

Bid 3

John F. Reinhart
CEO/Executive Director

Virginia Port Authority
600 World Trade Center
Norfolk, VA 23510

Bid Response for Ordinance No. 2015-168

Respondent:

Virginia Port Authority, a body corporate and political subdivision of the Commonwealth of Virginia. Pursuant to Virginia Code Section 62.1-128 to 62.1-147.2 the Virginia Port Authority ("VPA") was created and a Board of Commissioners has been designated the governing body of the VPA with the authority to exercise all rights and duties conferred by the Port Authority Act and other provisions of law upon the VPA.

Mission:

It is the mission of the VPA, 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 improve the navigable tidal waters within the Commonwealth, and 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. Given this mission, the VPA is uniquely qualified to perform the duties of the Lessee under the proposed Deed of Facilities Lease Agreement as specified in Ordinance No. 2015-168.

Qualifications:

The VPA, marketing itself as the Port of Virginia ("POV"), is the third largest container port on the U.S. East Coast. It operates five marine terminals in Hampton Roads, Virginia, has the sixth under development, and operates an intermodal container transfer facility in Front Royal, Virginia. In order to ensure that POV has the capacity to support the global supply chain and provide consumers across the country with reliable service, the POV must utilize intermodal outlets to move product quickly and efficiently. The Port of Richmond is a valuable intermodal asset by virtue of its location on the James River and close proximity to the major transportation corridors of I-95, I-64, I-85, and direct access to rail with CSX. As a result of this strategic location, the Port of Richmond is advantageously located to capitalize on intermodal freight activity.

The VPA is experienced in the business operations at the Port of Richmond as the lease and management of the port was assumed in July 2011 by the VPA from the City of Richmond, with the option to renew the lease for three successive five-year terms. During this partnership, the VPA began operating a barge service carrying containerized cargo between the marine terminals in Hampton Roads to the Port of Richmond. Growth of the barge service is critical as it removes container traffic from the local roadways, significantly reduces undesirable emissions, and provides for the consistent and effective movement of freight to bolster economic development in the City of Richmond and beyond.

Under VPA's management, cargo volumes at the Port of Richmond have grown year over year. In fiscal year 2013, the barge service transported over 6,400 containers. In fiscal year 2014, the barge volumes increased 49% with over 9,500 containers transported. Barge volumes increased another 47% and finished fiscal year 2015 with over 14,000 containers transported. Due to the consistent increase in volumes, the barge service increased from two trips a week to three trips a week in January of 2015 and is currently averaging approximately 200 moves per week. This steady increase in volumes is due in large part to direct marketing efforts of the VPA which have resulted in six international steam ship lines offering bills of lading directly to the Port of Richmond. The VPA has also made significant on-terminal investment to

include improvements to the rail infrastructure and the purchase of a new mobile harbor crane scheduled for delivery in April 2016. Total investment to date is approximately \$6.4 million.

Lease Terms:

The VPA is prepared to commit to a future with the Port of Richmond so that the VPA can continue to make on-terminal investments to attract additional shippers, strengthen the freight-moving network, and utilize the Port of Richmond as a catalyst for economic development within the City of Richmond and beyond.

The VPA is committed to adhering to and fully executing the terms of the Deed of Facilities Lease Agreement for Port of Richmond ("Lease") attached as **Item 1**.

Rent: In section three (3) of the attached Deed of Facilities Lease Agreement for Port of Richmond, entitled "Rent," the VPA proposes annual rent payable to the City of Richmond in the amount of One Hundred Eighty Thousand and 00/100 Dollars (\$180,000) for the term specified in section two (2) entitled "Term; Inspection Period," payable in equal monthly installments of Fifteen Thousand and 00/100 Dollars (\$15,000) due on the first day of each month, subject to adjustments warranted by Section 3.1.4 and Section 4 of the Lease.

Economic Development Partnership: In partnership with the City of Richmond, the VPA will deploy an economic development strategy for the industrial corridor along Commerce Road and Deepwater Terminal Boulevard for the purpose of establishing an inland logistics hub for the City of Richmond and the VPA. Please see the economic development strategy detailed in the Memorandum of Understanding attached as **Exhibit G** in **Item 1**.

Workforce Development Partnership: In partnership with the City of Richmond, the VPA commits to establishing and maintaining a close working relationship with the City of Richmond when recruiting businesses to locate in the Target Area, defined in Exhibit E of the Lease (Item 1), to take advantage of port operations. The VPA commits to collaborate with the City of Richmond Center for Workforce Innovation ("CWI") to encourage businesses recruited to work with the CWI to train and supply the work force needed. Please see the complete Workforce Development Partnership Plan attached as **Item 2**.

Request:

The VPA is committed to adhering to and executing the terms of the attached Lease for the purpose of developing the Port of Richmond as a self-sustainable transportation node and a valuable asset to the Port of Virginia, the City of Richmond and the Commonwealth. This is accomplished through strategic on-terminal investments and a committed partnership with the City of Richmond. Accordingly, the VPA requests the Richmond City Council vote to approve the Port of Virginia's Bid as it relates to Ordinance No. 2015-168.

DEED OF FACILITIES LEASE AGREEMENT
for
PORT OF RICHMOND

This Deed of Facilities Lease Agreement (this "Lease"), made this ___ day of _____, 2015, by and between _____ ("Lessee"), and the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia ("Lessor"), recites and provides as follows:

RECITALS

R-1 Lessor is the owner of a port facility located at 5000 Deepwater Terminal Road in the City of Richmond, Virginia, known as the Port of Richmond.

R-2 Pursuant to a Deed of Facilities Lease Agreement for the Port of Richmond dated June 30, 2011, Lessee leases the port facility from Lessor (the "Existing Lease"). Lessor and Lessee desire to replace the Existing Lease with this Lease as of the New Lease Commencement Date (as defined in Section 2.1 below), subject to Section 2.2 below.

R-3 Pursuant to Sections 62.1-128 to 62.1-147.2 of the Code of Virginia (the "Port Authority Act"), Lessee was duly created as a political subdivision of the Commonwealth of Virginia (the "Commonwealth").

R-4 Pursuant to the Port Authority Act, Lessee's Board of Commissioners (the "VPA Board") has been designated the governing body of Lessee with the authority to:

- a) exercise all the powers, rights and duties conferred by the Port Authority Act and other provisions of law upon Lessee, including but not limited to, the authority to rent, lease, buy, own, acquire, construct, reconstruct, and dispose of harbors, seaports, port facilities, and such property, whether real or personal, as Lessee may find necessary or convenient to carry out the purposes and provisions of the Port Authority Act, and
- b) acquire, construct, maintain, equip and operate any marine terminals, port facilities, wharves, docks, ships, piers, quays, elevators, compressors, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of shipping and other transportation facilities incidental thereto.

R-5 Pursuant to a Resolution adopted by the VPA Board at its meeting on May 19, 2015, Lessee has determined that the objectives of the Port Authority Act will be attained and the interest of the general public will be served by entering into this Lease and other related documents to be executed by Lessee pursuant to this Lease (collectively, the "Lease Transaction Documents").

R-6 Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, the Port of Richmond and certain equipment ("Equipment") pursuant to the conditions, covenants, provisions and terms of this Lease.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, Lessee and Lessor agree as follows:

1. Leased Premises and Equipment.

- 1.1. Upon the terms, provisions and conditions hereof and each in consideration of the duties, covenants, and obligations of the other party hereunder, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Port of Richmond marine terminal located at 5000 Deepwater Terminal Road and 4201 Deepwater Terminal Road in the City of Richmond, Virginia, consisting of those parcels respectively identified as Tax Parcel Numbers S0090759006 and S0080572040 in the 2015 records of the City Assessor of the City of Richmond, shown on Exhibit A to this Lease, and including without limitation any and all appurtenances, riparian rights, rights, privileges, and easements benefitting, belonging or pertaining thereto, and all buildings, structures and improvements located thereon (collectively, the "Leased Premises"). Lessee will order a survey (the "Survey") of the Leased Premises to be completed during the Inspection Period. The Survey shall be at Lessee's expense and meet the minimum standard detail requirements for ALTA/ACSM Land Title Surveys. When completed and accepted by Lessee, Lessee shall provide a copy of the Survey to Lessor, and the Survey will be attached to and become a part of this Lease as Exhibit A-1 without any further consent or approval by Lessor. When so attached, the Survey shall replace and supersede the original Exhibit A. Lessee may record the Survey.
- 1.2. Lessor also hereby leases to Lessee and Lessee hereby leases from Lessor the crane (the "Crane"), railcar mover (the "Railcar Mover"), and ancillary equipment more particularly described on Exhibit B attached hereto and incorporated herein by this reference (collectively the "Leased Equipment").
- 1.3. Lessor assigns to Lessee, and Lessee assumes, the plans and permits which are listed on Exhibit C hereto (the "Assigned Plans and Permits").
- 1.4. Subject to Section 35 of this Lease, the Leased Premises and Leased Equipment are let to Lessee and Lessee takes the Leased Premises and Leased Equipment subject to all of the following, and only the following: (i) the "Permitted Exceptions" enumerated in Exhibit D, if any; (ii) the Assigned Plans and Permits; (iii) regulations and restrictions, if any, of the United States, the municipality, the Commonwealth, or other governmental authority with jurisdiction over the Leased Premises and Leased Equipment, to the extent applicable to Lessee; and (iv) such other matters as may be agreed to in this Lease.

2. Term; Inspection Period.

- 2.1 The term of this Lease shall commence at 12:01 a.m. Eastern Time on the first day of the month immediately following the month in which the Inspection Period expires (the "New Lease Commencement Date"). The term of this Lease (the "Term") shall end at 11:59 p.m. Eastern Time on the day preceding the fortieth (40th) anniversary of the New Lease Commencement Date. By way of example only, if the Inspection Period expires December 10, 2015, the New Lease Commencement Date would be January 1, 2016, and the Term would expire on December 31, 2055. For avoidance of doubt, the Existing Lease shall continue in effect until the New Lease Commencement Date, at which time the Existing Lease shall terminate. The parties shall confirm the New Lease Commencement Date and the expiration date of the Term by executing an amendment to the memorandum of lease as provided in Section 33 below.
- 2.2 Notwithstanding the foregoing, however, Lessee shall have until 5:00 PM on the date that is ninety (90) days after the date on which this Lease has been fully executed (the "Inspection Period"), in which to conduct any and all studies, surveys, tests, evaluations, and investigations as Lessee may require of the Leased Premises, the title thereto, and the Lessee's intended use thereof, at Lessee's sole cost and expense. In the event that any of these studies, surveys, tests, evaluations, and investigations are not satisfactory to Lessee in its sole and absolute discretion, then Lessee may, by giving Lessor written notice (the "Inspection Termination Notice") prior to the expiration of the Inspection Period, terminate this Lease. If Lessee gives the Inspection Termination Notice, then the Existing Lease (as it may have been amended, extended, or renewed) shall not terminate on the New Lease Commencement Date and shall remain in full force and effect. Lessee's acceptance of the Leased Premises following the Inspection Period shall constitute acknowledgment by Lessee that Lessee had ample opportunity to retain independent, qualified professionals to inspect the Leased Premises and that the condition of the Leased Premises is acceptable to Lessee, subject to the other terms of this Lease. Lessee agrees that Lessor shall have no liability for any claims or losses Lessee or Lessee's successors or assigns may incur as a result of any condition or defect now or hereafter existing on the Leased Premises, except as stated in this Lease.
- 2.3 In addition to Lessee's other rights of termination in this Lease and under applicable law, Lessee may terminate this Lease at any time during the Term for Cause by giving Lessor written notice of Lessee's intent to terminate the Lease and describing the nature of the Cause for termination (the "Cause Termination Notice"). The Cause Termination Notice shall specify the date of termination, which shall be not less than twelve (12) months after the date the notice is given. For the purposes of this Section, "Cause" shall mean a determination by the VPA Board (or Lessee's successor governing body) that this Lease or Lessee's operation of the Leased Premises is no longer in the financial best interest of Lessee, or that the Lease is no longer consistent with Lessee's mission as defined by applicable law as it may be amended from time to time.

3. Rent.

3.1 Leased Premises; Leased Equipment; Assigned Plans and Permits.

3.1.1 Rent. Subject to Section 3.1.4 and Section 4, rent for the Leased Premises, the Leased Equipment, and the Assigned Plans and Permits ("Rent") shall be payable by Lessee to Lessor in the amount of _____ (\$ _____) annually ("Annual Rent") for the Term, payable in equal monthly installments of _____ and 00/100 Dollars (\$ _____) due in advance of the first day of each month, beginning on the New Lease Commencement Date and continuing each month during the Term in any given Lease Year. For purposes hereof, "Lease Year" shall mean the twelve (12) month period commencing on the New Lease Commencement Date and each anniversary thereof during the Term.

3.1.2 [Intentionally omitted.]

3.1.3 Railcar Mover. If Lessee fails to give the Inspection Termination Notice, such that this Lease continues in effect beyond the Inspection Period, Lessee shall not be obligated to pay Lessor upon termination of the Existing Lease the lump sum Railcar Mover usage fee of Five Thousand and 00/100 Dollars (\$5,000.00) as provided in the Existing Lease. Lessee shall be responsible, at its sole cost and expense, to repair, maintain, or replace the Railcar Mover during or after the Term; however, Lessee shall not be required to repair or replace the railcar mover after it has exceeded its useful life.

