Minutes of the Regular Meeting of the Board of Commissioners of the Lake Charles Harbor and Terminal District held at 6:00 P.M., Monday, March 25, 2019 in the Boardroom of the Port of Lake Charles located at 1611 West Sallier St., Lake Charles, Louisiana.

In attendance and constituting a quorum, were:

Michael G. Eason, President

John LeBlanc, Vice President

Elcie J. Guillory, Secretary/Treasurer

David J. Darbone, Assistant Secretary/Treasurer

Carl J. Krielow, Commissioner

Thomas L. Lorenzi, Commissioner

Absent:

Dudley R. Dixon, Commissioner

Also Present:

Bill Rase, Executive Director

Richert Self, Deputy Executive Director/Director of Administration and Finance

Jon Ringo, Assistant General Counsel

Channing Hayden, Director of Navigation

Donald Brinkman, Director of Security/Engineering, Maintenance and Development

Todd Henderson, Director of Operations

Dan Loughney, Director of Marketing and Trade Development

Michelle Bolen, Executive Administrative Assistant

Mr. Eason called the meeting to order at 6:00 P.M. and asked Mr. Guillory to give the invocation. Mr. LeBlanc led the Board and audience in the Pledge of Allegiance.

Mr. Eason asked if there were any public comments regarding any items on the agenda. There were none.

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1. Approval of the February 25, 2019 Regular Meeting Minutes.

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Mr. LeBlanc offered a motion to approve the February 25, 2019 Regular Meeting Minutes. Mr. Darbone seconded the motion and it carried unanimously.

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2. Submission 2019 – 006 authorizing a settlement agreement with Federal Marine Terminals.

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Mr. Rase stated this is the same proposal looked at last month. It was tabled and staff is bringing it back to the Board for approval. The Port had an agreement with FMT that had a minimum guarantee in the agreement. Two years had gone by and the Port had not collected the minimum guarantee. It ended up being approximately $147,000. In that discussion, in the contract there is some agreement that says, in general, that if conditions change and are altered then the minimum guarantee goes away. Based on that and the discussions they have had before the Board that showed the changes in the USDA and their processes. Staff felt that the offer of $40,000 was sufficient to move forward. That is the same situation that they had last month. That got deferred last month. Staff is bringing it back to the Board tonight.

Mr. Eason called upon Mr. Ringo for a legal opinion. Mr. Ringo stated he supports the submission and recommends the Board vote in favor of it. The bottom line is that this agreement, including the minimum tonnage guarantee, was written in a way to hold FMT to the minimum tonnage guarantee, but exclude them from that tonnage guarantee for events that were essentially outside their control. It is what they call “Minimum Tonnage Guarantee Stoppage Events.” It lists several things. If the Port fails to maintain their docks or there is damage to City Docks – those are minimum tonnage guarantee stoppage events. FMT has to give the Port notice that there is such an event and then the minimum tonnage guarantee does not apply.

There is another section saying, “In addition to the above,” which is everything they have just covered. In addition to that – separate from that. “In the event of fundamental changes to the USDA Aid cargo program from the program existing as at the commencement of this agreement…, or other circumstances outside the control of the contract or which materially impact the supply of cargo pursuant of this agreement, the parties agree that the minimum tonnage obligation shall no longer apply and will negotiate in good faith.”

He said they only have to point to the Port’s own meetings on the subject to look to events outside the control of the stevedore that have reduced the amount of cargo: actions at the Federal Government level or general conditions in the supply of cargo in that area. FMT agreed to the minimum tonnage and the Port signed the agreement, but in this case and this case specifically, he thinks they should agree to this settlement because there is some ambiguity in the language of they may ultimately be responsible for.

Mr. LeBlanc offered a motion to adopt Resolution 2019 – 006 to authorize a settlement agreement with Federal Marine Terminals. Mr. Eason seconded the motion.

Mr. Krielow stated that last month at the meeting, the topic came up. He said Mr. Lorenzi nor Mr. Dixon were here. This goes back to an exclusive guarantee that was given to FMT back in 2012. As part of that exclusive guarantee, they guaranteed a minimum annual tonnage of 200,000 tons. Before one gets to the section of the agreement that Mr. Ringo discussed, as to the provisions that give rise to changing the terms of the agreement, the very first thing it says on page 13, “Any shortfall between this minimum and the actual tonnage handled by the contractor shall be calculated and payable at the conclusion of each year.” FMT failed to do that. They failed to calculate it and submit that to the Port.

