

**OCEAN HIGHWAY AND PORT AUTHORITY
ATTORNEY REPORT
12/2017**

1. City of Fernandina Beach:

a. Customs House - To re-cap: As previously reported, Carrol Franklin and I met with representatives of the Homeland Security/US Customs at the Customs House on September 26. We advised them that we were not able to provide them with a free facility. The promised minutes of that meeting still have not been received from Homeland Security/US Customs. We still need to develop a plan to address the matter in some form but I suggest we wait until after we see how the new port operations and cash flow shape up..

2. Callahan - Nothing to report.

3. Hilliard - Callahan Corridor: Nothing to report.

4. Yulee – Nothing to report.

5. Nassau County – Nothing to report.

6. Camden County – Nothing to report;

7. Port Operator/Operating Agreement: As previously advised, aspects of the Port Operating Agreement will change if and when the bond issue is “defeased”. After that time, we will need to bring it into line with existing operations and practices; address issues in the changes in cash flow; address the issues of the need for a new crane; and any issues that may relate to our debt service.

It has been a hectic month, to say the least. In addition to the above matters, during the past month I have:

a. On the topic of a defeasance of the bond debt: Pierre, Adam, and I had multiple telephone conferences, emails and meetings. In addition, there has been an awful lot of communications between an ever expanding group affected. Here is a synopsis of my activity:

November 12: Email from Pierre;

November 13: Conference call and emails from/with Yaron Gisser and Stephen DuBose of Kinder Morgan;

November 14: Telephone conference call with Yaron Gisser and John McCrory of Kinder Morgan and Jason Jean, their attorney; Multiple emails from/to Chris Ragucci of Worldwide and Nick Ratti at Four Woods Capital;

November 15: Telephone conference with Pierre; Telephone conference with Chris Ragucci and

Four Woods Capital regarding new financial model;

November 16: Telephone conference call among attorneys of parties regarding defeasance process for bond debt;

November 17: Emails back and forth with Chris Ragucci, regarding Operating Contract and impacts of bond defeasance; Emails back and forth with Yaron Gisser, regarding Operating Contract and impacts of bond defeasance;

November 20: Email back and forth with Chris Ragucci and Yaron Gisser;

November 21: Email back and forth with Chris Ragucci regarding qualification to do business in Florida; with Yaron Gisser, regarding proposed Resolution to allow conditional assignment of Operating Contract;

November 22: Emails with Jason Jean at Bracewell; Lunch with A. Salzburg and J. Cason, re: impacts on OHPA procedures and process;

November 25: Emails from Ragucci;

November 27: Emails from/to Jason Jean, Chris Ragucci;

November 28: Meet with A. Salzburg and C. Ragucci & Four Woods Capital representative;

November 29: Special Meeting of OHPA; Review materials from Four Woods Capital;

November 30: Email from Ragucci;

December 1: Email from Jason Jean (Bracewell) with draft schedule for defeasance steps;

December 3: Email from Jason Jean;

December 4: Emails from/to Yaron Gisser, Ashley Baker, Mark Stern, Jason Jean, Kenni Callahan;

December 5: Initiate discussions with Joseph B. Stanton, re: bond counsel services; email from/to Jason Jean, re: bond counsel; Kenni Callahan, closing checklist;

December 6: Emails with Jason Jean regarding LOC, Indenture terms; Barbara Denton, Bank of New York;

December 6: Emails with Jason Jean and Barbara Denton

December 8: Draft multiple resolutions; Multiple emails with Jason Jean, Yaron Gisser, Chris Ragucci. Initiate discussions with Mark Mustain, re: bond counsel;

December 9: Emails from Yaron Gisser, Chris Ragucci, re: cost for OHPA bond counsel.

b. On the topic of the LignoTech Tank Project, Laura and I had multiple emails between us, as well as on the topic of the port fendering system, Seaport Mission Plan, and other matters.

