MISSISSIPPI PORT AUTHORITY

BOARD OF COMMISSIONERS

SPECIAL MEETING

July 6, 2017

Minutes of the Mississippi State Port Authority Board of Commissioners Meeting, Thursday, July 6, 2017, 2510 14th Street, Suite 1450, Gulfport, Mississippi at which the following Commissioners and staff were present:

Commissioners:	Robert Knesal, President James C. Simpson, Jr., Vice-President John Rester, Secretary E.J. Roberts, Commissioner
Staff:	Jonathan Daniels, Executive Director/CEO Matthew Wypyski, Chief Operating Officer John Webb, Director of Engineering Kim Purchner, Executive Asst./HRO Mel Arsenault, Director of External Affairs DeeDee Wood, Chief Financial Officer Carlos Bell, Director of Community Affairs
	Brant Pettis, Balch & Bingham
Others:	Philip Carter, MDA (via telephone)

Commissioner Knesal noted the presence of a quorum and called the meeting to order at approximately 4:00 p.m.

PUBLIC COMMENTS:

There were no public comments.

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Commissioner Simpson moved to approve payment of $4,750,290.38 to Necaise Brothers under Cash Request #169. Commissioner Rester seconded and the motion was unanimously approved.

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OLD BUSINESS:

Commissioner Simpson moved to adopt Resolution No. 17-02 that approves and authorizes the execution of the Takeover Agreement relating to Project 305. Commissioner Rester seconded and the motion was unanimously approved.

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Commissioner Rester moved to adjourn. Commissioner Roberts seconded and the motion was unanimously approved.

The meeting adjourned at approximately 4:25 p.m.

Approved and Attested

Robert J. Knesal President	John Rester Secretary

ORIGINAL

RESOLUTION NO. 17-02

RESOLUTION OF THE MISSISSIPPI STATE PORT AUTHORITY

The Board of Commissioners of the Mississippi State Port Authority at Gulfport (the "Port Authority") took up for consideration the following resolution pertaining to the approval and execution of that certain takeover agreement by and between the Port Authority and Travelers Casualty and Surety Company of America ("Travelers") relating to the completion of that certain General Contract 015-HUD-025 (hereinafter "General Contract") with Southern Industrial Contractors, LLC (hereinafter "SIC"), for work on West Pier Facilities - 305 (hereinafter "Project"), including completion of the Transit Shed, Terminal Administration, and Terminal Gate House (Buildings 3, 5.3 and 9) pursuant to the terms and conditions of that certain proposed written agreement incorporated herein. Thereupon, Commissioner Simpson offered and moved the adoption of the following resolution:

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT APPROVING AND AUTHORIZING THE EXECUTION OF THE TAKEOVER AGREEMENT RELATING TO PROJECT 305

WHEREAS, the Port Authority is an agency of the State of Mississippi charged with the responsibility of managing/operating the State's only deep-water port located at Gulfport, Mississippi; and

WHEREAS, the Mississippi Development Authority ("MDA") is an agency of the State of Mississippi charged with the responsibility of administering Hurricane Katrina disaster recovery programs which are funded by Community Development Block Grant ("CDBG") funds and overseen by the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, on January 2, 2009, MDA entered into a Katrina Supplemental CDBG Subgrant Agreement with MSPA, identified as POG R115-06-02, to facilitate the restoration of the Port of Gulfport's public infrastructure and publicly owned facilities that were destroyed by Hurricane Katrina and provide for the long-term recovery of the operating capacity of the Port; and

WHEREAS, on or about August 25, 2014, the Port Authority entered into the General Contract with SIC, for the Project; and

WHEREAS, as required by the General Contract, Travelers issued Performance and Payment Bonds numbered 106089918 dated August 25, 2014, each in the amount of $47,037,840.25 (hereinafter "Performance and Payment Bonds"), on behalf of SIC and naming the Port Authority as obligee; and

WHEREAS, on or about August 6, 2015, the Port Authority and SIC entered into Change Order No. 1 for the performance of certain excavation and related activities as specified in the change order and, as a result thereof, the Port Authority and SIC increased the General Contract amount to $51,366,112.66; and

WHEREAS, on or about September 14, 2016, the Port Authority terminated SIC's right to complete the General Contract, which were more particularly described in that certain Resolution No. 16-06 of the Board of Commissioners of the Port Authority and said termination is contested by the SIC and by Travelers. SIC and Travelers reserve all their rights and defenses regarding the legitimacy of the termination and any damages they have or will incur which result therefrom; and

