

RESOLUTION 17-12

RESOLUTION AUTHORIZING THE ACQUISITION OF TERMINAL OPERATING EQUIPMENT IN THE AGGREGATE PRINCIPAL AMOUNT UP TO \$37,000,000 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; and

WHEREAS, pursuant to Item 454, B.11 of the 2015 Virginia Acts of Assembly – Chapter 665, 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 \$37,000,000 (the “Equipment Financing”); and

WHEREAS, the Authority has determined that in connection with the ongoing renovation of Norfolk International Terminals it is necessary to contract to purchase certain equipment including 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 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, with Virginia International Gateway, Inc. (the “Senior Documents”); and

WHEREAS, the Senior Documents obligate the Authority to make payments of Senior Obligations to Virginia International Gateway, Inc.; and

WHEREAS, the Authority has issued, and there are currently outstanding in the aggregate principal amount of \$278,395,000, multiple series of its Port Facilities Revenue Refunding Bonds (the “Outstanding Bonds”); 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 Banc of America Public Capital 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; and

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.

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 \$37,000,000.

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

(c) Pursuant to the Bond Resolution, the Authority hereby confirms the appointment of Bank of America, Norfolk, Virginia, as Depository for amounts deposited to the Subordinate Obligations Fund referred to in Section 510 of the Bond Resolution.

Section 2. Terms of Agreement. (a) 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, 2020; and

(ii) shall provide for the interest portion of the payments made thereunder to be calculated using a rate per annum not to exceed 6.0%

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 Williams Mullen, 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.

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

[END OF RESOLUTION]

[Signatures on following page.]

[SIGNATURE PAGE TO VIRGINIA PORT AUTHORITY RESOLUTION #17-12]

PASSED AND ADOPTED this 26th day of September, 2017.

John G. Milliken
Chairman

Attest:

Debra J. McNulty
Secretary

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