Respectfully submitted,

CLYDE W. DAVIS /s/

**AN EMERGENCY RESOLUTION OF THE
OCEAN HIGHWAY AND PORT AUTHORITY OF
NASSAU COUNTY, FLORIDA, REGARDING
DEPOSIT OF FUNDS RESULTING FROM THE
DEFEASANCE OF THE EXISTING BOND DEBT
INCURRED FOR PORT INFRASTRUCTURE
FOR THE PORT OF FERNANDINA, AND
HAVING AN EFFECTIVE DATE:**

RESOLUTION NUMBER 2017-12

WHEREAS: The Ocean, Highway, and Port Authority [PORT AUTHORITY] is an independent, special district of the State of Florida, created and chartered under the laws of the State of Florida at Chapter 2005-293, as authorized by F.S. Ch. 189; and

WHEREAS: It is the obligation of PORT AUTHORITY to attend to the operation of the Port of Fernandina, engage in planning for the future of the Port of Fernandina, and plan for the construction, erection, and maintenance of facilities to meet present and future needs of the citizens of Nassau County, Florida; and

WHEREAS, In order to fulfill its obligations to all of the citizens of Nassau County, Florida, AUTHORITY did execute and deliver \$38,500,000.00 Ocean Highway and Port Authority Adjustable Demand Revenue Bonds, Series 1990 (Bonds), pursuant to a Trust Indenture dated December 1, 1990, and

WHEREAS, on that same date of December 1, 1990, PORT AUTHORITY did enter into its OPERATING CONTRACT with the Port Operator, then known as Nassau Terminals, Inc., and now known as Nassau Terminals, LLC., a Delaware Limited Liability Company, authorized to do business in the State of Florida; and

WHEREAS, Worldwide Terminals Fernandina, LLC., a Delaware Limited Liability Company, seeks to acquire one hundred (100.0%) percent of the membership units held in

Nassau Terminals, LLC. In connection therewith, it has obtained a commitment for financing from BBVA/Compass Bank which will, among other things, pay all of the remaining bond debt due under the aforesaid bond issue, and that will fully absolve and release Port Authority from the lien of the same; and

WHEREAS, Satisfaction and payment of the bond debt, otherwise called a “defeasance”, and the absolution and release of PORT AUTHORITY thereon will result in a change in the handling of the financial affairs due to the elimination of the services of the bond trustee who previously received, administered and distributed funds pursuant to the bond indenture; and

WHEREAS, The full and complete absolution, payment, satisfaction, release and defeasance of the aforesaid bond debt is in the long term best interest of PORT AUTHORITY; and

WHEREAS, In the administration of the defeasance process it will be necessary for there to be executed documents on behalf of PORT AUTHORITY to establish bank accounts for the receipt, retention and transmission of funds. Such bank accounts are not currently established, nor will they be necessary unless the transaction contemplated is actually completed; and

WHEREAS, PORT AUTHORITY will not be able to comply with all governing rules related to the procurement of goods or services if the aforesaid transaction is completed as there is not sufficient time allowed in the contemplated transaction between Kinder Morgan and Worldwide Terminals – Fernandina, LLC. within which to procure banking services **and** comply with all governing rules. However, the failure to immediately deposit receipts into an authorized and established bank account will cause an immediate danger to the public’s funds and create risk and danger of substantial loss to PORT AUTHORITY and its property and interests therein.

As a consequence;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE OCEAN HIGHWAY AND PORT OF AUTHORITY OF NASSAU COUNTY, FLORIDA, THAT:

1. **ADAM SALZBURG** and **LISSA BRADDOCK**, the Chairman and Secretary, respectively, of the Ocean Highway and Port Authority of Nassau County, Florida, are hereby authorized and directed to execute and deliver such deposit agreements and other documents necessary to establish one or more separate bank accounts in the name of OCEAN HIGHWAY AND PORT AUTHORITY OF NASSAU COUNTY, FLORIDA at FIRST FEDERAL BANK OF FLORIDA, 1500 Sadler Road, Fernandina Beach, Florida, for the receipt and retention of all funds received until such time as compliance with all necessary rules for procurement of banking services may be met or satisfied;

2. This Resolution shall be effective upon adoption by the Ocean Highway and Port Authority of Nassau County, Florida; and

RESOLVED, FURTHER THAT: The Ocean Highway and Port Authority hereby adopts the foregoing Resolution, dated this _____ day of December, 2017.