3.1.4 Rent Adjustment for New Business Activity.

A. As used herein: (i) "Target Area" shall mean the area shown on Exhibit E attached hereto and made a part hereof; (ii) "New Direct Tax Revenue" means the aggregate increase in real estate taxes collected by or on behalf of Lessor in or with respect to those parcels of real estate in the Target Area identified by tax map parcel number on Exhibit E-1 hereto over taxes collected in the Calendar Year ending December 31, 2015; (iii) "New Indirect Tax Revenue" means aggregate new tax revenue, attributable to New Business Activity, collected by or on behalf of the Lessor for the following local taxes as defined in Chapter 98 of the City Code of the City of Richmond, as same may be from time to time amended: tangible personal property taxes, machinery and tools taxes; sales taxes; meals taxes; transient lodging taxes, license taxes and business license fees, and (iv) "New Business Activity" means the establishment and operation of a business at an office or a location within the Target Area, at which occurs a regular and continuous course of dealing for 30 consecutive days or more, which establishment and operation did not exist prior to the New Lease Commencement Date. "New Direct Tax Revenue" and "New Indirect Tax Revenue" are collectively referred to as "New Tax Revenue". The parties agree to inspect Exhibit E-1 for accuracy promptly after execution of this Lease and to make any necessary clerical corrections thereto.

B. After the first complete Calendar Year (January 1 through December 31) during the Term, and each Calendar Year thereafter, Lessee will prepare and will submit to Lessor a report ("Annual Report") showing the New Business Activity generated by the Port of Richmond in the Target Area, the corresponding amount of New Indirect Tax

Revenue generated, and the amount of New Direct Tax Revenue. Subject to subsection D below, within ninety (90) days after the end of each Calendar Year, Lessor shall provide Lessee with data and information requested by Lessee reasonably necessary to prepare the Annual Report. Annual Rent shall be reduced by an amount equal to ten percent (10%) of all New Tax Revenue (the "Rent Reduction"), as can be reasonably determined by the Annual Report. Additional New Tax Revenue in subsequent years shall increase the Rent Reduction, as provided in the example below. The maximum possible Rent Reduction is Eighty Thousand and 00/100 Dollars (\$80,000.00). For the avoidance of doubt, Annual Rent will be no less than \$100,000 at any point during the Term.

C. The Rent Reduction shall commence upon the next payment of Rent after determination of New Tax Revenue for the prior Calendar Year, and shall continue for the remainder of the Term. By way of example, if the Annual Report for Calendar Year 2016 determines that New Tax Revenue is \$100,000.00, then Annual Rent will be reduced by \$10,000.00 for Calendar Year 2017 (e.g., \$100,000.00 X 10%) and each year thereafter until the end of the Term. If the Annual Report is issued in June 2017, then the \$10,000.00 Rent Reduction will be applied pro-rata as a \$1,666.67 per month credit in each of the remaining six (6) months of Calendar Year 2017. Thereafter, the \$10,000.00 Rent Reduction will be applied in twelve (12) monthly installments of \$833.33. If the Annual Report for Calendar Year 2017 then determines that New Tax Revenue is \$150,000.00, then Annual Rent will be reduced by an additional \$5,000.00 (for a total annual reduction of \$15,000.00) for Calendar Year 2018 and each year thereafter until the end of the Term. The additional \$5,000.00 of Rent Reduction will be prorated over the remaining months of Calendar Year 2018, then over each of the twelve (12) months in each Calendar Year thereafter, in addition to the prior \$10,000.00 Rent Reduction in Annual Rent. The process shall be repeated if and until the Rent Reduction in Annual Rent reaches \$80,000.00, at which point the Rent Reduction will remain \$80,000.00 for the remainder of the Term and the Annual Rent for the remainder of the Term will be \$100,000.00

D. Notwithstanding the foregoing, nothing herein shall require the Lessor to divulge tax information in violation of Virginia Code section 58.1-3, as the same may be from time to time amended.

- 3.2 Overdue Amounts. In the event that Lessee shall fail to pay any amount due from it to Lessor under this Lease when the same shall be due and Lessee does not pay such amount within five (5) business days after receipt of notice of such failure, Lessee shall also pay Lessor a late charge in the amount of five percent (5%) of the amount of the late rent.
- 3.3 Rent Constitutes a Subordinate Obligation. Lessor acknowledges receipt of a copy of Lessee's Resolution 97-5, adopted by the VPA Board on May 27, 1997, as amended and restated on June 1, 1998, as further amended and restated on May 3, 2000, and further amended and restated on July 22, 2003 (the "Resolution"). Lessor and Lessee agree that Rent and all other payments due by Lessee to Lessor under this Lease and any of the

Lease Transaction Documents constitute, collectively, a Subordinate Obligation, as that term is defined in the Resolution. All rent and all other payments due by Lessee to Lessor under this Lease and any of the Lease Transaction Documents shall be payable to Lessee solely from the Lessee's Subordinate Obligations Fund, as that term is defined in the Resolution.

- 4. Payments Subject to Appropriation and Shall Not Affect the Full Faith and Credit of the Commonwealth.**
- 4.1 Notwithstanding anything in this Lease to the contrary, Lessee's obligation to pay Rent and all other amounts required to be paid by Lessee under this Lease and other Lease Transaction Documents, is subordinate to Lessee's obligations under its bond financing obligations, and also shall be made solely from amounts appropriated for such purposes from time to time by the General Assembly of the Commonwealth (the "General Assembly").
- 4.2 Lessee will include the Rent in its budget requests to the Commonwealth throughout the term of this Lease. Lessee shall use reasonable efforts to have, during each legislative session during the Term: (i) the Governor of the Commonwealth include in the biennial or any supplemental budget of the Commonwealth the amounts so requested, and (ii) the General Assembly appropriate such amount so included by the Governor, except such best efforts need not be used if such amount shall have been previously appropriated and such amount is sufficient to meet the Rent provisions of this Lease. If the amount appropriated by the General Assembly is less than the amount of the Rent, Lessee shall take such actions, as permitted by law, to adjust the appropriation to satisfy the Rent provisions of this Lease. Lessee will notify Lessor within five (5) business days after the adjournment of any session of the General Assembly during which the General Assembly has failed to appropriate any part of the amounts due under this Lease for the next Lease Year (an "Event of Non-Appropriation").
- 4.3 Section 62.1-132.19 of the Code of Virginia proscribes Lessee's ability to pledge the faith and credit of the Commonwealth. Accordingly, notwithstanding anything in this Lease to the contrary, Lessee's obligation to pay Rent and all other amounts required to be paid by Lessee under this Lease shall be subject to and dependent upon Lessee's ability to pay such amounts as appropriated for such purposes by the General Assembly. NEITHER THE COMMONWEALTH NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING LESSEE, IS OBLIGATED TO PAY RENT OR OTHER COSTS INCIDENT HERETO, EXCEPT AS DESCRIBED HEREIN. LESSEE'S OBLIGATIONS HEREUNDER SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OF THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION THEREOF, EXCEPT LESSEE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE RENT OR OTHER COSTS INCIDENT HERETO, NOR SHALL THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION THEREOF, EXCEPT LESSEE, HAVE ANY OBLIGATION, MORAL OR OTHERWISE, TO PAY SUCH RENT OR COSTS.

LESSEE HAS NO TAXING POWER.

4.4 The Lessor's administration shall endeavor to have, for each fiscal year during the term of this Lease, (i) the Mayor of the City of Richmond include in the Mayor's proposed annual budget and any supplemental budget recommendations the amounts needed to satisfy any known obligations of Lessor under this Lease, and (ii) the Council of the City of Richmond appropriate such amount so recommended by the Mayor to satisfy such obligations. Notwithstanding anything in this Lease to the contrary, except with respect to insurance proceeds from loss or damage to the Leased Premises, Lessor's obligation to make payments or other performance required to be made by Lessor under this Lease shall be made solely from, and shall be subject to the availability of, funds appropriated for such purpose from time to time by the City Council of the City of Richmond, Virginia.

5. Representations, Warranties, and Covenants.

5.1 Lessor's Representations, Warranties, and Covenants. Lessor represents, warrants, and covenants to Lessee, as of the date hereof and as of the New Lease Commencement Date, as to each of the following:

5.1.1 Organization. Lessor is a municipal corporation and political subdivision of the Commonwealth, validly existing and in good standing under the laws of the Commonwealth.

5.1.2 Authorization. Lessor has full power and authority and its council members and authorized representatives have taken all required action necessary to permit Lessor to execute and deliver this Lease. The execution and delivery of this Lease by Lessor have been duly and validly authorized by all necessary action in respect thereof on the part of Lessor. This Lease has been duly executed and delivered by Lessor and constitutes the valid and binding agreement of Lessor enforceable against Lessor in accordance with its terms.

5.1.3 No Conflicts; Consents. The execution and delivery by Lessor of this Lease does not, and the consummation of the transactions contemplated herein will not, violate, conflict with, result in a breach of, result in or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of (i) the laws of the Commonwealth, (ii) to Lessor's actual knowledge, any material contract, or (iii) to Lessor's actual knowledge, any order, writ, judgment, injunction, or decree applicable to the Lessor, the Leased Premises, or the Leased Equipment.

5.1.4 [Intentionally left blank.]

5.1.5 [Intentionally left blank.]

5.1.6 [Intentionally left blank.]

- 5.1.7 Leased Premises. The Leased Premises comprise all real property interests used by Lessor to operate a marine terminal facility immediately before the commencement date of the Existing Lease, including without limitation improvements and riparian rights.
- 5.1.8 Litigation. To Lessor's actual knowledge, there exists no litigation pending against Lessor or to Lessor's actual knowledge threatened, which if determined adversely, would materially and adversely affect the ability of Lessor to carry out its obligations under this Lease or the transactions contemplated hereunder.
- 5.1.9 Disclosure. No provision of this Lease or other information furnished by Lessor to Lessee in connection with the execution, delivery and performance of this Lease, or the consummation of the transactions contemplated hereby, contains or will contain any knowingly untrue statement of a material fact or knowingly omits or will omit to state a material fact required to be stated to make the statement, in light of the circumstances in which it is made, not misleading. Notwithstanding the foregoing, Lessee acknowledges that Lessor is not required by the terms of this Lease or otherwise to divulge tax information in violation of Virginia Code section 58.1-3, as the same may from time to time be amended.
- 5.1.10 Security Cameras. Lessor shall make reasonable efforts to authorize and transfer ownership of the security cameras and related systems on the Leased Premises to Lessee on or before the New Lease Commencement Date.
- 5.2 Lessee's Representations, Warranties, and Covenants. Lessee represents, warrants, and covenants to Lessor, as of the date hereof and as of the New Lease Commencement Date, as to each of the following statements:
- 5.2.1 Organization. Lessee is a political subdivision of the Commonwealth duly organized, validly existing under the laws of the Commonwealth.
- 5.2.2 Authorization, etc. Lessee has full power and authority and its Board of Commissioners has taken all required action necessary to permit Lessee to execute and deliver this Lease and the Lease Transaction Documents, and to carry out the terms of the Lease Transaction Documents.
- 5.2.3 No Conflicts; Consents. The execution and delivery by Lessee of this Lease and the Transaction Documents do not, and the consummation of the transactions contemplated by the Lease Transaction Documents will not, violate, conflict with, result in a breach of, result in or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of (i) the laws of the Commonwealth or the Lessee's bylaws; (ii) to Lessee's knowledge, any material contract, or (iii) to Lessee's knowledge, any order, writ, judgment, injunction, or decree applicable to the Lessee, the Leased Premises, or the Leased Equipment.
- 5.2.4 Disclosure. No provision of this Lease or other information furnished by Lessee to

Lessor in connection with the execution, delivery and performance of this Lease, or the consummation of the transactions contemplated hereby, contains or will contain any knowingly untrue statement of a material fact or knowingly omits or will omit to state a material fact required to be stated to make the statement, in light of the circumstances in which it is made, not misleading.

5.2.5 There exists no litigation pending against the Lessee or to the Lessee's actual knowledge threatened, which if determined adversely, would materially and adversely affect the ability of the Lessee to carry out its obligations under this Lease or the transactions contemplated hereunder.

6. **Quiet Enjoyment; Lessor Access.** Lessor covenants that Lessee, on paying the Rent and performing all the covenants and conditions of this Lease on its part to be performed, shall have quiet enjoyment and peaceable possession of the Leased Premises without hindrance or molestation by anyone claiming by, through or under Lessor, subject to the terms, covenants, and conditions of this Lease. Lessor, through its Chief Administrative Officer or his designee or designees, shall have the right to enter thereon at any time upon notice reasonable under the circumstances for the inspection thereof, including without limitation inspection of the Leased Equipment and compliance with Lessor's other obligations in this Lease, for whatever reason Lessor deems appropriate, provided that Lessor does not unreasonably disrupt Lessee's operations, and as long as those entering the Leased Premises comply with Lessee's or its designated operator's safety and other requirements applicable generally to others coming on the Leased Premises. Lessor and its agents and contractors coming on the Leases Premises shall be responsible for all damage and injury to person and property which they cause.

