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**JASPER COUNTY COUNCIL  
VIRTUAL MEETING**

**Jasper County Clementa C. Pinckney Government Bldg  
358 3<sup>rd</sup> Avenue Ridgeland, SC 29936**

**August 30, 2021**

**AGENDA**

**8:30 A.M.**

**I. Call to Order by Chairwoman Barbara B. Clark**

*Clerk's Report of Compliance with the Freedom of Information Act.*

**II. Approval of the Agenda**

**III. Resolution:**

**A: Andrew Fulghum - Resolution authorizing and adopting the terms of the first amendment to that certain agreement between Jasper County and the South Carolina State Ports Authority regarding the Jasper Port site, and authorizing the County Administrator and County Attorney to perform certain tasks related thereto.**

**IV. Adjourn**

**\*Council may act on any item appearing on the agenda.**

In accordance with South Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, notification of the meeting was posted on the County Council Building at a publicly accessible place and on the county website at least 24 hours prior to the meeting. A copy of the agenda was given to the local news media and posted at the meeting location twenty-four hours prior to the meeting.

***Special Accommodations Available Upon Request to Individuals with Disabilities*  
*(843) 717-3696***

# AGENDA ITEM:

## III

Resolution

**STATE OF SOUTH CAROLINA  
JASPER COUNTY**

**RESOLUTION NUMBER 2021 -18**

**RESOLUTION OF JASPER COUNTY COUNCIL**

**RESOLUTION AUTHORIZING AND ADOPTING THE TERMS OF THE FIRST AMENDMENT TO THAT CERTAIN AGREEMENT BETWEEN JASPER COUNTY AND THE SOUTH CAROLINA STATE PORTS AUTHORITY REGARDING THE JASPER PORT SITE, AND AUTHORIZING THE COUNTY ADMINISTRATOR AND COUNTY ATTORNEY TO PERFORM CERTAIN TASKS RELATED THERETO**

**WHEREAS**, by Agreement made and executed on February 23, 2021 by the Jasper County Administrator and the Ports Authority's President and Chief Executive Officer, and subsequently ratified by Jasper County Council on March 1, 2021, and the Ports Authority on March 16, 2021 (the "March 16th Agreement"), certain terms and conditions were agreed upon by the parties; and

**WHEREAS**, the March 16<sup>th</sup> Agreement contemplated the creation and execution of an assignment and assumption agreement through which the Ports Authority assigns all of its rights, interests, duties, and obligations under that certain Joint Venture Agreement executed between the SCSPA and the Georgia Ports Authority (:GPA") in 2015 ("JVA") to Jasper County, and Jasper County assumes and accepts all of the Ports Authority's rights, interests, duties, and obligations under the JVA and agrees to fully enjoy and discharge those rights, interests, duties, and obligations. including but not limited to Ports Authority's interest in the Jasper Port Site; and

**WHEREAS**, in furtherance of the March 16<sup>th</sup> Agreement, an Assignment and Assumption Agreement was prepared and presented for approval to both Jasper County and the SCSPA, and the Assignment and Assumption Agreement was executed on March 26, 2021; and

**WHEREAS**, in accordance with the terms of the JVA, the effectiveness of the Assignment and Assumption Agreement and its terms and conditions are subject to the express written consent of GPA as required by Section 17(b) of the JVA; and

**WHEREAS**, the Assignment and Assumption Agreement and the March 16<sup>th</sup> Agreement were transmitted to the Chairman of the GPA on March 26, 2021, with a request for the GPA to provide its written consent, pursuant to Section 17(b) of the JVA; and

**WHEREAS**, the March 16<sup>th</sup> Agreement provided that the approvals and consents of Jasper County, the SCSPA, and GPA must be received no later than September 1, 2021; and

**WHEREAS**, the GPA, by letter dated August 12, 2021, informed Jasper County and SCSPA that it was not prepared to officially either offer or withhold its consent to the proposed assignment by SCSPA to Jasper County of SCSPA's interests in the JVA, and requested an extension beyond September 1, 2021 of that deadline; and

