



VIRGINIA PORT AUTHORITY
600 WORLD TRADE CENTER, NORFOLK, VA 23510
(757) 683-8000

MEMORANDUM OF BOARD ACTION

To: Virginia Port Authority Board of Commissioners
From: John Milliken, Chair of the Board of Commissioners
Faith Power, Chair of the Finance and Audit Committee
Date: July 23, 2019
Subject: Action taken pursuant to Bylaws Section 3.4.1: The Executive Director's authority to execute the Extension of the James River Barge Line (JRBL) Service 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 states that upon obtaining prior written approval by the Chairman of the Board and the Chairman of the Finance and Audit Committee, the Executive Director may enter into a contract, agreement or arrangement on the Authority's behalf in excess of \$2,500,000.

Action(s) Taken:

- The Authority and JRBL entered into Contract 2014-16 ("Service Agreement") dated September 1, 2014 that incorporated Request for Proposals #2014-16, JRBL's submission dated June 13, 2014, and JRBL's Contractor Clarification dated August 6, 2014 for the purpose of the operation of a barge service known as the "64 Express." The Service Agreement term extended through December 31, 2015, renewing annually for up to four (4) additional one-year periods.
- The Authority and JRBL amended the Original Contract by the Addendum to the Service Agreement dated January 22, 2016 (the "Addendum"), for the purpose of scaling the 64 Express to increase capacity.
- Given the increased cargo volumes the barge service is experiencing (over thirty percent volume growth year over year), the addition of a second barge into the operation is necessary for continuity of competitive service. JRBL procured a second barge and the Service Agreement and Addendum were amended to add a second barge and extend the Service Agreement ("JRBL Service Agreement Extension") such that it has the same provision of service and economics as the existing agreement and results in an annual service fee in excess of \$2,500,000.
- The funding for this expanded service was budgeted in the FY2020 budget which was approved by the Authority's Board of Commissioners on May 21, 2019.

- On June 19, 2019, pursuant to the Authority's Bylaws, Section 3.4.1, the Executive Director requested the written approval of the Chair of the Board and the Chair of the Finance and Audit Committee to authorize the Executive Director to approve the final form and content of and, execute and deliver the extension of the JRBL Service Agreement Extension. The written consent of the Chair of the Board and the Chair of the Finance and Audit Committee was granted on June 20, 2019. See *attached* communications granting authorization.

Conclusion:

- Pursuant to Section 3.4.1 of the Authority's Bylaws, upon obtaining the written approval on June 20, 2019 of the Chair of the Board and the Chair of the Finance and Audit Committee, the extension of the JRBL Service Agreement was authorized. Accordingly, the Executive Director duly executed the JRBL Service Agreement Extension.

Debbie McNulty

From: John Reinhart
Sent: Thursday, June 20, 2019 8:23 AM
To: John G. Milliken (jmillik3@gmu.edu); Faith B. Power - Shenandoah University (powerfaith98@gmail.com)
Cc: Sarah McCoy
Subject: FW: JRBL Service Agreement Extension with Contract
Attachments: Proposed Final Barge Services Agreement 6-18-19.pdf

John and Faith,

Resending yesterday's email with full agreement attached.

Best,
John

From: John Reinhart
Sent: Wednesday, June 19, 2019 9:05 AM
To: John G. Milliken (Jmillik3@gmu.edu) <Jmillik3@gmu.edu>; Faith B. Power - Shenandoah University (powerfaith98@gmail.com) <powerfaith98@gmail.com>
Cc: Sarah McCoy <smccoy@PortofVirginia.com>
Subject: JRBL Service Agreement Extension

Chairs Milliken and Power,

As you know we have been working with our transportation partner, the James River Barge Line (JRBL), on the addition of a second barge for our operation to/from Richmond Marine Terminal (RMT).

JRBL has procured the second barge and we have been working with JRBL to amend and extend, for another five years, our existing Service Agreement to account for the new asset.

The amended Service Agreement has the same provision of service and economics as the existing agreement and will result in annual service fee in excess of \$2.5 million.

Given the increased cargo volumes the barge service is experiencing (introduction of Bissell and Brother International), it is important that the new asset is utilized and accounted for as soon as possible.