7. **Use.** Lessee shall use the Leased Premises solely as a "Port Facility." For the purposes of this Lease, the term "Port Facility" means a facility for the loading and unloading of cargo and the handling of containers, break bulk cargoes and bulk cargoes by ships, barges, rail, and trucks; the receipt, handling, delivery, and storage incidental to the transportation of cargo (whether or not in containers) of vessels berthed at the Leased Premises, and of ships' stores, supplies and gear for such vessels; the use, operation, repair, and parking of equipment and motor vehicles; the storage of cargo-handling equipment and necessary amounts of dunnage, used in the operations of Lessee or the Operator under this Lease; the maintenance and utilization of office space; all other activities reasonably connected with or related to the operation of the Leased Premises as a marine terminal; any other purposes provided such use is otherwise required by any governmental authority; and for any other purposes provided Lessee deems that such use will increase the efficiency or capacity of the Leased Premises, or assist in the marketing of the Leased Premises, as a multifaceted maritime port.

7.1 **Compliance with Laws.** Subject to the provisions of Sections 11.7 and 35 of this Lease, Lessee shall comply with all federal, state, and local laws, rules, and regulations (including, but not limited to, zoning ordinances) to the extent applicable to Lessee and its use of the Leased Premises. Subject to the provisions of Sections 11.7 and 35 of this Lease, Lessee shall obtain all licenses and permits necessary for Lessee to lawfully

operate the Leased Premises as a Port Facility.

7.2 Lessee Services and Obligations. In operating the Leased Premises, Lessee, either directly or through Lessee's designated Operator (defined in Section 16.1 below), shall perform the following services or obligations at its own expense:

- A. Lessee shall provide the marketing, management, supervision, labor and materials (except the Leased Equipment), and expertise necessary to operate, maintain, and market the Leased Premises as a Port Facility.
- B. To the extent Lessor may delegate such responsibility under applicable law, Lessee shall be responsible for all security required by the United States Department of Homeland Security or otherwise, for a Port Facility of the type Lessee operates on the Leased Premises. Lessee shall be responsible for Lessor's responsibilities under Lessor's security plan for the Leased Premises approved by the United States Coast Guard.
- C. Lessee shall ensure the maintenance of a minimum draft equal to the controlling channel depth of the James River as determined by the United States Army Corps of Engineers alongside the Leased Premises to permit use of the dock and turning basin by all vessels and barges that can safely operate within the controlling channel depth of the James River or the current depth alongside the Leased Premises, whichever is less. Further, Lessee shall ensure the maintenance of the turning basin in the water alongside the Leased Premises at its current depth as of the date of this Lease.
- D. Lessee, in conjunction with the United States Army Corps of Engineers, shall assume the "local cost share" financial responsibilities associated with maintenance of the fill disposal site. Lessor shall furnish Lessee with a copy of each contract with the United States Army Corps of Engineers concerning these financial responsibilities associated with maintenance of the fill disposal site.
- E. Lessee shall implement, update and amend, as necessary, the Leased Premises' Spill Prevention Control and Countermeasures Plan and the Leased Premises' Stormwater Pollution Prevention Plan, attached hereto as Exhibit F.
- F. Lessor and Lessee will collaborate on a plan for economic development relating to the Port of Richmond and the surrounding area. Attached as Exhibit G hereto is a non-binding Memorandum of Understanding stating the current expectations of the parties concerning economic development opportunities relating to the Leased Premises.

7.4 Nuisances and Hazardous and Unlawful Cargo. In the performance of its obligations hereunder and in the use of the Leased Premises, Lessee shall conduct its operations in an orderly and proper manner, so as not to create any nuisance in violation of federal, state, or local law to the extent applicable to Lessee; provided, however, that the parties agree

that operation of the Leased Premises as a Port Facility shall not be construed to be a nuisance. Lessee shall not knowingly permit merchandise, commodities, or any other property to be brought to the Leased Premises in any manner or by any means of conveyance whatsoever that will hazard or damage the property or business of the Leased Premises or will likely constitute a nuisance. Lessee shall not knowingly permit any merchandise, commodity, or other property to be brought to the Leased Premises in any manner or by any means of conveyance whatsoever in violation of federal or state laws, statutes, ordinances, rules or regulations, and specifically any law, statute, ordinance, rule or regulation dealing with the transportation, handling or storage of dangerous or Hazardous Materials, to the extent applicable to the Lessee.

- 7.5 Lessee shall not encumber Lessor's interests in the Leased Premises with a mortgage, deed of trust or other kind of lien without the prior written consent of Lessor, which shall be given only after submission of all documents related to such mortgage, deed of trust or other kind of lien by Lessee to Lessor for Lessor's review and consent.
- 7.6 Lessee shall have no right or authority to enter into, deliver or perform any contracts or agreements pertaining to the Leased Premises which purport to bind Lessor or which are contrary to the terms of this Lease without the express prior written consent of Lessor. Lessor may withhold or condition its consent in its sole and absolute discretion.
- 7.7 If, because of any act or omission of Lessee or any subtenant or occupant of the Leased Premises or any part thereof, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Lessor or Lessor's interests in the Leased Premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice of the filing of such lien, charge or order.

8. **Maintenance and Repairs.** Except as expressly represented in Section 5 of this Lease, and subject to all other responsibilities of Lessor under this Lease, Lessor shall deliver the Leased Premises and the Leased Equipment in "as is" condition. Lessee shall be responsible for all maintenance, plumbing, heating, ventilation, air conditioning, electrical and mechanical devices. Lessee shall maintain the Leased Premises in clean, orderly and sanitary condition consistent with the condition thereof as of the date of Lessee's original occupancy of the Leased Property under the Existing Lease (the "Occupancy Date"), and shall maintain and keep free of debris all drainage ditches and storm water drainage ponds, and shall remove promptly pallets, dunnage, debris, and waste material from the docks, railroad tracks, access roads, aprons and other areas of the Leased Premises. Lessee shall repair and maintain the infrastructure of the Leased Premises, including the roofs, floor, foundations, walls, fire sprinkler systems, HVAC system and ceilings of each building in its condition as of the Occupancy Date. Lessee shall also maintain and repair aprons, docks, dock walls, access roads, storage lots, perimeter fences, and usable railroad tracks on the Leased Premises. Lessee shall repair and maintain, at its own expense, all doors and windows, fences, plumbing, and electrical connections and fixtures in their condition as of the Occupancy Date. Lessee shall be responsible for the repair and maintenance of the Leased Equipment and any fixtures, equipment, and improvements installed or brought on the Leased Premises by Lessee. Lessee

shall have the right to erect or display any advertising, signs, posters, or similar devices at or on the Leased Premises or elsewhere at the Leased Premises as Lessee deems necessary, provided any such advertising or signage installed on the Leased Premises shall meet state and local building codes to the extent applicable to Lessee. Any maintenance or repairs undertaken on the Leased Premises shall also meet building codes to the extent applicable to Lessee. Lessee shall pay for, or shall cause, the repair of any damage caused by the use of the Leased Premises to the dock, dock walls, dock apron, roadways, railroad tracks, and other installations and appurtenances on the Leased Premises. Replacements of items that have exceeded their useful life shall be "Lessee Improvements" (defined in Section 10 below). Lessee's obligations in this Section are subject to Lessee's rights in this Lease to undertake demolition, improvements, and replacements to the Leased Premises. Except as may be expressly stated in this Lease, Lessor shall have no obligation hereunder to make repairs to the Leased Premises or Leased Equipment, maintain the Leased Premises or Leased Equipment, operate the Leased Premises or Leased Equipment, manage the Leased Premises or construct any improvements upon the Leased Premises. However, if at any time Lessor determines in its reasonable discretion that Lessee is not maintaining the Leased Premises or the Leased Equipment in a commercially acceptable state of repair, is not maintaining the Leased Premises in full compliance with all applicable building codes, ordinances, statutes, rules, regulations, or is not maintaining the Leased Premises or Leased Equipment pursuant to the terms of this Lease, Lessee shall be in default of this Lease and, subject to Lessee's notice and cure rights in Section 11.1 of this Lease, Lessor may enter upon the Leased Premises to make improvements or repairs or to maintain, manage or operate the Leased Premises or the Leased Equipment as necessary and Lessee shall be liable to the Lessor for Lessor's costs in doing so.

9. **Utilities and Services.** Lessee shall, during the Term, pay or ensure payment of and shall discharge punctually, as and when the same shall become due and payable, all stormwater fees and charges for water, steam, heat, gas, electricity, telephone, sanitary sewer, coaxial or fiber optic cable, satellite, internet access and other services and utilities whether public or private, furnished to the Leased Premises for the benefit of the Lessee, subtenant or any other user. Lessee shall be responsible for providing and paying for landscaping, janitorial, cleaning, snow removal and trash removal services and shall maintain reasonable housekeeping standards for the Leased Premises. Lessee shall also provide for pest control to the Leased Premises as needed. Notwithstanding the foregoing, Lessor shall reasonably cooperate with Lessee in obtaining such easements, permits, and other items that may be required in connection with such services or utilities.

10. **Improvements.** Lessee may make alterations, changes, replacements, and improvements (including demolition as well as construction) to the Leased Premises consistent with its use as a Port Facility ("Lessee Improvements") without the prior consent of Lessor. All Lessee Improvements shall be at Lessee's own expense and shall be fully completed in a good and workmanlike manner.

11. **Default.**

11.1 Lessee shall be in default hereunder if during the Term of this Lease (each an "Event of Default"):

- A. Subject to Section 4, Lessee fails to pay when due and owing any installment of Rent or any other sums herein specified and such failure continues for thirty (30) days after written notice of such failure from Lessor;
 - B. Lessee fails to observe or perform any other of Lessee's covenants, agreements or obligations hereunder and, does not cure such failure within thirty (30) days (or such additional time as is reasonably required to correct any such failure if Lessee has instituted the corrective action and is diligently pursuing the same), after Lessor has given written notice to Lessee specifying Lessee's failure to observe or perform any such covenant, agreement or obligation;
 - C. Lessee's interest in this Lease or any part thereof is mortgaged, pledged or otherwise encumbered or transferred either voluntarily or by operation of law without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed, or such interest or any part thereof is assigned or sublet by Lessee, unless in accordance with the provisions of Section 16.2 hereof; or
 - D. Lessee permanently abandons, vacates or fails to operate a Port Facility on the Leased Premises, provided that the failure by Lessee to use the Leased Premises as a Port Facility shall not constitute an abandonment or vacation thereof by Lessee so long as Lessee performs all its other obligations hereunder.
- 11.2 An Event of Non-Appropriation shall not be deemed an Event of Default.
- 11.3 Upon the occurrence of an Event of Non-Appropriation or at any time thereafter during the continuance thereof, and as its sole remedy, either party may by ninety (90) days' written notice to the other party terminate this Lease, or such termination shall be effective upon the exhaustion of all appropriated funds.
- 11.4 If an Event of Default by Lessee occurs, Lessor may, at its election, while such Event of Default continues, give Lessee written notice of Lessor's intention to terminate this Lease on a date specified in such notice, which date shall not be earlier than thirty (30) days after such notice is given, and, if all defaults have not been cured on the termination date so specified, Lessee's rights to possession of the Leased Premises shall cease and, with or without reentry by Lessor, this Lease shall cease, and Lessor may reenter and take possession of the Leased Premises as provided in Section 21 hereof; provided that subject to Sections 3.3 and 4 above, Lessee shall be, and shall remain, liable for all Rent, whether for the Leased Premises or the Leased Equipment, accrued hereunder to the date such termination becomes effective and for all other sums then owing by Lessee hereunder. Lessor may take whatever legal action may appear necessary or desirable to collect the Rent then due or thereafter to become due for which Lessee is responsible under applicable law or to enforce performance and observance of any covenant, agreement or obligation of Lessee under this Lease. Any amounts collected pursuant to action taken under this Section shall be paid to Lessor unless all sums owing hereunder by Lessee

have been paid in full, in which case such amounts shall be paid to Lessee.

- 11.5 No right or remedy conferred herein is exclusive of any other right or remedy conferred herein or by law, but all such remedies are cumulative of every other right or remedy conferred hereunder or at law or in equity, by statute or otherwise, and may be exercised concurrently or subsequently from time to time. Under no circumstances shall Lessor, in exercising any remedy hereunder, be deemed guilty of any manner of trespass; provided that Lessor agrees not to undertake any self-help remedy which it may have. Lessor's remedies under this Lease shall apply not only to Lessee but also to any party claiming by, through, or under Lessee.
- 11.6 If Lessor breaches any representation or warranty provided in Section 5.1, or defaults on any obligation herein and fails to cure the default within thirty (30) days of receipt of written demand from Lessee, then Lessee, at its option, may (i) seek redress, either at law or in equity, or any combination of such remedies or (ii) give Lessor written notice of Lessee's intention to terminate this Lease on a date specified in such notice, which date shall not be earlier than thirty (30) days after such notice is given, and, if all defaults have not been cured on the termination date so specified, Lessee's obligations to pay rent hereunder shall cease.
- 11.7 If Lessor adopts any law (including, but not limited to, a zoning ordinance), rule or regulation that has a Material Adverse Effect on the ability of the Lessee to use the Leased Premises as a Port Facility, then Lessee may give Lessor written notice of Lessee's intention to terminate this Lease on a date specified in such notice, which date shall not be earlier than thirty (30) days after such notice is given. The foregoing shall not be construed as a waiver of Lessee's reservation of its rights under Section 35 of this Lease or applicable law.

