

MISSISSIPPI PORT AUTHORITY

BOARD OF COMMISSIONERS

SPECIAL MEETING

June 19, 2017

Minutes of the Mississippi State Port Authority Board of Commissioners Meeting,
Monday, June 19, 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 Jack Norris, Treasurer John Rester, Secretary (via telephone)
Staff:	Jonathan Daniels, Executive Director/CEO Matthew Wypyski, Chief Operating Officer Kim Purchner, Executive Asst./HRO Mel Arsenault, Director of External Affairs DeeDee Wood, Chief Financial Officer Nick Foto, Deputy Program Manager Brant Pettis, Balch & Bingham
Others:	Philip Carter, MDA (via telephone) Michael Sheely, CH2MHill Bob Burns, CH2MHill Randall Love, TL Wallace Cathy Beeding, Island View

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.

Item 5E under Old Business was moved up in the agenda. After a presentation by Cathy Beeding of Island View Resort & Casino, Commissioner Simpson moved to formally approve the \$75 million Island View Expansion to the south of Highway 90. Commissioner Norris seconded and the motion was unanimously approved.

Commissioner Simpson moved to close the meeting to determine the need for Executive Session. Commissioner Norris seconded and the motion was unanimously approved.

Commissioner Simpson moved to enter Executive Session to discuss litigation with SIC. Commissioner Norris seconded and the motion was unanimously approved.

(THE BOARD OF COMMISSIONERS ENTERED INTO EXECUTIVE SESSION AT APPROXIMATELY 4:20 P.M.).

Commissioner Knesal stated that no action took place during Executive Session

Commissioner Simpson moved to amend the agenda to table Items 4C (RFC #169) and 4D (RFC #170) under the Financial Report and add the adoption of a Resolution (will be Item 4C).

Commissioner Simpson moved to approve Cash Request #167 – Anchor QEA (\$39,909.75); Atkins (\$15,663.46); Atwell & Gent (\$67,132.10); CH2MHill (\$221,638.24); Dan Hensarling (\$481,756.27); J.O. Collins (\$762,506.62); MSPA (\$89,664.52); Necaise Brothers (\$1,326,891.24); Neel Schaffer (\$145,016.74); RFB, LLC (\$2,720.00); QES, Inc. (\$31,585.93); Volkert, Inc. (\$1,337.44) and Wharton Smith (\$511,543.32) for a sub-total of \$3,697,365.63. Commissioner Norris seconded and the motion was unanimously approved.

Commissioner Norris moved to approve Cash Request #168 to YAJV in the amount of \$455,689.00. Commissioner Simpson seconded and the motion was unanimously approved.

Commissioner Knesal left the meeting for the next agenda item:

Commissioner Simpson moved to approve payment of \$25,577.98 to Eley, Guild, Hardy Architects under Cash Request #167. The total for Cash Request #167 is \$3,722,943.61. Commissioner Norris seconded and the motion was unanimously approved.

Commissioner Knesal returned to the meeting.

Commissioner Simpson moved to adopt Resolution No. 17-01 (with suggested amendments regarding the removal of tenant names) regarding a potential settlement that is currently ongoing with SIC, and that this Resolution be part of the Minutes. Commissioner Norris seconded and the motion was unanimously approved.

OLD BUSINESS:

Commissioner Simpson moved to table items 5A – 5D under Old Business for discussion at a subsequent meeting. Commissioner Norris seconded and the motion was unanimously approved.

NEW BUSINESS:

Commissioner Simpson moved to table items 6A – 6C under New Business for discussion at a subsequent meeting. Commissioner Norris seconded and the motion was unanimously approved.

Commissioner Simpson moved to close the meeting to determine the need for an Executive Session. Commissioner Norris seconded and the motion was unanimously approved.

Commissioner Simpson moved to enter Executive Session to discuss a personnel matter. Commissioner Norris seconded and the motion was unanimously approved.

(THE BOARD OF COMMISSIONERS ENTERED INTO EXECUTIVE SESSION AT APPROXIMATELY 4:40 P.M.).

Commissioner Simpson moved to come out of Executive Session. Commissioner Norris seconded and the motion was unanimously approved.

Commissioner Knesal stated that no action took place during Executive Session

Commissioner Simpson moved to adjourn. Commissioner Norris seconded and the motion was unanimously approved.

The meeting adjourned at approximately 5:05 p.m.

Approved and Attested



Robert J. Knesal
President



John Rester
Secretary

RESOLUTION NO. 17-01

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 compromise and settlement of claims and rights by and between the Port Authority, Southern Industrial Contractors, LLC, a Louisiana limited liability company, together with its successors and assigns (“SIC”) and Travelers Casualty and Surety Company of America (“Travelers”) relating to the construction of West Pier Facilities, including the Transit Shed, Terminal Administration, and Terminal Gate House (Buildings 3, 5.3 and 9) (“Project 305” or the “Project”) pursuant to the terms and conditions of that certain proposed Settlement Agreement and Release. 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 SETTLEMENT AGREEMENT AND RELEASE RELATING TO PROJECT 305 AND CHANGE ORDER NO. 2 RELATED THERETO

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 July 25, 2014, MSPA entered into a contract with SIC, Agreement No. 015-HUD-025 in the original amount of \$47,037,840.25 (the “Contract” or “Contract Documents”), for Project 305; and

WHEREAS, the Performance and Payment Bonds, both bearing Bond No. 106089918 (“Bonds”), procured by SIC for Project 305 were issued by Travelers; and

WHEREAS, on 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 Contract amount to \$51,366,112.66; and

WHEREAS, Change Order No. 1 did not provide any additional contract time; however, Change Order No. 1 did contemplate that additional revisions to the contract would be negotiated for inclusion at a later date pursuant to a subsequent change order; and

WHEREAS, Project 305 was originally required by the Contract to be substantially complete on or before March 21, 2016; and

WHEREAS, on or about September 13, 2016, the Port Authority terminated SIC as the contractor for Project 305 for various reasons (the "Termination") which were more particularly described in that certain Resolution No. 16-06 of the Board of Commissioners of the Port Authority, none of the various reasons in support of termination have been conceded by SIC or Travelers and all of which are denied by SIC and Travelers; and

WHEREAS, prior to the termination of SIC, the Port Authority and SIC had not, in accordance with the requirements of the Contract Documents, made any modification to the substantial completion date of the Contract; and

WHEREAS, on or about September 14, 2016, the Port Authority made demand on the Performance Bond and requested that Travelers take immediate action to complete the remaining Work, and further ensure that the Work and Project site are secured and preserved before and after any demobilization of SIC; and

WHEREAS, the Port Authority, SIC and Travelers have asserted various claims and rights against each other relating to the Project and the Bonds; and

WHEREAS, on November 17, 2016, SIC filed a Motion to Compel Arbitration and Alternative Complaint for Breach of Contract in the Circuit Court of the First Judicial District of Hinds County, Mississippi, against the MSPA, which is pending as Cause No. 16-681 (the "Litigation"); and

WHEREAS, the Port Authority is expressly authorized by Miss. Code Ann. § 59-5-37(1) to "sue and be sued in its own name" and inherent in the right to sue and be sued is the right to resolve and settle all claims and disputes in efforts to avoid the necessity, expense, inconvenience, and uncertainty of litigation; and

WHEREAS, the Parties desire to avoid the necessity, expense, inconvenience, and uncertainty of litigation and to resolve and settle all claims and disputes between them on the terms set forth in that certain Settlement Agreement and Release ("Settlement Agreement"), including all exhibits contained therein, attached hereto as composite Exhibit "1" and fully incorporated into the official minutes of the Port Authority by this reference; and

WHEREAS, as part of the Settlement Agreement, the Parties have agreed to execute Change Order No. 2 attached and incorporated to the Settlement Agreement as Exhibit "A" in accordance with the terms and conditions of said Settlement Agreement; and

WHEREAS, as part of the Settlement Agreement, SIC has agreed to subcontract the entirety of the scope of the remaining work of Project 305 associated with Building Nos. 5.3 and 9 to a replacement contractor reasonably acceptable to the Port Authority, which said subcontract

EXHIBIT 1

SETTLEMENT AGREEMENT

CONFIDENTIAL SETTLEMENT COMMUNICATION

SETTLEMENT AGREEMENT AND RELEASE

THIS Settlement Agreement and Release ("Agreement"), dated as of June __, 2017, is entered by and between the Mississippi State Port Authority at Gulfport (the "MSPA"), Southern Industrial Contractors, LLC, a Louisiana limited liability company, together with its successors and assigns ("SIC") and Travelers Casualty and Surety Company of America ("Travelers") (MSPA, SIC and Travelers collectively the "Parties") and shall become effective as of the date of final execution of Change Order No. 2 by MDA (as defined below) (the "Effective Date").

WHEREAS, the MSPA 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 July 25, 2014, MSPA entered into a contract with SIC, Agreement No. 015-HUD-025 in the original amount of \$47,037,840.25 (the "Contract" or "Contract Documents"), for the construction of West Pier Facilities, including the Transit Shed, Dole Administration, and Dole Gate House (Buildings 3, 5.3 and 9) ("Project 305" or the "Project"); and

WHEREAS, the Performance and Payment Bonds, both bearing Bond No. 106089918 ("Bonds"), procured by SIC for Project 305 were issued by Travelers; and

WHEREAS, on August 6, 2015, MSPA 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, MSPA and SIC increased the Contract amount to \$51,366,112.66; and

WHEREAS, Change Order No. 1 did not provide any additional contract time; however, Change Order No. 1 did contemplate that additional revisions to the Contract would be negotiated for inclusion at a later date pursuant to a subsequent change order; and

WHEREAS, Project 305 was originally required by the Contract to be substantially complete on or before March 21, 2016; and

WHEREAS, on or about September 13, 2016, the MSPA terminated SIC as the contractor for Project 305 for various reasons (the "Termination"), none of which have been conceded by SIC or Travelers and all of which are denied by SIC and Travelers; and

WHEREAS, prior to the termination of SIC, the MSPA and SIC had not, in accordance with the requirements of the Contract Documents, made any modification to the substantial completion date of the Contract; and

CONFIDENTIAL SETTLEMENT COMMUNICATION

WHEREAS, on or about September 14, 2016, the MSPA made demand on the Performance Bond and requested that Travelers take immediate action to complete the remaining Work, and further ensure that the Work and Project site are secured and preserved before and after any demobilization of SIC; and

WHEREAS, the MSPA, SIC and Travelers have asserted various claims and rights against each other relating to the Project and the Bonds; and

WHEREAS, on November 17, 2016, SIC filed a Motion to Compel Arbitration and Alternative Complaint for Breach of Contract in the Circuit Court of the First Judicial District of Hinds County, Mississippi, against the MSPA, which is pending as Cause No. 16-681 (the "Litigation"); and

WHEREAS, on February 24, 2017, SIC, through its legal counsel, filed a "Notice of Claim Pursuant to the Mississippi Tort Claims Act" alleging liability against MDA in connection with delays in SIC's construction of Project 305; and

WHEREAS, SIC has issued multiple public records requests to the MSPA and the MDA which would require significant expenditures of time and resources; and

WHEREAS, Travelers has demanded that the MSPA make no further payments directly to SIC and that any such payments be made directly to Travelers; and

WHEREAS, the Parties desire to avoid the necessity, expense, inconvenience, and uncertainty of litigation and to resolve and settle certain claims and disputes between them on the terms set forth herein.

