

**PORT COMMISSION MINUTES  
DECEMBER 16, 2010**

Be it remembered that a regular meeting of the Port Commission of the City of Long Beach, Mississippi, was begun and held at the Long Beach School Administration Central Office, 19148 Commission Road, in said City at 5:30 o'clock p.m., it being the third Thursday in December, 2010, and the same being the time, date, and place fixed for holding said meeting.

There were present and in attendance on said Commission and at the meeting the following named persons: Commission President Phil Kies, Vice President James Hancock, Secretary Barbara Reed, Commissioners David Marks, Vernon Ehlers, Charles Purchner, Barney Hill, David Blackstock, Port Attorney James C. Simpson, Jr., and Deputy City Clerk Stacey Dahl.

Absent the meeting were Commissioner Danny Hansen and Harbormaster Michael White.

There being a quorum present and sufficient to transact the business of the Port Commission, the following proceedings were had and done.

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The meeting was called to order and there were no comments or amendments to the agenda.

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Commissioner Ehlers made motion seconded by Commissioner Purchner and unanimously carried to approve the November 18, 2010, Port Commission Minutes, as submitted.

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Commission President Kies recognized Project Manager Ron Robertson, Broaddus and Associates, for project updates as follows:

**PORT COMMISSION MINUTES  
DECEMBER 16, 2010**



Long Beach Port Commission  
Phil Kies, President

December 16, 2010

**RE: Project Updates:**

1. **Alternate Project. Harbor Pier 2 revisions**  
Project plans resubmitted to DMR/CORP for construction permit without Rock Jetty break water at the harbor entrance. Estimated project construction cost \$325k to \$335k.
2. **Bulkhead Project.**  
Bulkhead Design is currently at 75% complete. Issues still pending on lease agreement with Mississippi Secretary of State. Estimated project funding \$1,448k.
3. **Bait Shop.**  
MEMA/FEMA has approved Bait Shop scope of work without Improved Project status. See attached communication received this week. Estimated project construction cost \$70k. Next steps are to develop basis for requesting quotes on trailer and other items.
4. **CIAP – Harbor Expansion Planning.**  
CIAP Grant's Construction Narrative and Budget is currently under review for approval by Minerals Management Service, U.S. Department of Interior. Estimated project funding \$2,000k.

Please contact me at your convenience with any questions.

Best Regards,



Ron Robertson, P. E.  
Project Manager

**PORT COMMISSION MINUTES  
DECEMBER 16, 2010**

**Ron Robertson**

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**From:** Kelli Hamilton [khamilton@mema.ms.gov]  
**Sent:** Monday, December 13, 2010 1:08 PM  
**To:** Ron Robertson  
**Subject:** Answer to question on PW 5852

12/03/10 - (SSD) FEMA has prepared 5852-6 for the bait shop proposed project; per V6 scope: "ALTHOUGH THE REQUESTED SCOPE OF WORK DOES NOT RETURN THE BAIT SHOP TO EXACT PRE-DISASTER CONDITIONS, FEMA HAS DETERMINED THAT THE APPLICANT'S PROPOSED REPLACEMENT OFFERS THE MOST IDEAL AND COST-EFFECTIVE SOLUTION WHILE SATISFYING ALL NECESSARY CODE REQUIREMENTS. THIS VERSION CAPTURES THE APPLICANT'S PROPOSED BAIT SHOP REPLACEMENT ALLOWING THEIR PURSUIT OF THE REQUESTED SCOPE OF WORK WITHOUT IMPROVED PROJECT STATUS."

Kelli Blaize Hamilton MCEM  
Public Assistance - EM Specialist  
Mississippi Emergency Management Agency (MEMA)  
[khamilton@mema.ms.gov](mailto:khamilton@mema.ms.gov)<<mailto:khamilton@mema.ms.gov>><<mailto:khamilton@mema.ms.gov>>  
601-850-3271 - Cell

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There was no action required or taken regarding the aforesaid update.