**WHEREAS**, through negotiations with the SCSPA, the Jasper County Administrator and County Attorney have obtained a proposed amendment to the March 16<sup>th</sup> Agreement to extend the deadline to January 31, 2022, for consideration by County Council, entitled “FIRST AMENDMENT TO THAT CERTAIN AGREEMENT BETWEEN JASPER COUNTY AND THE SOUTH CAROLINA STATE PORTS AUTHORITY” (“First Amendment”), a copy of which is attached hereto as “Exhibit ‘A’”; and

**WHEREAS**, Jasper County Council has examined the terms and conditions negotiated as contained in the First Amendment; and

**WHEREAS**, Council finds it to be in the best interests of its citizens to approve and adopt the First Amendment, authorize its execution by the County Administrator on behalf of the County, and authorize such other and further actions necessary to implement the approval, adoption, execution and delivery of the First Amendment;

**NOW THEREFORE, BE IT RESOLVED** by Jasper County Council, in the council duly assembled and by the authority of the same, that Jasper County Council:

1) adopts the foregoing premises as findings of the Council, and likewise adopts the findings and premises of the attached First Amendment as findings of Council;

2) approves and adopts the First Amendment, and authorizes the County Administrator to execute the same on behalf of Jasper County, and deliver such executed copy to the SCSPA; and

3) directs the County Administrator and the County Attorney to undertake such other actions as are necessary to continue to implement the March 16<sup>th</sup> Agreement as amended by this First Amendment to comply with the Obligations of Jasper County.

This Resolution No. \_\_\_\_\_ made this \_\_\_\_\_<sup>th</sup> day of August, 2021, and effective immediately.

\_\_\_\_\_  
**Barbara Clark**  
**Chair**

**ATTEST:**

\_\_\_\_\_  
**Wanda Simmons**  
**Clerk to Council**

Reviewed for form and draftsmanship by the Jasper County Attorney.

\_\_\_\_\_  
**David L. Tedder**

\_\_\_\_\_  
**Date**

**FIRST AMENDMENT  
TO THAT CERTAIN AGREEMENT BETWEEN JASPER COUNTY AND  
THE SOUTH CAROLINA STATE PORTS AUTHORITY**

This First Amendment amends that certain Agreement by and between the South Carolina State Ports Authority and Jasper County relating to the proposed Jasper Ocean Terminal (First Amendment) is made as of this \_\_\_\_ day of August, 2021.

WHEREAS, the Parties entered into an agreement regarding certain commitments related to the proposed Jasper Ocean Terminal, attached hereto as Exhibit 1;

WHEREAS, the Parties desire to amend the agreement in accordance with the terms outlined herein;

NOW, THEREFORE, in consideration of the terms set forth below, the Parties agree as follows:

1. In conformity with Section 6.F, Page 4 of the Agreement, the Parties agree to amend the Agreement as set forth below. Other than the terms set forth below, the Agreement remains unaltered and unaffected.

2. Section B.e, Page 4 of the agreement is hereby stricken in its entirety and replaced with the following language:

“The Effective Date of this Agreement shall be the date of the last of these three approvals and consents set forth above. All three approvals and consents must be received no later than January 31, 2022, or this Agreement is rendered null and void. Until the receipt of the necessary approvals and consents to effectuate this Agreement, the Ports Authority shall continue to comply with the requirements of the Joint Venture Agreement.”

3. This First Amendment may be executed in one or more counterparts, all of which constitute a single agreement. The execution and delivery of such counterpart, including execution by electronic signature, by any Party shall have the same force and effect as if that person had executed all other counterparts.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURES ON FOLLOWING PAGE]**



IN WITNESS HEREOF, the Parties have set forth their hands and seals on dates set forth below, with this amendment being deemed effective on the last date:

**SOUTH CAROLINA STATE PORTS AUTHORITY**

By: \_\_\_\_\_  
Name: James I. Newsome, III  
Its: President and CEO  
Date: \_\_\_\_\_

**JASPER COUNTY**

By: \_\_\_\_\_  
Name: Andrew P. Fulghum  
Its: County Administrator  
Date: \_\_\_\_\_



**WHEREAS, the SCSPA, mindful of its statutory obligation pursuant to Act 73 of 2009, has concluded that a conveyance to Jasper County of its one-half interest in the Joint Venture and its undertaking of the other obligations set forth herein are consistent with its discharge of such statutory duty; and**

**WHEREAS, Jasper County has threatened a civil action against the SCSPA based on Jasper County's belief that the SCSPA has failed to expeditiously develop a port on the Jasper Port Site as required by Act 73 of 2009; and**