WHEREAS, as of the date of SIC being declared in default by the Port Authority, a portion of the Work (as defined in the General Contract) remained incomplete (hereinafter "Remaining Work"); and

WHEREAS, without waiving any rights or defenses of SIC, Travelers, or the Port Authority, all of which are expressly reserved, Travelers and the Port Authority have agreed that Travelers will take over the Remaining Work, subject to the terms and conditions of that certain Takeover Agreement by and between Travelers and the Port Authority, including all exhibits contained therein, which is attached hereto as composite **Exhibit "1"** and fully incorporated into the official minutes of the Port Authority by this reference (the "Takeover Agreement"); and

WHEREAS, the Port Authority desires to approve and authorize the execution of the Takeover Agreement and to authorize the taking of other such actions necessary or desirable in connection with the matters contemplated therein in order to facilitate the expeditious completion of the Project; and

NOW, THEREFORE BE IT RESOLVED, that the Port Authority hereby acknowledges, approves, authorizes, and affirms the execution of the Takeover Agreement and the taking of other such actions necessary or desirable in connection with the matters contemplated in the Takeover Agreement in order to facilitate the expeditious completion of the Project.

BE IT FURTHER RESOLVED, that the Chairman of the Board of Commissioners and the Executive Director of the Port Authority are hereby authorized to execute, deliver, and record additional documents as may be reasonably necessary and appropriate and to take all other reasonably necessary action to carry out the provisions of this Resolution.

Commissioner Rester seconded the motion to adopt the foregoing Resolution, and the vote thereupon was as follows:

	Voted:
Commissioner Robert J. Knesal:	Aye
Commissioner James C. Simpson, Jr.:	Aye
Commissioner John Rester	Aye

Commissioner E.J. Roberts: Aye

Commissioner Jack Norris: Absent

The motion having received the foregoing vote of the Board of Commissioners, the President declared the motion carried and the Resolution adopted, on this the 6th day of July, 2017.

This Resolution, along with any exhibits thereto, shall be incorporated into and considered as part of the minutes for the Board of Commissioners' meeting in which it is adopted.

ROBERT J. KNESAL, PRESIDENT

Exhibit A

[See attached]

AGREEMENT

This Agreement between Travelers Casualty and Surety Company of America (hereinafter "Surety") and the Mississippi State Port Authority (hereinafter "Owner") is effective as of July 6, 2017.

I.

RECITALS

A. On or about August 25, 2014, Owner entered into General Contract 015-HUD-025 (hereinafter "General Contract") with Southern Industrial Contractors, LLC (hereinafter "Principal"), for work on West Pier Facilities - 305 (hereinafter "Project").

B. As required by the General Contract, Surety issued Performance and Payment Bonds numbered 106089918 dated August 25, 2014, each in the amount of $47,037,840.25 (hereinafter "Performance and Payment Bonds"), on behalf of Principal and naming Owner as obligee.

C. On or about September 14, 2016, Owner terminated Principal's right to complete the General Contract, which termination is contested by the Principal and by the Surety. The Principal and the Surety reserve all their rights and defenses regarding the legitimacy of the termination and any damages they have or will incur which result therefrom.

D. As of the date of the Principal being declared in default by the Owner, a portion of the Work (as defined in the General Contract) remained incomplete (hereinafter "Remaining Work").

E. Without waiving any rights or defenses of the Principal, the Surety, or the Owner, all of which are expressly reserved, the Surety and the Owner have agreed that the Surety will take over the Remaining Work, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, based on the exchange of valuable consideration, the receipt and sufficiency of which is acknowledged, the Surety and the Owner agree to the following terms and conditions:

II.

TERMS & CONDITIONS

1. Incorporation of the General Contract. With the exception of any alternative dispute resolution provisions, the General Contract is incorporated by reference into this Agreement, including, without limitation, the Instructions for Bidders, the General Contract Terms and Conditions, the Supplemental Conditions, the Plans or Drawings, and any Special Conditions and Specifications, and all addenda and modifications to those documents issued in accordance with the General Contract.

