidence the increase in amount and extension of the Master Lease, execute and deliver such documentation and approve the aggregate principal amount, the term, the interest rates, the repayment provisions and other details thereof subject to the parameters specified. See *attached* Certificates of Approval and Consent.
- On February 25, 2019, the Treasury Board of the Commonwealth of Virginia approved a Resolution approving the plan of financing proposed by the Authority to increase the equipment funding amount and to extend the funding term of the Master Lease. See *attached* Treasury Board Resolution.

Conclusion:

- Pursuant to Section 3.4.1 of the Authority's Bylaws, on February 15, 2019 the Chairman of the Board and the Chairman of the Finance and Audit Committee provided written consent delegating to the Executive Director the authority to approve the documentation required to evidence the increase in amount and extension of the Master Lease, execute and deliver such documentation and approve the aggregate principal amount, the term, the interest rates, the repayment provisions and other details thereof subject to the parameters specified. This action was subsequently approved by the Treasury Board of the Commonwealth of Virginia.

**CHAIRMAN'S CERTIFICATE OF APPROVAL AND CONSENT
AUTHORIZING THE EXTENSION OF THE TERM AND INCREASE
IN AMOUNT OF A PREVIOUSLY APPROVED MASTER LEASE
EQUIPMENT FINANCING PROGRAM WITH BANC OF AMERICA
PUBLIC CAPITAL CORP FOR THE ACQUISITION OF TERMINAL
OPERATING EQUIPMENT IN THE AGGREGATE PRINCIPAL
AMOUNT UP TO AN ADDITIONAL \$30,000,000, AND
DELEGATING TO THE EXECUTIVE DIRECTOR OF THE
AUTHORITY RESPONSIBILITY FOR FIXING THE PRINCIPAL
AMOUNT, THE TERM, THE INTEREST RATES, THE REPAYMENT
PROVISIONS AND OTHER DETAILS THEREOF, AND
AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH
DOCUMENTATION IN CONNECTION THEREWITH.**

WHEREAS, the Virginia Port Authority (the "Authority") acting by its Board of Commissioners (the "Board") has heretofore adopted Resolution No. 17-12 (the "Master Lease Resolution"), authorizing a Master Lease Financing Agreement (the "Master Lease") with Banc of America Public Capital Corp (the "Lessor") to implement a financing plan to finance the acquisition of up to \$37,000,000 in terminal operating equipment; and

WHEREAS, the Authority has previously financed equipment under the Master Lease in two separate financings in the aggregate principal amount of \$29,937,422.90, leaving a remaining balance of \$7,062,577.10 for additional equipment financings; and

WHEREAS, the Authority desires to finance the acquisition of additional equipment under the Master Lease with a total estimated cost in excess of the remaining balance, making it necessary to increase the amount of acquisition financing available thereunder and the term thereof; and

WHEREAS, the Master Lease by its terms permits an increase in the amount of acquisition financing thereunder in an amount up to an additional \$30,000,000 and permits the extension of the term of the procurement period for up to one year; and

WHEREAS, pursuant to Item C-40, Chapter 2 of the 2018 Virginia Acts of Assembly the General Assembly of the Commonwealth of Virginia has authorized the acquisition by the Authority of terminal operating equipment at a total cost of \$37,000,000, such amount is in addition to the \$37,000,000 previously authorized by the General Assembly in connection with the Master Lease; and

WHEREAS, payments made by the Authority pursuant to the Master Lease have been designated as Subordinate Obligations under the Resolution No. 16-9 (the "Bond Resolution") and, as such, subordinate as to payment from the Authority's Net Revenue to the Senior Obligations outstanding from time to time under the Bond Resolution; and

WHEREAS, Section 3.4.1 of the Authority's Bylaws, amended and restated as of November 1, 2016, permits the Executive Director to enter into contracts, agreements or

arrangements on the Authority's behalf in excess of \$2,500,000 without the written consent of the Board if the Executive Director has obtained the prior written consent of the Chairman of the Board and the Chairman of the Finance and Audit Committee.

WHEREAS, the Chairman of the Board and the Chairman of the Finance and Audit Committee have determined that it is necessary to delegate to the Executive Director the authority to approve the documentation required to evidence the increase in amount and extension of the Master Lease, execute and deliver such documentation and approve the aggregate principal amount, the term, the interest rates, the repayment provisions and other details thereof subject to the parameters established hereby.