Accordingly, we bring this Service Agreement extension to the Chairs prior to the July board meeting and request the Chairs written approval for the Executive Director to enter into the extended Service Agreement.

If you have any questions, please do not hesitate to contact me.

Warm regards,

John

John F. Reinhart
CEO and Executive Director

Virginia Port Authority

PLEASE NOTE

The following Barge Services Agreement Extension

Between Virginia Port Authority, Virginia International Terminals, LLC, and James River Barge Line, Ltd. is the DRAFT VERSION that was provided to VPA Board Chairman, John Milliken and Finance and Audit Committee Chair, Faith Power, on June 20, 2019

VIRGINIA PORT AUTHORITY
600 WORLD TRADE CENTER
NORFOLK, VIRGINIA

BARGE SERVICES AGREEMENT EXTENSION

Articles

THIS CONTRACT EXTENSION IS MADE BETWEEN the VIRGINIA PORT AUTHORITY (“VPA”), VIRGINIA INTERNATIONAL TERMINALS, LLC (“VIT”) and JAMES RIVER BARGE LINE, LTD. (“JRBL” or “Contractor”), 508A East Indian River Road, Norfolk, VA 23523, (individually “Party”, collectively “Parties”) and is effective June 1^{***}, 2019 (“Extension”).

Recitals:

R-1 VPA and JRBL entered into Contract #2014-16 (“Original Contract”) dated September 1, 2014 that incorporated Request for Proposals #2014-16, JRBL’s submission dated June 13, 2014, and JRBL’s Contractor Clarification dated August 6, 2014 for the purpose of the operation of a barge service known as the “64 Express”. The Original Contract term extended through December 31, 2015, renewing annually for up to four (4) additional one-year periods.

R-2 VPA and JRBL amended the Original Contract by the Addendum to Barge Service Contract dated January 22, 2016 (the “Addendum”), for the purpose of scaling the 64 Express to increase capacity.

R-3 On May 23, 2018, VPA and JRBL agreed that JRBL would furnish a new barge largely similar to, and of the same capacity as the Richmond Express then in service, to add capacity to the 64 Express. Concurrent with that agreement, VPA and JRBL, and also agreed to negotiate freight rates for the new barge by December 31, 2018 (the “May 2018 Agreement”).

R-4 The Original Contract, the Addendum, and the May 2018 Agreement are referred to hereinafter as the “Contract”.

R-5 The Parties intend to memorialize extension of the Contract through December 31, 2024 (the “Extended Term”), and establish freight rates for the new barge, by the Extension.

IN CONSIDERATION OF the promises and mutual covenants and agreements herein contained, the parties agree as follows:

I. PURPOSE

The purpose of the Extension is to continue the movement of shipping containers, both loaded and empty, among and between the Hampton Roads Terminals and the Richmond Marine Terminal in a safe, economical and reliable manner. Waterborne transportation of the containers on the James River will reduce highway traffic and pollution generated by the movement of containers by truck.

II. SCOPE OF WORK

The Contractor shall provide Container on Barge Services.

VIT shall, in support of the VPA, provide operations management and support during the term of the Extension, including providing an accounting of services rendered under the Extension, make appropriate payments pursuant to the Extension, and provide essential scheduling information for the pick-up and delivery of containers.

III. TERM

The services called for under this Extension shall commence on June 1^{***}, 2019 and terminate on December 31, 2024, or as further extended pursuant hereto.

IV. DEFINITION OF TERMS

1. "Service" refers to provision of tugs and barges for the transportation of loaded and empty shipping containers from the various Hampton Roads Terminals to and from the Richmond Marine Terminal via the James River safely, economically and reliably
2. "Trip" shall mean orders by VPA or VIT executed by Contractor to transit a Tug and barge on a single leg between the Hampton Roads Terminals and the Richmond Marine Terminal. Trip does not mean light tug positioning, which is dealt with at Section X.2., Supplemental Operations.
3. "Hampton Roads Terminals" shall mean Norfolk International Terminals (NIT), Portsmouth Marine Terminal (PMT), Virginia International Gateway (VIG),
4. "Inner Harbor Movements" shall mean the transfer of one barge from one Hampton Roads Terminal to another.
5. "Work-Week" shall mean the period commencing at 0600 on Monday and expiring at 0559 the following Monday.

