

REQUEST FOR EXPRESSION OF INTEREST

HEARTLAND INTERMODAL GATEWAY, WAYNE COUNTY

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SECTION ONE: GENERAL INFORMATION

- 1. PURPOSE:** The West Virginia Department of Transportation (“WVDOT”), on behalf of the Board of Directors of the West Virginia Public Port Authority, is soliciting proposals from qualified companies to lease the “Heartland Intermodal Gateway” (the “HIG”) located at Prichard, Wayne County, West Virginia.
- 2. PROJECT:** The State of West Virginia, through the Department of Transportation’s Public Port Authority (“PPA”), owns property on which a transloading facility exists. The facility allows the transfer of containerized freight between trucks and rail, and also allows for containers to be stored on site between transfers. The facility is accessible via an access road extending between the site and CR 252/14, which access includes a structure that spans the Norfolk Southern (“NS”) railroad. The access road and bridge are owned by the Department of Transportation’s Division of Highways (“DOH”). Rail service is provided at the site by NS, which currently makes three stops per week at the facility pursuant to an Operating Agreement with the PPA. However, NS has indicated its intention to cease rail service effective November 1, 2019. No representations or warranties are made with respect to any agreements, requirements, guidelines, or restrictions of any sort that are, or may be required or needed, with respect to NS, its property, and/or interests. Also, no representations or warranties are made concerning any existing or potential customers of the facility.

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3. SCHEDULE OF EVENTS:

| | |
|---|-----------------|
| Release of the EOI | August 12, 2019 |
| Written Questions Submission Deadline | August 15, 2019 |
| Addendum Issued, if necessary..... | August 16, 2019 |
| Expressions of Interest Proposal Submission Deadline..... | August 30, 2019 |
| Estimated Date of PPA Board Meeting | September 2019 |

There is no guarantee that any proposal will be selected. PPA further reserves the right to waive minor irregularities in proposals, utilize any and all ideas submitted in the proposals received unless those ideas are identified as covered by legal patent or proprietary rights and generally adapt any or all of any proposal in developing contract language. Nothing contained herein shall be deemed an offer to enter into a lease by the WVDOT, DOH or PPA, or be interpreted as making a representation or giving any assurance that a contract will be entered into or that any entity is in some fashion obligated. Should the PPA be unsuccessful in negotiating a lease with any company or entity within an acceptable time frame, the PPA may begin negotiations with another entity responding to this request for expressions of interest, reject all responses, re-advertise or take such other action as the PPA may deem appropriate. In no event shall the WVDOT, DOH or PPA be liable for any costs incurred by any interested party in responding to this request for expression of interest.

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SECTION TWO: INSTRUCTIONS TO VENDORS SUBMITTING PROPOSALS

1. **ECONOMY OF PREPARATION:** Proposals should be prepared simply and economically, providing a straightforward, concise description of the proposer's plans for the lease of the HIG, as well as the proposer's ability to carry out these plans. Special bindings, color displays, promotional materials, etc., are not desired. Emphasis should be on completeness and clarity of content.
2. **PROPOSAL PREPARATION EXPENSE:** WVDOT, DOH and/or PPA will not assume any expense incurred by the proposer for or related to the preparation, delivery or oral presentation which may be requested as part of the selection process.
3. **PROPOSAL FORMAT:** The following items shall be included in the proposal:
 - A. General Information
 - (1) The full and correct legal name and principal address of the proposer.
 - (2) Date of incorporation, or organization, and the name of the political authority (State or Commonwealth) under which it was incorporated or organized. If the proposer is a partnership, association or other form of organization other than a corporation, a full description of the organization, including names of its officers, must be furnished. If the proposer is the subsidiary of another entity, full information of corporate structure including parent and holding companies must be furnished.
 - (3) Name, title, address, and telephone number of the person who can answer questions regarding the proposal with authority for the prospective operator.
 - (4) If proposer already is registered with the Secretary of State to do business in West Virginia, proposer is to provide a copy of the current business registration. If proposer is not registered with the Secretary of State, proposer is to provide written acknowledgement that proposer will register, with the Secretary of State should its proposal result in any agreement.
 - B. Business Plan: This is a detailed description of how the proposer intends to utilize the facility and estimated length of any initial term. ANY PLAN MUST MEET THE DEFINITION OF A "QUALIFYING FACILITY" AS DEFINED IN EXHIBIT A (DEED OF DONATION). THE PPA MAKES NO REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO WHETHER ANY PROPOSALS MEET SUCH DEFINITION, AND ANY DESIRED CONFIRMATION BY LESSOR OR LESSEE WOULD NEED TO BE SECURED FROM NS PRIOR TO EXECUTION OF ANY LEASE.