Furthermore, when you get to the events that give rise to renegotiation of the terms of the agreement, this has to be done, noticed in writing. Paragraph 3, page 14. The writing came three years after the event. It came because of a failure of FMT to notify, in writing, at the conclusion of the year, what their tonnage was and what the shortfall was. He understands this all came about a year ago, when they were discussing different options for trying to bring competiveness to the bagged cargo business, but without a doubt this agreement was done and it was done as an exclusive agreement. They failed to honor part of it. Mr. Thornton, at that same meeting, said that FMT was made aware on Friday and they are a responsible tenant. Mr. Dees told the Board that there was indeed a shortfall and that Mr. Rase had communicated for this to be invoiced and that the Port has lost nothing. Nothing is going to be lost and the agreed upon payment will be made. Since that time, Mr. Self has invoiced them the $147,000, so the Port is carrying it on their books as a receivable, and if the Board approves this settlement agreement, they will have a loss. They will write off over $100,000 for an agreement that was given to a company for exclusivity that they were able to have for six years before this came to light.

In his opinion, one of two things should happen. Either go ahead, if it was an oversight, and pay it because they failed to honor the annual report that they were supposed to be submitting to the Port on the tonnage and/or give up their exclusive rights to the bags. It should be one or the other. If they want to maintain the exclusive agreement, and he says pay this going forward. If there are circumstances that create an event that they are not going to meet their tonnage, then do what the agreement says. Notify the Port in writing that this event has happened. At the end of the year, calculate at the conclusion of the year and submit it to the Board. That is his position.

Mr. LeBlanc stated that looking at it, he asked to have it tabled so they could look at more information to make sure they had all of the information they could look at and figure out where they were and where they need to be on this. He can look at the contract and read it thoroughly and try and understand if a fundamental event happened. They way USDA is now actually bidding out their cargo and stuff, is another fundamental change. If you look at the amount of cargo that the Port had come in through USDA, there is nothing that anyone could have done to increase the amount of baggage that was coming in through USDA, no matter what they have done here.

What they have had is a fundamental change in the process that they have here. He understands that they should have given the Port written notice. He agrees with that 100%. But, he does not want to sit here and pass up on a settlement, where they will get something. He does not think, because of the way it is written, FMT owes the Port any more in the value of the contract right now. They were short. USDA has had a fundamental change. They have talked about it openly in the meetings the Port has had over the last four years. The amount of cargo that has come through has changed. It is going to the container business. It is going bulk. There are a lot of things that have changed the way the Port does business here. This is one of the fundamental changes that they have been talking about. He is going to support them settling this because he thinks they get some additional dollars that they were not going to get, even though the Port may have to write off what they think it was, $147,000. They will get a portion of it. He would rather receive a portion of it than nothing at all. If they do not take this settlement, there is a chance the Port will not see any of it.

Mr. Darbone stated if they sign agreements and two years later, we say we gave them a deal because they did not live up to their agreement. What kind of precedent does that set? If they sign an agreement with someone and then two years later they do not live up to their agreement, and they figure out a way to get them out. Mr. LeBlanc said they were still in the contract. It is part of the contract that says if there is a fundamental change the actual minimums do not apply. It is part of the contract. If this verbiage would not have been in there he would have supported going after the whole amount. But because of the fundamental change, they need to turn around and look at this and say this is what the cause was. They did not meet their minimum guarantee on the contract. If this paragraph was not in there, he would agree with Mr. Krielow to get the $147,000.

Mr. Krielow stated he appreciated where Mr. LeBlanc was going with the fundamental changes. He does agree with him on that. However, if they had done the very first thing in the minimum annual ton guarantee agreement that they signed, 2.5, and calculated at the conclusion of the each year, it would have never gotten to that fundamental change because they would have realized that they were not meeting it. They would have given the notice and it would have been changed back five years ago, instead of them dealing with them after the fact. He agrees with Mr. Darbone. They are setting a precedence here that says, “Hey, you make an agreement with the Port, and somehow or other you do not meet up to it, and do not do what your part of the agreement is, we are going to come back and give you a discount to settle it five years later.” He cannot support it for that reason. But he does appreciate where Mr. LeBlanc is coming from.