6. "Weather Protocol Conditions" shall mean those conditions that activate special contractual provisions that apply when operations are temporarily ceased due to weather or river conditions.

V. VIRGINIA PUBLIC PROCUREMENT ACT COMPLIANCE

This procurement, each of the provisions herein, and the specific compelling and justifiable reasons that support them meet the requirements for Single Source Procurement as set forth in the Virginia Port Authority Procurement and Capital Outlay Manual. As such, this Extension is an extension of the procurement initiated by Request for Proposals #2014-16 in 2014.

VI. PERFORMANCE OF WORK

Pursuant to the Extension and its terms, the Contractor shall:

1. Oversee and manage its barges, towing vessels and personnel to effectively perform the Service.
2. Provide and maintain equipment to perform the Service, including tugs, barges, communication equipment, semi-automatic lashing gear and any other equipment necessary for the Service including:
 - a. Tugs and barges capable of utilizing the berths at all Hampton Roads Terminals and Richmond Marine Terminals as currently configured.
 - b. Employ one or two tugs, as requested by VIT, and two barges, tug captains and other licensed and documented personnel to meet the operational needs of the Service.
 - c. Schedule and dispatch crews, tugs and barges as necessary to perform the Service within the operational parameters established by the Extension.
 - d. Alert VIT promptly of weather conditions and river conditions if such weather has a material impact on operations when such conditions are known.
3. Continue to operate tugs and barges safely and reliably and in a manner designed to maintain on-time arrivals and departures. Parties agree that weather – tides, currents and wind – can affect barge operations and delay sailings for safety reasons. The Master of the Tug maintains full rights to cancel or modify sail plans to ensure safe passage. The Master shall not make a "no-sail" decision without suitable safety or weather reasons to support such a decision.

Pursuant to the Extension, VIT shall:

4. Provide accounting for all expenses associated with the transportation of containers between the Hampton Roads terminals and the Richmond Marine Terminal to VPA should VPA request them
5. Provide payments to the Contractor in accordance with the terms of the Contract, as amended by this Extension.
6. Provide routine reports to the VPA regarding the effectiveness of the container transportation operation and this Extension.
7. Provide reports as reasonably requested by Contractor, of the conditions of the mooring lines and barge when left unattended at the Richmond Marine Terminal. Reporting should occur more frequently during severe weather. Reporting shall occur no less frequently than every four (4) hours during weather as severe as or more severe than tropical depression conditions.
8. Notify Contractor within 12 hours of any known damage caused by VIT during loading or unloading operations while a barge is unattended by Contractor. The barges are in the exclusive service of VIT, and damage caused by VIT during loading or discharging is therefore for the account of VIT. VIT shall load and discharge each barge according to load and discharge plans provided by JRBL.
9. Provide Contractor with requests for additional barge(s) to improve the service frequency, and to agree compensation with Contractor for such additional capacity, and to agree a suitable lead time for the Contractor to build such additional capacity if Contractor and VIT agree new capacity should be created.

VII. OPERATIONAL AND EQUIPMENT STANDARDS

1. Standard Transit. Contractor will continue its normal operational practice and use best efforts to complete the Trip in twelve (12) hours, but does not warrant this transit time. Contractor will provide prompt notice to VIT in the event trip completion is anticipated to exceed fourteen (14) hours. Events or persons not under the control of the Contractor, including but not limited to VIT, VPA, its or their subsidiaries, affiliates, operations, agents, employees, customers, invitees, other contractors, inclement weather, ship lane blockage, interrupted bridge operations, and congestion along the route, force majeure, and higher than normal water may cause material delay.
2. High water. The Parties provide guidelines for the safe and efficient navigation of the James River under certain conditions of higher than normal current ("Flood Stage"). Flood Stage conditions shall be determined by the National Weather