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- C. Marketing Plan: This is a description of the steps proposed to be taken by the proposer to promote business development and growth.
 - D. Financial Plan: Proposer should explain how its plans will be funded. The financial plan may include projections should explain any assumptions upon which the projections are based. Proposals that rely on any financial assistance from the State will be rejected.
 - E. Financial Stability: Proposer must demonstrate its financial ability to carry out responsibilities that would be required pursuant to any lease agreement, including but not limited to adequately insuring proposer, PPA, WVDOT, DOH, NS, the property/facility, equipment, and/or anticipated personnel against any and all loss or liability. Each proposer must demonstrate an equitable net worth of not less than One Million Dollars (\$1,000,000.00). Such equity may include cash or stocks used to capitalize the operation and/or ownership of rolling stock to be used in the operation. Absent the proposer's financial capability to satisfy the above criteria, personal financial statements of the principal(s) involved will be required to show the ability to capitalize operations.
 - F. Experience/References: Information must be provided on the experience and qualifications of the proposer's business and personnel. At least three (3) references with actual knowledge of the proposer's ability to perform the work described herein must be provided, and each reference must include the name of the contact person, current mailing address and phone number at which the contact person may be reach during business hours.
- 4. PROPOSAL SUBMISSION:** PROPOSALS SHOULD BE SUBMITTED ELECTRONICALLY, AS A PDF, NO LATER THAN 4:00 PM ON AUGUST 30, 2019, to Nathaniel.K.Tawney@wv.gov. Proposals will be shared with the PPA Board of Directors and may be discussed or requested to be presented at a public meeting of the Board.

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SECTION THREE: GENERAL LEASE SPECIFICATIONS

1. Scope:

Any lease entered into as a result of this request shall confer upon the company the rights and responsibilities to utilize the PPA property and equipment and appropriately utilize adjacent DOH right of way as part of such operation. It is anticipated that any lease will be a “triple net lease” and subject to the following provisions:

A. Term

The initial and/or renewal terms of any lease are not specified.

B. Operations

Operations pursuant to any lease may be conducted seven (7) days per week, any hours of the day, subject to any agreements or specifications that are or may be required with NS. Operations may be suspended by the WVDOT during DOH bridge inspections; bridge or roadway maintenance, construction or other activities; emergencies as determined by the Governor, WVDOT or other authorized agencies; or for non-compliance by company. The company shall not be entitled to any compensation for loss of profits or otherwise from WVDOT associated with such suspension of operations.

C. Equipment and Facilities

The lessee may utilize all PPA or WVDOT equipment at the HIG, including but not limited to reach stackers, buildings, computers, security equipment, and other items on-site. Lessee may utilize the access road and bridge, however lessee shall not attach any item, including, but not limited to equipment, signage and machinery to the bridge or make any modifications or alterations of the access road.

D. Safety and Security

Lessee shall have a written Safety Plan, written Emergency Operations Plan, and a written plan or procedure for addressing fuel spills within the HIG site. The lessee’s Emergency Operations Plan shall address the process for prompt reporting by company to law enforcement and WVDOT of suspicious activity. The WVDOT and local emergency responders shall be provided by the company, at no cost, a key or other appropriate means of access to all gates at the HIG site. Lessee shall be responsible for all coordination with US Customs and Border Protection concerning materials and

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containerized freight entering and leaving the HIG site.

E. Permits, Approvals, and Coordination

Lessee shall be wholly responsible for obtaining all necessary permits and approvals from any governmental entity. Lessee shall be responsible for all coordination with Norfolk Southern Corporation and for executing with NS any necessary agreements concerning rail service provided by NS for the HIG or otherwise, with the exception of any license and lease/easement agreement pursuant to Article K below.