NOW THEREFORE, in consideration of the stated recitals and of the promises and mutual covenants contained herein, the sufficiency of which is hereby acknowledged by the Parties, it is agreed between the MSPA, SIC and Travelers to compromise and settle per the following terms and conditions:

1. Prior to the Effective Date, SIC shall issue a written withdrawal and dismissal of its February 24, 2017 "Notice of Claim Pursuant to the Mississippi Tort Claims Act" against MDA. Receipt of this written withdrawal and dismissal shall be a condition precedent to MDA's actions to be taken pursuant to this Agreement, including, but not limited to, approval of any change orders or the processing of payments set forth herein. However, should the MDA not approve Change Order No. 2, SIC shall have the right to proceed under the "Notice of Claim Pursuant to the Mississippi Tort Claims Act" against MDA.
2. Upon the Effective Date, the Termination shall be automatically and immediately rescinded and the Contract shall be automatically and immediately reinstated.
3. The MSPA and SIC shall, simultaneously with the execution of this Agreement, execute Change Order No. 2 attached hereto and incorporated herein as Exhibit "A". This Agreement shall be deemed null and void if not signed by SIC and returned to the MSPA by 12 p.m. Central on June 21, 2017. Change Order No. 2 shall become effective as of

CONFIDENTIAL SETTLEMENT COMMUNICATION

the Effective Date. In the event that MDA fails to approve Change Order No. 2, within twenty (20) business days of the MSPA's execution of this Agreement, this Agreement shall be deemed null and void.

4. Within three (3) business days of both the MSPA's and SIC's execution of this Agreement, the MSPA will process and present a request to MDA for immediate release and payment to the MSPA of Pay Application Nos. 15 and 16T, and ½ of all Contract Retainage on Pay Application Nos. 1 through 16T. The MSPA will coordinate with MDA and utilize its reasonable efforts to provide MDA with such information as MDA may require in order to process and fulfill such request in a prompt and timely manner. Within three (3) business days of the MSPA's receipt of payment from MDA, the MSPA will issue payments of such funds to the payees and in such amounts specified in Exhibit "B" to this Agreement. Both SIC and Travelers jointly agree and consent to the MSPA making the payments provided for in Exhibit "B." The remaining funds shall be paid to SIC. Travelers will provide a standard written consent of surety to the MSPA regarding same. The MSPA's issuance of the foregoing payment shall be a condition precedent of this Agreement and to SIC's remobilization to the Project site.
5. Travelers assigns to SIC its rights and interests in the solicitation it performed and the bids it received for the completion of Building Nos. 5.3 and 9. The MSPA will propose a form of agreement to be used by SIC to contract the entirety of the scope of the remaining work associated with Building Nos. 5.3 and 9 to another contractor reasonably acceptable to the MSPA and the new contractor. SIC will then immediately assign a fully executed, valid and enforceable contract in the form proposed and agreed to by the MSPA and the new contractor, without modification, to the MSPA which, upon written acceptance of the assignment, shall assume all obligations of SIC under said contract. This new contract to complete Buildings 5.3 and 9 shall include a provision that it shall be null and void unless the MSPA accepts the assignment. The Parties acknowledge that the lowest proposal received for this work is currently \$4,149,000.00 and that such amount shall, subject to the change order and work change directive provisions of the assigned contract, represent a not to exceed amount for the entire scope of the remaining work associated with Building Nos. 5.3 and 9. Upon acceptance of the assignment by the MSPA, which is to occur immediately subsequent to the Effective Date, all remaining work in connection with Building Nos. 5.3 and 9 shall automatically be deleted from the Contract. After the assignment is accepted by the MSPA, SIC and Travelers shall not have any further responsibility or obligation of any kind associated with Building Nos. 5.3 and 9, and SIC and Travelers shall be released with regard to Building Nos. 5.3 and 9, except to the extent payment bond claims have been made relating to labor or materials provided toward the scopes of Building Nos. 5.3 and 9 and except to the extent that the assigned contractor provides new performance and payment bonds issued by Travelers. The MSPA shall accept full responsibility for any and all payments of any kind that may become due the new contractor for work performed on Building Nos. 5.3 and 9.
6. Performance of the work in accordance with the Contract Documents and Substantial Completion of all work for Building Nos. 5.3 and 9 shall be the sole and exclusive responsibility of the new contractor and its surety.

CONFIDENTIAL SETTLEMENT COMMUNICATION

7. SIC and the MSPA, for and on behalf of their owners, shareholders, members, officers, directors, commissioners, employees, affiliates, subsidiaries, subcontractors, assigns and attorneys, forever waive, release and discharge all claims, causes of action, payments, demands, losses, entitlements, damages, and/or any right of any nature, whether known or unknown, whether in contract or tort, at law or in equity of every nature or kind between them, *except as expressed otherwise below*, that are based upon any act, omission or event that occurred prior to the date of final execution of this Agreement, and which in any way arise out of, relate to or are any way connected to the Project.
8. Travelers and the MSPA, for and on behalf of their owners, shareholders, members, officers, directors, commissioners, employees, affiliates, subsidiaries, subcontractors, assigns and attorneys, forever waive, release and discharge all claims, causes of action, payments, demands, losses, entitlements, damages, and/or any right of any nature, whether known or unknown, whether in contract or tort, at law or in equity of every nature or kind between them, *except as expressed otherwise below*, that are based upon any act, omission or event that occurred prior to the date of final execution of this Agreement, and which in any way arise out of, relate to or are any way connected to the Bonds or to Travelers' role as a surety for the Project, including but not limited to Travelers' handling of any and/or all claims against the Bonds.
9. SIC, for and on behalf of its owners, shareholders, members, officers, directors, commissioners, employees, affiliates, subsidiaries, assigns and attorneys, forever waive, release and discharge the MDA and the State of Mississippi, and their entity's respective director, officers, employees and agents, of and from all claims, causes of action, payments, demands, losses, entitlements, damages, and/or any right of any nature, whether known or unknown, whether in contract or tort, at law or in equity of every nature or kind based upon any act, omission or event that occurred prior to the date of final execution of this Agreement and which in any way arise out of, relate to or are any way connected to the Project.
10. Travelers, for and on behalf of its owners, shareholders, members, officers, directors, commissioners, employees, affiliates, subsidiaries, assigns and attorneys, forever waive, release and discharge the MDA and the State of Mississippi, and their entity's respective director, officers, employees and agents, of and from all claims, causes of action, payments, demands, losses, entitlements, damages, and/or any right of any nature, whether known or unknown, whether in contract or tort, at law or in equity of every nature or kind based upon any act, omission or event that occurred prior to the date of final execution of this Agreement and which in any way arise out of, relate to or are any way connected to Travelers' role as a surety on the Project, including but not limited to Travelers' handling of any and/or all claims against the Bonds.
11. SIC, for and on behalf of its owners, shareholders, members, officers, directors, commissioners, employees, affiliates, subsidiaries, assigns and attorneys, forever waive, release and discharge CH2M Hill, Inc., Yates-Anderson (a Joint Venture), T.L. Wallace Construction, Inc. and Quality Engineering Services, Inc., and each entity's respective owners, shareholders, members, directors, officers, employees and agents, of and from all claims, causes of action, payments, demands, losses, entitlements, damages, and/or any

CONFIDENTIAL SETTLEMENT COMMUNICATION

right of any nature, whether known or unknown, whether in contract or tort, at law or in equity of every nature or kind based upon any act, omission or event that occurred prior to the date of final execution this Agreement and which in any way arise out of, relate to or are any way connected to the Project, except that no claims for fraud or intentional wrongdoing against such entities or individuals shall be construed as being released, waived or discharged. SIC expressly reserves all claims of every nature or kind, asserted or un-asserted, against Neel-Schaffer Engineers and Planners, Inc., Thompson Engineers, Inc., their affiliates and each of their respective owners, shareholders, members, directors, officers, employees and agents.

12. Travelers, for and on behalf of its owners, shareholders, members, officers, directors, commissioners, employees, affiliates, subsidiaries, assigns and attorneys, forever waive, release and discharge CH2M Hill, Inc., Yates-Anderson (a Joint Venture), T.L. Wallace Construction, Inc. and Quality Engineering Services, Inc., and each entity's respective owners, shareholders, members, directors, officers, employees and agents, of and from all claims, causes of action, payments, demands, losses, entitlements, damages, and/or any right of any nature, whether known or unknown, whether in contract or tort, at law or in equity of every nature or kind based upon any act, omission or event that occurred prior to the date of final execution this Agreement and which in any way arise out of, relate to or are any way connected to Travelers' role as a surety for the Project, including but not limited to Travelers' handling of any and/or all claims against the Bonds, except that no claims for fraud or intentional wrongdoing against such entities or individuals shall be construed as being released, waived or discharged. Travelers expressly reserves all claims of every nature or kind, asserted or un-asserted, against Neel-Schaffer Engineers and Planners, Inc., Thompson Engineers, Inc., their affiliates and each of their respective owners, shareholders, members, directors, officers, employees and agents.
13. Notwithstanding anything to the contrary in this Agreement, Travelers and SIC acknowledge and agree that nothing herein shall be construed as, or deemed to be, a release, waiver, or discharge of any claims, causes of action, payments, demands, losses, entitlements, damages, and/or any right of any nature as between Travelers and SIC, including but not limited to any and all claims, causes of action, payments, demands, losses, entitlements, damages, and/or any right of any nature arising from or relating in any way to the Project, the Contract, the Bonds, and/or the General Agreement of Indemnity dated April 4, 2006, which was signed by SIC, among others. Notwithstanding anything to the contrary in this Agreement, and except as provided in Paragraph 5 and 6 above, the Bonds shall remain in full force and effect. Notwithstanding anything to the contrary in this Agreement, the release of claims by the MSPA shall in no way be construed as a waiver, release or discharge of its workmanship, materials and equipment warranty rights against SIC as specifically set forth in the Contract Documents or arising under applicable law(s).
14. The Parties acknowledge and agree that all terms and conditions of the Contract not modified herein or by Change Order shall remain in full and effect and that, notwithstanding anything to the contrary, nothing in this Agreement shall relieve SIC or Travelers of (or limit the MSPA's ability to recover) any cost, expense, damages,

CONFIDENTIAL SETTLEMENT COMMUNICATION

reimbursement obligation, or liability which may arise as a result of a finding or audit conducted by HUD, the Office of Inspector General, MDA, the Department of Labor, the Environmental Protection Agency, or any other state or federal enforcement agency, or any of their successors or assigns, which concludes that SIC has violated applicable laws concerning grant compliance, procurement compliance, and labor standards, including, without limitation, CDBG statutes, regulations and rules. Nothing stated herein is intended by the Parties to expand any obligation or liability as may exist under the Contract or such applicable laws, rules, and regulations.