Service reports conditions for the James River (VA) at Richmond-Westham. (<https://water.weather.gov/ahps2/hydrograph.php?gage=RMDV2&wfo=akq>) Southbound Contractor tug and tow guidelines shall allow for southbound departure from the Richmond Deepwater Terminal for navigation during Flood Stage up to nine (9) feet. If Flood Stage greater than nine (9) feet, but not greater than ten (10) feet, the following criteria apply: Falling Flood Stage height, departure during daylight hours, while the upper river is under flooding tide or rising tide conditions slowing river current flow. The Master of the vessel retains the authority to determine the safety of sailing and to decide to sail or not to sail in any situation. The Master shall not decide arbitrarily not to sail and shall provide reasons for the no sail decision when asked.

3. As of May 1, 2019, Contractor will operate and assign to the Service two individual barges – the Virginia Express and the Richmond Express. Each of these barges is capable of ~3700 short tons or 120 FEUs loading.
4. Contractor is free to assign any towing vessel that meets the operational and equipment requirements of the Service as set forth in this Section. VPA/VIT will neither select nor pay different rates based on any particular towing vessel.
5. The Parties agree each barge may be out of service for a total of ten (10) days per calendar year for maintenance or repair (hereinafter “Outday” or “Outdays”). Outdays not used in a calendar year for either barge may be aggregated and carried over to the following year, and used in addition to such following year’s ten (10) Outday allotment. If Barges are out of service for any period of time during the Extended Term in excess of the Outdays, JRBL will provide a barge of 60 FEU capacity for use in the Service. No two barges will be out at the same time. Outdays will not be lumped together in a way that leaves either barge out of service, or unavailable due to maintenance, in excess of (30) calendar days.
6. At VIT’s expense, VIT will procure and install mooring cleats to the quay facing of the Richmond Marine Terminal in concert with inputs from Contractor to allow for safer mooring conditions while a barge is unattended.
7. JRBL is exclusively a marine transportation company and the tug and barge service described herein is the only service JRBL is obligated to perform.

VIII. GENERAL TERMS AND CONDITIONS

1. The Recitals are incorporated herein as if set forth verbatim herein.
2. At the commencement of the Extension, and each year thereafter, the Contractor shall provide to VIT a Certificate of Insurance demonstrating the applicable insurance cover. In accordance with the Contract, Contractor has posted Terms of Transport on its webpage which address liability limits.

3. All rates and fees herein are subject to annual inflation increase in accordance with the annual adjustment within Exhibit A of the Addendum, except within X.5 below. Additionally, all rates specified herein for Trips shall be adjusted according to fuel adjustments in accordance with Exhibit A of the Addendum.

IX. SUPERCEDING EFFECT

This Extension supersedes all prior oral or written agreements between the Parties and constitutes the entire agreement between the Parties.

X. OPERATIONS AND COMPENSATION

Pursuant to this Extension, VPA shall pay Contractor according to the following schedule:

1. Routine Operations (Drop and Swap)

Contractor will operate one tug and two barges known as the Richmond Express and the Virginia Express in Routine Operations. During Routine Operations the provided tug will tow one barge to enable at least four trips during a Work Week subject to weather and other conditions outside the control of the Contractor as required and directed by VIT.

Consistent with current contractual obligations, VPA shall pay the Contractor \$51,811 per Work Week (the "Routine Operations Fee"). The Routine Operations Fee is fully earned for 52 weeks per calendar year regardless of the operational use by VIT.

The Routine Operations Fee is for four Trips performed by the Contractor each Work Week. Contractor will complete the transit between Richmond Marine Terminal and Hampton Roads Terminals with due haste and with regular communication of anticipated transit time.

While a single tug is in operation, for each Trip conducted in excess of four trips per Work Week by the same tug or substitute tug, VIT agrees to pay Contractor \$5,287 per Trip. ("Plus Trips Fee")

2. Supplemental Operations

Contractor will operate two tugs and two barges during Supplemental Operations as requested by VIT. Supplemental Operations are initiated upon entry of a second tug into service following a VIT request on at least 48 hour advance notice.

