

MISSISSIPPI PORT AUTHORITY

BOARD OF COMMISSIONERS

SPECIAL MEETING

August 18, 2020

Minutes of the Mississippi State Port Authority Board of Commissioners Meeting, Tuesday, August 18, 2020 at 2510 14th Street, Suite 1450, Gulfport, Mississippi at which the following Commissioners and staff were present:

Commissioners: Jack Norris, President
E.J. Roberts, Vice-President
Robert J. Knesal, Secretary
James C. Simpson, Jr., Treasurer
John Rester, Commissioner

Staff: Kim Purchner, Executive Asst./HRO

Ben Stone, Legal Counsel
Brant Pettis, Legal Counsel

Commissioner Norris noted the presence of a quorum and called the meeting to order at approximately 1:30 p.m.

There were no public comments.

Commissioner Rester moved to close the meeting to discuss the need for an Executive Session. Commissioner Roberts seconded and the motion was unanimously approved.

Commissioner Rester moved to enter Executive Session to discuss personnel and legal matters (SIC litigation). Commissioner Simpson seconded and the motion was unanimously approved.

(THE BOARD OF COMMISSIONERS ENTERED INTO EXECUTIVE SESSION AT APPROXIMATELY 1:35 P.M.)

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


Commissioner Norris stated that no action took place during Executive Session.

Commissioner Simpson moved to amend the agenda to consider Resolution No. 20-04 regarding a settlement agreement for the SIC litigation. Commissioner Rester seconded and the motion was unanimously approved.

Commissioner Simpson moved to approve Resolution No. 20-04 (attached) regarding a settlement for the SIC litigation. Commissioner Roberts seconded and the motion was unanimously approved.

Commissioner Rester moved to adjourn.

The meeting adjourned at approximately 3:10 p.m.



Jack Norris
President



Robert J. Knesal
Secretary

RESOLUTION NO. 20-04

RESOLUTION OF THE MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT

The Board of Commissioners of the Mississippi State Port Authority at Gulfport (the “Port Authority”) took up for consideration, pursuant to the terms and conditions of that certain confidential Settlement Agreement and Release (“Settlement Agreement”), 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, together with its successors and assigns (“Travelers”) (the Port Authority, SIC and Travelers collectively the “Parties”), 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”) and the litigation pending in the Circuit Court of Harrison County, Mississippi, First Judicial District, case name “*Southern Industrial Contractors, LLC v. Mississippi State Port Authority*” Case Number: 24CI1:19-cv-00019, involving claims and counter-claims by and between SIC, the Port Authority and Travelers (hereinafter the “State Litigation”). 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**

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 the Port Authority, 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 at Gulfport; and

WHEREAS, on July 25, 2014, the Port Authority 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, Project 305 was originally required by the Contract to be substantially complete on or before March 21, 2016; and

WHEREAS, various disputes arose among the Parties prior to completion of the Project and the State Litigation was initially commenced on November 17, 2016 in the First Judicial District of Hinds County, Mississippi, and, following a transfer to the First Judicial District of Harrison County, Mississippi, has proceeded to date; and

WHEREAS, the Port Authority, SIC and Travelers have asserted various claims, counter-claims, defenses and rights against each other relating to the Project and the Bonds in the State 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 confidential Settlement Agreement attached hereto as Exhibit “1” and fully incorporated into the official minutes of the Port Authority by this reference; and

NOW, THEREFORE BE IT RESOLVED, that the Port Authority hereby acknowledges, approves, authorizes, and affirms (i) the execution of the confidential Settlement Agreement and (ii) the taking of other such actions necessary or desirable in connection with the matters contemplated in the confidential Settlement Agreement in order to facilitate the resolution of claims and disputes between the Parties as contemplated therein.

BE IT FURTHER RESOLVED, that the previous termination for fault or default of SIC from the Project is hereby rescinded and converted to a termination for convenience.

BE IT FURTHER RESOLVED, that the Chairman of the Board of Commissioners 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 Roberts seconded the motion to adopt the foregoing Resolution, and the vote thereupon was as follows:

	<u>Voted:</u>
Commissioner Jack Norris:	<u>Aye</u>
Commissioner E.J. Roberts:	<u>Aye</u>
Commissioner John Rester:	<u>Aye</u>
Commissioner Bobby Knesal:	<u>Aye</u>
Commissioner James C. Simpson, Jr.:	<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 18th day of August, 2020.



BOARD PRESIDENT