EXHIBIT "A"

2. The Current Contract Amount. The Owner represents that as of the effective date of this Agreement, the initial Contract Amount of $47,037,840.25 has been increased by change orders totaling $4,328,272.41 for a current contract amount of $51,366,112.66 (hereinafter "Contract Amount"). The Owner represents and warrants that the Contract Amount is accurate. The Surety reserves the right to verify the accuracy of the Contract Amount. The Surety's remedy against the Owner for breach of this representation and warranty is limited to the reformation of this Agreement to reflect the correct Contract Amount. The final amount to be paid under the General Contract, and this Agreement, shall be derived based upon the Owner's quantification and approval of work in place, which has been approved and accepted by Owner as substantially complete as contemplated in the General Contract, valued at the unit and/or lump sum prices set under the General Contract, subject to the Owner's rights to withhold payment and setoff.

3. Percentage of Completion & Prior Payments. As of the effective date of this Agreement, the Owner represents that the Principal has been paid $32,987,669.79 through Payment Requisition No. 15 under the General Contract (hereinafter "Amount Paid to Former Contractor"), and that the Owner is presently holding accrued retainage of $1,732,327.48 under the General Contract. Subject to the approval of the Mississippi Development Authority ("MDA"), the Owner shall approve Pay Requisition No. 15 in the amount of $1,350,652.30 and Pay Requisition No. 16 in the amount of $2,896,760.70. Within three business days of the Owner's receipt of payment from the MDA, the Owner shall issue payments to the payees identified in Exhibit "A" to this Agreement in the amounts specified in Exhibit "A" to this Agreement. Surety represents and warrants that the amounts to be paid to the payees as represented in Exhibit "A" represents verified amounts due and unpaid for work, labor, materials and/or equipment previously provided on the Project by the payees. As to the remainder of the funds received from the MDA in connection with Pay Requisition Nos. 15 and 16, the Owner intends to exercise its rights of withholding or setoff. The Surety reserves all rights to contest any portion of the amounts withheld or set off by the Owner. The Owner represents and warrants that the Amount Paid to Former Contractor is accurate. The Surety reserves the right to, at its own cost and expense, verify the accuracy of the Amount Paid to Former Contractor. The Surety's remedy against the Owner for breach of this representation and warranty is limited to the reformation of this Agreement to reflect the correct Amount Paid to Former Contractor.

4. Liens and Assignments Against General Contract Funds. The Surety represents that as of the effective date of this Agreement, the claim notices, stop notices, mechanic's liens, other liens, assignments or encumbrances against the Contract Funds identified in Exhibit "B" have been filed with or served upon the Surety in connection with the General Contract. The Owner represents that it will promptly advise Surety of any other claim notices, mechanic's liens, stop notices, other liens, assignments or encumbrances against the Contract Funds in connection with the General Contract. The Surety agrees to investigate all payment claims made against it, but shall have the right to settle, compromise, defend, appeal, pay or dispute such claims as it, in its sole and complete discretion, may deem appropriate. In no event shall the Owner withhold any portion of the Contract Amount on account of claims, stop notices, liens, suits or demands by subcontractors or material suppliers furnishing or alleged to have furnished labor and/or materials to the Project prior to the entry of this Agreement; provided, however, that the Surety shall defend, indemnify and hold harmless the Owner from any loss which may arise by virtue of such claims, stop notices, liens, suits and demands, subject to the penal sum of the

Payment Bond, as reduced by the payments made by the Surety pursuant thereto. The Surety's defense and indemnity obligations to the Owner for claims by such payment bond claimants shall be limited to the penal sum of the Payment Bond.

5. Surety to Perform Remaining Work. Surety shall be responsible for the completion of the Remaining Work. Surety shall perform the Remaining Work through a Completing Contractor(s) (hereinafter "Completing Contractor") which the Surety shall engage. The Completing Contractor shall be subject to the qualification and approval requirements of the Owner imposed by the General Contract for those entities performing the type of Work contemplated by the General Contract. Insofar as the Owner has any right, title, or interest in or to any subcontract, purchase order, contract, equipment, materials, inventory, or appurtenances furnished or supplied to the Principal for the General Contract, however derived, the Owner hereby assigns all such rights, title, or interest to the Surety and agrees that Surety and Completing Contractor shall have, strictly for the purpose of completing the Remaining Work, the right to utilize the same without charge.