Mr. Lorenzi stated if the Port is going to have contracts and agreements, the Board does have to have a policy that they mean what they say. They have to be willing to enforce agreements, otherwise they have no right to expect that of anyone else. Had the terms been followed, then right. If the notice had been given, then the recalculation paragraph would have kicked in. It would have been easy enough to recalculate. You do not get to that point until that notice is given that trips that paragraph. You cannot just rely on self-help from the Board, taking a willy-nilly attitude where if the Board is not going to protect itself by the contract that it writes and signs, then they are at the mercy at every Tom, Dick and Harry that signs a piece of paper because they have no right to require enforcement.

Mr. Eason asked Mr. Ringo about contract law and understands the Port should have received a notice, but they see the exclusions. Is it looked at as a total document or does one take precedence over the other within the contract? Mr. Ringo replied that it is looked at in total. The issue is there is the section Mr. Krielow brought up that they have to do the calculation. Then there is the section where they have to give the Port notice of certain stoppage events. Then there is this others section that says in addition to the above – separate and apart from that above – if there are fundamental changes in the USDA, the minimum does not apply and they will renegotiate in good faith. He agrees with everything said about they missed the calculation. The Port missed the invoicing from year to year. The Port tried to make up that invoicing. FMT, based on that provision from what he understands and he has not discussed this with them, is that they believe they do not owe anything based off of that provision. So, now the Port is in a situation where if the Port pursues this, what is the best ultimate outcome? He serves at the pleasure of the Board and will do what they want him to do. But, he thinks this is a reasonable settlement. In the future, the Port needs to look at this language and re-evaluate the Port’s position that such a broad exclusion is given in the minimum tonnage guarantee. Based off of this contract… This is his advice to the Board. The Board should discuss it and see what they want to do.

Mr. Eason said he understood the ambiguity being talked about. He said what they were trying to figure out is a notice required to invoke that exclusion or they can read the body of the exclusion and be suffice as to what their requirements are. Mr. Ringo replied that it is ambiguous at best. He understands Mr. Krielow’s position that they had to give the Port notice and that includes everything. That would be left for a judge to decide whether that “in addition to the above” means separate and apart.

Mr. Lorenzi stated the Port wrote the contract. Mr. Ringo agreed. Mr. Lorenzi stated that could be construed against the Port. Mr. Ringo agreed.

Mr. Guillory asked that if the Board does not accept this today, then that means they get nothing? Mr. Ringo replied that he did not know if that was the case. They have made a settlement offer. If the Board rejects it, then staff will have to go back and discuss it some more with FMT and come back to the Board.

Mr. Lorenzi said this does not sound like a negotiation. This is an offer. The paragraph Mr. Ringo cited said there would be a negotiation.

Mr. LeBlanc asked if this was FMT’s first offer. Was this the first offer once the Port sent an invoice? Mr. Self replied that they offered $20,000 initially. Mr. Henderson agreed that was their original offer. Staff countered that with $50,000 over two years and they came back with $40,000 over two years. Mr. LeBlanc stated that it was negotiated then.

Mr. Krielow asked if FMT has two more years on the current agreement they are under or a year and a half with the exclusive commercial bagged cargo. Mr. Henderson replied that the agreement they signed is just a one year agreement. Mr. Henderson said that the one they have now is not related to the minimum. There is no minimum on that one.

Mr. Krielow said he was not trying to get into the negotiating, but hearing from what staff said and they came back and offered some a year later, it is a work-off type of settlement so to speak and make the work-off for what it is due and let the Port collect the amount of money it is invoice. If it takes two years to collect the $147,000, then work some terms like that. He is not here to tell them how to negotiate, he just cannot support what is in front of him. Mr. Ringo said that is where they are. There have been negotiations. Staff is bringing that to the Board. If the Board rejects it, staff goes back to the drawing board. There has been a negotiation.

Mr. LeBlanc said that if he reads a portion, basically, it states, “Due to the defense of fundamental changes of USDA.” is what stuck with him – the fundamental changes. That gives them the cause for not having to pay the minimum. Mr. Ringo agreed. Zero. It is not just fundamental changes in the USDA. It goes on to say drought, or any other natural phenomenon or other circumstances outside the control of the contractor. What a judge does is they look at the agreement, if they believe the agreement is unclear, they go to what is known as the “intent of the parties.” He works for the Board. He does not want to advocate and then advocate an opposite position.