12. Wind Down Period and Recapture.

12.1 Wind Down Period.

- A. Upon any termination or expiration of this Lease, other than under Section 2.3, Section 11 and Section 14.6, a wind down period ("Wind Down Period") shall be provided as follows:
1. The Wind Down Period for the expiration of this Lease shall commence one hundred eighty (180) days prior to the date of expiration; and
 2. The Wind Down Period for any termination, shall be one hundred eighty (180) days from the date Lessor or Lessee provides written notice to the other party of its intent to terminate this Lease.
- B. During the Wind Down Period, Lessee shall continue to occupy the Leased Premises in accordance with this Lease, and Lessee shall continue to be contractually obligated to pay Rent in accordance with this Lease. During this

period, Lessor shall be granted reasonable access to the Leased Premises to begin the process of transitioning over the Leased Premises for exclusive use by Lessor following the expiration of the applicable Wind Down Period and the parties shall mutually cooperate with each other to allow for the transitioning of the Leased Premises from Lessee to Lessor in a manner that does not interrupt operation of the Leased Premises or the ability of customers of the Leased Premises to receive goods and efficient services before, during and after the applicable Wind Down Period, consistent with that provided at comparable port facilities in the United States.

12.2 Recapture of Improvements. Lessee shall own all Lessee Improvements during the term of the Lease, and shall transfer to Lessor all of Lessee's right, title and interest in and to the Lessee Improvements owned by Lessee at the expiration or termination of this Lease. Such transfer shall be by bill of sale. Such transfer shall be subject to approval and appropriation of funds by the City Council of the City of Richmond. Subject to such approval and appropriation of funds, Lessor shall pay the Recapture Amount to Lessee in cash or other immediately available funds. Payment shall be made, and shall be due only, upon the earliest of the following events to occur following expiration or termination: (i) the operation of all or any part of the Leased Premises by the City or any other party, (ii) the lease of all or any part of the Leased Premises to a third party, or (iii) the sale or transfer of all or any part of the Leased Premises. Lessor shall promptly give Lessee written notice of the occurrence of any of these events. For purposes hereof, the "Recapture Amount" shall mean the assessed value of the Lessee Improvements. Should any such Lessee Improvement not carry an assessed value, the Recapture Amount will be the remaining book value of the Lessee Improvements at the expiration or termination of this Lease (taking into account remaining useful lives and based on the straight line depreciation method acceptable under Generally Accepted Accounting Principles).

12.3 Notwithstanding the foregoing, however, if the Lease terminates as result of Lessee's giving the Cause Termination Notice, then the Recapture Amount to be paid by Lessor may be paid with respect to each Lessee Improvement for which there is a Recapture Amount in annual installments. The annual installments for each Lessee Improvement shall be equal to the annual straight line depreciation for the Lessee Improvement according to Generally Accepted Accounting Principles. The installments shall be paid on each July 1 after the Lease is terminated until the Recapture Amount for the applicable Lessee Improvement is fully paid. If all or a part of the Leased Premises are sold, then the remaining balance of the Recapture Amount shall be paid in full upon such sale.

13. Remedial Work.

13.1 Remedial Work by Lessor for Releases of Hazardous Materials. If any Hazardous Materials are discovered above non-residential screening levels in, on, under or migrating from the Leased Premises, and such Hazardous Materials were Released on or prior to the commencement date of the Existing Lease ("Occupancy Date"), then (i) the party to this Lease discovering the same shall notify the other party, and (ii) Lessor shall, subject

to Subsection (A) below, either perform or cause to be performed, Remedial Work to address the same or shall reimburse Lessee for the reasonable costs of such Remedial Work to the extent and as set forth in this Lease. Upon a discovery by either party of a Release of Hazardous Materials, Lessee shall allow Lessor immediate access to the Leased Premises for the purpose of enabling Lessor and the applicable governmental authority to conduct the examinations and tests necessary to determine when the Hazardous Material was Released. For purposes of this Lease, "Remedial Work" means any investigation, response action, removal action, remedial action, or corrective action to investigate, respond to, remove, remediate or otherwise address soil, air or water pollution or contamination. Lessee shall not undertake the Remedial Work or incur costs related thereto as long as Lessor performs the Remedial Work as set forth herein or if, as to Remedial Work not required by environmental laws, the parties agree as set forth in the next to the last sentence of Subsection (A) below. However, if Lessor fails to timely commence, or cause to be commenced, or fails to diligently pursue to completion, any Remedial Work required by this Lease, then Lessee may notify Lessor of its intent to perform, or cause to be performed, the Remedial Work. If Lessor does not commence or diligently pursue the Remedial Work within thirty (30) days after receiving such notice, or sooner as may be required by applicable law, then Lessee shall have the right, but not the obligation, to perform, or cause to be performed, the Remedial Work. All reasonable costs of performing the Remedial Work thereafter incurred by Lessee in accordance with this Lease shall be reimbursed by Lessor to Lessee. The following shall also apply:

- A. For Remedial Work relating to a Release of Hazardous Materials that is petroleum, Lessor may seek to conduct the Remedial Work under the auspices of the applicable petroleum program administered by the applicable governmental authority and, if the applicable governmental authority agrees such petroleum program may be used, shall then pursue such Remedial Work until such time as the applicable governmental authority issues a no further action letter relating to the Release. Unless remediation is clearly mandated by environmental laws, Remedial Work for Hazardous Materials shall be pursued (i) until such time as the applicable governmental authority issues a no further action letter, or (ii) if the applicable governmental authority will not oversee the Remedial Work unless it is conducted under the Virginia Voluntary Remediation Program ("VRP"), until such time as Lessor enrolls the Leased Premises, or affected portion of the Leased Premises, in the VRP and obtains a VRP certification of satisfactory completion for the Release. Lessee agrees to cooperate with Lessor in Lessor's efforts to enroll the Leased Premises in the VRP. Notwithstanding the foregoing, if (i) Remedial Work for Hazardous Materials discovered is not then required by environmental laws, and (ii) within ten (10) days of such discovery the parties agree in writing that no Remedial Work shall be required under this Lease for such Hazardous Materials, then Lessor shall not be required to conduct Remedial Work for such Hazardous Materials unless and until governmental authorities require such Remedial Work pursuant to environmental laws; provided, however, that Lessor shall make and keep a written record of the discovery, including the nature and areal extent of contamination, and shall agree in writing that it will

conduct Remedial Work relating to the same if and to the extent required in the future by governmental authorities pursuant to environmental laws. A copy of this written record and agreement shall be provided to Lessee.

- B. Lessor shall not be obligated to pay or incur costs to perform Remedial Work in excess of those costs required to achieve compliance with cleanup levels established by the applicable governmental authority pursuant to environmental laws. If remediation or cleanup is required by governmental authorities, Lessor may seek to perform the same using cleanup levels established by the applicable governmental authority that are appropriate for a non-residential use of the property. However, if the applicable governmental authority requires more stringent cleanup levels than for a non-residential use, then the Remedial Work shall be performed using those more stringent levels.
- C. Issuance of a no further action letter or VRP certification of satisfactory completion from the applicable governmental authority or an equivalent document issued by the applicable governmental authority, shall be deemed satisfaction of Lessor's obligation to perform the Remedial Work. Lessor shall ensure that any VRP certification of satisfactory completion issued shall also extend immunities and protections to Lessee.
- D. If required by the applicable governmental authority as a condition for use of non-residential cleanup standards or otherwise, Lessee shall allow Lessor to utilize on the Leased Premises, or shall allow Lessor to place on the Leased Premises, as the case may be, reasonable institutional controls (including, but not limited to, deed restrictions prohibiting use of groundwater and use of the Leased Premises for residential purposes). Reasonable institutional controls do not include any institutional controls that impede or affect operation or use of the Leased Premises in substantially the same manner operated or used as of the Occupancy Date.
- E. Lessor agrees to use its best efforts in the course of performing the Remedial Work to avoid unreasonable disruption of Lessee's use or occupancy of the Leased Premises, and Lessee agrees to provide Lessor with reasonable access to the Leased Premises to perform the Remedial Work, and agrees to use good faith efforts to avoid unreasonable disruption of Lessor's performance of the Remedial Work. Notwithstanding any other provision of this Lease to the contrary, in the event of a public emergency threat to the public health or safety resulting from a Release, Lessor shall have the right to immediately access the Leased Premises in order to make the necessary examinations and tests and perform necessary Remedial Work.
- F. To the extent that any Releases of Hazardous Materials after the Occupancy Date commingle with Releases of Hazardous Materials on or before the Occupancy Date, then Lessee shall pay, or reimburse Lessor as the case may be, the proportionate share of costs for the Remedial Work that relates to the

contamination for which it owes a remedial obligation under this Lease.

13.2 Remedial Work by Lessee for Releases of Hazardous Materials. If any Hazardous Materials are discovered above non-residential screening levels in, on, under or migrating from the Leased Premises, and such Hazardous Materials were Released on Tax Parcel Number S0090759006 after the commencement date of the Existing Lease (“Occupancy Date”), or Released on Tax Parcel Number S0080572040 after the New Lease Commencement Date, and prior to the earlier of termination or expiration of this Lease, then (i) the party to this Lease discovering the same shall notify the other party, and (ii) Lessee shall, subject to Subsection (A) below, either perform, or cause to be performed, Remedial Work to address the same or shall reimburse Lessor for the reasonable costs of such Remedial Work to the extent and as set forth in this Lease. Upon a discovery by either party of a Release of Hazardous Materials, Lessee shall allow Lessor immediate access to the Leased Premises for the purpose of enabling Lessor and the applicable governmental authority to conduct the examinations and tests necessary to determine when the Hazardous Material was Released. Lessor shall not undertake the Remedial Work or incur costs related thereto as long as Lessee performs the Remedial Work as set forth herein or if, as to Remedial Work not required by environmental laws, the parties agree as set forth in the next to the last sentence of Subsection (A) below. However, if Lessee fails to timely commence, or cause to be commenced, or fails to diligently pursue to completion, any Remedial Work required by this Lease, then Lessor may notify Lessee of its intent to perform; or cause to be performed, the Remedial Work. If Lessee does not commence or diligently pursue the Remedial Work within thirty (30) days after receiving such notice, or sooner as may be required by applicable law, then Lessor may perform, or cause to be performed, the Remedial Work. All reasonable costs of performing the Remedial Work thereafter incurred by Lessor in accordance with this Lease shall be reimbursed by Lessee to Lessor.

A. For Remedial Work relating to Releases of Hazardous Materials that are petroleum, Lessee may seek to conduct the Remedial Work under the auspices of the applicable petroleum program administered by the applicable governmental authority and, if the applicable governmental authority agrees such petroleum program may be used, shall then pursue such Remedial Work until such time as the applicable governmental authority issues a no further action letter relating to the Release. Unless remediation is clearly mandated by Environmental Laws, Remedial Work for Hazardous Materials shall be pursued (i) until such time as the applicable governmental authority issues a no further action letter, or (ii) if the applicable governmental authority will not oversee the Remedial Work unless it is conducted under the VRP, until such time as Lessee enrolls the Leased Premises, or affected portion of the Leased Premises, in the VRP and obtains a VRP certification of satisfactory completion for the Release. Lessor agrees to cooperate with Lessee in Lessee's efforts to enroll the Leased Premises in the VRP. Notwithstanding the forgoing, if (i) Remedial Work for Hazardous Materials discovered is not then required by environmental laws, and (ii) within ten (10) days of such discovery the Parties agree in writing that no Remedial Work shall be required under this Lease for such Hazardous Materials, then

Lessee shall not be required to conduct Remedial Work for such Hazardous Materials unless and until governmental authorities require such Remedial Work pursuant to environmental laws; provided, however, that Lessee shall make and keep a written record of the discovery, including the nature and areal extent of contamination, and shall agree in writing that it will conduct Remedial Work relating to the same if and to the extent required in the future by governmental authorities pursuant to environmental laws. A copy of this written record and agreement shall be provided to Lessor.

- B. Lessee shall not be obligated to pay or incur costs to perform Remedial Work in excess of those costs required to achieve compliance with cleanup levels established by the applicable governmental authority pursuant to environmental laws. If remediation or cleanup is required by governmental authorities, Lessee may seek to perform the same using cleanup levels established by the applicable governmental authority that are appropriate for a non-residential use of the property. However, if the applicable governmental authority requires more stringent cleanup levels than for a non-residential use, then the Remedial Work shall be performed using those more stringent levels.
- C. Issuance of a no further action letter or VRP certification of satisfactory completion from the applicable governmental authority, or an equivalent document issued by the applicable governmental authority, shall be deemed satisfaction of Lessee's obligation to perform the Remedial Work. Lessee shall ensure that any VRP certification of satisfactory completion issued shall also extend immunities and protections to Lessor.
- D. If required by the applicable governmental authority as a condition for use of non-residential cleanup standards or otherwise, Lessor shall allow Lessee to utilize on the Leased Premises, or Lessor shall record on the title to the Leased Premises, as the case may be, reasonable institutional controls (including, but not limited to, deed restrictions prohibiting use of groundwater and use of the Leased Premises for residential purposes). Reasonable institutional controls do not include any institutional controls that impede or affect operation or use of the Leased Premises in substantially the same manner operated or used as of the Occupancy Date.
- E. To the extent Lessee must conduct any Remedial Work following expiration of the Lease, Lessee agrees to use good faith efforts to avoid unreasonable disruption in the course of performing the same of Lessor's ownership and use of the Leased Premises, and Lessor agrees to provide Lessee with reasonable access to the Leased Premises to perform the Remedial Work, and agrees to use good faith efforts to avoid reasonable disruption of Lessee's performance of the Remedial Work
- F. To the extent that any Releases of Hazardous Materials on or prior to the Occupancy Date or after the term of this Lease, commingle with Releases of

Hazardous Materials after the Occupancy Date and during the term of this Lease then Lessor shall pay, or reimburse Lessee as the case may be, the proportionate share of costs for the Remedial Work that relates to the contamination for which it owes a remedial obligation under this Lease as well as the contamination Released after the term of this Lease.