6. Limited Obligation to Perform General Contract. The Surety hereby undertakes to cause the performance of the Remaining Work subject to the terms, covenants, and conditions of the General Contract. By its execution of this Agreement, the Owner acknowledges that the Surety is acting in its capacity as the surety for the Principal in making arrangements for the performance and completion of the Remaining Work in accordance with the requirements of the General Contract, and not as a completing contractor, and that the Surety is not assuming any obligations or liabilities beyond those set forth in the Payment and Performance Bonds. No contractual relationship shall exist between the Owner and the Completing Contractor. The Completing Contractor shall provide all insurances required under the General Contract. As to the completion of the General Contract, the Surety represents that it is entitled to all rights, title, and interest of the Principal in and to the General Contract.

7. Surety's Performance Rights Confirmed. Nothing shall limit the Surety's rights as a completing surety. The Owner hereby recognizes those rights, including the right of equitable subrogation, recoupment, offset, and withholding, amongst others. Surety represents and warrants that it is fully subrogated to the rights of the Principal under the General Contract, including, but not limited to, the right to receive payment for work previously performed by or on behalf of the Principal. Further, the Owner also recognizes that the Surety is subrogated to the Principal's rights under the General Contract, including the right to additional compensation or damages where allowed or appropriate under the General Contract or applicable law for claims or matters arising before or after the date of this Agreement. The Owner acknowledges that Surety is not a licensed contractor, and Surety acknowledges that it will not act in the capacity of a contractor.

8. Owner's Right With Respect to Changes in the Work. The Owner reserves the right, to the extent appropriate under the General Contract, to issue further change orders. The terms of these change orders, including the attendant extensions of time and valuation of the change order work, shall be determined as provided in the General Contract. The Surety reserves the right to refuse to perform any extra or additional work, either alone or in the aggregate with all extra or additional work performed by the Surety, that constitutes a cardinal change (to the extent such doctrine is recognized under Mississippi law) under the General Contract or if such work

constitutes a material alteration of the Surety's risk under the Performance Bond or the Payment Bond. Further, in the event the Owner seeks the performance of additional work which is not subject to valuation by application of the unit and/or lump sum prices set under the General Contract, it shall negotiate in good faith and in an expeditious manner the appropriate value for such work with Surety in accordance with the terms of the General Contract.

9. Schedule for Completion of the Remaining Work. The Surety, through the Completing Contractor, will coordinate and cooperate with the Owner in formulating a schedule for the completion of the Remaining Work. The Surety reserves all rights to pursue any claim for additional time and other associated relief, including excusable delays, that are appropriate under the General Contract. The Owner reserves its right to recover liquidated damages that may have accrued as a result of the Principal's failure to achieve substantial completion by the Completion Date of March 21, 2016. The Owner also reserves its rights of setoff. The Surety acknowledges that the Owner intends to withhold the payment of funds from pending pay applications and future pay applications relating to the takeover and completion of the Project by Surety in an amount sufficient to cover the Owner's liquidated damages for delay and claimed actual damages relating to the Principal's performance. The Surety reserves the right to contest any amounts withheld as damages or otherwise.

10. Completing Contractor. The Surety reserves the right (i) to terminate its completion contract with the Completing Contractor at any time, upon three (3) calendar days' prior written notice to the Owner; and (ii) to contract with another completing contractor, subject to reasonable approval by the Owner. Routine day-to-day operations and decisions as to the manner of performance of the Remaining Work shall be made by the Completing Contractor, subject to the terms and conditions of the General Contract; provided, however, that the Completing Contractor shall have no authority to: (i) agree to any changes in the General Contract or the Remaining Work; (ii) agree to any change orders; (iii) agree to any back charges or deductions of any nature; (iv) agree to any schedule changes; (v) agree to any adjustments in the General Contract amount or the Remaining Work; or (vi) agree to perform warranty work of the Principal or corrective work as a result of latent defect(s) in the work performed by the Principal, without the Surety's prior express written consent which shall be delivered to the Owner as a condition precedent to the Completing Contractor negotiating items (i) through (vi). The Remaining Work shall be subject to inspection and acceptance by the Owner, as provided in the General Contract.

11. Payments to Surety & Reduction of the Penal Sum. The Contract Amount, less the Amount Paid to Former Contractor or its subcontractors, shall be paid to the Surety as it completes the Remaining Work in accordance with the terms of the General Contract; provided, however, Owner reserves the right to withhold payment otherwise due pursuant to Paragraph 31 of the General Conditions of the General Contract, including, but not limited to, accrued liquidated damages. It shall not be considered a waiver of the Owner's withholding and setoff rights for such rights to be accrued or alleged but not exercised against any particular pay application that may be pending or presented in the future.