Mr. Krielow said he was not going to belabor the point, but if they had done the first thing in their contract under 2.5 of the minimum guarantee, at the conclusion of each year, they would have notified the Port of their calculations and any amount payable. They did not do that. They did not even get past that part to where they could give notice. Having said that, if they are going to vote, he would like a roll call vote.

Mr. Eason asked for a roll call vote:

Thomas Lorenzi No

David Darbone No

John LeBlanc Yes

Michael Eason Yes

Elcie Guillory No

Carl Krielow No

Dudley Dixon Absent

The motion did not pass.

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3. Submission 2019 – 007 authorizing an Addendum Number Seven to Real Estate Lease Option Agreement with Lake Charles Methanol.

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Mr. Rase stated this is the project to take the petroleum coke and turn it into a very green situation, making methanol. It has been going on now for a number of years, although not at the pace anyone would like. It has exchanged hands two or three times. This is the amendment before the Board. In the past, they paid their fee per month for about a year. They have been off of that fee for a year. To get the approval of this amendment, they have agreed to go back to paying the fee, which is about $35,000 per month. With that, they are hoping to go to their closing in June and move the project forward. This is the amendment to allow them to keep the property as long as they pay the monthly fee moving forward.

Mr. Eason asked if that was written into the agreement – as long as they keep paying it. Mr. Rase replied that was correct. It is until September 30, 2019.

Mr. Rase said it comes back to the Port if they do not pay it. The Port can then send them a termination letter. They have five days to correct that.

Mr. Darbone offered a motion to adopt Resolution 2019 – 007 to authorize an Addendum Number Seven to Real Estate Lease Option Agreement with Lake Charles Methanol. Mr. LeBlanc seconded the motion and it carried unanimously.

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4. Submission 2019 – 008 authorizing the Executive Director to enter into a Cooperative Endeavor Agreement with the City of Lake Charles to lease and develop a fire arms training facility on District Property.

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Mr. Rase stated this has been going on for several years. It started when there was the Mayor’s election when Mayor Hunter won the election. They have worked out the basic terms and conditions for the firing range, which will provide for the City Police and several other law enforcement entities to use. The CEA will cover the expense of the Port constructing the base of the range and they would operate it. He asked the Board for approval.

Mr. Darbone offered a motion to adopt Resolution 2019 – 008 to authorize the Executive Director to enter into a Cooperative Endeavor Agreement with the City of Lake Charles to lease and develop a fire arms training facility on District Property. Mr. Lorenzi seconded the motion and it carried unanimously.

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5. February 2019 Financials Briefing Note

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The February 2019 Financials Briefing Note was rendered to the Board and is on file in the Executive Offices.

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6. Monthly Staff report from Deputy Executive Director Monthly Report.

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The Deputy Executive Director’s Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

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7. Monthly Staff report from Director of Navigation.

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The Director of Navigation and Security’s Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

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8. Monthly Staff report from Director of Operations.

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The Director of Operations’ Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

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9. Monthly Staff report from Director of Marketing and Trade Development.

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The Director of Marketing and Trade Development’s Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

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10. Monthly Staff report from Director of Engineering, Maintenance, and Development and Security.

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The Director of Engineering, Maintenance, and Development and Security’s Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

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11. Monthly Staff report from the State Port Lobbyist.

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The State Port Lobbyist’s Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

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12. Other Matters which may properly come before the Board.

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There being no further business to come before the Board, Mr. Eason asked for a motion to adjourn. Mr. LeBlanc offered a motion to adjourn and Mr. Darbone seconded the motion and it carried unanimously. The meeting adjourned at 6:32 p.m.

All discussions held on the above items were recorded using the FTR Gold program, and saved on the District’s main file server in the District’s office.

Please note that when the votes are shown as unanimous, it is the policy of the Board that the President does not vote except in the event of a tie vote by the rest of the Board and/or unless otherwise indicated.

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MICHAEL G. EASON, Vice President

ATTEST:

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ELCIE J. GUILLORY, Secretary/ Treasurer