15. Nothing in this Agreement shall be construed to expand or add to Travelers' obligations under the Bonds.
16. SIC's indemnity, hold harmless and defend obligations provided in this Agreement shall survive as set forth in the Contract Documents or for a period of one year from the Effective Date, whichever is longer.
17. The releases stated herein are intended only for the specific benefit of the entities referenced herein, and, except with respect to such entities, there are no third party beneficiaries to this Agreement. The Parties each reserve all rights against any other person or entity not specifically referenced.
18. SIC agrees to dismiss with prejudice the lawsuit filed by SIC in Hinds County, Mississippi (Civil Action No. 25CI1:16-cv-00681-WLK) within two (2) business days of the Effective Date and the MSPA's full satisfaction of its payment obligation, as set forth in Paragraph 4 hereinabove. SIC agrees to withdraw immediately any and all public records requests pending with either MDA or the MSPA, but SIC reserves its right to submit any future public records request.
19. In any litigation, arbitration, mediation or other alternative dispute resolution process (each, a "Proceeding") and if in connection with any claim asserted by or on behalf of SIC which is based upon any act, omission or event in any way related to the Project or the work performed by or on behalf of SIC that occurred prior to the date of final execution of this Agreement, SIC agrees to indemnify, hold harmless and defend the MSPA, MDA and their respective directors, officers, commissioners, and employees, from and/or against any loss, cost, expense, fee (including attorneys' fees), claim, liability, damages or asserted liability incurred by the MSPA, MDA and their respective directors, officers, commissioners, employees, as a result of or in connection with any obligation on their respective parts to participate in any such Proceeding. The indemnity, hold harmless and defense obligations of SIC to the MSPA, MDA and their respective directors, officers, commissioners and employees are consideration for the settlement and release of claims in this Agreement, and not consideration for any past or future construction associated with the Project. Further, SIC will provide and pay all reasonable attorneys' fees in connection with the representation of the MSPA and MDA in any such Proceeding. MSPA and MDA shall have the right to choose their own respective counsel; provided, however, that SIC shall not be obligated to pay an hourly rate in excess of \$250. All costs, expenses and fees incurred by the MSPA and MDA as a result of having to respond to or participate in any such Proceeding (as a party or non-party)

CONFIDENTIAL SETTLEMENT COMMUNICATION

shall be based on the activities or services creating such costs, expenses or fees being performed by the lowest cost personnel or equipment capable of competently performing such activities or services, as determined by the MSPA or MDA as applicable. Costs, expenses and fees are due to be reimbursed after being incurred and within thirty (30) days of being invoiced. Provided, however, that in the event that there is a final judgment or final decision in a Proceeding wherein the finder of fact, whether a jury, judge or administrative tribunal, determines that the MSPA is liable for negligence or other wrongful conduct, and is therefore liable as a matter of law, then the MSPA shall be liable to reimburse SIC for payments made to or on behalf of MSPA under this paragraph for the defense of such claim(s) for which the MSPA is held liable.

20. All requirements in the Contract Documents concerning schedules remain in place except that within three (3) days prior to the Effective Date, schedulers for SIC, and the MSPA, together with a representative of Travelers, will meet to develop and work toward agreeing upon a new baseline schedule for completion, a new schedule of values that will identify all work remaining to be done to complete the Transit Shed (Building 3) as of such date, and the percent complete for the purpose of immediately submitting a compliant Application for Payment that the MSPA will submit to MDA for payment with all due diligence. SIC will submit the agreed upon baseline schedule and schedule of values for Building 3 to the MSPA, together with all Primavera electronic data, within fifteen (15) days after the new baseline schedule meeting. The new baseline schedule will be cost loaded per the Contract.
21. Travelers will have at least one person perform contract administration oversight through completion of SIC's scope of work on Building No. 3. Travelers' representative shall attend scheduled construction meetings, unless and until Travelers and SIC are notified in writing by MSPA that such attendance is no longer requested by the MSPA. Travelers and SIC agree that such representative(s) shall be included and involved in all communications by and between SIC and the MSPA and its consultants, including, but not limited to, Yates Anderson Joint Venture. Any independent consultant retained by Travelers to serve in this role shall be subject to the MSPA's approval, which shall not be unreasonably withheld. As between the MSPA and SIC, SIC shall be solely responsible for all costs associated with Travelers' efforts, it being agreed among the Parties that in no event shall the MSPA be responsible for any such costs.
22. SIC and the MSPA will cooperate with each other regarding any insurance claim that either the MSPA or SIC may wish to file in connection with property damage or theft, if any, which may have occurred during the period when SIC was prohibited from the project site.
23. Except as modified herein, the Contract Documents remain in full force and effect.
24. The Parties warrant and represent that they are the sole owners of the rights and claims contemplated by this Agreement, and that they have not assigned, transferred, or conveyed in any manner whatsoever, any right, title, or interest of any nature whatsoever nor in any portion whatsoever any rights or claims hereby released, and furthermore, that

CONFIDENTIAL SETTLEMENT COMMUNICATION

they have the full and unrestricted power and authority to grant, execute, and perform this Agreement.

25. This Agreement is governed by and construed in accordance with the laws of the State of Mississippi.
26. The Parties acknowledge that they have been represented by their own counsel and received their respective counsel's advice concerning the merits of their positions, and that they have relied solely upon such advice prior to entering into this Agreement.
27. Any modification of this Agreement must be made in writing and executed by each Party hereto. The Parties agree that this Agreement shall be executed in multiple counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
28. The Parties agree that the consideration specified in this Agreement is contractual in nature and not a mere recitation, and reflect the compromise and settlement of disputed claims, about the liability and the amount of damages for which there are bona fide disputes. It is expressly agreed that this Agreement is entered into to avoid litigation and to buy peace.
29. In addition to the foregoing, and as a material condition of this Agreement, the MSPA agrees to the following: 1) the MSPA will cause its retained consultants to render and issue to SIC a written decision regarding all outstanding submittals not less than three (3) business days prior to the Effective Date; and 2) the MSPA will cause its retained consultants to provide a comprehensive list of non-conformance items not less than three (3) business days prior to the Effective Date; and 3) the MSPA will submit to SIC the following documents within three (3) business days of the Effective Date:
 - a) Certificates of insurance regarding Neel-Schaffer Engineers and Planners, Inc., and Thompson Engineers, Inc.;
 - b) Any bonds provided by Neel-Schaffer Engineers and Planners, Inc., and Thompson Engineers, Inc., for this Project;
 - c) Contract documents between the MSPA and Neel-Schaffer Engineers and Planners, Inc., and/or Thompson Engineers in connection with the Project; and
 - d) Any known claims asserted against Neel-Schaffer Engineers and Planners, Inc., or Thompson Engineers, Inc. in connection with the Project.

THE UNDERSIGNED HAVE READ THE FOREGOING RELEASE AND SETTLEMENT AGREEMENT AND FULLY UNDERSTAND THE TERMS HEREIN. WITNESS THE SIGNATURE OF THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO IN THE SPACE PROVIDED HEREIN.

SIGNATURES ON SUBSEQUENT PAGES

CONFIDENTIAL SETTLEMENT COMMUNICATION

AGREED TO BY: SOUTHERN INDUSTRIAL CONTRACTORS, LLC

BY:

Print Name: _____

ITS:

STATE OF
COUNTY/PARISH OF

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 2017, within my jurisdiction, the within named _____, who acknowledged that he/she is _____ of Southern Industrial Contractors, LLC, and that for and on behalf of the said company, and as its act and deed he/she executed the above and foregoing instrument, after first having been duly authorized by said company so to do.

Given under my hand this the _____ day of _____, 2017.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

SIGNATURES CONTINUED ON THE NEXT PAGE.

CONFIDENTIAL SETTLEMENT COMMUNICATION

AGREED TO BY: TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA

BY:

Print Name: _____

ITS:

STATE OF
COUNTY OF

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 2017, within my jurisdiction, the within named _____, who acknowledged that he/she is _____ of Travelers Casualty and Surety Company of America, and that for and on behalf of the said company, and as its act and deed he/she executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

Given under my hand this the _____ day of _____, 2017.

NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____

SIGNATURES CONTINUED ON THE NEXT PAGE.

CONFIDENTIAL SETTLEMENT COMMUNICATION

AGREED TO BY: MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT

BY:

Print Name: Robert J. Kneaseal

ITS: President

STATE OF MISSISSIPPI

COUNTY OF HARRISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 2017, within my jurisdiction, the within named Robert J. Kneaseal, who acknowledged that he is the President of the Mississippi State Port Authority at Gulfport, and that for and on behalf of the said agency, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said agency so to do.

Given under my hand this the _____ day of _____, 2017.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

EXHIBIT A – CHANGE ORDER

Change Order

(Construction Contracts Only)

PROJECT:	CHANGE ORDER NUMBER:	2
West Pier Facilities	DATE:	6/ /2017
CONTRACTOR:	CONTRACT NUMBER:	015-HUD-025
Southern Industrial Contractors, LLC	PROJECT NUMBER:	305
158 Industrial Loop		
Rayville, LA 71269		

THE CONTRACT IS CHANGED AS FOLLOWS:

This Change Order No. 2 does amend and revise: (i) the overall scope of Work for the Project to only those remaining line items pertaining to the completion of Work for Building No. 3 (Please see Attachment No. "1" for detailed descriptions of each line item); (ii) the contract value; and (iii) the contract duration, and (iv) the Contract terms as specified in the SETTLEMENT AGREEMENT AND RELEASE (the "AGREEMENT") attached hereto and made a part hereof as Attachment No. "4". Except as otherwise provided herein, the revised Contract Amount includes all work to complete Building No. 3, including demobilization.

SIC agrees to subcontract out the following work for Building No. 3: Electrical, Sprinkler systems, Doors/dock levelers, Chiller, and Pallet rack. SIC agrees to subcontract out the concrete/paving work to ADS contingent upon the return of ADS to the Project site. Substantial Completion date for Building No. 3 shall be the date that is 210 days following final execution and approval by the MDA of this change order, the AGREEMENT and receipt of payment of funds described below. SIC shall complete the following items of work for Building No. 3 within the following contractual milestones that commence upon the final execution of this change order and the payment of funds referenced below: (a) the rail pocket within 65 calendar days; (b) all concrete foundations within 120 calendar days; (c) all steel framing within 150 calendar days; (d) all siding on the building within 150 calendar days; and (e) 15 functional and working docks (including dock levelers and doors) in Phase 5 within 150 days.