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The commission recognized Mr. Jimmy Levens, Blue Ridge Properties, LLC. Mr. Levens delivered final site and architectural plans and specifications to the Deputy City Clerk's office and were submitted for the commission's review. Commissioner Hancock made motion seconded by Commissioner Ehlers and unanimously carried to approve the aforesaid plans, noting a copy of the plans are available for review in the City of Long Beach Building Department.

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**PORT COMMISSION MINUTES  
DECEMBER 16, 2010**

The lease assignment, S. Pucheu Holdings, LLC, to DMF Properties, LLC, is being drafted by the lessee's attorney and the matter was taken under advisement for consideration and review at the next regular meeting, January 20, 2011.

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There came on for consideration a Proposed Engineering Agreement, BIG Tier 2 Development – Long Beach Harbor, as follows:



**A. GARNER RUSSELL & ASSOCIATES, INC. / CONSULTING ENGINEERS**

520 33<sup>RD</sup> STREET, GULFPORT, MS 39507  
P.O. BOX 1677, GULFPORT, MS 39502

TEL (228) 863-0667  
FAX (228) 863-5232



December 3, 2010

City of Long Beach  
P.O. Box 929  
Long Beach, MS 39560

**RE: Proposed Engineering Agreement  
BIG Tier 2 Development – Long Beach Harbor**

Ladies and Gentlemen:

We have attached a proposed Contract between the City and A. Garner Russell for engineering services related to the construction of the BIG improvements in the Long Beach Smallcraft Harbor. Namely, this includes a concrete bulkhead, and sidewalk, an 8' pier with electrical and water hookups for transient vessels, and dredging to provide appropriate water depth along the pier area. All of these improvements are along the north-eastern shore of the Harbor, between Pier 5 and the Fuel Dock.

Should it please the Board, we recommend approval of the referenced Contract so that development of Contract Documents may continue.

Sincerely,

David Ball, P.E.

DB:1882  
Enclosure

**PORT COMMISSION MINUTES  
DECEMBER 16, 2010**

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT, effective as of \_\_\_\_\_ ("Effective Date") between  
\_\_\_\_\_ City of Long Beach \_\_\_\_\_ ("Owner") and \_\_\_\_\_ A. Garner Russell & Assoc. \_\_\_\_\_  
("Engineer").

Engineer agrees to provide the services described below to Owner for the construction of a concrete bulkhead, and 8' pier for side-along mooring of transient vessels, and other miscellaneous site improvements, all more particularly described as the BIG Tier 2 Development, along the north-eastern shore of the Long Beach Harbor. ("Project")

Description of Engineer's Services: Provide design, bidding, and construction phase services for the BIG Tier 2 Development project in the Long Beach Harbor.

Owner and Engineer further agree as follows:

**1.01 Basic Agreement**

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

**2.01 Payment Procedures**

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

**3.01 Additional Services**

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

**4.01 Termination**

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

# PORT COMMISSION MINUTES

## DECEMBER 16, 2010

b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

### 5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

### 6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and

legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

### 7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction

# PORT COMMISSION MINUTES

## DECEMBER 16, 2010

contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

### 8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

**PORT COMMISSION MINUTES  
DECEMBER 16, 2010**

**9.01 Payment**

- A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:
1. Basic Services will be compensated on a lump sum amount of \$77,000 based on the following assumed distribution of compensation:

|                                  |             |
|----------------------------------|-------------|
| a. Preliminary Design Phase      | <u>35%</u>  |
| b. Final Design Phase            | <u>65%</u>  |
| c. Bidding and Negotiating Phase | <u>75%</u>  |
| d. Construction Phase            | <u>100%</u> |
  2. Resident Project Representative Services and Post Construction Services. For services of ENGINEER's Resident Project Representative, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.
  3. Engineer's Standard Hourly Rates are attached as Appendix 1.
  4. The Standard Hourly Rates will be adjusted annually (as of June, 2011) to reflect equitable changes in the compensation payable to the ENGINEER.
- B. The Engineer's compensation is conditioned on the time to complete construction not exceeding 12 months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Long Beach

ENGINEER: A. Garner Russell & Associates, Inc.

