

Resolution No. 20-16

RESOLUTION AUTHORIZING THE ACQUISITION OF TERMINAL OPERATING EQUIPMENT IN THE AGGREGATE PRINCIPAL AMOUNT UP TO \$63,000,000 THROUGH ONE OR MORE FINANCING PROGRAMS; ESTABLISHING GUIDELINES AND STANDARDS 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 OF SUCH FINANCING PROGRAM; AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE OR OTHER SUCH AGREEMENT EVIDENCING THE FINANCING PROGRAM.

WHEREAS, the Virginia Port Authority (the "Authority") acting by its Board of Commissioners (the "Board") has heretofore adopted Resolution No. 16-9 (the "Bond Resolution"), which in Section 510 authorizes the issuance of Subordinate Obligations as defined in the Bond Resolution; and

WHEREAS, pursuant to Item 458, B4 of the 2020 Virginia Acts of Assembly – Chapter 1289, the General Assembly of the Commonwealth of Virginia has authorized the acquisition by the Authority of terminal operating equipment at a total estimated cost of \$63,000,000 (the "Equipment Financing"); and

WHEREAS, the Authority has determined that in connection with the ongoing renovation and renewal and replacement needs of Norfolk International Terminals it is necessary to contract to purchase certain equipment including without limitation Ship to Shore Container Cranes, Rail Mounted Gantry Cranes, Rubber Tire Gantry Cranes, Shuttle Carriers, Reach Stackers, Top Picks, Empty Container Handlers, Yard Hustlers (UTRs), Bomb Carts and other such similar equipment (collectively, the "Equipment"), which Equipment may also be used at Portsmouth Marine Terminal, Richmond Marine Terminal and/or the Virginia Inland Port; and

WHEREAS, the Authority has determined that in connection with ongoing renovation and renewal and replacement needs of its Virginia International Gateway, Inc. ("VIG") facility it is necessary to contract to purchase certain Equipment; and

WHEREAS, the Authority has entered into an Amended and Restated Deed of Facilities Lease Agreement, a Construction Authority Agreement and an Installment Sale Contract, each dated September 21, 2016 (the "Senior Documents"), with VIG; and

WHEREAS, the Senior Documents obligate the Authority to make payments of Senior Obligations, as defined in the Bond Resolution, to VIG; and

WHEREAS, the Authority has issued, and there are currently outstanding in the aggregate principal amount of \$261,145,000 multiple series of its Port Facilities Revenue Refunding Bonds (the "Outstanding Bonds") and \$60,692,849 in Subordinate Obligations; and

WHEREAS, the Equipment will be acquired pursuant to a financing program evidenced by a Master Equipment Lease Agreement and subsequent equipment lease schedules (the "Agreement"), between the Authority and SunTrust Equipment Finance & Leasing Corp (the "Lessor"), to be dated the closing date thereof; and

WHEREAS, payments made by the Authority pursuant to the Agreement will be Subordinate Obligations under the Bond Resolution and, as such, subordinate as to payment from the Authority's Net Revenue to the Senior Obligations, the Outstanding Bonds and any other Bonds outstanding from time to time under the Bond Resolution; and

WHEREAS, the Board has found and determined that the obligations that will be evidenced by the Agreement on the terms contemplated hereby 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;

WHEREAS, the Board has determined that it is necessary to delegate to the Executive Director the authority to approve the form of the Agreement, execute the Agreement and approve the aggregate principal amount, the term, the interest rates, the repayment provisions and other details thereof that have not yet been finalized, but subject to the parameters established hereby;

WHEREAS, on March 12, 2020, Governor Northam issued Executive Order Fifty-One declaring a state of emergency pursuant to Virginia Code Section 44-146.17 to help the Commonwealth better respond to the threat posed by the COVID-19 virus pandemic;

WHEREAS, the reconvened session of the 2020 Virginia General Assembly adopted amendments to the budget bill proposed by Governor Northam allowing any public body, including any state, local, regional or regulatory board to meet by electronic communication means without a quorum of the public body or any member of the governing body physically assembled at one location when the Governor has declared a state of emergency in accordance with Virginia Code Section 44-146.17 provided (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of the meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body and the discharge of its lawful purpose, duties and responsibilities; (iii) the public body makes available a recording or transcript of the meeting on its website in accordance with certain time frames set forth in Sections 2.2-3707 and 2.2-3701.1 of the Virginia Code; (iv) public notice, where required, is given using the best available method given the nature of the emergency; (v) arrangements are made for public access to the meeting through electronic means, and if the means of communication allow, to provide an opportunity for public comment; and (vi) the minutes of the meeting specify the nature of the emergency, the fact that the meeting was held by electronic communications and the type of electronic communications by which the meeting was held;

WHEREAS, the nature of the Governor's declaration of emergency arising from the COVID-19 pandemic and related social distancing measures implemented by the Governor to mitigate the spread of COVID-19 make it impracticable or unsafe for the Board to assemble in a single location to meet;

WHEREAS, the Board is meeting to discuss and transact the business of the Authority, which is to provide for the funding of the Authority's capital needs, and the Board deems it necessary to meet by electronic communications without physical assembly of members of the Board; and

WHEREAS, accommodations have been made for public notice of, and public access to, the meeting as required by the aforementioned electronic meeting requirements.