**WHEREAS, Jasper County is desirous of forgoing the referenced civil action and issuing a release in regard thereto, and of accepting in its stead the SCSPA's assignment of its one-half interest in the Joint Venture and the SCSPA's promise to discharge certain other obligations set forth in this Agreement, and of assuming the Joint Venture obligations and certain other obligations set forth herein.**

**NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the SCSPA and Jasper County hereby agree as follows:**

**A. OBLIGATIONS OF THE PARTIES:**

- 1. Within ten (10) days of the approval of this Agreement by the Board of the SCSPA and the County Council for Jasper County, each will execute an assignment and assumption agreement through which the SCSPA assigns all of its rights, interests, duties, and obligations under the Joint Venture Agreement to Jasper County, and Jasper County assumes and accepts all of the SCSPA's rights, interests, duties, and obligations under the Joint Venture Agreement and agrees to fully enjoy and discharge those rights, interests, duties, and obligations. It is agreed and acknowledged that the transfer of the interest in the Joint Venture to Jasper County includes, but is not limited to, the real property interest held by the Joint Venture that was previously transferred to it by the SCSPA.**
- 2. Contemporaneously with the execution of the assignment and assumption agreement, the SCSPA and Jasper County will execute an agreement releasing and waiving any and all claims and covenanting not to sue the SCSPA for any and all claims arising from or related to the port project at the Jasper Port Site.**
- 3. Paragraph 17(b) of the Joint Venture Agreement provides, *inter alia*, the SCSPA may not assign its interest in the Joint Venture without the GPA's express written consent. Contemporaneously with the execution of the assignment and assumption agreement, the SCSPA covenants that it will send a letter to the GPA with a copy of the assignment and assumption agreement requesting that the GPA consent to the assignment by the SCSPA and the assumption by Jasper County of the SCSPA's Joint Venture interest.**



4. **Within thirty (30) days of the Effective Date, the SCSPA will provide Jasper County copies of all work product in its possession pertaining to the Jasper Ocean Terminal or, if such work product is in the possession of third parties with whom the SCSPA has contracted, if applicable, direct said third parties to deliver copies of such work product to Jasper County.**
5. **The SCSPA covenants that within fifteen (15) days of the Effective Date it will send letters to the U.S. Army Corps of Engineers' Charleston and Savannah Districts notifying each of the assignment and assumption and requesting that each branch meet with Jasper County for the purpose of updating Jasper County on the status of the port project for the Jasper Port Site.**
6. **Within thirty (30) days of the Effective Date, the Parties shall request a meeting with Maritime Commission members and staff be held for the purpose of the SCSPA and Jasper County briefing the Maritime Commission on this Agreement.**
7. **The SCSPA covenants that it will not oppose or encourage any third party to oppose the development of a port at the Jasper Port Site.**
8. **To the extent applicable, the SCSPA consents to the removal of any spoil easements held by the United States related to the port project for the Jasper Port Site.**
9. **Contemporaneous with the SCSPA's execution and delivery to Jasper County of the assignment and assumption agreement, the SCSPA shall transfer all right, title, and interest in the Three Million One Hundred Twenty Five Thousand and 00/100 (\$3,125,000.00) Dollars in state funds (the "Infrastructure Funds") that were previously appropriated to the SCSPA by the South Carolina General Assembly to defray expenditures related to the design, permitting or building of an ocean terminal on the Jasper Port Site, but which have not yet been spent for that purpose by the SCSPA, to the Department of Administration for it to hold for disbursement to Jasper County for qualifying expenses and costs. Such qualifying expenses and costs shall include legal and other professional assistance to negotiate an agreement with the GPA and/or third parties regarding the development of said ocean terminal and retaining third parties to assist with the design, permitting, or construction of an ocean terminal on the Jasper Port Site.**
10. **Jasper County covenants that, commencing as of the Effective Date of this Agreement, and continuing thereafter, it shall take actions that are in furtherance of the expeditious development of an ocean terminal on the Jasper Port Site. The SCSPA stipulates and acknowledges that Jasper County's ability to further the expeditious development of said terminal may from time to time involve requests by Jasper County to the South Carolina General Assembly for state appropriations to defray expenditures related to the design, permitting, or construction of an ocean terminal on the Jasper Port Site, and the SCSPA covenants that it will not oppose or encourage any third party to oppose Jasper County's request for such appropriations.**

11. As expeditiously as possible after the Effective Date of this Agreement, Jasper County shall retain legal and other professional assistance in connection with negotiating an agreement with the GPA and incur such other expenses as are related to the design, permitting, or constructing an ocean terminal on the Jasper Port Site.