- 13.3 Remedial Work by Lessor for Other Hazardous Materials. If (i) Hazardous Materials, including but not limited to asbestos, lead paint, and polychlorinated biphenyls, are determined to be in or are part of the Leased Premises or the Leased Equipment, (ii) such Hazardous Materials existed on Tax Parcel Number S0090759006 as of the commencement date of the Existing Lease or on Tax Parcel Number S0080572040 as of the New Lease Commencement Date, and (iii) such Hazardous Materials are required by environmental laws to be removed, encapsulated or otherwise addressed, including as part of Lessee's demolition or renovation of the Leased Premises, then Lessee shall notify Lessor of such conditions and afford Lessor a reasonable opportunity to remove, encapsulate or otherwise address such conditions at Lessor's sole expense. If Lessor does not remove, encapsulate or otherwise address such conditions, then Lessee may do the work, and Lessor shall promptly reimburse Lessee for the costs of the same.
- 13.4 Groundwater Impacts from Offsite Sources. Without limitation of the scope of the foregoing agreements in this Section 13, the Parties acknowledge that the Leased Premises and groundwater beneath the Leased Premises have been impacted by releases of Hazardous Materials from offsite sources, including without limitation, the Dupont Spruance Facility. The Parties agree that any costs of Remedial Work required to ameliorate such impacts, including as part of Lessee's demolition, renovation, repair, or construction activities on the Leased Premises, will be Lessor's obligation under this Lease. Lessee will cooperate with Lessor to obtain any compensation or other recovery that may be available from governmental agencies or third parties to cover such costs of Remedial Work.
- 13.5 Exclusive Remedy for Hazardous Materials. This Lease sets forth all remedies between the parties concerning remediation of Hazardous Materials.
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- 13.6 Lessor and Its Contractors. Lessor agrees that access by Lessor and its contractors to perform inspections or work on the Leased Premises pursuant to this Section 13 will be subject to providing such insurance and undertakings as are normally required for other parties coming on property owned or leased by Lessee.
- 13.7 For purposes of this Lease, "Hazardous Materials" means any and all hazardous or toxic substances, wastes or materials which, because of their quantity, concentration, or physical, chemical or infectious characteristics, may cause or pose a present or potential threat to human health or the environment when used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Materials" include, without limitation, any substance, waste or material which is or contains asbestos, polychlorinated biphenyls, urea formaldehyde, explosives, radioactive materials or petroleum. For purposes of this Lease, "Release" means any spilling, leaking,

pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

14. Insurance.

14.1 Policy Requirements. Lessee, at its sole cost and expense, shall carry and maintain the policy or policies of insurance required by this Section. If appropriate, Lessee may require the Operator to fulfill these insurance requirements on its behalf. Lessee shall provide insurance issued only by insurers (i) licensed to transact insurance business in the Commonwealth, and (ii) with A.M. Best's Key Rating of at least B++: VI. All policies shall list Lessor and, if commercially available, its officers, employees, agents and volunteers as an additional insured on the policy effective as of the New Lease Commencement Date and for the duration of this Lease. All such insurance shall be written or endorsed so as (i) to provide that Lessee's coverage shall be primary as to any coverage maintained by Lessor, and (ii) to the extent commercially available, provide that coverage will not be canceled, non-renewed or materially modified in a way adverse to Lessor without 30 days' written notice to Lessor (except for non-payment of premium, for which 10 days' notice to Lessor shall be provided).

14.2 Evidence of Coverage. Upon the New Lease Commencement Date and on each anniversary of the New Lease Commencement Date, Lessee shall furnish the City with an original, signed certificate of insurance evidencing the coverages and endorsements required by this Section. The certificate of insurance shall (i) refer specifically to this Lease, (ii) evidence the coverage required by this Lease, (iii) if commercially available, indicate that Lessor and its officers, employees, agents and volunteers are named as additional insured, (iv) indicate that such other endorsements as the Lease may prescribe are included, and (v) indicate that the notice requirements of the prior Section are met. If Lessee's insurance agent uses an "ACORD" insurance certificate form, if commercially available, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" box of the form shall be deleted or crossed out. Lessee shall furnish a new certificate prior to any change or cancellation date.

14.3 Schedule of Liability Coverage. Lessee shall provide and maintain the following types of insurance in accordance with the requirements of this Lease:

A. Commercial general liability coverage, stevedore and terminal operators liability (including a 72 hours sudden and accidental pollution clause) and wharfinger liability with a combined limit per occurrence of \$6,000,000 including at least general liability, wharfinger, and stevedore coverage. Lessee's terminal operator insurance coverage applicable to Lessee's other marine terminals shall, if extended to the Leased Premises, meet these requirements.

B. Comprehensive automobile liability coverage with a combined single limit of \$1,000,000 per occurrence.

- C. Statutory workers' compensation coverage including the U.S. Longshore and Harbor Workers and Jones Act endorsements and employers' liability coverage with a limit of at least \$500,000 or greater. If Lessee acquires watercraft of any kind, it shall obtain Jones Act coverage with a limit of not less than \$1,000,000.
- D. Excess liability coverage with a limit not less than \$5,000,000 per policy year providing the following form coverage over the comprehensive automobile liability and employers liability policies.
- 14.4 **Self-Insurance.** Lessee may satisfy any or all of the insurance requirements of this Lease through any self-insurance program in which it participates, provided such self-insurance program provides Lessor evidence acceptable to Lessor that the coverage meets the requirements of this Lease.
- 14.5 **Property Insurance.** Lessee shall provide all risk property insurance for the Leased Premises. Lessee shall observe and strictly enforce all rules and regulations affecting the validity of the property insurance contract covering the Leased Premises.
- 14.6 **Casualty.** If any building comprising the Leased Premises or any of the Leased Equipment shall be damaged or destroyed by fire or other casualty, Lessee shall promptly notify Lessor, and Lessee shall repair such damage and restore the same to substantially the same condition in which it was in immediately prior to such damage or destruction. Lessor agrees to cooperate with Lessee in connection with such restoration. If a casualty occurs during the last 12 months of the Term, Lessor may terminate this Lease, and Lessee will receive an equitable abatement of rent.
15. **Customs Bond.** Lessee shall be responsible for obtaining and maintaining any United States Customs bond required by the United States Government for the operation of the Leased Premises, and Lessor shall have no responsibility for obtaining and maintaining such bond.
16. **Transfer or Assignment.**
-
- 16.1 Lessee shall not sell, convey, transfer, or assign this Lease or the Leased Premises, without the express, written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment shall not discharge Lessee of any of its obligations under this Lease. Lessee may, in its discretion and without the need for Lessor's approval, select an operator to operate and manage the Leased Premises ("Operator"). Lessee anticipates that the Operator will be Virginia International Terminals, LLC following expiration or termination of Lessee's agreement with the Operator in effect as of the date of this Lease.
- 16.2 Lessor's approval is not required for Lessee or its Operator to sublet or license all or a portion of the Leased Premises in the normal course of Lessee or its Operator's business. Without limiting the foregoing, Lessor also specifically consents to Lessee or the Operator's allowing contractors or governmental entities to occupy or use portions of the

Leased Premises for the purpose of providing or performing services necessary or advisable for the operation of a Port Facility. For example, such services may include, without limitation, chassis pool operations, maintenance and repair operations, custom and border patrol operations, and labor.

- 16.3 Any assignments made in violation of this Section, if not terminated by Lessee within ninety (90) days after notice from Lessor thereof, shall, at the option of Lessor, be considered an Event of Default.
- 16.4 Lessee may terminate this Lease upon ninety (90) days' notice to Lessor if Lessor sells, conveys, or transfers the Leased Premises.
- 16.5 Lessor hereby grants Lessee the right of first offer if Lessor intends to sell or transfer all or any part of the Leased Premises. If Lessor intends to sell or transfer all or any part of the Leased Premises, Lessor shall give Lessee notice of such intent. Lessee may make an offer to Lessor to acquire the Leased Premises within sixty (60) days after receipt of such notice. If Lessee makes a written offer to purchase or acquire the Leased Premises (or such part of it which Lessor intends to sell or transfer) within such sixty (60) day period, Lessor shall have fifteen (15) days to accept or reject such offer. Unless and until Lessee fails to make an offer during the sixty (60) day period, or Lessor rejects any offer made by Lessee in accordance with the terms of this section 16.5, Lessor shall not sell or transfer all or any part of the Leased Premises, or enter into an agreement to do so. If Lessor rejects Lessee's offer, Lessor agrees not to sell the Leased Premises, or any part of it, for consideration less than that given in a legally binding offer from Lessee.

17. **Notices.** All notices required hereunder shall be in writing, and shall be deemed to have been given if either delivered personally, or by a nationally recognized overnight courier. Any notice to Lessor shall be sent to both:

Chief Administrative Officer
City of Richmond
900 East Broad Street, Suite 201
Richmond, Virginia 23219

AND

City Attorney City of Richmond
900 East Broad Street, Room 300
Richmond, Virginia 23219

Any notice required to be sent in writing to Lessee shall be sent to both:

Virginia Port Authority
600 World Trade Center
101 W. Main St., Suite 600
Norfolk, Virginia 23510

Attn: Executive Director

With copies to:

Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Attn: Chief, Transportation Section

Any party may change its address by appropriate notice to the other party.

18. **Non-Waiver.** No act of forbearance or failure to insist on the prompt performance of any provision of this Lease, either express or implied shall be construed as a waiver of any of the terms, conditions, or rights created herein.

19. **Reserved.**

20. **Reserved.**

21. **Surrender of Premises.** Upon expiration or termination of this Lease, and subject to Section 12 above, Lessee shall vacate the Leased Premises and surrender same in accordance with this Section. Upon vacation of the Leased Premises by Lessee, all appurtenances, personalty, furniture, fixtures and equipment in or on the Leased Premises, which were provided to the Leased Premises by Lessee, shall remain the sole property of Lessee. Lessee shall restore the Leased Premises to their prior condition of cleanliness at the time of the Occupancy Date, and Lessee shall peacefully yield to Lessor the Leased Premises as altered by Lessee in compliance with this Lease.

22. **Condemnation.** If the whole or any part of the Leased Premises or all means of access thereto shall be condemned or sold under threat of condemnation, this Lease shall terminate. However, the foregoing shall not limit Lessee's right to compensation from the condemning authority for the value of any of Lessee's property taken and Lessee shall have the right to claim against Lessor to any portion of the award in condemnation for the value of any unexpired term of this Lease. On a temporary taking, this Lease shall not terminate, but the Rent shall abate equitably in proportion to the adverse impact on the operation of the Leased Premises for the period of such taking.

23. **Complete Agreement.** This Lease, including the exhibits incorporated herein, is the complete agreement between the parties on the matter contained herein. Any possible prior representation, promise, statement or condition is expressly superseded, and any possible oral statement modifying, amending, changing or supplementing this Lease is expressly excluded. This Lease may be modified, amended, changed or supplemented only in writing signed by the legally authorized agents of both parties hereto with the same formality as this Lease.

24. **Waiver.** The failure of either party to insist on a strict performance of any terms, covenants or conditions of this Lease shall not be deemed a waiver of any subsequent breach or

default in the terms, covenants and conditions herein contained. This Lease may not be changed, modified or discharged orally. One or more waivers of any covenant or condition by either party shall not be construed as a waiver of any subsequent breach of the same or other covenant or condition.

25. **Captions and Headings.** The captions and headings used herein are intended only for convenience and are not to be used in construing this instrument.

26. **Governing Law and Forum Choice; Mediation.** This Lease shall be construed under the laws of the Commonwealth. If any provision of this Lease or portions thereof, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. Any and all disputes, claims and causes of action arising out of or in connection with this Lease, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court for the City of Richmond, Virginia. As a condition precedent to the filing of suit or proceeding in court, however, the party seeking relief shall give written notice to the other party of such dispute, and the parties shall within fifteen (15) business days thereafter have the issue mediated before the mediator(s) acceptable to all parties or appointed by the Circuit Court of the City of Richmond. Notwithstanding the foregoing, however, a party may apply to a court for temporary injunctive relief if the party will suffer irreparable harm during the time provided for the mediation process. The parties shall split the cost of mediator(s) evenly, but shall bear their own attorney's fees.

27. **Successors.** The covenants and agreements contained in the foregoing Lease are binding upon the parties hereto and their respective heirs, executors, administrators, successors, legal representatives, and permitted assigns.

28. **Brokerage.** Lessee hereby represents and warrants to Lessor that Lessee has engaged no broker or agent who is or may be entitled to be paid a commission in connection with this Lease. Lessor hereby represents and warrants to Lessee that Lessor has engaged no broker or agent who is or may be entitled to be paid a commission in connection with this Lease.

29. **Non-Liability of Individuals.** Neither the directors, commissioners, or officers of Lessee or Lessor, nor any member, manager, agent or employee of Lessee or Lessor shall be charged personally by either Lessee or Lessor with any liability, or held liable to either under any term or provision of this Lease or any of the Lease Transaction Documents, or because of the execution or attempted execution of this Lease or such Transaction Document, or because of any breach or attempted or alleged breach, thereof.