F. Payments to WVDOH

Proposals shall include the proposed payment structure (lease payment amount; percentage of sales; flat fee; other alternative payment method) the lessee intends to remit to the PPA and must represent current fair market value for use of the PPA and DOH property.

G. Annual Report

Company shall file annually with the WVDOT an audited financial report and remain in good standing the West Virginia Secretary of State.

H. Training/Personnel/Safety/Security

Lessee shall utilize personnel qualified and trained to operate the equipment associated with the HIG.

I. Reporting/Auditing

Lessee shall maintain appropriate financial records (in accordance with Generally Accepted Accounting Principles) and, upon request, shall make available to WVDOT and/or PPA all financial records for the previous year associated with all aspects of operation of the HIG. Lessee shall be responsible for and shall provide to the WVDOT or PPA upon request evidence of payment of all taxes and fees, and payment of lessee's vendors and any approved sub-contractors.

J. Agreements between Operator and Other Parties

Lessee shall have no right to (a) assign the Lease, by operation of law or otherwise; or (b) subcontract or otherwise delegate the performance of the services without the prior written consent of PPA which may be withheld in its sole discretion. Any unauthorized assignment shall be void.

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K. Right of Way Lease and Licensing Agreements

The WVDOT shall administer all license and lease/easement agreements involving any portion of the WVDOT right of way. The lessee shall have no right to obligate the WVDOT in any way regarding such agreements. The lessee shall refer to the WVDOT any party expressing an interest in or having any questions regarding such agreements.

L. Insurance and Liability

Lessee will be required to indemnify Lessor and maintain insurance as specified and agreed to.

M. Reporting

If applicable, Lessee shall, at its sole cost and expense, provide such data to Lessor as is deemed necessary and convenient for Lessor to meet any ongoing reporting requirements related to a "TIGER Grant Agreement with the federal government. The data shall include, but not be limited to: (i) Total Container Lifts, (ii) Average Annual Container Lifts (measured in TEU), (iii) Average Daily Truck Traffic (measured by weigh in motion sensors), (iv) Average Daily Gross Ton Miles (measure of freight cargo plus rail cars, to measure increase in movement of container freight from trucks to rail), (v) Average Daily Intermodal Lifts.

N. As-is Condition

Lessee accepts the facility and equipment in "AS IS" condition existing on the effective date, without any express or implied representations or warranties of any kind by Lessor, its agents or employees regarding the same; and Lessor shall not have any obligation to construct or install any improvements or alterations or to pay for any such construction or installation, make repairs, or expend any funds whatsoever in relation to Lessee's occupation of the property, it being acknowledged and understood that Lessor's funding and ability to spend money is or may be restricted or prohibited by the West Virginia Legislature.

- 2. Oral Presentations/Interviews:** Proposers should plan to attend the next scheduled PPA Board of Directors meeting in Charleston, West Virginia, and at such meeting make a presentation to the Board, if requested, and be prepared to address any questions, comments or concerns of the Board.

EXHIBIT A

DEC 20 2011

James H Booton
WAYNE County 01:18:52 PM
Instrument No 313037134
Date Recorded 12/20/2011
Document Type DEED
Pages Recorded 14
Book-Page 680-63

DEED OF DONATION

This Deed of Donation made the 15th day of November, 2011 between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, and VIRGINIA HOLDING CORPORATION, a Virginia corporation (collectively as "Donor") having a mailing address of 110 Franklin Road SE, Roanoke, VA 24042; and the WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, PUBLIC PORT AUTHORITY, a political subdivision of the State of West Virginia having a mailing address of 1900 Kanawha Boulevard, East, Building 5, Room 125, Charleston, West Virginia 25305 ("Donee");

WITNESSETH:

That in consideration of the public good and in order to promote the welfare of the citizens of the State of West Virginia, Donor, waiving its right to payment of just compensation, with covenants of special warranty, donates, grants and conveys to Donee all of Donor's claims upon the property in the County of Wayne, State of West Virginia, and being more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

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Prior deed references: Book 135 p. 16, Book 158 p. 424, Wayne County Records.