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

Section 1. Authorization of the Obligations Evidenced by the Agreement as Subordinate Obligations. (a) Pursuant to Section 510 of the Bond Resolution, the Authority is hereby authorized to acquire the Equipment pursuant to the Agreement and to pay the costs incident thereto in an aggregate principal amount not to exceed \$63,000,000.

(b) The Agreement and the obligations of the Authority pursuant to the Agreement will be Subordinate Obligations under the Bond Resolution.

(c) Pursuant to the Bond Resolution, the Authority hereby confirms the appointment of Truist Bank, formerly SunTrust Bank and Branch Banking and Trust Company, or an affiliate thereof, as a Depository for amounts deposited to the Subordinate Obligations Fund or the applicable account thereof referred to in Section 510 of the Bond Resolution. In connection with the Agreement and the transactions contemplated thereby, the establishment of an account or subaccount within the Subordinate Obligations Fund is authorized and approved.

Section 2. Terms of Agreement. The Executive Director is hereby authorized, if the Authority's Financial Advisor shall so recommend, to accept an offer of the Lessor to provide financing for the Equipment in the form of the Agreement whereby such Agreement:

(i) shall be for a term not to exceed September 30, 2023; and

(ii) shall provide for the interest portion of the payments made thereunder to be calculated using a rate per annum not to exceed 4.0% for tax-exempt lease payments and 5.0% for taxable lease payments.

Section 3. Approval of Agreement. The Executive Director is hereby authorized to approve the form of the Agreement. The execution and delivery of the Agreement in accordance with Section 2 hereof by the Authority is hereby authorized, and if the

Executive Director shall accept the offer of the Lessor, the Agreement shall be executed in the manner therein set forth to evidence the acceptance by the Authority of such offer.

Section 4. Official Intent. The Authority intends that the proceeds from the Equipment Financing be used to pay or reimburse the Authority for the payment of any expenditures made after the date of this Resolution or made within 60 days prior to the date of this Resolution with regard to expenditures incurred in connection with the Equipment. The Authority intends to make a reimbursement allocation, which is a written allocation by the Authority that evidences the Authority's use of proceeds of the Equipment Financing to reimburse an expenditure, no later than 18 months after the later of the date on which the expenditure is paid or the Equipment is placed in service or abandoned, but in no event more than three years after the date on which the expenditure is paid. The Authority recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, and certain *de minimis* amounts. Each expenditure will be, unless otherwise approved by Kaufman & Canoles, a Professional Corporation, the Authority's approved bond counsel, either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the expenditure), (b) a cost of issuance with respect to the Equipment Financing, or (c) a nonrecurring item that is not customarily payable from current revenues. The Board intends that the adoption of this Resolution 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 (the "Code"). Pursuant to Section 1.150-2(e)(1) of the Treasury Regulations, the Authority hereby designates its Executive Director and Chief Financial Officer, either of whom may act, as persons authorized to declare official intent on behalf of the Authority pursuant to the Treasury Regulations, regarding the Authority's intent to reimburse itself for expenses incurred prior to the date of this Resolution with regard to expenditures incurred in connection with the Equipment.

Section 5. Tax Covenant; Public Hearings. The Authority covenants that it will comply with the provisions of the Code, so that the 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. Pursuant to Section 147(f) of the Code, and applicable regulations thereunder, the Authority designates its Executive Director and its Chief Financial Officer, either of whom may act, as the public hearing officer to hold any public hearings required in order to ensure the tax-exempt status of the interest portion of the payments on tax-exempt lease payments made to the Lessor pursuant to the Agreement.

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 Agreement.

Section 7. Other Definitions. All capitalized terms not otherwise defined herein shall have the meanings given to them in the Bond Resolution.

Section 8. Confirmation of Electronic Meeting Findings. The Board confirms the findings and determinations contained in the recitals to this Resolution setting forth the reason for the need to meet by electronic means without requiring board members to physically assemble at one location during the current declared state of emergency by the Governor of the Commonwealth arising from COVID-19.

Section 9. Effective Date. This Resolution shall take effect immediately upon its adoption.

[END OF RESOLUTION]

PASSED AND ADOPTED this 22nd day of September, 2020.

John G. Milliken
Chairman

Attest:

Debra J. McNulty
Secretary