30. **Event of Force Majeure.**

30.1 The parties shall be excused from performing all or any part of their respective obligations under this Lease or any Transaction Document, shall not be deemed to be in breach of any of their respective obligations hereunder or under such Transaction Document, and shall not be liable for any breach of their respective obligations hereunder or under such Transaction

Document, if and to the extent that, they are unable to perform or are prevented from performing their respective obligations hereunder or under such Transaction Document by reason of an Event of Force Majeure. For purposes of this Section, "Event of Force Majeure" means any event, and the resulting after effects thereof, beyond the reasonable control of the affected party, foreseeable or unforeseeable, and without the willful act or negligence of the affected party which, by the exercise of due diligence, such affected party is unable to provide against, such as, but not limited to, acts of God, acts of public enemies, war (whether declared or undeclared), restraint of governments, princes or peoples of any nation, riots, strikes or lock outs, insurrections, terrorist acts, civil commotion, floods, fire, restrictions due to quarantines, epidemics and storms. In order to claim the protection of this Section for an affected party's failure to perform, or delay in performing, all or any part of its obligations under this Lease or any Transaction Document on account of an Event of Force Majeure, such affected party must give prompt written notice to the other party of (i) the Event of Force Majeure accompanied by the affected party's reasonable expectation as to the duration of such Event of Force Majeure, and (ii) the obligation(s) which are affected, and how affected. The affected party claiming the protection of this Section shall be under a duty to the other party to exercise commercially reasonable efforts to mitigate the effects of the Event of Force Majeure and to perform its obligations, or part thereof, to the extent commercially reasonable. Upon the termination of the Event of Force Majeure, the affected party must give prompt written notice to the other party and promptly resume performance of all or any part of its obligations required under this Lease or under the respective Transaction Document, the performance of which has been delayed or been suspended on account of the Event of Force Majeure.

30.2 This Lease may be terminated by Lessee in its sole discretion, by written notice to Lessor, at any time following the occurrence of (a) Lessee's delivery of written notice to Lessor as required by the preceding paragraph claiming an Event of Force Majeure, and (b) the passage of a period of six (6) consecutive months or more, from the date of such notice during which the Event of Force Majeure has continued uninterrupted.

30.3 This Lease may be terminated by Lessor in its sole discretion, by written notice to Lessee, at any time following the occurrence of (a) Lessee's delivery of written notice to Lessor as required by Section 30.1 claiming an Event of Force Majeure in which Lessee's obligation to pay Rent has been completely abated, and (b) the passage of a period of more than thirty-six (36) consecutive months from the date of such notice during which period the complete abatement of Rent has continued uninterrupted.

30.4 No party shall be entitled to claim or collect any damages or proceed to exercise its rights to serve a notice of an Event of Default for so long as the applicability, nature, effect or duration of an Event of Force Majeure is being disputed by any party.

31. Confidentiality.

31.1 To the extent permitted by law, the parties agree not to make use of or to disclose to third persons (other than their affiliates) any shipping, commercial, or other data, concerning cargo or rates pertaining to the operation of the Leased Premises, except where such data is required by authority of law or authorized in writing by the other party. This Section shall apply to all

documents, data, and information described in this Section (regardless of form or medium) that is exchanged during the term of this Lease between (i) Lessor or its agents, employees, or contractors, and (ii) Lessee or its Operator, agents, employees, or contractors.

31.2 If any party is served with a subpoena or other request for the disclosure of information described in this Section that originated from or pertains to another party, prior to responding to such subpoena or other request the disclosing party shall promptly send a copy thereof to the party whose information is sought. If the receiving party objects by notice to the disclosing party within three (3) business days, the disclosing party shall withhold such information pending resolution of such objection. If the receiving party fails to timely send an objection notice within the three (3) business day period, or if the disclosing party would be subject to sanction or penalty from a governmental authority for continuing to withhold the requested information, then the information may be disclosed, provided that the disclosing party takes reasonable steps (including, without limitation, seeking a protective order) to ensure the continuing confidentiality of the information.

32. **Reserved.**

33. **Memorandum of Lease.** Upon the execution of this Lease, Lessor and Lessee shall execute a memorandum of lease, substantially in the form attached as Exhibit H. Within thirty (30) days after the New Lease Commencement Date, Lessor and Lessee shall execute an amendment to the memorandum of lease to confirm the New Lease Commencement Date and the expiration date of the Term, in the form attached hereto as Exhibit H-1. Either party, at its own cost and expense, shall be entitled to record such memorandum of this Lease and amendment thereto in accordance with Section 55-57.1 of the Code of Virginia.

34. **Counterparts.** This Lease and the Lease Transaction Documents may be executed in one or more counterparts, each of which shall be deemed an original of such instrument, but all of which together shall constitute one and the same instrument, and facsimile signatures shall have the same binding effect as manual signatures.

35. **Sovereign Immunity of the Virginia Port Authority and the Commonwealth of Virginia.**

35.1 Except to the extent authorized as may be provided by Section 62.1-132.19(A) of the Code of Virginia, nothing in this Lease or any Transaction Document, or referenced in this Lease or in any Transaction Document and made a part hereof or thereof, or any other agreement of which this Lease or any Transaction Document is a part, shall act to, or be interpreted by the parties, (or their officers, directors, employees, representatives, agents, successors and assigns) to be construed as, or to act as, a waiver of the sovereign immunity of the Lessee or the Commonwealth, its agencies, authorities, boards and political subdivisions, or of any public officials, commissioners, officers, directors, employees, representatives, or agents of any of the same, or as a waiver of any of Lessee's rights under Section 62.1-132 of the Code of Virginia.

35.2 This Lease shall not be construed to relieve any entity from complying with applicable state, federal, and local laws, if such entity is not otherwise exempt from such compliance.

36. **Good Faith.** Each party agrees that it shall perform all acts and execute all documents necessary to implement the provisions and accomplish the purposes of this Lease or any Lease Transaction Documents to which it is a party, and exchange such additional information and documents as their respective counsel may reasonably require in furtherance of the provisions of this Lease or such Transaction Document.

37. **Exhibits.** The following exhibits, referred to in this Lease, are hereby incorporated into this Lease by reference:

Exhibit A Drawing of Leased Premises

Exhibit A-1 Survey of Leased Premises (to be provided)

Exhibit B Leased Equipment Schedule

Exhibit C Assigned Plans and Permits

Exhibit D Permitted Exceptions

Exhibit E Target Area

Exhibit E-1 List of Tax Parcels included in Target Area

Exhibit F Spill Prevention Control and Countermeasures Plan and Storm Water Pollution Prevention Plan

Exhibit G Memorandum of Understanding

Exhibit H Form of Memorandum of Lease

Exhibit H-1 Form of Amendment to Memorandum of Lease

Lessor shall provide Exhibits B, C, D, and F within thirty (30) days after the New Lease Commencement Date after discussing them with Lessee and by giving notice and copies of the Exhibits to Lessee. If Lessee does not approve the new Exhibits, it may give the Inspection Termination Notice pursuant to Section 2.2 above.

38. **No Waiver of Lessor's Sovereign Immunity.** Nothing in this Lease or any Transaction Document, or referenced in this Lease or in any Transaction Document and made a part hereof or thereof, or any other agreement of which this Lease or any Transaction Document is a part, shall act to, or be interpreted by the parties, (or their officers, directors, employees, representatives, agents, successors and assigns) to be construed as, or to act as, a waiver of the sovereign immunity of the Lessor, or of any public officials, commissioners, officers, directors, employees, representatives, or agents of any of the Lessor.

39. **No Exemption to Third Parties.** All persons and entities operating on or doing business at the Leased Premises shall be subject to all applicable taxes, fees, charges, laws, rules, and regulations unless that person or entity is otherwise exempt under applicable law.

40. **No Joint Venture.** Neither the terms, provisions or conditions of the foregoing clauses, nor any terms, provisions or conditions of the Lease of which they are a part, shall be construed as creating or constituting Lessor as co-partner or joint venturer with Lessee, nor shall same be construed in any manner as making Lessor liable for the debts, defaults, obligations or lawsuits of Lessee, or its Operator, subtenants, and assigns.

41. **No Third Party Beneficiaries.** Except as herein otherwise expressly provided, the

covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Lessor and Lessee and their respective successors and assigns. Notwithstanding any other provision of this Lease, Lessor and Lessee hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Lease; (ii) the provisions of this Lease are not intended to be for the benefit of any individual or entity other than Lessor or Lessee; (iii) no individual or entity shall obtain any right to make any claim against Lessor or Lessee under the provisions of this Lease; and (iv) no provision of this Lease shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Lease.

42. Lessor Performance Subject to Appropriation. All payments and other performances by the Lessor under this Lease are subject to annual appropriations by the City Council of the City of Richmond, Virginia. It is understood and agreed between the parties that the Lessor will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Lease. Under no circumstances shall the Lessor's total liability under this Lease exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Lease.

SIGNATURE PAGES TO FOLLOW

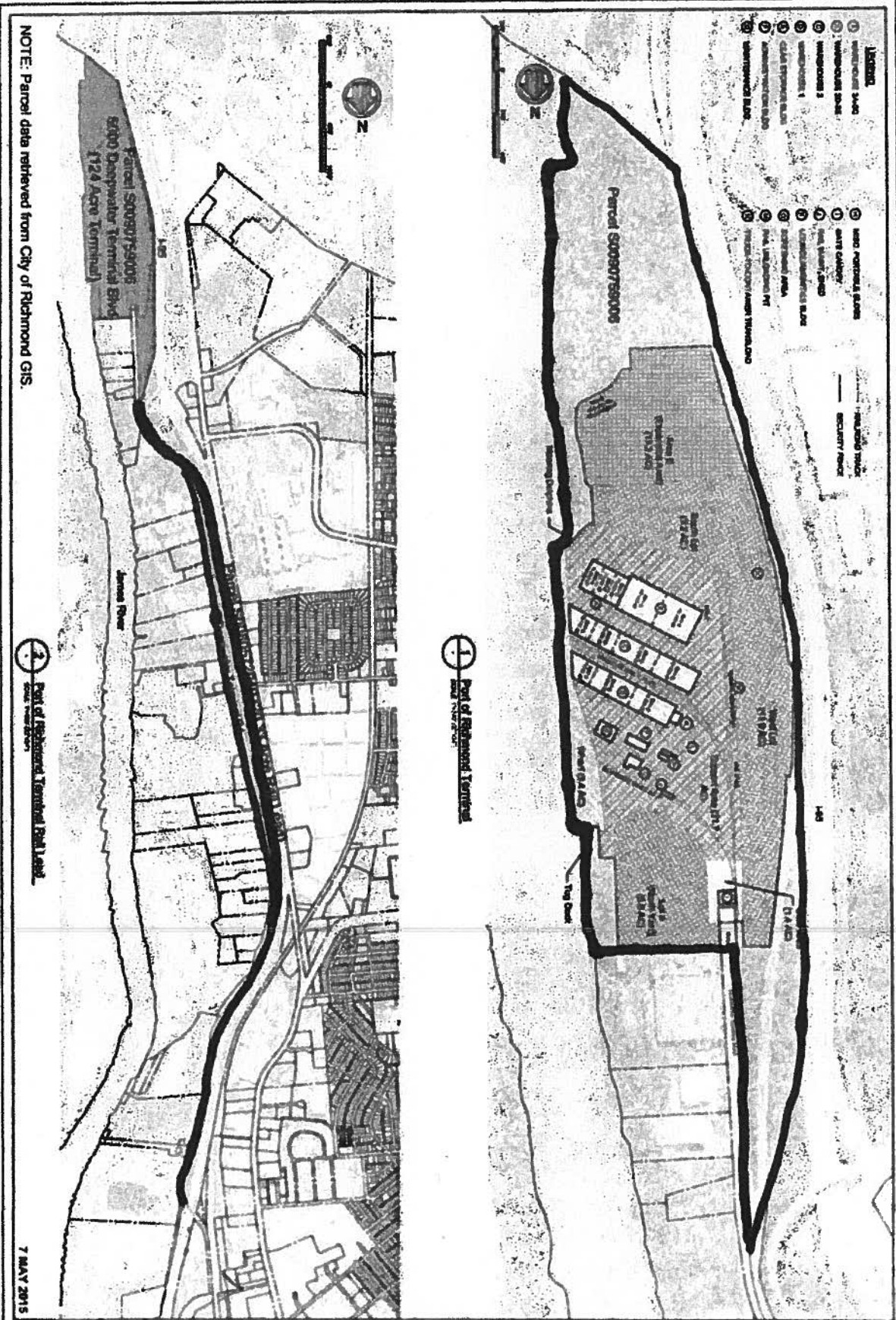


EXHIBIT A PORT OF RICHMOND TERMINAL

Exhibit A-1

Survey Showing Leased Premises

[TO BE PROVIDED]

EXHIBIT B

LEASED EQUIPMENT SCHEDULE

1. MANITOWOC CRANE, M-250 1994, ID # M-250R
 2. TRACKMOBILE (RAILCAR MOVER), 1998, Model 95 TM, ID # TRMBL2R
 3. Security cameras and related systems, including hardware, software, and wireless video surveillance system.
-

Exhibit C

Assigned Plans and Permits

Facility Security Plan for Port of Richmond [CITY TO PROVIDE UPDATED PLAN].

**Spill Prevention Control and Countermeasures Plan and Storm Water Pollution Prevention Plan
[CITY TO PROVIDE UPDATED PLAN]**

Exhibit D

Permitted Exceptions

There are no "Permitted Exceptions."

