

Diamond State Port Corporation
Board of Directors

Resolution 23-05

Authorizations Related to Amendments to the Concession Agreement and the Expenditure of
Funds related thereto.

WHEREAS, the Diamond State Port Corporation (“DSPC”) adopted a strategic master plan in 2016 that outlined long-term goals for the maritime industry in Delaware, including seeking private partners and expanding the operations the Port of Wilmington (POW).

WHEREAS, DSPC purchased the Edgemoor Property on the Delaware River in furtherance of its strategic master plan to expand operations at the Port of Wilmington (the “Edgemoor Property”) and to ensure deep water access to the Delaware River.

WHEREAS, DSPC partnered with GT USA Wilmington, LLC (“GT Wilmington”) in 2018 to maintain, operate, and expand the POW as part of a 50-year Concession Agreement.

WHEREAS, GT Wilmington entered a Memorandum of Agreement with the International Longshoreman’s Association (“ILA”) regarding the operations of the POW and a Project Labor Agreement (“PLA”) with the Delaware Building and Construction Trades Council related to the Edgemoor Project.

WHEREAS, GT Wilmington took over operations of the POW in 2018 and this partnership resulted in \$12 Million in concession fees for DSPC, the elimination of \$9 Million of debt, and \$80 Million in private investment at the POW.

WHEREAS, while DSPC and POW benefited from this partnership, GT Wilmington did not provide a viable long-term financing plan for the POW, the expansion at the Edgemoor Property and did not properly advance the Edgemoor project.

WHEREAS, in October 2022, certain actions were taken by creditors that provided secured financing (the “Noteholders”) to GT Wilmington and new leadership at the Board level was put in place at GT Wilmington.

WHEREAS, the reconstituted Board of GT Wilmington, at the urging of the Noteholders, initiated a process to secure alternative long-term financing for the POW.

WHEREAS, DSPC separately engaged PFM Financial (PFM) as an independent reviewer/evaluator, and the Finance Committee developed criteria to ensure a consistent comparison among the various proposals utilizing the following criteria: 1) ability to operate the Port to retain and grow jobs; 2) commitment to invest in existing POW; 3) viability of the plan to move Edgemoor forward; and 4) coverage of DSPC’s core operating costs.

WHEREAS, with these criteria, six proposals were reviewed and evaluated by PFM and the Finance Committee, with input from DSPC Staff/Counsel, and three proposals were selected for further negotiation/consideration by the DSPC.

WHEREAS, after reviewing the work of the Finance Committee, the Board authorized on April 21, 2023 the Finance Committee and the Chair to select and recommend a final bidder/proposal via Resolution 23-02.

WHEREAS, the Finance Committee and Chair invited the three bidders to make a presentation, respond to questions from the Committee and improve their proposals.

WHEREAS, the Finance Committee and Chair recommended Enstructure LLC ("Enstructure") for final and exclusive negotiations and the Board accepted this recommendation on May 22, 2023 via Resolution 23-03.

WHEREAS, Enstructure has improved upon its proposal by finalizing an agreement with the Noteholders, securing a Memorandum of Understanding with a shipping line for the development of Edgemoor and enhancing its Concession Fee payments proposal, as encompassed in the attached Enstructure Final Term Sheet.

WHEREAS, exercising DSPC's authority under Section 73 of the Bond and Capital Improvements Act (FY 2023 & FY 2024) and finalizing a transaction as encompassed in the Enstructure Final Term Sheet is in furtherance of the policy and purposes under § 8780 of Title 29.

RESOLVED: The Board of DSPC hereby authorizes the Chair and the Vice-Chair of the Board jointly to: 1) finalize and approve final forms of the assignment of and amendments to the Concession Agreement with Enstructure or its wholly owned subsidiary, consistent in all material respects with the attached Enstructure Final Term Sheet (the "Final Amendments"); 2) solicit the subsequent concurrence of the co-chairs of the Bond and Capital Improvement Committee, the Controller General, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives; 3) finalize and approve final forms of agreements with GT Wilmington, GT Americas Corp. and related entities in furtherance of finalizing this transaction; and 4) expend funds as previously authorized for this transaction and transition;

FURTHER RESOLVED, the Board of DSPC hereby authorizes the Chair of the Board to: 1) consent to the assignment of and execute and deliver and cause DSPC to perform the Final Amendments to the Concession Agreement with Enstructure or its wholly owned subsidiary; and 2) execute, deliver and perform final approved agreements with GT Wilmington, GT Americas Corp. and related entities in furtherance of finalizing this transaction;

FURTHER RESOLVED, that the Chair of the Board is authorized and directed to take such further actions and to execute and deliver, and to cause DSPC to perform its obligations under the agreements referenced in the foregoing resolutions and such further agreements, instruments, certificates and any other documents as may be contemplated by or related to the agreements referenced in the foregoing resolutions or as the Chair shall determine to be necessary, appropriate or advisable to carry out the intent and effectuate

the purpose of the foregoing resolutions and the transactions contemplated thereby, the taking of such further action or the execution of such further agreement, instrument, certificate or other document by the Chair to be conclusive evidence of such determination and the authority therefore; and

FURTHER RESOLVED, that any and all actions heretofore taken by the Chair and the Vice-Chair of the Board in connection with or related to any of the matters set forth herein or contemplated hereby, including, without limitation, any and all actions taken in connection with the negotiation, preparation and execution of the agreements referenced in the foregoing resolutions, be, and hereby are, ratified, confirmed and approved in all respects as fully as if such actions had been presented to the Board for its approval and approved prior to the taking of such action.

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☒	Approved by DSPC Board of Directors
☐	Denied by DSPC Board of Directors
☐	Decision Deferred by DSPC Board of Directors
Date:	July 7, 2023 DSPC Board Meeting