The Project Engineer shall identify any non-conforming/non-acceptable aspects of the existing, previously finished work (remedial work) and previous NCNs within 3 business days prior to final execution of this change order and as a condition precedent to the commencement of the running of any Contract Time, excepting punchlist items and aspects of the Work that cannot be evaluated, which items shall be separately identified by the Project Engineer. Written decisions regarding all submittals previously received from SIC and which are outstanding shall be provided to SIC within 3 business days prior to final execution of this change order and as a condition precedent to the commencement of the running of any Contract Time.

The MSPA may assess liquidated damages pursuant to the terms of the Contract Documents in the event that SIC fails to achieve substantial completion for Building No. 3 within 210 days as stated herein.

The items of work highlighted in red in the drawings attached as Attachment No. "2" shall not be required in order for Substantial Completion to be reached but shall be finished and completed within 30 days of SIC receiving notice of an MSPA contractor completing the storm drain construction related to this Project. The items of work highlighted in blue in Attachment No. "2" are not included in the remaining scope of work for Building No. 3. The items of work highlighted/outlined in green Attachment No. "2" are necessary for Substantial Completion.

The revised laydown area that may be utilized by SIC is outlined in red in Attachment No. "3".

All requirements in the Contract Documents concerning schedules remain in place except that within three (3) days prior to the effective date of this Agreement, schedulers for SIC and the MSPA, together with representatives of Travelers and/or Travelers' consultant, will meet to develop and work toward agreeing upon a new baseline schedule for completion, a new schedule of values that will identify all work remaining to be done to complete the Transit Shed (Building 3) as of such date, and the percent complete for the purpose of immediately submitting a compliant Application for Payment that the MSPA will submit to MDA for payment with all due diligence. SIC will submit the agreed upon schedule for Building 3 to the MSPA, together with all Primavera electronic data, within fifteen (15) days after the new baseline schedule meeting. The new baseline schedule will be cost loaded per the Contract.

Contemporaneously with the delivery of this fully executed change order, the MSPA will pay Pay Application Nos. 15 and 16 and ½ of Contract Retainage on Pay Application Nos. 1 through 16 to the payees and in the amounts specified by SIC and Travelers. Retainage in the amount of 2.5% shall be withheld throughout the remaining Work for Building No. 3 until Final Completion is reached.

All terms and provisions of the Contract Documents not amended hereby or by the separate Settlement Agreement and Release attached as Attachment No. "4" remain the same.

The original Contract Amount	\$47,037,840.25
The net change by previously authorized Change Orders	\$4,328,272.41
The Contract Amount prior to this Change Order	\$51,366,112.66
The Contract Amount will be decreased in the amount of	(\$3,327,111.93)
The new Contract Amount including this Change Order will be	\$48,039,000.73

CONFIDENTIAL SETTLEMENT COMMUNICATION

MSPA/SIC CO # 2

The Contract Time (Substantial Completion) will be increased by 210 days from the date of final entry of this Change Order and the payment of Pay Applications 15 and 16 and 1/2 of retainage described above.

Original Completion Date: March 21, 2016

Final Completion as of the date of this Change Order will be 30 days following Substantial Completion or from notice of the storm drain work being completed by an MSPA contractor, whichever occurs later.

NOT VALID UNTIL SIGNED BY CONTRACTOR, OWNER AND MDA.

<u>MS Development Authority</u> MDA	<u>MS State Port Authority</u> OWNER	<u>Southern Industrial Contractors</u> CONTRACTOR
<u>BY (Signature)</u>	<u>Robert J. Knesal - President</u>	<u>BY (Signature)</u>
<u>Glenn McCullough</u>	<u>John Rester - Board Secretary</u>	
<u>DATE</u>	<u>DATE</u>	<u>DATE</u>

ATTACHMENT 1

CONFIDENTIAL SETTLEMENT COMMUNICATION
ATTACHMENT NO. 1 - CHANGE ORDER NO. 2
MSPA PROJECT NO. 305

Item No.	Related RFQ No.	Item Name	Item Description/Comments	Amount
		T&M for work related to debris excavation/removal	Allowable T&M related to debris excavation/removal above the amount approved in Change Order No. 1. See Attachment No. 1-B.	\$228,227.94
	5	Slab design changes	See Attachment No. 1-C.	(\$708,445.98)
	6	Steel Expansion Joint vs. Stainless	See Attachment No. 1-D.	(\$62,748.00)
	10	OH Coiling Doors Paint Option	See Attachment No. 1-E.	\$84,525.00
	11	Pile 2515 and 2403 Redesign; 4 18" substituted for 2 24" in rail pocket	RFI 107. See Attachment No. 1-F. Additional piling costs were largely billed and paid in Pay Application No. 13. There are some costs associated with the rebar changes and relocation of the 24" piles that could not be installed.	\$6,000.00
	13	Pressure Reducing Valve	PRVs for Buildings 3 and 9	\$8,706.00
	14-17	Slab redesign	Slab redesign at 3.46-3.48/3.G.5 - 3J, 3.K line, 3J/3.43-3.44A, 3.44-3.45. See WCD No. 5, included as Attachment No. 1-G.	\$553,562.73
		Pile Cutoffs - 18" - 1,350 total (1,577 less the 227 in original contract)	SIC's bid number is \$200 per cutoff; 1350 x \$200 = \$270,000. See Attachment 1-P.	\$270,000.00
		Pile Cutoffs - 24" - 550 total (616 less the 66 in original contract)	SIC's bid number is \$200 per cutoff; 550 x \$200 = \$110,000. See Attachment 1-Q.	\$110,000.00
		Pile Reconciliation - Furnish 18" - 5,051LF @ \$29/LF	Original contract quantity of 163,005LF; furnished amount verified with Gulf Coast Prestress	\$146,479.00
		Pile Reconciliation - Furnish 24" - 5,569LF @ \$45.50/LF	Original contract quantity of 51,278LF; furnished amount verified with Gulf Coast Prestress	\$253,389.50
		PDA's ordered o/b/o the Owner	3 out of 10 PDA's listed by Contractor were ordered o/b/o the Owner. See Attachment No. 1-H.	\$13,800.00
		Jet water pond damages	Change Order entered with Necaise Bros. Construction. See Attachment No. 1-L.	(\$484,965.39)
		Piles that require drilling after cutoff	See Attachment No. 1-I.	\$222,288.00

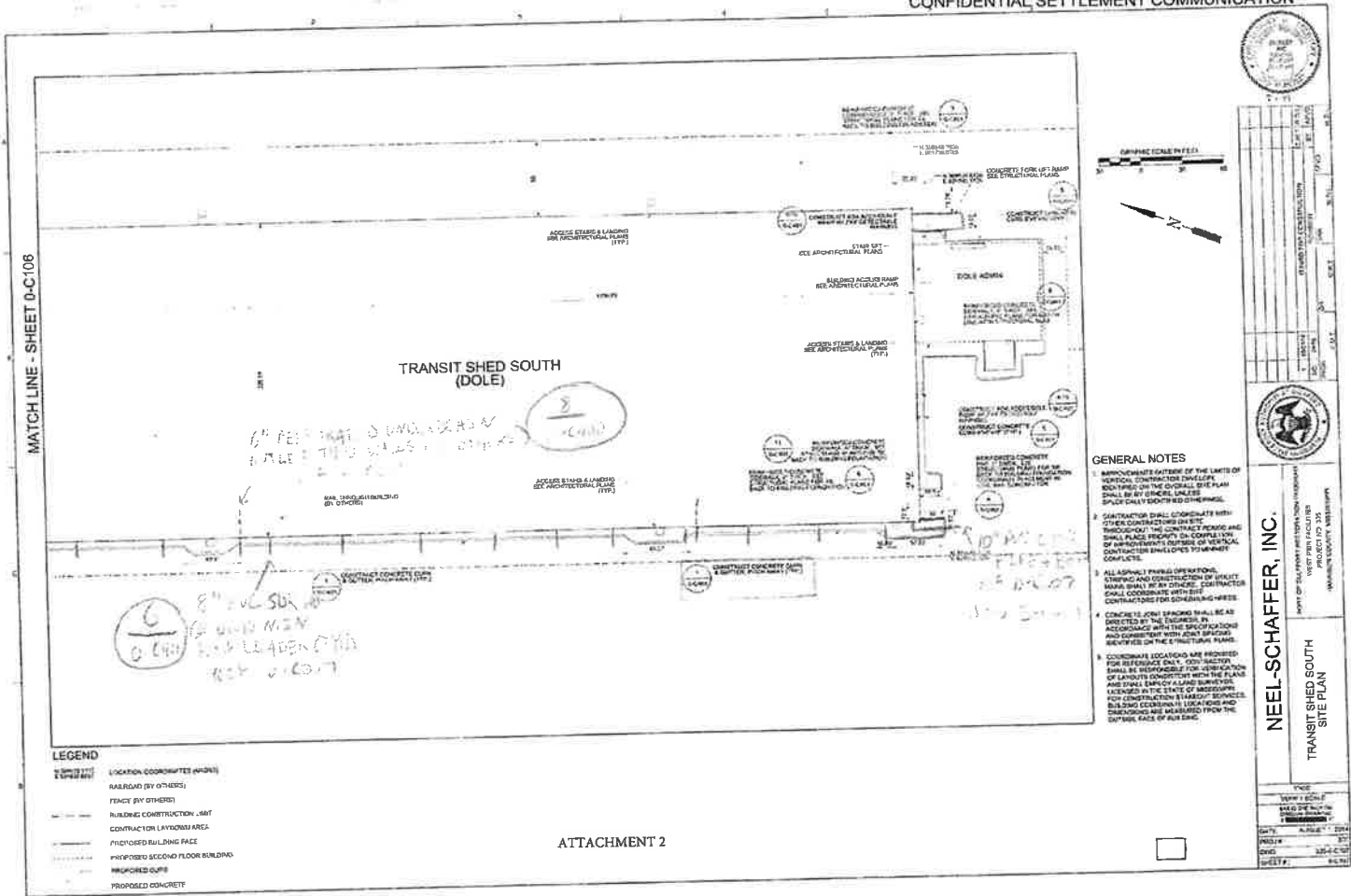
CONFIDENTIAL SETTLEMENT COMMUNICATION
ATTACHMENT NO. 1 - CHANGE ORDER NO. 2
MSPA PROJECT NO. 305