**OCEAN HIGHWAY AND PORT AUTHORITY
OF NASSAU COUNTY, FLORIDA**

**BY: _____
ADAM SALZBURG, CHAIRMAN**

ATTEST:

**_____
LISSA BRADDOCK, ITS SECRETARY**

AN EMERGENCY RESOLUTION OF THE OCEAN HIGHWAY AND PORT AUTHORITY OF NASSAU COUNTY, FLORIDA, REGARDING EMPLOYMENT OF BOND COUNSEL IN CONNECTION WITH THE DEFEASANCE OF THE EXISTING BOND DEBT INCURRED FOR PORT INFRASTRUCTURE FOR THE PORT OF FERNANDINA, ENCUMBERING FUNDS AND AMENDING THE BUDGET IN CONFORMITY THEREWITH, AND HAVING AN EFFECTIVE DATE:

RESOLUTION NUMBER 2017-13

WHEREAS: The Ocean, Highway, and Port Authority [PORT AUTHORITY] is an independent, special district of the State of Florida, created and chartered under the laws of the State of Florida at Chapter 2005-293, as authorized by F.S. Ch. 189; and

WHEREAS: It is the obligation of PORT AUTHORITY to attend to the operation of the Port of Fernandina, engage in planning for the future of the Port of Fernandina, and plan for the construction, erection, and maintenance of facilities to meet present and future needs of the citizens of Nassau County, Florida; and

WHEREAS, In order to fulfill its obligations to all of the citizens of Nassau County, Florida, AUTHORITY did execute and deliver \$38,500,000.00 Ocean Highway and Port Authority Adjustable Demand Revenue Bonds, Series 1990 (Bonds), pursuant to a Trust Indenture dated December 1, 1990, and

WHEREAS, on that same date of December 1, 1990, PORT AUTHORITY did enter into its OPERATING CONTRACT with the Port Operator, then known as Nassau Terminals, Inc., and now known as Nassau Terminals, LLC., a Delaware Limited Liability Company, authorized to do business in the State of Florida; and

WHEREAS, Worldwide Terminals Fernandina, LLC., a Delaware Limited Liability

Company, seeks to acquire one hundred (100.0%) percent of the membership units held in Nassau Terminals, LLC. In connection therewith, it has obtained a commitment for financing from BBVA/Compass Bank which will, among other things, pay all of the remaining bond debt due under the aforesaid bond issue, and that will fully absolve and release Port Authority from the lien of the same; and

WHEREAS, Satisfaction and payment of the bond debt, otherwise called a “defeasance”, and the absolution and release of PORT AUTHORITY thereon is in the best interest of PORT AUTHORITY; and

WHEREAS, Time constraints imposed by this transaction do not allow for the orderly procurement of specialized legal services through the RFP process. Yet the failure to have competent legal representation in this transaction poses an obvious, clear and immediate need for such services, and the failure to procure such services places the PORT AUTHORITY and its property and interests at a foreseeable, significant and immediate risk of substantial loss, and for which no budget line item exists;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE OCEAN HIGHWAY AND PORT OF AUTHORITY OF NASSAU COUNTY, FLORIDA, THAT:

1. The engagement letter/services contract proposal of Joseph B. Stanton, of Broad and Cassel, LLP, is accepted;

2. **ADAM SALZBURG** and **LISSA BRADDOCK**, the Chairman and Secretary, respectively, of the Ocean Highway and Port Authority of Nassau County, Florida, are hereby authorized and directed to execute and deliver such engagement letter on behalf of PORT AUTHORITY;

3. Funds held on deposit in First Federal Money Market Account, Special, ****1552, is encumbered in the amount of \$15,000.00 to meet the expenses of such contractual obligation and the current budget of PORT AUTHORITY is amended in conformity thereto, at the line item for legal services is amended contemporaneously herewith.

4. This Resolution shall be effective upon adoption by the Ocean Highway and Port Authority of Nassau County, Florida; and

RESOLVED, FURTHER THAT: The Ocean Highway and Port Authority hereby adopts the foregoing Resolution, dated this _____ day of December, 2017.

**OCEAN HIGHWAY AND PORT AUTHORITY
OF NASSAU COUNTY, FLORIDA**

**BY: _____
ADAM SALZBURG, CHAIRMAN**

ATTEST:

**_____
LISSA BRADDOCK, ITS SECRETARY**