NOW, THEREFORE, the Undersigned Chairman of the Finance and Audit Committee hereby approves and consents on behalf of the Board of the Authority, as follows:

Section 1. Authorization and Increase of Amount and Extension of Term.

(a) The Authority is hereby authorized to acquire additional equipment pursuant to the financing plan evidenced by the Master Lease in the principal amount up to an additional \$30,000,000 above the prior authorization under the Master Lease Resolution.

(b) As previously designated by the Board in the Master Lease Resolution, the Master Lease obligations will be Subordinate Obligations under the Bond Resolution.

Section 2. Terms of Extension. The Executive Director is hereby authorized, if the Authority's Financial Advisor shall so recommend, to:

(a) Extend the procurement period under the Master Lease for an additional one year from the September 30, 2020 initial termination date to September 30, 2021; and

(b) Provide for the interest portion of the payments made thereunder to be calculated using a rate per annum not to exceed 4.50% for tax-exempt lease payments and 6.0% for taxable lease payments.

Section 3. Approval of Documents. The Executive Director is hereby authorized to approve the form of the documentation required to evidence the increase and extension under the Master Lease herein authorized, including any amendments or modifications to the Master Lease and any related agreements. The execution and delivery of such documentation is hereby authorized.

Section 4. Official Intent. The Authority intends that the proceeds from the Master Lease be used to pay or reimburse the Authority for the payment of any expenditures made after the effective date of this authorization with regard to expenditures incurred in connection with the equipment. The execution of this Certificate confirms the "official intent" of the Authority within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended.

Section 5. Tax Covenant. The Authority covenants that it will comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), so that interest portion of the payments on tax-exempt lease payments made to the Lessor pursuant to the Agreement do not become includable in gross income of the Lessor for federal income tax purposes under the Code.

Section 6. 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 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 increase and extension Master Lease herein authorized.

Section 7. Treasury Board Approval. The Authority requests the Treasury Board of the Commonwealth of Virginia to approve the financing lease terms and structure in accordance with Section 2.2-2416.5 of the Code of Virginia of 1950, as amended. Staff is authorized and directed to apply for such approval.

Section 8. Effective Date. This authorization herein provided shall take effect immediately on the date hereof.

Date: February 15, 2019

By: *Faith B. Parker*

Name: Faith B. Parker
(Printed)

Title: Chairman of the Finance and Audit
Committee

CHAIRMAN'S CERTIFICATE OF APPROVAL AND CONSENT AUTHORIZING THE EXTENSION OF THE TERM AND INCREASE IN AMOUNT OF A PREVIOUSLY APPROVED MASTER LEASE EQUIPMENT FINANCING PROGRAM WITH BANC OF AMERICA PUBLIC CAPITAL CORP FOR THE ACQUISITION OF TERMINAL OPERATING EQUIPMENT IN THE AGGREGATE PRINCIPAL AMOUNT UP TO AN ADDITIONAL \$30,000,000, AND DELEGATING TO THE EXECUTIVE DIRECTOR OF THE AUTHORITY RESPONSIBILITY FOR FIXING THE PRINCIPAL AMOUNT, THE TERM, THE INTEREST RATES, THE REPAYMENT PROVISIONS AND OTHER DETAILS THEREOF, AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH DOCUMENTATION IN CONNECTION THEREWITH.

WHEREAS, the Virginia Port Authority (the "Authority") acting by its Board of Commissioners (the "Board") has heretofore adopted Resolution No. 17-12 (the "Master Lease Resolution"), authorizing a Master Lease Financing Agreement (the "Master Lease") with Banc of America Public Capital Corp (the "Lessor") to implement a financing plan to finance the acquisition of up to \$37,000,000 in terminal operating equipment; and

WHEREAS, the Authority has previously financed equipment under the Master Lease in two separate financings in the aggregate principal amount of \$29,937,422.90, leaving a remaining balance of \$7,062,577.10 for additional equipment financings; and

WHEREAS, the Authority desires to finance the acquisition of additional equipment under the Master Lease with a total estimated cost in excess of the remaining balance, making it necessary to increase the amount of acquisition financing available thereunder and the term thereof; and

WHEREAS, the Master Lease by its terms permits an increase in the amount of acquisition financing thereunder in an amount up to an additional \$30,000,000 and permits the extension of the term of the procurement period for up to one year; and