During Supplemental Operations, VIT shall pay Contractor \$9,000 per Trip (the "Supplemental Operations Fee"). The Supplemental Operations Fee is in addition to the Routine Operations Fee and any Plus Trip fees and applies whenever a second tug enters Service. The second tug shall begin service and end service from its home dock in Norfolk, Virginia.

Separate from and in addition to Trip charges, VPA shall pay Contractor \$5,250.00 for each leg of light tug (tug without barge) positioning ("Light Tug Fee"). A single leg by a Tug to position or pick up the second barges shall be completed to provide for Supplemental Operations. A single leg tug operation will never generate both a Light Tug Fee and a Supplemental Operations Fee. By way of example, if positioning of a light tug back to the home port is needed, VPA will pay only the Light Tug Fee.

3. **Weather Protocol**

The Master of the tug, in his reasonable sole discretion, may cease or delay operations for weather conditions. When such weather conditions exist, or are forecast to exist, Contractor shall promptly inform VIT of the weather delay.

Parties agree that no party should benefit from the necessity to invoke the Weather Protocol. The Parties agree to the following:

- In the event fewer than four Trips are completed under Routine Operations during a Work Week, Contractor will credit the balance of the Trips fees, at \$5287 per Trip, to be applied exclusively against future Plus Trips ("Trip Credits"). Trip Credits may be carried forward for four (4) weeks. In the event VIT does not utilize any Trip Credit within four weeks, JRBL shall afford VIT/VPA a money credit in satisfaction of such unutilized Trip Credit, for the lesser of \$3,700.00 or the cost of fuel multiplied by the amount of fuel not consumed per Trip ("Fuel Credit"). JRBL will make available to the VPA reasonably exact evidence of the amount of fuel not consumed and the fuel price factor, such price to be determined as of the last day of the four (4) week carry forward period. For example, should Contractor be able to complete only two Trips in a Work Week due to weather, then VIT/VPA is entitled to two Trip Credits which could be applied over the next four (4) Work Weeks therefore saving VIT/VPA \$5287 per trip taken beyond the four trips completed during that week. Any Trip Credit not used in such four (4) weeks would, upon expiration of the period, convert to a Fuel Credit. Such credit shall be applied during the next billing cycle.

4. **Inner Harbor Moves**

The fee for Inner Harbor Moves as directed by VIT shall be paid in accordance with the pre-existing Contract terms in the amount of \$2115 per Inner Harbor Move.

Payment will not be made for tug and/or barge movements to the wrong terminal or wrong footmark only so long as such wrong movements are caused solely and as a direct result of errors made by The Contractor.

5. **Barge Service Fee for the addition of the Virginia Express**

The Barge Service Fee is \$750,000 annually (unless amended as below) and is comprised of two components:

- A. \$450,000 of the fee shall be designated as make-ready costs. VPA has sponsored, and Contractor has been notified of an award of a grant from the Maritime Administration, a division of the U.S. Department of Transportation, in the amount of \$1,822,093.00 ("Grant"). The Grant lessens and offsets the capital cost of the service, which costs include, without limitation, the direct cost of construction, sales tax, carried interest, insurance, barge relocation, final fitting and overhead including management time and travel for project management, engineering, financing, accounting, legal, and relocation, and enables the addition of lower cost barge capacity. Upon receipt of the Grant, the make-ready costs in this subparagraph shall be \$150,000 per calendar year payable in equal weekly installments of \$2884.62. This reduction shall be deemed permanent for this Contract - and in effect so long as the Contract remains in effect.
- B. Contractor shall be due \$300,000 per annum in recurring costs. This fee is payable in equal weekly installments of \$5,769.23, for the purposes of management, maintenance, insurance, overhead, and other fees and charges. This fee is intended to provide for exclusive service of the barge Virginia Express to the 64 Express (the "Barge Service Fee"). The recurring costs fee in this subparagraph is fixed and will not adjust for inflation through December 31, 2024. If further extension occurs, after December 31, 2024, as described in Paragraph X.6 below., the recurring costs fee shall be adjusted upward by the total percentage increase in the CPI, between the effective date of this Extension, and December 31, 2024, for the Renewal Term 1, and by the total percentage increase in the CPI between January 1, 2025, and December 31, 2029, for the Renewal Term 2.
- C. Should VIT/VPA or JRBL be successful in receiving other governmental grants intended to lower recurring costs, then Contractor shall reduce costs further by mutual agreement between the Parties.