Item No.	Related RFQ No.	Item Name	Item Description/Comments	Amount
		Oversized pile caps in Phases 3, 4 and 5	See Attachment No. 1-J. Generally, piles out of tolerance are solely SIC's responsibility. YAJV identified 9 piles that appear to have hit debris during driving, and could have caused the pile to be installed out of tolerance.	\$2,023.00
		All pile buildups with concrete (piles that drove below grade)	See Attachment No. 1-K.	\$13,398.27
		Piles on site for Building 9	The furnishing of 2,780 LF of 16" piles is included in SOV line item 47. Actual linear footage of piles for this building is 3,127 LF. See Attachment No. 1-N.	\$75,048.00
		Building 3 Doors Redesign	Per drawings and estimates attached as Attachment No. 1-O.	\$90,600.00
		Scope of work for Buildings 5.3 and 9 assigned to separate contractor upon entry of this change order.	Negotiated deduction for SIC's SOV line items for Building Nos. 5.3 and 9. All SIC SOV line items for Buildings 5.3 and 9 shall be removed. The assigned contractor shall complete the work on Buildings 5.3 and 9 for \$4,149,000 or less. See Attachment 1-R.	(\$4,149,000.00)

TOTAL DEDUCTION: (\$3,327,111.93)

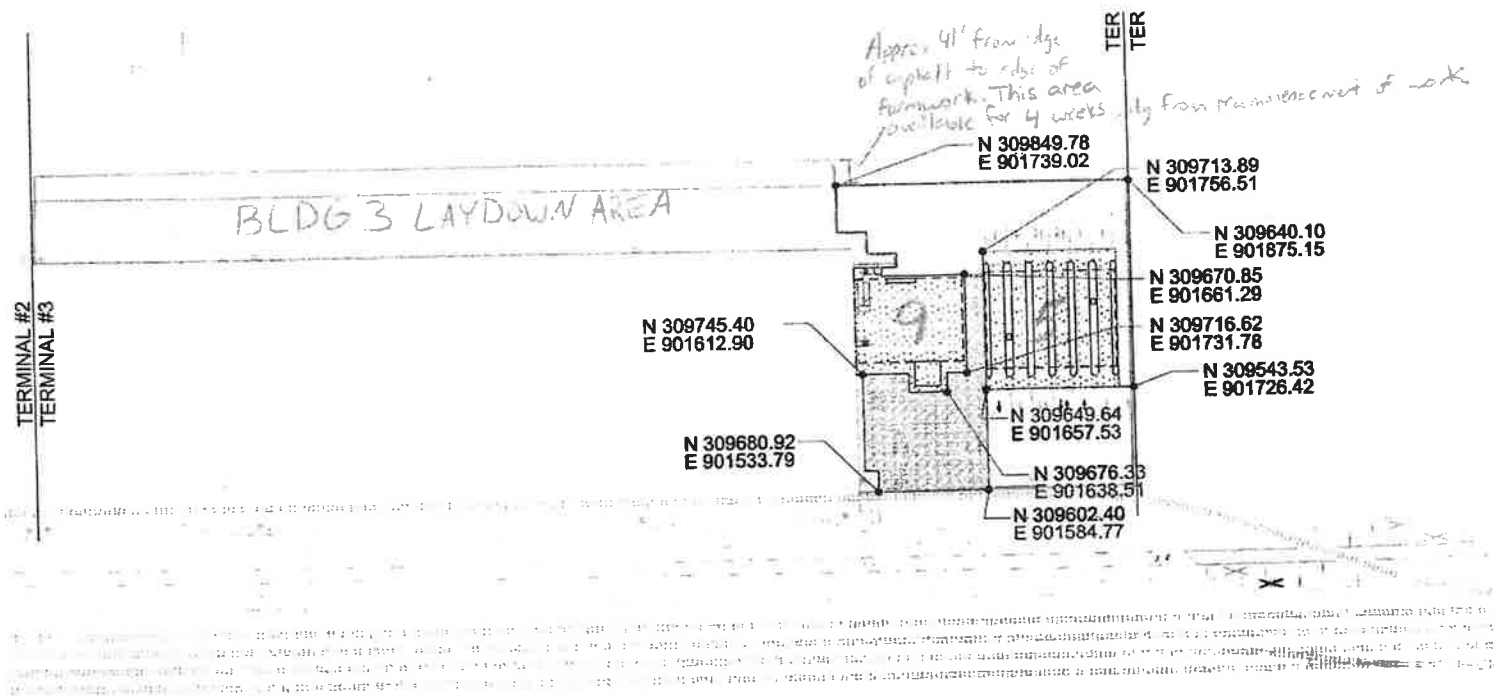
Current Contract Amount =	\$51,366,112.66
Revised SIC Contract Amount =	\$48,039,000.73
Amount for New Contractor to Complete Buildings 5 and 9 =	\$4,149,000.00
Aggregate Costs for Buildings 3, 5.3 and 9 =	\$52,188,000.73
Increase in Contract Amount =	\$821,888.07

ATTACHMENT 2



ATTACHMENT 2

ATTACHMENT 3



ATTACHMENT 4

EXHIBIT B

CONFIDENTIAL SETTLEMENT COMMUNICATION

MAKE CHECKS PAYABLE TO:		CHECK AMOUNT
SOUTHERN INDUSTRIAL CONTRACTORS AND ACE CONTRACTORS AND	Simplex Grinnell LP	\$22,272.78
SOUTHERN INDUSTRIAL CONTRACTORS AND ACE CONTRACTORS AND	Bonded Lightning Protection Systems, Ltd	\$49,277.70
SOUTHERN INDUSTRIAL CONTRACTORS AND ACE CONTRACTORS AND	Consolidated Electric Distributors, Inc. d/b/a	\$9,609.46
	Robinson Electric Supply	
SOUTHERN INDUSTRIAL CONTRACTORS AND ACE CONTRACTORS AND	Mayer Electric Supply Co Inc.	\$16,792.28
SOUTHERN INDUSTRIAL CONTRACTORS AND ACE CONTRACTORS AND	CLP Resources	\$51,346.80
SOUTHERN INDUSTRIAL CONTRACTORS AND ACE CONTRACTORS AND	Express Employment/Poolamerica	\$131,504.22
	Enterprises	
SOUTHERN INDUSTRIAL CONTRACTORS AND ACE CONTRACTORS AND	Sunbelt Rentals, Inc. (2)	\$13,006.24
SOUTHERN INDUSTRIAL CONTRACTORS AND ADS LLC AND	Construction Materials, Inc.	\$531.00
SOUTHERN INDUSTRIAL CONTRACTORS AND ADS LLC AND	Sunbelt Rentals, Inc.	\$55,075.73
SOUTHERN INDUSTRIAL CONTRACTORS AND ADS LLC AND	Blueline Rental	\$73,174.70
SOUTHERN INDUSTRIAL CONTRACTORS AND ADS LLC AND	CMC Rebar	\$326,353.84
SOUTHERN INDUSTRIAL CONTRACTORS AND ADS LLC AND	Farris Concrete Pumping LLC	\$7,982.95
SOUTHERN INDUSTRIAL CONTRACTORS AND ADS LLC AND	Stewart Land Development, Inc.	\$1,282.50
SOUTHERN INDUSTRIAL CONTRACTORS AND ADS LLC AND	HD Supply White Cap Construction	\$47,940.95
SOUTHERN INDUSTRIAL CONTRACTORS AND ADS LLC AND	Eagle Rebar & Cable Co., Inc.	\$8,038.62
TRAVELERS		\$118,960.71
TRAVELERS		\$487,511.01
SOUTHERN INDUSTRIAL CONTRACTORS AND	Associated Food Equipment & Supplies Inc.	\$521,575.08
SOUTHERN INDUSTRIAL CONTRACTORS AND METAL BUILDING & COMPONENTS SALES	Simsona Corp.	\$12,850.00
SOUTHERN INDUSTRIAL CONTRACTORS AND	Southern Industrial Sales, Inc.	\$7,813.50
SOUTHERN INDUSTRIAL CONTRACTORS AND	DOCK & DOORS	\$73,500.00
SOUTHERN INDUSTRIAL CONTRACTORS AND	S&S Sprinkler Company LLC	\$106,766.80
		\$2,143,276.87

MAKE CHECKS PAYABLE TO:		CHECK AMOUNT
TRAVELERS		\$16,432.75
SOUTHERN INDUSTRIAL CONTRACTORS AND	Neenah Foundry Company	\$9,840.00
SOUTHERN INDUSTRIAL CONTRACTORS AND	Bay Insulation of Louisiana, Inc.	\$155,063.00
SOUTHERN INDUSTRIAL CONTRACTORS AND	Gulf Coast Pre-Stress Partners, Ltd	\$100,012.56
SOUTHERN INDUSTRIAL CONTRACTORS AND	NES Rentals	\$102,679.22
SOUTHERN INDUSTRIAL CONTRACTORS AND	The Sherwin-Williams Company	\$10,975.29
SOUTHERN INDUSTRIAL CONTRACTORS AND	Simmons Trucking	\$15,385.00
SOUTHERN INDUSTRIAL CONTRACTORS AND	Metal Building Components, A Division Of NCI	\$19,210.36
	Group, Inc	
SOUTHERN INDUSTRIAL CONTRACTORS AND	Interior Exterior Building Supply, L.P.	\$3,871.14
SOUTHERN INDUSTRIAL CONTRACTORS AND	United Rentals (North America) Inc.	\$3,568.70
SOUTHERN INDUSTRIAL CONTRACTORS AND	Kelley Bros LLC	\$15,067.00
SOUTHERN INDUSTRIAL CONTRACTORS AND	ISCO Metals & Supplies Of MS, LLC	\$1,465.41
SOUTHERN INDUSTRIAL CONTRACTORS AND	CMC-Commercial Metals	\$75,650.00
SOUTHERN INDUSTRIAL CONTRACTORS AND	Waste Pro	\$7,735.56
SOUTHERN INDUSTRIAL CONTRACTORS AND	Bay Ice Company	\$1,524.00
SOUTHERN INDUSTRIAL CONTRACTORS AND	Sunbelt Rentals, Inc. (3)	\$6,463.34
SOUTHERN INDUSTRIAL CONTRACTORS AND	84 Lumber Company, LP	\$12,000.00
		\$556,943.33

PAYMENTS TO BE MADE FROM MSPA:	
PAY APP 15	\$1,350,652.30
PAY APP 16T	\$2,896,760.70
1/2 RETAINAGE FROM PAY APP 1 THRU 16T	\$866,163.74
	\$5,113,576.74
LESS	
Check Total Above	\$2,700,220.20

Check payable to Southern Industrial Contractors: \$2,413,356.54

SUBCONTRACT FOR BUILDINGS 5 & 9

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT, made and entered into this _____ day of _____ 2017, at Gulfport, Mississippi, by and between the SOUTHERN INDUSTRIAL CONTRACTORS, LLC, 158 Industrial Loop, Rayville, LA 71269, hereinafter referred to as "SIC" or "Contractor", and

DAN HENSARLING, INC.
POST OFFICE BOX 3927
GULFPORT, MS 39505

hereinafter called "Subcontractor"

classification as noted in their current Certificate of Responsibility No. 11065-MC, Class: Building Construction, and whose phone number is (228) 832-6622 /Fax: (228) 832-6681.

