

ORDINANCE NO. 6450-08

AN ORDINANCE OF THE COUNCIL OF THE CITY OF NEWPORT NEWS, VIRGINIA, APPROVING A SUBLEASE OF PARCEL 8A, NEWPORT NEWS SEAFOOD INDUSTRIAL PARK FROM DAVIS BOAT WORKS, INC. TO VIRGINIA NATURAL GAS, INC.

WHEREAS, by lease dated October 1, 1997 (the Lease), the City of Newport News (the City) leased to DAVIS BOAT WORKS, INC. (the Lessee) Newport News Seafood Industrial Park (the NNSIP) Parcel 8A containing approximately 132,020 square feet; and

WHEREAS, pursuant to Article 11 of the Lease, Lessee has requested permission from the City to sublease the parcel (the Parcel) to **VIRGINIA NATURAL GAS, INC.**, (the Sublessee); and

WHEREAS, the City agrees to approve the sublease subject to certain terms and conditions.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

That, notwithstanding any provision of the sublease, or any other contract between Lessee and Sublessee, it hereby approves of a sublease from Lessee to Sublessee only under the following conditions:

1. Sublessee must agree to all the conditions contained in the Lease and this permission to sublease; and forever waives its, or its successor's rights to object to the terms of the Lease, or amendments thereto, and the conditions contained herein.
2. The Sublease shall be for a term commencing February 1, 2008, and ending April 30, 2009, with options to extend the sublease for up to a total of six additional months.
3. Lessee shall remain responsible to the City for all rent and other monies due the City under the Lease but may retain any amounts received as rent under its Sublease to Sublessee above amounts due the City by Lessee under the Lease, due to Lessee's ownership of the structures on the property..
4. Notwithstanding the provisions of Article 10 of the Lease, Sublessee may occupy and use the premises for office space and staging area for its construction of a pipeline. There shall be no on site excavation or land disturbing activity and Sublessee must maintain the existing easement area.
5. The City shall waive its right to surrender of the premises as provided in Paragraph 11.2 of the Lease as a result of the proposed subletting hereby approved.
6. Except as provided in paragraphs 3, 4 and 5 hereof, Lessee shall continue to be subject

to the terms of the Lease with respect to Parcel 8A in the NNSIP, in all respects and manner related thereto.

7. Termination of the Lease for any reason shall also terminate this approval to sublease unless the City, in its sole discretion, agrees otherwise.

8. Sublessee shall keep continuously in force insurance coverage at least to the extent required by the Lease and shall name the City of Newport News, Virginia, as an additional insured thereon.

9. Except as provided in paragraph 4 hereof, Sublessee may use the subject premises for only the purposes and activities provided for in the Lease.

10. This approval to sublease shall inure only to the benefit of **VIRGINIA NATURAL GAS, INC.**, as Sublessee. No permission is given, whether expressly or by implication, to further assign, sublet or sell the Lease or the improvements on the subject premises without further approval of City Council. This condition specifically includes the purchase of Sublessee, or a controlling interest therein, by a person or entity not presently in control of the Sublessee.

11. This approval is further subject to the agreement by Sublessee that it will enter into amendments to both the Lease and Sublease, which the City Manager is hereby authorized to sign, to reflect the provisions of the existing Newport News Seafood Industrial Park Master Lease as well as future modifications to the existing Newport News Seafood Industrial Park Master Lease so long as such changes would not materially or adversely affect Sublessee's operations, business or use of the leased premises.

12. A true copy of the Sublease and any attachments, and any amendments thereto, shall be delivered to the Newport News Seafood Industrial Park Harbor Master at the following address:

Harbor Master
Newport News Seafood Industrial Park
2400 Washington Avenue
Newport News, VA 23607

13. The breach by Sublessee of any of the terms or conditions of the Lease, or any amendments thereto, or the conditions of this approval to sublease, shall be an event of substantial default and shall subject this approval to sublease to revocation and the Lease to termination, in the sole discretion of the Council of the City of Newport News upon notice by mail, or delivery thereof, to Sublessee at 150 West Main Street, Suite 1510, Norfolk, VA 23510, Attention: Les Flora; it being the responsibility of Sublessee to notify the Harbor Master in writing of any change in the above address.

14. All delinquent rents owed by the Lessee, taxes, licenses, fees and other city code

violations, if any, associated with Parcel 8A in the NNSIP must be satisfied or otherwise resolved to the City's satisfaction prior to the date provided in paragraph 18 hereof.

15. Lessee or Sublessee must execute a sublease document, or other appropriate document, as evidence of their approval of the sublease.

16. Entry upon and utilization of Parcel 8A of the NNSIP by Sublessee shall be deemed conclusive evidence of its acceptance of the terms of the Lease and the Sublease, as well as the terms of this ordinance approving the sublease from Lessee to Sublessee.

17. The Sublessee agrees to defend, indemnify and hold the City harmless from any damages of whatsoever nature that may result from the storage or transportation of hazardous matter or materials, as defined in the Lease, on or over Parcel 8A of the NNSIP by Sublessee, its employees, servants, agents or invitees.

18. All conditions contained herein must be satisfied, certified or assumed on or before close of business on March 1, 2008. In the event all conditions are not satisfied, certified or assumed on or before close of business on March 1, 2008, this ordinance, and the approvals contained herein shall lapse, have no further force or effect and shall be withdrawn by operation of law; no further action to withdraw shall be necessary.

19. That this ordinance shall be in effect on and after the date of its adoption, January 22, 2008.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON
JANUARY 22, 2008

Mabel V. Washington, CMC
City Clerk

Joe S. Frank
Mayor

A true copy, teste:

City Clerk