6. **Renewal**

The Extension shall renew for up to two (2) additional and successive five-year terms, as described below, unless the VPA delivers written notice to JRBL no later than July 1 of the final year of the then-existing term. By way of example, the first notice of non-renewal would need to be received by the Parties no later than July 1, 2024.

- a. Renewal Term 1: January 1, 2025-December 31, 2029;
- b. Renewal Term 2: January 1, 2030-December 31, 2034.

XI. CONTINUING EFFECT

Unless amended hereby, the terms of the Contract remain in full force and effect. In the event of any conflict, the terms of the Extension prevail over other Contract terms.

DOCUMENTS INCORPORATED BY REFERENCE

The following documents, which are attached hereto, are hereby incorporated into the Contract in order of precedence below:

- A. Exhibit __, "Addendum to Barge Service Contract, dated January 22, 2016"
- B. Exhibit __, "Barge Service Contract 2014-16, dated September 1, 2014"
- C. Exhibit __, "Contractor's Proposal, dated June 13, 2014"
- D. Exhibit __, "Request for Proposals #2014-16"
- E. S. McCoy email to E. Whitmore and others dated May 23, 2018, and Whitmore response thereto.

The terms and conditions set forth in this Extension shall supersede any conflicting provisions in the Exhibits set forth above.

Witness the following signatures and seals:

James River Barge Line, Ltd.

Virginia Port Authority

By: _____ (SEAL)

By: _____ (SEAL)

Name: _____

Name: _____

Title: _____

Title: _____

Debbie McNulty

From: John G Milliken <jmillik3@gmu.edu>
Sent: Thursday, June 20, 2019 11:01 AM
To: John Reinhart; Faith B. Power - Shenandoah University (powerfaith98@gmail.com)
Cc: Sarah McCoy
Subject: RE: JRBL Service Agreement Extension with Contract

Thank you. I approve the amended Service Agreement.

John

From: John Reinhart <jreinhart@PortofVirginia.com>
Sent: Thursday, June 20, 2019 8:23 AM
To: John G Milliken <jmillik3@gmu.edu>; Faith B. Power - Shenandoah University (powerfaith98@gmail.com) <powerfaith98@gmail.com>
Cc: Sarah McCoy <smccoy@PortofVirginia.com>
Subject: FW: JRBL Service Agreement Extension with Contract

John and Faith,

Resending yesterday's email with full agreement attached.

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To: John G. Milliken (jmillik3@gmu.edu) <jmillik3@gmu.edu>; Faith B. Power - Shenandoah University (powerfaith98@gmail.com) <powerfaith98@gmail.com>
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JRBL has procured the second barge and we have been working with JRBL to amend and extend, for another five years, our existing Service Agreement to account for the new asset.

The amended Service Agreement has the same provision of service and economics as the existing agreement and will result in annual service fee in excess of \$2.5 million.

Given the increased cargo volumes the barge service is experiencing (introduction of Bissell and Brother International), it is important that the new asset is utilized and accounted for as soon as possible.

Accordingly, we bring this Service Agreement extension to the Chairs prior to the July board meeting and request the Chairs written approval for the Executive Director to enter into the extended Service Agreement.

If you have any questions, please do not hesitate to contact me.

Warm regards,

John

John F. Reinhart
CEO and Executive Director

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Debbie McNulty

From: Faith Power <powerfaith98@gmail.com>
Sent: Thursday, June 20, 2019 6:53 AM
To: John Reinhart
Cc: John G. Milliken (Jmillik3@gmu.edu); Sarah McCoy
Subject: Re: JRBL Service Agreement Extension

Good morning, John.

This email will confirm my agreement with the James River Barge Line Extension Agreement.

Best,
Faith

Sent from my iPhone

On Jun 19, 2019, at 9:04 AM, John Reinhart <jreinhart@portofvirginia.com> wrote:

Chairs Milliken and Power,

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Warm regards,

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<image001.jpg>