The Subcontractor for and in consideration of the conditions, agreements, and stipulations of Contractor hereinafter expressed, does hereby agree to furnish to the Contractor services and materials as follows:

A. WORK TO BE DONE:

Subcontractor shall complete all Work as specified or indicated in the Contract Documents pertaining to the entirety of the remaining portion of the Work associated with the construction of Building Nos. 5.3 and 9 under the ~~Contract~~ **Settlement** between the Mississippi State Port Authority ("Owner") and Contractor for the construction of West Pier Facilities, Project 305 (the "Project"). Subcontractor shall be responsible for performing all obligations of the Contractor as expressed in the Contract Documents regarding the Work associated with the construction of Buildings 5.3 and 9. This Subcontract Agreement is the result of a ~~Settlement~~ **Settlement** and Release ("Settlement Agreement") entered by and between the Owner, Contractor and Contractor's Surety to avoid the necessity, expense, inconvenience, and uncertainty of litigation and to resolve and settle certain claims and disputes between them on the terms set forth therein, including the completion of the Work contemplated by this Subcontract Agreement. The Work contemplated hereunder is generally described as follows:

The Scope of Work for Building 5.3 includes the pay items 05.00 through 05.06 identified on the Bid Form for the Project. The Scope of Work for Building 9 includes all the pay items 09.00 through 09.07 identified on the Bid Form for the Project. The Scope of Work includes all Work to complete the Work in accordance to the Contract, Plans and Specification for the bid items for Buildings 5.3 and 9. Subcontractor is responsible to verify the location and condition of the existing test pile and utility tie-ins.

Notwithstanding anything in this Subcontract Agreement to the contrary, Subcontractor's available work zone and laydown area for the performance of the Work contemplated in this Subcontract Agreement is

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

depicted by green outline in the Revised Laydown Area, attached hereto as Attachment "B" and fully incorporated herein by this reference.

B. THE PROJECT

The Project for which the Work under the Contract Documents is generally described as follows:

Part of the West Pier Facilities, Project No. 305, specifically pertaining to the entirety of the Work for the construction of Building Nos. 5.3 and 9.

C. THE PROGRAM

The Program for which this Project is a part is generally described as follows:

Port of Gulfport Restoration Program

D. ENGINEER OF RECORD

The Engineer of Record is the designer of the Work.

Neel-Schaffer, Inc.

E. CONTRACT TIMES

Notwithstanding any other provision of the Contract Documents to the contrary, this Paragraph E of the Subcontract shall govern the Contract Time for the Work contemplated under this Subcontract.

Time is of the Essence: All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

This provision specifies the procedure for determination of time extensions for unusually severe weather. In order for the Contractor to award a time extension under this clause, the following conditions must be satisfied:

- (a) The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.
- (b) The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.

The Performance period for this Project has been established at 395 calendar days to Final Acceptance ("Contract Time") and includes anticipated adverse weather delays based on historical information from

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

the National Oceanic and Atmospheric Administration (NOAA). Substantial Completion must be achieved no later than thirty (30) days prior to the expiration of the Contract Time. The Contract Time shall commence upon issuance of a Notice to Proceed.

The Subcontractor’s activity durations in the progress schedule must reflect these anticipated adverse weather delays in all-weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAYS
DURING WORK DAYS

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
(6)	(9)	(9)	(9)	(5)	(5)	(5)	(7)	(4)	(4)	(4)	(7)

Upon acknowledgment of the Notice of Proceed and continuing throughout the Contract, the Subcontractor shall record on the daily report, the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent work on the Project’s critical activities for 50 percent or more of the Subcontractor’s scheduled work day. The number of actual adverse weather days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in the paragraph above, the Contractor will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract.

The Subcontractor must submit each month with his application for payment a separate letter stating that he is requesting an extension of time for abnormal adverse weather or that he has no claim for an extension for that period of time. No payment on a monthly application is due until the letter is received. Complete justification including an analysis verifying that conditions as stated herein above must accompany each request. A Subcontractor’s letter or statement that it was delayed will not be considered as adequate justification. The receipt of this request and data by the Contractor or Engineer will not be considered as Owner and Engineer approval of a time extension in any way.

F. PHASES, COMPLETION DATES, AND FINAL PAYMENT

Project will begin upon issuance of Notice to Proceed and be fully completed by Subcontractor and finally accepted by Owner within 395 calendar days. LIQUIDATED DAMAGES are described in Paragraph G below. Final Payment will be made to Subcontractor once that portion of the Work identified in this Subcontract is complete and receives final acceptance by the Owner and an as-built survey performed by a Land Surveyor registered in the State of Mississippi has been turned over to the Owner.

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

Construction Sequencing should proceed in a manner described in the Technical Specifications.

G. LIQUIDATED DAMAGES

Subcontractor and Contractor recognize that time is of the essence of this Subcontract Agreement and that Contractor and/or Owner will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with that certain unnumbered paragraph titled "Extension of Time of Completion" in between Paragraphs 28 and 29 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving, in a legal proceeding, the actual loss suffered by Contractor and/or Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Subcontractor and Contractor agree that as liquidated damages for delay (but not as a penalty) Subcontractor shall pay Owner:

In the event that Subcontractor fails to substantially complete the Work on or before the date that is thirty (30) calendar days prior to the expiration of the Contract Time (the "Substantial Completion Date"), Subcontractor shall pay Owner liquidated damages in the amount of \$5,000.00 per day for each day beyond the Substantial Completion Date that the Work is not substantially complete.

In the event that Subcontractor fails to obtain Final Acceptance for the Work contemplated under this Subcontract Agreement (including, without limitation, the completion of all execution and close-out requirements as specified in Specification 01 70 00) prior to the expiration of the Contract Time, Subcontractor shall pay Owner, in addition to any amounts owed pursuant to the immediately preceding paragraph (if applicable), liquidated damages in the amount of \$1,400 per day for each day beyond the Contract Time that the Work is not fully completed and finally accepted (Final Acceptance) by Owner.

For the avoidance of doubt, Contractor—Southern Industrial Contractors, LLC, shall not have any right or claim to liquidated damages under this Subcontract Agreement or any other legal or equitable remedy. This Subcontract Agreement shall be assigned to the Owner as part of a separate Settlement Agreement related to the Project, and Owner shall be the only party authorized to recover liquidated damages as contemplated in this Subcontract Agreement. Nothing provided for herein shall prevent or prohibit Owner from pursuing any other legal or equitable remedy to enforce its rights under this Subcontract Agreement.

H. COMPENSATION:

Owner will pay Subcontractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the following:

For all Work, at the prices stated in Subcontractor's Bid attached as an exhibit to this Agreement at execution.

TOTAL COST NOT TO EXCEED

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

\$4,149,000.00

(List total contract value numerically)

Four Million One Hundred Forty-Nine Thousand and No/100 Dollars

(Write-out total contract value)

I. PAYMENT PROCEDURES:

Applications for Payment:

Applications for Payment will be delivered by Subcontractor to Owner for processing as provided in Paragraph 3 of the General Conditions and Section 01 20 00. Documentation to be provided on a monthly basis with Subcontractor Application for Payment is as noted in Paragraph 3 of the General Conditions and Section 01 20 00. Confirm that the Record Documents (as-built mark ups) are current and accurately reflect the existing conditions. Failure to comply with this provision may cause Subcontractor's payment to be withheld.

The Subcontractor shall submit, on a form acceptable by Owner, a pay application in writing showing value of Work performed to that date. The Contractor shall make payment for all approved Work performed to the date of the pay application within forty-five (45) days from the receipt of said pay application; *provided, however*, Owner shall retain five percent (5%) of such estimated value as partial security for the fulfillment of the Subcontract Agreement as provided in Paragraph 3 of the General Conditions and Section 01 20 00, as applicable. Upon completion of at least fifty percent (50%) of the Work contemplated in this Subcontract Agreement, on schedule and satisfactory to Owner in a manner consistent with the Contract Documents, fifty percent (50%) of the retainage held by Owner to date of completion of at least fifty percent (50%) of the Work shall be disbursed to Subcontractor; *provided, however*, future retainage shall be withheld at the rate of two and one-half percent (2 1/2%) by Owner until the remaining Work contemplated in this Subcontract Agreement is complete.

Progress Payments:

Progress payments will be made on account of the Contract Price on the basis of Subcontractor's Application for Payment as recommended by Construction Manager. For purposes of this Subcontract, the Parties hereto and Contractor's assignee agree that the "Contract Price" shall be the TOTAL COST NOT TO EXCEED identified in Paragraph H above, subject to the change order and work change directive provisions of the Contract Documents. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values established (and in the case of Unit Price Work based on the number

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

of units completed) or, in the event there is no Schedule of Values, as provided in Paragraph 3 of the General Conditions.

Final Payment:

Upon final completion and acceptance of the Work in accordance with Paragraph 17 of the General Conditions, Section 01 20 00 and Section 01 70 00, Contractor shall pay unto Subcontractor the remainder of the Contract Price as recommended by Construction Manager.

Retainage:

Notwithstanding any other provision of the Subcontract Agreement or the General Conditions to the contrary, including any attachments incorporated herein by reference, Subcontractor shall only be entitled to make request for retainage payment and receipt thereof based upon the Contract Price for that portion of the Work contemplated in this Subcontractor Agreement—**specifically pertaining to the entirety of the Work pertaining to the construction of Building Nos. 5.3 and 9.**

J. SUBCONTRACTOR'S REPRESENTATIONS

In order to induce Contractor to enter into this Agreement, Subcontractor makes the following representations:

Subcontractor has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, and performance of the Work, including the obligation to comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u).

Subcontractor has studied carefully all reports of explorations and tests of subsurface conditions at or contiguous to the Site and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which are available to the Contractor or have been identified as "additional information" in Paragraph 5 of the General Conditions.

Subcontractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, studies, (in addition to or to supplement those referred to above) which pertain to subsurface or physical conditions at or contiguous to the Site or otherwise may affect the cost, progress, performance or furnishing of the Work as Subcontractor considers necessary for performance or furnishing of the Work at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, test reports, studies or similar information or data are or will be required by Subcontractor for such purposes.

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

Subcontractor has reviewed and checked all information and data shown or indicated in the Contract Documents with respect to existing underground facilities at or contiguous to the Site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, test reports, studies or similar information or data in respect of said underground facilities are or will be required by Subcontractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

Subcontractor has correlated the results of all such observations, examinations, investigations, explorations, test reports, and studies with the terms and conditions of the Contract Documents.

Subcontractor has given Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Subcontractor.

K. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Subcontract Agreement between Contractor and Subcontractor concerning the Work consist of the following:

1. This Subcontract Agreement.
2. Performance Bond of Subcontractor.
3. Payment Bond of Subcontractor.
4. Tax Bond Rider of Subcontractor.
5. The Contract Documents between the Owner and Contractor (*for scope of work on Building Nos. 5.3 and 9*), including, without limitation, the General Conditions and Supplemental Conditions
6. Notice to Proceed related Work under Subcontract Agreement.
7. Mississippi State Port Authority at Gulfport - Certifications Regarding Debarment, Suspension, Other Responsibility Matters and Lobbying
8. Specifications as listed in the table of contents of the Project Manual.
9. Drawings, which ~~shall~~ bear the following general title: "Port of Gulfport Restoration Program, Terminal 3 Administration Building and Gate, Project No. 305"
10. All Addenda.
11. Exhibits to this Agreement (enumerated as follows):
 - (a). Subcontractor's Bid Form (as may have been supplemented).
 - (b). Revised Laydown Area.
 - (c). In addition to those Drawings identified under Item #9 above, all General Drawings identifying Work for Buildings 5.3 and 9 to be completed under this Subcontract Agreement.

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

12. Insurance endorsements and certificates.
13. The following which may be delivered or issued after the Effective Date of the Subcontract and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents.

The documents listed above are attached to this Subcontract Agreement (except as expressly noted otherwise above). There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 36 of the General Conditions.

L. ASSIGNMENT

Subcontractor acknowledges that Contractor intends to fully assign all of its rights, obligations and total interest in the Subcontract Agreement to the MSPA simultaneously with the execution of this Subcontract Agreement. Subcontractor stipulates and agrees that Contractor shall have the right to assign, transfer, or convey the Subcontract Agreement, whether in whole or in part, to Owner without the prior written consent of Subcontractor. Upon an assignment of this Agreement by Contractor to the Owner, Subcontractor shall be considered the general contractor for the scope of work under this Agreement. SIC shall have no further rights, obligations or interest of any kind whatsoever in the Subcontract Agreement or Work, and the Owner's obligations to Subcontractor shall be the same as existed with the Contractor. This Subcontract Agreement shall be null, void, and without any legal effect unless Contractor assigns, transfers, or conveys to the Owner this Subcontract Agreement, and Owner accepts same, within fifteen days of the execution of this Subcontract Agreement by both Contractor and Subcontractor.

M. MISCELLANEOUS MATTERS

This Subcontract Agreement is subject to the fiscal and administrative provisions of the Mississippi State Port Authority and the State of Mississippi. Charges will accrue only after execution of this Subcontract Agreement. Any amount of Contractor's obligation hereunder shall not at any time exceed the amount stated in this Subcontract Agreement. ~~Owner~~ shall be represented by its Executive Director in all administrative matters relating to this Subcontract Agreement, as applicable.

It is expressly understood and agreed that the obligation of Contractor to proceed under this Subcontract Agreement is conditioned upon the Owner's obligation to proceed under the Contract, which is conditioned upon, among other things, the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If state and/or federal funds are not forthcoming or insufficient for any reason and are not available, Subcontractor is aware that the Owner shall have the right to terminate the Agreement with Contractor or Subcontractor without damage, penalty cost or expenses to Owner of any kind whatsoever. Owner shall give Contractor ten (10) business days' notice of such termination. Likewise, in the event the Owner terminates the Contract or Subcontract Agreement as identified above, Contractor

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

or Owner shall have the right to terminate the Subcontractor Agreement with Subcontractor without damage, penalty cost or expenses to Contractor or Owner of any kind whatsoever.

This Subcontractor Agreement has been executed by and on behalf of the parties hereto, the day and year first above written:

SUBCONTRACTOR:

DAN HENSARLING, INC.

Signature

Name

Title

Date

CONTRACTOR:

**SOUTHERN INDUSTRIAL CONTRACTORS,
INC.**

Signature

Name

Title

Date

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY - PORT OF GULFPORT RESTORATION PROGRAM

MISSISSIPPI STATE PORT AUTHORITY

APPROVED BY:

Robert Kneasal, President

John Rester, Secretary

Date

MISSISSIPPI DEVELOPMENT AUTHORITY

APPROVED BY:

Glenn McCullough, Executive Director

Date

END OF DOCUMENT

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EXHIBIT A – Revised Bid

6/16/17

[Handwritten signature]

COMPLETION OF THE
West Pier Facilities – Project #305 (Building 5.3 & 9)

SECTION IV
LUMP SUM PROPOSAL FORM

Offeror: Dan Hensarling, Inc.

1.0 Offer Price

- 1.1 Total compensation to Contractor for full and complete performance by the Contractor of all the Work, including the furnishing of all labor, materials, equipment, tools, supervision, insurance, bonds, taxes, overhead, profit, and each and every item of expense necessary to complete the Work in compliance with all the terms and conditions of the Completion Agreement and the SFO and all documents referenced therein, and for Contractor's payment of all obligations incurred in, or applicable to the performance of the Work, shall be in accordance with the Offer set forth in Exhibit 1, entitled "Lump Sum - Offer Schedule".
- 1.2 The Contractor shall commence work within five (5) calendar days after the date of the written Notice to Proceed from the Surety, and shall complete the Work within the time frame specified by the Project Completion Alternative, the Surety selects. Liquidated Damages as set forth in this SFO shall be in full force and effect for time overruns beyond the milestones and Completion date specified by the Project Completion Alternative the Surety selects. In the Notice of Award, the Surety shall notify the Contractor which Project Completion Alternative the Surety selects.
- 1.3 The Offer is valid for a period of sixty (60) days after the closing date of this SFO.
- 1.4 The quoted prices set forth herein are firm for the duration of the Work.
- 1.5 The following is offered by the undersigned:

The Total Bid Based on:

4,107,000⁰⁰

Lump Sum Prices (including Mobilization/Demobilization)

Exhibit 1, Schedule A - 4,069,000⁰⁰ Dollars

(\$ Four million SIXTY NINE THOUSAND DOLLARS)
ONE HUNDRED SEVEN THOUSAND

Exhibit 1, Schedule B - Cost of Bond (not included above)

\$ 42,000⁰⁰ Dollars

Name of Offer's Bond Company (not agent) is:

Travelers Casualty & Surety Co. of America

2.0 Conditions

CONFIDENTIAL SETTLEMENT COMMUNICATION

- 2.1 The undersigned Offeror has examined and read the SFO, the Contract, any General Conditions, Special Provisions, Supplementary Requirements, Technical Specifications, Contract Drawings, Measurement and Payment Provisions, Addenda, and all other SFO documents including the Completion Agreement; has performed a jobsite inspection; and is acquainted with and fully understands the extent and character of the Work covered by this Offer and the specified requirements for the proposed Work.
- 2.2 The Offeror agrees that if awarded a contract as a result of this SFO, the major Subcontractors and Suppliers used in the prosecution of the Work shall be those listed below. The following list includes all Subcontractors and Suppliers who will perform work representing approximately a value of ten percent (10%) or more of the Work. The Offeror represents that the Subcontractors and/or Suppliers listed below are financially responsible and are qualified to do the work required.

Name of Supplier/Subcontractor	Type of Work to be Performed
ACE CONTRACTORS	ELECTRICAL WORK

- 2.3 The undersigned certifies that he or she is or they are the only person, or persons, interested in this Offer as principals, and that the Offer is made without collusion with any person, firm or corporation.

3.0 Execution Of Contract

The Offeror agrees that if this Offer is accepted, the Offeror shall execute and return to the Surety the Completion Agreement issued by the Surety under Appendix 1 of this SFO in the same form and without change, alteration and/or modification, within five calendar (5) days of the date of the Notice of Award, and the Offeror shall furnish the properly executed bonds as required by the SFO to the Surety within five calendar (5) days of the date of the Notice of Award; that the Offeror shall furnish the Insurance Submittal within five calendar (5) days of the Notice of Award; that the Offeror shall perform the Work in accordance with the Completion Agreement and/or any contract entered into with the Obligee; that the Offeror shall commence the Work within five (5) calendar days after the Surety has given the Notice to Proceed; that the Offeror shall complete the Work within the time specified by the Projection Completion Alternative the Surety selects and that the Offeror shall accept as full payment therefore the prices set forth in this Proposal Form.

CONFIDENTIAL SETTLEMENT COMMUNICATION

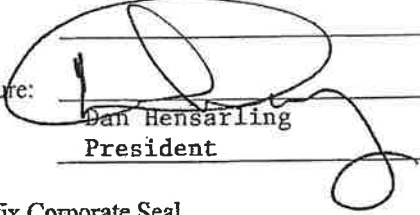
Proposal Date: January 5, 2017

Name of Offeror: Dan Hensarling, Inc.

Address of Offeror: P.O. Box 3927

Gulfport, MS 39505

Authorized Signature:


Dan Hensarling

Title:

President

If Corporation, Affix Corporate Seal

11065-MC

Contractor's License No.

CONFIDENTIAL SETTLEMENT COMMUNICATION

SECTION IV
PROPOSAL FORM

Exhibit 1

Lump Sum – Offer Schedule

Offeror: DAN HENSARLING, INC.

Schedule A – Lump Sum Price

See attached Schedule of Values for details

TOTAL LUMP SUM \$ ~~4,069,000~~

Schedule B – Bonds

Performance bond and labor and material payment bond naming Surety and Obligor as co-Obligees:

\$ 42,000

Schedule C – Time

List your milestone dates which you will achieve and the total contract duration expressed in calendar days.

TOTAL CONTRACT TIME FROM NTP 395 DAYS

Schedule D – Offeror's Pricing for Subcontractors and Suppliers (Spreadsheet listing each attached)

TO BE SUPPLIED AT A LATER DATE

1. Subcontractor Price – Total \$ _____
2. Supplier Price – Total \$ _____
3. Sum – Total \$ _____

~~CONFIDENTIAL SETTLEMENT COMMUNICATION~~
~~DAN HENSARLING, INC.~~

CONTRACTORS


June 16, 2017

Attachment to revised bid proposal of June 16, 2017 for Project No. 305, Buildings 5.3 and 9 located at the Port of Gulfport, Gulfport, MS.

We have been asked by Mr. Brant Pettis of Balch and Bingham, LLP to provide a statement concerning the exclusion of material pricing for 33 each, 16" x 16" square piling ranging in length from 93' to 95' located on the jobsite.

We have not included the piling found on the jobsite for Building 9 in our material pricing portion of our bid proposal. However, we have included pricing to install the 33 each piling.

Dan Hensarling, Inc.