From time to time, the Surety agrees to expend such of its own funds as may be necessary to pay for completion of the Remaining Work, pay the Completing Contractor, reimburse or pay the Owner for any and all damages or settlements of any nature or description; provided, however, that the penal sum of the Performance Bond shall be reduced (on a dollar-by-dollar basis) by all amounts expended by the Surety in excess of the amount paid by the Owner to the Surety (i) to complete the Remaining Work, (ii) pay the Completing Contractor, (iii) reimburse or pay the Owner for any and all damages or settlements of any nature or description, and/or (iv) defend, adjust and satisfy any claims under the Performance Bond, General Contract, and/or this Agreement. If, out of its own funds, the Surety either expends, or is committed to expend, the full penal sum of the Performance Bond, as reduced herein, then the Surety shall have no further obligation of any description to the Owner arising from, related to or in connection with the Performance Bond, the General Contract, and/or this Agreement. All payments made by the Surety previously, and those made in the future, have been and will (on a dollar-by-dollar basis) reduce the penal sum the Performance Bond.

Following the Surety's notice of its intention to cease work due to exhaustion of the penal sum, and at the Surety's sole option, the Surety may immediately terminate its contract with the Completing Contractor.

12. Payment Bond & Payment Bond Claims. The Payment Bond shall remain in full force and effect in accordance with its terms and provisions. The total liability of the Surety under the Payment Bond is limited to and shall not exceed the penal sum of the Payment Bond. For each dollar the Surety expends pursuant to the Payment Bond, the Surety shall receive a corresponding dollar-for-dollar reduction in the penal sum of the Payment Bond. If out of its own funds the Surety expends the full penal sum of the Payment Bond, the Surety shall have no further obligation of any description arising out of, or in connection with the Payment Bond. All payments made to Payment Bond claimants by the Surety previously, and those made in the future to Payment Bond claimants, have been and will be credited against the penal sum of the Payment Bond.

The Surety's Payment Bond obligations run solely to those claimants thereunder who performed work, labor and/or supplied material or equipment to the Project on or before the effective date of this Agreement. Surety's Payment Bond shall not apply to or cover the Completing Contractor or any of its subcontractors and suppliers for any work performed or materials delivered, and Surety shall not be a co-surety with the Completing Contractor's payment bond surety. No provision in this Agreement shall be construed as limiting Surety's obligations under new bonds that it may issue on behalf of the Completing Contractor.

13. Payment Requisitions. The Surety, through its Completing Contractor, shall submit to the Owner whatever information or documentation is required regarding the work performed under the General Contract, and stored materials, to conform to and support the requisition process and schedule established under the General Contract. The Owner recognizes that the Surety shall be completing the Remaining Work through the services of a Completing Contractor. Accordingly, the Owner shall consider the Completing Contractor's representations and certifications with respect to all aspects of the work, progress of the work, quality of the work, conformance of the work to the requirements of the General Contract, payments to others, warranty and maintenance of the work, and all other matters pertinent to the General Contract, wherever such representations are required by the General Contract, as if those representations had been made by the Surety, since the Surety may have no personal knowledge of such matters.

14. Completing Contractor Claims. Except as otherwise provided in the General Contract, the Surety shall not be obligated to defend, indemnify, or hold harmless the Owner from any claim the Completing Contractor may have in the future against: (i) the Owner; (ii) the funds due to the Surety for work performed by the Completing Contractor under this Agreement; or (iii) the real property upon which the Project is located.

15. Transmission of All Cure, Default or Termination Notices. Any notice which is provided for or required by either this Agreement or the General Contract for any cure, default or termination notice must be in writing and may be delivered in person to any party or may be sent by a facsimile transmission, telegraph, courier, or registered or certified U.S. mail, with postage prepaid, return receipt requested. E-mail is an acceptable communication method upon acknowledgement of receipt by the intended recipient. Any such cure, default or termination notice shall be deemed received by the party to whom it is sent (i) in the case of delivery by hand or delivery by reputable national or local courier (such as United Parcel Service or Federal Express), on the date of delivery to the party to whom such notice is addressed; (ii) in the case of facsimile transmission or telegram, one working day after the date of successful transmission (provided that an additional copy of such notice is subsequently received within three (3) days of the facsimile using the methods in (i) or (iii)), and (iii) in the case of registered or certified mail, the date receipt is acknowledged on the return receipt for such notice. All such notices shall be sent to the persons and addresses listed below:

If to the Obligee:
The Mississippi State Port Authority
c/o Ben H. Stone, Balch & Bingham LLP
1310 Twenty Fifth Avenue
Gulfport, Mississippi 39501-1931

with copies to:

The Mississippi State Port Authority
c/o Jonathan T. Daniels, Executive Director & CEO
2510 Fourteenth Street, Suite 1450
Gulfport, Mississippi 39501

If to Surety:
Thea Foglietta Silverstein, Managing Claim Counsel
Travelers Casualty and Surety Company of America
1500 Market Street, 29th Floor West Tower (Mail Code 1166)
Philadelphia, Pennsylvania 19102

If to Completing Contractor:

____

The addresses and persons listed may be changed at any time by giving written notice in accordance with this Paragraph.

16. All Claims Referred to the Surety. The Owner recognizes that the Surety may be liable to unpaid suppliers and subcontractors of Principal. The Owner agrees to make no representations or promises of payment to these suppliers and subcontractors and will refer all inquiries to the Surety.

17. Full Mutual & Specific Reservation of Rights & Defenses. Except to the extent expressly provided for to the contrary in this Agreement, neither this Agreement nor any provision hereof shall be deemed or construed to be an admission or concession of liability of any kind or nature by Principal, Surety, or the Owner or a waiver of: (i) any of the rights or claims of Principal or Surety in relation to the Payment or Performance Bonds or General Contract including, but not limited to, the claim that the Owner prejudiced Surety by making over payments to the Principal, the claim that the Owner prejudiced Surety by not mitigating Surety's damages, the Principal's claims for pending change orders, claims, extensions of time, delays, disruptions, acceleration, and wrongful termination; or (ii) any rights or claims of the Owner in the General Contract, the Performance Bond and Payment Bond, including, but not limited to, the Owner's claim for liquidated damages, actual damages and back charges, with the Principal, Surety and the Owner specifically reserving all of the foregoing rights, defenses and claims, as it is the understanding and intention of the parties that any claims or contentions which may have been made or which may be made in relation to the General Contract including alleged breaches thereof by the Principal, on the one hand, and by the Owner, on the other, are in no way affected by this Agreement, and by entering into this Agreement the parties recognize that, except as otherwise provided herein, any and all rights, defenses or claims which the Principal or the Surety may believe themselves to have against the Owner or the Owner may believe itself to have against the Principal or the Surety in relation to the General Contract are in no way impaired or reduced by this Agreement and are fully reserved.

Notwithstanding these potential rights, defenses and claims, however, and in the interest of expediting the completion of the Project to minimize the damages of the ultimately responsible parties, the Surety has agreed to complete the Remaining Work subject to: (i) the penal sum of the Performance Bond (as reduced herein); (ii) the penal sum of the Payment Bond (as reduced herein); (iii) this mutual reservation of all rights, defenses and claims; and (iv) the terms and conditions of this Agreement.

If it is subsequently determined in any future dispute resolution process that the Owner's default and/or termination of the Principal under the General Contract was not justified or proper, then the Surety is entitled to recover all amounts expended by the Surety in completing the General Contract in excess of the amount paid to the Surety by the Owner under this Agreement, without regard to any termination for convenience provision of the General Contract. The Owner's rights, claims and defenses against the Principal regarding the termination of the Principal, including a termination for convenience, shall be preserved.

18. Applicable Statute of Limitations/Statute of Repose. The time limitation for the Owner to bring or file any claim, action, demand, proceeding, suit or cause of action of any nature against the Surety under this Agreement or the Bonds is expressly and solely governed by Mississippi, and not by any other limitations period, statutory or otherwise, including but not limited to, any Statute of Repose. If the provisions of this Paragraph are void or prohibited by law,

then the minimum period of limitations available to a surety as a defense in the jurisdiction of the suit shall be applicable.

19. Agreement Binding on Successors. This Agreement shall be binding upon the successors and assignees of Surety and Owner.

20. No Modification Except in Writing. This Agreement cannot be modified except in a writing signed by both Owner and Surety.