Exhibit E-1

Target Area Properties

The following Parcel PIN's and corresponding addresses define and are contained within the Target Area

PIN	Address
S0071337004	1835 Commerce Road
S0080601031	2207 Commerce Road
S0071237002	1705 Commerce Road
S0080601006	2019 Ruffin Road
S0071337003	1833 Commerce Road
S0071038016	1627 Commerce Road
S0080785070	3301 Commerce Road
S0071337006	1829 Commerce Road
S0071337005	1831 Commerce Road
S0080601015	2901 Commerce Road
S0090396004	4400 Commerce Road
S0080822072	3405 Commerce Road
S0090759017	5064 Commerce Road
S0080601054	3205 Commerce Road
S0071038001	1122 Bruce St
S0071337001	1801 Commerce Road
S0071237007	1655 Commerce Road
S0080601011	1809 Ruffin Road
S0071237004	1641 Commerce Road
S0090753004	1800 Trenton Ave
S0071237001	1501 Carter Creek Road
S0071038017	1629 Commerce Road
S0080601025	2401 Commerce Road
S0071088001	1635 Commerce Road
S0080601028	2403 Commerce Road
S0071237005	1643 Commerce Road
S0071237009	1401 Carter Creek Road
S0080601051	3001 Commerce Road
S0071237006	1649 Commerce Road
S0090753017	5049 Commerce Road
S0080601010	2001 Ruffin Road
S0090396008	4350 Commerce Road
S0080785071	3401 Commerce Road
S0071038010	1601 Commerce Road
S0071038009	1624 Elmdale Ave
S0071337007	2011 Commerce Ct
S0071038011	1603 Commerce Road
S0071237008	1301 Carter Creek Road
S0090753001	5115 Commerce Road
S0071337008	2021 Commerce Ct
S0080601030	2201 Commerce Road

Target Area Properties

S0080601007	2009 Ruffin Road
S0071042015	1400 Deepwater Terminal Road
S0071038008	1620 Elmdale Ave
S0071237003	1637 Commerce Road
S0090753018	5029 Commerce Road
S0090753005	5115 Commerce Road Rear
S0080601012	1701 Ruffin Road
S0080211002	2100 Commerce Road
S0071038018	1631 Commerce Road
S0080211015	2204 Commerce Road
S0080601052	3203 Commerce Road
S0070292017	601 Goodes St
S0071040020	1710 Commerce Road
S0090399028B	4430 Deepwater Terminal Road
S0070940033	738 A Goodes St
S0080276007	2114 Bellemeade Road
S0071040019	1700 Commerce Road
S0071040018	1660 Commerce Road
S0071040016	1638 Commerce Road
S0070292018	599 Goodes St
S0071040012	1608 Commerce Road
S0071040015	1636 Commerce Road
S0070940011	1516 Commerce Road
S0080276004	2100 Colby Lane
S0080276008	2114 Bellemeade Road Rear
S0080275024	2201 Brady St
S0080601045	2149 Ruffin Road
S0080211001	1860 Commerce Road
S0080418002	2606 Lynhaven Ave
S0080392010	2320 Deepwater Terminal Road
S0080392008	2318 Deepwater Terminal Road
S0090310018	4301 Commerce Road
S0080211016	2102 Deepwater Terminal Road
S0090310017	4303 Commerce Road
S0071040013	1618 Commerce Road
S0080275025	2302 Drake St
S0080418001	2502 Lynhaven Ave
S0080276018	2130 Bellemeade Road
S0070292004	1550 Goodes St
S0070836003	1260 Ingram Ave
S0070836004	1270 Ingram Ave
S0080392022	2702 Deepwater Terminal Road
S0080572036	3240 Deepwater Terminal Road
S0080572020	3300 Deepwater Terminal Road
S0080572015	2900 Deepwater Terminal Road
S0070836002	1401 Commerce Road
S0080572004	3220 Deepwater Terminal Road

Target Area Properties

S0080392005	2200 Deepwater Terminal Road
S0080211004	2120 Deepwater Terminal Road
S0080392027	2800 Deepwater Terminal Road
S0080572006	2910 Deepwater Terminal Road
S0080275002	2302 Brady St
S0090759006	5000 Deepwater Terminal Road
S0080572035	3600 Deepwater Terminal Road
S0090753003	5001 Commerce Road
S0090399008	4200 Deepwater Terminal Road
S0080392020	2700 Deepwater Terminal Road
S0080572025	3400 Deepwater Terminal Road
S0080572030	3310 Deepwater Terminal Road
S0080572022	3302 Deepwater Terminal Road
S0071042007	1800 Deepwater Terminal Road
S0080392030	2800 A Deepwater Terminal Road
S0080392028	2300 Deepwater Terminal Road
S0070940015	1500 Commerce Road
S0070940003	738 B Goodes St
S0070940009	1422 Commerce Road
S0070940002	1402 Commerce Road
S0070940052	1420 Commerce Road
S0080392012	2602 Deepwater Terminal Road
S0090753019	4701 Commerce Road
S0070940034	738 Goodes St
S0090399015	3800 Deepwater Terminal Road
S0080276022	2108 Bellemeade Road
S0080276016	2120 Bellemeade Road
S0080276009	2107 Commerce Road
S0080276011	2100 Bellemeade Road
S0080211020	2120 Commerce Road
S0080211007	1850 Deepwater Terminal Road
S0090753007	4605 Commerce Road
S0080392031	2800 Deepwater Terminal Road Rear
S0090759010	4750 Deepwater Terminal Road
S0071042008	1700 Deepwater Terminal Road
S0081038001	4201 Commerce Road
S0090399023	4400 Deepwater Terminal Road
S0090399004	4250 Deepwater Terminal Road
S0071042011	1500 Deepwater Terminal Road
S0071042002	n/a
S0071042003	n/a
S0090759015	n/a
S0090759016	n/a
S0090399028	n/a
S0070940058	n/a
S0080392033	n/a
S0080211023	n/a

Target Area Properties

S0080211001T	n/a
S0080418003	n/a
S0090310017T	n/a
S0070940057	n/a
S0080276012	n/a
S0071042006	n/a
S0080211024	n/a
S0080211010	n/a
S0080211006	n/a
S0080572023	n/a
S0071042010	n/a
S0070940012	n/a
S0080276010	n/a
S0080572040	n/a
S0071042004	n/a
S0071042005	n/a
S0070836001	1400 Ingram Ave
S0080392011	2400 Deepwater Terminal Road
S0070940056	901 Page St
S0090387003	2001 Dale Ave
S0090396013	4300 Commerce Road
S0090399022	4450 Deepwater Terminal Road
S0090759007	4700 Deepwater Terminal Road
S0090399027	4500 Deepwater Terminal Road
S0090399024	4600 Deepwater Terminal Road
S0090310019	2001 Walmsley Blvd
S0090394007	4435 Commerce Road
S0090387001	4700 Trenton Ave
S0080211005	2100 Deepwater Terminal Road
S0090396012	4320 Commerce Road
S0090399014	3900 Deepwater Terminal Road Rear
S0090399010	4110 Deepwater Terminal Road
S0090399020	3850 Deepwater Terminal Road
S0090753002	2000 Trenton Ave
S0090310006	2326 Bells Road
S0090759020	5100 Commerce Road
S0090759022	5200 Commerce Road
S0090399013	3900 Deepwater Terminal Road
S0090753016	5135 Commerce Road

Exhibit F

**Facility's Spill Prevention Control and Countermeasures Plan
and Facility's Storm water Pollution Prevention Plan**

[CITY TO PROVIDE CURRENT PLANS.]

Exhibit G

Non-Binding Memorandum of Understanding

Pursuant to Section 7.1 of the Deed of Facilities Lease Agreement for Port of Richmond between the Virginia Port Authority (“VPA” or “Port of Virginia”) and the City of Richmond, the parties state their non-binding expectations concerning economic development opportunities for the Port of Richmond.

Port of Richmond Economic Development Strategy

In partnership with the City of Richmond, The Port of Virginia will deploy an economic development strategy for the industrial corridor along Commerce Road and Deepwater Terminal Boulevard. The development strategy outlines the vision, objectives and opportunities to lead the Commerce Road corridor towards establishing a position as an inland logistics hub for the City of Richmond and The Port of Virginia.

Note: The Commerce Road Industrial Corridor is outlined in Exhibit A hereto.

Goals and Objectives of the Port of Richmond Economic Development Strategy:

- Leverage the Port of Richmond as a key economic engine for the City of Richmond
- Make all good faith efforts to maximize the competitiveness of the Commerce Road Industrial Corridor for the City of Richmond to attract port related economic development opportunities
- Position the Commerce Road corridor as a vital job creation resource for the City of Richmond
- Stimulate economic development and new investment to grow the City of Richmond’s tax base

The City of Richmond's Commitments to the Economic Development Strategy:

- Investing in key available real estate along the stated corridor
- Capital improvements to outside the gate infrastructure along Deepwater Terminal Boulevard and Commerce Road
- Work with the General Assembly to amend Virginia Code **Section 62.1-129** to require a City of Richmond resident to be appointed to the Virginia Port Authority Board of Commissioners

The Port of Virginia’s Commitments to the Economic Development Strategy:

- Maintaining a highly functional marine terminal contemplating investments in
 - Pavement and wharf maintenance and repair
 - Bulkhead, fenders and land maintenance
 - Maintenance dredging
 - Facilities improvements and maintenance
 - Equipment investment and maintenance

- Present to Richmond City Council our annual report by July 1 of the following fiscal year. The annual report will outline-
 - On terminal improvements and investments
 - Port of Richmond annual TEU volumes
 - Outside the gate economic development efforts
- Take an active role in workforce development initiatives within the City of Richmond to establish a pathway to employment in the manufacturing, warehousing and logistics industries

Collaborative Commitments to the Economic Development Strategy:

- Execute a comprehensive marketing plan for the Port of Richmond and Commerce Road corridor
 - Marketing plan to include outreach marketing such as, but not limited to the following-
 - In collaboration and conjunction with City of Richmond staff and the Greater Richmond Partnership, marketing missions to meet with active economic development opportunities with an interest in utilizing the Port of Richmond
 - Trade shows and conferences that focus on river ports and inland distribution hubs
 - Leverage relationships to conduct face-to-face meetings with key site location consultants in Atlanta, Chicago, New York City, and Los Angeles
- In conjunction with the City of Richmond and appropriate regional and state economic development partners, host a bi-annual red carpet event with out-of-market site location consultants to showcase the Port of Richmond and various economic development corridors throughout the City of Richmond
- Continued utilization of regional higher educational institutions/technical schools for workforce development and research capabilities
- Identify outside the gate funding opportunities through the Department of Commerce
- City of Richmond and Port of Virginia to review the outlined economic development strategy on annual basis no later than June 30 each year

Priority Issues to Address within the Commerce Road Corridor:

- Need for competitive land and building options to compete with counties
- Need for city-owned or controlled properties
- Commerce Road Improvements
- Partially funded improvements to Bells Road interchange and turn lane (3rd lane) installation along Commerce Road
- An estimated 50,000 working age individuals (18-64) reside within the City of Richmond in close proximity to the Port of Richmond, and of these, more than 40 percent are considered to be residing in low-and-moderate income households.

Improvements Currently Funded by the City of Richmond:

- Goodes Street extension
- \$2.0M to extend Deepwater Road access to 20' I-95 underpass (currently only 14'1" access)
- Deepwater Terminal Road Improvements
- \$2.6M funded to improve drainage, improve rail spurs and resurface Deepwater Terminal Road

Economic Development Opportunities:

- Established State, Regional and local economic development offices working to attract new companies to the corridor that will utilize the Port of Richmond in an effort to create an import, export balance
- Available industrial sites and buildings within close proximity of the Port of Richmond
- Work with existing Port of Richmond users to grow their current utilization of the terminal for both export and import loads

Target Industries for the Commerce Road Industrial Corridor:

- In referencing the 2014 Richmond Regional Comprehensive Economic Development Strategy (CEDS), the following target industry clusters have been identified
 - Advanced Manufacturing
 - Supply Chain Management

Economic Development Resources and Incentives:

Federal, State and City Business Attraction-

- Federal EDA monies
- Enterprise Zone
- New Market Tax Credit Eligible Area
- Governor's Opportunity Fund
- Foreign-Trade Zone (FTZ) #207
- Virginia Jobs Investment Program
- Economic Development Authority Financing

Port of Virginia Business Attraction-

- Barge and Rail Usage Tax Credit
- International Trade Facility Tax Credit
- Port Volume Increase Tax Credit
- Economic & Infrastructure
- Development Grant

Exhibit A to Memorandum of Understanding

[Insert photo/map.]

EXHIBIT H

FORM MEMORANDUM OF LEASE

Prepared by: _____

Tax Parcel Numbers: S0090759006 and S0080572040

THIS INSTRUMENT IS TAX EXEMPT PURSUANT TO SECTIONS 58.1-811 A.3 AND 58.1-811 C.4 OF THE CODE OF VIRGINIA.