Dan Hensarling

attachment



EXHIBIT B - Laydown Area

CONFIDENTIAL SETTLEMENT COMMUNICATION

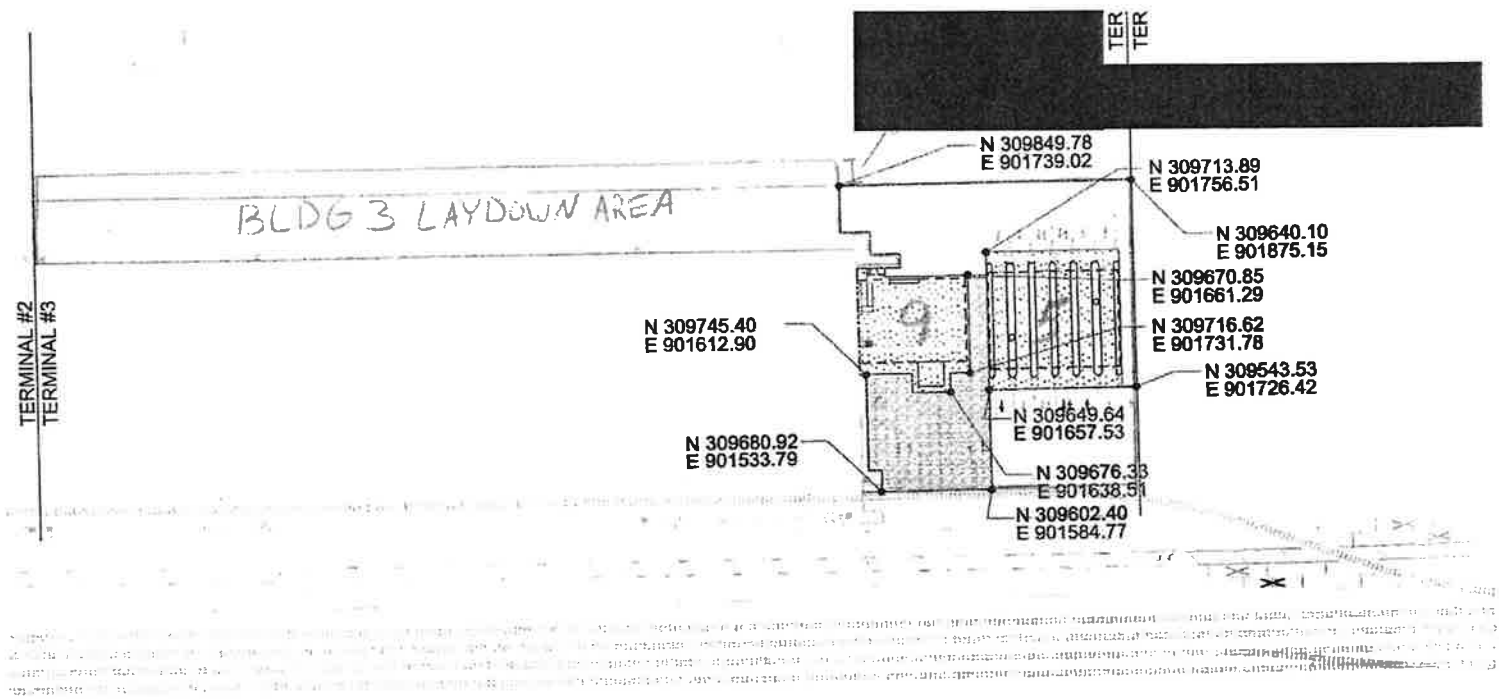


EXHIBIT "B"

**ASSIGNMENT OF SUBCONTRACT
FOR BUILDINGS 5 & 9**

CONFIDENTIAL SETTLEMENT COMMUNICATION

ASSIGNMENT OF SUBCONTRACT AGREEMENT

THIS ASSIGNMENT OF SUBCONTRACT AGREEMENT (this "Assignment") is made effective as of the ___ day of _____, 2017, by and between by and between the **Mississippi State Port Authority at Gulfport** (the "MSPA") the **Mississippi Development Authority** ("MDA"), and **Southern Industrial Contractors, LLC**, a Louisiana limited liability company ("SIC") (MSPA, MDA and SIC collectively the "Parties").

WITNESSETH:

WHEREAS, the MSPA 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, on July 25, 2014, MSPA entered into a contract with SIC, Agreement No. 015-HUD-025 in the original amount of \$47,037,840.25 (the "Contract" or "Contract Documents"), for the construction of West Pier Facilities, including the Transit Shed, Dole Administration, and Dole Gate House (Buildings 3, 5.3 and 9) ("Project 305" or the "Project"); and

WHEREAS, Project 305 was originally required by the Contract to be substantially complete on or before March 21, 2016; and

WHEREAS, on or about September 13, 2016, the MSPA terminated SIC as the contractor for Project 305 for various reasons (the "Termination"), none of which have been conceded by SIC or its surety, Travelers Casualty and Surety Company of America ("Travelers"), and all of which are denied by SIC and Travelers; and

WHEREAS, on or about September 14, 2016, the MSPA made demand on the Performance Bond, No. 106089918, ("Bond") and requested that Travelers take immediate action to complete the remaining Work, and further ensure that the Work and Project site are secured and preserved before and after any demobilization of SIC; and

WHEREAS, on November 17, 2016, SIC filed a Motion to Compel Arbitration and Alternative Complaint for Breach of Contract in the Circuit Court of the First Judicial District of Hinds County, Mississippi, against the MSPA, which is pending as Cause No. 16-681 (the "Litigation"); and

WHEREAS, on June __, 2017, the Parties entered into a Settlement Agreement and Release ("Settlement Agreement") to avoid the necessity, expense, inconvenience, and uncertainty of the Litigation and to resolve and settle all claims and disputes between them on the terms set forth therein; and

WHEREAS, as part of the Settlement Agreement, SIC has agreed to subcontract the entirety of the scope of the remaining work of the Project associated with Building Nos. 5.3 and 9 to a replacement contractor reasonably acceptable to the MSPA, which said subcontract will then be assigned by SIC to MSPA in accordance with the terms and conditions of the Settlement Agreement; and

CONFIDENTIAL SETTLEMENT COMMUNICATION

WHEREAS, as part of the Settlement Agreement and in accordance with the terms and conditions therein, SIC has entered into valid and enforceable Subcontract Agreement ("Subcontract") with Dan Hensarling, Inc. ("Hensarling") for the completion of Buildings 5.3 and 9 for the Project, a copy of the executed Subcontract is attached hereto and fully incorporated herein by this reference as Exhibit "A".

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and obligations of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Assignment of Subcontract. For value received, SIC assigns to MSPA the Subcontract with Hensarling for the completion of Buildings 5.3 and 9 for the Project, a copy of which is attached as Exhibit "A", without modification.

2. Assumption of Subcontract by MSPA. Upon execution of the assignment by all Parties, MSPA assumes all rights and obligations of SIC under said Subcontract, including, without limitation, the obligation to make payment to Hensarling for Work completed under the Subcontract, in accordance with the terms and conditions of the Settlement Agreement and the Contract Documents. Notwithstanding anything to the contrary, the MSPA shall be considered the Owner of the Project, and not a contractor, at all times.

3. Deletion of Work under Subcontract from SIC Contract. Upon acceptance of the assignment by the MSPA, all remaining Work in connection with Building Nos. 5.3 and 9 shall automatically be deleted from the Contract and from the Bond in accordance with the terms and conditions of the Settlement Agreement.

4. Scope of Assignment. The rights assigned by this Assignment include all of SIC's responsibility or obligation of any kind associated with Building Nos. 5.3 and 9 under the Subcontract in accordance with the terms and conditions of the Settlement Agreement, and SIC and Travelers shall be released with regard to Building Nos. 5.3 and 9 in accordance with the terms and conditions of the Settlement Agreement.

5. Governing Law. This Assignment shall be governed by, construed under the interpreted and enforced in accordance with the laws of the State of Mississippi, without regard to its conflict of law provisions.

6. Conflicting Terms. This Assignment shall not be deemed to modify, supersede, diminish, alter or affect any of the terms of the Settlement Agreement in any respect. To the extent that the terms hereof are inconsistent with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

7. Counterpart. This Assignment may be executed in multiple counterparts, each of which will be deemed to be an original. When the signature pages of all of such executed counterparts are taken together with the body of this Assignment, it will be deemed to constitute one and the same.

CONFIDENTIAL SETTLEMENT COMMUNICATION

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed as of the day and year first above written.

SOUTHERN INDUSTRIAL CONTRACTORS,
LLC:

By: _____
Name: _____
Its: _____

STATE OF _____
COUNTY/PARISH OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 2017, within my jurisdiction, the within named _____, who acknowledged that he/she is _____ of Southern Industrial Contractors, LLC, and that for and on behalf of the said company, and as its act and deed he/she executed the above and foregoing instrument, after first having been duly authorized by said company so to do.

Given under my hand this the _____ day of _____, 2017.

NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI STATE PORT AUTHORITY AT
GULFPORT

By: _____
Name: _____
Its: _____

STATE OF MISSISSIPPI

COUNTY OF HARRISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 2017, within my jurisdiction, the within named Robert J. Knesal, who acknowledged that he is the President of the Mississippi State Port Authority, and that for and on behalf of the said agency, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said agency so to do.

Given under my hand this the _____ day of _____, 2017.

NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____

CONFIDENTIAL SETTLEMENT COMMUNICATION

MISSISSIPPI DEVELOPMENT AUTHORITY

By: _____
Name: _____
Its: _____

STATE OF MISSISSIPPI

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 2017, within my jurisdiction, the within named _____, who acknowledged that he is the Executive Director of the Mississippi Development Authority, and that for and on behalf of the said agency, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said agency so to do.

Given under my hand this the _____ day of _____, 2017.

NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____

EXHIBIT A - Subcontract

will then be assigned by SIC to the Port Authority in accordance with the terms and conditions of the Settlement Agreement; and

WHEREAS, the Port Authority desires to approve and authorize the execution of the Settlement Agreement relating to Project 305 and Change Order No. 2 related thereto and to authorize the taking of other such actions necessary or desirable in connection with the matters contemplated in the Settlement Agreement in order to facilitate the resolution of claims and disputes between the Parties as contemplated therein.

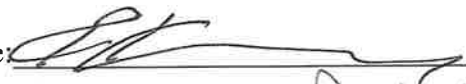
NOW, THEREFORE BE IT RESOLVED, that the Port Authority hereby acknowledges, approves, authorizes, and affirms (i) the execution of the Settlement Agreement and (ii) the execution of the Change Order No. 2; (iii) and the taking of other such actions necessary or desirable in connection with the matters contemplated in the Settlement Agreement in order to facilitate the resolution of claims and disputes between the Parties as contemplated therein.

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

	<u>Voted:</u>
Commissioner Bobby Knesal:	<u>Aye</u>
Commissioner James C. Simpson, Jr.:	<u>Aye</u>
Commissioner John Rester	<u>Aye</u>
Commissioner E.J. Roberts:	<u>Absent</u>
Commissioner Jack Norris:	<u>Aye</u>

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 19th day of June, 2017.

Name: 
Title: Commission President