WHEREAS, pursuant to Item C-40, Chapter 2 of the 2018 Virginia Acts of Assembly the General Assembly of the Commonwealth of Virginia has authorized the acquisition by the Authority of terminal operating equipment at a total cost of \$37,000,000, such amount is in addition to the \$37,000,000 previously authorized by the General Assembly in connection with the Master Lease; and

WHEREAS, payments made by the Authority pursuant to the Master Lease have been designated as Subordinate Obligations under the Resolution No. 16-9 (the "Bond Resolution") and, as such, subordinate as to payment from the Authority's Net Revenue to the Senior Obligations outstanding from time to time under the Bond Resolution; and

WHEREAS, Section 3.4.1 of the Authority's Bylaws, amended and restated as of November 1, 2016, permits the Executive Director to enter into contracts, agreements or

arrangements on the Authority's behalf in excess of \$2,500,000 without the written consent of the Board if the Executive Director has obtained the prior written consent of the Chairman of the Board and the Chairman of the Finance and Audit Committee.

WHEREAS, the Chairman of the Board and the Chairman of the Finance and Audit Committee have determined that it is necessary to delegate to the Executive Director the authority to approve the documentation required to evidence the increase in amount and extension of the Master Lease, execute and deliver such documentation and approve the aggregate principal amount, the term, the interest rates, the repayment provisions and other details thereof subject to the parameters established hereby.

NOW, THEREFORE, the Undersigned Chairman of the Board hereby approves and consents on behalf of the Board of the Authority, as follows:

Section 1. Authorization and Increase of Amount and Extension of Term.

(a) The Authority is hereby authorized to acquire additional equipment pursuant to the financing plan evidenced by the Master Lease in the principal amount up to an additional \$30,000,000 above the prior authorization under the Master Lease Resolution.

(b) As previously designated by the Board in the Master Lease Resolution, the Master Lease obligations will be Subordinate Obligations under the Bond Resolution.

Section 2. Terms of Extension. The Executive Director is hereby authorized, if the Authority's Financial Advisor shall so recommend, to:

(a) Extend the procurement period under the Master Lease for an additional one year from the September 30, 2020 initial termination date to September 30, 2021; and

(b) Provide for the interest portion of the payments made thereunder to be calculated using a rate per annum not to exceed 4.50% for tax-exempt lease payments and 6.0% for taxable lease payments.

Section 3. Approval of Documents. The Executive Director is hereby authorized to approve the form of the documentation required to evidence the increase and extension under the Master Lease herein authorized, including any amendments or modifications to the Master Lease and any related agreements. The execution and delivery of such documentation is hereby authorized.

Section 4. Official Intent. The Authority intends that the proceeds from the Master Lease be used to pay or reimburse the Authority for the payment of any expenditures made after the effective date of this authorization with regard to expenditures incurred in connection with the equipment. The execution of this Certificate confirms the "official intent" of the Authority within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended.


Section 5. Tax Covenant. The Authority covenants that it will comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), so that interest portion of the payments on tax-exempt lease payments made to the Lessor pursuant to the Agreement do not become includable in gross income of the Lessor for federal income tax purposes under the Code.

Section 6. 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 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 increase and extension Master Lease herein authorized.

Section 7. Treasury Board Approval. The Authority requests the Treasury Board of the Commonwealth of Virginia to approve the financing lease terms and structure in accordance with Section 2.2-2416.5 of the Code of Virginia of 1950, as amended. Staff is authorized and directed to apply for such approval.

Section 8. Effective Date. This authorization herein provided shall take effect immediately on the date hereof.

Date: February 15, 2019

By: 

Name: JOHN G. MILLIKEN
(Printed)

Title: Chairman of the Board

**RESOLUTION APPROVING AN INCREASE AND EXTENSION
OF AN EXISTING MASTER EQUIPMENT LEASE
PURCHASE PROGRAM FOR THE VIRGINIA PORT AUTHORITY AND
DELEGATING TO THE STATE TREASURER AUTHORITY TO
APPROVE THE TERMS THEREOF**

WHEREAS, the Treasury Board of the Commonwealth of Virginia (the "Board") is required, pursuant to Sections 2.2-2416 and 2.2-2417 of the Code of Virginia of 1950, as amended (the "Virginia Code"), to approve the terms and structure of financing arrangements, including financing leases, executed by or for the benefit of state agencies, boards and authorities, where payments are expected to be made by appropriations from the Commonwealth;