21. This Agreement Controls. In case of a conflict between the provisions of this Agreement and the provisions of the General Contract, Payment Bond and/or Performance Bond, this Agreement shall control. Further, this Agreement, the Payment Bond, and the Performance Bond constitute the entire Agreement between the Owner and the Surety and, together, supersede all prior negotiations, representations, offers, other writings and oral statements of every description.

22. Applicable Law. The validity, construction and interpretation of this Agreement and the performance of the Owner and the Surety of this Agreement, shall be governed by, and construed in accordance with, the laws of the State of Mississippi and that, in any suit, action, or proceeding that may be brought arising out of, in connection with, or by reason of this Agreement for the enforcement thereof, or otherwise, the laws of the State Mississippi shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any suit, action, or proceeding may be instituted.

23. No Waiver. The failure of either party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or of any other right.

24. Counterparts. This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be deemed to an original with all the counterparts constituting but one and the same Agreement. The execution of this Agreement by any parties hereto will not become effective until all the counterparts hereof have been executed by all the parties.

25. Construction. The Owner and Surety have been represented by counsel who have materially participated in the authorship of this Agreement. With this understanding, the Owner and the Surety agree that the rule of construction that a written agreement is construed against the party drafting or preparing such an agreement shall not apply to the interpretation of this Agreement.

WHEREFORE, Surety and Owner have executed this Agreement by their authorized representatives.

DATED: 7/6/17

THE MISSISSIPPI STATE PORT AUTHORITY

By: ____________________

Its: President ________________ and lawfully
authorized representative.

DATED:__________

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA

By: ______________________________________

Its __________________________ and lawfully
authorized representative.

Its: ________________________________ and lawfully authorized representative.

DATED: 11 Jul 17

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

By: ________________________ Mark S. Marino

Its 2nd Vice President and lawfully authorized representative.

EXHIBIT A TO TAKEOVER AGREEMENT

MAKE CHECKS PAYABLE TO:		CHECK AMOUNT
Travelers Casualty and Surety Company of America AND	Simplex Grinnell LP	$22,272.78
Travelers Casualty and Surety Company of America AND	Bonded Lightning Protection Systems, Ltd	$49,277.70
Travelers Casualty and Surety Company of America AND	Consolidated Electric Distributors, Inc. d/b/a Robinson Electric Supply	$9,609.46
Travelers Casualty and Surety Company of America AND	Mayer Electric Supply Co Inc.	$16,792.28
Travelers Casualty and Surety Company of America AND	CLP Resources	$51,346.80
Travelers Casualty and Surety Company of America AND	Express Employment/Poolemerica Enterprises	$131,504.22
Travelers Casualty and Surety Company of America AND	Sunbelt Rentals, Inc. (2)	$13,006.24
Travelers Casualty and Surety Company of America AND	Construction Materials, Inc.	$631.00
Travelers Casualty and Surety Company of America AND	Sunbelt Rentals, Inc.	$55,075.73
Travelers Casualty and Surety Company of America AND	Blueline Rental	$73,174.70
Travelers Casualty and Surety Company of America AND	CMC Rebar	$326,353.84
Travelers Casualty and Surety Company of America AND	Farris Concrete Pumping LLC	$7,992.95
Travelers Casualty and Surety Company of America AND	Stewart Land Development, Inc.	$1,282.50
Travelers Casualty and Surety Company of America AND	HD Supply White Cap Construction	$47,940.95
Travelers Casualty and Surety Company of America AND	Eagle Rebar & Cable Co., Inc.	$8,038.62
Travelers Casualty and Surety Company of America AND	Associated Food Equipment & Supplies Inc.	$521,575.08
Travelers Casualty and Surety Company of America AND	Simsona Corp.	$12,850.00
Travelers Casualty and Surety Company of America AND	Southern Industrial Sales, Inc.	$7,813.50
Travelers Casualty and Surety Company of America AND	DOCK & DOORS	$73,500.00
Travelers Casualty and Surety Company of America AND	S&S Sprinkler Company LLC	$106,766.80
Travelers Casualty and Surety Company of America AND	Neenah Foundry Company	$9,840.00
Travelers Casualty and Surety Company of America AND	Bay Insulation of Louisiana, Inc.	$155,063.00
Travelers Casualty and Surety Company of America AND	Gulf Coast Pre-Stress Partners, Ltd	$100,012.56
Travelers Casualty and Surety Company of America AND	NES Rentals	$102,679.22
Travelers Casualty and Surety Company of America AND	The Sherwin-Williams Company	$10,975.29
Travelers Casualty and Surety Company of America AND	Simmons Trucking	$15,385.00