**B. CONDITIONS PRECEDENT.**

- a. The effectiveness of this Agreement and its terms and conditions are subject to the express approval by the Board of the SCSPA, and the SCSPA agrees to seek such approval at the SCSPA's next regularly scheduled Board meeting.
- b. The effectiveness of this Agreement and its terms and conditions are subject to the express approval by Jasper County Council, and Jasper County agrees to seek such approval at Jasper County's next regularly scheduled Council meeting.
- c. The effectiveness of this Agreement and its terms and conditions are subject to the express written consent of the Georgia Ports Authority as required by Section 17(b) of the Joint Venture Agreement.
- d. The execution of this Agreement by the CEO and President of the SCSPA and the County Administrator of Jasper County represent a good faith intent by them to obtain the approvals and consents set forth above and are only effective and binding upon the Parties as of the Effective Date.
- e. The Effective Date of this Agreement shall be the date of the last of the three approvals and consents set forth above. All three approvals and consents must be received no later than September 1, 2021, or this Agreement is rendered null and void. Until the receipt of the necessary approvals and consents to effectuate this Agreement, the Ports Authority shall continue to comply with the requirements of the Joint Venture Agreement.

**C. MISCELLANEOUS:**

1. The Parties to this Agreement acknowledge that, upon assumption of the Joint Venture Agreement, Jasper County retains discretion on how to proceed in connection with development of an ocean terminal on the Jasper Port Site, and that such may include, without limitation, an ocean terminal consistent with its current design configuration or with a reduced scope, and may also include such legal ownership and/or operation arrangements as it shall determine is reasonably related to the stated objective consistent with the Joint Venture Agreement.



2. This Agreement may be executed in one or more counterparts, each of which will be deemed an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The parties understand and agree that signatures sent by electronic means, e.g., facsimile, scanned and sent via email, or signed by electronic signature, shall be deemed original signatures.
3. This Agreement constitutes the entire understanding between the Parties regarding the subject matter of the Agreement.
4. This Agreement shall be governed by the laws of the State of South Carolina and shall be binding on the Parties and their respective successors and assigns.
5. This Agreement may not be modified or amended except in a writing signed by authorized officers or representatives of both Parties.

IN WITNESS WHEREOF, the Parties have signed this Agreement to be operative as of the Effective Date.

**SOUTH CAROLINA STATE  
PORTS AUTHORITY**

By: \_\_\_\_\_

James I. Newsome, III  
Its: President and CEO

**JASPER COUNTY**

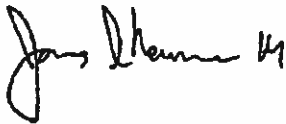
By: \_\_\_\_\_

  
Andrew P. Fulghum  
Its: County Administrator

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**SOUTH CAROLINA STATE  
PORTS AUTHORITY**



By:

James I. Newsome, III  
Its: President and CEO

**JASPER COUNTY**

By:

\_\_\_\_\_  
Andrew P. Fulghum  
Its: County Administrator

**Exhibit A**

**All those certain pieces, parcels or lots of land, situate, lying and being in Jasper County, South Carolina, having and containing 1517.78 acres, more or less, shown and designated as "Tract 14A and Tract 14B" (the "Property") on that certain plat entitled "Jasper Ocean Terminal Tracts 14A & 14B, being lands of The Georgia Department of Transportation, Jasper County, South Carolina", dated June 30, 2008, prepared by Hussey Gay Bell & De Young, Inc., certified to by James M. Sims, S.C.R.L.S #13169, and recorded in the Land Records of Jasper County, South Carolina, in Plat Book 31 at Page 183 (the "Plat").**

**SEE DEED RECORDED IN BOOK 685 AT PAGE 0049 OF THE REGISTER OF DEEDS OFFICE FOR JASPER COUNTY, SOUTH CAROLINA FOR METES AND BOUNDS.**