DONOR RESERVES unto itself and to its successors and assigns, all coal, oil and minerals of every character in, upon or underlying the Property, however, Donor shall provide for Donee's written review the means, methods and schedule by which Donor intends to utilize the surface of the Property for extraction or production of all coal, oil and minerals, and Donee shall promptly review such means and methods and notify Donor whether Donee approves such, with any approval that may be given by Donee to be in writing.

SUBJECT to all restrictions, conditions, easements, licenses and reservations appearing of record or from an inspection of the Property.

DONEE RECOGNIZES that the Property is partially surrounded by land retained by Donor, and that while Donor and Donee have this date executed that certain Private Road Crossing Agreement (the "Crossing Agreement") as a means of access to the Property during the performance of certain work by Donee on the Property, the Crossing Agreement eventually will expire by its terms. Donee further recognizes that the sole permanent means of ingress and egress to and from the Property, if any, shall be provided through an aerial easement, which shall be conveyed by Donor to Donee within sixty (60) days after: (a) Donee's presentation of documentation to Donor reasonably establishing Donee's procurement of all necessary funding for the complete installation and construction of a bridge spanning Donor's tracks (the "Bridge") for vehicular access to the Property; and (b) Donee's delivery to Donor of a survey and legal description describing the proposed aerial easement area for Donor's written approval, which shall not be unreasonably withheld or delayed by Donor. Donee acknowledges and agrees that

it shall be the sole responsibility of Donee to design and construct the Bridge to provide a permanent means of ingress and egress to and from the Property and hereby waives any claim to an easement by necessity or other implied easement appurtenant to the Property, whether or not Donee actually constructs the Bridge.

THIS CONVEYANCE is made by Donor upon, and by its acceptance of delivery of this instrument Donee hereby agrees to, the following conditions:

(a) The Property shall be used exclusively for the operation of a "Qualifying Facility" (as hereinafter defined). The Property shall not be used, in whole or in part, for any residential purposes, including, but not limited to, single family homes, multiple family dwellings, schools, child care centers, churches, day care centers, apartment buildings, dormitories, hotels, other residential-style facilities, hospitals, health care facilities, churches, nursing homes or elder care facilities. Donee and any successor in title to the Property shall cause all grants, leases and other written transfers of interests in the Property to contain a provision expressly requiring all holders of such interests in the Property to accept such interests subject to the use restrictions, covenants, requirements and releases set forth in this instrument and not to violate any term or condition of this instrument.

(b) Donee, or its successors or assigns, shall use the Property conveyed hereby exclusively for the operation of a "Qualifying Facility," which shall be defined to mean an intermodal, multi-modal or other rail-dependent facility to be developed upon the Property, which shall include any of the following facilities so long as they

substantially rely upon freight transportation to or from the Property on Donor's adjacent rail network:

- (i) a conventional intermodal ramp for the transfer of containers or trailers between rail and truck modes of transportation;
- (ii) a transloading facility for the original pick-up or final delivery of bulk commodities such as grains or chemicals between rail and truck modes of transportation;
- (iii) a rail-dependent industrial park for the rail delivery or pick-up of goods that are processed, trans-shipped or produced at the Property;
- (iv) an automotive ramp for the transfer of finished vehicles between rail and truck modes of transportation; or
- (v) any combination of the above.

Donee, or its successors or assigns, shall commence construction of a Qualifying Facility within the earlier to occur of the following dates: (A) twenty-four (24) months after the date of Donee's written approval of the plans for the Qualifying Facility, or (B) sixty (60) months after the date of this instrument. Donee, or its successors or assigns, shall diligently pursue construction of a Qualifying Facility to completion, and, following completion of construction of a Qualifying Facility, not fail to operate such Qualifying Facility for any consecutive twenty-four (24) month period. As used in this paragraph, the phrase "commence construction" means that all applicable permits for a Qualifying Facility have been obtained and actual physical construction has commenced on the Property, including site clearance, grading and filling in preparation for the installation of a Qualifying Facility. If any of the above requirements is not met, then at Donor's