WHEREAS, on October 18, 2017, the Board by resolution previously approved a \$37 million master equipment lease/purchase financing program for the Authority with Banc of America Public Capital Corp pursuant to a Master Equipment Lease Agreement (the "Agreement"), after approval thereof by the Board of Commissioners of the Virginia Port Authority (the "Authority") by resolution 17-12 adopted on September 26, 2017 pursuant to authorization provided in the 2015 Virginia Acts of Assembly;

WHEREAS, the Authority has financed \$29.9 million in equipment under the Agreement and now desires to acquire additional equipment thereunder, the cost of which exceeds the remaining amount that may be funded, and to extend the term under which equipment may be acquired under the Agreement;

WHEREAS, the Agreement by its terms permits additional funding thereunder up to \$30 million and the extension of up to one year from September 30, 2020 to September 30, 2021 of the term under which equipment may be acquired with such funding;

WHEREAS, payments under the Agreement are to be paid from net revenues derived from the operation of the Authority's port facilities, which payments from net revenues are subordinate to payments on the Authority Port Facility Revenue Bonds and other Senior Obligations now in existence or to be issued under the Authority's master bond resolution, and such payments are also subject to appropriation by the Virginia General Assembly;

WHEREAS, under authority granted by the Bylaws of the Authority pursuant to written consents of the Chairman of the Board of Commissioners of the Authority and the Chairman of the Finance and Audit Committee, such officers have on behalf of the Authority Board authorized a First Amendment (the "Amendment") to the Agreement to permit the increase in funding thereunder in an amount up to \$30 million and the extension of the equipment acquisition period thereunder for up to an additional year to September 30, 2021, and delegated to the Executive Director of the Authority approval of the form of the Amendment and the final terms and details thereof within parameters established by the consents of such officers;

WHEREAS, pursuant to Item C-40, Chapter 2 of the 2018 Virginia Acts of Assembly, Virginia General Assembly has authorized the acquisition by the Authority of terminal operating equipment at a total cost of up to \$37 million, such authorization being in addition to the \$37 million authorized in 2015 Virginia General Assembly; and

WHEREAS, the terms and structure of the proposed financing are described in a Preliminary Financing Summary (the "Preliminary Financing Summary"), copies of which, together with copies of the Agreement and the Amendment, have been presented to this meeting and the members of the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD THAT:

1. The plan of financing proposed by the Authority to increase the equipment funding amount and to extend the funding term under the Agreement pursuant to the Amendment as outlined in the Preliminary Financing Summary presented to this meeting, is hereby approved, subject to further approval by the State Treasurer pursuant to Section 2 of this Resolution.

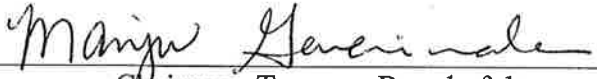
2. Pursuant to Section 2.2-2416(9) of the Virginia Code, the Board deems it proper and delegates to the State Treasurer authority to act for and on behalf of the Board and to take such action as the State Treasurer, in the State Treasurer's sole discretion, may deem necessary or appropriate to approve the final terms and structure of the Agreement as amended pursuant to the Amendment, **provided, however**, (i) the maximum amount of equipment that may be financed under the Amendment shall not exceed \$30,000,000, which amount is in addition to the amount authorized by the Board on October 18, 2017 (ii) the interest portion of lease payments thereunder may not exceed an annual rate of 4.50% for tax-exempt lease payments and 6.00% for taxable lease payments; and (iii) the term thereunder for acquiring equipment shall be not later than September 30, 2021. The Authority may enter into one or more leases under the Agreement as amended pursuant to the Amendment within the parameters herein established, and as is the case with lease payments under the Agreement as currently in existence, such lease payments made in connection with the Amendment shall be subject to appropriation by the Virginia General Assembly.

3. The State Treasurer is authorized to take such further action as is necessary to carry out the purposes and intent of this Resolution.

4. This Resolution shall take effect immediately upon its adoption, and shall remain in effect for a period of one year after the date of adoption.

The undersigned Chairman of the Treasury Board of the Commonwealth of Virginia certifies that the foregoing is a true and correct copy of a Resolution adopted by the Treasury Board at a duly called meeting held on February 25, 2019.

Date: February 25, 2019



Chairman, Treasury Board of the
Commonwealth of Virginia