Travelers Casualty and Surety Company of America AND	Metal Building Components, A Division Of NCI Group, Inc	**$19,210.36**
Travelers Casualty and Surety Company of America AND	Interior Exterior Building Supply, L.P.	**$3,871.14**
Travelers Casualty and Surety Company of America AND	United Rentals (North America) Inc.	**$3,568.70**
Travelers Casualty and Surety Company of America AND	Kelley Bros LLC	**$15,067.00**
Travelers Casualty and Surety Company of America AND	ISCO Metals & Supplies Of MS, LLC	**$1,465.41**
Travelers Casualty and Surety Company of America AND	CMC-Commercial Metals	**$75,650.00**
Travelers Casualty and Surety Company of America AND	Waste Pro	**$7,735.56**
Travelers Casualty and Surety Company of America AND	Bay Ice Company	**$1,524.00**
Travelers Casualty and Surety Company of America AND	Sunbelt Rentals, Inc. (3)	**$6,463.34**
Travelers Casualty and Surety Company of America AND	84 Lumber Company, LP	**$12,000.00**
		$2,077,315.73

EXHIBIT B

Claim Notices/Stop Notices/Liens/Assignments

DATE	CLAIMANT	AMOUNT
2017/03/09	84 Lumber Company, LP	12,000.00
2016/08/08	ACE Contractors, Inc.	1,435,459.47
2016/10/17	ADS, LLC	1,505,029.21
2016/11/02	Associated Food Equipment & Supplies, Inc.	521,575.08
2017/02/21	Bay Ice Company	1,524.00
2016/11/18	Bay Insulation of Louisiana, Inc.	155,063.00
2016/09/07	Blueline Rental	73,174.70
2016/11/21	Bonded Lightning Protection Systems, Ltd.	49,277.70
2016/10/10	CLP Resources	51,346.80
2017/01/18	CMC – Commercial Metals	75,650.00
2016/11/17	CMC Rebar	326,353.84
2017/02/13	Consolidated Electric Distributors, Inc. d/b/a Robinson Electric Supply	9,609.46
2016/08/04	Construction Materials, Inc.	631.00
2017/05/19	D&M Steel Co.	58,336.19
2016/09/26	Eagle Rebar & Cable Co., Inc.	118,960.71
2016/09/26	Eagle Rebar & Cable Co., Inc.	8,038.62
2016/08/26	Express Employment / Poolemerica Enterprises	131,504.22
2016/11/04	Farris Concrete Pumping, LLC	7,992.95
2016/12/08	Gulf Coast Pre-Stress Partners, Ltd.	100,012.56
2016/11/04	HD Supply White Cap Construction	47,940.95
2017/01/09	Herc Rentals ADC, LLC	5,245.21
2016/12/13	Interior Exterior Building Supply, L.P.	3,871.14
2017/01/24	ISCO Metals & Supplies of MS, LLC	1,465.41
2017/01/19	Kelley Bros., LLC	15,067.00
2016/08/11	Mayer Electric Supply Co., Inc.	16,792.28
2016/12/29	MBCS Steel Fabrication	100,177.00
2016/12/05	Metal Building Components, A Division of NCI Group, Inc.	19,210.36
2017/01/17	Neenah Foundry Company	9,840.00
2016/12/19	NES Rentals	102,679.22
2016/06/22	P&H Construction, Inc.	323,975.79
2016/10/07	Ray C. Weaver Mechanical Contractors, Inc.	28,800.20
2016/10/11	S&S Sprinkler Company, LLC	150,981.13
2016/11/08	Simmons Trucking	15,385.00
2016/12/05	Simplex Grinnell, LP	22,272.78
2016/07/18	Simsona Corp.	12,850.00
2016/08/04	Southern Industrial Sales, Inc.	81,313.50
2017/01/09	Stewart Land Development, Inc.	1,282.50
2016/11/15	Sunbelt Rentals, Inc.	55,075.73
2017/03/02	Sunbelt Rentals, Inc. (2)	13,006.24
2017/03/02	Sunbelt Rentals, Inc. (3)	6,463.34
2016/11/28	The Sherwin-Williams Company	10,975.29
2017/01/10	United Rentals (North America) Inc.	3,568.70
2017/02/08	Waste Pro	7,735.56