option, exercisable by written notice to Donee at any time following such failure to meet any of the foregoing requirements, as the case may be, which notice sets forth the nature of the failure, and further provided that if such failure is not corrected to Donor's reasonable satisfaction within ninety (90) days after Donee's receipt of the notice, then all right, title and interest in and to the Property and to any improvements thereon, together with the right of immediate possession thereof, will revert to and re-vest in Donor, its successors or assigns as fully and completely as if this instrument had not been executed. In the event of any such reversion of the Property to Donor, Donor shall reimburse Donee for the actual cost of any improvements made by Donee to the Property, amortized on a straight-line basis over a five-year period. For purposes of this instrument, written notice to Donor and Donee shall be by personal delivery, overnight delivery by a nationally-recognized courier, or by first class U.S. mail, postage prepaid, to the appropriate address in the first paragraph of this instrument (or to such other address of which Donor or Donee, as the case may be, notifies the other party hereto in like fashion), and shall be deemed received when actually received or, if sent by U.S. mail, three (3) days after being deposited in the mail.

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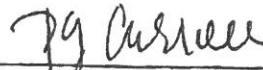
Witness the following signatures and seal.

NORFOLK SOUTHERN RAILWAY
COMPANY, a Virginia corporation
By:

 Assistant Corporate Secretary  Assistant Vice President - Real Estate

[CORPORATE SEAL]

VIRGINIA HOLDING CORPORATION, a
Virginia corporation
By:

 Assistant Corporate Secretary  Assistant Vice President - Real Estate

[CORPORATE SEAL]

RPMS 1107911
#854472v3

APPROVED AS TO FORM THIS 17th
DAY OF November, 2011
DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

By:  DEPUTY ATTORNEY GENERAL

STATE OF GEORGIA

COUNTY OF FULTON

I, a notary of said county, do certify that P.G. Carroll, who signed the writing above (or hereto annexed) bearing date the 15th day of November, 2011, for Norfolk Southern Railway Company, a Virginia corporation, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this 15th day of November, 2011.

My commission expires the 26th day of May, 2015.



Shirley J. Petty
Notary Public

STATE OF GEORGIA

COUNTY OF FULTON

I, a notary of said county, do certify that P.G. Carroll, who signed the writing above (or hereto annexed) bearing date the 15th day of November, 2011, for Virginia Holding Corporation, a Virginia corporation, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this 15th day of November, 2011.

My commission expires the 26th day of May, 2015.



Shirley J. Petty
Notary Public

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CONSIDERATION CERTIFICATE

We, the undersigned, do hereby certify that there was no consideration for the donation of the property described in the deed.

NORFOLK SOUTHERN RAILWAY
COMPANY

WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION, PUBLIC PORT
AUTHORITY

By: Pg Carroll
Assistant Vice President - Real Estate

By: [Signature]
Title: Acting Executive Director

VIRGINIA HOLDING CORPORATION

By: Pg Carroll
Assistant Vice President - Real Estate
("Donor")

("Donee")

STATE OF GEORGIA)
) SS:
COUNTY OF FULTON).

The foregoing Consideration Certificate was acknowledged, subscribed and sworn to before me this 15th day of November, 2011, by P.G. Carroll, the Assistant Vice President of Norfolk Southern Railway Company, a Virginia corporation, the Donor, for and on behalf of said corporation.

My commission expires: May 26, 2015



Shirley T. Petty
Notary Public

STATE OF GEORGIA)
) SS:
COUNTY OF FULTON)

The foregoing Consideration Certificate was acknowledged, subscribed and sworn to before me this 15th day of November, 2011, by P.G. Carroll, the Assistant Vice President of Virginia Holding Corporation, a Virginia corporation, the Donor, for and on behalf of said corporation.

My commission expires: May 26, 2015

(SEAL)



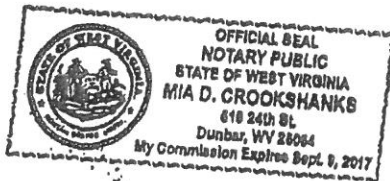
Shirley J. Petty
Notary Public

STATE OF WEST VIRGINIA)
) SS:
COUNTY OF Kanawha)

The foregoing Consideration Certificate was acknowledged, subscribed and sworn to before me this 4th day of November, 2011, by David F. Cramer, the Acting Executive Director of West Virginia Public Port Authority, a political subdivision of the State of West Virginia, and on behalf of said entity.

My commission expires: 9-9-2017

(SEAL)



Mia D. Crookshanks
Notary Public

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