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum of Lease") is dated as of the ____ day of _____, 2015 by and between the **CITY OF RICHMOND**, a municipal corporation and political subdivision of the Commonwealth of Virginia whose address is 900 East Broad Street, Suite 201, Richmond, Virginia 23219, Attn: Chief Administrative Officer ("Lessor"), to be indexed as Grantor, and the **VIRGINIA PORT AUTHORITY**, a body corporate and political subdivision of the Commonwealth of Virginia whose address is 600 World Trade Center, 101 W. Main St., Suite 600, Norfolk, Virginia 23510, Attn: Executive Director ("Lessee"), to be indexed as Grantee, and provides as follows:

1. **Lease.** Pursuant to a Deed of Facilities Lease Agreement dated _____, 2015 (the "Lease") between Lessee and Lessor, Lessor has leased to Lessee the Port of Richmond, a port facility located at 5000 Deepwater Terminal Road in the City of Richmond, Virginia, including Tax Parcel Numbers S0090759006 and S0080572040 in the 2015 records of the City Assessor of the City of Richmond, and any and all appurtenances, riparian rights, rights, privileges, and easements benefitting, belonging or pertaining thereto, and all buildings, structures and improvements located thereon (collectively, the "Leased Premises"). Lessor and Lessee enter into and record this Memorandum of Lease in lieu of recording the Lease as provided by Section 55-57.1 of the Code of Virginia.
2. **Term.** The term of this Lease shall commence at 12:01 a.m. Eastern Time on the first day of the month immediately following the month in which the Inspection Period expires (the "New Lease Commencement Date"). The term of this Lease shall end at 11:59 p.m. Eastern Time on the day preceding the fortieth (40th) anniversary of the New Lease Commencement Date. The Inspection Period expires on the date that is ninety (90) days after the date on which the Lease has been executed and delivered by Lessor and Lessee. There are no rights of extension or renewal. After the New Lease Commencement Date, the parties intend to record an amendment to this Memorandum of Lease setting forth the actual commencement and expiration dates of the Term.
3. **Use.** Lessee shall use the Leased Premises solely as a Port Facility. The term "Port Facility"

means a facility for the loading and unloading of cargo and the handling of containers, break bulk cargoes and bulk cargoes by ships, barges, rail, and trucks; the receipt, handling, delivery, and storage incidental to the transportation of cargo (whether or not in containers) of vessels berthed at the Leased Premises, and of ships' stores, supplies and gear for such vessels; the use, operation, repair, and parking of equipment and motor vehicles; the storage of cargo-handling equipment and necessary amounts of dunnage, used in the operations of Lessee under this Lease; the maintenance and utilization of office space; all other activities reasonably connected with or related to the operation of the Leased Premises as a port facility; any other purposes provided such use is otherwise required by any governmental authority; and for any other purposes provided Lessee deems that such use will increase the efficiency or capacity of the Leased Premises, or assist in the marketing of the Leased Premises, as a multifaceted maritime port.

4. **Right of First Offer and Assignment of Leases and Rents.** The Lease contains a right of first offer in favor of Lessee regarding the sale or transfer all or any part of the Leased Premises by Lessor, and an assignment of leases, rents, and revenues from the Leased Premises to secure repayment at the expiration or termination of this Lease of the remaining book value of improvements to the Leased Premises made by Lessee.
5. **Addresses.** The addresses of the parties as stated in the Lease are set forth in the introductory paragraph of this Memorandum of Lease.

This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall control.

IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EXECUTED THIS MEMORANDUM OF LEASE DATED _____, 2015 BETWEEN THE CITY OF RICHMOND, AS LESSOR, AND THE VIRGINIA PORT AUTHORITY, AS LESSEE.

LESSOR: _____ CITY OF RICHMOND, VIRGINIA _____

By: _____ (SEAL)
_____, Chief Administrative Officer

Authorized by Ord. No. _____, adopted _____, 2015.

COMMONWEALTH OF VIRGINIA
CITY OF _____, to-wit:

The foregoing Memorandum of Lease Agreement was voluntarily acknowledged before me this ____ day of _____, 2015, by _____, who is either personally known to me or has presented identification of a state issued driver's license, in his capacity as Chief Administrative Officer of the City of Richmond, a municipal corporation and political

subdivision of the Commonwealth of Virginia, on behalf of said municipal corporation.

Notary Public:
Registration Number:
My commission expires:

APPROVED AS TO FORM:

APPROVED AS TO TERMS:

Deputy City Attorney

Executive Director of the Port of Richmond

THE FOLLOWING SIGNATURES ARE PART OF THE MEMORANDUM OF LEASE DATED _____, 2015, BETWEEN THE CITY OF RICHMOND, AS LESSOR, AND THE VIRGINIA PORT AUTHORITY, AS LESSEE

LESSEE: COMMONWEALTH OF VIRGINIA, VIRGINIA PORT AUTHORITY, a political subdivision of the Commonwealth of Virginia

ATTEST:

_____, Secretary

By: _____ (SEAL)
John F. Reinhart, Executive Director and CEO

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

The foregoing Memorandum of Lease was voluntarily acknowledged before me this __ day of _____, 2015, John F. Reinhart, who is either personally known to me or has presented identification of a state issued driver's license, in his capacity as Executive Director and CEO of the Virginia Port Authority, and _____, as Secretary of the Virginia Port Authority, on behalf of the Virginia Port Authority.

Notary Public: _____
Registration Number:
My commission expires:

(SEAL)

APPROVED AS TO FORM:

OFFICE OF ATTORNEY GENERAL

By: _____
_____, Assistant Attorney General

EXHIBIT H-1

FORM AMENDMENT TO MEMORANDUM OF LEASE

[Term Confirmation]

Prepared by: _____

Tax Parcel Numbers: S0090759006 and S0080572040

THIS INSTRUMENT IS TAX EXEMPT PURSUANT TO SECTIONS 58.1-811 A.3 AND 58.1-811 C.4 OF THE CODE OF VIRGINIA.

AMENDMENT TO MEMORANDUM OF LEASE

THIS AMENDMENT TO MEMORANDUM OF LEASE (this "Amendment") is dated as of the ____ day of _____, 20__ by and between the **CITY OF RICHMOND**, a municipal corporation and political subdivision of the Commonwealth of Virginia whose address is 900 East Broad Street, Suite 201, Richmond, Virginia 23219, Attn: Chief Administrative Officer ("Lessor"), to be indexed as Grantor, and the **VIRGINIA PORT AUTHORITY**, a body corporate and political subdivision of the Commonwealth of Virginia whose address is 600 World Trade Center, 101 W. Main St., Suite 600, Norfolk, Virginia 23510, Attn: Executive Director ("Lessee"), to be indexed as Grantee, and provides as follows:

1. **Lease; Existing Memorandum of Lease.** Pursuant to a Deed of Facilities Lease Agreement dated _____, 2015 (the "Lease") between Lessee and Lessor, Lessor has leased to Lessee the Port of Richmond, a port facility located at 5000 Deepwater Terminal Road in the City of Richmond, Virginia, including Tax Parcel Numbers S0090759006 and S0080572040 in the 2015 records of the City Assessor of the City of Richmond, and any and all appurtenances, riparian rights, rights, privileges, and easements benefitting, belonging or pertaining thereto, and all buildings, structures and improvements located thereon. Lessor and Lessee recorded a Memorandum of Lease in connection with the Lease as provided by Section 55-57.1 of the Code of Virginia. The Memorandum is recorded in the Clerk's Office of the Circuit Court of the City of Richmond in Book _____ and Page _____. *[In the alternative, use Instrument Number.]*
2. **Confirmation of Term.** Lessor and Lessee hereby confirm that the term of the Lease commenced at 12:01 a.m. Eastern Time on _____, 20__, and shall end at 11:59 p.m. Eastern Time on _____, 20__.

The purpose of this Amendment is to confirm the commencement and expiration dates of the term of the Lease. This Amendment is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of

the Lease or of the prior Memorandum, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Amendment and the provisions of the Lease, the provisions of the Lease shall control.

IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EXECUTED THIS AMENDMENT TO MEMORANDUM OF LEASE DATED _____, 20__ BETWEEN THE CITY OF RICHMOND, AS LESSOR, AND THE VIRGINIA PORT AUTHORITY, AS LESSEE.

LESSOR: CITY OF RICHMOND, VIRGINIA

By: _____ (SEAL)
_____, Chief Administrative Officer

Authorized by Ord. No. _____, adopted _____, 2015.

COMMONWEALTH OF VIRGINIA
CITY OF _____, to-wit:

The foregoing Amendment to Memorandum of Lease Agreement was voluntarily acknowledged before me this ___ day of _____, 20__, by _____, who is either personally known to me or has presented identification of a state issued driver's license, in his capacity as Chief Administrative Officer of the City of Richmond, a municipal corporation and political subdivision of the Commonwealth of Virginia, on behalf of said municipal corporation.

Notary Public:
Registration Number:
My commission expires:

APPROVED AS TO FORM:

APPROVED AS TO TERMS:

Deputy City Attorney

Executive Director of the Port of Richmond

THE FOLLOWING SIGNATURES ARE PART OF THE AMENDMENT TO MEMORANDUM OF LEASE DATED _____, 20__, BETWEEN THE CITY OF RICHMOND, AS LESSOR, AND THE VIRGINIA PORT AUTHORITY, AS LESSEE

LESSEE: COMMONWEALTH OF VIRGINIA, VIRGINIA PORT AUTHORITY, a political subdivision of the Commonwealth of Virginia

ATTEST:

_____, Secretary

By: _____(SEAL)
John F. Reinhart, Executive Director and CEO

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

The foregoing Amendment to Memorandum of Lease was voluntarily acknowledged before me this __ day of _____, 20__, John F. Reinhart, who is either personally known to me or has presented identification of a state issued driver's license, in his capacity as Executive Director and CEO of the Virginia Port Authority, and _____, as Secretary of the Virginia Port Authority, on behalf of the Virginia Port Authority.

Notary Public: _____
Registration Number:
My commission expires:

(SEAL)

APPROVED AS TO FORM:

OFFICE OF ATTORNEY GENERAL

By: _____
_____, Assistant Attorney General



Workforce Development Partnership Plan

Item 2



Workforce Development is an essential component in the economic prosperity and growth of any community and is of great interest to businesses looking to expand or move into the greater Richmond region. Workforce Development is also a pathway for individuals to improve their earning potential enabling increased levels of stability and self sufficiency.

With the mutually agreed upon commitment to increase the productivity, capacity, efficiency and long term economic viability of Richmond's inland port (hereafter referred to as the Port), the Virginia Port Authority (hereafter referred to as VPA) commits to establishing and maintaining a close working relationship with the City of Richmond with regards to recruiting and retaining businesses to locate in the Target Area (as defined in Exhibit E of the Deed of Facilities Lease Agreement for the Port of Richmond) to take advantage of port operations, and create a sustainable workforce to support those businesses.

To achieve this partnership the VPA commits to work with the City's Center for Workforce Innovation (CWI) to encourage businesses being recruited to use port services to collaborate with and utilize the services offered by the CWI.

The VPA will integrate the workforce development strategy into the communications, marketing, and recruitment activities affiliated with the Port. The VPA further agrees to work with the CWI to identify and validate training and certification programs to prepare job seekers with the knowledge, skills, abilities, and experience to be competitive when applying for port-related jobs, and encourage other businesses to collaborate with the CWI to help fill their employment needs. The parties will create opportunities for city residents to gain employment. The VPA retains the right to only hire employees that, in the company's sole opinion, are the most qualified and capable. Nothing in this Agreement will be construed as interfering with the VPA's hiring decisions or its existing hiring policies. This same exclusion applies to all other businesses that are opened, recruited or undergo expansion in affiliation with the Port.

The CWI serves as a workforce intermediary by building, optimizing and sustaining an effective workforce system in the City of Richmond. As intermediary CWI acts as a relationship broker to bring teams together from diverse agencies and entities who share a common goal of helping people prepare for and obtain meaningful work. It is also the role of the intermediary to help grow the capacity of regional providers to ensure that there is sufficient opportunity to meet the needs of both job seekers and businesses. As the intermediary, the CWI will strive to serve the businesses and job seekers utilizing a demand-driven workforce development strategy.

The demand driven workforce development strategy known as the Richmond Workforce Pipeline (hereafter referred to as the Pipeline) begins by defining the needs of the business as it defines the workforce criterion such as the knowledge, skills, abilities, as well as other motivational and behavioral attributes the businesses are seeking in their workforce. Based upon the defined criterion the CWI facilitates the connection of qualified job seekers with the hiring employers. Career pathways are designed outlining how job seekers gain employment in positions with businesses who are seeking staff. Based upon the job description and hiring criteria, the CWI will work integrally with local, regional, state and federal partners and appropriate providers to prepare workers with all the prerequisite knowledge, skills, and abilities to successfully become valued employees.

Program Methodology: The Pipeline develops pathways to employment consisting of the following elements:

1. Screening /Assessment
2. Workplace readiness and technical job skills training
3. A targeted interview process



Workforce Development Partnership Plan

Item 2



4. Transition to Full Employment for those individuals who successfully satisfy the hiring requirements and probationary period

The CWI Pipeline is not a one size fits all approach. Each pathway is tailored to the needs of the employer and the prior experience, interests, and aptitudes of the individual job seeker. Those with substantial prior experience and training may not need additional services while others may require a longer pathway to prepare them. This approach has proven both successful and greatly appreciated by employers and job seekers alike.

To ensure that businesses remain competitive no business will be under any obligation to hire employees who they believe are not adequately prepared or are not otherwise appropriately qualified to gain employment through a competitive hiring process. There is no undue expectation of preferential treatment of potential employees other than the expectation that successful participants will be afforded an in-person interview and a good faith review by the business for consideration for employment.