By: \_\_\_\_\_  
William Skellie, Jr.  
Mayor

By: M. Scott Burge  
M. Scott Burge  
President

Date Signed: \_\_\_\_\_

Date Signed: 12-9-10  
License No. and State: 9550 / MS

Address for giving notices:

Address for giving notices:

P. O. Box 929  
Long Beach, MS 39560

P. O. Box 1677  
Gulfport, MS 39502

After considerable discussion and review of the aforesaid contract, it was the consensus of the commission to request the following clarifications to the aforesaid contract:

- Timeline of deliverables
- Breakdown of \$77,000
- Late penalty fees/payment of invoices
- Insurance limits for error and omissions
- Attach Appendix 1

It was the consensus of the commission to table the aforesaid contract until the next regular meeting on January 20, 2011, or sooner, if required.



# PORT COMMISSION MINUTES

## DECEMBER 16, 2010

### Harbor Master Report

December 16, 2010

- Harbor Master Building
  - All defective windows have been replaced
- Broken Piling on Pier 1 Between Slips 33 & 34
  - Pink Marine replaced broken pile
- Marina Trash Skimmer
  - Delivered, installed and operational
- Slip Numbers
  - Still re-stenciling due to in climate weather
- Boat Launch Fender System
  - In the process of installing 5" fire hose, delayed due to in climate weather
- Harbor Employee Shirts
  - All employees have received their new shirts.
  - Total cost \$868.00
- Current Slip Occupancy 70% 165 rented out of 234 total slips
- <sup>December</sup> ~~October~~ Income Collected \$27,968.00

**PORT COMMISSION MINUTES  
DECEMBER 16, 2010**

November 2010

Tax Report

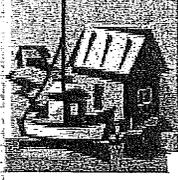
|               |                 |
|---------------|-----------------|
| Store Income: | \$ 463.00       |
| Tax:          | <u>\$ 32.00</u> |
| Total:        | \$ 495.00       |

|                   |                    |
|-------------------|--------------------|
| Slip Rent Income: | \$ 17,911.00       |
| Tax:              | <u>\$ 1,254.00</u> |
| Total:            | \$ 19,165.00       |

|             |                  |
|-------------|------------------|
| Land Lease: | \$ 7,764.00      |
| Tax:        | <u>\$ 544.00</u> |
| Total:      | \$8,308.00       |

|                  |                    |
|------------------|--------------------|
| Combined Income: | \$ 26,138.00       |
| Combined Tax:    | <u>\$ 1,830.00</u> |
| Combined Total:  | \$ 27,968.00       |

**PORT COMMISSION MINUTES  
DECEMBER 16, 2010**



**HARBOR BATCH REPORTS**

DATE: 12-8-10  
 CASH: 1,046.33      CHECKS: 25,257.27      TOTAL: 27,473.61  
 BANK DRAFT: 1,170.01  
 LAND LEASE: 8,308.49      TEMPS: 2,826.18

|          | BATCH         | CHECKS    | CASH              | TOTAL       |
|----------|---------------|-----------|-------------------|-------------|
| ..-15-10 | 6829          | —         | —                 | \$1,170.01  |
|          | 6816          | 6,515.73  | 201.29            | \$6,717.02  |
|          | 6845          | 13,520.04 | 596.82            | \$14,116.86 |
|          | 6783          | 5,221.50  | <del>248.22</del> | \$5,469.72  |
|          | <del>68</del> |           |                   |             |
|          |               |           |                   |             |
|          |               |           |                   |             |

There was no action required or taken regarding the Harbormaster's report.

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The commission recognized Attorney James C. Simpson, Jr., for the Port Attorney's report; however there was nothing to report.

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There being no further business to come before the Port Commission at this time, Commissioner Ehlers made motion seconded by Commissioner Purchner and unanimously carried to adjourn until the next regular meeting in due course.

**PORT COMMISSION MINUTES  
DECEMBER 16, 2010**

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APPROVED:

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PHIL KIES, PRESIDENT

DATE:

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ATTEST:

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STACEY DAHL, DEPUTY CITY CLERK